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**Answer to the  
REVISED SCHEME  
FOR  
EVALUATING JUDICIAL SYSTEMS  
2004 Data**

**Réponse à la  
GRILLE REVISEE  
POUR  
L'ÉVALUATION DES SYSTÈMES JUDICIAIRES  
Données 2004**

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**BOSNIA AND HERZEGOVINA/  
BOSNIE-HERZEGOVINE**



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

**Final version**

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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)**

**REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS**

**adopted by the CEPEJ at its 5<sup>th</sup> Plenary Meeting (Strasbourg, 15 – 17 June 2005) and  
approved by the Committee of Ministers on 7 September 2005  
(936<sup>th</sup> meeting of the Ministers' Deputies)**

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## REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

**COUNTRY: Bosnia and Herzegovina**

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## I. Demographic and economic data

### I. A. General information

1. **Number of inhabitants** 4,337,033 as of 1991

Source *Federal Office of Statistics of Federation BiH*  
<http://www.fzs.ba/Dem/Popis/PopisiPopule.htm>

2. **Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level**

	thousands	€
State level	2,662,255	€
Entity level FBiH	1,789,392	€
Entity level RS	750,353	€
Brčko District	80,645	€

The amount for state level (above) represents consolidated amount for Entities and Brčko district.

Source <http://www.cbbh.gov.ba/bh/statistika.html>

3. **Per capita GDP** 1,732 €

Source <http://www.cbbh.gov.ba/bh/statistika.html>  
According to CBBH, estimated 2004 population was 3,832,000.

4. **Average gross annual salary** 4,634 €

Source <http://www.bhas.ba>  
August 2004 gross average monthly salary taken (755 KM).

### I. B. Budgetary data concerning judicial system

5. **Total annual budget allocated to all courts** in 2004 61,040,303 €

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

**Please specify:**

The amount excludes budget allocated to Minor Offence Courts (MOC) which are in the process of being integrated with regular courts as one of the courts' departments. Total budget for Minor Offence Courts in 2004 was 11,132,000 €

6. **Within this budget, can you isolate the following budgets and specify, if appropriate, their amount:**

	Yes	Amount	
▪ Salaries?	X, 2004 Courts	48,859,892	€
▪	X, 2004 MOC	11,132,000	€
▪			

▪ **IT?**

▪ Within this budget there were no funds allocated to IT in 2004. However,

donations were received from international community, and were distributed as follows:

- In 2004, audio equipment for recording a criminal cases' trials installed in courts 500,000 €
- Justice expenses borne by the State? Not available €

Source High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department

**7. Annual public budget spent on legal aid**

Between 1,554,798 – 2,000,000 €

Rough estimate due to inadequacy in accounting practices. Only 54% of courts kept track on legal expenses.

Source High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department

**8. If possible, please specify:**

- the annual public budget spent on legal aid in criminal cases N.A. €
- the annual public budget spent on legal aid in other court cases N.A. €

Source No information available

**9. Annual public budget spent on prosecution system 16.591.370 €**

Source High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department

**10. Bodies formally responsible for budgets allocated to the courts:**

	Preparation of the budget (Yes/No)	Adoption of the budget (Yes/No)	Management and allocation of the budget among courts (Yes/No)	Evaluation of the use of the budget (Yes/No)
Ministry of Justice	Yes	No	Yes	No
Other ministry. Finance ministry	Yes	No	Yes	Yes
Parliament	No	Yes	No	Yes
Supreme Court	Yes, but only for its own budget	No	No	No
Judicial Council	Yes	No	No	Yes
Courts	Yes but only for its own budget	No	No	Yes
Inspection body. Please specify.	N.A.	N.A.	N.A.	Ministry of finance
Other. Please specify	N.A.	N.A.	N.A.	N.A.

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your budgetary system

## II. Access to Justice and to all courts

### II. A. Legal aid

11. Does legal aid concern:

	Criminal cases	Other than criminal cases
Representation in court (Yes/No)	Yes	No
Legal advice (Yes/No)	Yes	No
Other (Yes/No). Please specify		

12. Number of legal aid cases:

- total N.A.
- criminal cases N.A.
- other than criminal cases N.A.

Source *No information available.*

13. In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

Yes  No

*When the proceedings are conducted for an offense for which a prison sentence of three or more years may be pronounced or when the interests of justice so require, regardless of the prescribed punishment, any individual who does not have sufficient financial means, may be assisted by a free of charge lawyer at his request if due to an adverse financial situation, he is not able to pay the expenses of the defence.*

14. Does your country have an income and asset test for granting legal aid:

- |                                  | No                                  | Yes/Amount               |
|----------------------------------|-------------------------------------|--------------------------|
| ▪ for criminal cases?            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ for other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Source *BiH legislation.*

*Although any individual who does not have sufficient financial means may be granted a free legal*

*aid, there is no income and asset test with precise numbers, but rather the overall financial situation of the individual is assessed, meaning his property, his income, his obligations, etc.*

15. In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

Yes  No

16. If yes, is the decision taken by:

- the court?
- a body external to the court?
- a mixed decision-making body (court and external)?

Yes

17. In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- |                                  |                                     |                                     |
|----------------------------------|-------------------------------------|-------------------------------------|
|                                  | Yes                                 | No                                  |
| ▪ for criminal cases?            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ▪ for other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

If yes, are there exceptions? Please specify:

*The following litigants are exempted from paying a court fee to start a proceeding: (i) state organs, (ii) humanitarian organizations, (iii) persons receiving social aid.*

*In following cases, a court tax to start a proceeding is paid upon conclusion of proceedings only in case if a final and valid court decision is not in favour of a litigant who started a proceeding: (i) administrative disputes, (ii) health, pension and disability disputes, (iii) custody, (iv) adoption and social care.*

*The court may decide to exempt a litigant from paying a court tax for a foreign national if it is provided in the international agreement or if there is reciprocity between the states concerned.*

18. Is there a private system of legal expense insurance for individuals in order to finance legal proceedings to court?

No   
Yes  Please specify:

19. Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

- |                              |                                     |                          |
|------------------------------|-------------------------------------|--------------------------|
|                              | Yes                                 | No                       |
| ▪ criminal cases?            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system

*In criminal cases when the court finds the accused guilty, the accused must reimburse the costs of criminal proceedings.*



The court may relieve the accused of the duty to reimburse all or part of the costs of criminal proceedings if their payment would jeopardize the support of the accused or of persons whom the accused is required to support economically.

When criminal proceedings are dismissed or when a verdict is rendered that acquits the accused or rejects the charge, the decision or verdict pronounces that the costs of criminal proceedings and the necessary expenditures of the accused and the necessary expenditures and remuneration of defense attorney are paid from budget appropriations.

In other than criminal cases, the party that has lost the litigation in its entirety shall cover the winning party's costs. If the party was partially successful, the court may, depending on the success in the proceedings, order each party to cover its own costs, or one party to cover a proportionate part of other party's costs. The court may decide that a party covers all the costs of the adverse party, if the adverse party failed to succeed in small part of his/her claim only and no separate costs were incurred in connection to that part of the claim. Regardless of the outcome of the proceedings, a party is obliged to reimburse the costs of the adverse party which have been incurred by his/her fault or incident that happened to him/her. Each party shall bear his/her own costs if the litigation has been terminated by a judicial settlement, and the settlement does not state otherwise.

