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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

**Questionnaire with a view of the preparation of Opinion No. 15 on
specialisation of judges and courts**

Replies from Bosnia and Herzegovina

1. Specialisation of courts

TYPES OF COURTS/JUDGES	(A) TICK THE BOX IF YOUR COUNTRY HAVE SPECIALISED COURTS/JUDGES IN:	(B) IF YES TO (A), TICK THE BOX IF THEY ARE SPECIALISED JUDGES/CHAMBERS WITHIN A GENERALIST COURT	(C) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE INSTITUTION WITHIN THE GENERAL ORGANISATION OF THE JUDICIARY	(D) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE JUDICIARY FORMING A SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(F) IF YES TO (A), TICK THE BOX IF THEY HAVE A TERRITORIAL COMPETENCE DIFFERENT FROM GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)	(G) IF YES TO (A), TICK THE BOX IF THEY APPLY RULES (PROCEDURE, EVIDENCE, ETC.) THAT ARE DIFFERENT FROM THOSE APPLICABLE IN GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)
Family courts							
Juvenile courts							
Administrative courts/council of state							
Immigration/Asylum							
Courts of Account							
Military Courts							
Tax Courts							
Labour/social courts							
Courts for agricultural contracts							
Consumers' claims courts							
Small claims courts							
Courts for wills and inheritances							
Patent/copyrights/trademark courts							
Commercial courts							
Bankruptcy courts							
Courts for land disputes							
"Cours d'arbitrage"							
Serious crimes courts/courts of assize							
Courts for the supervision of criminal investigations (e.g. authorising arrest, wire-tappings, etc.)							

¹ For example, appeals on decisions of the specialised court of first instance is filed with a specialised court of appeals, council of state, etc.

² For example, composition including lay members: jurors, psychologists, engineers; please specify qualifications and system of recruitment. For example composition of only lay members: representatives of labour organisations, aldermen-échevins, justices of the peace, magistrates etc.

Courts for the supervision of criminal enforcement and custody in penitentiaries							
Other, please specify:							

There are four, relatively separate judicial systems in Bosnia-Herzegovina; at the level of the state of BiH, of the Federation of BiH, of Republika Srpska and of the Brčko District of BiH. Each of the four systems is regulated by a separate law: Law on the Court of BiH, Law on Courts in the Federation of BiH, Law on Courts in Republika Srpska and the Law on Courts of Brčko District. Due to the fact that the foregoing laws established different judicial systems, it was not possible to provide adequate information by answering questions in the above table, which is why the answers are given below in a narrative form.

Law on the Court of BiH regulates the jurisdiction of the Court of BiH, as well as its internal organisation. The following Divisions and Sections have been set up under the Law: **Criminal Division** (consisting of Section I for War Crimes, Section II for Organised Crime, Economic Crime and Corruption, and Section III for other criminal offences falling under the Court's jurisdiction), **Administrative Division** and **Appellate Division** (consisting of Section I, which rules on appeals from decisions rendered by Section I of the Criminal Division, Section II, which rules on appeals from decisions rendered by Section II of the Criminal Division, Section III, which rules on appeals from decisions rendered by Section III of the Criminal Division, as well as on appeals from the Administrative Division decisions and on complaints relative to election issues).

A separate body – the High Judicial and Prosecutorial Council, appoints judges to the Court of BiH, whereas the Court President assigns judges to divisions and sections. Prior experience of a judge in a specific field of law as a rule has an impact on the decision on the appointment and assignment to a certain division/section, although this is not prescribed by the law.

Separate laws on courts of the entities and Brčko District regulate the material and territorial jurisdiction of the entity courts. Basic courts (in Republika Srpska and Brčko District) and municipal courts (in the Federation of BiH) in principle are first-instance courts of general jurisdiction.

District courts (Republika Srpska), Appellate (Brčko District) and Cantonal courts (Federation of BiH), are courts of appeal as a rule, however they also have first-instance jurisdiction in matters clearly defined by the law.

