



CCJE-BU(2021)1

Strasbourg, 21 January 2021

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 24 (2021):

“Evolution of the Councils for the Judiciary  
and their role for independent and impartial judicial systems”

Bosnia and Herzegovina

*Please in your answers do not send extracts of your legislation  
but describe the situation in brief and concise manner.*

### General

1. Is there a Council for the Judiciary in your judicial system?	<input checked="" type="radio"/> yes <input type="radio"/> no
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2. What is the exact title/denomination of this body?

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC/Council)

3. This question should be answered by members from both legal systems with and without a Council for the Judiciary: Which department or body - for example the Council for the Judiciary (often denominated as High Judicial Council (HJC)) or Ministry of Justice (MoJ) - is responsible for or is in position to perform the following tasks? More than one institution might be involved, so more than one box can be ticked.

Defending and fostering the independence of judges and the judiciary/the rule of law	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
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Defending judges/the judiciary against public attacks	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Administration of the judiciary	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Selection of new judges	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Selection of judges for promotion	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Evaluation of judges	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Evaluation of court performance	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input checked="" type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Conducting disciplinary procedures	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament

	<input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Drafting and enforcing a code of ethics	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Public relations/media coverage for the judiciary, or individual courts	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input checked="" type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Providing input on legislative projects	<input checked="" type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Court Presidents <input checked="" type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Training of judges	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input checked="" type="radio"/> other, please specify – Centres for judicial and prosecutorial trainings (Federation of Bosnia and Herzegovina, Republika Srpska and Judicial Commission of Brcko District BiH)
IT, including digitalisation of the judiciary and online hearings	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input checked="" type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify
The allocation of financial resources to the judiciary including individual courts	<input checked="" type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify

Salaries of judges	<input type="radio"/> HJC <input type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> Bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify
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- **If there is a Council for the Judiciary in your country, has it other duties not mentioned here? Is it in a position to appoint or remove presidents of courts to and from the office? Is there additional information that would be useful to understand the role of the Council for the Judiciary within your country?**

All authorities of the HJPC stated for judges above relate also to prosecutors, including the authority to appoint and remove from the office presidents of courts and chief prosecutors.

Additional authorities of the HJPC include the following:

- Collecting the annual financial statements of judges and prosecutors;
- Deciding upon issues of incompatibility of other functions performed by judges and prosecutors;
- Deciding upon the temporary assignment or transfer of judges and prosecutors to another court or prosecutor's office;
- Deciding upon leaves of absence for judges and prosecutors;
- Setting criteria for the performance evaluations of judges and prosecutors;
- Setting criteria for the performance of courts and prosecutors' offices, and initiating enquiries concerning administrative or financial conduct;
- Determining the number of judges and prosecutors;
- Collecting information and maintaining documentation on the professional status of judges and prosecutors, including their date of appointment, termination of office, statistical information relevant to their work performance, and any other information relevant to the work of court presidents, chief prosecutors, judges and prosecutors;
- Providing opinions on complaints lodged by a judge or a prosecutor who considers that his or her rights provided for by this or other law, or more generally his or her independence are threatened;
- Providing opinions on draft laws, regulations, or issues of importance that may affect the judiciary, initiate the adoption of relevant legislation and other regulations and to provide guidance to courts and prosecutors' offices on matters falling under the Council's competence,
- Making proposals to the relevant authorities in relation to their proposals for election and nomination of judges of the constitutional courts;
- Submitting the Annual Work Report to the parliaments in BiH; and
- Regulating the work and internal procedures of the Council.

- **If there is no Council for the Judiciary in your country, are there other important institutions, and formal or informal rules which are necessary to understand how the judiciary functions in your country?**

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#### Legal basis

4. **Please explain which legal sources regulate the following aspects of the Council for the Judiciary in your legal system**

Existence of a Council for the Judiciary	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Composition	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Selection of members including tenure and removal during tenure	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Tasks	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Resources, funding, administration	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Independence	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify

- **Are there other formal or informal rules which are necessary to understand the role and functioning of the Council for the Judiciary in your country?**

The Council adopts by-laws that further regulates certain aspects of it's work, as The Rules of Procedures of the Council, the Book of Rules on selection of the Council members, the Book of Rules on conflict of interests of the Council members, etc.

## Composition and Membership

### 5. The composition of the Council for the Judiciary:

- **How many members are there?**

The Council is consisted of fifteen (15) members.

