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LAW ON AMENDMENTS TO THE LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

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NOTE: The Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina was published in the “Official Gazette of Bosnia and Herzegovina”, 25/04.

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the 10th session of the House of Representatives, held on 22 August 2023, and the 9th session of the House of Peoples, held on 06 September 2023, adopted the following

LAW ON AMENDMENTS TO THE LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

Article 1

In the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of BiH, No. 25/04, 93/05, 48/07 and 15/08), in Article 1, after paragraph (3), a new paragraph (4) shall be added to read as follows:

“(4) words used in this Law in one gender, in the interest of clarity, shall pertain to both masculine and feminine gender without discrimination.

Article 2

In Article 4, paragraph (5) after the words: "Deputy Chief Prosecutors" a comma and the following words shall be added: "and Council Members".

Article 3

In Article 5, after paragraph (2), a new paragraph (3) shall be added to read as follows:

"(3) One year after the end of a Council Member's mandate, he/she may not apply or be elected to vacant positions in the judiciary which would constitute a career advancement, including the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska, and may not apply for vacant positions of Chief Disciplinary Counsel or Deputy in the Office of Disciplinary Counsel and the Director and the Deputy in the HJPC Secretariat.

Article 4

In Article 6 paragraph (1), items (d) and (e) shall be amended to read as follows:

"(d) in the event of a conflict of interest referred to in Article 10a paragraph (1) item (a) of this Law;

(e) following a decision on dismissal referred to in Article 6a of his Law."

Item (f) shall be deleted, and item (g) shall become item (f).

In paragraph (2), words: "paragraph 1, items d), (e) and (f) of this Article on the day the HJPC removes him/her from duty", shall be replaced by words: referred to in paragraph (1) item (d) of this Article, the mandate shall terminate with the filing of an application for a vacant position".

Paragraph (3) shall be amended to read as follows:

"(3) If the mandate of a Council member, Council president or vice-president is terminated in the manner set forth in this Article, the decision terminating the mandate must state the exact day of the mandate termination."

Article 5

After Article 6, a new Article 6a shall be added to read:

"Article 6a

(Dismissal of Council Members)

(1) A Council Member shall be dismissed:

(a) If he/she violates this Law or in another way seriously undermines the reputation of the Council;

(b) in case of incompatibility of offices;

(c) In case of absence from duty as a Council Member for a period longer than three months continually, or longer than six months continually if the absence is caused by sickness;

(2) The procedure for dismissing a Council Member shall be initiated upon a motion that can be filed by any judge, prosecutor or Council Member who have information about the existence of the reasons referred to in paragraph (1) of this Article.

(3) Motion to initiate the dismissal procedure shall be filed with the Council.

(4) Once it receives the motion and concludes it is necessary to initiate the procedure to establish the facts regarding the circumstances referred to in paragraph (1) of this Article, the Council will establish a special commission, consisting of five members, tasked with establishing the relevant facts and proposing a decision to the Council.

(5) The Commission referred to in paragraph (4) of this Article must include at least one HJPC member from the ranks of judges and at least one HJPC member from the ranks of prosecutors, and three members shall be judicial office holders. However, the Commission may not include judges or prosecutors coming from the same court or prosecutor's office as the HJPC member who is subject to dismissal procedure.

(6) The establishment of the commission and the dismissal procedure shall be regulated in more detail by the Rules of Procedure.

(7) The Council shall decide on dismissal by a two-thirds majority vote of Council members present.

(8) Decision referred to in paragraph (7) of this Article shall be adopted in the form of a ruling that must contain a detailed justification of reasons for dismissal and shall be published in accordance with Article 45 of this Law and on the HJPC website.

(9) Decision referred to in paragraph (8) of this Article shall be a final administrative act in terms of Article 4 of the Law on Administrative Disputes of Bosnia and Herzegovina (Official Gazette of BiH, No. 19/02, 88/07, 83/08 and 74/10), which can be challenged in an administrative dispute procedure that may be initiated by filing a complaint to the Court of Bosnia and Herzegovina.

(10) Complaint from paragraph (9) of this Article shall be filed within eight days from the day when the Decision on Dismissal is published on the HJPC website.

(11) The Defendant shall respond to the complaint within eight days from the day of receiving the complaint, and the Court shall decide within eight days from the day of receiving the response to the complaint."

Article 6

After Article 10, a new Article 10a shall be added to read:

"Article 10a (Conflict of Interest)

(1) A conflict of interest for a Council Member shall be deemed to exist:

a) when a Council member or his/her blood relative in direct line of descent, the child of the spouse, a spouse or a civil-law partner, adoptive parent and adopted child, applies for a vacant position in the judiciary including the Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska or a vacant position of a Chief Disciplinary Counsel and Deputy in the Office of Disciplinary Counsel or Director or Deputy Director in the HJPC Secretariat;

b) in other situations in which a Council Member has a blood relative in the lateral line of descent, a relative-in-law or has close friendship, business or any other ties or a private interest which affects or may affect the legal, transparent, objective and impartial performance of official duty, i.e. in which a private interest is detrimental or may be detrimental to the public interest or public trust.

(2) If a Council Member applies to a vacant position referred to in paragraph (1) item a) of this Article, his/her mandate at the Council shall be terminated. If a Council Member's relative or a person from paragraph (1) item a) of this Article applies to the vacant position, the Council Member shall report it to the Council immediately upon learning about it and request recusal from the interview panel and from the procedure for nomination and appointment of candidates.

(3) Cases which imply the existence of conflict of interest referred to in paragraph (1) item b) of this Article shall be regulated in more detail in the Council's Book of Rules.