In two regions of BiH, which cover approximately 5% of population, there are two government departments that provide free legal aid to those who cannot afford to pay for legal representation or advice. Also, there is a non-governmental organization called Vaša prava "Your Rights", which has its offices throughout the country and which provide a free legal aid to all those who cannot afford it.

## II. B. Users of the courts and victims

### II. B. 1. Rights of the users and victims

20. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

- Yes No  
▪ legal texts (e.g. codes, laws, regulations, etc.)? x

Internet address(es): <http://www.hjpc.ba/>  
<http://www.fbihvlada.gov.ba/index.html>  
<http://www.vladars.net/lt/zakoni/>  
<http://www.narodnaskupstinars.net/lat/zakoni/arhiva.php>  
<http://www.bdccentral.net/Members/skupstina/Zakoni/zakoni.html>

- case-law of the higher court/s?

Internet address(es): <http://www.vsfbih.ba/index.php>  
<http://www.vrhovnisudrs.com/>  
<http://www.ustavnisud.ba>  
<http://www.hrc.ba>

- other documents (for examples legal forms)?

Internet address(es):

21. Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

Yes  No x

If yes, please specify:

22. Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

Yes  No

23. Are there special arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism (Yes/No)	Hearing modalities (Yes/No)	Procedural rights (Yes/No)	Other (Yes/No). Please specify
Victims of rape	No	Yes	Yes	N.A.
Victims of terrorism	No	Yes	Yes	N.A.
Child/Witness/Victim	No	Yes	Yes	Yes. Special measures could be implemented by the court for the victims, such as to be temporarily placed in "safe houses", etc.
Victims of domestic violence	No	Yes	Yes	Yes. Special measures could be implemented by the court for the victims, such as to be temporarily placed in "safe houses", etc.
Ethnic minorities	No	No	No	N.A.
Disabled persons	No	Yes	Yes	N.A.
Juvenile offenders	No	Yes	Yes	During the proceedings before the court, the juvenile judge may render a decision concerning temporary placement of the minor in an institution, and he may also revoke a previous order to that effect.

Other	N.A.	N.A.	Given age, physical and mental condition, or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness. An expert may be assigned for the purpose of the examination.	N.A.
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24. Does your country have compensation procedure for victims of crimes?

Yes  No

25. If yes, does this compensation procedure consist in:

- Yes
- a public fund?
  - a court order?
  - private fund?

26. If yes, which kind of cases does this procedure concern?

*A claim under property law that has arisen because of the commission of a criminal offense is deliberated on the motion of a victim in criminal proceedings if this would not considerably prolong such proceedings. A claim under property law may pertain to reimbursement of damage, recovery of items, or annulment of a particular legal transaction.*

27. For victims, are there studies to evaluate the recovery rate of the compensation awarded by courts?

No  Yes  Please specify:

## II. B.2. Confidence of citizens in their justice system

28. Is there a system for compensating users in the following circumstances:

	Yes	No
▪ excessive length of proceedings?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ wrongful arrest?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ wrongful condemnation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If yes, please specify (fund, daily tariff):

*Wrongful arrest - a person is entitled to compensation of damages in following cases (i) who was in detention, but criminal proceedings were not instituted or proceedings were dismissed or a final verdict was pronounced acquitting the person of charges or charges were rejected; (ii) a person who was subjected to unlawful detention or retained in detention or a correctional institution due to a mistake; (iii) a person who was in detention longer than the sentence to which he was convicted; (iv) a person who served a sentence of imprisonment, and was pronounced a shorter imprisonment sentence in reopened criminal proceedings than the sentence he had served, or was pronounced a criminal sanction other than imprisonment or he was pronounced guilty but freed from sanction; (v) a person who was imprisoned without a legal ground is entitled to compensation of damages if no pre-trial detention was ordered against him or the time for which he was imprisoned was not included in the sentence pronounced for a criminal offense or minor offense.*

*Wrongful condemnation - A person against whom an effective criminal sanction was pronounced or who was found guilty and freed from sanction, and later, based on extraordinary remedy, reopened proceedings were effectively dismissed or effective verdict was pronounced acquitting the person of charges, or the charges were rejected, is entitled to compensation of damages on grounds of unjust convicted, except in the following cases: (i) if the dismissal of proceedings or the verdict rejecting the charges resulted from the prosecutor dismissing the prosecution in the reopened proceedings, and the dismissal took place based on an agreement with the suspect or the accused; (ii) if in the reopened proceedings a verdict was pronounced rejecting the charges due to lack of jurisdiction of the court, and the authorized prosecutor instituted prosecution before a competent court.*

*When calculating the compensation, there are no provisions regulating the amount per day of unjustified detention or condemnation compensation, however, when the fine is substituted by imprisonment it is done in a way each 25 Euro started, is substituted by one day of imprisonment.*

29. Does your country have surveys on users or legal professionals (judges, lawyers, officials, etc.) to measure public trust and satisfaction with the services delivered by the judiciary system?

Yes  No

If possible, please specify their titles, how to find these surveys, etc:

--

30. If yes, please specify:

	Trough systematic surveys (Yes/No)	Through ad hoc surveys (Yes/No)
Surveys at national level	N.A.	N.A.
Surveys at court level	N.A.	N.A.

31. Is there a national or local procedure for making complaints about the performance of the judicial system?

Yes  No

32. If yes, please specify:

	Time limit to respond (Yes/No)	Time limit for dealing with the complaint (Yes/No)
Court concerned	Yes	No
Higher court	No	No
Ministry of Justice	Yes	No
High Council of Justice	Yes	Yes
Other external organisations (e.g. Ombudsman)	Yes	No

**Can you give information elements concerning the efficiency of this complaint procedure?**

*When a complaint is filed against a judge to a court or Ministry of Justice, it is their obligation to immediately forward the complaint to the “High Council of Justice” (which in Bosnia is called “High Judicial and Prosecutorial Council”). The High Judicial and Prosecutorial Council has two years to investigate the complaint and make a final decision about it, meaning whether to initiate disciplinary proceedings or to reject it as unfounded.*

*If a complaint is filed against a court employee, then president of the court is responsible to make a final determination about the complaint, but no time limits are given in the law.*

*If the Ministry of Justice, after investigation upon complaint or ex officio for which there are no time limits, concludes that there are some deficiencies in administration of justice, it is responsible to inform a competent court president and/or High Judicial and Prosecutorial Council, which are then responsible to undertake measures to correct these deficiencies.*

*If the Ombudsman institution, after investigation upon complaint or ex officio for which there are no time limits, finds out that there are deficiencies in administration of justice, it can give recommendations to the court or HJPC concerned how to correct these deficiencies.*

### III. Organisation of the court system

#### III. A. Functioning

#### 33. Total number of courts (administrative structure):

- **first instance courts of general jurisdiction**

66 (48 municipal, 15 county – first instance only in some cases, 2 supreme - first instance only in some cases, 1 state - first instance only in some cases)

Source High Judicial and Prosecutorial Council of BiH – Appointment Department

- **specialised first instance courts** 0

Source High Judicial and Prosecutorial Council of BiH

**Please specify the different areas of specialisation (and, if possible, the number of courts concerned):**

As for first instance courts of general jurisdiction, there are specialised departments within the courts that are competent to deal with specific issues. So, the following specialised departments exists: (i) department for economic disputes (total number is 15); (ii) department for registration of legal persons (15).

