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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

THE JUDICIAL POWER IN BOSNIA AND HERZEGOVINA (BiH)
BACKGROUND PAPER

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A. INTRODUCTION

In the context of its Stabilisation and Association Process, the European Union (EU) has launched, on 6-7 June 2011, a Structured Dialogue on the judiciary between the EU and BiH in Banja Luka. At this meeting, a first set of preliminary recommendations from the European Commission (EC)¹ was made, covering the implementation of the Justice Sector Reform Strategy, the National War Crimes Strategy, co-ordination of competences between judicial authorities and institutions, equal access to justice, juvenile justice, the prison system and budgetary issues. During this meeting, the BiH authorities also received technical information questions from the EC, to which they sent their replies in August 2011.²

Within the context of the EU's Structured Dialogue, the Venice Commission Secretariat received an official request, on 19 October 2011, from Mr Pierre Mirel, Director of the Directorate-General Enlargement of the European Commission (EC), for an opinion on: "How the judicial framework, the division of powers and the existing co-ordination mechanisms affect legal certainty and the independence of the judiciary in Bosnia and Herzegovina".

The EC adopted its final Recommendations for BiH³, within the context of the Structured Dialogue, in November 2011. In these Recommendations, the EC stated, among others, that the BiH authorities welcome the preparation by the Venice Commission of an opinion and that it requested all relevant authorities in BiH to provide the Venice Commission's rapporteurs with the necessary information, support and assistance.

The Venice Commission intends to adopt the opinion at the 90th Plenary Session in March 2012, at the earliest.

As a background paper for the opinion, the present paper provides an overview of the judicial system of Bosnia and Herzegovina (BiH).

¹ See Commission Staff Working Paper, Bosnia and Herzegovina 2011, Progress Report: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf

² See http://www.mpr.gov.ba/userfiles/file/Europske%20integracije/08_4%20Odgovori%20na%20pitanja%20-%20Strukturalni%20dijalpg%20EU-BiH%20-%20EJ.pdf.

³ See Appendix II to this document.

B. JUDICIAL SYSTEM OF BOSNIA AND HERZEGOVINA

The aim of this section is to provide an overview of the judicial system of BiH. The information in this part was collected from the following sources:

I. References

- Council of Europe, *Judiciary in Bosnia and Herzegovina. Types of courts and their jurisdiction*. http://www.coe.int/t/dghl/cooperation/cepej/profiles/CourtSystemBiH_en.pdf
- *EU-Bosnia and Herzegovina SAA Structured dialogue on justice technical information requested by the European Commission*. Sarajevo, August, 2011.
- N.n., The relations between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts, in: *Report of the Constitutional Court of Bosnia and Herzegovina*. XIIth Congress of the Conference of European Constitutional Courts. Brussels, 13–17 May 2002. <http://www.confcoconsteu.org/reports/rep-xii/Bosnie-Herzegovina-EN.pdf>
- Valerija Galić. Report: Bosnia and Herzegovina, in: *Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies*. Second Congress of the World Conference on Constitutional Justice. Rio de Janeiro, 16–18 January 2011. http://www.venice.coe.int/WCCJ/Rio/Papers/BiH_Galic_e.pdf

II. Official websites of different organs of BiH

- Official website of the Constitutional Court of Bosnia and Herzegovina. <http://www.ustavnisud.ba/eng/>
- Official website of the Court of Bosnia and Herzegovina. <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=3&id=3&jezik=e>
- Official website of the Prosecutor's Office of Bosnia and Herzegovina. <http://www.tuzilastvobih.gov.ba/index.php?opcija=sadrzaj&kat=1&id=3&jezik=e>

III. Constitutions and legislation

- Constitution of Bosnia and Herzegovina.
There is an English version in the Venice Commission's CODICES database (<http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>).
On the website of the International Constitutional Law Project Information, which provides English translations of textual material related to constitutional documents, there is also an English version of the Constitution of BiH (http://www.servat.unibe.ch/icl/bk00000_.html).
- Constitution of the Federation of Bosnia and Herzegovina.
There is an English version on the website of the Office of the United Nations High Commissioner for Refugees. (http://www.unhcr.org/refworld/docid/3ae6b56e4.html#_ftnref5).
- Constitution of Republika Srpska. <http://legislationline.org/download/action/download/id/1580/file/c8ea79bc0db11c11f49f19525f43.htm/preview>
- Rules of the Constitutional Court of Bosnia and Herzegovina. <http://www.ustavnisud.ba/public/down/rules.pdf>
- Rules of Procedure of Constitutional Court of Bosnia and Herzegovina. http://www.ustavnisud.ba/public/down/Rules_of_procedure.pdf
- Law on Court of Bosnia and Herzegovina. http://www.sudbih.gov.ba/files/docs/zakoni/en/Law_on_Court_BiH_-_Consolidated_text_-_49_09.pdf
- Criminal Procedure Code of Bosnia and Herzegovina. http://www.sudbih.gov.ba/files/docs/zakoni/en/Criminal_Procedure_Code_of_BH_-_consolidated_version_dec2009.pdf
- Criminal Code of Bosnia and Herzegovina. http://www.sudbih.gov.ba/files/docs/zakoni/en/Criminal_Code_of_BH_-_Consolidated_text.pdf
- Law on Administrative Disputes of Bosnia and Herzegovina. http://www.sudbih.gov.ba/files/docs/zakoni/en/zakon_o_upravnim_sporovima_19_02_-_eng.pdf
- Law on the Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the Prosecutor's Office Of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in Bosnia and Herzegovina. http://www.sudbih.gov.ba/files/docs/zakoni/en/BH_LAW_ON_TRANSFER_OF_CASES_-_Consolidated_text.pdf

See [Table 1](#) for the Judicial System of BiH.

1 Global structure of Bosnia and Herzegovina

1.1 General

BiH is a Federal State. It is separated into two Entities, the Federation of Bosnia and Herzegovina (FBiH), which covers 51% of the states territory and is further divided into 10 cantons and the RS, which covers 49% of the states territory. BiH has three territories – the FBiH, the RS and the Brčko District – and four court systems:

1. the court system of BiH: see Chapter 2.
2. the court system of FBiH: see Chapter 3.
3. the court system of the RS: see Chapter 4.
4. the court system of the Brčko District: see Chapter 5.

Each territory has its own laws. Parallel to these, the State level also has its own laws. There are therefore four Criminal Codes, four Criminal Procedure Codes, four Civil Procedure Codes and four Laws on Enforcement Procedure in force at the same time. In 2003, the judicial system at the State level was reformed. The most important procedural laws were adopted, introducing the same civil and criminal procedures throughout the country. However, since there is no obligation to harmonise regulations between the two Entities, the Brčko District and the country, all the legislative bodies in BiH may amend their laws at any time and abolish the harmonisation established in 2003. For this reason, a separate chapter is devoted to each individual court system.

1.2 Prosecutors' offices

The prosecutors' offices of BiH are autonomous and independent bodies which, within their competence, apply the prescribed measures and actions in the detection and prosecution of perpetrators of criminal offences and minor economic offences, and carry out other duties defined by law. No less than 15 laws in BiH relate to the establishment, structure and functioning of the prosecutors' offices. This large number of laws is mainly due to the FBiH, where 10 cantonal laws on the Prosecutor's Offices established 10 prosecutors' offices at the cantonal level. In addition, there are Books of Rules adopted in the FBiH for each prosecutor's office.

2 Court system at the State level

2.1 General

The judicial system at the State level of BiH consists of two courts: the Constitutional Court of BiH (see paragraph 2.2, below) and the Court of BiH (see paragraph 2.3, below). The latter was established in the year 2000 as the only ordinary court at the BiH level.

2.2 Constitutional Court of Bosnia and Herzegovina

The Constitutional Court is autonomous and independent from all other bodies in BiH. Its aim is to preserve the Constitution of BiH.

