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JUDICIAL SELF-GOVERNANCE REFORM IN BOSNIA AND HERZEGOVINA: CURRENT CHALLENGES AND PROSPECTS – THROUGH THE LENS OF POLISH EXPERIENCE

Summary: *The independence of the judiciary is one of the key preconditions of the rule of law. To function as a fundamental component of the system of horizontal accountability and, consequently, a critical factor in strengthening the rule of law, the judiciary must remain independent from other branches of government and any external influence. However, strengthening the culture of judicial independence must be accompanied by constant efforts to develop mechanisms and culture of judicial accountability and integrity, particularly in post-authoritarian societies.*

Judicial self-governance, broadly defined as the existence and functioning of institutions that include at least one judge and exercise authority over court administration and/or judicial career management, has been widely promoted as a panacea for challenges confronting court administration. In recent decades, judicial councils have emerged as the most prominent institutional expression of judicial self-governance, although some scholars extend this concept to encompass other governance actors. While councils, composed predominantly of members of the judiciary, are intended to insulate appointments, promotions, and disciplinary proceedings from partisan political influence, contemporary scholarship increasingly cautions that their establishment may generate new channels of politicisation and raise complex concerns regarding accountability.

The paper examines the legal framework of judicial self-governance in Bosnia and Herzegovina, with particular emphasis on the 2023 amendments to the Law on the High Judicial and Prosecutorial Council (HJPC BiH) and the proposed new Law on the HJPC BiH currently pending before the Parliamentary Assembly of BiH. The analysis focuses specifically on the provisions governing the disciplinary responsibility of judges and HJPC BiH members, as well as the procedures for

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dismissal of Council members. In line with a broader interpretation of the concept of judicial self-governance, this study also considers the role and authority of court presidents.

By situating the discussion within the broader context of the Polish experience with judicial self-governance reforms, the paper offers additional insights into the risks of politicization and institutional capture that may arise even within frameworks formally designed to protect judicial independence.

Keywords: *judicial self-governance, judicial councils, court presidents, Bosnia and Herzegovina, Poland*

1. PROMISES AND RISKS OF JUDICIAL SELF-GOVERNANCE

Judicial independence is one of the key prerequisites for the rule of law, which presupposes "an effective system of horizontal accountability that is composed of government institutions that hold one another accountable to the law and to the public".[1] To affirm itself as a relevant component of horizontal accountability, and accordingly as a mechanism for safeguarding the rule of law, the judiciary must remain independent. As Jeremy Waldron observes, courts constitute a key element of the rule of law, but only as "independent institutions that operate according to recognized standards of procedural due process, which offer an impartial forum where disputes can be resolved".[2]

Judicial independence, however, does not imply absolute autonomy in the exercise of judicial authority. Strengthening the "culture" of judicial independence must be accompanied by sustained efforts to develop and enhance mechanisms and the "culture" of judicial accountability. This imperative is particularly pronounced in states where judicial independence is established upon the unstable foundations of an authoritarian past, in which judicial autonomy was deliberately and systematically suppressed. Even where formal safeguards of judicial independence are in place, their practical effectiveness may be limited in socio-political environments shaped by a persistent legacy of political subordination. In such contexts, the absence of an internalized culture of independence may leave judges vulnerable and more susceptible to corruptive influences and informal pressures. One of the greatest challenges for legislators, therefore, is to ensure an adequate level of accountability for judicial office holders, while simultaneously preserving both the institutional autonomy of the judiciary and the decisional independence of individual judges.

In recent decades, the strengthening of judicial self-governance has come to be regarded as an important means of promoting judicial independence. As some authors point out, judicial self-governance has often been perceived as a universal remedy (*panacea*) for all challenges

1 Chavez Rebecca Bill, 'The Rule of Law and Courts in Democratizing Regimes' in Keith E. Whittington, Daniel R. Kelemen, and Gregory A. Caldeira (eds,), *The Oxford Handbook of Law and Politics* (Oxford University Press 2008) 65.

2 Waldron Jeremy, *Thoughtfulness and the Rule of Law* (Harvard University Press 2023) 2.

confronting court administration.[3] Over time, judicial councils—independent bodies predominantly composed of members of the judiciary—have emerged as the principal form of judicial self-governance, established with the aim of transferring the authority over judicial appointments, promotion, and disciplinary proceedings from partisan political processes, while simultaneously securing a certain degree of accountability.[4] The primary purpose of judicial councils is to "ensure the external independence of the judiciary, and in particular the independence of the judiciary vis-à-vis the executive branch of government".[5] By weakening or severing institutional ties with the executive and legislative branches of government, judicial councils move closer to a more consistent separation of powers in line with Montesquieu's classical model, ensuring a more comprehensive realization of the principle of judicial independence.[6]

However, constructing a protective barrier against interference from the political branches of government can undermine so-called internal judicial independence[7], potentially resulting in what has been termed a "system of dependent judges within an independent judiciary".[8] Developments in Poland further demonstrate how internal judicial independence may be compromised not only through corporatism, but also through hierarchical pressures exercised by court presidents appointed or promoted within a politicized governance framework. This has been particularly evident where court presidents acquired extensive administrative powers, including influence over case allocation and disciplinary referrals.[9] In recent years, an increasing number of scholars have warned that forming judicial councils can open new channels for the politicization of the judiciary and new mechanisms of pressure on judicial office holders (whether through the influence of council members themselves or informal centers of power). This raises the dilemma of whether judicial councils should be viewed as a *panacea*, a universal remedy for deficiencies in the judiciary, or as a mere placebo that, aside from being ineffective in curing the root problem (failing to sufficiently depoliticize the judiciary), can produce serious side effects. Reducing external oversight of the judiciary's work, the establishment of

3 Kosař David, 'Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe' (2018) 19(7) German Law Journal 1567.

4 Garoupa Nuno and Ginsburg Tom, 'Guarding the guardians: Judicial councils and judicial independence' (2009) 57(1) The American Journal of Comparative Law 106.

5 Pérez Aida Torres, 'Judicial Self-Government and Judicial Independence: The Political Capture of the General Council of the Judiciary in Spain' (2018) 19(7) German Law Journal 1770.

6 Some authors suggest adopting a broader definition of judicial self-governance, one that is not confined exclusively to judicial councils. Kosař defines judicial self-governance bodies as those that include at least one judge and whose primary function, established by legal norms, is to: a) decide on matters related to judicial administration and / or judges' careers, and b) advise bodies that decide on such matters. This broader definition encompasses not only judicial councils but also court presidents, court services, specialized domestic judicial appointment commissions, the Panel established under Article 255 TFEU for the selection of judges to the Court of Justice of the European Union, and the Committee of Ministers' Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights. Kosař (n 3) 1571.

7 Internal judicial independence requires that judges, in the adjudication of cases, remain free from pressures or directives not only from political authorities but also from fellow judges and from holders of administrative authority within the courts, such as court presidents or heads of judicial departments. Shetreet Shimon, 'The normative cycle of shaping judicial independence in domestic and international law: the mutual impact of national and international jurisprudence and contemporary practical and conceptual challenges', (2009) 10(1) Chicago Journal of International Law 287.

8 Kosař David, *Perils of Judicial Self-Government in Transitional Societies* (Cambridge University Press 2016) 19.

9 Sadurski Wojciech, *Poland's Constitutional Breakdown* (Oxford University Press, 2019) 96-131; ECtHR Reczkowicz v. Poland, Application no. 43447/19 (2021), ECtHR, <https://hudoc.echr.coe.int/fre#{%22itemid% 22:[%22001-211127%22]}> accessed 1 December 2025.

judicial councils may pave the way for the erosion of internal judicial independence, a threat no less serious than external political interference.

