

# Decision imposing the Law on Judicial and Prosecutorial Service in the Federation

**In accordance** with my authority under Annex 10 of the Dayton Agreement, and recalling Article XI of the Bonn Declaration,

**Recalling** the text of the Madrid Declaration of 16 December 1998 which emphasized the urgent need for judicial reform in Bosnia and Herzegovina;

**Recognizing** the importance of establishing an independent judiciary at all levels of governance as an integral element of a modern democratic state and in particular the need for a process of selection and discipline for judges and prosecutors based on merit instead of political affiliation;

**Acknowledging** the efforts of those in the domestic legal community who produced the Draft Law on Judicial and Prosecutorial Service as well as the efforts of the House of Representatives which passed similar legislation;

All this considered, born in mind and noted, I hereby issue the following

## DECISION

On the Law on Judicial and Prosecutorial Service in the Federation of Bosnia and Herzegovina, whose text appears below, enters into force with immediate effect on an interim basis, until such time as the House of Representatives and House of Peoples of the Federation of Bosnia and Herzegovina adopt this Law in this form, without amendments and with no conditions attached. This Decision, accompanied by the text of the Law, shall forthwith be published in the Official Gazette

of the Federation of Bosnia and Herzegovina.

Sarajevo, 17th May 2000	Wolfgang Petritsch
	High Representative

# **LAW ON JUDICIAL AND PROSECUTORIAL SERVICE IN THE FEDERATION OF BOSNIA AND HERZEGOVINA**

## **I GENERAL PROVISION**

### **Article 1**

With this Law, and in order to establish independent and unbiased judiciary and prosecutor service and to ensure independence and professionalism in performing judicial and prosecutorial function in the Federation of Bosnia and Herzegovina (hereinafter: the Federation ), in accordance with the responsibilities of the Federation set forth in the Constitution of the Federation in Chapter III, Articles 1, 2 and 3, consistent with international standards contained in the “Basic Principles of Court Independence” of the UN from 1985, Council of Europe Recommendation No. R (94) 12 of the Committee of Ministers of Member States on the Independence, Efficiency and the Role of Judges, and other international instruments that are dealing with court independence, regulated are the principles for the exercise of the judicial and prosecutorial service, the commission for the election and appointment of judges and prosecutors, the mode of operation of the Federation Commission and the cantonal commissions, dismissal of judges and prosecutors, disciplinary liability of judges and prosecutors, removal from the exercise of the judicial and prosecutorial service, incompatibility of service in judiciary and prosecutor’s office with other services, giving opinions on laws and recommendations regarding the needs to finance judiciary and prosecutor’s office, rights of judges and prosecutors, judges’ and prosecutors’ robe, common

for the judges and prosecutors of all municipal, cantonal and Federation courts, as well as municipal and cantonal prosecutor's offices and the Federation Prosecutor's Office in the Federation.

## **II PRINCIPLES OF EXERCISE OF JUDICIAL AND PROSECUTION FUNCTION**

### **Article 2**

The principles of the judiciary, stipulated by the Constitution of Federation of BH are reflecting standards that are applied by the commissions for the election and appointment of judges and prosecutors.

The profession of a judge and prosecutor is respectable vocation and career. Only persons fulfilling all conditions and qualifications prescribed by this Law can be appointed as judges and prosecutors.

The behaviour of the judge and prosecutor, either while exercising their duty or in private life, always has to be such that the trust of public in its independence, lack of bias and integrity are not put in question. The Codes of Ethics adopted by the Association of Judges and the Association of Prosecutors, and published in the Official Gazette BiH, Official Gazette of the Federation BiH and cantonal official gazettes, represent minimum standards of moral and ethical behaviour for judges and prosecutors in the performance of their duties. These standards must be respected by judges and prosecutors at all times.

The judge and prosecutor has to actively support and ensure respect to the Constitution and laws of Bosnia and Herzegovina and of Federation of Bosnia and Herzegovina.

The judge and prosecutor have to ensure that all parties in court proceedings will be treated in the same manner, in an unbiased way and with respect.

### **Article 3**

The judges and prosecutors have to be qualified, independent in their work and unaffected by corruption or improper influence.

### **Article 4**

The laws of the Federation and cantons prescribe special and separate provisions for the election and appointment of the judges and prosecutors.

The minimal condition regarding the professional qualification of the judges and prosecutors of Federation, cantonal and municipal courts are that they have completed a law degree and passed the bar examination.

Candidates must not be members of a political organisation.

The working and ethical capability of the candidates is determined by an evaluation of their previous work and behaviour, whether it was in accordance with demands of their profession and the ethical standards that are necessary for performing judicial and prosecutor function.

## **III COMMISSION FOR ELECTION AND APPOINTMENT OF THE JUDGES AND PROSECUTORS**

### **Article 5**

The Federal Commission for Election and Appointment of the judges and Federal Commission for Election and Appointment of the Prosecutors (in further text: Federal Commission) and Cantonal Commissions (in further text: Cantonal Commissions) are established.

The Federal Commission deliberates, votes and then proposes all candidates for the election or -appointment of judges and prosecutors at the Federation level. Cantonal Commissions shall deliberate and vote with the Federal Commission for

election or appointment of judges and prosecutors at the cantonal or municipal level; following such deliberations and voting, Cantonal Commissions shall propose candidates to cantonal ministries of justice.

For judges and prosecutors at the Federation level, the Federal Commission also determines whether there are reasons for replacement of the judges and prosecutors, determines reasons for suspension of the judges and prosecutors from their service, determines regarding incompatibility of performing judicial and prosecutor service parallel with some other work, gives an opinion regarding the laws that determine the position, rights and duties of the judges and prosecutors and other persons in courts and prosecutors offices, and perform other work prescribed by the law. As in the case of proposals for appointments, where the judge or prosecutor in question is acting on the Federation level, the Federal Commission shall make its recommendation directly to the appropriate body as identified elsewhere in this law.

