JUSTICE REFORM ACCORDING TO THE JOINT STATEMENT OF COMMITMENTS II

NO. 07/2026

Author: Gzim Shala

Editors: Ehat Miftaraj, Betim Musliu

No part of this material may be printed, copied, reproduces in any electronic or printed form, or in any other form or reproduction, without the consent of the Kosovo Law Institute.

The content of this publication is the sole responsibility of the Kosovo Law Institute (KLI).

Implemented by:

Supported by:

ABOUT KLI

KLI, Kosovo Law Institute is a non-governmental

and non-profit public policy organization,

a think tank in the justice sector.

KLI, Str. Ilaz Agushi
Pristina
E: info@kli-ks.org
www.kli-ks.org

May, 2026
Pristina, Republic of Kosovo

List of acronyms

KLI – Kosovo Law Institute

KJC – Kosovo Judicial Council

KPC – Kosovo Prosecutorial Council

MoJ – Ministry of Justice

CC – Constitutional Court of the Republic of Kosovo

GC – Governing Council

AoJ – Academy of Justice

IVU – Integrity and Verification Unit

Draft Law – The relevant draft law within the framework of justice reform

Basic Law – The law currently in force that is subject to amendments and supplements

Content

I. Executive summary 6
II. Reform under the Joint Declaration of Commitments 8
.... Error! Bookmark not defined.
1. Selection of non-judge members by the Assembly 11
2. The stage of the filed indictment 13
3. Nomination and voting for members of the KJC 14
4. Integrity and managerial competence 15
5. Proposal and candidates for voting in the plenary session 16
6. Appointment of members of the Performance Evaluation Commission 16
7. Criminal vs. Disciplinary Liability 18
8. Majority required for the election of KJC members 19
9. Insufficiency of procedural provisions 20
10. Mandates of Court Presidents and Supervising Judges 21
11. Mixing the Law on the KJC with the Law on Courts 22
12. Unequal treatment of IVU officials 22
.... Error! Bookmark not defined.
13. Majority required for the election of non-prosecutor members 25
14. Appointment of members of the Performance Evaluation Commission 26
15. Allocation of mandates by lottery 27
16. Performance Evaluation of Chief Prosecutors 28
17. Mixing the law on the KPC with the law on the State Prosecutor 29
18. Officials within the Verification Unit 30
19. The Minister of Justice in the Governing Council 32
20. Provisions regarding the implementation of training 33

I. Executive summary

This report constitutes the second part of the Kosovo Law Institute's (KLI) analysis regarding justice reform under the Joint Declaration of Commitments. This section addresses the Draft Law on Amending and Supplementing the Law on the Kosovo Judicial Council, the Draft Law on Amending and Supplementing the Law on the Kosovo Prosecutorial Council, and the Draft Law on Amending and Supplementing the Law on the Academy of Justice. Regarding these draft laws, KLI had previously submitted comments and published an analysis. Following the publication of the updated drafts, KLI once again submitted comments within the framework of public consultations, which are included in this report.

With respect to the KJC, the main issue concerns the method of selection and functioning of Council members. The selection of non-judge members by the Assembly should be built upon stronger guarantees against politicization. Low parliamentary voting thresholds do not ensure broad representation.

Other issues in the Draft Law on the KJC relate to the criteria for Council members, particularly regarding the stage of indictment, integrity, and managerial competence. These criteria should be clear, measurable, and enforceable. It is insufficient for the law to use general notions without indicating how they are assessed in practice. Furthermore, the method of appointing members of the Performance Evaluation Commission remains problematic, as nominations by court presidents give them excessive influence and limit genuine competition. For these positions, the most appropriate solution is an open recruitment process.

With respect to the KPC, the report identifies similar problems. The majority required for the election of non-prosecutor members should guarantee the independence and depoliticization of the Council. Likewise, the method of appointing members of the Prosecutors' Performance Evaluation Commission, the allocation of mandates by lottery, and the performance evaluation of Chief Prosecutors require reconsideration.

