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**DECISION OF THE  
HIGH REPRESENTATIVE**

n. 167/02

**In the exercise** of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

**Recalling** paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

**Bearing in mind** the communiqué of the Steering Board of the Peace Implementation Council issued at Brussels on 28 February 2002 wherein it recognised “the importance of the creation of a High Judicial Council for BiH”;

**Further bearing in mind** the communiqué of the Steering Board of the Peace Implementation Council issued at Sarajevo on 7 May 2002 wherein it was stated that the establishment of a single High Judicial Council would “lay the foundations for further reform of the judiciary, such as the re-structuring of the court and prosecutorial systems”;

**Conscious** of the necessity to pursue such re-structuring and selection process following upon the establishment of the High Judicial and Prosecutorial Council for the Federation of Bosnia and Herzegovina and of the High Judicial and Prosecutorial Council of the Republika Srpska which shall together compose a State High Judicial Council for Bosnia and Herzegovina;

**Recalling** Article III: 5 (b) of the Constitution of Bosnia and Herzegovina which provides that “Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters ... ”;

**Recalling** Article I: 2. of the Constitution of Bosnia and Herzegovina which provides that: “Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law ... ”;

**Observing** that in order to strengthen democratic principles and the rule of law it is essential that the State Institutions of Bosnia and Herzegovina should have the power *inter alia* to legislate in regard to judicial bodies throughout Bosnia and Herzegovina and in future in relation to the Brcko District; and

Further taking into account the totality of the matters aforesaid I hereby issue the following:

# **DECISION ENACTING THE LAW ON THE HIGH JUDICIAL COUNCIL OF BOSNIA AND HERZEGOVINA**

The Law which follows shall come into effect as provided for in Article 73 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published without delay in the official Gazette of Bosnia and Herzegovina and in the official Gazette of the Brcko District of Bosnia and Herzegovina.

Sarajevo, 23 May 2002

Wolfgang Petritsch  
High Representative

## **Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina**

### **CHAPTER I - GENERAL PROVISIONS**

#### **Establishment of High Judicial and Prosecutorial Council of Bosnia and Herzegovina**

##### **Article 1 Establishment**

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter, the Council) is hereby established.

The establishment and work of the Council shall be regulated by this Law.

##### **Article 2 Financing of the Council**

The State of Bosnia and Herzegovina shall be responsible for financing the operations of the Council, in respect of its competence under the law.

##### **Article 3 Legal Status**

The Council shall have the status of a legal person.

Principles of Independent Judiciary and role of the Council

##### **Article 4 Independent Judicial Authority**

The role of the Council shall be as the autonomous organ in Bosnia and Herzegovina with the task of ensuring the maintenance of an independent, impartial and professional judiciary, and to ensure the provision of a professional and efficient court system and prosecutorial service on the level of the State of Bosnia and Herzegovina and in Brcko District as well as to co-ordinate the application of these standards in the Entities to the extent provided by this Law.

### **CHAPTER II - MEMBERS AND ORGANISATION OF THE COUNCIL**

## **Membership**

### **Article 5 Members of the Council**

The Council shall have members, as follows:

- two judges of the Court of Bosnia and Herzegovina, elected by all the judges of the Court;
- one judge elected by all judges of the Appellate Court and Basic Court of Brcko District;
- one prosecutor or a deputy prosecutor of the Prosecutor's Office of Brcko District, elected by all prosecutors of the Office;
- a person of high moral character and integrity appointed by the Presidency of Bosnia and Herzegovina;
- the members of the High Judicial and Prosecutorial Councils established under the Constitutions and laws of the Federation of Bosnia and Herzegovina and Republika Srpska;

Members of the Council shall be independent and impartial in the exercise of their functions, shall be persons of high moral standing and integrity, and shall have a reputation for efficiency, competence, and integrity.

### **Article 6 Mandate**

The members of the Council, apart from the members of the High Judicial and Prosecutorial Councils of Entities (hereinafter: Entity Councils) shall serve for a period of four years and shall be eligible to serve one consecutive term only.

If the mandate of a member as referred to in the previous Paragraph terminates under Article 7 prior to the expiry of his/her term of office, a new member shall be appointed as a replacement and shall serve the remaining term of office. The person shall be eligible to serve one consecutive full-term only.

### **Article 7 Termination of Mandate**

The mandate of a member as referred to in paragraph 1 of the previous article shall terminate:

1. upon cessation of function by virtue of which he/she was appointed to the Council;
2. upon the expiry of the period for which he/she has been elected or appointed;
3. by resignation;
4. if he/she performs his/her duties improperly, inefficiently, or in a biased manner or fails to fulfill obligations arising out of his/her office;
5. for a commission of an act that would make him/her unworthy to perform duties in the Council; or
6. upon a final conviction of any criminal offense punishable by a prison sentence, which conviction shall result in automatic termination.

A Council member whose mandate has expired under subparagraph 2 of the previous paragraph shall continue exercising the rights and duties of a Council member until a new member is elected or appointed.

The mandate of a Council member under subparagraph 3 of the first paragraph of this Article shall expire on the day when the Council receives his/her written statement of resignation, and under subparagraphs 4 and 5 of the first Paragraph hereof when the Council relieves him/her of duty.

The Council shall adopt a decision to relieve a member from duty for the reasons set out under subparagraphs 4 and 5 of the first Paragraph hereof, by a two-thirds majority of all members upon a proposal of at least one third of its members.

### **Article 8. Suspension of a Member**

The Council shall suspend a member against whom criminal charges are brought by a competent prosecutor or if the member is confined to pre-trial detention.

The Council shall suspend a member who is suspended from the function by virtue of which he/she qualifies for appointment to the Council.