Where the judge or prosecutor in question is acting on the cantonal or municipal level, the relevant Cantonal Commission shall deliberate and vote with the Federal Commission and the Cantonal Commission shall then make the recommendation to the competent cantonal Ministry of Justice.

Besides the authority defined in Paragraphs 2 through 5 of this article, the Federal Commission gives recommendations to the Government of the Federation and Cantonal Commissions give recommendations to governments of the cantons regarding financial needs of the courts and prosecutors offices.

## **Article 6**

The Federal Commission for the election and appointment of the judges consists of 7 members, of which three are judges of the Supreme Court of FBH, that are appointed by General session of the Supreme Court of FBH, two members from the Association of

the judges of FBH, one from Association of prosecutors of FBH and one legal professional (lawyer or academic) elected by the remaining members of the Commission.

Cantonal Commissions are organised in cantons, and they consist of three members if the area of the canton has up to 20 judges, and 5 members if the area of canton has over 20 judges.

A three-member Cantonal Commission shall have at least one municipal court judge within its composition, while a five-member Cantonal Commission shall have at least two municipal court judges.

Cantonal Commissions for the election and appointment of judges are appointed by a joint session of the judges of the cantonal court that will get an opinion from municipal courts for the members of Cantonal Commissions from that court.

Presidents of the cantonal courts cannot be members of the Federal Commission or Cantonal Commission, but they can deliver their opinion regarding proposed candidates to the Commission or Cantonal Commissions.

## **Article 7**

The Federal Commission for election and appointment of prosecutors consists of seven members, three from the ranks of the Federation Prosecutor's Office officials and his deputies, two from Association of prosecutors of FBH, one from Association of Judges of FBH and one legal professional (lawyer or academic) elected by the remaining members of the Commission.

Cantonal Commissions shall be established in cantons and shall consist of prosecutors from the canton concerned. If a canton has up to 20 prosecutors. A Cantonal Commission shall have three members. If a canton has more than 20 prosecutors then it shall have five members.

Cantonal Commissions with three members have at least one municipal prosecutor or deputy municipal prosecutor, and Cantonal Commissions of five members have at least two prosecutors or deputies of the municipal prosecutor.

Cantonal Commissions for the election and appointment of prosecutors are elected by a vote of the prosecutors in the canton.

## **Article 8**

The mandate of members of the Federal Commission and Cantonal Commissions is 4 years, from the day of their appointment, with stipulation that members cannot serve two consecutive terms.

Measurable and identifiable efforts must be made toward achieving multi-ethnicity and gender balance in accordance with Chapter II, Article 2 of the Constitution of the Federation.

## **Article 9**

The mandate of the members of the Federal Commission or a Cantonal Commission ceases to exist with its death, or with the end of the mandate, or submission of a resignation, replacement, and with cessation or with dismissed from the function or from membership in association on what basis the member is appointed to the Federal Commission or a Cantonal Commission.

In the case of cessation of the mandate to a certain member of the Federal Commission or a Cantonal Commission, appointment is done in the manner prescribed in Articles 6, 7 and 8 of this Law.

## **Article 10**

The Federal Commission, with all Cantonal Commissions in attendance, will hold a constituting session in 30 days from

the time of coming into force of this Law, and at that that session they will choose presidents of the Federal Commission and Cantonal Commissions.

The oldest judge or prosecutor among the members of the Federal Commission or a Cantonal Commission will represent the president of the Federal Commission or a Cantonal Commission, in their absence.

During the initial meeting of the Federal Commission with all the Cantonal Commission shall adopt a single Book of Rules that will govern procedures to be used by the Federal Commission and all Cantonal Commission in the performance of their duties.

## **Article 11**

A member of the Federal Commission or a Cantonal Commission cannot participate if the candidate about whose status a decision is to be taken is, a spouse, a direct blood relative up to the any degree, a blood lateral line up to the fourth degree or a relative by marriage up to the second degree, as well as if circumstances exist which would cause any doubt in impartiality of such member.

## **Article 12**

Personnel and technical services for the Federal Commission for election and appointment of the judges are performed by the Supreme Court of FBH, more specifically the secretary of the Supreme Court as well as the executive secretary of the Federal Commission with one more administrative assistant, for which work, in terms of remuneration, their monthly salaries will be increased by 30%.

Personnel and technical services for the Federal Commission for election and appointment of prosecutors are performed by Federal prosecutor's office, more precisely the secretary of the Federal prosecutor's office as executive secretary of the



of the Federal Commission with one more administrative assistant, for which work, in terms of remuneration, their monthly salaries will be increased by 30%.

In the case of Cantonal Commissions, such services as described above shall be performed by the relevant Cantonal Court or Cantonal Prosecutor's Office, as well as that Cantonal Commission's executive secretary and, where applicable, administrative assistant. Additional remuneration or compensation for such individuals at the Cantonal level shall be determined by the relevant Cantonal Court or Prosecutor's Office, using the formula described above as a general principle for guidance.

### **Article 13**

Resources for the work of the Federal Commission are provided from the Budget of the Federation BH, and they consist of operational and administration expenses. Resources for the work of the Cantonal Commissions should be provided from Cantonal budgets in accordance with their laws and in a manner that follows the principles set forth in this law.

Operational expenses consist of the expenses of the members of the commissions based on their work in the commission (travel expenses and per diem amount), whose amount is determined by the Book of Rules on the Work of the Federal Commission and Cantonal Commissions. .

Presidents of the Federal Commission or Cantonal Commissions are principals of financial operations of the commissions.

## **IV WAY OF WORK OF THE FEDERAL COMMISSION AND CANTONAL COMMISSIONS**

### **Article 14**

The Federal Commission, when meeting on Federation level issues, shall consist of a seven member panel. When the

Federal Commission meets with individual Cantonal Commissions, those meetings shall consist of ten or twelve member panels. A quorum will be required for voting on recommendations by any of these panels. A quorum shall consist of at least 2/3 (two thirds) of the membership of any panel. If no quorum is reached after two attempted meetings, then a subsequent meeting or meetings shall be convened at which a simple majority of the membership shall constitute a quorum.