- one member from the Court of Bosnia and Herzegovina, elected by the judges of that Court;
- one member from the Prosecutor's Office of Bosnia and Herzegovina, elected by the prosecutors of that Office;
- one judge from the Supreme Court of the Federation of Bosnia and Herzegovina, elected by the judges of that Court;
- one prosecutor from the Prosecutor's Office of the Federation of Bosnia and Herzegovina, elected by the prosecutors of that Office;
- one judge from the Supreme Court of the Republika Srpska, elected by the judges of that Court;
- one prosecutor from the Prosecutor's Office of the Republika Srpska, elected by the prosecutors of that Office;
- one judge from either a Cantonal or Municipal level court of the Federation of Bosnia and Herzegovina, elected by the Cantonal and Municipal court judges of the Federation of Bosnia and Herzegovina, through written ballot;
- one prosecutor from a Cantonal level prosecutor's office of the Federation of Bosnia and Herzegovina, elected by the Cantonal prosecutors of the Federation of Bosnia and Herzegovina, through written ballot;
- one judge from a District or Basic level court of the Republika Srpska, elected by the district and basic court judges of the Republika Srpska through written ballot;

- one prosecutor from a District level prosecutor's office of the Republika Srpska, elected by the district prosecutors of the Republika Srpska, through written ballot;
- one judge or prosecutor elected by the Brcko District of Bosnia and Herzegovina Judicial Commission;
- one attorney, elected by the Bar Association of the Federation of Bosnia and Herzegovina;
- one attorney, elected by the Bar Association of the Republika Srpska;
- one member who shall not be a member of the judiciary or a member of the Parliamentary Assembly of Bosnia and Herzegovina, elected by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina; and
- one member who is not a member of the judiciary and who is not a member of the Council of Ministers of Bosnia and Herzegovina, elected by the Council of Ministers of Bosnia and Herzegovina upon the proposal of the Minister of Justice of Bosnia and Herzegovina.

▪ **Are there ex-officio members?**

No.

▪ **How many members must be judges? Do they need specific qualifications or experiences, must they come from different court systems or instances?**

Out of eleven (11) Council members who come from judicial system, at least five (5) members must be judges who come from all instances of regular courts in Bosnia and Herzegovina. The Council members need to be persons of high moral standing and integrity, and have a reputation for efficiency, competence and integrity.

▪ **Can/must non-judges be members of the Council? Please specify (number, qualification/specific functions)**

Out of four (4) Council members who are not judges and prosecutors, two (2) members are professional attorneys, and two (2) members are those who do not perform any judicial functions and who are not members of the parliamentary and ministerial bodies of Bosnia and Herzegovina.

**6. Please describe the procedure of appointment:**

▪ **Who nominates the members? (judges or other institutions or authorities – please specify)**

Members of the Council are nominated by the institutions or authorities they represent. For the Council members positions, judges are elected from judges of all instances of regular courts, prosecutors are elected from prosecutors of all instances of prosecutors' offices, and attorneys are elected by bar associations in Bosnia and Herzegovina. Members who do not perform functions in judiciary are elected by the Parliamentary Assembly of Bosnia and Herzegovina and the Council of Ministers of Bosnia and Herzegovina.

▪ **Please describe the appointment system**

Appointment system is defined by the Law and the Book of Rules on selection of the Council members, according to which at least three (3) months prior to the expiration of the term of office of a Council member, the Council initiates an election procedure by notifying the relevant institution or authority which is responsible for election or

appointment of Council members, and requests election or appointment of a new Council member within the determined deadline.

- **If members are elected by Parliament, are these members elected with a simple or qualified majority?**

The Council member who is appointed by the Parliamentary Assembly of Bosnia and Herzegovina is elected by a simple majority voting of the House of Representative.

**7. How is integrity and independence of members ensured in the selection process and during their time on the Council?**

In order to realise election or appointment procedure of a Council member, the relevant institution or authority is instructed that according to the Law he or she must be a person of high moral standing and integrity, and have a reputation for efficiency, competence and integrity. Eleven (11) Council members are judges and prosecutors who are elected by their peers, and they make up more than two thirds of the total number of the Council members. The legislative and executive authorities have no influence on the selection of the Council members, with the exception of selection of two members.

The Council acts and makes decisions as a single body at its sessions which are public. The presence of a minimum of eleven (11) members is required to constitute a quorum. The Council decides by majority of affirmative votes of the total votes of members present and voting. If the voting is equal, a roll call vote is taken and the President of the Council has the casting vote.

**8. How is the President and/or Vice-President of the Council selected and appointed?**

The President and two Vice-Presidents of the Council are elected by a simple majority of the members present and voting.

**9. What is the term of office for a member of the Council?**

The Council members are appointed for a term of four years and are eligible to serve no more than two consecutive terms of four years. A person who has served as a Council member for a period of two terms consecutively may not be appointed again as a Council member until the expiry of four years since end of his or her previous term.

**10. May a member be removed from office against his/her will and, if so, under what circumstances?**

Termination of a Council member mandate by removal from his or her office is prescribed in the following circumstances:

- if he or she performs his or her duties improperly, inefficiently or in a biased manner;
- if he or she fails to fulfil obligations arising out of his or her office due to illness or any other reason;
- for the commission of an act that would make him or her unworthy to perform duties in the Council; or
- upon a final conviction of a criminal offence pronouncing a prison sentence, which conviction shall result in automatic termination.