In addition to this, there are 116 Minor Offence First Instance Courts which are responsible for minor offences such as disturbance of public peace and order, traffic violations, etc. There is a reform underway of the minor offence structure, so it is expected that next year these courts will become part of regular court system in a way that the courts will become specialised departments within regular first instance courts.

#### 34. Total number of courts (geographic locations)

72 first instance courts of general jurisdiction = 66 (48 municipal, 15 county – first instance only in some cases, 2 supreme - first instance only in some cases, 1 state - first instance only in some cases) + 4 branches in the RS + 2 branches in the FBiH

0 specialised first instance courts

Source High Judicial and Prosecutorial Council of BiH

#### 35. Number of first instance courts competent for a case concerning:

- **a debt collection for small claims** 48

**Please specify what is meant by small claims in your country:**

Small claim disputes are those where the monetary claim does not exceed 1.500 Euro. Small claim disputes also include disputes which are not of pecuniary nature but for which the plaintiff has stated in the complaint that s/he will accept certain monetary sum that does not exceed the amount. Small claim disputes also include those disputes in which the main subject matter is not of pecuniary nature but the transfer of a moveable asset with value, as stated in the complaint by the plaintiff, that does not exceed the amount.

- a dismissal 48
- a robbery 48

36. **Number of professional judges sitting in courts** 690  
*(present the information in full time equivalent and for permanent posts)*

*Judges of Minor Offence Courts, whose number is about 280, are not included in the above number.*

Source *High Judicial and Prosecutorial Council of BiH – Appointment Department*

37. **Number of professional judges sitting in courts on an occasional basis and who are paid as such:**

- gross figure 12
- if possible, in full time equivalent

Source *High Judicial and Prosecutorial Council of BiH – Appointment Department*

**Please specify:**

*The High Judicial and Prosecutorial Council of BiH may appoint persons on a temporary basis to act as reserve judges, in order to assist courts in reducing case backlogs, or where the prolonged absence of a judge in a court requires additional judicial resources. The HJPC may appoint reserve judges upon application by the president of a court, provided the application is supported by evidence indicating the need and sufficient funding for the reserve judges.*

38. **Number of non-professional judges (including lay judges) who are not remunerated but who can possibly receive a simple defrayal of costs** 362

Source *High Judicial and Prosecutorial Council of BiH – Appointment Department*

**Please specify:**

*Lay judges play a role in the BiH judicial system, due to application of previous civil and criminal procedural laws that required their participation. However, most of the procedural laws changed in 2003 in a way that participation of lay judges is not required any longer, but due to a backlog of cases, their participation is still needed.*

39. **Does your judicial system include trial by jury with the participation of citizens?**

No

Yes  **For which type of case(s)?**

**If possible, number of citizens who were involved in such juries for the year 2004?**

40. **Number of non-judge staff who are working in courts** 1998 as of December 2005

(present the information in full time equivalent and for permanent posts)

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

41. If possible, could you distribute this staff according to the 3 following categories:

- non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars: 1,025 as of December 2005
- staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management): 758 as of December 2005
- technical staff: 215 as of December 2005

*These numbers are an estimate since the position titles are not standardized throughout BiH*

42. In courts, do you have non-judge staff entrusted with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal (such as German and Austrian Rechtspfleger):

No    
 Yes  Number of staff

43. Number of public prosecutors 274

(present the information in full time equivalent and for permanent posts)

Source *High Judicial and Prosecutorial Council of BiH – Appointment Department*

44. Do you have persons who have similar duties as public prosecutors?

No    
 Yes  Please specify:

45. Is the status of prosecutors:

- independent within the judiciary?
- independent from the judiciary ?
- under the authority of the Ministry of Justice?

Yes

46. Number of staff (non prosecutors) attached to the public prosecution service

*427 as of December 2005*



(present the information in full time equivalent and for permanent posts)

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

**47. Who is entrusted with the individual court budget?**

	Preparation of the budget (Yes/No)	Arbitration and allocation (Yes/No)	Day to day management of the budget (Yes/No)	Evaluation and control of the use of the budget (Yes/No)
Management Board	No	No	No	No
Court President	Yes	Yes	Yes	Yes
Court administrative director Court secretary	No	No	No	No
Head of the court clerk office	No	No	No	No
Other. Please specify				

**48. In general, do the courts in your country have computer facilities?**

Yes  No

**49. What are the computer facilities used within the courts? as of December 2005**

Functions	Facilities	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Direct assistance to the judge/court clerk	Word processing		<input checked="" type="checkbox"/>		
	Electronic data base of jurisprudence				<input checked="" type="checkbox"/>
	Electronic files				<input checked="" type="checkbox"/>
	E-mail			<input checked="" type="checkbox"/>	
	Internet connection			<input checked="" type="checkbox"/>	
Administration and management	Case registration system				<input checked="" type="checkbox"/>
	Court management information system				<input checked="" type="checkbox"/>
	Financial information system				<input checked="" type="checkbox"/>
Communication between the court and the parties	Electronic forms				<input checked="" type="checkbox"/>
	Special Website			<input checked="" type="checkbox"/>	
	Other electronic	<i>E-mail and fax communication</i>			

communication  
facilities

Source *High Judicial and Prosecutorial Council of BiH – IT Department*

50. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

No

Yes

Please specify the name and the address of this institution:

1. *The High Judicial and Prosecutorial Council of BiH, Kraljice Jelene 88, 71000 Sarajevo, BiH.*
2. *Federalni zavod za statistiku, Zelenih beretki 26, 71000 Sarajevo, BiH,*
3. *RS Zavod za statistiku, Veljka Mlađenovića 12 d, 78000 Banja Luka, BiH.*

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system

### III. B. Monitoring and evaluation

51. Are the courts required to prepare an annual activity report?

Yes

No

52. Do you have a regular monitoring system of court activities concerning the:

- |                              | Yes                                 | No                                  |
|------------------------------|-------------------------------------|-------------------------------------|
| ▪ number of incoming cases?  | <input checked="" type="checkbox"/> |                                     |
| ▪ number of decisions?       | <input checked="" type="checkbox"/> |                                     |
| ▪ number of postponed cases? | <input checked="" type="checkbox"/> |                                     |
| ▪ length of proceedings?     |                                     | <input checked="" type="checkbox"/> |
| ▪ other?                     |                                     |                                     |

Please specify:

53. Do you have a regular evaluation system of the performance of the court?

No

Yes

Please specify:

54. Concerning court activities, have you defined:

- performance indicators? Yes  No

Please specify the 4 main indicators for a proper functioning of justice:

*It is in the process of being established*

- targets? Yes  No

Please specify who is responsible for setting the targets:

- executive power? Yes
- legislative power? Yes
- judicial power?
- other?  Please specify:

*Each and every court prepare an Annual Work Plan setting targets for the coming year.*

