

# **LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF THE REPUBLIKA SRPSKA**

**May 23, 2002**

## **CHAPTER I. GENERAL PROVISIONS**

### **Establishment of High Judicial and Prosecutorial Council of Republika Srpska**

#### **Article 1 Establishment**

The High Judicial and Prosecutorial Council of Republika Srpska (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**

Republika Srpska 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**

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

The role of the Council shall be as the autonomous constitutional organ of the judicial power within Republika Srpska with the tasks of ensuring the maintenance of an independent, impartial and professional judiciary, and ensuring the provision of a professional and efficient court system and prosecutorial service.

## **CHAPTER II. MEMBERS AND ORGANIZATION OF THE COUNCIL**

### **Membership**

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

The Council shall have members, as follows:

- a judge of the Supreme Court of Republika Srpska, elected by all the judges of the Court;
- a public prosecutor of the Public Prosecutor's Office of Republika Srpska elected by the Public Prosecutor of the Republic and deputy public prosecutors in the Office;
- one judge, either from a district court or a basic court, elected by the Association of Judges and Prosecutors of Republika Srpska;
- one public prosecutor or deputy public prosecutor, either from a district public prosecutor's office or from a basic public prosecutor's office, elected by the Association of Judges and Prosecutors of Republika Srpska;
- a minor offence court judge elected by the Association of Minor Offence Court Judges of Republika Srpska;

- an attorney elected by the Bar Association of Republika Srpska;
- a person of high moral character and integrity appointed by the President of Republika Srpska; and
- the members of the High Judicial and Prosecutorial Council established under the Constitution and laws of the Federation of Bosnia and Herzegovina.

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 shall serve for a period of four years and shall be eligible to serve one consecutive term only.

If a member's mandate terminates under Article 7 prior to the expiry of his/her term of office, a new member shall be elected or appointed as a replacement and shall serve the remaining term of office. The person shall be eligible to serve one additional full-term after completing the remaining term of office.

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

The mandate of a member 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 public 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 election or 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 appointment 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 President of Republika Srpska, 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 or appoint a new member, the President of the Council shall notify the body responsible for the election or appointment of the new member. The Council shall notify the relevant body no later than 30 days after the termination of mandate.

## **Article 10 Leave of Absence**

A member who is a judge or a public prosecutor shall be entitled to a leave of absence from a court or public prosecutor's office in order to perform official duties on behalf of the Council. The member shall be entitled to continue to receive salary and other emoluments from the court or public prosecutor's office.

The Council shall decide on such issues as may arise under the previous paragraph hereof, including issues as to the necessity for and the period of any absence.

## **Article 11 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 12 President and Vice-President of the Council**

The President and Vice-President of the 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 13 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 14**  
**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, public prosecutors, or other experts.

**Article 15**  
**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 this 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 16**  
**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 17**  
**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 18**  
**Competence**

The Council shall have the following competence:

1. selection and appointment of judges, lay judges, reserve judges, public prosecutors and deputy public prosecutors;
2. appointment of the presidents of the courts;
3. proposing candidates for appointment by the relevant constitutional authority to the Constitutional Court of Republika Srpska and the Constitutional Court of Bosnia and Herzegovina;
4. supervising the advanced professional training of judges and public prosecutors and advising the Center for Judicial and Prosecutorial Training of Republika Srpska in its adoption of programs of advanced professional training for judges and public prosecutors;
5. determining the minimum amount of advanced professional training to be undertaken by every judge and public prosecutor each year;
6. determining the induction training requirements for candidates for judicial and public prosecutorial office and supervising the provision of such training;
7. considering the annual report of the Steering Board of the Judicial and Prosecutorial Training Center of Republika Srpska;