A common issue affecting both the KJC and the KPC is the mixing of institutional laws with matters that belong to other laws. The draft laws address issues that fundamentally pertain to the Law on Courts and the

Law on the State Prosecutor, respectively. This creates normative confusion and weakens the clarity of the legal system. Laws governing the Councils should regulate the Councils themselves, not replace substantive laws on the organization of courts and prosecution offices.

With respect to the Academy of Justice, the primary concern relates to the inclusion of the Minister of Justice in the Governing Council. The Academy plays a fundamental role in the professional development of judges and prosecutors and should not be exposed to executive influence. Moreover, issues related to the implementation of training should not be broadly left to secondary legislation. Initial training is a key component of entry into the justice system and should be regulated by law, with clear and verifiable standards.

Ultimately, this report demonstrates that reform of the KJC, KPC, and the Academy of Justice cannot consist merely of a formal reorganization of provisions. It must ensure institutional independence, transparent procedures, clear criteria, and effective protection against political influence.

II. Reform under the Joint Declaration of Commitments

On 14 March 2023, the Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Supreme Court, and the Acting Chief State Prosecutor signed the Joint Declaration of Commitments. The purpose of this declaration was for justice reform to be developed as a joint institutional process. Through it, the institutions committed themselves to working together in the assessment, conceptualization, and drafting of legislative initiatives aimed at clarifying, supplementing, and strengthening the legal framework of the justice system.

The areas covered by this reform were among the most important for the functioning of the justice system: the recruitment, appointment, and reappointment of judges and prosecutors, performance evaluation, the disciplinary system, integrity control, professional development, and related matters.

For this purpose, working groups were established, and during 2024 meetings and workshops were held to discuss the initial reports and concepts. However, the process soon became characterized by serious disagreements. From a reform that was intended to be built upon institutional cooperation, it gradually transformed into a process led primarily by the Ministry of Justice. This undermined the very logic of the Joint Declaration of Commitments, because justice reform cannot be sustainable if the institutions responsible for implementing it are not genuinely involved in its drafting. Regarding the published draft laws, KLI had previously submitted comments and published three separate analyses. Subsequently, all stakeholders re-entered the process.

The reform process in question was not properly designed from the outset, and such a reform, so important for the justice system, was not treated with the seriousness and priority it required. Instead of being developed through clear planning, genuine institutional coordination, and reasonable timelines, the process dragged on for years. Now, in May 2026, more than three years after the signing of the Joint Declaration of Commitments, these draft laws have still not been adopted. Moreover, the dissolution of the Assembly and the country's early elections have further delayed the completion of this reform. This demonstrates that the

reform under the Joint Declaration of Commitments was not prioritized and, as such, was never completed.

This process has also been characterized by significant delays. Years have passed since the signing of the Joint Declaration of Commitments, while the key laws still remain unfinished. This has left major issues unresolved within the justice system, particularly regarding accountability, integrity, performance evaluation, and the functioning of the Councils

PART I

DRAFT LAW ON THE KOSOVO JUDICIAL COUNCIL (KJC)

Part III: Draft Law on Amending and Supplementing Law No. 06/L-055 on the Kosovo Judicial Council

Within the framework of the laws envisaged under the justice reform pursuant to the Joint Declaration of Commitments, the Draft Law on Amending and Supplementing Law No. 06/L-055 on the Kosovo Judicial Council (hereinafter: the Draft Law) is also included, the draft of which has been published for comments on the public consultations platform. Regarding this Draft Law, KLI had previously submitted comments and published a separate analysis.

1. Selection of non-judge members by the Assembly

Through Article 2, the Draft Law adds a new paragraph [1.a] to Article 8 of the basic law, according to which the three (3) non-judge members of the Council elected by the Assembly are appointed from among the users of the judicial system, such as lawyers, prosecutors, notaries, academics, members of civil society organizations, or other professionals, in accordance with the criteria of this law. This solution derives from the logic of the Venice Commission, which required that, in the absence of constitutional reform, the law should provide for at least three non-judge members drawn from the "users of the judicial system." Nevertheless, it must be emphasized that this solution, in the case of Kosovo, does not represent an adequate model.