*High Judicial and Prosecutorial Council of BiH, an independent and autonomous body, is tasked with ensuring the maintenance of an independent, impartial and professional judiciary. Its competence also includes setting criteria for the performance evaluations of judges and prosecutors as well as setting criteria for the performance of courts and prosecutors offices.*

Source *High Judicial and Prosecutorial Council of BiH*

55. Which authority is responsible for the evaluation of the performances of the courts:

- the High Council of judiciary? Yes
- the Ministry of justice? *no*
- an Inspection body? *no*
- the Supreme Court? *no*
- an external audit body? *no*
- other?  Please specify:

*One of the HJPC's authorities is to evaluate performance of the courts.*

*Presidents of courts evaluate performance of the courts, namely judges and court officials, in the end of a year.*

56. Does the evaluation system include quality standards concerning judicial decisions?

- No
- Yes  Please specify:

*Courts collect statistical information on number of annulled, cancelled and overturned decisions for each and every judge and on that basis court presidents evaluate quality of decisions and judges.*

Source *High Judicial and Prosecutorial Council of BiH*

57. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within an acceptable timeframe for:

- |                         | Yes                                 | No                       |
|-------------------------|-------------------------------------|--------------------------|
| ▪ civil cases?          | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ criminal cases?       | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ administrative cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

*Courts keep track on all open cases during a year as well as those cases that are not finished from previous years, however there is no national centralized system of the data.*

58. Do you have a way of analysing queuing time during court procedures?

- No   
Yes  Please specify:

59. Do you monitor and evaluate the performance of the prosecution services?

- No   
Yes  Please specify:

*Entity Chief Prosecutors and District Chief Prosecutors monitor and evaluate performance of prosecutors and prosecutors' offices as such.*

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your court monitoring and evaluation system

#### IV. Fair trial

##### IV. A. Fundamental principles

60. Is there in your judicial system:

- a right for an interpreter for all those within your jurisdiction who cannot understand or speak the language used in court?  
Yes  No
- the right to have reasons given for all prisons sentences?  
Yes  No
- for all cases, an effective remedy to a superior jurisdiction?  
Yes  No

61. Which is the percentage of judgements in first instance criminal cases in which the suspect is not actually present or represented? *0%.*

Source *BiH legislation*

*Explanation: According to the new criminal procedure codes applicable in BiH, which have been adopted and in force since 2003, an accused may never be tried in absentia. However, according to the old criminal procedure codes, it was possible to conduct court*

proceedings in absentia of the accused, but in presence of his lawyer. Some of the trials, in accordance with the old laws, have not been concluded before 2004, therefore some, but very small number of cases were decided without presence of the accused but in presence of his lawyer in 2004, but there is no reliable source about number of these cases.

62. Is there a procedure to effectively challenge a judge if a party consider he/she is not impartial?

No

Yes

If possible, number of successful challenges (in a year): N.A.

63. Please give the following data 2003 and 2004 concerning the number of cases regarding the violation of Article 6 of the European Convention of Human Rights:

		Cases communicated by the Court		Cases declared inadmissible by the Court		Friendly settlements		Judgements establishing a violation		Judgements establishing a non violation	
		2003	2004	2003	2004	2003	2004	2003	2004	2003	2004
Criminal proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)										
	Article 6§2										
	Article 6§3a										
	Article 6§3b										
	Article 6§3c										
	Article 6§3d										
	Article 6§3e										
Civil proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)										
	Article 6§1 (non execution only)										

#### SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2004

In 2004 the Court delivered 718 judgments, 15 of which were delivered by the Grand Chamber. Judgments were delivered in respect of all Contracting States except Armenia, Azerbaijan, **Bosnia and Herzegovina**, the former Yugoslav Republic of Macedonia, Norway, Slovenia and Switzerland.

Source: <http://www.echr.coe.int/NR/rdonlyres/94484030-2547-4FFC-9F91-8E96A87C7D74/0/2004analysisofcaselaw.pdf>

#### SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2003

In 2003 the Court delivered 703 judgments<sup>1</sup>, 12 of which were delivered by the Grand Chamber. Judgments were given in respect of all Contracting States except Albania, Andorra, Armenia, Azerbaijan, **Bosnia and Herzegovina**, Georgia, Liechtenstein, the former Yugoslav Republic of Macedonia and Slovenia.

**IV.B. Timeframes of proceedings**  
**IV. B. 1. General**

64. Are there specific procedures for urgent matters in:

- |                         | Yes                                 | No                                  |
|-------------------------|-------------------------------------|-------------------------------------|
| ▪ civil cases?          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ▪ criminal cases?       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ▪ administrative cases? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

65. Are there simplified procedures for:

- |                                    | Yes                                 | No                                  |
|------------------------------------|-------------------------------------|-------------------------------------|
| ▪ civil cases (small claims)?      | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ▪ criminal cases (petty offences)? | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ▪ administrative cases?            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

66. Is it possible for a second instance court to send back a case to a first instance court for a new examination?

Yes  – in civil cases

No  – in criminal cases

67. Do courts and lawyers have the possibility to conclude agreements on modalities for processing cases (presentation of files, binding timeframes for lawyers to submit their conclusions and dates of hearings)?

No

Yes  Please specify:

**IV. B. 2. Civil and administrative cases**

68. Total number of civil cases in courts (litigious and not litigious): **N.A.**

Please specify the main types of cases:

Civil procedure cases and civil commercial cases over 1,500 Euro  
 Civil procedure cases and civil commercial cases under 1,500 Euro  
 Bankruptcy cases  
 Liquidation cases  
 Inheritance cases

69. Litigious administrative and civil cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:

		Civil cases	Administrative cases	Divorce	Employment dismissal
Total number (1st instance)	Incoming cases				
	Decisions on the merits				
	Percentage of decisions subject to appeal in a higher court				
	Pending cases by 1 January 2005				
	Percentage of pending cases of more than 3 years				
Average length (from date of lodging of court proceedings*)	1st instance decisions				
	2nd instance decisions				
	Total procedure				

\* If you cannot calculate the average length from the date of lodging of court proceedings, how do you calculate length of proceedings?

*There is no reliable statistical information regarding this question.*

**Where appropriate, please specify the specific procedure as regards divorce:**

*There is no reliable statistical information regarding this question.*

Source

**IV. B. 3. Criminal cases**

70. Please describe the role and powers of the prosecutor in the criminal procedure:

	Yes	No
▪ to conduct or supervise police investigation?	x	
▪ to conduct investigation?	x	
▪ when necessary, to demand investigation measures from the judge?	x	
▪ to charge?	x	
▪ to present the case in the court?	x	

- to propose a sentence to the judge?  x
  - to appeal?  x
  - to supervise enforcement procedure?
  - to end the case by dropping it without the need for a judicial decision?
  - to end the case by imposing or negotiating a penalty without a judicial decision?
  - other significant powers?
- Please specify:**

*A prosecutor may withdraw the indictment without prior approval before its confirmation, and after the confirmation and before the commencement of the main trial, only with the approval of the preliminary hearing judge who confirmed the indictment*

*In the case, the proceeding shall be ceased by the decision, and the suspect or the accused, the defense attorney and injured party shall be promptly notified of such decision.*

