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CHALLENGES OF REFORM IN JUSTICE

*(Analysis of four draft laws deriving from
"Joint Declaration of Commitments")*

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ABOUT KLI

KLI, Kosovo Law Institute, is a non-governmental and non-profit organization of public policy, a think tank specialized in the justice sector.

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ACRONYMS

KLI	Kosovo Law Institute
MoJ	Ministry of Justice
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
OCSP	Office of the Chief State Prosecutor
SC	Supreme Court
KP	Kosovo Police
MIA	Ministry of Internal Affairs
JA	Justice Academy
ACPO	Administration of Courts and Prosecutors' Offices
FRRLS	Functional Review of the Rule of Law Sector

1. Executive summary

The Ministry of Justice (MOJ), the Judicial Council, the Prosecution Council, the Supreme Court, and the Chief State Prosecutor signed the Joint Declaration of Commitments on March 14, 2023, with the goal of continuing justice reform. However, despite the initial plan for the MOJ to collaborate with the heads of the Judicial Council and the Prosecution Council, the MOJ has ended up pursuing the reform alone due to disagreements between institutions. The MOJ has published six draft laws on the Public Consultation Platform, but only 15 days have been allotted for comments on these complex and significant draft laws, although this deadline may be extended.

KLI has reviewed the published draft laws to provide comments during this phase of public consultation. Concerning the draft laws for the KJC and KPC, KLI has identified that the council members, responsible for evaluating the performance of judges and prosecutors, should not themselves be subject to performance evaluations in their capacity as council members. Consequently, KLI has recommended removing the provisions related to the performance evaluation of council members.

Additionally, KLI has observed that the Draft Law on Supplementing and Amending the Law on KPC is currently under consideration in the Assembly of the Republic of Kosovo. Meanwhile, this same draft law is included in the package of draft laws stemming from the Joint Declaration of Commitments. Consequently, the MoJ is simultaneously conducting two separate processes for the completion and amendment of the Law on KPC, highlighting poor planning in the MoJ's legislative process.

The draft law on the KJC and KPC proposes the verification of officials in the Integrity Verification Units for judges and prosecutors. The MoJ has assigned the responsibility for verifying these officers to the Kosovo Police. This delegation of authority to the Kosovo Police constitutes a violation of the Constitution and risks politicizing the evaluation process.

Regarding the Draft Law on Amending and Supplementing to Law No. 05/L-095 for the Justice Academy, KLI has determined that candidates unable to participate in the initial training due to objective reasons should be provided with alternative opportunities to complete the training, ensuring they do not lose their status. Additionally, KLI has recommended that the draft law include clear legal provisions outlining the competences of the Justice Academy and detail the coordination and cooperation between the Justice Academy, the KJC, and the KPC.

According to KLI, Article 27/A of the Draft Law, which assigns the Legislation Committee the responsibility of supervising the Justice Academy, not only politicizes the JA but also duplicates existing responsibilities, as this oversight is already managed by the JA Governing Council. This provision constitutes executive intervention in an independent institution like the Justice Academy. The JA should not be supervised by a parliamentary committee composed of political representatives.

KLI has also called for clear legal criteria for JA trainers to enhance the quality of training. Establishing these criteria will ensure that the Justice Academy provides high-quality and professional training.

Regarding the Draft Law for Civil Servants in the Administration of Courts and Prosecutors' Offices, IKD has recommended the removal of special provisions related to the specifics of work, such as sensitivity/nature of the work, confidentiality, responsibility, and the code of ethics, as they are deemed unnecessary.

Furthermore, KLI has advised the MoJ to review the provisions regarding the election of the directors of the KJC and KPC Secretariats to establish clear legal criteria for their election and to elaborate on these criteria. Additionally, the draft law should ensure that civil servants in the administration of courts and prosecutors' offices adhere to their Code of Ethics. Since the draft law does not specify the consequences of insufficient or poor assessments for the staff of the ACPO, KLI has recommended that these consequences be clearly outlined.

KLI has identified duplicate legal provisions between the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices and the Law on Public Officials, as well as other existing laws. Consequently, KLI has recommended revising these provisions for clarity and coherence.

