

LAW
ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL
OF BOSNIA AND HERZEGOVINA
Consolidated text for internal use¹

CHAPTER I - GENERAL PROVISIONS

Article 1
Establishment

(1) This Law establishes the High Judicial and Prosecutorial Council, and regulates: its work, organisation, competencies, powers and the conditions and mandate for the holding of judicial and prosecutorial power, the appointment of judges and prosecutors, the disciplinary responsibility of judges and prosecutors, the temporary suspension from office of judges and prosecutors, the incompatibility of judicial and prosecutorial service with other functions, the termination of mandates of judges and prosecutors and other questions related to the work of the High Judicial and Prosecutorial Council (hereinafter “the Council”).

(2) The Council is an independent organ of Bosnia and Herzegovina and has legal personality.

(3) The provisions of the Law on Ministries and Other Bodies of the Administration of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 5/03 and 42/03) and the Law on Administration of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 32/02) shall not apply to the Council.

Article 2
Financing

The Council shall be financed from the Budget of the institutions and international obligations of Bosnia and Herzegovina.

Article 3
Independent and Autonomous Body

(1) The Council shall be an independent and autonomous body, with the task of ensuring the maintenance of an independent, impartial and professional judiciary as confirmed in Article 17 of this Law.

¹ Consolidated text contains a text of the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 25/04) that came into effect on June 1, 2004, the Law on Amendments to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 93/05) that came into effect on January 7, 2006, and the Law on Amendments to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 15/08) imposed by the High Representative on June 15, 2007 (Official Gazette of Bosnia and Herzegovina, No. 48/07) and came into effect on July 3, 2007 (underline).

(2) The Council shall have a stamp, with the name of the Council, the name of the State and the National Coat of Arms, in accordance with the Law on Stamp of institutions of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 12/98 and 14/03).

CHAPTER II - MEMBERS AND ORGANISATION OF THE COUNCIL

Article 4 ***Membership***

- (1) The Council shall consist of fifteen (15) members:
- (a) one (1) member who shall be a judge from the Court of Bosnia and Herzegovina, elected by the judges of that Court;
 - (b) one (1) member who shall be a prosecutor from the Prosecutor's Office of Bosnia and Herzegovina, elected by the prosecutors of that Office;
 - (c) one (1) member who shall be a judge from the Supreme Court of the Federation of Bosnia and Herzegovina, elected by the judges of that Court;
 - (d) one (1) member who shall be a prosecutor from the Prosecutor's Office of the Federation of Bosnia and Herzegovina, elected by the prosecutors of that Office;
 - (e) one (1) member who shall be a judge from the Supreme Court of the Republika Srpska, elected by the judges of that Court;
 - (f) one (1) member who shall be a prosecutor from the Prosecutor's Office of the Republika Srpska, elected by the prosecutors of that Office;
 - (g) one (1) member who shall be a judge from either a Cantonal or Municipal level court of the Federation of Bosnia and Herzegovina, elected by the Cantonal and Municipal court judges of the Federation of Bosnia and Herzegovina, through written ballot to be organized by the President of the Supreme Court of the Federation of Bosnia and Herzegovina;
 - (h) one (1) member who shall be a prosecutor from a Cantonal level prosecutor's office of the Federation of Bosnia and Herzegovina, elected by the Cantonal prosecutors of the Federation of Bosnia and Herzegovina, through written ballot to be organized by the Chief Prosecutor of the Federation of Bosnia and Herzegovina;
 - (i) one (1) member who shall be a judge from a District or Basic level court of the Republika Srpska, elected by the district and basic court judges of the Republika Srpska through written ballot to be organized by the President of the Supreme Court of the Republika Srpska;
 - (j) one (1) member who shall be a prosecutor from a District level prosecutor's office of the Republika Srpska, elected by the district prosecutors of the Republika Srpska, through written ballot to be organized by the Chief Prosecutor of the Republika Srpska;
 - (k) one (1) member who shall be a judge or prosecutor elected by the Brcko District of Bosnia and Herzegovina Judicial Commission;
 - (l) one (1) member who shall be an attorney, elected by the Bar Association of the Federation of Bosnia and Herzegovina;
 - (m) one (1) member who shall be an attorney, elected by the Bar Association of the Republika Srpska;
 - (n) one (1) member who shall not be a member of the judiciary or a member of

the Parliamentary Assembly of Bosnia and Herzegovina, elected by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina; and

- (o) one (1) member who is not a member of the judiciary and who is not a member of the Council of Ministers of Bosnia and Herzegovina, elected by the Council of Ministers of Bosnia and Herzegovina upon the proposal of the Minister of Justice of Bosnia and Herzegovina

(2) Members of the Council shall be persons of high moral standing and integrity, and shall have a reputation for efficiency, competence and integrity.

(3) Members of the Council shall be independent and impartial in the exercise of their functions.

(4) The membership of the Council shall be generally representative of the peoples of Bosnia and Herzegovina and shall reflect the gender balance in Bosnia and Herzegovina. The Book of Rules of the Council shall regulate the procedures necessary to ensure compliance with applicable provisions of the Constitution and laws of Bosnia and Herzegovina regulating this issue.

(5) References in this Law to judges and prosecutors shall, unless otherwise indicated by the context, be construed to include judges, prosecutors, Court Presidents, Chief Prosecutors and Deputy Chief Prosecutors.

(6) The President of the Court of Bosnia and Herzegovina shall convene the first meeting of the Council to be held no later than 15 days after enough members to form a quorum under Article 14 (1) of this Law have been elected.

Article 5 ***Mandate***

(1) The members of the Council shall serve for a term of four (4) years and shall be eligible to serve no more than two (2) consecutive terms of four years.

(2) A person, who has served as a member of the Council for a period of two (2) terms consecutively, may not again be appointed as a member of the Council until the expiry of four (4) years since the end of the person's previous term as a member of the Council.

Article 6 ***Termination of Mandate***

- (1) The mandate of a member shall terminate:
 - (a) upon cessation of function by virtue of which he or she was appointed to the Council;
 - (b) upon the expiry of the period for which he or she has been elected or appointed;
 - (c) by resignation;
 - (d) if he or she performs his or her duties improperly, inefficiently or in a biased manner;
 - (e) if he or she fails to fulfil obligations arising out of his or her office due to

- illness or any other reason;
- (f) for the commission of an act that would make him or her unworthy to perform duties in the Council; or
- (g) upon a final conviction of a criminal offence pronouncing a prison sentence, which conviction shall result in automatic termination.

(2) The mandate of a Council member under subparagraph (c) of paragraph (1) of this Article shall expire on the day when the Council receives his or her written statement of resignation, and under subparagraphs (d), (e) and (f) of paragraph (1) of this Article, on the day the Council relieves him or her of duty.

(3) The Council shall adopt a decision to relieve a member from duty for the reasons set out under subparagraphs (d), (e) and (f) of paragraph (1) of this Article, by a two-thirds majority of all members present and voting, upon a proposal of at least one third of its members, or upon proposal from a Disciplinary Panel.

(4) The mandate of the President or Vice-President of the Council as such, may terminate either by resignation, or by decision of the Council. Resignation from the position of President or Vice-President does not of itself result in resignation from the Council. Such termination shall occur, in case of resignation, on the date of receipt of a written letter of resignation by the Secretariat of the Council, and in case of decision of the Council, on the date of the taking of such decision.

Article 7 ***Suspension of a Member***

(1) A member of the Council shall be suspended *ex lege* in the following cases:

- (a) if he or she is suspended from the function by virtue of which he or she qualifies for election or appointment to the Council; or
- (b) if he or she is confined to pre-trial detention.

(2) In respect of suspensions under paragraph (1) above, a decision of the Council shall not be required for the suspension to come into effect. The act on suspension shall be passed by the President of the Council and in a case of suspension of the President of the Council, the act will be passed by one of the vice-presidents, which will be specified in the Rules of Procedures of the Council.

(3) The Council may suspend a member:

- (a) for matters that could lead to termination of the member's mandate under Article 6; or
- (b) for any of the same circumstances that it may suspend a judge or a prosecutor under Article 77 of this Law.

(4) A majority of two thirds of members present and voting shall be required to impose a suspension in accordance with paragraph (3) above.

Article 8
New Members

- (1) The Council shall notify the body responsible for the election or appointment of a member to the Council under Article 4 hereof at least three (3) months prior to the expiry of a member's mandate and request the body to elect or appoint a new member to the Council.
- (2) 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 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 ten (10) days after the termination of mandate.

