



Visoko sudsko i tužilačko vijeće Bosne i Hercegovine  
Visoko sudbeno i tužiteljsko vijeće Bosne i Hercegovine  
Високи судски и тужилачки савјет Босне и Херцеговине  
High Judicial and Prosecutorial Council of Bosnia and Herzegovina



# GUIDELINES

for the prevention  
of conflict of interest  
in the judiciary



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# INTRODUCTION

The strategic vision of the judiciary in BiH is to build a reliable and strong rule of law system and develop an independent, impartial, professional and efficient judicial system as a key prerequisite not only to the accession of Bosnia and Herzegovina to the European Union, but also to the development of a mature and sustainable democracy. A prerequisite to modern and successful society is a well-organized, professionally governed, regulated, independent and impartial, and also accountable judiciary that all citizens can rely on with confidence.

Increasing the level of public trust is one of the most important goals of the judicial sector reform and improving measures to prevent conflicts of interest is a powerful instrument for achieving this goal, because no matter how just, proportionate and legitimate the prosecutorial and judicial decisions are, the perception of their injustice remains strong if there is any doubt about the professional performance of the judicial office holders because of their common interest with a party to the dispute.

Conflict of interest is not defined as corruption *per se*, but situations involving conflicts of interest may generate corruption. Preventing conflicts between private interests of an individual who holds a public office and interests of the public office is precisely one of the key mechanisms for the prevention of corruption in public service, including the judiciary.

Preventing conflicts of interest in public offices in Bosnia and Herzegovina is regulated by the Law on Conflict of Interest in the institutions of BiH, the Law on Prevention of Conflict of Interest in the Public Bodies of Republika Srpska, the Law on Prevention of Conflict of Interest in the Public Bodies of the Federation of BiH and the Law on Prevention of Conflict of Interest in the Institutions of Brčko District BiH. These laws do not apply to judicial office holders. Preventing conflict of interest in the BiH judiciary is partly regulated by the Law on the High Judicial and Prosecutorial Council of BiH, codes of ethics for judges and prosecutors, as well as procedural laws and laws on courts.

It is impossible to prevent conflicts of interest by simply prohibiting judicial office holders from having private interests. Instead, it is necessary to, on one hand, establish rules and enforceable standards of conduct and control system to ensure compliance with the regulations, and on the other hand judicial office holders should be diligent to identify and avoid conflicts of interest. Conflict of interest must be regarded as an expected situation which may and must be managed. This includes timely identification of risks inherent in the coexistence of public and private interests, which may result in the abuse of office or illegitimate or dishonest personal gain for a judicial office holder or persons close to them.

Strengthening individual accountability and organizational culture of no tolerance for the conflict of interest are the basic principles that underpin the policies for the prevention of conflict of interest. In this regard, it is of invaluable importance to encourage all judicial office holders to take responsibility for their actions and the perceived effects of their actions on the judiciary as a whole. Judicial office holders are expected to behave with the highest level of integrity to set a positive example for other public officials and the public.

Judicial office holders should be diligent to identify individual cases of conflict of interest and when conflicts of private and public interests arise resolve them in favor of the public interest. Given their exposure to constant public scrutiny, judicial office holders are expected to readily accept certain personal restrictions and in the exercise of their rights always act in accordance with the dignity of the judicial office and the principle of judicial independence and impartiality. In doing so, it is of particular importance to always keep in mind to foster the public confidence in the judicial institutions, which means paying particular attention not only to the risks of corruption, but also to the implied risks of situations involving actual, potential or perceived conflict of interest.

# INTERNATIONAL STANDARDS AND DEFINITIONS OF CONFLICT OF INTEREST

**OECD Guidelines for Managing Conflict of Interest in the Public Service**<sup>1</sup> defines the conflict of interest as “a conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities”. Defined in this way, “conflict of interest” has the same meaning as “actual or current conflict of interest”. For understanding the concept of actual conflict of interest it is important to note that it does not matter if the detected conflict of interest has produced improper conduct or not. What is important is that there is a situation of conflict of interest which must be identified properly and sanctioned.

The concept of perceived or apparent conflict of interest has been defined as a situation where “it *appears* that a public official's private interests could improperly influence the performance of their duties”, but this is not in fact the case, as it only appears that there may be a situation of conflict of interests. Recognising this form of conflict of interest, detecting and regulating it is also very important because appearances of conflicts of interest may always have the capacity to turn into actual conflicts of interest or into abuse of office.

Third form of conflict of interest is the potential conflict of interest which arises where “a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (*i.e.* conflicting) official responsibilities in the future”. It is certain that such situations do not involve actual conflict of interests. However, it is also certain that if that particular person would acquire that public capacity, then the conflict of interest would turn from potential into actual. This form of conflict of interests is also very important especially with regards to persons who are expected to take a certain public position which would enter in conflict with the existing private capacity. In such a situation, there should be regulations which would compel such person to renounce one of the two capacities.

According to OECD Guidelines, the prevention of conflicts of interest implies:

- that public interest must always come first;
- that decisions must be made transparently, which entails objective controls, *i.e.* establishing the system for submitting declarations of interest and existence of conflict of interest;
- that individual responsibility and personal example are of utmost importance;
- that it is necessary to work on engendering an organisational culture which is intolerant of conflicts of interest.

Guidelines recommend that the conflict of interest policy should be regulated by laws and codes as “primary sources”, and that particular attention needs to be placed on the corruption-sensitive areas such as “private-sector sponsorships, privatisation and deregulation programmes, NGO relations, political activity, public-private partnerships and the interchange of personnel between sectors”.

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<sup>1</sup> OECD Guidelines (Organisation for Economic Cooperation and Development) for Managing Conflict of Interest in the Public Service [www.oecd.org/countries/.../49106053.pdf](http://www.oecd.org/countries/.../49106053.pdf)

The Guidelines emphasise the importance of declaring and registering private interests of public officials upon taking the office, at specific intervals of time and whenever any changes occur.

Although there is no mention of a requirement to publish such declarations, Guidelines underline that a transparent conflict of interest policy helps to gain the public trust. In addition, the responsibility of providing the information regarding private interests should rest with the people under the scrutiny, as they must undertake accountability for their conduct in public office. This is usually done through a written statement based on a regulated procedure which should be followed by appropriate sanctions (including criminal) for false declarations.

Guidelines emphasise in particular the importance of imposing sanctions in case of a demonstrated situation of conflict of interest. The sanctions may range among: divestment or liquidation of the interest by the public official, recusal from involvement in an affected decision-making process, restriction of access to particular information, transfer to a duty in a non-conflicting function, re-arrangement of duties and responsibilities to resignation of the public official. Clearly such sanctions may also be followed by appropriate criminal sanctions and annulment of all decisions made during the demonstrated conflict of interest.

It is emphasized in the Guidelines that any conflict of interests' policy should develop effective internal and external controls and that all public institutions should be submitting annual assessments of conflicts of interest, which should inform the public about cases of conflict of interest, solutions and sanctions imposed, as well as about internal policies of the institution, etc.

The Guidelines underline as exceptionally important for any conflicts of interest policy to include complaint mechanisms and the protection for those who report violations against all forms of legal or other reprisal.

