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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**BOSNIA AND HERZEGOVINA**

**DRAFT LAW**  
**ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL**

**DRAFT**

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the \_\_\_\_\_ session of the House of Representatives, held on \_\_\_\_\_ 2024, and at the session of the House of Peoples, held on \_\_\_\_\_ 2024, adopted the

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

**PART I - GENERAL PROVISIONS**

**Article 1**  
**(Subject Matter)**

(1) This Law confirms the continuity of the existence of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: the Council), and prescribes the composition, procedure and conditions for the election of Council members, 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, as well as the procedure and conditions for the appointment of legal associates who, pursuant to specific provisions, are authorised to process and decide in matters within the jurisdiction of the court, and other issues related to the work of the Council.

(2) 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 2**  
**(Seat, Status and Stamp of the Council)**

(1) The seat of the Council shall be in Sarajevo.

(2) The Council shall be an autonomous and independent institution and it 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) In addition to the name of the Council in the three official languages and two scripts that are in use in Bosnia and Herzegovina, the coat of arms and flag of Bosnia and Herzegovina shall be displayed on the building where the Council is seated.

**Article 3**  
**(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 4**  
**(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, autonomously 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 work and decision-making of the Council.
- (5) The composition of the Council, as a rule, shall reflect the diversity of the peoples of Bosnia and Herzegovina in accordance with the Constitution of Bosnia and Herzegovina, whereby the Council must have at least four members from each constituent people and two members who are the Others, and at least eight members of the same gender.
- (6) The work of the Council shall be public, unless this Law regulates otherwise, and everyone has the right to access information in accordance with the regulations on freedom of access to information at the level of Bosnia and Herzegovina.
- (7) The provisions of the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina (Official Gazette of BiH, 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09, 87/12, 6/13, 19/16 and 83/17) shall not apply to the Council.
- (8) The provisions of the Law on Administration (Official Gazette of BiH, 32/02, 102/09 and 72/17) shall not apply to the Council, unless otherwise regulated by this Law.

### **Article 5** **(Composition of the Council)**

- (1) The Council shall have 20 members.
- (2) Eight Council members shall be elected from among judges, as follows:
- a) one judge from the Court of Bosnia and Herzegovina, elected by the judges of the Court of Bosnia and Herzegovina;
  - b) one judge of the Appellate or the Basic Court of the Brčko District, elected by the judges of the Basic and the Appellate Court of the Brčko 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 the Supreme Court of Republika Srpska;
  - 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 Brčko District of Bosnia and Herzegovina, elected by the prosecutors of the Prosecutor's Office of the Brčko 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, with a two-thirds majority upon the proposal of the Joint Collegium of both Houses.<sup>1</sup>

(6) One Council member who is an attorney shall be appointed by the Bar Association of the Federation of Bosnia and Herzegovina.

(7) One Council member who is an attorney shall be appointed by the Bar Association of Republika Srpska.

(8) Council member from paragraphs (4) and (5) of this Article, shall be a person who has a high reputation in the public, private or non-governmental sector, professional qualifications and experience that are relevant to work in the Council.

(9) In order to implement the minimum ethnic and gender based composition of the Council, the Council shall determine the institutions from which the election of the Council members shall ensure the implementation of Article 4, paragraph (5) of this Law by drawing lots before publishing the public call. The drawing of lots shall be regulated by the Book of Rules adopted by the Council at the proposal of the commission from paragraph 10 of this Article.

(10) For the purpose of preparing a Draft Book of Rules for the drawing of lots procedure, the Council shall form a commission to be composed of the equal number of representatives of the Council and the Ministry of Justice of Bosnia and Herzegovina.

## **Article 6**

### **(Ineligibility for the Membership in the Council)**

(1) No person who has previously served two terms as a Council member, nor a person who has previously been removed from office as a Council member in accordance with this Law, shall be elected a Council member.

(2) The following persons may not be elected Council members referred to in Article 5, paragraphs (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 elected in the following mandate as a Council member under Article 5, paragraph (2) items 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 elected in the following mandate as a Council member under Article 5, paragraph (2), items d) and f).

(5) The following persons may not be elected Council members referred to in Article 5, 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;
- d) person who has not completed a period of four years from the end of the previous term in the Council.

(6) A person who is subject to criminal proceedings or a person who has been finally convicted of a criminal offense shall not be elected as a Council member.

(7) Deadlines referred to in paragraph (2) items b), d) and e) and paragraph (5) items b), c) and d) of this Article are counted until the day of publication of the call for nominations of Council members.

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<sup>1</sup> 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.

**Article 7**  
**(Composition of the Council Rules)**

(1) A judge of the Appellate Court of the Brčko District BiH and a judge of the Basic Court of the Brčko District BiH shall be elected alternately as members of the Council referred to in Article 5, paragraph (2) item b) of this Law.

(2) Judges of courts from the same canton may not at the same be elected Council members under Article 5, paragraph (2), items d) and e).

(3) Judges of courts from the territorial jurisdiction of one district court may not at the same time be elected Council members under Article 5, paragraph (2), items g) and h) of this Law. 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.

(5) For the Council member referred to in Article 5, paragraphs (4) and (5) of this Article, two experts from the Notary Association, or from the same public, private or non-governmental organisation shall not be elected at the same time.

(6) Persons who meet the criteria decided by drawing lots may run for Council members representing institutions that ensure the implementation of Article 4, paragraph (5) of this Law.

**Article 8**  
**(Election Procedure)**

(1) The procedure for nomination and election of the Council members referred to in Article 5, paragraphs (2) and (3) of this 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 5, paragraphs (4), (5), (6) and (7) of this Law shall be conducted in accordance with this Law and regulations of the bodies and services in charge of nomination, election and appointment.

**Article 9**  
**(Public Call for Nominations)**

(1) The Council shall post a public call for nominations on its website no later than nine months prior to the expiration of the Council members' term. The content of the public call shall reflect the results of the drawing of lots in terms of Article 5, paragraph (9) of this Law.

(2) Judicial institutions, bodies referred to in Article 5, paragraphs (4) and (5) of this Law, the Bar Association of the Federation of BiH and the Bar Association of Republika Srpska 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 10**  
**(Electoral Bodies)**

(1) Bodies for the election of the Council members referred to in Article 5, paragraph (2) and (3) of this Law shall be the Election Committee and electoral boards.

(2) The Election Committee shall be appointed by the Council.

(3) Electoral boards in each court and prosecutor's office shall be appointed by the court president or chief prosecutor, on the proposal of the general session or collegium.

(4) Electoral bodies shall be formed for each election process in accordance with the Book of Rules on the procedure for election of Council members under Article 8 of this Law.

**Article 11**  
**(Composition of Electoral Bodies)**

(1) The Election Committee shall consist of three Council members, of which one judge, one prosecutor and one member who is not judicial office holder.

(2) Electoral boards in courts shall consist of three members, of which two judges and one member who is not judicial office holder.

(3) Electoral boards in prosecutor's offices shall consist of three members, of which two prosecutors and one member who is not judicial office holder.

(4) 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 a judge, prosecutor or member if they have a conflict of interest that may cast doubt on their impartiality.

(5) 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 8 paragraph (1) of this Law.

(6) Chairs of the electoral bodies shall be elected by the members of these bodies from among themselves.

## **Article 12** **(Tasks of Electoral Bodies)**

(1) The Election Committee shall be responsible to:

- a) open candidate applications and determine whether the applications are timely and eligible, in terms of Article 13, paragraphs (1) and (2) of this Law;
- b) create lists of candidates and submit them to competent electoral boards together with the candidates' CVs;
- c) inform the Council if one candidate has been registered for election to a specific position;
- d) form the electoral roll individually for each court, i.e. 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;
- g) determine the number of valid, invalid and unused ballots for each polling station;
- h) count the votes from each polling station, for each candidate, and tally the votes and state the results of the election;
- i) submit to the Council a notice on the results of the election along with a report on the conducted election process;
- j) receive objections to the process of candidacy and election of the Council members, and collect the necessary 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 8, paragraph (1) of this Law shall regulate 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 13** **(Nomination for a Council Member from the Ranks of Judges and Prosecutors)**

(1) The candidate running for a member of the Council shall submit his/her application within 15 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 candidacy.

(2) The application shall be submitted to the competent committee in the Council by mail.

#### **Article 14**

##### **(Election of Council Members from the Ranks of Judges and Prosecutors)**

- (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 CVs, shall be 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 5 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.
- (7) The Council entrusts the Election Committee with a sufficient number of numbered ballots corresponding to the number of voters.

#### **Article 15**

##### **(Election Results and Notification of the Election Conducted)**

- (1) The chair of the Election Committee shall inform the Council about the election results no later than eight days after the day of the election and submit a detailed report on the conducted elections, which shall be published on the Council's website no later than the following day.
- (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 5 paragraph (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.
- (5) If the best ranked candidates on the lists of candidates for the election of Council members under Article 5 paragraph (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 16**

##### **(Objection to the Election Procedure)**

- (1) Each candidate as well as each judge or prosecutor has the right to file an objection to irregularities in the procedure for nomination and election of a Council member, at all stages of the procedure, no later than eight days after the publication of the report referred to in Article 15, paragraph (1) of this Law.
- (2) The Book of Rules referred to in Article 8 paragraph (1) of the Law shall stipulate what are the irregularities within the meaning of paragraph (1) of this Article.

- (3) The objection shall be submitted to the Election Committee, which submits the objection along with a written statement to the Council no later than three days.
- (4) Responding to the objection, the Council may:
- a) dismiss the objection if it is untimely, incomplete or inadmissible
  - b) reject the objection as ill-founded
  - c) accept the objection and order measures to eliminate the identified irregularity in the nomination and election process, or
  - d) accept the objection and annul the election of the Council member in whose election process an irregularity was found 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 Election Committee, it is established that there were irregularities in the nomination and election of a Council member that could affect election result.
- (6) Members of the Election Committee shall recuse themselves from deciding on the objection if the allegations relate to the conduct of the Election Committee.

#### **Article 17 (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 stipulated by this Law, the procedure for the replacement of a Council member shall be subject to provisions governing the election of Council members.

#### **Article 18 (Election of Other Members of the Council)**

- (1) Candidates for Council members under Article 5, paragraphs (4), (5), (6) and (7) of this Law, shall submit applications to the public call referred to in Article 9, paragraph (1) of this Law to the Ministry of Justice, i.e. to the Joint Collegium of both Houses of the Parliamentary Assembly BiH, the Bar Association of the Federation of Bosnia and Herzegovina and the Bar Association of Republika Srpska as bodies responsible for nominations, within 30 days from the date of publication on the Council's website.
- (2) The procedure for nominating and appointing Council members under Article 5, paragraphs (4), (5), (6) and (7) of this Law shall be carried out by competent bodies in accordance with this Law and the regulations governing their service.
- (3) The bodies responsible for appointing Council members under Article 5, paragraphs (4), (5), (6) and (7) of this Law shall submit the appointment decision to the Council no later than 90 days from the receipt of the call. The decision shall contain an explanation of the criteria referred to in Article 5 paragraph (8) of this Law.

### **CHAPTER II - MANDATE OF THE COUNCIL MEMBER AND CONFLICT OF INTEREST**

#### **Article 19 (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 him/her and serve the rest of the unexpired mandate.

#### **Article 20 (Prior Verification)**

- (1) The verification of asset and interest declarations of elected members of the Council, 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 175 and 176 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 176 of this Law and the outcome was positive, it shall not be subject to a new check.

#### **Article 21**

##### **(Obligation to Submit Asset Declarations)**

(1) Council members other than judges or prosecutors shall submit their initial declarations on assets and interests under Article 173 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 173 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 173, paragraph (6) of this Law.

#### **Article 22**

##### **(Annulment of Election)**

(1) In the event of a negative outcome of asset and interest declaration check, the election of the 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 body in charge of the election of the need to elect a new member of the Council.

#### **Article 23**

##### **(Commencement of Council Members' 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) 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, 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 175 of this Law.

(4) The postponement of taking office in accordance with paragraph (2) of this Article shall be calculated as part of the mandate.

(5) A Council member elected through a repeated call or as a replacement under Article 19, paragraph (3) of this Law, shall take office in the Council on the day the Council receives notification of the positive outcome of an additional check referred to in Article 176 of this Law.

#### **Article 24**

##### **(Ban on Applying to Vacant Positions During and After the End of Council Members' Mandate)**

(1) One year following the end of their mandate, members 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 or be elected to 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, the 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 the transfer.

#### **Article 25**

##### **(Misconduct of Council Members)**

(1) A Council member shall be held liable for the following misconduct, which they commit either intentionally or due to gross negligence:

- a) non-participating or irregularly participating in the work of the Council, its commissions and other working bodies, without justifiable reason;
  - b) non-fulfilling of obligations arising from the law, regulations and acts of the Council, without justifiable reason;
  - c) violating of the principle of impartiality or independence in the exercise of the function of a Council member;
  - d) acting with bias and prejudice during the exercise of official function due to race, colour, gender, religious affiliation, ethnic origin, nationality, sexual orientation or social and economic status;
  - e) inappropriate conduct in exercising the function of a Council member;
  - f) violating of the rules on preventing conflict of interest and recusal of the Council members;
  - g) holding of incompatible offices referred to in Article 31 of this Law;
  - h) disclosing of confidential information resulting from the exercise of the function of a Council member;
  - i) providing or presenting to the Council false, misleading or insufficient information;
  - j) violating the provisions of this Law concerning declaration of assets and interests;
  - k) conduct that damaged the reputation and integrity of the Council and judiciary as a whole.
- (2) If the misconduct of a Council member who is a judge or prosecutor can be brought under a disciplinary offense referred to in Article 194 or 195 of this Law, the provisions of this Law governing the disciplinary liability of judges and prosecutors shall be applied.
- (3) For the misconduct referred to in paragraph (1) of this Article, one of the following measures may be imposed:
- a) public reprimand;
  - b) removal from office.
- (4) The removal from office measure may be imposed in the event that the found misconduct led to a serious damage to the reputation of the Council or the judiciary, or when due to the severity of the violation, or the manner and circumstances under which it was committed, or the degree of liability and conduct of a Council member at the proceedings referred to in Article 28 of this Law renders a Council member unworthy to continue to hold the office.

## **Article 26**

### **(Initiation of Procedure and Competent Bodies)**

- (1) Each Council member, a judge, a prosecutor, and the Office of the Disciplinary Counsel, may submit to the Council a reasoned proposal for determining misconduct of a Council member.
- (2) When it receives the proposal and concludes that it is admissible in terms of paragraph (1) of this Article, the Council shall form a special panel to carry out inquiry into allegations concerning misconduct of a Council member (hereinafter: the Inquiry Panel) and a panel that decides on allegations of misconduct (hereinafter: the Disciplinary Panel).
- (3) The Inquiry Panel shall consist of three members who are selected from among judges and prosecutors who are not Council members, and who are selected from the list referred to in Article 192 of this Law.
- (4) The Disciplinary Panel shall consist of five members who are selected from among judges and prosecutors who are not Council members, and who are selected from the list referred to in Article 192 of this Law.
- (5) No judge or prosecutor from the same court or prosecutor's office as Council member against whom procedure has been initiated shall be appointed to the panels.
- (6) The Rules of Procedure shall regulate the formation of panels referred to in paragraph (2) of this Article, as well as the procedure for determining misconduct of a Council member, in the part that is not regulated by this Law.
- (7) The procedure upon the proposal referred to in paragraph (1) of this Article is urgent.

## **Article 27**

### **(Inquiries Concerning Allegations of Misconduct)**

- (1) The Inquiry Panel shall collect and consider information related to allegations of misconduct of a Council member, and it shall make a report and propose a decision.

- (2) In collecting information related to allegations of misconduct, the Inquiry Panel shall have competence referred to in Article 68 of the Law.
- (3) The Inquiry Panel shall provide the possibility to the Council member against whom procedure has been initiated to state, in writing or orally for the record, the facts related to the misconduct that he/she is charged with, and to submit or propose information and evidence.
- (4) The procedure before the Inquiry Panel shall not be public.
- (5) The report with the reasoned proposal, together with the collected documentation and the statement of the Council member, if given, shall be submitted to the Disciplinary Panel and the Council member against whom the proposal from paragraph (1) of this Article was submitted.
- (6) If from the proposal for determining misconduct of a Council member referred to in Article 26 paragraph (1) or from the collected information it follows that it is necessary to act in accordance with Article 26 paragraph (2), the Inquiry Panel shall submit the proposal to the Office of the Disciplinary Counsel, and inform the Council and the complainant. If disciplinary liability for a disciplinary offense referred to in Article 194 or 195 of this Law is determined in the disciplinary proceedings, the mandate of the Council member shall end in accordance with Article 29 paragraph (1) item h).

### **Article 28**

#### **(Decision on Allegations of Misconduct)**

- (1) The Disciplinary Panel shall consider the report and discuss it at a public session.
- (2) Chair of the Inquiry Panel shall be invited to the session to present the report. If the Chair is prevented to do so, he/she shall be replaced by another member of the Inquiry Panel.
- (3) The Council member against whom proceedings have been initiated shall be given the opportunity to personally or by proxy, in writing and orally at the session of the Disciplinary Panel, give statement on the allegations from the report, i.e. the allegations of misconduct that he/she is charged with, and to present and submit the information and evidence needed.
- (4) The Disciplinary Panel shall make decision with detailed reasoning, which shall be published on the Council's website.
- (5) A Council member may file a complaint to initiate an administrative dispute before the Court of Bosnia and Herzegovina against the decision referred to in paragraph (4) of this Article, within eight days from the date of publishing the decision on the Council's website. The complaint shall be decided by the Appellate Division of the Court of BiH in a panel of three judges.
- (6) The complaint referred to in paragraph (5) of this Article shall be submitted to the respondent for a response within eight days from the date it was received by the Court. The respondent is required to submit the response to the complaint within eight days from the date of receipt of the complaint.
- (7) In the dispute referred to in this Article, the Court shall review the legality of the procedure carried out and shall render decision in an urgent procedure within eight days from the date of receipt of the response to the complaint.

### **Article 29**

#### **(Termination of Council Members' Mandate)**

- (1) The mandate of a Council member shall terminate:
  - a) upon expiry of the period for which he/she has been elected;
  - b) upon cessation of office by virtue of which he/she was appointed to the Council;
  - c) by resignation;
  - d) in the event of violation of a prohibition referred to in Article 24, paragraph (2) of this Law;
  - e) in case of absence or non-participation in the work of the Council for periods longer than three months continually, or longer than six months continually due to illness;
  - f) in the event he/she has been finally convicted of a criminal offence which renders him or her unworthy to continue to hold the office;
  - g) by decision on removal of a Council member in accordance with Article 25 paragraph (3) item c) of this Law;
  - h) in the event of a disciplinary measure imposed on him/her while holding the office by virtue of which he/she was elected to the Council;
  - i) in the event of death of a Council member.

(2) In the cases referred to in paragraph (1) item c) through h) above, the mandate of a Council member shall terminate:

- a) on the day following the receipt of written resignation in the case referred to in paragraph (1), item c) above ;
- b) in the case referred to in paragraph (1) item d) above, the mandate shall terminate when he/she submits an application for a vacant position;
- c) on the day of adoption of the Council's decision determining that the circumstances referred to in paragraph (1) item e) above have occurred;
- d) on the day of adoption of the Council's decision determining that the circumstances referred to in paragraph(1) item f) above have occurred;
- e) in the case referred to in paragraph(1) item g) above, the mandate shall terminate on the day when decision on removal is issued;
- f) in the case referred to in paragraph(1) item h) above, the mandate shall terminate with the finality of the decision imposing disciplinary measure.

(3) The decision determining that the circumstances referred to in paragraph (1) items e) and f) have occurred shall be made by the Council ex officio.

### **Article 30**

#### **(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 he/she was elected or appointed to the Council, or to office he/she performs outside the Council;
- 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 vote 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 5 paragraphs (4), (5), (6) and (7) 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 31**

#### **(Incompatible Offices)**

(1) 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.

(2) A Council member may not be a member of any organisation that discriminates on any basis in accordance with the Law on Prohibition of Discrimination (Official Gazette of BiH, 59/09 and 66/16), nor may he or she contract the use of facilities belonging to such organisations and must resign from such organisations immediately upon learning of such conduct.

### **Article 32**

#### **(Conflict of Interest)**

(1) Council members shall be deemed to be in conflict of interest in situations in which they have private interest which influence or may reasonably 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 reasonably detrimental to the public interest or public trust.

(2) Within the meaning of paragraph (1) of this Article, "private interest" refers to 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.

(6) 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.

(7) In the event that a Council member has any doubts about conflict of interest, he or she shall request the opinion of the Council and act in accordance with that opinion.

