

CODE OF ETHICS FOR JUDGES¹

INTRODUCTION

The purpose of this code is to formulate the principles of ethical conduct of judges in Bosnia and Herzegovina. It is designed to assist judges with the difficult ethical and professional issues which confront them and to assist members of the executive and legislative branches of government, and the public in general, to better understand and support the judiciary. The code is aligned with the Guidelines of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina on the Prevention of Conflict of Interest in the Judiciary.

Every citizen of BiH has a vested interest in an independent judiciary. A judge must be free to decide honestly and impartially on the basis of the law and the evidence, without any pressure or influence. Judges have a duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges.

ETHICAL PRINCIPLES

1. INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law. A judge shall exercise the judicial function independently in accordance with the law and their interpretation of the facts upholding judicial independence both in its individual and institutional aspects.

Application:

1.1 In performing his or her duties, a judge shall be independent from legislative and executive branches, public, media and other institutions in society, as well as from the parties to a proceeding.

1.2 A judge shall be free from any inappropriate connections with the executive and legislative branches of government, and shall appear to a reasonable observer to be free from such connections and influence.

1.2.a A judge may participate in standing and temporary bodies established by executive or legislative branches, but only if such bodies deal with the issues of law and legal system. Such participation of a judge should be without remuneration, unless otherwise provided for in a separate law.

¹ Official Gazette of BiH, 13/06, 24/15 and 94/18.

The text in **bold** is the amendment to the Code published in the Official Gazette of BiH, 24/15 which entered into force on 24 March 2015.

The underlined text is the text of the amendments to the Code published in the Official Gazette of BiH, 94/18 which entered into force on 29 December 2018.

Note: the integral text is used only internally and may not be cited for official purposes.

1.2.b When deciding whether to accept participation in the bodies established by executive or legislative branches, a judge should ensure that their participation casts no doubt upon their impartiality, political neutrality or independence, bearing in mind the field of work of that body, its composition and manner of work.

1.2.c A judge should not be a member of organizations associated with the law enforcement agencies, including selection and appointment boards and committees, panels for dismissal of police chiefs, police boards, and boards for handling citizens' complaints against the police work.

1.3 In performing judicial duties, a judge shall be independent of judicial colleagues.

1.3.a A judge may consult about performance of their duties, legal or practical matters with other judicial office holders or staff of judicial institutions, bearing in mind that during such consultations they do not disclose information on pending cases.

1.4 A judge shall encourage and uphold safeguards in order to maintain and enhance the institutional and operational independence of the judiciary.

1.5 A judge shall promote high standards of judicial conduct in order to reinforce public confidence in the judiciary.

1.6 A judge shall reject any attempt to influence his/her decisions.

2. IMPARTIALITY

A judge shall perform his or her judicial duties and will treat all parties to legal disputes without favor, bias or prejudice. Impartiality applies not only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public and parties to the case in impartiality of the judge and judiciary as a whole.

2.2 A judge shall conduct himself or herself in his/her personal or business affairs as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.2.a In evaluating reasons for recusal from a case, in order to avoid every perceived, potential of actual conflict of interest, a judge should take into account in particular all of their previous duties and activities performed prior to taking the judicial office.

2.2.b A judge who intends to terminate their judicial function or who knows that their function will be terminated by force of law or by the HJPC's decision, shall not use their judicial function

or judicial resources to promote their future activities and in this regard, they shall bear in mind the potential existence of grounds for recusal.

2.2.c If a judge knows that his/her family member or other person close to him/her has a financial, political or other interest in a case that he/she adjudicates, the judge should request to be recused. This implies that a judge should take reasonable steps to be informed about financial, political or other interests of his/her family members.

2.2.1. A judge is free to participate in civic, charitable and religious activities subject to the following considerations:

(a) A judge shall avoid any activity or association that could reflect adversely on their impartiality or interfere with the performance of judicial duties;

(b) A judge shall not lend the prestige of judicial office to solicit funds unless such is for judicial or charitable purposes;

(c) A judge shall avoid any involvement in causes that are likely to result in litigation;

(d) A judge should not give legal or investment advice.