2. THE HISTORICAL ORIGINS AND GENERAL CHARACTERISTICS OF JUDICIAL COUNCILS

Over the past three decades, the growing power of domestic judiciaries has been accompanied by the rise of judicial self-governance as a response to the increasing need to ensure an appropriate balance between judicial independence and accountability. As a result, many states have moved away from models dominated by executive branch and introduced new institutional frameworks aimed at strengthening the autonomy and internal governance of the judiciary.[10] Responsibilities relating to judicial careers, the appointment and promotion of judges, and the administration of courts have increasingly been entrusted to judicial councils.[11]

It should be emphasised that the bodies designed to secure the participation of judicial representatives in these domains, and thereby to provide adequate guarantees of the independence of courts and judges, display considerable institutional diversity in comparative perspective. In European democratic states governed by the rule of law, two models have been developed for the appointment of judges and other key issues relating to the judiciary, both of which are sometimes subsumed under the broad designation of judicial councils.[12] The Southern European model is characterised by councils vested with extensive competences relating primarily to the professional careers of individual judges, including appointment, promotion, evaluation, and the determination of disciplinary liability (France, Italy, Spain, Portugal). The Northern European model is characterised by the operation of specialised offices and units that primarily deal with issues of court administration and the budgetary financing of the judiciary (Sweden, Denmark, Latvia), with some authors questioning the appropriateness of classifying institutions within this model as judicial councils.[13]

The expansion of the judicial council model has not taken place in isolation. Rather, it has been profoundly influenced by the normative frameworks, policy guidance, and supervisory mechanisms developed by international and regional organizations, which have consistently endorsed judicial councils as structural safeguards of judicial independence and as institutional safeguards against undue political interference. The so-called "fourth wave" of the spread of judicial councils in European countries, which emerged in the second half of the 1990s, has been widely attributed to the impact of organizations such as the Council of Europe (CoE) and

10 Šipulová Katarina and others, 'Judicial Self-Governance Index: Towards better understanding of the role of judges in governing the judiciary' (2023) 17(1) Regulation & Governance 22.

11 *Ibid.*

12 Voermans Wim, Albers Pim, *Councils for the Judiciary in EU Countries* (2003) 10, available at <www.encj.eu/encj> accessed 1 December 2025; Voermans Wim, 'Councils for the judiciary in Europe: Trends and models', in Francisco Fernandez (ed.), *The Spanish Constitution in the European Constitutional Context* (Editorial Dykinson 2003) 2134–2135.

13 Bobek and Kosař criticize the use of the term Northern European model, describing it as "conceptually inaccurate and misleading". In their view, the more appropriate term is Court Service model. Bobek Michal and Kosař David, 'Global Solutions, local damages: a critical study in judicial councils in Central and Eastern Europe' (2014) 15(7) German Law Journal 1264.

the European Union (EU).[14] The CoE and its interlocutors, such as the Venice Commission, the Consultative Council of European Judges (CCEJ), and the European Network of Councils for the Judiciary (ENCJ), have promoted the judicial council model as a comprehensive institutional solution to the structural challenges affecting national judiciaries.[15] In the European Commission's Agenda 2000, adopted in 1997, judicial independence and self-governance were listed among the requirements for EU candidate countries, with their implementation subject to Commission monitoring.[16] By the EU's 2004 enlargement, the introduction of judicial councils had become part of the "pre-accession conditionality",[17] widely regarded as "the only right solution capable of eradicating the vices of the post-communist judiciaries".[18] Romania and Bulgaria, whose EU accession was delayed until 2007, faced explicit demands from the European Commission to reform their judicial councils in line with European standards.[19] Other candidate countries, including BiH, have also been subject to requirements concerning the establishment of judicial councils, as well as the appropriate determination of their organization and competences. In its "Opinion on BiH's application for EU membership", issued on 29 May 2019, the European Commission has identified 14 key priorities that BiH must address. One of the priorities stated in the Opinion is guaranteeing the independence of the judiciary, including its self-governance body–the HJPC BiH.[20]

In Poland, the demand to establish a judicial council was one of the main elements of the negotiations taking place at the Round Table. The opposition believed that this was a way to guarantee the independence of the courts and judges, which had not been effectively guaranteed or observed during the communist era. A change was therefore made to the Constitution of the Polish People's Republic, and Article 60 introduced a constitutional basis for the establishment of a judicial council, which was implemented by the Act of 20 December 1989 on the National Judicial Council.[21]

Bobek and Kosař note that the pressure to introduce or reorganize judicial councils is not based on a precisely defined "European model" of this institution. Rather, such efforts are guided by a normative framework largely comprised of *soft law* instruments adopted by advisory bodies such as the Consultative Council of European Judges (CCJE), the European Network of Councils for the Judiciary (ENCJ), and the Venice Commission. However, these authors maintain that an analysis of the relevant documents reveals the key characteristics of a "European model" of judicial councils: 1) councils should be established through constitutional provisions; 2) at least half of the council's members should be judges elected by their peers; 3) councils should be decision-making bodies, not merely advisory entities; 4) councils

14 Kosař (n 8), 123.

15 Šipulova and others (n 9) 22.

16 Bobek and Kosař (n 13) 1275–1276.

17 *Ibid*., 1261.

18 Kosař David, 'Politics of judicial independence and judicial accountability in Czechia: bargaining in the shadow of the law between court presidents and the ministry of justice', (2017) 13(1) European Constitutional Law Review 97.

19 Bobek, Kosař (n 13) 1261.

20 Woelk Jens, Galić Domagoj, Sekulić Tatjana, 'Bosnia and Herzegovina and European Union Integration: The Constitutional Impact of Accession to the European Union' in Maja Sahadžić and other (eds.), *Citizens, Constitution, Europe: glossary of essential constitutional concepts in BiH* (Sarajevo 2023) 460.

21 Act of 20 December 1989 on the National Council of the Judiciary, Journal of Laws (1989) 73, item 435, as amended.

should have significant authority over all aspects of judicial careers, including selection, appointment, promotion, transfer, dismissal, and disciplinary proceedings; 5) the council should be chaired by the president of the highest court or a "neutral" head of state. These features can only be conditionally accepted, as Bobek and Kosař acknowledge that their list of criteria is neither exhaustive nor definitive.[22] Moreover, a review of documents regulating the organization and competencies of judicial councils reveals provisions that diverge from the aforementioned characteristics.[23] Certain institutional arrangements adopted within national legal systems also diverge from the "European model" outlined above.[24]

The Polish case underscores the fragility of this model when the method of selecting judicial members is altered in a manner that subordinates the council to the legislative majority, thereby undermining the Council's role as a buffer between the judiciary and political branches of government. The replacement of judicial self-election with parliamentary appointment of judge-members of the Polish National Council of the Judiciary has been widely regarded as incompatible with the minimum standards of judicial independence articulated by the Court of Justice of the EU and the European Court of Human Rights.[25]

Despite the lack of consensus on the criteria for the organization and competencies of judicial councils, it is evident that there is a clear preference for their establishment. Proponents argue that the introduction of judicial councils is among the most effective means of safeguarding the principle of judicial independence. Enhancing the organizational autonomy of judicial bodies allows the judiciary to operate independently of political influence, thereby fulfilling its essential role as a distinct branch of government, which involves, as Russell observes, the impartial adjudication of disputes concerning legally defined rights and obligations, whether between private individuals or between individuals and public authorities.[26] The rule of law, understood as governance limited and controlled by law, requires that "disputes about whether the nonjudicial branches of government have exercised their powers in a manner authorized by law must be decided by judges those branches do not control".[27]

22 Bobek, Kosař (n 13) 1263.

23 The Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)12 permits the possibility that the establishment of judicial councils may be provided for by ordinary legislation rather than exclusively through constitutional provisions. Committee of Ministers of the Council of Europe, *Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities*, available at: <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d> accessed 21 November 2025. In addition, certain documents advocate for assigning broader competencies to judicial councils, see, for example, European Network of Councils for the Judiciary (ENCJ), *Councils for the Judiciary Report 2010–2011*, Rome, 2011; available at: <https://www.encj.eu/images/stories/pdf/workinggroups/report_project_team_councils_for_he_ judiciary_2010_2011.pdf> accessed 21 November 2025.