2.2.1 Relevant laws

The following laws are relevant for the competences of the Court:

- **Constitution of BiH** – a specific chapter sets out the functions of the Constitutional Court, its powers, organisation and competences⁴.
- **European Convention on Human Rights (ECHR)** – Article VI.3.c of the Constitution of BiH establishes that the Constitutional Court has jurisdiction over issues referred to it by any court in BiH on whether a law, the validity of which depends on its decision, is compatible with the ECHR.
- **Rules of the Constitutional Court of BiH** – governs the organisation of the Constitutional Court of BiH and sets out the procedures, rules of admissibility and other issues related to the activities of the Constitutional Court. There is one version on the official website of the Constitutional Court of BiH.⁵
- **Rules of Procedure of Constitutional Court of BiH** – regulate the proceedings before the Constitutional Court of BiH. There is one version on the official website of the Constitutional Court of BiH.⁶

2.2.2 Territory

The Constitutional Court of BiH has jurisdiction over the entire territory of BiH.

2.2.3 Structure and operation of the Constitutional Court of Bosnia and Herzegovina

The Constitutional Court consists of nine judges. It works in a Grand Chamber and in Chambers. The former is composed of five judges, and the latter of three judges each. The Constitutional Court makes decisions in the plenary sessions by the majority of votes of all members of the Constitutional Court on cases arising out of its competence under Article VI.3.a (disputes between organs of the State), Article VI.3.c (referred questions) and Article VI.3.b of the Constitution of BiH (appellate jurisdiction over constitutional issues).

⁴ http://www.servat.unibe.ch/icl/bk00000_.html

⁵ <http://www.ustavisud.ba/public/down/rules.pdf>

⁶ http://www.ustavisud.ba/public/down/Rules_of_procedure.pdf

2.2.4 Competence

The powers and competences of the Constitutional Court are set out in Article VI of the Constitution of BiH. Among these powers are the functions to resolve disputes between organs of the State and it is provided that it is an appeal organ on constitutional issues and that it carries out the constitutional control of laws.

A. Exclusive jurisdiction

- The Constitutional Court decides on any dispute that arises under the Constitution of BiH between the Entities or between BiH and an Entity or Entities, or between institutions of BiH, including, but not limited to:
 - whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with the Constitution of BiH, including provisions concerning the sovereignty and territorial integrity of BiH;
 - whether any provision of an Entity's constitution or law is consistent with the Constitution of BiH.

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

B. Appellate Jurisdiction

- The Constitutional Court of BiH must decide over issues under the Constitution arising out of a judgment of any other court in BiH.

C. Referred questions

- The Constitutional Court of BiH has jurisdiction over issues referred by any court in BiH on whether a law, the validity of which depends on its decision, is compatible with the Constitution, with the ECHR and its Protocols, and with the laws of BiH; or concerning the existence of or the scope of a general rule of public international law relevant to the court's decision.

2.3 Court of Bosnia and Herzegovina

The Court of BiH was established with the principal aim of ensuring the effective exercise of the competences of the State and the respect for human rights and the rule of law in the territory of BiH. It has no explicit constitutional basis, but there is an opinion of the Venice Commission pointing to the need for such a court⁷.

⁷ See Opinion of the Venice Commission on the need for a judicial institution at the level of the state of Bosnia and Herzegovina, CDL-INF(98)17.

2.3.1 Relevant laws

The following laws are relevant for the competences of the Court:

- **Law on Court of BiH** – contains provisions on the structure of the Court and its integration, operation, competences and jurisdiction.⁸
- **Criminal Procedure Code of BiH** – establishes the subject-matter jurisdiction (*ratione materie*) and composition of the court. This Law also contains the main rules on criminal procedure.⁹
- **Criminal Code of BiH** – contains the main provisions on the applicability of criminal law at the national level of BiH, and mentions all the criminal offences that are under the jurisdiction of the Court of BiH.¹⁰
- **Law on Administrative Disputes of BiH** – regulates the jurisdiction of the Court of BiH in administrative disputes.¹¹
- **Law on the Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BiH** – regulates the transfer of cases by ICTY to the Prosecutor's Office of BiH and the admissibility of evidence collected by ICTY in proceedings before the Court of BiH and others courts of the country.¹²
- Law on Civil Procedure before the Court of BiH.

2.3.2 Territory

The Court of BiH has jurisdiction over the entire area of BiH.

2.3.3 Structure of the court

The Court of BiH consists of a Plenum and three divisions. The Plenum consist of all the judges of the Court and adopts its decisions by simple majority. It has an essentially administrative competence, for example to adopt the draft budget or the rules of procedure of the Court. The Court has a President who represents it.

The Court of BiH has three divisions that exercise the jurisdiction of the court: the Criminal Division; the Administrative Division and the Appellate Division. Depending on their difficulty, cases are dealt with either in panels of three judges or by individual judges.

The Criminal Division and the Appellate Division have three sections each. Both have at least ten judges. The Administrative Division consists of one panel and of at least five judges.

The three sections of the Criminal Division are:

⁸ There is a consolidated version on the official website of the Court of BiH:

http://www.sudbih.gov.ba/files/docs/zakoni/en/Law_on_Court_BiH_Consolidated_text_-49_09.pdf

⁹ There is an unofficial consolidated version on the website of the Court of BiH

http://www.sudbih.gov.ba/files/docs/zakoni/en/Criminal_Procedure_Code_of_BH_-_consolidated_version_dec2009.pdf

¹⁰ There is an unofficial consolidated version on the website of the Court of BiH:

http://www.sudbih.gov.ba/files/docs/zakoni/en/Criminal_Code_of_BH_-_Consolidated_text.pdf

¹¹ The official version is available on the website of the Court of BiH:

http://www.sudbih.gov.ba/files/docs/zakoni/en/zakon_o_upravnim_sporovima_19_02_-eng.pdf

¹² There is an unofficial consolidated version on the website of the Court of BiH:

http://www.sudbih.gov.ba/files/docs/zakoni/en/BH_LAW_ON_TRANSFER_OF_CASES_-_Consolidated_text.pdf

- Section I: War Crimes;
- Section II: Organised Crime, Economic Crime and Corruption;
- Section III: General Crime.

The Administrative Division deals with administrative disputes and civil cases.

The Appellate Division decides, at second instance, appeals against the resolutions of the other two divisions of the Court and electoral authorities. It consists of three Sections:

- Section I deals with appeals against the resolutions of Section I of the Criminal Division (War Crimes);
- Section II deals with appeals against decisions of Section II of the Criminal Division (Organised Crime);
- Section III deals with appeals against resolutions of Section III of the Criminal Division, against the decisions of the Administrative Division and appeals at last instance in electoral matters.

See [Table 3](#) for the structure of the Court of BiH.

2.3.4 Competence

A. At first Instance:

- criminal offences under the Criminal Code of BiH and other laws of BiH on the national level;
- criminal offences stipulated by laws of the FBiH, the RS and the Brčko District, when these criminal offences¹³:
 - a. endanger the sovereignty, territorial integrity, political independence, national security and international personality of BiH;
 - b. might have serious repercussions or detrimental consequences to the economy of BiH;
 - c. the sovereignty, territorial integrity, political independence, national security and international personality of BiH;
 - d. might have serious repercussions or detrimental consequences to the economy;
 - e. might cause other detrimental consequences for BiH;
 - f. might cause serious economic damage or other detrimental consequences beyond the territory of the respective Entity or Brčko District.
- Appeals against final administrative acts, or in the case of failure to respond by the administration, the institutions of BiH and its bodies, public agencies, public corporations, institutions of Brčko District and other organisations identified by the law of BiH, adopted in exercise of public authority.
- Evaluate the legality of individual and general enforceable administrative acts adopted on the basis of State Law, in exercise of public duties by the authorities of BiH for which the law has not provided any court examination.
- Resolves property disputes between the State and the Entities, between the State and Brčko District, between the Entities, between the Entities and Brčko District, and between the institutions of BiH, which are associated with the exercise of public authority.

¹³ See Article 7.2 of the Law on the Court of BiH.