Article 7

In Article 14 paragraph (2) words: "and those voting" and words: "pursuant to Article 11 (4)" shall be deleted.

Paragraph (3) shall be amended to read as follows:

"(3) In the voting procedure, Council members may not abstain."

Paragraph (4) shall be deleted.

Article 8

In Article 17, item (22) after the word "determine", following words shall be added: "procedure and".

After item (29), a new item (30) shall be added to read:

"(30) establish a Department responsible for processing declarations referred to in Article 86f of this Law;"

Previous item (30) shall become item (31).

Article 9

In Article 44, paragraph (1) shall be amended to read:

(1) The Council shall adopt decisions appointing candidates as judges or prosecutors in the form of a ruling that must contain justification regarding the application of criteria referred to in Article 43 of the Law. The ruling shall be published in line with Article 45 of this Law and on the Council's website.

After paragraph (3), new paragraphs (4), (5) and (6) shall be added to read:

"(4) The appointment decision shall constitute a final administrative act of an institution of Bosnia and Herzegovina in accordance with Article 4 of the Law on Administrative Disputes of Bosnia and Herzegovina (Official Gazette of BiH, No. 19/02, 88/07, 83/08 and 74/10), which can be challenged in an administrative dispute procedure that may be initiated by filing a complaint with the Court of Bosnia and Herzegovina.

(5) Complaint from paragraph (4) of this Article shall be filed within eight days from the day when the Decision on appointment is published on the Council's website. In the dispute referred to in this paragraph, the Court of Bosnia and Herzegovina shall review the legality of the appointment procedure and shall decide in an urgent procedure, no later than eight days from the date of receiving the response to the complaint. The defendant must submit a response to the complaint within eight days from the day of receiving the complaint.

(6) In case an administrative dispute is initiated, as referred to in paragraph (4) of this Article, the newly appointed judge or prosecutor's assumption of office shall be delayed until the completion of court proceedings"

Article 10

Article 54 shall be amended to read as follows:

"Article 54

(Liability for Disciplinary Offences)

(1) A judge, a prosecutor, a reserve judge or a lay judge, including court presidents and chief prosecutors and their deputies, as well as Council members, shall be held liable for disciplinary offences stipulated by the Law, which they commit either intentionally or negligently.

(2) Appointment to another court or prosecutor's office shall not preclude disciplinary liability of a judge or a prosecutor for any disciplinary offence committed while performing the previous judicial office. Cessation of a managerial position mandate shall not preclude disciplinary liability for an offence committed during that mandate.

(3) Criminal or minor offence liability shall not preclude the disciplinary liability of a judge or a prosecutor for the same offence that was a matter for criminal or minor offence proceedings if such an offence is also a disciplinary offence.

(4) The dismissal procedure in line with Article 6a of this Law shall not preclude disciplinary liability of a Council member if the offence that was a matter for the dismissal procedure, at the same time constitutes a disciplinary offence.

Article 11

Article 56 shall be amended to read as follows:

"Article 56

(Disciplinary Offences of Judges)

(1) The following shall constitute disciplinary offences of judges:

- a) disclosure of confidential information obtained through the exercise of judicial office
- b) use of judicial office to obtain a benefit for oneself or others;
- c) failure to request his/her disqualification from a case when a conflict of interest exists;
- d) an undue delay in writing of a decision or in taking a procedural action;
- e) failure to comply with a decision made in the procedure for protection of a right to a trial within reasonable time;
- f) allowing the performance of a judicial function to a person not authorised by law to do so;
- g) interfering with the work of a judge or prosecutor, contrary to the rules, with the intention to obstruct or prevent their activities or to influence their work;
- h) making any comments about a court or prosecutorial decision, proceedings or case while the case is ongoing before the court, which can reasonably be expected to interfere with or prejudice a fair process or trial;

- i) failure to comply with a book of rules, a decision, an order or another act of the Council for unjustified reasons;
- j) providing or presenting the Council with false, misleading or insufficient information;
- k) failure to provide the Council with any information he or she is required to provide under this Law;
- l) violating the provisions of this Law on submitting declaration of assets and interests;
- m) violating the provisions of this Law on monitoring the declarant's obligations set out in this Law;
- n) failure to fulfil any mandatory training obligation;
- o) engaging in activities that are incompatible with judicial office;
- p) exceeding any limitations related to income generated from fees for additional activities;
- r) the performance of official duties with bias and prejudice based on race, colour, sex, religion, ethnic origin, nationality, sexual orientation or social and economic status of the party;
- s) violating the principles of the Code of Ethics for Judges in a way that compromises the reputation and integrity of the judiciary, and not prescribed by this Article as a separate offence;
- t) accepting a gift or reward whose purpose is to unduly influence the judge's decisions or actions, including cases where a gift or reward only give an impression of undue influence.

(2) In addition to the offences referred to in paragraph (1) of this Article, court president shall also be held liable for the following disciplinary offences:

- a) violating regulations governing the management of the court and court administration;
- b) violating a regulation or decision on the assignment of cases, directly or by failing to carry out supervision;
- c) failure to file a disciplinary complaint against a judge of the same court despite having information on the judge's misconduct;
- d) failure to provide the Council with any information he or she is required to provide as court president under this Law."

