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High Judicial and Prosecutorial Council of Bosnia and Herzegovina



# JUDICIAL DISCIPLINE BENCHMARK

OF THE HIGH JUDICIAL AND  
PROSECUTORIAL COUNCIL  
OF BOSNIA AND HERZEGOVINA

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PROSECUTORIAL COUNCIL OF

SEPTEMBER 2019



# ACKNOWLEDGMENT

Judicial Discipline Benchbook of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina is a result of cooperation between the HJPC Working Group on Integrity and Accountability of judicial office holders and the USAID's Justice Activity in Bosnia and Herzegovina. We would like to express our gratitude to our external associates whose expertise was of key importance in designing and drafting the Benchbook-Victoria Henley, former longtime Head of the Commission on Judicial Performance of the State of California, USA, and Mersudin Pružan, Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina and former Deputy Chief Disciplinary Counsel of the Office of the Disciplinary Counsel of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.





# FOREWORD

The Law on High Judicial and Prosecutorial Council of BiH (the Law) was passed in 2004. The Law established the High Judicial and Prosecutorial Council as an independent body with a task to ensure an independent, impartial and professional judiciary. In order to fulfil the task successfully, the Council has continuously taken a series of measures within the scope of its powers. A significant part of these measures is related to strengthening of the integrity and accountability of judicial office holders falling within the scope of its powers, where the incorporation of the principles of independence, impartiality and professionalism in functioning of the judiciary as a whole is of key importance. The judiciary comprises both individuals and institutions. For the institutions to function properly through the implementation of these principles, individuals working in them should also apply high standards in their implementation.

Judges and prosecutors may decide on freedoms and rights of individuals and groups, property, status, employment, family relations etc. They exercise their functions primarily in the interest of the rule of law in a democratic society, protection of the society and of the individual who needs such protection. Therefore, the public has a good reason for keeping its eye on judges and prosecutors, and it expects them to demonstrate high levels of competency, personal and professional integrity. The integrity is built continuously, through constant professional development and advancement of knowledge and professional skills. There are different corrective mechanisms for conducts exceeding the frame of ethics and professionalism, and the disciplinary liability of judges and prosecutors is one of those mechanisms<sup>2</sup>.

The Law pays significant attention to this field. More than 30% of Articles of the Law are dedicated to the procedure for establishing the disciplinary liability and related areas of suspension and incompatibility of judicial and prosecutorial positions with other duties, and to the issue of immunity.

For the first time following the establishment of Bosnia and Herzegovina as defined by the Dayton agreement, the Law lays down the issues of disciplinary proceedings in a unified way for all judicial office holders in the country falling under its jurisdiction. It defines disciplinary offenses, procedure for submission of disciplinary charges, regulates the status of the Office of the Disciplinary Counsel (ODC), forming and practices of disciplinary panels and of the Council when deciding on disciplinary matters, and the disciplinary measures. A significant number of issues related to disciplinary proceedings is also covered by the Council's Rules of Procedure, thereby resolving a number of gaps in the implementation of the Law concerning the disciplinary proceedings.

During almost 15 years of the implementation of the Law and the already significant number of completed disciplinary proceedings, the need has arisen for systematization of the accumulated experiences and presenting them in the form of a benchbook as an instrument which will enable participants of disciplinary proceedings to find the majority of answers to potential questions and dilemmas in one place. The Benchbook is primarily intended for participants in disciplinary proceedings - the ODC, members of disciplinary panels, the respondent judge or prosecutor and their defense attorneys. Its main purpose is to serve as a reminder for conducting of the proceedings. But this is also an educational instrument, because apart from an overview of procedural steps that are taken during disciplinary proceedings, it also contains parts that provide a fuller picture of the procedure and its potential outcomes and consequences. So far, through the procedure itself, respondent judge or prosecutor, ODC's counsels, members of disciplinary panels and of the Council, and defense counsels of respondent judges and prosecutors were acquainted with details. To the majority of other judges and prosecutors, disciplinary proceedings conducted in accordance with the Law constitute a fairly unknown field. This is why the Benchbook is also useful for other judicial office holders.

1 Official Gazette of BiH, no. 25/04, 93/05 and 15/08.

2 For the purposes of this Benchbook, the terms judge and prosecutor, or a judicial office holder means a judge, court president, lay judge and reserve judge, chief prosecutor, deputy chief prosecutor and prosecutor, and legal officer appointed by the Council.

The Benchbook contents are conceived in the way to guide the user through disciplinary proceedings in the simplest way possible - from the Council's powers to regulate and conduct disciplinary proceedings, composition of disciplinary panels, types of disciplinary measures, etc. In the final part, the Benchbook covers topics that are complementary to disciplinary proceedings - suspension, the issues of a judge's or prosecutor's inability to perform their duty, incompatibility and immunity. The user will also find comments about certain terms or stages of disciplinary proceedings in the Benchbook. Those comments point to the need to regulate certain terms or situations more precisely, or to improve certain practice.

In order for the Benchbook to be as user-friendly and as simple as possible, a significant part of the material is presented in annexes. The total of 12 annexes present elaborations of different issues, such as lists of disciplinary offenses of judges and prosecutors, comments about proposed amendments to the Law on HJPC/text of the new Law on HJPC, summaries of all completed disciplinary cases with finally imposed disciplinary measures, proposed forms of certain documents in disciplinary proceedings, the Guidelines for Determining Disciplinary Measures, etc.

Annex entitled "Summaries of disciplinary decisions" is particularly important for the Benchbook itself. This Annex covers all disciplinary cases that resulted in final decisions imposing disciplinary measures by the time of publishing the Benchbook. Summaries of disciplinary decisions are grouped by types of conducts that resulted in the perpetration of a disciplinary offense. Decisions on disciplinary liability that include several types of such conduct provide appropriate references to sources where other disciplinary cases which resulted in the imposition of a disciplinary measure for the same type of conduct can be found. Apart from it being an excellent overview of practices in one interesting legal field, this Annex provides judges and prosecutors with an opportunity to learn about kinds of actions that are disciplined, and about types of sanctions. In this way, they will know that the specific conduct is punishable, which makes the Benchbook an extraordinary training resource for all current and future judges and prosecutors, with a special preventive effect.

In order to fulfil the expected standards of professional and personal integrity that the profession and the public expect from them, judges and prosecutors should behave in accordance with codes or judicial and prosecutorial ethics and related documents (Guidelines for the prevention of conflict of interest in the judiciary, Monitoring instrument for the implementation of the Guidelines for the prevention of conflict of interest in the judiciary, Manual for the application of the codes of judicial and prosecutorial ethics, Rulebook on the submission, verification and processing of financial statements of judges and prosecutors with the financial declaration form, and Guidelines for the development and implementation of integrity plans in courts and prosecutor's offices in BiH). Compliance with the provisions of the codes is not defined as compulsory, and non-compliance is not defined as a disciplinary offense. However, the Annex entitled "Summaries of disciplinary decisions" shows that a significant number of disciplinary offenses were perpetrated because the sanctioned judges and prosecutors did not comply with provisions of relevant codes. Also, apart from qualifying certain actions of judges and prosecutors as disciplinary offenses, the ODC and disciplinary panels increasingly characterize those actions as violations of codes of ethics as well. Thereby, the codes of judicial and prosecutorial ethics also become an interpretation guide for disciplinary offenses laid down in the Law.

The Law on HJPC was passed in 2004, at the time when some of the international documents mentioned in the Benchbook that define integrity as the main issue or one of the most important issues were not adopted yet. Through analysis of contents of newly adopted documents, we will see that they do not contradict the principles based on which the text of the Law had been defined earlier. On the contrary, they confirm that, at the time of adoption, the Law was in compliance with the main principles of existing international documents at the time that covered the issues of integrity and accountability of judges and prosecutors. The progress in defining of international standards concerning judges and prosecutors does not necessarily mean that the text of the future Law should be substantially amended to accommodate each of those important international documents and incorporate the principles laid down in those documents. It is far more important that the judiciary in BiH follow the trends that these documents incorporate in foundations of the development of judicial systems in democratic societies, and to timely accept and follow those trends, and apply them in daily functioning of the judiciary. Also, it should be noted that international standards contain provisions that promote the protection of

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# INTRODUCTION

The Judicial Discipline Benchbook was developed to support the judicial and prosecutorial disciplinary system in Bosnia and Herzegovina by strengthening the capacity of those who serve in it. Because these disciplinary systems are unique, when individuals are hired or appointed to serve in them, they typically have little or no familiarity with how the systems work and how they serve the public and the justice system. This Benchbook is designed to bridge that gap. It provides context and background for BiH's disciplinary system by explaining how such systems evolved and enumerating international standards that have developed for them. The Benchbook contains all of the standards on which disciplinary liability can be predicated and provides a step-by-step overview of the disciplinary process, with commentary regarding critical issues. Forms, templates and checklists are furnished along with timelines for various phases of the process. Lastly, the Benchbook contains a digest of all prior discipline decisions involving judges and prosecutors to familiarize the reader with prior decisions and sanctions imposed according to the type of misconduct found.



## DISCIPLINARY OFFENSES

The Law on the High Judicial and Prosecutorial Council provides that a judge, prosecutor, reserve judge, or lay judge, including a Court President and Chief or Deputy Chief Prosecutor, shall be held liable for any disciplinary offence regulated by the Law which he or she commits, either with intent or negligently (Law on the High Judicial and Prosecutorial Council, hereafter referred to as LOHJPC, Article 54).

The offenses for which judges can be held liable are set forth in Article 56 of the LOHJPC and can be found at Appendix 1. The offenses for which prosecutors can be held liable are set forth in Article 57 of the LOHJPC and can be found at Appendix 2.

In addition to this, Article 82 and 83 are also relevant as they regulate the issue of incompatibility of the duties of judges and prosecutors are included in Annex 3. Likewise, in 2016, the High Judicial and Prosecutorial Council adopted Guidelines for the Prevention of Conflict of Interest in the Judiciary. The Guidelines address many aspects of conflict of interest covered by the Code of Judicial Ethics, the Code of Prosecutorial Ethics and other regulations such as those relating to incompatible activities. The guidelines can be found on the HJPC website.



# ETHICS STANDARDS

## CODE OF ETHICS FOR JUDGES

As required by Article 17(9) of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, in 2005 the High Council adopted the Code of Ethics for Judges. The Code commences with a description of its purpose, including its relationship to the disciplinary process, as follows:

The purpose of this code is to formulate the principles of ethical conduct of judges in Bosnia and Herzegovina. It is designed to assist judges with the difficult ethical and professional issues which confront them and to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established in order to maintain judicial standards, which are themselves independent and impartial. The principles are advisory in nature and are intended to supplement and not to derogate from existing laws governing judicial conduct.

The Code of Ethics establishes the very high standards toward which all judges strive. It contains principles of reason to be applied in light of all of the relevant circumstances and consistently with the requirements of judicial independence and the law. This Code shall be used as an interpretive guide to disciplinary violations in the Law on the High Judicial and Prosecutorial Council.

Every citizen of BiH has a vested interest in an independent judiciary. A judge must be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. Nothing in this Code is intended to limit judicial independence. Judges have a duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges.<sup>3</sup>

The current version of the Code of Ethics for Judges can be found at the web site of HJPC <https://vstv.pravosudje.ba/>

## CODE OF PROSECUTORIAL ETHICS

As with the adoption of the Code of Ethics for Judges, as required by Article 17 (9) of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, in 2005 the High Council adopted the Code of Prosecutorial Ethics. At the outset, the purpose of the Code, including its relationship to the disciplinary process, is described as follows:

The purpose of this code is to formulate the principles for ethical conduct for prosecutors in Bosnia and Herzegovina. It is designed to assist prosecutors with the difficult ethical and professional issues which confront them and to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the criminal justice system. These principles presuppose that prosecutors are accountable for their conduct to appropriate institutions established to maintain ethical standards, which are themselves independent and impartial. The principles are advisory in nature and are intended to supplement and not to derogate existing laws governing prosecutorial conduct.

This Code describes the very high standards toward which all prosecutors strive. It contains principles of reason to be applied in light of all of the relevant circumstances and consistently with the requirements of prosecutorial independence and the law. This Code shall be used as an interpretive guide to disciplinary violations in the Law on the High Judicial and Prosecutorial Council.

3 "Purpose", page I, Code of Ethics for Judges (2005)

For the public to be confident that cases of prosecutor's noncompliance with the basic principles of their professional ethics will be examined and evaluated, prosecutors must be ready to justify their behaviour as being in compliance with the basic ethics principles and to motivate every derogation from the said principles. Non-compliance with the basic ethics principles will be considered to be a mode of behaviour unworthy of the prosecutor, which might give rise to issues of disciplinary liability and the imposition of sanctions.

The public in BiH need to have confidence in the integrity of the criminal justice system. The prosecutors play a crucial role in the administration of criminal justice and the exercise of prosecutorial discretion is a grave and serious responsibility. Such exercise should be as open as possible, consistent with personal rights, sensible to the needs of the victims and should be conducted in an objective and impartial manner. A prosecutor must be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone.<sup>4</sup>

The current version of the Code of Prosecutorial Ethics can be found on the website of the HJPC <https://vstv.pravosudje.ba/>

4 "Purpose", page 1, Code of Prosecutorial Ethics (2005)





# INTERNATIONAL STANDARDS AND PRACTICE

A number of international standards exist today pertaining to the disciplinary liability of the judges and prosecutors. International standards treat disciplinary liability as a component of the independence of the judiciary. Confidence in the fair, independent and impartial administration of justice also requires judges and prosecutors to be held to account should they not fulfil their functions in accordance with ethical standards. “Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.”<sup>5</sup>

Some of the standards relating to the disciplinary liability of judges and prosecutors were developed by the United Nations and Council of Europe. These prominently include the UN standards namely the Basic Principles on the Independence of the Judiciary<sup>6</sup>, the Guidelines on the Role of Prosecutors<sup>7</sup> and the Bangalore Principles of Judicial Conduct<sup>8</sup>.

In the regional context, the Council of Europe bodies articulate a number of non-binding standards including the Recommendation (94) of the Committee of Ministers on the independence, efficiency and role of judges<sup>9</sup>, the European Charter on the Statute for Judges<sup>10</sup>, European Network of Councils for the Judiciary Report - Development of minimum judicial standards<sup>11</sup> and the Recommendation CM/Rec(2010)<sup>12</sup> of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities<sup>12</sup>.

Additionally, a number of other standards can be found in opinions of different organizations such as the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul to the Human Rights Council<sup>13</sup>, Venice Commission Report on the Independence of the Judicial System Part I: The Independence of Judges (adopted in March 2010), the Magna Carta of Judges<sup>14</sup> and the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct<sup>15</sup>, Standards of professional responsibility and statement of the essential duties and rights of prosecutors.<sup>16</sup>

For purposes of this Benchbook, international standards governing disciplinary liability of judges and prosecutors were clustered into the following groups of principles:

- 5 California Code of Judicial Ethics, Commentary to Canons 2 and 2A
- 6 UN Basic Principles on the Independence of the Judiciary as endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985
- 7 Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990
- 8 Bangalore Principles of Judicial Conduct as endorsed by the The Economic and Social Council in 2006, ECOSOC 2006/23
- 9 the Recommendation (94) of the Committee of Ministers on the independence, efficiency and role of judges, Adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies
- 10 European Charter on the Statute of Judges approved at a multilateral meeting organised by the Directorate of Legal Affairs of the Council of Europe in Strasbourg in July 1998
- 11 European Network of Councils for the Judiciary Report- Development of minimum judicial standards V 2014-2015, adopted at The Hague 5 June 2015
- 12 Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies
- 13 Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul to the Human Rights Council, A/ HRC/20/19, 7 June 2012
- 14 Magna Carta of Judges (Fundamental Principles) of the Consultative Council of European Judges (CCJE), adopted in November 2010
- 15 Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, adopted by the Judicial Integrity Group in January 2010
- 16 Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on the twenty third day of April 1999.

## **Professional standards of judges and prosecutors should be clearly defined.**

Judges and prosecutors are expected to act with the highest degree of integrity in both their professional and private lives. To advance this principle, members of the judiciary should be guided by clearly defined ethical principles of professional conduct<sup>17</sup>, which include duties and responsibilities that, if breached, may be sanctioned by disciplinary measures.

Ethical principles of professional conduct are not prescribed at the international level. The Global Code of Judicial Ethics<sup>18</sup> confirmed that the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country. However, this Code was intended to clarify standards for ethical conduct of judges and to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. Similarly, the Consultative Council of European Prosecutors adopted the European Guidelines on ethics and conduct for public prosecutors (also known as the “Budapest Guidelines”) to provide further guidance regarding widely accepted general principles for public prosecutors in the performance of their duties.

The ethical principles recognized in these and other international standards include independence, impartiality, integrity, propriety, equality, competence and diligence. Guidelines embodying these principles and/or a code of conduct/ethics should be drawn up by the members of the judiciary or a Council for the Judiciary.

While principles of ethical conduct are designed to guide members of the judiciary, international standards consistently recognize that not every unethical behavior should result in disciplinary action. As a general rule, international standards hold that disciplinary proceedings may follow where prosecutors acted in a manner clearly out of the range of professional standards<sup>19</sup> or when judges failed to carry out their duties in an efficient and proper manner<sup>20</sup>. Whether disciplinary action is, or is not, appropriate may depend on other factors, such as the seriousness of the behaviour, whether or not there is a pattern of improper activity, and on the effect of the improper activity on others and on the judiciary as a whole.

## **The disciplinary procedure should be processed expeditiously and fairly under an appropriate procedure.**

All international standards speak of the need to conduct disciplinary procedures against judges and prosecutors expeditiously, fairly and under a procedure with guarantees of a fair hearing.<sup>21</sup>

Judges and prosecutors subject to disciplinary hearings should be made aware of the allegations of their misconduct, and this should be communicated to them clearly and effectively. If a judge or a prosecutor is found guilty of professional misconduct, the sanctions that are imposed should be proportional to the gravity of the infraction committed<sup>22</sup>. The European Network of Councils for the Judiciary Report explores the principle of an expeditious procedure and states that there should be time limits for bringing a complaint, for concluding the investigation, for making a decision, and for the imposition of any sanction. Any sanction should be imposed immediately after the decision on the merits of the case, and in any event without undue delay. These limits should be extended only in exceptional circumstances, such as the complexity of the investigation, illness of the judge or a criminal investigation.

The European Network of Councils for the Judiciary Report articulates further principles. Complaints should normally be identified, however if a complaint can be made by anyone, there needs to be a mechanism or a summary procedure by which the complaint can be dismissed or a decision can be taken that the complaint should

17 Principle 19, Basic Principles on the Independence of the Judiciary and Principle 21, Guidelines on the Role of Prosecutors

18 International Association of Judicial Independence and World Peace, Bologna Milano Global Code of Judicial Ethics, 2015

19 Principle 21, Guidelines on the Role of Prosecutors

20 Para 69., Recommendation CM/Rec(2010)12

21 See Principle 17 of the UN Basic Principles and Principle 17 of the UN Guidelines

22 Para 5.1., The European Charter on the statute for judges and para 86. of the Human Rights Council, A/HRC/20/19

not be advanced. There should be a separate body responsible for receiving complaints and the administration of them, independent of the Ministry of Justice and answerable only to the Judiciary. The investigation of complaints should include the possibility of receiving written and/or oral evidence.

The determination as to whether the particular behavior or the ability of a judge constitutes a cause for removal must be taken by an independent and impartial body. Recommendation No. R (94) 12 of the Council of Europe establishes a requirement to establish a special body that affords judges all procedural guarantees in the hearing process.<sup>23</sup> The European Charter on the statute for judges states that such a body should be composed of at least one half elected judges<sup>24</sup>.

The Human Rights Council<sup>25</sup> recognizes that the accountability of prosecutors can be organized in several different ways: through monitoring by the executive; accountability before a prosecutorial council, prosecution inspectorates or similar independent body; or parliamentary accountability, although this form of accountability should not be used to scrutinize individual cases.

### **Clear guarantees of a fair hearing should be defined.**

Both the UN Basic and the UN Guidelines provide that judges and prosecutors should have the right to a fair hearing. A right to a fair hearing is part of due process requirements under Article 6.1 of the European Convention on Human Rights. A fair hearing includes a full right of defense to appear at any hearing and be heard, to introduce evidence either in writing or orally, to be given a timetable for the investigation of the complaint and the making of the decision, and to be provided with the reasons for the decision adopted by the relevant disciplinary body. The fairness of the decision is closely connected with the requirement of providing reasons as a way to avoid any hint of arbitrariness.

Judges and prosecutors should have the right to be legally represented or assisted by a person of their choosing if he/she they so choose. If acquitted of any allegations, under appropriate circumstances, they should be able to recover legal costs reasonably incurred from the State.

### **The decisions should be subject to independent review.**

All decisions of a disciplinary hearing should be subject to independent appellate review.<sup>26</sup> This principle is supported by Article 6 of the European Convention on Human Rights on the right to a fair trial, which establishes a direct link between this right and the independence of the judge. The right to review usually includes a right to appeal to a higher judicial authority to challenge the decision and sanction. The UN Basic Principles state that the right to appeal may not apply when the disciplinary decision is made by the supreme or highest court of the country or where there is a proven tradition allowing the decision to be made by the legislature in impeachment or similar proceedings.

A List of International Standards relating to judicial and prosecutorial disciplinary systems is included as Appendix 4 to this Benchbook.

23 Recommendation No. R (94) 12, doc. cit., Principle VI.3

24 European Charter on the statute for judges, para 5.1.

25 Para 83. Human Rights Council, A/HRC/20/19

26 See Principle 20 of the UN Basic Principles and Principle 22 of the UN Guidelines.



# THE DISCIPLINARY PROCESS

As this Benchbook was being prepared, a number of legislative amendments were under consideration which, if adopted, would make significant changes to the disciplinary process. The Benchbook is based upon the law and rules in effect at the time of its publication. The primary legislative amendments that have been proposed are summarized in Proposed Legislative Amendments to the Law on the High Judicial and Prosecutorial Council, included as Appendix 12 to this Benchbook.

For reference in reviewing this section on The Disciplinary Process, a Timeline for the Disciplinary Process is included in Appendix 9 to this Benchbook.

## GENERAL PROVISIONS

### Authority of the High Council of Judges and Prosecutors

In addition to its responsibility for the selection and training of judges and prosecutors and for other functions with respect to the judiciary, the High Council is responsible for the disciplinary system for judges and prosecutors as follows:

- Receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability, and imposing disciplinary measures on judges, lay judges, reserve judges and prosecutors;
- Deciding upon appeals in disciplinary proceedings;
- Deciding upon suspensions of judges, lay judges, reserve judges and prosecutors.

The disciplinary bodies are the First Instance Disciplinary Panel, the Second Instance Disciplinary Panel and the High Council.

(Law On the High Judicial and Prosecutorial Council Article 17(4)(5)(6), Article 55; Rules of Procedure Article 75)

### Application of Rules of Procedure of the High Judicial and Prosecutorial Council

The High Council regulates, in its Rules of Procedure<sup>27</sup>, (ROP), the formation and operation of the disciplinary bodies, and the conduct of disciplinary proceedings consistent with the provisions of the Law on the High Judicial and Prosecutorial Council (LOHCJP).

The Law on the High Judicial and Prosecutorial Council expressly allows the Council through its Rules of Procedure to allow for expedited proceedings, provided that the rights of parties are respected.

(LOHCJP Article 62)

27 Rules of Procedure of the High Judicial and Prosecutorial Council, "Official Gazette of BiH" No. 55/13, 96/13, 46/14, 61/14, 78/14, 27/15, 46/15, 93/16, 48/17)

## DISCIPLINARY MEASURES/SANCTIONS

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

- A written warning which shall not be made public;
- Public reprimand;
- Reduction in salary up to a maximum of 50% (fifty percent) for a period of up to one (1) year;
- Temporary or permanent reassignment to another court or prosecutor's office;
- Demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor;
- Removal from office.

Instead of or in addition to the above disciplinary measures, the Council may also order, if appropriate, that a judge or prosecutor participate in rehabilitation programs, counselling or professional training. These disciplinary measures may last no longer than (6 six) months. The duration of special disciplinary measures is to be determined by the disciplinary panel for each case separately.

Upon removal by the Council, all rights and privileges of judges and prosecutors terminate. A judge or prosecutor who is removed from office is barred from further exercise of judicial or prosecutorial function.

(LOHJPC Article 58; ROP Articles 71, 105)

### **Sanctions Principles for Determining Disciplinary Measures**

A primary principle governing the imposition of disciplinary measures is that they are to be governed by the principle of proportionality. Before pronouncing the measures for a disciplinary offence, the following aspects shall be taken into consideration by the Disciplinary Panels:

- a. the number and severity of the disciplinary offence committed and its consequences;
- b. the degree of responsibility;
- c. the circumstances under which the disciplinary offence was committed;
- d. the previous work and behaviour of the offender; and
- e. any other circumstances that may affect the decision on the severity and type of disciplinary measure, including the degree of remorse and/or cooperation shown by the judge or prosecutor during the disciplinary proceedings.

The disciplinary measure of dismissal is only to be used in cases where a serious disciplinary offence is found and the severity of the offence makes it clear that the offender is unfit or unworthy to continue to hold his or her office.

When a suspension has been imposed in the course of a pending disciplinary proceeding, in determining whether to impose a disciplinary measure in that proceeding, the High Council may take the suspension into account and may reduce the disciplinary measure accordingly, or may, at its discretion, determine that the prior suspension is itself a sufficient measure for the disciplinary violation or violations found.

(LOHJPC Article 59)

## Standards for Determining Sanctions, Guidelines

### High Judicial and Prosecutorial Council Guidelines for Determining Disciplinary Measures

*To assist the Disciplinary Panels making determinations about disciplinary measures under Article 59 Law on HJPC, at its session held on July 8, 2016 the High Council adopted internal Guidelines for Determining Disciplinary Measures. These guidelines set forth a means for determining the appropriate disciplinary measure in a particular case and to ensure consistency and fairness across cases dealing with similar misconduct and surrounding circumstances. The guidelines help fulfill the primary purposes of discipline, which include:*

- a. protection of the public, judicial institutions and the justice system;
  - b. maintenance of the highest professional standards; and
  - c. preservation of public confidence in the judiciary
1. In addition to the aspects set forth in Article 59(1), the Disciplinary Panels should consider the following factors:
    - A. Characteristics of Misconduct.
      - a. The number of acts of misconduct.
      - b. The nature and seriousness of the misconduct.
      - c. Whether the misconduct occurred in the judge or prosecutor's official capacity or in his or her private life.
      - d. Whether the misconduct involved dishonesty or lack of integrity.
      - e. Whether the misconduct was intentional, premeditated, negligent, or spontaneous.
      - f. The nature and extent to which the misconduct has been injurious to other persons.
      - g. Whether the judge or prosecutor was motivated by a desire to satisfy a personal or venal interest, vindictiveness, or an interest in justice, or compassion.
      - h. Whether the misconduct undermines the integrity of the judiciary, respect for the judiciary or the administration of justice.
      - i. Whether the misconduct involves unequal application of justice on the basis of such considerations as race, ethnicity or national origin, gender, sexual orientation, or religion.
    - B. Service and Demeanor of the Judge or Prosecutor.
      - a. Whether the judge or prosecutor has acknowledged the acts occurred and has shown an appreciation of the impropriety of his or her acts.
      - b. Whether the judge or prosecutor cooperated fully and honestly in the disciplinary proceedings.
      - c. Whether the judge or prosecutor has evidenced an effort to change or modify the conduct.
      - d. The judge or prosecutor's length of service in a judicial or prosecutorial capacity.
      - e. Whether there has been prior disciplinary action concerning the judge or prosecutor.
      - f. Whether there are exceptional personal circumstances that warrant consideration.
      - g. The judge or prosecutor's reputation for administering his or her duties in a fair, impartial, and dignified manner and for making positive contributions to the court or community.
  3. When a judge or prosecutor has previously been disciplined, the following considerations should apply:
    - a. If a judge or prosecutor has a single prior record of discipline, the sanction should be greater than

- the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.
- b. If a judge or prosecutor has two or more prior records of public discipline, dismissal is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
    - i. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
    - ii. 2. The prior disciplinary matters coupled with the current record demonstrate the judge or prosecutor's unwillingness or inability to conform to ethical and/or professional responsibilities.
    - iii. (c) Sanctions may be imposed, including dismissal, even if a judge or prosecutor has no prior record of discipline.
  4. (3) A written warning that is not to be made public is appropriate only in cases of minor misconduct, when there is little or no injury to an individual, the public or the justice system, and when there is little likelihood of repetition by the judge or prosecutor.
  5. (4) Salary reductions are appropriate for serious misconduct not warranting dismissal, a pattern of misconduct or when a judge or prosecutor has previously received a public reprimand. Salary reductions of 25% or more for greater than 6 months should be considered for serious offenses that are deliberate, a pattern of misconduct and when a judge or prosecutor has had a previous salary reduction.
  6. (5) Dismissal is appropriate for an act of moral turpitude<sup>28</sup>, dishonesty<sup>29</sup>, fraud<sup>30</sup>, corruption<sup>31</sup> or concealment<sup>32</sup> of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled anyone and related to the judge or prosecutor's professional duties

## COMMENTARY I: DISCIPLINARY SANCTIONS GUIDELINES

As noted, the Disciplinary Sanction Guidelines were adopted by the High Council in July 2016. A review of cases since the adoption of the Guidelines reveals that the application of the Guidelines is not often discussed or referred to in disciplinary decisions. On the sample of 25 cases which were part of monitoring in the period of July 2016-July 2018, 11 decisions made a reference to Sanction Guidelines. Disciplinary panels' references to the Guidelines were more prevalent as of the beginning of 2017, hopefully suggesting the establishment of a practice of applying the Guidelines. This analysis showed that in cases when disciplinary committees departed from the Guidelines, that no reasoning for any departure was provided. Similarly, even when the sanction imposed appeared consistent with the Guidelines, a consistent lack of a rating criterion for pronouncing measures and the method of determining the measure was not observed 228/5000 In a number of cases, which were specifically analyzed for similarity in the behavior of judges and prosecutors, similarly different disciplinary measures were imposed, and no adequate explanation was provided, the reasons for the apparent inconsistency are not known. Further, when mitigating factors were present, the decisions did not elaborate how the circumstances applied in the particular case or how they related to the pronounced sanction. Most of the decisions – 14 of the 22 cases – did

- 28 Generally defined as an act contrary to honesty and good morals; act of baseness, vileness or depravity in the private and social duties which man owes to his fellowmen. The concept of moral turpitude depends on the state of public morals and may vary according to the community and the times as well as the degree of public harm produced by the act in question.
- 29 The quality of being untruthful or deceitful.
- 30 Deliberate deception to secure unfair or unlawful gain; using dishonest means to take something valuable from another person.
- 31 Misuse of entrusted power for personal gain.
- 32 To keep from being observed or discovered; to hide.

not specify any aggravating factors. In some cases, aggravating factors such as dishonesty were present but were not taken into account in assessing the appropriate disciplinary measure. Because of the absence of any explanation concerning the application of the guidelines the impression is that the guidelines are not applied consistently, thereby violating the objectives of the purpose of the guidelines, namely ensuring consistency and proportionality, and the quality of reasoning of decisions and the imposition of measures. In connection with this commentary, it is also necessary to see the Commentary on the content of the decisions in the disciplinary procedure.

A step-by-step approach to applying the sanctions guidelines, Disciplinary Sanctions Guidelines Checklist, is included as Appendix 5 to this Benchbook.

## **Appointment, Composition, Authority of Disciplinary Panels**

Disciplinary proceedings are conducted by a first instance disciplinary panel and a second instance disciplinary panel. The panels are independent and have full authority to adjudicate disciplinary matters. Any panel members who participate in a matter before the first instance panel may not participate in the same matter before the second instance disciplinary panel.

(LOHJPC Article 60.)

The President of the High Council appoints four first instance and three second instance panels for cases involving judges and three first instance and two second instance panels for cases involving prosecutors. Should a need arise, the Council President may appoint more disciplinary panels and additional members to panels, such as when a member is disqualified. Members of panels serve for a term of two (2) years, subject to completion of pending disciplinary proceedings. Members of disciplinary panels are eligible for reappointment. The President also appoints one member as the chairperson of each panel.

(LOHJPC Article 61; ROP Articles 75, 76)

Each cantonal and district court as well as each cantonal and district prosecutor's office shall propose, at the general or collegium session, one judge or prosecutor who may be appointed a member of a first instance disciplinary panel. The list of judges and prosecutors who may be appointed as members of a first instance disciplinary panel shall be established by the Council based on the names submitted by courts and prosecutors offices. (ROP Article 76)

In the first instance, disciplinary liability and the imposition of measures is determined by the first instance disciplinary panel, which is composed of three (3) members, at least two (2) of whom are to be members of the Council. The assignment of a case for processing by a disciplinary panel is to be carried out in accordance with a pre-determined order or by way of automated assignment. (ROP Article 85)

Appeals from the decisions of the first instance disciplinary panel are decided by the second instance disciplinary panel, which is composed of three (3) members of the Council. The second instance disciplinary panel may confirm, reject or alter the decision or disciplinary measures imposed by the first instance disciplinary panel.

In disciplinary proceedings against judges, a majority of members of the panel, at both first and second instance, must be judges. In disciplinary proceedings against prosecutors, a majority of members of the panel, at both first and second instance, must be prosecutors.

(LOHJPC Article 60)

The disciplinary panels have the power to issue subpoenas for the attendance of witnesses or for the production of documentary evidence and have the power to punish the wilful failure to obey a subpoena. (LOHJPC Article 63) See also Subpoena Process.

The disciplinary panels also consider Joint Consent Agreements and determine whether to accept them. (LOHJPC Article 69)

(LOHJPC Articles 60, 61, 62, 63, 66; ROP Article 72)

## **Disciplinary Counsel**

### **Office of Disciplinary Counsel**

The Office of the Disciplinary Counsel (ODC) is an office within the High Council. It is responsible for performing prosecutorial functions concerning allegations of misconduct against judges and prosecutors in accordance with the Law on High Judicial and Prosecutorial Council and the Rules of Procedure of the Council.

The ODC acts upon a complaint or upon its own initiative and is responsible for evaluating complaints for legal sufficiency, investigating allegations of misconduct against judges and prosecutors, and initiating and presenting cases of disciplinary violations before the disciplinary panels of the Council.