- Resolves conflicts of jurisdiction between Entity courts, between Entity courts and the Court of Brčko District, and between the Court and any other court in criminal and administrative cases.
 - Decides on the reopening of criminal proceedings and administrative disputes for criminal offences provided for by laws of BiH.
 - Decides on the reopening of criminal proceedings and administrative disputes for criminal offences provided for by the laws of BiH.
- B. At second instance:
- appeals against verdicts or decisions made by the Criminal Division of this Court;
 - appeals against verdicts or decisions made by the Administrative Division of this Court.
- C. At third instance:
- extraordinary legal remedies against final decisions made by the divisions of the Court, except the request for the reopening of the proceedings;
 - complaints relating to the violation of the Election Law and additional regulations and guidelines issued by the Central Election Commission of BiH;
 - all other cases provided for in the laws of BiH.
- D. Referred questions:
- final and legally binding positions in connection with the enforcement of laws of BiH and international agreements upon request of any court of an Entity or any court of Brčko District, which is entrusted with the enforcement of laws of BiH.
- E. Other powers:
- adoption of practical guidelines for the application of substantive criminal law of BiH within the Court's jurisdiction in relation to the criminal offences of genocide, crimes against humanity, war crimes and violation of the laws and customs of war, and individual criminal liability related to these offences, *ex officio* or at the request of any Entity court or the court of Brčko District; also decides on issues pertaining to the enforcement of international and inter-Entity criminal law, including relations with Interpol and other international police authorities, such as transfer of a convicted person, extradition and surrender of persons, requested by any other state or international court or tribunal from any authority in the territory of BiH.

2.4 Prosecutors' offices

2.4.1 General overview

There is only one prosecutors' office at the judicial system on the State level. This prosecutor's office is competent for:

- conducting investigations for criminal offences for which the Court of BiH is competent;
- prosecuting perpetrators before the Court of BiH¹⁴;
- receive requests for international legal assistance in criminal matters, including the requests for extradition or surrender of persons sought by the courts or authorities within the territory of BiH and other countries, or by international courts or tribunals.

¹⁴ See Article 12 of the Law on the Prosecutor's Office of BiH.

See [Table 2](#) for the Prosecutors' Offices System in BiH.

2.4.2 More detailed overview

The prosecutors' office has three special divisions.

Division I:

This special division deals with the investigation and prosecution of perpetrators of war crimes. It deals notably with:

- cases referred by ICTY to the national judiciary pursuant to Rule 11bis of its Rules of Procedure and Evidence;
- cases reviewed by ICTY Rules of the Road Unit. These are cases in which the domestic institutions from BiH have conducted an investigation, forwarded the information to the Rules of the Road Unit in order to obtain their opinion and to establish whether they have collected enough evidence indicating that there is grounded suspicion that a person could be placed in pre-trial detention;
- cases from the Prosecutor's Office of ICTY in which the Tribunal has conducted an investigation, but has not filed an indictment;
- cases which were initiated after the expiration of the mandate of the Rules of the Road Unit in October 2004.

Division II:

This special division deals with organised crime, economic crime and corruption. It deals notably with the prosecution of perpetrators of organised, commercial crimes and corruption in accordance with the laws of BiH.

Division III:

The third and final division is competent for all criminal offences within the jurisdiction of the Prosecutor's Office of BiH which are not within the exclusive jurisdiction of Division I or Division II. It therefore has competence to hear:

- cases which include, but are not limited to, criminal offences of terrorism, protection of copyright and money counterfeiting;
- establishing international co-operation in criminal cases in accordance with the laws, multilateral and bilateral agreements and conventions, which also include requests for extradition or transfer of persons sought by the courts or authorities in the territory of BiH and other countries.

3 Court system of the FBiH

3.1 General

It is important to note that the courts in the FBiH apply special Entity procedural and substantive laws. Between the laws at the State level and the laws of the FBiH, harmonisation is taken into account, but there is no hierarchy between these laws or the fact that cases overlap. The courts in the FBiH exclusively apply the laws of the FBiH and cantonal laws.

The judicial functions in the FBiH are carried out by:

- the courts of the FBiH¹⁵:
 - a. Constitutional Court of the FBiH,
 - b. Supreme Court of the FBiH, and
 - c. Human Rights Court;
- the Cantonal courts (there are 10 cantons and each canton has its own court), and
- the Municipal courts.

3.2 Constitutional Court of the FBiH

3.2.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the FBiH;
- Law on Proceedings before the Constitutional Court of the FBiH;
- Rules of Procedure of the Constitutional Court of the FBiH.

3.2.2 Territory

The Constitutional Court of the FBiH has jurisdiction over the entire territory of the FBiH, but only to preserve the Constitution of the FBiH.

3.2.3 Competence

The Constitutional Court of the FBiH consists of nine judges and has the following competences:

- the primary function of the Constitutional Court is to resolve disputes between organs of the FBiH (federation government, cantons, municipalities and cities);
- the Constitutional Court has the power to carry out the constitutional control of laws and regulations of the FBiH and laws of Cantons;
- the Constitutional Court decides on the constitutional questions presented by the Supreme Court or the Human Rights Court or a Cantonal Court that arise during the course of the proceedings pending before the court.

¹⁵ According to Article IV.C.1.1 of the Constitution of the FBiH.

3.3 Supreme Court of the FBiH

The Supreme Court is the highest court of appeal in the FBiH, including appeals from cantonal courts, in respect of matters involving questions concerning the Constitution, laws or regulations of the FBiH and others, as provided for in the FBiH legislation – except those within the jurisdiction of the Constitutional Court or the Human Rights Court.

3.3.1 Relevant laws

The following laws are relevant for the competences of the court:

- Law on Court of the FBiH.

3.3.2 Territory

The Supreme Court of the FBiH only has jurisdiction over the entire territory of the FBiH to apply the Law of the FBiH.

3.3.3 Competence

The Supreme Court of the FBiH decides:

A. At first instance:

- conflicts of jurisdiction between the cantonal and municipal courts;
- territorial conflicts different cantons;
- transfer of territorial jurisdiction from one court to another;
- it also has such original jurisdiction as is provided by the FBiH legislation.

B. At second instance:

- appeals from cantonal courts, in respect of matters involving questions concerning the Constitution, laws or regulations of the FBiH and others as provided for in the FBiH legislation.

C. At third instance:

- extraordinary legal remedies: third level of decision-making.

3.4 Human Rights Court

The Human Rights Court (hereinafter, the “HRC”) consists of three judges: one Bosniac, one Croat and one other ethnicity. It may appoint more judges if it deems it necessary.

3.4.1 Competence

The HRC has jurisdiction over cases started after 1 January 1991.

The competence of the HRC extends to any question concerning constitutional or other legal provisions relating to human rights or fundamental freedoms or to any international instruments incorporated into the FBiH Constitution or its Annex.

Any party to an appeal in which another court of the FBiH or any canton has pronounced a judgment that is not subject to any other appeal, may appeal such judgment to the Court on the basis of any question within its competence. The Court may issue orders or other relief it deems appropriate. The decision of the court is final and binding.

An appeal may also be made to the Court if proceedings are pending for an unduly long period of time in any other court of the FBiH or any canton.

The Court decides whether to accept such an appeal after preliminary consideration of whether the proceedings in the other court have been pending for too long and whether the subject of the appeal is within its competence.

The Constitutional Court and the Supreme Court or any other cantonal court may, at the request of any party to an appeal pending before it, or on its own motion in relation to such an appeal, address a question to the HRC arising out of the appeal if the question relates to any matter within the HRC's competence. HRC's answer is binding on the requesting court.

3.5 Cantonal courts

3.5.1 Relevant laws

The following laws are relevant for the competences of the court:

- Law on Courts in the FBiH.

3.5.2 Territory

Each of the 10 cantons has a cantonal court. The 10 cantonal courts have jurisdiction in their respective cantons. They are situated in: Bihać, Orašje, Tuzla, Zenica, Goražde, Travnik, Mostar, Široki Brijeg, Sarajevo and Livno.

3.5.3 Competence

The cantonal courts have appellate jurisdiction over the decisions of the courts of municipalities within the canton and original jurisdiction over matters not within the competence of those courts and as provided by law.

3.6 Municipal courts

3.6.1 Relevant laws

The following laws are relevant for the competences of the court:

- Law on Courts in the FBiH.

3.6.2 Territory

Municipal courts shall be established and funded by the cantonal governments. The 32 municipal courts form the basic level of judicature in the FBiH¹⁶. Each municipal court has jurisdiction for the territory of one or more municipalities within a canton¹⁷. Commercial cases however, are only dealt with by the municipal courts which have their seat in the centres of cantons.

3.6.3 Competence

The municipal courts have original jurisdiction over all civil and criminal matters, except when extended original jurisdiction is assigned to another court by the cantonal constitution or by any law of the FBiH or the Canton.