The Council may suspend a member against whom a criminal investigation or professional disciplinary proceedings have been initiated or for matters that could lead to termination of the member's mandate under Article 7.

#### **Article 9 New Members**

The President of the Council shall notify the body responsible for the election or designation of a member to the Council under Article 5 hereof at least three (3) months prior to the expiry of a member's mandate and request the body to elect, or in the case of the Presidency of Bosnia and Herzegovina, to appoint a new member to the Council.

In the event that a member's mandate terminates for a reason other than expiry of mandate and it is necessary to elect a new member, the President of the Council shall notify the body responsible for the election or designation of the new member. The Council shall notify the relevant body no later than 30 days after the termination of mandate.

#### **Article 10 Incompatibility and Immunity**

Neither a member of the Council, nor a member of any panel or division thereof, nor any member of the staff of the Council, shall hold office or perform any duties in a political party, or in associations or foundations connected to political parties. Members and staff as aforesaid shall likewise refrain from participating in political party activities of a public nature. A member shall sign a declaration of interests upon assuming official duties on behalf of the Council.

Members of the Council, or of a panel or division within the Council are immune from civil liability for any conduct performed in the course of official duties.

#### **Organisation of the Council**

##### **Article 11. President and Vice-President of the Council**

The President and Vice-President of the Council who cannot be members of an Entity Council shall be elected by a two-thirds majority vote of the members present and voting. The mandate of the President shall be four (4) years or until his/her mandate expires or otherwise terminates under Article 7, whichever is sooner. The mandate of the Vice-President shall be regulated by the Council's rules of procedure.

##### **Article 12. Divisions and Panels**

In order to accomplish its tasks and carry out its duties as specified by this Law, the Council shall be empowered to establish panels and divisions but shall act and make decisions as a single body, except as otherwise provided by this Law.

##### **Article 13. Powers of Divisions and Panels**

The Council may select experts, who are not members of the Council, to participate in the work of a division

or panel created by the Council.

Experts selected to participate in the work of a panel or division shall be judges, prosecutors, or other experts.

#### **Article 14 Quorum, Voting and Meetings**

A majority of the members of the Council constitutes a quorum. A decision of the Council shall require a majority vote of all members present and voting, not including members disqualified from voting, unless otherwise provided for by Law. The President's vote shall be decisive on matters where there is a tie vote. Meetings of the Council shall be convened under the authority of the President, which shall be regulated by the rules of procedure.

#### **Article 15 Secretariat of the High Judicial Council**

The professional and administrative tasks for the Council shall be performed by the Secretariat of the Council, which shall have an Executive Director.

#### **Article 16 Rules of Procedure**

The Council shall adopt and promulgate rules of procedure regulating its internal operations, appointment, discipline, and other matters. The rules of procedure shall be a public document.

### **CHAPTER III - COMPETENCE AND AUTHORITY**

#### **Article 17 Competence**

The Council shall have the following competence:

1. selection and appointment of judges including Presidents of the Court of Bosnia and Herzegovina, of the Appellate Court of Brcko District and of the Basic Court of Brcko District.;
2. selection and appointment of the Prosecutor and deputy prosecutors of Prosecutor's Office of Brcko District;
3. coordinating the co-operation of High Judicial and Prosecutorial Councils of the Entities and the Judicial Commission of Brcko District;
4. organization of training of judges and prosecutors as referred to in Items 1. and 2. of this Paragraph;
5. coordinating with the Boards of the Judicial and Prosecutorial Training Centers of the Federation of Bosnia and Herzegovina and of Republika Srpska and the corresponding institution of the Brcko District on planning a program for compulsory initial training of candidates for the function of judge or public prosecutor throughout Bosnia and Herzegovina;
6. coordinating the continuing training of judges and prosecutors, and consulting with the Boards of the Judicial and Prosecutorial Training Centers of the Federation of Bosnia and Herzegovina and of Republika Srpska and the corresponding body of the Brcko District prior to the adoption of programs of training;
7. coordination of international representation of judiciary and of prosecutorial service of Bosnia and Herzegovina or any of its component parts;
8. deciding on issues of incompatibility of other functions performed by judges and prosecutors as referred to in Items 1. and 2. of this paragraph and also as to their immunity;
9. receiving the complaints against judges and prosecutors as referred to in Items 1. and 2. of this paragraph;
10. initiating and conducting inquiries and disciplinary proceedings, determining disciplinary liability and imposing disciplinary sanctions as well as suspension of judges, prosecutors and deputy prosecutors as referred to in Items 1. and 2. of this paragraph and deciding upon appeals in disciplinary proceedings;

11. ruling on complaints lodged by judge or prosecutor as referred to in Items 1. and 2. of this paragraph who considers that his/her rights provided for by this or other law, or more generally his/her independence, or that of the legal process, are threatened or ignored in any way whatsoever;
12. proposing the number of judges, of the Court of Bosnia and Herzegovina, Appellate and Basic Court of Brcko District and of deputy prosecutors of the Prosecutor's office of Brcko District after soliciting an opinion or upon the initiative of a president of the respective court or the prosecutor and after consultation with the relevant budgetary authority, to the respective legislative body;
13. collecting information and maintaining the documentation on the professional status of judges, a prosecutor or deputy prosecutors as referred to in Items 1. and 2. of this paragraph, including their date of appointment and termination of function and statistical information relevant to their work performance;
14. providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, and initiating the adoption of relevant legislation;
15. making budget proposals for the Court of Bosnia and Herzegovina, Appellate and Basic Court of Brcko District and of the Prosecutor's office of Brcko District in consultation with relevant authorities, presenting these budget proposals to the respective government and legislative body and monitoring execution of these budgets to ensure adequate and continuous funding;
16. deciding on the appointment of the Executive Director and other professional and administrative staff of the Council; and
17. exercising other competence as determined by this or another law.