Article 9
Leave of Absence and Contributions

- (1) Members of the Council shall be entitled to a leave of absence from their official positions in order to perform their duties in the Council.
- (2) Any member whose salary and other emoluments are paid from public funds shall be entitled to continue to receive salary and other emoluments from his or her employer during such leave of absence.
- (3) The Council shall compensate a council member for travel expenses (which shall consist solely of the following: per diem, transport and accommodation expenses) that have reasonably been incurred as a result of the performance of such members' duties in the Council. The compensation for expenses shall be regulated in the regulations referred to in Article 16 of this Law.²
- (4) Members of the Council shall be entitled to compensation for the carrying out of their duties. The specific amount of the compensation shall be decided by the Council of Ministers of Bosnia and Herzegovina, acting upon a proposal of the Council.³

Article 10
Incompatibility and Immunity

- (1) Neither a member of the Council, nor a member of any panel 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.
- (2) A member shall sign a declaration of interests as described in the Council's Book of Rules upon assuming duties on behalf of the Council.
- (3) Members of the Council, or of a panel within the Council, are immune from civil liability for opinions expressed and decisions taken within the scope of official duties.

² Paragraph 3 amended - the High Representative's Decision of 15 June 2007

³ Former Paragraph 4 deleted and Paragraph 5 became Paragraph 4 - the High Representative's Decision of 15 June 2007

Article 11
President and Vice-Presidents of the Council

- (1) The Council has a President and two (2) Vice-Presidents.
- (2) The President and two (2) Vice-Presidents of the Council shall be elected by a simple majority vote of the members present and voting. The mandate of the President shall be four (4) years or until his or her mandate expires or otherwise terminates under Article (6), whichever is sooner.
- (3) The President of the Council and up to three members of Council shall work on a full time basis at the Council.⁴
- (4) For the purposes of proportional representation of the peoples, the President and Vice-Presidents can not belong to the same Constituent People nor shall more than one of the President or Vice-Presidents be members of the group of Others.
- (5) The President shall prepare the agenda for Council sessions, convene and preside over Council sessions and supervise the overall operations of the Council and the Secretariat. The President shall represent the Council before third parties and undertake other duties as regulated by the Rules of Procedure of the Council.⁵
- (6) The Vice-Presidents shall assist the President in carrying out the tasks as required for effective and duly performance of the work of the Council. One of the Vice-Presidents, as regulated in the Rules of Procedure of the Council, shall act in the place of the President during the President's absence. The further duties of the Vice-Presidents shall be regulated by the Rules of Procedure of the Council.⁶

Article 12
Panels

- (1) The Council shall act and make decisions as a single body.
- (2) In order to accomplish its tasks and carry out its duties as specified by this Law in an effective manner, the Council may establish panels, consisting of at least three (3) members, of which the majority always shall be judges or prosecutors, that are empowered to make decisions and carry out tasks, as specified in the Council's Rules of Procedure. The Rules of Procedure shall regulate the work of panels and their authorities.
- (3) When establishing panels and sub-councils according to this law Article 4 (4) shall be observed.
- (4) Decisions on the appointment of judges and prosecutors may not be delegated to panels.

⁴ New Paragraph 3 added, and former Paragraph 3 became Paragraph 4 - the High Representative Decision of 15 June 2007

⁵ Former Paragraph 4 amended and became Paragraph 5 - the High Representative's Decision of 15 June 2007

⁶ New Paragraph 6 added - the High Representative's Decision of 15 June 2007

Article 13

Experts

- (1) The Council may select experts, who are not members of the Council, to participate in the work of the Council or a panel created by the Council as advisors. Such experts shall not be entitled to vote on any matter before the Council.
- (2) The compensation to experts shall be regulated by the Book of Rules of the Council and shall be comparable to the compensation paid to court experts.

Article 14

Quorum, Voting and Meetings

- (1) The presence of a minimum of eleven (11) members shall be required to constitute a quorum.
- (2) Unless otherwise provided by this Law, a decision of the Council shall require a majority of affirmative votes of the total votes cast by the members present and voting. If the voting is equal, a roll call vote shall then be taken and the President, or the Vice-President in accordance with the provisions of Article 11(4), shall have the casting vote.
- (3) A member of the Council who is present but abstains from voting shall be deemed to have cast an abstention vote. An abstention vote shall not be included in the vote count under paragraph (2) of this Article.
- (4) Members of the First and Second Instance Disciplinary Panels shall not be entitled to abstain when voting on decisions related to the determination of disciplinary proceedings.

Article 15⁷

The Secretariat

- (1) The professional, financial and administrative tasks for the Council shall be performed by the Secretariat of the Council, supervised by the President and the two Vice-Presidents of the Council. The tasks of the Secretariat shall include, inter alia, provision of administrative support, the carrying out of legal, financial and other research necessary for the Council to implement its mandate in accordance with the law, as well as provision of strategic advice on issues related to the execution of the mandate of the Council. The Secretariat shall prepare draft decisions to be rendered by the Council, execute decisions adopted by the Council and regularly report to the Council with respect to its activities. The Secretariat shall also be responsible for preparing the proposal of the annual budget and the annual report of the Council required pursuant to Article 20 of this Law, for review by the President and two Vice-Presidents of the Council.
- (2) The Secretariat of the Council shall have a Director and a Deputy Director, responsible to the Council. The Director and the Deputy Director shall be appointed and removed by the Council in accordance with the provisions of the Law on Civil Service in the Institutions of Bosnia and Herzegovina. The mandate of the Director and the mandate of the Deputy Director shall be limited to four years. Notwithstanding Article 34, paragraph 2, second sentence of

⁷ Article 15 amended - the High Representative's Decision of 15 June 2007

the Law on Civil Service in the Institutions of BiH, the mandate of the Director and the Deputy Director shall be renewable every four years.

(3) The Secretariat shall have a staff that enables it to perform effectively its tasks according to the law. The civil servants in the Secretariat shall be appointed and removed by a Committee comprised of a member selected by the Council, the Director and the Deputy Director in accordance with the provisions of the Law on Civil Service in the Institutions of Bosnia and Herzegovina. Staff of the Secretariat who does not enjoy the status of civil servants shall be appointed and removed by a Committee comprised of a member selected by the Council, the Director and the Deputy Director in accordance with the legislation of Bosnia and Herzegovina regulating labour relations.

(4) Article 19 paragraph 2 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina, shall not apply to the filling of vacancies in the Secretariat. Article 28 paragraph 2 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina shall regulate all appointments to the Secretariat and Article 51 paragraph 2 of that law shall regulate all dismissals of Secretariat staff. The Director or his/her designate and a member of the Council selected by the Council shall always be a member of the selection committee mentioned in Article 24 paragraph 2 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina. The nature and the content of all open competitions conducted in accordance with Article 26 paragraph 1 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina shall be decided by the Council upon proposal of the Director.

(5) The Director shall be responsible for the overall performance of the professional, financial and administrative tasks of the Secretariat, for execution of the budget adopted by the Council, as well as for other tasks as decided by the Council.

(6) The Deputy Director shall be responsible for overseeing the preparation of Council sessions and overseeing the execution of Council decisions, as well as for other tasks as decided by the Council. The Deputy Director shall replace the Director in his/her absence.

(7) The Director and the Deputy Director have the right to attend all meetings of the Council as non-voting participants and to express his or her opinion on all issues on the agenda. The Director and Deputy Director may also propose and include items on the agenda.

(8) The salaries of the Secretariat staff not referred to in the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina shall be decided in an agreement between the Council and the Council of Ministers of Bosnia and Herzegovina.

(9) The Council may receive donations from international donors to its operational budget and for special judicial reform projects outside the operational budget of the Council. Such funds shall be transferred to a special purpose account with the Central Bank of Bosnia and Herzegovina. The funds shall be spent upon the order of the Director of the Secretariat in accordance with regulations for execution of donor funds issued by the Council and in accordance with the conditions of the grant agreement with the donor.

Article 16
Book of Rules

The Council shall adopt and promulgate a Book of Rules, including Rules of Procedure, regulating its organisation, systemisation of posts, operations, appointment, discipline, and other matters. The Book of Rules shall be published in the Official Gazette of Bosnia and Herzegovina.