The municipal courts of the FBiH decide:

- A. At first Instance:
- criminal offences with a penalty of imprisonment of up to 10 years;
 - civil disputes;
 - non-litigation procedure;
 - enforcement proceedings;
 - land-registry procedures;
 - procedures of registration of legal persons into the court registry;
 - providing assistance to the courts in BiH and international legal assistance;
 - other special proceedings;
 - some of them: commercial cases.

3.7 Prosecutors' offices

The Law on the Prosecutor's Office of the FBiH has established the FBiH Prosecutor's Office. In addition, 10 cantonal laws on the Prosecutor's Offices in the FBiH have established 10 prosecutors' offices at the cantonal level, for each single Prosecutor's Office in the FBiH a Books of Rules is adopted.

The Prosecutor's Office of the FBiH acts in cases before the Supreme Court of the FBiH, while cantonal prosecutors' offices act before the courts of the Canton for which they have been established (including the municipal and cantonal court of that canton).

4 Court system of the Republika Srpska

4.1 General

It is important to note that the courts in the RS, like in the FBiH, apply special Entity procedural and substantive laws. There are, however, no cantons in RS. Between the laws at the State

¹⁶ Their number in the year 2010.

¹⁷ see Article 22 of the Law on Courts in the FBiH.

level and the laws of the RS, harmonisation is taken into account, but there is no hierarchy between these laws or cases of overlap. The courts in the RS exclusively apply the RS laws.

4.2 Constitutional Court of the Republika Srpska

4.2.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the RS.¹⁸
- Law on the Constitutional Court of the RS.¹⁹
- Rules of Procedure of the Constitutional Court of RS.²⁰

4.2.2 Territory

The Constitutional Court of the RS – “Ustavni Sud” in Serbian – has territorial jurisdiction over the entire territory of the Entity²¹. Anyone, even the Constitutional Court itself, “can give an initiative to start the proceedings for assessing the constitutionality and legality”²².

4.2.3 Competence

A. At first instance:

- conformity of laws, other regulations and general enactments with the Constitution;
- the compliance of laws, other regulations and enactment of the National Assembly with the provisions of the Constitution on the protection of vital interests of the constituent peoples;
- conformity of regulations and general enactments with the law;
- conflict of jurisdictions between bodies of legislative, executive and judicial branch;
- conflicts of jurisdictions between agencies of the Republic, city and municipality;
- conformity of programmes, statutes and other general enactments of political organisations with the Constitution and the law.²³

4.3 Courts with general jurisdiction

4.3.1 Supreme Court of the Republika Srpska

4.3.1.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the RS.²⁴
- Law on the Constitutional Court of the RS.
- Rules of Procedure of the Constitutional Court of the RS.

¹⁸ In particular: Articles 69.3 and 115–120:

<http://legislationline.org/download/action/download/id/1580/file/c8ea79bc0db11c11f49f19525f43.htm/preview>

¹⁹ This Law was not available.

²⁰ This Law was not available.

²¹ See Article 119 of the Constitution of the RS.

²² See Article 120 of the Constitution of the RS.

²³ See Article 115 of the Constitution of the RS.

²⁴ In particular: Articles 69.3, 121–127, 130 and 131.

4.3.1.2 Territory

The Supreme Court of the RS has, as the highest court in the RS, territorial jurisdiction over the entire territory of the Entity. According to Article 123 of the Constitution of the RS, the Supreme Court must ensure uniform application of laws. Its seat is in Banja Luka.

4.3.1.3 Competence

- A. At first instance:
- None.
- B. At second instance:
- Decides on ordinary legal remedies against decisions made by district courts (see paragraph 4.3.1, above) and commercial courts (paragraph 4.4.1, below).
- For example:
- appeals against the first-instance criminal verdicts rendered by district courts.
 - appellate proceedings against war crime proceedings in BiH.
- C. At third instance / extraordinary legal remedies:
- on extraordinary legal remedies against final decisions made by courts, if it is legally prescribed;
 - take principled positions when it deems that they are important for the uniform application of laws (request for protection of legality);
 - examines current issues of the judicial practice, to analyse the needs for professional training of judges, expert associates and senior expert associates and other activities specified by law (request for protection of legality);
 - revision and request for protection of legality;
 - special legal remedies against the decisions by district courts in administrative disputes, given that an appeal is not allowed as a regular legal remedy in administrative disputes;
 - tertiary jurisdiction over the Higher Commercial Court.

4.3.2 District courts

4.3.2.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the RS.²⁵
- Law on Courts in the RS.
- Law on Ordinary and Extraordinary Legal Remedies.

4.3.2.2 Territory

There are five district courts in the RS: Banja Luka, Bijeljina, Doboj, Trebinje and Istočno Sarajevo. They have territorial jurisdiction for the territory covered by two or more basic courts²⁶. Sometimes district courts are also referred to as 'country courts'.

²⁵ In particular: Articles 69.3, 121–127, 130 and 131.

²⁶ See Article 25 of the Law on Courts in the RS.

4.3.2.3 Competence

- A. At first instance:
- criminal offences with a set penalty of more than 10 years' imprisonment or long-term imprisonment;
 - decides in all administrative disputes, according to the seat of the first-instance administrative authority body;
 - war crime proceedings in BiH;
 - the District Court in Banja Luka has exclusive jurisdiction for criminal offences of organised crime under Article 383a of the Criminal Code of the RS and the gravest forms of criminal offences against the economy, payment system and against official duty.
- B. At second instance:
- appeals against civil, criminal and minor offence decisions made by basic courts;
 - appeals against first-instance decisions in litigation, enforcement, non-litigation and minor-offence proceedings.
- C. At third instance / extraordinary legal remedies:
- ordinary and extraordinary legal remedies, if it is provided for by law.

4.3.3 Basic courts

4.3.3.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the RS.²⁷
- Law on Courts in the RS.
- Law on Ordinary and Extraordinary Legal Remedies.
- Law on Combating Organised and the Worst Forms of Economic Crime²⁸.

4.3.3.2 Territory

There are 19 basic courts. They have territorial jurisdiction for the territory of one or more municipalities²⁹. In some cases, however, the District Court of Banja Luka has territorial jurisdiction over the entire territory of the RS.

4.3.3.3 Competence

- A. At first instance:
- criminal offences with a penalty of a fine or imprisonment of up to 10 years;
 - criminal offences for which a special law provides the jurisdiction of a basic court;
 - civil cases adjudicate in the first instance;
 - all civil disputes;
 - non-litigation procedures;
 - minor offence cases;
 - requests for the reopening of minor offence proceedings.

²⁷ In particular: Articles 69.3, 121–127, 130 and 131.

²⁸ "Official Gazette of RS", No. 111/07 – Revised text.

²⁹ See Article 22 of the Law on Courts in the RS (this Law was not available).

- B. At second instance:
 - None
- C. At third instance / extraordinary legal remedies:
 - conduct the enforcement procedures;
 - decide on security measures;
 - carry out activities of international legal assistance;
 - carry out activities of registration of citizens' associations.

4.4 Courts of special jurisdiction

4.4.1 Higher Commercial Court

4.4.1.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the RS.³⁰

4.4.1.2 Territory

The Higher Commercial Court (hereinafter, the "HCC") has its seat in Banja Luka and has been established for the entire territory of the RS. It was introduced by amendment in 2008. There are currently 7 judges working for the HCC.

4.4.1.3 Competence

- A. At first instance:
 - matters defined by law.
- B. At second instance:
 - appeals against decisions made by district commercial courts.
- C. At third instance / extraordinary legal remedies:
 - conflicts of jurisdiction and transfer of jurisdiction of district commercial courts;
 - determines legal positions for the uniform application of laws within the jurisdiction of the district commercial courts.

4.4.2 District commercial courts

4.4.2.1 Relevant laws

The following laws are relevant for the competences of the court:

- Constitution of the RS.³¹

³⁰ In particular: Articles 69.3, 121–127, 130 and 131.

³¹ Ibid.

4.4.2.2 Territory

There are five district commercial courts in the RS. They have been established for the territory covered by the district courts: Banja Luka, Bijeljina, Doboj, Trebinje and Istočno Sarajevo. In total, 32 judges work in the district commercial courts.