## **Article 15**

Decisions or proposals by the Federal Commission or Cantonal Commissions are made by a simple majority of the members that participate in the making the decision.

## **V ELECTION AND APPOINTMENT OF THE JUDGES AND PROSECUTORS**

### **Article 16**

Public announcement of vacant judicial and prosecution vacancies comes before the election of the judges and prosecutors.

Federal or cantonal Ministries of Justice announce vacancies for judges and prosecutors in the Official Gazette of FBH and in Official Gazettes of the cantons and in at least one daily newspaper of general circulation within the Federation.

The vacancy announcement should also be made by the court or prosecutor's office seeking to fill the vacancy.

All judicial and prosecutorial vacancies shall be announced within 30 days from the day of constituting the Federation Commission and the cantonal commissions, in the framework of the adopted systemisation and needs of courts and prosecutors' offices.

### **Article 17**

Applications can be submitted to authorised Ministry of Justice 30 days after the positions are announced.

The authorised Ministry of Justice delivers applications received with all additions right then, and at the latest in 8 days after the deadline for delivery of applications to the Federal Commission or relevant Cantonal Commission for election and appointment of the judges or for election and appointment of the prosecutors.

The secretary of the Federal Commission or relevant Cantonal Commission delivers without delay copies of the applications and attached documentation to the Federal Commission or relevant Cantonal Commission that has competence as to place, which will in 30 days deliver a reasoned opinion about each candidate who has applied for the position.

After the opinion has been received, as explained before, the President of the Federal Commission or relevant Cantonal Commission schedules a regular session of the Federal Commission or relevant Cantonal Commission.

## **Article 18**

While estimating whether the candidates fulfil all conditions for exercising judicial or prosecution duties, the Federal Commission or relevant Cantonal Commission will determine whether the candidates fulfil all objective and subjective criteria for these duties projected by Federal, cantonal and this Law, especially regarding:

1. Expert knowledge and work,
2. Academic record during university studies, as well as completion of initial judicial/prosecutor training including such training as may be required by law
3. Demonstrated intellectual excellence through academic written work or participation in professional organisations
4. Demonstrated professional excellence through results

achieved during previous work

5. Working abilities and ability to resolve in a proper way legal issues,
6. Ensuring a reputation of judicial impartiality, conscience, diligence, determination and responsibility while performing working obligations;
7. Ability of oral and written expression, which can be established by an interview, test or some other related way;
8. Ability to communicate and work with parties;
9. Relations with co-workers and behaviour outside the office;
10. Ability to perform managerial tasks, if the judge is appointed for such position.

Regarding criteria from item 1 of the first paragraph account is taken of, above all, expert qualifications, that is visible from the work of the judge and prosecutor and is established on the basis of an evaluation of the quality of judge's and prosecutor's decisions, from court and prosecution registers or authorised ministries, as well as professional skill, achieved by bachelor's or master post diploma study, or with the title of D. Sc.

## **Article 19**

For candidates that did not perform function of the judge or prosecutor before, the criteria prescribed in Article 18 of the Law shall apply accordingly.

## **Article 20**

The Federal Commission will, in matters relating to Federation level appointments, in accordance with its Book of Rules, make a list of the candidates that are fulfilling conditions for election – appointment for the function that they applied for, and after that, it will make a list of proposals of candidates with the best qualifications.

The Federal Commission will deliver the list of the proposals (or proposal if there is only one candidate) to the official, or institution that is making election – appointment of the candidate.

In the case of proposals relating to Cantonal or municipal positions, the relevant Cantonal Commission shall deliver the list of proposals or the proposal to the official or the body making the appointment or the election of judges and prosecutors.

In the case that official is making an election – appointment do not agree with proposed candidates, he/she is obliged to deliver a written explanation regarding that.

After receiving the explanation as described in previous paragraph, the Federal Commission or relevant Cantonal Commission can suggest the same candidate again, giving their explanation regarding reasons that were stated by the official who refused the first suggestion of the Federal Commission or relevant Cantonal Commission, or propose the new candidate.

In the case that the official does not agree again with the proposition of the candidate from the first proposition, he/she will ask that Federal Commission or relevant Cantonal Commission delivers a new proposal from the list of applied candidates.

A candidate for whom a Federal Commission or relevant Cantonal Commission has not given a satisfactory recommendation cannot be appointed for judge's or prosecutor's function.

## **Article 21**

The candidate will be informed whether Federal Commission or relevant Cantonal Commission recommended him for election - appointment.

A candidate who was not recommended has a right to apply to

the Federal Commission or relevant Cantonal Commission within 8 days from the day of receipt of the information for an explanation of the actions of the Federal Commission or relevant Cantonal Commission.

The Federal Commission or relevant Cantonal Commission is obliged to deliver its response in writing to the applicant and forward a copy of this response to the official making the appointment within 21 days of receipt of the application.

## **VI DISMISSAL OF THE JUDGE AND PROSECUTOR**

### **Article 22**

Before the procedure for dismissal of the judge or prosecutor has begun, according to Federal and cantonal constitutions and laws, official – organ in charge of initiation of the procedure for dismissing, will deliver a request for an opinion whether the procedure for dismissing of the judge or prosecutor is based or not, to the Federal Commission or relevant Cantonal Commission.

With the request as described in previous paragraph, all documentation (including statements of witnesses, documents and so on) on which the procedure for dismissing of the judge is initiated will be delivered to Federal Commission or relevant Cantonal Commission.

Provisions of this Law regarding the procedure for dismissing the judge will be applied in full.

## **VII DISCIPLINARY LIABILITY OF JUDGES AND PROSECUTORS**

### **Article 23**

Disciplinary procedure against a judge or prosecutor is initiated, conducted and measures pronounced where appropriate by the President of the relevant Court regarding judges of that court or the prosecutor regarding his/her deputies.

Immediately upon determining that such procedures are to be initiated, the Federal Commission or relevant Cantonal Commission must be notified so that it may perform its inquiry of the matter and render its opinion in accordance with its duties under this Law to the official charged with determining whether discipline is required.