24 The method of selecting members of judicial councils in certain European countries offers a useful illustration. In Spain, the General Council of the Judiciary consists of the President of the Supreme Court and twenty additional members. Of these, eight are appointed by Parliament from among lawyers with a minimum of fifteen years of professional experience—four by the Congress of Deputies and four by the Senate, each requiring a three-fifths majority. The remaining twelve members are judges who, under the provisions of Organic Law No. 4/2013, are also elected by Parliament. Pérez (n 5) 1772–1775.

25 ECtHR Judgments in cases of: Advance Pharma sp. z o.o. v. Poland, Application no. 1469/20. Available at: <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-215388%22]}> accessed 1 December 2025 and Grzęda v. Poland, Application no. 535 72/18. Available at: <https://hudoc.echr.coe.int/eng#{%22fulltext%22 :[%22Grzeda%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-216400%22]}> accessed 1 December 2025. See judgements of the CJEU referred to in footnote 23.

26 Russell Peter H., 'Toward a General Theory of Judicial Independence' in Peter H. Russell and David M. O'Brien (eds.), *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World* (University Press of Virginia 2001) 10.

27 *Ibid.*

For judicial councils to fulfill this role, they must be organized according to appropriate standards. If judges are a minority among council members, or if legislative and executive branches dominate their selection, or if the council's powers are limited or reduced to advisory functions, its contribution to ensuring judicial independence will be significantly compromised. Judicial independence requires a corresponding level of independence for judicial councils. As highlighted in the judgment of the EU Court of Justice in Joined Cases C-585/18, C-624/18, and C-625/18: "The degree of independence enjoyed by the KRS [Krajowa Rada Sądownictwa – National Council of the Judiciary of Poland] in respect of the legislature and the executive in exercising the responsibilities attributed to it under national legislation, as the body empowered, under Article 186 of the Constitution, to ensure the independence of the courts and of the judiciary, may become relevant when ascertaining whether the judges which it selects will be capable of meeting the requirements of independence and impartiality arising from Article 47 of the Charter."[28]

The establishment of judicial councils and ensuring their independence from the political branches of government undoubtedly contribute to strengthening external judicial independence. However, severing ties with the executive and legislative branches implies weakening external control mechanisms, thereby increasing the risk of undue influence by other judges or centers of power that may form within the judiciary itself. Regarding the composition of judicial councils, one controversial issue concerns the potential "dominance" of judges from the highest courts among council members, which enables their prevailing influence in decision-making on matters within the council's jurisdiction.[29]

Electing council members exclusively from among judges, by their peers, represents the most complete realization of the concept of judicial self-governance. However, such a solution increases the risk of corporatism, which, in addition to weakening judicial accountability, can lead to the strengthening of interest groups. One way to mitigate this risk is to prescribe a "mixed" composition of judicial councils. The need for councils to include members from other professions, in addition to judicial office holders, has been emphasized in several documents of the CCJE. In Opinion no. 10 of the CCJE on the Council for the Judiciary in the Service of Society, it was stated that a "mixed composition" of the council would bring certain advantages: on the one hand, it would reduce the risk of creating the impression of prioritizing self-interest and cronyism (appointing close collaborators and friends to judicial positions), while on the other hand, it would allow for the maintenance of diverse viewpoints within society, thereby providing the judiciary with an additional source of legitimacy.[30]

28 The Court of Justice of the EU, Judgment in Joined Cases C–585/18, C–624/18 and C–625/18 (*A. K. v Krajowa Rada Sądownictwa,* and *CP and DO v Sąd Najwyższy* (2019). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62018CJ0585> accessed 12 April 2025.

29 For example, the 1958 Law on the High Council of the Judiciary of the Republic of Italy stipulated that six members of the Council, elected from among judicial office holders, had to be judges of the Supreme Court. This meant that, when combined with the two *ex officio* members, representatives of the highest judicial authority formed the majority within this category of members. Although the Constitutional Court of the Republic of Italy did not find this solution unconstitutional, it faced criticism, ultimately leading to its abandonment. Benvenuti Simone, Paris Davide, 'Judicial Self-Government in Italy: Merits, Limits, and the Reality of an Export Model' (2018) 19(7) German Law Journal 1654.

30 CCJE, Opinion no. 10 on the Council for the Judiciary in the service of society (2007). Available at: <https://rm.coe.int/168074779b> accessed 14 April 2025. The CCJE Opinion no 24 on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems (2021) also affirms that "in order to avoid the perception of self-interest, self-protection and cronyism and to reflect different viewpoints within society, the Council for the Judiciary should have a mixed composition with a substantial majority of judges, even if certain specific tasks should be held in reserve to an all-judge

An issue of particular importance for the effective role of judicial councils in safeguarding and strengthening judicial independence, as well as for ensuring the realization of the principle of judicial accountability, is the establishment of an adequate framework for the accountability of council members. As emphasized in CCJE Opinion No. 24, every judicial council „must earn the trust of the public and its support through excellent, transparent work and accountability (...). The more powers and responsibilities a Council has, the more important it is that it should be accountable for the use of those powers". The Opinion underscores the necessity of applying the three forms of accountability identified by the CCJE, judicial, punitive, and explanatory, not only to individual judges and the judiciary as a whole, but equally to judicial councils and their respective members.[31] This issue will be examined in greater detail in the analysis of the legal framework governing the accountability of members of the HJPC BiH.

3. JUDICIAL SELF-GOVERNANCE IN BIH

3.1. HJPC OF BIH: ORGANIZATION AND COMPETENCIES

In BiH, decisions regarding the appointment and career of judges, as well as the determination of their disciplinary liability, are entrusted to the HJPC BiH, a regulatory body established to act as an "independent and autonomous body (...) ensuring an independent, impartial, and professional judiciary".[32] The establishment of HJPC BiH was not unexpected, given the aforementioned preferences of the EU and the Council of Europe for introducing judicial councils. In the Feasibility Study adopted by the European Commission in 2003, the establishment of HJPC BiH was identified as one of the conditions for initiating negotiations on the Stabilization and Association Agreement between the EU and BiH.[33]

The HJPC BiH is composed of fifteen members: eleven judges and prosecutors elected at the state, entity, and Brčko District levels[34] (two members at the BiH level, four from each

panel", although the Opinion does not exclude the possibility that judicial councils "may (...) be exclusively composed of judges". Available at: <https://rm.coe.int/opinion-no-24-2021-of-the-ccje/1680a47604> accessed 16 May 2025.

31 Judicial accountability refers to the necessity of providing legal remedies against decisions of judicial councils before the courts. When the legal merits of a council's decision are subject to review by an independent court, the council is thereby held accountable. Members of a judicial council are also expected to adhere to the highest ethical standards and must be held accountable for their actions through appropriate mechanisms, including criminal liability where appropriate (punitive accountability). Explanatory accountability pertains to the requirement that judicial councils operate in a transparent manner, offering clear justifications for their decisions and procedures, thereby ensuring accountability through openness and reason-giving.

32 Article 3, Paragraph 1 of the Law on HJPC BiH (*Official Gazette of BiH*, Nos. 25/2004, 93/2005, 48/2007, 15/2008, and 68/2023). The HJPC BiH was established in 2004 with the adoption of the Law on HJPC BiH by the Parliamentary Assembly of BiH. The adoption of the Law was preceded by the signing of the Agreement on the Transfer of Certain Responsibilities of the Entities through the Establishment of HJPC BiH, which provided for the establishment of a unified HJPC BiH, entrusted with ensuring the autonomy, independence, impartiality, expertise, and efficiency of the judiciary, including prosecutors, in the Federation of BiH (FBiH) and the Republic of Srpska (RS), as well as at the level of BiH. With the establishment of HJPC BiH, the previously existing high judicial and prosecutorial councils of the entities and BiH, which were established in 2002, ceased to operate.