2. Statements from Leaders on Justice Reform

To advance justice reform, on March 14, 2023, the Minister of Justice, the Chair of the Judicial Council of Kosovo, the Chair of the Kosovo Prosecutorial Council, the President of the Supreme Court, and the Chief State Prosecutor signed the Joint Declaration of Commitments.[1] The statement underscored that these institutions are committed, among other things, to continuing justice reform through collaborative efforts to assess, conceptualize, and draft legal initiatives. Their shared goal is to clarify, supplement, amend, and strengthen the legal framework across various areas.

The areas identified for reform by the heads of these institutions included performance evaluation, recruitment, appointment, and reappointment processes, disciplinary systems, verification of judges and prosecutors, professional development, enhanced mechanisms for asset declaration by judges and prosecutors, status considerations for judges and prosecutors, legislation concerning civil servants in court and prosecutors' office administrations, and the implementation of recommendations from the TAIEX Mission to combat organized crime and corruption, among others.

Six working groups were formed to review and assess laws within the justice system. In late January 2024, a workshop was held to present a draft report that synthesized the findings of these working groups.[2] [3] Following the draft report, a meeting of the Justice Reform working group was convened on February 14, 2024, to discuss concept documents.[4] The joint meetings among the declaration signatories persisted until March 20, 2024, when representatives from the judicial and prosecutorial systems withdrew from the workshop due to disagreements with the draft laws proposed by the Ministry of Justice (MOJ).[5] In fact, the Kosovo Prosecutorial Council (KPK) issued a public statement criticizing the Ministry of Justice (MOJ) for its uncooperative approach and for deviating from the Joint Declaration of Commitments. Additionally, the KPK expressed concern over the biased language used by Deputy Minister of Justice Vigan Qorrolli.[6]

[1] "The joint declaration of commitment for legal reform in the justice system between the Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Supreme Court and the Chief State Prosecutor is signed. The Kosovo Judicial Council. March 14, 2023. (See: <https://www.gjyqesori-rks.org/2023/03/14/nenshkruset-deklarata-e-perbashket-e-zotimit-per-reformen-ligjore-ne-sistemin-e-drejtise-ne-mes-te-ministrise-se-drejtise-keshillit-gjyqesor-te-kosoves-keshillit-prokurorial-te-kosoves-gjykates/>). (Last accessed 29 June 2024).

[2] "The Working Group for Justice Reform held its next meeting"; Ministry of Justice; January 31 2024; (See: <https://www.facebook.com/MinistriaeDrejtise/posts/pfbid02CgNiWkntZHBVCFWHTeCv9Q8cvASdXnkDSMT2XJq6hrvynMZUxkRG4PrdIPc8JUKI>), (Last accessed 29 June 2024).

[3] Note: In this workshop held on 31.01.2024, no representative of the prosecutorial system participated.

[4] "The work of the Working Group for Justice Reform continues"; Ministry of Justice; February 14 2024; (See: <https://www.facebook.com/MinistriaeDrejtise/posts/pfbid029vboUFccMMJjk8DQyAGA7rvVUGCmBupVdziGhGCqH5Y2MZik7TqdZLPakn4usrEil>), (Last accessed 29 June 2024).

[5] "The first drafts of the documents derived from the Joint Declaration of Commitments are discussed"; Ministry of Justice; March 20 2024; See:

<https://www.facebook.com/MinistriaeDrejtise/posts/pfbid0XbPgFnIBTi6G16SSLggCC8gIRFj6g815jZtKtwCxbN7z1XcSaPMBXp688VwLE8JDI>), (Last accessed 29 June 2024).

[6] "Reaction of the Kosovo Prosecutorial Council"; Prosecutorial system; 21 mars 2024; (See: <https://www.facebook.com/share/p/ut3fXgZkRMcqGYcB/>), (Last accessed 29 June 2024).