CHAPTER III - COMPETENCE AND AUTHORITY

Article 17
Competence

The Council shall have the following competencies:

- (1) Appointment of judges, including Court Presidents, lay judges and reserve judges in all courts at the State, Entity, Cantonal, District, Basic and Municipal levels in Bosnia and Herzegovina, including the Brcko District of Bosnia and Herzegovina, but excluding the Constitutional Courts of the State and Entities of Bosnia and Herzegovina;
- (2) Appointment of Chief Prosecutors, Deputy Chief Prosecutors and prosecutors in all prosecutors' offices at the State, Entity, Cantonal and District levels in Bosnia and Herzegovina, including the Brcko District of Bosnia and Herzegovina;
- (3) Making proposals to the relevant authorities in relation to, their proposal and election of judges to the Constitutional Court of Republika Srpska and their nomination of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina. When exercising its competence under this paragraph, the Council shall seek a written opinion of the relevant Constitutional Court before it makes its proposal;
- (4) Receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability, and imposing disciplinary measures on judges, lay judges, reserve judges and prosecutors;
- (5) Deciding upon appeals in disciplinary proceedings;
- (6) Deciding upon suspensions of judges, lay judges, reserve judges and prosecutors;
- (7) Supervising the advanced professional training of judges and prosecutors and advising the Entity Centres for Judicial and Prosecutorial Training and the Brcko District of Bosnia and Herzegovina Judicial Commission in their adoption of programmes of advanced professional training for judges and prosecutors;
- (8) Determining the minimum amount of advanced professional training to be undertaken by every judge and prosecutor each year;
- (9) Determining the induction training for candidates chosen for judicial and prosecutorial office and supervising the provision of such training;

- (10) Approving the annual report of the Steering Boards of the Entity Judicial and Prosecutorial Training Centres and of the Brcko District of Bosnia and Herzegovina Judicial Commission insofar as it relates to the induction training and the advanced professional training of judges and prosecutors;
- (11) Deciding upon issues of incompatibility of other functions performed by judges and prosecutors;
- (12) Deciding upon the temporary assignment or transfer of judges and prosecutors to another court or prosecutor's office;
- (13) Deciding upon leaves of absence for judges and prosecutors;
- (14) Participating, at the Council's discretion, in the drafting process of annual budgets for the courts and prosecutors offices;
- (15) Making recommendations upon, at the Council's discretion, the annual budget proposals made by governmental bodies and/or governments for courts and prosecutors offices;
- (16) Making and presenting recommendations, at the Council's discretion, for amendments to the proposed budgets made by governmental bodies and/or governments and/or the Brcko District of Bosnia and Herzegovina Judicial Commission before the relevant legislative bodies;
- (17) Collecting and analysing reports and relevant budget and revenue data for courts and prosecutors offices, in order to provide statistical data for the effective operation of courts and prosecutors offices;
- (18) Advocating for adequate and continuous funding of courts and prosecutors' offices in Bosnia and Herzegovina;
- (19) Participating in the drafting of, and approving, Books of Rules for the operation of courts and prosecutors offices in Bosnia and Herzegovina;
- (20) Monitoring and advising courts and prosecutors offices on appropriate and effective budget, administration and management techniques and procedures and initiating training in this regard;
- (21) Initiating, overseeing and coordinating projects related to improving all aspects of the administration of courts and prosecutors offices, including seeking national and international funding therefore;
- (22) Setting criteria for the performance evaluations of judges and prosecutors;
- (23) Setting criteria for the performance of courts and prosecutors offices, and initiating enquiries concerning administrative or financial conduct;

- (24) Initiating, coordinating and supervising the use of information technology by courts and prosecutors' offices in order to achieve and maintain uniformity in this area between and among courts and prosecutors' offices throughout the country. No court or prosecutors' office shall adopt an automated case-tracking registration, tracking or related system, including backup and storage systems, without obtaining the prior approval of the Council;
- (25) Determining the number of judges, prosecutors and/or Deputy Chief Prosecutors of each court or prosecutor's office within the Council's competence, after consultation with the relevant Court President or Chief Prosecutor, relevant budgetary authority, and the relevant Ministry of Justice;
- (26) Collecting information and maintaining documentation on the professional status of judges and prosecutors, including their date of appointment, termination of office, statistical information relevant to their work performance, and any other information which the Council considers relevant to the work of Court Presidents, Chief and Deputy Prosecutors, judges and prosecutors;
- (27) Providing opinions on complaints lodged by a judge or a prosecutor who considers that his or her rights provided for by this or other law, or more generally his or her independence are threatened;
- (28) Providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, initiate the adoption of relevant legislation and other regulations and to provide guidance to courts and prosecutors' offices on matters falling under the Council's competence;
- (29) Issuing codes of ethics for judges and prosecutors;
- (30) Exercising other competencies as determined by this or other Law.

Article 18
Courts and Prosecutors' Offices

The Council shall have the competencies as defined in Article 17 hereof, over the judiciary in Bosnia and Herzegovina, which includes the following courts and prosecutor's offices:

- (a) the Court of Bosnia and Herzegovina;
- (b) the Prosecutor's Office of Bosnia and Herzegovina;
- (c) the Constitutional Courts of Republika Srpska and the Federation of Bosnia and Herzegovina, exclusively in accordance with the provisions of Article 17, item (3);
- (d) the Supreme Courts of Republika Srpska and the Federation of Bosnia and Herzegovina;
- (e) the District and Basic Courts of Republika Srpska;
- (f) the Cantonal and Municipal Courts of the Federation of Bosnia and Herzegovina;
- (g) the Republic Prosecutor's Office of the Republika Srpska and the Federation Prosecutor's of the Federation of Bosnia and Herzegovina;

- (h) the District Prosecutors' Offices in Republika Srpska and the Cantonal Prosecutors' Offices in the Federation of Bosnia and Herzegovina;
- (i) The Appellate Court of Brcko District of Bosnia and Herzegovina, the Basic Court of Brcko District of Bosnia and Herzegovina and the Prosecutor's Office of the Brcko District of Bosnia and Herzegovina.

Article 19

Obligation to Comply with Inquiry and Requests

- (1) All courts, prosecutor's offices and governmental bodies, as well as all judges, Court Presidents, prosecutors, Chief and Deputy Chief Prosecutors, lay judges, reserve judges and employees of courts and prosecutor's offices shall comply with requests by the Council for information, documents, and other materials related to the realisation of the competencies of the Council and with requests of the Council to attend meetings in respect of the exercise of the competencies of the Council.
- (2) To the extent necessary for the realisation of its competencies under this or any other law, the Council and its representatives shall have access to all premises occupied by and documentation in possession of the courts and prosecutors offices mentioned under Article 18.

Article 20

Annual Budget and Report

- (1) The Council shall adopt an annual budget proposal for its operations.
- (2) The Council shall forward the proposal for its annual budget to the Ministry of Justice of Bosnia and Herzegovina in sufficient time for that body to consider it. The Council has the right to defend the proposal directly before the Parliamentary Assembly of Bosnia and Herzegovina. The Council shall inform the Entity Ministries of Justice of the proposal for its annual budget.
- (3) The Council shall, not later than 1 May each year, prepare an annual report documenting its activities and describing the state of the judiciary and prosecutorial authority, including recommendations for improvement. The report shall be delivered to the Parliamentary Assembly of Bosnia and Herzegovina, the Council of Ministers of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina, the Cantonal Parliaments, the National Assembly of Republika Srpska, the State and Entity Ministries of Justice, and the Assembly of Brcko District of Bosnia and Herzegovina for information. The report shall be available to the public.⁸
- (4) Upon the invitation of the Parliamentary Assembly or other bodies as referred to under the previous paragraph, the President or other authorized representative of the Council shall explain the report and answer the questions of the representatives and/or members of other bodies directly at the session. Following the discussion on the report and conclusions, evaluation, suggestions and proposals, which do not dispute the independence of the Council, may be given.

⁸ Paragraph 3 amended – the High Representative's Decision of 15 June 2007

CHAPTER IV - REQUIREMENTS AND MANDATE TO HOLD OFFICE

Article 21

Basic Requirements

In order to qualify for appointment to judicial or prosecutorial office, a person shall meet the following requirements:

- (a) he or she shall be a citizen of Bosnia and Herzegovina;
- (b) he or she shall hold the intellectual and physical aptitude to perform judicial or prosecutorial function;
- (c) he or she shall 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 law;
- (d) he or she shall have passed a bar examination administered in Bosnia and Herzegovina or in the Socialist Federal Republic of Yugoslavia;
- (e) or, as an exception to sub-paragraph (d) above, he or she shall, in the period between 6 April 1992 and 31 March 2004, have passed a bar examination administered in any country whose territory was part of the territory of the Socialist Federal Republic of Yugoslavia and shall have held office as a judge or prosecutor in Bosnia and Herzegovina in the period between 6 April 1992 and 31 March 2004.

Article 22

Professional Standing

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

Article 23

Court of Bosnia and Herzegovina

- (1) Judges of the Court of Bosnia and Herzegovina shall have a minimum of eight (8) years of practical experience as a judge, prosecutor, attorney, or other relevant 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.
- (2) The President shall be from among judges appointed to the Court of Bosnia 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.
- (3) Exceptionally, members of the Court of Bosnia and Herzegovina holding office as of the date of entry into force of this Law who, prior to their appointment as a member of that Court, have fifteen (15) years of professional experience as assistant professors or professors of the Faculties of Law in Bosnia and Herzegovina may continue to hold office as a judge of the Court of Bosnia and Herzegovina, regardless of whether or not they have passed a bar examination.