*The suspect or the accused and the defense attorney, may negotiate with the Prosecutor on the conditions of admitting guilt for the criminal offense with which the accused is charged. An agreement on the admission of guilt shall be made in writing. The preliminary hearing judge, judge or the Panel may sustain or reject the agreement in question.*

*Educational recommendations may be applied to a juvenile for criminal offences for which a fine or a punishment of imprisonment for a term not exceeding three years is prescribed.*

*The educational recommendations may be applied to a juvenile by a competent prosecutor or judge for juvenile perpetrators.*

*The conditions for application of educational recommendations are: the juvenile's admission that he has perpetrated the criminal offence, and his expressed willingness to make amends with the injured party.*

**71. Does the prosecutor also have a role in civil and/or administrative cases?**

- No
- Yes  **Please specify:**

*A prosecutor has the right to file a request for protection of legality if the prosecutor deems that the ruling violates the law, against the valid ruling issued in the area where an administrative lawsuit can not be conducted, and the judicial protection is not provided outside the administrative lawsuit.*

*The request for protection of legality under the provision may be filed within 30 days from the day when the ruling was submitted to the prosecutor, and if it was not submitted, then within the period of three months from the day of submission to the party.*

*In addition to this, and in the process of registration of legal entities, a prosecutor has a right to file a Request for protection of legality if the substantive law has been applied incorrectly and if the rules of procedure have been seriously violated. The prosecutor is able to file a request for the protection of legality if the registration subject that has already been registered with the court and is registering with a different court, and the first registering court has not conducted the prescribed procedure. The prosecutor is able to file a request for protection of legality against a valid decision on the court registration within 60 days*

**72. Functions of the public prosecutor in relation to criminal cases– please complete this table:**

		Total number of 1st instance criminal cases
--	--	---



Received by the public prosecutor	
Discontinued by the public prosecutor	In general
	Because the offender could not be identified
	Due to the lack of an established offence or a specific legal situation
Concluded by a penalty, imposed or negotiated by the public prosecutor	
Charged by the public prosecutor before the courts	

Source  

*There is no reliable statistical information regarding this question.*

**73. Criminal cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:**

		Criminal cases	Robbery cases	Intentional homicides
Total number (1st instance)	Incoming cases			
	Judicial decisions			
	Convicted persons			
	Acquitted persons			
	Percentage of decisions subject to appeal in a higher court			
	Pending cases by 1 January 2005			
	Percentage of pending cases of more than 3 years			
Average length*(from the date of official charging)	1st instance decision			
	2nd instance decision			
	Total procedure			

\* If you cannot calculate the average length from the date of official charging, how do you calculate length of proceedings?

*There is no reliable statistical information regarding this question.*

Source  

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**

- **the characteristics of your system concerning timeframes of proceedings**

System concerning timeframes of proceedings which could provide information on average length of proceedings on state level is not yet established. However each court is able to provide this kind of information on separate level, and based on this fact statistical system on state level is to be established.

**V. Career of judges and prosecutors**

**V. A. Appointment and training**

74. Are judges initially/at the beginning of their carrier recruited and nominated by:
- a body composed of members of the judiciary?
  - a body composed of members external to the judiciary?
  - a body composed of members of the judiciary and external to the judiciary?
75. Are prosecutors initially/at the beginning of their carrier recruited and nominated by:
- a body composed of members of the prosecution system?
  - a body composed of members external to the prosecution system?
  - a body composed of members of the prosecution system and external to the prosecution system?

Judges and prosecutors are recruited and nominated in accordance with the same procedure.

76. Is the mandate given for an undetermined period for:

- |                | Yes                                 | No                       |
|----------------|-------------------------------------|--------------------------|
| ▪ judges?      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ prosecutors? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

**Are there exceptions ? Please specify:**

There is only one exception. The High Judicial and Prosecutorial Council of BiH may appoint persons on a temporary basis to act as reserve judges, in order to assist courts in reducing case backlogs, or where the prolonged absence of a judge in a court requires additional judicial resources. The Council may appoint reserve judges upon application by the president of a court, provided the application is supported by evidence indicating the need and sufficient funding for the reserve judges.

**If no, what is the length of the mandate:**

- of judges?
- of prosecutors?

**Is it renewable?**

- | Yes                      | No                       |
|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> |

\*\*\*

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors

Selection and nomination of judges and prosecutors is conducted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which is an independent and autonomous organ of Bosnia and Herzegovina tasked to ensure maintenance of an independent, impartial and professional judiciary. The

Council consists of fifteen (15) members out of which 5 are judges of different levels, 6 are prosecutors of different levels, 2 are lawyers and 2 are representatives of legislative and executive branch of the government.

Criteria for selection and nomination of judges and prosecutors is objective to a large extent, and only individuals possessing integrity, high moral standing, and demonstrated professional ability with the appropriate training and qualifications could be appointed to a position of a judge or prosecutor. Selection and appointment procedure is initiated by a public announcement of vacant positions, conducted by the HJPC, and is published throughout Bosnia and Herzegovina. A competitive examination of applicants could be consisted of a written test, while no person is eligible for appointment to judicial or prosecutorial office without having been interviewed.

Each applicant has a right to review his or her application materials provided to the HJPC in regard to his or her applications, to request and receive information, subject to confidentiality, regarding the application and appointment procedure, to review and comment upon any opinion regarding the applicant submitted to the HJPC, and to address comments to the HJPC about a matter affecting the applicant's application

In making decisions on appointment, the Council shall take into account, amongst others, the following criteria: (i) professional knowledge, work experience and performance; (ii) work capability and capacity for analysing legal problems; (iii) ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered; (iv) communication abilities; (v) relations with colleagues, conduct out of office, integrity and reputation; (vi) Managerial experience and qualifications, in relation to the positions of court president, chief prosecutor and deputy chief prosecutor.

**77. Nature of the training of judges:**

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory			
	Highly recommended			
	Optional	Yes		
General in-service training	Compulsory	Yes	Annual	Yes
	Highly recommended		Regular	
	Optional		Occasional	
In-service training for specialised functions (e.g. judge for economic or administrative issues)	Compulsory		Annual	
	Highly recommended		Regular	
	Optional	Yes	Occasional	Yes
In-service training for specific functions (e.g. head of court)	Compulsory		Annual	
	Highly recommended	Yes	Regular	
	Optional		Occasional	Yes

**78. Nature of the training of prosecutors:**

	Compulsion (Yes/No)		Frequency (Yes/No)	
	Initial training	Compulsory		
Highly recommended				
Optional		Yes		
General in-service training	Compulsory	Yes	Annual	Yes
	Highly recommended		Regular	
	Optional		Occasional	
Specialised in-service training	Compulsory		Annual	
	Highly recommended		Regular	
	Optional	Yes	Occasional	Yes

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your training system for judges and prosecutors**

*The High Judicial and Prosecutorial Council of Bosnia and Herzegovina is in charge for controlling the training for judges and prosecutors, but on the other hand three Centers for Judicial and Prosecutorial Training are empowered with carrying out the training.*