It has been over one year and three months since the Joint Declaration of Commitments was signed. Despite the initial intention for justice reform to be a collaborative effort involving the Ministry of Justice alongside the heads of the Kosovo Judicial Council (KJC) and Prosecutorial Council (KPC), the Ministry of Justice has found itself alone in its pursuit of reforming the justice system.

Justice reform conducted without the participation of judiciary and prosecutorial representatives poses a significant risk of failure. The Ministry of Justice (MoJ) must strive to reintegrate the Kosovo Judicial Council (KJC) and Prosecutorial Council (KPC) into the working groups. Failure to include the KJC and KPC could undermine the legitimacy of the reform efforts and lead to serious implementation challenges. Without their involvement, the reform initiative is at risk of failure.

3. Short deadline for comments

Regulation No. 05/2016 on Minimum Standards for the Public Consultation Process, effective until June 29, 2024, stipulated [Article 9.1.1.2.] that "For particularly complex or significant acts, the comment period may be extended up to 60 calendar days." However, Regulation No. 17/2024 on the Work of the Government of the Republic of Kosovo (Article 51.2.2.3) reduces this timeframe to 30 days.

On June 10, 2024, the Ministry of Justice published seven draft laws on the public consultation platform, six of which were derived from the reform outlined in the Declaration of Commitments, along with the Draft Law on the Right to Trial within a Reasonable Time. Despite the public having only 15 working days to provide feedback on these seven draft laws, the MoJ did not consider extending the comment period, as permitted by regulation. Given the complexity and significance of each draft law, extending the comment deadline is essential. A 15-day period limits the ability of interested parties to conduct thorough analyses of the draft laws.

Extending the deadline, as permitted by the Regulation mentioned earlier, would enhance transparency and increase the participation of all stakeholders and individuals interested in providing feedback. A brief deadline may give the impression of minimizing criticism and rushing the legislative adoption process as proposed by the initiator.

4. Performance Evaluation of Council Members

One of the innovations of the justice reform regarding the Draft Law on Supplementing and Amending Law No. 06/L-055 on the Kosovo Judicial Council and the Draft Law on Supplementing and Amending Law No. 06/L-056 on the Kosovo Prosecutorial Council is also the performance evaluation of the members of the Councils. According to these draft laws, under Article 27, the evaluation of council members will be conducted by a Performance Evaluation Committee. This committee will comprise judges from the Supreme Court and the Court of Appeal for the KJC, and prosecutors from the Chief State Prosecutor's Office and the Appellate Prosecution at the KPC.

Council members tasked with evaluating the performance of judges and prosecutors cannot themselves undergo performance evaluations while serving on the councils.

The Venice Commission underscored that members of a Judicial Council, whether judges or non-judges, may only be dismissed from office due to serious misconduct (grave disciplinary offense). Such allegations must be substantiated through a procedure that ensures the right to a fair trial.^[7] Therefore, the accountability of a Council member is limited to disciplinary matters and does not extend to responsibilities arising from performance evaluations.

However, it is structurally unfeasible for judges and prosecutors who are part of the relevant performance evaluation committee to assess the performance of members of the KJC and KPC. This setup creates a scenario where representatives of a subordinate institution are evaluating the performance of a superior institution.

Additionally, the KJC and KPC function as collegial bodies, employing various mechanisms to oversee their operations, including the election of non-judge and non-prosecutor members to their respective councils. However, it is imperative that efforts to enhance efficiency do not involve the performance evaluation of KJC and KPC members.

Assessing KJC and KPC members by judges and prosecutors could potentially compromise the independence of these council members. This is because these institutions are tasked with evaluating the performance of all judges and prosecutors, and requiring council members themselves to be evaluated by judges and prosecutors may appear to undermine their independence in decision-making processes.

Therefore, the Kosovo Law Institute (KLI) recommends removing provisions that hinder the evaluation of KJC and KPC members' performance.

[7] Consultative Council of European Judges (CCJE), Paragraph 38; Strasbourg, 5 November 2021; (See: <https://rm.coe.int/opinion-no-24-2021-of-the-ccje/1680a47604-.>), (Last accessed 4 July 2024).