First, this is not a novelty within Kosovo's constitutional system. Prior to Amendment 25, the Constitution provided that, out of the four members elected by deputies holding seats won through the general allocation of seats, at least two had to be judges and one had to be a member of the Kosovo Bar Association. With Amendment 25, this structure was changed: seven members are elected by the judiciary itself, while two are elected by deputies from the general seats, and at least one of these two must be a judge. Therefore, the element of representation of the Kosovo Bar Association was removed through constitutional amendment, and the structure was redesigned on the basis of a different constitutional balance.

Second, the Venice Commission itself was far more ambitious than the current draft. It emphasized that, in order to provide sufficient guarantees against corporatism, it would be necessary for all six members appointed by the Assembly to be genuine non-judge members. Only in the absence of constitutional reform did it recommend, as a minimum, that the law should provide for at least three non-judge members from among the users of the judicial system. Thus, the achievement of the full objective was linked by the Venice Commission to constitutional reform, which represents an entirely different situation.

Third, in Kosovo's constitutional context, this solution does not genuinely mitigate corporatism. This is because, even under this model, the KJC would still consist of at least ten (10) judges: seven elected by the judiciary and at least three elected by the Assembly, while the choice of the remaining three members is left to the Assembly's discretion. This means that, even with this amendment to the draft, the real minimum composition remains 10 to 3. Within this ratio, three non-judge members are insufficient to create a new balance within the Council. On the contrary, they remain within a structure that continues to be clearly dominated by judges. Precisely for this reason, the draft does not genuinely implement the logic of reform, but merely the formal minimum that the Venice Commission accepted as a transitional solution in the absence of constitutional reform.

Fourth, the analogy with the reform of the KPC should be used carefully, but it is not without value. While the KPC consisted of 13 members, 10 of whom were prosecutors and three (3) non-prosecutor members appointed by the Assembly, this composition proved to be corporatist and unsustainable. It was corporatist due to the imbalance between prosecutor and non-prosecutor members, and unsustainable due to the continuous failures to fill these positions. Thus, reform within the KPC only gained meaning once this composition was fully reconfigured, moving to a model of seven (7) members, with four (4) prosecutors and three (3) non-prosecutor members. This creates an entirely different ratio from the one that remains in the KJC. In the case of the KJC, without constitutional amendment, the minimum constitutional ratio remains 10 to 3. Therefore, the proposed solution does not produce comparable structural balancing and, based on the experience with the KPC, represents a model already proven unsuccessful.

For this reason, KLI assesses that this solution is not adequate for Kosovo's constitutional system, although it is aware that it is recommended by the Venice Commission. It addresses the recommendation of the Venice Commission only partially and formally, but does not genuinely resolve the problem of corporatism. Furthermore, the experience with the KPC demonstrates that such a solution is unsustainable. This situation, in its entirety, as also noted by the Venice Commission itself, could only be addressed through constitutional amendments

2. The stage of the filed indictment

The Draft Law establishes as a condition for appointment that the candidate must not have an indictment filed against them, both for candidates from among judges seeking membership in the Council [Article 9.1.1.4] and for non-judge candidates for membership in the Council [Article 9.2.2.8]. The same criterion is also provided for officials of the Integrity and Verification Unit (IVU) [Article 12.6.6.4].

Considering the importance of these positions for judicial independence, integrity, and self-governance, KLI assesses that the criterion of a "filed indictment" represents a low threshold for excluding candidates. KLI recognizes the need for high integrity standards for positions of such sensitivity. However, precisely because of this importance, the criteria must be sufficiently robust, precise, and protected against arbitrariness.

The problem lies in the fact that the filing of any indictment, for any criminal offense, without any judicial review, should not suffice to exclude a candidate from the process. At this stage, a filed indictment represents only the position of the State Prosecutor. As long as it has not been reviewed by a court and confirmed for judicial consideration, it remains merely a prosecutorial document. In this situation, simply through the filing of an indictment, without passing through any judicial filter, a real possibility is created for a candidate to be excluded from the procedure on the basis of a document that has not yet been reviewed by the court.