The ODC is fully autonomous and independent with respect to how complaints are investigated and with respect to whether a complaint shall be filed or not as a result of an investigation of a complaint. The Chief Disciplinary Counsel decides on all administrative and financial matters of the ODC. These decisions are exercised by the competent Department of the HJPC's Secretariat based on the order of the Chief Disciplinary Counsel.

(LOHJPC Article 64; ROP Articles 28-30)

### **Chief Counsel of the Office of Disciplinary Counsel**

The Office of Disciplinary Counsel is headed by the Chief Counsel of the Office of Disciplinary Counsel. The High Council appoints the Chief Counsel, who either is a judge or prosecutor or who fulfills the minimum requirements for appointment as a judge or prosecutor, and who is of high moral standing and possesses the requisite legal expertise to serve as the Chief Counsel. The Chief Counsel has a mandate of four (4) years and is eligible for re-appointment. The Chief Counsel is supported by a staff of lawyers<sup>33</sup> and investigators.

The Chief Counsel may authorize staff lawyers to present cases before the Council and its disciplinary panels or to exercise other duties of the Chief Counsel.

(LOHJPC Article 64).

## **Handling of Complaints**

Any physical or legal person, institution or organization is permitted to file a complaint with the Office of the Disciplinary Counsel against one or more judicial office holders. Complaints must be filed in writing and submitted with the accompanying evidence. The ODC has posted on the High Council's website a complaint form and instructions for filling out the form. The complaint form is quite detailed to assist ODC in obtaining the information necessary to evaluate the allegations. The ODC also has a brochure that explains to complainants and prospective complainants the role of ODC in the disciplinary process, the process for reviewing complaints and conducting investigations, the time frame for the disposition of cases and potential outcomes. In accordance with best practices, the brochure should be furnished to every individual who files a complaint with ODC to inform them about the process. Copies of the complaint form, the instructions for completing the form and the informational brochure about the disciplinary process are included as Appendix 8 to this Benchbook.

The ODC is also permitted to compile a case ex officio against a judge or prosecutor if he or she possesses knowledge on the violation of office by a judge or prosecutor or upon acquiring knowledge of the conduct of

33 After the Law on HJPC had been adopted, the position of the Disciplinary Counsel/Prosecutor (who act upon the authorization issued by the Chief Disciplinary Counsel) was included into the ODC organizational scheme.

a judge or prosecutor unbefitting of a judicial office holder. In the event of an anonymous complaint, the ODC assesses whether to conduct an investigation on a case by case basis.

(ROP Article 81)

## COMMENTARY 2: EX OFFICIO OFFICE OF DISCIPLINARY COUNSEL INVESTIGATIONS

The Office of the Disciplinary Counsel may act upon its own initiative and open a case against a judge or prosecutor if finds out about a breach of official duty or other inappropriate behavior by a judge or prosecutor. Cases are opened ex officio by the ODC based on reports of court and prosecutor's offices about cases closed due to statute of limitations, decisions of the Constitutional Court of Bosnia and Herzegovina establishing violations such as of a right to a trial within a reasonable time and information from media sources, including both traditional news media and Internet sources such as social media networks (Facebook, Twitter, Instagram, etc.), YouTube, etc.

As with anonymous complaints, it is the responsibility of the ODC to determine whether there is sufficient evidence to support the allegations and to proceed if the evidence supports the allegations. The European Commission's 2016 recommendations based on peer assessments cited the need for greater objectivity and the use of transparent criteria when ODC decides to commence an investigation ex officio. ODC must ensure that the report meets the standards ODC applies in determining whether to open an investigation based on a submitted complaint. Media and other reports may focus on one judge or prosecutor's alleged misconduct while similar misconduct by others may not be reported. To adjust for this imbalance, ODC should attempt to determine when pursuing a media report about an individual judge or prosecutor whether the conduct may be more widespread. If the alleged misconduct is severe and there is evidence of other judges and prosecutors committing the same offense, it may be appropriate to open additional cases ex officio. In less serious matters, it may be appropriate to advise president judges of the prevalence of the problem or to address the matter through ethics training or during Court Presidents/Chief Prosecutors Annual Conferences, etc.

### CHECKLIST FOR INITIATING EX OFFICIO INVESTIGATIONS:

- Is there a reasonable basis to believe that the judge or prosecutor may have committed a disciplinary offense?
- Is there sufficient factual information to proceed with an investigation?
- Are there other judges or prosecutors engaged in the same conduct who should also have investigations opened ex officio?
- If the problem is not severe but is pervasive, should it be addressed through ethics trainings or addressed by judicial official managers?

## Initiation of investigation

Upon receipt of a complaint, the Office of the Disciplinary Counsel conducts a preliminary check of the allegations of a complaint and may dismiss a complaint without conducting a preliminary check or subsequent to a preliminary check in the event that one of the following is established:

- That the complaint falls outside of High Council's competences;
- That the complaint does not refer to conduct or behavior that represents a disciplinary violation;
- That the alleged violation of office of judge or prosecutor is insignificant;
- That statute of limitations has come into effect regarding the initiation or conduct of disciplinary proceedings;
- That the complaint has been filed as an attempt to inappropriately influence a procedure that is underway before a court or prosecutors office;
- That the complaint is illegible;
- That a decision has been previously passed on the same matter.

In the event that a complaint is dismissed without conducting a preliminary check or subsequent to a preliminary check, the ODC delivers written notice of the reasons for the dismissal of the complaint to the complainant.

(ROP Article 82)

### COMMENTARY 3: TIMING OF COMPLAINT REVIEW

The law limits the amount of time that ODC has to file a disciplinary complaint from the receipt of a complaint to two years. The law does not set a limit on ODC's initial evaluation of complaints. Consistent with best practices, to avoid backlog and to maintain public trust, a deadline of 60 or 90 days should be adopted for ODC's initial evaluation of complaints.

### COMMENTARY 4: STANDARD TO COMMENCE INVESTIGATION

Nothing in the Law on the High Judges and Prosecutors Council or the Rules of Procedure addresses specifically what standard is to be used by the Office of Disciplinary Council to determine whether an investigation should be commenced or not. It appears that if the complaint cannot be rejected due to the reasons stated in Article 82 of the Rules of Procedure, then ODC must investigate a complaint. ODC's informational brochure states that an investigation will be commenced if the complaint establishes a reasonable basis to believe that a judge or prosecutor may have committed a disciplinary offense.

### COMMENTARY 5: EXPLANATION OF REASONS FOR CLOSING TO COMPLAINANT

Because between 92 and 97% of complaints about judges and prosecutors are closed by the Office of Disciplinary Counsel, the ODC's closing letter to the complainant is critically important in maintaining public confidence in the ODC and the disciplinary system itself. ODC has recently invested effort in improving their closing letters and adopted an Instruction in December 2017

on the content of closing letters<sup>34</sup>. The introductory paragraph of the letter clearly states that all proceedings and actions in relation to allegations of misconduct are confidential<sup>35</sup> and that information obtained through an investigation is privileged.<sup>36</sup> The letter then describes, to the fullest extent possible, the reason or reasons why the complaint is being dismissed identifying each ground or grounds for dismissal. The Instruction permits discussion in the closing letter, subject to the rules of confidentiality, of data already available to the complainant or that is public, information regarding the actions taken by ODC to evaluate the complaint and references to regulations, disciplinary law and cases. The letter is to explain in detail the following reasons for dismissal, if applicable:

- Why the complaint is not within the competence of the High Council;
- Why the complained behavior or misconduct is not a disciplinary offence;
- Why the alleged misconduct of a judge or prosecutor is insignificant;
- Why the statute of limitation precludes initiating or conducting disciplinary procedure;
- Why it was determined that the complaint was submitted in order to improperly influence proceedings before a court or prosecutor's office;
- Why the complaint is incomprehensible;
- That the alleged misconduct has already been decided;
- Why there is not enough evidence about the alleged misconduct.

Also, in the letter it should be clearly stated that appeal against the ODC decision is not envisaged by the High Judicial and Prosecutorial Council Law, but that the ODC would consider any new evidence submitted by the complainant.

## Investigations

An investigation is to be conducted by the Office of the Disciplinary Counsel in accordance with the Law on the High Judicial and Prosecutorial Council and the Rules of Procedure.

During the investigation of a complaint, disciplinary counsel may:

- Seek from any physical or legal person or institution or organization any documents or other information he or she deems necessary in order to properly render a decision;
- Question the person who filed a complaint, the judge or prosecutor against whom an investigation is held and or any other person who may provide beneficial information. The Office of the Disciplinary Counsel shall ensure that a judge or prosecutor is familiar with the nature of the allegations against him or her, while during questioning a judge or prosecutor may have a legal proxy;
- Undertake any other action he or she deems necessary for rendering a final decision.

All courts, prosecutor's offices and governmental bodies, as well as judges, prosecutors, reserve judges, lay judges, and employees of courts and prosecutor's offices are required to comply with requests by the ODC for information, documents, or other materials related to an inquiry. To obtain information related to an inquiry from other individuals or bodies, the ODC may request a disciplinary panel to issue a subpoena for the

34 Number: 03-02-3924-1/2017 Sarajevo, 13.12.2017

35 In accordance with Article 70 paragraph (1) of the HJPC Law.

36 In accordance with Article 71 paragraph (1) of the HJPC Law.

production of information, documents, or other materials.

In the event that a judge or prosecutor refused to provide information, documents or other material pursuant to a request from the ODC, that Office may apply to a disciplinary panel for an order compelling the judge or prosecutor in question to produce the requested information, documents, or other material.

After the conclusion of an investigation, the ODC determines whether there is sufficient evidence of the perpetration of a disciplinary violation. It must dismiss a complaint if subsequent to an investigation it determines there is insufficient evidence on the disciplinary violation that was committed. The ODC informs the Council that the complaint has been dismissed, as well as the complainant and the judge or prosecutor if either were questioned in the manner or if they were otherwise informed of the allegations of the complaint by the ODC. When informing the complainant of the dismissal, the ODC is to elaborate the reasons for rendering its decision to dismiss the complaint.

Along with investigating ex officio, or complaints submitted against judges or prosecutors, the ODC conducts inquiries and present cases before the Council concerning the physical, emotional, mental, or other incapacity of a judge or prosecutor; requiring permanent or temporary suspension of a judge or prosecutor from official duty or termination of mandate.

(LOHJPC Article 66; ROP Article 83)

## **Deferral of Investigation and Proceedings When Criminal Investigation or Proceedings Pending**

### **COMMENTARY 6: CONSIDERATIONS REGARDING DEFERRAL OF PROCEEDINGS WHEN CRIMINAL INVESTIGATION OR PROCEEDING IS PENDING**

When a criminal investigation or proceeding is pending against a judge or prosecutor, the Office of Disciplinary Counsel must determine whether to proceed with its case or defer it until the criminal matter has concluded. Typically, the disciplinary case should be deferred if the criminal charge is of a nature that, upon conviction, would make the judge or prosecutor unfit for office thereby mandating the initiation of the disciplinary process. Deferring the disciplinary case allows the ODC to conserve its resources and avoid unnecessary duplication of effort until the conviction is final. Another reason to defer a case – at least initially – is to avoid having the ODC’s investigation or proceedings interfere with the collection of evidence in the criminal case. If the ODC defers to avoid interfering with a criminal investigation, ODC should closely monitor the criminal investigation to ensure that it does not defer or delay the disciplinary case unnecessarily, for example, if the prosecutor is not pursuing criminal charges. Another reason to defer the disciplinary investigation is that information obtained through ODC’s investigations is privileged, even from the prosecutors and judges working on the criminal case. To avoid conflicts over confidentiality and privilege of ODC investigations, the ODC should usually defer its investigation until the criminal matter has concluded.

There are instances when the disciplinary case should not be deferred because deferral may result in undue delay and a loss of public confidence in the disciplinary system. This is especially true when the nature of the criminal charge will not automatically result in the removal of the judge or prosecutor upon conviction and disciplinary proceedings will be required to determine whether the conviction supports removal of the judge or prosecutor based on the facts from the criminal case..

Another instance when the disciplinary case should not be deferred is when the judge or prosecutor is held in custody and by law must be suspended. The ODC should undertake an investigation to establish whether there is evidence justifying the implementation of disciplinary proceedings against

the judge/prosecutor. This is critical to avoid the system being abused by isolating an honest judge or prosecutor who may have been working on a high-profile case. Also, since the High Council has discretion to suspend a judge or prosecutor if a criminal investigation is initiated against a judge or prosecutor, or if an indictment for a criminal act is brought by a competent prosecutor, the ODC should investigate the case and evaluate the evidence to be able to propose to the Council whether to review its decision to suspend the judge or prosecutor; if, for instance, the criminal system is being used improperly against an honest judge or prosecutor. As noted in Suspensions, below at page ??, because of the severe impact of a suspension, the Council should introduce the practice of requiring periodic reporting of cases in which judges and prosecutors have been suspended to ensure that continued suspension is appropriate.

In deciding whether or not to defer a case, the statute of limitations must be considered and may be a reason not to defer the disciplinary case. No disciplinary proceeding may be initiated against a judge or a prosecutor more than five (5) years after the date that the alleged violation occurred, or in respect of a criminal matter, no more than two (2) years after the date of the final and binding decision of a court in criminal proceedings occurred. Criminal investigations can last for years. Sometimes the criminal investigation is concluded and the case closed even before it was brought to the court which means there would be no court decision in the criminal matter for the ODC to rely on. In these circumstances, if ODC delays its case, the statute of limitations might preclude the ODC from filing a disciplinary complaint even if there was sufficient evidence to establish that a judge or prosecutor committed a disciplinary offence. Also if the court decision in the criminal case acquits the judge or prosecutor, the ODC would have two years to initiate disciplinary proceedings from the final decision in the criminal case, however, if the facts of the disciplinary complaint differ from the facts in the criminal proceedings, the disciplinary proceedings may be subject to the general statute of limitation of five years.

## **Disqualification of Disciplinary Panel Members**

The provisions on the disqualification of High Council members from Council activities also apply to the disqualification of members of disciplinary panels. The pertinent provisions of the Rules of Procedure are as follows:

### **Reasons for the Disqualification of a Member of the Council**

A member of the Council shall not participate in the activities of the Council if:

- He is in such represents a conflict of interest which is listed as a reason for exemption in the Book of Rules on Conflict of Interest of Members of the High Judicial and Prosecutorial Council of BiH and is deemed a reason for disqualification;
- The matter deals with an issue directly concerning him or her, a blood relative in a direct line to any degree and in a lateral line up to the fourth degree or spouses or common law partners or relatives by marriage or of a common law partner up to the second degree regardless of whether the marriage or common law marriage has terminated or not, if not otherwise regulated by the Book of Rules on Conflict of Interest;
- There are other circumstances that raise doubt as to his or her impartiality.

### **Procedure for Exemption of the Council Member ex officio**

- I. As soon as he/she learns of the reasons for exemption under Article 7 of the Book of Rules, the Council Member is obliged to cease activities in the procedure in which there are reasons for his/her exemption, and exempt himself/herself fully from the procedure and inform, in a written form, the Council President or the president of the competent subcommittee, if it is about the process of appointment.

2. The Council President may request the Council member to continue participating in the procedure from which he/she exempted himself/herself, if find out that there is no reason for exemption.
3. If the Council member does not exempt himself/herself from the procedure in which there are reasons for his/her exemption, the president shall make a decision on exemption as soon as he finds out about existence of the reasons, and then informs the committee from Article 6b of the Book of Rules.
4. The President will inform the Council about his exemption, in accordance with Paragraph 1 of this article. Decisions from Paragraph 2 and 3 of this article in regard of the president are rendered by the Council.

### **Motion to Disqualify a Member of the Council**

1. The disqualification of a member of the Council may be motioned by a person who has a legitimate interest.
2. A motion to disqualify a member of the Council shall be filed immediately upon acquiring knowledge on the presence of reasons for the disqualification and no later than up to the rendering of a decision by the Council on the issue for which disqualification is sought.
3. A motion to disqualify shall state the name of the member of the Council.
4. A person seeking disqualification shall state the circumstances in the motion based on which he or she believes that there is a reason to disqualify the member of the Council. The motion shall not restate any reasons that were given in a previously denied motion to disqualify.

### **Procedure for the Disqualification of a Member of the Council Upon Request**

If a motion for his or her disqualification has been filed, a member of the Council shall cease all activities within a procedure for which a motion has been filed and immediately inform the President of the Council on the matter.

If the motion seeks to disqualify the President of the Council, one of the vice-presidents of the Council shall take his or her place until a decision is rendered on the motion that was filed.

The Council and/or the relevant body of the Council shall discontinue a procedure until the rendering of a decision on a motion to disqualify.

### **Deciding on a Motion to Disqualify a Member of the Council**

The President shall decide on a motion to disqualify a member of the Council.

If the motion is to disqualify the President of the Council, the decision on the motion to disqualify shall be passed by the Council.

Prior to rendering a decision on a motion to disqualify, a statement shall be requested from the member of the Council whose disqualification is motioned, while other action shall be taken as required.

An appeal shall not be permitted against a decision either granting or denying a motion to disqualify.

(ROP Article 77; ROP Articles 7-10)

### **Disqualification of the Chief Disciplinary Counsel or an Employee of the Office of the Disciplinary Counsel**

It is the High Council that decides on the disqualification of the Chief Disciplinary Counsel.

A judge or prosecutor against whom disciplinary proceedings have been initiated and their legal proxy may

seek the disqualification of the Chief Disciplinary Counsel. A motion to disqualify may be submitted up to the beginning of the main hearing. In the motion, the petitioner is to state the circumstances which he or she considers as reason for disqualification pursuant to Article 7 of the Rules of Procedure. (See Disqualification of Members of Disciplinary Panels, above, page ??-??.) The motion shall not repeat any reasons that were stated in a previously denied motion to disqualify. Prior to a decision on disqualification being rendered, a statement must be taken from the Chief Disciplinary Counsel and other actions are carried out as required.

The Chief Disciplinary Counsel is required to inform the President of the Council in writing of any possible conflict of interest that may occur within his work. In such event, proceedings continue without delay until a decision on disqualification has been rendered.

There is no appeal from either a decision upholding or denying a motion to disqualify.

In matters of conflict of interest or that would otherwise require disqualification of the Chief Counsel from the investigation or prosecution of a disciplinary matter before the High Council or its disciplinary panels, the Council determines a person to proceed with the disciplinary case.

The Chief Disciplinary Counsel decides on the disqualification of any employee of the Office of the Disciplinary Counsel on the basis of the reasons for disqualification pursuant to Article 7 of the Rules of Procedure. (See Disqualification of Members of Disciplinary Panels, above.)

(LOHJPC Article 64; ROP Article 78)

## **Confidentiality**

All proceedings or actions in relation to allegations of misconduct or disability prior to the filing of a formal complaint by the Office of the Disciplinary Counsel are confidential unless the judge or prosecutor, who is the subject of the allegations, waives the right to confidentiality in writing.

If prior to the filing of a formal complaint, an investigation of possible misconduct or disability becomes public, the ODC may issue a statement in order to confirm that an investigation is pending, to clarify procedural aspects of the disciplinary proceedings, to explain the rights of judges and prosecutors to a fair hearing without prejudice, to state that a judge or prosecutor denies the allegations, or to correct public misinformation.

(LOHJPC Article 70)

The Office of the Disciplinary Counsel maintains records of complaints filed and the action taken in the processing of complaints, investigations, and disciplinary matters. These records are available to the High Council and the ODC is obliged to provide the Council with copies of complaints, investigation reports, or other relevant documentation as requested.

(LOHJPC Article 65)

Also, when the Office of the Disciplinary Counsel dismisses a complaint subsequent to an investigation because it determines there is insufficient evidence on the disciplinary violation that was committed, the ODC informs the High Council as well as the complainant and the judge or prosecutor if either were questioned in the matter or if they were otherwise informed of the allegations of the complaint by ODC.

(ROP Article 83)

## **Privilege and Immunity**

A complaint or communication alleging judicial or prosecutorial misconduct filed with the Office of the Disciplinary Counsel or information obtained through an investigation is privileged, except as to requests from the High Council.

The staff of the Council and the ODC and international experts having a contract with or being seconded to the Council are immune from civil liability for any conduct performed in the course of their official duties.

(LOHJPC Article 71)

## **Subpoena Process**

The High Council, including its disciplinary panels, has the power to issue subpoenas for the attendance of witnesses or for the production of documentary evidence, which shall be served in the same manner provided for under the code of civil procedure applicable to the locus of the action.

The Council, including its disciplinary panels, also has the power to punish the wilful failure to obey a subpoena, which shall constitute contempt of the Council, in the same manner provided for under the code of civil procedure applicable to the locus of the action.

Witnesses are entitled to payment of their expenses in accordance with the same terms as provided for in the code of civil procedure applicable to the locus of the action.

(LOHJPC Article 63).

## **Mandatory Collection of Information and Documentation**

If a party is unable to acquire information from a court, prosecutor's office or governmental body, a judge, Court President, prosecutor, Chief and Deputy Chief Prosecutor, lay judge, reserve judge or employees of courts and prosecutor's offices it may ask that the Council exercise its legal authority pursuant to Article 19 of the Law on the High Judicial and Prosecutorial Council, which gives the Council and its representatives access to all premises occupied by and documentation in possession of the courts and prosecutors.

(LOHJPC Article 19; ROP Article 89)

## **Joint Consent Agreements, Process**

The Office of the Disciplinary Counsel and a person against whom the complaint has been filed and his or her legal representative, if applicable, are permitted at any time to agree upon a voluntary disposition of the alleged disciplinary violations of which the judge or prosecutor is accused. The parties may agree as to which disciplinary violations the judge or prosecutor will admit, and on an appropriate measure. The parties file a Joint Consent Agreement for Finding of Disciplinary Liability reflecting the violations which the judge or prosecutor is admitting (the "Agreement").

The Agreement must be in writing, signed by the parties and will be filed with the High Council. The Agreement must contain

- a. a factual statement of the violations to which the judge or prosecutor admits and
- b. the agreed statement upon measure, if any.

The Agreement is forwarded to the President of the Council, who appoints a disciplinary panel to consider the Agreement. The panel can either accept or reject the Agreement by a majority vote. If the panel decides to reject the Agreement, it is to give reasons in writing for such rejection.

If the panel accepts the Agreement, the matter proceeds in the same manner as if the panel had made a finding after a hearing that a disciplinary violation had occurred, except that there is no appeal subsequent to the panel's acceptance of the Agreement.

If the panel rejects the Agreement, the fact that the parties had attempted to negotiate such an Agreement in voluntary resolution of the disciplinary violations and any admissions made by a party before the panel during the hearing on whether to accept the Agreement may not be used either by or against either party at any disciplinary hearing.

In the event that an Agreement is rejected by a panel, the ODC may initiate disciplinary proceedings against the judge or prosecutor named in the Agreement within ninety (90) days of the date of rejection of such Agreement.

All Joint Consent Agreements must contain a statement, signed by the respondent judge or prosecutor that he or she is aware that the Joint Consent Agreement is subject to the approval of the first instance disciplinary panel, and that such approval may be withheld at the discretion of that panel.

(LOHJPC Article 69)

A template for joint consent agreements is included as Appendix 9 to this Benchbook.

## **Limitation Periods for Initiating and Resolving Disciplinary Proceedings**

No disciplinary proceeding may be initiated against a judge or a prosecutor more than five (5) years after the date that the alleged violation occurred, or in respect of a criminal matter, no more than two (2) years after the date of the final and binding decision of the court in which the criminal proceedings occurred. This limitation period does not apply to alleged violations of Articles 56(19) or 57(19) of the Law on the High Judicial and Prosecutorial Council, which involve misrepresentations by judges and prosecutors in connection with applications for appointment and promotion.

The High Council is prohibited from initiating a disciplinary proceeding against a judge or a prosecutor more than two (2) year after the date upon which the Council received the initial complaint or information on the alleged violation.

Proceedings for determining disciplinary liability must be completed within one year from the date of the filing of a formal complaint before a disciplinary panel, unless upon a showing of cause that an extension is justified. (LOHJPC Articles 72, 73)

### **COMMENTARY 7: EXTENDING ONE-YEAR PERIOD FOR COMPLETING DISCIPLINARY PROCEEDINGS WHEN CONTINUANCES ARE GRANTED DURING HEARINGS**

Although it is not defined by the Law or the Rulebook, a objective and dynamic interpretation of the Law leads to the conclusion that the disciplinary proceedings are urgent. This reasoning is confirmed was confirmed by the Constitutional Court of BiH<sup>37</sup> in several cases. The one-year period for completing disciplinary proceedings is sufficient in most cases, however, this period is too short in certain, more complex cases. Also, even in less complex cases, disciplinary proceedings may be deferred, which may result in expiry of the statutory limitation period. Delays in disciplinary

37 Constitutional Court of BiH, Case No AP-4086/17, para 40

proceedings can result from repetitive requests for exemption of disciplinary panel members, the Office of Disciplinary Counsel and others, requests for rescheduling of the hearings, requests for introduction of new evidence, change of the attorney, obligations of the attorney in other hearings, changes in of disciplinary panel members, the absence of witnesses or expert witnesses without justified reasons, inefficient system of sanctioning the summoned witnesses or expert witnesses when they fail to show up, the initiation of criminal proceedings, detention, filing of indictments, hearings and obligations in other cases. To avoid manipulation of the system and unfairness, when continuances are granted or delays occur during the hearing, the one-year period for completing disciplinary proceedings is typically extended.

In order to obtain better insight in the length of disciplinary proceedings, it would be good to introduce quarterly reporting to panel chairs about the status of cases and problems with the implementation of proceedings, so that appropriate measures can be taken to ensure timely completion of disciplinary proceedings.

In addition, even after the High Council renders a final decision, the ODC should always file a motion for extension of the one-year time period if a judge or prosecutor files an appeal or challenge to the Court of BiH or the Constitutional Court of BiH against the final disciplinary decision, and should seek an extension until the matter is finally resolved by the two mentioned courts. If these courts revoke the Council's final disciplinary decision and order renewal of the disciplinary proceedings, the one-year time limit would have expired in most if not all disciplinary cases. The Law on the High Judicial and Prosecutorial Council does not specify an authority responsible to submit motions for extension of the statutory limitation period. Therefore, this motion does not necessarily have to be filed by the ODC, but the disciplinary panels can do it as well<sup>38</sup>. However, it is logical that the ODC requires the extension, because as a rule, disciplinary panel members only come to the High Council when hearings are taking place, and they spend the rest of the time at their workplaces at the court/prosecutor's office and are incompletely informed about all relevant facts. To prevent a judge or prosecutor avoiding disciplinary liability under these circumstances, the ODC always needs to initiate extension of the one-year time period in every of these cases.<sup>39</sup> In any case as the HJPC should discuss and decide on motions for extension<sup>40</sup>. These decisions should be well elaborated given the urgent nature of the disciplinary proceedings and the High Council should scrutinize such reasons in its decision. The Constitutional Court of BiH has in several cases<sup>41</sup> analyzed whether adopted reasons for decisions on extension are relevant and satisfactory in assessing if such extension led to violation the right to a trial within a reasonable time. In assessing if the length of the proceedings and the decision on extension are reasonable the Constitutional Court analyses the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute<sup>42</sup>.

38 Constitutional Court of BiH, Case No AP-3080/09, para 60

39 The Office of Disciplinary Council filed a disciplinary complaint against a judge on 30 June 2010. The final High Council decision no. 04-02-68-4/2011 was rendered on 12 May 2011, meaning within one-year time period. After that the judge filed an appeal to the Constitutional Court of BiH, which brought a Decision no. AP 4101/09 on 30 March 2012, by which it revoked the final High Council decision and ordered the Council to bring a new decision. The Council then rendered a new decision no. 04-02-2550/2012 on 03 July 2012, meaning 2 years and 4 days after the formal disciplinary complaint was filed. The judge filed an appeal to the Constitutional Court alleging that the statute of limitation had expired and that the disciplinary proceedings should be terminated. The Constitutional Court of BiH, in its Decision no. AP: 3344/12 of 05 September 2013 upheld the appeal of the judge stating that the time limit was not extended and was applicable, and ordered the High Council to render a new decision.

40 Constitutional Court of BiH, Case No AP-3344/12, para 33

41 See inter alia Constitutional Court of BiH, Case No AP-4086/17, para 42

42 Constitutional Court of BiH, Case No AP-3080/09, para 70

Some consideration should be given to providing an automatic continuance or tolling of the limitations period upon the filing of an appeal with the Court of BiH or the Constitutional Court.

## **Recording and Publishing Final Disciplinary and Termination of Mandate Decisions**

The High Council is required to maintain records on all pronounced disciplinary measures.

Disciplinary measures of removal from office are to be published in the Official Gazette of Bosnia and Herzegovina and disclosed on the Council web site.

Public reprimands, salary reductions, temporary reassignments to another court or prosecutor's office and demotions are to be published on the notice board at the premises of the Council, the web site of the Council and one of the daily newspapers.

In addition to the publication described above, a final decision on a public reprimand, salary reduction, temporary reassignment to another court or prosecutor's office, a demotion or removal from office is also delivered to the president of the court in which the judge or legal associate works or to the chief prosecutor of the prosecutor's office in which the prosecutor holds office.

A decision on the termination of mandate for incapacity is sent to the relevant judge or prosecutor, the president of the court or chief prosecutor and is published in the appropriate official gazette. The Council also informs the relevant ministry of justice.

(LOHJPC Article 74; ROP Articles 71, 105, 117 119)

## **Enforcement of Disciplinary Measures**

A pronounced disciplinary measure is enforced upon becoming final.

The High Council enters data on disciplinary measures that have been pronounced in the personal file of a judge, prosecutor or legal associate.

In the event that a disciplinary counsel withdraws a complaint or when a panel denies a complaint, records on the complaint are not entered in the personal file of a judge or prosecutor.

The disciplinary measure of a written warning, which shall not be disclosed, is enforced by way of delivery of the decision containing the pronounced measure to the respondent.

The disciplinary measure of a public reprimand is enforced by way of disclosure of the decision on the pronounced measures at the general session of the court or the prosecutor collegium session.

The disciplinary measure of a reduction in salary is enforced by the court president or the chief prosecutor of the court or prosecutors office in which the respondent holds judicial office, through the relevant service and shall upon the enforcement of the measure inform the Council in writing within 15 days.

The disciplinary measure of temporary or permanent reassignment to another court or prosecutors office is enforced with the taking up of office at the other court or prosecutors office.

The disciplinary measure of demotion of a court president to an ordinary judge or chief prosecutor to an ordinary prosecutor is enforced with the taking up of the office of judge or prosecutor.

The Council renders a separate decision regarding a decision pronouncing the disciplinary measures of temporary or permanent reassignment or demotion.

The disciplinary measure removal from office is enforced by way of serving the respondent with the decision containing the measure on the removal from office.

(ROP Articles 112, 113)

In addition to the steps described above, a final decision on a public reprimand, salary reduction, temporary reassignment to another court or prosecutor's office, a demotion or removal from office is also delivered to the president of the court in which the judge works or to the chief prosecutor of the prosecutor's office in which the prosecutor holds office. Pursuant to a decision of the High Council dated October 17, 2018<sup>43</sup>, upon receipt of a disciplinary sanction involving a judge of the court or the prosecutors office which he or she manages, the president judge or chief prosecutor is required to inform all of the judge or prosecutors about the disciplinary sanction that has been imposed and discuss with them the risks arising thereof. The court president or chief prosecutor is required to inform the High Council of its notification and advising of disciplinary sanctions as part of annual reporting.

## COMMENTARY 8: COURT PRESIDENT AND CHIEF PROSECUTOR'S DUTY TO INFORM JUDGES OR PROSECUTORS ON DISCIPLINARY MEASURE

The intent of the High Council's decision appears laudable, that is, ensuring that all judges and prosecutors are informed of disciplinary sanctions imposed against a colleague to prevent future misconduct by others. This is particularly true because other judges and prosecutors in the same court or office may have also engaged in or witnessed impermissible conduct by a colleague and may need to be advised of its impropriety. Unfortunately, the decision provides no guidance for court presidents and chief prosecutors about how the notification and discussion of the sanction is to take place. This responsibility is not without potential perils: the identity of the sanctioned judge or prosecutor is not to be revealed and possible inadequate commentary by a court president or chief prosecutor about the disciplined judge or prosecutor could become excessive and abusive. Is the court president or chief prosecutor permitted to circulate the decision (with identifying material redacted) or is more required? Also, the decision cites the requirement of Rules of Procedure of the High Judicial and Prosecutor Council Art. 112 and 113 that the measure of a public reprimand is to be made public at the general session of the court or collegium of prosecutors. May the court president or chief prosecutor wait for the next regular general session or collegium or is special scheduling required? To guide court presidents and chief prosecutors and to achieve consistency in the implementation of this decision, the High Council should issue guidelines on how court presidents and chief prosecutors can best comply with the decision providing consistency in its implementation.

43 HJPC Decision number 08-07-2-3318/2018.

## THE HEARING PROCESS

### Rights of Parties during Disciplinary Proceedings

Disciplinary procedures are governed by fairness and transparency. During the course of disciplinary proceedings, the judge or prosecutor concerned has the following rights that must be guaranteed in the Rules of Procedure for disciplinary proceedings adopted by the High Council:

- the right to be duly notified of the allegations of the violation and the supporting evidence, along with the right to respond in writing or to have a verbal statement recorded in writing;
- the right to a fair and public hearing within a reasonable time by an independent and impartial panel established by law. The press and public may be excluded from all or part of the hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the panel in special circumstances where publicity would prejudice the interests of justice;
- the right to assert the privilege against self-incrimination and to appear at any hearing and defend against the allegations with legal counsel of choice;
- the right that judgments shall be pronounced publicly and/or made public in some manner; and
- the right to appeal adverse decisions.

A judge or a prosecutor against whom disciplinary proceedings are held has the right to representation by legal proxy of his or her choosing for all phases of disciplinary proceedings.

(LOHJPC Article 68; ROP Article 87)

### Initiating Disciplinary Proceedings and Filing of Complaint, Content of Complaint

The Office of the Disciplinary Counsel initiates proceedings before the first instance disciplinary panel by filing a complaint if it believes that a judge or prosecutor has engaged in misconduct.