**In the recommendations to the EU Member States on Codes of Conduct for Public Officials**, the Council of Ministers defines the conflict of interest<sup>2</sup> as a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. Private interest is defined as “any advantage”, which means that it includes both patrimonial or material and non-patrimonial or non-material advantages. The recommendation states that non-patrimonial conflicts of interests engender similar negative consequences to the performance of public interests and therefore should be regulated as such.

Although the recommendations do not define the terms used to describe the range of individuals who should be subject to the rules on conflicts of interest, it is assumed that the family includes the first-degree relatives, such as parents, spouses and children; close relatives include blood relatives, in-laws to the fourth degree; individuals and organisations with business or political significance include politicians, business partners, companies, non-profit entities, trade unions, political parties, professional organisations, etc. It is evident that family, friendship, business and political ties are very strong and can prompt a public official to violate his/her public duties. Such strong ties should therefore be covered by regulations that aim to prevent and suppress conflicts of interest

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<sup>2</sup> Recommendation No R (2000) 10 of the Committee of Ministers to member states on codes of conduct for public officials, Article 13 – Conflict of interest

The Council of Europe further recommends that every public official disclose his/her a conflict of interest. For this reason, the measures should provide for a system of disclosure of conflict of interest when taking office, as well as through regular periodic reports, or whenever there is a change in the nature and scope of private interests.

In addition to the system of declaration of private interests, pursuant to the Recommendation of the Council of Europe, there should also be a system of declaration and approval of possible new positions which may enter in conflict with the public position. In this, due regard should be given to the fact that there it is often very probable that private positions acquired by the public official are a result of his/her previous public office appointment.

In this regard, the Recommendation provides that “subject to the provisions of the law the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment”.

Furthermore, the Council of Europe recommends that any conflict of interest declared by a candidate to a public service or a new position in the public service should be resolved before appointment.

Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;
- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

Pursuant to the recommendations, no public official shall use his/her official position for any action or omission, or for influencing others to act or omit to act, in order to obtain personal or financial gain for himself/herself or members of his/her household, or for a member of his/her immediate family (a spouse or a common-law partner and his/her immediate family), his/her borrower or lender, a non-governmental organisation, association or religious community with which the public official or his/her spouse or a family member are related to.

The public official must never give priority to his/her own interest or to the interest of persons with whom he/she is associated with over the public interest. The general rule is that a conflict of interest exists where it can create an impression that a public official can put another person into a privileged position.

The public official must not have any interest, financial or otherwise, direct or indirect, or be involved in any businesses, recruitment processes, transactions or professional activities or accept any commitment, which is in conflict with his/her public duties.

It is not uncommon that the public officials find themselves in a conflict of interest situation. Preventing and avoiding the situations that lead to a conflict of interest is not a primary solution to this problem and it is often not a feasible solution. However, it is important that a public official is able to manage a conflict of interest fairly and responsibly, which includes the disclosure of conflicts of interest and avoiding to act in all matters where a conflict of interest exists, no matter how confident a public official is about his/her impartiality. What is important is to not only act impartially but also to not fuel the perception of bias.

# REASONS FOR ADOPTING THE GUIDELINES FOR THE PREVENTION OF CONFLICT OF INTEREST IN THE JUDICIARY

Having regard to the internationally recognised standards, embedded in the relevant documents such as the United Nations Basic Principles on the Independence of the Judiciary, the European Charter on the Statute for Judges, the recommendations of the Committee of Ministers of the Council of Europe, the 2002 Bangalore Principles of Judicial Conduct, from which it follows that judicial independence is not a privilege granted to judicial office holders, but rather the guarantor of the rule of law and freedom of every person - which strengthens the confidence in the judicial system;

Underlining that the Bangalore Principles of Judicial Conduct emphasize that "public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society"; recalling that Recommendation CM / Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and accountability, stating that judges in their activities should be guided by ethical principles of professional conduct and that these principles not only include "... duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves ... ". Noting that that the Bangalore Principles of Judicial Conduct emphasize that integrity, proper conduct and dignity are essential to the proper discharge of the judicial office, where the behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary and satisfy the rule that "justice must not merely be done but must also be seen to be done";

Starting from the obligation stemming from the Bangalore Principles of Judicial Conduct stating that "*the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country*";

Considering that the avoidance of situations in which there is or there may be a conflict of interest, or of the situations that may be perceived as a conflict of interest by third parties, is one of the most important obligations of judicial office holders, which ensures high ethical standards, and thus the integrity and independence of the judiciary; Emphasizing the principle contained, among other things, in the Bangalore Principles of Judicial Conduct where "*As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.*"

Recalling one of the conclusions of the European Commission following the **TAIEX** seminar on the "**Conflict of Interest in the Judiciary**", held in 2015 within the framework of the EU-BiH Structured Dialogue on Justice and Other Rule of Law Matters, which calls on the High Judicial and Prosecutorial Council of BiH to "*develop, pending possible legislative developments in this area, a set of guidelines and principles for judicial integrity and the related monitoring mechanisms*";

Taking into account the recommendations of the fourth round of evaluation of the Group of States against Corruption (**GRECO**), recommending to Bosnia and Herzegovina "*rules on*

*conflicts of interest that apply to all judges and prosecutors, along with an adequate supervisory and enforcement regime”,*

Starting from the obligations set forth in the HJPC BiH Strategic Plan for 2014-2018, which provides that the Book of Rules on Conflicts of Interest for Members of the High Judicial and Prosecutorial Council of BiH shall be extended to the entire judicial community;

In committing to ensure the conditions for the application of the highest standards of ethical conduct, the strengthening of integrity and reaffirmation of public confidence in the justice system, which will contribute to strengthening the rule of law, being an obligation for all judicial office holders, the High Judicial and Prosecutorial Council hereby adopts the following:

# GUIDELINES FOR THE PREVENTION OF CONFLICT OF INTEREST IN THE JUDICIARY

Guidelines for the Prevention of Conflict of Interest in the Judiciary of BiH (hereinafter: the Guidelines) comprise a set of recommendations and measures that should help judicial office holders understand the conflict of interest and recognise the risks of the competing public and private interests to the performance of their duties that can lead to abuse of office or generate illegitimate gain for themselves and/or persons who have the same interests as them. These Guidelines also aim to encourage the awareness and accountability among judicial office holders to act appropriately in situations that can lead to conflict of interest, both actual and perceived.

Conflict of interest may create situations in which judicial office holders are placed in a position to violate the applicable regulations, and consequently face disciplinary sanctions. To illustrate just how close the conflict of interest situation is to the commission of a disciplinary offense, the relevant articles on disciplinary liability of judicial office holders from the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina are cited (hereinafter: the Law on HJPC).

The Guidelines cover the following areas:

- a. Incompatibility and accessory activities of judicial office holders
- b. Reporting on assets, income, liabilities and interests
- c. Gifts and other benefits
- d. Contacts with third parties and abuse of confidential information
- e. Nepotism
- f. Educating and raising awareness about prevention of conflict of interest in the judiciary

These areas have been identified as groups of potential sources of conflict of interest, and solutions are based on the applicable regulations and the existing institutional framework, as well as international standards. Judicial office holders are provided with clear instructions on how to act in circumstances that require conflict-of-interest risk assessment to make the right decision and relevant institutions and managers are recommended to take necessary measures to raise awareness among judicial office holders about the need to prevent the conflict of interest.