For this reason, KLI recommends raising this threshold. Instead of the wording "must not have a filed indictment," KLI recommends that the Draft Law establish the criterion "must not have an indictment confirmed

by the court." This would preserve the high standard of integrity while at the same time making the criterion more protected against arbitrariness

3. Nomination and voting for members of the KJC

The Draft Law changes the method for selecting judge members of the KJC. According to Article 2 of the Draft Law, seven (7) members of the Council shall be judges elected by members of the judiciary, of whom two (2) shall be from the Supreme Court, two (2) from the Court of Appeals or the second instance of specialized courts, and three (3) from the Basic Courts or the first instance of specialized courts. Furthermore, pursuant to Article 4 of the Draft Law, which adds Article 9/A to the basic law, candidates may self-nominate or be proposed by judges' associations, the ad hoc electoral commission verifies the formal eligibility conditions for candidacy, and the voting takes place at the general conference of all judges. Thus, not only the nomination but also the final election is left to an open process involving the entire judiciary.

This solution is linked to the recommendation of the Venice Commission that members of the Council should not represent the interests of their respective court levels, but rather the judiciary as a whole. Precisely for this reason, the Venice Commission criticized the previous sub-legal system, under which each member was elected only by judges of his or her own rank, and recommended that at least some members be elected by the judiciary as a whole. However, the Venice Commission did not require a single specific model, leaving open the possibility for different models, provided that they meet the relevant standards and are clearly regulated by law.

Taking this aspect into account, it should be emphasized that, insofar as the law itself has established clear quotas according to court levels, these levels should also have real weight in the nomination process. Otherwise, the representation of the Supreme Court and the Court of Appeals risks, in practice, being determined by the votes of judges from the basic court level, due to their substantially greater number. This weakens the very logic of the legal quotas. If the law considers it important that the Council include precisely two members from the Supreme Court and two from the Court of Appeals, then these two levels cannot be reduced merely to

formal categories of candidacy, without a real role in identifying the candidates who will enter the race.

For this reason, KLI considers that an intermediate mechanism should be found. A more balanced solution would be for the Supreme Court and the Court of Appeals, through their judges, to have a role in the preliminary nomination of candidates from among their own ranks, while the final election would be carried out by the judiciary as a whole. In this way, the logic of the Venice Commission—that members should not simply be delegates of their own court level—would be preserved, while at the same time maintaining the real importance of the levels that the law itself has decided to represent separately. This would also strengthen the role of these Courts without making that role decisive, and would enable the candidacy of persons who enjoy the support of their colleagues, bearing in mind that the final decision would still come from the vote of all judges. Without such a mechanism, there is a risk that the representation quotas of the Supreme Court and the Court of Appeals will be determined exclusively by the basic court level

4. Integrity and managerial competence

Article 9/A paragraph 8 of the Draft Law provides that the ad hoc electoral commission assesses whether candidates fulfill the conditions for being elected as members of the Council under Article 9 paragraph 1 of the law, "except for the condition of high integrity and managerial competence." On the other hand, Article 9/A paragraph 10 requires each candidate to prepare a concept paper with data and practical examples to demonstrate their integrity, competence, and managerial abilities. The problem is that the Draft Law nowhere specifies who evaluates these two conditions, at what stage of the procedure this evaluation takes place, and according to what methodology. This deficiency becomes even more apparent when compared with the procedure for members elected by the Assembly, where Article 10 paragraph 6 expressly provides that the commission conducts interviews and, based on its own methodology, evaluates the integrity, competence, and managerial abilities of the candidates. Thus, for candidates elected by the Assembly, the draft clearly identifies both the

evaluating authority and the method of evaluation, whereas for judge candidates elected by the judiciary this issue remains unregulated.