4.4.2.3 Competence

- A. At first instance:
- civil and non-litigation procedures relating to the rights and obligations arising from legal transactions for goods and services (commercial disputes);
 - disputes arising from copyrights, related rights and of industrial property rights;
 - bankruptcy and liquidation procedures and activities of registration of legal persons or individual entrepreneurs regulated by law;
 - other activities regulated by law.

4.5 Prosecutors' offices

The Law on the prosecutors' offices in the RS established five district prosecutors' offices and the Prosecutor's Office of the RS. Based on the "Law on the Combating of Organised and Most Severe Forms of Crimes", there is also a Special Prosecutor's Office for Prevention of Organised and Most Severe Forms of Crimes. The latter has its seat in Banja Luka and has territorial jurisdiction over the entire territory of the RS.

In the RS, there is a single Rulebook for all the prosecutors' offices which regulates, *inter alia*, the organisation of the RS Prosecutor's Office and district prosecutors' offices, the number of administrative and technical staff and conditions for performing of those tasks.

5 Court system of the Brčko District of Bosnia and Herzegovina

5.1 General

The Brčko District was established at the beginning of the year 2000. This District is a separate administrative unit with respect to the FBiH and the RS. It has its own judicial system.

5.2 Appellate Court

5.2.1 Relevant laws

The following laws are relevant for the competences of the court:

- Statute of Brčko District.³²
- Law on Courts in Brčko District.³³

³² http://www.ohr.int/ohr-offices/brcko/default.asp?content_id=5367

³³ This Law was not available.

5.2.2 Territory

There is one court of appeal, which has territorial jurisdiction over the territory of the Brčko District. There are no further appeals except for those that contain constitutional issues that may be brought before the Constitutional Court of BiH.

5.2.3 Competence

- A. At first Instance:
 - conflicts of jurisdiction between the basic courts;
 - conflicts from the territory of different districts;
 - transfer of territorial jurisdiction from one court to another.
- B. At second instance:
 - ordinary legal remedies against decisions made by the basic court.
- C. At third instance:
 - extraordinary legal remedies: third level of decision-making.

5.3 Basic court

5.3.1 Relevant laws

The following laws are relevant for the competences of the court:

- Statute of Brčko District.
- Law on Courts in Brčko District.

5.3.2 Territory

The Basic court of the Brčko District has territorial jurisdiction over the entire Brčko District. The Brčko District is not a part of either Entity in BiH.

5.3.3 Competence

- A. At first Instance:
 - all criminal cases regardless of the penalty that may be pronounced. Criminal cases in first instance with prescribed penalty of imprisonment of up to 10 years;
 - all administrative cases;
 - civil disputes;
 - non-litigation procedure;
 - minor offence cases;
 - enforcement proceedings;
 - land-registry procedures;
 - procedures of registration of legal persons into the court registry;
 - providing assistance to the courts in BiH and international legal assistance.

5.4 Prosecutors' office

Based on the Law on the Prosecutor's Office of Brčko District, there is only one prosecutors' office in Brčko District. It is an autonomous and independent body which, within Brčko District, undertakes the prescribed measures and actions in the detection and prosecution of perpetrators of criminal offences and minor economic offences, and performs other duties defined by law. In performing its function, the Prosecutor's Office of Brčko District participates in the proceedings before the Appellate and Basic Court of Brčko District.

6 High Judicial and Prosecutorial Council of Bosnia and Herzegovina

6.1 Relevant laws

The *Agreement on Transfer of Certain Entities' Responsibilities through the establishment of the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina* was signed in March 2004 by the Prime Ministers of the FBiH and RS and the Minister for Justice of BiH on behalf of the Council of Ministers of BiH. This Agreement foresees the establishment of a single institution of the HJPC of BiH.³⁴

The High Judicial and Prosecutorial Council of BiH (HJPC) was established in June 2004.³⁵ The Law on HJPC was adopted by the Parliamentary Assembly of Bosnia and Herzegovina pursuant to Article IV 4. a) of the Constitution of BiH³⁶.

The following laws are relevant for the HJPC:

- Law on HJPC;
- Rules of Procedure of HJPC;
- Rulebook on Internal Organisation and Systematisation of Posts of HJPC.

6.2 Territory

The HJPC is an independent organ of BiH and has legal personality. Its task is to maintain an independent, impartial and professional judiciary.

³⁴ See also footnote 2 above, Technical Information requested by EC, p. 36.

³⁵ On the date of the publication of the Law on the HJPC of BiH in the Official Gazette of Bosnia and Herzegovina No. 25/04 (Tuesday, June 1, 2004). <http://www.hjpc.ba/intro/Template.aspx?cid=2301,1,1>
See also the Office of the High Representative's Decision Enacting the Law on the High Judicial Council of Bosnia and Herzegovina of 23 May 2002: http://www.ohr.int/decisions/judicialrdec/default.asp?content_id=8464

³⁶ "4. Powers. The Parliamentary Assembly shall have responsibility for: a. Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution. [...]"

6.3 Organisation

The HJPC consists of 15 members of whom two are selected by politicians (respectively the House of Representatives of the Parliamentary Assembly of BiH and the Council of Ministers of BiH), two are selected by Bar Chambers, five or six prosecutors and five or six judges³⁷. The number of judges and prosecutors depends on whether or not Brčko District sends a judge or a prosecutor.

Moreover, the Law on HJPC provides that international experts may be assigned to the Council. One international member appointed by the High Representative for BiH acts as a full member within the HJPC. The HJPC might have 16 members.

6.4 Competence

- Appointment of judges, including presidents of courts, lay judges and reserve judges in all courts at the level of the state, Entities, cantons, and districts, at Basic and Municipal level in BiH, including Brčko District, with the exception of the Constitutional Courts of the Entities.
- Appointment of chief prosecutors, deputy chief prosecutors and prosecutors in all prosecutors' offices at the level of the state, Entities, cantons and districts in BiH, including the Brčko District.
- Making proposals to competent authorities in relation to their proposing and selection of judges of the Constitutional Court of the RS and appointing of judges to the Constitutional Court of the FBiH. During execution of its competences stated in this paragraph, the HJPC shall, prior to making a proposal, seek the opinion of the relevant constitutional court in writing.
- Receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability and imposing disciplinary measures to judges, lay judges, reserve judges and prosecutors, deciding on appeals in disciplinary proceedings.
- Deciding on disciplinary appeals.
- Deciding on temporary suspensions from duty of judges, lay judges, reserve judges and prosecutors.
- Supervising the professional training of judges and prosecutors and advising the Entity centres for education of judges and prosecutors and the Judicial Commission of the Brčko District in relation to the adoption of the programme of professional training for judges and prosecutors.
- Determining the minimum volume of professional training which every judge and prosecutor must attain in the course of a year.
- Determining the initial training for the persons who have been elected as judges or prosecutors and supervising the implementation of such training.
- Approving the annual report of the managing boards of the Entity centres for education of judges and prosecutors and the Judicial Commission of the Brčko District in the part which relates to the initial training and professional training of judges and prosecutors.
- Deciding on issues of incompatibility with other duties, which judges and prosecutors perform within their duties as judges and prosecutors.
- Deciding on temporary assignments of judges and prosecutors to other courts or prosecutors' offices.