Article 12

Article 57 shall be amended to read as follows:

"Article 57 (Disciplinary Offences of Prosecutors)

(1) The following shall constitute Disciplinary Offences of Prosecutors:

- a) disclosure of confidential information obtained through the exercise of a prosecutorial office;
- b) using prosecutorial office to obtain a benefit for oneself or others;
- c) failure to request his/her disqualification from a case when a conflict of interest exists;
- d) undue delays in conducting actions concerning the performance of prosecutorial office;
- e) failure to comply with a decision made in the procedure for protection of a right to a trial within reasonable time;
- f) allowing the performance of a prosecutorial office to persons not authorised by law to do so;

- g) interfering with the work of a judge or prosecutor, contrary to the rules, with the intention to obstruct or prevent their activities or to influence their work;
- h) making any comments about a court or prosecutorial decision, proceedings or case while the case is ongoing before the court, which can reasonably be expected to interfere with or prejudice a fair process or trial;
- i) failure to comply with a book of rules, a decision, an order or another act of the Council for unjustified reasons;
- j) providing or presenting the Council with false, misleading or insufficient information;
- k) failure to provide the Council with any information he or she is required to provide under this Law;
- l) violating the provisions of this Law on submitting declaration of assets and interests;
- m) violating the provisions of this Law on monitoring the declarant's obligations set out in this Law;
- n) failure to fulfil any mandatory training obligation;
- o) failure to carry out a statutory instruction of a supervising prosecutor unless carrying out of such an instruction would, in itself, constitute a violation of law;
- p) engaging in any activities that are incompatible with prosecutorial office;
- r) exceeding any limitations related to income generated from fees for additional activities;
- s) the performance of official duties with bias and prejudice based on race, colour, sex, religion, ethnic origin, nationality, sexual orientation or social and economic status of the party;
- t) violating the principles of the Code of Ethics for Prosecutors, in a way that compromises the reputation and integrity of the judiciary, and not prescribed by this Article as a separate offence;
- u) accepting a gift or reward whose purpose is to inappropriately influence prosecutor's decisions or actions, including cases where the gift or reward only give an impression of inappropriate influence.

(2) In addition to the offences referred to in paragraph (1) of this Article, Chief Prosecutor shall also be held liable for the following disciplinary offences:

- a) violating regulations governing the management of Prosecutor's Office and Prosecutor's Office administration;
- b) violating regulations and decisions on case assignment, either directly or by failing to carry out supervision;
- c) failure to file a disciplinary complaint against a prosecutor of the same prosecutor's office, despite having information on the misconduct;
- d) failure to provide the Council with any information he or she is required to provide as Chief Prosecutor under this Law.

Article 13

After Article 57, a new Article 57a shall be added to read:

"Article 57a

(Disciplinary offenses of Council Members)

The following shall constitute Disciplinary offenses of Council Members:

- a) violating the principle of impartiality or independence while performing the function of a Council Member;
- b) the performance of official duties with bias and prejudice based on race, colour, sex, religion, ethnic origin, nationality, sexual orientation or social and economic status;
- c) disclosure of confidential information obtained in the course of performing duties of Council Member;
- d) use of the position of a Council Member to obtain a benefit for oneself or others;
- e) failure to request his/her disqualification from a duty in the Council when a conflict of interest exists;
- f) Unlawful interference with the work of a judge, a prosecutor or a Council member with the intention to obstruct or prevent their activities, or to influence their work;
- g) making any comments about a court or prosecutorial decision, proceedings or case while the case is ongoing before the court, which can reasonably be expected to interfere with or prejudice a fair process or trial;
- h) failure to participate, without justification, in the work of the Council, its committees or other working bodies, and failure to carry out the tasks assigned to him/her by the Council;
- i) failure to comply with a book of rules, a decision, an order or another act of the Council for unjustified reasons;
- j) providing or presenting the Council with false, misleading or insufficient information;
- k) failure to provide to the Council any information he or she is required to provide under this Law;
- l) violating provisions of this Law on submitting declaration of assets and interests;
- m) violating provisions of this Law on monitoring the declarant's reporting obligations on assets and interests as set out in this Law;
- n) conduct that compromises the reputation and integrity of the Council or the judiciary as a whole, and not prescribed by this Article as a separate offence.

Article 14

In Article 58, paragraph (1), item (c), after the word "salaries" the following words shall be added: "or compensations", and in item (e), after the words: "to a position of a prosecutor" the following words shall be added: "or demotion from the position of a Council President or Vice-President to a position of a council member".

Article 15

After Article 61, new Articles 61a and 61b shall be added to read:

"Article 61a

(Special rules for disciplinary proceedings against a member of the Council)

(1) Disciplinary proceedings against a member of the Council shall be conducted by:

- a) The first instance disciplinary panel;
- b) The second instance disciplinary panel.

(2) The panels referred to in paragraph (1) of this Article shall be independent and competent to conduct disciplinary proceedings against members of the Council. Any panel member who participated in a matter as a member of the first instance panel may not participate in the same matter as a member of the second instance disciplinary panel.

(3) In disciplinary proceedings against a Council member who is a judge, both first instance and second instance panels shall be composed of judges, and in disciplinary proceedings against a member of the Council who is a prosecutor, both first instance and second instance panels shall be composed of prosecutors. In a disciplinary proceeding against a member of the Council who is neither a judge or a prosecutor, both the first instance and second instance disciplinary panels shall be composed of one judge, one prosecutor and one non-judicial Council member.

(4) The first instance disciplinary panel shall have three members and shall establish disciplinary liability in the first instance and impose measures.

(5) The second instance disciplinary panel shall have three members and shall decide on appeals against the decisions of the first instance disciplinary panel. The second instance disciplinary panel may uphold, revoke, or modify a decision or disciplinary measures imposed by first instance disciplinary panel.

(6) Notwithstanding paragraphs (2) and (3) of Article 69 of this Law, an Agreement on Joint Consent to the Proceedings to Establish Disciplinary Liability, reached between the Office of the Disciplinary Counsel and a member of the Council against whom a complaint was filed, shall be submitted to the Second instance disciplinary panel for review. The rest of Article 69 of this Law shall equally apply to members of the Council.