Disciplinary procedure against a President of a Court or the Prosecutor is initiated, conducted and measures pronounced where appropriate by the President of the immediately higher Court or immediately higher prosecutor.

## **Article 24**

Disciplinary procedure is conducted for a disciplinary violation:

1. Obvious violation of the obligations of correct behaviour towards the parties in the process, legal representatives or actions.
2. Revealing judicial or prosecution secrets
3. Non-fulfilment of working tasks concerning quality and quantity of the work, or negligence towards the work
4. Non-efficient and non-economical performance of judicial and prosecution duties, which causes delay of proceedings and unnecessary increase of the process expenses,
5. Public expression of disagreement with a decision of other judges or prosecutors in order to belittle them,
6. Nonparticipation in obligatory forms of expert training of judges or prosecutors,
7. Engagement in activities that are not in accordance with judicial or prosecutor's function,
8. Behaviour during and outside official premises that can lead to compromising of the judge, or prosecutor,
9. Every other behaviour that can bring into question trust of unbiased judiciary or prosecution.
10. Conduct which violates the Code of Ethics for Judges and

Code of Ethics for Prosecutors under Paragraph 3 of Article 2 of this Law.

## **Article 25**

Disciplinary sanctions are: warning, reprimand and/or fine by decreasing the salary up to 20% for up to 6 months.

## **Article 26**

Against the decision on pronouncing a disciplinary sanction, a judge or prosecutor can make an appeal within 8 days from the day the disposition is received.

A joint session of all judges or collegium of prosecution will decide a decision on appeal.

## **VIII REMOVAL FROM EXERCISING JUDICIAL AND PROSECUTOR SERVICE**

## **Article 27**

The body or official charged with deciding on the removal (suspension) from office of a judge or prosecutor shall notify the Federal Commission or relevant Cantonal Commission immediately upon determining that such procedures are to be initiated. The Federal Commission or relevant Cantonal Commission must be notified so that it may perform its inquiry of the matter and render its opinion in accordance with its duties under of this Law to the official charged with determining whether removal is required.

A body, or official, that is in charge of making the decision on removal (suspension) from the duty of a judge and prosecutor, is obliged without delay to inform the Federal Commission or relevant Cantonal Commission regarding initiation of the procedure for removal (suspension) of the judge or prosecutor from the service, as well as the reasons for such, and Federal Commission or relevant Cantonal Commission can within 3 days from the day of receiving it,



deliver its opinion about basis of this decision.

## **IX INCOMPATIBLE SERVICE IN JUDICIARY AND PROSECUTION WITH OTHER SERVICES**

### **Article 28**

A judge or prosecutor cannot practice as an advocate or notary, or practice other economic or other duties, in which he/she gains material benefit.

A judge or prosecutor cannot perform executive functions and must not be a member of Steering or Supervising board of any enterprise, or other legal person, that are performed for payment.

### **Article 29**

A judge, or prosecutor, must not accept any work that would interfere in performing judicial or prosecutorial service, or that would be contrary to the reputation of judicial or prosecution service, or that would have such influence on their performing their judicial or prosecutorial duties.

A judge or prosecutor can perform pedagogical, scientific, publicist, researching and other similar work in legal area, unless judicial or prosecutorial service is hindered by it.

For performing work from previous paragraph, judge or prosecutor must not enter into a working relationship

### **Article 30**

For performing the works under paragraph 2 of Article 29 of this Law, a judge or prosecutor has to inform previously, in written form, the President of the Court or the immediately higher-ranking prosecutor.

If the President of a Court or the Prosecutor are in doubt concerning the compatibility of a person's judicial or

prosecutorial functions with an outside activity, that President or Prosecutor shall inform the Federal Commission or relevant Cantonal Commission and seek an opinion regarding the activity in question.

Chapters III and IV of this Law are applied appropriately in the procedure of determining incompatibility of judicial and prosecution service with other activities.

## **X GIVING OPINIONS ON LAWS AND RECOMMENDATIONS REGARDING FINANCIAL NEEDS OF THE JUDICIARY AND PROSECUTION**

### **Article 31**

The legislative bodies of the Federation and cantons will deliver to the relevant commission for opinion drafts or propositions of the laws that are regulating position, rights and obligation of the judges and prosecutors, as well as other employees in the courts and prosecutors' offices, as well as regulations concerning the financing of courts and prosecutors.

Chapters III and IV of this Law will be applied appropriately in the procedure of giving and opinion on laws and recommendations.

### **Article 32**

Resources for the work of the Federation level courts of FBH and Federal Prosecutor's Office are provided from the budget of FBH, and the cantonal and municipal courts and prosecutors' offices from the budget of the cantons.

Resources for the work of courts and prosecutors consist of means for exercising their regular work (salaries for the judges and prosecutors, employees in courts and prosecutors' offices, resources for material .expenses, maintenance of the buildings, equipment and things) and resources for special

purposes (for the work of trainees, expert education of judges and prosecutors,- employees in the courts and prosecutors offices) .and resources for special purposes and other expenses connected with performing judicial and prosecutor service.

The mentioned resources are provided on time and in the amount that will ensure regular performance of all tasks in the court and prosecutor office.

## **XI JUDICIAL AND PROSECUTORS RIGHTS**

### **Article 33**

Judges and prosecutors have a right to join judicial and prosecutors associations.

### **Article 34**

A judge or prosecutor has a right to a salary that is adequate for a judicial or prosecutorial position, or a position for which he/she is appointed or elected.

Provisions set forth in Articles 35 through 46 of this Law represent the minimum salary structure for judges and prosecutors working at the Federation level. For judges and prosecutors working at the cantonal and municipal levels, the following provisions represent general principles that shall regulate this issue throughout the Federation. Such general principles shall not preclude cantonal governments from enacting legislation that may provide for a different salary structure as long as compensation does not fall below the levels defined in the provisions set forth in Articles 35 through 46 of this Law.