³⁷ See Article 4 of the Law on HJPC: <http://www.hjpc.ba/intro/pdf/LawonHJPCConsolidatedtext.pdf>

- Participating, at his or her sole discretion, in the procedure of preparation of the annual budgets of courts and prosecutors' offices.
- Making proposals, at his or her sole discretion, in relation to the annual budget proposed by the state authorities and/or governments for courts and prosecutors' offices.
- Providing and presenting, at his or her sole discretion, proposals for changes in budgets proposed by state authorities and/or governments and/or the Judicial Commission of the Brčko District to the competent legislative bodies.
- Collecting and analysing the reports, as well as the necessary information on budget and revenues for courts and prosecutors' offices in order to provide statistical data for efficiency of the work of courts and prosecutors' offices.
- Advocating adequate and continuous financing of courts and prosecutors' offices in BiH.
- Participating in the drafting and approving of books of rules on the operations of courts and prosecutors' offices in BiH.
- Overseeing and advising courts and prosecutors' offices on appropriate and efficient techniques and procedures in relation to the budget, control and management and initiating education in this regard.
- Launching, overseeing and co-ordinating projects related to the improvement of issues relating to management of courts and prosecutors' offices, including seeking of funds from domestic and international sources.
- Defining the criteria for the evaluation of the work of judges and prosecutors.
- Defining the criteria for the work of courts and prosecutors' offices and initiating investigations, which relate to the behaviour in the field of administration or finance.
- Leading, co-ordinating and supervising the use of information technology in courts and prosecutors' offices in order to achieve and maintain uniformity in the courts and prosecutors' offices throughout the country in this regard. Courts and prosecutors' offices may introduce automated systems of tracking and registration of cases or similar systems including the systems of support and archiving of data, only with prior approval of the HJPC.
- Determining the number of judges, prosecutors and deputy chief prosecutors for the courts and prosecutors' offices within his or her jurisdiction, after consultations with the court president or chief prosecutor, the body competent for budget and the competent ministry of justice.
- Collecting information and maintaining documentation on the professional status of judges and prosecutors, including their date of appointment and termination of function, statistical data relating to their work performance, and other information, which the HJPC finds important for the work of court presidents, chief prosecutors and deputy chief prosecutors, judges and prosecutors.
- Giving opinions on complaints lodged by a judge or prosecutor who believe that his or her rights or independence are endangered.
- Giving opinions on draft laws, regulations and important issues which may affect the judiciary, initiating the procedure of the adoption of laws and other regulations and providing guidelines to the courts and prosecutors' offices under the jurisdiction of the HJPC.
- Publishing codes of ethics for judges and prosecutors.

6.5 Exception: the Republika Srpska

The RS considers that there should be a separation between the High Judicial Council and the High Prosecutorial Council.³⁸ Prosecutors and defence lawyers should not be members of the High Judicial Council, as both appear as parties to proceedings (which threatens the independence of the judiciary, guaranteed by the Constitution). Therefore, the RS has created, in addition to a HJPC, two other separate councils at Entity level: the High Judicial Council of the RS and “an organ in RS which will appoint the prosecutors”.

See **Table 4** for the High Judicial Council of Republika Srpska.

³⁸ See paragraph 40, 40th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations:
http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=46579#08b
See also footnote 2 above, Technical Information requested by EC, p. 36.

APPENDIX I – Tables

Table 1: Judicial System of Bosnia and Herzegovina

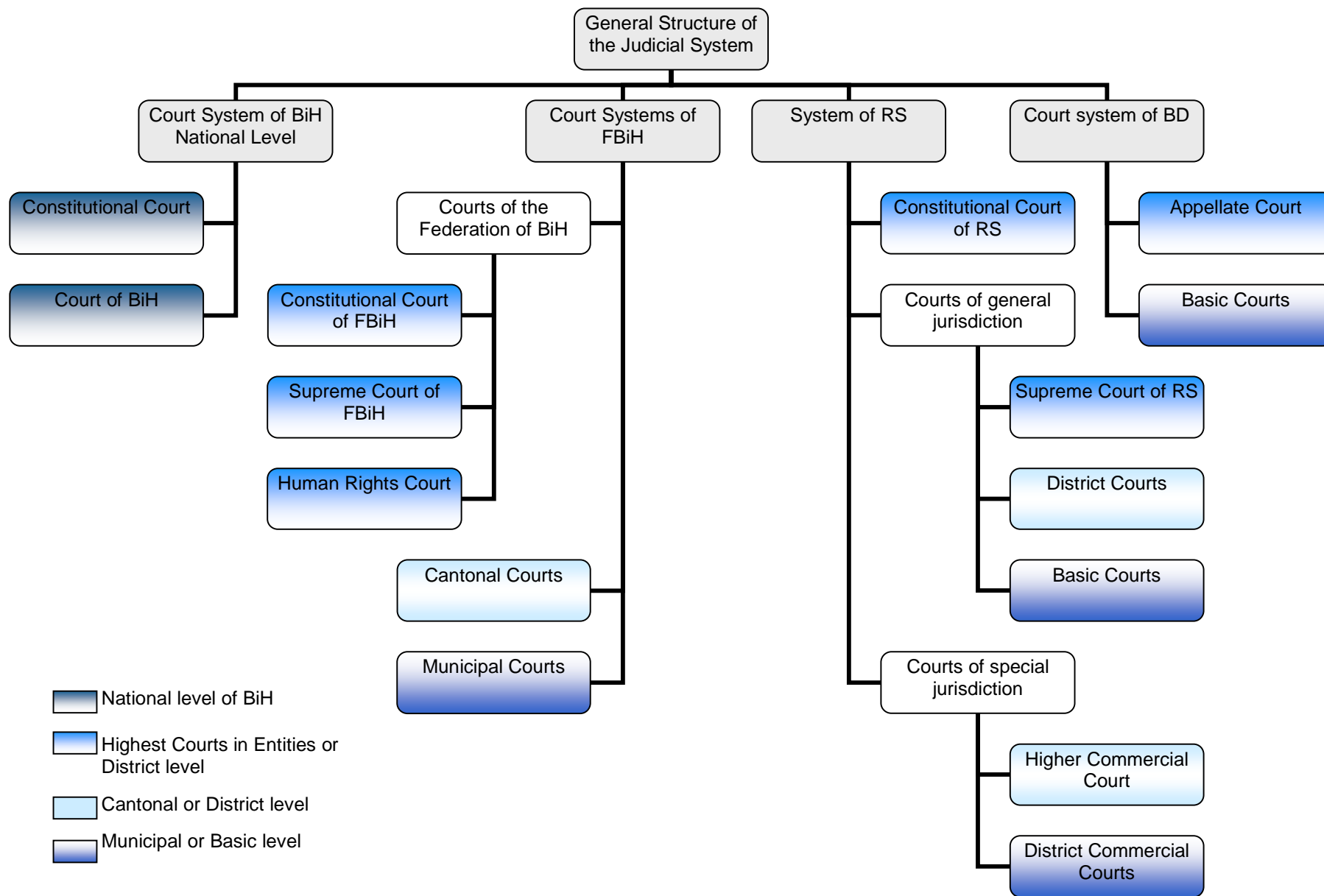
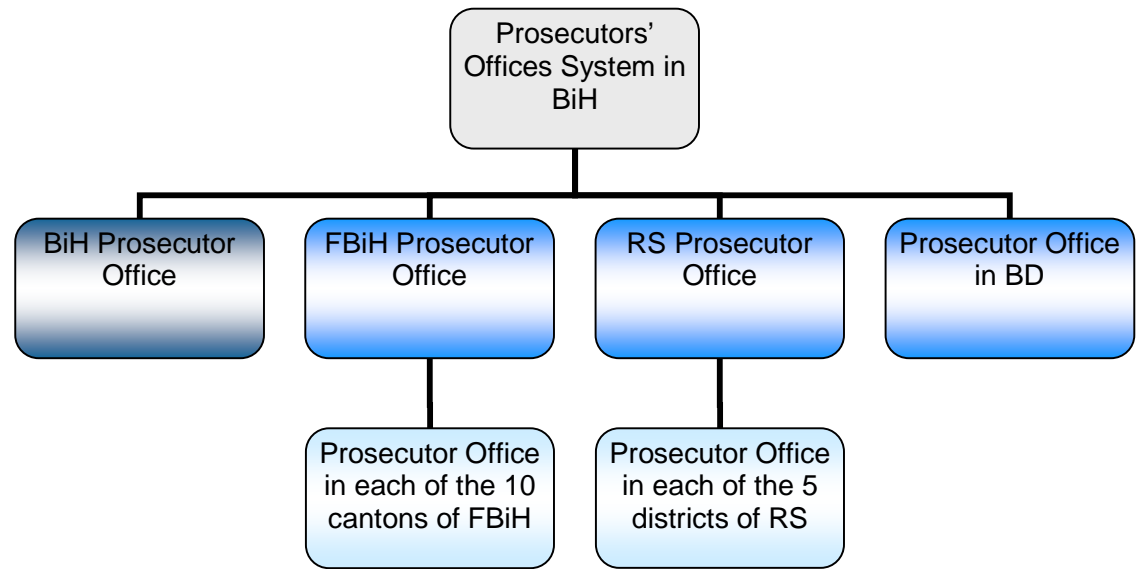


Table 2: Prosecutors' Offices System in Bosnia and Herzegovina






-  National level of BiH
-  Highest Courts in Entities or District level
-  Cantonal or District level