## A. INCOMPATIBILITY AND ACCESSORY ACTIVITIES OF JUDICIAL OFFICE HOLDERS

### Applicable legislation

#### THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BiH

##### Article 17 - Competence

The Council shall have the following competencies: ...

(11) to decide on issues of incompatibility of other functions performed by judges and prosecutors; ....

##### Article 56 and Article 57 - List of Disciplinary Offences for Judges/Prosecutors

Disciplinary offences for judges/prosecutors shall include...

7. not disqualifying himself or herself from hearing a case when a conflict of interest exists; ...

16. being engaged in activities that are incompatible with the judicial/prosecutorial function; ...

##### Article 82 - General Prohibition against Incompatible Functions

(1) A judge or prosecutor shall not engage in any function that is incompatible with or could be seen to interfere with the fair and impartial execution of judicial or prosecutorial function or that would affect the independence or dignity of judicial or prosecutorial office, cast doubt upon his or her ability to act impartially, or demean judicial or prosecutorial office.

(2) A judge or prosecutor shall not be a member of or perform any duties in political party organs, or associations or foundations connected to political parties, and shall refrain from participating in political party activities of a public nature.

(3) A judge or prosecutor shall not be a member of and, upon gaining knowledge, must immediately resign from any organisation that practices invidious discrimination on the basis of race, colour, sex, sexual orientation, religion, or ethnic, or national origin, nor arrange to use the facilities of such an organisation.

##### Article 83 - Prohibition against Performance of Public, Legal, or Other Functions

(1) A judge or prosecutor shall not hold any other public office that would conflict with the performance of judicial or prosecutorial function, unless otherwise provided by law.

(2) A judge or prosecutor shall not be an attorney, notary, or perform other activities for remuneration, which conflict with the performance of judicial or prosecutorial function, unless otherwise provided by law. As an exception, a judge or prosecutor may engage in academic, scholarly, or similar activities that serve to educate the public and may be entitled to remuneration

(3) A judge or prosecutor shall not be a member of an executive or supervisory board of public or private companies or other legal persons.

(4) A judge or prosecutor shall not perform any other duties that may interfere with the performance of judicial or prosecutorial function.

##### Article 84 - References to the Council

If a Court President or Chief Prosecutor believes that a judge or prosecutor is performing activities which are prohibited by Articles 82 and 83 of this Law, the judge or prosecutor shall be informed and the Court President or Chief Prosecutor shall refer the matter to the Council, which shall issue a binding decision. The Council's Rules of Procedure shall regulate proceedings.

##### Article 85 - Opinion on Activities of Judges or Prosecutors

A judge or prosecutor may request from the Council an opinion on whether his or her activities are compatible with his or her function and the provisions of this Law. Such request shall contain details of the activities concerned. The Council shall respond in writing to such a request within a reasonable time from the receipt of such request. The response of the Council provided in accordance with this paragraph shall be binding.

#### Article 86 - Reporting Activities to the High Judicial and Prosecutorial Council

Judges and prosecutors shall file an annual financial statement with the Council reporting, among other things, the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration. The financial statement shall include information about spouses and children who are part of the same household and hold shares in or participate in the management of private or public corporations and associations, including political parties. The Council shall send out forms for financial reports and may request additional information.

### **CODES OF ETHICS FOR JUDGES AND PROSECUTORS**

2.2.1. A judge/prosecutor is free to participate in civic, charitable and religious activities subject to the following considerations:

(a) they shall avoid any activity or association that could reflect adversely on their impartiality or interfere with the performance of judicial/prosecutorial duties.

(b) they shall not lend the prestige of their office to solicit funds, except for judicial/prosecutorial or charitable purposes.

(c) A judge shall avoid involvement in causes that may result in litigation.<sup>3</sup>

(d) they shall not give legal or investment advice.

2.2.2. A judge/prosecutor shall refrain from membership in groups or organizations or participation in public discussion which, in public opinion, would undermine confidence in his/her impartiality or that of the judiciary in general.

2.2.3. A judge/prosecutor shall not:

a) be a member of political parties;

b) attend political gatherings or events;

c) contribute to political parties or campaigns

d) take part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice;

e) sign petitions which may influence a political decision.

2.2.4. A judge/prosecutor shall refrain from conduct that, in public opinion, gives rise to the impression that he/she is politically active.

2.2.5. A judge/prosecutor shall recognize that political activities of their close family members may adversely affect the public perception of his/her impartiality, in which event he/she shall recuse him/herself.

4.9. A judge/prosecutor may engage in activities that are not directly associated with the performance of judicial/prosecutorial duties, if such activities do not detract from the dignity of the office or otherwise interfere with the performance of such duties in accordance with this Code, e.g. :

(a) write, lecture, teach and participate in academic, cultural and professional activities concerning the law, the legal system and the administration of justice;

(b) participate in public debates concerned with matters relating to the law, the legal system and the administration of justice;

(c) serve as a member of a government commission, board or advisory body, if such membership is not inconsistent with the publicly perceived impartiality and political neutrality of a judge/prosecutor.

4.13. A judge/prosecutor shall not allow any member of the legal profession to set up an office in his/her house or apartment.

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<sup>3</sup> Prosecutors not included.

## **Definitions**

Incompatible duties are all public duties, legal or other, that may hinder the performance of the duty of judges and prosecutors and as such are generally prohibited.

Accessory activities are secondary activities performed by judicial office holders that are subject to certain limitations in terms of contents and finances, in accordance with the principle of preservation of integrity of judicial function.

## **Practical Guidelines**

### **1. Incompatible duties of judicial office holders**

#### **Business activities**

**1.1.** Performance of any other function or business activity by judicial office holders that are incompatible with the performance of their judicial duties shall be regarded as conflict of interest.

**1.2.** Managing any private or public companies or other legal entities is incompatible with the performance of judicial duties.

**1.3.** Judicial office holders shall avoid using their position to promote business entities, promote investments in business ventures, or collect funds for the activities of business entities.

- This prohibition also includes the promotion of business entities through work in judiciary, among the staff in the judiciary or outside the judiciary.
- This prohibition also covers the promotion of business activities of judicial office holders' family members

**1.4.** Judicial office holders should avoid any business transactions, including the trade in goods and services, if their value exceeds 5,000 KM, with the parties to their current proceedings as well as two years after completing those proceedings.

**1.5.** Heads of judicial institutions should refrain from procuring in the direct agreement procedure any goods or services for the institution from entities in which family members of judicial office holders or other employees of that judicial institution may have financial interest.

#### **POLITICAL ACTIVITIES**

**1.6.** Judicial office holders may not be members of political parties, attend any political gatherings or events, give contributions to political parties or campaigns, publicly participate in any controversial political discussions, except on issues which directly concern the work of courts and prosecutor's offices, judicial independence or fundamental aspects of administration of justice, or sign any petitions which may influence political decisions.

**1.7.** Judicial office holders should refrain from all activities that could be perceived by the public as support to political activity of their close family members.

## **INCOMPATIBILITY WITH PREVIOUS AND NEW DUTIES**

**1.8.** In evaluating reasons for recusal from a case, in order to avoid every perceived, potential or actual conflict of interest, judicial office holders should take into account in particular all of their previous duties and activities performed prior to taking the judicial office.