### **Article 35**

The initial basis for calculation of judicial or deputy prosecutor salary for all judges and deputies is the same and is 2,5 of the average net salaries of employees in the FBiH in

the last month of the year previous the year of paying out.

Judges and deputy prosecutors are categorised in three salary grades: the first grade are the judges of municipal courts and deputies of municipal prosecutors, second are the judges of cantonal courts and deputies to the cantonal prosecutor, and third are the judges of the Federation level courts of FBH and deputies of Federal prosecutor. –

The coefficient for first salary grade is 1,5, for second 1,8, and for third 2,1.

### **Article 36**

Salary is determined in a way that the basis from the previous Article is multiplied by the coefficient of salary grade and increased by a judicial or prosecutor. addition due to incompatibility of the service in the judiciary and prosecution with other works, and the total amount is increased based on working experience.

The addition for first category is 25%, for second 35% and for the third 50%.

Salary is .increased by 0,5% for every started year of working experience, up to a maximum of 20%.

### **Article 37**

The salary of Presidents, or acting Presidents of courts is increased for the managerial function, and 10% for municipal courts and 20% for cantonal and the Federation level courts of FBH.

The salary of the Federation, cantonal and municipal prosecutors shall be determined by the same criteria as the salaries of the presidents of the Federation level, cantonal and municipal courts.

### **Article 38**

To the judges or prosecutors who are performing investigation service on duty belongs special addition for work, which is counted, according to the regular provisions as work under special conditions.

### **Article 39**

In a case in which in one of the courts or prosecutor offices all positions cannot be filled due to the impossibility of providing personnel, judges or prosecutors that are performing work there have special advantage in salary, so the basic salary is increased for up to 50% depending on the increase of the workload created by the shortage of personnel.

### **Article 40**

The judge or prosecutor has a right to compensation up to the amount of one salary during a period of annual leave and paid absence and for first 30 days of the absence from work due to sickness or disability.

### **Article 41**

A judge or prosecutor has a right to remuneration for certain specific expenses:

1. Compensation for travel expenses to and from the work;
2. Compensation for food during working hours;
2. Regress for annual leave
3. Compensation for separate life from the family;
4. Compensation for travel expenses for non-working days from the place of work in which they have an official apartment, to the place of permanent residence and back, in other words compensation for the expense of travel to the place of residence of his/her family during the weekends, state holidays and non-working days;
5. Compensation for moving expenses from the place of permanent residence to the place where the official apartment is and back;

6. Compensation for education expenses;
7. Anniversary rewards;
8. Severance pays while retiring.

#### **Article 42**

The Judge or prosecutor has a right to compensation for expenses concerning official trips (per diem, transportation expenses and so on).

#### **Article 43**

A judge or prosecutor has a right to annual leave of 30 days and paid absence of 7 working days in one calendar year.

Usage of annual leave is determined according to annual work schedule, while taking care that most of the annual leave should be taken during the court holiday period (court holiday).

#### **Article 44**

Judges or prosecutors are obliged to work permanently on their expert education, familiarisation with new laws, and to be familiar with court practice, including those of international courts.

Judges or prosecutors have a right and obligation to participate in educational activities, seminars, or other gatherings of legal experts.

After the Centre for education of judges has started with its work, commissions will periodically send their working proposals to the Centre, and participation of judges and prosecutors is obligatory.

A President of the court or authorised prosecutor will decide on participation of judges or prosecutors in seminars and other kinds of educational activities, having in mind besides proportional participation of all the judges or prosecutors.

## **Article 45**

In the case that the court or prosecutor office stops working due to a permanent decrease in the volume of work or reorganisation of judicial authority, salary from the same category of salary shall be provided to a judge or prosecutor for 12 months, if he/she cannot be assigned to some other court or prosecutor office.

## **Article 46**

Allocating the judge or prosecutor for work on temporary basis to some other court or prosecutor office will be in accordance with Federation and cantonal regulations.

During temporary work in another court or prosecutor's office, a judge or prosecutor achieves receipt of the salary scale of the court or prosecutor's office from which he has been assigned for temporary service or the salary scale of the court or prosecutor's office in which he performs temporary work, depending on which is more favourable for the judge or prosecutor.

## **Article 47**

Pensions of the judge or prosecutor are determined on pension basis that represents his/her average monthly salary in calendar year before gaining his right to a pension.

## **Article 48**

Authorised ministries of justice will keep personal records of the judges and prosecutors that consists following information:

1. personal data;
2. decision on election and appointment of the judge or prosecutor;
3. data on success during education;
3. data on trainee period;
4. evaluation of the quality of the judge's work expressed

through the evaluation of confirmed, altered or overturned decisions;

5. Other data like publishing of expert works, participation in legislative and similar activities.

## **XII JUDGE' S AND PROSECUTOR' S ROBE**

### **Article 49**

During the trial and public annunciation of verdicts, the judge and prosecutor are wearing robes.

The Federation Ministry of Justice prescribes the appearance of judge's and prosecutor's robe.

## **XIII TRANSITIONAL PROVISIONS**

### **A. GENERAL PROVISIONS**

#### **Article 50 – Extraordinary Period of Review**

The period of eighteen (18) months from the date of the constitutive session of the Federal Commission and the Cantonal Commissions (the Commission) in accordance with Article 10 of this Law shall be designated the Extraordinary Period of Review. During the Extraordinary Period of Review, the Federal and Cantonal Commissions shall conduct a Comprehensive Review of the suitability of all serving judges and prosecutors appointed to office previous to the enactment of this Law.

The purpose of the Comprehensive Review will be to assess the suitability of judges and prosecutors in order to cause the removal of judges and prosecutors who are unsuitable to hold office.

#### **Article 51 – Resources of the Commission**

The Commission will be provided with adequate staff and resources in order to carry out as necessary the Comprehensive



Review during the Extraordinary Period of Review in addition to any resources already allocated to the Commission in this Law.