2.2.2. A judge should refrain from membership in groups or organizations or participation in public discussion which, in the public opinion, would undermine confidence in the impartiality of the judge and judiciary as a whole.

2.2.2.a When deciding to join a non-governmental organization, a judge should carefully consider such organization's goals, activities, sources of funding, management, the diversity of its members, their interests, associations with the governmental bodies, judicial institutions, political organizations and make sure that such organization does not discriminate against anyone on any basis.

2.2.3. A judge shall not:

(a) be a member of political parties;

(b) attend political gatherings or events;

(c) contribute to political parties or campaigns;

(d) take part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice;

(e) be a member of the election commissions or otherwise participate in their work;

(f) sign petitions, except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice.

2.2.4. A judge should refrain from the conduct that may affect public perception that he/she is politically active.

2.2.5. A judge should refrain from all activities that could be perceived by the public as support to political activity of their close family members.

2.3 A judge shall, in his or her personal relations with individual members of the legal profession avoid situations which might reasonably raise doubt as to his or her impartiality.

2.3.a A judge must be careful that their socializing with other legal professionals, including lawyers and notaries, are not perceived among the parties to the proceedings and general public as conflict of interest, and shall notify the parties to the proceedings about their friendly relations with either party to the proceedings.

2.4 A judge shall not make any comment in public or otherwise regarding any case that he/she is in charge of or case that he/she may take charge of that might reasonably be expected to raise doubt as to his/her impartiality or that might constitute an inappropriate influence.

2.4.a A judge may publicly express their positions and opinions for the purpose of advancing law and legal system and make comments about social occurrences, but bearing in mind the principles of impartiality and independence of judicial office, and in deciding whether to speak publicly, a judge should take the following factors into account:

a) whether the matters he/she wishes to speak about concern the law, legal system and judiciary;

b) whether his/her public statement will contribute to educating and providing better information for the public about that topic,

c) whether those issues are related to the professional community or just him/her alone, and

d) whether it would be better to address those issues through professional associations.

2.4.b For their appearances in public or commercial media, a judge should not accept any payment.

2.4.c In their media appearances, a judge shall not promote businesses or commercial activities, or use the prestige of their position to promote other legal or natural persons or political parties.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which it may appear to public that the judge is unable to decide the matter impartially or in which a judge finds that he/she is unable to decide the matter impartially.

2.6. A judge should be mindful that their communication with the parties to the proceedings and other persons raises no doubt as to their independence and impartiality and must refuse every attempt by the parties to the proceedings to have an *ex parte* communication with them.

keeping this prohibition in mind even when it appears that *ex parte* communication would be more efficient and practical.

2.7. A judge should make reasonable efforts, including providing appropriate supervision, to ensure that guidelines on *ex parte* communication are not violated by the staff of the judicial institution in which he/she performs his/her duties.

2.8 A judge shall appoint expert witnesses and experts impartially and on the basis of their expertise, without nepotism or favoritism and also approve a reasonable fee to such appointed persons in accordance with the value of the services provided.

3. EQUALITY

A judge shall be aware of, and understand diversity in society especially regarding race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like matters and shall ensure equal respect to all persons with whom he/she professionally interacts in the due performance of the judicial office.

Application:

3.1 A judge shall not, in the performance of judicial duties, by words or conduct, manifest favoritism or prejudice towards any person or group.

3.2 A judge shall carry out his/her judicial duties in the way to ensure equal treatment for all participants in the proceedings.

3.3 A judge shall not permit court staff or others subject to the judge's control to differentiate between participants to a proceeding, without reasonable ground.

4. INTEGRITY AND PROPRIETY

A judge shall act with moral uprightness and esteem and in accordance with the dignity of the judicial function.