**Article 18**  
**Obligation to Comply with Inquiry**

All courts, prosecutor's offices and governmental bodies in Bosnia and Herzegovina, as well as all judges, prosecutors, deputy prosecutors, lay judges and employees of courts and prosecutor's offices throughout Bosnia and Herzegovina shall comply with requests by the Council for information, documents, and other materials related to an inquiry.

**Annual Budget and Report**

**Article 19**  
**Annual Budget and Report**

The Council shall adopt and present an annual budget proposal for its operations to the Parliamentary Assembly of Bosnia and Herzegovina in respect of its competence under this law.

The Council shall prepare an annual report documenting its activities and describing the state of the judiciary and prosecutorial authority, including recommendations for improvement. The report shall be delivered to the Parliamentary Assembly of Bosnia and Herzegovina, Parliament of the Federation of Bosnia and Herzegovina, National Assembly of Republika Srpska and the Assembly of Brcko District for information. The report shall be available to the public.

**CHAPTER IV - REQUIREMENTS AND MANDATE TO HOLD OFFICE IN THE COURT OF BOSNIA AND HERZEGOVINA, APPELLATE COURT OF BRCKO DISTRICT, BASIC COURT OF BRCKO DISTRICT AND PROSECUTOR'S OFFICE OF BRCKO DISTRICT;**

**Basic Requirements to Hold Judicial or Prosecutorial Office**

**Article 20**  
**Basic Requirements**

In order to qualify for appointment to judicial or prosecutor office in the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor's Office of Brcko District, a person shall meet the following requirements:

- (a) be a citizen of Bosnia and Herzegovina;

- (b) 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 the law;
- (c) shall have passed a bar examination administered in Bosnia and Herzegovina or in the Socialist Federal Republic of Yugoslavia; and
- (d) shall have fulfilled professional training requirements as may be determined by the Council under Article 17.

**Article 21**  
**Professional Standing**

Judges, prosecutors, and deputy prosecutors as referred to in Article 17 paragraphs 1 and 2 shall be individuals possessing integrity, high moral standing, and demonstrated professional ability with the appropriate training and qualifications.

**Judges and Court Presidents**

**Article 22**  
**Court of Bosnia and Herzegovina**

Judges of the Court of Bosnia and Herzegovina shall have a minimum of ten (10) years of practical experience as a judge, prosecutor, deputy prosecutor, attorney, or other comparable legal experience after having passed the bar examination and shall be appointed for life, subject to resignation, mandatory retirement age or removal from office for cause.

Exceptionally from the provisions of the previous paragraph, assistant professors or professors of the Faculties of Law in Bosnia and Herzegovina in the field of criminal law or criminal procedural law, civil law or civil procedural law, administrative law, commercial law or family law may be appointed as a judge of the Court of Bosnia and Herzegovina without having passed a bar examination, provided they have a minimum of 15 years of experience as a professor or assistant professor.

The President shall be from among judges appointed to the Court of Bosnia and Herzegovina and shall have a minimum of twelve (12) years of practical experience and shall have proven management and leadership skills relevant to the operation of this court. The president shall have a mandate of six (6) years and shall be eligible for re-appointment.

**Article 23**  
**Appellate Court of Brcko District**

Judges of the Appellate Court of Brcko District shall have a minimum of five (5) years of practical experience as a judge, prosecutor, deputy prosecutor, attorney, or other comparable legal experience after having passed the bar examination and shall be appointed for life, subject to resignation, mandatory retirement age or removal from office for cause.

The president shall be from among judges appointed to the Appellate Court, shall have a minimum of seven (7) years of practical experience and shall have proven management and leadership skills relevant to the operation of this court. The president shall have a mandate of six (6) years and shall be eligible for re-appointment.

**Article 24**  
**Basic Court of Brcko District**

Judges of the Basic Court of Brcko District shall have a minimum of three (3) years of practical experience as a judge, prosecutor, deputy prosecutor, attorney, or other legal experience after having passed the bar examination and shall be appointed for life, subject to resignation, mandatory retirement age or removal from office for cause.

The president shall be from among judges appointed to the Basic Court of Brcko District, shall have a

minimum of five (5) years of practical experience and shall have proven management and leadership skills relevant to the operation of this court. The president shall have a mandate of four (4) years and shall be eligible for re-appointment.

#### **Article 25**

##### **Prosecutor and Deputy Prosecutors of the Prosecutor Office's of Brcko District Prosecutor's Office**

The prosecutor of the Prosecutor's Office of Brcko District shall have a minimum of ten (10) years of practical experience as a judge, prosecutor, deputy prosecutor, attorney, or other comparable legal experience after having passed the bar examination and shall have proven management and leadership skills relevant to the operation of this prosecutor's office. The prosecutor shall have a mandate of six (6) years and shall be eligible for re-appointment; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Deputy prosecutors shall have a minimum of eight (8) years of practical experience as a judge, prosecutor, deputy prosecutor, attorney, or other legal experience after having passed the bar examination. A deputy prosecutor's mandate shall be unlimited; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

### **CHAPTER V - APPOINTMENT OF JUDGES OF THE COURT OF BOSNIA AND HERZEGOVINA, APPELLATE COURT OF BRCKO DISTRICT, BASIC COURT OF BRCKO DISTRICT AND PROSECUTORS OF THE PROSECUTOR'S OFFICE OF BRCKO DISTRICT**

#### **Announcement of Judicial and Prosecutorial Posts**

##### **Article 26**

##### **Appointment Procedure**

The Council shall regulate the appointment procedure in its rules of procedure and may require the use of standard application material.