Additionally, the Council member may be suspended *ex lege* if he or she is suspended from the function by virtue of which he or she qualifies for election or appointment to the Council, or if he or she is confined to pre-trial detention.

### Resources and management

11. Which body provides funding for the Council for the Judiciary?	<input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input type="radio"/> other, if so specify
12. Is the administration of the Council for the Judiciary independent from other branches of government?	<input checked="" type="radio"/> yes <input type="radio"/> no

### Relations within the Council for the Judiciary and within the judiciary

- 13. Have there been any severe internal conflicts within the Council for the Judiciary that have seriously affected its functioning? If yes, what was the character of these conflicts and have they been solved?**

No.

- 14. Have there been conflicts between the Council for the Judiciary and the judiciary? Have judges felt that the Council for the Judiciary did not represent their interests? If yes, why and has the conflict been solved?**

No serious conflicts.

### Relations with other branches of government, governmental bodies, civil society and media

- 15. Have there been conflicts between the Council for the Judiciary and the executive or legislative? If yes, what was the character of these conflicts and have they been solved?**

There were some conflicts with the legislative power. In May 2020, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina established an Interim Investigative Committee for inquiring into the state of the judiciary in BiH, especially the HJPC and its work is still ongoing.

- 16. What legal and political means may the Council of Judiciary in your judicial system employ if it feels that its constitutional role has been infringed?**

The Council is an independent organ of Bosnia and Herzegovina established by the special Law and has a status of legal person. Accordingly, the Council may initiate administrative and court procedures at relevant administrative bodies and courts in matters of their authority. Any issue related to legal status or institutional changes of the Council has to be initiated at the Parliamentary Assembly of Bosnia and Herzegovina.

- 17. How does the Council for the Judiciary in your judicial system interact with anti-corruption bodies?**

In accordance with the National Anti-Corruption Strategy and its Action Plan, the Council submits on a regular basis reports to the Anti-Corruption Agency of Bosnia and



Herzegovina in relation to implementation of the Council's activities in this area, which relate to both the Council and the judicial system as a whole. Consequently, the Council initiate creation and implementation of integrity plans for courts and prosecutors' offices.

**18. How does the Council for the Judiciary in your judicial system interact with NGOs?**

The Council cooperates with non-governmental organizations in certain activities related to judiciary, what includes both local and international non-governmental organizations, particularly in area of free legal aid, mediation, discrimination, corruption, improvements of court administration, ethics etc.

**19. How does the Council for the Judiciary in your judicial system interact with associations of judges?**

The Council cooperation with associations of judges is realised through the consultations on certain issues of importance for judicial office holders and the judiciary as a whole, whether initiated by the associations themselves or within activities organised or implemented by the Council, such as meetings, conferences etc.

**20. How does the Council for the Judiciary in your judicial system interact with media?**

Within its regular activities, the Council continuously provides information to the public by issuing press releases, as well as by statements on specific issues referred to the Council by media requests. Media representatives may be present and follow the sessions of the Council.

**21. What, if any, is the role of the Council for the Judiciary in the vetting of judges?**

The Council does not have this role.

**Challenges, developments**

**22. Does the Council for the Judiciary in your judiciary face particular challenges? If so, what is the character of these challenges? These challenges might have arisen – among other reasons - because of political and economic developments, societal changes, corruption, the Covid-19 pandemic or technological challenges such as the digitalisation of the judiciary.**

The main challenges of the Council relate to full implementation of reform requirements to improve the judicial system in line with the European Commission and GRECO recommendations, which set out obligations to build a more efficient, accountable and transparent judicial system, especially in the fight against corruption. The process of realization of mentioned activities of the Council are not affected by circumstances caused by the Covid-19 pandemic due to already developed digitalisation of the judiciary and all necessary measures undertaken by the Council to ensure normal working operations of both the Council and the judicial system as a whole.

**23. Has the role of the Council for the Judiciary in your judicial system changed in recent years? If so, how?**

The role of the Council in relation to judiciary has not changed.

**24. Have there been reforms concerning the Council for the Judiciary in your judicial system recently? If so, what were the objectives of these reforms and have they been successful?**

The Council has initiated a series of reform activities aimed at improving the quality and efficiency of the judiciary, as well as the integrity and accountability of judicial officials. For that purpose, the Council focused on the system of evaluation of work of judges and prosecutors, issues of ethics, integrity and accountability, improvement of disciplinary proceedings, planning of integrity in judicial institutions, etc. For implementation of initiated activities, the Council made restructuring of the internal organisation of institution, by establishing appropriate organizational units and strengthening its human resources capacities.

- 25. In case your judicial system does not have one, is there a discussion to introduce a Council for the Judiciary? If so, what are the arguments made in favour and against the introduction of a Council for the Judiciary. Do you think that there are challenges in your judicial system a Council for the Judiciary might help to solve? Is it likely that such a Council will be introduced?**

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