### **CHAPTER III - ORGANIZATION, WORK AND COMPETENCIES OF THE COUNCIL**

#### **Article 33**

##### **(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 12 members and shall be comprised of Council members elected in accordance with Article 5, paragraphs (2), (4), (5), (6) and (7) of this Law.

(3) The Prosecutorial Department shall have 12 members and shall be comprised of Council members elected in accordance with Article 5, paragraphs (3), (4), (5), (6) and (7) of this Law.

#### **Article 34**

##### **(President and Vice Presidents of the Council)**

(1) The Council shall have a President and two Vice-Presidents.

(2) Article 4, paragraph (5) of this Law shall apply to the election of the President and two Vice-Presidents.

(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 this 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 this Law, whichever comes first.

#### **Article 35**

##### **(Election of the President)**

The Council shall elect its President in a procedure that shall be regulated with the Rules of Procedure.

#### **Article 36**

##### **(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) In managing the work of the Judicial Department and the Prosecutorial Department, the Vice-Presidents shall be assisted by deputies elected from among the full-time Council members.

(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 37**

#### **(Taking Office as President and Vice-President)**

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 176 of this Law.

### **Article 38**

#### **(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 his/her duties, he/she 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 referred to in 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 and Systematisation of Job Positions.

### **Article 39**

#### **(Duties of the Vice-Presidents)**

Aside from the duties and authorities outlined in Article 34, paragraphs (2) and (3) of this 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 40**

#### **(Termination of Mandate of the 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, as well as 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 41**

##### **(Removal of the President)**

(1) The President of the Council may be removed from office if they do not execute their duties from Article 38 of this 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 5, paragraphs (4), (5), (6) and (7) 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 vote of all Council members.

(5) The decision referred to in paragraph (4) of this Article shall contain the reasoning.

#### **Article 42**

##### **(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 39 of this 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) the decision referred to in paragraph (4) of this Article shall contain the reasoning.

#### **Article 43**

##### **(Duties of Council Members)**

(1) Members of the Council shall regularly participate in the work of the Council, its departments, committees and other working bodies and execute the tasks as assigned by the Council.

(2) The President, Vice-Presidents and two members from the ranks of judges and two members from the ranks of prosecutors 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. The 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, the 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 the 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 44****(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, 90/05, 32/07 and 77/20), where:

- a) the President of the Council shall have the rights specified for the President of the 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 Court of Bosnia and Herzegovina.

(2) 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.

(3) If the salary of a Council member 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 45****(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 this 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 46****(Immunity)**

(1) Council members, and members of the committee within the Council shall not be criminally prosecuted, arrested or detained, nor shall they be held liable in civil proceedings for any opinion they give or for the decisions they rendered within the scope of their official duties.

(2) Immunity shall not prevent or delay an investigation in a criminal or civil proceeding that is conducted against a Council member or a member of a committee within the Council on a matter in accordance with the law.

**Article 47****(Declarations of Assets and Interests of the Council Members)**

The provisions of this Law governing the filing of declarations of assets and interests of judges and prosecutors shall also apply to Council members.

**Article 48****(Decision-Making)**

(1) The Council shall exercise its competencies in plenary sessions of the Council, sessions of the Judicial Department and the Prosecutorial Department, and through disciplinary bodies and appraisal committees in accordance with the Article 52 of this Law.

(2) In exercising the Council's competencies, members of the bodies referred to in paragraph (1) of this Article may not abstain from voting.

**Article 49****(Plenary Session of the Council)**

(1) Plenary session shall comprise all Council members.

(2) At its plenary sessions, the Council shall decide on 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 15 members in attendance.
- (4) The plenary session shall decide by majority vote of all Council members, unless otherwise provided by this Law.
- (5) At least five votes of the Council members from the ranks of judges shall be required in the majority vote from paragraph (4) above for adoption of a decision made on the proposal of the Judicial Department.
- (6) At least five votes of the Council members from the ranks of prosecutors shall be required in the majority vote from paragraph (4) above for adoption of a decision made on the proposal of the Prosecutorial Department.

**Article 50**  
**(Department Sessions)**

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

**Article 51**  
**(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 212, paragraph (4) of this Law.
- (2) The composition, competencies and the method of work of disciplinary bodies shall be regulated in more detail in Part IV of this Law.

**Article 52**  
**(Performance Appraisal Committees)**

The Council shall have a performance appraisal committees for judges and prosecutors, which shall conduct performance appraisal in accordance with Chapter VI of this Law.

**Article 53**  
**(Committees and Working Bodies)**

- (1) The Council may, for reasons of greater efficiency in the execution of tasks, establish by decision 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 by internal regulations.
- (4) In establishing committees and other working bodies, the principle referred to in Article 4 paragraph (5) of this Law shall apply.
- (5) In accordance with its internal regulations, the Council may engage judges, prosecutors and any other persons 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 committees or other working bodies of the Council.
- (6) 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.
- (7) The 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 regulations, 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 54**  
**(Competencies)**

(1) 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) conducting disciplinary inquiries and proceedings, determining disciplinary liability of 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 determining the minimum amount of advanced professional training on an annual level, determining the induction training for persons elected to judicial and prosecutorial office and supervising the provision of such training, making recommendations regarding the adoption of the advanced professional training programme for judges and prosecutors and approving annual reports of the management boards of the Entity Judicial and Prosecutorial Training Centres and the Judicial Commission of Brčko District BiH in the part referred to the induction training and advanced professional training for judges and prosecutors;
- i) deciding on issues of incompatibility of other functions performed by judges and prosecutors;
- j) deciding on the temporary assignment of judges and prosecutors to another court or prosecutor's office;
- k) deciding on leaves of absence for judges and prosecutors;
- l) participating in all stages of the process of planning, preparing and proposing the annual budgets of courts and prosecutor's offices, following up on the process of their adoption and execution, collecting and analysing data and establishing a system for monitoring budget processes, and undertaking all necessary measures to ensure adequate funding of courts and prosecutor's offices in Bosnia and Herzegovina;
- m) giving opinions on the budget proposals of the courts and prosecutor's offices which are forwarded to the ministries of justice and the Judicial Commission of Brčko District BiH, and consulting with all relevant ministries of finance before adopting the budget proposals;
- n) giving opinions in the process of amending the budget of courts and prosecutor's offices, about which the Council shall be informed by the courts and prosecutor's offices and competent ministries of justice or other competent authorities;
- o) participating in the drafting of, and approving, Books of Rules for the operation of courts and prosecutor's offices in Bosnia and Herzegovina;
- p) supervising the courts and prosecutor's offices regarding the matters of judicial and prosecutorial administration and giving guidelines regarding budget planning and execution, managing and governing of courts and prosecutor's offices and initiating trainings in this regard;
- q) setting criteria for the performance of courts and prosecutor's offices and overseeing their implementation;
- r) initiating, overseeing and coordinating projects related to improving judicial performance, including seeking national and international funding resources;
- s) prescribing the content of criteria and sub-criteria and the procedure for performance appraisal of judges and prosecutors, court presidents, chief prosecutors and deputy chief prosecutors;

- t) apprising the performance of judges, prosecutors, court presidents, chief prosecutors and deputy chief prosecutors;
  - u) prescribing, establishing, coordinating and supervising the use of the Judicial Information System and approving the establishment of other information technologies in courts and prosecutor's offices;
  - v) 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 or the Judicial Commission of Brčko District BiH;
  - w) collecting information and maintaining documentation on the professional status and work performance of judges, prosecutors, court presidents, chief prosecutors and deputy chief prosecutors;
  - x) gathering asset and interest declarations of Council members, judges and prosecutors, checking timeliness, accuracy, completeness and authenticity of the declared data and analysing data provided in the declarations;
  - y) 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;
  - z) providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, initiate the adoption of relevant legislation and other regulations;
  - aa) providing guidance to courts and prosecutor's offices on matters falling under the Council's competence;
  - bb) issuing codes of ethics for judges and prosecutors;
  - cc) exercising other competencies as determined by this or other law.
- (2) Competencies from paragraph (1) items a), c), e), g), j) and k) as regards judges, court presidents and lay judges shall be exercised by the Judicial Department.
- (3) Competences from paragraph (1) items b), c), e), g), j) and k) as regards chief prosecutors, deputy chief prosecutors and prosecutors shall be exercised by the Prosecutorial Department.
- (4) Other competences of the Council from paragraph (1) of this Article shall be exercised by the plenary session of the Council, disciplinary bodies, performance appraisal committees, as well as the Asset Declarations Department, in accordance with this Law.

## **Article 55**

### **(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 54, item d) of this Law.

## **Article 56**

### **(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 referred to in Article 55, paragraph (1) of this 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 57 (Secretariat)**

(1) Professional, financial and administrative tasks for the Council and departments shall be performed by the Secretariat of the Council. The tasks of the Secretariat shall include 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 58 (Managing the Secretariat)**

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

(2) The Director shall carry out management duties, govern 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 59 (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 the Institutions of Bosnia and Herzegovina and the longest period of appointment to the position shall be ten years.

(3) Two Council members shall be elected on behalf of the Council as members of the selection committee for the Director and Deputy Director referred to in Article 24, paragraph (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, in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina.

### **Article 60 (Civil Servants and Employees in the Secretariat)**

(1) The nature and the content of open competitions for civil servants conducted in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina shall be decided by the Council upon the proposal of the Director.

(2) A selection committee pursuant to Article 24, paragraph (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, paragraph (2) of the Law on Civil Service in the Institutions of BiH.

(4) Civil servants in the Secretariat shall be 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 61 (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 regulations necessary for the work of the Council.

#### **Article 62 (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 budget in accordance with the provisions of the Law on Funding the Institutions of Bosnia and Herzegovina.

#### **Article 63 (Judicial Information System)**

(1) Financial resources necessary for the functional operation of the Judicial Information System in all its segments shall be provided in the Council's budget.

(2) The Judicial Information System shall be an integrated set of hardware and software components, equipment and systems for the collection, processing, storage, transfer and use of data and information in the Council, courts and prosecutor's offices.

(3) The Council shall regulate the establishment, maintenance, use and protection of the Judicial Information System by a by-law.

#### **Article 64 (Donor Funds)**

(1) The Council may initiate and conduct negotiations aimed at achieving international cooperation, receive funds from domestic and international donors for the Council's operating budget, as well as for the implementation of policies or special capacity building projects out of the Council's operating budget.

(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 donor agreement or grant agreement.

#### **Article 65 (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 Brčko 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 66 (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 67 (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, and
- g) no criminal proceedings are conducted against them.

##### **Article 68 (Special Requirements for the Appointment of Judges)**

(1) A judge of the court referred to in paragraphs (4) and (5) of this Article who has served for at least five years in that position and has at least 15 years of experience as a judge or prosecutor, of which at least 12 years as a judge may be appointed to the position of a judge of the Supreme Court of the Federation of BiH, the Supreme Court of Republika Srpska and the Appellate Court of the Brčko District of Bosnia and Herzegovina.

(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) Exceptionally from paragraphs (1) and (2) of this Article, a judge of the Basic Court of Brčko District BiH who has served for at least seven years in that position and has at least 15 years of experience as a judge or prosecutor, of which at least 12 years as a judge, may be appointed to the position of a judge of the Appellate Court of Brčko District BiH.

(4) A person who serves as a judge and has 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 Bosnia and Herzegovina.

(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) Exceptionally from paragraphs (4) and (5) of this Article, a judge of the Basic Court of the Brčko District BiH who has served in that position for at least five years may be appointed to the position of a judge of the Court of BiH, the district court in the Republika Srpska, the High Commercial Court in the Republika Srpska and the judge of the cantonal court in the Federation of BiH.

(7) A person who has at least five years of experience in legal affairs, after passing the bar exam, may be appointed to the position of a judge of the Basic Court of Brčko District BiH.

(8) A person who has at least three years of work experience in legal affairs, after passing the bar exam, may be appointed to the position of a judge of the basic court, district commercial court and municipal court.

(9) A person who serves as a prosecutor may also be appointed to the position of a judge referred to in paragraphs (7) and (8) of this Article.

### **Article 69** **(Special Requirements for the Appointment of Prosecutors and Deputy Chief Prosecutors)**

(1) A prosecutor who has at least fifteen years of experience as a prosecutor or judge, of which at least twelve years as a prosecutor, 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.

(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 to the position of the Deputy Chief Prosecutor of the Prosecutor's Office of Brčko District BiH, cantonal prosecutor's office in the Federation of BiH and district prosecutor's office in the Republika Srpska.

(4) A person with at least three years of experience in legal affairs, after passing the bar exam, may be appointed to the position of a prosecutor of the Prosecutor's Office of Brčko District BiH, cantonal prosecutor's office in the Federation of BiH and district prosecutor's office in the Republika Srpska.

(5) Also, a judge may be appointed to the position of a prosecutor referred to in paragraph (4) of this Article.

### **Article 70** **(Mandate of Judges and Prosecutors)**

Judges and prosecutors shall be 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 which renders him or her unfit to hold office or removal from office for reasons set forth under this Law.

### **Article 71** **(Suitability)**

(1) In the procedures referred to in Article 72 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 24 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 common-law partner, relative by marriage or relative of common-law partner up to second degree, holds a judicial/prosecutorial office.

(2) In the procedures referred to in Article 72 of this Law, when nominating, transferring or appointing candidates, all circumstances relevant to the assessment of their suitability shall be 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 72 (Filling the Vacant Positions)**

- (1) Vacant positions of judges, prosecutors and deputy chief prosecutors shall be filled through transfers, internal and public competitions, in accordance with this Law and the recruitment plan.
- (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 73 (Equal Rights and Proportional 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 proportional representation of constituent peoples and others, and shall look after the gender equality.

### **Article 74 (Matters Regulated by By-laws)**

- (1) The transfer, internal and public competition, nomination of candidates and appointment procedures, including managerial positions, in the part not regulated by this Law, shall be regulated in more detail by the Council's Book of Rules on the Appointment Procedure for Judicial Office Holders (hereinafter: the Book of Rules on the Appointment Procedure) and other Council's regulations 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 75 (Decision on Transfer and Appointment)**

- (1) The decision on transfer or appointment shall contain reasoning behind the application of criteria under Articles 85, 90, 98, 109 and 117 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 76 (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 shall be 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 176 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 (THE RELEVANT DEPARTMENT) may postpone or change the date for assuming the office of a judge or prosecutor, for the following reasons:



- a) If it is necessary in order to check the information referred to in Article 71 paragraph (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 77**

##### **(Reversing the Decision on Transfer or Appointment)**

- (1) Relevant Department shall reverse the decision on transfer or appointment:
  - a) when receives a negative report on the conducted check in accordance with Articles 176 and 177, 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 this Law.
- (2) If the relevant Department reverses the 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 shall also apply to the decision on appointment of the court president, chief prosecutor and deputy chief prosecutor.

#### **Article 78**

##### **(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) The solemn declaration shall be made orally before the President of the Council, or a Council Member designated by the President of the Council, and the declaration shall then be signed.
- (3) The solemn declaration shall bind the judges and prosecutors 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 79**

##### **(Right to Object During the Appointment Process)**

- (1) The candidate may file 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, to the competent department 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) shall be decided by the Judicial Department or the Prosecutorial Department, and the procedure upon objection shall be regulated in more detail by the Book of Rules on Appointments.

#### **Article 80**

##### **(Judicial Review)**

- (1) The candidate from the ranking list specified in Articles 86, 93 and 103 may file a complaint to initiate an administrative dispute before the Court of BiH against the transfer or appointment decision. The complaint shall be decided by the Appellate Division of the Court of BiH, in a panel of three judges.
- (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 shall submit the complaint to the Council for its response within eight days from the date it was received by the court. The Council shall submit the response to the complaint within eight days from the date of its receipt.

(4) In the dispute referred to in this Article, the Court 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) If the Court does not dismiss the complaint, it may:

- a) reject the complaint as ill-founded,
- b) uphold the complaint, reverse the decision on appointment and return the matter to the relevant Department 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 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 and submit the list of candidates to the competent sub-council for nomination of candidates.

(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.

##### **Article 82 (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 Brčko District BiH shall consist of six Council members, as follows:

- a) one Council member who is the judge of the Court of BiH;
- b) one Council member who is the judge of the Appellate Court of the Brčko District BiH or the Basic Court of the Brčko 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 Brčko 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.

(3) When determining a proposal related to the appointment or transfer of judges, both members of the sub-council from the ranks of judges must vote in favour of the proposal. When determining the proposal regarding the appointment or transfer of prosecutors, both members of the sub-council from the ranks of 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 83**  
**(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 the sub-councils in accordance with this Law shall include the reasoning.
- (2) Sub-council for nomination of candidates to vacant positions in the 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 the 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.

**Section B – Transfer**

**Article 84**  
**(Transfer)**

- (1) Once every three 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 50% 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 referred to in paragraph (1) item a) of this Article.
- (5) The call shall be open to judges, i.e. prosecutors who have spent at least five years in the position they perform at the time when call is announced.
- (6) The particular work experience in terms of paragraph (4) of this Article shall be regulated in more detail by the Book of Rules.

**Article 85**  
**(Criteria for Transfer)**

- (1) In the transfer procedure the following criteria shall apply:
- a) 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 suitability of candidates in terms of Article 71, paragraph 2 of this Law;
  - c) the need to ensure equal rights and proportional representation in a court or prosecutor's office, in terms of Article 73 of this Law;
  - d) the candidate's particular work experience if specified in the call announcement.

**Article 86**  
**(Transfer Procedure)**

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

**Article 87**  
**(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 85 of this Law when deciding on the transfer.

**Section C - Internal Competition Procedure**

**Article 88**  
**(Announcing the Internal Competition)**

- (1) For the positions referred to in Article 68, paragraphs (6) and (7) and Article 69, paragraph (4) of this Law, an internal competition shall be announced once every five years.
- (2) For the positions referred to in Article 68 paragraphs (1), (3), (4) and (5) and Article 69 paragraphs (1), (2) and (3), internal competition shall be announced in accordance with the recruitment 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. The Book of Rules on Appointments shall regulate for which positions particular work experience may be required and how it is determined.
- (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 89**  
**(Internal Competition Procedure)**

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

**Article 90**  
**(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) In the internal competition procedure for filling the position of deputy chief prosecutor, in addition to the criteria from paragraph (1) above, management and organisational skills shall be also taken into account as a separate criterion that is used at the interview.

(3) Candidates shall be assessed against the criteria referred to in paragraph (1) item a) of this Article based on the performance appraisal in accordance with the Book of Rules on Appointments, and against criteria referred to in paragraph (1) items b), c), d) and e) of this Article at the interview.

(4) Candidates for the position of deputy chief prosecutor, which according to special regulations implies specific authorizations, shall be required to prepare and present a work programme. The preparation, presentation and evaluation of the work programme shall be regulated by the Book of Rules on the Appointments.

### **Article 91**

#### **(Scoring Against the Criteria for the Internal Competition Procedure)**

The manner of scoring against the criteria referred to in Article 90 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 shall make at least two thirds of the total number of points;
- c) the minimum number of points that the candidate must score to be nominated;
- d) the rules for ranking candidates who earn equal number of points.

### **Article 92**

#### **(Interview)**

(1) Candidates who meet the special requirements set out in this Law to be appointed to the position they have applied for, and who have the appropriate number of points based on the 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 shall not be called for an interview.

### **Article 93**

#### **(Ranking and Nomination of Candidates in the Internal Competition Procedure)**

(1) In accordance with the Book of Rules on Appointments, the competent sub-council shall rank the candidates based on the total number of points and submit the ranking list with a reasoned nomination for the appointment to the Judicial Department, i.e. the Prosecutorial Department.

(2) When nominating a candidate, the sub-council shall cumulatively take into account the following:

- a) the minimum number of points that the candidate is required to score to be nominated;
- b) the number of points earned by the candidate;
- c) the circumstances relevant to the assessment of suitability of candidates referred to in Article 71 paragraph (2) of this Law;
- d) the need to ensure equal rights and proportional representation in a court or prosecutor's office, in terms of Article 73 of this Law;
- e) the candidate's particular work experience if specified in the internal competition 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.

(5) Nomination of candidates for the position of Deputy Chief Prosecutor, which according to separate regulations implies specific powers, shall be conducted in accordance with the Book of Rules on Appointments.

#### **Article 94**

##### **(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 referred to in Article 93, paragraphs (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 95**

##### **(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 68 paragraphs (6) and (7) of this Law and the position of a prosecutor in the prosecutor's office referred to in Article 69 paragraph (4) of this Law.

(2) The public competition shall be posted on the Council's website.

#### **Article 96**

##### **(Filling the Positions through Public Competition)**

(1) Positions in courts and prosecutor's offices referred to in Article 68, paragraphs (6) and (7) and Article 69, paragraph (4) of this Law shall be regularly filled based on the public competition procedure, with the exception of those positions that are included in the recruitment plan through transfers or internal competition procedure.

