

Acting under the auspices of the High Judicial and Prosecutorial Council of Bosnia Herzegovina pursuant to Article 3(1) of the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of BiH, No. 25/04, 93/05, 48/07 and 15/08), Article 9(3) of the Rules on Internal Court Operation (Official Gazette of BiH, No. 66/12), Article 9(3) of the Rules on Internal Court Operation (Official Gazette of RS, No. 9/14) and in accordance with the recommendations of the Structured Dialogue on Justice between the European Union and Bosnia and Herzegovina and the Opinion of the Venice Commission on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina No. 648/2011 of 18 June 2012, the representatives of the Court of Bosnia and Herzegovina, the Supreme Courts of the Entities, and the Appellate Court of Brčko District of BiH on 10 April 2014 adopted the following

R U L E S

of the Judicial Practice Harmonisation Panels

I GENERAL PROVISIONS

Article 1 (Scope of Rules)

These Rules shall define the role, composition, method of operation and other issues important for the operation of the panels and judicial practice harmonisation.

II ROLE OF PANELS

Article 2 (Objectives of Panels)

(1) The panels for establishing a continuous dialogue between the highest judicial instances shall act as a platform for harmonising judicial practice, and for discussing other common arising issues.

Article 3 (Role of Panels)

(1) Where legal provisions are harmonised but their interpretation differs, the panels shall harmonise positions and provide legal opinions.

(2) Where legislative solutions are not harmonized, and result in inequality of citizens before the law, the panels shall initiate legislative amendments as necessary.

(3) The panels may be used to share experiences and opinions in the interpretation and application of laws and in other situations, and shall propose appropriate solutions to competent institutions.

Article 4 (Coordination of Panels)

The panels shall be coordinated by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: the BiH HJPC).

III COMPOSITION OF PANELS

Article 5 (General Composition of Panels)

- (1) Panel members shall be judges of the Appellate Division of the Court of Bosnia and Herzegovina, the Supreme Court of Republika Srpska, the Supreme Court of the Federation of Bosnia and Herzegovina and the Appellate Court of the Brčko District of Bosnia and Herzegovina (hereinafter: the Courts).
- (2) The Panels shall be formed for the areas of criminal, civil and administrative law.

Article 6 (Members of Panels)

- (1) The Panel members shall be determined by presidents of Court departments, in consultation with the President of the Court for each panel session.
- (2) Each Court shall determine at least one and not more than three members for each panel session.
- (3) The list of panel members shall be delivered to the BiH HJPC Court Documentation Centre.

IV SESSIONS OF PANELS

Article 7 (Holding Sessions of panels)

- (1) Panels sessions shall be held, as a rule, at the premises of the BiH HJPC.
- (2) Panels sessions may also be held outside of the BiH HJPC premises, with the consent of all panel members and provided that financial requirements are met.
- (3) Panels sessions shall be held, as a rule, every three months.

Article 8 (Proposing Topics)

- (1) Topics to be discussed by panels shall be proposed at the sessions of Court departments.
- (2) A department may propose topics eligible for judicial practice harmonisation, as well as topics which due to complexity or unclear legal framework, need to be discussed by the panels.
- (3) The BiH HJPC may initiate topics to be discussed by panels.
- (4) Proposed topics shall be submitted to the BiH HJPC Court Documentation Centre including an indication of priority and urgency.

(5) If no conclusion is agreed on a particular topic at a panel session or during subsequent consultations within the department, such topic shall be nominated for the next or one of the next panel sessions.

Article 9
(Determining the Agenda)

(1) A draft agenda shall be determined by the BiH HJPC Court Documentation Centre, so that the draft agenda, as a rule, shall include one topic by each Court.

(2) The topics from the Courts shall be included in the draft agenda in order of priority and urgency.

(3) The draft agenda shall be provided to the Courts for approval.

(4) Along with approval of the agenda or a proposal for agenda amendments, the Courts shall provide the names of panel members and rapporteurs for the topic proposed by that Court.

(5) If a Court fails to provide comments on the agenda within five days of the draft agenda being delivered, such Court shall be deemed to have approved the draft agenda.

(6) Agenda consultations shall be carried out electronically.

(7) The President of the BiH HJPC shall send invitations for a session to panel members, including the agreed upon agenda, no later than 30 days before the session.

(8) The Presidents of Courts shall be informed of the panel sessions,

Article 10
(Preparation and Delivery of Topic Reports)

(1) The rapporteur on a particular topic shall submit a topic report to the BiH HJPC Court Documentation Centre no later than 20 days before the session.

(2) The topic report should include an explanation of the disputed issue including examples of judicial practice and a draft conclusion.

(3) Following receipt of a topic report, the topic report shall be delivered electronically to all relevant panel members in order to adequately prepare for discussion.

(4) Other panel members may provide their opinion on the session topic in writing (topic joint report) within 10 days after receipt of the topic report. Topic joint reports shall also be provided to other members.

(5) If a topic report is not submitted within the specified period, panel members shall decide during the session whether the issue will be considered or postponed.

V MODE OF OPERATION OF PANELS

Article 11
(Panel Chairmanship)

(1) The panel session shall be chaired by a panel member in accordance with the principle of Court rotation.

