



Одсјек Кривичне Одбране
Odsjek Krivične Odbrane
CRIMINAL DEFENCE SECTION

ADDITIONAL RULES OF PROCEDURE
FOR DEFENCE ADVOCATES APPEARING
BEFORE
SECTION I FOR WAR CRIMES AND SECTION II FOR ORGANISED CRIME, ECONOMIC CRIME
AND CORRUPTION OF
THE COURT OF BOSNIA AND HERZEGOVINA

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Upon proposal by the Registry for Section I for war crimes and Section II for organized crime, economic crime and corruption of the Criminal and Appellate Divisions of the Court of BiH, in accordance with article 12 Paragraph 5 of the Law on the Court, the Court of BiH, pursuant to article 22(2)(b) of the Law on Court of BiH, at the plenary session held on 30 June 2005 adopted the following:

**ADDITIONAL RULES OF PROCEDURE FOR DEFENCE ADVOCATES APPEARING
BEFORE SECTION I AND SECTION II OF THE CRIMINAL DIVISION AND SECTION I
AND SECTION II OF THE APPELLATE DIVISION OF THE COURT OF BOSNIA AND
HERZEGOVINA**

PART I - GENERAL PROVISIONS

CHAPTER 1 – BASIC PRINCIPLES

ARTICLE 1.1 – SCOPE OF APPLICATION

These Rules establish the Criminal Defence Section of the Registry of the Court, and set forth the conditions and procedures for admitting advocates to the list of advocates licensed to practice before Section I for War Crimes and Section II for Organised Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina, and assignment of advocates appearing for the defence of any suspect, accused or detained person.

ARTICLE 1.2 – ENTRY INTO FORCE

These Rules shall enter into force seven days after their adoption by the Plenum of the Court, and shall become an integral part of the Rules of Procedure of the Court, and shall apply to cases commenced after the date of entry into force.

ARTICLE 1.3 – AMENDMENTS

1. Any proposals for amendment to these Rules shall be submitted to the Plenum of the Court. Proposals for amendments shall be accompanied with a reasoned proposal and any explanatory material.
2. The application of amendments to the Rules agreed by the Plenum shall not operate to prejudice the rights of the suspect or the accused in any pending case before the Court.

ARTICLE 1.4 – CONFLICT

Where there is any inconsistency between these Rules and any other Book of Rules, Code of Conduct, Rules of Professional Ethics, Regulation or Directive, the terms of these Rules shall prevail in respect of the licensing and assignment of advocates in respect of proceedings before Sections I and II of the Court.

ARTICLE 1.5 – DEFINITIONS

1. In these Rules, unless the context otherwise requires, the following terms shall mean:

Rules	Rules of Procedure for Defence Advocates appearing before Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions
Court	Court of Bosnia and Herzegovina
Sections I and II	Section I for War Crimes and Section II for Organised Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina
Registry	Registry for Sections I and II
Registrar	Registrar for Sections I and II
List	List of advocates authorised to appear before Sections I and II of the Court of BiH
Criminal defence section	The criminal defence section of the Registry, Odsjek Krivične Odbrane (OKO)
Authorised Advocate	Advocate who has been admitted to the list of advocates authorised to appear before the Court in accordance with these Rules.
ICTY	The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993
Bar Associations	Bar Association of the Federation of Bosnia and Herzegovina and Bar Association of the Republika Srpska
Law on Court	Law on Court of Bosnia and Herzegovina
CPC	Criminal Procedure Code of Bosnia and Herzegovina

2. Any term not defined in these Rules shall have the same meaning given to it by the Laws of Bosnia and Herzegovina in force.

CHAPTER 2 – ODSJEK KRIVIČNE ODBRANE

ARTICLE 2.1 – ESTABLISHMENT OF THE CRIMINAL DEFENCE SECTION

1. There shall be a criminal defence section of the Registry for the purpose of giving legal assistance to suspects and accused, which shall be known as Odsjek Krivične Odbrane, or OKO.
2. OKO shall consist of the Director, professional staff and administrative staff recruited by OKO in accordance with the internal rules of the Registry.
3. The Registrar, in consultation with the President of the Court, shall appoint the Director of OKO.

ARTICLE 2.2 – RESPONSIBILITIES

1. OKO shall provide assistance to any suspect or accused being investigated for or charged with an offence, or detained under the authority of the Court or brought to appear before the Court.
2. OKO is authorised pursuant to Art.12 of the Law on Court as the authorising authority for Sections I and II, and is authorized to prepare and maintain the list
3. OKO shall fulfil its functions, *inter alia*, by:
 - a. Assisting in the protection of the rights of suspects, accused, detainees or other persons.
 - b. Providing and maintaining representation for suspects, accused, detainees or other persons.
 - c. Helping to ensure respect for the highest standards of criminal justice.
 - d. Administering applications to be admitted to the list in accordance with the criteria in these Rules.
 - e. Maintaining an accurate and up to date list.
 - f. Providing all suspects and accused with information on how to select an advocate from the list.
 - g. Providing administrative and other support for assigned advocates.
 - h. Providing training courses to allow advocates to fulfil the criteria for admission to the list together with continuing professional training.
4. Advocates employed by the OKO who provide legal advice or representation to suspects, detainees or accused or other persons shall act in the best interests of those persons and shall be independent from the Registry. Legal advice given by OKO to suspects,

detainees, accused or other persons or to any advocate shall be regarded as legally privileged.