(2) In the public competition procedure, candidates must disclose the information regarding the circumstances referred to in Article 71 paragraph (2) of this Law.

#### **Article 97**

##### **(Public Competition Procedure)**

Public competition procedure shall include entrance exam, written test, interview, preparing the list of successful candidates and nomination of candidates.

#### **Article 98**

##### **(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 99**  
**(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.

(3) Entrance exam shall be carried out under code. In the entrance exam evaluation process, the evaluators shall not know the identity of the examined candidates.

(4) All matters related to the entrance exam that are not regulated by this Law shall be further regulated by the Book of Rules on Appointments.

**Article 100**  
**(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.

(3) Written test shall be carried out under code. In the written test evaluation process, the evaluators shall not know the identity of the tested candidates.

(4) All matters related to the written test that are not regulated by this Law shall be further regulated by the Book of Rules on Appointments.

**Article 101**  
**(Interview)**

(1) Unless otherwise prescribed, the candidates who pass the written test shall be called to the interview, which shall test the candidates against the criteria referred to in Article 98, paragraph (1) items 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 102**  
**(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) the 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) the 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 103 of this Law;
- d) the criteria for ranking candidates who earn equal number of points.

**Article 103**  
**(Forming the List of Successful Candidates)**

(1) The Judicial Department or the Prosecutorial Department shall form 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 104**

##### **(Announcement of Vacancies and Call for Applications)**

(1) Once every three months, the Judicial Department, i.e. the Prosecutorial Department shall determine and announce a list of vacancies in courts and prosecutor's offices referred to in Article 68, paragraphs (6) and (7) and Article 69, paragraph (4), with a call for applications to candidates from the list of successful candidates referred to in Article 103 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 paragraph (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 105**

##### **(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 referred to in Article 104 paragraph (3) of this Law if they have indicated them, the need to ensure equal rights and proportional representation in terms of Article 73 of this Law, as well as circumstances referred to in Article 71, paragraph (2) of this Law, which are relevant to the assessment of the candidates' suitability.

(3) The preferences of the candidates under Article 104 paragraph (3) who are best ranked on the list of successful candidates referred to in Article 103 paragraph (1) of this Law shall be binding on the sub-council, and they may be deviated from only if it is necessary to ensure equal rights and proportional 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 the best ranked candidates under Article 104 paragraph (3) shall take precedence over the preferences of lower-ranked candidates.

(5) The Council shall thoroughly regulate in the Book of Rules on Appointments the rules for nominating candidates, including limitations to deviate from the ranking list.

(6) 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 106**

##### **(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 105 paragraphs (2), (3), (4), (5) and (6) 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 107****(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 the Brčko 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.

(2) 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 the Brčko District BiH and the Court of BiH up to 10% of positions may be filled by candidates who meet the requirements under Article 68 paragraph (2) of this Law.

**Article 108****(Filling the Positions in the Highest Instance Courts Through Public Competition)**

(1) The Council shall appoint the candidates who are not judicial office holders and meet the requirements prescribed under Article 68 paragraph (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 107, paragraph (1) of this Law, this circumstance shall be indicated in the public competition.

(4) Public competition procedure shall include entrance exam, written test, interview, preparing the list of successful candidates and nomination of candidates.

**Article 109****(Appointment Criteria for Public Competitions)**

(1) In the public competition procedure for filling the positions in courts referred to in Article 107 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 on Appointments.

**Article 110****(Public Competition Procedure 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 109, paragraph (1), items c), d), e) and f) of this Law.

#### **Article 111**

##### **(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 based on the overall number of points scored and shall submit to the Judicial 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) the minimum number of points that the candidate is required to score to be nominated;
- b) the number of points earned by the candidate;
- c) the circumstances relevant to the assessment of suitability of candidates referred to in Article 71 paragraph (2) of this Law;
- d) the need to ensure equal rights and proportional representation in a court or prosecutor's office, in terms of Article 73 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, including limitations to deviate from the ranking list, in the Book of Rules on Appointments.

(4) The Judicial Department shall make a decision on the appointment of a judge based on the ranking list referred to in paragraph (1) of this Article upon nomination of the competent sub-council.

#### **Article 112**

##### **(Analogous Application of Provisions on Public Competition Procedure)**

Articles 96, paragraph (2) and 97 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 113**

##### **(General Requirements for Appointment to Managerial Positions)**

(1) Positions of court presidents and chief prosecutors shall be opened 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.

(2) In cooperation with the bodies in charge of training of judges and prosecutors, the Council shall provide training programme for candidates for court presidents and chief prosecutors, as well as the conditions to ensure timely participation in this training by all interested candidates.

#### **Article 114**

##### **(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 the court no candidates apply or those who apply do not achieve an adequate result 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 115****(Requirements for Appointment of Chief Prosecutors)**

(1) The chief prosecutor of the Prosecutor's Office of the Federation of Bosnia and Herzegovina, the Prosecutor's Office of the Republika Srpska and the Prosecutor's Office of BiH shall be appointed from among the prosecutors of that prosecutor's office.

(2) Exceptionally, 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 did not achieve an adequate result, or none of the candidates received the majority of votes required for appointment, 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, paragraphs (1) and (2) of this Law.

(3) Chief prosecutors of the Prosecutor's Office of the Brčko 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 at least eight years of work experience as a prosecutor.

(4) Exceptionally, 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 at least eight years of work experience as a prosecutor, in the following situations:

- a) if in the internal competition procedure within a prosecutor's office no candidates apply or those who apply did not achieve an adequate result 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 116****(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 do not achieve an adequate result 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 paragraphs (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 117****(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 the Book of Rules on Appointments.

(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 66 in conjunction with Article 71, paragraph (2) of this Law, shall also be taken into consideration.

**Article 118**  
**(Work Programme)**

(1) Candidates for the position of court president or chief prosecutor shall prepare and present their work programme for the court or the prosecutor's office for which they have applied.

(2) The work programme 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 119**  
**(Testing against the Criteria)**

(1) Candidates shall be tested against the criteria referred to in Article 117 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 on Appointments prescribing the following:

- a) the total number of points that can be earned in the competition procedure;
- b) the maximum number of points that can be awarded per criteria;
- c) the minimum number of points that the candidate must score to be nominated for appointment;
- d) the rules for ranking the candidates who receive the same number of points.

**Article 120**  
**(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 121**  
**(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) The competent sub-council shall provide the reasoned proposal for each of the candidates referred to in paragraph (1) of this Article, while also taking into account the candidate's standing in the ranking list. When nominating candidates, in addition to candidate's standing in the ranking list, the sub-council shall take into account the ethnicity of the candidates, if it is necessary to ensure the appropriate distribution of positions in accordance with the Entity constitutions, as well as the referred to in Article 71, paragraph (2) of this Law.

(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 122**  
**(Appointment of Court Presidents or Chief Prosecutors)**

(1) The Judicial/Prosecutorial Department shall appoint a candidate to the position of a court president/chief prosecutor based on their results in the competition procedure and the presented work programme, as well as by taking into account the circumstances referred to in Article 71, paragraph (2) of this Law that are relevant for the assessment of candidate's suitability.

(2) If a candidate who is not a judicial office holder in the relevant court or the prosecutor's office is appointed as court president or a chief prosecutor in that particular court/prosecutor's office, the Judicial/Prosecutorial Department shall simultaneously issue a decision appointing the candidate as a judge or a prosecutor of that court/ prosecutor's office.

(3) The manner of assessment of the work programme and voting procedure at the relevant Department's session shall be regulated in more detail by the Book of Rules on Appointments.

**Article 123**  
**(Mandate)**

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

**Article 124**  
**(Status after the Expiry of Mandate)**

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

**Section A - Specific provisions concerning legal associates**

**Article 125**  
**(General provision)**

The Council shall, in accordance with this Law, have the authority over legal associates who are authorised by special regulations to act and decide in judicial matters (hereinafter: legal associates).

**Article 126**  
**(Determining the number of legal associate posts)**

The number of legal associate posts in municipal courts shall be determined by the Judicial Department, following consultations with the Court President, the relevant budgetary authority and the relevant Ministry of Justice.

**Article 127**  
**(Appointment of Legal Associates)**

- (1) Legal associates shall be appointed by the Judicial Department.
- (2) In order to be appointed as a legal associate, one must meet the requirements outlined in Article 67 of this Law.
- (3) Legal associate vacancies shall be filled through a public competition in line with the plan determined by the Council.
- (4) The competition procedure for the legal associate post shall involve the candidate interview, as well as ranking and nomination of candidates, and it shall be carried out by the competent sub-council and the interview panel. The competition procedure shall be regulated in more detail by the Book of Rules on Appointments.
- (5) The appointment procedure of legal associates shall be based on the following criteria:
  - a) knowledge of the legislation relevant to the performance of the tasks of a legal associate and how to apply it;
  - b) ability to analyse and solve legal problems;
  - c) motivation, communication and presentation skills;
  - d) average grade attained while studying;
  - e) professional development, publication of scientific and professional papers and other professional activities;
  - f) relevance of previous work experience for the performance of the tasks of a legal associate.
- (6) The method of scoring against the criteria referred to in paragraph (5) of this Article, as well as the candidate nomination rules, shall be set forth in the Book of Rules on Appointments.
- (7) Article 71 of this Law shall also apply to appointment of legal associates.
- (8) The decision on the appointment of a legal associate shall contain the reasoning behind the application of the criteria referred to in paragraph (5) of this Article and it shall be published on

the Council's website. The appointment decision, without reasoning, shall be published in the Official Gazette of Bosnia and Herzegovina.

**Article 128**  
**(Taking of Office)**

- (1) The appointed legal associate shall take office on the date determined by the Judicial Department.
- (2) The Judicial Department may postpone or change the date of taking of office by the legal associate for the following reasons:
  - a) when verification of the information referred to in Article 71, paragraph (2) of this Law so requires;
  - b) when the appointee is unable to take office on a certain date for justified reasons.
- (3) Before assuming the office, legal associates shall make a solemn declaration, the wording of which is provided in Article 78, paragraph (1) of this Law.

**Article 129**  
**(Reversing the Decision on Appointment)**

- (1) The Judicial Department shall reverse its decision on the appointment of a legal associate:
  - a) if, before assuming the office, it receives information that, if known at the time of appointment, would constitute a reason not to make the decision on appointment;
  - b) if the appointee fails to assume the office during the time period prescribed by this Law.
- (2) In the event of a reversal, the Judicial Department may decide to appoint another candidate from the list.

**Article 130**  
**(Disciplinary Liability of Legal Associates)**

Legal associates shall be subject to the same provisions on disciplinary liability under this Law as judges.

**Article 131**  
**(Termination of Status)**

The legal associate status shall be terminated in the event of:

- a) resignation;
- b) appointment as a judge or prosecutor;
- c) permanent loss of ability to work;
- d) his/her removal by the Council as a result of disciplinary procedure;
- e) retirement;
- f) final conviction for a criminal offence rendering him/her unworthy to serve as a legal associate;
- g) death.

**CHAPTER V - JUDGES OF THE ENTITY CONSTITUTIONAL COURTS AND LAY JUDGES**

**Section A - Provisions concerning judges of the Entity constitutional courts**

**Article 132**  
**(Competences in Relation to the Nomination of Candidates for 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 133**  
**(Nomination Criteria)**

(1) Candidates for Entity constitutional courts shall be nominated based on the criteria that allow competent authorities to select judges who are distinguished lawyers with the highest moral standing.

(2) Within the meaning of paragraph (1) above, the following criteria shall apply:

- a) years of the candidate's work experience as a judge, prosecutor, attorney or other relevant legal experience after the bar exam;
- b) the candidate's academic experience and achievements;
- c) the suitability of the candidate to work as a judge of the given constitutional court within the meaning of Article 71, paragraph (2) of this Law.

(3) The Council may nominate the professors and assistant professors of law universities in Bosnia and Herzegovina, who have not taken the bar exam, as judges to the constitutional courts provided that they have at least ten years of experience as professors or assistant professors.

**Article 134**  
**(Nomination Procedure)**

(1) The procedure for nominating candidates for vacant positions in the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of the Republika Srpska shall be carried out on the basis of a public competition published by the Council on the Council's website and in daily newspapers circulated throughout Bosnia and Herzegovina.

(2) The Council shall make a decision establishing a Nomination Panel to nominate candidates for Constitutional Court judges, which shall be comprised of five members as it follows:

- a) three Council members who are judges of the Court of Bosnia and Herzegovina or the Supreme Court of the Federation of Bosnia and Herzegovina, the Supreme Court of the Republika Srpska or the Appellate Court of the Brčko District,
- b) one non-judge Council member,
- c) President of the Constitutional Court of Bosnia and Herzegovina or a judge of the Constitutional Court of Bosnia and Herzegovina authorised by him/her.

(3) The decision establishing the Panel shall be published on the Council's website.

(4) The Nomination Panel shall be responsible to determine whether candidate applications are timely and whether they meet basic requirements from Article 67 of this Law, except for the requirements referred to in paragraph d) in case of candidates from Article 133, paragraph (3) of this Law, and to interview the candidates.

(5) Candidate interviews shall be open to the public. No later than five days prior to the interview, the Panel shall notify the public via the Council's website of the date and time of the interview with all the candidates.

(6) Based on the interviews, the Panel shall compile a report on the conducted procedure that includes the list of candidates and an elaboration of a level of success for each candidate. The report shall be brought to the plenary session to the Council for its consideration and adoption.

(7) The adopted report shall be published on the Council's website and submitted to the authorities responsible for appointment procedure in accordance with the Constitution of the Federation of Bosnia and Herzegovina and the Constitution of Republika Srpska, along with previously obtained opinion of the Constitutional Court concerned.

(8) The plenary session of the Council shall adopt the Book of Rules on nomination procedure for candidates for judges of the Constitutional Court and publish it in the Official Gazette of BiH and on the Council's website, governing in detail the matters pertaining to the nomination procedure for judges of the Constitutional Court that are not prescribed by this Law, in compliance with the principles of transparency, efficiency and strengthening of public trust in the integrity of the candidate nomination process.

**Section B - Provisions Concerning Lay Judges**

**Article 135**  
**(Requirements for the Appointment of Lay Judges)**

(1) In order to serve as a lay judge, a person 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 136**

#### **(Mandate of a Lay Judge)**

- (1) Lay judges shall be appointed for a term of eight years and shall be eligible for re-appointment.
- (2) The term of lay judges shall be terminated upon their resignation, when they reach 70 years of age or when they are removed for reasons stipulated by law.
- (3) A lay judge shall continue participation in a case until its completion even after the expiration of their term.

### **Article 137**

#### **(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 out by the relevant minister of justice upon consultations with the Council.
- (3) Before assuming the duty, lay judges shall make a solemn declaration pursuant to Article 78 of this Law. President of the Council may delegate this task to the president of the court in which the lay judge shall assume the duty.

## **CHAPTER VI - APPRAISAL OF JUDGES AND PROSECUTORS**

### **Article 138**

#### **(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) enhance the accountability of the judicial system and strengthen public confidence.

### **Article 139**

#### **(Performance Appraisal)**

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



**Article 140****(Performance Appraisal Period for Judges and Prosecutors)**

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

**Article 141****(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 142****(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 the third year of their term in office.

**Article 143****(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 this Law.

(2) The Judicial Performance Appraisal Committee shall consist of all members of the Council from the rank of judges and one judge each of the Supreme Court of the Federation BiH, the Supreme Court of the Republika Srpska, the Court of BiH and the Appellate Court of Brčko 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 144****(Appraisers in the Process of Performance Appraisal of Court Presidents)**

(1) Performance appraisal of the president of the Supreme Court of the Federation BiH, the Supreme Court of the Republika Srpska, the Appellate Court of Brčko District BiH and the 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 Supreme Court of the Federation BiH, the Supreme Court of the Republika Srpska 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 145****(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 this Law.

(2) The Prosecutorial Performance Appraisal Committee shall consist of all members of the Council from the ranks of prosecutors and one prosecutor each of the Prosecutor's Office of the Federation BiH, the Prosecutor's Office of the Republika Srpska, 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 146****(Appraisers in the Process of Performance Appraisal of Chief Prosecutors)**

(1) Performance appraisal of chief prosecutors of the Prosecutor's Office of the Federation BiH, the Prosecutor's Office of the Republika Srpska, 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 rank of prosecutors and chief prosecutors of the Prosecutor's Office of the Federation BiH, the Prosecutor's Office of the Republika Srpska, 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 at the proposal of the chief prosecutor of the immediately higher prosecutor's office.

**Article 147****(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 148****(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 Division of the Court of BiH and the Entity prosecutor's offices shall be set out by a by-law of the Council.

**Article 149****(Personal Qualities and General Abilities)**

(1) 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 the independence, impartiality and reputation of the judiciary;
- d) ability to adapt to changing circumstances.

**Article 150****(Content and Method of Performance Appraisal)**

The content of the criteria and the method of performance appraisal based on the criterion referred to in Article 147, paragraph (2) and the sub-criteria referred to in Articles 148 and 149 of this Law shall be further elaborated in by-laws from Article 155 of this Law, by calendar year and in total covering the appraisal period from Article 140 of this Law.

**Article 151****(Sources of Information in Performance Appraisal)**

(1) The performance appraisal scores of judicial office holders shall be 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 147, 148 and 149 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 concerning the 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) documents and opinions containing objective and relevant information about the performance, professional activities and personal qualities of the judicial office holder, in line with the by-laws referred to in Article 155 of this Law.

(2) In the process of determining the proposal of the score, the court president shall obtain 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 shall obtain the 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 148 paragraph (2) of this Law.

**Article 152****(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 151 of this Law.

(3) The judge or prosecutor concerned shall participate in the procedure 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 144, paragraph (1) and Article 145, paragraph (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 / the Council shall make a reasoned decision on the performance appraisal score based on the submitted proposal and the insight into the complete materials.

(7) The Performance Appraisal Committee/ 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 153****(Judicial Review in Performance Appraisal Procedure)**

(1) The judge or prosecutor concerned may file a complaint to initiate an administrative dispute with the Court of BiH against the performance appraisal decision. The complaint shall be decided by the Appellate Division of the Court of BiH, in a panel of three judges.

- (2) The complaint initiating the administrative dispute shall be filed within eight days from delivery date of the decision on performance appraisal to the judge or prosecutor concerned.
- (3) The Court shall submit the complaint to the Council for its response within eight days from the date it was received by the Court. The Council shall be required to submit the response to the complaint within eight days from the date of the receipt.
- (4) In the dispute referred to in this Article, the Court 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 performance appraisal and return the matter for a new decision.
- (6) The decision of the Court may not be challenged through extraordinary legal remedies provided by the Law on Administrative Disputes of Bosnia and Herzegovina.
- (7) In the event of an administrative dispute from paragraph (1) of this Article, the legal consequences of the performance appraisal decision shall be postponed until the court procedure is completed.

#### **Article 154 (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 155 of this Law.

#### **Article 155 (By-laws Governing Performance Appraisal)**

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

### **CHAPTER VII - ASSIGNMENT AND TRANSFER TO ANOTHER COURT OR PROSECUTORS OFFICE**

#### **Article 156 (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) an insufficient number of judges at the court to which they are being temporarily assigned;
  - b) a temporary reduction in the workload of the court in which they regularly perform judicial duties;
  - c) in order to assist in the elimination of backlogs at the court to which they are being temporarily assigned;
  - 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 to which they are being temporarily assigned 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, the judges may also deal with cases of the court to which they were appointed.

**Article 157**  
**(Procedure for Temporary Assignment)**

- (1) The Judicial Department shall decide on temporary assignment to another court in accordance with Article 156 of this Law, 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 Judicial Department 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 duties.

**Article 158**  
**(Temporary Assignments of Prosecutors)**

- (1) The provisions on temporary assignment of judges shall also apply to the procedure of temporary assignment of prosecutors.
- (2) The procedure for temporary assignment of prosecutors shall be carried out by the Prosecutorial Department.

**Article 159**  
**(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 the decision of the Judicial Department, 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 the decision of the Prosecutorial Department, without their consent, in the event of termination of the prosecutor's office to which they were appointed.

**CHAPTER VIII - LEAVE OF ABSENCE**

**Article 160**  
**(Leave by Virtue 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 Judicial or Prosecutorial Department, respectively.