Article 24

Constitutional Court of Republika Srpska and the Federation of Bosnia and Herzegovina

- (1) The competencies of the Council in relation to the appointment of judges to the Constitutional Courts of the Federation of Bosnia and Herzegovina and of the Republika Srpska shall be exercised in accordance with the Constitutions of the Federation of Bosnia and Herzegovina and of the Republika Srpska.
- (2) The Council, in making recommendations to the relevant authority, as specified in the applicable Constitution, for the proposal and election of judges to the Constitutional Court of the Republika Srpska and for the selection of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina shall have regard to the following criteria:
 - (a) a candidate's number of years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination;
 - (b) a candidate's academic experience and achievements; and
 - (c) other information which, in the opinion of the Council, is relevant to the candidate's suitability to serve as a judge of the Constitutional Court in question.
- (3) Professors and assistant professors of faculties of law in Bosnia and Herzegovina in the fields of constitutional law, international law, criminal law or procedure, civil law or procedure, administrative law, commercial law, or family law are, subject to the other provisions of this paragraph, eligible for recommendation by the Council for appointment to the Constitutional Court without having passed a bar examination, provided they have a minimum of ten (10) years of experience as a professor or assistant professor.
- (4) The President shall be from among judges appointed to the Constitutional Court and shall have proven management and leadership skills relevant to the operation of this court.

Article 25

Supreme Court of Republika Srpska and the Federation of Bosnia and Herzegovina

- (1) Judges of the Entity Supreme Courts shall have a minimum of eight (8) years of experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination. A judge's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.
- (2) The president shall be from among judges appointed to the Supreme Court 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 26

Appellate Court of Brcko District of Bosnia and Herzegovina

- (1) Judges of the Appellate Court of Brcko District of Bosnia and Herzegovina shall have a minimum of eight (8) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination. A judge's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

(2) The president shall be from among judges appointed to the Appellate Court 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 27

District courts of Republika Srpska and cantonal courts of the Federation of Bosnia and Herzegovina

(1) Judges of the district courts of Republika Srpska and the cantonal courts of the Federation of Bosnia and Herzegovina shall have a minimum of five (5) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination. A judge's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

(2) The president shall be from among judges appointed to the respective district or cantonal court 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 28

Basic Courts of Republika Srpska and the Brcko District of Bosnia and Herzegovina and Municipal Courts of the Federation of Bosnia and Herzegovina

(1) Judges of the basic courts of Republika Srpska, the Basic Court of Brcko District of Bosnia and Herzegovina, and the municipal courts of the Federation of Bosnia and Herzegovina shall have a minimum of three (3) years of legal experience after having passed the bar examination. A judge's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

(2) The president shall be from among judges appointed to the respective basic or municipal court 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 29

Chief Prosecutor, Deputy Chief Prosecutors and Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina

(1) The Chief Prosecutor and Deputy Chief Prosecutors of the Prosecutors' Office of Bosnia and Herzegovina shall have a minimum of eight (8) years of practical experience as a judge, prosecutor, attorney or other relevant legal experience after having passed the bar examination and shall have proven management and leadership skills relevant to the operation of the prosecutors' office. The Chief Prosecutor and Deputy Chief Prosecutors shall have a mandate of six (6) years and shall be eligible for re-appointment, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

(2) Prosecutors shall have a minimum of five (5) years of practical experience as a judge, prosecutor, attorney or other relevant legal experience after having passed the bar examination. A prosecutor's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Article 30

Prosecutor's Office of the Republika Srpska and Federation Prosecutors Office

(1) The Chief Prosecutor of Republika Srpska, the Chief Prosecutor of the Federation of Bosnia and Herzegovina, and the Deputy Chief Prosecutor(s) of Republika Srpska and the Federation of Bosnia and Herzegovina, shall have a minimum of eight (8) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination and shall have proven management and leadership skills relevant to the operation of these prosecutors' offices. The Chief Prosecutor and Deputy Chief Prosecutor(s) shall have a mandate of six (6) years and shall be eligible for re-appointment, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

(2) Prosecutors shall have a minimum of five (5) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination. A prosecutor's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Article 31

District and Cantonal Prosecutor's Offices

(1) District and Cantonal Chief Prosecutors, and Deputy Chief Prosecutors shall have a minimum of five (5) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination.

(2) District and Cantonal Chief Prosecutors, and Deputy Chief Prosecutors shall have proven management and leadership skills relevant to the operation of these prosecutors' offices. Chief Prosecutors and Deputy Chief Prosecutors shall have a mandate of five (5) 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.

(3) District and Cantonal prosecutors shall have a minimum of three (3) years of legal experience after having passed the bar examination. A District and Cantonal prosecutor's mandate shall be unlimited, however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Article 32

Chief Prosecutor and Prosecutors of the Prosecutor Office's of Brcko District of Bosnia and Herzegovina

(1) The Chief Prosecutor and Deputy Chief Prosecutor of the Prosecutors' Office of the Brcko District of Bosnia and Herzegovina shall have a minimum of five (5) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination and shall have proven management and leadership skills relevant to the operation of this public prosecutor's office.

(2) The Chief Prosecutor and the Deputy Chief Prosecutor shall have a mandate of five (5) years and shall be eligible for re-appointment, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

(3) Prosecutors shall have a minimum of three (3) years of practical experience as a judge, prosecutor, attorney, or other relevant legal experience after having passed the bar examination. A prosecutor's mandate shall be unlimited, but however, the mandate shall be subject to resignation, mandatory retirement age or removal from office for cause.

Article 33
Reserve Judges

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

(2) Retired judges and prosecutors shall be eligible to be appointed and serve as reserve judges until they reach the age of seventy two (72).

Article 34
Lay Judges – Requirements and Mandate

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

- (a) be a citizen of Bosnia and Herzegovina,
- (b) hold the intellectual and physical aptitude to perform judicial or prosecutorial function;
- (c) be at least twenty-five (25) years of age at the time of application,
- (d) have a reputation for high moral character and integrity,
- (e) have not been convicted of a criminal offence,
- (f) possess a certificate that there are no ongoing criminal proceedings against him or her, and
- (g) be a resident in the jurisdiction in which he or she is appointed.

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

(3) Lay judges may serve until they reach the age of seventy two (72).

(4) Lay judges shall have a mandate of eight (8) 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 case before a court after the expiration of mandate, resignation or upon reaching seventy two (72) years of age, if this is necessary to ensure the proper resolution of a case on which they were participating prior to such event.

CHAPTER V - APPOINTMENT

Article 35
Appointment Procedure

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

Article 36
Public Announcement

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

Article 37
Nomination Sub-councils for Appointments at the Level of Bosnia and Herzegovina and in the Brcko District of Bosnia and Herzegovina

(1) The President of the Council shall appoint nomination sub-councils for all vacant positions in courts and prosecutors' offices at the level of Bosnia and Herzegovina and in the Brcko District of Bosnia and Herzegovina.

(2) The nomination sub-council for judicial and prosecutorial positions at the level of Bosnia and Herzegovina shall consist of no less than three (3) members of the Council of which, if possible, at least one (1) shall be a judge or prosecutor from the level of Bosnia and Herzegovina, one (1) shall be a judge or prosecutor from Republika Srpska and one (1) shall be a judge or prosecutor from the Federation of Bosnia and Herzegovina.

(3) The nomination sub-council for judicial and prosecutorial positions in Brcko District of Bosnia and Herzegovina shall consist of no less than three (3) members of the Council of which, if possible, at least one (1) shall be a judge or prosecutor from the Brcko District of Bosnia and Herzegovina, one (1) shall be a judge or prosecutor from the level of Bosnia and Herzegovina and one (1) shall be a judge or prosecutor from the Entity level.

(4) The nomination sub-councils shall, as regulated in the Councils Book of Rules, interview and rank the applicants for the vacant post based upon merit, fitness, and qualification and present its list of ranked candidates to the Council who make the final decision on all appointments.

Article 38
Nomination Sub-council for Appointments in the Entities

(1) The Council shall have nomination sub-councils for appointments to judicial and prosecutorial positions in the Entities.

(2) The nomination sub-council for judicial and prosecutorial positions in Republika Srpska shall consist of the five (5) members of the Council from the Republika Srpska.

(3) The nomination sub-council for judicial and prosecutorial positions in the Federation of Bosnia and Herzegovina shall consist of the five (5) members of the Council from the Federation of Bosnia and Herzegovina.

(4) The entity nomination sub-councils shall, as regulated in the Councils Rules of Procedures, select no less than three (3) members from the Council, who shall interview and rank the applicants for the vacant post based upon merit, fitness, and qualification.

(5) Based on the ranking of the interview panel the Entity nomination sub-council shall present a list of ranked candidates to the Council who make the final decision on all appointments.

Article 39 ***Competitive Examination***

(1) The Council may introduce a competitive written examination of applicants. The examination shall test the applicants' qualifications pursuant to the criteria stipulated in Article 43 of this Law and may include following topics:

- (a) Constitutional law of Bosnia and Herzegovina;
- (b) Criminal law;
- (c) Criminal procedure;
- (d) Civil law;
- (e) Civil procedure;
- (f) Administrative law and procedure;
- (g) Commercial law;
- (h) European Convention on Human Rights and Fundamental Freedoms and other international human rights documents, treaties and agreements to which Bosnia and Herzegovina is a party;
- (i) Ethical principles for conducting judicial or prosecutorial functions and
- (j) Other matters relevant to the post.