Application:

4.1. As a subject of constant public scrutiny, a judge shall freely and willingly accept any restrictions arising from the judicial office he/she holds.

4.2 The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary.

4.3 A judge, like any other citizen, is entitled to freedom of expression, belief, religion, association and assembly, but in exercising such rights, a judge shall always conduct himself

or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.4 A judge shall not display any religious, political, national or other affiliation when discharging his or her duties.

4.5. A judge shall not allow that his or her financial interests or interests of his or her family members have adverse effect on the dignity of his or her judicial duties.

4.5.a In disposing of the property they own as sole owners or jointly with their spouses, a judge shall be mindful to avoid any perceived, potential or actual conflict of interest and all situations that may require their recusal, such as leasing their property as office premises to any government institutions, notaries, lawyers and other persons performing activities that are related to the work of the judiciary.

4.6 A judge shall not allow his/her family, social or other relationships to improperly influence the judge's judicial conduct and judgment.

4.6.a A judge should refrain from visiting places which are suspected sites of criminal activities or might be visited by persons potentially involved in criminal activities.

4.7 A judge shall not use the prestige of the judicial office, nor shall the judge permit others to use it to advance their private interests.

4.7.a A judge shall not use their position to promote business entities, promote investments in business ventures, or collect funds for the activities of business entities.

4.7.b A judge should not use his/her influence among peers and in society to ensure employment for his/her family member with any legal or natural person, and in particular in another judicial institution. This also includes giving of recommendations.

4.7.c A judge shall not in any way participate in the activities of his/her family member to raise funds in their business, political, civic or other activities.

4.7.d A judge should warn his/her family members against using her/his name and reputation in their business, financial or other activities.

4.8 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose during and after discharge of the judicial office.

4.9 Mindful that the judicial duties of a judge take precedence over all other activities, a judge may engage in other non-legal activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with this Code, e.g.:

(a) write, lecture, teach and participate in scientific, cultural and professional activities concerning the law, the legal system, the administration of justice or related matters;

(b) take part in public debates concerning the law, the legal system, the administration of justice or related matters;

(c) serve as a member of government commissions, committees or advisory bodies, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge.

4.9.a Before accepting any educational or professional engagements, a judge should take into consideration the information about the organizer and participants of such training, to avoid potential conflict of interest.

4.9.b Through their educational and professional activities a judge may contribute to improving the knowledge and skills of lawyers. In doing so, a judge should not disclose the specific information on parties involved or judicial office holders seized of cases.

4.10 A judge may form or join associations of judges or participate in other organizations representing the interests of judges.

4.11 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties, nor shall a judge knowingly permit such conduct by court staff or others under his supervision during and after performance of their judicial duties.

4.11.a A judge should inform their close family members about the rules on receiving prohibited gifts or other benefits.

4.12 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

4.13 A judge shall, in the performance of his/her judicial duties in the courtroom, wear the prescribed robe and shall be dressed appropriately for all other occasions, and shall also ensure that other judicial staff under his or her supervision comply with the requirement of being dressed appropriately in the courtroom and for all other occasions.

5. COMPETENCE AND DILIGENCE

A judge shall maintain a high level of professionalism and execute his/her judicial duties in a professional, conscientious, diligent and efficient manner.

Application:

5.1 The judicial duties of a judge take precedence over all other activities.

5.2 A judge shall devote his/her professional activity to judicial duties, which include not only the performance of judicial functions, but also other tasks relevant to the operations of the court.

5.3 A judge shall take reasonable steps to maintain and enhance his/her knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

5.4 A judge shall keep himself/herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

5.5 A judge shall perform all judicial duties efficiently, fairly and with reasonable promptness.

5.6 A judge shall perform all judicial duties with patience, dignity and fairness in relation to the participants to a proceeding, as well as in relation to individuals with whom the judge has professional dealings and shall demand similar conduct from legal representatives, court staff and others under his/her supervision.

5.7 A judge should regularly attend trainings on judicial ethics and integrity.