##### **Article 27**

##### **Public Announcement**

A public announcement of vacant positions, conducted by the Council, shall precede the appointment of judges, including court presidents, prosecutor and deputy-prosecutors in the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor's Office of Brcko District. The announcement shall be published throughout Bosnia and Herzegovina, in a manner determined by the Council.

##### **Article 28**

##### **Nomination Panel**

The President of the Council shall appoint a nomination panel consisting of no less than three (3) members. The nomination panel shall rank the applicants for the vacant post based upon merit, fitness, and qualifications and present its list of candidates and recommendation to the Council.

##### **Article 29**

##### **Competitive Examination**

The Council may conduct a competitive examination of applicants. The examination shall test the applicants' qualifications pursuant to the criteria stipulated in Article 33 below and may inquire information on the following substantive topics:

1. Constitutional law of Bosnia and Herzegovina;
2. Criminal law;
3. Criminal procedure;
4. Civil law;



5. Civil procedure;
6. Administrative law and procedure;
7. European Convention on Human Rights and Fundamental Freedoms and other international human rights documents, treaties and agreements to which BiH is a party;
8. Ethical principles for conducting judicial or prosecutorial functions; and
9. Other matters relevant to the post.

The competitive examination may be in the form of a written and/or an oral examination. In case a written examination is conducted, the Council shall ensure that it is carried out in a way to preserve the anonymity of the applicants.

### **Article 30 Interviews**

Interviews shall assist in determining an applicant's ability to perform judicial or prosecutorial functions.

In case of conducting of a competitive examination, the Nomination Panel shall interview all applicants who have successfully passed the examination.

### **Article 31 Opinions on the Applicants**

The Council may request written opinions from current and/or former employers concerning the applicant's qualifications.

### **Article 32 Rights of Applicants**

Applicants shall have the right to review application materials provided to the Council in regard to their applications, to request and receive information, subject to confidentiality, regarding the application and appointment procedure, to review and comment upon any opinion from an employer submitted to the Council, and to address comments to the Council about a matter affecting the applicant's application.

### **Article 33 Criteria for Appointment**

The Council shall assess whether the applicant is able to perform judicial or prosecutorial functions, taking into account the following criteria:

- (1) Professional knowledge and performance;
- (2) Proven capacity through academic written works and activities within professional associations;
- (3) Proven professional ability based on previous career results, including participation in organized forms of continuing training;
- (4) Work capability and capacity for analysing legal problems;
- (5) Ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he/she is being considered;
- (6) Communication abilities;
- (7) Relations with colleagues, conduct out of office, integrity and reputation; and
- (8) Managerial experience and qualifications (for the positions of president of court and prosecutor).

The Council shall implement relevant Constitutional provisions regulating the equal rights and representation of constituent peoples and others. Appointments to all levels of the judiciary should also have, as an objective, the achievement of equality between women and men.

### **Article 34 Decision on Appointment**

The decision to appoint a candidate to a judicial or prosecutorial post shall be made in accordance with article 14 and shall contain justification in writing.

**Article 35**  
**Announcement of Appointment Decision**

The Council shall inform all applicants, the relevant court or the prosecutor's office of its decision on appointment.

The Council shall post the decision on appointment in a public viewing area at its premises. The decision on appointment shall be dated on the day of posting.

The decision on appointment shall be published in the relevant official gazettes. The publication shall have only informative effect.

**Commencement of Official Function**

**Article 36**  
**Commencement of Official Function**

A person appointed to judicial or prosecutorial office shall commence official function as determined by the Council after consultation with the appointed person.

If the appointed person fails to commence official function for unjustified reasons within the period prescribed by the Council, the Council shall annul the decision on appointment. The Council shall either appoint another person to office from the pool of candidates in accordance with procedure or re-announce the position as vacant.

**Article 37**  
**Declaration of Office**

Before taking up their official function, judges of the Court of Bosnia and Herzegovina shall make a solemn declaration: "I solemnly declare that I shall perform the duty of judge in accordance with the Constitution of Bosnia and Herzegovina and laws of Bosnia and Herzegovina, 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 and the European Convention on Human Rights and Fundamental Freedoms".

Judges and prosecutors of Courts and Prosecutor's Office of Brcko District shall make the following solemn declaration: "I solemnly declare that I shall perform the duty of judge/prosecutor in accordance with the Constitution of Bosnia and Herzegovina, Statute of Brcko District and laws of Bosnia and Herzegovina and of Brcko District, 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 and the European Convention on Human Rights and Fundamental Freedoms"

The individual appointed to office shall make the solemn declaration before the President of the Council by attesting his signature to the declaration.

**CHAPTER VI - DISCIPLINARY LIABILITY OF JUDGES OF THE COURT OF BOSNIA AND HERZEGOVINA, APPELLATE COURT OF BRCKO DISTRICT, BASIC COURT OF BRCKO DISTRICT AND PROSECUTORS OF THE PROSECUTOR'S OFFICE OF BRCKO DISTRICT**

**Article 38**  
**General Provision on Liability for Disciplinary Offences**

A judge of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko

District and Prosecutor or deputy prosecutor of Prosecutor's Office of Brcko District shall be disciplined if he/she commits a disciplinary offence.

### **Article 39 Competence for Disciplinary Proceedings**

The Council, through its designated disciplinary bodies, shall be responsible for initiating all cases regarding potential disciplinary action against judges and prosecutors as referred to in Article 38, determining disciplinary liability, imposing disciplinary sanctions where appropriate and adjudicating any and all appeals on decisions rendered by the disciplinary bodies.

