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Adoption of the RS Law on the HJPC leads to complete legal uncertainty and the capture of the judiciary

The creation of parallel institutions would violate legal security and hinder citizens from enjoying basic human rights and freedoms, such as the right to personal liberty and security, the property right, and such.

Banja Luka, February 8th, 2022 – Transparency International in Bosnia and Herzegovina (TI BiH) warns that the adoption of the Law on the High Judicial and Prosecutorial Council of Republika Srpska, which should be in the form of a draft before MPs at the 20th regular session of the National Assembly of Republika Srpska, would set a dangerous precedent. The adoption of the new law, which was put on the agenda of today's NARS session at the last minute, is just another in a series of attempts to overthrow the legal order and establish additional capture of judicial institutions establish control over all institutions and processes, and now, through the appointment of eligible judges and prosecutors, efforts are being made to further undermine the rule of law system.

We remind you that Bosnia and Herzegovina already has a High Judicial and Prosecutorial Council (HJPC), which was established as an independent and autonomous body, and has the task of providing an independent, impartial and professional judiciary. Members of the HJPC are judges and prosecutors from all over BiH, and this body has the authority to appoint judges and prosecutors at the state, entity, cantonal, district, and municipal levels, including the Brčko District of BiH, except for the entity constitutional courts. The Constitution of Bosnia and Herzegovina stipulates that BiH is a state governed by the rule of law, and the rule of law is obliged to guarantee legal security to its citizens. Legal certainty, on the other hand, means that every individual can rely on the meaning and predictability of positive legal regulations, as well as the rights and obligations arising from those regulations. **Creating parallel institutions and disrupting the unity of the organization and governance of the judiciary would undermine legal certainty and impede the enjoyment of basic human rights and freedoms such as the right to liberty and security of person, the property right, the right to a fair hearing and criminal matters, etc.**

The legislative procedure before the Parliamentary Assembly of BiH includes amendments to the Law on the HJPC, to harmonize it with the recommendations of the Venice Commission and the priority conditions of the European Union, which require stronger guarantees of judicial independence. The HJPC, as an independent and autonomous body governing the judiciary, needs to be strengthened by additional guarantees of independence, while initiatives to create new bodies at the entity level thwart such efforts. TI BiH has pointed to the problems of political influence on the judiciary in BiH and the need for comprehensive reform, strengthening independence and responsibility, but instead, **the authorities in Republika Srpska are trying to create chaos and uncertainty by completely collapsing the legal order, which would have catastrophic consequences for all processes in the country, basic rights of citizens and the functioning of all institutions. Instead of dealing with the Law on the HJPC, which is in the legislative procedure before the BiH Parliamentary Assembly, decision-makers are dealing with the adoption of a law that is a threat to legal security and will further alienate BiH in the European integration process.**

TI BiH warns that the Draft Law on the HJPC of the Republika Srpska has not been published on the official website of the RS National Assembly, that the content of the draft is unknown to the general public, that the public learned about the draft through unofficial sources and that no assessment of the impact of the adoption of such a law has been made.

The creation of parallel institutions for the supervision of the judiciary, all under the guise of national interest, is aimed at creating a private state and destabilization to strengthen the position of the ruling parties. TI BiH, therefore, calls on NARS MPs to take responsibility towards the citizens of Republika Srpska and Bosnia and



Herzegovina and urges them to consider the consequences of establishing such institutions and the losses they will produce due to legal uncertainty and paralysis of institutions, and the proponents to withdraw the Draft Law on the HJPC and to contribute to judicial reforms with proposals that respect basic legal principles.