**1.9.** A head of a judicial institution should take into account all his/her prior duties and activities performed prior to taking the position of the head of a judicial institution, when he/she is deciding about the rights and interest of parties, in accordance with the law and other regulations.

**1.10.** Judicial office holders, who intend to terminate their judicial function, should not use their judicial function or judicial resources to promote their future activities and in this regard they shall bear in mind the potential existence of grounds for recusal.

## **2. Additional activities of judicial office holders**

### **COMMERCIAL AND FINANCIAL ACTIVITIES**

**2.1.** Judicial office holders may purchase real estates and other property, including securities, manage such property and carry out transactions involving their property, bearing in mind the obligation to report their property, income, obligations and interests.

**2.2.** In disposing of the property they own as sole owners or jointly with their spouses, judicial office holders shall be mindful to avoid any perceived, potential or actual conflict of interest and all situations that may require their recusal, such as leasing their property as office premises to any government institutions, notaries, lawyers and other persons performing activities that are related to the work of the judiciary.

### **EDUCATIONAL AND PROFESSIONAL ACTIVITIES**

**2.3.** The remuneration for educational and professional activities should be reasonable and not exceed 20% percent of the judicial office holder's annual income in BiH.

**2.4.** Judicial office holders may be reimbursed for their travel and accommodation expenses during educational and professional activities in the amount of the actual costs incurred, but keeping in mind the principle of economy of public spending.

**2.5.** Before accepting any educational or professional engagements, judicial office holders should take into consideration the information about the organiser and participants of such training, to avoid potential conflict of interest

**2.6.** Through their educational and professional activities judicial office holders may contribute to improving the knowledge and skills of lawyers. In doing so, judicial office holders should not disclose the specific information on parties involved or judicial office holders seized of cases.

**2.7.** Judicial office holders who participate in deciding on the training programs for judges and prosecutors may take the role of lecturers in such programs, but should not receive any remuneration for doing that.

## **PARTICIPATION IN BODIES SET UP BY EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES**

**2.8.** Judicial office holders may participate in standing and temporary bodies established by executive or legislative branches but only if such bodies deal with the issues of law and legal system. Such participation of judicial office holders should be without remuneration.

**2.9.** When deciding whether to accept participation in the bodies established by executive or legislature, judicial office holders should ensure that their participation casts no doubt upon their impartiality, political neutrality or independence, bearing in mind the field of work of that body, its composition and manner of work. In case of any dilemmas, judicial office holders should request the opinion of the Committee for Judicial and Prosecutorial Ethics, Incompatibility and Independence.

**2.10.** Judicial office holders should not be members of organisations associated with the law enforcement agencies, including selection and appointments boards and committees, panels for dismissal of police chiefs, police boards, and boards for handling citizens' complaints against the police work.

**2.11.** Judicial office holders may participate in activities organised by law enforcement agencies if their purpose is educational (as speakers, lecturers or participants) and in official, public or ceremonial events that are open to public, except for events that may in any way be associated with specific cases in which they had acted or are acting as judicial office holders.

**2.12.** Judicial office holders may participate in standing or temporary bodies established by the judicial branch, while bearing in mind to avoid that such participation interferes with the performance of their regular duties. If such participation exceeds the regular duties of a judicial office holder, they may receive remuneration.

## **ACTING AS AN ATTORNEY OR REPRESENTATIVE**

**2.13.** Judicial office holders may act as attorneys or representatives only for their close family members and only if such duties do not require them to participate in proceedings before the judicial institution where they work.

## **MEMBERSHIP IN CIVIC AND PROFESSIONAL ORGANISATIONS**

**2.14.** Judicial office holders may be members of non-profit civic organisations and participate in their establishment and organization provided they do not have a role of legal or financial advisers, and not participate in fund-raising activities for such organisations.

**2.15.** When deciding to join a civic organization, judicial office holders should carefully consider such organisation's goals, activities, sources of funding, management, the diversity of its members, their interests, associations with the governmental bodies, judicial institutions, political organizations, and upon confirming that such organization does not discriminate against anyone on any basis.

**2.16.** In deciding whether to participate in the work of a civic organisation, judicial office holders should bear in mind the activities that are absolutely prohibited – association and participation in activities, as well as their tacit approval, that may detract from judicial impartiality and independence, fund-raising, attracting new members, legal counselling, *ex parte* communication, discussing specific judicial cases, use of prestige of their position to acquire benefits, and activities that would require their recusal from judicial/prosecutorial proceedings.

### **3. How to prevent incompatibility of duties and conflicts of interest that may arise from the performance of additional activities by judicial office holders**

**3.1.** Judicial office holders should carefully consider in every situation the compatibility of other duties and additional activities, paid or unpaid, with the performance of their judicial office and refrain from any duty or activity which could in any way lead to actual, perceived or potential conflict of interest.

**3.2.** Bearing in mind the fact that judicial office holders themselves are usually the only persons who know if they are involved in the conflict of interest, he/she should take upon themselves to be alert to and avoid such situation from arising. This includes identification, avoidance and disclosure of any actual, perceived or potential conflict of interest and withdrawal from the situation and divesting himself or herself of the advantage that such situation has caused.

**3.3.** It is recommended that judicial office holders should seek the opinion of the Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility when considering the compatibility of any additional duty or activity.

**3.4.** In their annual financial statements, judicial office holders must disclose full and accurate information about all of their additional activities, including remuneration they received.

**3.5.** A heads of judicial institution shall submit to the HJPC a request for determining incompatibility in all situations when he/she believes that a judicial office holder performs an activity that is incompatible with their judicial or prosecutorial duties.

**3.6.** Through its Standing Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility, the HJPC decides on the incompatibility of duties of judicial office holders with other duties. In case when a judge/prosecutor is found to be performing activities incompatible with their judicial duties, the Office of Disciplinary Counsel is to be informed.

## **B. REPORTING ON ASSETS, INCOME, LIABILITIES AND INTERESTS**

### **Applicable legislation**

#### **THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BiH**

##### Article 86 - Reporting Activities to the High Judicial and Prosecutorial Council

*Judges and prosecutors shall file an annual financial statement with the Council reporting, among other things, the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration. The financial statement shall include information about spouses and children who are part of the same household and hold shares in or participate in the management of private or public corporations and associations, including political parties. The Council shall send out forms for financial reports and may request additional information.*

##### Article 56 and 57 - List of Disciplinary Offences for Judges/Prosecutors

*Disciplinary offences for judges/prosecutors shall include: ...*

19. if he or she provides false, misleading or insufficient information with regard to job applications, disciplinary matters, promotion or career development matters or any other matters under the competence of the Council;...

## **Definitions**

Financial statement is a statement in which judicial office holders report, *inter alia*, on their extra-judicial/prosecutorial activities including the compensation received. Financial statements include the information on their spouses and children who are part of the same household and who hold shares in or participate in the management of private or public corporations and associations, including political parties

Declaration of assets is a statement of assets owned by a judicial office holder, their spouses/civil marriage partners and the assets of their children who share the same household, as well as the liabilities related to immovable and different types of movable property (cars, antiquities, precious artwork, shares, loans, savings etc.).

## **Practical guidelines**

### **1. Financial reporting**

**1.1.** Judicial office holders have a duty to file with the HJPC a complete and accurate annual financial statement no later than 31 March of the current year. Forms for financial reports are provided by the HJPC.