5. Any decision of the Director of OKO may be reviewed by the President of the Court.

PART II – ADMISSION AND ASSIGNMENT OF ADVOCATES

CHAPTER 3 – ADMISSION TO THE LIST

ARTICLE 3.1 – LIST OF AUTHORISED ADVOCATES

1. OKO shall maintain a public and open announcement inviting advocates to apply to be admitted to the list.
2. OKO shall determine if the prerequisites set by the Rules are satisfied and admit successful candidates to the list.
3. OKO shall maintain the list and shall make the list available to the President of the Court.

ARTICLE 3.2 – QUALIFICATIONS OF ADVOCATES

In order to be admitted to the list an advocate must fulfil each of the following requirements:

1. To be a current and valid member of either of the Bar Associations;
2. To possess as an advocate, judge or prosecutor at least seven years of relevant working experience on legal matters in order to be appointed as the only advocate or the primary advocate;
3. To possess knowledge and expertise in relevant areas of law in accordance with the criteria published by OKO; and
4. To have completed sufficient continuing professional training hours, in accordance with the criteria published by OKO.

ARTICLE 3.3 – APPLICATION PROCESS

1. Applicants shall complete an application form prepared by OKO and shall submit any other relevant document necessary in accordance with the criteria referred to in Art.3.2(4) of these Rules.
2. Any advocate who has been denied admission to the list may seek review of the decision before the President of the Court within fifteen days of receiving notification of the decision.

ARTICLE 3.4 – SPECIAL ADMISSION

1. Pursuant to Article 12(2) of the Law on Court, Judges of Sections I and II may at any time specially admit an advocate who is not on the list to appear or practise before the Court.
2. The definition of 'advocate' in subparagraph 1 above shall include but not be limited to an advocate who has a current and valid license for performing the practice of law from a recognised association of lawyers of a foreign state or from a State body.
3. The advocate shall apply to the preliminary proceedings judge, preliminary hearings judge, the judge or the Presiding judge depending on the phase of proceedings.
4. The Judge may take the following factors into account when considering applications under this Article:
 - a. Whether the advocate has specific competence in criminal law, international criminal law, international human rights law, or any other area of law, such as to significantly assist in the proceedings.
 - b. If the advocate has already appeared before the ICTY in a case that has been transferred to the Court under Rule 11bis of the Rules of Procedure of the ICTY, whether any other advocate would have adequate time for the preparation of the defence.
 - c. Any previous applications to be admitted to the list that have been refused.
 - d. Any other factor relevant to the rights of the suspect or accused.
5. The Judge shall inform OKO of any decision to admit an advocate not on the list.
6. OKO shall keep a list of specially admitted advocates.
7. The advocate shall forward the relevant documentation to OKO in accordance with Article 3.3 of these Rules.

ARTICLE 3.5 – REMOVAL FROM THE LIST

An advocate who has been admitted to the list shall be removed where the advocate:

- a. requests removal from the list and is not currently assigned to a case;
- b. no longer satisfies the qualifications as outlined in these Rules; or
- c. has been disqualified in terms of Article 42 of the CPC, or has been repeatedly removed from the courtroom or prevented from further representation in terms of Article 242 of the CPC.

CHAPTER 4 – ASSIGNMENT OF ADVOCATES

ARTICLE 4.1 – SELECTION OF ADVOCATE FROM LIST

1. The suspect or the accused may select an advocate from the list who is willing and available to be assigned to the suspect or accused.
2. Where the suspect or accused proposes an advocate not on the list, OKO shall prioritise an application from that advocate for admission to the list in accordance with these Rules, or the advocate may make an application for special admission pursuant to Article 3.4 of these Rules.
3. If the suspect or accused fails to select or propose an advocate of his choice, then, in accordance with Article 45 and 46 of the CPC, the preliminary proceedings judge, preliminary hearings judge, the judge or the Presiding judge may:
 - a. assign an available advocate from the list; or
 - b. temporarily assign an available advocate from the list; or
 - c. assign any other advocate for a period not exceeding thirty days.

ARTICLE 4.2 – ASSIGNMENT OF ADDITIONAL ADVOCATES

1. Where more than one advocate is necessary for the adequate preparation of the defence, the Court may assign additional advocates.
2. The Court may consider the following criteria in deciding whether to assign additional advocates in a specific case:
 - a. The complexity of the case;
 - b. The number of members of the prosecution;
 - c. The quantity of prosecution evidence;
 - d. Any complex issues of fact or law;
 - e. The estimated length of the trial;
 - f. Any other factor relevant to the rights of the suspect or the accused.
3. Where more than one advocate is assigned, the suspect or accused shall decide which is the primary advocate.