(7) Decision of the second instance disciplinary panel constitutes a final administrative act, and an administrative dispute may be initiated to challenge it by filing a complaint with the Court of Bosnia and Herzegovina within eight days from the day when the decision is published on the Council's website. The Defendant shall respond to the complaint within eight days from the day of receiving the complaint, and the Court shall decide within eight days from the day of receiving the response to the complaint.

Article 61b

(List of members of disciplinary panel)

(1) The Court of Bosnia and Herzegovina, Supreme Court of the Federation of BiH, the Supreme Court of Republika Srpska and the Appellate Court of Brčko District of Bosnia and Herzegovina at their general meeting, shall nominate two judges each as members of disciplinary panel against a member of the Council.

(2) The Prosecutor's Office of Bosnia and Herzegovina, Prosecutor's Office of the Federation of Bosnia and Herzegovina, Public Prosecutor's Office Republika Srpska and the Prosecutor's Office of Brčko District of Bosnia and Herzegovina, at their collegium shall nominate two prosecutors each as members of a disciplinary panel against a member of the Council.

(3) A judge or a prosecutor who has not been subject to disciplinary proceedings and who has received the performance evaluation "exceptionally successful in the performance of duties" or "successful in the performance of duties" may be nominated for a member of a disciplinary panel.

(4) Based on the nominations submitted by the courts and prosecutor's offices referred to in paragraphs (1) and (2) of this Article, the Council shall prepare a list of judges and prosecutors, who shall be appointed as disciplinary panel members. The prepared list shall be valid for two years subject to completion of pending disciplinary proceedings. Members of disciplinary panels shall not be eligible for reappointment.

(5) A member of a disciplinary panel may not be from the same court or prosecutor's office from which the member of the Council against whom the disciplinary proceedings are being conducted was appointed.

(6) A judge or a prosecutor from the list referred to in paragraph (4) of this Article may be appointed a member of not more than one disciplinary panel. Therefore, the list shall be updated as necessary and in particular if a proposed member resigns, joins another institution, is appointed a Council member or for other reasons in accordance with the Council Instruction on the Procedure for Nominating Disciplinary Panel members."

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Article 72 shall be amended to read as follows:

"Article 72

(Statute of Limitation for the Initiation of Disciplinary Proceedings)

(1) Disciplinary proceedings against a judge, a prosecutor or a Council Member may not be initiated:

a) upon the expiry of two years from the date of filing the complaint, or from the date the Office of the Disciplinary Counsel learnt of the offence;

b) upon the expiry of five years from the date of commission of the alleged offence or, in case of a criminal procedure, upon the expiry of one year following the finality of the decision in those proceedings, whichever of the two deadlines occurs later.

(2) Statute of limitations for initiating disciplinary proceedings for disciplinary offences of a lasting nature shall commence at the time when the unlawful state ends.

Article 17

Article 82 shall be amended to read as follows:

"Article 82

(Prohibition against holding incompatible offices)

(1) A judge or a prosecutor shall not perform any office or activity, paid or unpaid, that is incompatible with their office, other than additional activities referred to in Article 83, paragraph (2) of this Law.

(2) A judge or a prosecutor shall not be a member of or perform any duty in a body of a political party, or an association or a foundation connected to political parties, and shall refrain from participating in political party activities of a public nature.

(3) A judge or a prosecutor shall not be a member of any organization that discriminates on any basis in accordance with the Law prohibiting discrimination (Official Gazette of BiH, No. 59/09 and 66/16) nor shall contract the use of facilities belonging to such organizations and shall withdraw from such organizations immediately upon learning of such conduct.

(4) A judge or a prosecutor shall not be an attorney or notary public, nor a member of a steering or supervisory board in any public or private company or another legal person or entrepreneurship. Exceptionally, a judge or a prosecutor may be a member of a managing authority of an institution responsible for judicial training.

(5) A judge or a prosecutor shall not hold any other public office, other than in the judicial bodies, as stipulated by law.

Article 18

Article 83 shall be amended to read as follows:

"Article 83

(Additional Activities)

(1) A judge or prosecutor may, outside working hours, engage in academic, scholarly, scientific, professional, cultural or other activities that are compatible with judicial or prosecutorial office and that do not fall under the prohibitions listed in Article 82 of this Law.

(2) During working hours, a judge or prosecutor shall be permitted to:

a) work as trainer in the Judicial and Prosecutorial Training Centre, but not more than ten working days a year;

b) participate in the work of professional bodies or in gatherings formed or organised for the purpose of drafting legislation or discussing issues and preparing or presenting materials with relevance to the judiciary;

c) hold a judicial office to which he or she is appointed;

d) participate in the work of professional associations of judges and prosecutors up to five working days a year.

(3) a judge or prosecutor who plans to engage in activities referred to in paragraph (2) item b) of this Article shall inform thereof the court president or chief prosecutor as well as the Council.

(4) a judge or prosecutor may be remunerated for the additional activities from paragraph (1) this Article.

Article 19

Article 84 shall be amended to read as follows:

"Article 84

(Remuneration for Additional Activities)

(1) Remuneration for additional activities of a judge or a prosecutor may not exceed annually the total of 40% of his/her annual net salary as a judge or a prosecutor.

(2) The limitation from paragraph (1) of this Article shall not apply to income from property, income from copyrights and related rights or industrial property rights, and similar income that cannot be considered as income from additional activities.

(3) The limitation from paragraph (1) of this Article shall not apply to income a judge or a prosecutor earns during unpaid leave."