Under the Law on Courts of Republika Srpska, separate District Commercial Courts have been established as first-instance courts, as well as the Higher Commercial Court as the second-instance court whose jurisdiction covers the entire entity of Republika Srpska.

Laws on courts of the Entities generally, do not regulate the courts' internal organisation. Exception from this are provisions prescribing that minor offence divisions are to be established in all municipal/basic courts, while in the Federation of BiH, the law also defines municipal courts that have special commercial divisions. As to all other matters, internal organisation of the courts is regulated by the courts' internal acts, while the laws only contain a provision that courts may establish divisions for deciding on matters in the same legal field. Assignment of judges and their potential specialisation inside the court is within the competence of the president of the court.

The High Judicial and Prosecutorial Council appoints judges to the entity courts too, while presidents of courts assign judges to specific divisions and sections within a court. Prior experience of a judge in a specific field of law generally has an impact on the decision on the appointment and assignment to a certain division/section, although no such obligation is prescribed by the law.

Only professional judges try cases in Bosnia-Herzegovina, that is, there are no lay-judges.

To what extent specialisation of courts is relevant in your system?
 There is very little specialisation of courts in Bosnia-Herzegovina.

2. Specialisation of judges

a) Does the recruitment procedure take into account the specialised studies accomplished after the university diploma in law? Does it take into account the specialised professional experience? Please specify.

After getting a university diploma and following a two-year internship, a bachelor of law sits for the bar exam, which, under the law, is a prerequisite for holding the position of a judge. The bar exam is universal for all lawyers who wish to apply for judicial or prosecutorial positions and it encompasses all fields of law.

There are no separate specialised studies or courses for members of the judiciary. However, judges may attend various specialised studies organised by universities. Specialised studies that may have been completed cannot replace the bar exam and formally are not a condition for the position of a judge, but practically, they may give an edge over other candidates. The criteria applied when selecting judges include professional knowledge, professional experience and work results; skills demonstrated through publication of papers and other activities within the profession; professional proficiency based on previous results during the career, including participation in organised types of professional development...

b) Are judges promoted to a higher court, or assigned to a post of chief judge, on the basis of a procedure giving relevance to specialisation? Please specify.

The law stipulates the minimum number of years of relevant experience as a prerequisite for the appointment of judges to courts at various levels, as well as for the appointment to the position of a court President (years of experience working as a judge, prosecutor, attorney or other relevant experience in law following the bar exam). Specialisation, as one of the criteria for the assessment of a judge's qualification may be an asset, but formally is not a condition for the appointment to a higher court or to the position of the President of a court.

c) May a judge from a generalist court move to a specialised court, or from one specialisation to another:

<i>As to separate court systems:</i>	<i>Within the same court system:</i>
<input type="checkbox"/> by just filing an application examined on the basis of seniority and other criteria not including previous specialisation?	<input checked="" type="checkbox"/> by showing professional experience?
<input checked="" type="checkbox"/> by resigning from original post and participate to a new recruitment?	<input type="checkbox"/> by attending specialisation/reconversion courses?
<input type="checkbox"/> other?	<input type="checkbox"/> by passing a specialisation exam?

d) Does the system ensure that all judges may access specialisation (e.g. by giving them the appropriate information)?

Information on available positions and vacancies for judicial positions is public.
 Information about training programmes for judges is public and is published on the web pages of the Centres for Judicial and Prosecutorial Training.

Each year, faculties of law offer specialised studies and the necessary information about programmes for specialised studies is published in daily newspapers and on their respective web pages.

e) What are for judges the criteria for access to specialisation?

f) Do financial provisions exist helping judges to transfer to other towns where specialisation may be acquired?

No.

g) Are there access/reconversion courses to specialised functions:

- Yes, within the judicial training institute?

- Yes, organised by an institution different from the judicial training institute?

- No?

h) Are there training courses reserved only to specialised judges?