The requirement exists in the law, but the mechanism for verifying it is absent. In this form, the law establishes a condition for election to the position of Council member, but fails to create a mechanism for its verification. If these conditions are not evaluated at all, then their inclusion as legal requirements becomes meaningless.

For this reason, KLI considers that this part should be reconsidered. The Draft Law should expressly define the competent authority, the methodology, and the procedural stage for evaluating the high integrity and managerial competence of candidates for membership in the KJC. Otherwise, these conditions remain merely on paper

5. Proposal and candidates for voting in the plenary session

Article 5.2 of the Draft Law reformulates Article 10 paragraph 7 of the basic law, providing that the shortlist proposed to the Assembly for voting in plenary session shall contain more candidates than the number of "non-judge members" to be elected, but no more than five (5) candidates for one vacant position. This creates a normative gap with regard to judge members elected by the Assembly.

The problem lies in the fact that the provision refers only to "non-judge members," while Article 10 of the basic law continues to regulate the procedure for nomination and proposal for all members elected by the Assembly. Consequently, a gap is created in this regard concerning judge members elected by the Assembly.

For this reason, KLI recommends that this provision be reformulated. If the intention is for this standard to apply to all positions filled by the Assembly, then the expression "non-judge members" should be replaced with the expression "members elected by the Assembly."

6. Appointment of members of the Performance Evaluation Commission

The Draft Law regulates the appointment of members of the Judicial Performance Evaluation Commission in Articles 27 and 27/A. According to Article 27, this Commission is a permanent body of the Council and consists of seven (7) judges appointed by the Council, of whom four (4) are from the Supreme Court and three (3) from the Court of Appeals or equivalent levels of specialized courts. One of the judges from the Supreme Court must be a member of the Council and serves as Chairperson of the Commission. Furthermore, Article 27/A provides that the appointment is made "through an open call for nominations by the Council," but then adds that candidates for appointment to the Commission are nominated by the President of the Supreme Court and the President of the Court of Appeals from the respective courts. Therefore, entry into the procedure is not made through self-nomination or an open competition, but solely through nomination by the two court presidents.

This solution grants excessively strong powers to the President of the Supreme Court and the President of the Court of Appeals. Although formally the members are appointed by the Council, in substance the Council loses an important part of its role, because the list of candidates depends exclusively on nominations coming from these two presidents. This limits competition, closes access to the procedure, and excludes the possibility for other interested and qualified judges to enter the process without the prior approval of the respective presidents. This becomes even more apparent when compared with the election of KJC members themselves by the judiciary, where Article 9/A paragraph 4 expressly permits self-nomination. Thus, when the law intends to allow open candidacy, it states so clearly. In this case, it does not.

For this reason, KLI considers that this provision should be reconsidered. For the appointment of members of the Performance Evaluation Commission, there should not merely be nominations, but rather an open competition, allowing candidates to apply directly, while the Council carries out the selection on the basis of legal criteria. Only in this way can the role of the Council be better preserved and the excessive concentration of influence in the hands of the presidents of the two courts be avoided

7. Criminal vs. Disciplinary Liability

Article 13.4 of the Draft Law lists as disciplinary violations by a member of the Council cases where the member "abuses official position for unlawful benefits for himself/herself or other persons or for other unlawful purposes," "shares non-public information obtained during the performance of official duties as a member of the Council with unauthorized persons," or "interferes in the activity of judges with the aim of unlawfully influencing the exercise of their duties."

In this regard, at least some of the formulations in Article 13.4 clearly overlap with provisions of the Criminal Code. Abuse of official position for unlawful gain is covered by Article 414 of the Criminal Code. The sharing of non-public information with unauthorized persons, where official secrecy is involved, is covered by Article 426 of the Criminal Code. Interference in the activity of judges with the aim of unlawful influence also falls within a sphere closely linked to unlawful influence under Article 424 of the Criminal Code.

The Draft Law, in Article 13.1.7, already treats conviction for a criminal offense as a separate basis for the termination of the mandate of a Council member. This means that the law already provides for the connection between criminal liability and the legal consequence affecting the mandate. Precisely for this reason, the inclusion of acts belonging to the criminal sphere within the catalogue of disciplinary violations constitutes an unnecessary conflation of disciplinary and criminal liability concepts.