A disciplinary complaint is to contain:

- The name and surname, office held within the judiciary, title and address, telephone number, email address and other personal information of the judge or prosecutor against whom disciplinary proceedings are initiated as well as information regarding his or her legal proxy, if available;
- The alleged disciplinary violation;
- A factual description of the disciplinary violation, including the time, place and manner of perpetration;
- The provisions of the Law or other regulations that are to be applied;
- Motions for witnesses, expert witnesses, documents and evidence that is to be presented at the hearing.

(LOHJPC Article 67; ROP Article 84)

### Withdrawal of Complaint

The Office of the Disciplinary Counsel may withdraw a disciplinary complaint at any time prior to the beginning of the hearing. Subsequently, a disciplinary complaint may be withdrawn only with the consent of the first instance disciplinary panel and the individual against whom the complaint was filed.

The ODC may not file a new disciplinary complaint based on the same facts.

(ROP Article 84)

## Service of Complaint, Response to Complaint

The High Council delivers the disciplinary complaint to the judge or the prosecutor against whom disciplinary proceedings are being held before a first instance disciplinary panel, together with all accompanying attachments, by registered mail or personally in accordance with the provisions on delivery of the Civil Procedure Code.

A judge or a prosecutor against whom disciplinary proceedings are held or his or her legal proxy may respond in writing to the Council regarding the allegations of a disciplinary complaint or provide an oral statement on record within 15 days of the delivery of the disciplinary complaint. The first instance disciplinary panel must deliver a copy of the written response and/or the oral statement as recorded in writing together with all accompanying attachments to the Office of the Disciplinary Counsel within three days of receipt of the response.

If a judge or prosecutor decides to respond, the response to the allegations or the oral statement recorded in writing may include any defense that the judge or prosecutor against whom disciplinary proceedings are held deems necessary to be considered by the first instance disciplinary panel together with a motion for witnesses, expert witnesses, documents and other evidence that is to be presented at the hearing.

A judge or a prosecutor who is the subject of disciplinary proceedings is to state the address at which the Council and the ODC are to deliver documents and submissions.

If delivery to a judge or prosecutor has been properly carried out and he or she does not deliver a response within the deadline, the proceedings continue.

(ROP Articles 86, 87)

## Assignment to First Instance Disciplinary Panel

The assignment of a case for processing by a disciplinary panel is required to be carried out in accordance with a pre-determined order or by way of automated assignment.

(ROP Article 85)

## COMMENTARY 9: PANEL REVIEW OF DISCIPLINARY COMPLAINT

Although neither the Law on High Judicial and Prosecutorial Council, nor the High Council's Rules of Procedure stipulate the panel's obligations relating to the examination of disciplinary complaint, pursuant to the Civil Procedure Code, panels should review the complaint before they submit it to the respondent for response, and determine if the complaint is understandable and whether it contains all the elements referred to in Article 84 paragraph 2 of the High Council's Rules of Procedure<sup>44</sup>. When the panel finds that the complaint is incomprehensible or incomplete in that it does not contain all the elements stipulated by the aforementioned provision the panel should take necessary steps to ensure removal of the deficiencies.

44 Article 84 paragraph (2) of the HJPC's Rules of Procedure: A disciplinary complaint contains:  
Name and surname, position in the judiciary, title and address, telephone number, e-mail and other personal data of the respondent judge or prosecutor, and details of their proxy(-ies), if available;  
The alleged disciplinary offence;  
Description of facts, including time, place and method of commission;  
Applicable provisions of the Law or other regulations;  
Proposed witnesses, expert witnesses, documents and evidence to be presented at the hearing.

## Pre-hearing Conference

After the expiry of the deadline for response to the disciplinary complaint, the chairperson of the panel sets a preliminary hearing within a period of 15 days.

At the preliminary hearing, parties may give notice of any evidence they wish to present during the proceedings, state names and addresses for noticed witnesses and expert witnesses and bring any documents and items at the preliminary hearing they wish to use as evidence except for those which require a warrant or approval of a relevant authority.

At the preliminary hearing the panel decides what shall be deliberated at the main hearing and the disputed facts. The chairperson of the panel, in consultation with the other panel members, decides which evidence shall be accepted by the panel and presented at the main hearing.

New evidence is not to be accepted after the preliminary hearing, except in the event that there was justification for not presenting it at the preliminary hearing.

The date of the main hearing is to be determined at the preliminary hearing.

(ROP Article 88)

## COMMENTARY 10: PREHEARING CONFERENCES

Pre-hearing conferences should be planned meticulously, especially in complex cases where a significant number of evidentiary matters need to be discussed. This is particularly important since the Law or the Rulebook don't foresee any deferment or continuation of the pre-hearing conference nor is this allowed by the Civil Procedure Code.<sup>45</sup>

The chairperson of the panel should control the proceeding to make sure that only the relevant and acceptable evidence will be admitted, and to prevent unduly deferral of the proceeding due to consideration of irrelevant facts. Panels often admit all evidence proposed by parties in order to avoid any procedural objections by parties, although some of those proposals should not be accepted to some extent. This approach is also confirmed by the Constitutional Court of BiH<sup>46</sup> which confirmed that in deciding which witnesses to summon panels is not to summon all the witnesses if it is not considered that their statements would be relevant to the case. In doing so the disciplinary panel needs to make sure that both parties are treated equally to ensure equality of arms. Obviously, rejection of witnesses and other evidence should be elaborated in the decision of the panel and in particular is relevant to the case and whether they may offer useful information necessary for the evaluation of the case. It should be also noted that such decision made at the pre-hearing conference can be subject of appellate control by the second instance disciplinary panels.

Handling of evidence designated as secret and confidential and method of submission of such evidence to the respondent and their proxy constitute a separate issue. This issue is not regulated by the Law on the High Judicial and Prosecutorial Council, the Rules of Procedure or by the provisions of Civil Procedure Code governing this issue<sup>47</sup>. For these reasons, the method of handling and submission of such evidence before the beginning of the main hearing needs to be regulated.

45 Constitutional Court of BiH, Case No AP-4086/17, para 41

46 Constitutional Court of BiH, Case No AP-662/04, para 48

47 The Law on Civil Procedure before the Court of BiH:

Article 86 (1) The court may close the entire main hearing or a part thereof for the public, if the interests of keeping the official, business or personal secret, protection of a juvenile's interest, public order or morality interests require so.

Article 87 ... (3) The court shall warn the persons attending a closed hearing that they must keep as a secret the information they learn at the hearing, which is not publicly known, and inform them about consequences of revealing a secret.

Article 105 A person who would breach the duty of keeping the official or military secret by their testimony may not be examined as a witness until the competent authority relieves them of this duty.

## Summoning of Witnesses and Expert Witnesses by First Instance Panel

The first instance disciplinary panel summons a witness by way of a written summons, which is required to state:

- The name and surname of the witness and the name of one parent;
- The date, time and place of arrival;
- The case for which he or she is summoned and notice that he or she is summoned in the capacity of a witness;
- Notice of the consequences to non-compliance and information on the right to reimbursement of expenses in accordance with the provisions of the Civil Procedure Code.

A witness who due to age, illness or serious physical disability is unable to respond to a summons may be heard in his or her apartment or other place of residence. Prior to giving testimony, a witness is to be alerted to the duty to speak the truth and the consequences to giving false testimony in accordance with the provisions of the Civil Procedure Code.

An expert witness may be hired by the Office of the Disciplinary Counsel, a judge or a prosecutor against whom disciplinary proceedings are held as well as by the Panel. The expenses of an expert witness are borne by whoever hired the expert.

The First Instance Disciplinary Panel summons an expert witness by way of a written summons which is to state:

- the name, surname and profession of the expert witness;
- the date, time and place of arrival;
- the case for which he or she is summoned.

Prior to presenting his or her findings and opinion, an expert witness is to be alerted of the duty to present his or her findings and opinion conscientiously and in accordance with the rules of the profession as well as of the consequences to failing to show without justification in accordance with the provisions of the Civil Procedure Code and shall be informed of the right to awards and reimbursement of expenses in accordance with the provisions of the Civil Procedure Code.

(ROP Articles 90, 91)

## Expenses, Costs and Reimbursement

All parties bear their own expenses, including expenses for any witnesses and expert witnesses they may motion.

If disciplinary proceedings are concluded with a decision establishing that a disciplinary violation was not proven, on the motion of the judge or prosecutor against whom the disciplinary proceedings were held, the High Council will reimburse any justified expenses from the proceedings.

A first instance disciplinary panel renders a decision on the reimbursement of the respondent judge or prosecutor's expenses in writing. An appeal against the decision may be made to the second instance disciplinary panel within eight days of the delivery of the decision.

(ROP Articles 91, 106)

## Subsidiary Application of Civil Procedure Code

The provisions of the Civil Procedure Code in accordance with the place of perpetration of the disciplinary offence apply for all matters that refer to disciplinary procedure which are not covered by the Law or the Rules of Procedure. (ROP Article 79)

## Main Hearing

The main hearing, generally, is held at latest within 15 days of the holding of the preliminary hearing. The chairperson of the first instance disciplinary panel may decide to hold the main hearing immediately after the preliminary hearing.

The chairperson of the first instance disciplinary panel presides over the main hearing.

In the event that a party which has been properly summoned does not show up at the hearing, the panel may hold the hearing and render a decision. If the party has informed the panel of the reasons for not showing up and the panel deems the reasons to be justified, the panel may then postpone the hearing.

A judge or a prosecutor against whom disciplinary proceedings are held may have more than one legal proxy. The first instance disciplinary panel may limit oral presentation at the hearing to just one or two legal proxies.

The members of the panel, the parties and their legal proxies may ask questions to any person participating in proceedings before the panel. The chairperson of the panel decides on any objections of the parties that refer to questioning witnesses and expert witnesses.

In the event that evidence presented points to a change in the factual state compared to that which was presented in the disciplinary complaint or shows that a judge or prosecutor against whom disciplinary proceedings are held has committed an additional one or more disciplinary violations or committed a different disciplinary violation, the Office of the Disciplinary Counsel may seek: (1) that the disciplinary complaint is amended orally at the hearing, or (2) that the hearing is postponed in order to prepare a new disciplinary complaint or amend the existing one.

In the event that the panel allows the complaint to be amended, on the motion of the judge or prosecutor against whom proceedings are held, the panel may postpone the hearing in order for the judge or prosecutor against whom proceedings are held to prepare a response to the allegations of the amended complaint.

Hearings before the panel are audio recorded.

The order of events at hearings before the disciplinary panels is that the Office of the Disciplinary Panel first gives an opening statement, which is to include a brief presentation of the disciplinary complaint. Then, the judge or prosecutor against whom disciplinary proceedings are held or his or her legal proxy may give their opening statement;

Any party may ask for an audio recording from the main hearing. The audio recording shall be delivered to all parties within five days of filing the request.

(ROP Article 92)

## COMMENTARY 11: THE CONDUCT OF THE DISCIPLINARY HEARING:

Before opening the main hearing, the chairperson should determine if anyone is absent and the reasons for such absences and take any necessary steps to ensure the presence of anyone whose presence is required. After opening the main hearing, the chairperson should warn all present that the hearing is going to be audio-recorded.

The chairperson should make sure that the press and public are not excluded from the main hearing or any part of the hearing, unless under conditions as provided in the HJPC law. The panel may close the entire main hearing or a part thereof for the public, if the interests of keeping the official, business or personal secret, protection of a juvenile's interest, public order or morality interests require so. In cases where the general public is excluded, the chairperson may decide to authorize certain persons to attend the hearing but the chairperson is required to warn all present of their obligation to keep confidential the information they learn in the course of the hearing. The chairperson should remind participants of the official languages used in the proceedings and make sure that all documents offered by the parties are translated in one of the official languages, otherwise they would not be accepted as evidence. In certain circumstances the panel could decide to accept evidence which was translated verbally or via electronic mail when it is necessary due to the huge quantity of materials making sure that all the members of the Panel were made familiar with the contents of the said documents<sup>48</sup>.

The chairperson, in consultation with the other panel members, decides which new evidence is to be accepted after the preliminary hearing. Justifiable circumstances for accepting new evidence include a newly discovered document but the party must show that it was obtained after conclusion of the preliminary hearing, and only if relevant to the facts of the case. A similar principle is applied to presence of witnesses and expert witnesses and their possible participation in the disciplinary process.

The chairperson will limit the duration of the opening and closing statements of the parties so the time available is equally distributed. As a rule, the chairperson will require parties to provide written copies of their prepared statements at the hearing and then orally present just the most important aspects of it, so to avoid unnecessary repetition and delay. The Office of Disciplinary Counsel, as a rule, should not read the whole disciplinary complaint but should state that it adheres to all allegations from the complaint and then it should emphasize the most important facts and evidence proving the allegations. In the closing statement, because the ODC has the burden of proof in the proceedings, the ODC should respond to procedural issues raised by the respondent judge/prosecutor and identify what evidence proves which relevant fact. The ODC should also address the application of the sanctions standards if a sanction is being proposed, including identifying what are and what are not aggravating and mitigating circumstances. The ODC carries the burden of proof, and therefore the primary responsibility of the ODC once it confirms the disciplinary complaint is to finalize the proceeding by establishing the liability and imposing appropriate sanction. Members of panels change every few years, and they do not possess equal knowledge and experience in these issues as the ODC staff does, and the ODC should facilitate adoption of the right decision.

48 Constitutional Court of BiH, Case No AP-662/04, para 46

## Application of Rules of Evidence

All matters pertaining to the disciplinary proceedings not covered by the High Judicial and Prosecutorial Council Law and Rules of Procedure are regulated by the Civil Procedure Code applicable to the place where the disciplinary offence was committed. This includes the rules of evidence.

(ROP Article 79)

## Burden of Proof and Standard of Proof

The burden of proof lies with the Office of the Disciplinary Counsel.

(ROP Article 93)

### COMMENTARY 12: STANDARD OF PROOF IN DISCIPLINARY PROCEEDINGS

In the earlier Rules of Procedure, Article 51 provided that the burden of proof in disciplinary proceedings rested with Office of Disciplinary Counsel and the standard of proof in disciplinary proceedings was whether the evidence established that it was “more likely than not” that the charged disciplinary offense was committed. When the ROP were revised in 2013, the standard of proof was omitted. Article 93 of the current ROP provides only that “The burden of proof shall lie with the Office of the Disciplinary Counsel.”

While Article 79 of the ROP provides that the provisions of the Civil Procedure Code apply for all matters that refer to disciplinary procedure which are not covered by the Law on the High Judicial and Prosecutorial Council or the ROP.

The Civil Procedure Code, Chapter “Basic Principles”, establishes that “the court shall decide which fact shall be considered as proved, on the basis of free evaluation of evidence”, and that “the court shall conscientiously and meticulously evaluate each individual piece of evidence and all evidence in their entirety”. With respect to the standard of proof, each of the four Civil Procedure Code’s within BiH does not regulate the standard of proof. The laws only define that “if the court, based on the evaluation of presented evidence, cannot determine a fact with certainty, the court shall decide on the existence of that fact by applying the rules on burden of proof. But the burden of proof has not been precisely defined, and the provision that “each party shall be obliged to prove the facts on which s/he bases her/his claims”. Being a specific, “sui generis” proceedings”, and in light of previously cited provision of the HJPC’s ROP that the burden of proof is on the Office of the Disciplinary Counsel, it is logical to conclude that in the disciplinary proceedings against judges and prosecutors the principle of preponderance of evidence should be applied. Thus the principle of equality of arms is in place and the right to present evidence by the allegedly respondent judge or prosecutor becomes equal to such right of the Office of the Disciplinary Counsel.

A few disciplinary decisions discuss the standard of proof, as follows:

1. First Instance Decision no. 04-07-3-1418-12/2015 of 16 June 2015 – “... With regard to the account I of the disciplinary complaint, which was disputed by the defendant, the ODC by the presented evidence undoubtedly succeeded to prove actions and the occurrence described under account I. ...The Commission accepted the witness’s testimony from the main hearing as convincing and honest, logical and consistent to her initial statement, which was by no means put under a reasonable doubt ... After conducting the proceedings, the Commission concluded beyond any reasonable doubt that the defendant committed with the direct intent ...

2. Second Instance Decision no. 04-02-126-17/2015 of 13 May 2015 – “... this is due to a reason that evidence carried out in the first instance proceedings also according to evaluation of this Commission represents a reliable basis for conclusion that the defendant ....
3. The Whole Council Decision no. 04-02-2550/2012 of 03 July 2012 – “... The appellant’s objection is unfounded in regard to that the factual basis in the case was wrongly or incompletely established. The Council reasoned that from the evidence presented at the main hearing it unquestionably comes out that ....
4. Second Instance Decision no. 04-02-312-10/2011 of 05 April 2011 – “... The appellant’s objection that the disputed part of the decision violated a provision of Article 8 of CPC because the presented evidence were not evaluated as provided by that provision, is not supported by the content of elaboration of the disputed decision, because contrary to the appellant’s claim, and considering reasons from the elaboration, it undisputedly comes out that ... according to evaluation of this Commission the evidence presented in the first instance proceedings form a reliable basis for conclusion that the defendant ....

Some of these disciplinary decisions appear to utilize a rather high standard of proof for the ODC (“undisputedly”, “beyond a reasonable doubt”), the equivalent of the standard of proof in criminal proceedings. Other references to the proof are arguably less stringent (“a reliable basis for conclusion”). Because few of the decisions refer to any standard of proof, it is not clear which standard was used in those cases. To ensure fairness in the disciplinary proceedings, a standard of proof should be established. In the United States, for example, some disciplinary bodies use the civil standard of a preponderance of the evidence while others use the higher standard of clear and convincing evidence. Because disciplinary proceedings are not criminal in nature, the criminal standard of beyond a reasonable doubt is not used.

Determining the standard of proof in disciplinary proceedings remains one of the issues that should be regulated. Until then, the Council should take a position on which standards of proof are applied in disciplinary proceedings against judges and prosecutors.

## Admission of Violations Charged

In any phase of disciplinary proceedings, a judge or prosecutor against whom disciplinary proceedings are held may admit to committing one or more violations or all of the violations for which he or she is charged. In the event of an admission, other evidence shall not be presented.

The panel shall render a decision on the basis of the admission and the admission may be taken into consideration as mitigating circumstances when determining the disciplinary measure.

(ROP Article 95)

## Filing and Deciding on a Joint Consent Agreement on the Determination of Disciplinary Liability

The parties to the disciplinary proceeding may file a joint consent agreement with the High Council either when the disciplinary complaint is filed or after the filing of a disciplinary complaint.

In the agreement, the parties may agree as to which disciplinary violation or violations a judge or prosecutor shall admit to or may agree to determine disciplinary liability for other disciplinary violations than those stated in the complaint.

If an agreement is delivered together with the disciplinary complaint, the President appoints a Panel for Consideration of the Agreement. (In the event that this panel renders a decision denying the proposed agreement, this panel continues in the capacity of the first instance panel.)

If an agreement is delivered after the filing of a disciplinary complaint and after the establishment of the first instance disciplinary panel, that panel, in continuing the proceedings, takes action as would the Panel for Consideration of the Agreement.

A panel decides on an agreement at its session. Exceptionally, a panel may hold a hearing if it deems necessary.

When a panel decides on an agreement at its session, the decision is rendered within eight days of the establishment of the panel, if the agreement was filed with the complaint and the President appointed a panel to consider the agreement. If the agreement was filed after the disciplinary complaint was filed and a panel had already been appointed, the decision must be rendered within eight days of delivery of the agreement to the Council.

When a panel holds a hearing, it is held within 15 days of the establishment of a panel, if the agreement was filed with the complaint and the President appointed a panel to consider the agreement. If the agreement was filed after the disciplinary complaint was filed and a panel had already been appointed, the hearing is held within eight days of the delivery of the agreement to the Council. After the conclusion of the hearing and at latest within three days, the panel is to render a decision on the agreement.

A written decision on the acceptance or denial of an agreement shall be signed by the chairperson of the panel. If a panel accepts an agreement, then a separate decision is rendered accordingly. If a panel member does not agree with a decision, he or she prepares a dissenting opinion which forms a component part of the minutes on deliberation and voting.

A party does not have the right of appeal against a decision on the acceptance of an agreement. If a panel denies an agreement, its decision must state the reasons for its denial. The denial of an agreement by a panel does not prevent the parties from entering into an agreement again.

In the event an agreement is denied, the Office of the Disciplinary Counsel may within 90 days of the denial of the agreement file a motion for the continuation of disciplinary proceedings or initiate new disciplinary proceedings. Otherwise, upon the expiry of the deadline, it shall be deemed that the ODC has withdrawn the disciplinary complaint in accordance with the provisions of Article 84, paragraph (3) of the Rules of Procedure, which permit the withdrawal of complaint but provide that, after withdrawal, a new complaint cannot be filed on the same facts.

The ODC may also submit a motion for continuance of the proceedings in an agreement. After a motion has been filed by the ODC on the continuation of proceedings either as part of an agreement or if an agreement is denied, the panel is to continue proceedings.

(ROP Articles 96, 97)

## **Decisions of First Instance Panel**

Decisions of the first instance disciplinary panel are rendered by a majority vote of panel members and must be made in writing within 15 days of the conclusion of the main hearing.

Prior to the conclusion of a hearing the panel establishes the date when a decision is to be made available at the premises of the Council and informs the parties accordingly. A decision is deemed delivered to the parties on the day of its being made available at the premises of the Council.

A decision determines whether a judge or prosecutor is accountable for a disciplinary violation and if so, the sanction rendered. Such decision is to include:

- A description of the case and the names of the parties
- The list of established and dismissed disciplinary violations
- An overview of evidence presented, facts established and legal conclusions
- Elaboration of the measures pronounced.

Upon the conclusion of the main hearing and at latest within three days, the panel renders a decision with separate minutes compiled that are signed by the members of the panel. Any dissenting opinion by a panel member is to be stated in the minutes.

A decision in writing is signed by the chairperson of the panel. A panel member who does not concur with a decision prepares a dissenting opinion which is a component part of the minutes on deliberation and voting. The panel may in its decision, either ex officio or on the motion of one of the parties, correct a typing error, accounting error or any obvious error.

Exceptionally, a decision may be delivered in the manner as provided for in the provisions on the Civil Procedure Code that deal with delivery.

(ROP Article 94)

### COMMENTARY 13: THE CONTENT OF DECISIONS, NEED FOR REASONING

The confidence of judicial office holders and the public in the outcome of disciplinary cases is largely dependent upon the quality of the panels' and the Council's written decisions. Decisions should be detailed, addressing with specificity which counts are sustained and not sustained, citing evidence presented at the hearing and the reasoning for the outcome on each count, as well as the grounds for disciplinary liability as to each sustained count. If the outcome of a particular charge depended upon the credibility of witnesses, the decision should indicate which witnesses' testimony was deemed more reliable. If certain evidence was deemed not probative, that evidence should be identified. The decision shall also state whether a judge or prosecutor committed a disciplinary offence intentionally or negligently and the evidence and reasoning that supports that conclusion. The decision should contain a detailed discussion of the reasoning for any sanction imposed, addressing the relevant factors from the aspects set forth in Article 59 of the Law on the High Judicial and Prosecutorial Council and the sanctions guidelines adopted by HJPC. The decision should indicate what sanction, if any, is called for by the guidelines and whether the panel believes that that sanction should be imposed. When the sanction the panel imposes departs from the guidelines, the reasons for the departure should be clearly set forth. Since all decisions are potentially subject to review by other bodies, decisions which give detailed, clear and precise arguments which have led its conclusion leave no room for suspicion of any arbitrariness<sup>49</sup>.

Dissenting opinions, are issued when a member of a judicial authority disagrees with the opinion of the majority of other members, and they may be very important for the progress of the disciplinary system. Although the existing High Council Rules of Procedure foresee the possibility of writing the dissenting opinions,<sup>50</sup> they are not publicly announced because they constitute an integral part of the minutes on deliberation and voting which are not public<sup>51</sup>. It seems that it would be very

49 See inter alia Constitutional Court of BiH, Case No. AP-4836/11,

50 Article 94 paragraph (4) of the HJPC's Rules of Procedure: After closing of the main hearing, within three days at the latest, the panel shall make a decision, and special minutes shall be prepared thereof, to be signed by all panel members. A dissenting opinion of a panel member shall be recorded in the minutes. (6) A panel member who disagrees with a decision shall prepare a dissenting opinion, which shall be a consisting part of the minutes on deliberation and voting.

51 CPC before the Court of BiH: Article 314 (1) Special minutes on deliberation and voting shall be composed. If the first instance and second instance panels made unanimous decisions concerning the remedy in the proceeding, minutes shall not be developed, but the original decision shall include a note on deliberation and voting. (2) The minutes on deliberation and voting shall include

useful to amend the existing provisions of the Rules of Procedure so as to enable publication of dissenting opinions, following the role model of the Constitutional Court of BiH, where a dissenting opinion is enclosed as an annex to the decision.<sup>52</sup> Therefore members of the disciplinary panels with dissenting opinions should be encouraged to write them in the most detailed manner and attach them to the decision rendered by the panel.

A template for disciplinary decisions is included as Appendix 6 to this Benchbook.

## APPEAL

### Appeal of Decisions of the First Instance Disciplinary Panel

A party may file an appeal against a decision of a first instance disciplinary panel within eight days of the decision being made available to the parties at the premises of the Council.

An appeal is filed with the first instance disciplinary panel in writing and in sufficient copies for the panel and opposing party and shall contain:

- Designation of the decision against which the appeal is filed;
- A statement contesting the decision either in full or in part;
- The grounds and reasons for the appeal;
- The signature of the person filing the appeal;
- The address and telephone number where the panel may contact the party or deliver any writs, including information on the availability of a decision at the premises of the Council.

The grounds for contesting a decision are:

- due to violation of the rules of procedures that may have had an influence on the rendering of a legal and correct decision;
- due to incorrectly or incompletely determined state of facts;
- due to the incorrect application of substantive law;
- against a decision on the disciplinary measure that was rendered.

An appeal is not to contain any new facts or notice any new evidence unless the appellant can prove that with no fault of his or her own he or she was unable to present or motion it by the time of the conclusion of the main hearing.

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the course of voting and the adopted decision. (3) The minutes shall be signed by all panel members and the minutes taker. The minutes on deliberation and voting shall be sealed in a special envelope. Only the appellate panel shall be able to review the minutes when deciding on the remedy, and in that case, the minutes shall be sealed again in a special envelope, with indication on the envelope that the minutes have been reviewed.

- 52 Article 43 (Dissenting opinions): (1) Any judge who participated in the consideration of a case shall be entitled to present a dissenting opinion agreeing or disagreeing with the decision, or give a statement of disagreement, or join a dissenting opinion. (2) A judge has the right and duty to write and explain the dissenting opinion not later than 15 days from the date of receiving the decision, following professional and technical redaction of the text. (3) A dissenting opinion of a judge shall be enclosed with the minutes from a session and inserted in the respective case file, and the adopted decision shall read that the dissenting opinion has been issued. (4) The dissenting opinion shall be enclosed as an annex to the decision. The decision shall be published in official gazettes and the publication of the Constitutional Court, along with the dissenting opinion. (5) The decision shall not be dispatched until the dissenting opinion has been serviced, or until expiry of the timeline referred to in paragraph (2) of this Article. If the dissenting opinion has not been serviced before expiry of the timeline referred to in paragraph (2) of this Article, the decision shall be dispatched, and subsequently serviced dissenting opinion shall be inserted in the constitutional court file, and shall constitute an integral part thereof.

If an appeal is untimely, incomplete or inadmissible, the first instance disciplinary panel is permitted to dismiss the appeal by so ruling.

If the appeal is timely submitted, complete and admissible, the first instance disciplinary panel is required to deliver a copy of the appeal together with attachments to the opposing party in the proceedings within three days of receipt of the appeal. The opposing party may within eight days of receipt of the appeal deliver a response to the appeal. Responses that are late are not to be given consideration.

Upon the receipt of a response to an appeal or after the elapsing of the period for the delivery of a response to an appeal, the first instance disciplinary panel shall deliver the appeal and the response to the appeal, if filed, together with all other files to the second instance disciplinary panel within a period of eight days.

(ROP Articles 98, 99)

## **Second Instance Disciplinary Panel**

The second instance disciplinary panel applies the rules and procedures as determined by the Rules of Procedure for first instance disciplinary proceedings.

The second instance disciplinary panel renders decisions at sessions or on the basis of hearings held in accordance with the Civil Procedure Code.

(ROP Articles 100, 101)

## **Decisions of the Second Instance Disciplinary Panel**

If the second instance disciplinary panel determines that a hearing in accordance with the Civil Procedure Code pursuant to Article 101 of the Rules of Procedure is necessary, it sets a hearing within 15 days of receipt of the casefile that is subject to the appeal from the first instance panel.

If the second instance disciplinary panel decides at session, then the panel convenes a session, generally, within 15 days of receipt of the casefile that is subject to appeal from the first instance panel.

Upon the holding of the session or the conclusion of the main hearing and at latest within three days, the panel renders a decision and separate minutes are recorded accordingly which must be signed by all panel members. Any dissenting opinion of a panel member is to be stated in the minutes.

A decision in written form must be signed by the chairperson of the panel.

A panel member who does not agree with a decision prepares a dissenting opinion which forms a component part of the minutes on deliberation and voting. The panel may in its decision, either ex officio or on the request of one of the parties, decide to correct any typing errors, calculation errors or obvious mistakes.

Decisions of the second instance disciplinary panels must be made available to the parties at the premises of the High Council within 15 days of rendering. The day a decision is made available at the premises of the Council is deemed as the day the delivery of the decision to the parties was completed.

Exceptionally, decisions may be delivered in the manner as provided for with the provisions of the Civil Procedure Code that cover delivery.

(ROP Article 102)

## COMMENTARY 14: LIMITS TO THE AUTHORITY OF THE SECOND INSTANCE PANEL

The authority of the second instance panel is restricted by the Civil Procedure Code insofar as the disciplinary complaint filed by the ODC, evidence presented and the facts established by the first instance panel. Accordingly, the Constitutional Court of BiH<sup>53</sup> found in a case that the second instance panel violated the rights guaranteed under Article 6 of the European Convention on Human Rights when it accepted the facts established by the first instance panel but found the appellant responsible for an offence which was not encompassed by the disciplinary complaint. The Constitutional Court found that this resulted in a lack of notice to the appellant of the offense he was found to have violated and no opportunity to provide evidence and present his defense to that charge.

### Appeals to Second Instance Disciplinary Panel Decisions, Decisions of the High Council on Appeal

An appeal may be filed with the High Council against a decision of a second instance disciplinary panel only regarding the disciplinary measure pronounced. It must be submitted in writing and within eight days of delivery.

The Council President selects a member of the Council who did not participate in the decision-making process of the case to present the case to the Council prior to deliberation and voting. Members of the first and second instance panels are eligible to participate, unless their disqualification is required for a reason other than prior adjudication of the matter. Additional information on the case may be presented also by the relevant department of the Secretariat.

The Council decides on an appeal at its session. In deciding on an appeal, the Council may:

- dismiss an appeal as late, incomplete or inadmissible;
- deny an appeal as unfounded if it establishes the non-existence of reasons based on which the appeal was filed and in doing so upholds the decision of the second instance disciplinary panel;
- uphold the appeal and modify the decision of the second instance disciplinary panel regarding the disciplinary measure pronounced. If the Council does not confirm the measure of removal, the Council may impose any other measure provided for by this Law.

The decision of the Council is final. A judge or prosecutor who has been removed by decision of the Council may appeal to the Court of Bosnia and Herzegovina on one or both of the following grounds only:

that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, materially violated the procedures set out in the Law on the High Judicial and Prosecutorial Council;

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

Any appeal by a judge or prosecutor who has been removed by decision of the Council must be received by the Court of Bosnia and Herzegovina within three (3) weeks of the date of the receipt by the judge or prosecutor of the decision of the Council. Appeals made after that date are rejected by the Court of Bosnia and Herzegovina in a summary procedure.

(LOHJPC Article 60; ROP Articles 103, 104)

53 Constitutional Court of BiH, Case No. AP-2581/05.

## COMMENTARY 15: APPEALS TO THE COURT OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina is an independent state authority which provides guarantees of an effective remedy in accordance with Article 13 of the European Convention on Human Rights according to the Constitutional Court of Bosnia and Herzegovina.<sup>54</sup>

### SUSPENSION OF JUDGES OR PROSECUTORS PENDING CRIMINAL, DISCIPLINARY OR DISMISSAL PROCEEDINGS

#### Mandatory Suspension

A judge or prosecutor who is being held in pre-trial confinement must be suspended from duty. Such suspension lasts for the same length of time as the person's pre-trial confinement.

The suspension may be extended under the provision for discretionary suspensions if the judge or prosecutor is released from pre-trial confinement.

(LOHJPC Article 76)

#### Discretionary Suspension

A judge or prosecutor may be suspended from duty if:

- if a criminal investigation is initiated against the judge or prosecutor;
- if an indictment for a criminal act is brought by a competent prosecutor;
- if a procedure for his or her dismissal has been initiated;
- if a disciplinary proceeding has been initiated for a disciplinary violation, and the Council determines that disciplinary liability cannot be properly adjudicated without suspension of the judge or prosecutor during the proceedings; or
- if the performance of official functions is impaired because of his or her mental, emotional, or physical condition.

When a judge or prosecutor is suspended from duty due to the initiation of a criminal investigation or the pendency of an indictment for a criminal act, the suspension may last until the conclusion of the investigation or the criminal proceedings on such grounds. Upon the termination of those grounds for suspension, the suspension may be extended on other grounds such as the initiation of disciplinary or dismissal proceedings or impairment.

A motion to extend a suspension is filed in writing with the High Council.

(LOHJPC Article 77; ROP Article 111)

54 Constitutional Court of BiH, Case No. AP 147/09, para 80.

## Initiation of Suspension Proceedings

The first instance disciplinary panel of the High Council may suspend a judge or a prosecutor upon its own initiative, upon the request of the Office of Disciplinary Counsel, or upon the request of the Court President or the Chief Prosecutor who has authority over the judge or prosecutor in question.

A motion for suspension from office must be filed in writing with the first instance disciplinary panel. A motion for suspension may be filed together with a disciplinary complaint or separately, if filed by the ODC.