Training programmes organised by the Centres for Judicial and Prosecutorial Training encompass a variety of areas and are adapted to the needs of judges coming from all levels and all courts.

i) Are exchanges of judicial experiences between different specialisations and/or generalist groups of judges organised?

Exchange of experience is possible through various types of seminars and trainings, conferences organised by the associations of judges etc.

j) Do specialised positions exist in court for organisational purposes only (e.g., judge serving as spokesperson for the court; judge for the development of IT in court; judge co-operating with ADR services, etc.)?

No.

k) If yes, is there a specific training for this type of posts? Please specify.

No.

l) Do specialised judges have a higher compensation than generalist judges? Please distinguish, if relevant, according to whether the specialist judges belong to the same court system or a separate court system (e.g., in some countries, depending on the distinction between ordinary judges and administrative judges).

No.

m) Are there special allowances, or benefits in kind, for specialised judges?

No.

n) Are specialised judges entitled to a preferential access to higher courts? If yes, is such access limited to the specialisation field of the judge concerned?

They do not have a preferential access. Such experience is valued equally as all other elements of a judge's professional background.

3. Specialisation of courts vis-à-vis specialisation of other actors of justice

a) Is the bar and/or professional associations of lawyers organised on a specialised basis in your country? Please specify.

No.

b) In order to practice before specialised courts, have lawyers to be specialised (e.g. registered in special bar listings)?

Attorneys who wish to practice before the courts in Bosnia-Herzegovina must be on one of the entity listings of attorneys, kept by the entity Bar Associations. In BiH, there are specialised commercial

courts (in Republika Srpska only) and in order for an attorney to be able to practice before them, no formal specialisation is required, nor is a separate listing kept.

However, those attorneys who wish to practice in criminal cases before the Court of BiH, in addition to being registered on one of the entity listings of attorneys, must also be registered on a separate listing of attorneys kept by the Criminal Defence Section (established as part of the Ministry of Justice of BiH). The Criminal Defence Section, in addition to keeping the listing of attorneys authorised to practice in criminal cases before the Court of BiH, is also in charge of organising special trainings for attorneys so that they can meet the criteria for being put on the list.

c) Is public prosecution organised on a specialised basis in your country? Please specify.

No.

d) In order to practice before specialised courts, have prosecutors to be specialised (e.g. belong to specialised department of the prosecution service)?

In the Prosecutor's Office of BiH, there are special departments corresponding to the special criminal divisions of the Court of BiH.

e) Are specialised judges assisted by specialised staff (clerks, technical staff, etc.)? If yes, is this staff recruited on an *ad hoc* basis?

As a rule, there is no prior specialisation as a prerequisite for employment, but staff specialises through work that is usually related to a particular field of law.

4. Specialisation and governance

Is your Council for the judiciary or other another equivalent independent body entrusted with the protection of the independence of judges competent for all specialised judges, as for all generalist judges? If not, please specify the specialised judges that are not under the governance of the Council.

The High Judicial and Prosecutorial Council is competent for all judges.

5. Specialisation, professional associations of judges, judicial ethics

a) Are there in your country professional associations of specialised judges?

No.

b) Do specialised judges have separate or common "principles of judicial ethics"³ with respect to generalist judges? If separate principles apply, please specify (i.e. separate principles needed by exposure of specialised judges to problems affecting juveniles, family problems, labour disputes, etc.).

The same principles of judicial ethics apply to all judges.

6. Conclusion

a) Please give your opinion on the advantages and disadvantages of special courts

Certain types of cases (juveniles and family disputes) do not require specialised courts (due to economic difficulties); instead, specialised divisions with specialised judges should be established within the existing courts.

³ See principles of judicial ethics as defined in CCJE's Opinion No. 3 (i.e. rules having no disciplinary impact).

b) Please give your opinion on the advantages and disadvantages of specialisation of judges

I believe that every specialisation of judges leads to better quality and greater efficiency.