## **Article 52 – Unsuitability**

The grounds for unsuitability are as follows:

1. The judge or prosecutor is incapable of performing judicial or prosecutorial functions for lack of basic qualifications,
2. The judge or prosecutor has not abided by the principles of impartiality or independence,
3. The judge or prosecutor is corrupt,
4. The judge or prosecutor is incapable of performing official duties due to mental incapacity, alcoholism, or drug addiction,
5. The judge or prosecutor has failed to act in a professional or ethical manner or has otherwise committed nonfeasance to a substantial degree,
6. The judge or prosecutor has committed a serious breach of law,
7. The judge or prosecutor was selected in an improper manner, or
8. The judge or prosecutor has intentionally failed to submit a completed Disclosure Form, has intentionally provided false information on a Disclosure Form, or has otherwise intentionally failed to cooperate with the Commission concerning a matter substantially material to a determination of unsuitability.

## **Article 53 – Personal Review File**

Within thirty (30) days after the beginning of the Extraordinary Period of Review, the Federal Commission shall create a file (the Personal Review File) for each serving judge or prosecutor in a central location at the offices of the Federal Commission. The Personal Review File shall contain

copies of all relevant information held in official files in any branch of government related to that person's professional qualifications or work, including copies of that person's personnel files and statistical records of job performance from courts and prosecutor offices, previous applications of that person for the position of judge or prosecutor, relevant police records, and records of any complaint lodged against that person while serving as a judge or prosecutor. Any member of the Commission may require that other relevant evidence be placed in a Personal Review File.

The Personal Review File shall be kept confidential and shall not be subject to public disclosure. Access to a Personal Review File shall be limited to members of the Commission, the staff of the Commission, other persons specifically designated by the Commission, and the person who is the subject of the file, as provided by this Law.

#### **Article 54 – Public Comment**

Any person regardless of residence shall have the right to submit information to the Commission concerning the unsuitability of a judge or prosecutor. Within fifteen (15) days after the beginning of the Extraordinary Period of Review, the Federal Commission shall publish in three (3) newspapers of general circulation throughout the Federation a notice inviting any person to submit information to the Commission concerning the qualifications, ethical behavior, or performance of any judge or prosecutor. The notice shall state that providing false information may be punishable by law. All information received from members of the public shall be placed in the appropriate Personal Review File, provided, however, that information shall only be placed in a Personal Review File if the name of the individual providing such information is also provided. No information submitted by an anonymous person may be placed in a Personal Review File.

#### **Article 55 – Evaluation Form**

The Federal Commission shall prepare and disseminate an Evaluation Form to the Court Presidents and the Chief Prosecutors within thirty (30) days after the beginning of the Extraordinary Period of Review. The Evaluation Form shall provide for the evaluation by the Court Presidents and Chief Prosecutors of the suitability of subordinate judges and prosecutors based upon the criteria set forth in Article 51.

The President of the each Cantonal Court shall evaluate the Presidents of the Municipal Courts and the President of the Supreme Court shall evaluate the Presidents of the Cantonal Courts within their respective jurisdictions.

Within sixty (60) days after the beginning of the Extraordinary Period of Review, the Presidents of all Municipal, Cantonal, and Supreme Courts and Chief Prosecutors shall deliver completed Evaluation Forms for all judges and prosecutors to the Commission.

The Evaluation Form of the judges and prosecutors shall be placed in the relevant Personal Review File.

## **Article 56 – Disclosure Form**

Within thirty (30) days after the beginning of the Extraordinary Period of Review, the Federal Commission shall prepare and disseminate a Disclosure Form to every judge and prosecutor, who shall complete and return the Disclosure Form to the Federal Commission within sixty (60) days from the beginning of the Extraordinary Period of Review. The person under review shall affirm that the information provided on the Disclosure Form is true and accurate. The person under review shall list on the Disclosure Form all financial interests, including the financial interests of a spouse and minor children, since 1 January 1998. The person under review shall provide on the Disclosure Form complete information regarding all legal degrees or certificates received from a university or comparable institution and the date and place of successful

bar examinations. The Disclosure Form shall also contain a declaration that the judge or prosecutor: (1) is not an active or a passive member of any political party, (2) is not an officer, director, or member of the board of any public or private company, and (3) does not hold other public offices.

The Disclosure Form of the judges and prosecutors shall be placed in the relevant Personal Review File.

## **Article 57 – Production of Information and Testimony**

The Commission shall have the power to compel the attendance of witnesses and the production of information through issuance of a summons. The Commission shall have the power to issue an order for bringing in a witness if the witness fails to comply with a summons. The order for bringing in shall be carried out by the Judicial Police. Should a witness appear and then refuse to testify without legitimate reason after being warned of the consequences, he may be fined up to five hundred Convertible Marks (KM 500.00).

An appeal against a decision of the Commission pronouncing a fine shall be made to a panel consisting of three (3) judges of the Supreme Court of the Federation within seven (7) days from entry of the fine.

A witness's privilege to refuse to testify shall be limited to communications with an attorney during the course of client representation, with a medical doctor during the course of patient treatment, or with a religious official during the course of performing religious functions. A witness shall have the right to refuse to testify on a matter that may incriminate the witness, a blood relative in direct line, an adopted child, or a spouse.

The proceedings of the Commission during the Period of Review shall be considered to be proceedings aimed at establishing whether a duty has been breached and the making of false statements shall be punishable under Article 328 of the

Criminal Code.

## **B. PRELIMINARY REVIEW**

### **Article 58 – Commission Review of Personal Review Files**

Within sixty (60) days after the start of the Extraordinary Period of Review, the Federal Commission shall commence a Preliminary Review of all Personal Review Files assembled in accordance with Articles 53-56. During the Preliminary Review, the Commission will review each Personal Review File to determine whether it contains any credible evidence that the person under review may be unsuitable to hold office.

If at any time during the Extraordinary Period of Review at least two (2) members of the Commission have a basis to believe that the person under review may be unsuitable to hold office, then the Personal Review File shall be subject to Subsequent Review. Members of the Commission shall set forth their reasons in writing to serve as a basis for Subsequent Review. The lack of adequate information in the Personal Review File shall serve as a reasonable basis for instituting Subsequent Review of the Personal Review File.