Article 20

Article 85 shall be amended to read as follows:

"Article 85

(Referral to the Council)

(1) A judge or prosecutor may request the Council's opinion on whether his/her activities are compatible with his/her office and the provisions of this Law.

(2) A court president or a chief prosecutor may also request Council's opinion when he or she believes that a judge or a prosecutor performs or intends to perform an activity that is incompatible with his or her office. Court president or chief prosecutor shall inform the judge or prosecutor concerned about the request for opinion.

(3) In addition to issuing opinions in response to specific requests, the Council may also, ex officio, issue its opinion on compatibility of a judicial or prosecutorial office with the activities they perform upon receiving the information from Article 83, paragraph (3) of this Law.

(4) Council's opinion on compatibility of offices shall be binding and compliance with it shall protect the judge or prosecutor against the risk of disciplinary proceedings. The procedure for issuing opinion referred to in this Article shall be regulated in more detail by the Council's Rules of Procedure.

(5) Through its rules, the Council may provide general guidelines for the application of Articles 82 and 83 of this Law.

Article 21

Article 86 shall be amended to read as follows:

"Article 86
(Declaration of Assets and Interests)

(1) Judges and prosecutors shall submit to the Council their entry and annual declaration of assets and interests, including the manner and time of acquiring those assets and their acquisition value, income, interests, liabilities, expenditures and guarantees for themselves, their spouse or civil-law partner, parents and children and other persons with whom they share a household (hereinafter: the Declaration).

(2) Declaration from paragraph (1) of this Article shall contain the following data:

a) name and surname, date of birth, place and address of temporary/permanent residence, marital status/kinship with the declarant, employment status, title and place of work;

b) data on all income for the judge, prosecutor, spouse or civil-law partner, parents, children and other persons from paragraph (1) of this Article with whom they share a household;

c) data on income from other paid activities;

d) data on ownership of real estates, including the manner and time of their acquisition, and acquisition value;

e) data on ownership of vehicles, including the manner and time of their acquisition, and acquisition value;

f) data on ownership of other movables the individual value of which exceeds BAM 5,000 including the manner and time of acquisition;

g) data on deposits in banks or other financial institutions, including e-currencies and cash the value of which exceeds BAM 5,000;

h) data on life insurance policy;

i) data on gifts and donations received in connection with the performance of office, the value of which exceeds BAM 25;

j) data on gifts and donations received as a private person if their individual value exceeds BAM 500, or BAM 1,000 in total per year;

k) data on investments, including shares and other securities;

l) data on other expenses the individual value of which exceeds BAM 5,000;

m) data on liabilities.

(3) Declaration referred to in paragraph (1) of this Article shall also contain the data referred to in Article 86a paragraph (2) of this Law that shall not be available to the public.

(4) In their declaration, a judge or a prosecutor shall also provide detailed information on any additional unpaid activity that is otherwise relevant for the performance of their office.

(5) In their declaration, a judge or a prosecutor shall also provide the name and surname, type of kinship, title or activity of their relatives working in the judiciary, lawyer profession, public attorney or notary public offices. Relatives shall include relatives in the direct line of descent, relatives in the lateral line of descent up to a third degree, relatives-in-law to a second degree and the child of a spouse, a spouse or a civil-law partner, adoptive parents and adopted children.

(6) Declaration for the previous year shall be submitted on a form the contents of which shall be determined by the Council. The Council shall set a deadline for submitting the annual declaration, but it shall not extend beyond 30 April of the current year. Judicial office holders shall attach to their declaration a copy of their annual income tax return form, and any other tax return forms and documents pertaining to the information provided in the declaration.

(7) The annual declaration shall list all the changes that occurred during the reporting period and not listed in the

previously submitted declaration, the copy of which shall be attached to the declaration.

(8) A judge or a prosecutor who is appointed to a judicial office for the first time, shall submit his/her entry declaration within 30 days from the day of assuming the office.

(9) A judge or a prosecutor whose mandate has ended shall submit his/her declaration pursuant to this Law for the first year following the end of their mandate.

(10) If the persons referred to in paragraph (1) of this Article refuse to provide to a judge or a prosecutor information necessary for submitting a declaration, the judge or prosecutor shall state so in their declaration, and attach to the declaration a statement certified by the competent administrative body stating that the person with the data given in paragraph (2) item a) of this Article refused to provide information necessary for the declaration.

(11) If a judge or a prosecutor, in their entry declaration or their first annual declaration after this Law enters into effect, declares cash in the amount exceeding BAM 5,000 held outside banks, he/she cannot use such amounts to justify the funding of his/her expenditures.”

Article 22

After Article 86, Articles 86a through 86k shall be added to read:

"Article 86a (Transparency)

(1) Declaration referred to in Article 86 of this Law shall be published on the HJPC website with the aim of strengthening integrity, transparency and public trust in the judiciary, and to prevent conflict of interest and other undue influence on the performance of a judicial office.

(2) Notwithstanding paragraph (1) of this Article, the following data from the declaration shall not be available to the public:

- a) names of minors listed in the declaration, except for the first letter of their first name,
- b) personal identification number and residence address of the judge or prosecutor or other persons listed in the declaration;
- c) the name and number of the street where the property listed in the declaration is located;
- d) bank account numbers and other financial identification numbers;
- e) individual amounts of cash owned by a judge or a prosecutor and individual amounts of money owned by other household members;
- f) Registration numbers of vehicles.

(3) Annual income tax return and other attachments that a judge or a prosecutor submit with their declarations shall not be available to the public.

(4) The total amount of savings, which is the sum of the balances in all bank accounts and the cash reserves of a judge or a prosecutor and other members of their household shall be made available to the public.