### **Article 40 List of Disciplinary Offences for Judges**

Disciplinary offences for judges as referred to in Article 38, shall include:

1. violations of the duty of impartiality;
2. acting with bias or prejudice while carrying out official duties due to a party's race, colour, sex, religion, ethnic background, national origin, sexual orientation or social and economic status;
3. a patent violation of the obligation of proper behaviour towards parties in a proceeding, their legal representatives, witnesses, civil servants or colleagues;
4. disclosure of secrets arising in the judicial function;
5. 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;
6. exploiting his/her position as a judge in order to obtain unjustified advantages for himself/herself or for other persons;
7. not disqualifying himself/herself from hearing a case when a conflict of interest exists;
8. professional negligence;
9. issuing decisions in patent violation of the law or persistent and unjustified violation of procedural rules;
10. recurrent and unjustified delays in issuing decisions or any other act related to the exercise of judicial functions, or any other repeated disregard of the duties of the judicial function;
11. engaging in inappropriate communications with any parties to a proceeding or their representatives;
12. enabling a person not authorised by law to perform judicial functions;
13. interfering in the jurisdictional activity of another judge or prosecutor, including agreeing or disagreeing with their actions or decisions in order to obstruct their activities or demean them;
14. if he/she is sentenced to imprisonment for a crime, or if he/she is convicted of a crime which makes him/her unfit for judicial function;
15. being engaged in activities that are incompatible with the judicial function;
16. failure to comply with decisions, orders or requests of the Council, including the failure to respond to an inquiry pursuant to a disciplinary matter;
17. if he/she deliberately 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;
18. failure to fulfill any mandatory training obligations or any other obligations imposed by law;
19. if he/she does not act in accordance with the decision on temporary transfer to another court;
20. behavior that demeans the dignity of office of judge; or
21. any other behaviour that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the judiciary.

### **Article 41 List of Disciplinary Offences for Prosecutors**

Disciplinary offences for prosecutors as referred to in Article 38, shall include:

1. violations of the duty of impartiality;

2. acting with bias or prejudice while carrying out official duties due to a party's race, colour, sex, religion, ethnic background, national origin, sexual orientation or social and economic status;
3. a patent violation of the obligation of proper behaviour towards the judge in a proceeding, any parties, their legal representatives, witnesses, civil servants or colleagues;
4. disclosure of secrets arising in the prosecutorial function;
5. 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;
6. exploiting his/her position as a prosecutor in order to obtain unjustified advantages for himself/herself or for other persons;
7. not disqualifying himself/herself from prosecuting a case when a conflict of interest exists;
8. instituting or initiating a criminal investigation or indictment that he/she knows, or should have known, is not supported by a grounded suspicion that the subject of the investigation or indictment committed a criminal offence;
9. professional negligence;
10. recurrent and unjustified delays in performing any acts related to the exercise of prosecutorial functions, or any other repeated disregard of the duties of the office of prosecutor;
11. engaging in inappropriate communications with the judge or any parties to a proceeding;
12. enabling a person not authorised by law to perform prosecutorial functions;
13. interfering in the jurisdictional activity of a judge or prosecutor, including agreeing or disagreeing with their actions or decisions in order to obstruct their activities or demean them;
14. if he/she is sentenced to imprisonment for a crime, or if he/she is convicted of a crime which makes him/her unfit for the prosecutorial function;
15. making any comment, while a proceeding is pending in any court, that might reasonably be expected to prejudice or interfere with a fair trial or hearing, or failing to take reasonable steps to maintain and ensure similar abstention on the part of the staff at the Prosecutor's Office subject to his/her authority;
16. failing to carry out the written order from a Prosecutor under whose authority they serve;
17. being engaged in activities that are incompatible with the prosecutorial function;
18. failure to comply with the decisions, orders or requests of the Council, including the failure to respond to an inquiry pursuant to a disciplinary matter;
19. if he/she deliberately 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;
20. failure to fulfill any mandatory training obligations or any other obligations imposed by law;
21. if he/she does not act in accordance with the decision on temporary transfer to another prosecutor's office;
22. behavior that demeans the dignity of office of prosecutor; or
23. any other behaviour that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the office of the Prosecutor.

## **Article 42**

### **List of Sanctions**

The Council may impose the following disciplinary sanctions:

1. A written warning;
2. A public reprimand;
3. A fine that decreases the offender's salary by up to thirty percent (30%), not to exceed six (6) months; and/or
4. Dismissal from office.

All rights and privileges under labor relations of a judge, president of court, prosecutor, or deputy prosecutor as referred to in Article 38, who is dismissed from office pursuant to a disciplinary proceeding, shall cease in accordance with the law regulating cessation of labor relations for governmental bodies.

**Article 43**  
**Disciplinary Bodies**

The Disciplinary bodies of the Council shall be:

- (1) the Disciplinary Prosecutor;
- (2) the First Instance Disciplinary Panel; and
- (3) the Second Instance Disciplinary Panel

The Council shall adopt rules of procedure governing the formation, membership and operation of the disciplinary bodies and the conduct of disciplinary proceedings consistent with the dictates of this law.

In all cases, the membership of the disciplinary bodies authorised to handle matters of judicial discipline shall be comprised of a majority of judges currently holding office.

In all cases, the membership of the disciplinary bodies authorised to handle matters of prosecutorial discipline shall be comprised of a majority of prosecutors currently holding office.

**Article 44**  
**Structure and Competence of Disciplinary Panels**

Disciplinary liability and the imposition of sanctions in the first instance shall be determined by the First Instance Disciplinary Panel, which shall be composed of three (3) members.

Members of the First Instance Disciplinary Panel do not have to be members of the Council.