All Personal Review Files not selected by the Commission for Subsequent Review shall remain pending during the Extraordinary Period of Review and be subject to re-examination in accordance with Article 75.

## **C. SUBSEQUENT REVIEW**

### **Article 59 – Commission's Work Plan For Subsequent Review**

Not later than ninety (90) days after the beginning of the Extraordinary Period of Review, the Commission shall prepare a work plan that will provide for the efficient disposal of all cases requiring Subsequent Review.

### **Article 60 – Assignment of Referee**

For each Personal Review File designated for Subsequent Review, the Commission shall assign one of its members to act as a Referee whose responsibility will be the gathering of evidence and the conducting of investigations as warranted, pursuant to Articles 60, 61, and 62. The Commission may delegate its powers to the Referee to compel the attendance of the witnesses and the production of information.

### **Article 61 – Referee’s Duties**

The Referee shall, among other things:

1. Manage all Personal Review Files assigned for Subsequent Review,
2. Review relevant court and prosecutor files, records, and registers,
3. Collect other relevant information from governmental offices, public institutions, or other public or private bodies in order to gather evidence related to the Referee’s investigation,
4. Expand the scope of the investigation to determine other grounds for unsuitability as the investigation may warrant,
5. Establish the necessity and availability of witnesses or expert evidence,
6. Institute proceedings for the gathering of evidence as authorized by the Commission, and
7. Perform additional investigations as instructed by the Commission.

### **Article 62 – Referee’s Report to the Commission**

For each Personal Review File designated for Subsequent Review, the Referee shall submit a Report to the Commission summarizing the factual allegations and findings of the investigation concerning (1) whether the person under review is unsuitable to hold office, (2) whether the person under review was selected in a corrupt or improper manner, and (3)

whether the person under review should be subject to disciplinary action. The Report shall contain a Recommendation as to whether or not there is an evidentiary basis to establish unsuitability. The Referee's Report and supporting evidence shall be placed in the Personal Review File.

### **Article 63 – Commission Review of Personal Review File and Referee's Report**

The Commission shall review the evidence contained in the Personal Review File and the Referee's Report and Recommendation for grounds of unsuitability. The Commission may return the Personal Review File to the Referee with instructions for further investigation. When the Commission determines that no further investigation of a Personal Review File is warranted, the Commission shall vote to designate the Personal Review File for Final Review. An affirmative vote by a majority of the members of the Commission shall be necessary to designate the Personal Review File for Final Review. If the Commission does not designate the Personal Review File for Final Review, then the Personal Review File shall remain pending during the Extraordinary Period of Review and be subject to re-examination in accordance with Article 75.

## **D. FINAL REVIEW**

### **Article 64 – Notification of Final Review**

For each Personal Review File designated for Final Review, the Commission shall serve the person under review, in person or by leaving a copy at the place of work of the person under review, with written notification of the allegations of unsuitability. The notification shall also inform of the right of the person under review to contest the allegations and to demand a Hearing before the Commission. The notification shall further inform of the location of the Personal Review File of the person under review and the right of person under review to inspect the contents of the Personal Review File. The

Commission shall include with the notification a copy of any of the Referee's reports. A Personal Review File designated for Final Review proceedings in accordance with this Article may extend beyond the Extraordinary Period of Review.

### **Article 65 – Reply and Demand For Hearing**

The person under review shall have thirty (30) days from receipt of Notification of Hearing Status to file with the Commission a Reply in writing. The Reply of the person under review shall set forth a defense to the allegations and include specific objections to the Referee's Report. The person under review may submit any documentation in support of the Reply.

At the time the person under review submits a Reply in writing in accordance with Paragraph 1, the person under review may demand a Hearing to allow the person under review to be heard in accordance with the provisions of Article 67. The demand for a Hearing shall identify witnesses the person under review intends to call at the Hearing and any other evidence the person under review intends to present at the Hearing.

The person under review may waive his or her right to a Hearing. In the event a person under review files a Reply but does not demand a Hearing or fails to respond to the Commission, the President of the Commission shall designate the Personal Review File, including the Reply of the person under review, for Final Review by the Commission.

### **Article 66 – Scheduling of Hearing**

If the person under review demands a Hearing, the President of the Commission shall schedule a Hearing date. The Hearing shall occur within sixty (60) days from the lodging of a demand for Hearing by the person under review, unless for good cause as determined by the President of the Commission. The Commission shall give notice to the person under review at least twenty (20) days prior to the date of the Hearing.



## **Article 67 – Hearing Procedure**

The President of the Commission shall preside over the Hearing. The Commission shall inform the person under review of the basis of unsuitability and may present evidence, including witness testimony and expert opinion, at the Hearing. The Referee shall participate in the Hearing as a member of the Commission.

The person under review shall have the right to give testimony, to call witnesses, to request the Commission to compel the attendance of witnesses, to examine any witnesses appearing before the Commission, to rebut evidence, to present other relevant evidence, and to deliver a closing statement.

The Federal Commission shall establish rules of procedure for Hearings in its Book of Rules. The Federal Commission may establish rules to prevent the introduction of irrelevant evidence and to place reasonable limits on the length of Hearings. A summary or recording shall be made of the proceedings of Hearings. The person under review may request a public hearing. The President of the Commission may exclude the press and the public from a Hearing where publicity would prejudice the interests of justice.

## **Article 68 – Delay of Review Process**

The unjustified delay of the review process by a member of the Commission, a Referee, or a person under review shall be subject to penalty and disciplinary action. The Comprehensive Review of judges and prosecutors shall be conducted on a continuous basis throughout the Extraordinary Period of Review. A proceeding instituted to gather evidence or testimony shall be conducted on a daily basis without delay or recess, unless the efficient conduct of the proceeding requires a delay or recess for good cause but, on any account, the delay or recess shall not be longer than a total of fourteen (14) days. Personal leave shall not constitute good

cause for the delay or recess of a proceeding. The delay or recess of a proceeding must be approved by the Commission.