Table 3: Structure of the Court of Bosnia and Herzegovina

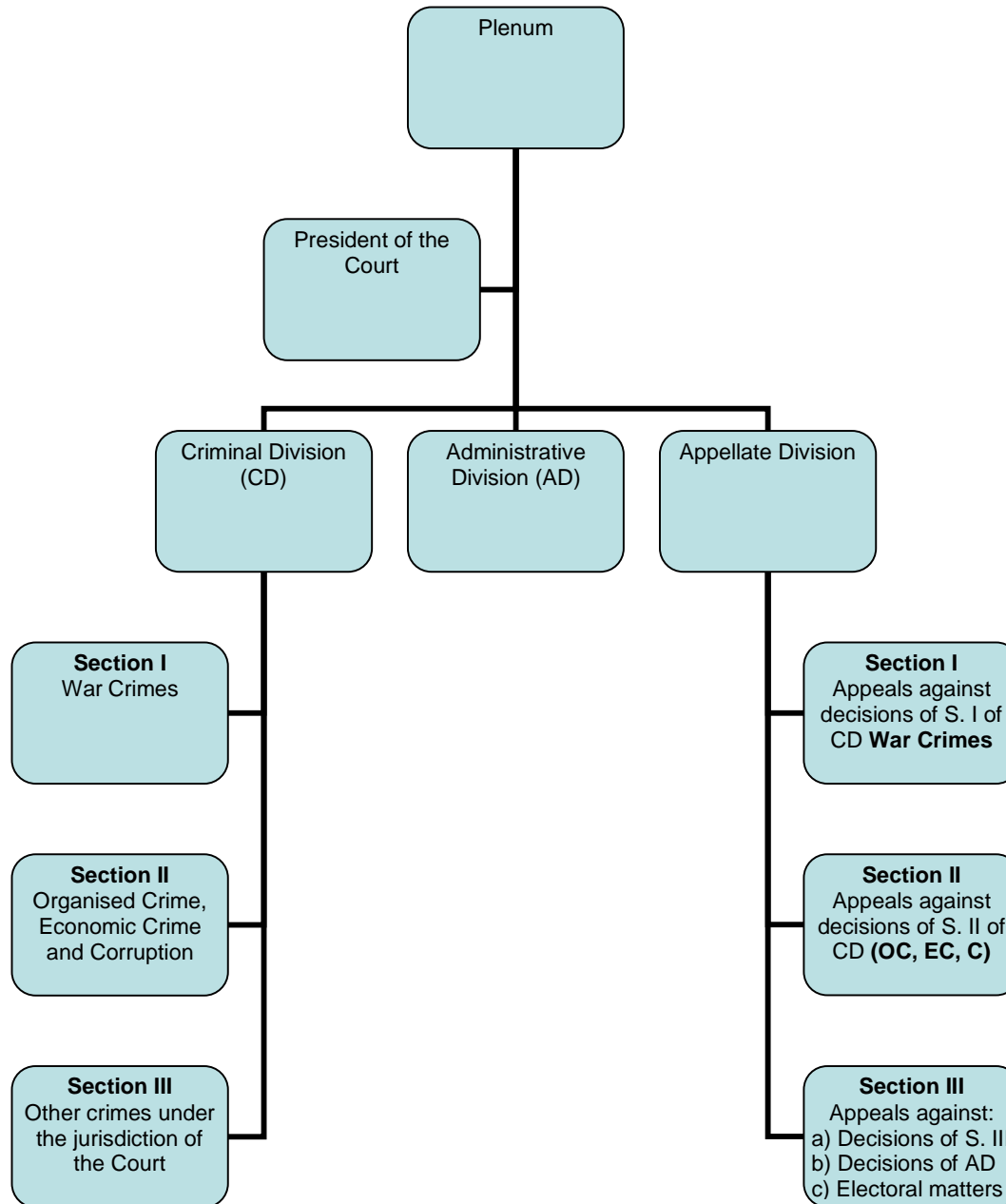
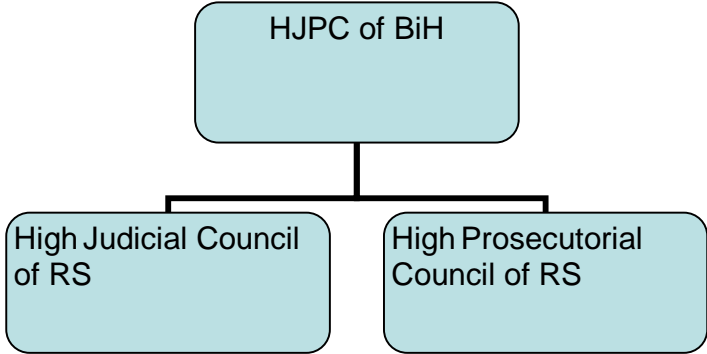


Table 4: High Judicial Council of Republika Srpska



APPENDIX II – Recommendations from the European Commission**Second meeting of the “Structured Dialogue on Justice between the European Union and Bosnia and Herzegovina”****Sarajevo (Bosnia and Herzegovina), 10-11 November 2011****Recommendations from the European Commission³⁹**

On the backlog of cases, the European Commission:

- Encourages the High Judicial and Prosecutorial Council of BiH (HJPC) to continue its initiatives to increase efficiency through proposals for legislative changes, monitoring of backlog reduction through the available IT management tools, management training, changes of the internal working procedures at courts, as well as renovation and modernisation of buildings.
- Recommends that a set of measures be put in place to decrease the huge influx of cases of unpaid utility bills, such as, removing the processing of utility cases from courts, transferring the non-judicial part of their enforcement to private or public enforcement agencies, and transferring non-contested inheritance cases to notaries.
- Recommends that a plan for the introduction of a functional system for in court and out-of-court mediation throughout BiH be prepared on the basis of the preliminary assessment conducted by the HJPC.
- Encourages all stakeholders to organise a regional workshop for the exchange of good practices on the reduction of the backlog of cases, as well as on the execution of criminal sanctions.

On the Law on Prosecutor’s Offices in the Federation of Bosnia and Herzegovina (FBiH), the European Commission:

- Welcomes the initiative to advance on the adoption of a single Law, with a view to guarantee a harmonisation throughout FBiH.
- Particularly welcomes the scheduled initiation of the adoption procedure by 17 February 2012, as per the action plan announced by the FBiH Minister of Justice.

On the Law on Execution of Criminal Sanctions in FBiH, the European Commission:

³⁹ <http://www.delbih.ec.europa.eu/?akcija=vijesti&akcija2=pregled&jezik=2&ID=1086>.

- Welcomes the commitment by the FBiH Minister of Justice to promptly pursue the adoption of a new law on execution of criminal sanctions.
- Urges FBiH authorities to undertake all possible measures to reduce the backlog in the execution of criminal sanctions.

On the Framework Law on Free Legal Aid, the European Commission:

- Requests that BiH authorities adopt a Framework Law on Legal Aid, in view of ensuring equal rights of citizens before the law throughout the country.
- Expresses concern for a lack of specific provisions on free legal aid in some Cantons of the FBiH.

On the establishment of a High Security State Prison and Special hospital for forensic psychiatry, the European Commission:

- Expresses concern about the delays in opening the forensic psychiatric hospital located in Sokolac.
- Encourages all competent authorities in Republika Srpska (RS) to complete the remaining works and all other preparatory activities by June 2012, as planned and announced.
- Expresses serious concerns for the protracted delays in the construction of the High-Security State Prison and calls on the Ministry of Justice of BiH to do its utmost to speed up this important project.
- Recommends that the BiH Ministry of Justice holds an urgent information meeting with stakeholders of the High-Security State Prison in order to ensure full understanding of the design and budget.

On police/prosecutors cooperation, the European Commission:

- Encourages further joint training initiatives.
- Underscoring the need to implement the policies on preventing and fighting financial crimes without further delays, recommends that specific joint training modules for members of the judiciary and representative of law enforcement agencies are scheduled on money laundering, cyber crimes, asset seizure and expanded confiscation of assets. Such trainings shall take place regularly.

On pre-trial detention, the European Commission:

- Recalls that BiH authorities are bound by a general obligation to maintain pre-trial detention for the shortest possible time.
- Insists that relevant authorities complement the available figures with more specific data on length and grounds for pre-trial custody. These shall be submitted before the next meeting of the Structured Dialogue.