(2) In the event that a written examination is conducted, the Council shall seek to ensure that the persons marking the examination are not aware, during the process of the marking of the examination, of the identity of the author of the examination.

Article 40 ***Interviews***

No person shall be eligible for appointment to judicial or prosecutorial office without having been interviewed.

Article 41 ***Opinions on the Applicants***

The Council may seek written opinions regarding the professional and other qualifications of an applicant.

Article 42 ***Rights of Applicants***

Each applicants shall have the right to review his or her application materials provided to the Council in regard to his or her applications, to request and receive information, subject to confidentiality, regarding the application and appointment procedure, to review and comment

upon any opinion regarding the applicant submitted to the Council, and to address comments to the Council about a matter affecting the applicant's application.

Article 43
Criteria for Appointment

(1) In making decisions on appointment, the Council shall take into account, amongst others, the following criteria:

- (a) Professional knowledge, work experience and performance;
- (b) Capacity through academic written works and other professional activities;
- (c) Professional ability based on previous career results, including participation in organized forms of training;
- (d) Work capability and capacity for analysing legal problems;
- (e) Ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered;
- (f) Communication abilities;
- (g) Relations with colleagues, conduct out of office, integrity and reputation; and
- (h) Managerial experience and qualifications, in relation to the positions of Court President, Chief Prosecutor and Deputy Chief Prosecutor.

(2) 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 44
Decision on Appointment

(1) The decision to appoint a candidate to a judicial or prosecutorial post shall be made in accordance with Article 17 of this Law and shall contain justification in writing.

(2) The Council may annul a decision on appointment if it, after the decision on appointment, but before the appointee has commenced his or her function, receives information which, if it had been known at the time of the appointment of that person by the Council, would have resulted in the Council not appointing such person to judicial or prosecutorial office. The Council may, if it considers necessary, postpone the date of commencement of function of a person in respect of whom information as described in this paragraph is received, in order to enable it to conduct a proper investigation of the information concerned.

(3) If the Council annuls a decision on appointment, it shall either appoint another person to office from the pool of applicants or re-announce the position as vacant.

Article 45
Announcement of Appointment Decision

(1) The Council shall inform all applicants, the relevant court or prosecutor's office, and the relevant ministry of justice of its decision on appointment.

(2) 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.

(3) The decision on appointment shall be published in the Official Gazette of Bosnia and Herzegovina.

Article 46

Commencement of Official Function

(1) A person appointed to judicial or prosecutorial office shall commence official function on a date as determined by the Council.

(2) 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 applicants or re-announce the position as vacant.

Article 47

Declaration of Office

(1) Before taking up their official function, judges and prosecutors shall make a solemn declaration: "I solemnly declare that I shall perform the duty of my office in accordance with the Constitutions and the Law, 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 Constitutions of Bosnia and Herzegovina."

(2) The individual appointed to office shall make the solemn declaration orally before the President of the Council, or a Council Member designated by the President of the Council, and by attesting his or her signature to the declaration.

Article 48

Appointment of Reserve Judges

(1) The Council may appoint persons on a temporary basis to act as reserve judges, in order to assist courts in reducing case backlogs, or where the prolonged absence of a judge in a court requires additional judicial resources. The Council may appoint reserve judges upon application by the president of a court, provided the application is supported by evidence indicating the need and sufficient funding for the reserve judges.

(2) Before taking up official function, a reserve judge shall make the Solemn Declaration, as provided for under Article 46 of this Law. The President of the Council may delegate this task to the President of the court in which the reserve judge is to take up his or her function.

Article 49

Appointment of Lay Judges

(1) The Council shall appoint lay judges to serve in a court after receiving a list of proposals by the President of the Court concerned.

(2) Lay judges shall be entitled to compensation for expenses reasonably incurred in the performance of their duties and to remuneration. The relevant Ministry of Justice, after consultation with the Council, shall determine the conditions for service of lay judges, and the amounts of compensation and remuneration to which they are entitled.

(3) Before taking up official function, a lay judge shall make the Solemn Declaration as provided for under Article 47 of this Law. The President of the Council may delegate this task to the President of the court in which the lay judge is to take up his or her function.

Article 50 ***Assignment with Consent***

(1) Judges, including reserve judges, may be assigned to perform judicial service, with their consent, at another court of the same or lower instance:

(a) for a period of no longer than six (6) months, for the reason that there is an insufficient number of judges at the court to which they are being temporarily assigned (in further text: “the receiving court”); or

(b) for a period of no longer than twelve (12) months, for the reason that there is a temporary reduction in the workload of the court in which he or she regularly performs judicial service; or

(c) for a period of no longer than twelve (12) months, in order to assist in the elimination of backlogs in the caseload of the receiving court; or

(d) for an indefinite period, for the reason that the judge is assigned to deal with a particular case or cases in the receiving court, where the disqualification of a judge at that court necessitates the temporary assignment of a judge from another court to deal with such case or cases; or

(e) for an indefinite period, for the reason that a judge at the receiving court is on extended leave.

(2) A judge may not be temporarily assigned to another court on more than two consecutive occasions, unless he or she has, in the meantime, been performing judicial service at the court to which he or she was appointed for a period of at least twelve (12) months.

Article 51 ***Assignments without Consent***

(1) A judge may only be the subject of a temporary assignment without his or her consent if the conditions set out in this Article are fulfilled.

(2) A judge may be assigned to perform judicial services in another court without his or her consent for a period of up to three (3) months, in the event that such assignment is in order to participate in one particular case at the receiving court, or in the event that no other judge has consented to such an assignment.

(3) A judge may not be temporarily assigned to another court without his or her consent if he or she has been the subject of a temporary assignment in the preceding twelve (12) months.

Article 52
Procedure for Assignment

The Council shall make a decision on a request for temporary assignment, pursuant to Articles 50 and 51, upon a request from the President of a Court who wishes to have a judge temporarily assigned to his or her court. The Council shall consult the President of the Court who made the request, the judge who is being considered for temporary assignment, and the President of the Court where that judge regularly performs judicial service.

Article 53
Temporary assignments of Prosecutors

Temporary assignments of prosecutors shall be regulated in accordance with the provisions of the Law on Prosecutors applicable to the prosecutor's office in question.

CHAPTER VI - DISCIPLINARY LIABILITY OF JUDGES AND PROSECUTORS

Article 54
General Provision on Liability for Disciplinary Offences

A judge, prosecutor, reserve judge, or lay judge, including a Court President and Chief or Deputy Chief Prosecutor, shall be held liable for any disciplinary offence regulated by this Law which he or she commits, either with intent or negligently.

Article 55
Competence for Disciplinary Proceedings

The Council shall exercise its disciplinary powers through its disciplinary bodies.

Article 56
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, or other individuals;
4. disclosure of confidential information 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 or her position as a judge in order to obtain unjustified advantages for himself or herself or for other persons;
7. not disqualifying himself or herself from hearing a case when a conflict of interest exists;
8. neglect or careless exercise of official duties;
9. issuing decisions in patent violation of the law or persistent and unjustified violation of procedural rules;
10. 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 a judge or prosecutor with the intention of obstructing their activities or demeaning them;
14. if he or she is sentenced to imprisonment for a crime, or if he or she is convicted of a crime which makes him or her unfit for judicial 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 court who are subject to his or her authority;
16. being engaged in activities that are incompatible with the judicial function;
17. failure, for an unjustifiable reason, to comply with decisions, orders or requests of the Council,
18. failure to respond to an inquiry pursuant to a disciplinary matter, unless for a justified reason;
19. if he or she 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 fulfil any mandatory training obligations or any other obligations imposed by law;
21. if he or she does not act in accordance with the decision on temporary transfer to another court;
22. behaviour inside or outside the court that demeans the dignity of judge; 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 judiciary.

Article 57

List of Disciplinary Offences for Prosecutors

Disciplinary offences for 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, or other individuals;
4. disclosure of confidential information arising in the prosecutorial function;

5. accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the prosecutor, including also when the gift or remuneration merely creates the appearance of improper influence;
6. exploiting his or her position as a prosecutor in order to obtain unjustified advantages for himself or herself or for other persons;
7. not disqualifying himself or herself from prosecuting a case when a conflict of interest exists;
8. neglect or careless exercise of official duties;
9. unjustified delays in performing any acts related to the exercise of prosecutorial functions, or any other repeated disregard of the duties of the prosecutor;
10. engaging in inappropriate communications with the judge or any parties to a proceeding;
11. enabling a person not authorised by law to perform prosecutorial functions;
12. interfering in the jurisdictional activity of a judge or prosecutor, with the intention of obstructing their activities or demeaning them;
13. if he or she is sentenced to imprisonment for a crime, or if he or she he is convicted of a crime which makes him or her unfit for the prosecutorial function;
14. making any comment, while a proceeding is pending in any court, that might reasonably be expected to prejudice or interfere with a fair trial or hearing, or failing to take reasonable steps to maintain and ensure similar abstention on the part of the staff at the prosecutor's office who are subject to his or her authority;
15. failing to carry out instructions of a superior prosecutor under whose authority they serve, unless the carrying out of such instruction would itself constitute a violation of law or this Article;
16. being engaged in activities that are incompatible with the prosecutorial function;
17. failure, for an unjustified reason, to comply with the decisions, orders or requests of the Council,
18. failure to respond to an inquiry pursuant to a disciplinary matter, unless for a justified reason;
19. if he or she 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 fulfil any mandatory training obligations or any other obligations imposed by law;
21. if he or she does not act in accordance with the decision on temporary transfer to another prosecutor's office;
22. behaviour inside or outside the court or office that demeans the dignity of the 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 prosecutor.