A Commission member or a person under review who engages in an unjustified delay of the review process by failure to abide by the provisions of this Law or the procedures of the Commission or due to unjustified absence shall be subject to a fine of up to five hundred Convertible Marks (KM 500.00).

Any delay in the review process shall be reported to the President of the Commission, who shall determine whether there has been an unjustified delay by a member of the Commission or a person under review. The President of the Commission shall recommend appropriate disciplinary action and order a fine if justified. Fines imposed shall be subject to appeal to a panel of three (3) members of the Supreme Court.

### **Article 69 – Final Report of the Commission**

Within twenty (20) days after the close of proceedings under either Articles 65 or 67, the Commission shall consider all evidence contained in the Personal Review File, the Referee's Report(s), the submissions of evidence by the person under review, and any evidence presented at a Hearing and prepare a Final Report setting forth its findings of fact and conclusions. The Commission may issue one of the following conclusions:

1. the person under review is unsuitable for office and should be removed,
2. the person under review was selected in a corrupt or improper manner, and should be required to reapply for his position, or
3. evidence exists that the person under review should be subject to disciplinary procedure, but the person under review is otherwise suitable and should remain in office.

In the event that a Hearing has occurred in a matter, only the

members of the Commission who participated in the Hearing shall vote. An affirmative vote of four (4) members of the Federal Commission acting alone, six (6) members of a ten (10)-member Commission or seven (7) members of a twelve (12)-member Commission shall be required to adopt any of the above conclusions.

The Commission's Final Report and supporting evidence shall be placed in the Personal Review File. The Commission shall provide the person under review with a copy of the Final Report.

If there are insufficient votes to adopt any of the above conclusions, then the Personal Review File shall remain pending during the Period of Review and be subject to re-examination in accordance with Article 75.

#### **Article 70 – Determination of Unsuitability**

If the Commission concludes that the person under review is unsuitable and should be removed from office it shall, within ten (10) days of such determination, deliver a copy of the Final Report, under formal seal of the Commission, to the competent authority empowered under the Constitution to remove judges or prosecutors from office. The Commission shall request the competent authority to remove the person under review from office.

#### **Article 71 – Improper Selection**

If the Commission finds that the person under review was selected in a corrupt or improper manner, the Commission shall, within ten (10) days, deliver a copy of the Final Report, under seal of the Commission, to the competent authority requesting the commencement of an appointment procedure pursuant to Article 5 of this Law.

The reappointment procedure shall commence within thirty (30) days from the delivery of the Commission's Final Report to the

competent authority. The person under review may apply for appointment, but that person's application shall be considered in the same manner as all other applicants' applications.

The person under review shall be suspended from work with pay during the period of appointment. If at the conclusion of the appointment procedure the person under review is not selected to fill the position, his or her employment shall be terminated.

## **Article 72 – Recommendation of Disciplinary Action**

If the Commission concludes that the evidence does not support a finding that the person under review is unsuitable to hold office, but that the person under review should be subject to disciplinary procedure, the Commission shall, within ten (10) days, deliver the Final Report, under formal seal of the Commission, to the competent disciplinary authority.

## **E. CONCLUSION OF THE COMPREHENSIVE REVIEW**

### **Article 73 – Summary of Commission's Findings**

At the conclusion of the Comprehensive Review of all Persons under Review, the Commission shall issue a Summary of the Commission's Findings. The Commission's Summary shall list the names of all persons under review found unsuitable to hold office, including the subsequent action taken by the competent authority. The Commission's Summary shall list the status of all persons under review who were found to have been appointed in a corrupt or improper manner, and the subsequent action taken by the competent authority. The Commission's Summary shall also list the names of the persons under review for whom no finding of unsuitability was entered. The Commission's Summary shall be public.

Any person who is not found to be unsuitable and who is not required to reapply for his position shall be considered to be suitable for office and shall continue to hold such office

until he reaches seventy (70) years of age, unless removed according to the procedures set forth in the Constitution.

## **F. MISCELLANEOUS PROVISIONS**

### **Article 74 – Federal and Cantonal Commission Review**

In the case of judges or prosecutors at the municipal or cantonal level, the Federal Commission shall sit together with the relevant Cantonal Commission in performing Preliminary Review, Subsequent Review, and Final Review.

### **Article 75 – Re-examination of Personal Review Files**

The Commission may, at any time during the Extraordinary Period of Review, re-examine a Personal Review File which is pending and designate it for Subsequent Review in accordance with Article 58, Paragraph 2, provided that new and material evidence or factual allegations are brought to the attention of the Commission.

### **Article 76 – Standard of Proof**

The level of evidence necessary in order to establish unsuitability shall be that it is more likely than not that the person under review is unsuitable to hold office.

### **Article 77 – Right to Counsel**

The person under review shall have the right to be represented by counsel at his or her own election and expense during the process of review.

### **Article 78 – Impartiality of Members of the Commission**

Members of the Commission shall not in any manner participate in the management, review, or final disposition of their own Personal Review Files.

Members of the Commission shall participate in all review proceedings unless he or she cannot act impartially.

## **Article 79 – President of the Commission**

In the event the President of the Commission cannot carry out his or her duties due to a conflict of interest in a matter or otherwise, the Commission shall designate one of its members to perform the President's duties.

## **Article 80 – Finality of Commission's Decisions**

There shall be no appeal from any decision or order of the Commission made during the Extraordinary Period of Review, unless otherwise provided in this Law.

## **Article 81 – Retention of Personal Review Files**

The Commission shall retain the Personal Review Files for three years after the close of the Extraordinary Period of Review.

## **XIV FINAL PROVISIONS**

### **Article 82**

All Federal or cantonal laws that are determining issues of judicial and prosecution authorities, starting from the conditions laid down in this law as minimal, shall be brought into harmony with this Law, and until then, provisions of this Law shall be applied.

## **Office of the High Representative**