33 Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_03_1563> accessed 14 April 2025.

34 BiH, as a complex state, consists of two entities (federal units): the FBiH and the RS. The RS is a unitary entity, while the FBiH is federally structured (it consists of 10 cantons). The third subnational unit in BiH is the Brčko District (BD) of BiH, a special administrative unit of local self-government (according to Article 1.1 of the BD Statute).

entity, and one selected by the BD Judicial Commission); two lawyers (one elected by the Bar Association of the FBiH and one by the Bar Association of the RS); one member elected by the House of Representatives of the Parliamentary Assembly of BiH, who does not hold a judicial office and is not a member of Parliament; and one member elected by the Council of Ministers of BiH, upon the proposal of the Minister of Justice of BiH, who does not hold a judicial office and is not a member of the Council of Ministers of BiH (Article 4, paragraph 1 of the Law on HJPC BiH). A question arises as to the extent to which the composition of the HJPC aligns with European standards (the European model of judicial councils). While the requirement that a majority of members be representatives of the judiciary is formally satisfied, criticism has been directed at the decision-making process for judicial appointments. The core of this criticism lies in the fact that such decisions are adopted by the Council as a whole, allowing prosecutors to participate in matters that pertain exclusively to the judiciary. This reduces the influence of judges, given that judicial office holders make up only one-third of the total number of Council members. This deficiency could be addressed by establishing two sub-councils (departments) within the HJPC, one for judges and another for prosecutors, as proposed in earlier drafts of the Law on HJPC BiH (a model supported by the Venice Commission as a "(...) balanced solution that, on the one hand, prevents excessive interference by one legal profession in the work of the other, while, on the other hand, maintains the existing structure of HJPC as a joint body of judges and prosecutors").[35] However, the 2023 Law on Amendments to the Law on HJPC BiH (Law on Amendments) did not provide for the formation of sub-councils for judges and prosecutors).[36]

Article 17 paragraph 1 of the Law on HJPC BiH stipulates that the Council appoints judges, including court presidents, lay judges, and additional judges, to all courts at the state, entity, cantonal, district, basic, and municipal levels in BiH, including BD of BiH, with the exception of entity constitutional courts. To carry out the process of judicial appointments, four sub-councils for candidate selection are established (in accordance with BiH's complex state structure and its adapted judiciary organization): the Sub-Council at the BiH level, the Sub-Council for BD BiH, the Sub-Council for the RS, and the Sub-Council for the FBiH. The Sub-Council at the BiH level, appointed by the President of the Council, consists of at least three HJPC members, including, if possible, at least one judge or prosecutor from the BiH level, one from the RS, and one from the FBiH. The Sub-Council conducts interviews with candidates for vacant positions at the BiH level and submits a ranked list of candidates to the Council, which makes the appointment decisions (Article 37 of the Law on HJPC BiH). Entity sub-councils consist of five Council members from the respective entity. These sub-councils appoint committees of three Council members to conduct interviews with candidates and rank them based on their ability, suitability, and expertise.[37] Where possible, the majority of committee members should be members of the relevant entity sub-council, and a committee member who is a judge or prosecutor from the same institution as the candidate being inter-

35 Venice Commission, Opinion no. 712/2013 on the draft Law on the High Judicial and Prosecutorial Council of BiH (paragraph 61) (2014). (Available at: <https://www.venice.coe.int/webforms/documents/default. aspx?pdffile=CDL(2014)008-e> Venice Commission, Opinion no. 648/2011 on Legal Certainty and the Independence of the Judiciary in BiH (para. 93) (2012). Available at: <https://www.venice.coe.int/webforms/ documents/default.aspx?pdffile=CDL(2012)039-e> accessed 13 April 2025.

36 Law on Amendments to the Law on HJPC BiH (Official Gazette of BiH, no. 68/23).

37 Art. 38 of the Law on HJPC BiH; Art. 41, paragraph 1. of the Rules of Procedure of HJPC BiH. Available at: <https://vstv.pravosudje.ba/vstvfo/Sc/141/kategorije-vijesti/ 1172/1180/4570> accessed 12 December 2023.

viewed cannot participate in the composition of the committee (Article 41, Paragraphs 2 and 3 of the Rules of Procedure of HJPC BiH). Based on the ranking performed by the committee, the entity sub-council submits a ranked list of candidates to the Council, which makes the final decision on all appointments (Article 38, Paragraph 5 of the Law on HJPC BiH). The Sub-Council for BD BiH, appointed by the President of the Council, consists of at least three Council members, including, if possible, at least one judge or prosecutor from BD, from the BiH level, and one from the entity level. This Sub-Council conducts interviews with candidates for vacant positions in BD, and the final decision on appointments to judicial office, as in the previous cases, is made by the Council (Article 37 of the Law).

The HJPC BiH is also responsible for conducting disciplinary proceedings to determine the liability of judicial office holders. Such an institutional arrangement is consistent with relevant international and regional standards governing the status of judges and the principles of judicial conduct, which emphasise that disciplinary matters should be adjudicated by independent bodies insulated from political influence.[38] However, the mere allocation of disciplinary competence to a judicial council does not, in itself, guarantee the impartiality or depoliticisation of disciplinary proceedings. Comparative experience from Poland demonstrates that disciplinary regimes may be instrumentalized not only through selective enforcement but also through institutional design. The creation of disciplinary bodies lacking sufficient independence, combined with politically influenced appointment procedures, has led European courts to conclude that such mechanisms may exert a chilling effect on judges and undermine both individual and systemic judicial independence.[39]

Judicial disciplinary liability is defined as liability "for a violation of judicial duty prescribed by law, for which a specified penalty is imposed through a prescribed procedure."[40] The primary aim of judicial disciplinary liability is "(...) to assure, by means of the menace and the application of disciplinary sanctions—as varied as warning and censure, loss of seniority and salary, forced transfer, compulsory retirement and removal, etc.—that judges, in their role as public officers, although of a special kind, abide by their office duties, i.e., their public law duties vis-a-vis the state and the citizenry."[41] The specificity of judicial disciplinary liability, stemming from the special social significance of the judicial function, lies in the fact that judicial duties, violations of which are classified as disciplinary offenses, are not necessarily limited to behavior in court. Judicial disciplinary liability often "(...) extends to certain vaguely defined forms of out-of-court misbehavior, such as acts which might be considered damaging to the "prestige" of the judiciary or to "the people's confidence" in the independence of a particular judge."[42] The presence of such disciplinary offenses indicates the existence of the special, higher standards of behavior required of judges, not strictly tied to the performance of judicial functions.

38 Milinković Igor, *Ogledi iz pravne etike I: Sudijska etika (Essays on Legal Ethics I: Judicial Ethics),* (Faculty of Law of the University of Banja Luka 2021) 97–102.

39 Pech Laurent and Scheppele Kim Lane, 'Illiberalism Within: Rule of Law Backsliding in the EU' (2017) 19 Cambridge Yearbook of European Legal Studies.

40 Galiot Mijo, Čović Silvio, Juras Damir, 'Kaznena i stegovna (disciplinska) odgovornost sudaca (Criminal and Disciplinary Responsibility of Judges)', (2013) 34(2) Collected Papers of the Faculty of Law of the University of Rijeka 867.

41 Cappelletti, Mauro, 'Who Watches the Watchmen – A Comparative Study on Judicial Responsibility' (1983) 31(1) American Journal of Comparative Law 46.

42 *Ibid*., fn. 223.