Article 58
List of Measures

- (1) The Council may impose one or more of the following disciplinary measures:
 - (a) A written warning which shall not be made public;
 - (b) Public reprimand;
 - (c) Reduction in salary up to a maximum of 50% (fifty per cent) for a period of up to one (1) year;

- (d) Temporary or permanent reassignment to another court or prosecutor's office;
- (e) Demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor;
- (f) Removal from office.

(2) As a separate measure, instead of or in addition to any of the disciplinary measures set out above, the Council may, if appropriate, order that a judge or prosecutor participate in rehabilitation programmes, counselling, or professional training.

(3) All rights and privileges under labour relations of a judge, Court President, Chief Prosecutor, Deputy Chief Prosecutor, or prosecutor who is removed from office pursuant to a disciplinary proceeding shall cease upon removal by the Council. A judge or prosecutor who is removed from office under this article shall be barred from further exercise of judicial or prosecutorial function.

Article 59

Principles for Determining Measures

(1) Disciplinary measures imposed should be governed by the principle of proportionality. Before pronouncing the measures for a disciplinary offence, the following aspects shall be taken into consideration by the Disciplinary Panels:

- (a) the number and severity of the disciplinary offence committed and its consequences;
- (b) the degree of responsibility;
- (c) the circumstances under which the disciplinary offence was committed;
- (d) the previous work and behaviour of the offender; and
- (e) any other circumstances that may affect the decision on the severity and type of disciplinary measure, including the degree of remorse and/or cooperation shown by the judge or prosecutor during the disciplinary proceedings.

(2) The disciplinary measure 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 or unworthy to continue to hold his or her office.

(3) The Council may take into account any prior suspension, imposed in the course of the proceedings in question, and may reduce the disciplinary measure accordingly, or may, at its discretion, determine that the prior suspension is itself a sufficient measure for the disciplinary violation or violations found.

Article 60

Conduct of Disciplinary Proceedings and Appeals

(1) Disciplinary proceedings shall be conducted by:

- (a) the First Instance Disciplinary Panel and
- (b) the Second Instance Disciplinary Panel.

(2) The First and Second Instance Disciplinary Panels shall be independent and shall have full authority to adjudicate disciplinary matters. Any panel members who participate in a

matter before the First Instance Panel shall not participate in the same matter before the Second Instance Disciplinary Panel.

(3) Disciplinary liability and the imposition of measures in the first instance shall be determined by the First Instance Disciplinary Panel, which shall be composed of three (3) members, at least two (2) of whom shall be members of the Council.

(4) 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 of the Council. The Second Instance Disciplinary Panel may confirm, reject or alter the decision of or disciplinary measures imposed by the First Instance Disciplinary Panel.

(5) In disciplinary proceedings against judges, a majority of members of the Panel, at both First and Second Instance, shall be judges. In disciplinary proceedings against prosecutors, a majority of members of the Panel, at both First and Second Instance, shall be prosecutors.

(6) An appeal to the full membership of the Council is possible against a disciplinary measure determined by the Second Instance Disciplinary Panel. If the Council does not confirm the measure of removal, the Council may impose any other measure provided for by this Law. Members of the first and second instance panels shall be eligible to participate, unless their disqualification is required for a reason other than prior adjudication of the matter.

(7) A judge or prosecutor who has been removed by decision of the Council may appeal to the Court of Bosnia and Herzegovina on one or both of following grounds only:

- (a) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, materially violated the procedures set out in this Law;
- (b) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, erroneously applied the law.

(8) Any appeal under paragraph (7) above must be received by the Court of Bosnia and Herzegovina within three (3) weeks of the date of the receipt by the judge or prosecutor of the decision of the Council. Appeals made after that date shall be rejected by the Court of Bosnia and Herzegovina in a summary procedure.

Article 61

Appointment and Mandate of Members of Disciplinary Panels

(1) The President of the Council shall appoint the members of the First and Second Instance Disciplinary Panels, in accordance with the provisions of Article 60.

(2) Members shall serve for a term of two (2) years, subject to completion of pending disciplinary proceedings. Members of Disciplinary Panels shall be eligible for reappointment.

Article 62

Disciplinary Bodies and Procedure

(1) The Council shall, in its Rules of Procedure, regulate the formation and operation of the disciplinary bodies, and the conduct of disciplinary proceedings consistent with this Law.

(2) The Rules of Procedure may allow for expedited proceedings, provided that the rights of parties under this Law are respected.

Article 63 ***Subpoena Process***

(1) The Council, including its disciplinary panels, shall have the power to issue subpoenas for the attendance of witnesses or for the production of documentary evidence, which shall be served in the same manner provided for under the code of civil procedure applicable to the locus of the action.

(2) The Council, including its disciplinary panels, shall have the power to punish the wilful failure to obey a subpoena, which shall constitute contempt of the Council, in the same manner provided for under the code of civil procedure applicable to the locus of the action.

(3) Witnesses shall be entitled to payment of their expenses in accordance with the same terms as provided for in the code of civil procedure applicable to the locus of the action.

Article 64 ***Disciplinary Counsel***

(1) The Office of the Disciplinary Counsel, an office within the Council, shall perform prosecutorial functions concerning allegations of misconduct against judges and prosecutors in accordance with this Law and the Rules of Procedure of the Council.

(2) The Office of the Disciplinary Counsel shall act upon a complaint or upon its own initiative and shall be responsible for evaluating complaints for legal sufficiency, investigating allegations of misconduct against judges and prosecutors, and initiating and presenting cases of disciplinary violations before the disciplinary panels of the Council.

(3) The Council shall appoint an individual, who either is a judge or prosecutor or who fulfils the minimum requirements set forth in this Law for appointment as a judge or prosecutor, of high moral standing and requisite legal expertise to serve as the Chief Counsel of the Office of Disciplinary Counsel. The Chief Counsel shall have a mandate of four (4) years and be eligible for re-appointment. The Chief Counsel shall be supported by a staff of lawyers and investigators. The Chief Counsel may authorize staff lawyers to present cases before the Council and its disciplinary panels.

(4) In matters of conflict of interest or that would otherwise require disqualification of the Chief Counsel from the investigation or prosecution of a disciplinary matter before the Council or its disciplinary panels, the Council shall employ outside counsel to investigate or prosecute the matter.

(5) The Chief Counsel of the Office of Disciplinary Counsel shall be appointed and removed by the Council in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina.

(6) The salary of the Chief Counsel of the Office of Disciplinary Counsel shall be equal to the average salary earned by prosecutors of the Cantonal Prosecutors' Offices in the

Federation of Bosnia and Herzegovina and in District Prosecutors' Offices in the Republika Srpska.

(7) All administrative and financial decisions of the Office of Disciplinary Counsel shall be rendered by the Chief Counsel and shall be executed by the relevant department of the Secretariat upon the order of the Chief Counsel.⁹

Article 65

Record keeping and Reporting to the Council

(1) The Office of the Disciplinary Counsel shall maintain records of complaints filed and the action taken in the processing of complaints, investigations, and disciplinary matters.

(2) The records shall be available to the Council. The Office of the Disciplinary Counsel shall be obliged to provide the Council with copies of complaints, investigation reports, or other relevant documentation as requested.

(3) The Office of the Disciplinary Counsel shall report periodically, in written form, to the Council regarding its activities.

Article 66

Inquiries

(1) The Office of the Disciplinary Counsel may initiate inquiries concerning allegations of judicial or prosecutorial misconduct or disability.

(2) All courts, prosecutor's offices and governmental bodies, as well as judges, prosecutors, reserve judges, lay judges, and employees of courts and prosecutor's offices shall comply with requests by the Office of the Disciplinary Counsel for information, documents, or other materials related to an inquiry.

(3) The Office of the Disciplinary Counsel may request a disciplinary panel to issue a subpoena for the production of information, documents, or other materials related to an inquiry for individuals or bodies not governed by sub-paragraph (2) above.