A motion for suspension must contain:

- The name and surname, the office they hold within the judiciary, the title and address, the telephone number, email address and other personal information of a judge or prosecutor against whom disciplinary proceedings are initiated as well as information on their legal proxy, if available;
- The facts due to which suspension is sought;
- The legal basis for suspension;
- Motions for witnesses, expert witnesses, documents and other evidence that is to be presented at the hearing or based on which the first instance disciplinary panel shall decide on the motion for suspension without a hearing.

A judge or a prosecutor against whom suspension proceedings are initiated has the right to representation by legal proxy of his or her choosing. The relevant Court President or Chief Prosecutor, upon learning of any of the events that are grounds for mandatory or discretionary suspension, is required to immediately forward the information to the Council.

(LOHJPC Article 78, ROP Articles 107, 109)

## Suspension Decisions and Appeals

The High Council and its disciplinary panels are to take urgent action in matters that relate to the suspension of a judge or prosecutor. In matters that relate to suspension, the Council and the disciplinary panels apply the rules applicable to disciplinary proceedings if there is no other applicable provision.

The first instance disciplinary panel decides on a motion for the suspension of a judge or prosecutor arising from the initiation of a criminal investigation, the issuance of an indictment for a criminal act or the initiation of dismissal proceedings based on the facts and evidence presented in the motion for suspension. The disciplinary panel may ask for additional information from the petitioner seeking suspension. The first instance disciplinary panel may decide to ask for a statement from the judge or prosecutor whose suspension is sought if the panel considers it to be of significance when deciding. The statement must be delivered at latest within 24 hours.

When delivering a decision on the suspension of a judge or prosecutor whose suspension is sought, the first instance disciplinary panel also delivers the motion seeking the suspension of the judge or prosecutor if the decision on the suspension of the judge or prosecutor was rendered without the delivery of the motion seeking the suspension of the judge or prosecutor, for response.

A judge or prosecutor has the right to file an appeal against a decision on suspension. An appeal does not stay the enforcement of the suspension decision. The appeal must be filed within three days of delivery of the suspension decision. The appeal shall be delivered to the petitioner for the suspension who may within 24 hours of receipt of the appeal file a response with the first instance disciplinary panel.

The first instance disciplinary panel, within three days of receipt of a response to an appeal or as of the day of expiry of the deadline for filing a response, must deliver the appeal, and any response, together with all other files, to the second instance disciplinary panel.

The second instance disciplinary panel decides on the appeal within three days from the day of receipt of the files from the first instance disciplinary panel. The decision of the second instance disciplinary panel in proceedings pursuant to a motion for the suspension of a judge or prosecutor is final.

The decision of the second instance disciplinary panel may be contested by filing a complaint with the Court of Bosnia and Herzegovina.

(LOHJPC Article 79; ROP Article 108)

### **Limits on Length of Suspension**

The suspension of a judge or prosecutor may be ordered for any period not to exceed the date of the finalisation of the disciplinary proceedings which form the basis of the suspension. The first instance disciplinary panel may, at its discretion, review a discretionary suspension of a judge or prosecutor, and after such review may amend, annul or affirm such suspension.

(LOHJPC Article 80)

### **Suspension of Salary and Other Emoluments**

In the event that a judge or prosecutor is found guilty of a criminal offence by a first instance court, the first instance disciplinary panel may order that the payment of salary and other emoluments to that judge or prosecutor be suspended, pending the determination of any appeal to a higher instance court.

In the event that any appeal is successful, the judge or prosecutor concerned shall be entitled to the immediate payment of all salary and other emoluments which were withheld.

(LOHJPC Article 81)

## **COMMENTARY 16: SUSPENSIONS**

Because of the severe impact of a suspension, it is recommended that the High Council require reporting to the panel ordering a suspension, at least on a quarterly basis, of the status of the circumstances upon which a suspension was imposed to permit the panel to determine whether to reconsider the suspension or to require further information regarding current status.

## **PROCEDURE IN THE CASE OF INCAPACITY OF JUDGE OR PROSECUTOR**

### **Incapacity of Judge or Prosecutor**

The Office of Disciplinary Counsel inquires into and presents cases before the High Council concerning the physical, emotional, mental, or other incapacity of a judge or prosecutor, requiring permanent or temporary suspension of a judge or prosecutor from official duty or termination of mandate.

The ODC has all rights and powers delegated under this chapter to inquire into and gather information concerning the disability of a judge or prosecutor. A judge or prosecutor has the right to counsel during termination proceedings.

In addition to the remedies of permanent or temporary suspension and termination of mandate, the Council has broad remedial authority. If a judge or prosecutor is relieved of duty, the Council may re-instate the judge or prosecutor upon a showing that the judge or prosecutor is no longer incapacitated.

In the event of being relieved of duty or termination of mandate, the judge or prosecutor retains all rights to pension, disability, or other benefits, as provided by law.

(LOHJPC Article 75; ROP Articles 109, 110, 119)

### **Discretionary suspension due to incapacitation Suspension Due to Incapacitation**

In case of incapacitation of judge or prosecutor as regulated in Article 75. Paragraph (1) of the Law on High Judicial and Prosecutorial Council due to physical, emotional, mental or other incapacity, the Office of the Disciplinary Counsel will present the case to the High Council to render the decision.

If the suspension lasts for six months, after the elapsing of the period the first instance disciplinary panel shall ex officio reconsider each separate case and if it determines that incapacitation still exist, extend the suspension.

(LOHJPC Article 75; ROP Article 110)

### **Termination of Mandate for Loss of Working Capacity**

One of the grounds for termination of the mandate of a judge or prosecutor is if it has been proven by the medical documentation that he or she has permanently lost the working capacity to perform his judicial or prosecutorial function. A decision on the termination of mandate based on these grounds is rendered by the High Council based on a legally binding decision from the relevant authority on the permanent loss of working capacity or the capacity to hold the office of judge or prosecutor.

The Council renders a decision on the termination of mandate for loss of working capacity which is to contain:

- a. the name, surname and position of the judge or prosecutor whose mandate is terminated;
- b. the date of the termination of mandate;
- c. the reason for the termination of mandate.

(LOHJPC Article 88; ROP Articles 117, 118)



# APPENDICES

## DISCIPLINARY OFFENSES FOR JUDGES

### Article 56. Disciplinary offenses for judges

1. violations of the duty of impartiality;
2. acting with bias or prejudice while carrying out official duties due to a party's race, colour, sex, religion, ethnic background, national origin, sexual orientation or social and economic status;
3. a patent violation of the obligation of proper behaviour towards parties in a proceeding, their legal representatives, witnesses, or other individuals;
4. disclosure of confidential information arising in the judicial function;
5. accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the judge, including also when the gift or remuneration merely creates the appearance of improper influence;
6. exploiting his or her position as a judge in order to obtain unjustified advantages for himself or herself or for other persons;
7. not disqualifying himself or herself from hearing a case when a conflict of interest exists;
8. neglect or careless exercise of official duties;
9. issuing decisions in patent violation of the law or persistent and unjustified violation of procedural rules;
10. unjustified delays in issuing decisions or any other act related to the exercise of judicial functions, or any other repeated disregard of the duties of the judicial function;
11. engaging in inappropriate communications with any parties to a proceeding or their representatives;
12. enabling a person not authorised by law to perform judicial functions;
13. interfering in the jurisdictional activity of a judge or prosecutor with the intention of obstructing their activities or demeaning them;
14. if he or she is sentenced to imprisonment for a crime, or if he or she is convicted of a crime which makes him or her unfit for judicial function;
15. making any comment, while a proceeding is pending in any court, that might reasonably be expected to prejudice or interfere with a fair trial or hearing, or failing to take reasonable steps to maintain and ensure similar abstention on the part of the staff at the court who are subject to his or her authority;
16. being engaged in activities that are incompatible with the judicial function;
17. failure, for an unjustifiable reason, to comply with decisions, orders or requests of the Council;
18. failure to respond to an inquiry pursuant to a disciplinary matter, unless for a justified reason;
19. if he or she provides false, misleading or insufficient information with regard to job applications, disciplinary matters, promotion or career development matters or any other matters under the competence of the Council;
20. failure to fulfil any mandatory training obligations or any other obligations imposed by law;
21. if he or she does not act in accordance with the decision on temporary transfer to another court;
22. behaviour inside or outside the court that demeans the dignity of judge; or
23. any other behaviour that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the judiciary.

## DISCIPLINARY OFFENSES FOR PROSECUTORS

### Article 57. Disciplinary offenses for prosecutors

1. violations of the duty of impartiality;
2. acting with bias or prejudice while carrying out official duties due to a party's race, colour, sex, religion, ethnic background, national origin, sexual orientation or social and economic status;
3. a patent violation of the obligation of proper behaviour towards the judge in a proceeding, any parties, their legal representatives, witnesses, or other individuals;
4. disclosure of confidential information arising in the prosecutorial function;
5. accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the prosecutor, including also when the gift or remuneration merely creates the appearance of improper influence;
6. exploiting his or her position as a prosecutor in order to obtain unjustified advantages for himself or herself or for other persons;
7. not disqualifying himself or herself from prosecuting a case when a conflict of interest exists;
8. neglect or careless exercise of official duties;
9. unjustified delays in performing any acts related to the exercise of prosecutorial functions, or any other repeated disregard of the duties of the prosecutor;
10. engaging in inappropriate communications with the judge or any parties to a proceeding;
11. enabling a person not authorised by law to perform prosecutorial functions;
12. interfering in the jurisdictional activity of a judge or prosecutor, with the intention of obstructing their activities or demeaning them;
13. if he or she is sentenced to imprisonment for a crime, or if he or she he is convicted of a crime which makes him or her unfit for the prosecutorial function;
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;
15. failing to carry out instructions of a superior prosecutor under whose authority they serve, unless the carrying out of such instruction would itself constitute a violation of law or this Article;
16. being engaged in activities that are incompatible with the prosecutorial function;
17. failure, for an unjustified reason, to comply with the decisions, orders or requests of the Council,
18. failure to respond to an inquiry pursuant to a disciplinary matter, unless for a justified reason;
19. if he or she provides false, misleading or insufficient information with regard to job applications, disciplinary matters, promotion or career development matters or any other matters under the competence of the Council;
20. failure to fulfil any mandatory training obligations or any other obligations imposed by law;
21. if he or she does not act in accordance with the decision on temporary transfer to another prosecutor's office;
22. behaviour inside or outside the court or office that demeans the dignity of the prosecutor;
23. any other behaviour that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the prosecutor

## PROHIBITION AGAINST INCOMPATIBLE FUNCTIONS

A judge or prosecutor is prohibited from engaging 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.

A judge or prosecutor is not to 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.

A judge or prosecutor is not to 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.

## PROHIBITION AGAINST PERFORMANCE OF PUBLIC, LEGAL, OR OTHER FUNCTIONS

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

A judge or prosecutor is not to be a member of an executive or supervisory board of public or private companies or other legal persons. A judge or prosecutor is not to perform any other duties that may interfere with the performance of judicial or prosecutorial function.

(LOHJPC Articles 82, 83)

## LIST OF INTERNATIONAL STANDARDS

- Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 and 40/146, 1985)
- Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (ECOSOC resolution 1989/60)
- Basic Principles on the Role of Lawyers (welcomed by General Assembly resolution 45/166, 1990)
- Guidelines on the Role of Prosecutors (welcomed by General Assembly resolution 45/166, 1990)
- Human Rights Council, Resolution 23/6, Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (2013)
- Commentary to the Bangalore Principles (Judicial Group on Strengthening Judicial Integrity, 2002)
- Measures for the effective implementation of the Bangalore Principles of Judicial Conduct (Judicial Group on Strengthening Judicial Integrity, 2010)
- A Guide to the Status and Role of Prosecutors (UN Office on Drugs and Crime & International Association of Prosecutors, 2014)
- The Universal Charter of the Judge (International Association of Judges, 1999)
- International Bar Association, International Code of Ethics (1954, latest version 1988)
- International Association of Judicial Independence and World Peace, Mount Scopus International Standards

- of Judicial Independence, 1998 (consolidated 2015)
- International Association of Judicial Independence and World Peace, Mount Scopus International Standards of Judicial Independence, 1998 (consolidated 2015)
- European Charter on the statute for judges and Explanatory Memorandum (Council of Europe, 1998)
- Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges. CDL-AD(2010)004
- Venice Commission Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service, CDL-AD(2010)040

## DISCIPLINARY SANCTIONS GUIDELINES CHECKLIST

### STEP ONE – DISMISSAL ANALYSIS – CHARACTERISTICS OF MISCONDUCT

Did the sustained charge(s) involve moral turpitude, dishonesty, fraud, corruption or concealment of a material fact or other offense so severe that it is clear that the judge or prosecutor is unfit or unworthy to hold office?

If yes, dismissal of the judge or prosecutor is the appropriate sanction.

[Specify the charge or offense that meets the criteria for dismissal]

Go to Step Six.

If not, go to Step Two.

### STEP TWO – DISMISSAL ANALYSIS – SERVICE AND DEMEANOR OF THE JUDGE OR PROSECUTOR

Has the judge or prosecutor previously received two or more disciplines?

If not, go to Step Three.

If yes, were mitigating circumstances relating to the current misconduct established at the hearing that were most compelling and clearly predominating? If so, dismissal may not be the appropriate sanction. [Identify the mitigating circumstances] Go to Step Three.

If compelling mitigating circumstances are not present, did the prior and current misconduct occur within the same time period? If so, dismissal may not be the appropriate sanction. [Cite the dates of all prior and current misconduct] Go to Step Three.

If there are not compelling mitigating circumstances and the prior and current misconduct did not occur within the same time period, dismissal is the appropriate sanction if:

there is a pattern of misconduct [Cite evidence]; or,

the prior and current misconduct demonstrate an unwillingness or inability to conform to ethical or professional responsibilities [Cite evidence].

If yes, go to Step Six.

### STEP THREE – SALARY REDUCTION ANALYSIS

Did the sustained charge(s) involve serious misconduct not warranting dismissal?

If yes, a salary reduction is appropriate. [Cite evidence]

If not, did the sustained charge(s) involve a pattern of misconduct?

If yes, a salary reduction is appropriate. [Cite evidence]

If not, has the judge or prosecutor previously received a public reprimand?

If yes, a salary reduction is appropriate. [Cite date of sanction and conduct that was sanctioned]

If the sustained charges did not involve serious misconduct not warranting dismissal or a pattern of misconduct and the judge or prosecutor has not previously received a reprimand, a salary reduction is not appropriate. Go to Step Four.

If a salary reduction is appropriate, were the sustained charge(s) for serious offenses that are deliberate?

If yes, a salary reduction of 25% or more for greater than 6 months should be considered. [Cite evidence of deliberateness]

If not, was there a pattern of misconduct?

If yes, a salary reduction of 25% or more for greater than 6 months should be considered. [Cite evidence of pattern]

If not, did the judge or the prosecutor have a previous salary reduction?

If yes, a salary reduction of 25% or more for greater than 6 months should be considered. [Identify date(s) of prior salary reduction and offense(s) that sanction was based upon]

If a salary reduction is appropriate, go to Step Six.

### STEP FOUR – PUBLIC REPRIMAND ANALYSIS

Did the sustained charges involve serious misconduct not warranting dismissal or a salary reduction?

If so, a public reprimand is appropriate. Go to Step Six.

If not, does the judge or prosecutor have a single prior warning, unless the prior warning was so remote in time and the current misconduct was not serious enough that imposing a public reprimand would be manifestly unjust?

If so, a public reprimand is appropriate. [Identify date(s) of prior reprimand and offense(s) that sanction was based upon.] Go to Step Six.

### STEP FIVE – WRITTEN WARNING ANALYSIS

Did the sustained charge(s) involve only minor misconduct and there was little or no injury to an individual, the public or the justice system and there is little likelihood of repetition by the judge or prosecutor?

If all three criteria are met, a written warning may be appropriate. [Cite basis for misconduct being considered minor, evidence of lack of injury and reason little likelihood of repetition.]

If all three criteria are not met, a written warning is not appropriate and a public reprimand should be considered.

## **STEP SIX – MITIGATION AND AGGRAVATION ANALYSIS**

Are there factors in mitigation that might warrant a departure from the standard?

If yes, cite factors from Article 59 (1) or (1)(A) in the Guidelines for Determining Disciplinary Measures and identify evidence that supports each factor.

Are there factors in aggravation that might warrant a departure from the standard?

If yes, cite factors from Article 59 (1) or (1)(A) in the Guidelines for Determining Disciplinary Measures and identify evidence that supports each factor.

# COMPLAINT TEMPLATE GUIDELINES, INFORMATIVE BROCHURE



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



Ured disciplinskog tužioca  
Ured stegovnog tužitelja  
Канцеларија дисциплинског тужиоца  
Office of the Disciplinary Counsel

## OFFICE OF DISCIPLINARY COUNSEL

### Instructions for Completing Complaint Form

Please read the following instructions carefully before completing the attached Complaint Form against a judge or prosecutor.<sup>44</sup>

1. Print or type all information except where your signature is required.
2. Provide as much information as you can about the alleged misconduct/unprofessional behavior or disability (impairment of performance of official function because of mental, emotional, or physical condition), including relevant dates, times, and places; identify known witnesses.
3. Attach copies of any relevant documents in your possession or clearly indicate which documents you believe contain evidence of the alleged misconduct or disability.
4. You may use additional sheets of paper, if necessary.
5. Sign and date the form and send it to the Office of Disciplinary Counsel at the address contained on this form.

The Office of Disciplinary Counsel does not have the authority to influence proceeding before a court or prosecutor's office or the results of a case, nor to change decisions of a court or prosecutor's office.

<sup>44</sup> The relevant laws governing the initiation of disciplinary proceedings do not require the use of a specific complaint form; however, the Office of Disciplinary Counsel recommends use of this form in order to facilitate proper review and resolution of a complaint.

OFFICE OF DISCIPLINARY COUNSEL  
COMPLAINT FORM

I. Personal Information

Your name:	
Address:	
Telephone number:	

2. Information of Possible Misconduct or Disability

I have information of possible misconduct/unprofessional behavior or disability on the part of:

Name of Judge or Prosecutor	Name of Court or Prosecutor's Office

3. Statement of Facts

3.1 When and where did this happen:

Date	Time	Location

3.2 If your information arises out of a court case, please answer these questions.

What is the case name:	
What is the case number:	
What kind of case is it? (Please check the appropriate box)	
criminal <input type="checkbox"/> civil <input type="checkbox"/> enforcement <input type="checkbox"/> extra-judiciary <input type="checkbox"/> administrative <input type="checkbox"/> other <input type="checkbox"/>	

3.3 What is your relationship to the case?

Please check the appropriate box.	
<input type="checkbox"/> plaintiff/petitioner	<input type="checkbox"/> defendant/respondent
<input type="checkbox"/> attorney for	
<input type="checkbox"/> witness for	
<input type="checkbox"/> other (specify)	

3.4 If you were represented by an attorney in this matter at the time of misconduct or unprofessional behavior of the judge or prosecutor, please identify the attorney(s):

Name:	
Address:	
Telephone number:	

3.5 Identify any other attorney(s) who represented you or persons involved in the case:

Name	Address	Telephone number

3.6 Identify, if possible, any witnesses to the conduct of the judge or prosecutor:

Name	Address	Telephone number

3.7 Describe below the details of what the judge or prosecutor did that allegedly constitutes misconduct/unprofessional behavior or indicates disability (attach additional paper if necessary).


3.8 List the documents, if any, which support your allegations. Submit with this form copies of any relevant documents in your possession.


I understand that a copy of this complaint and all documents attached hereto may be available to the judge or prosecutor who is the focus of this complaint.

I certify that all information submitted is true and correct to the best of my knowledge.

Signature:	Date:
------------	-------

Deliver this form to:  
Office of Disciplinary Counsel  
High Judicial and Prosecutorial Council  
Kraljice Jelene 88, 71000 Sarajevo, Bosnia and Herzegovina

## STIPULATION FOR DISCIPLINE BY CONSENT TEMPLATE

[STIPULATION FOR DISCIPLINE BY CONSENT TEMPLATE]

[NOTE TO USER: The information in standard type is proposed text; alternatives and possible additions, as may be appropriate, are set forth in brackets. Instructions to the drafter are set forth in italics.]

STIPULATION FOR DISCIPLINE BY CONSENT

(Rule of Procedure of the High Judicial and Prosecutorial Council, Article 96)

Case No. XX-XX-X-XXX-X/XXX

Pursuant to Rules of the High Council of Judges and Prosecutors, Article 96, [Judge OR Prosecutor] [Name of Judge or Prosecutor] of the [Name of Court or Prosecutor's Office] represented by counsel [Name of counsel] and Office of Disciplinary Counsel attorney [Name of ODC attorney] ("the parties") submit this proposed disposition of the disciplinary charges in No. XX. The parties request that the First Instance Disciplinary Panel for [Judges OR Prosecutors] resolve this matter by imposition of a [disciplinary measure].

The parties believe that the settlement provided by this agreement is in the best interests of the Council and [Judge] [Prosecutor] [Name] because, among other reasons, in light of the stipulated facts and legal conclusions, a [disciplinary measure] adequately protects the public and will avoid the delay and expense of further proceedings. [In addition,] [cite any additional reasons why resolution consent agreement is beneficial]

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged against [Judge] [Prosecutor] [Name] in Case No. XX.
2. The IST Instance Disciplinary Panel shall issue a [disciplinary measure] based on the agreed Stipulated Facts and Legal Conclusions set forth herein.
3. If the IST Instance Disciplinary Panel accepts this proposed disposition, the Panel's decision and order imposing [disciplinary measure] may articulate the reasons for its decision and include adequate explanatory language.
4. [Judge] [Prosecutor] [Name] waives any further proceedings and review in this matter, including disciplinary proceedings (Rules of the High Council of Judges and Prosecutors, Article 84, et seq.) and review by the Supreme Court of Bosnia and Herzegovina or by the Constitutional Court of Bosnia and Herzegovina.
5. The IST Instance Disciplinary Panel may reject this proposed disposition [and continue with the disciplinary proceedings.] If the Panel does so, nothing in this proposed disposition will be deemed to be admitted by [Judge] [Prosecutor] [Name]. Accordingly, it is hereby stipulated and agreed that the Panel shall issue a [disciplinary measure] on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions:

STIPULATED FACTS AND LEGAL CONCLUSIONS

[Judge] [Prosecutor] [Name] became a [judge] [prosecutor] of the [name of court or prosecutor's office] Court in [year].

Count One

[insert agreed upon facts as to Count One ]

[Count Two]

[repeat as to additional counts]

[At end of the facts for all charges, insert any comment by the judge or prosecutor about his/her conduct such as [Judge] [Prosecutor] [Name] expresses deep remorse, embarrassment and regret over [his] [her] actions and has made assurances that the conduct will not be repeated.]

[Judge] [Prosecutor] [Name] conduct violated the [cite all provisions of the judicial or prosecutorial code of ethics that were violated] and constituted [cite all disciplinary offenses].

#### Factors in Mitigation

[Cite any mitigating factors relevant to sanctions from Article 59 and the list of mitigating and aggravating factors in the Guidelines for Determining Disciplinary Measures, including any prior discipline of the judge or prosecutor]

#### Factors in Aggravation

[Cite any aggravating factors relevant to sanctions from Article 59(1) and the list of mitigating and aggravating factors in the Guidelines for Determining Disciplinary Measures]

#### Other Factors

[Consider discussion whether prior dispositions are consistent with the sanctions measure in this case or what disciplinary measure is indicated by the Guidelines for Determining Disciplinary Measures. If the Joint Consent Agreement does not seek the imposition of that measure or the proposed disciplinary measure is not consistent with that imposed in similar cases, consider discussing the reason for a different sanction in this case.]

#### Charges to be Dismissed

By this agreement, [Judge] [Prosecutor] [Name] is [stipulating to liability on all of the charged counts] [stipulating to liability on Counts XXXXX, but not Counts XXXXX. In the disciplinary counsel's opinion, [there is a reasonable possibility that the charge(s) will not be proved by the required standard of proof] [even if proven, the addition of the count(s) would not change the level of sanction in the case] [the burden of trying the case on the witnesses and their privacy is outweighed by a prompt disposition in light of the agreed-to sanction] and/or [cite other considerations].]

By signing this stipulation, in addition to consenting to discipline on the terms set forth, [Judge] [Prosecutor] [Name] expressly admits that the foregoing facts are true and that [he] [she] agrees with the stated legal conclusions.

Dated:

\_\_\_\_\_  
Disciplinary Counsel

Dated:

\_\_\_\_\_  
[Judge] [Prosecutor]

Dated:

\_\_\_\_\_  
Attorney for [Judge] [Prosecutor]

## TIMELINE JOINT CONSENT AGREEMENTS

PARTIES' FILING OF JOINT CONSENT AGREEMENT WITH COUNCIL



APPOINTMENT OF PANEL FOR CONSIDERATION OF AGREEMENT IF FIRST INSTANCE PANEL HAS NOT BEEN APPOINTED



REFERRAL OF JOINT CONSENT AGREEMENT TO PANEL



IF DECISION OF PANEL AT SESSION  
[within 8 days of establishment of panel or  
delivery of agreement to Council if first  
instance panel already appointed]



IF HEARING CONDUCTED BY PANEL  
[hearing to be held within 15 days of the  
establishment of a panel or within 8 days of the  
delivery of the agreement to Council if first  
instance panel already appointed]



ODC FILING OF MOTION  
FOR CONTINUATION OF  
DISCIPLINARY PROCEEDINGS  
OR INITIATION OF NEW  
DISCIPLINARY PROCEEDINGS  
[within 90 days of denial of a joint  
consent agreement]



DECISION OF PANEL AFTER HEARING  
[within 3 days of conclusion of hearing]



ODC FILING OF MOTION FOR  
CONTINUATION OF DISCIPLINARY  
PROCEEDINGS OR INITIATION OF NEW  
DISCIPLINARY PROCEEDINGS  
[within 90 days of denial of a joint consent agreement]

## DISCIPLINARY DECISION TEMPLATE/CHECKLIST

[NOTE TO USER: The information in standard type is proposed text; alternatives and possible additions, as may be appropriate, are set forth in brackets. Instructions to the drafter are set forth in italics.]

### INTRODUCTION

The [First Instance Disciplinary Panel for Prosecutors -OR- First Instance Disciplinary Panel for Judges] of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina comprised of [Prosecutor -OR- Judge] [Name of President of the Panel], and [Titles and Names of other members of the panel] as members of the Panel, presided over the disciplinary case against [Name of respondent prosecutor or judge], [Prosecutor -OR- Judge] of the [Prosecutor's Office of BiH, Name of Court -OR- Judiciary of BiH, Name of Court], hereafter "Respondent."

Disciplinary charges [and a motion to be held accountable] were filed by the Office of the Disciplinary Council ("ODC") on [date(s)], [case number]. The charges were specified on [date]. The charges concern disciplinary offenses under [Article 57 (x) (x) (x) --- list each charged subpart] [Article 56 (x) (x) (x) --- list each charged subpart]. In brief, [provide a brief summary of the circumstances of the charged offenses.]

The main hearing was held on [date(s)], attended by [name of prosecutor] on behalf of the Office of Disciplinary Counsel, [Prosecutor -OR- Judge] [Name] and [Name of counsel], counsel for the Respondent.

Having heard and considered the evidence and the arguments of counsel, the Panel issued the following:

### DECISION

[NAME OF RESPONDENT]

[Title] [ if applicable: (at the time of the disciplinary offenses)]

[HAS BEEN FOUND ACCOUNTABLE -OR- HAS BEEN FOUND UNACCOUNTABLE – OR- HAS BEEN FOUND ACCOUNTABLE IN PART AND UNACCOUNTABLE IN PART] for the following offenses, as follows:

[For each charged disciplinary count, indicate whether the charge was sustained or not]

[If applicable -- BY DOING SO, Respondent committed the disciplinary offense(s) under Article [57] [56] (x) [title of offense from the Article], etc.

And consequently, [the case is dismissed -OR- for the above disciplinary offense(s) pursuant to Article 58 (1)(c) and 59 of the Law on the HJPC of BiH, the Respondent has been imposed the disciplinary sanction of]

[SANCTION]

### REASONING

Respondent has been a [Prosecutor -OR- Judge] since [date]. [Set forth relevant biographical information such as any former prosecutorial or judicial positions; when admitted to the Bar of BiH.]

[Set forth any relevant pretrial motions or other procedural history after the filing of the disciplinary charges.]

COUNT ONE [Title of Offense from Article 56 or 57]

- Summary of allegations from the disciplinary charges
- Prosecutor/Judge's response; any affirmative defenses

- Panel's findings and conclusions
  - *Indicate whether facts are undisputed; if not, identify which facts are disputed*
  - *For any factual disputes, cite testimony or other evidence relied upon in determining facts, especially if one witness's testimony given more credit than another*
  - *If dispute as to applicable law, cite reason for adopting one interpretation over another*
  - *If count sustained, indicate whether conduct done deliberately or not*
  - *If count not sustained, indicate reason, i.e. facts not established by sufficient evidence, established facts do not constitute misconduct, affirmative defense established*

[For any additional count(s)--- Same as above for COUNT ONE]

[DISCIPLINARY SANCTION --- if any charge(s)sustained – consider Article 59 and the “Disciplinary Sanctions Guidelines Checklist”]

Factors in Mitigation and Factors in Aggravation

In accordance with Article 59 of the Law on the High Judicial and Prosecutorial Council [and the Disciplinary Sanctions Guidelines], the panel considered the following to be factors in mitigation and aggravation in this case:

[List each factor in mitigation considered by the panel]

[List each factor in aggravation considered by the panel]

[Analysis of precedent from other cases]

[If applicable, identify cases that support the disciplinary measure and distinguish cases that do not.]

Disciplinary Sanction

Based upon the requirements of Articles 58, 59, the panel determined to impose [identify disciplinary measure to be imposed]. [Provide any additional reasoning for the panel's selection of the particular sanction such as, “removal is appropriate because the conduct involved moral turpitude, dishonesty, fraud, corruption, concealment of a material fact or other offense so severe that it is clear that the judge or prosecutor is unfit to hold office” or “the respondent previously received a public reprimand and so a higher sanction is appropriate” or “there was a pattern of misconduct warranting more than a public reprimand” or “the sustained charge(s) involve only minor misconduct and there was little or no injury to an individual, the public or the justice system and there is little likelihood of repetition by the respondent and so a written warning appears appropriate”.]

A party may file an appeal against this decision, in the manner prescribed by the High Judicial and Prosecutorial Council Rule of Procedure 98, within eight days of the decision being made available to the parties at the premises of the High Judicial and Prosecutorial Council.

## AFFIDAVIT OF RESPONDENT [JUDGE] [PROSECUTOR]

### STIPULATION FOR DISCIPLINE BY CONSENT (Article 96)

Pursuant to Article 96 of the Law on the High Judicial and Prosecutorial Council, [Judge] [Prosecutor] [Name] submits the following affidavit of consent:

1. I consent to the imposition of a [disciplinary measure].
2. My consent is freely and voluntarily rendered.
3. I admit the truth of the charges in Count [indicate count(s)] of the disciplinary complaint dated [date] in case no. [case number] only to the extent specifically set forth in the Stipulation for Discipline by Consent.
4. I waive all further proceedings before the High Judicial and Prosecutorial Council and review by review by the Supreme Court of Bosnia and Herzegovina or by the Constitutional Court of Bosnia and Herzegovina.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [Date]

---

[Name of Judge/Prosecutor]

## TIMELINE FOR DISCIPLINARY PROCEEDINGS

COMPLAINT AGAINST JUDGE OR PROSECUTOR FILED WITH COUNCIL OR OFFICE OF DISCIPLINARY COUNSEL



PRELIMINARY CHECKING BY ODC



INVESTIGATION BY ODC



FILING OF DISCIPLINARY COMPLAINT BY ODC

[within 2 years of the filing of the complaint with ODC]



FILING OF JUDGE OR PROSECUTOR'S RESPONSE, IF ANY, TO DISCIPLINARY COMPLAINT

[within 15 days of the filing of the disciplinary complaint]



FIRST INSTANCE PANEL DELIVERS JUDGE OR PROSECUTOR'S RESPONSE TO ODC

[within 3 days of filing of response or when time to respond expires]

PANEL CHAIRPERSON SCHEDULES PRELIMINARY HEARING

[for date within 15 days]



PRELIMINARY HEARING HELD

[within 15 days of delivery of judge or prosecutor's response to disciplinary complaint]

MAIN HEARING SCHEDULED

[for date within 15 days]



MAIN HEARING HELD

[within 15 days of preliminary hearing]



PANEL RENDERS DECISION

[within 3 days of conclusion of main hearing]



WRITTEN DECISION OF PANEL ISSUED

[within 15 days of main hearing]



FILING OF APPEAL, IF ANY, OF DECISION OF FIRST INSTANCE PANEL

[within 8 days of written decision of first instance panel being made available to parties]



FIRST INSTANCE PANEL DISMISSES APPEAL

OR

PANEL DELIVERS APPEAL TO OPPOSING PARTY

[within 3 days of filing appeal]



IF PANEL DELIVERS APPEAL TO OPPOSING PARTY

RESPONSE TO APPEAL TO BE DELIVERED

[within 8 days of delivery of appeal]



FIRST INSTANCE PANEL DELIVERS APPEAL, RESPONSE AND ALL FILES TO SECOND INSTANCE PANEL

[within 8 days of delivery of response to appeal or upon expiry of time to respond]



HEARING ON APPEAL TO BE CONDUCTED OR APPEAL TO BE DECIDED AT SESSION

[within 15 days of delivery of appeal to second instance panel]



SECOND INSTANCE PANEL RENDERS DECISION ON APPEAL

[within 3 days of hearing or session]



DECISION TO BE MADE AVAILABLE TO ALL PARTIES



DEADLINE TO APPEAL SECOND INSTANCE PANEL DECISION

[within 8 days of delivery of decision]



DECISION OF COUNCIL ON APPEAL AT SESSION [The Council should decide on appeal within one year of filing of the disciplinary complaint, unless extended]



APPEAL BY RESPONDENT TO COURT OF BOSNIA AND HERZEGOVINA

[within 3 weeks of delivery of decision of High Council on appeal]

## TIMELINE FOR SUSPENSION PROCEEDINGS

MOTION FOR SUSPENSION OF JUDGE OR PROSECUTOR FILED WITH FIRST INSTANCE DISCIPLINARY PANEL



DELIVERY OF JUDGE OR PROSECUTOR'S STATEMENT TO FIRST INSTANCE PANEL, IF REQUESTED  
[within 24 hours of request]



SUSPENSION DECISION ISSUED [URGENTLY!]