5. Inadequate planning concerning amendments to the Law on KPC, while the new law is sent to the Assembly for approval

The Draft Law on Supplementing and Amending the Law on the KPC is currently under consideration in the Assembly of the Republic of Kosovo. Simultaneously, it is also included in the package of draft laws stemming from the Joint Declaration of Commitments. Consequently, the Ministry of Justice (MoJ) is concurrently managing two distinct processes to finalize and amend the Law on the Kosovo Prosecutorial Council

The Ministry of Justice's approach to initiating amendments to the old law while the new law is pending approval in the Assembly reflects poor planning in justice reform. KLI believes that after accepting the Venice Commission's opinion, the MoJ should have incorporated the legal changes stemming from the Joint Declaration of Commitments into the new draft law. Failing to include these changes demonstrates inadequate planning in the MoJ's legislative process. It would have been more prudent and professional to incorporate necessary changes into the new law and await its approval, rather than pursuing parallel processes for the same law.

In this context, KLI suggests that the Ministry of Justice should reassess and refine its legislative planning and management processes to ensure effective coordination of legal initiatives.

6. Integrity Oversight of Officials

Articles 27E(2) of the Draft Laws for the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPK) specify that: "Integrity oversight of officials in integrity oversight units is conducted by the Kosovo Police and assessed by the Judicial Council, in accordance with the standards outlined in this law" and "Integrity oversight of officials in integrity oversight units is conducted by the Kosovo Police and assessed by the Prosecutorial Council, in accordance with the standards outlined in this law."

Therefore, under these provisions, the integrity oversight of officials in the integrity oversight unit within the KJC and KPK will be carried out by the Kosovo Police (KP). Moreover, this law does not specify any criteria or procedures for how this oversight will be conducted.

However, delegating the Kosovo Police with the mandate to oversee the officers of the integrity oversight unit constitutes a violation of the Constitution and poses the risk of politicizing this evaluation.

Article 128 of the Constitution of the Republic of Kosovo stipulates that "The Police of the Republic of Kosovo are responsible for maintaining order and public safety throughout the territory of the Republic of Kosovo." Therefore, according to this article, the mandate of the Kosovo Police covers two specific areas: maintaining public order and ensuring security. In the current context, overseeing the officers of the integrity unit does not fall within either of these areas. As such, according to the Constitution, this responsibility cannot legally belong to the Kosovo Police.

Moreover, the Kosovo Police is a constitutional body under the chapter of the Constitution concerning the Security Sector, while the KJC is an independent constitutional body within the justice system. Therefore, granting the Kosovo Police the authority to evaluate officials of the KJC and KPC constitutes direct interference by one institution in the affairs of another. Inter-institutional mandates must adhere strictly to constitutional provisions, which is not the case here.

On the contrary, the Kosovo Police's verification of integrity unit officials also poses a risk of politicizing this assessment. According to Article 4.1 of Law 04/L-076 on the Kosovo Police, "Under this law, the Police of the Republic of Kosovo functions as a public service under the Ministry of Internal Affairs." Furthermore, Article 5.1 of this law states that "The Police operates under the authority of the Minister of Internal Affairs and is under the control and supervision of the General Director of Police." Notably, the Ministry of Internal Affairs is led by a political figure. Therefore, this oversight, besides being unconstitutional, is susceptible to politicization of the process.

Therefore, KLI recommends a thorough revision of these provisions.

7. Continuation of Initial Training

Article 19/A, par 1 of the Draft Law on Amending and Supplementing Law No. 05/L -095 on the Justice Academy has determined that: "The Academy organizes initial training for the training of candidates for judges and state prosecutors" while paragraph 2 of this draft law provides that: "The initial training will last twelve (12) months and consists of the theoretical and practical part. The theoretical training is carried out with the support of the trainers, while the practical training is carried out with the support of the mentor".

Under the new legal changes, judges and prosecutors will only be nominated for appointment by the President of the Republic of Kosovo after completing their initial training. Until that point, they will hold the status of "candidate for judge" or "candidate for prosecutor".^[8] Given that the initial training is slated to span 12 months, the draft law does not account for situations where candidates may be unable to complete their training due to various objective reasons. Such reasons could include maternity leave, illness, or other circumstances preventing them from participating in both the theoretical and practical components of the training.