(4) In the event that a judge or prosecutor refused to provide information, documents or other material pursuant to a request from the Office of the Disciplinary Counsel, that Office may apply to a disciplinary panel for an order compelling the judge or prosecutor in question to produce the requested information, documents, or other material.

Article 67

Initiating Disciplinary Proceedings and Filing of Complaint

(1) The Office of the Disciplinary Counsel shall initiate proceedings before the First Instance Disciplinary Panel by filing a complaint if it believes that a judge or prosecutor has engaged in misconduct.

⁹ Paragraph 7 amended – the High Representative's Decision of 15 June 2007

(2) The complaint shall enumerate the alleged disciplinary violations and comply with the Rules of Procedure governing disciplinary proceedings.

Article 68

Rights of Parties during Disciplinary Proceedings

Disciplinary procedures shall be governed by fairness and transparency. During the course of disciplinary proceedings, the judge or prosecutor concerned shall have the following rights that must be guaranteed in the Rules of Procedure for disciplinary proceedings adopted by the Council:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) the right that judgments shall be pronounced publicly and/or made public in some manner; and
- (e) the right to appeal adverse decisions.

Article 69

Joint Consent Agreement

(1) The Office of the Disciplinary Counsel and a person against whom the complaint has been filed and his or her legal representative, if applicable, may at any time agree upon a voluntary disposition of the alleged disciplinary violations of which the judge or prosecutor is accused. The parties may agree as to which disciplinary violations the judge or prosecutor will admit, and on an appropriate measure. The parties shall file a Joint Consent Agreement for Finding of Disciplinary Liability reflecting the violations which the judge or prosecutor is admitting (the "Agreement").

(2) The Agreement shall be in writing, signed by the parties and will be filed with the Council. The Agreement shall contain:

- (a) a factual statement of the violations to which the judge or prosecutor admits;
- (b) the agreed statement upon measure, if any.

(3) The Agreement shall be forwarded to the President of the Council, who shall appoint a Disciplinary Panel to consider the Agreement. The Panel shall accept or reject the Agreement by a majority vote. If the Panel decides to reject the Agreement, it shall give reasons in writing for such rejection.

(4) If the Panel accepts the Agreement, the matter shall proceed in the same manner as if the Panel had made a finding after a hearing that a disciplinary violation had occurred, except that there shall be no appeal subsequent to the Panel's acceptance of the Agreement.

(5) If the Panel rejects the Agreement, the fact that the parties had attempted to negotiate such an Agreement in voluntary resolution of the disciplinary violations and any admissions made by a party before the Panel during the hearing on whether to accept the Agreement may not be used either by or against either party at any disciplinary hearing.

(6) In the event that an Agreement is rejected by a Panel, the Office of the Disciplinary Counsel may initiate disciplinary proceedings against the judge or prosecutor named in the Agreement within ninety (90) days of the date of rejection of such Agreement.

(7) All Joint Consent Agreements shall contain a statement, signed by the judge or prosecutor concerned, that he or she is aware that the Joint Consent Agreement is subject to the approval of the First Instance Disciplinary Panel, and that such approval may be withheld at the discretion of that Panel.

Article 70 ***Confidentiality***

(1) All proceedings or actions in relation to allegations of misconduct or disability prior to the filing of a formal complaint by the Office of the Disciplinary Counsel are confidential unless the judge or prosecutor, who is the subject of the allegations, waives the right to confidentiality in writing.

(2) If prior to the filing of a formal complaint, an investigation of possible misconduct or disability becomes public, the Office of the Disciplinary Counsel may issue a statement in order to confirm that an investigation is pending, to clarify procedural aspects of the disciplinary proceedings, to explain the rights of judges and prosecutors to a fair hearing without prejudgment, to state that a judge or prosecutor denies the allegations, or to correct public misinformation.

Article 71 ***Privilege and Immunity***

(1) A complaint or communication alleging judicial or prosecutorial misconduct with the Office of the Disciplinary Counsel or information obtained through an investigation shall be privileged, except as to requests from the Council.

(2) The staff of the Council and the Office of the Disciplinary Counsel and international experts having a contract with or being seconded to the Council shall be immune from civil liability for any conduct performed in the course of their official duties.

Article 72 ***Limitation period for Initiating Disciplinary Proceedings***

(1) No disciplinary proceeding may be initiated against a judge or a prosecutor more than five (5) years after the date that the alleged violation occurred, or in respect of a criminal matter, no more than two (2) years after the date of the final and binding decision of a court in criminal proceedings occurred. The limitation in this paragraph shall not apply to alleged violations of Articles 56(19) or 57(19) of this Law.

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

Article 73

Statute of Limitations for Conducting Disciplinary Proceedings

Proceedings for determining disciplinary liability must be completed within one year from the date of the filing of a formal complaint before a disciplinary panel, unless upon a showing of cause that an extension is justified.

Article 74

Recording and Publishing Final Disciplinary Decisions

(1) The Council shall maintain records on all pronounced disciplinary measures.

(2) Disciplinary measures of removal from office shall be published in the Official Gazette of Bosnia and Herzegovina.

Article 75

Incapacity of Judge or Prosecutor

(1) The Office of Disciplinary Counsel shall inquire into and present cases before the Council concerning the physical, emotional, mental, or other incapacity of a judge or prosecutor, requiring permanent or temporary suspension of a judge or prosecutor from official duty or termination of mandate.

(2) The Office of Disciplinary Counsel shall have all rights and powers delegated under this chapter to inquire into and gather information concerning the disability of a judge or prosecutor.

(3) In addition to the remedies under paragraph (1) of this Article, the Council shall have broad remedial authority. If a judge or prosecutor is relieved of duty, the Council may reinstate a judge or prosecutor upon a showing that the judge or prosecutor is no longer incapacitated.

(4) The judge or prosecutor shall retain all rights to pension, disability, or other benefits, as provided by law, in the event of being relieved of duty or termination of mandate.

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

Article 76 ***Mandatory Suspension***

- (1) A judge or prosecutor who is being held in pre-trial confinement shall be suspended from duty. Such suspension shall last for the same length of time as the person's pre-trial confinement.
- (2) The suspension may be extended under Article 77 of this Law if the judge or prosecutor is released from pre-trial confinement.

Article 77 ***Discretionary Suspension***

A judge or prosecutor may be suspended from duty if:

- (a) if a criminal investigation is initiated against the judge or prosecutor;
- (b) if an indictment for a criminal act is brought by a competent prosecutor;
- (c) if a procedure for his or her dismissal has been initiated;
- (d) if a disciplinary proceeding has been initiated for a disciplinary violation, and the Council determines that disciplinary liability cannot be properly adjudicated without suspension of the judge or prosecutor during the proceedings; or
- (e) if the performance of official functions is impaired because of his or her mental, emotional, or physical condition.

Article 78 ***Initiation of Suspension Proceedings***

- (1) The First Instance Disciplinary Panel of the Council may suspend a judge or a prosecutor upon its own initiative, upon the request of the Office of Disciplinary Counsel, or upon the request of the Court President or the Chief Prosecutor who has authority over the judge or prosecutor in question.
- (2) The relevant Court President or Chief Prosecutor shall immediately, upon learning of any of the events listed in Articles 76 and 77, forward the information to the Council.

Article 79 ***Suspension Decisions and Appeals***

- (1) A decision on suspension from duty made in accordance with the provisions of Articles 76 and 77 shall be taken by the First Instance Disciplinary Panel of the Council.
- (2) All appeals of decisions relating to suspensions shall be made to the Second Instance Disciplinary Panel of the Council. An appeal shall not stay the enforcement of the decision referred to in paragraph (1) of this Article.¹⁰

¹⁰ Paragraph 2 amended – the High Representative's Decision of 15 June 2007

(3) The decision of the Second Instance Disciplinary Panel may be contested by filing a complaint with the Court of Bosnia and Herzegovina.

Article 80
Limits on Length of Suspension

(1) The suspension of a judge or prosecutor may be ordered for any period not to exceed the date of the finalisation of the disciplinary proceedings which form the basis of the suspension.

(2) The First Instance Disciplinary Panel may, at its discretion, review a suspension of a judge or prosecutor ordered under Article 77, and may after such review amend, annul or affirm such suspension.

Article 81
Suspension of Salary and Other Emoluments

(1) In the event that a judge or prosecutor is found guilty of a criminal offence by a first instance court, the First Instance Disciplinary Panel may order that the payment of salary and other emoluments to that judge or prosecutor be suspended, pending the determination of any appeal to a higher instance court.

(2) In the event that any appeal is successful, the judge or prosecutor concerned shall be entitled to the immediate payment of all salary and other emoluments which were withheld under paragraph (1) of this Article.

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

Article 82
General Prohibition against Incompatible Functions

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

(2) A judge or 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.

(3) A judge or 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, sexual orientation, religion, or ethnic, or national origin, nor arrange to use the facilities of such an organisation.

