

# CODE OF PROSECUTORIAL ETHICS<sup>1</sup>

## INTRODUCTION

The purpose of this code is to formulate the principles for ethical conduct for prosecutors in Bosnia and Herzegovina. It is designed to assist prosecutors 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.

The prosecutors play a crucial role in the administration of criminal justice and freedom to decide on the basis of the law and the evidence, and thus enhance the public confidence in independence of the judiciary of Bosnia and Herzegovina.

## ETHICAL PRINCIPLES

### 1. INDEPENDENCE

The independence of the judicial system is a pre-requisite to the rule of law. A prosecutor shall exercise the prosecutorial function independently on the basis of the law and their interpretation of the facts upholding judicial independence both in its individual and institutional aspects.

#### **Application:**

**1.1** A prosecutor shall be independent in his/her judgment and in his/her actions should comply with the Constitution and the laws.

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

**1.2.a** A prosecutor 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 prosecutor should be without remuneration, unless otherwise provided for in a separate law.

**1.2.b** When deciding whether to accept participation in the bodies established by executive or legislative branches, prosecutor a should ensure that their participation casts no doubt upon

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<sup>1</sup> 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, 32/15 which entered into force on 21 April 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.*

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 prosecutor should not be a member of organizations associate 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 A prosecutor shall encourage and uphold safeguards in order to maintain and enhance the institutional and operational independence of the judiciary.

1.3.a A prosecutor 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 prosecutor shall promote high standards of prosecutorial conduct in order to reinforce public confidence in the judiciary.

1.5 A prosecutor shall reject any attempt to influence his/her decisions.

## **2. IMPARTIALITY**

A prosecutor shall perform his or her prosecutorial duties without favor, bias or prejudice, honoring the presumption of innocence. Impartiality applies not only to the prosecutorial decisions but also to the process by which the decisions are made.

### **Application:**

2.1 A prosecutor shall ensure that his or her conduct, both in and out of prosecutor's office, 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 prosecutor 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 prosecutor to be disqualified.

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

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

request to be recused. This implies that a prosecutor should take reasonable steps to be informed about financial, political or other interests of his/her family members.

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

(a) A prosecutor shall avoid any activity or association that could reflect adversely on his/her impartiality or interfere with the performance of prosecutorial duties;

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

(c) A prosecutor should not give legal or investment advice.

**2.2.2.** A prosecutor 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 prosecutor.

**2.2.2.a** When deciding to join a non-governmental organization, a prosecutor 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 prosecutor shall not:

(a) be a member of political parties;

(b) attend political gatherings and 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 prosecutor's offices, 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 prosecutor's offices, the independence of the judiciary or fundamental aspects of the administration of justice.

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

**2.2.5.** A prosecutor 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 prosecutor 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 prosecutor 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 prosecutor 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 prosecutor 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 prosecutor 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 prosecutor should not accept any payment.

**2.4.c** In their media appearances, a prosecutor should 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 prosecutor shall disqualify himself or herself from participating in any proceedings in which it may appear to public that the prosecutor is unable to decide the matter impartially or if a prosecutor finds that he/she is unable to decide the matter impartially.

**2.6.** A prosecutor should be mindful that his/her 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 prosecutor 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 prosecutor 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 prosecutor 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 causes, and shall ensure equal respect to all persons with whom he/she professionally interacts in the due performance of the prosecutorial office.

#### **Application:**

**3.1** A prosecutor shall not, in the performance of prosecutorial duties, by words or conduct, manifest bias or prejudice towards any person or group and shall ensure equal treatment to all participants to a proceeding.

**3.2** A prosecutor shall not knowingly permit staff or others subject to the prosecutor's control to differentiate between participants to a proceeding, without reasonable ground.

### **4. INTEGRITY AND PROPRIETY**

A prosecutor shall act with moral uprightness and esteem and in accordance with the dignity of the prosecutorial office.

#### **Application:**

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

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

**4.3** A prosecutor, like any other citizen, is entitled to freedom of expression, belief, religion, association and assembly, but in exercising such rights, a prosecutor shall always conduct himself or herself in such a manner as to preserve the dignity of the prosecutorial office and the impartiality and independence of the judiciary.

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

**4.5.** A prosecutor 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 prosecutor 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 prosecutor shall not allow the prosecutor's family, social or other relationships to improperly influence the prosecutor's conduct and judgment.

**4.6.a** A prosecutor 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 prosecutor shall not use the prestige of the prosecutorial office, nor shall he/she permit others to use it to advance their personal interests.

**4.7.a** A prosecutor shall avoid using their position to promote business entities, promote investments in business ventures, or collect funds for the activities of business entities.

**4.7.b** A prosecutor 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 prosecutor should 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 prosecutor 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 prosecutor in the prosecutor's prosecutorial capacity shall not be used or disclosed by the prosecutor for any other purpose, during and after discharge of his/her prosecutorial office.

**4.9** Mindful that the prosecutorial duties of a prosecutor take precedence over all other activities, a prosecutor may engage in other non-legal activities, if such activities do not detract from the dignity of the prosecutorial office or otherwise interfere with the performance of prosecutorial 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;

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

(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 prosecutor.

**4.9.a** Before accepting any educational or professional engagements, a prosecutor 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 prosecutor may contribute to improving the knowledge and skills of lawyers. In doing so, a prosecutor should not disclose the specific information on parties involved or judicial office holders seized of cases.

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

4.11 A prosecutor and members of the prosecutor'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 prosecutor in connection with the performance of prosecutorial duties, nor shall a prosecutor knowingly allow such conduct by the prosecutorial staff and others under his supervision during and after performance of the prosecutorial office.

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 prosecutor 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 prosecutor in the performance of prosecutorial duties or otherwise give rise to an appearance of partiality.

4.14 A prosecutor shall, in the performance of his/her prosecutorial duties in the courtroom, wear the prescribed robe and shall be dressed appropriately for all other occasions, and shall also ensure that other prosecutorial 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 prosecutor shall maintain a high level of professionalism and execute his/her prosecutorial duties in a professional, conscientious, diligent and efficient manner.

### **Application:**

5.1 The prosecutorial duties of a prosecutor take precedence over all other activities.

5.2 A prosecutor shall devote his/her professional activity to prosecutorial duties, which include not only the performance of prosecutorial functions, but also other tasks relevant to the operations of the prosecutor's office.

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

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

**5.5** A prosecutor shall perform all prosecutorial duties efficiently, fairly and with reasonable promptness.

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

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