On prison administration, the European Commission:

- Urges that coordination between prison administrations is guaranteed, especially with a view to develop a systematic and coherent approach to training of prison staff throughout the country, in line with the relevant EU standards.
- Strongly reiterates that an overview of all measures envisaged to strengthen the training programmes for prison guards and other prison staff, including a dedicated curriculum on integrity and anti-corruption, be agreed and provided.

On regional cooperation, the European Commission:

- Expects that the protocol on exchange of evidence in war crimes cases between the Prosecutor's Office of BiH and the War Crimes Prosecutor's Office of Serbia be signed by the end of November 2011.
- Recommends that serious efforts are made by law enforcement agencies to locate all current fugitives, and suggests that more proactive and regionally agreed measures are initiated in order to locate these fugitives, including by co-ordinating operational plans.
- Expresses strong support to the conclusion of bilateral agreements with neighbouring countries for the extradition of own nationals.

On the functioning of judicial institutions, for issues related to structural resources, the European Commission:

- Recommends that no new Courts or Prosecutors' Offices be opened without a proper needs-assessment, as well as without serious consideration of the financial implications and long term sustainability.
- Recommends that competent authorities from both Entities maintain a constructive dialogue with the HJPC, in order to establish a better systematization of posts rather than opening new Courts and Prosecutors' Offices.
- Recommends that all justice sector authorities engage constructively in the programming process of the Instrument for Pre-Accession (IPA) assistance 2012-2013, to support their medium and long term needs can be met, in terms of both institution building and investments.
- Encourages further use of the Technical Assistance and Information Exchange instrument (TAIEX) for short term initiatives, advice, training and peer assistance.

On the overall National War Crimes Strategy (NWCS) implementation, the European Commission:

- Reiterates that effective processing of war crimes cases is fundamental for truth and national reconciliation. Delays and inefficiencies cannot be accepted, since they represent negation of justice for victims and victims' families, as well as for the citizens of BiH in general.

- Reminds that the lack of effective developments in this field seriously undermines the overall credibility of the judiciary; therefore, all deadlocks shall be overcome as a matter of priority.
- Expresses concerns about the lack of proper implementation of most strategic objectives of the NWCS.
- Recommends that sufficient funds and human resources be allocated to the Prosecutor's Office of BiH to effectively perform its tasks related to exhumations.

On the referral of cases, the European Commission:

- Notes with preoccupation the recent discussion at the NWCS Supervisory Board and the identification of difficulties in guaranteeing an objective, efficient, and transparent referral of cases.
- Urges the Court of BiH and the Prosecutor's Office of BiH to undertake all possible measures to address the outlined concerns without further delays.
- Welcomes the commitment by the Prosecutor's Office of BiH and the Court of BiH to finalise the procedures of the referral of cases as matter of urgency, in compliance with the strategic goals of the NWCS.
- At the same time, requests the HJPC to submit all its technical recommendations on further definition of the current legal framework, as concluded at its session of 9 November 2011. These can be considered as an additional corrective option and therefore will be technically assessed by the Commission to propose, only if relevant, further recommendations on the matter at the next meeting of the structured dialogue.

On the Equality of citizens before the law and application of criminal codes to war crimes, the European Commission:

- Pending the judgement of the ECtHR on the case Maktouf vs. BiH, commends the leadership of the NWCS Supervisory Board in launching systematic consultations, open to all levels of the judiciary, the academic and professional communities, as well as international and EU expertise.
- Urges the initiation of periodic meetings between the President of the Court of BiH, the Presidents of the Entity Supreme Courts and the President of the Brcko District Appellate Court in order to engage in expert discussions towards a harmonisation of practices on the use of the substantive criminal codes in war crimes cases.

On the Witness Protection and support mechanisms: legal framework and implementation, the European Commission:

- Calls on all competent institutions to coordinate and communicate their needs for the improvement of witness protection and support, with the aim of ensuring sustainable integrated mechanisms in all relevant institutions, including the police, the judiciary and the social assistance.

- Expects that a sound needs-assessment be coordinated amongst all competent institutions and be finalised well in advance of the next meeting of the structured dialogue.

On the institutional reform of the appellate system at the Court of BiH, the European Commission:

- Notes with concern the lack of any progress by the BiH Ministry of Justice in the implementation of the conclusions of the working group on the establishment of the Appellate court of BiH.
- Expects that the proposals adopted in 2008, also reiterated by the HJPC at its session on 9 November, be put into Parliamentary procedure before the next meeting of the structured dialogue.

On co-ordination between the Court of BiH and other judicial instances in BiH, the European Commission:

- Requests the HJPC to coordinate the identification of ways to strengthen objectivity of the parameters set in Article 7.2 of the Law on the Court of Bosnia and Herzegovina, so as to eliminate the perspective of misuse or inappropriate application of this article, especially in relation to the principle of the natural judge.

On the RS Draft Law on Courts, the European Commission:

- Expects the RS Ministry of Justice to continue its close coordination with the HJPC in relation to the draft Law on Courts of Republika Srpska.
- Expects that the Law shall be mindful of the independence of the judiciary and fully coherent with the prerogatives and recommendations of the HJPC.

On the Consolidation of HJPC functions, including by revision of the relevant law, the European Commission:

- Requests the HJPC to provide a set of draft legislative amendments in order to ameliorate its working procedures, as well as to further consolidate its functionality, independence and accountability. A draft revision of the Law on the HJPC shall be provided by the next meeting of the Structured Dialogue.

On the Constitutional Court, the European Commission:

- Draws the attention of the Constitutional Court of BiH that its rules of procedures do not allow judges who do not belong to one of the Constituent Peoples to be elected as President.

On professionalism in the justice sector, the European Commission:

- Underlines that a number of improvements are necessary, especially to increase accountability, efficiency and effectiveness throughout the sector.
- Amongst others, priority shall be assigned to the following steps: introduction of qualitative criteria for appraisal processes; identification of adequate measures to guarantee further mobility in the sector; reform of the procedures to access judicial careers, related reform of the Bar exam.

On the presence of international staff in judicial institutions across BiH, the European Commission:

- Recalling the principle of ownership, reiterates that it is important to continue phasing out international staff, particularly with executive powers, towards fully handing over all responsibilities to national practitioners.
- In this regard, welcomes the announcement made by both the Prosecutor's Office of BiH and the Court of BiH that the international staff in their ranks, including those with executive powers, will be fully transitioned by the end of 2012.
- Confirms its readiness to provide capacity-building which will be deemed necessary to support this transition.

On the financing of the justice sector, the European Commission:

- Reiterates that an independent, efficient, impartial, accountable and professional judiciary cannot be fully achieved unless adequate financial means are at the disposal of judicial institutions.
- Requests competent authorities to agree on a set of possible measures to streamline budgetary competences in respect of the constitutional order of BiH, to be submitted in advance of the next meeting of the structured dialogue.

On follow up to the second meeting of the Structured Dialogue, the European Commission:

- Encourages all relevant authorities to maintain constructive and consistent consultations.
- Recalls that the Structured Dialogue is a comprehensive platform for reforms in the justice sector, which will allow BiH to make important steps on its path towards EU integration.
- Reiterates that every legislative and institutional reform shall be guided by one main objective: to consolidate the rule of law throughout BiH by establishing an independent, efficient, impartial, accountable and professional judicial system for the benefit of all citizens.
- Reminds that high level consensus was reached at the inauguration of the Structured Dialogue on the idea that amendments to key judicial legislation shall not be put into procedure prior to coordination with the EU and domestic

consultations, to ensure consistency with the overall structure and EU accession requirements.

- Requests to receive, at least two weeks prior to each meeting of the Structured Dialogue, the official acceptance by the Delegation of BiH to the proposed agenda, as well as an agreed list of participants. These shall also be complemented by the submission of a position paper on progress made on the implementation of the recommendations.
- Takes note that BiH authorities have welcomed the perspective preparation by the Venice Commission of an opinion on how the judicial framework, the division of powers and the existing co-ordination mechanisms affect legal certainty and the independence of the judiciary in BiH.
- In relation to this exercise, requests that all relevant authorities in BiH provide experts from the Venice Commission with the necessary information, support and assistance.