**Article 161**  
**(Grounds for the Approval of Leave of Absence)**

- (1) The Judicial Department/ the Prosecutorial Department may approve leave of absence for a judge or prosecutor, respectively, which may be paid or unpaid, under the conditions and in the procedure prescribed with this Law and the Book of Rules on Leave of Absence adopted by the Council.
- (2) A judge or prosecutor may be allowed to use leave of absence for the following reasons:
  - a) participation in advanced training programmes in a professional field that is linked to the work of the court or prosecutor's office, except in the situation referred to in Article 162, paragraph (1), item d) of this Law;
  - b) assignment and appointment as a judge to 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, except in the situation referred to in Article 162, paragraph (1), item d) of this Law;
  - d) the performance of activities and duties that may be of significance for the judiciary, in accordance with the Book of Rules referred to in paragraph (1) above;
  - e) personal or family reasons that justify leave of absence.
- (3) Paid leave of absence may be approved under the conditions prescribed by the Book of Rules on Leave of Absence.
- (4) With the exception of cases referred to in paragraph (5), the Judicial Department or the Prosecutorial Department, respectively, 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, the leave of absence shall be determined based on a decision on assignment or appointment to the position of a judge to an international court or to another international judicial office.

#### **Article 162**

##### **(Discretionary Decision on Leave of Absence)**

- (1) The provision of Article 161 of this Law shall not refer to:
- a) legally prescribed leave of absence stemming from employment;
  - b) leave of absence in order to serve as a trainer with the training centres, up to 10 days during one year;
  - c) leave of absence in order to participate in regular training at the judicial and prosecutorial training centres;
  - d) leave of absence in order to undertake activities in connection with the performance of the judiciary, including study trips and participation at professional gatherings and advanced training programmes in country and abroad, up to five consecutive days and up to ten days during a calendar year.
- (2) Leaves of absence pursuant to paragraph (1) of this Article shall be approved by the court president / chief prosecutor.
- (3) Notice on approved leave of absence pursuant to paragraph (1), item d) of this Article shall be sent to the Judicial Department or Prosecutorial Department, respectively.

#### **Article 163**

##### **(Duration of Leave of Absence)**

Duration of the leave on each of the grounds from Article 161, paragraph (2) and Article 162 paragraph (2), items b), c) and d) of this Law, as well as the total duration of leave of absence 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 164**

##### **(Status for the Duration of Unpaid Leave of Absence)**

- (1) During the unpaid leave of absence, the judge's or prosecutor's rights and duties 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.
- (2) Within eight days after the cessation of the unpaid leave of absence, the judge or prosecutor shall notify the Judicial Department or the Prosecutorial Department about that, as well as the court president or the chief prosecutor respectively, and shall resume the office.

### **CHAPTER IX - IMMUNITY, INCOMPATIBILITY AND ASSET DECLARATIONS OF JUDGES AND PROSECUTORS**

#### **Section A - Immunity, Incompatibility and Additional Activities**

#### **Article 165**

##### **(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 immunity shall not prevent or delay the criminal or civil investigation, conducted in accordance with the law against a judge or prosecutor.

#### **Article 166**

##### **(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 167**  
**(Protection of Independence)**

(1) Judges or prosecutors who believe that their rights or their independence have been violated may request the Council's opinion. In their request, judges or prosecutors may propose to 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 a violation, if possible, the Council itself may remedy the violation.

(3) The opinion referred to in paragraph (2) of this Article shall be published on the Council's website and delivered to the applicant and the relevant institutions.

**Article 168**  
**(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 169, paragraph (2) of this Law.

(2) A judge or prosecutor shall not be a member of or perform any duties in political party bodies, 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 may not be a member of any organisation that discriminates on any basis in accordance with the Law on Discrimination (Official Gazette BiH, 59/09 and 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 or entrepreneurship. 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 169**  
**(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 168 of this 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 to undertake 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 170**  
**(Income from Additional Activities)**

(1) Remuneration for additional activities of judges or prosecutors 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 the unpaid leave of absence.

**Article 171**  
**(Opinion on Compatibility of Offices)**

(1) Judges or prosecutors 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 request 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 individual 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 169, paragraph (3) of this Law.

(4) A Council opinion on compatibility of office shall be 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 168 and 169 of this Law.

**Section B - Declaration of Assets and Additional Activities**

**Article 172**  
**(Application of the Provisions on the Declaration of Assets and Interests)**

The provisions on the declaration of assets and interests shall equally apply to judges, prosecutors, court presidents, chief prosecutors, deputy chief prosecutors and all members of the Council.

**Article 173**  
**(Declaration of Assets and Interests)**

(1) Judges and prosecutors shall submit to the Council their initial and annual declarations of assets and interests, including the manner and time of acquisition and the purchase value, 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) The asset declarations referred to in paragraph (1) of this Article shall contain the following data:

- a) the name and surname, date of birth, national identification number, 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 income of the judge, prosecutor, spouse and common-law partner, parents, children and other persons referred to in 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 in the country and abroad, including the manner and time of acquisition, as well as the purchase price or market value at the time of acquisition;
- e) information on the ownership of movables that are subject to registration with the competent authorities in the country or abroad;
- f) information on the ownership of other movables with an individual value of over BAM 5,000, including the manner and time of acquisition;
- g) information on financial assets in banks or other financial institutions, including e-currency, in the country and abroad and any cash exceeding BAM 5,000;
- 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;
- n) information on claims.

(3) The asset declarations referred to in paragraph (1) of this Article shall contain data under Article 174, paragraph (2) of this Law not 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 documents relevant to the information submitted in the declaration.

(7) The annual declaration of assets shall list information on all the changes that occurred during the reporting period and which are not listed in the previous declaration of assets.

(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 through an internal competition, including any appointment to a management 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 of the Council shall submit their asset declaration in accordance with Article 22 of this 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, otherwise the provisions of Article 183, paragraph (3) of this Law shall apply.

(10) If a person referred to in paragraph (1) of this Article refuses to provide a judge or a prosecutor with information necessary for submitting an asset declaration, the judge or the prosecutor concerned shall state so in their asset declaration, and attach to the asset declaration a statement certified by the competent administrative body that the relevant person from paragraph (2), item a) of this Article refused to provide information necessary for the asset declaration.

(11) 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 174 (Transparency)**

(1) The asset declarations referred to in Article 173 of this Law shall be published on the Council's 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 asset declaration shall not be available to the public:

- a) the names and surnames of minors who are listed in the asset declaration, except for the initials of their name and surname;
- b) the national identity number and residence address of the judge or prosecutor and 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) registration numbers of movables that are subject to registration with the competent authorities.

(3) Attachments that judges or prosecutors submit with their asset 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.

(5) After the expiry of a three-year period from the end of a judge's or prosecutor's mandate, data from the asset declaration shall no longer be available to the public.

### **Article 175**

#### **(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 176, paragraph (4) of this Law, the Asset Declarations Department referred to in Article 179 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 asset 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 the 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 176, paragraph (6) of this Law by comparing it with the subsequently collected data in accordance with this 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 other 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 shall 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 expenses, savings and other expenses, such as alimony, education, medical treatment etc.

(5) For the purpose of verifying the asset declarations, the Council shall, through the Asset Declarations Department referred to in Article 179 of this Law, adopt and regularly revise the risk criteria, which shall be confidential. The 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 are carried out.

(6) Risk criteria which require additional checks ex officio in accordance with Article 176, paragraphs (4) through (8) of this 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 179 of this 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 results of the verification shall be published on the Council's website.

**Article 176**  
**(Additional Checks)**

(1) Additional checks, which may involve the entire asset declaration or certain elements from the asset 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 173, paragraph (1) of this Law.

(2) An additional check of an asset declaration may be carried out based on an elaborated report by a natural or legal person alleging incorrect information in the asset 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 aircrafts, 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 natural persons, the Asset Declarations Department shall send a written request for the data from the relevant institutions or natural or legal persons. The relevant institutions and other legal and natural 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 179 of this Law shall more precisely determine the method of access or other method of obtaining data with an agreement on cooperation with the authorities, institutions and other legal entities that maintain the records referred to in 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 179 of this 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 asset declaration.

(8) The following irregularities can be identified through additional checks:

- a) missing data in the asset declaration;
- b) false data in the asset 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 177**  
**(Outcome of Conducted Checks)**

(1) The verification process shall end with a notice on the conducted control containing 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 176, paragraph (8) of this 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 asset 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, that is the Judicial Department or the Prosecutorial Department respectively, shall be notified of the outcome of an additional check that is carried out based on risk criteria pursuant to Article 175, paragraph (6) of this 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, i.e. 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 176, paragraph (4) of this Law raises suspicion of any irregularities referred to in Article 176, paragraph (8) of this 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 referred to in 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 204 of this Law, pursuant to Article 194, paragraph (1), item l) and Article 195 paragraph (1), item l), notwithstanding the rules of disciplinary procedure prescribed by this 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 referred to in 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 179 of this 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 competent authority when necessary for carrying out the measures that fall under their competence.

### **Article 178**

#### **(Register of Declarations)**

(1) The Council shall establish records, i.e. a Register of Declarations on Assets and Interests of Judges and Prosecutors.

(2) The asset declaration 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 asset declarations and attached documents by the Council or any other authority in official proceedings.

### **Article 179**

#### **(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, 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 and 93/17) as well as special

requirements prescribed by the Book of Rules on Internal Organisation and Systematisation of Job Positions 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 Systematisation of Job Positions in the Secretariat.

(5) Provisions of the Law on Civil Service in the Institutions of BiH 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 60 of this Law.

(6) The security and privacy of information, communications and other essential Department infrastructure shall be guaranteed, and the 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, 54/05 and 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 the office, persons referred to in 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 180**

#### **(Department Competences and Transparency)**

(1) The Department shall have the following competences:

- a) implements provisions of this 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 asset declarations, establishes a schedule for checks, and performs additional checks;
- c) publishes asset declaration verification results;
- d) in accordance with Article 177, paragraph (5) of this Law, submits to the Office of the Disciplinary Counsel and authorities referred to in Article 177, paragraph (8) of this 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 work 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 181**

#### **(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 asset declarations. Experts shall be hired 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 to issue, in this process, written recommendations to the hiring committee, which may be rejected with a written explanation of the reasons for non-acceptance within 15 days of receiving the written recommendation.

(4) In the event that the Department acts pursuant to Article 177, paragraph (5) of this 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 personal in accordance with the Law on the Protection of Personal 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 regarding the 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 182**

### **(Book of Rules on Asset Declarations)**

The Council shall issue a separate book of rules to regulate any additional details regarding the asset declaration form, including also 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 timeline for checking asset declarations, and the procedure for concluding agreements on cooperation with authorities, institutions and other legal entities referred to in Article 176, paragraph (6) of this Law.

## **Article 183**

### **(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 be responsible according to these provisions.

(3) A natural 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, 41/07, 18/12, 36/14, 81/15 and 65/20).

## PART IV – DISCIPLINARY LIABILITY

**CHAPTER I OFFICE OF DISCIPLINARY COUNSEL AND DISCIPLINARY PANELS**  
**Section A - Office of Disciplinary Counsel****Article 184**  
**(Office of Disciplinary Counsel)**

- (1) The Office of Disciplinary Counsel (hereinafter: the ODC) shall have a Chief Disciplinary Counsel, deputy chief disciplinary counsels and disciplinary counsels.
- (2) The ODC shall be autonomous and functionally independent in its work on disciplinary cases and shall perform the duties of disciplinary counsel in relation to allegations of misconduct by a judge or prosecutor in accordance with this 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 shall take action either upon receiving a complaint or ex officio, 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 the administrative and financial decisions within the framework of the planned and 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 185**  
**(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 205, paragraph (2) of this Law as well as to consider all matters regarding the ODC operations, and in particular:
  1. performance results for the previous period;
  2. work on priority cases;
  3. improving performance, professional advancement;
  4. performance reports, as well as other issues relevant for the ODC operations as prescribed with the rules of procedure.
- (4) Based on the analysis and the outcome from the collegium meetings, the Chief Disciplinary Counsel may pass other measures in order to improve the ODC operations and clearance rates.

**Article 186**  
**(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 and the longest period of appointment to the position shall be ten years.
- (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 virtue 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 187****(Election, Appointment and Removal of the Deputy Chief Disciplinary Counsel, Disciplinary Counsels and Civil Servants)**

(1) The appointment 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 referred to in 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 he/she authorises.

(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 188****(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 working experience in legal affairs after the bar exam, 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 working experience in legal affairs after the bar exam, 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 working experience in legal affairs after the bar exam, and possesses the quality of professional impartiality, high moral values and proven professional competences may be appointed to the position of disciplinary counsel.

**Article 189****(Employment)**

In accordance with the Law on Service in the Institutions of Bosnia and Herzegovina, a decision on employment or termination of an employment contract by the employer for the 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 190****(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 212, paragraph (4) of this Law (hereinafter: the Appeals Panel)

(2) The panels referred to in paragraph (1) of this Article shall be independent and in charge of processing disciplinary matters.

(3) 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 until the conclusion of any ongoing disciplinary proceeding.



(4) To ensure efficiency and impartiality, the Council shall appoint the required number of disciplinary panels referred to in paragraph (1) of this Article.

**Article 191**  
**(Composition 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 192 of this 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 192 of this 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 192 of this Law.

(4) Notwithstanding the provisions of paragraphs (1), (2), and (3) of this Article, all three panel members in the disciplinary proceedings against judges and prosecutors who are members of the Council shall be appointed from the list referred to in Article 192 of this Law.

(5) In the disciplinary proceedings against judges, the majority of panel members referred to in Article 190, paragraph (1) of this Law shall be judges. In the disciplinary proceedings against prosecutors, the majority of panel members referred to in Article 190, paragraph (1) of this Law shall be 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 as 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 as the respondent prosecutor in the disciplinary proceeding.

(7) 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 of the Appeals Panel.

(8) Members of disciplinary panels who are not members of the Council shall be entitled to the fee and reimbursement of their costs pursuant to Article 53 paragraph (7) of this Law.

**Article 192**  
**(List of Candidates Nominated by Courts and Prosecutor's Offices)**

(1) At the general session or collegium, every court and prosecutor's office shall nominate one judge, i.e. 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 Court of BiH, the Supreme Court of the Federation BiH, the Supreme Court of the Republika Srpska and the Appellate Court of the Brčko District BiH shall each nominate two judges, while the Prosecutor's Office of BiH, the Prosecutor's Office of the Federation BiH and the Prosecutor's Office of the Republika Srpska shall each nominate two prosecutors.

(3) A judge or a prosecutor who has not been found liable in disciplinary proceedings and whose last performance appraisal was "exceptionally successful" or "successful" may be nominated for a member of a disciplinary panel.

(4) The list of judges and prosecutors to be appointed as disciplinary panel members shall be made based on the nominations submitted by the courts and prosecutor's offices. The list shall be valid for four years.

## **CHAPTER II - DISCIPLINARY LIABILITY AND DISCIPLINARY PROCEEDINGS**

### **Section A - Disciplinary Offences and Disciplinary Measures**

**Article 193**  
**(Liability for Disciplinary Offences)**

(1) A judge, prosecutor and lay judge, including court presidents, chief prosecutors and their deputies, as well as all Council members from the ranks of judges and prosecutors shall be held

liable for any disciplinary offence referred to in Articles 194 and 195 of this Law, which they commit either intentionally or as a result of gross negligence.

(2) Official duty within the meaning of Article 194, paragraph (1) item i) and Article 195, paragraph (1) item i) shall also include the duties of the Council members.

(3) 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.

(4) Criminal or minor offence liability shall not preclude the disciplinary liability of a judge or prosecutor for the same offence that was a matter for criminal or minor offence proceedings, where such an offence also represents a disciplinary offence.

#### **Article 194** **(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) failure to seek disqualification or recusal when a conflict of interest arises or to report it to his or her superior upon becoming aware of it;
- 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) negligence in office;
- g) engaging in ex parte communication with any parties to a proceeding or their representatives;
- h) behaviour inside or outside the court that demeans the dignity of judge;
- i) breach of official duties that compromises the public confidence in the impartiality, professionalism and integrity of the judiciary;
- j) enabling persons not authorised by law to perform judicial functions;
- k) 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;
- l) making 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;
- m) failure to comply with books of rules, decisions, orders or other acts of the Council for unjustified reason;
- n) providing or presenting the Council with false, misleading or insufficient information;
- o) failure to provide the Council with the information as required by this Law;
- p) violation of the provisions of this Law concerning the submission of a declaration of assets and interests;
- q) failure to attend mandatory training;
- r) engaging in activities that are incompatible with the office of a judge;
- s) violating restrictions related to generating income from fees for additional activities;
- t) 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;
- u) 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 195**  
**(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) negligence in office;
  - g) engaging in ex parte communication with a judge or any parties to a proceeding;
  - h) behaviour inside or outside the prosecutor's office that demeans the dignity of the prosecutorial office;
  - i) breach of official duties that compromises the public confidence in the impartiality, professionalism and integrity of the judiciary;
  - e) enabling persons not authorised by law to perform prosecutorial functions;
  - f) 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;
  - g) making 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;
  - h) failure to comply with books of rules, decisions, orders or other acts of the Council for unjustified reason;
  - i) providing or presenting the Council with false, misleading or insufficient information;
  - j) failure to provide the Council with any of the information as required by this Law;
  - k) violation of the provisions of this Law concerning the submission of declaration of assets and interests;
  - o) failure to fulfil any mandatory training obligations;
  - p) 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;
  - q) engaging in any activities that are incompatible with the office of a 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, gender, religion, ethnic origin, nationality, sexual orientation, or a party's social or economic status;
  - t) 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 196**  
**(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, chief prosecutor or deputy chief prosecutor;
- d) removal from the office of judge or prosecutor.

**Article 197**  
**(Additional Measures)**

In addition to the disciplinary measure referred to in Article 196 of this 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 198**  
**(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 liability;
- d) the circumstances under which the disciplinary offence was committed;
- e) the previous work and behaviour of the offender;
- 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 199**  
**(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 of 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 200**  
**(Statute of Limitations for the Initiation of Disciplinary Proceedings)**

(1) Disciplinary proceedings may not be initiated:

- a) upon the expiry of two years from the date of filing the complaint, or from the date the ODC learned 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 201**

##### **(Statute of Limitations for the Conduct of Disciplinary Proceedings)**

- (1) The procedure for the establishment of disciplinary liability shall be completed within one year from the date of filing a motion to institute disciplinary proceedings before the first instance disciplinary panel, unless there is a justified reason to extend this deadline.
- (2) Notwithstanding the provisions of 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 be carried out at the latest within one year from the date of receiving the competent court's decision.

#### **Article 202**

##### **(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 200 and 201 of this Law 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 203**

##### **(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, in principle, 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 in terms of 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 56 of this Law.
- (6) The ODC shall investigate and ascertain, with the same diligence, not only the facts that incriminate the judge or prosecutor but also the ones that benefit them.

#### **Article 204**

##### **(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 and allegations about the judge's or prosecutor's misconduct. The complaint shall be accompanied with evidence, if available to the complainant.
- (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 incomprehensible or does not provide sufficient grounds for further investigation and it is 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) the same matter was decided earlier.
- (4) A decision referred to in paragraph (3) of this Article shall be rendered by the ODC within six months from 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 205**

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

- (1) The ODC shall 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 in 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. The reasoned 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 the objection within 30 days from the date of receipt, and notify the complainant of that. If the Collegium finds that the complaint is grounded, it shall determine the measures and actions to be taken.
- (4) A final decision not to file a motion for the initiation of disciplinary proceedings shall be delivered to the judge or prosecutor concerned, provided that they were informed previously that a complaint had been filed against them.

## **Section D - Disciplinary Proceedings**

### **Article 206**

#### **(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 who is subject to disciplinary proceedings, 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 its commission;
  - d) the provisions of applicable laws and other regulations;
  - e) evidence that is motioned to be presented at the proceedings.

### **Article 207**

#### **(The Rights of Judges and Prosecutors in Disciplinary Proceedings)**

- (1) A judge or prosecutor concerned shall have the right to be duly notified of the motion for the initiation of disciplinary proceedings, to be acquainted with the case and the accompanying documents.
- (2) In the event that such evidence was not submitted along with the motion to initiate disciplinary proceedings, the ODC shall without delay grant the judge or prosecutor concerned access to evidence that benefit them, while taking due account of the confidentiality and integrity of other proceedings.

(3) Throughout disciplinary proceedings, a judge or prosecutor who is subject to disciplinary proceedings shall be afforded the option to present their defence personally or via a proxy of their choice, as well as to propose the facts and evidence benefiting them.

**Article 208**  
**(Assignment of Disciplinary Cases)**

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

**Article 209**  
**(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 matters 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 210**  
**(Joinder of Proceedings)**

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

**Article 211**  
**(Joint Consent Agreement)**

(1) The ODC and the judge or prosecutor against whom a motion for the initiation of disciplinary proceedings has been filed, as well as their proxy, may voluntarily 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;
- c) a statement from the judge or prosecutor acknowledging that they are aware that the agreement needs to be approved by the disciplinary panel and that the panel may reject such an agreement.