The disciplinary procedure is initiated by the Office of the Disciplinary Prosecutor before the First-Instance Disciplinary Commission, by filing a lawsuit (Article 67, Paragraph 1 of the Law on HJPC BiH). The First-Instance Disciplinary Commission consists of three members, at least two of whom are Council members, and if the disciplinary procedure is conducted against a judge, the majority of the Commission members must be judges (Article 60, Paragraphs 3 and 5 of the Law). Appeals against decisions of the First-Instance Disciplinary Commission can always be made to the Second-Instance Disciplinary Commission. Decisions of the Second-Instance Disciplinary Commission imposing measures can be appealed to the Council as a whole, and if the Council does not confirm the measure of dismissal, it may impose another disciplinary measure provided by law (Article 60, Paragraph 6). If the Council confirms the measure of dismissal, the judge may appeal to the Court of BiH, alleging either a material violation of procedural rules established by the Law on HJPC BiH or the misapplication of the law by the Council (Article 60, Paragraph 7). Judges subject to disciplinary measures have one more legal remedy available. The Constitution of BiH provides that the Constitutional Court has appellate jurisdiction in matters arising under the Constitution when such matters become contentious due to judgments by any court in BiH (Article VI/3.b). The Constitutional Court of BiH has taken the position that its appellate jurisdiction includes not only decisions of the Court of BiH but also those of HJPC BiH. The Court has stated that "(...) HJPC, although not a court in the traditional sense, can be considered an 'independent and impartial tribunal established by law' within the meaning of Article 6, Paragraph 1 of the European Convention", leading to the conclusion that "(...)decisions of such a body, made in disciplinary proceedings, must be considered 'judgments or decisions' within the meaning of Article VI/3.b of the Constitution of BiH and Article 15, Paragraph 3 of the Rules of Procedure of the Constitutional Court, which the Constitutional Court has jurisdiction to review."[43]

BiH is among the countries that prescribe a relatively complex procedure for determining the disciplinary liability of judges. Based on an expert analysis of disciplinary proceedings in BiH,[44] the European Commission recommended simplifying disciplinary procedure and reducing it to just two stages: first instance and appeal (the Recommendation also emphasized the need for judicial oversight of the decisions of the first-instance commission). While reasons related to the protection of judicial independence support a more complex procedure to minimize the risk of misuse of the disciplinary mechanism, effective sanctioning of disciplinary offenses requires a simpler and quicker process. The literature suggests that classifying disciplinary offenses into several categories according to their severity could ensure greater efficiency in determining disciplinary liability for judicial office holders. Support for such a solution, which is not unknown in comparative legislation (e.g., in Slovakia, Spain, Montenegro, Albania), stems from considerations of legal certainty (particularly regarding the possibility of imposing dismissal measures) and efficiency (as less severe disciplinary offenses could involve a less complex procedure).[45] Although the 2023 Law on Amendments amended provisions concerning disciplinary offenses of judges, they did not include a classification by severity.

43 Decision of the Constitutional Court of BiH, no. AP 633/04 (Official Gazette of BiH, no. 73/2005).

44 Recommendation of the European Commission based on expert analysis of disciplinary procedures in BiH. Available at: <https://pravosudje.ba/vstvfo/Sc/10001/kategorije-vijesti/10144/115100> accessed 23 November 2025.

45 See: Milinković (n 39) 105–109.

3.2. COURT PRESIDENTS AND THE PROTECTION OF JUDICIAL INDEPENDENCE IN BIH

As previously indicated, some authors advocate for a broader understanding of judicial self-governance that includes not only judicial councils but also court presidents. From this perspective, the following section provides a general overview of the legal provisions governing the appointment procedures and disciplinary accountability of court presidents in BiH.

The significance of the role played by court presidents has been highlighted by the CCJE, which addressed this issue in detail in its Opinion No. 19 (2016) on the Role of Court Presidents.[46] According to the Opinion, court presidents play a key role in upholding the independence and impartiality of the judiciary, both at the institutional level and with respect to individual judges. Internal judicial independence, as emphasized by the CCJE, requires that judges remain entirely free from instructions or pressure from court presidents when adjudicating cases. The CCJE further recommends that the procedures for appointing court presidents should align with those applicable to the selection and appointment of judges. This includes a merit-based evaluation of candidates, conducted by an independent authority competent to make judicial appointments. As a general principle, the selection process should be competitive and based on a public call for applications, with eligibility criteria clearly prescribed by law. The CCJE also supports the involvement of judges from the respective court in the appointment process, either through a binding vote or a consultative role.

Article 17.1 of the Law on the HJPC BiH provides that the Council is responsible for appointing court presidents at the state, entity, cantonal, district, basic, and municipal levels across BiH (with the exception of the constitutional courts of the entities). Appointments are made on the basis of a public competition. In making its decision, the Council considers, among other criteria: professional knowledge, work experience, and past performance; demonstrated competence through the publication of scholarly works and other professional activities; professional aptitude as evidenced by career achievements, including participation in organized professional development; analytical ability and capacity to address legal issues; the ability to perform duties impartially, conscientiously, diligently, decisively, and responsibly; communication skills; collegial relations and conduct outside the workplace; professional impartiality and reputation. In the case of candidates for the position of court president, particular attention is given to managerial experience and qualifications relevant to leadership functions.

The status of court presidents plays an important role in ensuring the effective functioning of an independent judiciary. When their appointment and functions are governed by clear and merit-based procedures, court presidents can serve as relevant protectors of judicial integrity and impartiality. Conversely, if their selection is subject to political influence or lacks procedural safeguards, court presidents may become channels of internal or external pressure, thereby jeopardizing both the independence of individual judges and the institutional autonomy of the judiciary as a whole.

The Polish experience provides an illustrative example of how the executive branch may resort to various methods in order to establish control over court presidents, frequently em-

46 CCJE, Opinion no. 19 (2018) on the Role of Court Presidents; Available at: <https://www.coe.int/en/web/ccje/ccje-opinionsandmagna-carta> accessed 11 January 2025.

bedding such measures within broader judicial reforms. Following the electoral victory of the Law and Justice (PiS) party, legislative amendments granted the Minister of Justice a temporary but extensive power to dismiss and appoint court presidents without consultation. This authority was used to replace a substantial number of court presidents and vice-presidents (almost 150 in total) within a short timeframe. At the same time, changes to the retirement regime affected judges occupying the highest positions within the Polish judiciary, including the President of the Supreme Court.[47]

Owing to their extensive administrative and career-related competences, court presidents occupy structurally sensitive positions within the judicial system and may therefore be exposed to pressures emanating from a variety of sources, not limited to the executive branch. Their authority over case allocation, internal court administration, and the professional advancement of judges confers substantial institutional importance upon their office. In such circumstances, loyal or compliant court presidents may facilitate indirect forms of political or institutional influence over the judiciary. This risk of abuse underscores the need for a clearly defined and appropriately calibrated framework of responsibility tailored specifically to their office, rather than reliance solely on the general rules governing judicial accountability.

The Law on the HJPC BiH stipulates that "[j]udges, prosecutors, additional judges or lay judges, including court presidents (...) shall be held accountable for disciplinary offences prescribed by law, committed either intentionally or through negligence" (Article 54, Paragraph 1). The 2023 Law on Amendments introduced a specific provision concerning the disciplinary liability of court presidents. Article 56, Paragraph 2 of the Law stipulates that, in addition to the disciplinary offences listed in Paragraph 1 of that Article (applicable to judges), court presidents may also be held accountable for the following offences: (a) violation of regulations governing court leadership and judicial administration; (b) violation of rules or decisions concerning case assignment, whether through direct action or omission of proper oversight; (c) failure to file a disciplinary complaint against a judge of the same court despite having knowledge of a breach of official duties; and (d) failure to provide the Council with information or data which, under this Law, the president of the court is obligated to submit. Given the responsibility of court presidents for the proper functioning of the courts and the potential for abuses in case allocation and other areas, the inclusion of these specific disciplinary offences represents a justified measure.