DEADLINE FOR JUDGE OR PROSECUTOR TO APPEAL SUSPENSION DECISION  
[within 3 days of delivery of suspension decision]



FILING OF PETITIONER'S RESPONSE, IF ANY, TO APPEAL  
[within 24 hours of receipt of appeal]



FIRST INSTANCE PANEL DELIVERS APPEAL, RESPONSE AND ALL FILES TO SECOND INSTANCE PANEL  
[within 3 days of receipt of response to appeal or expiry of time to respond]



SECOND INSTANCE PANEL ISSUES DECISION ON APPEAL  
[within three days of receipt of file]

## PROPOSED LEGISLATIVE AMENDMENTS TO THE LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL

In 2018, as this Benchbook was being prepared, various amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina were under consideration. One of the major proposals would direct the High Council to prepare a Book of Rules on Disciplinary Liability that would regulate much of the process for hearings and appeals and other aspects of disciplinary proceedings rather than having those procedures contained in the Law on the High Judicial and Prosecutorial Council. Additional proposed changes are summarized here.

### Disciplinary Offenses

Various reports, including the Venice Commission 2014 Report on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina<sup>55</sup> and the European Commission's 2016 recommendations based on peer assessments, urged that some disciplinary offenses for judges and prosecutors be defined more precisely. In addition to more specific violations, the proposed amendments include a provision that would include violations of the Code of Ethics as disciplinary offenses, if not otherwise prescribed as a separate offense, so long as the violation is such that it violates the reputation and integrity of the judiciary. The proposed amendments also include specific grounds for disciplinary liability for court presidents and chief prosecutors.

### Disciplinary Measures/Sanctions

The proposed legislative changes would eliminate two disciplinary measures provided for under current law: the written warning and the temporary or permanent reassignment to another court or prosecutor's office. The amendments would clarify that appointment to another court or prosecutor's office does not preclude disciplinary liability for an offense committed in a previous judicial office, that cessation of a mandate in a managerial position also does not preclude disciplinary liability for an offense committed during that mandate and that imposition of criminal liability upon a judge or prosecutor shall not preclude the imposition of disciplinary liability for the same conduct, if such offense also represents a disciplinary offense.

The proposed amendments also contain a framework of legal consequences that would result from the imposition of a sanction, prohibiting the sanctioned judge or prosecutor from transfers or appointments to other positions for a set period of time, depending on the measure imposed. The amendments would extend the legal consequences of dismissal from office to a judge or prosecutor who resigns from office during the course of disciplinary proceedings. The legal consequences of the dismissal of a court president, chief prosecutor or deputy chief prosecutor would also be applied to a judge or prosecutor who resigns from a managerial position during the course of disciplinary proceedings.

The proposed amendments would also provide that disciplinary measures be expunged ex officio from the personal file of a judge or prosecutor within one year after the time limits set forth as the legal consequences of the various disciplinary measures, unless the judge or prosecutor commits another offense.

### Principles for Determining Disciplinary Measures

The proposed amendments would eliminate the prescription that dismissal is only to be used in cases where a serious disciplinary offense is found and the severity of the offense makes clear that the offender is unfit for

55 CDL-AD (2014) 008

office. Also, the amendments would eliminate the Council's ability to take an interim suspension into account to reduce the disciplinary measure or eliminate discipline altogether.

## **Appointment, Composition, Authority of Disciplinary Panels**

The present disciplinary system provides for hearings by a first instance disciplinary panel and a second instance disciplinary panel and an appeal to the High Council. The European Commission recommendations based on peer assessments in 2016 included simplifying the disciplinary procedure to have only two phases of proceedings: a first instance and appeal. The proposed amendments, consistent with the European Commission recommendations, would provide a hearing by the first instance panel and an appeal to the second instance panel. The second instance disciplinary panel could affirm, reverse or modify a decision of the first instance disciplinary panel. The appeal to the High Council would be eliminated.

The proposed amendments would also change the composition of the first and second instance disciplinary panels. Presently, both panels are both comprised of three members. In cases involving judges, a majority of the panel must be members of the High Council and a majority must be judges. In cases involving prosecutors, a majority of the panel must be prosecutors and a majority must be members of the High Council. The proposed amendments would permit only judges to serve as members of disciplinary panels involving judges and only prosecutors on panels in cases involving prosecutors. First instance panels would remain comprised of three members but the second instance panels would be expanded to five members. The amendments would require that only one member of the first instance panels and two members of the second instance panels be members of the High Council. The other panellists would be selected, in cases involving judges, from a list of judges proposed by courts in a periodic process set forth in the proposed amendments. In cases involving prosecutors, the other members of the panels would be selected from a list of prosecutors proposed by prosecutors. Judges and prosecutors who are not members of the High Council would be eligible for nomination as candidates for appointment to disciplinary panels as long as they had not been found liable in disciplinary proceedings and had received the performance evaluation of either "exceptionally successful" or "successful" in the performance of their duties. The amendments would also require that each panel in proceedings involving judges have at least one member from the same or higher level court as the respondent judge. In disciplinary proceedings involving prosecutors, each panel would be required to have one member from the same or higher level as the respondent prosecutor.

Under the current system, when an appeal is made to the High Council, members who served in the proceedings as panellists on the first and second instance disciplinary panels are permitted to participate in the proceedings before the High Council, unless they are otherwise disqualified. The proposed amendments would not permit a panellist from the first instance disciplinary panel to serve as a panellist on the second instance disciplinary panel in the same case.

## **Disciplinary Counsel**

Based upon the European Commission peer assessment recommendations in 2016, various amendments to increase the independence of the Office of Disciplinary Counsel were considered. These included lengthening the term of the Chief Counsel to six years, without the option of reappointment and giving the Chief Counsel complete authority over the administration and finances of the ODC. The amendments would also set requirements of six years and three years post-bar examination legal experience for appointment as the Chief Counsel and disciplinary counsel, respectively. To be appointed as a disciplinary counsel, a judge or prosecutor would be required to have a clean disciplinary record and a performance evaluation score of "exceptionally successful" or "successful". An additional change would establish a Professional Board (Collegium) within the ODC composed of chief disciplinary counsel, deputy chief disciplinary counsels and disciplinary counsels.

The Collegium would be responsible for considering objections from complainants to ODC's closing of their complaints.

### **Commencing an Investigation**

The legislative amendments would no longer permit the Office of Disciplinary Counsel to reject outright an incomprehensible complaint or a complaint lacking in detail, unless the complaint was from an anonymous source. ODC would be required to return the complaint to the complainant who would have eight days to complete the complaint. The legislative amendments would require ODC to dismiss outright complaints about a judge or prosecutor whose mandate had expired either before the complaint was submitted or after it was submitted and before processing of the complaint commenced.

The proposed amendments would also clarify the grounds for ODC issuing a decision not to file a request for the initiation of disciplinary proceedings after an investigation: (1) an insufficiency of evidence to prove the disciplinary offense, (2) the mandate of the judge or prosecutor expired during the investigation or, (3) the initiation of disciplinary proceedings is time-barred. The proposed amendments would require ODC to deliver notification of the decision not to initiate disciplinary proceedings to the complainant who would be permitted to file an objection with the Collegium of the ODC within eight days of receipt of the decision. Thereafter the Collegium would decide on the objection within 30 days of receipt.

### **Confidentiality**

The proposed legislative amendments would permit the judge or prosecutor who is the subject of the allegations to request only that information on a decision discontinuing a disciplinary investigation be made public, not to waive confidentiality as to all of the proceedings or actions prior to the Office of Disciplinary Counsel's filing of a formal complaint, as is permitted under current law.

The amendments would clarify that the High Council is only permitted to request information from ODC about complaints, investigations and initiated disciplinary proceedings for the purpose of conducting the appointment and appraisal procedure for judges and prosecutors.

### **Joint Consent Agreements, Process**

The proposed legislative amendments would require that the contents and implementation of joint consent agreements be regulated in the Book of Rules on Disciplinary Liability. The amendments would clarify, however, that a decision rejecting a joint consent agreement may not be appealed.

### **Limitation Periods for Initiating and Resolving Disciplinary Proceedings**

The proposed legislative amendments would shorten various limitation periods. Limitation periods based on when the alleged violation occurred, would be shortened from five years to three years. Limitation periods for a criminal matter would be shortened from two years to one year from the date the conviction becomes final. The amendments would also provide that the statute of limitations would stop running during the pendency of a criminal investigation or proceeding. The period for initiating a disciplinary proceeding against a judge or prosecutor after the Office of Disciplinary Counsel's receipt of the complaint or information about the offense would be shortened from two years to one year.

## **Enforcement of Disciplinary Measures**

The legislative amendments would transfer much of the regulation concerning enforcement of decisions to the Book of Rules on Disciplinary Liability. The amendments would provide that the enforcement of the disciplinary measure of salary reduction would become time-barred one year after the finality of the decision imposing the measure. As noted earlier, disciplinary measures would be expunged from the personal file of a judge or prosecutor within one year after the expiry of the time set as the legal consequence attendant to the imposed disciplinary measure, unless the judge or prosecutor commits another offense.

## **Rights of Parties during Disciplinary Proceedings**

The proposed amendments would affirmatively state that disciplinary proceedings are to be transparent and public. They would provide for a hearing to be closed or partially closed from the public under specific circumstances: (1) in the interest of morality, public order or national security of a democratic society, (2) when interests concerning a minor or the protection of the private life of the parties so require, or (3) when the panel believes it is necessary due to specific circumstances in which public presence would be harmful to the interests of justice.

The amendments would also require that data on disciplinary proceedings be available to the public for the duration of the disciplinary proceedings and that the public be informed of any disciplinary measures imposing dismissal or dismissal from office of a court president, chief prosecutor or deputy chief prosecutor. Information on a disciplinary decision finding a judge or prosecutor not liable for a disciplinary offense would have to be disclosed as requested by or with the consent of the judge or prosecutor subject to the proceedings. The proposed amendments would also permit the disclosure of disciplinary decisions, subject to removal of personal data, in accordance with rules as determined by the High Council.

## **Subsidiary Application of Civil Procedure Code**

The legislative amendments would provide that when issues related to disciplinary proceedings are not covered by the Law on the High Council of Judges and Prosecutors or by the Book of Rules on Disciplinary Liability, the provisions of the Criminal Procedure Code of Bosnia and Herzegovina would be applied, not the Civil Procedure Code, as the Law presently provides.

## **Mandatory Suspension**

The proposed amendments would require mandatory suspension from office when prohibiting measures had been imposed against a judge or prosecutor which rendered obstacles to holding office, in addition to when a judge or prosecutor was in pre-trial confinement. Mandatory suspension would also be required when an indictment was confirmed against a judge or prosecutor. The amendments would also require a presiding judge or prosecutor to notify the Council, without delay, concerning any pre-trial confinement, prohibiting measures or indictments.

## **Discretionary Suspension**

The proposed amendments would add further requirements to discretionary suspensions. The initiation of a criminal investigation would be grounds for suspension only if the criminal offense would render the judge or prosecutor unsuitable to hold the office. A judge or prosecutor against whom disciplinary proceedings were pending would not be suspended until a decision on removal from office without finality was rendered or if disciplinary liability could not be established unless the judge or prosecutor was suspended for the duration

of the proceedings or if the disciplinary proceedings involve an offense of such nature and gravity that the continued holding of office through the conclusion of the disciplinary proceedings would severely impede the reputation of the judiciary. A decision to suspend when a procedure to assess a judge or prosecutor's fitness to hold office was pending would require obtaining an opinion by a medical expert.

### **Termination of Mandate for Loss of Working Capacity**

The proposed amendments would amend these provisions relating to termination for loss of working capacity to cover only cases of permanent incapacity. Based on a proposal of the court president, the chief prosecutor or the ODC, the High Council could order a judge or prosecutor to initiate a procedure for assessment of the judge or prosecutor's medical fitness where there is justified doubt as to a permanent loss of capacity. If the judge or prosecutor failed to act on the Council's decision, the procedure for the assessment of medical fitness would be initiated by the court or prosecutor's office in which the judge or prosecutor holds office, with the court or prosecutor's office having the capacity of a party.





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## INTRODUCTION

This part of the document contains digests of decisions of disciplinary committee finding disciplinary responsibility of holders of judicial positions in line with the Law on the High Judicial and Prosecutorial Council of BiH.

The purpose of these digests is informative and is intended to inform holders of judicial positions and the members of disciplinary committees with the disciplinary responsibility and the integrity of the judiciary. At the same time, this document serves as a response to the EU Peer-Review Mission finding under which<sup>58</sup>: “All the disciplinary decision should be included in a compilation of jurisprudence -Praxis Manual-, and an analysis of sanctioning praxis shall also be conducted for each of the types of offenses” and that the “Judges and prosecutors should be familiar with the concrete ethical challenges and concrete instruments available to ensure integrity, including disciplinary jurisprudence<sup>59</sup>”.

The High Judicial and Prosecutorial Council of BiH is determined to update and publish this part of the document periodically to ensure that the disciplinary practice is available in the form of digests.

*DISCLAIMER: This digests are for information only and full positions on the disciplinary responsibility of judges and prosecutors are included in the decisions of the disciplinary committees. It should be also taken into consideration that the part of the Law on the High Judicial and Prosecutorial Council of BiH which regulates the disciplinary procedure was amended in 2005.*

## I IMPROPER CONDUCT

### I.1. Improper conduct of a judge in the court

#### **1** Year: 2014

Case No. 04-02-9-2/2014

Judicial office holder: Judge

Type of judicial institution: Court

Level of judicial institution: Basic Court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 point 22

Summary: As the adjudicating judge in a case, the respondent requested from an NGO representative who attended the trial in the section designated for public, to tell her (the respondent) the reasons why she filed a complaint against the respondent with the HJPC BiH. Since the NGO representative refused to give any explanations why she filed the complaint against the judge, the respondent ordered her to leave the courtroom several times repeating "get out", whereupon the NGO representative followed the order of the respondent and left.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

#### **1** Year: 2014

Case No. 04-02-437-8/2014

Judicial office holder: Judge

Type of judicial institution: Court

Level of judicial institution: The Supreme Court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 22 and 23 in conjunction with the rules defined under Articles 4.1, 4.2 and 4.16 of the Code of Judicial Ethics

Summary: In early morning hours, between 08:05 and 08:45, in her office on the first floor of the Court building, easily believing that nobody could see her from the outside, in the office desk placed in the vicinity of the window facing the street and the building that is parallel to the side of the Court building, lying undressed she performed some exercises. During the time, some people in the building across from the Court building were watching and taking some photos of her, whereupon these photos were published in the daily newspapers and electronic media.

Disciplinary measure: Salary reduction by 50% for a period of one year.

**1** **Year: 2008**

Case No. HJPC-02-0921-I 4052008

Judicial office holder: Judge and the President of the Court

Type of judicial institution: Court

Level of judicial institution: The Supreme Court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 point 22

Summary: Contrary to the Criminal Procedure Code, the respondent refused to sign the record on deliberation and voting, whereupon he also refused to sign judicial decision; he also addressed the Ministry of Justice making false statements on the disputable case, i.e. situation among the Panel members.

Disciplinary measure: Salary reduction by 15% for a period of three months.

**1** **Year: 2006**

Case No. DŽNT (judges) I/2006

Judicial office holder: Judge

Type of judicial institution: Court

Level of judicial institution: Basic Court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 40 paragraph I subparagraph 20 (behavior that demeans the dignity of a judge)

Summary: The respondent committed the disciplinary offence of improper conduct in the way that he tore apart the delivery note whereby the court president assigned him the casefile numbers upon urging of the parties and refused to accept the letter from the court president. Thereafter, on three occasions the respondent refused to sign delivery notes whereby the president of the court and secretary delivered official correspondence to him.

Disciplinary measure: Public reprimand

## **1.2. Improper conduct of a prosecutor in the prosecutor's office or court**

**1** **Year: 2018**

Case No. 04-07-6-207-I/2018

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

Summary: On the official premises of the prosecutor's office, in the office where he worked, the respondent allowed his female friend who came to pay a private visit to dress his robe and to take selfies wearing the robe, which she published on her Facebook profile.

Disciplinary measure:

Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2012**

Case No.: 04-02-2928-5/2012

Judicial office holder: prosecutor

Type of judicial institution: Prosecutor's Office

Level of judicial institution: Prosecutor's Office of BiH

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 paragraph I points 22 and 23 and violations of provisions 1.4 and 4 of the Code of Prosecutorial Ethics

Summary: The respondent committed the disciplinary offence of improper conduct of the prosecutor in the way that after the examination of a witness he ordered the investigator of the prosecutor's office to destroy the signed witness examination record in the presence of that person, whereupon the investigator did it on the same day in front of the prosecutor's office's building in the presence of the witness, his defense counsel and another person. Furthermore, the respondent made a document entitled: "General instructions" in which he named the chief prosecutor as the author of this document using the official memorandum of the prosecutor's office from the e-mail address of an insulting name, and distributed it electronically to the addresses of a large number of prosecutors and staff of the prosecutor's office, majority of whom received and read the e-mail. In this way, the respondent abused the official memorandum of the prosecutor's office, including the name and surname of the chief prosecutor. The respondent submitted this letter with inappropriate content to the police, to the attention of the police director.

Disciplinary measure Salary reduction by 10% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2012**

Case No. 04-02-193-19/2012, 04-02-193-23/2012

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: District Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

Summary: The respondent, as the prosecutor on duty, acted negligently in the exercise of her official duties, by failing to perform on-the-spot investigation upon receiving the information about violent deaths of two persons and the existence of grounds for suspicion that the gravest criminal offence against life and limb was committed - murder of two persons. The respondent gave a verbal authorization to inspectors to conduct the on-the-spot investigation in her absence making excuses that she was too far away and that she was exhausted as she had too many difficult situations during the week.

Disciplinary measure: Written warning that is not disclosed

**1** **Year: 2012**

Case No. 04-02-427-6/2012

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: District Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

Summary: In early September 2011, during the regular meeting of prosecutors of the district prosecutor's office where he performed the duty of a prosecutor, the respondent made inappropriate statements using the language inappropriate for a judicial office holder on the premises of the prosecutor's office in relation to one political party and its chairperson. Thereafter, the respondent expressed a negative attitude towards the statements of the members of the said party broadcast on TV in relation to the proceedings in the criminal case involving the criminal offense of murder of the vice-chairperson of that party, in which case the respondent as a prosecutor of the district prosecutor's office filed the indictment and represented the prosecution.

Disciplinary measure: Salary reduction by 10% for a period of nine months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2011**

Case No. 04-02-1665-4/2011

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: Prosecutor's Office of the District

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

(Also liable for: INAPPROPRIATE COMMENTS ON INSTITUTIONS, COLLEAGUES OR PARTIES)

Summary: The respondent committed the disciplinary offence of improper conduct of the prosecutor because as the prosecutor in the case, during the main trial in a criminal case arbitrarily and without asking or receiving a permission of the adjudicating judge, she left the main hearing and consequently prevented the resumption of the main trial. Furthermore, in another criminal case during the witness examination, dissatisfied with the manner in which the adjudicating judge conducted the proceedings, she directed multiple offensive words at the adjudicating judge hindering the work of the court and violating dignity of the court.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2009**

Case No. DCMZ (prosecutors) 8/2009

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

(Also liable for: SEXUAL HARASSMENT AND HARASEMENT; INAPPROPRIATE COMMENTS ON INSTITUTIONS, COLLEAGUES OR PARTIES)

Summary: The respondent committed the disciplinary offence of improper conduct in the way that he harassed female employees of the prosecutor's office by making inappropriate comments on their sex, sexual orientation and their physical appearance. The respondent otherwise engaged in improper conduct in the presence of a large number of employees, and his vulgar and improper comments to women were common in the prosecutor's office.

Disciplinary measure: Written warning that is not disclosed and a special measure of participating in the training program in the field of Code of Prosecutorial Ethics organized by CEST, following the Joint Consent Agreement for Finding of Disciplinary Liability

### **1** Year: 2008

Case No. DCSK (prosecutors) 25/2007, DŽSK (prosecutors): 3/2008, HJPC-02-I | 38-02062008

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57, points 6 and 22

Summary: The respondent committed the disciplinary offence of improper conduct of the prosecutor outside of the prosecutor's office or court in the way that he used the driver of the prosecutor's office for his private purposes during the working hours.

Disciplinary measure: Written warning that is not disclosed

## **1.3 Improper conduct of a judge outside of the court**

### **1** Year: 2006

Case No. DCVA (judges): 14/2006, DŽVA (judges) 1/2008, HJPC-02-I | 07-30052008

Judicial office holder: Judge

Type of judicial institution: Court

Level of judicial institution: The Court of BiH

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 point 22

(Also liable for: SEXUAL HARASSEMENT AND HARASSEMENT)

Summary: In a store, the respondent followed a female shop assistant working there to the basement, where he grabbing her hands and pulling her close held her tight and kissed her on the mouth despite of her resistance. Furthermore, the respondent harassed a female employee in her workplace by making a physical contact in the way that he put his arm around her shoulder and followed her into the Ladies' room located in the building of the institution. Having entered into the Ladies' room, the respondent tried to make a further physical contact

with her, trying to grab her by the hand and acting improperly. The respondent behaved improperly towards other female employees in the institution.

Disciplinary measure: dismissal

#### **1.4 Improper conduct of a prosecutor outside of the prosecutor's office or court**

##### **1 Year: 2012**

Case No. 04-02-178-8/2012

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

Summary: In the exercise of his prosecutorial duties, a day after the pronouncement of judgement in one case, the respondent came into an inappropriate contact with the father of the defendant in a catering facility in Sarajevo discussing the criminal case in which binding decision was not yet passed. Furthermore, on that occasion he also talked to the mother of the defendant on the phone and said "we have done it all, the only thing left to do is this, and then we will do this".

Disciplinary measure Salary reduction by 20% for a period of one year.

##### **1 Year: 2007**

Case No. DCBR (prosecutors) 4/2007 (prosecutors): 10/ 2007, HJPC-02-0261-12022008

Judicial office holder: prosecutor:

Type of judicial institution: Prosecutor's Office

Level of judicial institution: Entity-level Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 point 22

Summary: The respondent committed the disciplinary offence of improper conduct of the prosecutor outside the prosecutor's office or the court by violating construction regulations in the way that he incurred loan debts significantly exceeding his monthly salary and the legally allowed maximum debt- to- income ratio. This resulted in the inability of a large number of banks to collect monthly loan instalments from the salary of the respondent, wherefore these banks requested to collect the instalments from the respondent's loan guarantors through the prosecutor's office where these guarantors were employed. The respondent borrowed the amount of BAM 3,000.00 from his long-time acquaintance although based on the circumstances and his personal traits he was obliged to know that this person was crime prone.

Disciplinary measure: dismissal

##### **1 Year: 2005**

Case No not assigned

Judicial office holder: Chief Prosecutor

Type of judicial institution: Prosecutor's Office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57, points 22 and 23

Description: The respondent committed the disciplinary offence of improper conduct of the prosecutor outside of the prosecutor's office or court by violating the construction regulations in the way that, without an approval, he built a prefabricated wooden house in the river protection zone where the construction works are prohibited.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

## 2 PARTIALITY AND PREJUDICES

### **1** Year: 2017

Case No. 04-07-6-120-5/2017, 04-07-6-120-11/2017

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, points 1 and 3

Summary: Acting in a case before the municipal court, the respondent received an anonymous letter which he, because of its content, attributed to the injured party and her husband. The respondent thereafter decided to present the letter as evidence of the court, whereupon in the reasoning to the judgement he indicated that the injured party and her husband told hideous lies about him whereupon he rendered conclusions on their characters. The second instance court found that the presentation of an anonymous letter was unlawful evidence. Therefore, the second instance court remanded the case for retrial and ordered the disqualification of the respondent due to a reasonable doubt into his impartiality.

Disciplinary measure: Public reprimand.

### **1** Year: 2007

Case No. DCRK (judges) 10/2007

Judicial office holder: Judge and the President of the Court

Type of judicial institution: Court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 1 and 23

Summary: The respondent violated the principle of impartiality by filing an application before the Constitutional Court of BiH for an assessment of constitutionality of the collective agreement provision in the proceedings upon complaints filed by employees in the secondary school education in the Canton. In his application he requested that the relevant provision be pronounced as unconstitutional whereby he sided with the executive and legislative branches indicating that if granted these complaints would result in financial blockade of the

Canton and violation of public interest. With respect to the application the respondent ordered to the relevant departments of the cantonal court and recommended to the municipal courts presidents to temporarily suspend their work in the cases related to the payments of salary differences to employees in the secondary school education based on the collective agreement. Upon receiving a decision of the Constitutional Court rejecting the application as inadmissible, the respondent informed the presidents of departments and municipal courts of this decisions, whereupon the cantonal court continued working on these cases.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability.

### **3 DELAYS IN ISSUING DECISIONS OR OTHER PROCEDURAL ACTS**

#### **3.1 Unjustified delays in issuing decision of a judge or in other procedural acts**

##### **1 Year: 2018**

Case No.: 04-07-6-1563-4/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 10 and 19

Summary: Without good reason, the respondent delayed drafting of decisions in 21 minor offense cases for at least four months and up to one year, and he recorded 27 cases as closed, knowing that he had not drafted decisions for service at the time of such entry in the records.

Disciplinary measure: Salary reduction by 20% for a period of four (4) months, following the Joint Consent Agreement for Finding of Disciplinary Liability

##### **1 Year: 2017**

Case No.: 04-07-6-2271-7/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent failed to take legally prescribed actions toward completion of enforcement procedures in five enforcement cases for six months, and up to three years.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2017**

Case No.: 04-07-6-390-4/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent delayed issuance and drafting of the judgement for at least one year and seven months, although the Civil Procedure Code lays down that the court will always consider the need for urgent resolution of labor disputes. In another case, the respondent delayed issuance and drafting of the judgement for three years and one month. In one case, when the motion to repeat the proceedings was filed, the respondent failed to submit the case to a higher court for one year and ten months, although the Civil Procedure Code stipulates that the first instance court will submit such motion and a response to the motion, if any, to the second instance court within eight days at the latest. In one case, the respondent failed to decide on a motion to restore status quo ante for two years and five months.

Disciplinary measure: Salary reduction by 10% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2017**

Case No.: 04-07-6-532-5/2017

Judicial office holder: legal officer

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Contrary to the instruction of the second instance court and to the provisions of the Civil Procedure Code which lay down that a preparatory hearing should be scheduled immediately upon receiving the second instance decision i.e. that a hearing for the main trial should be scheduled within 30 days of the date of receiving the second instance decision, the respondent took no action in the case for almost eight months.

Disciplinary measure: Written warning that is not disclosed.

**1** **Year: 2017**

Case No.: 04-07-6-553-1/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent delayed actions in 29 cases that were reviewed by the disciplinary counsel. In six labor disputes, the respondent failed to schedule and conduct a preparatory hearing, although as the adjudicating judge she was to take urgent action in proceedings relating to employment relations, whereas in 21 civil cases, having received responses to civil actions, she failed to schedule and conduct a preparatory hearing.

Disciplinary measure: Reprimand letter which is not publicly announced, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2017

Case No.: 04-07-6-1363-7/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8 and 17

(Also responsible for: FAILURE TO COMPLY WITH DECISIONS, ORDERS OR REQUESTS OF THE COUNCIL)

Summary: In May 2011, the respondent was assigned a civil case which was included in his case resolution plans for 2011, 2013, 2014, 2015 and 2016, and he failed to conduct the proceeding without delay and to complete the case, by omitting to take any actions in the case in 2011, 2012 and 2014, while he took one action in 2013, 2015 and 2016 each, although in the same period when this case was covered by the backlog resolution plans, he resolved between 49 and 77 new civil cases per year, which were initiated in the same year and were not backlog cases or included in the plans, thus significantly violating the principle of priority backlog resolution by the age of case.

Disciplinary measure: Public reprimand

**1** Year: 2017

Case No.: 04-07-6-301-2/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

(Also responsible for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: The respondent concluded the main hearing and informed the parties that the judgement would be served to them within the legal time limit. According to the CMS records, the respondent then drafted the judgement and accidentally cited a wrong case number on it, which resulted in wrong recording of the judgement and failure to timely serve the judgement to the parties; he only served the judgement when urged by the assistant prosecutor, with one year and four months delay.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-30-3/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: Acting in two minor offense cases, the respondent failed to schedule a hearing in a timely manner, within a time period of 11 and 13 months of the establishment of case file and case assignment respectively, and she delayed drafting of court decisions for five and six months respectively, which significantly prolonged the proceedings. Such untimely actions by the respondent resulted in absolute expiry of statutory limitation period for minor offense proceedings in those cases before the cases were submitted to a higher court to decide on appeals against court decisions.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-1501-8/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: In a criminal case, after issuance of conviction sentencing the defendant to two months in prison, when the sentence became final, the respondent failed to issue an order on enforcement of the two-month prison sentence for four and a half years, which resulted in relative expiry of statutory limitation period for execution of the criminal sanction, and the proceeding was suspended.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-1196-14/2016, 04-07-6-1196-18/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8 and 17

(Also responsible for: FAILURE TO COMPLY WITH DECISIONS, ORDERS OR REQUESTS OF THE COUNCIL)

Summary: The respondent failed to take required measures to conduct proceedings in a criminal without delay and thus prevent the expiry of statutory limitation period for prosecution, despite the age of the case, its inclusion in backlog resolution plans for several years and the level of threat against the protected object specified in the indictment, which constitutes careless exercise of judge's duty in this case. Without good reason, the respondent failed to follow the HJPC's request - instruction to adjudicating judges to submit to the HJPC, via court presidents, the decision on expiry of statutory limitation period for prosecution and information about reasons which led to the expiry.

Disciplinary measure: Reprimand letter which is not publicly announced

**1** **Year: 2016**

Case No.: 04-07-6-2264-8/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: Without good reason, the respondent delayed drafting of decisions in 110 labor disputes for minimum two months and up to one year and five months, despite the fact that these are urgent cases.

Disciplinary measure: Salary reduction by 30 percent, for a period of ten months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-2683-12/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8, 9 and 10

(Also responsible for: ISSUING DECISIONS IN PATENT VIOLATION OF THE LAW OR PERSISTENT AND UNJUSTIFIED VIOLATION OF PROCEDURAL RULES)

Summary: The respondent caused delay without good reason and violated rules of the proceeding in three civil cases, of which one was not resolved even after 24 years, the second one after eight and a half years, and the third one even after 11 years of the complaint filing date.

Disciplinary measure: Salary reduction by 50% for a period of eight months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-2707-5/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: For a period longer than 4 years, the respondent failed to issue orders inviting convicts to serve their prison sentences, which resulted in relative expiry of statutory limitation period for criminal sanctions in three criminal cases.

Disciplinary measure: Salary reduction by 20% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-1255-4/2016

Judicial office holder: judge and court president

Type of judicial institution: court

Level of judicial institution: higher commercial court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: Acting in a case, the respondent drafted a decision two years and 11 months after the hearing, and ordered service of the decision to the parties in the proceeding only seven months of the decision making date.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-07-6-85-3/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: higher commercial court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: For two years and six months, acting in three minor offense cases, the respondent failed to take necessary actions towards case completion in a timely manner, which resulted in absolute expiry of statutory limitation period for minor offense procedure in all cases.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2016**

Case No.: 04-7-6-1934-6/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 Of the Law on HJPC BiH:

Article 56 subparagraph 10

Summary: Acting in three civil cases, the respondent delayed drafting of judgments for one year and six months in two cases, and for nine months in one case.

Disciplinary measure: Salary reduction by 20% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2015**

Case No. 04-07-3-2966-7/2015

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: Basic Court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES

Summary: In one case wherein the hearing was concluded, the respondent made a decision on the motion to impose prohibiting measures with an eight-month delay. In addition, the respondent failed to produce a written decision in three cases with a delay of five months up to two years and in two cases she failed to deliver the complaint for response to the adverse party for nine months and one year respectively.

Disciplinary measure: Salary reduction by 20% for a period of six months following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** **Year: 2015**

Case No. 04-02-707-2/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: In the period from two months to one year and four months, the defendant in the sixteen minor offence cases unduly delayed drafting the decision on the minor offence and issuing orders for service of the decision to the parties for a period of at least two months to one year and four months, resulting in the expiry of the statute of limitations for prosecution.

Disciplinary measure: Salary reduction by 10% for a period of three months, following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** Year: 2015

Case No. 04-02-173-2/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: In one enforcement case, the respondent returned the case to the District Court on two occasions failing to act upon the order of that court to perform the reconstruction of the casefile, which he did only after receiving the third order. In three enforcement cases, following the filing of objection against the enforcement decision the respondent delivered the objection to the adverse party for response only after ten months up to one year and ten months.

Disciplinary measure: Salary reduction by 20% for a period of six months

**1** Year: 2015

Case No. 04-02-707-2/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 9

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES

Summary: In the decision-making procedure for expunging of the suspended sentence in one case, the respondent failed to carry out the necessary checks and collect the data on whether there are any criminal proceedings pending against the convicted person for a new criminal offense committed prior to the expiring of the time-limit for expunging of the sentence, and he also failed to conduct a hearing of the prosecutor and the convicted. After issuing a decision on expunging of the suspended sentence, the respondent further violated procedural rule by including the clause on finality of the decision whereas the appeal time limit did not yet expire. On the same day when the decision on expunging the suspended sentence was issued, the same person was sentenced in another case before the Basic Court to a suspended sentence for the criminal offence of violent behavior which carries the imprisonment sentence between three months and three years, in which no prior criminal records of the defendant was considered as a mitigating circumstance.