Appeals from the decisions of the First Instance Disciplinary Panel shall be decided by the Second Instance Disciplinary Panel, which shall be composed of three (3) members. The Second Instance Disciplinary Panel shall be free to make its own determination as to appropriate sanctions, either more or less severe, should a finding of disciplinary liability be upheld by the panel.

Any panel members who participated in a case on the First Instance Panel shall not participate in the same matter before the Second Instance Disciplinary Panel.

Members of the Second Instance Disciplinary Panel must be members of the Council.

The First and Second Instance Disciplinary Panels shall be independent and shall have sole authority to adjudicate disciplinary matters. Decisions of the Second Instance Disciplinary Panel shall be final and binding and not subject to any administrative procedure or further judicial review, except as provided by this law.

In cases where the disciplinary sanction of dismissal is recommended by the Second Instance Panel, such recommendation must be referred to the full Council as a whole, which must confirm the decision by a majority vote under the applicable quorum provisions. If the Council does not confirm the sanction of dismissal, the Council may impose any other sanction provided for by this law.

**Article 45**  
**Appointment and Mandate of Members of Disciplinary Panels**

The President of the Council shall appoint the members of the First and Second Instance Disciplinary Panels consistent with the provisions of Articles 43 and 44.

Members shall serve for a term of one (1) year subject to completion of pending disciplinary proceedings.

**Article 46**  
**Disciplinary Prosecutors--Appointment, Competence and Mandate**

The President of the Council shall appoint a judge as Disciplinary Prosecutor for cases involving judicial discipline.

The President of the Council shall appoint a prosecutor as Disciplinary Prosecutor for cases involving prosecutorial discipline.

The Disciplinary Prosecutor and his/her staff shall not be members of the Council.

The Disciplinary Prosecutor shall be responsible for evaluating all complaints for legal sufficiency, initiating and presenting all cases of disciplinary violations to the disciplinary panels of the Council. The work of the Disciplinary Prosecutor shall be governed by the rules of procedure for disciplinary proceedings adopted by the Council.

Disciplinary Prosecutors shall serve for a term of one (1) year.

#### **Article 47 Initiating Disciplinary Proceedings**

A request for initiating disciplinary proceedings against a judge or a prosecutor can be filed by anyone, without specific formality, with the Disciplinary Prosecutor.

The Disciplinary Prosecutor must review every complaint to determine whether the complaint, after a careful and close examination, reveals a sufficient prima facie case that there has been a commission of a disciplinary offence by a judge or prosecutor to justify it being forwarded to the First Instance Disciplinary Panel.

If the Disciplinary Prosecutor finds that a complaint reveals a sufficient prima facie case for the commission of a disciplinary offence by a judge or a prosecutor, he/she must refer the matter to the First Instance Disciplinary Panel for adjudication.

#### **Article 48 Rights of Parties during Disciplinary Proceedings**

Throughout all disciplinary proceedings, the judge or prosecutor concerned shall have the following rights that must be guaranteed in the rules of procedure for disciplinary proceedings adopted by the Council:

- (1) the right to be duly notified of the allegations of the violation and the supporting evidence, along with the right to respond in writing or to have a verbal statement recorded in writing;
- (2) the right to a fair and public hearing within a reasonable time by an independent and impartial panel established by law. The press and public may be excluded from all or part of the hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the panel in special circumstances where publicity would prejudice the interests of justice;
- (3) the right to assert the privilege against self-incrimination and to appear at any hearing and defend against the allegations with legal counsel of choice;
- (4) the right that judgments shall be pronounced publicly; and
- (5) the right to appeal any adverse decisions made by the First Instance Disciplinary Panel to the Second Instance Disciplinary Panel.

All disciplinary procedures must be fair and transparent and any disciplinary measures imposed must be governed by the principle of proportionality.

#### **Article 49 Principles for Determining Sanctions**

Before pronouncing the sanctions for a disciplinary offence, the following aspects shall be taken into

consideration by the Disciplinary Panels:

- (1) the severity of the disciplinary offence committed and its consequences;
- (2) the degree of responsibility;
- (3) the circumstances under which the disciplinary offence was committed;
- (4) the previous work and behaviour of the offender;
- (5) any other circumstances that may affect the decision on the severity and type of disciplinary sanction; and
- (6) that the disciplinary sanction of dismissal shall only be used in cases where a serious disciplinary offence is found and the severity of the offence makes it clear that the offender is unfit to continue to hold his/her office.

**Article 50**  
**Statute of Limitations for Initiating Disciplinary Proceedings**

No disciplinary proceeding may be initiated against a judge or a prosecutor more than five (5) years after the date that the alleged violation occurred.

The Council shall not be able to initiate a disciplinary proceeding against a judge or a prosecutor more than two (2) years after the date upon which the Council received the initial complaint or information on the alleged violation.

**Article 51**  
**Statute of limitations for Conducting Disciplinary Proceedings**

Proceedings for determining disciplinary liability must be completed within one year from the date that the disciplinary proceeding was initiated, unless upon a showing of cause that an extension is justified.

**Article 52**  
**General Provisions on Recording and Publishing Final Disciplinary Decisions**

The Council shall maintain records on all pronounced disciplinary sanctions.

Disciplinary sanctions, other than written warnings, shall be published in the Official gazette of Bosnia and Herzegovina and the Official gazette of Brcko District respectively.

**CHAPTER VII - SUSPENSION OF JUDGES OR PROSECUTORS PENDING CRIMINAL, DISCIPLINARY OR DISMISSAL PROCEEDINGS**

**Article 53**  
**Mandatory Suspension**

The Council shall order the suspension from duty of any judge of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor or deputy prosecutors of Prosecutor's Office of Brcko District:

- (a) against whom criminal charges are brought by a competent prosecutor for a criminal act punishable by a prison sentence; or
- (b) if the judge or prosecutor is being held in pre-trial confinement.