4. 2023 AMENDMENTS TO THE LAW ON HJPC BIH: A PATH TOWARD GREATER ACCOUNTABILITY AND INTEGRITY OF JUDGES (HJPC BIH MEMBERS)

4.1. ACCOUNTABILITY OF HJPC BIH MEMBERS

The extensive powers of the HJPC BiH raise the issue of creating an adequate legal framework for the accountability of its members. It is unrealistic to expect judicial councils to

47 Blisa Adam, Kosař David, 'Court presidents: the missing piece in the puzzle of judicial governance' (2018) 19(7) German Law Journal 2032.

effectively fulfill their role in strengthening accountability and integrity in the judiciary if their own members are not subject to rules that guarantee adherence to these principles. The need for appropriate procedures to determine the accountability of judicial council members is particularly pronounced in countries where public trust in the judiciary, including judicial self-governance bodies, is relatively low, such as BiH.

The situation in BiH was further exacerbated by several scandals involving HJPC BiH members, including its president. In 2019, a recording surfaced of a conversation in a restaurant involving then-president of HJPC BiH M. T., where party N. A. inquired about the status of a specific criminal case. The Council president promised to discuss the matter with the Chief Prosecutor of the Sarajevo Canton, D. B. In the continuation of the recorded conversation, which the Council president did not attend, an acquaintance of N.A., an officer of the State Investigation and Protection Agency (SIPA), demanded and accepted money from N.A. for "horseshoeing" ("potkivanje", a term used to imply bribery). This incident came to be known as the "Potkivanje" affair. The Office of the Disciplinary Prosecutor of HJPC BiH initiated disciplinary proceedings against the Council president for the disciplinary offense of "(...) any other conduct that constitutes a serious violation of official duty or undermines public confidence in the impartiality and credibility of the judiciary" (Article 56, Point 23 of the Law on HJPC BiH).[48]

However, the First-Instance Disciplinary Commission dismissed the lawsuit, reasoning that the provisions of the Law governing judicial disciplinary offenses did not apply to HJPC members. The decision was upheld by the Second-Instance Disciplinary Commission.[49] Article 54 of the Law on HJPC BiH ("General Provisions on Disciplinary Liability for Disciplinary Offenses"), in force at the time, addressed the disciplinary liability of judges, prosecutors, additional judges, or lay judges (including court presidents, chief prosecutors, and their deputies) for offenses prescribed by the Law but did not explicitly mention the liability of Council members. The Law provided for the removal of Council members upon the proposal of at least one-third of Council members or the Disciplinary Commission, by a two-thirds majority of the members present and voting. Under the then-applicable legal provisions, an HJPC member could be removed if: 1) they did not perform their duties properly, effectively, or impartially; 2) they failed to fulfill obligations arising from their role due to illness or other reasons; or 3) they committed an offense making them unworthy of serving on the Council (Article 6, Points d), e), and f) of the Law). In this instance, HJPC members supported the Council president, rendering the legal mechanism for removal unused. This highlighted the weaknesses of the legal framework, as the process for establishing liability and considering the removal of Council members could only be initiated at the proposal of Council members themselves, allowing the president and members to block any attempt to establish their liability. Since the Council failed to respond, the House of Representatives of the Parliamentary Assembly of BiH formed a Temporary Investigative Commission to assess the state of the judiciary in BiH, tasked with examining the Council's work. Although this decision by the House of Representatives was necessitated by the existing legal framework, the process raised concerns about maintaining HJPC independence from political branches of government, specifically the legislative branch in this case. The HJPC president deemed the formation of the Investigative Commission un-

48 <https://www.slobodnaevropa.org/a/29974875.html> accessed 12 November 2025.

49 <https://www.slobodnaevropa.org/a/29999615.html> accessed 12 November 2025.

constitutional and unlawful,[50] while the HJPC adopted conclusions labeling the Commission's establishment as an unacceptable interference in the judiciary's work.[51] Although no indictment was brought against former president of the HJPC BiH, the case highlighted significant shortcomings in the legal framework governing the accountability of Council members.

The weaknesses of the legal framework for determining the liability of HJPC BiH members were also highlighted in the 2019 Expert Report on Rule of Law Issues in BiH, which emphasized the need to enhance accountability and transparency in HJPC operations, as well as to establish appropriate oversight of Council members' conduct and procedures for establishing liability.[52]

The 2023 Law on Amendments to the Law devoted significant attention to the issue of Council member liability. Article 5 of the Law on Amendments introduced Article 6a, which regulates the procedure for removing Council members. The new Article 6a ("Removal of Council Members") provides that a member may be removed if they seriously damage the Council's reputation through a violation of the Law or other action, in cases of incompatible functions, and for continuous absence exceeding three months or, in the case of illness, six months. In such cases, the HJPC will form a special commission of five members to establish the relevant facts and propose a decision to the Council. The removal decision requires a two-thirds majority of Council members present.

Previously, HJPC disciplinary bodies had ruled that provisions of the Law on HJPC BiH regarding judicial disciplinary responsibility could not be analogously applied to Council members. Article 13 of the Law on Amendments supplemented the Law with provisions on the disciplinary liability of Council members. The Law on Amendments added Article 57a, which explicitly defines the disciplinary offenses of Council members, structured similarly to judicial disciplinary offenses. Article 57a enumerates specific disciplinary offenses across thirteen points and includes a general provision in Point n), stipulating that "(...) any conduct that damages the reputation and integrity of the Council and the judiciary as a whole, not specifically prescribed as a separate offense by this article", shall also be considered a disciplinary offense.

Article 15 of the Law on Amendments added Articles 61a and 61b, which govern the procedure for conducting disciplinary proceedings against Council members. The new provisions specify that disciplinary proceedings are conducted by the First-Instance and Second-Instance Disciplinary Commissions. The Second-Instance Commission decides on appeals against decisions of the First-Instance Commission, while appeals against the Second-Instance Commission's decisions, as final administrative acts, may be filed with the Court of BiH (Article 61a, Paragraph 7).

The First-Instance and Second-Instance Disciplinary Commissions are each composed of three members (Article 61a, Paragraphs 4 and 5). In disciplinary proceedings against a member who is a judge, all commission members will be judges at both instances. In cases involving

50 <https://www.rtrs.tv/vijesti/vijest.php?id=389753> accessed 12 November 2025.

51 <https://www.nezavisne.com/novosti/bih/VSTS-osudio-formiranje-istrazne-komisije-nece-ucestvovati-u-njenom-radu/548884> accessed 12 November 2025.

52 Available at: <https://archive.europa.ba/?p=66927> accessed 12 November 2025.

a prosecutor, all members will be prosecutors. For proceedings involving a member who is neither a judge nor a prosecutor, the commissions will include one judge, one prosecutor, and one Council member who is not a judge or prosecutor (Article 61a, Paragraph 3). Based on proposals by courts and prosecutor's offices, the HJPC compiles a list of judges and prosecutors eligible to serve as disciplinary commission members. Members cannot be reappointed (Article 61b, Paragraph 4). Since the effective performance of HJPC BiH requires lawful and professionally responsible conduct by its members, the adoption of provisions on the disciplinary liability of Council members can be deemed justified.

Another aspect of the Polish experience relevant for comparative purposes concerns the accountability of judicial council members. While judicial councils are often entrusted with extensive powers over appointments, promotions, and discipline, the Polish case illustrates the risks arising from insufficient mechanisms for holding council members accountable for breaches of ethical or legal standards. The absence of effective internal and external oversight facilitated the consolidation of power within the Council and limited its responsiveness to constitutional and European constraints. This experience resonates with the concerns identified in BiH regarding the accountability of HJPC members prior to the 2023 amendments.

