**Questionnaire of the Special Rapporteur**

**on the independence of judges and lawyers**

1. **Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?**

In Bosnia and Herzegovina this body is the High Judicial and Prosecutorial Council, which was established based on the Law on the High Judicial and Prosecutorial Council. The Council has 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;

1. 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;
2. 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 seeks a written opinion of the relevant Constitutional Court before it makes its proposal;
3. Receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability, and imposing disciplinary measures on judges, lay judges, reserve judges and prosecutors;
4. Deciding upon appeals in disciplinary proceedings;
5. Deciding upon suspensions of judges, lay judges, reserve judges and prosecutors;
6. 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;
7. Determining the minimum amount of advanced professional training to be undertaken by every judge and prosecutor each year;
8. Determining the induction training for candidates chosen for judicial and prosecutorial office and supervising the provision of such training;
9. 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;
10. Deciding upon issues of incompatibility of other functions performed by judges and prosecutors;
11. Deciding upon the temporary assignment or transfer of judges and prosecutors to another court or prosecutor’s office;
12. Deciding upon leaves of absence for judges and prosecutors;
13. Participating, at the Council’s discretion, in the drafting process of annual budgets for the courts and prosecutors offices;
14. Making recommendations upon, at the Council’s discretion, the annual budget proposals made by governmental bodies and/or governments for courts and prosecutors offices;
15. 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;
16. 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;
17. Advocating for adequate and continuous funding of courts and prosecutors’ offices in Bosnia and Herzegovina;
18. Participating in the drafting of, and approving, Books of Rules for the operation of courts and prosecutors offices in Bosnia and Herzegovina;
19. Monitoring and advising courts and prosecutors offices on appropriate and effective budget, administration and management techniques and procedures and initiating training in this regard;
20. 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;
21. 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.

1. **Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget).**

(1) The Council consists of fifteen (15) members:

(a) one (1) member who is a judge from the Court of Bosnia and Herzegovina, elected by the judges of that Court;

(b) one (1) member who is a prosecutor from the Prosecutor’s Office of Bosnia and Herzegovina, elected by the prosecutors of that Office;

(c) one (1) member who is 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 is 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 is a judge from the Supreme Court of the Republika Srpska, elected by the judges of that Court;

(f) one (1) member who is a prosecutor from the Prosecutor’s Office of the Republika Srpska, elected by the prosecutors of that Office;

(g) one (1) member who is 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 organized by the President of the Supreme Court of the Federation of Bosnia and Herzegovina;

(h) one (1) member who is 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 organized by the Chief Prosecutor of the Federation of Bosnia and Herzegovina;

(i) one (1) member who is 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 organized by the President of the Supreme Court of the Republika Srpska;

(j) one (1) member who is 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 organized by the Chief Prosecutor of the Republika Srpska;

(k) one (1) member who is a judge or prosecutor elected by the Brcko District of Bosnia and Herzegovina Judicial Commission;

(l) one (1) member who is an attorney, elected by the Bar Association of the Federation of Bosnia and Herzegovina;

(m) one (1) member who is an attorney, elected by the Bar Association of the Republika Srpska;

(n) one (1) member who is 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

Mandate of the Council members is four (4) years that can be repeated once.

According to the 2016 Annual report of the BiH HJPC 2016 as at 31 December 2016 the HJPC had 132 employees out of which 81 was funded by the Budget of the HJPC, while 51 of the employees were engaged to work on different projects and are remunerated from the donations.

The HJPC budget for 2016 amounted at 4,759,000 BAM.

1. **Please provide detailed information on the legislation and practice existing in your country in relation to:**
2. The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);
3. Condition of service and security of tenure of judges;
4. ) Promotion of judges;
5. Transfer of judges;
6. Disciplinary proceedings against judges.

The above mentioned Law on HJPC governs the mentioned issues in the following manner:

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

1. he or she should shall be a citizen of Bosnia and Herzegovina;
2. he or she should shall hold the intellectual and physical aptitude to perform judicial or prosecutorial function;
3. he or she should 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;
4. he or she should shall have passed a bar examination administered in Bosnia and Herzegovina or in the Socialist Federal Republic of Yugoslavia**;**
5. or, as an exception to sub-paragraph (d) above, he or she should 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.

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

Each applicants has 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.

(1) In making decisions on appointment, the Council should 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.

The Council implements 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.

The mandate of a judge or prosecutor terminates in the following cases:

(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;

The Law also provides for the assignment of judges with or without their consent, as well as the type of disciplinary measures to be taken cannot exceed three months.

System of promotions or advancement is based on the application of the candidates to certain positions.

Disciplinary offences for judges include the following:

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.

The Council may impose one or more of the following disciplinary measures:

(a) A written warning which will 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.

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.

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 judges or prosecutor who is removed from office under this article shall be barred from further exercise of judicial or prosecutorial function.

Disciplinary proceedings are conducted by:

1. the First Instance Disciplinary Panel and
2. the Second Instance Disciplinary Panel.

The First and Second Instance Disciplinary Panels are independent and have full authority to adjudicate disciplinary matters. Any panel members who participate in a matter before the First Instance Panel should not participate in the same matter before the Second Instance Disciplinary Panel.

The First Instance Disciplinary Panel consists of three members out of which at least two are the Council members and in the first instance determines somebody’s liability and pronounces disciplinary measures.

The Second Instance Disciplinary Panel consists of three members, which are at the same time the Council members and they decide on appeals from the decisions of the First Instance Panel. The Second Instance Disciplinary Panel can uphold, repel or modify a decision or a disciplinary measure pronounced by the First Instance Disciplinary Panel.

What is the role played by the national organ or mechanism with regard to the issues referred to above?

Any person who believes that his or her rights guaranteed under the Law on HJCP are violated or denied by the HJPC in any segment of the above mentioned proceedings can turn to the Ombudsman Institution. The Ombudsman Institution will consider these complaints in accordance with its competencies, legislation, constitution and international documents in the same manner as any other complaints against any of the public function holders in Bosnia and Herzegovina.

1. **If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:**
2. Judicial selection and appointment;
3. Transfer and promotion of judges;
4. Disciplinary proceedings against judges

More detailed information on the mentioned proceedings can be found in the attached Law on High Judicial and Prosecutorial Council.