**Article 54**  
**Discretionary Suspension**

The Council may order the suspension from duty of any judge or prosecutor as referred to in the previous article:

- (a) if a criminal investigation is initiated against the judge or prosecutor;

- (b) if a procedure for his/her dismissal has been initiated;
- (c) if a disciplinary proceeding has been initiated for a disciplinary violation;
- (d) if the performance of official functions is impaired because of mental, emotional, or physical condition; or
- (e) if the Council determines that disciplinary liability can not be properly adjudicated without suspension of the judge or prosecutor during the proceedings.

**Article 55**  
**Initiation of Suspension Proceedings**

The Council may suspend a judge or prosecutor as referred to in Article 53, paragraph 1 upon its own initiative, upon the request of the Disciplinary Prosecutor, or upon the request of the court president or prosecutor who has authority over the judge or prosecutor in question.

The relevant court president or prosecutor shall immediately, upon learning of any of the events listed in Articles 53 and 54, forward the information to the Council.

**Article 56**  
**Suspension Decisions and Appeals**

The decision on suspension from duty referred to in Articles 53 and 54 shall be taken by the First Instance Disciplinary Panel of the Council.

All appeals of decisions relating to suspensions shall be made to the Second Instance Disciplinary Panel of the Council.

The decision of the Second Instance Disciplinary Panel shall not be subject to any administrative procedure or further judicial review.

**Article 57**  
**Limits on Length of Suspension**

A judge or prosecutor, as referred to in Article 53 paragraph 1, shall not be suspended for a period exceeding six (6) months from the date of suspension without dismissal, disciplinary or criminal proceedings having been initiated during that period of time. Should a suspension exceed six (6) months and no proceedings for dismissal, disciplinary or criminal proceedings have been instituted, the suspension shall automatically become null and void immediately upon the expiration of the six-month period.

**CHAPTER VIII - INCOMPATIBILITY OF JUDICIAL OR PROSECUTORIAL FUNCTION WITH OTHER FUNCTIONS AND IMMUNITY**

**Incompatibility**

**Article 58**  
**General Prohibition against Incompatible Functions**

A judge of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor or deputy prosecutor of Prosecutor's Office of Brcko District, shall not engage in any function that is incompatible with, or could be seen to interfere with the fair and impartial execution of judicial or prosecutorial function or that would affect the independence or dignity of judicial or prosecutorial office, cast doubt upon his or her ability to act impartially, or demean judicial or prosecutorial office.

A judge, the Prosecutor, or a deputy prosecutor as referred to in the previous paragraph shall not be a member of or perform any duties in political party organs, or associations or foundations connected to political parties, and shall refrain from participating in political party activities of a public nature.

A judge, prosecutor, or deputy prosecutor as referred to in paragraph 1 shall not be a member of and, upon



gaining knowledge, must immediately resign from any organisation that practices invidious discrimination on the basis of race, colour, sex, sex orientation, religion, ethnic or national origin nor arrange to use the facilities of such an organization.

#### **Article 59**

##### **Prohibition against Performance of Public, Legal, or Other Functions**

A judge, prosecutor, or deputy prosecutor as referred to in Paragraph 1 of Article 58 shall not hold any other public office that would conflict with the performance of judicial or prosecutorial function, unless otherwise provided by law.

A judge, prosecutor, or deputy prosecutor as referred to in Paragraph 1 of Article 58 shall not be an attorney, notary, or perform other activities for remuneration, which conflict with the performance of judicial or prosecutorial function, unless otherwise provided by law. As an exception, a judge, prosecutor, or deputy prosecutor may engage in academic, scholarly, or similar activities that serve to educate the public and may be entitled to remuneration.

A judge, prosecutor, or deputy prosecutor as referred to in Paragraph 1 of Article 58 shall not be a member of an executive or supervisory board of public or private companies or other legal persons.

A judge, prosecutor, or deputy prosecutor as referred to in Paragraph 1 of Article 58 shall not perform any other duties that may interfere with the performance of judicial or prosecutorial function.

#### **Article 60**

##### **Disciplinary Liability**

A judge, prosecutor, or deputy prosecutor as referred to in Paragraph 1 of Article 58 who violates the provisions of this law governing the incompatibility of judicial or prosecutorial function shall be subject to disciplinary action.

#### **Article 61**

##### **Reporting of Activities to the Council**

If a court president or prosecutor believes that the activities of a judge of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor or deputy prosecutor of Prosecutor's Office of Brcko District are not compatible with judicial or prosecutorial function, the judge, prosecutor, or deputy prosecutor shall be informed and the court president or prosecutor shall refer the matter to the Council, which shall issue a binding decision. The Council's rules of procedure shall regulate proceedings.

Judges, prosecutors, and deputy prosecutors as referred to in the previous paragraph shall file an annual financial statement with the Council reporting the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration. The financial statement shall include information about spouses and children who are part of the same household and hold shares in or participate in the management of private or public corporations and associations, including political parties. The Council may request additional relevant information, which shall be included on a standard form prepared by the Council.

#### **Immunity**

#### **Article 62**

##### **Immunity of Judges, Prosecutors, and Deputy Prosecutors**

A judge of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor or deputy prosecutor of Prosecutor's Office of Brcko District shall not be prosecuted, arrested, or detained nor be subject to civil liability for opinions expressed or decisions taken within the scope of official duties.