(5) First and last names of the relatives of a judge or prosecutor referred to in Article 86 paragraph (5) of this Law shall be published on the HJPC website.

(6) After the expiry of a three-year period from the end of a judge's or prosecutor's mandate, data from the declarations shall no longer be available to the public.

Article 86b (Data verification and analysis)

(1) Respecting the statutory competences of authorities, institutions and other legal entities that keep the records referred to in Article 86c. paragraph (4) of this Law, the Department responsible for processing declarations referred to in Article 86f of this Law shall regularly check the accuracy, completeness and truthfulness of declared data and shall analyse the data from declarations of assets and interests with the purpose of detecting incompatible activities and potential conflicts of interest.

(2) Verification of the timeliness, accuracy and completeness of information provided in the declaration shall be done via:

a) formal check, to verify whether a declaration was submitted in a timely manner and fully completed.

b) regular check, to verify - by comparing submitted data - if there is proportionality between the data concerning the financial inflows and outflows declared by a judge or prosecutor;

c) additional check, to verify the accuracy of the declared data based on the information collected pursuant to Article 86c paragraph (6) of this Law, by comparing the declared data with the subsequently collected information in accordance with this Law.

(3) Financial inflows comprise all income that increase a judge's or a prosecutor's financial assets during the declaration period, including, bank and similar savings balance at end of the previous declaration period, income from the main and additional activities, monetary gifts, loans and donations, taken loans and other income, such as income from real property, copyrights, investments etc.

(4) Financial outflows comprise all expenses that decrease a judge's or a prosecutor's financial assets during the declaration period, including expenses for real properties, vehicles, movable property, loan repayment, lending, investments, insurance costs, subsistence expenditures, savings and other expenses, such as alimony, education, medical treatments and similar expenses.

(5) For the purpose of verifying declarations, through the Department responsible for processing declarations referred to in Article 86f of this Law, the HJPC shall adopt and regularly revise the risk criteria which shall be confidential. A risk criterion is a circumstance or a set of circumstances based on which declarations of assets and interests are prioritized for regular checks, a schedule of checks is prepared and additional checks are conducted. First appointment and promotion constitute a risk criterion requiring additional checks to be conducted *ex officio* in accordance with Article 86c paragraphs (4) to (8) of this Law.

(6) Department responsible for processing declarations referred to in Article 86f shall request from a judge or prosecutor additional information or explanation concerning the data from his/her declaration, when this is necessary for the purpose of verifying their accuracy and completeness.

(7) Declaration verification procedure shall be closed for public, while the criteria and results of the verification shall be published.

Article 86c (Additional check)

(1) Additional check, which may include the entire declaration or some of its parts, shall be carried out:

a) when the comparison of received data in the regular check of a declaration shows discrepancy between financial inflow and financial outflow;

b) when the risk criteria require so;

c) when a declaration of assets and interests is selected randomly by a software application;

d) in other cases provided for under the Law;

e) If the declaration does not contain all the data on persons referred to in Article 86 paragraph (1) of this Law.

(2) Additional check of a declaration may be carried out based on a reasoned report made by a natural or legal

person alleging incorrect information in the declaration.

(3) Additional check referred to in paragraph (1) item c) of this Article shall be carried out on at least 10% of submitted declarations in a calendar year.

(4) For an additional check, information may be collected from:

a) public records: vital records, tax records, court records, land registries, cadastres, registers of business entities, associations and foundations, registers of securities, registers of intellectual property rights, registers of motor vehicles, civilian aircrafts, boats and other vessels etc.

b) other records such as: records on companies' debts, records on value of real properties or vehicles, bank records, etc.

(5) When access to the data referred to in paragraph (4) of this Article is not possible by direct search of electronic records or when it is necessary to collect information from natural persons, the Department responsible for processing declarations referred to in Article 86f of this Law shall request in writing the data from a legal or natural person, institutions responsible for checking, recording or storing such data or institutions that own such data. Competent institutions and other legal and natural persons shall submit the requested data in accordance with this Law and other applicable regulations of Bosnia and Herzegovina, Republika Srpska, Federation of BiH and Brčko District, respecting statutory deadlines or deadlines set by the Department responsible for processing declarations referred to in Article 86f of this Law for providing the data.

(6) Department responsible for processing declarations referred to in Article 86f of this Law shall define more precisely the manner of access or other method of obtaining data through an agreement on cooperation with authorities, institutions and other legal entities that keep the records from paragraph (4) of this Article. Resources required for accessing commercial records shall be earmarked in the HJPC budget.

(7) Pursuant to the request of the Department responsible for processing declarations referred to under Article 86f of this Law, and in line with paragraph (5) of this Article, institutions regulated by the legislation on banks shall confirm to the Department whether account balances declared for a certain date correspond with the actual account balance on such date, and whether there are any undeclared accounts or other financial products held at this institution for persons covered by the declaration.

(8) The procedure of an additional check of a declaration may identify the following irregularities:

a) missing data in the declaration;

b) false data in the declaration;

c) concealed assets, liabilities, income or expenses;

d) discrepancy between data on financial inflow and financial outflow that a judge or a prosecutor or Council member is unable to explain;

e) concealed activity which is incompatible with the office of a judge, prosecutor or Council member;

f) concealed information indicating a possible conflict of interest of a judge, a prosecutor, or a Council member.

Article 86d (Result of a check)

(1) The verification process shall end by producing a note on the conducted control, which shall contain information about the type and scope of the check, the information collected from the records of other legal persons and other sources of information that were consulted during the check, the availability of data for the check, cooperation of a judge, prosecutor or a Council member during the verification process, about the outcome of the verification process including reasoning, and other information relevant for completing the verification process.