*The HJPC (i) determines the induction training for candidates chosen for judicial and prosecutorial office and supervise the provision of such training; (ii) determines the minimum amount of advanced professional training to be undertaken by every judge and prosecutor each year; (iii) supervise the advanced professional training of judges and prosecutors and advise the Centres for Judicial and Prosecutorial Training in adoption of programmes of advanced professional training for judges and prosecutors; (iv) approve the annual report of the Steering Boards of the Judicial and Prosecutorial Training Centres insofar as it relates to the induction training and the advanced professional training of judges and prosecutors.*

*If a judge or prosecutor fails to fulfil any mandatory training obligations or any other obligations imposed by law, by that he/she commits a disciplinary offence for which a disciplinary measure could be imposed by the HJPC.*

**V. B. Practice of the profession**

**79. Gross annual salary of a first instance professional judge at the beginning of his/her career**

	FBIH	RS	
	26,153	22,148	€
<i>Assuming 3 yrs of work experience</i>			

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

**80. Gross annual salary of a judge of the Supreme Court or of the highest appellate court**

FBiH	RS	
47,617	33,605	€
<i>Assuming 20 yrs of work experience</i>		

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

**81. Gross annual salary of a public prosecutor at the beginning of his/her career**

FBiH	RS	
26,153	22,148	€
<i>Assuming 3 yrs of work experience</i>		

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

**82. Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court**

FBiH	RS	
47,617	33,605	€
<i>Assuming 20 yrs of work experience</i>		

Source *High Judicial and Prosecutorial Council of BiH – Budget and Statistics Department*

**83. Do judges and public prosecutors have additional benefits?**

	Judges (Yes/No)	Public prosecutors (Yes/No)
Reduced taxation	No	No
Special pension	No	No
Housing	No	No
Other financial benefit (If yes, please specify)	No	No

**84. Can judges or prosecutors combine their work with any of the following other professions?**

	Judges			Prosecutors		
	Yes with remuneration	Yes without remuneration	No	Yes with remuneration	Yes without remuneration	No
Teaching	x			x		
Research and publication	x			x		
Arbitrator			x			x
Consultant			x			x
Cultural function			x			x
Other function to specify			x			x

**85. Do judges receive bonus based on the fulfilment of quantitative objectives relating to the**

**delivering of judgments?**

No

Yes  **Please specify:**

**V. C. Disciplinary procedures**

**86. Types of disciplinary proceedings and sanctions against judges and prosecutors:**

		Judges	Prosecutors
Reasons for disciplinary procedures	Total number	9	4
	Breach of professional ethics (Yes/No) If yes, please specify the number	5	3
	Professional inadequacy (Yes/No) If yes, please specify the number	4	1
	Criminal offence (Yes/No) If yes, please specify the number	0	0
	Other (Yes/No) If yes, please specify	0	0
	Types of sanctions	Total number	13
Reprimand (Yes/No) If yes, please specify the number		5	3
Suspension (Yes/No) If yes, please specify the number		0	0
Dismissal (Yes/No) If yes, please specify the number		2	0
Fine (Yes/No) If yes, please specify the number		5	2
Other (Yes/No) If yes, please specify		<i>One judge resigned before initiation of the disciplinary proceedings.</i>	<i>One prosecutor resigned before initiation of the disciplinary proceedings.</i>

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning disciplinary procedures for judges and prosecutors**

*Judicial disciplinary system in Bosnia and Herzegovina is established in a way that an independent office within the High Judicial and Prosecutorial Council of Bosnia and Herzegovina is conducting investigation into allegations of misconduct against judges and prosecutors, while the HJPC, through its disciplinary panels, make a final decision about imposing a disciplinary measure. Judge or prosecutor is guaranteed*

all rights, including (i) a right to be represented by a lawyer; (ii) a right to file two appeals against any decision made by disciplinary panels to impose a disciplinary measure; (iii) and, in case of his/her removal, a right to appeal to the State Court of Bosnia and Herzegovina.

There are 23 disciplinary offences provided in the Law on HJPC, for which a judge/prosecutor could be held liable, and when disciplinary panels of the HJPC find the judge/prosecutor liable for committing a disciplinary offence, the following one or more disciplinary measures could be imposed: (i) a written warning which is not made public; (ii) public reprimand; (iii) reduction in salary up to a maximum of 50% (fifty per cent) for a period of up to one (1) year; (iv) temporary or permanent reassignment to another court or prosecutor's office; (v) demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor; (vi) removal from office. As a separate measure, instead of or in addition to any of the disciplinary measures set out above, the HJPC may, if appropriate, order that a judge or prosecutor participate in rehabilitation programmes, counselling, or professional training.

Disciplinary measures imposed are governed by the principle of proportionality. Before pronouncing the measures for a disciplinary offence, the following aspects are taken into consideration by the Disciplinary Panels: (i) the number and severity of the disciplinary offence committed and its consequences; (ii) the degree of responsibility; (iii) the circumstances under which the disciplinary offence was committed; (iv) the previous work and behaviour of the offender; (v) 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 shall only 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.

## VI. Lawyers

87. **Number of lawyers practising in your country** 1,224 – as of December 2005

Source <http://www.advokombih.ba>  
<http://www.advokatska.com/okomori.html>

There are two entity bar associations in Bosnia and Herzegovina. One is in Republika Srpska and the other one is in Federation of Bosnia and Herzegovina. Out of 1,224 lawyers, 444 are members of the Republika Srpska Bar Association while 780 lawyers are members of the Federation of Bosnia and Herzegovina Bar Association.

There are also 217 trainees, 57 in Republika Srpska and 160 in Federation of Bosnia and Herzegovina.

88. **Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?**

Yes  No

89. **Do lawyers have a monopoly of representation:**

	Monopoly (Yes/No)	If no, possible representation by (Yes/No)	
Civil cases*	No	Member of family	Yes
		Trade Union	No
		NGO	Free legal aid service employee
		Other	Employee of a

Criminal cases*	Defendant	Yes		legal person for its employer
			Member of family	
			Trade Union	
			NGO	
	Victim	No	Member of family	Yes
			Trade Union	No
			NGO	Free legal aid service employee
			Other	Employee of a legal person for its employer
Administrative cases*	No	Member of family	Yes	
		Trade Union	No	
		NGO	Free legal aid service employee	
		Other	Employee of a legal person for its employer	

\* If appropriate, please specify if it concerns first instance and appeal.

**90. Is the lawyer profession organised through?**

- |                   |                                     |
|-------------------|-------------------------------------|
|                   | Yes                                 |
| ▪ a national bar? | <input type="checkbox"/>            |
| ▪ a regional bar? | <input checked="" type="checkbox"/> |
| ▪ a local bar?    | <input checked="" type="checkbox"/> |

**Please specify:**

There are two entity bar associations in Bosnia, one in the Federation of BiH and other in the Republic of Srpska, while there is no a unified national bar as such. The Federation of BiH Bar Association consists of five local bar associations, while RS Bar Association is not divided into local associations.