This approach is problematic because disciplinary liability and criminal liability are two distinct forms of responsibility. The Venice Commission has made this distinction clear, emphasizing that disciplinary liability contains different elements from criminal liability and is applied under a different standard of proof, although the two do not exclude one another. Likewise, in another joint opinion, the Venice Commission expressly stated that disciplinary proceedings should not be confused with criminal proceedings and that formulations introducing "elements of crime" into the disciplinary sphere should be removed.

For this reason, this part of the Draft Law should be reconsidered. Provisions that essentially constitute conduct criminalized under criminal law should not be listed as such within the catalogue of disciplinary violations, thereby ensuring a clear distinction between these two (2) types of liability

8. Majority required for the election of KJC members

Paragraphs 9 and 10 of Article 10 of the basic Law on the KJC provide that members elected by the Assembly, in the first round, are elected by a majority of the votes of deputies present and voting, while in the second round the candidate receiving the highest number of votes is considered elected. On the other hand, their dismissal is carried out by a majority vote of all deputies of the Assembly. The Draft Law does not amend this point.

In KLI's assessment, this issue should be reconsidered. The composition of the KJC directly affects judicial independence. For this reason, the election of its members by the Assembly should be based on a standard that ensures broader political and institutional support. A higher majority requirement for election should not be viewed as a procedural obstacle, but rather as an additional guarantee for the integrity, inclusiveness, and independence of the Council. Precisely through a higher voting standard, the likelihood increases that candidates will enjoy broader legitimacy and will not be perceived as the product of a narrow parliamentary majority.

This logic is also supported by the Venice Commission. In its opinion on the Law on the KJC, it emphasized that international standards require broader consensus than a simple majority and recommended that non-judge members of the KJC should always be elected by an absolute majority in the Assembly. The same logic was reiterated by the Constitutional Court in Judgment KO46/23, where it emphasized that, notwithstanding Article 80 of the Constitution, the Assembly may establish higher majorities for independent institutions and that a higher legal guarantee serves to strengthen the independence and representative character of the institution.

For this reason, KLI recommends that the election of KJC members by the Assembly should be carried out by a majority vote of all deputies of the Assembly, rather than by a majority of deputies present and voting

9. Insufficiency of procedural provisions

Article 8 paragraph 2 of the Draft Law adds paragraph 3.a to Article 19 of the basic law, according to which "the investigative procedure conducted by disciplinary panels for judges under the law in force on the disciplinary liability of judges shall apply mutatis mutandis during the implementation of disciplinary investigative procedures for Council members." This solution is insufficient.

The first problem is that the reference "mutatis mutandis" does not itself establish the procedure. The law on the disciplinary liability of judges and prosecutors regulates a complete regime: who is the competent authority, who initiates the procedure, how complaints are filed, how recommendations for initiating investigations are made, how the investigative panel is established, how evidence is collected, who bears the burden of proof, who the parties to the procedure are, how suspension is regulated, and how appeals against disciplinary decisions are exercised. In the case of Council members, the Draft Law does not clearly define these elements. For this reason, reference to another law does not replace the need for at least the fundamental principles to be expressly regulated in the Law on the KJC itself.

The second problem is that the draft leaves serious ambiguity regarding the decision-making authority. Article 8 paragraph 1, which reformulates Article 19 paragraph 2 of the basic law, states that the three-member commission decides on disciplinary measures and sanctions, including suspension and dismissal of any member of the Council. In this way, the draft fails to clearly distinguish between members elected by the Assembly and those elected by the judiciary. Thus, it is unclear whether the commission merely proposes dismissal for certain categories or decides directly for all categories.

For this reason, KLI considers that this part should be comprehensively revised. The Draft Law should expressly regulate at least: who initiates

disciplinary proceedings against Council members, who is considered the competent authority, what the procedural stages are, who the parties to the procedure are, how suspension is regulated, what the right to appeal entails, and which body is the final decision-making authority. Likewise, a clear distinction should be made between the procedure applicable to members elected by the Assembly and that applicable to members elected by the judiciary. Otherwise, the provision remains incomplete, unclear, and creates difficulties for implementation in practice.