(2) The judge, prosecutor or a Council member shall be informed about the outcome of the declaration verification process, and the note referred to in paragraph (1) of this Article shall be delivered to the judge, prosecutor or a Council member.

(3) If the comparison of data submitted in the regular declaration verification or data from institutions and other legal entities that keep records referred to in Article 86c paragraph (4) of this Law raises any suspicion of irregularities referred to in Article 86c of this Law, the Office of the Disciplinary Counsel shall be informed thereof and provided with all information resulting from the check, for its further action.

(4) Based on the information provided by the Department from paragraph (3) of this Article, the Office of Disciplinary Counsel shall proceed in accordance with its competence. If the data collected in the procedure by the Office of the Disciplinary Counsel meet the evidentiary standards for a disciplinary offense and lead to a complaint in accordance with Article 67 of this Law, pursuant to Article 56, paragraph (1) item I), Article 57 paragraph (1) item I) and Article 57a item I), notwithstanding the rules of disciplinary procedure prescribed by this Law, it shall be up to the judge, prosecutor or a Council member subject to the disciplinary procedure to prove or explain the contrary.

(5) The burden of proof from paragraph (4) of this Article shall apply exclusively to disciplinary proceedings resulting from the declaration verification process and may not be used in any other proceedings, especially not in criminal proceedings.

(6) If the first appointment or promotion to a position in the judiciary are due during the procedure, or if there are other reasons that give rise to an additional check referred to in Article 86c of this Law, the assumption of the office by the appointed judicial office holder shall be postponed until the completion of the additional check with a positive outcome. In case of a negative outcome, the appointment decision shall be revoked in accordance with Article 44 of this Law.

(7) In the process of electing a Council member from among judges and prosecutors, or electing the Council president or vice-president, an additional check from Article 86c of this Law shall be carried out and the assumption of office shall be postponed until the completion of the additional check with a positive outcome. In case of a negative outcome, the Council shall act in accordance with Article 8, paragraph (2) of this Law.

(8) Department responsible for processing declarations referred to in Article 86f of this Law shall forward the information on the conducted control, including the data from the declaration and the data obtained during the control procedure, to the institution or another legal entity whose data was used during the declaration verification process, as well as to any other competent authority when needed for the purpose of implementation of measures falling under the competence of that authority.

Article 86e (Register of Declarations)

(1) The Council shall establish records, i.e. a Register of Declarations on Assets and Interests.

(2) Declarations of judges and prosecutors whose mandate has ended shall be deleted from the Register ten years after the end of the mandate. Deletion shall be suspended during any ongoing use of the declarations and attached documents by the Council or any other authority for an official procedure.

Article 86f (Department responsible for processing declarations)

(1) The Council shall establish Department responsible for processing declarations within the HJPC Secretariat (hereinafter: the Department), which shall be independent in performing its tasks and shall be competent for implementing the provisions of this Law that regulate the processing of declarations, without receiving any instructions and without any interference in its work on specific cases.

(2) The Department shall be independently managed by the Head of the Department, who organizes and ensures the lawful and efficient performance of tasks, while performing the function entrusted to him/her conscientiously.

(3) A person who meets the general requirements prescribed by the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH, No. 12/02, 19/02, 8/03, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06,

32/07, 43/09, 8/10, 40/12 and 93/17) as well as special requirements prescribed by the Rulebook on Internal Organization and Job Systematization in the Secretariat, may be appointed as the Head of the Department.

(4) The Head of the Department shall be assisted in his/her work by the Deputy Head, legal advisers, expert advisers, and other employees tasked to perform duties laid down in the Rulebook on Internal Organization and Job Systematization in the Secretariat.

(5) Provisions of the Law on Civil Service in BiH Institutions regulating the rights, duties, disciplinary liability, and incompatibilities with the office of a civil servant shall be applied by analogy to the employees of the Department, while the vacant positions shall be filled in line with Article 15 of this Law.

(6) Security and privacy of information, communication, and other essential infrastructure of the Department, as well as personal protection of employees in the Department shall be guaranteed. Employees of the Department shall protect the security and confidentiality of information and communications in accordance with the rulebook regulating the security of secret data and the security of employees in the Department, adopted by the Council upon proposal of the Secretariat Director, and shall ensure the protection of personal data.

(7) To be eligible to access, use, protect and keep the classified information, the Head of Unit, the Deputy, and if needed other Department employees shall undergo security clearance before taking up their positions, in accordance with the Law on Protection of Classified Data (Official Gazette BiH, No. 54/05 and 12/09). The Council shall request in a timely manner and in writing, the security clearance for the persons listed in this paragraph.

(8) Department employees who provide false or incomplete information when hired or during the security clearance, and those who violate the duty referred to in paragraph (6) of this Article, shall be subject to disciplinary action.

(9) When taking their office, persons from paragraph (4) of this Article who do not require security clearance, shall sign a declaration to confirm being informed of and accepting the obligation to act in accordance with the Law on Protection of Classified Data and the Rulebook regulating the safekeeping of classified data within the Department.

Article 86g (Department Competences and Transparency)

(1) The Department shall have the following competences:

- a) Implementing the provisions of this Law and other regulations regarding declarations, collecting declarations from judges, prosecutors and Council members, checking the timeliness, accuracy, completeness and truthfulness of declared data, analysing the declared data to detect incompatible offices or conflicts of interest;
- b) Adopting and regularly updating the risk criteria used for prioritising regular checks of declarations, establishing a calendar of checks, and performing additional checks;
- c) Publishing declaration verification results;
- d) In line with Article 86d, paragraph (3) of this Law, submitting to the Office of the Disciplinary Counsel and authorities referred to in Article 86d paragraph (7) of this Law the information resulting from verification.