Article 12
(Opening and Prerequisites for the Operation of the Panels)

- (1) The chairperson shall open the session by noting whether all panel members are present, that is, whether each Court is represented by at least one representative, in order to ensure the requirements are met to hold the session.
- (2) The chairperson shall present the agreed upon agenda, and shall amend it if necessary, at a proposal and with the consent of panel members.

Article 13
(Course of the Session)

- (1) Presentation of topic reports, discussion and adoption of conclusions shall proceed according to the approved agenda.
- (2) The chairperson shall open the discussion on each item on the agenda following presentation of the topic report by the rapporteur, and shall give the floor to panellists, respecting the order in which it was requested.
- (4) The chairperson shall ensure that the representatives of all Courts take part in the discussion.
- (5) Following completion of discussion on a particular item on the agenda, the chairperson shall close the debate and precisely formulate conclusions.

Article 14
(Decision making)

- (1) Panel members shall vote on the conclusion on a one-Court-one-vote basis.
- (2) Conclusions shall be made by consensus of all Courts.
- (3) If no consensus can be reached on a particular issue, the minority opinion Court shall carry out further consultations at the session of the department and shall notify the BiH HJPC Court Documentation Centre and other members of the panel about the decision made by the department.
- (4) Additional consultations shall also be carried out at department sessions when the Court does not have a position of its department on a particular issue.
- (5) If there is an equal number of pro and contra votes during the voting on a proposed conclusion, the topic shall be proposed for the next or one of the next panel sessions.

Article 15
(Types of Conclusions)

- (1) A panel shall reach a conclusion in the form of a harmonised opinion on a particular legal issue, which shall be submitted to the relevant Court divisions for verification.
- (2) Having been verified by the divisions, the harmonised legal opinion of the Court divisions shall become the legal opinion of the panel.
- (3) The legal opinion of the panels shall be binding for the Courts and instructive for lower instance courts.

(4) A panel may reach a conclusion in the form of an initiative addressed to the competent authorities to enact or amend laws and other regulations.

Article 16
(Drafting of Reasoning)

(1) Once the conclusions are reached, the panel shall appoint a panel member or form a working group to prepare reasonings for conclusions.

(2) Reasonings for conclusions referred to in Article 15(3) of the Rules shall contain reasons for the adoption of the legal opinion.

(3) As a rule, the deadline to draft a reasoning shall be 8 days after the session was held.

(4) Reasonings of conclusions shall be delivered to all the Courts for verification.

(5) The Courts shall be bound to complete verification within 8 days of the reasoning being received.

Article 17
(Submission and Publication of Conclusions)

(1) The Courts shall provide legal opinions of the panels along with accompanying reasonings to lower instance courts within their jurisdiction. Conclusions and reasonings shall be made available to the general public on the website of the BiH HJPC Court Documentation Centre.

(2) The BiH HJPC shall submit conclusions defined under Article 15(4) to the competent authorities.

Article 18
(Modification of Panels Legal Opinion)

(1) If due to a change in circumstances, the division of a Court establishes a need to modify the panel legal opinion, it shall initiate convening an urgent panel session.

(2) If the panels fail to agree to modify the legal opinion, it shall be concluded that there is no harmonised legal opinion of the Courts about that issue and actions shall be taken pursuant to Article 17(1) of the Rules.

Article 19
(Publishing Court Decisions)

The Courts shall serve the BiH HJPC Court Documentation Centre with relevant court decisions supporting the panel legal opinion for the purpose of entering in the database of court decisions.

VI AUDIO RECORDINGS AND MINUTES

Article 20
(Audio Recording)

- (1) The course of the panel meetings shall be recorded by an audio recording device.
- (2) An audio recording shall be stored at the BiH HJPC Court Documentation Centre.
- (3) All panel members shall have access to audio recordings upon request.

Article 21
(Recording of Minutes)

- (1) Minutes of panel sessions shall be recorded by the BiH HJPC Court Documentation Centre.
- (2) Minutes shall include a summary of discussions and voting results, as well as conclusions reached by the panel.
- (3) Minutes shall be provided electronically to panel members within eight days, and shall be approved at the next panel session.
- (4) The approved minutes shall be signed by the panel chairperson and the minute taker, and shall be kept in the BiH HJPC Court Documentation Centre.
- (5) Minutes shall be accompanied by all the supporting documents that served as a basis for discussing specific issues.

VII INTERIM AND FINAL PROVISIONS

Article 22
(Amendments to the Rules)

All issues that have not been regulated by these Rules shall be regulated by panel conclusions or amendments to the Rules.

Article 23
(Entry into Force and Application)

These Rules shall enter into force on the day of adoption.

Meddžida Kreso,
President of the Court of Bosnia and Herzegovina

Amir Jaganjac,
President of the Supreme Court of the Federation of Bosnia and Herzegovina

Želimir Barić,
President of the Supreme Court of Republika Srpska

Damjan Kaurinović,
President of the Appellate Court of the Brčko District of Bosnia and Herzegovina

Milorad Novković,
President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina

Number: 07-50-314-4/2014
Date: 10 April 2014