10. Mandates of Court Presidents and Supervising Judges

Article 30 paragraph 5 of the basic law provides that court presidents are appointed for a five (5)-year term, without the right to reappointment. The Draft Law changes this solution and provides that court presidents shall be appointed for a four (4)-year term, with the right to reappointment for one additional consecutive four (4)-year term. The same approach is followed for supervising judges. This solution is not new. It was the previous model under Law No. 03/L-223 on the Kosovo Judicial Council, but was changed with the current Law No. 06/L-055, which introduced a five (5)-year term without the right to reappointment. In this situation, returning to the previous model without being accompanied by a clear analysis justifying this solution remains unclear.

This issue has also been addressed by the Venice Commission. In its opinion on the Draft Law on the KJC, it emphasized that shortening the mandate from five (5) to four (4) years and allowing reappointment for a second term presents a potential risk to the independence of the holders of these functions. At the same time, the Commission noted that interlocutors in Prishtina supported this amendment because of the current system and the limited number of judges. Nevertheless, precisely because the Venice Commission itself identified this risk, such a change should have been supported by a clear, concrete, and documented analysis.

On the other hand, the Draft Law does not address at all the situation of Court Presidents and Supervising Judges who have already been appointed under the existing five (5)-year mandate without the right to reappointment. It is unclear whether the new model will also apply to

them or only to future appointments. This creates serious uncertainty in practice. For this reason, KLI recommends that, without a specific analysis and without clear regulation of the transitional situation, this proposal should not proceed

11. Mixing the Law on the KJC with the Law on Courts

The basic Law on the KJC, in Article 1, provides that this law regulates the duties, responsibilities, organization, and functioning of the Kosovo Judicial Council. On the other hand, the Law on Courts, also in Article 1, provides that it regulates the organization, functioning, and jurisdiction of the courts in the Republic of Kosovo. This distinction clearly demonstrates that the subject matter of the Law on the KJC should be separate from the subject matter pertaining to the courts themselves.

Through Article 13, the Draft Law on the KJC adds Articles 36/A, 36/B, 36/C, 36/D, 36/E, and 36/F, which regulate the administration of the judicial system, court administrators, professional associates, translators, and interpreters. These are matters related to the organization and functioning of the courts, and not to the Council itself. This is particularly evident in Article 36/C concerning court administrators. Currently, this matter is regulated by Article 29 of the Law on Courts, whereas the Draft Law on the KJC regulates the issue again and, in Article 16, repeals Article 29 of the Law on Courts.

This demonstrates that there is an unnecessary overlap between the two laws. If the aim is to regulate the administration of the judicial system and matters directly related to the functioning of the courts, the appropriate place for such regulation is the Law on Courts. For this reason, KLI considers that this part should be reconsidered and that provisions concerning the organization and administration of the courts should be addressed within the Law on Courts and not in this Draft Law

12. Unequal treatment of IVU officials

Article 36.6.6.5 of the Draft Law provides that an official of the Integrity and Verification Unit (IVU) must "not have been convicted of a criminal

offense." Unlike other provisions within the same legislative package, this provision does not contain an exception for criminal offenses committed through negligence.

This formulation creates inconsistency. In the same Draft Law, a non-judge candidate for membership in the Council, under Article 9.2.2.9, must not have been convicted of a criminal offense, but "with the exception of criminal offenses committed through negligence." Likewise, under Article 13.1.1.7 concerning the termination of a Council member's mandate, the same standard is applied, namely with the exception of criminal offenses committed through negligence. This means that for Council members, the law distinguishes between intentional criminal offenses and criminal offenses committed through negligence, whereas for IVU officials this distinction is removed.