8. deciding on issues of incompatibility of other functions performed by judges and public prosecutors and also as to their immunity;
9. deciding on the transfer of judges and public prosecutors to another court or public prosecutor's office unless otherwise provided by law;
10. receiving the complaints against judges and public prosecutors;
11. initiating and conducting inquiries and disciplinary proceedings, determining disciplinary liability and imposing disciplinary sanctions as well as suspension of judges, lay judges, public prosecutors and deputy public prosecutors and deciding upon appeals in disciplinary proceedings;
12. ruling on complaints lodged by a judge or a public prosecutor 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;
13. proposing the number of judges, public prosecutors and deputy public prosecutors of a particular court or of a public prosecutor's office after soliciting an opinion or upon the initiative of a president of the respective court or a public prosecutor and after consultation with the relevant budgetary authority, to the National Assembly of Republika Srpska;
14. collecting information and maintaining the documentation on the professional status of judges, public prosecutors, and deputy public prosecutors, including their date of appointment and termination of function and statistical information relevant to their work performance;
15. providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, and initiating the adoption of relevant legislation;
16. making budget proposals for all courts and public prosecutors offices in Republika Srpska in consultation with relevant authorities, presenting these budget proposals to the government and National Assembly and monitoring the execution of these budgets to ensure adequate and continuous funding of all judicial and public prosecutorial bodies in Republika Srpska;
17. deciding on the appointment of the Executive Director and other professional and administrative staff of the Council; and
18. exercising other competence as determined by this or another law.

### **Article 19** **Courts and Public Prosecutor's Offices**

The Council shall have the competence referred to in Article 18 hereof over the following courts and public prosecutor's offices:

- Supreme Court of Republika Srpska;
- District and Basic Courts in Republika Srpska;
- Minor Offence Courts in Republika Srpska;
- Public Prosecutor's Office of the Republic;
- District and Basic Public Prosecutor's Offices in Republika Srpska.

### **Article 20** **Obligation to Comply with Inquiry**

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

### **Annual Budget and Report**

### **Article 21** **Annual Budget and Report**

The Council shall adopt and present an annual budget proposal for its operations to the National Assembly of Republika Srpska 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 National Assembly of Republika Srpska for information. The report shall be available to the public.

## **CHAPTER IV. REQUIREMENTS AND MANDATE TO HOLD OFFICE**

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

#### **Article 22 Basic Requirements**

In order to qualify for appointment to judicial or public prosecutorial office, 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 18.

#### **Article 23 Professional Standing**

Judges, public prosecutors, and deputy public prosecutors shall be individuals possessing integrity, high moral standing, and demonstrated professional ability with the appropriate training and qualifications.

### **Judges and Court Presidents**

#### **Article 24 Constitutional Court**

Judges of the Constitutional Court shall have a minimum of eight (8) 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. Professors and assistant professors of faculties of law in Bosnia and Herzegovina in the fields of constitutional law, criminal law or procedure, civil law or procedure, administrative law, commercial law, or family law are eligible for appointment to the Constitutional Court 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 Constitutional Court, shall have a minimum of ten (10) 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 25 Supreme Court**

Judges of the Supreme Court shall have a minimum of eight (8) years of practical experience as a judge, public prosecutor, deputy public 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 supreme court, shall have a minimum of ten (10) years of practical experience and shall have proven management and leadership skills relevant to the operation of this courts. The president shall have a mandate of six (6) years and shall be eligible for re-appointment.

#### **Article 26 District Courts**

Judges of the district courts shall have a minimum of five (5) years of practical experience as a judge, public prosecutor, deputy public 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 respective district 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 these courts. The president shall have a mandate of six (6) years and shall be eligible for re-appointment.

#### **Article 27 Basic Courts**

Judges of the basic courts shall have a minimum of three (3) years of practical experience as a judge, public prosecutor, deputy public 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 respective basic court, shall have a minimum of five (5) years of practical experience and shall have proven management and leadership skills relevant to the operation of these courts. The president shall have a mandate of four (4) years and shall be eligible for re-appointment.

#### **Article 28 Minor Offence Courts**

Judges of the first instance and second instance minor offence courts shall have a minimum of one (1) year and four (4) years, respectively, of practical legal experience after having passed the bar examination and shall be appointed for life subject to resignation, mandatory retirement age and removal for cause.

Presidents of first instance and second instance minor offence courts shall be from among judges appointed to those courts, shall have a minimum of four (4) years of practical experience and shall have proven management and leadership skills relevant to the operation of these courts. Presidents of minor offence courts shall have a mandate of four (4) years and shall be eligible for re-appointment.