**91. Is there a specific initial training or examination to enter the profession of lawyer?**

Yes  No

**92. Is there a mandatory general system for lawyers requiring continuing professional development?**

Yes  No

**93. Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?**

No   
Yes  **Please specify:**



94. Can users establish easily what the lawyers' fees will be?

Yes  No

95. Are lawyers fees:

- |                                 |                                     |
|---------------------------------|-------------------------------------|
|                                 | Yes                                 |
| ▪ regulated by law?             | <input type="checkbox"/>            |
| ▪ regulated by Bar association? | <input checked="" type="checkbox"/> |
| ▪ freely negotiated?            | <input checked="" type="checkbox"/> |

96. Have quality standards been formulated for lawyers?

Yes  No

97. If yes, who is responsible for formulating these quality standards:

- |                        |                                     |
|------------------------|-------------------------------------|
|                        | Yes                                 |
| ▪ the bar association? | <input checked="" type="checkbox"/> |
| ▪ the legislature?     | <input checked="" type="checkbox"/> |
| ▪ other?               | <input type="checkbox"/>            |

**Please specify:**

*According to replies of the Entity Bar Associations, the quality standards are formulated by entity parliaments through the Law on Lawyer's Office, as well as through the Code of Ethics for Lawyers and Book of Rules on Disciplinary Liability of Lawyers and Trainees.*

98. Is it possible to complain about :

- |                               |                             |   |
|-------------------------------|-----------------------------|---|
| ▪ the performance of lawyers? | No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> |
|-------------------------------|-----------------------------|---|

**Please specify:**

*Any person may file a complaint against a lawyer. There are four aggravated offences of lawyer, one of which is a violation of professional secrecy and the other one is asking for a fee higher than given in the Tariff or in a contract between the lawyer and his client. In addition to this, complainants may complain about any other behaviour or performance of a lawyer, and these violations are considered as less serious offences, but they are not enumerated in advance.*

- |                       |   |                             |
|-----------------------|---|-----------------------------|
| ▪ the amount of fees? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
|-----------------------|---|-----------------------------|

99. Disciplinary proceedings and sanctions against lawyers:

	Yes /No (If yes, please specify the annual number)	
Reasons for disciplinary proceedings	Breach of professional ethics	Yes
	Professional inadequacy	No
	Criminal offence	No
	Other	No
Type of sanctions	Reprimand	1
	Suspension	
	Removal	
	Fine	1
	Other	

Note: The above information pertain to 444 lawyers of the Republika Srpska Bar Association that provided information about disciplinary proceedings in 2004, while the Federation of Bosnia and Herzegovina Bar Association did not provide relevant information.

During 2004 the Republika Srpska Bar Association received 38 complaints. Disciplinary proceedings were initiated in four cases. In one case a reprimand was imposed, in one case a fine was imposed, while one case is still pending- In one case a complainant withdraw a complaint.

100. Who is the authority responsible for the disciplinary procedures:

- Yes

▪ **a professional body?**  **Please specify:**

*Disciplinary procedure is initiated by a Disciplinary Prosecutor, who is a member of the Bar Association, and the decision about a disciplinary offence of a lawyer is rendered by a disciplinary court, whose members could only be members of the bar association.*
  
- **the judge?**

- **the Ministry of justice?**

- **other?**  **Please specify:**

*The Ministry of Justice can initiate a disciplinary proceeding by filing a disciplinary indictment, however, only a competent prosecutor can represent the case before a disciplinary court.*

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar

**VII. Alternative Dispute Resolution**

101. If appropriate, please specify, by type of cases, the organisation of the judicial mediation:

	Compulsion (Yes/No)		Body providing mediation (Yes/No)	
Civil cases	Compulsory stage prior to court proceedings	No	Private mediator	
			Public or authorised by court body	Yes
			Court	
	Compulsory stage in court proceedings	No	Judge	
	Ordered by judge in certain cases	No	Prosecutor	
Family cases	Compulsory stage prior to court proceedings	Yes	Private mediator	
			Public or authorised by court body	Yes

			Court	
	Compulsory stage in court proceedings	No	Judge	
	Ordered by judge in certain cases	No	Prosecutor	
Administrative cases	Compulsory stage prior to court proceedings	No	Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings	No	Judge	
	Ordered by judge in certain cases	No	Prosecutor	
Employment dismissals	Compulsory stage prior to court proceedings	No	Private mediator	
			Public or authorised by court body	Yes
			Court	
	Compulsory stage in court proceedings	No	Judge	
	Ordered by judge in certain cases	No	Prosecutor	
Criminal cases	Compulsory stage prior to court proceedings	No	Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings	No	Judge	
	Ordered by judge in certain cases	No	Prosecutor	

**102. Can you provide information about accredited mediators?**

*On July 29th, 2005, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Transfer of Mediation Affairs onto the Association of Mediators in BiH. This Law provides that the mediation affairs shall be transferred onto the Association of Mediators in Bosnia and Herzegovina. The Association shall proceed with drafting of bylaws to regulate the keeping of the registry of mediators, mandatory training programs and other requirements for application of mediation, in compliance with the Law on the Mediation Procedure.*

*Over the previous period, four basic "Mediation - Training for Trainers" training sessions have been organized, of which three in cooperation with the Chamber of Commerce of the Sarajevo Canton. The Association has also organized one final training under the title "Mediation - Getting ready to Mediate". An additional final training was also organized by the International Financial Corporation (IFC) for mediators involved in the pilot project in Sarajevo, who have been taken by the trainers of the Association towards the IFC program, which is in compliance with the Association's curricula.*

*A total of 65 trainees went through the initial training, of which 12 in Banja Luka and 53 in Sarajevo. The advanced training courses in Banja Luka and in Sarajevo were attended by 14 and 13 trainees respectively. Including the trainees who had completed the "Getting ready to Mediate" training in 2004, the total number of persons who have completed both training programs is 45. One new trainer has been certified, and one has begun participating in the observation and mentoring program.*

By the end of September 2005, a total of 192 mediation agreements have been reached, accounting for some 70 per cent of the total number of the mediations held. These agreements have resulted in releasing of KM 13 millions, blocked in extended lawsuits. During July and August, 3 mediations resulted in agreements at the Center for Mediation in Sarajevo, unblocking KM 65 thousands.  
<http://www.umbih.co.ba/bih/publikacije/Bilten10.pdf>

103. Can you provide information about the total number of mediation procedure concerning:
- civil cases? 181
  - family cases? 38
  - administrative cases? x
  - employment dismissals? 79
  - criminal cases? x

Source <http://www.umbih.co.ba/bih/publikacije/izvjestaj01.pdf>

104. Can you give information concerning other alternative dispute resolution (e.g. Arbitration)?  
 Please specify:

*In civil cases, parties may agree to entrust the resolution of the disputes on to the arbitration. An arbitration agreement may be concluded with an existing dispute or on future possible disputes that could stem from certain legal relation. An arbitration agreement is considered legitimately concluded also when the provision on jurisdiction of the arbitration board is embodied in the general requirements for the conclusion of legal business. If the parties have agreed to entrust the resolution of the certain dispute to the arbitration, the court which received the complaint concerning the same dispute among the same parties proclaims itself incompetent upon the defendant's objection, revoke actions commenced in the proceedings and dismiss the complaint.*

*Unless the possibility of contesting the arbitration award before a higher instance arbitration board has been envisaged by the arbitration agreement, the arbitration award is considered final for the parties. An arbitration award may be annulled upon the party's complaint requesting the annulment of the arbitration award filed with the competent court in certain cases provided in the law.*

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR

## VIII. Enforcement of court decisions

### VIII. A. Execution of decisions in civil matters

105. Are enforcement agents:

- judges? Yes
- bailiff practising as private profession ruled by public authorities? x
- bailiff working in a public institution?
- other enforcement agents? x

Please specify their status:

*Court referee denotes a court official who on the court's order directly undertakes certain acts set forth in the enforcement procedure.*

106. Number of enforcement agents N.A.

Source  

107. Is there a specific initial training or examination to enter the profession of enforcement agent?

Yes   No

108. Is the profession of enforcement agent organised by?

- a national body?
- a regional body?
- a local body?