(3) The disciplinary panel shall ascertain:

- 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 be treated as if the Panel, after conducting the disciplinary proceeding, found that a disciplinary offense had been committed, 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 212**  
**(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 the decisions of the first instance disciplinary panel and 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 disciplinary measure finding the judge or prosecutor to be disciplinary liable;
- b) when the second instance disciplinary panel modifies a first instance disciplinary panel 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 213**

#### **(Filing an Appeal with the Court of BiH)**

(1) A judge or prosecutor who has been removed through a decision referred to in Article 196, item d) of this Law may file an appeal with the Court of Bosnia and Herzegovina if:

- a) during the disciplinary proceedings, the rules of procedure set out in this Law were violated;
- b) during the disciplinary proceedings, 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 212, paragraph (4) of this 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 214**

#### **(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 more detail with the Book of Rules on Disciplinary Liability.

## **Section E - Confidentiality and Records**

### **Article 215**

#### **(Confidentiality of Disciplinary Investigations)**

(1) Unless otherwise prescribed by 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 a 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 216**

#### **(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 by their content.



**Article 217**  
**(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 218**  
**(Access to Information)**

- (1) Information on disciplinary proceedings initiated against a judge or prosecutor shall be available to the public until the completion of the disciplinary proceedings.
- (2) The public shall be informed of any disciplinary measures imposing removal from office, including the 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 concerned.
- (4) Disciplinary decisions shall be disclosed, subject to the removal of personal data, in accordance with the rules as determined by the Council.

**Article 219**  
**(Expunging Disciplinary Measures)**

Disciplinary measures shall be expunged from the personal file of a judge or prosecutor ex officio within five year from the expiration of the two-time period referred to in Article 199 of this Law, unless the judge or prosecutor commits a new offence.

**Article 220**  
**(Reporting to the Council)**

- (1) The ODC shall provide, upon request, the Council, the Judicial Department, the Prosecutorial Department, the nomination sub-councils and the performance 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 to the Council a written report on its activities.

**PART V – SUSPENSION OF JUDGES AND PROSECUTORS FROM OFFICE AND  
TERMINATION OF OFFICE**

**CHAPTER I – SUSPENSION OF JUDGES AND PROSECUTORS FROM OFFICE**

**Article 221**  
**(Mandatory Suspension from Office)**

- (1) A judge or prosecutor shall be suspended from office:
  - a) if pre-trial 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 the circumstances referred to in paragraph (1) of this Article.

**Article 222**  
**(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 renders 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 revoke their legal 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 this Law shall be made upon obtaining opinion by a medical expert.

### **Article 223**

#### **(Duration of Discretionary Suspension)**

- (1) In the event of the suspension of a judge or prosecutor due to grounds stipulated in Article 222, paragraph (1), item a) of this 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 222, paragraph (1), item b) of this 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 222, paragraph (1), items c) and d) of this 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 224**

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

- (1) A decision on suspension shall be rendered by the first instance disciplinary panel of the Council, upon the motion of the ODC.
- (2) An appeal against a decision on suspension shall be filed with the second instance disciplinary panel of the Council. The appeal shall not delay enforcement of the decision referred to in paragraph (1) of this Article. The decision of the second instance disciplinary panel shall be final.

### **Article 225**

#### **(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 226**

#### **(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 same court to exercise 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 the prosecutor's office that has no appointed deputy chief prosecutor, to exercise the duties of chief prosecutor for the duration of the suspension.

**Article 227****(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 the 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 this Law.
- (3) Apart from measures referred to in 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 228****(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 rendering them unfit to hold judicial office;
  - f) upon their removal as a consequence of disciplinary proceedings;
  - g) if they fail to comply with Article 164, paragraph (2) of this Law.
- (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 231 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 to the Council. 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 Judicial Department or Prosecutorial Department shall make the ex officio decision determining that the events listed in paragraph (1) item e) of this Article have occurred. The mandate of a judge or prosecutor shall be terminated with the day the decision is rendered.
- (7) 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 229**  
**(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 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 the event referred to in 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 e) of this Article, shall terminate on the day the decision imposing the measure of removal becomes final.

(4) A court president, chief prosecutor or deputy chief prosecutor may resign from their office in accordance with Article 228, paragraph (3) of this Law.

(5) In case of 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 230**  
**(Temporary Extension of Mandate)**

(1) A court president, chief prosecutor or deputy chief prosecutor whose mandate in the office they were appointed to has expired shall continue exercising all 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 been terminated, 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 231**  
**(Mandatory Retirement Age)**

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

**PART VI – TRANSITIONAL AND FINAL PROVISIONS**

**Article 232**  
**(Continuity of the Work of the Council)**

The Council shall work in continuation.

**Article 233**  
**(Transitional Period)**

(1) Council members holding the position in the Council at the moment this Law enters into force shall remain as Council members for a period of 12 months following the day this Law enters into force (hereinafter: the transitional period).

(2) The term of office of a Council member elected before this Law enters into force shall commence on the day when he/she assumes office and shall last until the end of the transitional period.

(3) The work and decision-making of the Council in the transitional period shall be governed by Article 14 of the Law on High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH,

25/4, 93/05, 15/08, 48/07, 63/23 and 9/24) and the applicable Rules of Procedure of the Council, while the Council members shall retain acquired rights until the end of the transitional period.

(4) Unless otherwise prescribed by this Law, the Council shall adopt new or harmonise the existing regulations no later than ten months following entering into force of this Law.

(5) The standing committees and working bodies established pursuant to Article 12 of the Law on High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/4, 93/05, 15/08, 48/07, 63/23 and 9/24) shall continue working until the end of the transitional period.

(6) Before the expiration of the transitional period, the competent institutions of Bosnia and Herzegovina shall provide the material and financial resources required for the implementation of this Law.

### **Article 234**

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

(1) No later than 45 days from the day this Law enters into force, the Council shall adopt the Book of Rules on drawing of lots referred to in Article 5, paragraph (9) of this Law.

(2) No later than 60 days from the day this Law enters into force, the Council shall adopt the Book of Rules on the Procedure for Election of Council Members referred to in Article 8, paragraph (1) of this Law and determine the format and content of the ballots referred to in Article 14, paragraph (6) of this Law.

(3) No later than 90 days from the day this Law enters into force, the Council shall announce a public call for nominations for Council members referred to in Article 9, paragraph (1) of this Law.

(4) The mandate of the Council members elected in accordance with Article 5 of this Law shall start the next day of the day when the transitional period expires.

(5) The first session of the Council in the convocation prescribed by this Law, in which the President of the Council shall be elected, shall be convened by the previous President, no later than three days from the beginning of the mandate of the new Council members.

(6) The limitations prescribed in Article 6 of this Law shall apply to the Council members holding the position in the Council at the time this Law enters into force, as well as to the persons elected as Council members in accordance with the Law on the High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/4, 93/05, 15/08, 48/07, 63/23 and 9/24).

(7) As an exception to paragraph (6) of this Article, the limitations prescribed in Article 6, paragraph (2) item e) of this Law shall not apply to the Council members holding the position in the Council at the day this Law enters into force if on that day they did not serve more than half of their term in the Council.

(8) If the funds for the salaries of Council members are not secured in the Council budget on time in accordance with Article 44 of this Law, the newly-appointed full-time Council members shall continue receiving their salary and other allowances from their respective employers for the positions they hold with their employers.

(9) For the period in which they were receiving salary in accordance with paragraph (8) of this Article, which cannot be longer than six months from the expiration of the transitional period, the Council members who work on a full-time basis shall have the right to remuneration in the amount that is the difference between the amount of salary they have the right to in accordance with Article 44 of this Law and salary that was disbursed to them. The remuneration shall be disbursed from the budget of the Council.

(10) In the transitional period, the Council of Ministers of Bosnia and Herzegovina shall make a decision from Article 45, paragraph (3) of this Law governing the award for the duties performed by the Council members elected under this Law.

(11) Should the Council of Ministers of BiH fail to make a decision referred to in paragraph (10) of this Article within the prescribed deadline, the Council members shall receive the award for the duties performed in accordance with the decision in force on the date of adoption of this Law.

**Article 235**  
**(Continuity of Mandates in Managerial Positions)**

(1) The court presidents, chief prosecutors and deputy chief prosecutors holding these offices at the time this Law enters into force shall continue to perform the duties until the expiration or termination of mandate to which they were appointed.

(2) The persons appointed as the Director and Deputy Director of the Secretariat, and the Chief Disciplinary Counsel of the Office of Disciplinary Counsel shall remain in that office until the expiration or termination of mandate to which they were appointed.

(3) In applying the provisions of this Law governing the maximum number or duration of mandates in managerial positions in the Council and in the judiciary, previous mandates served by the persons appointed in accordance with the Law on the High Judicial and Prosecutorial Council of BiH shall also be taken into consideration (Official Gazette of BiH, 25/4, 93/05, 15/08, 48/07, 63/23 and 9/24).

**Article 236**  
**(Continuity of Service of External Monitoring Experts)**

The experts engaged in accordance with Article 86h of the Law on the High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/4, 93/05, 15/08, 48/07, 63/23 and 9/24) shall continue working until the expiration of the four-year period they were engaged for.

**Article 237**  
**(Implementation of the Initiated Appointment Procedures)**

(1) The appointment procedures of judicial office holders that were initiated before this Law entered into force shall be finalised in accordance with the regulations that were in effect at the time of the announcement of the public competition.

(2) Notwithstanding the rule referred to in paragraph (1) of this Article, the mandate of court presidents, chief prosecutors and deputy chief prosecutors appointed in the transitional period shall be four years.

(3) In the transitional period, the Council shall render a decision regarding all vacant posts in courts and prosecutor's offices for which a competition was published before this Law entered into force in accordance with Article 33 of the Law on the High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/4, 93/05, 15/08, 48/07, 63/23 and 9/24).

(4) After the expiry of the transitional period, the Judicial/Prosecutorial Department shall, in accordance with paragraph (1) of this Article, act upon decisions of the Court of BiH rendered in the disputes against decisions appointing judges or prosecutors on the basis of previous regulations, as well as upon reports on additional verification of declarations of assets and interests of judges and prosecutors appointed in accordance with the previous regulations.

**Article 238**  
**(Beginning of the Application of the Appointments Provisions)**

(1) The provisions of Articles 67 to 124 of this Law shall begin to apply the day after the expiration of the transitional period.

(2) Notwithstanding the previous paragraph, the Council shall, no later than ten months after this Law enters into force, adopt a plan for filling positions in the judiciary as specified in this Law.

(3) The Council shall, no later than 15 days after the expiration of the transitional period, announce a public competition as specified in Article 93 of this Law for the position of judge of the court referred to in Article 66, paragraphs (6) and (7) of this Law, and for the position of prosecutor in the prosecutor's office referred to in Article 67, paragraph (4) of this Law.

(4) No later than 30 days after the expiration of the transitional period, the Council shall issue a call as specified in Article 84 of this Law, which will cover up to 50% of the vacant positions in a single court or prosecutor's office.

(5) No later than within 6 months from the date this Law enters into force, the Council shall adopt a Book of Rules on Appointments referred to in Article 72 of this Law.

(6) No later than within 45 days from the date this Law enters into force, the Council shall adopt a Book of Rules on the procedure for nomination of candidates for the position of a Constitutional Court judge.

**Article 239**  
**(Reserve Judges)**

(1) A reserve judge who is in that position at the time this Law enters into force shall remain at the position of a judge in the same court he/she was appointed to, without limitations in the mandate duration, subject to the decision of the Council, if their three last performance appraisal grades were "good" or higher and if there is a vacant judge position in that court for which the funds have been secured.

(2) If there is no position in that court, by a decision of the Council the reserve judge shall be appointed, with his/her consent, to the vacant judge position in the court of same level, without limitations in the mandate duration. They shall remain in the position they were at the time this Law entered into force until the appointment.

(3) If a reserve judge does not accept the appointment in accordance with paragraph (2) of this Article, their mandate of a reserve judge shall be terminated on the date when the Council takes the decision on the termination of mandate.

(4) While filling the vacancies, the Council shall prioritise the appointment of judges in accordance with the paragraph (2) of this Article. Vacant positions for which a competition was published earlier shall also be taken into consideration should a decision on appointment has not been rendered yet.

**Article 240**  
**(Transitional Provisions Concerning Disciplinary Liability)**

(1) Disciplinary proceedings initiated before this Law entered into force shall be conducted according to the rules that were in force at the time the disciplinary complaint was filed.

(2) No later than within 30 days from the date this Law enters into force, the Council shall form disciplinary panels in accordance with Articles 180 and 181 of this Law to a mandate that lasts until the expiration of the transitional period. As an exception, a disciplinary panel shall continue operating after the mandate has ended through to the conclusion of any ongoing disciplinary proceeding.

(3) No later than 30 days after the expiration of the transitional period, the Council shall establish new disciplinary panels in accordance with Articles 180 and 181 of this Law.

(4) No later than 60 days after this Law enters into force, the Council shall adopt the Book of Rules on Disciplinary Liability of Judicial Office Holders.

(5) The provisions of Articles 56 and 57 of the Law on the High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/04, 93/05, 48/07 and 15/08) shall apply to disciplinary offences committed by judges and prosecutors up to 23 December 2023.

(6) The provisions of Articles 11 and 12 of the Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 63/23) shall apply to disciplinary offences committed by judges and prosecutors from 23 December 2023 until this Law enters into force.

(7) Section C of this Law – Disciplinary Investigations shall apply to the complaints received after this Law enters into force.

**Article 241**  
**(Application of Provisions on Performance Appraisal)**

(1) Articles 128 to 143 of this Law shall apply from 1 January after the year in which the transitional period expires.

(2) The performance appraisal of judicial office holders for the calendar years covered by the period before the application of Articles 128 to 143 of this Law shall be carried out in accordance with the regulations in force at the time of entry into force of this Law.

(3) No later than within 9 months from the date of entry into force of this Law, the Council shall adopt a Book of Rules referred to in Article 144 of this Law.

**Article 242**  
**(Termination of Validity of Earlier Law)**

Entry into force of this Law shall terminate the validity of the Law on High Judicial and Prosecutorial Council of BiH (Official Gazette of BiH, 25/4, 93/05, 15/08, 48/07, 63/23 and 9/24).

**Article 243**  
**(Entry into Force)**

This Law shall enter into force 30 days upon its publication in the Official Gazette of BiH.



## EXPLANATORY NOTE

### I - CONSTITUTIONAL BASIS FOR THE ENACTMENT OF THE LAW

The constitutional basis for the enactment of this Law is contained in Article IV 4 a) of the Constitution of Bosnia and Herzegovina, according to which the Parliamentary Assembly of Bosnia and Herzegovina is responsible for enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution of Bosnia and Herzegovina.

### II - REASONS FOR ENACTING THE LAW

The High Judicial and Prosecutorial Council of BiH was established by the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: the Law on the HJPC), adopted in 2004, as an independent body for the judiciary in the entire territory of BiH, with the task of providing an independent, impartial and professional judiciary in BiH.

In its **2012 Opinion** on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, the **Venice Commission** confirmed the important role of the HJPC in strengthening the independence of the judiciary, but it also identified certain shortcomings in the legal framework, as well as in the work of the HJPC. In the same Opinion, the Venice Commission emphasized the need to ensure that the two main professions represented in the HJPC, judges and prosecutors, cannot outvote each other (especially with respect to appointments and disciplinary proceedings), and proposed establishment of two sub-councils within the HJPC, one for judges and the other for prosecutors.

The **Venice Commission** also considered comprehensive amendments to the Law on the HJPC from **2014** (which was never adopted), and in its Opinion welcomed the proposal to establish two separate sub-councils within the HJPC, but recommended introducing a right to appeal to a court of law for HJPC's decisions regarding appointments and disciplinary proceedings.

Furthermore, the **European Commission Report of 6 October 2020**, highlighted shortcomings in terms of the independence, responsibility and efficiency of the HJPC, and emphasized the key priority for BiH, which should, in order to strengthen the independence and responsibility of the HJPC as a guarantor of the independence of the judiciary, adopt the new Law on the HJPC. It was suggested that the starting point should be the 2018 legislative initiative of the HJPC, which should be aligned with the European standards regarding the HJPC's composition and election, and it should improve the system of appointment, promotion, performance appraisal, disciplinary responsibility, conflict of interest and integrity of judicial office holders, performance appraisal of judges and prosecutors and it should introduce a judicial remedy against all HJPC's final decisions.

In terms of amendments related to strengthening the integrity of judicial office holders, the **Venice Commission adopted the Opinion** at its 126<sup>th</sup> plenary session (in **2021**), the recommendations of which were accepted and incorporated into the Law that was officially adopted and published in the Official Gazette of BiH on 15 September 2023. In these amendments to the Law on the HJPC BiH, a special provision stipulates that within one year from the date of entry into force of that Law, the Parliamentary Assembly of Bosnia and Herzegovina will adopt the Law on the High Judicial and Prosecutorial Council of BiH, which will be aligned with the EU standards as provided for in the Opinion of the European Commission on Bosnia and Herzegovina's request for membership in the European Union.

Therefore, this new, comprehensive Draft Law on the HJPC has been prepared addressing all the issues in line with the recommendations previously established by the Venice Commission, *Priebe* report, GRECO recommendations and EU reports on BiH.

The Venice Commission adopted the Interim Opinion on the working Draft Law at its 139<sup>th</sup> plenary session (Venice, 21 and 22 June 2024).

The Commission invites the authorities to consider what would be the other immediate necessary actions directly related to the Draft Law, i.e. what other pieces of legislation would require to be harmonised after this Law or possibly in parallel to it.

### III - THE PRINCIPLES ON WHICH THE PROPOSAL IS BASED

The Draft Law is based on the principles of transparency of the HJPC work, integrity of HJPC members and judicial office holders, transparency of election of judicial office holders, principle of two-tier decision-making and principle of responsibility of judicial office holders.

- **Transparency of work** is of key importance to establishing control mechanisms and strengthening citizens' trust in the judiciary. Transparency is particularly important in the work of the HJPC due to high degree of independence and broad powers of this body, so the principle of publicity in the work of this body appears as one of the essential mechanisms of control and accountability. Judicial institutions should build trust in their relations with the public by affirming the principles of transparency and responsibility in their daily activities.

- **Integrity of judicial office holders** is a standard that the HJPC members and judicial office holders should adhere to during their careers in order to meet the high demands of the judicial function. It is a broad concept that covers multiple qualities expected of every judicial office holder (independence, impartiality, professionalism, responsibility, expertise, proper behaviour...). The principle of integrity of the individual judicial office holder will be especially provided by observing the legislation on preventing the conflict of interest.

- **Two-tier decision-making**, considering that the right to an effective legal remedy is the basis for respect and protection of individual rights, introduction of judicial control over the Council's decisions (on the appointment of the judicial office holders, performance appraisal, disciplinary responsibility..) is in accordance with the principles of the rule of law. The Council's decisions should also be subject to general legislation that apply to public institutions, such as the Law on Administrative Disputes, which provides for judicial protection by initiating an administrative dispute before the court.

- **Responsibilities of judicial office holders** - Independence of judicial office holders is not a privilege given in their own interest, but in the interest of the rule of law and the persons seeking and expecting impartial justice and it includes a number of rights but the obligations as well. The general rule is that the judicial office holder, who does not perform the office in an appropriate manner, can be subject to disciplinary responsibility before the authority that conducts the disciplinary proceedings in accordance with the principles on which the fairness of the procedure and the legality of disciplinary sanctions are based. In this light, the European Network of Councils for the Judiciary states in its recommendations that "*the judiciary must also earn trust and confidence by being accountable to society*".

### IV - EXPLANATORY NOTE TO PROPOSED SOLUTIONS

Law on the HJPC was adopted by the Parliament of BiH in 2004, i.e. a key institution was established by that Law to ensure independence of judiciary and the rule of law in BiH. **Article 1** of that Law stipulates that this Law establishes the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, and Article 1 of the Draft Law clearly stipulates that this Draft Law confirms the continuity of the existence of the High Judicial and Prosecutorial Council. Considering that the legal associates, authorised by special regulations to act and decide in judicial matters, are appointed by the Council, i.e. the competent Department, it was therefore justified to **amend Article 1** of the Draft Law.

In the recommendation **III A.16**, the Venice Commission considers that it is of utmost importance to specify in this Draft Law that the provisions of the Law on Ministries and Other Bodies of the Administration of BiH and the Law on Administration of BiH do not apply to the HJPC as set out by the current Law on the HJPC. **Article 4**, paragraph (8) of the Draft Law was amended in accordance with this recommendation.

