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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 16

**on the relationship between judges and lawyers
and the concrete means to improve the efficiency and quality of judicial proceedings**

Replies from Bosnia Herzegovina

A. Professional ethics, conduct and responsibility of judges and lawyers

1. Does your country have a Code of Ethics or equivalent for judges? (please specify)
Yes, BiH has a Code of Ethics for judges.
2. Does your country have a Code of Ethics or equivalent for lawyers? (please specify)
Yes, BiH has a Code of Ethics for lawyers of the Federation of Bosnia and Herzegovina and a Code of Ethics for lawyers of the Republika Srpska Bar Association.
3. Does your country have any joint codes, rules and/or regulations concerning ethics of judges and lawyers? (please specify)
No. There are separate Codes of Ethics for judges and lawyers.
4. Does your country plan to establish codes, rules and/or regulations concerning professional ethics, conduct and responsibility of both judges and lawyers, or to develop the existing ones?
I am not aware of such plans.
5. Does your country have any rules and/or regulations dealing in any manner with the issues of relations between judges and lawyers or is there any intention to establish such instruments in a joint manner for both groups (judges and lawyers)? If yes, please specify
No, not that I know of.
6. In your opinion, what are the main principles which should govern the ethics of:
 - judges ?
 - lawyers?*The main principles that should govern judicial ethics are as follows: judge's independence in decision making, and impartiality in his/her work.*
The main principles that should govern the ethics of lawyers are as follows: representing the best interest of their clients and professional representation regardless of own interests or external pressures.

B. Training of judges and lawyers

7. Which are, in your country, the training institutions:
 - for judges ?
 - for lawyers?*The training of judges in BiH is carried out by Centres for the Education of Judges and Prosecutors (CEST), on the entity level: in the Federation of BiH there is CEST BiH, and in Republika Srpska CEST RS.*
The training of lawyers is carried out by entity bar associations and the Criminal Defence Section of the BiH Ministry of Justice (for lawyers who appear before the Court of BiH/State Court).
8. Which kind of training curricula (initial and continuous training), in brief, do these training institutions have:
 - for judges ?
 - for lawyers?*There is continuous training for judges, which includes several days a year of mandatory training, focused on:*
 - *keeping track of legal regulations in BiH and of novelties, as well as amendments to the laws,*
 - *enhancing judicial and prosecutorial skills,*
 - *getting acquainted with EU legislation,*
 - *discussing selected topics suggested by judges themselves, as well as prosecutors and the BiH High Judicial and Prosecutorial Council.*
9. What is the duration of the initial training:
 - for judges ?
In BiH there is initial training for legal officers preparing for a judicial position (either as judges or prosecutors). The training lasts for 3 years and includes training in criminal, civil, administrative and executive procedure areas (training in substantive and procedural law), human rights, ECtHR case law, judicial ethics..
 - for lawyers?
In order to become a defence counsel, after passing the bar exam a graduated lawyer must have a 2-year practical training in a law firm (as a judicial trainee/intern), which can be considered as mandatory initial training.

10. Does the initial training include issues related to the professional ethics, conduct and responsibility of judges and lawyers, their relations with each other, as well as their co-operation with a view of fair and efficient conclusion of judicial proceedings?

Yes, when it comes to the initial training of legal officers preparing for judicial positions. Every year during the 3 years of initial training, at least one seminar is dedicated to the mentioned issues.

11. Are there joint training courses for judges and lawyers?

No.

If yes:

- what is their content and duration?
- are they mandatory for judges and lawyers?
- how are these courses funded?

If not, are they planned or discussed?

C. Efficiency and quality of judicial proceedings

12. Are there any procedural instruments to facilitate the interaction between judges and lawyers during the proceedings? If yes, please specify.

Unclear question.

13. If not, how are they planned?

14. How is the communication between judges and lawyers organised? Is it efficient? Are there computerised information systems to that end?

There are no computerised information systems for communication between judges and lawyers. Communication is taking place by way of filing written submissions with the court either by mail or by personal delivery, which is subsequently registered in the CMS (Court Management System), which is a computerised system, but still there is no possibility of direct referral of submissions via that system.

15. Are there possibilities, procedures and mechanisms for judges and lawyers to come to an agreement concerning the judicial resolution of the case?