#### **Public Prosecutors and Deputy Public Prosecutors**

#### **Article 29 Public Prosecutor's Office of the Republic**

The Public Prosecutor of Republika Srpska shall have a minimum of ten (10) years of practical experience as a judge, public prosecutor, deputy public prosecutor, attorney, or other comparable legal experience after having passed the bar examination, shall have proven management and leadership skills relevant to the operation of this public prosecutor's office. The public 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 public prosecutors shall have a minimum of eight (8) years of practical experience as a judge, public prosecutor, deputy public prosecutor, attorney, or other legal experience after having passed the bar

examination. A deputy public prosecutor's mandate shall be unlimited; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

**Article 30**  
**District Public Prosecutor's Offices**

District public prosecutors shall have a minimum of seven (7) years of practical experience as a judge, public prosecutor, deputy public 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 these public prosecutor's offices. The public 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 public prosecutors shall have a minimum of five (5) years of practical experience as a judge, public prosecutor, deputy public prosecutor, attorney, or other legal experience after having passed the bar examination. A deputy public prosecutor's mandate shall be unlimited; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

**Article 31**  
**Basic Public Prosecutor's Offices**

Basic public prosecutors shall have a minimum of five (5) years of practical experience as a judge, public prosecutor, deputy public 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 these public prosecutor's offices. The public prosecutor shall have a mandate of four (4) 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 public prosecutors shall have a minimum of two (2) years of practical experience as a judge, public prosecutor, deputy public prosecutor, attorney, or other legal experience after having passed the bar examination. A deputy public prosecutor's mandate shall be unlimited; however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

**Reserve and Lay Judges**

**Article 32**  
**Reserve Judges**

Reserve judges shall meet the professional requirements of judges of the court to which they would be assigned.

**Article 33**  
**Lay Judges – Requirements and Mandate**

This article shall apply to lay judges appointed to courts that fall within the scope of this law.

In order to serve as a lay judge, an individual shall satisfy the following requirements:

- (a) be a citizen of Bosnia and Herzegovina,
- (b) be at least twenty-five (25) years of age at the time of application, and
- (c) have a reputation for high moral character and integrity.

For the adjudication of matters involving juveniles, a lay judge shall have appropriate professional qualifications or experience involving juveniles.

Lay judges shall have a mandate of three (3) years and be eligible for re-appointment. The mandate shall be subject to resignation, mandatory retirement age and removal for cause. A lay judge shall finish participation in a prior case before a court after the expiration of mandate, resignation or upon reaching mandatory retirement age, if necessary to ensure resolution of the case.

## **CHAPTER V. APPOINTMENT**

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

#### **Article 34 Appointment Procedure**

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

#### **Article 35 Public Announcement**

A public announcement of vacant positions, conducted by the Council, shall precede the appointment of judges, including court presidents, public prosecutors, and deputy public prosecutors. The announcement shall be published throughout Bosnia and Herzegovina, in a manner determined by the Council.

#### **Article 36 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 qualification and present its list of candidates and recommendation to the Council.

#### **Article 37 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 41 below and may inquire information on the following substantive topics:

1. Constitutional law of BiH;
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 38 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 39**  
**Opinions on the Applicants**

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

**Article 40**  
**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 41**  
**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 public 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 42**  
**Decision on Appointment**

The decision to appoint a candidate to a judicial or prosecutorial post shall be made in accordance with article 15 and shall contain justification in writing.

**Article 43**  
**Announcement of Appointment Decision**

The Council shall inform all applicants, the relevant court or the public prosecutor's office, and the relevant ministry of justice 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 44**

#### **Commencement of Official Function**

A person appointed to judicial or public 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 45**

#### **Declaration of Office**

Before taking up their official function, judges, public prosecutors and deputy public prosecutors shall make a solemn declaration: "I solemnly declare that I shall perform the duty of judge/ public prosecutor/deputy public prosecutor in accordance with the Constitution and laws of Republika Srpska, 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.

### **Article 46**

#### **Appointment of Lay Judges**

The Council shall appoint lay judges after receiving a list of proposals by the relevant court president.

## **CHAPTER VI. DISCIPLINARY LIABILITY OF JUDGES AND PUBLIC PROSECUTORS**

### **Article 47**

#### **General Provision on Liability for Disciplinary Offences**

A judge or public prosecutor shall be disciplined if he/she commits a disciplinary offence.

### **Article 48**

#### **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 public prosecutors, determining disciplinary liability, imposing disciplinary sanctions where appropriate and adjudicating any and all appeals on decisions rendered by the disciplinary bodies.

### **Article 49**

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

Disciplinary offences for judges 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 public 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 behavior that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the judiciary.