Furthermore, in accordance with paragraphs 25, 26, 28, 34 and 35 of the Interim Opinion, the Commission commented the “**composition of the Council**” which is **Article 5** in this Draft Law, suggesting that “**in the specific context of Bosnian and Herzegovina, it would be preferable to refer to a general representation of the peoples, in line with the Constitution**”. However, the provision was specified exactly in line with the Constitution, and reflects the diversity of the country in terms of ethnic, gender and other criteria, because this diversity will surely increase the legitimacy and public trust in the Council. This provision will not certainly be an obstacle to properly and primarily apply objective merit-based criteria during the election. With regard to the Constitutional provisions, it is stipulated (Article 4, paragraph (5)) that the composition of the Council, **as a rule**, reflects the diversity of the peoples of Bosnia and Herzegovina in accordance with the Constitution of Bosnia and Herzegovina, whereby the Council, **which has 20 members, must have at least four members from each constituent people and two members who are the Others**, and at least eight members of the same gender. In order to implement this rule properly and without abuses, before publishing the public call, the institutions from which the election of the Council members will ensure its implementation will be determined by drawing lots.

Regarding **Article 5 of the Draft Law**, referring to the composition of the Council, the Commission welcomed the fact that the Draft Law abides by the principle of diversity and ensures that the judicial and the prosecutorial members are representatives of all levels and areas of judiciary and prosecution service, but recommended increasing significantly the number of lay members of the HJPC. In accordance with the recommendation from the Opinion, it is provided that two members will be elected by other bodies, one by the Council of Ministers, and one by the Parliamentary Assembly of BiH under precisely prescribed conditions, while one member will be elected each by the bar associations of the Federation of BiH and of the Republika Srpska. The proposed provision provides for a balanced representation of judges and prosecutors from all levels. It is certain that persons of high moral standing will be appointed to the Council on behalf of the Council of Ministers and the Parliamentary Assembly of BiH, who, due to their expertise and professionalism, will ensure independent and impartial work and decision-making of the Council, as provided for in this Law, but in accordance with the Commission’s recommendation, it is possible also to appoint experts who are not lawyers. As provided by Article 5 of the Draft Law, the Council has 8 members who are judges, 8 members who are prosecutors and 4 members who are not from the judicial community. The increase in the number of non-judicial members in the HJPC provides a significant representation of these experts in the respective Departments (4 out of 8), which will definitely ensure the democratic legitimacy of both the Department and the Council.

**Article 6** of the Draft prescribes certain criteria, eligibility for the membership in the Council, and it is precisely prescribed which persons cannot be elected as the Council members. This provision will also prevent the Council members from always being from more numerous or pre-determined territorial judicial institutions. This provision clearly prescribes obstacles to the Council membership of the members elected by the Council of Ministers and the Parliamentary Assembly of BiH. In accordance with recommendation 45 of the Venice Commission, this provision is supplemented by paragraph (6) which prescribes an explicit criterion of ineligibility for a Council member of the persons who are subject to criminal proceedings or persons who have been finally convicted of a criminal offence.

**Article 7** prescribes the rules on the Council composition (cantonal and municipal court judges from the same canton, or district and basic court judges from the territorial jurisdiction of that district court or from one canton, or district prosecutor’s office may not be elected as members of the Council...).

**Articles 9-18** of the Draft Law prescribe the public call and electoral bodies that will ensure a fair, secret and transparent Council members election process. When compared to the current Law, a transparent election process and electoral bodies are clearly prescribed. *The procedure is not prescribed by the current law, but by the HJPC Book of Rules, and they were carried out within each judicial institution, without control, responsibility, which caused justified doubts.*

The Council posts a public call (**Article 9**), and the judicial institutions, bodies referred to in Article 5, paragraphs (4) to (7) of this Law, the Bar Association of the Federation of BiH and the Bar Association of Republika Srpska are notified thereof immediately following its announcement. Every eligible judge and prosecutor may submit a candidature to the Election Committee (Article 13). Concerning the earlier proposal for the composition of the Election Committee, the Venice Commission made a recommendation in paragraph 49. Accordingly, the composition of the Election Committee is harmonized with the recommendation. The election will be carried out by one committee which is responsible for the entire procedure except for the actual voting in various courts, i.e. prosecutor's offices, which is overseen by electoral boards in each court and prosecutor's office, and which are appointed by the court president, i.e. the chief prosecutor, at the proposal of the general session, i.e. collegium (Article 10 paragraph (3)). Candidates, judges and prosecutors who participated in voting have the right to file an objection (Article 16) to irregularities in the procedure, which is decided by the Council. Paragraph (6) of this Article stipulates that the members of the Election Committee will be exempted from deciding on the objection if the allegations of the complaint relate to the conduct of the Election Committee (recommendation 49 of the Venice Commission), and an appropriate deadline of eight days is left for filing the objections. Article 18 of the Draft Law establishes that the appointment of non-judicial members is preceded by the public call referred to in Article 9 of the Draft Law (recommendation 51-55). The procedure for nominating and appointing the non-judicial members is carried out by the competent bodies in accordance with this Law and the regulations governing their services, because this Law cannot prescribe a procedure different from the one that these bodies apply for other appointments that they carry out within their competences. This provision stipulates that the bodies responsible for appointing a Council member should submit their decision within the given deadline, and that it should contain an explanation.

**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. **All members of the Council are elected at the same time.** In case of termination of the mandate of a Council member, the new member has a mandate only until the end of the unexpired mandate of the member he/she replaced. Assuming office in the Council is preceded by a verification of the assets and interests declaration of all elected members of the Council.

According to the current Law, the election was made individually upon expiration of a member's mandate, and members could have two consecutive mandates.

Verification of asset and interest declarations of elected members of the Council takes place prior to their taking of office in the Council (**Article 20**), and the elected members of the Council may assume office only if the outcome of checks conducted is positive, and **Article 21** of the Draft stipulates the obligation for all Council members to submit an initial declarations on assets and interests within the specified deadline.

The Draft Law incorporates rules aimed to increase the transparency of the work of the HJPC (**Article 24**) by 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 and one year after its expiration or from being elected to certain posts in the judiciary and civil service.

**Article 25** of the Draft Law provides the list of misconducts of a Council member for which he/she is liable if they were committed intentionally or due to gross negligence. Furthermore, if the misconduct of a Council member who is a judge or prosecutor can be brought under a disciplinary offence, the provisions of this Law governing the disciplinary liability of judges and prosecutors will be applied.

Paragraph (3) prescribes two measures: a public reprimand and removal from office of a Council member. In particular, paragraph (4) provides the cases in which a measure of removal from the office of a Council member may be imposed.

**Article 26** of the Draft Law sets out the possibility for each Council member, a judge, a prosecutor, and the Office of the Disciplinary Counsel to submit to the Council a reasoned proposal for determining misconduct of a Council member. The examination of allegations of the misconduct is carried out by the Inquiry Panel formed by the Council and it consists of three members who are selected from among judges and prosecutors who are not Council members. The Disciplinary Panel formed by the Council decides on allegations concerning the misconduct, and it consists of five members who are selected from among judges and prosecutors who are not Council members.

**Article 27** prescribes the procedure for examining allegations of misconduct and **Article 28** for deciding on allegations of misconduct, where it is stipulated in paragraph (5) that a Council member may file a complaint to initiate an administrative dispute before the Court of Bosnia and Herzegovina against the decision of the disciplinary panel, within eight days from the date of publishing the decision on the Council's website.

**Article 28 governs the decision-making on allegations of misconduct, and paragraph (3)** stipulates that the Council member against whom proceedings have been initiated will be given the opportunity to personally or by proxy, in writing and orally at the session of the Disciplinary Panel, give statement on the allegations from the report, i.e. the allegations of misconduct that he/she is charged with, and to present and submit the necessary information and evidence, which is fully in accordance with the Venice Commission recommendation stated in its paragraph 64.

**Article 29** of the Draft prescribes the grounds for the termination of the mandate of a Council member, and in accordance with the Venice Commission recommendation stated in its paragraph 57, the items g) and i) were amended, that is, **the provisions concerning the event of the death of a member, as well as a reference to the Article prescribing the removal from office**, were added to the list as special grounds. In the paragraph 58, the Venice Commission considers that the Law should specify that only a disciplinary measure of a certain gravity may lead to the termination of a mandate. However, Article 25, paragraph (4) of this Draft Law clearly stipulates that the removal from office measure may be imposed in the event that the found misconduct led to a serious damage to the reputation of the Council or the judiciary, or when due to the severity of the violation, or the manner and circumstances under which it was committed, or the degree of liability and conduct of a Council member renders the Council member unworthy to continue to hold the office. Item f) is precise, since it stipulates that the grounds for the termination of a Council member's mandate is a final conviction for a criminal offence, but only that which renders him or her unworthy to continue to hold the office. The Venice Commission recommendation stated in the paragraph 63 refers to item e) of the Draft Law, i.e. the grounds for the termination of a Council member's mandate in case of absence or non-participation in the work of the Council. However, this ground exists if, in a period of three or six months, a Council member continually does not perform the duties of a member, i.e. this ground does not exist if a Council member attends at least one meeting/discussion, that is, any activity in the Council, thereby interrupting the period of absence.

**Article 30** of the Draft regulates cases of suspension from office of a Council member. The cases of suspension from office of a Council member are clearly prescribed, and this decision requires a two-thirds majority vote of all Council members. Regarding the Venice Commission recommendation stated in the paragraph 65, it is emphasized that in accordance with this Article,

it is a suspension that does not deprive the suspended person of any rights, i.e. the person is not deprived of his/her salary.

**Article 31** of the Draft clearly prohibits a Council member to 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. In addition to that, in accordance with paragraph (2) of this Article, a Council member must not be a member of any organisation that discriminates on any basis, as recommended by the Venice Commission in the paragraph 63.

**Article 32** of the Draft regulates conflict of interest. The Venice Commission recommendation in terms of making the definition of conflict of interest more precise is accepted with the phrase: "may reasonably influence", and the provision was supplemented with paragraph (7) which allows a member of the Council to request an opinion in case of any doubts about conflict of interest. In the current Law and by-laws, the regulatory principle of prescribing the conflicts of interest is consistent. Namely, the Rules of Procedure prescribe in detail the cases in which the existence of a conflict of interest is implied, as well as the grounds and procedure for recusal of a Council member, due to the fact that it is an extensive matter, which by its nature implies specifying legal standards through by-laws. In addition to that, the purpose of removing arbitrariness in assessing the existence of a conflict of interest and the uniformity of the assessment is to prescribe the situations by the Rules of Procedure of the HJPC BiH, which is published in the official gazette and presents a regulation that, according to its standards, meets the criteria of substantive law in the sense of the ECHR. This approach in the work practice of the Council enabled the application of clear standards from which there are no deviations depending on the addressee to whom it is applied.

**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. It is prescribed by Article 33 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.

**Articles 33 and 34** accept and incorporate the recommendation of the Venice Commission from paragraphs 67 and 68, so that each member of the Council can be elected as the President or Vice-President of the Council.

**Article 45 of the Draft** stipulates the rights of the Council members who are not with the Council on a full-time basis, and that the award for their work in the Council will be regulated by the Council of Ministers of Bosnia and Herzegovina upon the proposal of the Council. The Venice Commission recommends in paragraph 70 reconsidering the prerogative of the executive on the award for part-time members. In this context, it is emphasized that the Law regulating the salaries and benefits of officials and employees at the level of BiH has given the Council of Ministers the authority to generally regulate the issue of additional benefits, so that this provision is not disputable, "it is balanced", bearing in mind that the Council of Ministers makes the decision on the proposal of the HJPC.

**Article 46** stipulates that Council members cannot be criminally prosecuted, arrested or detained, nor can they be held liable in civil proceedings for any opinion they give or for the decisions they rendered within the scope of their official duties, but the immunity will not prevent

or delay an investigation in a criminal or civil proceeding that is conducted against a Council member on a matter in accordance with the law. This provision is fully harmonized with the Venice Commission recommendation stated in paragraph 70.

**Article 48** stipulates that the competencies of the Council are carried out in plenary session of the Council, sessions of the Judicial and Prosecutorial Departments, and through disciplinary bodies and appraisal committees, and that in exercising the competencies, the Council members cannot abstain from voting. This provision is commented by the Venice Commission in the paragraph 72 emphasizing that this provision does not correspond to real needs, i.e. *“it notes that the Council is called on to decide on many highly specialised and technical matters and such a blanket ban to abstain may not be appropriate and even detrimental if members were obliged to vote on matters on which they lack competence.”* Considering that the Departments of the Secretariat prepare detailed materials for the sessions, after which the HJPC members have all the information necessary for decision making, and that the Peer Review 2016 – recommendation was to ban abstinence, this recommendation of the Venice Commission was not followed.

**Article 49 of the Draft** stipulates that the plenary session of the Council comprise all Council members, i.e. 20 of them, so 11 members makes the majority of all members of the Council - an odd number, which is in accordance with the Venice Commission recommendations, while **Article 50** of the Draft stipulates that at sessions of the Judicial or the Prosecutorial Department the quorum consists of at least nine members, in which number the non-judicial members are also included, and the Venice Commission recommends in the paragraph 79 to include the lay members in the threshold.

**Article 54 of the Draft** complied with the Venice Commission recommendations from paragraph 74 and 168, i.e. the separation of the list of competences between the respective formations and bodies of the Council was carried out, thereby implementing the recommendation from paragraph 86.

Therefore, **this part has been radically changed in relation to the current Law**, so that the Council consists of all Council members, who are, in accordance with this Draft, members of the Judicial and the Prosecutorial Departments.

The Judicial Department has 12 members and consists of 8 judges and 4 non-judicial Council members, the Prosecutorial Department has 12 members and consists of 8 prosecutors and 4 non-judicial Council members.

At its plenary sessions, the Council decides on 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.

**The members cannot abstain from voting, as prescribed by the current Law, which was noted as an abuse.**

The Judicial Department appoints judges, including court presidents and lay judges; decides on objections in the appointment procedures for judges; decides on the termination of the mandate of judges and court presidents; decides on the suspension of judges and lay judges and on the temporary assignment of judges to another court; decides on leaves of absence for judges.

The Prosecutorial Department appoints chief prosecutors, deputy chief prosecutors and prosecutors; decides on objections in the appointment procedures for prosecutors; decides on the termination of the mandate of prosecutors, chief prosecutors and deputy chief prosecutors; decides on the suspension of prosecutors and on the temporary assignment of prosecutors to another prosecutor's office; decides on leaves of absence for prosecutors.

Other competences of the Council are exercised by the plenary session of the Council, disciplinary bodies, performance appraisal committees, as well as the Asset Declarations Department, in accordance with this Law.

At the plenary session of the Council, the quorum makes at least 15 members in attendance, and decisions are made by the majority of vote of all Council members. **In order to avoid the situation of judges overvoting prosecutors or vice versa, it is stipulated that in the majority vote there must be at least five votes of the Council members from the ranks of judges for the adoption of a decision made on the proposal of the Judicial Department, i.e. at least five votes of the Council members from the ranks of prosecutors for the adoption of a decision made on the proposal of the Judicial Department.**

**Article 56 of the Draft** stipulates in the paragraph (2) that to the extent necessary for the performance of its competencies, the Council and its representatives will have access to all premises and documentation of the courts and prosecutor's offices (e.g. inspection of documentation related to disciplinary proceedings), which is the reason why the recommendation from paragraph 80 and 153 of the Venice Commission was not complied with.

**Chapter IV** stipulates in **Article 57** that professional, financial and administrative tasks of the Council and departments are performed by the Secretariat of the Council. This Chapter spells out the competences of the Secretariat, management, election and term of managerial staff as well as the election of civil servants, i.e. employees in the Secretariat, while **Article 59** of the Draft stipulates that the Director and Deputy Director are removed by the Council. In the paragraph 88, the Venice Commission finds that "*the possibility for the Council to remove the Director and Deputy Director should be limited to specific cases of misconduct*". This recommendation was not followed because they are civil servants, the appointment and removal of which is regulated by the Law on Civil Service in the Institutions of Bosnia and Herzegovina.

Much like any other institutions of Bosnia and Herzegovina, in accordance with **Article 62**, 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 III** of the Draft Law regulates all important issues regarding the appointment of judges and prosecutors.

The Draft Law introduces radical changes in the appointment of judges and prosecutors, through the so-called *Career advancement system*.

In fact, the basic requirement that a person must meet in order to be appointed to the position of a judge or prosecutor are identical to those in the current Law, however, special conditions for appointment to the position of a judge are specified for each level, as well as special conditions for appointment to the position of a prosecutor for each level.

With regard to the *Career advancement system*, it is clearly stipulated that a prosecutor who has no experience as a judge cannot be appointed to the position of a judge, as well as vice versa, except for the first entry into the judiciary, i.e. to the lowest positions.

The Draft clearly stipulates that the vacant positions of judges, prosecutors and deputy chief prosecutors are to be filled by transfer, internal or public competition, in accordance with the procedure elaborated in detail by the Draft Law.

Furthermore, the vacant positions of court presidents and the chief prosecutor are 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 by this Draft Law.



The novelty incorporated in this Draft Law, which was welcomed by the Venice Commission, is that the candidate can file 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, to the Judicial, i.e. the Prosecutorial Department.

Furthermore, an administrative dispute can be initiated before the Court of BiH against the decision on the appointment or transfer of a candidate.

Contrary to the previous legal solutions, which had different terms of office for the presidents of different courts as well as the chief prosecutors, this Draft Law stipulates that the court president, the chief prosecutor and the deputy chief prosecutor are appointed for a term of four years and can be appointed for a maximum of one more consecutive term in the same court or prosecutor's office.

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

**Article 67** prescribes the basic requirements to be met for appointment as a judge or a prosecutor.

**Articles 68 and 69** 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 conditionally lists the special requirements for appointment to the position of a judge in the Appellate Court of BiH, and they will be retained in this Law subject to timely adoption of the Law on Courts of BiH.

**Article 70** 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 71** 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 competition.

**Article 73** prescribes that in the transfer and appointment procedure, based on internal or public competition, the Council applies relevant constitutional provisions which regulate the equal rights and proportional representation of constituent peoples and others, and looks after the gender equality. The Venice Commission pointed out objections to this provision, and therefore the hierarchy of legal acts is emphasized, i.e. Entity constitutions have priority in application compared to the law, including this one, because the explicit provisions of the Entity constitution (imposed by the High Representative) limit the possibility of applying the Venice Commission recommendation from the paragraph 97 et seq.

**Article 75 of the Draft** prescribes that 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 2021 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 reasoning on the application of criteria".

Furthermore, 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.

**Article 79 of the Draft** prescribes that the candidate may file 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, to the competent department 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.

Administrative dispute can be initiated before the Court of BiH (**Article 80 of the Draft**) against the decision on the appointment or transfer of a candidate.

**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 82**) and the composition of sub-councils for proposing candidates for vacant posts in courts and prosecutor's offices in the Entities (**Article 83**).

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

**Section B – Transfer (Article 84)** – a novelty introduced by this Draft Law, whereby at least once every three 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 instance who wish to be transferred to one of the vacant posts in a court of the same or lower instance; as well as a list of vacant posts in the cantonal and district prosecutor's offices and a call for 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/prosecutors who have spent at least five years in the position they perform at the time when call is announced can apply for a transfer call.

**Article 85** clearly prescribes the criteria for transfer, and **Article 86** 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.

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

**Article 88 of the Draft** in paragraph (5) prescribes a restriction 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 competition can apply for the post.

**Article 90 of the Draft** prescribes that in the internal competition procedure, five specified criteria are applied, and for filling the position of a deputy chief prosecutor, management and organizational skills are also taken into account.

Internal vacancy procedure includes interviews with candidates, scoring, ranking and nomination of candidates (**Articles 92 and 93**).

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 94**).

#### **Section D - Public Competition**

This Section prescribes the rules for “entry” posts in the judiciary that are filled through a public competition and open for application to candidates outside the judicial community. According to this procedure, the posts of judges in the basic court, the district commercial court and the municipal court, as well as the prosecutor in 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 are filled (**Article 95**). The Council publishes a public competition once a year to fill the positions in accordance with this Section. The public competition procedure includes entrance exams, written tests, interviews with candidates, determining a list of successful candidates and nomination of candidates (**Article 97**), and the criteria prescribed in **Article 98** of the Draft Law are applied in the procedure in a manner separately prescribed for each criterion of this Section. (**Articles 99, 100, 101, 102**).

Once every three months, the Judicial/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. List of successful candidates remains valid until the new list upon next public competition is formed (**Article 103**).

The invitation to apply for candidates from the list of successful candidates is published in accordance with **Article 104**, and one candidate can apply to a maximum of three vacant positions.

Pursuant to **Article 105** of the Draft, after the application deadline, the competent sub-council without delay forms a ranking list of candidates for each of the announced positions, in accordance with the results they achieved in the public competition procedure.