**1.2.** Newly elected judicial office holders have a duty to submit their financial statements to the HJPC BiH within 30 days from the day of their appointment to the judicial office.

**1.3.** Judicial office holders may turn to HJPC for advice or opinion on how to fill in or submit their financial statements.

**1.4.** Judicial office holders should inform their judicial institution head about financial difficulties which may affect the actual and perceived impartiality in their work or decision-making.

**1.5.** Heads of judicial institutions should act proactively to promote the obligation of timely submission of complete and accurate financial statements, and to control the compliance of judicial office holders with this obligation.

### **2. Handling financial statements**

**2.1.** The HJPC BiH controls the regular filing of financial statements by judicial office holders.

**2.2.** If a judicial office holder fails to submit his/her financial statement on time, the HJPC BiH will caution him/her and set an additional deadline of 15 days for submission of the statement. If a judicial office holder again fails to provide the statement within the additional deadline, the HJPC will inform the ODP of such failure.

**2.3.** Providing intentionally false, misleading or insufficient information in financial statements may constitute a disciplinary offense referred to in Article 56(1) item 19 and Article 57(1) item 19 of the Law on HJPC.

## C. GIFTS AND OTHER BENEFITS

### Applicable legislation

#### **THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BIH**

*Article 56 and Article 57 - List of Disciplinary Offences for Judges/Prosecutors*

*Disciplinary offences for judges/prosecutors shall include: ...*

*5. accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the judge/prosecutor, including also when the gift or remuneration merely creates the appearance of improper influence;*

*6. exploiting his or her position as a judge/prosecutor in order to obtain unjustified advantages for himself or herself or for other persons;*

#### **CODES OF ETHICS FOR JUDGES/PROSECUTORS**

*4.11. A judge/prosecutor and members of their families, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge/prosecutor in connection with the performance of judicial duties, nor shall he/she knowingly permit such actions by the court/prosecutor's office staff or other persons under his/her supervision*

*4.12. Subject to laws regulating public disclosure of gifts, a judge/prosecutor may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge/prosecutor in the performance of judicial/prosecutorial duties or otherwise give rise to an appearance of their partiality.*

### Definitions

What is gift or other benefit?

Joint characteristic of gifts and other benefits in the context of conflict of interest for the judicial office holders is that they are offered and accepted in direct or indirect connection with the performance of judicial duty. The challenges of such gifts and benefits may also come from their informal nature or the fact that offering and accepting gifts and other benefits does not entail a formal agreement and no tax is paid on their value.

There is a difference between personal gifts and other benefits received for example from family or close relatives, that are not related to the performance of judicial duties, and those that are related or appear to be related to the performance of judicial duties.

A gift may be a sum of money or its counter value, e.g. in a form of securities, precious metals, artwork, and real property or movable property, among other things.

Gifts also include small/symbolic gifts and protocol gifts.

The value of the gift offered or accepted in direct or indirect connection with the performance of judicial duty is irrelevant, given the absolute prohibition on accepting gifts.

Other benefits (perks and services) may include travels, scholarships, hospitality, discounts, loans and credits, bequest, free services, debt write-off, etc.

## Practical guidelines

### **1. Prohibition on accepting gifts and other benefits in connection with the performance of judicial duty**

**1.1.** Judicial office holders are prohibited from soliciting or accepting any gifts or other benefits in connection with the performance of their judicial duty.

**1.2.** This prohibition applies to parties to proceedings, their representatives, family members and any individual who offers a gift or other benefit to a judicial office holder related to action or omission in the performance of their judicial function.

**1.3.** Judicial office holders will not knowingly allow judicial or prosecutorial staff or other employees under their supervision to accept gifts or other benefits in connection with the performance of their judicial duty.

**1.4.** Judicial office holders should not use the prestige of their office to acquire financial or other benefits for themselves or other persons

**1.5.** Prohibition to solicit or accept gifts or other benefits in connection with the performance of judicial duty also applies to family and household members of the judicial office holders<sup>4</sup>.

**1.6.** Judicial office holders should inform their close family members about the ethical aspects of receiving prohibited gifts or other benefits and warn them against accepting prohibited gifts and other benefits, especially bearing in mind the public perception about independence and impartiality of judicial office holders.

**1.7.** Prohibition on soliciting or accepting gifts or other benefits is not time limited.

### **2. Exceptions to the prohibition on accepting gifts and other benefits in connection with the performance of judicial function**

**2.1.** Informational materials, such as books, reports, magazines, calendars, data carriers, invitations for trainings and conferences (excluding travel expenses or other fees), are not regarded as gifts.

**2.2.** Books and data carriers, and other materials which publishers send to judicial office holders free of cost, for their official use, are an exception to the prohibition on accepting gifts and other benefits in connection with the performance of judicial function.

### **3. Accepting gifts and other benefits in situations not connected to the performance of judicial duty**

**3.1.** Accepting gifts or other benefits from relatives or close friends is acceptable if there is no connection with the performance of judicial duty and work on cases, i.e. if there are no reasons for recusal of judicial office holders, or if the persons who consider themselves relatives and close friends are not acting as mediators for third persons.

**3.2.** On special occasions, such as weddings, birthdays and similar events, judicial office holders may accept gifts or other benefits from other persons as well, if there are no reasons for recusal of the judicial office holder, if such gift does not raise any doubt as to inappropriate influence and if the value of the gift is appropriate to the occasion and their relationship.

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<sup>4</sup> This means family members who are covered by provisions on recusal: spouse or civil marriage partner, blood relative in a direct line up to any degree, in lateral line up to fourth degree, and in-laws up to second degree, guardian, ward, adoptive parent, adopted child, foster parent or foster child.

**3.3.** Paid travel expenses (travel costs, accommodation and food) in connection with the participation in judicial, educational, civil and governmental programs that are intended for improvement of law and legal system are allowed, but the amount should not exceed reasonable travel expenses.

**3.4.** Judicial office holders may apply for and receive a loan under the conditions applicable to all citizens and in the same amount as available to other citizens.

**3.5.** Judicial office holders should not accept any rebate or free services from any legal or natural person if such are not equal or available to other citizens.

**3.6.** Judicial office holders may receive scholarships<sup>5</sup> under the same conditions and based on the same criteria as for other applicants.

**3.7.** Judicial office holders may accept the hospitality<sup>6</sup> of appropriate value. Hospitality, the value of which exceeds the reasonable amount of expenses, is considered as prohibited gift.

#### **4. How to prevent the conflict of interest when (prohibited) gifts and benefits are being offered?**

**4.1.** Judicial office holders should avoid situations in which someone might offer them any prohibited gifts or other benefits.

**4.2.** If a judicial office holder inadvertently accepts a prohibited gift or other benefit, he/she has a duty to return such gift, as soon as possible, or pay to the offering party the counter value, inform the head of the judicial institution thereof and draft an official note.

**4.3.** If, for any reason, it is not possible to refuse or return the gift, the receipt of the gift has to be reported to the head of the judicial institution and an official note should be made.

**4.4.** In their financial statements to the HJPC BiH, judicial office holders should state the accurate and complete information on the gifts received.