**Article 50**  
**List of Disciplinary Offences for Public Prosecutors**

Disciplinary offences for public prosecutors 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 public prosecutorial function;
5. accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the public prosecutor, including also when the gift or remuneration merely creates the appearance of improper influence;
6. exploiting his/her position as a public 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 public prosecutorial functions, or any other repeated disregard of the duties of the office of public 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 public prosecutorial functions;
13. interfering in the jurisdictional activity of a judge or public 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 he is convinced of a crime which makes him/her unfit for the public 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 Public Prosecutor's Office subject to his/her authority;
16. failing to carry out the written order from a Public 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 public prosecutor's office;
22. behavior that demeans the dignity of office of public 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 Public Prosecutor.

### **Article 51 List of Sanctions**

The Council may impose the following disciplinary sanctions:

1. A written warning to the judge or public prosecutor;
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, court president, public prosecutor, or deputy public prosecutor, who is dismissed from office pursuant to a disciplinary proceeding, shall cease upon dismissal by the Council.

### **Article 52 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 public prosecutorial discipline shall be comprised of a majority of public prosecutors currently holding office.

### **Article 53 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 54 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 52 and 53.

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

#### **Article 55 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 public 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 56 Initiating Disciplinary Proceedings**

A request for initiating disciplinary proceedings against a judge or a public 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 a public 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 public prosecutor, he/she must refer the matter to the First Instance Disciplinary Panel for adjudication.

### **Article 57** **Rights of Parties During Disciplinary Proceedings**

Throughout all disciplinary proceedings, the judge or public 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 58** **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 behavior 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 59** **Statute of Limitations for Initiating Disciplinary Proceedings**

No disciplinary proceeding may be initiated against a judge or a public 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 public prosecutor more than two (2) years after the date upon which the Council received the initial complaint or information on the alleged violation.

**Article 60**  
**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 61**  
**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 Republika Srpska.

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

**Article 62**  
**Mandatory Suspension**

The Council shall order the suspension from duty of any judge or a public prosecutor:

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

**Article 63**  
**Discretionary Suspension**

The Council may order the suspension from duty of any judge or public prosecutor:

- (a) if a criminal investigation is initiated against the judge or public 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;
- (e) if the Council determines that disciplinary liability can not be properly adjudicated without suspension of the judge or public prosecutor during the proceedings.

**Article 64**  
**Initiation of Suspension Proceedings**

The Council may suspend a judge or a public prosecutor upon its own initiative, upon the request of the Disciplinary Prosecutor, or upon the request of the court president or the public prosecutor who has authority over the judge or public prosecutor in question.

The relevant court president or public prosecutor shall immediately, upon learning of any of the events listed in Articles 62 and 63, forward the information to the Council.

**Article 65**  
**Suspension Decisions and Appeals**

The decision on suspension from duty, referred to in Articles 62 and 63, 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 66**  
**Limits on Length of Suspension**

A judge or public prosecutor 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 67**  
**General Prohibition against Incompatible Functions**

A judge, public prosecutor, or deputy public prosecutor 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 public prosecutorial function or that would affect the independence or dignity of judicial or public prosecutorial office, cast doubt upon his or her ability to act impartially, or demean judicial or public prosecutorial office.

A judge, public prosecutor, or deputy public prosecutor 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, public prosecutor, or deputy public prosecutor 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, or ethnic or national origin nor arrange to use the facilities of such an organization.

**Article 68**  
**Prohibition against Performance of Public, Legal, or Other Functions**

A judge, public prosecutor, or deputy public prosecutor 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, public prosecutor, or deputy public prosecutor 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, public prosecutor, or deputy public prosecutor may engage in academic, scholarly, or similar activities that serve to educate the public and may be entitled to remuneration.

A judge, public prosecutor, or deputy public prosecutor shall not be a member of an executive or supervisory board of public or private companies or other legal persons.

A judge, public prosecutor, or deputy public prosecutor shall not perform any other duties that may interfere with the performance of judicial or prosecutorial function.

**Article 69**  
**Disciplinary Liability**

A judge, public prosecutor, or deputy public prosecutor who violates the provisions of this law governing the incompatibility of judicial or prosecutorial function shall be subject to disciplinary action.

**Article 70**  
**Reporting of Activities to the High Judicial Council**

If a court president or public prosecutor believes that the activities of a judge, public prosecutor, or deputy public prosecutor is not compatible with judicial or public prosecutorial function, the judge, public prosecutor, or deputy public prosecutor shall be informed and the court president or public prosecutor shall refer the matter to the Council, which shall issue a binding decision. The Council's rules of procedure shall regulate proceedings.