#### **Section E - Filling the positions in the highest instance courts (Articles 107-112)**

Vacant posts in the highest instance courts (Supreme Court of the Federation of BiH, Supreme Court of the Republika Srpska, the Appellate Court of the Brčko District BiH and the Court of BiH) are filled through an internal competition procedure. However, as provided by this Law, a prominent legal expert, who is not a judicial office holder, can be appointed as a judge of the highest instance court, 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 competition, 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 this Law; with the criteria for appointment in the public competition prescribed in **Article 109** of the Draft Law.

**Chapter IV** of the Draft Law regulates the requirements, procedure and criteria for appointing court presidents and chief prosecutors. A judge or prosecutor who meets the requirements prescribed in **Articles 114 and 115** 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.

Pursuant to **Article 113**, the Council, together with the bodies in charge of training of judges and prosecutors, will provide training programme for candidates for court presidents and chief prosecutors, as well as timely attendance of that training by interested candidates.

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 117** 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 established in accordance with 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 programmes at the session of the Judicial/Prosecutorial Department (**Article 121**). Paragraph (2) of this Article stipulates that the competent sub-council is obliged to provide the reasoned proposal for each of the candidates based on the candidate's standing in the ranking list. When nominating candidates for the positions of presidents of Entity supreme courts and chief prosecutors of Entity prosecutor's offices, in addition to candidate's standing in the ranking list, the sub-council also takes into account the ethnicity of the candidates, if it is necessary to ensure the appropriate distribution of positions in accordance with the Entity constitutions.

The appointment of court president or chief prosecutor in the procedure prescribed in **Article 122** of this Chapter is carried out by the Judicial/Prosecutorial Department, and the court presidents, chief prosecutors and deputy chief prosecutors are appointed for a term of four years and may be reappointed but not for more than one consecutive term in the same court or prosecutor's office (**Article 123**), and upon expiration of their term of office as managers, they continue to serve as judges/prosecutors in the same court/prosecutor's office (**Article 124**).

**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 of the criteria for nomination under Article 124 of this Chapter.

**Section A regulates the status of legal associates through Articles 125-131 of the Draft Law.**

Legal associates are authorised by special regulations to act and decide in judicial matters (**Article 125**). **Laws on the courts of the Federation of BiH and Brčko District stipulate that legal associates are appointed by the Council under the conditions prescribed by those laws**, and that they can act and decide in non-litigation and executive matters and small value disputes, when provided for by law, in cases assigned to them by the president of the court. In accordance with this Section, the number of positions of legal associates in municipal courts in the Federation of BiH and the Basic Court of Brčko District is determined by the Judicial Department, which appoints them based on the criteria referred to in **Article 127, paragraph (5)** of this Draft, and has the authority to reverse the decision on the appointment of a legal associate in cases prescribed by **Article 129** of the Draft. The disciplinary responsibility of legal associates is determined in accordance with the provisions of this Draft prescribed for judges (**Article 130**). This Section also lists the reasons for terminating the status of legal associate (**Article 131**).

**Chapter V - Section A contains provisions concerning judges of the Entity constitutional courts (Articles 132, 133 and 134).**

In paragraph 102, the Venice Commission recommends that it is necessary to further specify the criteria for selection of the judge to be nominated for the Constitutional Court of the Republika Srpska and to be nominated for the Constitutional Court of the Federation of Bosnia and Herzegovina.

In fact, in accordance with the Constitution of the Federation of BiH and the Constitution of the Republika Srpska, the Council carries out the responsibilities related to the procedure of appointing judges to the Constitutional Court of the Federation of BiH and the Constitutional Court of the Republika Srpska.

In order to enable the competent authorities to select judges for the Entity constitutional courts who are distinguished lawyers with the highest moral standing, **Article 133** of this Draft stipulates that in the process of nominating candidates, years of the relevant work experience after passing the bar exam, academic experience and achievements, as well as the suitability of the candidate to work as a judge of the given constitutional court, are evaluated as mandatory criteria. This Article (paragraph (3)) stipulates that the professors and assistant professors of law universities in Bosnia and Herzegovina may be nominated as judges of the constitutional court even without passing the bar exam, provided that they have at least ten years of work experience as professors or assistant professors.

The procedure for nominating candidates for vacant positions in the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of the Republika Srpska is carried out in accordance with **Article 134**, after a public competition announced by the Council. This Article also clearly specifies the establishment and composition of the Nomination Panel established by the Council, and sets out its competences in preparing a report on the conducted procedure, which contains a list of candidates with an explanation of the success for each candidate. The report of the Panel is considered and adopted by the plenary session of the Council.

**Chapter V - 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 137**).

**Chapter VI - Performance appraisal of judges and prosecutors**

This Draft significantly improved the performance appraisal system for judges and prosecutors, because according to the current law, judges were appraised by the court president, and the court president by the president of the immediately higher instance court. Prosecutors were appraised in the same way, i.e. prosecutors were appraised by the chief prosecutor, and chief prosecutors by the chief prosecutors of the prosecutor's office of the Republika Srpska or the Federation of BiH.

**Article 138** of the Draft sets out the aim of the performance appraisal, emphasizing that it is for the purpose of improving the quality of the judicial system by enhancing the professional capacities of judicial office holders, improving and achieving more efficient work in judicial institutions, as well as improving the accountability of the judicial system and strengthening the public confidence. It is clear from this provision that the aim of the performance appraisal is by no means to "punish" the judicial office holders.

The set objectives are achieved through performance appraisal of judicial office holders (**Article 139**), four of which are ranked according to the success achieved in their performance, while one grade is negative. The performance appraisal is carried out once every three years (**Article 140**),

while the court president, the chief prosecutor and the deputy chief prosecutor are appraised after the expiry of the third year of their mandate (**Article 142**).

If the indicators covering the performance appraisal criteria indicate that the performance appraisal will be negative, the court president, i.e. the chief prosecutor, has the obligation prescribed by **Article 141** of this Draft, to draft and implement a plan of measures to help the judge/prosecutor improve his/her performance. The court president or the chief prosecutor is obliged to submit the plan of measures and the report on its implementation to the Council.

**Articles 143, 144, 145, and 146** exhaustively prescribe who is the appraiser in the process of performance appraisal of judges, court presidents, prosecutors and chief prosecutors.

The criteria for performance appraisals of judges and prosecutors are their workplace skills and professional knowledge, as well as personal qualities and general ability to hold judicial or prosecutorial office, while an additional criterion for performance appraisals of court presidents, chief prosecutors and deputy chief prosecutors includes the ability to perform managerial tasks (**Article 147**).

**Article 148 (Workplace Skills and Professional Knowledge)** - in the Venice Commission recommendations - 107-109, it was indicated that the draft law should elaborate more on how the performance appraisal criteria should be interpreted and applied. However, these are professional issues that depend on the technique and methodology which is closer to the judicial system institutions, not the legislator. It was decided to specify the basic criteria by law, namely the statistical parameters of quantity and quality, as well as the analytical quality of performance, which represents "the result of an in-depth analysis of decisions and work". Practice can show that certain methods of analysis need to be corrected and improved, which is why the legal prescription of the details of the manner to determine the appraisal by individual sub-criterion could cause rigidity of the norm and non-compliance with the objective needs of the system. Everything will be regulated by the criteria and Book of Rules adopted by the Council, which are published and represent a predictable regulation. The methodology will be clearly specified in the by-laws.

Furthermore, by-laws will prescribe the content of the criteria and the method of performance appraisal based on the criteria and sub-criteria (**Article 150**).

**Article 151** of the Draft Law prescribes which sources of information can be used in the performance appraisal. In paragraph 108, the Venice Commission welcomed the fact that the Draft Law stipulates that the information should be "objective and relevant", and in accordance with the recommendation, item c) in paragraph (1) was elaborated and unrestricted access to information during the performance appraisal was prevented, i.e. it was stipulated that the documents whose data can be used in this process will be prescribed by by-laws.

The process of performance appraisals of judges and prosecutors is carried out in two phases (**Article 152**), which are determining the proposed performance appraisal score and making a decision on the score.

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 proposal for performance appraisal 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, or the Council, is not bound by the performance appraisal proposal, and can collect other relevant data and ask for clarifications relevant to the appraisal, and the appraised judicial office holder can be invited to an interview in order to contribute to the correct performance appraisal.

In paragraph 105, the Venice Commission welcomes that the Draft Law itself describes certain core features of the procedure to be followed, i.e., the involvement of the judge or prosecutor concerned in the process, his or her possibility to take note of all documents used in the appraisal procedure and the possibility to comment on them, the fact that the decision will be reasoned and the possibility for judicial review.

In its 2014 Opinion, the Venice Commission recommended “*introducing a right to appeal to a court of law for HJPC’s written decisions regarding appointments and for assessments of judges and prosecutors as well as for decisions of the disciplinary commission.*” The importance of judicial review of decisions made by judicial panels has been highlighted in various international instruments. This recommendation is incorporated into **Article 153** of this Draft, which stipulates that the appraised judge or the prosecutor may initiate an administrative dispute before the Court of BiH against the performance appraisal decision. The cited Article establishes the deadline for initiating an administrative dispute, the deadline for responding to the complaint, but the scope of the review of the appraisal procedure is also prescribed, i.e. the court reviews the legality of the conducted appraisal procedure. Additionally, it is important to point out that paragraph (7) of this Article stipulates that the legal consequences of the performance appraisal decision will be postponed until the court procedure is completed.

**Chapter VII** of the Draft Law regulates the assignment and transfer of judicial office holders to another court and prosecutor’s office.

In accordance with **Article 156** of this Chapter, with his/her consent, the judge may be assigned to another court of the same or lower instance, 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 assigning a judge to another court are listed exhaustively.

A judge or prosecutor may be permanently transferred to another court or prosecutor’s office of the same instance without the consent, by decision of the competent Department, in the event of the termination of the court or prosecutor’s office to which he/she was appointed (**Article 159**). This guarantees the permanence of the judicial office (judge or prosecutor).

**Chapter VIII** – prescribes the leave of absence for a judge or prosecutor, which is approved by the competent Department, and can be paid or unpaid. **Article 161** prescribes the reasons, i.e., the grounds for approving the leave of absence, and for each reason exhaustively states the basis on which the competent Department may approve leave of absence to a judge or a prosecutor.

Court presidents or chief prosecutors decide on the leave of 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 training 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 competent Department of the approved leave of absence (**Article 162**)

**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 or gross negligence should give rise to a disciplinary violation*”. In line

with that, judges or prosecutors are not to be held liable for the opinions they give or the decisions they make in the course of their official duties (**Article 165**).

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 166**).

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 do, 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 168** of this Section enumerates the duties that may not be performed by a judge or prosecutor, i.e. those that are prohibited as incompatible with their office.

This Article refers to the Recommendation CM/Rec(2010)12 of the Council of Europe on the independence of judges and other issues (paragraph 29): *“Judges should be aware that their membership of certain non professional organisations may infringe their independence or impartiality. Each member state should determine which activities are incompatible with judges' independence and impartiality. Furthermore, in order to ensure that judges have the time to perform their primary function, that is to adjudicate, the plurality of mandates in various commissions should be restricted and cases in which the law prescribes for judges to sit on a commission, council, etc., should be limited”*.

In addition to that, it is necessary to mention the *Resolution on judicial ethics* of the European Court of Human Rights (2008), which states the following: *“In the exercise of their judicial functions, judges shall be independent of any public national or international institution, body or authority or any private entity. They shall refrain from any activity, expression and association, refuse to follow any instruction, and avoid any situation that may be considered to interfere with their judicial function and to affect adversely public confidence in their independence.”*

The Venice Commission emphasized that judges and prosecutors may perform *“scientific, didactic or creative and possibly other specific activities”*. Therefore, **Article 169** was structured along those lines, and in paragraph (2) it specifies those activities as the work of trainers in training centres 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. This is in line with the 2021 Opinion of the Venice Commission where it was stated 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 that, 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, as well as the Council, 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 judgement, and are subject solely to the law.

**Article 171 of the Draft Law** stipulates that judges or prosecutors may request the opinion of the Council on whether their external activities are compatible with their function. Consultative Council of European Judges (Opinion no. 3, paragraph 29) *“encourages the establishment within the judiciary of one or more bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the*



*private sphere is compatible with their status of judge*". Similarly, in the Recommendation CM/Rec(2010)12 of the Council of Europe, it is stated under paragraph 74: "*Judges should be able to seek advice on ethics from a body within the judiciary.*" In accordance with this recommendation, Article 171 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 Law on HJPC. 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 - Declaration of Assets and Additional Activities**

The provisions included in this Section establish rules for detecting conflicts of interest and increasing the transparency of the work of the HJPC and judges and prosecutors. The provisions on the declaration of assets and interests equally apply to judges, prosecutors, court presidents, chief prosecutors, deputy chief prosecutors and all members of the Council (**Article 172**).

The Venice Commission in its Opinion No. 1015/2021 on the Draft Law on Amendments to the Law on HJPC welcomed the efforts to increase transparency and prevent conflicts of interest both inside the HJPC and among judges and prosecutors more broadly. These efforts, as stated in the Opinion, are, in principle, in line with international standards and also take account of some of the recommendations that the Venice Commission formulated in its previous opinions. **The recommendations from that Opinion were complied with and incorporated into the Law that was officially adopted and published in the Official Gazette of Bosnia and Herzegovina on 15 September 2023. The provisions of that Law are included in this Draft Law, and are amended in accordance with the corrections from the Interim Opinion of the Venice Commission.**

**Article 173 of the Draft** stipulates the obligation of judges and prosecutors to submit to the Council their initial and annual declaration of assets and interests, including the manner and time of acquisition and the purchase value, 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. Paragraph (2) prescribes what data the declaration should contain, the deadline for submitting the initial report.

**Article 174** regulates the transparency of asset declarations. Asset declarations are available to the public. The public availability of reports - including their availability via the Internet - is also in accordance with the jurisprudence of the European Court of Human Rights (and *inter alia* the decision of 25 October 2005 in the case of *Wypych v. Poland*, no. 2428/05), which supports "*Internet access to [asset] declarations [...]. Without such access, the obligation would have no practical importance or genuine incidence on the degree to which the public is informed [...]*".

Furthermore, the Western Balkan Recommendation on disclosure of finances and interests by public officials (2014) under paragraph H.1 states the following: "*Since the public scrutiny is generally one of the most effective instruments, income and asset reports should be available online. Ideally, reports filed online are published in real time. A useful public database of reports especially requires that access to these databases should be electronic and free of charge, and that the data should be in a searchable and machine-readable format*". Paragraph (2) of this Article regarding exceptions to data availability is in accordance with the Western Balkan Recommendation on disclosure of finances and interests by public officials (2014) and under paragraph I.2 it states the following: "*Personal data can be exempted from publication in order to protect the privacy and security of public officials. This especially applies to the location of property, license plates of vehicles, identification numbers of current accounts, savings accounts, safety deposit boxes or credit cards*". In this sense, in case of disclosure, the amount of cash can be considered a security risk. However, as long as only the total amount of the entire savings is disclosed (balance in the bank account plus cash), no outsider would know if the property declarant actually has any cash, and if he does, what amount of cash is actually involved here.

Paragraph (3) of this Article implies that the attached documents are not an integral part of the asset declaration.

It should be noted that in other countries the asset declarations are available to the public without a time limit. In this sense, the proposal in this Article of three years is a rather modest and minimally invasive approach.

**Article 175** of the Draft stipulates that the Asset Declarations Department regularly checks the accuracy, completeness and truthfulness of declared data and analyses the data from the asset declarations with the aim of detecting any incompatible activities and potential conflicts of interest. The verification is carried out through formal checks to verify whether an asset declaration was submitted in a timely manner and fully completed, regular checks by comparing the declared data to verify the proportionality between the data on the financial inflows and outflows, and additional checks to verify the accuracy of the data from the asset declaration based on the data collected. Asset Declarations Department adopts and regularly revises the risk criteria, which 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 are carried out.

The Group of States against Corruption (GRECO) recommended that the judiciary of BiH develop *“an effective system for reviewing annual financial statements, including adequate human and material resources, [and] cooperation channels with relevant authorities”* (Eval. IV Rep (2015) 2E, rec. xiii).

Verification of asset declarations is focused on hidden conflicts of interest as well as unexplained wealth in accordance with international standards. According to the Western Balkan Recommendation on disclosure of finances and interests by public officials (2014) the paragraph A states the following: *“Interest and asset reports serve as a means to prevent and detect conflicts of interest and unlawful enrichment of public officials”*.

The competences provided for in **Article 176** of the Draft, for collecting additional information from those who submitted the asset declaration and from third parties, are standard characteristics present in the entire Western Balkans and beyond. According to the Western Balkan Recommendation on disclosure of finances and interests by public officials (2014) the paragraph E.6 states the following: *“In order to determine the accuracy of the submitted data, the supervisory authority must cross-check the data with a large number of state databases. The supervisory authority should also have access to private data available on a public or voluntary basis and should have the possibility of performing (external) asset inspections in individual cases”*. This provision was welcomed by the Venice Commission and the recommendation under paragraph 117 was complied with and it was stipulated that the funds needed for access to business records are provided in the budget of the HJPC.

**Article 177 of the Draft** stipulates that the verification process ends with a notice on the conducted control. If one or more irregularities are identified, the outcome of the verification is considered negative. In addition to that, it is prescribed that the Council submits the information about the outcome of the check to the judge or prosecutor, and in the case of identified irregularities, submits the information to the Office of the Disciplinary Counsel to proceed in accordance with its competence, but also to other competent authorities which, if necessary, will carry out the necessary actions and measures in accordance with their competences. This Article introduces the concept of the reversed burden of proof in the case of initiation of disciplinary proceedings based on the outcome of an additional check. If the disciplinary counsel files a disciplinary complaint, then there is a presumption that a disciplinary offence has been committed, and the judicial office holder or a member of the HJPC concerned has the burden of proving or explaining the opposite. This concept is used exclusively in the context of the outcome of the asset declaration verification, and exceptionally from the rules of the disciplinary proceedings prescribed by this Law.

The introduction of this standard into BiH legislation is not new, because the “reversed burden of proof” is provided for in the Criminal Code of BiH under “Extended Confiscation of Property Gain Acquired through Perpetration of a Criminal Offence” - Article 110a, as well as in Article 15 “Burden of Proof” of the Law on Prohibition of Discrimination, and is considered justified.

**Article 178** of the Draft stipulates that the Council establishes a Register of Declarations on Assets and Interests. Furthermore, the Western Balkan Recommendation on disclosure of finances and interests by public officials (2014) under paragraph I.4 states the following: “*The reports must be archived long enough after the person obliged to report has finished his functions, in order to enable checks and investigations within the statute of limitations of the relevant criminal acts after employment*”. Paragraph (2) of this Article stipulates that the asset declaration of a judge or prosecutor whose mandate has been terminated is expunged from the Register ten years after the termination of their mandate. Expungement is suspended during any ongoing use of the asset declarations and attached documents by the Council or any other authority in official proceedings.

**Article 179** of the Draft prescribes the establishment of an Asset Declarations Department within the Council Secretariat, which is independent in performing its tasks and competent 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.

Given that the Expert Report on Rule of Law Issues in BiH (*Priebe Report*) concluded that the current storage of asset declarations based on the current Law on HJPC is meaningless without the possibility of any verification, this Article entrusts the verification of asset declarations to the Department, with an explicit legal basis.

Finally, and as the *Priebe Report* states, together with increased transparency through the publication of asset declarations, such oversight of verification by the Department would reduce concerns in terms of potential abuses and manipulations in this process.

Furthermore, precise rules are prescribed on the composition and operation of the Department, including *ex ante* integrity and information checks of its members, together with effective protective measures, including possible external monitoring of the recruitment process (**Article 181**). In accordance with this Article, the experts have unimpeded access to the documentation at their disposal, which is necessary for the performance of their role to monitor the recruitment process in the Department, and are obliged to maintain the confidentiality of all information that is not public.

**Article 183 of the Draft** establishes minor offences related to the declaration of assets and interests. The statute of limitations is quite short for the minor offences (Article 22 of the Law on Minor Offences). However, most of the minor offences under this Article should be detected almost immediately.

#### **PART IV – Disciplinary liability**

The Draft precisely determines the composition of the disciplinary panels and provides a special Appeals Panel.

The first instance disciplinary panel is comprised of three members of which one is a Council department member, while two members are appointed from the list proposed by the courts and the prosecutor's office; the second instance disciplinary panel is comprised of three members of which one is a Council member, while the other two members are appointed from the list proposed by the courts and the prosecutor's office; and the Appeals Panel is comprised of three members of which one is a Council member, while the other two members are appointed from the list.

An appeal can always be filed against a decision made in the first instance, and an appeal against the decision of the Second Instance Disciplinary Panel is allowed in cases that are specified by the Draft Law.

