

## Bosnia and Herzegovina / Bosnie et Herzégovine

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies? As a member of the Council of Europe BiH for example joined the European convention on Human Rights and therefore is obliged to follow the decisions of the European Court of Human Rights or other bodies in this concern. In all pending cases BiH took the necessary measures to direct the concrete implementation to the competent authority of the state.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples? The practical independence of prosecutors in BiH is not in any case questioned by above mentioned decisions.

3. Are these measures reflected in the law or in the prosecution policy or debate? See above.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures? Incorrect question.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors? No.

6. Does the prosecution system in your country belong to the judiciary? Court and Prosecutor's Offices are separate bodies of the judicial system and therefore both are part of the judiciary.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power? Yes they are.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate? The constitution foresees a unified body named „High Judicial and Prosecutorial Council (HJPC)“.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors? The High Judicial and Prosecutorial Council of BiH consists of judges and prosecutors. In the law of that council is not foreseen any impact on the prosecution policy or debate.

10. Who has the initiative of disciplinary proceedings? Every citizen as well as every institution or legal body has the right to remonstrate about the behaviour of any prosecutor or can report to the police in case that he does violate the law. The remonstrance or the report will be handed over to the prosecutor for disciplinary affairs of the HJPC, who is responsible to decide whether there is a substantial basis for an indictment. At that moment the disciplinary commission of the HJPC takes over to vote according to the procedures of civil law.

11. Are prosecutors appointed for life or do they have to fulfill successive terms? Of how many years? The prosecutors are appointed for life. The maximum of their service ends with the entry to their seventies year of birth.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges? Yes, they are.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them? The government cannot instruct the prosecution services in any way. Therefore the other two questions are incorrect.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused? The instructions are given in writing. The prosecutor cannot challenge it.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence? The main initiatives are undertaken by international institutions like as the Council of Europe, Financially independent NGOs in close contact with the Judicial and Prosecutorial Council of BiH.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors? The media in BiH cover those decisions because of its concern to the actual politics in the country quite well.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors? Each prosecutor' office from the level of Kanton up to the State' s prosecutor's office has its spokesperson for the public. In case that it is in the interest of the public the prosecutor in charge decides to engage the spokesman to inform about the topic in question. Naturally it depends of the sensitivity of the spokesman with his comments not hurt the independence of that prosecutor who is involved in that specific case.

#### Answer to the MAIN QUESTION of CCPE

##### Question:

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors; b) of the judiciary or the justice system as a whole; c) of judges.

##### Answer:

Within the amount of comparable cases, so far as I know, such judgement or decision does not exist.

##### Question:

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

See my answer above!

##### Question:

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

##### Answer:

The independence of prosecutors at all cannot be compared with the independence of judges, because the prosecutorial system of Bosnia and Herzegovina is constructed as a hierarchy, but judges are single one's or belong to a council which is completely independent.

##### Question:

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

Answer:

The interaction of prosecutor's offices with the above mentioned authorities is really based on prosecutor's independence in the sense that the role of prosecutors is superior of that one of all other actors in criminal procedures. But the single prosecutor is subordinated in organizational respect to the decisions of the General prosecutor and bound to the procedures of interaction with the other above mentioned authorities.

Question:

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Answer:

The system of allocation, reallocation and management of cases is in the hands of the General prosecutor and her/his staff. The criteria cannot be challenged by the single prosecutor but she/he has the right to declare her/his self-consciousness in case of personal reasons.

Question:

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

Answer:

The code of ethics has been prepared by the High Judicial and Prosecutorial Council and has passed in one of its sessions. I have the pleasure to add that code in English as an attachment to this document.