Judges, public prosecutors, and deputy public prosecutors shall file an annual financial statement with the Council reporting, among other things, 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 71**  
**Immunity of Judges, Public Prosecutors, and Deputy Public Prosecutors**

A judge, public prosecutor, or deputy public prosecutor 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, public prosecutor, or deputy public prosecutor asserts immunity, the Council shall have the authority to lift the immunity of a judge, public prosecutor, or deputy public prosecutor 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 the law, of a matter concerning a judge, public prosecutor, or deputy public prosecutor.

**CHAPTER IX. TERMINATION OF OFFICE**

**Article 72**  
**Termination of Mandate to Hold Office**

The term of judges and public prosecutors shall terminate:

1. in the case of judges and deputy public prosecutors, upon reaching mandatory retirement age,
2. in the case of public prosecutor 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, public prosecutor or deputy public prosecutor reaches the mandatory retirement age, his/her mandate shall automatically terminate. The mandate of a judge, public prosecutor or deputy public prosecutor 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 shall terminate upon the expiry of the period for which he/she has been appointed.

**Article 73**  
**Temporary Extension of Mandate**

A president of a court or public prosecutor 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 public prosecutor is appointed.

In case of the termination of the term of office of a court president, he/she shall nevertheless continue to perform a judicial function in the same court subject to Article 72.

**Article 74**  
**Mandatory Retirement Age**

Mandatory retirement age for judges of the Supreme Court shall be age 70 and for judges at all other courts age 67.

Mandatory retirement age for public prosecutors and deputy public prosecutors at all public prosecutors' offices shall be age 67.

Mandatory retirement age for lay judges shall be age 65.

**CHAPTER X. TRANSITIONAL AND FINAL PROVISIONS**

**General Provisions**

**Article 75**  
**Transitional Period**

During a transitional period, in which the courts and public prosecutors' offices shall be restructured in accordance with law, 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 for courts and public prosecutor's offices, (3) annual budget and reporting responsibilities, and (4) appointment of an executive director. The Council shall have the authority to terminate the mandates of judges and public prosecutors.

During the transitional period, the provisions of this law shall apply unless provided otherwise by this chapter

The transitional period shall last until 31 December 2003 and may be extended until the Council completes its obligations under this Chapter.

**Article 76**  
**Composition, Appointment, and Terms of Office**

During the transitional period, the High Representative shall appoint to the Council the members specified in Article 5, to the extent possible. During this period the Council shall not include a minor offence court judge. The mandates of the national members shall be for a term of four years as set forth in by Article 6 of this law.

The High Representative shall also appoint up to eight (8) international members to the Council. The mandates of the international members shall be confined to the transitional period.

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

**Article 77**  
**Procedural Issues**

The international members shall deliberate and vote on all issues before the Council with the national members from Republika Srpska and two (2) members from the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina, which shall be regulated by the rules of procedure.

The President shall preside over matters before the Council. The Vice-President shall act in place of the President if the latter is temporarily absent.

During the transitional period, the President shall convene meetings. A quorum shall be established if a majority of all members are present. The Council shall decide matters by majority vote of those members present and voting. The President's vote shall be decisive on matters where there is a tie vote.

The Council shall adopt rules of procedure to govern its proceedings during the transitional period.

**Article 78**  
**Secretariat**

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

**Selection of Judges and Public Prosecutors to Office**

**Article 79**  
**Appointment Procedure**

During the transitional period, all qualified professionals shall be eligible to apply in an open competition for the posts of judges, including court presidents, public prosecutors, and deputy public prosecutors at all courts and public prosecutor's offices throughout Republika Srpska.

The Council shall assess the qualifications, merit, and fitness of applicants to perform judicial and public prosecutorial functions. In making appointments, the provisions contained in Chapter 4 of this law shall apply, except that judges and public prosecutors holding office at the time of application shall be exempted from the professional requirements to hold office contained in Articles 25 – 32. Chapter 4 of this law shall regulate the term of judicial or public prosecutorial office for appointments by the Council.

An incumbent judge, public prosecutor, or deputy public prosecutor who is not selected for judicial or public prosecutorial office under this Article may file a request for reconsideration:

- (1) if the Council failed to consider material facts favorable to the applicant provided that information was submitted to the Council at the time of application, or
- (2) if the applicant exercised his right to review application material under Article 40 prior to the Council's decision and the Council took adverse decision based upon information not made available to the applicant.