It is provided that the judge or prosecutor removed from office may file an appeal to the Court of Bosnia and Herzegovina against the decision imposing the measure of removal from office in the cases prescribed by the Draft.

### **Section A - Office of Disciplinary Counsel**

**Article 184** of this Section stipulates that the Office of Disciplinary Counsel consists of the chief disciplinary counsel, deputy chief disciplinary counsels and disciplinary counsels. It also underscores its autonomy and functional independence in processing disciplinary cases. It also prescribes the tasks of the Office, management, tasks of the deputy chief disciplinary counsels and disciplinary counsels. The composition and competences of the Collegium of Disciplinary Counsels are prescribed in **Article 185**.

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.

**Article 186** of the Draft in paragraph (4) stipulates that the chief disciplinary counsel is removed by the Council. In paragraph 134, the Venice Commission recommends that the participation of HJPC members in the selection and removal of the chief disciplinary council and other employees should be reconsidered. This recommendation was not accepted because this is a systemic solution - appointment and removal is carried out in accordance with the Law on Civil Service in the Institutions of BiH. In addition to that, the share of the Council members in the composition of the disciplinary panels that decide on appeals and measures has been significantly reduced, which excludes a potential conflict of interest.

**Article 187** of the Draft - election, appointment and removal of the deputy chief disciplinary counsel, disciplinary counsels and civil servants is carried out in accordance with the Law on Civil Service in the Institutions of BiH.

### **Section B - Disciplinary Panels**

Compared to the current Law on HJPC, this Draft Law, i.e. this Section, in addition to the first-instance and second-instance disciplinary panels also provides for a special panel - the Appeals Panel (**Article 190**).

**Article 191 prescribes the composition of disciplinary panels**, and in accordance with the recommendation of the Venice Commission, the Council members who are not judicial office holders may be members of disciplinary bodies, i.e. panels. 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.

## **CHAPTER II - Disciplinary liability and disciplinary proceedings**

### **Section A - Disciplinary offences 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 intentionally or as a result of gross negligence. Criminal or minor offence liability does not preclude the disciplinary liability for the same offence that was a matter for criminal or minor offence proceedings, where such an offence also represents a disciplinary offence. 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 193**).

**Articles 194 (Disciplinary Offences of Judges) and 195 (Disciplinary Offences of Prosecutors)** - The Law does not prescribe a gradation into minor and serious offences, therefore neither gradation of sanctions *a priori*, without consideration of the specific content of the offence by the disciplinary panels.

It is noted in the practice of the Constitutional Court of Bosnia and Herzegovina that the Constitutional Court emphasized that it agrees with the position of the HJPC that the legal classification of disciplinary offences into serious and minor is not a generally accepted standard in regulating the prohibited behaviour of judicial office holders, neither in comparative legislation, nor is it insisted on by international documents which prescribe the standards of judicial or prosecutorial independence, nor the relevant recommendations or opinions given in connection with the current Law on the HJPC in the part that governs disciplinary offences.

In this regard, it should be noted that the Law on the HJPC BiH clearly prescribes the principles that are taken into account when making a decision on what disciplinary measure will be imposed on a judge or prosecutor for an established disciplinary offence under the Law on the HJPC BiH, all in terms of the principle referred to in Article 198.

Therefore, when making a decision on a disciplinary measure, the disciplinary panels will not act arbitrarily, but are obliged to be guided by the law and principles under the Law on the HJPC BiH, and to justify their decision in this part as well. It is pointed out that the legislation providing predetermined penalties for certain offences is less flexible than the current solution prescribed by the Law on the Council, which was transferred to the Draft. The mitigating or aggravating circumstances are the key factor for the individualization of the disciplinary measure.

For example, for the same disciplinary offence according to the earlier iteration of the offences prescribed in Article 56 item 19) of the Law (intentionally provides false, misleading or insufficient information with regard to job applications, disciplinary matters, promotion or career development matters or any other matters under the competence of the Council), disciplinary measures could be imposed which ranged from the mildest to the most severe ones.

*(Thus, for the two defendant judges, disciplinary measures of a written reprimand, which is not published publicly, and public reprimands were imposed for the following factual description of disciplinary violations: "The defendants failed to ask for the opinion of the Council (Ethics Commission) and consciously and willingly accepted membership and actively participated in the work of the Committee for Public Complaints (as president, i.e. member of the Committee) and received a regular monthly fee for that work during the period from 4 July 2019 until 4 July 2021. In addition to that, in the asset declaration for 2019, the second defendant failed to report the income earned in that year by working in the Office for Public Complaints in the period from 4 July 2019 until 31 December 2019".*

On the other hand, the measure of removal from office was imposed on the prosecutor for an identical offence (*mutatis mutandis*) with a substantially different factual basis: *"The defendant intentionally provided false and insufficient information about his previous convictions in connection with applications for the position of prosecutor"*.

Therefore, it would be wrong to prescribe sanctions without the possibility of individualization.

In the light of the Venice Commission recommendation under paragraph 148, which indicated the need to delete offences based on *per se* violation of the principles of the code of ethics, in the sense of a general reference to ethical standards, after complying with the recommendation, there remained an empty space - a void, for processing of frequent actions in practice, which would remain beyond the reach of processing in disciplinary proceedings if additional offences

were not prescribed after the deletion of the “general reference to ethical standards”. In fact, by deleting the disciplinary offence related to violations of the Code of Ethics, the area of disciplinary responsibility will be dramatically narrowed, and this was certainly not the subject of the recommendations of all relevant reports and analyses in this area. Therefore, four minor offences were added.

Therefore, it was proposed to introduce these four minor offences, which under the practice of the Office of Disciplinary Counsel have proven to be frequent grounds for processing, and would remain outside the scope of processing if only the minor offences related to the violation of ethical norms *per se* were to be deleted. For this reason, it is proposed to standardize negligent performance of official duty, engaging in inappropriate contacts with any party to a proceeding or their representative, behaviour inside or outside the court that demeans the dignity of the judicial function, and breach of official duties that compromises the public confidence in the impartiality, professionalism and integrity of the judiciary. These minor offences are formulated in a way which is precise, prevents arbitrariness in performance, and enables the prosecution of the most common offences committed by judicial office holders.

In terms of the Venice Commission recommendation under paragraph 144, it is pointed out that the offence referred to in Article 194 paragraph (1) item f) rarely occurs in practice, and is most often manifested in the form of enabling unauthorized court employees to act in cases. For example, in one enforcement case, the defendant ordered the bailiff to carry out the enforcement in her absence due to illness, after which the bailiff, with her knowledge, made a conclusion determining the enforcement, issued an order to the court police to provide him with assistance, and ordered the treasury office to pay him the costs of the procedure, where he marked the defendant as the decision-maker. Or the defendant, as acting judge, enabled interns-volunteers and 1 employee of the court to undertake procedural actions in a large number of inheritance cases, independently and without the presence of the defendant, to hold hearings where they took inheritance statements from the heirs and made decisions.

In relation to paragraph 145 of the Venice Commission Opinion, an example is given of a situation recorded in practice, in which the court president ordered the employees to stop the dispatch of the decision, because she was not satisfied with its content. After that, the case was assigned to another judge.

**Article 196** 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 198.

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 199**).

Paragraph (1) of this Article stipulates that 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. In paragraph 155, the Venice Commission commented this provision and pointed out that *the one-year ban on appointment or transfer of a judge or prosecutor who has been reprimanded appears draconian, especially considering that a reprimand is the lowest level of penalty.* However, the provision is in the function of prevention. If the legal consequences of the imposed sanction - reprimand - were deleted, the largest number of imposed disciplinary measures would remain outside the application of this Article, because in practice a reprimand is most often imposed. Additionally, there is a need, which is emphasized in the relevant reports (...) to standardize the rules for checking the eligibility of candidates in the appointment process and the influence that the previously established disciplinary responsibility has in this regard. We believe that a one-year period (which in practice means a small number of competitions) is appropriate for the

severity of the imposed sanction and the fact that the disciplinary responsibility of the sanctioned judge has been established.

**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 200, 201 and 202**).

The recommendation of the Venice Commission in terms of **Article 201**, paragraph (1) stipulating the deadline by which the procedure for determining disciplinary responsibility must be completed, has been implemented. Namely, in accordance with the recommendation, the deadline will be extended if there is an established reason that makes the extension of this deadline justified.

(2) Notwithstanding the provisions of 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 be carried out at the latest within one year from the date of receiving the competent court's decision.

### **Section C - Disciplinary investigation**

The Office initiates a disciplinary investigation based on a complaint or ex officio (**Article 203**), and if several cases are initiated against the same judge or prosecutor, the Office will, in principle, conduct a single disciplinary investigation. The Venice Commission commented the conduct of a single disciplinary investigation. This comment is unfounded because a single disciplinary investigation will cover all minor offences. Additionally, there is no division into serious and minor offences, which is why there is no prioritization for action. The prioritization and work method of the Office of Disciplinary Counsel will be clarified by the Book of Rules referred to in paragraph (3) of this Article and the rules of procedure of the Office of Disciplinary Counsel. (VC 157) However, the Venice Commission recommendation under paragraph 154 was accepted and paragraph (6) of this Article stipulates that the Office is obliged to investigate and ascertain, with the same diligence, not only the facts that incriminate the judge or prosecutor but also the ones that benefit them.

**Article 204** - clearly prescribes that a complaint must contain the name and surname of the respondent judge or prosecutor and allegations about the judge's or prosecutor's misconduct, otherwise, the Office will return it to the complainant to be amended within eight days. If one of the reasons from paragraph (3) of this Article 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 initiation of disciplinary proceedings is time-barred, the Office will take a decision not to file a motion to initiate disciplinary proceedings (**Article 205**). The same Article stipulates that the Office will make 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 objection within 30 days from the day of its receipt.

### **Section D - Disciplinary Proceedings**

**Article 206** 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.

Pursuant to **Article 207** of the Draft Law, a judge or prosecutor concerned will have the right to be duly notified of the motion for the initiation of disciplinary proceedings, to be acquainted with the case and the accompanying documents. The Venice Commission recommendation under paragraph 154 was accepted, and paragraph (2) specified that the judge or prosecutor will have access to the evidence that benefit him if it was not submitted with the motion to initiate disciplinary proceedings, with the note that the Office will take care of confidentiality and integrity of other proceedings. Furthermore, this Article provides an opportunity for a judge or prosecutor who is subject to disciplinary proceedings to be afforded the option to present their defence personally or via a proxy of their choice, as well as to propose the facts and evidence benefiting them.

To ensure transparent proceedings and eliminate any doubt in the work of the disciplinary panels, **Article 208** stipulates that disciplinary cases are assigned to disciplinary panels by using an automated system for assignment.

For the sake of efficiency of the proceedings, **Article 211** 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 offences alleged in the motion to initiate disciplinary proceedings, before the final completion of the proceedings, i.e. conclude a joint consent agreement. This Article provides for the contents of the joint consent 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 joint consent 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 joint consent agreement, the proceedings will continue, and the admission contained in the agreement cannot be used as evidence in the disciplinary proceedings.

**Article 212** 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 affirm, reverse or modify the decision pronounced by the first instance disciplinary panel.

**Article 212 of the Draft** - 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 rendered a decision rejecting the complaint. In accordance with the recommendation of the Venice Commission under paragraph 154, it is emphasized that the Law on Civil Procedure before the Court of Bosnia and Herzegovina is applied in these proceedings, which implies a standard regarding deadlines as well as the right to a reasoned court decision.

We believe that the proposed system, as described above, is more inclusive to achieve the purpose of the proceedings for establishing and sanctioning violations of judicial or prosecutorial duty and to enable efficient action that is both in the interest of the accused in the disciplinary proceedings and in the interest of 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 Council in terms of the 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 of the ECHR. We believe that in their essence, these proposals do not depart from the core 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 Constitutional Court of BiH.

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 213**).

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 (**Article 214**).

### **Section E - Confidentiality and Records**

A complaint received by the Office, the initiation and conduct of disciplinary proceedings, and any decision not to initiate disciplinary proceedings are not publicly available (**Article 215**), and the Office keeps records of filed complaints and of actions taken pursuant to complaints, investigations and disciplinary cases, as well as records of submissions received by the Office that do not constitute complaints by their content (**Article 216**), while the Council keeps a register of initiated disciplinary proceedings, disciplinary decisions and imposed disciplinary measures for the purpose of conducting the appointment and appraisal procedure for judges and prosecutors. For the purpose of conducting the appointment and appraisal procedure for judges and prosecutors, the Office delivers necessary information and, at least once a year, submits to the Council a written report on its activities (**Article 220**).

### **PART V – Suspension of judges or prosecutors from office and termination of office**

#### **Chapter I – Suspension of judges or prosecutors from office**

If pre-trial detention or prohibiting measures have been rendered against a judge or prosecutor and interfere with the holding of their office, or if an indictment for a criminal offence has been confirmed against them, the judge or prosecutor must be suspended from their office. The suspension from their office lasts for the duration of the pre-trial detention or prohibiting measures, or until the conclusion of criminal proceedings based on which the suspension was rendered (**Article 221**).

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 222**), and **Article 223** prescribes the duration of discretionary suspension.

The decision on suspension from office is rendered by the first instance disciplinary panel, upon the motion of the Office, and the appeal against the decision is filed with the second instance disciplinary panel, which is a final act (**Article 224**).

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 be reimbursed the difference in unpaid salaries and other emoluments if the disciplinary proceedings, which lead to suspension, fail to establish their liability or if the investigation or criminal proceedings against him/her are discontinued or he/she is acquitted in criminal proceedings (**Article 225**).

## 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.

The Venice Commission recommendation under paragraph 60 was implemented in **Article 228**, paragraph (1) item e), which stipulates that the mandate of a judge or prosecutor terminates if they have been convicted with finality of a criminal offence rendering them unworthy to hold judicial office.

## PART VI - Transitional and final provisions

Considering that this Draft, in relation to the current Law, comprehensively regulates many issues that will enable more efficient and transparent functioning of the judiciary and the HJPC, it was necessary to prepare the text of transitional provisions that need to regulate many issues, and for the purpose of smooth and continuous activities of the Council.

**The transitional provisions confirm that the Council continues to work continuously. The transitional period will last 12 months, and during that period the members of the Council holding that position or are elected until the date of entry into force of this Law, continue to perform the function of a member of the Council.**

These provisions prescribe the deadlines for the adoption of by-laws, the announcement of a public call for the election of Council members, the manner of completing the initiated procedures for the appointment of judicial office holders, the status of reserve judges....

The term of office of the newly elected members of the Council begins on the day following the day on which the transitional period expires.

Therefore:

**Article 233** clearly stipulates that the transitional period will last 12 months from the date of entry into force of this Law, and that during that period, the Council members holding the position in the Council or some members **elected until the date of entry into force of this Law**, will continue to perform their functions of the Council members and in that period retain all acquired rights. In order to continue the smooth operation of the Council, this provision stipulates that during the transitional period the Council will act and decide in accordance with Article 14 of the current Law on the HJPC BiH, i.e. the presence of at least eleven members is necessary for a quorum, and decisions are made by a majority vote of all members present and voting, and if the votes are divided, the vote of the president or vice president is decisive. According to this provision, a Council member in attendance may abstain from voting, while this rule does not apply to members of the first and the second instance disciplinary panels who do not have the right to abstain when voting on decisions related to deciding on disciplinary liability. Furthermore, this provision instructs the Council to adopt new or harmonize existing by-laws within ten months from the entry into force of this Law, except for those for which this Draft prescribes a special deadline. Until the end of the transitional period, in accordance with paragraph (5) of this Article, the standing committees and working bodies continue to work, in accordance with Article 12 of the current Law.

In order to start the implementation of this Draft Law in a timely manner, the competent institutions of Bosnia and Herzegovina were ordered to ensure the material and financial resources necessary for its implementation before the end of the transitional period.

**Article 234** considering that this Draft Law, compared to the current Law, prescribes a different composition and manner of election of the Council members, this Article stipulates that the Council will, **no later than 45 days from the date of entry into force of this Law, adopt the Book of Rules on drawing of lots referred to in Article 5, paragraph (9) of this Law**, no later

than 60 days from the date of entry into force of this Law, adopt the Book of Rules on the procedure for election of Council members as provided for in this Law, and determine the format and content of ballots, and within 90 days from the day of entry into force of this Law, publish a public call for nominations for Council members.

The provision specifies the beginning of the term of office of the Council members, which commence on the day following the day on which the transitional period expires. As Article 6 of this Draft prescribes restrictions to membership in the Council, paragraph (5) of this Article specifies that these restrictions also apply to Council members holding that position at the time this Law enters into force, as well as to persons who were elected as members of the Council in accordance with the current Law on the HJPC, unless the member of the Council holding that position on the date of entry into force of this Law has not completed more than half of his first mandate.

This Article also prescribes the salaries and benefits for newly elected members of the Council who work in the Council on a part-time basis.

**Article 235** ensures, during the transitional period, the continuity of the mandate in the management positions of court presidents, chief prosecutors and deputy chief prosecutors who are in those positions at the time of entry into force of this Law, as well as the director and deputy director of the Secretariat, and the Chief Disciplinary Counsel in the Office of Disciplinary Counsel. They remain in that position until the expiration or termination of the mandate to which they were appointed.

Furthermore, external experts who have an advisory role, and who are under the current Law on HJPC engaged in the Department for the implementation of proceedings under **Article 236**, are ensured continuity of engagement until the end of the four-year period for which they were engaged.

**Article 237** of the Draft stipulates that the appointment procedures of judicial office holders that were initiated before this Law entered into force will be finalised in accordance with the current Law on the HJPC, i.e. the regulations that were in force at the time of the announcement of the public competition. The mandate of court presidents, chief prosecutors and deputy chief prosecutors appointed in the transitional period will be four years as prescribed by this Draft.

**Article 238** governs the beginning of the application of the provisions on appointments under this Draft, establishes the deadline for adopting a plan for filling positions in the judiciary, the deadline for announcing a public competition, the deadline for adopting the Book of Rules on Appointments and the deadline for adopting the Book of Rules on the procedure for nomination of candidates for the position of a Constitutional Court judge.

**Article 239** regulates the status of reserve judges, i.e. judges appointed for a "fixed" period under the current Law on the HJPC BiH. It is indisputable that the reserve judge must meet the professional requirements prescribed for judges of the court to which the reserve judge is appointed as prescribed in Article 33 of the Law on the HJPC, and the provisions on performance appraisal, disciplinary proceedings, work standards apply to them... , as well as judges whose permanent position and mandate are guaranteed by law without limitation.

However, the Draft Law does not recognize this function, that is, a reserve judge. Considering that there is a small number (under 20) of reserve judges in the courts, who successfully perform this function for several two-year mandates, this provision permanently resolves their status, because it would be unfair for them to lose their status as judges at the end of the mandate to which they were appointed.

Due to the above, it is stipulated that upon the entry into force of this Law, a reserve judge will remain in office as a judge in the same court to which he was appointed, without limitation on the duration of his mandate. This status will be verified by the Council's decision, if the reserve judge

has the last three grades "good" or higher grades and if there is a vacant judge position in that court for which financial resources are provided.

However, if there is no vacant position in that court, the Council will, without limitation on the duration of the mandate, appoint a reserve judge to a vacant judge's position in the court of the same level, with his consent, and until the appointment he will remain in the position he was in at the time of entry into force of this of the Law. The mandate of the reserve judge will terminate if he does not agree to be appointed to a vacant judge position in another court of the same level. Paragraph (4) of this Article is of particular importance in resolving the status of reserve judges, which stipulates that vacant positions for which a competition was announced earlier will also be taken into consideration should a decision on appointment has not been rendered yet.

**Article 240** prescribes the rules of procedure in the transitional period in relation to disciplinary responsibility, and Article 241 specifies that the provisions on performance appraisal prescribed by this Law apply from 1 January following the year in which the transitional period expires.

## **V - CONSULTATIONS**

In developing this Draft Law, the recommendations of judicial experts, Peer Review recommendations, earlier opinions, as well as the interim opinion of the Venice Commission, the opinions of the Consultative Council of European Prosecutors and the Consultative Council of European Judges, GRECO recommendations were taken into consideration... Public consultations were conducted during the preparation of the proposed provisions.

In accordance with the Rules of consultations in legislative drafting (Official Gazette of BiH, 81/06 and 80/14) public consultations will be conducted, and necessary opinions will be obtained in accordance with the Rules of Procedure of the Council of Ministers of BiH.

## **VI - REVISION OF CURRENT REGULATIONS**

Adoption and application of this Law requires the adoption of new as well as the harmonization of current by-laws within the deadlines prescribed in the Transitional Provisions of this Draft Law.

## **VII - FINANCIAL RESOURCES**

Implementation of this Law requires additional funds in the Budget of Bosnia and Herzegovina,  
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