Disciplinary measure: Salary reduction by 10% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2015

Case No. 04-07-3-3049-5/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: The respondent unduly delayed taking procedural actions in two enforcement cases requiring urgent actions of the court for at least one year and nine months because she failed to deliver enforcement decision to banks for their enforcement. The respondent exceeded the time limit for deciding on the motion for enforcement for a period of one to four years, and unduly delayed making decisions on objection, and in one case she issued a decision after four years and five months. Following a decision declaring the lack of territorial jurisdiction of the court in two cases, the respondent failed to transfer the case to the competent court for action for a period of at least four years, even though she was obliged to do it immediately and no later than within three days.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** Year: 2015

Case No. 04-02-577-2/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: Over the period of four years, in 17 enforcement cases contrary to the principle of urgency of enforcement proceedings the respondent failed to undertake further actions in these cases in order to complete the enforcement proceedings and thus caused delays of at least nine months and up to four years and five months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** Year: 2014

Case No. 04-02-3328-5/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: During the period between five and nine years, the respondent failed to take actions aimed at the completion of the proceedings in 23 cases assigned to him and thus he acted with neglect in the exercise of his judicial duties in these cases.

Disciplinary measure: Salary reduction by 10% for a period of six months, following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** Year: 2014

Case No. 04-02-521-37/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: The respondent, who had previously performed prosecutorial function, failed to undertake a single procedural action in 48 cases in the period between four years and seven years, except in one case in which he issued an order for conducting the investigation. In 25 of these cases relative statute of limitations expired.

Disciplinary measure: Salary reduction by 5% for a period of two months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2014

Case No. 04-02-41-11/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: As the adjudicating judge in six cases of the Basic Court, one of which was a labor dispute, which require urgent actions the respondent delayed rendering the judgements for at least three months up to one year and eight months.

Disciplinary measure: Salary reduction by 20% for a period of six months

**1** Year: 2014

Case No. 04-02-2157-4/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent unduly delayed in drafting decisions in ten civil cases for a period exceeding one year and eight months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2014**

Case No. 04-02-2271-9/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent, contrary to the principle of urgency of enforcement proceedings, delayed in undertaking actions required by the law in 17 cases for seven months up to three and a half years.

Disciplinary measure: Salary reduction by 20% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2014**

Case No. 04-02-282-5/2014, 04-02-282-10/2014, 04-02-282-14/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

Summary: Acting in 11 criminal cases, the respondent unduly delayed drafting of decisions by exceeding the deadline for drafting judgment stipulated by the CPC for a period of at least five years and seven months up to six years and six months.

Disciplinary measure: Permanent transfer to another court and Salary reduction by 20% for a period of six months.

**1** **Year: 2013**

Case No. 04-02-3345-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: Acting in two cases, the respondent exceeded the time limit for issuing and drafting a written judgment for more than six months, that is, less than nine months, by failing to inform the court president thereof, and he also failed to inform the parties about the postponed date of the rendering of judgment. In one of these cases, the respondent issued the order for service of the judgment to the parties two months following the issuing and drafting of the judgment.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-3795-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: In a period of about three and a half years, acting in three minor offence cases, the respondent made decisions after expiration of eight months to one year and 11 months from the date when the oral hearing ended, thereby exceeding the deadline for issuing of the decision. The delay of the respondent in the decision-making process was crucial for the expiry of statute of limitations period for the minor offence proceedings against the defendant in these cases.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-3927-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Contrary to the Civil Procedure Code, the respondent failed to take any procedural action in one case for a period exceeding six years. In another case, the respondent exceeded the deadline for issuing and drafting a judgment for more than seven months, and failed to inform the court president on the reasons thereof.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-1402-5/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent as adjudicating judge in one criminal case and 23 civil cases of the Basic Court, delayed in rendering and drafting of court decisions.

Disciplinary measure: Salary reduction by 20% for a period of eight months, following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-1320-4/2013

Judicial office holder: the court president

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Failures of the respondent resulted in the expiry of the statute of limitations period in three different criminal cases. Aware of the consequences of her failures, the respondent requested the out of hearing panel to suspend the proceedings against the defendants in all three cases.

Disciplinary measure: Salary reduction by 5% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-278-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: Following the pronouncement of the judgement in May 2008, the respondent wrongly inserted the casefile in the file of another case, which was subsequently dispatched to the court register. Thereafter, the defendant scheduled the main hearing for August 2009, which she did not hold because she noticed that the judgement had been published earlier. The respondent drafted a judgment two years and eight months from

the date of the pronouncement of the judgment, and thereby exceeded the deadline for drafting of judgement stipulated under the CPC and failed to inform the court president of the reasons thereof.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-7-3/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In one enforcement case for a period of at least six years the respondent unreasonably delayed the proceeding by failing to submit the judgement debtor's objection against enforcement decision to judgement creditor for response for almost 12 months despite of several interventions by the judgement debtor's proxy. The respondent continued to delay the proceedings in this case and submitted the response to the objection to the judgement creditor with nearly a ten-month delay. In the same case, the respondent ordered that the file be delivered to the District Court, with a nearly nine-month delay from the date of lodging of the appeal; upon completion of the appellate proceedings and issuance of the second instance decision, instead of taking further actions in this case, the respondent archived it, although the enforcement proceeding was not completed. Furthermore, in another civil case upon revision the respondent delayed submitting the casefile to the Supreme Court for more than seven months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2013

Case No. 04-02-8-6/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: Acting in five cases, the respondent exceeded the deadline for issuing and drafting judgments for a period between five months and one year and nine months, thereby violating the legal obligation of notifying the court president on exceeding the deadline in all cases.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** **Year: 2013**

Case No. 04-02-2248-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: Acting in 31 criminal cases the respondent exceeded the time limit for drafting judgments for at least six months up to two years, and in all cases violated the legal obligation of notifying the court president on exceeding the deadline for drafting of judgments.

Disciplinary measure: Salary reduction by 20% for a period of one year, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2013**

Case No. 04-02-2481-13/2013

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: The respondent, acting as the preliminary hearing judge in a criminal case, after the first defendant entered his plea in August 2009, only in January 2013, the case was referred to the judge of the same court to schedule the main hearing. Since the case was referred less than two months before the expiration of the time limit required for expiry of the absolute statute of limitations for prosecution, the time limit expired in the next stage of the case.

Disciplinary measure: Written warning that is not disclosed.

**1** **Year: 2012**

Case No. 04-02-2972-8/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

Summary: The respondent, contrary to the Law on Enforcement Procedure, failed to undertake the procedural acts stipulated by law in eight enforcement cases for a period exceeding one year and 11 months. In three out of eight cases, the respondent failed to act on the order of the court president to promptly commence working in the cases, one of the three cases was related to the enforcement of the decision of the Constitutional Court

of BiH ordering the court to immediately take action and finalize the proceedings. In addition to the foregoing case, the respondent failed to comply with the Decision of the Constitutional Court of BiH in another case.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2012

Case No. 04-02-837-7/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: As the adjudicating judge, the respondent delayed drafting and delivering court decisions to parties in five minor offence cases for a period exceeding two months. In these cases, the respondent presented the dates of the conclusion of the oral hearing as the dates of the issuing and drafting of the decision, although upon conclusion of the oral hearing, he delayed issuing a decision for at least one month and eight days. Acting in the above manner, in rendering, drafting and delivering of a decision, the absolute statute of limitations period expired for minor offence proceedings in two out of five cases, while in other cases, by exceeding the legal time limits for rendering, drafting and delivering of the decision to the parties, the respondent significantly limited the rights of the parties to file legal remedies which they intentionally failed to file in order to prevent the expiry of absolute statute of limitations during the further course of proceedings.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2012

Case No. 04-02-1885-4/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Acting as a judge in the case upon receiving the decision of the second instance court revoking the first instance judgement and remanding the case to the first instance court for a retrial, the respondent failed to undertake any procedural action in order to end the repeated proceedings for a period of four years and six months, although the case, based on its stage, required urgent actions.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2012**

Case No. 04 -02:-349-

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Acting as the adjudicating judge in the criminal case of the first instance court for more than five years, the respondent failed to act on the order of the second instance court to request delivery of the Supreme Court's Decision to the injured party-subsidary prosecutor revoking the second instance court decision and remanding the case to this court for retrial. Acting as the adjudicating judge in the criminal case the respondent failed to take further actions to finalize the case for more than two years.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2012**

Case No. 04-02-2970-8/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

Summary: Acting in two minor offence cases and following the conclusion of the oral hearing, the respondent failed to render and draft court decision for a period exceeding one year and 11 months, resulting in the expiry of the absolute statute of limitations for the proceedings in both cases.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2012**

Case No. 04-02-177-7/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

Summary: For at least 11 months, the respondent failed to make court decisions in 28 civil cases, in five of which he failed to issue judgements contrary to the Civil Procedure Code, and he also failed to inform the president about the reasons for delays in drafting decisions and failed to inform the parties about the postponed date for drafting the judgement. Upon order of the court president to immediately embark on preparing court

decisions in the above cases, the respondent drafted decisions in three cases within two months, while in ten cases he ante-dated the judgement and its delivery to parties, although the judgments were not actually drafted on the date. In three labor disputes requiring urgent action under the law, the respondent unduly delayed the proceedings in such a way that upon receiving the response to the complaint by the defendants, he failed to undertake procedural actions for a period exceeding two years and eight months. For one year and eight months, the respondent unduly delayed the proceedings in a civil case. Upon the conclusion of the main hearing and after informing the parties that the written judgment would be delivered by mail, he delayed in rendering, drafting and delivering a court decision for seven months, and also failed to inform the president of the court and the parties on the reasons thereof. The respondent drafted the judgement only upon the order of the president of the court and ante-dated judgement although the judgement was not actually drafted on that date.

Disciplinary measure: Salary reduction by 20% for a period of 12 months.

**1** Year: 2012

Case No. 04-02-1240-7/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES

Summary: The respondent unduly delayed issuing and drafting of judgments in ten commercial cases and their delivery to the parties. The respondent failed to inform the court president of the reasons for exceeding the legal time limit for drafting of these judgments. The respondent failed to timely inform the parties or their legal representatives on the delay in drafting of these decisions. The respondent also failed to submit regular monthly reports on work to the court president.

Disciplinary measure: Salary reduction by 20% for a period of eight months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2012

Case No. 04-02-1358-15/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Upon receiving a notification from the district prosecutor's office not to assume criminal prosecution in one criminal case, the respondent failed to issue a decision on suspension of investigation for more than four years and ten months. Thereupon, the respondent failed to act on the appeal against the decision to suspend investigation for a period exceeding two years and four months of the date of lodging of the appeal.

Disciplinary measure: Public reprimand

**1** Year: 2012

Case No. 04-02-1498-9/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Acting as a judge of the enforcement department, the respondent resolved a total of 44 out of 368 backlog cases whose resolution is foreseen under the backlog resolution plan, that is, he implemented 11.96% of the Plan. The respondent also delayed conducting actions in seven cases for a period between six months and two years, including two cases where the Constitutional Court of BiH in its decision found violation of the constitutional right of the judgement creditor to a fair trial within a reasonable time.

Disciplinary measure: Public reprimand

**1** Year: 2012

Case No. 04-02-1999-4/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: In one case wherein a decision was rendered finding the plaintiff's complaint withdrawn, the plaintiff filed a motion to restore the status quo ante. The respondent failed to take a single procedural action for one year and nine months, or more precisely, the respondent neither scheduled a hearing nor decided on the plaintiff's motion to restore the status quo ante, and thereupon she did not continue with the proceedings on the appeal against the decision on withdrawal of complaint within legal time limit.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** Year: 2012

Case No. 04-02-2886-5/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Acting in three minor offence cases, the respondent significantly exceeded the time limit for submitting the decision on minor offence and violated the obligation to take urgent action upon reports (minor offence

orders), and delivered the decision on the minor offence to the relevant authority only one year and two months and one year and nine months from the date of their issuance.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2012**

Case No. 04-02-2901-5/2012

Judicial office holder: deputy chief prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: Prosecutor's Office of BiH

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: Acting in a case upon issuing the order on conducting investigation, the respondent failed to render the final prosecutorial decision for the next five years whereupon she issued an order to suspend the investigation against the suspect wherefore the Constitutional Court of Bosnia and Herzegovina in its Decision on Admissibility and Merits found the violation of the suspect's constitutional right to a trial within a reasonable time.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** **Year: 2012**

Case No. 04-02-727-4/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent unduly violated the rules of procedure and unduly delayed drafting of judgment and other acts related to the exercise of judicial duties in six civil cases.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2012**

Case No. 04-02-645-10/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 9 and 10

Summary: In one labor dispute requiring urgent resolution under the law, the respondent unduly delayed proceedings. Furthermore, the respondent failed to act upon instructions of the higher-instance court and issued judgements on four occasions without holding preliminary hearing or main hearing although in its decision the second instance court ordered so. In this way the actions of the respondent resulted in unjustified delays of proceedings.

Disciplinary measure: Salary reduction by 10% for a period of ten months.

**1** Year: 2011

Case No. 04-02-395-5/2011, DCBSK (judges) 2/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: district court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Following the main hearing the respondent rendered a judgement and even though she was required to draft and deliver a judgement within 30 days, she failed to take a single action in this case for the next five years. It was only after she learned that the casefile was misplaced, acting upon the urgencies the party that the respondent undertook some actions to find the casefile, whereupon she drafted a judgement and issued the order for its delivery.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2011

Case No. 04-02-27-5/2011 disciplinary case: DCDK (judges) 1/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent unduly delayed in drafting decisions in two criminal cases for one and a half months up to one year and a half respectively.

Disciplinary measure: Salary reduction by 5% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2011

Case No. 04-02-1862-4/2011 of 15 July 2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: Between January 2011 and March 2011 the respondent scheduled preliminary hearings and main hearings in twenty-six civil cases from 2010 and 2011 which were neither urgent nor were they, based on the date of initial act, due for action, failing to commence working in 20 cases from 2008 and 2009 as they belonged to the "backlogs" under the backlog resolution plan. In the foregoing period the respondent failed to proceed in five labor disputes requiring urgent action. Furthermore, the respondent delayed in drafting and delivering of judicial decisions in ten civil cases that he presented as closed in CMS system. The respondent failed to inform the parties and the court president thereof.

Disciplinary measure: Salary reduction by 10% for a period of three months, following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** Year: 2011

Case No. 04-02-322-12/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 9 and 10

Summary: In two labor disputes requiring urgent actions under the law, the respondent unduly delayed in the way that, upon receiving decisions from the second instance court revoking the judgements and remanding the cases to the first instance court for retrial, he failed to undertake procedural actions for the period exceeding two years and one year respectively. Furthermore, the respondent acted in contravention with the Civil Procedure Code rendering judgments without conducting new civil proceedings as ordered in these second instance court decisions. In addition, upon the conclusion of the preliminary hearing in which a motion to terminate proceedings was filed, the respondent failed to act in this case for one year.

Disciplinary measure: Public reprimand

**1** Year: 2011

Case No. 04-02-149-4/2011 disciplinary case: DCMR (judges) 18/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: In breach of the civil proceedings rules and negligent behavior in the exercise of official duties, the respondent as a civil judge unduly delayed proceedings in six cases.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** Year: 2011

Case No. 04-02-3288-4/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent failed to issue decisions in ten enforcement cases for a period between one year and 5 years; she also delayed undertaking other actions in these cases. Furthermore, she delayed issuing decisions in seven enforcement cases for a period between seven months and three and a half years.

Disciplinary measure: Reduction in salary by 10% for a period of two months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2011

Case No. 04-02-3303-6/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: As the adjudicating judge in a criminal case the respondent delayed criminal proceedings by failing, without any reason, to schedule and hold the main hearing on two occasions for at least two years and seven months. Furthermore, the respondent, upon receipt of the information from the prosecutor's office that the prosecutor could not attend the scheduled main hearing, he failed to record in the case file if the scheduled hearing took place or if it was postponed; he also failed to commence working in the case for a period of one year and two months.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2011

Case No. 04-02-3757-5/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: As the preliminary hearing judge in a criminal case the respondent failed to issue decision confirming or rejecting the indictment for one year and three months.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** Year: 2011

Case No. 04-02-3647-4/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: The respondent, as the adjudicating judge in a criminal case, unduly delayed criminal proceedings for around four and a half years. In this case the respondent scheduled a total of 13 hearings of which she held only five, while other hearings were delayed for more than 30 days due to the non-appearance of the duly summoned defendant. The respondent secured the presence of the defendant at the main trial by bringing him in on as many as six occasions, although she could secure his presence by ordering custody as it was evident that the defendant intentionally avoided coming to the trial. Furthermore, for a period exceeding 11 months during which the casefile was held by the expert for psychiatric evaluation of the defendant, the respondent failed to schedule the main hearing or insist that the case be sent back from the expert evaluation.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2011

Case No. 04-02-122-3/11, DCMM (judges) 15/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: district court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent unduly delayed the second instance proceedings for two years and nine months. In this period, he resolved 14 cases that did not fall into the urgent cases group, five of which did not fall into the group of cases of "procedural nature" either, wherein the initial acts were received by the court later than the initial act in the case which the respondent delayed. Delaying the proceedings was also found in the BiH Constitutional Court Decision.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2011

Case No. 04-02-1588-4/2011, DCEH (judges) 4/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: By exceeding the legal time limit, the respondent caused the expiry of absolute statute of limitations period in two cases, whereupon he issued a decision to terminate the minor offence proceedings in both cases. In one of the two cases, the respondent for two years of the date of filing the objection against the decision rendered in a summary proceeding, failed to decide thereon, resulting in expiry of absolute statute of limitations for initiating and conducting minor offence proceedings. Following the conclusion of the oral hearing, the respondent failed to render a decision in another case within eight days of the conclusion of the oral hearing which he was required to do under the Law on Minor Offence Procedure, and he also failed to take a single procedural action for one year causing the expiry of absolute statute of limitations period for minor offence proceedings and hence he terminated the proceedings. In addition, in rendering a decision to terminate proceedings in the same case the respondent misapplied the Law on Minor Offences.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** Year: 2010

Case No. 03-09-007-3/10 DCMP (judge) 14/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 9 and 10

Summary: Between 2005 and 2008 the respondent unduly delayed drafting judicial decisions in 38 cases and failed to inform the court president and parties or their proxies on the reasons for exceeding the deadline for drafting of these judgements.

Disciplinary measure: Salary reduction by 10% for a period of six months, after the Joint Consent Agreement on the Determination of Disciplinary Liability.

**1** Year: 2010

Case No. Number: DCŠS (judge) 4/2010

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 8, 9 and 10

Summary: The respondent unduly delayed in drafting of judgements in 18 criminal cases and six out of hearing cases over the period from one month and 3 days to six months and four days and failed to inform the court president thereof. The respondent failed to act upon the motion on division of property in 7 cases for more than 11 months up to three years and one month, delayed in issuing a decision upon the objection in 75 enforcement cases lasting between three and a half months up to three years and one month, did not respect the chronological order of adjudication in 14 enforcement cases, unduly delayed in rendering a decision on objection in 12 cases and failed to deliver appeals to the adverse party in 11 enforcement cases.

Disciplinary measure: Salary reduction by 20% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2010

Case No. 04-02-2902-4/10 DCLJČ (judges) 13/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In the period between 2006 and 2010, the respondent delayed in issuing and writing of court decisions in 18 cases of the Basic Court, by exceeding the legal time limit for periods between one and eight months. Furthermore, in one case since 2001 when she had issued a decision and order to deliver the casefile the respondent failed to take a single action in the proceedings until 2010.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement on the Determination of Disciplinary Liability

**1** Year: 2010

Case No. 04-02-2367-6/2010, DCAH (judges) 9/2010; 04-02-0490/2011, DŽAH (judges) 3/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

Summary: The respondent issued and pronounced the verdict in one criminal case, and only one year and ten months after he issued a daily order to deliver the judgement to the prosecutor's office, defendants and their defense attorney. In another criminal case, ten months after issuing the judgement the respondent issued a daily order for the delivery of the judgement to the prosecution, the defendants and their defense attorneys. In the course of drafting of the judgement in one case, the prosecution became absolutely time-barred.

Disciplinary measure: Salary reduction by 10% for a period of six months

**1** **Year: 2010**

Case No. DCMF (judge) 15/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH: Article 56 subparagraphs 8, 9 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: The respondent scheduled several hearings in labor disputes requiring urgent action beyond the deadlines provided for in the relevant provisions of the Civil Procedure Code. The respondent also failed to take urgent action in another labor dispute. The respondent failed to deliver the first-instance judgement to the proxy and called the party to the proceedings to submit the power of attorney for filing an appeal against the first-instance judgement on several occasions, although the power of attorney already existed in the casefile, causing unjustified delay in the proceedings.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2010**

Case No. 04-02-1588-6/2010, DCRK (judges) 5/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: The respondent failed to make a decision on a minor offence for more than 14 months from her last action, that is, from the witness examination in a minor offence case, which resulted in a decision to terminate the minor offence proceedings due to the expiry of absolute statute of limitations period.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2010**

Case No. 04-07-0396-3/10 DCBK (judge) 1/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent unduly delayed in drafting and delivering of judgements, specifically in 4 cases for up to one year, and in 5 cases for more than two and a half years. In addition to delays in drafting and delivering

of decisions in these cases, the respondent also failed to inform the parties that the date of rendering the judgement will be postponed, immediately upon learning thereof.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2009

Case No. DCŠJ (judge) 1/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In one case, the respondent referred the casefile for expert examination and only one year of the date of referring the casefile, she requested the casefile back in writing, while she failed to seek a written response of the parties as foreseen under the Civil Procedure Code. In the same case, even 18 months upon filing the aforementioned written request, the respondent did not take any action, instead the request for the reconstruction of the lost casefile was filed by the party's proxy. In one case, the respondent submitted the casefile on the appeal to the cantonal court six months after meeting the procedural conditions for its delivery.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2009

Case No. 04-07-6550-1/09, DCZT (judge) 9/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In two cases the respondent failed to ensure the defendants their right to mandatory defense because he held plea hearings during which the defendants were examined in the absence of their defense attorneys. In one enforcement case the respondent issued a decision on lack of jurisdiction, whereupon he forwarded this non-binding decision to the relevant court for further action. Furthermore, as the preliminary hearing judge, the respondent delayed in confirming the indictments in 4 cases for 27 to 50 days.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2009

Case No. DCGT (judge) 6/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

(Also liable for: NEGLECT OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In multiple cases, the respondent unduly delayed in conducting procedural acts, drafting decisions and failed to take urgent action in cases that require urgent actions under the law. The respondent failed to undertake any actions in a case where expert examination was not conducted within 8 days stipulated in the order for one year and six months thereafter. In two labor disputes requiring urgent action, the respondent failed to submit a reorganized complaint for six months of its receipt nor did she decided on procedural objections raised at the main hearing for more than nine months. In one case, the respondent, for a period longer than 11 months without any justified reasons, failed to undertake the action of re-sending of complaint for response. In addition, the respondent unduly delayed in other actions related to the exercise of judicial duties.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2008**

Case No. DŽGB (judges): 6/2008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 10, 23, 13 and 9

Summary: The respondent unduly failed in the exercise of her judicial duties within the stipulated deadlines in one criminal case inasmuch as she did not take any single procedural action for six months nor did she file a motion for her disqualification. Even after the motion for her recusal was rejected by the court president, the respondent failed to act on the case for the next eight months when, upon assuming the function of the court president, she reassigned the case to another judge.

Disciplinary measure: Public reprimand and reduction in salary by 20% for a period of one year.

**1** **Year: 2008**

Case No. DCRJ (judges) 3/2008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: In a civil case, the respondent neither undertook a single action on the appeal nor referred the appeal to the second instance court for nearly two years.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2009

Case No. DCDK (judges) 9/2008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8, 9, 10 and 23

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In one case, despite the fact that there already existed an original record based on which he pronounced a judgement in the presence of the parties, which they confirmed with their signatures thereto, the respondent made another record of pronouncement of a criminal sentence in the absence of the parties. He used this forged record to produce a written judgment, which did not correspond to the judgment that had been pronounced. Between 2005-2008, as a judge the respondent delayed in drafting of judgements or decisions in 23 criminal cases for a period between 1 month and 13 days and 1 year, 11 months and 22 days respectively, but he failed to inform the court president and parties thereof. In addition, the respondent failed to submit an appeal to the second instance court for deciding for more than seven months. Furthermore, in several cases in 2005 and 2006 the respondent unduly and persistently violated the procedural rules. In those cases, the respondent did not produce evidence relating to the sentence at the sentencing hearings, nor did he give an opportunity to the parties to state their views on the sentence, rather upon opening of the hearing he proceeded with the pronouncing of judgement.

Disciplinary measure: Public reprimand and reduction in salary by 10% for a period of 12 months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2008

Case No. DCDĐ (judges) 6/2008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 8 and 10

Summary: In an enforcement case, following the appeal lodged by the judgement debtor to the second instance court, the respondent two years from the day when she was obliged to act as required by the Law on Enforcement Procedure, issued an order for the case file to be submitted to the second instance court upon appeal. In another enforcement case, aware of the fact that she was acting in breach of the law, the respondent failed to deliver the casefile to the second instance court for deciding on the appeal for four months and thus unnecessarily prolonged the length of the proceedings for this period.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2008**

Case No. DCVG (judges) 7/2008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: In one civil case, instead of deciding on the motion to restore status quo ante, the respondent ordered delivery of the casefile to a higher-instance court. Having observed this failure of the respondent, the court returned the casefile for issuing a decision, but the respondent, again failed to act in the present case for nearly one year without any good reason. Following the hearing on the motion, the respondent failed to decide on the motion for the next two years, ten months and 16 days. It was only upon the inquiry of the ODP and more than five years of the date of filing of the motion that the respondent issued a decision on the motion and ordered their service to the parties. Due to these failures of the respondent, a binding decision in the case initiated upon complaint in August 1999 was not yet issued in 2008.

Disciplinary measure: Reduction in salary by 10% for a period of two months, following the Joint Consent Agreement for Finding of the Disciplinary Liability

**1** **Year: 2008**

Case No. DCDĆ (judges) 5/2008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 8, 9 and 10

Summary: Contrary to the Civil Procedure Code, the respondent delayed in rendering, writing and delivering of judgements in a total of 20 cases for 28 months failing to inform the parties to the proceeding and the court president on the reasons for exceeding the time limit for drafting judicial decisions. Contrary to the conclusions of the collegium and orders of the court president the respondent failed to make his own backlog resolution plan, failed to submit his monthly reports on work for four months in 2006, and for six months in 2008, and also failed to undertake other actions related to backlogs as foreseen under the foregoing plan of the court; he also failed to act in accordance with the time schedule, i.e. backlog resolution plan.

Disciplinary measure: Public reprimand and reduction in salary by 10% for a period of 12 months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. DCNI (judges) 14/2007

Judicial office holder: judge and the court president

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 3, 9, 8 and 9

Summary: In 2006, in 11 enforcement cases the respondent crossed out a part of the motion for enforcement by hand, while in 10 out of those 11 cases, after the judgements creditors lodged appeals, the cantonal court revoked the foregoing decisions, resulting in unnecessary delays in the proceedings and dissatisfaction of parties with the court actions. In three cases the respondent submitted decisions on enforcement to the bank for enforcement where he also made corrections by hand, upon the bank's warning that this created obstacles for the bank's enforcement of the enforcement decision, in his correspondence with the Bank he made comments on the judgement creditor's proxy and thereby patently violated his duty to act properly towards legal representatives of parties.

Disciplinary measure: Public reprimand and reduction in salary by 10% for a period of two months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. DCRM (judges) 27/2007

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: Over the course of 18 months the respondent delayed in issuing, writing and delivering of judgement in a total of 10 cases between 11 and 93 days following the deadline set under the Civil Procedure Code, whereupon she also failed to inform the court president and the parties thereof.

Disciplinary measure: Salary reduction by 20% for a period of 12 months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. DCŠJ (judges) 3/2007

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 1, 9 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In multiple cases between 2001 and 2006 the respondent failed to act in accordance with the Civil Procedure Code in the way that she did not deliver appeals to parties or the second instance court nor did she decide on request for disqualification, she failed to deliver written judgement to parties, unduly delayed her case, she did not deliver the revision filed with the Supreme Court, and rendered a decision whereby the plaintiffs complaint is considered as withdrawn, although no legal requirements were met to render such a decision.

Disciplinary measure: Public reprimand and Salary reduction by 20% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. DCHDŽ (judges) 5/2007.

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: During the main hearing the respondent informed the parties that he would render his judgment within 30 days and that the judgement would be delivered to the parties in accordance with the provisions on the Civil Procedure Code relating to the delivery. The respondent rendered a judgement in this legal matter on the court record 30 days thereafter, but failed to draft a written judgement, and failed to inform the court president and parties to the proceedings on the reasons thereof. It was only after 114 days of the day of conclusion of the main hearing in this legal matter that the respondent made a written judgement and sent it to the parties thereafter.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No.: not assigned

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: During the main hearing, as a single judge in the case, the respondent issued a decision pronouncing the conclusion of the main hearing and informed the present parties that the written decision will be made within the legal time limit of 30 days via mail. It was only after 30 days that the respondent informed the court president that the judgement in this case was not made and delivered to the parties to the proceedings until that date. The respondent never informed the parties on the postponed date of rendering a judgement, and she was required to do so in accordance with the provisions of the Civil Procedure Code. Three months after the expiry of legal time limit for drafting a judgement, the respondent drafted a written judgement in this case and issued an order for the judgement to be served on the parties.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2007

Case No. DCZŠ (judges): 15/2006

Judicial office holder: additional judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: At the main hearing the respondent as a single judge issued a decision pronouncing the conclusion of the main hearing and informed the parties that the court will render a judgement in this legal matter within 25 days. After expiry of 25 days the respondent informed the parties to the proceedings that the judgement would be rendered in eight days. As the respondent failed to issue a judgment in the case in the subsequently set deadline, a party to the proceedings immediately addressed the Institution of Human Rights Ombudsman. More than two months from the expiration of the deadline for issuing a judgment, the Ombudsman requested the court to report on the status of the case. Almost four months from the expiration of the deadline for drafting of judgement, the court president requested the respondent to immediately provide information about the case since she failed to act upon the request of the Ombudsman. Having failed to act on the order of the court president, the president informed the Ombudsman that the report on the case would be subsequently submitted, and in the meantime the Ombudsman issued a recommendation that a judgment should be issued as soon as possible. Eight months after expiry of the time limit for drafting of judgement, the respondent prepared a judgment in writing in the case and issued the order for its service to the parties. In this period, the respondent also failed to report to the court president that the time limit for issuing and drafting of judgment was exceeded, so that the president received this information from the Ombudsman.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2007

Case No. DCBK (judges) 19/2007.

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: Contrary to the proceedings stipulated by the law, six months after issuing decision to conclude the main hearing the respondent issued a decision where she put the date of conclusion of the main hearing and terminated the proceedings in this legal matter. During the appellate proceedings the second instance court revoked the Decision to terminate proceedings and remanded the case for a retrial. In another case the respondent delayed in rendering a judgement for more than ten months upon expiry of the legal time limit but failed to inform the parties or the court president on the reasons thereof.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. DCDP (judges) 17/2007

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 8 and 10

Summary: In one enforcement case the respondent without any justification failed to act for two years and seven months; in another enforcement case he failed to act in a case for more than two years upon the delivery of the motion for enforcement, while in the third enforcement case he decided on the motion for enforcement more than a year thereafter.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. DCDĆ (judges) 26/2007

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 8 and 10

Summary: Contrary to the provision of the Civil Procedure Code related to the deadline for issuing, writing and delivering of the judgement the respondent delayed in issuing, drafting and delivering of a judgement in a total of 12 cases between 13 days and 4 months over the period of 13 months, and acted negligently and carelessly in the exercise of his judicial duties, which resulted in the parties receiving those notifications after the deadline set for issuing of judgment expired.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No. Number: DCMR (judges) 12/2006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, subparagraphs 8 and 10

Summary: Over the period of six months the respondent delayed in rendering of judgments in 14 cases, in drafting of judgements in 15 cases; these delays took between 105 and 250 days following the expiry of the legal time limit of 30 days. The respondent also acted negligently and carelessly in the exercise of his judicial duties, because non-complying with the provisions of the Civil Procedure Code related to the reasons for failing to

draft judicial decisions, he failed to inform the court president, and he also failed to inform the parties about the postponed date for issuing of judgement.

Disciplinary measure: Public reprimand and reduction in salary by 10% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2006

Case No. DCFP (judges) 9/2006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraphs 8 and 10

Summary: The respondent, as the chair of the out of hearing panel in two criminal cases unduly delayed in drafting court decisions by pronouncing judgements but failing to draft a written judgement within 15 days of its pronouncement, he only did it 77 days of the date of pronouncing one judgement and 98 days of the pronouncing of another. Furthermore, in the Report on work for the month in which he pronounced the judgements the respondent presented these cases as closed, whereupon in violation of the CPC, he failed to inform the court president on the reasons for failing to draft the judicial decisions.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2006

Case No. HJPC-07-0314-14032006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 paragraph 1 subparagraph 10

Summary:

As the adjudicating judge, during the period between one and thirteen months, the respondent unduly delayed in drafting judicial decisions in 23 civil cases pending before the court.

Disciplinary measure: Public reprimand and reduction in salary by 50% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2006

Case No. DŽMZ (judges) 3/2006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, points 9 and 10

Summary: The respondent allowed that a party be represented by a person who under the Civil Procedure Code was not allowed to do so, and the court should have established this ex officio; he also made several procedural failures and as the adjudicating judge he unduly delayed in drafting of decisions in seven civil cases of the municipal court.

Disciplinary measure: Salary reduction by 25% for a period of six months.

**1** **Year: 2006**

Case No. DCMA (judges) 2/2006, DŽMA (judges) 4/2006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent unduly delayed in drafting judicial decisions for 13 months in 14 minor offence cases for one and seven months respectively.

Disciplinary measure: Salary reduction by 10% for a period of four months.

**1** **Year: 2006**

Case No. DCMS (judges) 5/2006, DŽMS (judges) 2/2007, HJPC-02-1025-04062007

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: the Court of BiH

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent acted in contravention with the legal provisions and authorizations because he submitted a petition for the extradition of the suspect to the Republic of Croatia along with the casefile to out of hearing panel more than five months upon its receipt whereby he seriously violated the rights of the suspect.

The respondent thus caused considerable delays in proceedings and prolonged the custody of the suspect.

Disciplinary measure: Salary reduction by 20% for a period of six months.