**4.5.** In case of any dilemmas on what to do when a gift or other benefit is either offered or accepted, judicial office holder should request the opinion of the Standing Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility.

**4.6.** Accepting gifts or other benefits offered with the intention to improperly influence the decisions or actions of judges/prosecutors, including when gifts or benefits merely create the appearance of improper or influence, constitutes a disciplinary offence.

## **D. CONTACT WITH THIRD PARTIES AND MISUSE OF CONFIDENTIAL INFORMATION**

### **Applicable legislation**

#### **THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BIH**

##### Article 56 - List of Disciplinary Offences for Judges

*Disciplinary offences for judges shall include:...*

<sup>5</sup> Scholarship is a partial or full financial aid for education at any educational level and for any type of education.

<sup>6</sup> Hospitality means accepting the role of a guest on occasions or at events at someone else's expense, and includes lunches, dinners, receptions, overnight stays, accommodation and activities, among other things.

- 4. disclosure of confidential information arising from the performance of judicial function;...
- 11. engaging in inappropriate communications with any parties to a proceeding or their representatives;...
- 15. making any comment, while a proceeding is pending in any court, that might reasonably be expected to prejudice or interfere with a fair trial or hearing, or failing to take reasonable steps to maintain and ensure similar abstention on the part of the staff at the court who are subject to his or her authority;...

#### Article 57 - List of Disciplinary Offences for Prosecutors

Disciplinary offences for prosecutors shall include:...

- 4. disclosure of confidential information arising from the performance of prosecutorial function;...
- 10. engaging in inappropriate communications with the judge or any parties to a proceeding;...
- 14. making any comment, while a proceeding is pending in any court, that might reasonably be expected to prejudice or interfere with a fair trial or hearing, or failing to take reasonable steps to maintain and ensure similar abstention on the part of the staff at the prosecutor's office who are subject to his or her authority;...

### **CODES OF ETHICS FOR JUDGES/ PROSECUTORS**

2.2.3. A judge/prosecutor shall not: ...

(d) take part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice;

.....

4.3 A judge/prosecutor, like any other citizen, is entitled to freedom of expression, belief, awareness, religion, association and assembly, but in exercising such rights, a judge/prosecutor shall always conduct him/herself in such a manner as to preserve the dignity of the judicial/prosecutorial office and the impartiality and independence of the judiciary.

....

4.8. Confidential information acquired by a judge/prosecutor in their official capacity shall not be used or disclosed by the judge/prosecutor for any other purpose ...

### **LAW ON COURTS IN THE FEDERATION OF BIH<sup>7</sup>**

#### Article 54 - Confidentiality

Judges and court staff shall keep confidential everything they learn in the course of their work about participants in proceedings, and the legal and factual circumstances of their cases, and they shall protect the confidentiality of information not accessible to the public

#### Article 55 - Official Secret

Judges and court staff shall keep official secrets confidential, regardless of how they came into possession of the information. The following shall especially be considered to be official secret:

- 1) all the information that has been designated as an official secret by law or other regulation;
- 2) any information that has been specified as an official secret by the general acts of state bodies, legal entities and other institutions;
- 3) information and documents specially designated as official secret by state bodies, legal entities, and other institutions; and
- 4) information and documents that have been marked as official secret by the President of the Court or an authorised court staff member.

The obligation to keep the confidentiality of official secret shall continue even after termination of work in the court.

The President of the Court may release the judge or the court employee from the obligation to keep an official secret if it can be substantively justified in a particular case.

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<sup>7</sup> Art. 85 and 86 of the Law on Courts in Republika Srpska as well as Art. 63 and 64 of the Law on Courts of Brčko District BiH regulate the confidentiality and keeping of official or business secret in the same manner

## Definitions

**Unauthorised third party communication** refers to transmitting information to a third party regarding matters related to the performance of a judicial duty and working on cases, whereby such information is confidential.

**Confidential information** is information that stems from the performance of the duty of a judicial office holder and which may not be disclosed or used for prohibited purposes.

**Ex parte (or one-sided) communication** is any case-related communication with any one party to the dispute/proceedings without the presence of the other party. The basic concept of a fair trial is based on the possibility of one party to promptly respond to the arguments of the opposing party. *Ex parte* communications undermines that concept by allowing one party the access to the adjudicator without the presence of the other party.

## Practical guidelines

### 1. Prohibition on disclosure of confidential information

- 1.1. Judicial office holders should not disclose to other persons any confidential information they obtain during the performance of their duty.
- 1.2. Prohibition on disclosure of confidential information also applies to the information that becomes known to judicial office holders during the proceedings they are conducting as well as information originating from other judicial/prosecutorial cases available to them.
- 1.3. Judicial office holders should not disclose information regarding the personal situation of the parties.
- 1.4. Judicial office holders should not use confidential information for their personal benefit.
- 1.5. Judicial office holders should take all necessary measures and keep reminding the judicial institutions' employees of the obligation to protect confidential information.

### 2. Ex parte communication

- 2.1. Judicial office holders should be mindful that their communication with the parties to the proceedings and other persons raises no doubt as to their independence and impartiality.
- 2.2. Judicial office holders must refuse every attempt by the parties to the proceedings to have an *ex parte* communication with them, keeping this prohibition in mind even when it appears that *ex parte* communication would be more efficient and practical.
- 2.3. *Ex parte* communication is allowed for urgent, administrative or scheduling purposes, without addressing any substantive matters, provided that a judicial office holder reasonably believes that no party to the proceedings will gain a procedural, substantive or tactical advantage as a result of such communication, and provided that the judicial office holder promptly informs all other parties of such *ex parte* communication and gives the parties an opportunity to respond.
- 2.4. In the event of inadvertent *ex parte* communication, judicial office holder should make provision promptly to notify all the parties to the proceedings of such communication and provide the parties with an opportunity to respond.

**2.5.** A judicial office holder should make reasonable efforts, including providing appropriate supervision, to ensure that guidelines on *ex parte* communication are not violated by the staff of the judicial institution in which he/she performs his/her duties.

### **3. Third party contacts and media appearances**

**3.1.** Judicial office holders should not publically or privately comment final or pending cases.

**3.2.** Judicial office holders may consult about performance of their duty, legal or practical matters with other judicial office holders or staff of judicial institutions, bearing in mind that during such consultations they do not obtain information which would create a conflict of interest.

**3.3.** Judicial office holders should be careful not to make any inappropriate statements or statements which may compromise their impartiality or the dignity of the judicial institution even in their private conversations. This also includes giving information about the characteristics of other judicial office holders as it might prejudice the fairness of proceedings.

**3.4.** Judicial office holders should bear in mind that third persons do not know or do not interpret properly the concept of independence of judiciary, and therefore they must take a proactive role in informing the individuals and the public about this concept and its implications.

**3.5.** Judicial office holders are allowed to socialise with other legal professionals, including lawyers and notaries, but judicial office holders must be careful to avoid direct contact with persons involved in their cases or appear as parties to the proceedings conducted before the judicial institution in which they work.

**3.6.** Judicial office holders should refrain from visiting places which are suspected sites of criminal activities or might be visited by persons potentially involved in criminal activities.

**3.7.** Judicial office holders may publicly express their positions and opinions for the purpose of advancing law and legal system and make comments about social occurrences, but bearing in mind the principles of impartiality and independence of judicial office.