Yes

*Not applicable. Enforcement agents or court referees are hired by a court president and there is no any organisation of court referees.*

109. Can users establish easily what the fees of the enforcement agents will be?

Yes  No  

110. Are enforcement fees:

- regulated by law?
- freely negotiated?

Yes

111. Is there a body entrusted with the supervision and the control of the enforcement agents?

No  

Yes  Which authority is responsible for the supervision and the control of enforcement agents:

- a professional body?
- the judge?
- the Ministry of justice?
- the prosecutor?
- other?

Yes

Please specify:

*A party or participant may file a submission requesting removal of irregularities conducted by the court referee in the course of executing the enforcement. The court may issue a conclusion revoking illicit and improper activity performed by the court referee. A court president and secretary have a duty to supervise and control the enforcement agents.*

112. Have quality standards been formulated for enforcement agents?

No

Yes   Who is responsible for formulating these quality standards?

Source   *High Judicial and Prosecutorial Council of BiH*

113. What are the main complaints of users concerning the enforcement procedure:

	Yes	No
▪ no execution at all?	<input type="checkbox"/>	<input type="checkbox"/>
▪ lack of information?	<input type="checkbox"/>	<input type="checkbox"/>
▪ excessive length?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ unlawful practices?	<input type="checkbox"/>	<input type="checkbox"/>
▪ insufficient supervision?	<input type="checkbox"/>	<input type="checkbox"/>
▪ excessive cost?	<input type="checkbox"/>	<input type="checkbox"/>
▪ other?	<input type="checkbox"/>	<input type="checkbox"/>

Source *High Judicial and Prosecutorial Council of Bosnia and Herzegovina – Office of the Disciplinary Counsel*

114. Does your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions?

No   
 Yes  Please specify:

*High Judicial and Prosecutorial Council of Bosnia and Herzegovina, within its authority, has conducted certain activities in order to change and improve situation concerning the enforcement of court decisions through changes of legislation. Working group is to be established.*

115. Is there a system measuring the timeframes of the enforcement of decisions :

	Yes	No
▪ for civil cases?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ for administrative cases?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

116. As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

	Yes
▪ between 1 and 5 days	<input checked="" type="checkbox"/>
▪ between 6 and 10 days	<input type="checkbox"/>
▪ between 11 and 30 days	<input type="checkbox"/>
▪ more: please specify <input type="checkbox"/>	<input type="checkbox"/>

Source *High Judicial and Prosecutorial Council of Bosnia and Herzegovina – Legal Department*

117. Disciplinary proceedings and sanctions against enforcement agents:

	Yes /No (If yes, please specify the total number)	
Disciplinary proceedings	Breach of professional ethics	<input type="checkbox"/>
	Professional inadequacy	<input type="checkbox"/>
	Criminal offence	<input type="checkbox"/>
	Other	<input type="checkbox"/>
Sanctions	Reprimand	<input type="checkbox"/>
	Suspension	<input type="checkbox"/>
	Dismissal	<input type="checkbox"/>

Fine	
Other	

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your enforcement system of decisions in civil matters**

**VIII. B. Enforcement of decisions in criminal matters**

**118. Is there a judge who has in charge the enforcement of judgments?**

Yes  **Please specify his/her functions and activities (e.g. Initiative or control functions):**

*A judge has an initiative function, meaning that as soon as a court competent for the enforcement of judgement receive a final and valid judgment, it is a duty of judge to undertake activities to enforce the judgement no later then three days after receiving it in case of imprisonment judgments or eight days in case of security measures.*

No  **Please specify which authority is entrusted with the enforcement of judgements (e.g prosecutor):**

**119. As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?**

No   
 Yes  **Please specify:**

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your enforcement system of decisions in criminal matters**

## IX. Notaries

120. Is the status of notaries:

- a private one?
- a status of private worker ruled by the public authorities?
- a public one?
- other?

Yes	Number
<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Please specify:**

*The notary service is a public service that is performed by the notaries, who are self-standing and independent providers of that service. A notary performs the service of the notary in a professional manner, and exclusively as a profession during the time for which he has been appointed. A notary may perform his service until he is 70 years of age, except where reasons for early termination of service exist. Number of notaries depends on population, meaning that one notary should cover app. 20.000 inhabitants.*

Source *The Law on Notaries of Federation BiH*  
*The Law on Notaries of RS*

121. Do notaries have duties:

- within the framework of civil procedure?
- in the field of legal advice?
- to authenticate legal deeds?
- other?

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

**If yes, please specify:**

*A notary is responsible for undertaking notary processing of a document, issuing confirmations, and certify signatures, handsigns and copies. Notary documents are: the documents made by notary processing, notary confirmation or notary certificates. Notary documents have the weight of a public document, and are valid with all authorities, legal persons and other institutions, regardless of which particular notary had issued them. Notary processed documents, which were made by the notary under the scope of his official responsibilities and in a prescribed form, have the full evidentiary weight of a public document on the statements issued before the notary. Notary confirmation and certificate have the evidentiary weight of a public document on the facts that are testified in them.*

122. Is there a body entrusted with the supervision and the control of the notaries?

- No   
Yes

**Which authority is responsible for the supervision and the control of the notaries:**

- a professional body?
- the judge?
- the Ministry of justice?
- the prosecutor?
- other?

Yes
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

**Please specify:**



Work of the notaries is supervised by the cantonal administration agency and the Entity Ministry of Justice. Procedure for determination of disciplinary responsibility of the notary is initiated by the cantonal administration agency. The Notary Chamber is responsible for conducting the disciplinary procedure. The Notary Chamber has a power to impose disciplinary measures on a notary except removal, while the Minister of Justice remove a notary when conditions provided in the law are met.

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system of notaries**

\*\*\*\*\*

**123. Please indicate main orientations for reform and concrete measures which could improve the quality and the efficiency of your judicial system:**

*Main reason for inefficiency of BH judiciary is in large number of unresolved cases.*

*Concrete measures to be taken in order to settle this problem are:*

- *Changes in criminal, civil and enforcement legislation*
- *Increased engagement of trainees and judicial associates*
- *Increase of court fees*
- *Affirmation of mediation and institute of notary*
- *Adoption of new system of measurement and evaluation of work of judges and prosecutors*
- *Establishment of the system of promotion of judges and prosecutors*
- *Implementation of Information and Communication Technology in courts and Prosecutor Offices*
- *Resolution of the premises problem and the problem of financing the courts and Prosecutor Offices*
- *Implementation of measures to be undertaken within each court*
- *Reform of the Minor Offence Courts*