4.2. ASSET DECLARATION BY JUDGES AND HJPC BIH MEMBERS

One of the amendments introduced by the 2023 Law on Amendments concerns the obligation for judges and prosecutors (as well as HJPC BiH members) to declare their assets. This controversial measure raises the issue of balancing the right to privacy of judicial office holders and their family members, on the one hand, and the public interest, which demands measures aimed at combating corruption and strengthening integrity in the judiciary, on the other. The justification for this measure was emphasized in the CCJE Opinion No. 21 on Preventing Corruption among Judges[53] from 2018, which states that "(...) a strong asset declaration system can contribute to identifying and subsequently avoiding conflicts of interest if all relevant steps are taken, thereby increasing transparency in the judiciary and fostering a climate of judicial integrity".

However, the CCJE also stresses the need to respect the principle of proportionality when balancing the obligation to declare assets with the right to privacy of judges and their families. The opinion suggests that access to information covered by the declaration obligation should only be granted upon request and only if the applicant demonstrates a legitimate interest, while the privacy of third parties, such as family members of judges, should receive a higher level of protection.

CCJE Opinion No. 21 also refers to recommendations by GRECO (Group of States Against Corruption) made in its Fourth Evaluation Round titled "Preventing Corruption among MPs, Judges, and Prosecutors." In its 2016 Evaluation Report for BiH, GRECO recommended establishing an effective system for monitoring annual financial declarations of judges and

53 CCJE, Opinion no. 21 (2018) on Preventing Corruption among Judges. Available at: <https://www.coe.int/en/web/ccje/ccje-opinionsand-magna-carta> accessed 23 December 2024.

prosecutors, including the imposition of appropriate sanctions for noncompliance or false declaration.[54]

The obligation to declare assets of judges and their family members is not unknown in comparative law. For example, Article 175b of Bulgaria's Judiciary System Act[55] requires judges, prosecutors, and investigating judges to provide information about financial interests in Bulgaria and abroad. Efforts to introduce mandatory financial declaration for judicial office holders in BiH to combat corruption and scrutinize the origin of assets were recorded even before the adoption of the Law on Amendments. In 2018, HJPC BiH adopted the Rulebook on Submitting, Verifying, and Processing Financial Reports of Judges and Prosecutors (08-02-2-3186/2018), which prescribed rules and procedures for submitting financial reports, as well as their verification, processing, publication, storage, and access. However, the BiH Personal Data Protection Agency issued an official decision prohibiting HJPC BiH from processing the personal data of judges and prosecutors in the manner prescribed by the Rulebook, citing violations of the Law on HJPC BiH, the Law on Unique Identification Numbers, and provisions of the Anti-Corruption Convention.[56] The HJPC BiH filed a lawsuit with the Court of BiH seeking annulment of the decision. The Court dismissed the lawsuit, finding the Agency's decision to be based on properly established facts and the correct application of procedural and substantive law.[57]

Article 21 of the Law on Amendments, which amended Article 86 of the Law on HJPC BiH, introduced the obligation for judges and prosecutors to submit to the Council "(...) initial and annual asset and interest declarations, including details on the method and timing of acquisition, purchase value, income, interests, liabilities, expenses, and guarantees for themselves, their spouses or partners, parents, children, and other individuals living in the same household" (Article 86, Paragraph 1).

Judges must also declare all income of their spouses, partners, parents, children, and other household members (Article 86, Paragraph 2b). The law further requires judges to declare income from other paid activities, ownership rights over real estate (including acquisition details and purchase value), and ownership rights over vehicles and other movable property worth over 5,000 BAM (Convertible Marks). Additionally, judges must declare financial assets held in banks or financial institutions, including electronic currencies and cash exceeding 5,000 BAM, while specific provisions pertain to declaring gifts and donations (Article 86, Paragraph 2, Items i and j).

Article 22 of the Law on Amendments added Articles 86a to 86k to regulate access to asset and interest declarations, their verification and analysis, and the establishment of a registry for such declarations. Article 86a, Paragraph 1 provides that asset and interest declarations are published on the HJPC BiH website "(...) to enhance integrity, transparency, and public

54 GRECO – Group of States against Corruption, Evaluation Report: Bosnia and Herzegovina (2016) 36.

55 Judiciary System Act of the Republic of Bulgaria; Available at: <https://vss.justice.bg/en/page/view/2073> accessed 17 December 2024.

56 Decision of the Agency for the Protection of Personal Data in BiH dated March 5, 2019. Available at: <https://www.azlp.ba/rjesenja/Archive.aspx?langTag=sr%E2%80%93SP%E2%80%93Cyrl&template_id=149& pa geIndex=4> accessed 17 December 2024.

57 <https://www.azlp.ba/saopstenja/?id=2867> accessed 12 November 2025.

trust in the judiciary, as well as to prevent conflicts of interest and other undue influences on judicial functions." The law mandates the establishment of a Department for Processing Declarations within the HJPC Secretariat, which is tasked with independently enforcing the provisions of the Law without receiving instructions or interference in specific cases (Article 86f paragraph 1). Article 86k provides that the legal regime governing asset and interest declarations applies equally to the HJPC members, a solution that is justified in light of the potentially greater harm that corrupt conduct by Council members may pose to judicial independence compared with misconduct by individual judicial office holders.

5. WHAT BRINGS THE NEW PROPOSAL OF THE LAW ON HJPC BIH

The current Proposal of the Law on HJPC BiH[58] proposes changes to the internal structure of the Council. Although earlier drafts of the HJPC Law had considered the possibility of establishing two departments (sub-councils) within the Council—one judicial and one prosecutorial—such a solution was not adopted in the 2023 amendments. However, the new legislative proposal provides for the creation of two distinct departments within the HJPC. Article 48 stipulates that the Council's competences shall be exercised within the framework of its plenary sessions, as well as through the work of the Judicial Department, the Prosecutorial Department, and other organizational units of the Council, in accordance with the law. The plenary session, composed of all members of the Council, decides on matters falling within the Council's competence that are not expressly assigned to the Judicial Department, the Prosecutorial Department, the disciplinary bodies, or the evaluation committees (Article 49, Paragraphs 1 and 2).

This approach addresses one of the deficiencies previously identified by the Venice Commission. One of the main criticisms regarding the current composition of the Council concerns the fact that decisions on the appointment of judges are adopted by the Council as a whole, which means that prosecutors also participate in such decisions. Given that judges comprise only one-third of the Council's total membership, this arrangement reduces their influence in decision-making processes relating to the judiciary. The proposed solution—to establish two internal departments, one for judges and one for prosecutors—would correct this imbalance.

Article 54, Paragraphs 1–3 of the Law Proposal define the competences of the Council and specify which responsibilities are exercised by the Judicial Department and which by the Prosecutorial Department. The Judicial Department is responsible for appointing judges, including court presidents and lay judges. It decides on complaints related to the judicial appointment process, the termination of mandates of judges and court presidents, temporary suspension from judicial duties, temporary transfer of judges to another court, and matters concerning judicial leave. Similarly, the Prosecutorial Department appoints chief prosecutors, deputy chief prosecutors, and prosecutors. It decides on complaints in the appointment process of prosecutors, termination of mandates of prosecutors, chief prosecutors, and deputy

58 Available at: <https://static.parlament.ba/doc/182622_b%20Prijedlog%20zakona.pdf> accessed 25 December 2025.

chief prosecutors, temporary suspension from prosecutorial duties, temporary transfer of prosecutors to other prosecutor's offices, and matters concerning prosecutorial leave.