In the event that a judge, prosecutor, or deputy prosecutor as referred to in the previous paragraph asserts

immunity, the Council shall have the authority to lift his or her immunity from criminal or civil liability. The Council's rules of procedure shall regulate proceedings.

The privilege of immunity shall not bar or delay the criminal or civil investigation conducted in accordance with law, of a matter concerning a judge, prosecutor, or deputy prosecutor.

## **CHAPTER IX - TERMINATION OF OFFICE OF JUDGES OF THE COURT OF BOSNIA AND HERZEGOVINA, APPELLATE COURT OF BRCKO DISTRICT, BASIC COURT OF BRCKO DISTRICT AND OF THE PROSECUTOR OR DEPUTY PROSECUTOR OF PROSECUTOR'S OFFICE OF BRCKO DISTRICT**

### **Article 63 Termination of Mandate to Hold Office**

The term of judges of the Court of Bosnia and Herzegovina, Appellate Court of Brcko District, Basic Court of Brcko District and Prosecutor or deputy prosecutor of Prosecutor's Office of Brcko District shall terminate:

1. in the case of judges and deputy prosecutors, upon reaching mandatory retirement age;
2. in the case of prosecutors, upon reaching mandatory retirement age or upon expiration of the period for which he/she has been appointed;
3. upon resignation;
4. upon removal by the Council as a consequence of disciplinary proceedings;
5. if it has been proven by the medical documentation that he/she has permanently lost the working capacity to perform his judicial or prosecutorial function;

In case a judge, Prosecutor or deputy prosecutor as referred to in the previous paragraph reaches the mandatory retirement age his/her mandate shall automatically terminate. The mandate of a judge, prosecutor or deputy prosecutor as referred to in paragraph 1 under subparagraph (3) of the first paragraph shall expire upon receipt by the Council of a written resignation statement and under subparagraphs (4) and (5) shall expire upon determination of the Council.

The term of a president of a court as referred to in paragraph 1 shall terminate upon the expiry of the period for which he/she has been appointed.

### **Article 64 Temporary Extension of Mandate**

The president of the Court of Bosnia and Herzegovina and a president of a court or the Prosecutor of the Brcko District whose mandate has expired due to the expiry of the period for which he/she has been appointed shall continue exercising the rights and duties of such office until a new president or prosecutor is appointed.

In case of the termination of the term of office of a court president, as referred to in paragraph 1, he/she shall nevertheless continue to perform a judicial function in the same court, subject to Article 63.

### **Article 65 Mandatory Retirement Age**

Mandatory retirement age for judges of the Court of Bosnia and Herzegovina and Appellate Court of Brcko District shall be age 70 and for judges of Basic Court of Brcko District shall be age 67.

Mandatory retirement age for prosecutor and deputy prosecutors at Prosecutors' Offices of Brcko District shall be age 67.

## **CHAPTER X - TRANSITIONAL AND FINAL PROVISIONS**

## **Transitional Provisions**

### **Article 66 Initial Appointments of the Council Members**

In respect of a transitional period until 31 December 2003 the members of the Council who are not members of the Entity Councils shall be appointed by the High Representative.

The High Representative shall also appoint international members to serve as the President and the Vice-President during the transitional period.

### **Article 67 Competence During the Transitional Period**

Until 31 December 2003 the Council shall not be obligated to exercise its competence in the following matters: (1) proposing the number of judicial and prosecutorial posts, (2) obligations related to budgets of courts and prosecutor's offices, (3) annual budget responsibilities, and (4) appointment of an executive director.

Until 31 December 2003 all decisions of the Council shall require the agreement of at least one half of the number of the international members.

### **Article 68 Applicability of the Law to the Brcko District Courts and Prosecutor's Office**

Until 31 December 2003, this Law shall not apply to the judges of the Appellate Court and Basic Court of Brcko District and to the Prosecutor and deputy prosecutors of the Prosecutor's Office of Brcko District, by which time relevant provisions contained in the laws of Brcko District shall be brought into harmony with this law. Provisions that are inconsistent with this law shall cease to be valid on 1 January 2004.

### **Article 69 Secretariat During the Transitional Period**

During the transitional period the Independent Judicial Commission shall support the work of the Council and may serve as the Disciplinary Prosecutor in disciplinary matters before the Council.

## **Final Provisions**

### **Article 70 Definition**

The term prosecutor or prosecutorial shall include deputy public prosecutor unless such a construction would be manifestly contrary to the law's intent.

### **Article 71 Applicability of the Law**

When the law establishing the Office of the Prosecutor for Bosnia and Herzegovina comes into force, all functions of selection, appointment, discipline and training of prosecutors, deputy prosecutors and assistant prosecutors in that Office shall be carried out by the Council in accordance with provisions in Rules of Procedure.

### **Article 72 Abolishment of Former Commission**

The competence of the Commission for the Nomination of Judges to the Court of Bosnia and Herzegovina, established under the Law on the Court of Bosnia and Herzegovina (Official Gazette of Bosnia and

Herzegovina No 29/00), to recommend judges to the Court of Bosnia and Herzegovina is hereby abolished. The Commission shall exercise its competence under the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No 23/01, 07/02, 09/02 and 23/02) until 1 November 2002, at which time the Commission shall dissolve.

**Article 73**  
**Repealing of Provisions**

The provisions of Articles 3., 4., 5., 6., 7, 8, 20 and 22 (2) (a), (f) and (g) of the Law on the Court of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No.29/00) shall be repealed as of the entry into force of this law.

**Article 74**  
**Publication and Entry into Force of the Law**

This Law shall be published in the Official Gazette of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, Official Gazette of Republika Srpska and Official Gazette of Brcko District and shall enter into force on the eight day after publication in the Official Gazette of Bosnia and Herzegovina.