**1** **Year: 2006**

Case No. HJPC-07-0311-14032006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent drafted judicial decisions after the expiry of the legal time limit for drafting of judicial decisions in 24 cases contrary to the provisions of the Law on Civil Procedure, Law on Courts and Code of Judicial Ethics.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2006**

Case No. not assigned

Judicial office holder: the court president

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 point 10

Summary: The respondent failed to draft a judgement in a criminal case in which she acted as a single judge for more than seven months following the pronouncement of the judgement and criminal sentence, whereby exceeding the legal time limit for drafting of judgement.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2006**

Case No. HJPC-07-0312-14032006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: The respondent, acting as a judge in three cases, made written judicial decisions upon the expiry of the legal time limit for writing judicial decisions, contrary to the Civil Procedure Code, Law on Courts and Code of Judicial Ethics.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2005**

Case No: not assigned

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: The respondent acted negligently and carelessly in the exercise of his official duties in a civil case in the way that after the conclusion of the main hearing he did not inform the present parties on the date of issuing of judgment, and thereafter he did not write the judgement for eight months.

Disciplinary measure:

Salary reduction by 25% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2005

Case No. DCAS (judges) 1/2005, DŽAS (judges) 6/2005

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56, points 8, 9, 10 and 23

(Also liable for: ISSUING DECISIONS THAT VIOLATE THE LAW OR PROCEDURAL RULES)

Summary: In a criminal case, in breach of the 15-day deadline defined in the CPC, without any justified reason, the respondent failed to summon the defendant to enter his plea upon the confirmed indictment even upon expiry of five months from the date of the delivery of the indictment. In another case the respondent issued a decision to terminate criminal proceedings against the defendant by invoking the applicable CPC. The respondent neglected the fact that in this criminal case the judgement had already been rendered and that, due to the explicit provision of the applicable CPC, decision to terminate proceedings could not be rendered at all, and consequently she issued a judicial decision in violation of the law. Furthermore, the respondent violated the provisions of the previous CPC because she issued the decision as a single judge, while the decision on potential termination of proceedings should have been made by out of hearing panel with subject matter, territorial and functional jurisdictions.

Disciplinary measure: Written warning that is not disclosed

**1** Year: 2005

Case No. HJPC-07-1365-19122005

Judicial office holder: judge and the court president

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8

Summary: Acting in a legal matter of the judgement creditor against judgement debtor, contrary to the Law on Enforcement Procedure and Law on Civil Procedure, the respondent failed to deliver the appeal for response

to the adverse party – judgement creditor within the legal time limit, which resulted in unnecessary delay in enforcement proceedings for at least eight months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

#### **1** Year: 2004

Case No. DCASF (judges) 4/2004, DŽASF (judges) 5/2005, HJPC-02-0841-30082005

Judicial office holder: Judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 49 subparagraph 9 of the Law on the HJPC of the Federation of BiH “issuing decisions in patent violation of the law or persistent or unjustified violation of procedural rules”.

Summary: In civil proceedings, the respondent failed to examine a witness for almost two years, i.e. from the moment of filing the first motion to summon the witness. The respondent also ordered delays in a great number of hearings, and a total number of hearings and delays was unreasonable and constituted the violation of the former Civil Procedure Code which required the court to “decide on claims on the basis of an oral, direct and public hearing” and to “conduct the hearing without delay”.

Disciplinary measure: Salary reduction by 30% for a period of six months.

### **3.2 Delays in performing any acts related to the exercise of prosecutorial functions**

#### **1** Year: 2016

Case No.: 04-07-6-239-2/2016

Judicial office holder: prosecutor

Type of judicial institution: prosecutor’s office

Level of judicial institution: cantonal prosecutor’s office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8

Summary: The respondent failed to submit to the court an explained motion for extension of detention against a suspect within the legal time limit of five days prior to expiry of the time limit defined in the decision on detention. He faxed this motion directly to the competent Supreme Court one day prior to expiry of the time limit, and not through the first instance court, thus preventing the first instance court from enclosing the case file with the motion, for decision making procedure. The respondent failed to conduct a full analysis of evidence which he also submitted in untimely manner with the motion. The Supreme Court found that this motion did not even contain basic elements, and it rejected the motion for extension of detention as unfounded, because it does not identify a single detention ground or the requested extension period, or grounded suspicion of perpetration of a criminal offense. The suspect was released, and in further course of the proceeding the respondent proposed that the first instance court issue a warrant against the suspect because he was unavailable.

In one case, the respondent failed to present elementary evidence which would establish basic relevant facts prior to issuance of orders suspending the investigation, and then, when the orders were repealed by a binding instruction of the superior prosecutor's office and by a decision of the chief prosecutor, and the respondent was ordered to immediately start working on the case, he failed to start working on the case for at least six months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-07-3-2032-8/2015

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: Prosecutor's Office of BiH

Disciplinary offence referred to in Articles 56 and 57 Of the Law on HJPC BiH:

Article 57 subparagraph 9

Summary: Acting in two cases of war crimes committed by known perpetrators, the respondent failed to take a single action towards completion of these cases for over seven and a half years, i.e. for eight years.

Disciplinary measure: Salary reduction by 20% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No. 04-07-3-1399-20/2015

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: The respondent failed to undertake any procedural actions for at least three years and not more than seven years, in twenty-two cases of the cantonal prosecutor's office in Sarajevo.

Disciplinary measure: Salary reduction by 15% for a period of six months following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2015

Case No. 04-02-321-14/2015

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraphs 8, 9 and 22

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES

Summary: The respondent failed to undertake any actions in two criminal cases for a period exceeding six years. One of the cases involved the murder of one person and the respondent ordered the conduct of investigation only 15 years after the murder.

Disciplinary measure: Salary reduction by 50% for a period of one year.

**1** Year: 2015

Case No.: 04-02-299-5/2015

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 Of the Law on HJPC BiH:

Article 57 subparagraphs 8, 9 and 22

(Also responsible for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES; IMPROPER CONDUCT

Summary: The respondent misinformed the court that she had good reason for failure to appear at the main trial at the scheduled time; she informed the court that she was conducting a crime scene investigation at the time, which is not true, attempting to justify her failure to appear at the main trial at the time set by the court i.e. to justify her being late to the trial. The respondent failed to appear at hearings on two occasions without good reason, although she had duly received court summons... The respondent failed to start working on two cases for three years and five months and for four years and eight months respectively, and failed to take a single procedural action in those cases, which resulted in expiry of statutory limitation period for prosecution.

Disciplinary measure: Salary reduction by 30% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-07-3-2031-21/2015, 04-07-3-2031-27/2015, 04-07-7-9-4/2016

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: FBiH Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 Of the Law on HJPC BiH:

Article 57 subparagraph 9

Summary: For over six and a half years, the respondent failed to take a single action towards completion of a war crimes case.

Disciplinary measure: Public reprimand

**1** Year: 2015

Case No. 04-07-3-1409-7/2015

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraphs 8 and 9

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: The respondent failed to take any action in order to detect and prosecute the perpetrators of the criminal offenses or in order to complete the case in 17 prosecution cases for nine years, resulting in expiry of the statute of limitations period for prosecution.

Disciplinary measure: Salary reduction by 10% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

#### **1** Year: 2014

Case No. 04-02-2985-4/2014

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: In the period from July 2008 to September 2014, following her first action in the case, i.e. suspect examination in June 2010, the respondent failed to take further actions in the case until April 2013, when she started opening and reviewing the documentation submitted with the report. Upon ordering financial evaluation of the casefile in January 2014, the respondent failed to take further actions in the case until September 2014 when she sent out summonses for examination of five witnesses. Therefore, the respondent failed to undertake the necessary measures for the efficient conduct of the investigation in a timely fashion and meet the pre-requirements for issuing final public prosecutorial decision.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

#### **1** Year: 2013

Case No. 04-02-2044-9/2013

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 8 and 10

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: For seven years, failing to take any action in 27 cases of the cantonal prosecutor's office assigned to him, the respondent acted with neglect in the exercise of his prosecutorial duties and with repeated disregard for the prosecutorial duties.

Disciplinary measure: Salary reduction by 10% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** Year: 2013

Case No. 04-02-357-9/2013

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: district-level

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 of the Law on the HJPC BiH, subparagraph 8 and 9

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: The respondent acted with neglect in the exercise of his prosecutorial duties by failing to take any action in five cases of the District Prosecutor's Office for at least five years, causing the expiry of the statute of limitations for prosecution. In addition, the first respondent failed to undertake any action in two cases for two years and four months. Upon assuming the two cases from the first respondent the second respondent failed to commence the work in the case and take timely prosecutorial decision for more than four years, resulting in expiry of absolute statute of limitations period for prosecution, while in another case, she failed to undertake actions for a period exceeding four years, causing expiry of statute of limitations period for prosecution, whereupon she issued an order to suspend the investigation.

Disciplinary measure: The first respondent Salary reduction by 10 % for a period of three months, the second respondent a written warning that is not disclosed.

**1** Year: 2012

Case No. 04-02-1761-4/2012

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: In one case during three-year investigation prior to issuing of the indictment, the respondent took only one procedural action, i.e. issued an order to re-summon the injured party to be examined as a witness. Furthermore, acting in another case, having conducted the last investigative actions the respondent failed to issue a final decision without any reason for more than two years and seven months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2012

Case No. 04 -02-367/2012

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: Brčko District Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: The respondent failed to undertake any pre-investigative prosecutorial action upon complaint filed against the president of the Basic Court for 11 months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2012

Case No. 04-02-2353-12/2012

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: District Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

Summary: The respondent unduly delayed the conduct of investigation in one criminal case for a period exceeding 8 years and seven months.

Disciplinary measure: A written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2010

Case No. 04-02-2035-4/10 DCGL (prosecutors) 6/2010

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraphs 8 and 9

(Also liable for: NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: In 19 cases where investigation was suspended or where the order suspending investigation was issued, the respondent failed to inform the injured parties or applicants thereof. The respondent unduly delayed in conducting actions related to the exercise of her prosecutorial duties in seven cases during at least 11 months and up to three years and four months. In 4 cases, the respondent unduly delayed in delivering the indictments to the registry office for their delivery to the Court for at least five months. In her 2018 monthly reports the respondent presented ten cases as closed, although the foregoing prosecutorial decisions had not been rendered, and only upon the warning by the chief prosecutor about the unjustified delays in those cases did she make and ante-dated the indictments and the order to suspend the investigation. Through her monthly reports for 2008, which the respondent personally made and delivered to the chief prosecutor, she presented as closed the ongoing cases in which prosecutorial decisions were not made or where the prosecutorial decisions had been made earlier. Prior to the confirmation by the court, the respondent withdrew the indictment and archived the casefile without issuing the prosecutorial decision.

Disciplinary measure: Salary reduction by 20% for a period of eight months following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2009**

Case No. DCPT (prosecutors) 2/2009

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 56 subparagraph 10

Summary: In two criminal cases, as a judge of the municipal court, the respondent issued two orders for service of judgments only after more than 4 months and after more than 5 months respectively, and delayed in performing other actions as well.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for finding of Disciplinary Liability

**1** **Year: 2008**

Case No. DŽMD (prosecutors): 9/2007

Judicial office holder: prosecutor:

Type of judicial institution: prosecutor's office

Level of judicial institution: District Prosecutor's Office

Disciplinary offence referred to in Articles 56 and 57 of the Law on the HJPC BiH:

Article 57 subparagraph 9

(Also liable for: PROVIDING OR PRESENTING FALSE, MISLEADING OR INSUFFICIENT INFORMATION TO THE COUNCIL)

Summary: In one criminal case the respondent failed to complete the investigation within 6 months, instead he suspended the investigation three years later due to the lack of evidence.

Disciplinary measure: Public reprimand

## 4. PATENT VIOLATION OF THE OBLIGATION OF PROPER BEHAVIOR

### 4.1.A patent violation of the obligation of proper behavior towards parties in a proceeding, their legal representatives, witnesses, or other individuals

#### **1** Year: 2017

Case No.: 04-07-6-876-4/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 3, 8 and 9

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS; NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: Acting in an enforcement case, the respondent failed to take actions in the case for one and a half year, and then he issued a daily order on recording of the case under civil cases, and six months later he issued a decision establishing that he had no subject-matter jurisdiction because economic operators were parties in the case, and he transferred the case file to a commercial court. Acting in probate proceedings in which a legal officer was taking actions, the respondent failed to supervise the taken actions and to review the content of the case file, and he issued a decision on inheritance, without having considered enclosed registry excerpts, and failing to decide on all inheritance parts based on available data. In another case, after he had issued a procedural decision in a preparatory hearing, establishing that a complaint against the respondent municipality represented by the Office of Attorney General was considered withdrawn, he failed to draft the decision and deliver it to the respondent municipality's legal representative, and then he issued a judgement which he failed to deliver to the respondent municipality's legal representative, despite urging by the Office of Attorney General. Such practice was repeated in two other cases against another municipality and Entity as respondents. When complainants informed the court that they wanted to withdraw their complaint against the municipality, and the Office of Attorney General informed the court that they did not oppose the withdrawal, the respondent failed to draft the decision establishing the complaint withdrawn and to deliver it to the respondent municipality's legal representative, and then he issued a judgement which he failed to deliver to the respondent municipality's legal representative, despite urging by the Office of Attorney General.

Disciplinary measure: Salary reduction by 15% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability

#### **1** Year: 2016

Case No.: 04-07-6-1444-11/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 3

(Also responsible for: INAPPROPRIATE COMMENTS ABOUT INSTITUTIONS, COLLEAGUES OR PARTIES)

Summary: In one case, the respondent sent summons to a party who had a proxy and, apart from including general details about the party, she sent the summons developed contrary to the Civil Procedure Code, and failed to deliver it to the party's proxy. In the summons, the respondent indicated that the proxy demonstrated negligence in the representation of the party (noting that "from hearing to hearing, the proxy [...] does not represent you, but either requests disqualification, or he is ill, or a criminal proceeding is more important to him, and God knows when he received summons for that... Therefore, you should take care of the case file and attend a hearing yourself via a legal representative, or find a proxy who will be more committed to your file"), although previously she failed to take measures laid down in the Civil Procedure Code in order to prevent any abuse of the proxy's procedural rights and to inform the relevant bar association that the proxy - attorney did not fulfil his duties in accordance with the law.

Disciplinary measure: Reprimand letter which is not publicly announced, following the Joint Consent Agreement for Finding of Disciplinary Liability.

### **1** Year: 2015

Case No.: 04-07-3-2486-10/2015, 04-07-3-2486-15/2015, 04-07-2-310-1/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: supreme court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 3

Summary: In an administrative dispute procedure, the respondent issued a judgement adopting the lawsuit and repealing the contested decision; however, she violated the Law on Administrative Disputes by failing to previously submit the lawsuit to the respondent as the body whose document is contested for response, or to interested parties that have certain rights and interests in the legal matter at issue, thus preventing the respondent and interested parties from participating in a court proceeding, which was acknowledged in the judgement of the higher court.

Disciplinary measure: Public reprimand

### **1** Year: 2014

Case No.: 04-02-180-5/2014

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 23

Summary: As the acting prosecutor during a case investigation, which involved a decision on employment termination and retirement of an officer of the Administration taken by a police director, the respondent overstepped his powers by sending a letter on behalf of the prosecutor's office, asking the minister of finance to use his powers and issue a decision suspending the enforcement of the decision of the FBiH Police Administration director on payment of contributions for the retired officer, noting that this decision was manifestly in contradiction with the Law on Budget Execution. The minister of finance granted this request and

issued the decision suspending the enforcement of the order of the Police Administration, explaining that it was in contradiction with the Law.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2010**

Case No.: 04-02-2763-7/10 DCJR (judges) 12/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 3, 9 and 23

(Also responsible for: ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES)

Summary: At a plea hearing, the respondent failed to maintain order in the courtroom, allowing the defendant to threaten and insult the prosecutor during the hearing. The respondent failed to take measures to ensure dignity of the court and protect the prosecutor, although the prosecutor repeatedly asked for court protection, requesting that the said threats and insults are included in the record, because the hearing was not audio recorded. Despite the prosecutor's requests, the respondent refused to allow the entry of the said threats and insults in the record.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2009**

Case No.: DCKL (judge) 4/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 3, 9 and 23

(Also responsible for: ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES)

Summary: As a preliminary hearing judge, the respondent appointed an ex officio defense attorney for the suspect, without having presented the suspect with the list of attorneys or giving him the chance to choose an ex officio attorney himself, in accordance with the law. Following the appointment of the defense attorney, the respondent submitted a confirmed indictment to the prosecutor's office and to the defendant on the same day, whereas the defense attorney did not receive the indictment at all, but was notified thereof by telephone. On the same day, after official working hours of the court, the respondent conducted a plea hearing, reviewed the plea agreement and accepted it, conducted a hearing for imposition of a criminal sanction and issued and announced a judgement in the court premises, in presence of the defendant, ex officio defense attorney, the cantonal prosecutor and court clerk. The respondent adopted the decision on acceptance of the plea agreement after she had read records of questioning of the suspect, and found that the records constituted "sufficient evidence of the defendant's guilt." At the same time, an investigation was terminated against the other three suspects in the same case who were suspected, like the defendant, of having organized and planned a

criminal offense together, based on a prosecutor's decision - Order on suspending of the investigation due to lack of evidence indicating that the suspects perpetrated the criminal offense of preparation of a criminal offense.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2007

Case No.: 0054/06

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 3, 10 and 13

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS))

Summary: Acting in a case involving a legal matter of the judgement creditor against judgement debtor, contrary to provisions of the Law on Enforcement Procedure and Civil Procedure Code, the respondent failed to deliver an appeal to the opposite party - the judgement creditor for response within the legal time limit, which caused unnecessary procrastination of the enforcement procedure for at least eight months.

The respondent repeatedly violated the obligation of proper behavior towards defense attorneys by having several telephone conversations with defense attorneys about the procedure without having informed the adjudicating judge or obtaining his approval, although she was not assigned this case. Following a telephone conversation with the convict's defense attorney, the respondent granted his unlawful request by issuing a daily order on behalf of the adjudicating judge, without informing the adjudicating judge or obtaining his approval, and by personally affixing the presiding judge's signature, based on which the convict was released immediately. Also, over the time period of five months, the respondent delayed drafting of court decisions without good reason; in one case, she drafted the decision after 162 days, and the second decision only after 106 days of the publication date and, contrary to the same legal provisions, she failed to inform the President about reasons for the delay in drafting of the judgement for delivery.

Disciplinary measure: Public reprimand and salary reduction by 30% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2006

Case No.: VSTV-07-0315-14032006

Judicial office holder: court president

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 3

Summary: As a judge-panel member in a criminal case, contrary to the provisions of the Law on Judicial and Prosecutorial Functions and of the Code of Judicial Ethics, during a cross examination by the defense attorney at the main trial, the respondent said, harshly and loudly: "Defense counsel, I am fed up with how you and the prosecutor maltreat the minor witness - injured party with your questions the whole time."

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability and disciplinary measure

4.2. A patent violation of the obligation of proper behavior towards the judge in a proceeding, parties, their legal representatives, witnesses, or other individuals

**1** **Year: 2014**

Case No.: 04-02-180-5/2014

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 23

Summary: As the acting prosecutor during a case investigation, which involved a decision on employment termination and retirement of an officer of the Administration taken by a police director, the respondent overstepped his powers by sending a letter on behalf of the prosecutor's office, asking the minister of finance to use his powers and issue a decision suspending the enforcement of the decision of the FBiH Police Administration director on payment of contributions for the retired officer, noting that this decision was manifestly in contradiction with the Law on Budget Execution. The minister of finance granted this request and issued the decision suspending the enforcement of the order of the Police Administration, explaining that it was in contradiction with the Law.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2007**

Case No.: DCEO (prosecutors) 20/2007

Judicial office holder: prosecutors

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraphs 3, 19, 22 and 23

(Also responsible for: PROVIDING OR PRESENTING THE COUNCIL WITH FALSE, MISLEADING OR INSUFFICIENT INFORMATION; ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES)

Summary: In the course of 2005, in the office of the Municipal Court president, the respondent agreed to conduct a hearing of the defendant concerning a motion for issuance of a punitive order in the absence of the adjudicating judge who signed the minutes from the said hearing on an unknown date, as if he had personally conducted and closed the hearing. In her plea to the ODC, the respondent noted, among other things: "...I can say with confidence that an adjudicating judge acted at every hearing in all criminal cases in which I represented indictments, and that not a single hearing was conducted in the absence of a judge."

Disciplinary measure: Public reprimand and salary reduction by 10% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability

## 5. INAPPROPRIATE COMMENTS ABOUT INSTITUTIONS, COLLEAGUES OR PARTIES

### **1** Year: 2016

Case No.: 04-07-6-1954-7/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 22

(Also responsible for: ACTING WITH BIAS OR PREJUDICE BASED ON NATIONAL ORIGIN)

Summary: The respondent sent an e-mail to all judges and prosecutors included in communication via pravosudje.ba domain, with an attachment, expressing unfounded claims about the process of appointment of judicial office holders, after his unsuccessful application for a vacant judicial office. In the e-mail, he wrote that some HJPC members “lobby and machinate”, and others “watch and remain silent”, referring to the appointment process as “Arizona” and accusing the HJPC president of eliminating representatives of certain national groups from managerial positions in the judiciary.

Disciplinary measure: Public reprimand

### **1** Year: 2016

Case No.: 04-07-6-666-4/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 22

Summary: At the main trial in a case, the respondent testified as a witness, and then she stayed in the courtroom and, while another witness was testifying, being a long-standing judge and aware of the need for proper conduct by a witness and maintaining order in the courtroom, the respondent interrupted the witness's testimony by saying “she is lying, she is lying, she is a mental patient.” In this way, the respondent upset the witness who started crying, and the adjudicating judge was forced to calm her down and offer her a glass of water before she continued her testimony.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2006

Case No.: not assigned

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 22

Summary: In the capacity of a court president, the respondent sent a letter to the Association of Judges, noting that she was unable to accept the fact that judges were subject to disciplinary liability due to violation of the procedure, and that the most severe disciplinary measure can be imposed for such violation. The letter also reads that this constitutes pressure on their work, which directly affects independence of courts, and the respondent asked the Association to consider ways to protect its members, in order to ensure the protection of dignity of the judicial office. The Association considered the issues contained in the letters, evaluating a judge's conduct in a concrete civil case (which was qualified by the disciplinary panel as a disciplinary offense) as the issue of defining the right to a professional mistake.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

## **6. MAKING COMMENTS ON COURT DECISIONS, PROCEEDINGS OR CASES WHILE A CASE IS PENDING BEFORE COURT**

## **7. SEXUAL HARASSMENT AND HARASSMENT**

## **8. NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES**

**1** Year: 2018

Case No.: 04-07-6-882-22/2017, 04-07-7-391-1/2018, 04-07-7-391-1/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8, 17 and 22

(Also responsible for: BEHAVIOR INSIDE OR OUTSIDE THE COURT THAT DEMEANS THE DIGNITY OF A JUDGE)

Summary: For two consecutive years, the respondent failed to comply with the Council's Instruction which prescribes that old cases included in the plan should account for at least 70% of the annual orientation quota, and she resolved 31.82% of orientation quota in one year, and 21.59% in the second year. Acting as a judge rapporteur, the respondent behaved inappropriately at a hearing by using elevated voice for at least 30 minutes and requesting that two proxies of a party leave the hearing, which is why the proxy of the respondents left the hearing, and judges from the panel prepared official notes specifying that the judge behaved "unprofessionally, inappropriately, and that they did not want to participate in further work and the panel...that the dignity and

competence of the presiding judge were undermined...and that it was a shameful way for the court and judges...". In five cases, the respondent sent letters to parties inviting them to submit written statements on whether they will give up their motion for a public hearing which was defined in the lawsuit, although it was the respondent's duty to conduct the public hearing. For two years and nine months, the respondent failed to take action in a case involving a motion for review of the court decision and, contrary to the law, she submitted the case to the Supreme Court for action, but the Supreme Court found that it had no jurisdiction over the case and returned the case to the respondent, which affected overall duration of the proceeding. For more than two years and nine months, the respondent failed to adopt a decision on correction of a mistake in a judgement, and she only did it when the court president issued an order on case resolution upon a party's request.

Disciplinary measure: Dismissal

**1** Year: 2018

Case No.: 04-07-6-355-2/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8 and 11

(Also responsible for: INAPPROPRIATE COMMUNICATIONS WITH A PARTY TO A PROCEEDING)

Summary: The respondent failed to inform a proxy in writing about the amount to be paid in advance for appraisal of a real property. Acting in an enforcement proceeding, the respondent significantly exceeded the time limit for submission of the case file to the second instance court upon appeal, and only did it after one year and one month. While the respondent was acting in the case, before she sent it to the second instance court upon appeal lodged by the judgement creditor, the respondent and her daughter had met the judgement creditor and her legal representative – mother, who posted their joint photograph on her Facebook profile, with the following status: "My best friend, the best judge in Bosnia and her daughter".

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2018

Case No.: 04-07-6-1367-5/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: district court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: The respondent failed to pull the case from the archives and to take action based on the lodged appeal for at least one year and five months.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2018

Case No.: 04-07-6-929-8/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: After issuing of a search warrant, the respondent failed to record the course of conversation with the petitioner in accordance with the law. Due to such careless treatment and failure to follow the special formal procedure for issuance of a search warrant based on oral request, one indictment count was dismissed.

In another case, after issuance of an order on special investigative action, the respondent recorded it in CMS although the order was confidential, thus making it available to unauthorized persons. Although she learned on the same day that the confidential order was recorded in CMS, the respondent failed to take all actions and measures and to issue a court order on erasing the order on special investigative and strictly confidential action from the CMS system. The order was erased from the system only after the head of the criminal department ordered it.

Disciplinary measure:

Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2017

Case No.: 04-07-6-380-10/2017, 04-07-6-380-13/2017, 04-07-6-380-15/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: higher commercial court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8, 17 and 22

(Also responsible for: FAILURE TO COMPLY WITH DECISIONS, ORDERS OR REQUESTS OF THE COUNCIL)

Summary: Contrary to provisions of the civil procedure code, the respondent failed to draft decisions in 18 cases within 30 days of the session dates, and he also failed to comply with the court president's decision ordering him to complete those cases urgently. Over a period of one year, the respondent reached only 15% of orientation quota for cases included in backlog reduction plans, and he completed 41 cases that were not included in the plan during the same time period, and 38 cases from the plan, and thereby he favored simpler cases that were initiated at a later date compared to the cases covered by the plan. The respondent was absent from work frequently and without good reason during the year, for several hours during the working hours, without informing or obtaining the approval of the court president.

Disciplinary measure: Salary reduction by 10% for a period of six months

**1** **Year: 2016**

Case No.: 04-07-6-491-2/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: In one case, the respondent submitted the requested revision to the other party for response only after three years, only after the Constitutional Court of BiH asked for response concerning the appeal filed by a party in the case. The Constitutional Court of BiH eventually issued a decision adopting the respondent's appeal in the case and established violation of his right to a fair trial and to a decision within a reasonable time.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2015**

Case No.: 04-02-1045-6/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Over the time period 2010 - 2013, acting in 26 minor offense cases, the respondent failed to take necessary actions towards case completion in a timely manner, which resulted in absolute expiry of statutory limitation period for minor offense procedure in all cases.

Disciplinary measure: Salary reduction by 10% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2015**

Case No.: 004-07-3-2323-15/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Over a period longer than 13 years, the respondent failed to complete probate proceedings, during which period the testator's sons deceased, which affected the overall duration of the proceedings.

Disciplinary measure: Salary reduction by 10% for a period of two months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-07-3-2615-8/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Over a period of three years and nine months, the respondent failed to start working on a case. When she started working on the case, the respondent issued a decision on separation of criminal proceedings at the main trial, but she ordered establishment of a new case file only after more than four years and four months. This case was subject to absolute expiry of the statutory limitation period for prosecution against the defendant, and the respondent acknowledged it in a court decision she made more than four years later, i.e. eight years after she was assigned the case. Finally, the respondent failed to comply with the instruction of HJPC BiH and with the order of the court president to prepare a report on the decision establishing the expiry of statutory limitation period for prosecution and to inform the court president.

Disciplinary measure: Salary reduction by 10% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-02-380-5/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Over a time period from six to ten years, the respondent failed to take actions towards completion of proceedings in several cases and, acting in 25 cases, she marked the cases "closed", knowing that decisions on closing of those cases were not made, and she failed to take final decisions in the cases or to change their status to "open" for a long period of time.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-02-1168-11/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Acting in a case, after the respondent had convicted the defendant in April 2006 and imposed a prison sentence of four months, and the conviction became final in June 2006, the respondent failed to initiate enforcement of the prison sentence until April 2013, when the absolute statute of limitations became applicable to the execution of the sanction.

Disciplinary measure: Public reprimand

**1** **Year: 2015**

Case No.: 04-07-3-2306-21/2015

Judicial office holder: judge and judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: In the capacity of members of a panel which was presided by another judge, the respondents failed to conduct required checks before the adoption of the decision on erasing of the suspended sentence in a case. In this way, they adopted the decision on erasing of the suspended sentence although formal legal conditions were not met for such decision. This constitutes careless exercise of duty by the respondents, especially considering that a criminal proceeding against the convict was ongoing at the same time for a new criminal offense, before the same court, which processes cases at a relatively good pace and does not have a large number of criminal cases.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2014**

Case No.: 04-02-1313-4/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: Supreme Court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS)

Summary: Acting in three cases in which court decisions were ruled, the respondent intended to inform parties that they needed to correct deficiencies in motions that the parties filed requesting review of the court decisions; for that purpose, he took the case files in order to conduct the planned actions. However, the respondent failed to take those actions for the next five to seven years. The respondent separated the said case files from the other files in which he acted, and with such careless actions he caused unnecessary delays in the cases before the court for a long period of time, and a long delay in taking actions based on the used remedies.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2014**

Case No.: 04-02-2452-5/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: In preliminary criminal procedure stage in six cases, the respondent issued daily orders on delivery of search warrants to suspects as well, and the suspects received the said warrants even before the searches were conducted. The Police Administration informed the court president that they would not conduct the searches because the search warrants were also delivered to the suspects, apart from those who were to execute the warrants.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2014**

Case No.: 04-02-439-/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Over a period of one year, the respondent reached 8% of the orientation quota for backlog cases, contrary to Article 14 of the HJPC's Instructions for the Drafting of Plans for the Resolution of Old Cases based on age of the initial act, which prescribe that old cases should account for at least 40% of a judge's monthly quota.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2014**

Case No.: 04-02-3110-4/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: From 2010 to 2013, acting in 89 minor offense cases, the respondent failed to take a single action against offenders, which resulted in expiry of the statutory limitation period for minor offense proceedings in all cases. Also, for two years and nine months, the respondent failed to take actions after receiving the second

instance decision reversing the respondent's previous decision on termination of proceedings, although she was obligated to take action within 30 days of the date of receiving the second instance decision.

Disciplinary measure: Salary reduction by 10% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2014

Case No.: 04-02-261-15/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Acting in a case which was approaching the expiry of the statutory limitation period for prosecution of the criminal offense of aggravated theft involving significant pecuniary damages for injured parties, the respondent failed to take required measures towards timely completion of the case for more than one year and seven months. This resulted in expiry of statutory limitation period for prosecution of defendants for the said criminal offense.

Disciplinary measure: Public reprimand

**1** Year: 2014

Case No.: 04-02-1880-5/2014

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8 and 17

(Also responsible for: FAILING TO COMPLY WITH DECISIONS OF SUPERIOR INDIVIDUALS, BODIES AND THE HJPC)

Summary: The respondent failed to follow the decision of the Constitutional Court of Bosnia and Herzegovina instructing the court to finalize the proceeding in a case without further delay. Before she ruled a decision in this case, the respondent had resolved 56 other cases that were initiated at a later time, which is contrary to the principle of case resolution by the age of the initial act.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2014

Case No.: 04-02-1806-9/2014, 04-02-324-1/2015, 04-02-324-4/2015

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8, 9, 17 and 19

(Also responsible for: ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES; FAILURE TO COMPLY WITH DECISIONS, ORDERS OR REQUESTS OF THE COUNCIL; NON-COMPLIANCE WITH WORKING HOURS OF THE COURT)

Summary: The respondent failed to follow the decision of the Constitutional Court and the order of the court president to continue the proceedings urgently and to inform him about the taken measures within five days. Instead, the respondent forwarded the case file to the Supreme Court with a letter requesting that the Supreme Court resolve the issue of conflict of jurisdictions, and then marked the case as closed in the following way: "Case submitted to the jurisdiction of another court." When the Supreme Court returned the case to the respondent for further action without issuing a decision on jurisdiction, the respondent failed to take actions towards completion of the case which he had previously marked as closed, without issuing a decision completing the first instance procedure. Also, over a period of three years, acting in seven civil cases, after previous decisions had been reversed in those cases in accordance with the provisions of the Civil Procedure Code, the respondent deliberately issued judgements without conducting main trials, which is why the second instance court reversed all judgements in the appellate procedure and ordered that the main trial in a new proceeding is to take place before a different judge.

Over a period of nine months, the respondent sent 41 court cases to the Supreme Court for "resolving the conflict of jurisdictions", although he had not issued decisions establishing that he has no jurisdiction over those cases, and a higher court did not cause any conflict of jurisdictions in those cases, which was known to the respondent, and the Supreme Court returned all cases to the respondent for further action without issuing a decision on "conflict of jurisdictions." The respondent failed to issue orders on service of written decisions to the parties in these cases, and when the Supreme Court returned all cases to him for further action without issuing a decision on "conflict of jurisdictions", he failed to change the status of those cases, and they were still marked as closed. Moreover, the respondent failed to take action in 20 cases that were included in the respondent's case backlog resolution plans, even after the court president warned him and ordered him to start working on those cases immediately.

Contrary to the House Rules of the court which lay down the working hours and to the court president's order on control over the use of working hours of all court employees which was e-mailed to all court employees, and contrary to a special daily order sent to the respondent in writing, the respondent was late to work for at least one hour for 15 days.