(2) The work of the Department shall be based on the principle of transparency. The Department shall establish a system for filing complaints and make it available to the public, and shall publish its work report at least once a year. Information on assets and activities of employees of the Department shall be submitted in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina and shall be published in compliance with the regulations on personal data protection. Employees of the Department shall have a duty to update the published information once a year.

(3) Breach of duties by the Department employees, prescribed under paragraph (2) of this Article, shall constitute basis for disciplinary liability.

Article 86h (External monitoring of Department's work and disciplinary proceedings)

(1) For the purpose of monitoring the work of the Department on collecting, verifying and publishing the declarations, as well as monitoring the overall functioning of the Department and monitoring the disciplinary proceedings initiated based on declaration verification results, the Council shall hire experts in an advisory role. Experts shall be retained for a period of four years, and if necessary, the Council shall decide on the period for their continued engagement.

(2) The experts referred to in paragraph (1) of this Article shall have direct and unimpeded access to all information and data on persons and their declarations, as well as to the documents available to the Department, except for data covered by personal data protection regulations.

(3) The experts shall have the right to monitor the recruitment process in the Department and in this process issue written recommendations to the recruitment commission. Such recommendations may be rejected, but the reasons for rejection shall be provided in writing within 15 days from the date of receiving the written recommendation.

(4) In cases when the Department, pursuant to Article 86d paragraph (3) of this Law, informs the Office of the Disciplinary Counsel about irregularities identified during the check, the experts shall monitor the disciplinary proceedings and shall make a report referred to in paragraph (9) of this Article.

(5) The experts may propose disciplinary proceedings to be initiated against employees of the Department.

(6) The experts shall maintain the confidentiality of all information defined as classified in line with the Law on Protection of Secret Data.

(7) The experts shall provide written recommendations to the Head of the Department regarding the handling of a specific declaration verification case and the overall Department operation, with the aim to improve the efficiency and effectiveness of its work.

(8) Recommendations by the experts referred to in this Article may be rejected, and in such cases, the Head of the Department shall explain in writing the reasons for rejection within 15 days from receiving the written recommendation.

(9) At least once a year, the experts shall prepare and publish a report on the work and functioning of the Department, and on the declaration verification procedures, as well as on disciplinary proceedings initiated based on the declaration verification results.

Article 86i (Book of Rules on Declarations)

The Council shall issue a separate rulebook to regulate additional details regarding the declaration form, including attachments submitted with it, deadlines and procedures for submitting declarations, exceptions from accessing data, operational aspects of the Department's work within the Secretariat, including the advisory role of experts, establishing and maintaining records, i.e. the register of declarations, the procedure and timeline for checking declarations, and the procedure for concluding agreements on cooperation with authorities, institutions and other legal entities from Article 86c paragraph (6) of this Law.

Article 86j (Minor offences related to declarations of assets and interests)

(1) An official responsible person within a public body who fails to cooperate with the Department or with the body authorised to verify the declarations or who fails to provide to such body the requested information shall be punished by a fine in the amount ranging between BAM 2,000 and BAM 10,000.

(2) If the manager of the public body fails to assign a specific official person for cooperation with the Department or the body authorised to verify the declarations, the manager shall be responsible under these provisions.

(3) A natural person who fails to cooperate with the Department or with the body authorised to verify the declarations or who fails to provide to such body the requested information in accordance with the statutory procedures, shall be punished by a fine in the amount ranging between BAM 2,000 and BAM 10,000. For the same minor offence, a legal person shall be punished by a fine in the amount between BAM 5,000 and BAM 20,000.

(4) The HJPC shall file a request to initiate minor offence proceedings for minor offences referred to in this Article, in accordance with the Minor Offences Law (Official Gazette BiH, No. 41/07, 18/12, 36/14, 81/15 and 65/20).

Article 86k
(Application to the Members of the Council)

Provisions of this Chapter on declarations of assets and interests shall apply equally to all HJPC members.“

Article 23

In Article 88, paragraph (1), after item f) a new item g) shall be added to read:

"g) When he/she has been finally convicted for a criminal offence carrying sentence of imprisonment”.

In paragraph (4), after the words: "Upon determination of the Council" a punctuation mark “comma” and the following words shall be added: "and under item g) paragraph (1) of this Article, on the day when the judgement becomes final”.

Article 24
(Adoption of bylaws)

Within 45 days of the application of this Law, the HJPC shall either pass new ones or harmonise the existing regulations referred to in Articles 6a, 10a, 85, 86b, 86f and 86g and 86i of this Law.

Article 25
(Deadline for filing and checking the first declaration)

Judges and prosecutors holding the office at the time when this Law enters into force shall submit their declaration of assets and interests pursuant to this Law, within 30 days from the day when the regulation referred to in Article 86i of this Law is passed.

Article 26
(Adoption of a new law)

Within one year from the date when this Law enters into force, the Parliamentary Assembly of Bosnia and Herzegovina shall adopt the Law on High Judicial and Prosecutorial Council aligned with the EU standards, as required under the European Commission's Opinion on the Application of Bosnia and Herzegovina for membership in the European Union.

Article 27

This Law shall enter into force on the eight day from its publication in the “Official Gazette of BiH”, and shall become applicable upon 90 days from its entry into force.

Number: 01,02-02-1-1424/23

On 06 September 2023

Sarajevo

Speaker of the House of Representatives of the Parliamentary Assembly of BiH

Marinko Čavara, signed *m.p.*

Speaker of the House of Peoples of the Parliamentary Assembly of
BiH **Nikola Špirić**, PhD, signed *m.p.*