KLI suggests addressing these scenarios in the new legal revisions. It is crucial to ensure that candidates are provided sufficient opportunities, minimizing the risk of candidates losing their status due to objective circumstances preventing their participation.

[8] Article 8 and 9; Draft Law No. X/L-Xx For Recruitment, Performance Evaluation, Integrity Oversight, Advancement and Status of Judges and Prosecutors; June 2024; (See: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=42482>).

8. The draft law should clarify the competences and coordination of the JA with the KJC and the KPC

While the Justice Academy (JA) maintains its status as an independent public institution under both current law and the Draft Law amending and supplementing Law No. 05/L-095 on the Justice Academy, its role in training judges and prosecutors should not be exclusive. Instead, it should be coordinated with the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC). This collaborative approach is necessary because many issues must involve input from these councils, which oversee judges and prosecutors. Therefore, the competencies of the JA should be aligned with those of the KJC and KPC at this juncture.

Training needs, topics, and requirements for additional training are matters initiated directly by both councils. These councils, through their permanent and ad-hoc committees, regularly assess performance and identify training needs. To this end, the Kosovo Judicial Council (KJC) has established the Training Committee, which oversees training initiatives. In 2023, the KJC also endorsed Regulation No. 16/2023 on Training of Judges, further formalizing these processes.[9]

While certain provisions indicate the inter-institutional relationships among these three bodies, others require further clarification and detail to prevent conflicts. (See, for example, Article 20/A, paragraph 3, Article 24, paragraphs 3 and 6) [10]. To maintain a balanced relationship among these independent institutions, the new draft law should clearly outline the competencies of the Justice Academy (JA) and prevent any potential conflicts of authority. Moreover, issues falling under the jurisdiction of the KJC and KPC should adopt a collaborative approach. Provisions governing this cooperation should also be integrated into the proposed legislation.

To achieve this, KLI recommends that the Ministry of Justice thoroughly review the Draft Law, taking into consideration the points mentioned above.

9. Inclinations towards political control of the Academy

Article 17 of the Draft Law amending and supplementing Law No. 05/L-095 for the Justice Academy proposes an amendment to Article 27/A of the foundational law. This amendment specifies that the supervision of the Justice Academy will be overseen by the Committee on Legislation, Mandates, Immunities, Rules of the Assembly, and Anti-Corruption Agency of the Assembly of the Republic of Kosovo.

Such a provision constitutes executive interference in an independent institution like the Justice Academy. The Academy should not be overseen by a parliamentary commission composed of political representatives.

[9] Regulation no.16/2023 Training of Judges; 21 December 2023; (See: https://www.gjyqesori-rks.org/wp-content/uploads/lgs/7501_Rregullore_Nr_16_2023_per_trajnimin_gjyqtareve.pdf).

[10] Note: For this reason, it is important to detail the competences of the JA on the one hand and the KJC and KPC on the other, in order to preserve the independence of each institution

Article 8 of the Draft Law amending and supplementing Law No. 05/L-095 for the Justice Academy defines the Governing Council of the Academy and its composition. Meanwhile, Article 10 of the foundational law states that "1. The powers of the Governing Council include... 1.5. oversight of the Academy's operations." When considering other competencies of the Justice Academy's Governing Council, such as approving the budget, developing strategy, and setting work plans, it becomes evident that one of its primary responsibilities is indeed supervising the institution's operations. Therefore, Article 27/A of the Draft Law, which assigns supervision of the Justice Academy to the Legislation Committee, not only politicizes the Academy but also duplicates responsibilities already held by its Governing Council.

In light of this, KLI recommends that the Ministry of Justice delete Article 27/A from the Draft Law. The Justice Academy's written report to the Assembly, similar to the practices of the KJC or KPC, should be the maximum extent of reporting envisioned between the Academy and the Assembly.