Disciplinary measure: Dismissal

**1** **Year: 2013**

Case No.: 04-02-1322-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: After a case was assigned to her, the respondent failed to schedule a plea hearing for four years and two months, and failed to conclude the case, which resulted in absolute expiry of the statutory limitation period for prosecution.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2013**

Case No.: 04-02-1321-5/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: The respondent failed to schedule the main trial for more than six years, which resulted in absolute expiry of the statutory limitation period for prosecution.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2012**

Case No.: 04-02-1608-9/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: As the adjudicating judge in a criminal case, the respondent failed to submit details about the convict to the competent authority in the case file finalization stage, which is why the data about the convict were not entered in criminal records for more than one year. As a result, the convict exercised certain rights during that period that would have been inaccessible to him had the data been entered. In the same case, the respondent failed to call upon the convict to cover the criminal procedure costs and to order entry of the imposed suspended sentence in the records.

As the adjudicating judge in a minor offense case, after he had taken over the case from another judge, the respondent decided based on evidence that had been presented before the other judge, although according to the rules of procedure, he was obligated to conduct a new trial or to present the evidence again.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2012**

Case No.: 04-02-776-4/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: After receiving the official note of the court police in a criminal case saying that a warrant for a defendant to be brought to the main trial could not be executed because his whereabouts were unknown, the respondent failed to take further actions in order to ensure the defendant's presence at the main trial for over one year and nine months. This resulted in absolute expiry of the statutory limitation period for prosecution of both defendants, and the respondent issued a decision suspending the criminal proceedings.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2012**

Case No.: 04-02-645-10/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: The respondent archived a civil case, although a party applied for revision in the case. This is why the case was transferred to the Supreme Court for further action only one year and ten months following the application for revision. Due to the respondent's omission, the revision was decided on with a delay of two years and one month following the application for revision.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2010

Case No.: 04-02-716-5/10 DCMR (judge) 13/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: By issuing the order on archiving of a case, which was followed, although conditions were not met for archiving, the respondent failed to submit the file upon appeal to the second instance court for almost 18 months.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2006

Case No.: DCNK (judge) 6/2006

Judicial office holder: judge and court president

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 6, 8, 19 and 22

(Also responsible for: IMPROPER CONDUCT)

Summary: From 2004 until the end of 2005, the respondent presented negligence and careless management of the court and court administration, because he failed to: adopt general acts of the court that are necessary for legal and proper functioning of the court, to conduct performance evaluation of the court employees for 2004, and to take required measures for proper keeping of timesheet records. From March 2004 until the end of 2005, the respondent used his position of a court president to obtain unjustified benefits for himself, and behaved in a way which demeans the judicial office and puts in question public confidence in the credibility of courts, by using official vehicles of the court for private purposes.

Disciplinary measure: Public reprimand and salary reduction by 20% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

**1** **Year: 2006**

Case No.: DCNK (judge) 6/2006

Judicial office holder: judge and court president

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 6, 8, 19 and 22

(Also responsible for: IMPROPER CONDUCT)

Summary: From 2004 until the end of 2005, the respondent presented negligence and careless management of the court and court administration, because he failed to: adopt general acts of the court that are necessary for legal and proper functioning of the court, to conduct performance evaluation of the court employees for 2004, and to take required measures for proper keeping of timesheet records. From March 2004 until the end of 2005, the respondent used his position of a court president to obtain unjustified benefits for himself, and behaved in a way which demeans the judicial office and puts in question public confidence in the credibility of courts, by using official vehicles of the court for private purposes.

Disciplinary measure: Public reprimand and salary reduction by 20% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2017**

Case No.: 04-07-6-380-10/2017, 04-07-6-380-13/2017, 04-07-6-380-15/2017

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: district prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraphs 8, 9 and 3

(Also responsible for: UNJUSTIFIED DELAY; VIOLATION OF THE OBLIGATION OF PROPER BEHAVIOR)

Summary: Acting in a case, the respondent prepared an indictment against two suspects, and archived the case file for 15 years, without sending the indictment with evidence to the competent court for confirmation. For this reason, the case with the indictment and related evidence was archived for at least four years before the chief prosecutor found it in the archives. In six prosecutorial cases, despite warnings of the mail dispatch clerk and the typist, and without good reason, after the respondent prepared indictments against suspects, for three years and one month and up to five years and ten months, she deliberately failed to submit the files to the competent department of the prosecutor's office for dispatch and submission of the indictments and evidence to competent courts for confirmation. During that period, the respondent failed to prosecute six suspects, thus violating the legality principle, and she significantly contributed to the lapse of statutory limitation periods for prosecution and prevented timely delivery of criminal justice. In three prosecutorial cases, without good reason she failed to inform injured parties about issuance of an order on suspension of investigation and of an order that the investigation shall not be conducted, whereas in one case she informed the injured party at least five years and four months after issuance of an order on suspension of investigation.

Disciplinary measure: Dismissal

**1** Year: 2017

Case No.: 04-07-6-617-7/2017

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraphs 8 and 9

Summary: The respondent failed to take procedural actions in 15 cases and to complete the cases in minimum two years, and up to four years. In all those cases, while they were assigned to the respondent, or immediately after their reassignment to other prosecutors, the statutory limitation period for prosecution expired.

Disciplinary measure: Salary reduction by 30% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2017

Case No.: 04-07-6-248-47/2017, 04-07-6-248-50/2017, 04-07-6-248-53/2017

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraphs 8 and 9

Summary: For at least six years, the respondent failed to take a single prosecutorial action in a case, which caused undue delay in the implementation of actions that fall under the duties of a prosecutor according to the criminal procedure code. Acting in another case involving a public company in which an order on suspension of investigation was issued, the respondent failed to inform the Office of Attorney General about the order; pursuant to the criminal procedure code, the Office can file a complaint to the chief prosecutor against the decision on suspension of investigation. When the Office of Attorney General was given the chance to file a complaint, a decision on continuation of the investigation was issued. In a third case against three persons, the respondent failed to issue a final prosecutorial decision concerning two reported persons for at least five years of the issuance of an order that the investigation shall not be conducted against the third person. When the Prosecutor's Office found that a complaint against the order that the investigation shall not be conducted was founded, the respondent ordered an investigation against the three persons. The respondent failed to take procedural actions in the next 15 cases that were assigned to him, and to complete the cases for at least two years, and up to ten years.

Disciplinary measure: Salary reduction by 20% for a period of one year

**1** **Year: 2016**

Case No.: 04-07-6-1496-9/2016

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraphs 8 and 15

Summary: In a car accident case with fatal outcome for one person, the respondent had issued an official note closing the case before he reviewed findings and opinion of a medical expert and took other actions, and he failed to inform the injured party. In another case in which detention was ordered and which required urgent action due to its nature, the respondent filed a motion for extension of the detention without taking prosecutorial actions or submitting evidence, and the court issued a decision rejecting the motion.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2015**

Case No.: 04-07-3-2146-9/2015

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8 of the Law

Summary: Despite prior warning of the chief prosecutor, the respondent failed to inform superiors about his inability to come to work without good reason, and despite continued absence from work for 20 more business days, he failed to contact his superiors and inform them about the reasons and grounds for the absence. Over a period of four years and seven months, the respondent failed to take actions as a prosecutor in two cases in order to prevent relative expiry of statutory limitation period for prosecution, which resulted in relative expiry, as acknowledged in prosecutorial decisions.

Disciplinary measure: Salary reduction by 10% for a period of four months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2015**

Case No.: 04-02-1274-11/2015

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8

Summary: For a continuous period of several years, the respondent failed to take any prosecutorial actions in two cases (at least five years and ten months in one case, and at least four years and five months in the other)

for the purpose of conducting investigations and making final prosecutorial decisions, which resulted in expiry of the statutory limitation period for prosecution.

Disciplinary measure: Salary reduction by 10% for a period of two months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2015**

Case No.: 04-02-126-17/2015

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8 of the Law

Summary: In a case against the defendant for the criminal offense of light bodily injury, the respondent decided to drop charges at the hearing for the main trial. He based this decision on a wrong conclusion that the expert findings and opinion about injuries inflicted on the injured party were developed based on uncertified copy of documents, which is unlawful evidence, and that the prosecutor's office did not have the original medical documents. In this way, he failed to establish what material evidence the prosecutor's office had obtained and included in the case file, which included a certified copy of medical documents - findings and opinion of a specialist doctor about the injuries inflicted on the injured party.

Disciplinary measure: Salary reduction by 10% for a period of six months

**1** **Year: 2015**

Case No.: 04-07-3-3048-7/2015

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8 of the Law

Summary: Over a period of three to five years, the respondent failed to take a single procedural action in three cases, which resulted in expiry of statutory limitation period in all three cases.

Disciplinary measure: Salary reduction by 10% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2014

Case No.: 04-02-1074-4/2014

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: Prosecutor's Office of BiH

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8

Summary: Managing a search of a suspect's apartment, the respondent ordered police officers to put a seal on the entrance door and prevent further use of the apartment, and then he ordered suspension of the investigation against the suspect. After that, over a period of one year and eight months, the respondent failed to order police officers to remove the seal from the entrance door and to return the apartment to the owner who was prevented from enjoyment of his property in the absence of the order and legal grounds, although in the meantime he urged three times in order to regain the possession over his apartment.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2010

Case No.: DCHD (prosecutors) 8/2010, DŽHD (prosecutors;): 2/2010 No.: 04-02-839/11

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 8

Summary: The respondent failed to conduct investigation carefully in a case, because he did not hear all injured parties during the investigation. Also, the respondent engaged in improper conduct through the content of a writ which was sent to the Ombudsman Institution, which reads: "...A logical question is whether it is justified to waste a prosecutor's time by writing these kinds of explanations."

Disciplinary measure: Written warning that is not disclosed

## 9. ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES

### **1** Year: 2017

Case No.: 04-07-6-1818-4/2017

Judicial office holder: court president

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 9

Summary: Although he exercised duty of a court president and knew or should have known the legislation governing recruitment of employees of the court, the respondent issued four decisions on employment of two persons without publicly announcing the vacancies, initially for a fixed time period, and then for indefinite time period, to the positions of typists-court clerks. The administrative inspection then issued a decision ordering the respondent to eliminate irregularities found during the inspection and to issue decisions terminating employment of the aforementioned persons.

Disciplinary measure: Salary reduction by 10% for a period of 3 (three) months, following the Joint Consent Agreement for Finding of Disciplinary Liability

### **1** Year: 2017

Case No.: 04-07-6-2574-5/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 9

Summary: In a minor offense proceeding against a juvenile, contrary to provisions of the law, the respondent addressed summons to the juvenile directly, failed to provide a defense attorney to the juvenile, failed to summon relevant custody authority to the oral trial and to obtain data about juvenile's personality from the custody authority. After that, in the absence of the offender at the oral trial, the respondent issued a decision finding the offender responsible for the perpetrated offense. In the part of the drafted decision relating to remedy, the respondent specified that an appeal may be filed within eight days, and since he failed to provide a defense attorney to the juvenile, he failed to deliver the decision to a defense attorney.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2016

Case No.: 04-07-6-1527-4/2016

Judicial office holder: legal officer

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 9

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS))

Summary: The respondent issued a decision suspending the proceeding, in which she specified that an appeal against the decision was not allowed, and the proxy of the legal successor appealed against the decision. The respondent then failed to submit the case to the second instance court upon appeal and continued adjudicating the case, scheduled five hearings and finally issued a decision suspending the proceeding, in which she specified that an appeal against the decision was not allowed, and the attorney appealed against the decision, after which the respondent failed to submit the case to the second instance court upon appeal for the next 13 months.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2013

Case No.: 04-02-1152-4/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 23

Summary: In his office at the Municipal Court building, in a case assigned to him, the respondent drafted a response to a complaint on behalf of the respondent party, dictated the response to a typist who typed it on a computer, and the prepared document - response to a complaint was handed over to the intake office of the court.

Disciplinary measure: Public reprimand

**1** Year: 2012

Case No.: 04-02-2572-5/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 9 and 22

(Also responsible for: IMPROPER CONDUCT)

Summary: Acting in seven cases in which parties paid for crime scene investigation costs in advance based on the court order, with the intention of obtaining unjustified benefit the respondent issued decisions instructing the accounting office of the Municipal Court to pay her a fee for visiting the crime scene, in the amounts of BAM 40.00 and BAM 280.00, and to calculate and pay taxes on this amount, although she knew that there was no legal ground for payment of such fee. Although the accounting office of the Municipal Court refused to pay the said fees in 2010 and 2011 and returned the decisions with an indication "unpaid", the respondent continued issuing such decisions deliberately and persistently until April 2012.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2012

Case No.: 04-02-2118-4/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 9

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR ANY OTHER ACT RELATED TO THE EXERCISE OF JUDICIAL FUNCTIONS)

Summary: Acting as a judge in a minor offense case, although expiry of absolute statute of limitations for minor offense proceeding was approaching, the respondent started the oral trial only ten months later, and then postponed it "in order to review documents enclosed by the defendant." Without continuing the trial, the respondent issued a decision suspending the minor offense proceeding in October 2010, due to existence of circumstances that rule out liability for the offense. When a party appealed, the respondent issued a decision suspending the minor offense proceeding in December 2010 due to expiry of statute of limitations for minor offense proceeding, failing to submit the appeal and the case file to the second instance court, in accordance with the law.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2011**

Case No.: 04-02-3151-4/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 9

Summary: Acting as a preliminary hearing judge in a criminal case, the respondent failed to provide a defense attorney to a person accused for a criminal offense punishable with ten years in prison at the time of submission of the indictment and during the entire preliminary hearing proceeding. In the same case, contrary to the criminal procedure code, the respondent conducted a plea hearing before expiry of the deadline for submission of preliminary objections to the indictment, and before making of a decision on the filed objections, contrary to CPC provisions.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2010**

Case No.: 04-09-2052-4/10, DCAO (judges) 7/2010

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 9

Summary: The respondent submitted a complaint for response to a respondent, although the person could not be a party to a proceeding due to the immunity enjoyed by diplomatic representatives pursuant to Article 31 of the Vienna Convention on Diplomatic Relations, acting contrary to the civil procedure code. Although she was informed that the respondent in the case enjoyed diplomatic immunity, the respondent issued a daily order and scheduled a preparatory hearing based on the order. At the preparatory hearing, the respondent issued a decision dismissing the complaint and the plaintiffs appealed against the decision, which is why the procedure was closed and the case was archived only ten months later.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2006**

Case No.: VSTV-07-0313-14032006

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 8

Summary: Acting as a judge in a legal matter involving a debt, contrary to provisions of the civil procedure code, law on enforcement procedure and the Code of Judicial Ethics, the respondent failed to serve the judgement to the respondent, and she noted on the judgement that it was enforceable, although legal conditions were not fulfilled.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2005**

Case No.: VSTV-02-0842-30082005

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 49(1) subparagraph 3 of the Law on High Judicial and Prosecutorial Council of BiH

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS))

Summary: The respondent failed to treat parties in a case and their representatives equally and properly by preventing the respondent to present the proposed evidence with regard to the complaint and their counter complaint. The respondent wronged the plaintiff too by not issuing a default judgement, although it was proposed in the complaint, and if the enclosed evidence did not constitute proper grounds for the claim, she should have rejected the complaint.

Disciplinary measure: Salary reduction by 30% for a period of six months

**1** **Year: 2004**

Case No.: DCHH (judges) 7/2004

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 9 and 23

Summary: The respondent closed four cases by issuing punitive orders, although legal conditions were not met. Also, the respondent imposed a fine against a defendant for a criminal offense although conditions were not met for imposition of a more lenient sanction.

Disciplinary measure: Salary reduction by 20% for a period of five months

## **10. DISCLOSURE OF CONFIDENTIAL INFORMATION**

### **10.1. Disclosure of confidential information obtained while performing the judicial office**

#### **1** Year: 2004

Case No.: DCZP (judges) 2/2004, DŽZP (judges) 2/2005, VSTV-07-0494-27052005

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8, 19, 22 and 23

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS; KNOWINGLY PROVIDING OR PRESENTING THE COUNCIL WITH FALSE, MISLEADING OR INSUFFICIENT INFORMATION)

Summary: As the adjudicating judge and deputy court president, contrary to the criminal procedure code, the law on ordinary courts and Rulebook on internal operations of ordinary courts, upon oral request of the assistant minister for judiciary and administration, the respondent submitted to him the original court file of a criminal case against 16 defendants. The respondent then failed to request that the Ministry return the case file. Also, the respondent failed to take a single action towards completion of investigation against 16 defendants for severe criminal offenses thus preventing prosecution of the crime perpetrators, which is why the investigation has not been finalized yet. With the intention to avoid disciplinary liability for perpetrated disciplinary offenses in this disciplinary matter, the respondent presented the first instance disciplinary panel with a court document which was not signed by the respondent or confirmed by a stamp, attempting to misrepresent that he requested return of the criminal file from the Ministry.

Disciplinary measure: Public reprimand and salary reduction by 50% for a period of four months

## **10.2. Disclosure of confidential information obtained while performing the prosecutorial office**

### **1 Year: 2017**

Case No.: 04-07-6-660-2/2017, 04-07-6-660-10/2017, 04-07-6-660-14/2017

Judicial office holder: chief prosecutor and prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraphs 4, 8, 15, 19 and 23

Summary: In the capacity of the chief prosecutor, the respondent sent a letter to the cantonal prime minister at the time with a breakdown of 16 prosecution cases relating to the subject of inquiry, in which final prosecutorial decisions were not made. In the said letter, the respondent provided an unauthorized person with detailed information about persons who filed criminal reports, reported persons and criminal offenses they were accused of, and about taken pre-investigative and investigative actions in the case and actions that would be taken in the further course of action. In this way, the respondent made the said information available to other persons as well. The aforementioned respondent's letter was found in the possession of a suspect in another case before the same prosecutor's office. Also, exercising the duties of a chief prosecutor, the respondent failed to ensure lawful, orderly and timely performance of tasks of the prosecutor's office, in accordance with the Rulebook. The respondent failed to handle complaints against orders on non-conducting and suspension of investigations within a reasonable time, and failed to keep orderly records of received complaints and method of handling thereof. In the capacity of the prosecutor in 247 KTA cases of the prosecutor's office, the respondent marked the cases as closed in the TCMS system and archived them, without having issued final prosecutorial decisions, i.e. cases that required further actions and, based on the wrongful marking of the cases as closed, she also marked them as closed in the report on the achieved orientation quota by the respondent. In the capacity of a prosecutor, the respondent issued official notes in 59 prosecution cases and marked them as closed, failing to deliver the decisions and notifications to injured parties and to persons who filed the reports.

Disciplinary measure: Salary reduction by 20% for a period of 9 (nine) months

## **11. EX PARTE COMMUNICATION**

### **1 Year: 2012**

Case No.: 04-02-448-19/2012

Judicial office holder: prosecutor and chief prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: Prosecutor's Office of BiH

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57(1) subparagraphs 10 and 23

Summary: As the chief prosecutor of the prosecutor's office, while the court order prohibiting the disposal with financial resources against a legal person was in force, the respondent repeatedly made telephone, indirect and direct contacts outside of official premises with the authorized person and beneficial owner of the legal person who was under sanctions of the United Nations Security Council due to illegal arms trafficking.

Disciplinary measure: Transfer from the position of a chief prosecutor to the position of a prosecutor at the Prosecutor's Office of Bosnia and Herzegovina and salary reduction by 10% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability.

## **12. FAILURE TO PROVIDE THE COUNCIL WITH INFORMATION REQUIRED BY THE LAW**

## **13. PROVIDING OR PRESENTING THE COUNCIL WITH FALSE, MISLEADING OR INSUFFICIENT INFORMATION**

### **1** Year: 2009

Case No.: 04-02-6649-3/09 DCFM (judge) 11/2009

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 16, 19 and 23

Summary: Exercising the duties of the president of the cantonal football association and a member of the Executive Board of the Football Association of Bosnia and Herzegovina, the respondent engaged in activities that are incompatible with the judicial office. Although he generated additional income, in his annual financial statements for 2006 and 2007 submitted to the HJPC BiH, the respondent stated that his judicial salary was his only personal income. These statements include a signed statement of the respondent confirming that the information provided in the declaration form were true, complete and accurate, under full material and criminal liability. With his activities outside of the court, the respondent compromised the public confidence in the credibility of the judiciary because he was a member of the Executive Board of the Football Association of Bosnia and Herzegovina and exercised judicial office at the same time, although he knew that indictments were issued against leading people in the Association and he was aware of the reputation of that institution and its managers.

Disciplinary measure: Public reprimand and salary reduction by 20% for a period of six months, following the Joint Consent Agreement for Finding of Disciplinary Liability

### **1** Year: 2007

Case No.: DCAK (judges) 9/2007, DŽAK (judges): 8/2007, VSTV-02-0921-14052008

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 49 subparagraph 17 and Article 56 subparagraphs 8, 9, 10, 20 and 22

(Also responsible for: DELAY IN DRAFTING OF DECISIONS OR IN OTHER PROCEDURAL ACTIONS; ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES)

Summary: In the application for a judicial office, the respondent provided false, misleading or insufficient information about military service during the war. In the application process, in the applicant's personal data form, the respondent circled the answer NO to the question about serving in a military or paramilitary formation or a similar organization, and signed the Statement in the said form confirming truthfulness of the provided data.

The respondent perpetrated disciplinary offenses in at least 22 cases: unjustified delays in nine (mostly enforcement) cases for two to six years; ignorance about characteristics of an enforceable and credible document in at least five cases (treatment of contracts, accounts and court decisions as credible documents), unjustified delays for two to three years and changing dates on decisions; various patent violations of the law and procedural rules (illegally enabling an expert to buy real estates, determining of deposits and unlawful delay of the third public auction for seven months, foreclosure against real property based on the decision on foreclosure against movable property, and obstructing the mandate of the Ombudsman's Institution, proclaiming one and the same person as the first and the third bidder, simultaneous enforcement against accounts in five different banks, illegal foreclosure against the same real property in two cases), and unjustified delays in eight cases.

Disciplinary measure: Dismissal

### **1** Year: 2004

Case No.: DCMR (judges) 1/2004

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: district court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 19, 22 and 23

Summary: When filling up the application for a judicial office, the respondent specified that he had moved out from his previous apartment due to war circumstances and that he lived in his own house, failing to mention that his previous apartment was returned to him, as well as the real reason for moving out from that apartment.

Disciplinary measure: Dismissal

### **1** Year: 2010

Case No.: DCMR (prosecutors): 14/2010, 04-02-821-6/2011, 04-02-821-11/11

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 19

Summary: In his application for a judicial or prosecutorial office submitted to HJPC BiH in 2010, referring to the same application submitted in 2003, the respondent stated that there were no changes in his criminal record. The respondent knew that he had been convicted for the criminal offense of misrepresentation and that, in another case, he had been convicted for criminal offenses of fraud in office, counterfeiting or destroying an official document, embezzlement and abuse of office or authority, thus concealing his previous illegal activities and preventing the HJPC from obtaining full data in the process of deciding on the submitted application for the judicial or prosecutorial position.

Disciplinary measure: Dismissal

## **14. CRIMINAL CONVICTION**

### **14.1. Criminal conviction which makes one unfit for judicial office**

#### **1** Year: 2017

Case No.: 04-07-6-501-3/2017, 04-07-6-501-5/2017, 04-07-6-501-3/2017

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 14

Summary: The respondent was convicted for the criminal offense of abuse of office or authority and sentenced to seven months in prison.

Disciplinary measure: Dismissal

### **14.2. Criminal conviction which makes one unfit for prosecutorial office**

#### **1** Year: 2016

Case No.: 04-07-6-33-3/2016, 04-07-6-33-6/2016, 04-07-6-33-11/2016

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 13

Summary: The respondent was convicted for the criminal offense against safety of public traffic and sentenced to one year in prison.

Disciplinary measure: Dismissal

## **15. EXPLOITING ONE'S POSITION IN ORDER TO OBTAIN UNJUSTIFIED ADVANTAGES FOR ONESELF OR OTHERS**

### **15.1. Exploiting one's position as a judge in order to obtain advantages for oneself or for other persons**

**1** Year: 2011

Case No.: 04-02-312-10/2011, Case No.: DŽBDJ (judges) 2/2011

Judicial office holder: judge and court president

Type of judicial institution: court

Level of judicial institution: district court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 23

Summary: In the capacity of a court president, violating the legal recruitment procedure which includes mandatory reporting of the need for workers to the competent employment organization, the respondent employed three persons for a fixed period of time. Additionally, the respondent employed a person who did not fulfil the five-year working experience requirement prescribed by the general act to the position of the court secretary, and a person who did not provide evidence of required six-month working experience to the position of a driver.

Disciplinary measure: Public reprimand

### **15.2. Exploiting one's position as a prosecutor in order to obtain advantages for oneself or for other persons**

## **16. NOT DISQUALIFYING HIMSELF OR HERSELF FROM HEARING A CASE WHEN A CONFLICT OF INTEREST EXISTS**

**1** Year: 2018

Case No.: 04-07-6-1023-8/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: district court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 17

Summary: As the presiding judge of a panel, the respondent participated in decision making upon appeal in a case in which her son represented proxies in certain stages of the proceeding before the first instance court.

Disciplinary measure:

Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2016

Case No.: 04-07-6-1805-4/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 7

Summary: The respondent failed to inform the court president that there was a reason for her disqualification, knowing that she had previously worked for an attorney's office which represented the judgement creditor in the case, and that she had represented the judgement creditor in three hearings in the civil stage of the case. Despite of all this, the respondent issued a decision in this case fully rejecting the judgement debtor's objection.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-07-3-2056-13/2015

Judicial office holder: legal officer

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 15

Summary: The respondent failed to disqualify himself from hearing a case due to his in-law relationship with the proxy of one of the parties.

Disciplinary measure: Public reprimand

**1** Year: 2012

Case No.: 04-02-556/2012, 04-02-556-4/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: cantonal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 7 and 23

Summary: The respondent failed to disqualify herself from hearing a case due to close kinship with the majority owner involved in the case. In this way, the respondent caused reasonable suspicion of the opposite party - the plaintiff in her impartiality as a member of the panel of judges, and compromised public confidence in impartiality and credibility of courts.

Disciplinary measure: Written warning that is not disclosed

## 17. FAILING TO COMPLY WITH DECISIONS OF SUPERIOR INDIVIDUALS, BODIES AND THE HJPC

### **1** Year: 2018

Case No.: 04-07-6-1123-4/2018

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 8 and 17

Summary: Over a period of five years, contrary to the principle of urgency of enforcement proceedings, the respondent failed to decide on the judgement debtor's objection and to take other actions in order to conclude the case, despite the fact that, following the appeal, the second instance court remanded the case for a repeated first instance procedure and that the case was included in the case resolution plan for that year.

Resolving the cases included in the case resolution plan, the respondent achieved 52.72% of quota, thus failing to implement the case resolution plan for that year, pursuant to Article 10 of the HJPC's Instruction on the development of the case resolution plan, which stipulates that a judge is to solve minimum 70% of the cases included in the plan in relation to the annual quota.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

### **1** Year: 2016

Case No.: 04-07-6-1160-4/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: higher commercial court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 17

Summary: In the course of 2015, the respondent failed to resolve cases in accordance with the plan and sequence of resolution based on the age of cases. For this reason, he failed to ensure resolution of cases included in the plan that should have accounted for at least 70% of the annual orientation quota, whereas the remainder of the quota could be comprised of cases that are not included in the plan. In this way, without good reason, he resolved old cases which accounted for only 23% of the annual quota, and 57% of the quota accounted for cases which were not included in the case resolution plan.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1 Year: 2016**

Case No.: 04-07-6-1084-4/2016

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: higher commercial court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 17

Summary: The respondent failed to fully implement her case resolution plan in 2014, by resolving 49% of cases included in the plan, although 25% of cases she resolved in merits in 2014 were not urgent cases and were initiated at a later time compared to the cases included in the plan.

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1 Year: 2011**

Case No.: Number: 04-02-3021-11/2011

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 23

Summary: Over a period of eight months, the respondent failed to comply with working hours of the municipal court where she works as a reserve judge, by continuously coming to work after the beginning of working hours. Also, the respondent left her workplace during working hours on a daily basis using the exit intended for court users, in order to avoid registering of her entries to, and exits from the court building at the official entrance where the identification card must be used. Also, the respondent left the court building five times during working hours, allegedly for scene investigation purposes in five civil cases, although such investigative actions were neither scheduled, nor conducted in any of those cases.

Disciplinary measure: Salary reduction by 5% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1 Year: 2015**

Case No.: 04-07-6-93-1/2016

Judicial office holder: prosecutor

Type of judicial institution: prosecutor's office

Level of judicial institution: cantonal prosecutor's office

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 57 subparagraph 15

Summary: The respondent failed to comply with the instruction of the deputy chief prosecutor and the conclusion of the general session (collegium) of the general crimes department ordering her to continue taking all actions in the investigation of a case, because legal requirements were not met for submission of the case to

the Prosecutor's Office of Bosnia and Herzegovina. Nevertheless, the respondent submitted the whole case file to the Prosecutor's Office of Bosnia and Herzegovina, enclosed with a letter entitled "Transfer of a case under competence."

Disciplinary measure: Public reprimand, following the Joint Consent Agreement for Finding of Disciplinary Liability

## **18. ENABLING PERSONS NOT AUTHORIZED BY LAW TO PERFORM FUNCTIONS**

### **18.1. Enabling persons not authorized by law to perform judicial functions**

#### **1 Year: 2013**

Case No.: 04-02-115-15/2013

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 6, 8, 12 and 23

(Also responsible for: EXPLOITING ONE'S POSITION AS A JUDGE IN ORDER TO OBTAIN ADVANTAGES FOR ONESELF OR FOR OTHER PERSONS; ISSUING DECISIONS IN VIOLATION OF THE LAW OR PROCEDURAL RULES; NEGLIGENCE OR CARELESS EXERCISE OF OFFICIAL DUTIES)

Summary: At the time when he exercised office of the municipal court president, the respondent enabled an employee to take procedural actions and conduct hearings in a large number of probate proceedings in which the respondent was the adjudicating judge. The judge issued certificates to a staff member who performed duties of a typist and technical secretary, positions that require secondary education level according to the Rulebook, which read that the person completed "internship" at the municipal court, that she worked as a "trainee - volunteer" and obtained working experience performing duties that require higher education level - a law graduate level. In a case involving execution of criminal sanction against a convict who was finally found guilty of the criminal offense of attempted homicide, the respondent issued a decision postponing the enforcement of prison sentence for a period of three months, based on the convict's request which did not include a single piece of evidence of facts based on which he requested such postponement, without having conducted court checks in order to establish the facts.

Disciplinary measure: Salary reduction by 20% for a period of six months.

#### **1 Year: 2012**

Case No.: 04-02-2976-7/2012

Judicial office holder: judge

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 12

Summary: During a sick leave, the respondent ordered a court enforcement officer to conduct an enforcement during her absence, and the enforcement officer issued a conclusion ordering enforcement of a decision, denoting the respondent judge as the decision maker. In this way, the respondent enabled a person not authorized by law to perform judicial function.

Disciplinary measure: Written warning that is not disclosed, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** **Year: 2009**

Case No.: 04-07-6427-6/09 DCGD (judges) 10/2009

Judicial office holder: judge and court president

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraphs 12 and 23

Summary: The respondent enabled two persons to exercise functions of a judicial officer, although they were not appointed to those positions by the HJPC. They performed all procedural actions at court that a sole judge or a legal officer authorized by a sole judge is authorized for in non-contentious cases - probate proceedings and small claims. These persons scheduled hearings, conducted them, prepared minutes from hearings and issued court decisions. Based on the respondent's instructions, the minutes were signed by other legal officers at a later time, although they did not take any actions at those hearings, and they were not even present during the hearings.

Disciplinary measure: Public reprimand and salary reduction by 5% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

## **18.2. Enabling persons not authorized by law to perform prosecutorial functions**

## **19. FAILURE TO COMPLY WITH DECISIONS, ORDERS OR REQUESTS OF THE COUNCIL**

## **20. ABUSE OF JUDICIAL OFFICE**

**1** **Year: 2017**

Case No.: 04-07-6-2288-10/2017

Judicial office holder: legal officer

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 17

Summary: Over a long period of time, as the legal officer in 782 cases assigned to her, the respondent wrongly denoted the cases as "closed" in the Case Management System - CMS, although conditions were not met for

such action within the meaning of the Rulebook on orientation criteria for the performance of judges and legal officers at courts.

Disciplinary measure:

Salary reduction by 20% for a period of three months, following the Joint Consent Agreement for Finding of Disciplinary Liability

**1** Year: 2015

Case No.: 04-07-3-2013-18/2015, 04-07-3-2013-25/2015, 04-07-6-201-4/2016

Judicial office holder: legal officer

Type of judicial institution: court

Level of judicial institution: municipal court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 13

Summary: The respondent took a case from the court registry upon intervention of a real estate buyer in the enforcement procedure, although the case was not assigned to her through the automated Case Management System, and she had no authority whatsoever in the case. Through unauthorized use of the user account and password of another legal officer who was assigned with the case in order to access the case via CMS, the respondent issued a decision suspending the enforcement procedure and repealing all taken actions, under the name of the legal officer who was unaware of her actions, and on the same day she sent a letter to the cash register of the court ordering return of the paid deposit and dispatch of the acts to the parties. The respondent took the aforementioned case from the court registry and, after issuing the decision suspending the procedure, she kept the case file in her office, inserted in another case, without having informed the legal officer to whom the case was assigned about the taken actions.

Disciplinary measure: Salary reduction by 50% for a period of one year

## **21. FAILURE TO TAKE MEASURES WITHIN MANAGERIAL MANDATE TO ENSURE EFFICIENT WORK OF THE COURT**

**1** Year: 2016

Case No.: 04-07-6-1085-6/2016

Judicial office holder: court president

Type of judicial institution: court

Level of judicial institution: basic court

Disciplinary offence referred to in Articles 56 and 57 of the Law on HJPC BiH:

Article 56 subparagraph 17

Summary: The respondent failed to take measures towards improvement of the implementation of the backlog resolution plan, although judges of this court significantly departed from the principle of case resolution based on age i.e. initiation date at court, thus acting contrary to the HJPC's Instructions for the Drafting of Plans for the Resolution of Old Cases.

Disciplinary measure: Public reprimand

## **22. NON-COMPLIANCE WITH WORKING HOURS**

22.1. Non-compliance with working hours of the court

22.2. Non-compliance with working hours of the prosecutor's office

## **23. INTERFERING WITH THE WORK OF A JUDGE OR PROSECUTOR WITH THE INTENTION TO OBSTRUCT OR UNDERESTIMATE THEIR ACTIVITIES**