The Council shall maintain a list of judges not selected for judicial office who would be eligible to serve as reserve judges for temporary appointment in order to assist courts in reducing case backlogs or to facilitate the handling of cases in courts that are reorganised. The Council may temporarily appoint reserve judges upon application by the president of a court, provided there is a showing of need and sufficient funding.

**Article 80**  
**Disciplinary Procedure**

Chapter 6 shall apply to all disciplinary matters. As an exception to Chapter 6, disciplinary actions may be initiated for violations of Articles 49 and 50 up to twelve (12) years from the date of offense.

**Article 81**  
**Separation from Office**

A judge, president of a court, public prosecutor, or deputy public prosecutor holding office at the time this law comes into effect and who is not selected by the Council for judicial or public prosecutorial office shall no longer have a mandate to perform judicial or public prosecutorial function. The Council shall terminate the mandate of such judge, president of court, public prosecutor or deputy public prosecutor.

A judge, president of a court, public prosecutor, or deputy public prosecutor holding office at the time this law comes into effect, who applies for a judicial or public prosecutorial post, and who is not selected for judicial or public prosecutorial office shall be eligible to receive salary in the amount equivalent to his/her last salary and other compensation, including coverage of health and pension insurance, for a period of six (6) months after the termination of mandate. The judge, president of a court, public prosecutor, or deputy public prosecutor, however, shall not be eligible for deployment within the judicial or prosecutorial systems. The non-selection of a judge, president of a court, a public prosecutor or deputy public prosecutor shall not prohibit the individual from later appointment to a judicial or a public prosecutorial post.

The receipt of benefits under subparagraph (2) shall terminate at the time an individual, during the period of benefits, reaches the mandatory retirement age for judges and public prosecutors and is entitled to pension and other benefits as provided by law.

A judge, president of a court, public prosecutor, or deputy public prosecutor who resigns during the transitional period shall be entitled to compensation in an amount equivalent to eight (8) months of salary, unless resignation occurs within six (6) months of mandatory retirement, in which case compensation shall be in an amount equivalent to four (4) months of salary.

Benefits under this article shall be provided by the authority responsible for the funding of the operations of the relevant court or public prosecutor's office.

**Cessation of Transitional Period**

**Article 82**  
**Cessation of Transitional Period**

Prior to completing the Council's obligations under this Chapter, the President shall contact the relevant bodies listed in Article 5 of this law and request them to elect or, as appropriate appoint, members to the Council.

Upon notification from the President of the Council, the relevant bodies shall deliver the names of the elected members to the President.

After receiving the names of elected members, the President shall provide for an orderly transition of the affairs of the Council to the newly elected members.

**Minor Offense Courts**

**Article 83**  
**Minor Offense Courts**

During the transitional period, this law shall not apply to minor offense court judges, who shall be appointed and disciplined in accordance with current law.

After the cessation of the transitional period and following the restructuring of the minor offense courts, the Council shall invite, by public announcement, applications for the posts of judges at all minor offense courts and appoint individuals to these posts.

### **Other Provisions**

#### **Article 84 Definitions**

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

#### **Article 85 Abolishment of Former Commissions**

The High Judicial Council established under the Law on Courts and Court's Service of Republika Srpska (Official Gazette of Republika Srpska, 13/00, 15/00, 16/00, 70/01) and the High Prosecutorial Council established by the Law on Prosecutorial Office (Official Gazette of Republika Srpska 13/00, 15/00, 16/00, 70/01) are hereby abolished, except that the High Judicial Council shall remain operational until 1 August 2002 for the purpose of proposing candidates to the National Assembly for appointment to the Constitutional Court of Bosnia and Herzegovina

All proceedings, cases, files and other documents of the Councils as referred to in the previous paragraph shall be transferred to the Council for action consistent with this law.

#### **Article 86 Applicability of the Law**

This law shall be applicable to the Republika Srpska. Statutory provisions contained in the laws of Republika Srpska shall be brought into harmony with this law and any provisions that are inconsistent with this law are hereby repealed.

#### **Article 87 Entry into Force**

This law shall be published in the Official Gazette of Republika Srpska and shall enter into force eight (8) days after publication.

Sarajevo, 23 May 2002

Wolfgang Petritsch  
High Representative