

[Bosnia and Herzegovina]

Official name in original language	Visoko sudsko i tuzilacko vijece Bosne i Hercegovine
Official name in English	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
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Brief history

The founding of the HJPC BiH as the guarantor of the independence of the judiciary in BiH was preceded by a range of reform-related steps. In 2000 and 2001, laws on judicial and prosecutorial service were adopted which established committees for the appointment of judges and prosecutors on federal and cantonal levels in the FBiH and a High Judicial and High Prosecutorial Council in Republika Srpska. The bodies, comprised exclusively from representatives of the judiciary and legal experts, had competences to provide proposals for appointment to the legislative and executive authorities in charge of the election of judges and prosecutors. The committees and the councils also received powers for disciplinary process. However, the unwillingness of the political powers to accept the recommendations of the committees and the councils slowed down appointment procedures and hindered, even obstructed the work of the judicial institutions that were operating under reduced capacities for many years while positions remained unoccupied.

Therefore, the next step was the establishment of high judicial and prosecutorial councils. In May, 2002, the High Representative for BiH amended the entity constitutions concerning the judicial powers and rendered the Law on the High Judicial and Prosecutorial Council of BiH, the Law on the High Judicial and Prosecutorial Council of FBiH and the Law on the High Judicial and prosecutorial Council of RS.

The newly established councils were tasked with ensuring an independent, impartial and professional judiciary and the establishment of a professional effective court system and prosecutorial service. Apart from competencies for appointment, the councils were also given powers to conduct disciplinary proceedings and decide on disciplinary liability of judges and prosecutors, to oversee training, decide on temporary reassignments and incompatibility issues, as well as having competencies for determining the number of judges and prosecutors, providing opinions for draft laws as well as for participating in drafting budgets for the courts and prosecutors offices. Apart from their regular competencies, the councils were also entrusted the very important and demanding task of carrying out the reappointment process for judicial office.

The general objectives of the reappointment process were to improve the quality and professionalism of the performance of judicial office holders and to achieve the appropriate national balance in order to meet with the constitutional provisions on the representation of constituent Peoples and Others. During the transitional period, the appointment and reappointment process covered some 1,000 positions in 83 courts and prosecutors offices, including appointments to newly established institutions on BiH level. The reappointment process also had a major influence on the establishment of an appropriate ethnic balance in the BiH judiciary.

When rendering the entity laws on the high judicial and prosecutorial councils, the High Representative for BiH also passed Instructions for the relevant entity authorities in order to begin negotiations on the transfer of competencies for the judiciary to the state in order to establish the High Judicial and Prosecutorial Council of BiH with comprehensive competencies for the judiciary.

Specifically, the establishment of the HJPC BiH was assessed as the best option for ensuring fully harmonised standards for the appointment and disciplinary processing of judges and prosecutors throughout all of BiH.

The establishment of the HJPC BiH was also a requirement of the *European Union*, considering that the *European Commission Feasibility Study* set the requirement as one of the conditions in order to initiate negotiations on concluding a *Stabilisation and Association Agreement between the EU and BiH*.

In March, 2004, the entity prime ministers and the Minister of Justice of BiH signed an *Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of BiH*, which was ultimately carried out by the *Parliamentary Assembly of BiH* in June, 2004.

The Law on the HJPC BiH established the HJPC BiH in accordance with the European standards for independence, accountability, efficiency and quality of the judiciary. Today, in regional terms, the institution stands for a judicial council that is predominantly organised according to the highest European standards as listed in *Opinion no: 10 of the Consultative Council of European Judges (CCEJ)*.