Article 83

Prohibition against Performance of Public, Legal, or Other Functions

- (1) A judge or prosecutor shall not hold any other public office that would conflict with the performance of judicial or prosecutorial function, unless otherwise provided by law.
- (2) A judge or 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 or prosecutor may engage in academic, scholarly, or similar activities that serve to educate the public and may be entitled to remuneration.
- (3) A judge or prosecutor shall not be a member of an executive or supervisory board of public or private companies or other legal persons.
- (4) A judge or prosecutor shall not perform any other duties that may interfere with the performance of judicial or prosecutorial function.

Article 84

References to the Council

If a Court President or Chief Prosecutor believes that a judge or prosecutor is performing activities which are prohibited by Articles 82 and 83 of this Law, the judge or prosecutor shall be informed and the Court President or Chief Prosecutor shall refer the matter to the Council, which shall issue a binding decision. The Council's Rules of Procedure shall regulate proceedings.

Article 85

Opinions on Activities of a Judge or Prosecutor

A judge or prosecutor may request the Council to provide an opinion on whether his or her activities are compatible with his or her function and the provisions of this Law. Such request shall contain details of the activities concerned. The Council shall respond in writing to such a request within a reasonable time from the receipt of such request. The response of the Council provided in accordance with this paragraph shall be binding.

Article 86

Reporting of Activities to the High Judicial and Prosecutorial Council

Judges and 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 shall send out forms for financial reports and may request additional information.

Article 87
Immunity of Judges and Prosecutors

- (1) A judge or 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.
- (2) 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 or prosecutor.

CHAPTER IX - TERMINATION OF OFFICE

Article 88
Termination of Mandate to Hold Office

- (1) The mandate of a judge or prosecutor shall terminate:
 - (a) in the case of judges and prosecutors, upon reaching the mandatory retirement age,
 - (b) in the case of a Court President, upon the expiry of the period for which he or she has been appointed;
 - (c) in the case of Chief Prosecutors and Deputy Chief Prosecutors, upon reaching mandatory retirement age or upon the expiry of the period for which he or she has been appointed;
 - (d) upon resignation from office;
 - (e) upon removal by the Council as a consequence of disciplinary proceedings;
 - (f) if it has been proven by the medical documentation that he or she has permanently lost the working capacity to perform his judicial or prosecutorial function;
- (2) A Court President, Chief Prosecutor or Deputy Chief Prosecutor shall be able to resign from his or her position and continue to perform service as a judge or prosecutor, respectively until the decision on resignation is passed by the Council, i.e. until the expiry of the day when the resignation should enter into force.
- (3) In case of the termination of the mandate of a Court President, Chief Prosecutor or Deputy Chief Prosecutor, he or she shall nevertheless continue to perform a judicial or prosecutorial function in the same court or prosecutors' office.
- (4) In case a judge or prosecutor reaches the mandatory retirement age, his or her mandate shall automatically terminate. In case of resignation, the judge or prosecutor shall submit a resignation in writing to the Council indicating the date of resignation. The mandate of a judge or prosecutor under subparagraph (d) of the first paragraph of this Article shall expire on the later of the date when the Council receives his or her written statement of resignation or the date on which the resignation is to take effect. The mandate of a judge or prosecutor under subparagraphs (e) and (f) shall expire upon determination of the Council.
- (5) If a Court President or Chief Prosecutor is aware in advance that the mandate of a judge or prosecutor under their supervision will terminate, the Court President or Chief Prosecutor shall notify the Council immediately in order for new appointment proceedings to be commenced for the future vacancy.

Article 89
Temporary Extension of Mandate

A Court President, Chief Prosecutor or Deputy Chief Prosecutor whose mandate has expired due to the expiry of the period for which he or she has been appointed shall continue exercising the rights and duties of such office until a new President or Chief Prosecutor is appointed.

Article 90
Mandatory Retirement Age

The mandatory retirement age for judges and prosecutors appointed by the Council shall be age seventy (70).

CHAPTER X - FINAL PROVISIONS

Article 91
Abolishment of All Former Councils and Transitional Arrangements

(1) The High Judicial and Prosecutorial Councils established under the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, as amended, (*Official Gazette of Bosnia and Herzegovina, Nos. 15/02, 26/02 and 35/02*), the Law on High Judicial and Prosecutorial Council of Republika Srpska, as amended, (*Official Gazette of Republika Srpska Nos. 31/02 and 55/02*), and the Law on High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina, as amended, (*Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 22/02, 41/02, 42/02 and 19/03*) are hereby abolished with effect from the date of entry into force of this Law.

(2) The Council shall be the legal successor of the former High Judicial and Prosecutorial Councils referred to in the first paragraph of this Article.

(3) The staff selected in accordance with Article 3 of the Decision of the High Representative No. 167/03 dated 20 November 2003 shall be transferred to the Secretariat and the Office of the Disciplinary Counsel of the Council.

(4) Within three (3) months after the entry into force of this Law, the Agency for Civil Service shall review whether the initial transitioned staff of maximum thirty (30) staff members fulfils the basic requirements in Article 22 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina. All staff not recruited in accordance with paragraph 3 of this Article shall be recruited by the Council in accordance with the provisions of the Law on Civil Service in the Institutions of Bosnia and Herzegovina.

(5) Assets, liabilities, equipment, tangible and intangible materials, files and other documents or property of the former Councils referred to in the first paragraph of this Article shall be transferred to the Council.

(6) Assets, equipment, tangible and intangible materials, files and other documents or property in the possession of the Independent Judicial Commission may be transferred to the Council, in accordance with an agreement between the Council, the Independent Judicial

Commission and the relevant owners of the property. Assets, equipment, tangible and intangible materials, files and other documents or property transferred in this way shall not be subject to customs, tax or duties.

(7) International experts may be seconded to the Council. The privileges and immunities related to the diplomatic status of such international experts shall be regulated in an agreement between the Council of Ministers of Bosnia and Herzegovina and the Council.

(8) International experts having a contract with or being seconded to the Council whose salary and emoluments are paid from funds provided from international donors shall be exempt from income or any other tax or contribution levied on such salary and emoluments under the laws of Bosnia and Herzegovina.

Article 91a

(Current mandates of the Director, the Deputy Director and the Vice-Presidents)

(1) The mandate of the Director and the Deputy Director of the Secretariat provided for under this Law shall be deemed to have commenced on the date they assumed their respective offices.

(2) The Vice-Presidents of the Council shall assume their full time duties in the Council not later than 1 January 2008.¹¹

Article 92

Repealing of Provisions

The Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, as amended, the Law on High Judicial and Prosecutorial Council of Republika Srpska, as amended, and the Law on High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina, as amended, *shall* be repealed as of the entry into force of this Law.

Article 93

Harmonisation

Laws or statutory provisions contained in the laws of Republika Srpska, the Federation of Bosnia and Herzegovina and the Brcko District of Bosnia and Herzegovina shall be brought into harmony with this Law and any provisions that are inconsistent with this Law are hereby repealed.

Article 94¹²

Minor Offence Courts

(1) The Council shall commence a process, in accordance with Chapter V of this Law, to appoint judges to those courts in Republika Srpska and the Federation of Bosnia and Herzegovina that according to Entity Laws on Courts will have jurisdiction to handle minor

¹¹ New Article 91a added – the High Representative’s Decision of 15 June 2007

¹² Former Article 94 amended by the Law on Amendments to the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 93/05) that entered into force on 7th January 2006

offence cases. Such appointments shall be performed at a day as decided by the Council, but no earlier than 1 January 2006.

(2) As an exception to the provisions of Article 28(1) of this Law, applicants for such positions shall be eligible to apply if they have passed the bar examination although they do not have three years of post bar experience in legal matters.

(3) A judge appointed to handle minor offence cases at first instance without having three years of post bar experience, may not handle other cases of the court before such experience is gained.

(4) In situation of all other factors being equal, the Council shall give priority to those candidates who have specialized experience in the field of minor offences.

(5) All serving judges of cantonal or municipal Minor Offence Courts in the Federation of Bosnia and Herzegovina and Minor Offence Courts in the Republika Srpska, who are not selected by the Council in accordance with paragraph (1) of this Article, shall no longer have a mandate to perform judicial function. The Council shall determine a termination of mandate to such judges as of 1 January 2006, or later if so specified by the Council.

(6) A judge of a cantonal or municipal Minor Offence Court in the Federation of Bosnia and Herzegovina and judge of Minor Offence Court in the Republika Srpska, whose mandate is terminated in accordance with paragraph (5) of this Article, 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 salaries and compensations shall be provided by authority responsible for funding the operations of the relevant court. The non-selection of a judge shall not prohibit the individual from later appointment to a judicial or prosecutorial post.

(7) The receipt of benefits under paragraph (6) of this Article shall be terminated if an individual, during the period of benefits, reaches the mandatory retirement age for judges and is entitled to pension and other benefits as provided by law.

Article 95

Publication and Entry into Force

This Law shall be published in the Official Gazette of Bosnia and Herzegovina and shall enter into force on the day of its publication.