This article further provides that all competences not assigned to the Judicial or Prosecutorial Department shall be exercised by the plenary session of the Council, unless expressly assigned by the Law to other bodies (Article 54, Paragraph 4). The quorum for a plenary session is constituted by the presence of at least fifteen members (the total number of Council members has been increased to twenty), and decisions are adopted by a majority vote of all Council members. In order to prevent prosecutors from outvoting judges, or vice versa, the Law prescribes that any decision proposed by the Judicial Department must receive at least five votes from Council members who are judges, and any decision proposed by the Prosecutorial Department must receive at least five votes from Council members who are prosecutors (Article 49).

The Law Proposal introduces a modified system for the evaluation of judges and prosecutors. Under the current law, judges were evaluated by the president of the court in which they serve, while court presidents were evaluated by the president of the immediately higher court. According to Article 143 of the Law Proposal, the evaluation of judges is carried out by the Commission for the Evaluation of Judges, established by the Council in accordance with the Law. The Commission comprises all Council members from among the judiciary, as well as one judge each from the Supreme Court of the FBiH, the Supreme Court of the RS, the Court of BiH, and the Appellate Court of the BD of BiH. The evaluation of the presidents of the Supreme Court of the FBiH, the Supreme Court of the RS, the Appellate Court of the BD, and the Court of BiH is conducted by the Council, based on a proposal submitted by the Judicial Department. The evaluation of presidents of other courts is conducted by the Commission for the Evaluation of Court Presidents, which includes all Council members from among the judiciary and the presidents of the aforementioned highest courts (Article 144, Paragraphs 1 and 2).

6. CONCLUSION

The arguments grounded in the protection of judicial independence and the realization of the rule of law support the establishment of judicial councils as bodies of judicial self-governance. Entrusting decisions regarding the selection, promotion, and disciplinary liability of judicial office holders to bodies composed of representatives of the judiciary, elected by judges, undoubtedly enhances the external independence of the judiciary. However, severing ties with the political branches of government may lead to the emergence of new centers of undue influence on judges, this time within the judiciary itself. To prevent the erosion of internal judicial independence, the introduction of judicial councils must be accompanied by mechanisms that can determine the liability of their members. Therefore, the provisions of the 2023 Law on Amendments, which created a more adequate legal framework for determining the liability of Council members, can be considered justified. The deficiency in the previous legal text, which did not prescribe disciplinary offenses for HJPC BiH members or the procedure for their determination, has been rectified with the adoption of the Law on Amendments.

The new proposal of the Law on HJPC BiH also regulates these offences and procedure for determination of disciplinary responsibility of the Council's members (Articles 25–28). Nevertheless, the long-term effectiveness of these reforms will depend not solely on their formal conformity with European standards, but on their practical capacity to prevent both external political influence and internal concentrations of power within judicial hierarchies.

Given the responsibility of court presidents for the proper functioning of the courts and the potential for abuse in the allocation of cases and other areas, the issues of their appointment, evaluation, and determination of disciplinary responsibility are of particular importance. This paper underscores the adequacy of the solutions provided in this regard by the 2023 Law on Amendments to the Law on the HJPC, as well as by the current Law Proposal, including the introduction of specific disciplinary offenses applicable to court presidents.

Efforts to combat corruption in the judiciary and enhance the integrity of judicial office holders also justify the introduction of measures related to the submission of asset and interest declarations. Consequently, the provisions of the Law on Amendments requiring judges, prosecutors, and HJPC members to submit asset and interest declarations can be deemed appropriate. Special attention must be paid to protecting the privacy rights of individuals covered by these declarations, particularly regarding members of the households of judicial office holders.

The 2023 Law on Amendments did not address all the issues concerning the organization and competencies of HJPC BiH, such as the establishment of two departments (sub-councils) within HJPC BiH: judicial and prosecutorial, a structural reform supported by Venice Commission and now envisaged in the current Law Proposal. The paper also highlighted the justification for classifying disciplinary offenses based on their severity into minor and major offenses, a measure that was neither included in the 2023 Law on Amendments, nor in the current Law Proposal.

Nonetheless, despite the aforementioned omission, the Law Proposal addresses several shortcomings of the previous legislation. Its adoption would thus represent an important step toward a more adequate and responsible realization of judicial self-governance in BiH. However, the establishment of an appropriate legal framework must be accompanied by continuous and coordinated efforts from all relevant stakeholders to ensure an optimal balance between judicial independence and judicial accountability.

The Polish experience serves as a cautionary example demonstrating that formal adherence to the institutional model of judicial self-governance is insufficient if not accompanied by effective guarantees of independence in the composition, functioning, and accountability of governance bodies. It highlights that judicial councils may become sites of institutional capture unless embedded within a broader constitutional culture of checks and balances. The latest GRECO report for Poland concludes that judicial reforms—especially the politicised composition of the National Council of the Judiciary and the disciplinary regime for judges—continue to undermine judicial independence and create a risk of disciplinary proceedings being used as a tool of pressure rather than legitimate accountability.[59]

59 <https://rm.coe.int/grecorc4-2024-9-final-eng-3rd-interim-inc-rule-34-poland-public/1680b35908> accessed 25 December 2025.

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REFORMA PRAVOSUDNE SAMOUPRAVE U BOSNI I HERCEGOVINI: AKTUALNI IZAZOVI I PERSPEKTIVE U SVJETLU POLJSKOG ISKUSTVA

Sažetak

Neovisnost pravosuđa jedan je od ključnih preduvjeta vladavine prava. Kako bi moglo djelovati kao temeljna sastavnica sustava horizontalne odgovornosti te, posljedično, kao važan čimbenik jačanja vladavine prava, pravosuđe mora ostati neovisno o drugim granama vlasti i svakom vanjskom utjecaju. Međutim, jačanje kulture pravosudne neovisnosti mora biti praćeno stalnim nastojanjima usmjerenima na razvoj mehanizama i kulture pravosudne odgovornosti i integriteta, osobito u postautoritarnim društvima.

Pravosudna samouprava, široko definirana kao postojanje i djelovanje institucija koje uključuju najmanje jednog suca te obavljaju poslove upravljanja sudovima i/ili upravljanja pravosudnim karijerama, često se promiče kao rješenje za izazove s kojima se suočava upravljanje pravosuđem. Tijekom posljednjih desetljeća pravosudna vijeća postala su najistaknutiji institucionalni izraz pravosudne samouprave, iako pojedini autori taj pojam proširuju i na druge aktere pravosudnog upravljanja. Premda je svrha vijeća, sastavljenih pretežito od pripadnika pravosuđa, zaštititi imenovanja, napredovanja i stegovne postupke od stranačkih političkih utjecaja, suvremena literatura sve češće upozorava da njihovo uspostavljanje može stvoriti nove kanale politizacije te otvoriti složena pitanja odgovornosti.

U radu se analizira pravni okvir pravosudne samouprave u Bosni i Hercegovini, s posebnim naglaskom na izmjene Zakona o Visokom sudbenom i tužiteljskom vijeću Bosne i Hercegovine iz 2023. godine te na prijedlog novog Zakona o Visokom sudbenom i tužiteljskom vijeću Bosne i Hercegovine, koji se trenutačno nalazi u parlamentarnoj proceduri pred Parlamentarnom skupštinom Bosne i Hercegovine. Analiza je usmjerena osobito na odredbe koje uređuju stegovnu odgovornost sudaca i članova VSTV-a BiH, kao i na postupke razrješenja članova Vijeća. Polazeći od šireg razumijevanja pojma pravosudne samouprave, rad također razmatra ulogu i ovlasti predsjednika sudova.

Smještajući raspravu u širi kontekst poljskog iskustva reformi pravosudne samouprave, rad pruža dodatne uvide u rizike politizacije i institucionalnog zarobljavanja koji se mogu pojaviti čak i u okvirima formalno osmišljenima radi zaštite neovisnosti pravosuđa.

Ključne riječi: pravosudna samouprava, pravosudna vijeća, predsjednici sudova, Bosna i Hercegovina, Poljska

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