Stemming from the competencies of the HJPC BiH as prescribed in Article 17 of the Law on the HJPC BiH is that the Council has exclusive jurisdiction for the appointment and disciplinary liability of judicial office holders. Apart from this, the HJPC BiH also executes its role through partnerships with the executive and legislative branches for various fields such as judicial and prosecutorial budgets, legislative

	initiates, judicial administration, the systematization of judge and prosecutor positions and securing funds for the positions as well as other competencies.
Constitutional or legal status/basis	Legal status/basis
Legal acts regulating the Status	The Law on the HJPC BiH and Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina
Composition:	
Total number of members	The HJPC BiH has fifteen members
Term of office	The members of the HJPC BiH have a mandate of four years
Is there a possibility to be renewed as a member?	Yes. The members of HJPC can hold at most two consecutive mandates.
Do the members have a full-time position or not?	In accordance with the Law on the HJPC, members of the HJPC, with the exception of the presidency, do not work full-time in the Council.
Make up	<p>The HJPC has 15 members:</p> <ul style="list-style-type: none"> - five members are judges (elected by the judges of all levels of the courts) <ul style="list-style-type: none"> • one member who is a judge from the Court of Bosnia and Herzegovina, elected by the judges of that Court; • one member who is a judge judge from the Supreme Court of the Federation of Bosnia and Herzegovina, elected by the judges of that Court; • one member who is judge from the Supreme Court of the Republika Srpska, elected by the judges of that Court; • one member who is judge from 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 • one member who is 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 - five members are prosecutors (elected by prosecutors of all levels of the prosecutors offices in BiH) <ul style="list-style-type: none"> • one member who is prosecutor from the Prosecutor's Office of Bosnia and Herzegovina, elected by the prosecutors of that Office;

	<ul style="list-style-type: none"> • one member who is prosecutor from the Prosecutor's Office of the Federation of Bosnia and Herzegovina, elected by the prosecutors of that Office; • one member who is a prosecutor from the Prosecutor's Office of the Republika Srpska, elected by the prosecutors of that Office; • one 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 to be organized by the Chief Prosecutor of the Prosecutor's Office of the Federation of Bosnia and Herzegovina; • one 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 to be organized by the Chief Prosecutor of the Prosecutor's Office of Republika Srpska; <ul style="list-style-type: none"> - one member who is judge or prosecutor elected by the Brcko District of Bosnia and Herzegovina Judicial Commission - one member who is an attorney, elected by the Bar Association of the Federation of Bosnia and Herzegovina - one member who is an attorney, elected by the Bar Association of the Republika Srpska; - one member who is not 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 - one 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.
Is there a majority of Judges?	The HJPC is a united judicial council for courts and prosecutor's offices, so the majority in the council are holders of judicial functions (judges and prosecutors).
Presidency	<p>The Council has a President and two (2) Vice-Presidents . 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.</p> <p>The President and the two vice-presidents of the Council and one member of the Council work full-time with the Council.</p> <p>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</p>

Council before third parties and undertake other duties as regulated by the Rules of Procedure of the Council.

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.

The main competences of the HJPC are prescribed by **Article 17 of the Law on the HJPC of BiH.**

The Council shall have the following competencies:

Main Competences:

- (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 Judicial and Prosecutorial Training Centres 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 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.

Career of judges and / or prosecutors Yes

Judicial training	Yes
Discipline	Yes
Ethics	Yes
Opinions on legislation / other opinions	Yes
Status of decisions	<p>Regulations, rules of procedure, instructions, decisions</p> <p>Individual and general legal acts that have been passed in the form of a final administrative act can be contested before the Court of Bosnia and Herzegovina. This is not a case with appointment decisions.</p> <p>In addition, there is a possibility of submitting an appeal to the Constitutional Court of Bosnia and Herzegovina if the act of the HJPC seriously violated the rights and fundamental freedoms protected by the Constitution or international documents that apply in Bosnia and Herzegovina</p> <p>When it comes to decisions from disciplinary proceedings against judges and prosecutors:</p> <p>Disciplinary proceedings are conducted by the First Instance Disciplinary Commission and the Second Instance Disciplinary Commission. The second-instance disciplinary commission, composed of three members of the Council, decides on appeals against the decision of the first-instance disciplinary commission. The Second Instance Disciplinary Panel may confirm, reject or alter the decision of or disciplinary measures imposed by the First Instance Disciplinary Panel.</p> <p>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.</p> <p>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:</p> <p>(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;</p>
Review	

(b) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, erroneously applied the law

Budget

Yes, the HJPC BiH has own budget. The Council is financed from the Budget of the institutions and international obligations of Bosnia and Herzegovina.