**3.8.** For their appearances in public or commercial media, judicial office holders should not accept any payment.

**3.9.** In their media appearances, judicial office holders should not promote businesses or commercial activities, or use the prestige of their position to promote other legal or natural persons.

**3.10.** In deciding whether to speak publically, a judicial office holder should take into account the preservation of the dignity of the judicial office and the public confidence in the impartiality and independence of the judiciary, and take the following factors into account: 1) whether the matters he/she wishes to speak about concern the law, legal system and judiciary, 2) whether his/her public statement will contribute to educating and providing better information for the public about that topic, 3) whether those issues are related to the professional community or just him/her alone, and 4) whether it would be better to address those issues through professional associations.

**3.11.** In their public appearances, judicial office holders will bear in mind that their publically expressed opinion may be interpreted as the opinion of the entire judiciary, even when they stress that it is their personal opinion.

**3.12.** Judicial office holders should inform the head of the judicial office in which they perform their duties about their intention to make a public statement and about the statements they had already made in cases of unforeseen public statement.

#### **4. Procedure in case of disclosure of confidential information and *ex parte* communication**

**4.1.** Disclosing confidential information and engaging in inappropriate contacts with any of the parties to the proceedings or their representatives constitutes a disciplinary offence.

**4.2.** In case of *ex parte* communication, a judicial office holder should promptly inform all the parties to the proceedings of such communication, provide them with an opportunity to respond and draft an official note.

**4.3.** Judicial office holders should report to the head of the judicial institution any inappropriate attempt by the parties to have an *ex parte* communication with them, and should draft an official note thereof.

**4.4.** If the head of a judicial institution suspects that a judicial office holder is disclosing confidential information stemming from the performance of their judicial duty, or engages in inappropriate contacts with third persons, he/she should inform the Office of the Disciplinary Counsel thereof.

## **E. NEPOTISM**

### **Applicable legislation**

The issue of nepotism in the BiH judiciary is not generally regulated by applicable legislation, a partial exception being the Law on Courts of Brčko District of BiH, which contains the prohibition on hiring at the same time, spouses, direct blood relatives and relatives in a lateral line up to the second degree at the same court.<sup>8</sup> However, this provision applies only to staff members of courts.

#### **LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BIH**

##### Article 56 - List of Disciplinary Offences for Judges

*Disciplinary offences for judges shall include: ...*

*6. exploiting his/her position as a judge to obtain unjustified advantages for himself/herself or for other persons;*

##### Article 57 - List of Disciplinary Offences for Prosecutors

*Disciplinary offences for prosecutors shall include: ...*

*6. exploiting his/her position as a prosecutor in order to obtain unjustified advantages for himself/herself or for other persons;*

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<sup>8</sup> Article 58 of the Law on Courts in Brčko District BiH

## Definitions

Nepotism is a special form of conflict of interest. Although the term has a wider use, it describes a situation in which a person uses its authority to enable certain advantages to his/her family members. Prohibiting nepotism is primarily intended to prevent the abuse of one's position for enabling advantages to that person's family members or other persons close to him/her.

## Practical guidelines

### **1. Procedure in cases when a judicial office holder's family member is a party or has a financial interest**

**1.1.** Judicial office holders should be consistent in complying with the rules on recusal in cases in which their family members or other persons close to them appear as parties. This also includes the cases in which the judicial office holder's family members appear as injured party.

**1.2.** Judicial office holders should not contact other judicial office holders, officers of law enforcement agencies, civil servants or staff members, to solicit or offer information about the cases in which members of their family or other persons close to them appear as parties, or request from those persons to act in their favour.

**1.3.** If a judicial office holder knows that his/her family member or other person close to him/her has a financial, political or other interest in a case, the judicial office holder should request to be recused. This implies that a judicial office holder should take reasonable steps to be informed about financial, political or other interests of his/her family members.

**1.4.** A judicial office holder should immediately consider the possibility of his/her recusal from a case in which he/she is acting, if there is a probability that his/her family member will be called to participate in the proceedings as a witness or expert witness.

**1.5.** Bearing in mind the legal provisions regulating recusal, a judicial office holder should be mindful of the need to also request his/her own recusal from a case if his/her family member participates in the team representing the parties in that case, even if they do not personally appear in the proceedings before the judicial institution, and if they are employed or have financial or other interest in the company representing the parties in that case.

### **2. Hiring and appointment of judicial office holder's family members<sup>9</sup>**

**2.1.** Judicial office holders are expected to avoid nepotism and favouring of their family members when hiring.

**2.2.** Judicial office holders should not take part in recruitment procedures involving their family members.

**2.3.** A judicial office holder should not use his/her influence among peers and in society to ensure employment for his/her family member, even if the employment is in any other judicial or other institution or organization. This also includes giving of recommendations.

**2.4.** When selecting candidates for employment in a judicial institution, a judicial office holder who participates in deciding on the candidates should particularly bear in mind that if selecting his/her or other judicial office holder's family member, the selection should be

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<sup>9</sup> In terms of these Guidelines, family members are the relatives of judicial office holders as defined under the provisions on recusal in the procedural laws.

based on objective criteria, qualifications of the candidates, transparent and such that does not call into question the objectivity of the process.

**2.5.** It is recommended to avoid employing judicial office holder's family members in the same judicial institution.

**2.6.** If a judicial institution employee or a judicial office holder becomes a family member of another judicial office holder in the same judicial institution, such situation should not be construed as nepotistic behaviour by judicial office holders per se. However, it is recommended that such judicial institution employee or judicial office holder should not work under the supervision of the judicial office holder who had become his/her family member, nor that judicial office holder should in any way take part in the decisions regarding the status of that person.

**2.7.** Judicial office holder should not appoint his/her family members or their business partners, as *ex officio* defence counsels in criminal cases or representatives in other cases, nor influence their colleagues to do so, even if it involves unpaid duties.

**2.8.** Judicial office holder may appoint a family member of another judicial office holder as an *ex officio* defence counsel or a representative in accordance with the roster and objective criteria.

**2.9.** A judicial office holder should not refer cases for mediation to their family members, their business partners, or influence their colleagues to do so.

**2.10.** A judicial office holder should not appoint as expert witnesses their family members, their business partners, or influence their colleagues to do so.

**2.11.** A judicial office holder should not suggest to the parties in their own or their colleagues' cases to use the services of institutions, companies or organizations in which their family members have a financial or other benefits.

### **3. Using the prestige of a judicial office to obtain financial or other benefits for family members**

**3.1.** A judicial office holder should warn his/her family members against using her/his name and reputation in their business, financial or other activities.

**3.2.** A judicial office holder should not in any way participate in the activities of his/her family member to raise funds in their business, political, civic or other activities.

**3.3.** A judicial office holder should not publicly support the political campaign of his/her family member or in any way participate in such campaign.

### **4. How to prevent nepotism?**

**4.1.** A judicial office holder should be careful to avoid his position being used by his/her family members or persons close to them for obtaining some advantage, especially bearing in mind the public perception of nepotism.

**4.2.** Judicial office holders must inform the members of their families and households of the principles of ethics for judicial office holders.

**4.3.** Using the office of a judge/prosecutor to obtain undue advantage for himself/herself or another person constitutes a disciplinary offense.