10. Criteria for Academy Trainers

Article 16 of the Draft Law amending and supplementing Law No. 05/L-095 on the Justice Academy proposes amendments to Article 24 of the foundational law, which outlines the procedure for selecting permanent and temporary trainers and mentors. However, this draft law lacks specific criteria for qualifying trainers at the Justice Academy.

To ensure that judges and prosecutors undergoing training at the Justice Academy meet rigorous professional and ethical standards, it is crucial to establish clear legal criteria in this regard. For instance, trainers should possess a strong performance record, no history of disciplinary actions, substantial professional experience, and academic qualifications. Additionally, integrity should be of paramount importance, along with prior training experience and participation in professional conferences and activities.

Establishing precise legal criteria for trainers will ensure that the Justice Academy delivers high-quality and professional training. This measure is crucial for bolstering the judiciary and prosecutorial system, ensuring that only trainers of impeccable integrity and competence, meeting the established legal standards, are entrusted with educating future generations of judges and prosecutors.

Consequently, KLI advises the Ministry of Justice to revisit this article and incorporate explicit legal criteria for trainers. This initiative will enhance training quality and reinforce public trust in the justice system.

11. Unnecessary provisions for special job specifications

Article 4 of the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices outlines specific job requirements for roles within these institutions. These include considerations such as the sensitive nature of the work, confidentiality, responsibility, and adherence to a code of ethics.

The specific job specifications outlined in this article of the draft law for employees in the administration of courts and prosecutors' offices are deemed unnecessary. These provisions should focus on clarifications and assessment norms rather than detailed job specifications, which may not be enforceable in practice.

KLI recommends to the Ministry of Justice to remove this provision from the Draft Law.

12. Criteria for the selection of directors of secretariats

Article 7 of the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices outlines the process for appointing the General Director of the Secretariat of the KJC and KPC. Paragraph 2 of this article establishes general criteria for selecting directors, emphasizing that they must possess appropriate qualifications, competence, experience, and high professional integrity to effectively manage the resources of the Secretariat.

However, these criteria lack specific details, which are crucial for such a pivotal role in overseeing judicial and prosecutorial administration. The absence of detailed criteria in the existing laws governing the KJC^[11] and KPC^[12] necessitates that the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices include comprehensive and clear legal standards for selecting directors of secretariats. Additionally, supplementary regulations from the Councils should further specify selection procedures.

KLI recommends that the Ministry of Justice revise this provision to articulate precise legal criteria for appointing directors of secretariats and to elaborate further on the general criteria.

[11] Article 35; Law No. 06/L-055 on the Kosovo Judicial Council; Pristina, 2018.

[12] Article 32; Law No. 06/L-056 on the Kosovo Prosecutorial Council. Pristina, 2019

13. Special conditions for employment

Article 9 of the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices outlines special conditions for the recruitment and appointment of judicial and prosecutorial staff. This article specifies that "under the provisions of this law, the KJC and KPC may set forth specific criteria in job announcements for particular positions, considering the unique aspects of the workplace and the nature of duties within courts and prosecutor's offices."

The Constitutional Court, through Judgment no. AGJ: 2262/23 in cases no. KO216/22 and KO220/22, has invalidated Article 9, specifically paragraph 5, of Law No. 08/L-197 on Public Officials. Paragraph 5 previously stated, "Suitability and/or additional specific criteria for appointment to a position according to this article, for employees in the Presidency of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo, the Justice System, the Assembly of the Republic of Kosovo, and the independent constitutional institutions, is regulated by this law and by a special act approved by the competent bodies of these institutions".^[13] The Constitutional Court's decision emphasized that legal provisions must be "clear, accessible and predictable" according to the Constitution. Consequently, it found that the definition of the criterion "suitability" conflicted with constitutional guarantees and undermined legal certainty.

According to the Venice Commission, "Foreseeability means not only that the law must, where possible, be published before it goes into effect and be predictable as to its effects: it must also be formulated with precision and clarity sufficient to enable legal entities to regulate their behavior in accordance with it" ^[14]. Allowing the KJC to request additional criteria beyond those specified by law undermines predictability, a fundamental aspect of the rule of law.