There is a possibility of a plea bargaining or judicial mediation in civil proceedings.

In criminal proceedings there exists an institution of admission of guilt agreement, which represents an agreement between the defendant and the prosecutor, submitted to the court for consideration, in order to speed up the proceedings.

16. If yes, is such agreement compulsory?

In civil proceedings it is mandatory to attempt to resolve the case in that manner, but the agreement as such is not compulsory.

17. Do they negotiate certain phases of the procedure?

In civil matters, there is a so-called preparatory hearing at which the judges and the parties discuss the mentioned organizational issues. Holding a preparatory hearing is mandatory, and only exceptionally may the court schedule a main trial hearing without the preparatory hearing. At the preparatory hearing the court may propose to the parties an alternative solution to the dispute (mediation or court settlement).

At the beginning of the proceedings in criminal matters, a status conference may be held, which is an opportunity for the judge and the parties to agree on the stages of the proceedings, the order of presentation of evidence and similar organizational issues. Holding the status conference in criminal matters is not mandatory.

18. Are there any legal instruments (substantive or procedural) which potentially could be used by judges to ignore, to disregard or in any manner to avoid taking into consideration the claims, demands and arguments of lawyers?

Not that I know of.

19. Are there any legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution?

Lawyers might abuse some legal hearing postponement mechanisms, even though the most recent reform in that area removed a lot of possible abuse mechanisms that the parties could have previously used to delay the proceedings. For instance, according to the latest legal provisions, respondent's failure to appear at a hearing is considered to be tantamount to a withdrawal of lawsuit, whereas the previous law stipulated that a "stay of

proceedings” should take place in such a situation. Also, termination of the possibility (according to the latest Civil Procedure Code) for the presentation of new evidence and facts during the main trial effectively dismantled the mechanism for delaying the proceedings, which had been excessively used and abused in the past.

Also, in criminal matters, it is possible that a lawyer uses a legal possibility to postpone a hearing (for instance in case of disease or some other justifiable inability to attend the hearing etc.).

20. To what extent does the successful interaction between judges and lawyers depend on objective factors such as legislation, structures and procedures? Are there any plans to improve them?
This interaction to a large extent depends on the legally prescribed procedures, whether they to a sufficient extent and in sufficient detail define the duties of the judge in exercising interaction with lawyers during a proceeding he runs.
21. To what extent does such interaction depends on subjective factors such as the patterns of behaviour of individual judges and lawyers, their understanding of their role and responsibility, and/or their wish to work together in order to improve the procedure, etc.?
The interaction to a large extent depends on a subjective behaviour of the judge in running a court proceeding and his attitude towards the lawyers.
22. How would you assess the relationship between judges and lawyers in your country? Are there any plans to take steps to improve the legal culture and to foster co-operation between judges and lawyers?
The relationship between judges and lawyers has been a good one. I do not know of any plans to strengthen their co-operation.

D. Role of judges and lawyers in responding to the needs of parties

23. Please give some examples of co-operation between judges and lawyers in specific categories of cases (e.g. those ending in the peaceful settlement in civil claims).
24. Do you have any possibility in your country for lawyers to become judges, and vice versa? If yes, is it frequent ?
Yes. It does not happen too often, but it is quite possible, there are no obstacles for a lawyer to apply for a judicial position, providing he has 3 years of work experience in the justice system following a bar exam. The opposite situation is much more common, that a judge should become a lawyer.
25. Can lawyers act, in your country, as deputy judges and if so, under what conditions ?
No.

E. Judges, lawyers and media

26. Have there been any reflections in the mass media as regards the relations between judges and lawyers and their co-operation?
The participation of lawyers in the BiH High Judicial and Prosecutorial Council has received negative comments by the local media. The HJPC is an independent body that appoints all judges and prosecutors in BiH, and consists mainly of distinguished judges and prosecutors, but also lawyers. The representation of lawyers through their representatives in the HJPC has been criticized as unacceptable, since with their votes they affect the selection of individuals and their appointment to judicial (and prosecutorial) positions.
27. To what extent lawyers and judges comment in the media on pending cases and on judgments?
Sometimes it happens that legal counsel should comment for the media on cases where no final and binding verdict has been delivered by the court, or criticize judicial decisions that have been made.