4.4. Failure to recuse himself/herself from acting in cases when a conflict of interest (including the recusal grounds relating to handling cases involving family members) constitutes a disciplinary offence.

4.5. In case of any doubt as to what to do, judicial office holder should seek the opinion of the Standing Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility.

## F. EDUCATING AND RAISING AWARENESS ABOUT PREVENTION OF CONFLICT OF INTEREST IN THE JUDICIARY

### Applicable regulations

#### THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BIH

##### Article 17 - (Competence) ...

(7) Supervising the advanced professional training of judges and prosecutors and advising the Entity Centres for Judicial and Prosecutorial Training and the Brcko District of Bosnia and Herzegovina Judicial Commission in their adoption of programmes of advanced professional training for judges and prosecutors;

(8) Determining the minimum amount of advanced professional training to be undertaken by every judge and prosecutor each year;

(9) Determining the induction training for candidates chosen for judicial and prosecutorial office and supervising the provision of such training;

(10) Approving the annual report of the Steering Boards of the Entity Judicial and Prosecutorial Training Centres and of the Brcko District of Bosnia and Herzegovina Judicial Commission insofar as it relates to the induction training and the advanced professional training of judges and prosecutors;...

##### Decision establishing standing committees of the HJPC

...

(1) Standing Committee for Judicial and Prosecutorial Ethics, Independency and Incompatibility shall deal with issues pertaining to judicial and prosecutorial ethics, independence and incompatibility, and, in particular, it shall:

- a) decide on simple and indisputable queries regarding incompatibility,
- b) provide opinions to the Council on issues related to incompatibility of functions performed by judges and prosecutors,
- c) provide opinions to the Council on complaints lodged by judges and prosecutors alleging jeopardy to their independence, and
- d) keep the codes of ethics for judges and prosecutors updated and monitor their application;
- e) in cooperation with the judicial and prosecutorial training centres and other institutions such as the associations of judges and prosecutors – organize seminars, discussions, roundtables and debates with a view to raising awareness on judicial ethics.

(2) The Standing Committee shall notify the Council of the decisions taken in accordance with paragraph 1) a) of this Article.

## **Practical guidelines**

**1.1.** A judicial office holder should be aware that his/her behaviour and decisions are viewed through the prism of his/her position and that they are exposed to constant public scrutiny and in that sense, they should willingly accept personal restrictions on their freedom that do not apply to other citizens, in order to preserve the integrity, independence and impartiality of the judiciary.

**1.2.** A judicial office holder should always bear in mind that the prevention of conflict of interest and prioritising public over personal interests is of critical importance for the maintenance of the integrity of the judiciary and strengthening public confidence in the judicial system.

**1.3.** A judicial office holder should pay due attention and keep abreast with the international and national regulations and guidelines for the prevention of conflicts of interest as part of their continuing professional education and development.

**1.4.** A judicial office holder should regularly attend trainings on judicial ethics, the prevention of corruption and conflict of interest.

**1.5.** Heads of the judicial institutions should act proactively to improve training of both judicial office holders and other staff members in their judicial institutions on matters of ethics, prevention of corruption and conflict of interest.

## **Applying guidelines to raise awareness and educate**

**2.1.** The HJPC and judicial and prosecutorial training centres of FBiH and RS should prepare special training modules for judges and prosecutors, heads of judicial institutions and HJPC members on judicial ethics, prevention of corruption and conflict of interest, and recommend compulsory training for judicial office holders in these modules.

**2.2.** Heads of judicial institutions should organize regular trainings in their judicial institutions on judicial ethics, prevention of corruption and conflict of interest, in accordance with the above modules.

**2.3.** The Standing Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility should be continuously collecting and analysing illustrative examples of application of ethical principles and presenting them to the professional community.

# **INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION AND MONITORING OF THE GUIDELINES FOR THE PREVENTION OF CONFLICT OF INTEREST IN THE JUDICIARY**

Pursuant to the Law, the HJPC is responsible for the monitoring, controlling and preventing of conflicts of interest, and the sanctioning of specific forms of conflicts of interest among judicial office holders.

Pursuant to the Law on the HJPC, the HJPC decides on matters pertaining to the incompatibility of other duties with judicial office. The head of a judicial institution is required to notify the HJPC on the activities of judges and prosecutors which he/she considers incompatible with the duty of a judge or prosecutor. The compatibility of duties is subject to preliminary review by the Standing Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility, and the HJPC renders a binding decision. If an activity is found to be incompatible with judicial office, the case shall be referred to the Office of Disciplinary Counsel for further action.

A judicial office holder may himself/herself seek an opinion from the HJPC about the compatibility of his/her activities with the judicial office that he/she holds. The procedure for the assessment of incompatibility is identical to the one conducted at the request of the head of a judicial institution and the response of the HJPC is binding. The guidelines recommend that judges and prosecutors consult the HJPC or the Standing Committee for Judicial and Prosecutorial Ethics, Independence and Incompatibility regarding the compatibility of any additional activity.

The Law on the HJPC provides that judges and prosecutors submit to the HJPC their annual financial statements which, among other things, list the activities conducted outside their judicial or prosecutorial office, including the amounts of remuneration. The financial statement shall include information about spouses and children who are part of the same household and hold shares in or participate in the management of private or public corporations and associations, including political parties.

The HJPC collects and retains the annual financial statements of judicial office holders, but due to the lack of appropriate mechanisms it does not perform a thorough systemic check. The financial statements are submitted to the Office of Disciplinary Counsel on its request in cases where it is believed that certain information contained in the report could be used in disciplinary proceedings. The 2014-2018 HJPC Strategic Plan foresees the activity to establish a functioning system for recording and the verification of financial statements, including their public disclosure. The attainment of these goals is conditioned on the adoption of amendments to the Law on HJPC and the introduction of appropriate mechanisms for monitoring and verification, as well as effective sanctions for providing false information or a failure to submit a financial statement.

Engaging in activities that are incompatible with judicial duties, the disclosure of confidential information, accepting gifts or remunerations, exploiting judicial office in order to obtain unjustified advantages for himself or herself or for other persons, not disqualifying himself or herself from hearing a case when a conflict of interest exists, engaging in inappropriate

communications with any of the parties to proceedings or their representatives, any other behaviour that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the judiciary, constitutes, in accordance with the Law on HJPC, among other things, a disciplinary offense.

Disciplinary actions are initiated by the Office of Disciplinary Counsel, upon receiving complaints or *ex officio*. In accordance with the Law on the HJPC and other relevant regulations, the Office of Disciplinary Counsel initiates disciplinary proceedings where there are reasonable grounds to believe that the judicial office holder has committed a disciplinary offense. Disciplinary proceedings are conducted by the first and second instance disciplinary panels of the HJPC.

The competences of the HJPC include supervision over the training of judges and prosecutors and advising the entity-level Judicial and Prosecutorial Training Centres and the Judicial Commission of Brčko District of Bosnia and Herzegovina in connection with the adoption of programmes of advanced professional training for judges and prosecutors. Introducing compulsory training, workshops and panel discussions on ethics, corruption and the prevention of conflict of interest contributes significantly to raising awareness among judicial office holders about the detriments of conflicts of interest, the necessity of introducing measures to prevent it, the ability to identify situations that may lead to conflict of interest, and strengthening their own accountability.

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President

Milan Tegeltija