In accordance with the Constitutional Court's ruling and the guidelines set by the Venice Commission, the criteria for appointment to specific positions must be explicitly stated in the law. Therefore, in the Draft Law on Civil Servants in the judicial and prosecutorial administration, clear criteria should be defined for employment purposes to ensure legal certainty. As a distinct legislation from the Law on Public Officials, this draft law should specify the particular criteria for positions within the judicial and prosecutorial systems, precluding the possibility of defining these criteria through bylaws. Failing to do so would contradict the Constitutional Court's aforementioned judgment..

Therefore, based on the considerations mentioned above, KLI recommends that the Ministry of Justice adhere to the Constitutional Court's ruling on Law No. 08/L-197 concerning Public Officials and the guidelines set by the Venice Commission. It is advised to revise this article in the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices to ensure that all criteria are clearly defined by the law itself and that there is no provision allowing the Councils to establish additional criteria through bylaws.

[13] Judgment of the Constitutional Court in cases no. KO216/22 and KO220/22; (See: <https://gzk.rks-gov.net/ActDetail.aspx?Ac2tID=81333>), (Last accessed 30 June 2024)

[14] Venice Commission of the Council of Europe; "The Rule of Law Checklist"; page 25-26; (See: https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf), (Last accessed 30 June 2024)

14. Performance and Code of Ethics for the Administration of Courts and Prosecutors Offices

With article 13 of the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices (ACPO), namely paragraph 3 of this article, it is determined that: "Performance evaluation is done with grades: Excellent, Very Good, Good, Sufficient and Poor".

In this section of the Draft Law, the ramifications of inadequate or inadequate evaluation for ACPO personnel remain undefined. A comprehensive performance evaluation should include delineating the repercussions or impacts of such evaluations. The article should explicitly outline the post-evaluation procedures and the potential "sanctions" associated with a "poor" rating. Therefore, it is crucial for the draft law to address this matter, with further specifics anticipated to be regulated by internal policies of the ACPO soon after the law's approval..

Additionally, according to Article 15/A of the Draft Law, it is stipulated that: "Officials within the judicial and prosecutorial administration, as public servants, are required to adhere to the principles outlined in this law, the Code of Ethics for public officials, and the Code of Ethics for judges and prosecutors."

The ACPO needs to adopt and enforce its own Code of Ethics. This draft law should include provisions ensuring that civil servants in court and prosecutorial administrations adhere to their specific Code of Ethics.

Consequently, KLI suggests that the Ministry of Justice review these articles to address both performance considerations and the distinct implementation of the Code of Ethics tailored for the ACPO.

15. Provisions "similar" to other laws

KLI has identified similarities or identical legal provisions between the Draft Law on Civil Servants in the Administration of Courts and Prosecutors' Offices and existing laws, such as the Law on Public Officials. Specific examples of duplicated provisions include: [Article 14] concerning the specific rights or obligations of civil servants in courts and the prosecutor's office, [Article 17] regarding salary entitlements, [Article 20] covering working hours, continuity, and holidays for public officials, [Article 21] addressing the right to join trade unions and professional associations, [Article 22] on the right to strike, and [Article 25] detailing suspension and termination of employment for ACPO officials.

Since both categories of provisions are applicable, there is no need to duplicate the provisions of one law in another. Such redundancy can lead to confusion and compromise clarity. Therefore, to avoid this situation, it is recommended that the Draft Law should not repeat provisions already defined in the Law on Public Officials or any other existing laws.

Therefore, IKD recommends that the Ministry of Justice conduct a thorough review of this draft law to eliminate provisions that are similar or identical to those found in other laws, and to ensure consistency with existing legislation.

Furthermore, Article 15/A of the Draft Law on Civil Servants in the Administration of Courts and Prosecutors includes a provision in paragraph 6 stating that: "The public official is obligated to carry out orders confirmed in writing, except when such implementation would constitute a criminal offense, according to paragraph 7 of this article." However, there is no corresponding paragraph numbered 7 in this article. IKD acknowledges that this may be a technical error, but it should be rectified as the current wording is incomplete and refers to a non-existent paragraph.

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