This distinction does not appear justified. On the contrary, it creates the impression of a stricter standard for IVU officials, without any explanation as to why this specific category should be treated differently. This becomes even more problematic when it is observed that, in the Draft Law on the KPC, for IVU officials, Article 10 of the Draft Law adding Article 31/A paragraph 6.5 uses the standard "must not have been convicted of a criminal offense, with the exception of criminal offenses committed through negligence." Similarly, the Draft Law on Recruitment, Performance Evaluation, Integrity Control, and the Status of Judges and Prosecutors applies the same exception to candidates for judges and prosecutors under Article 5.1.1.5, as well as to lay judge candidates under Article 7.2.2.5.

For this reason, KLI considers that this provision should be harmonized. If the intention of the Draft Law is to follow the standard already used for other similar categories, then Article 36.6.6.5 should likewise include the exception for criminal offenses committed through negligence. Otherwise, the Draft Law maintains unequal and unjustified treatment toward IVU officials

PART II

Part IV: Draft Law on Amending and Supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council, as Amended and Supplemented by Law No. 08/L-249

Within the framework of the laws envisaged under the justice reform pursuant to the Joint Declaration of Commitments, the Draft Law on Amending and Supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council, as Amended and Supplemented by Law No. 08/L-249 (hereinafter: the Draft Law), is also included, the draft of which has been published for comments on the public consultations platform. Regarding this Draft Law, KLI had previously submitted comments and published a separate analysis.

Following a renewed analysis of the draft published for public consultation, KLI submits the following comments in relation to this draft:

13. Majority required for the election of non-prosecutor members

The law currently in force on the KPC provides that the three (3) non-prosecutor members of the Council elected by the Assembly are elected by secret ballot, by a majority vote of the deputies present and voting. The current Draft Law does not amend this part of the law.

This issue has also been problematized by the Venice Commission. In its latest opinion on the Law on the KPC, the Commission emphasized that the rule allowing the Assembly to elect non-prosecutor members by simple majority remains problematic, because it implies that these members may reflect only the governing majority. Furthermore, the Commission emphasized that the most appropriate way to ensure a pluralistic composition would be their election by a qualified majority. In the same opinion, the Commission added that, under the current circumstances, such a solution would require constitutional amendment, given that the Constitution currently mandates a simple majority.

Nevertheless, despite the limitation of Article 80.1 of the Constitution, according to which decisions in the Assembly are generally adopted by simple majority, in practice there are cases where both the Venice Commission and the Constitutional Court have accepted the possibility for ordinary legislation to establish a higher voting guarantee. In its Fourth

Opinion on Bulgaria, the Venice Commission emphasized that a national constitutional court generally intervenes when a guarantee is lacking, and not when ordinary legislation provides a stricter guarantee, as in the present case, which would strengthen the independence and representative character of the institution. Precisely for this reason, it recommended restoring the qualified majority requirement in legislation.

Along the same lines, the Constitutional Court, in Judgment KO46/23, recalled that, notwithstanding Article 80 of the Constitution, the legislator has in various cases established higher majorities for the election and dismissal of members of independent institutions, expressly mentioning non-prosecutor members of the KPC and members of the KJC. The Court also recalled the position of the Venice Commission in the case of Bulgaria, according to which a higher majority prescribed by law may serve as an additional guarantee for the independence and representative character of the institution.

For this reason, this issue should be reconsidered. The composition of the KPC directly affects the independence of this system. The election of its non-prosecutor members by the Assembly should not be based on a simple majority of votes. In KLI's assessment, there is a basis for the law to require at least a majority vote of all deputies of the Assembly for their election. Such a standard would increase the legitimacy of these members and would serve as an additional guarantee for strengthening the independence of the KPC.

14. Appointment of members of the Performance Evaluation Commission

According to Article 27, the Prosecutorial Performance Evaluation Commission is a permanent body of the Prosecutorial Council and consists of five (5) prosecutors appointed by the Council, of whom three (3) are from among the prosecutors of the Office of the Chief State Prosecutor and two (2) from among the prosecutors of the Appellate Prosecution Office. The Chairperson of the Commission is appointed from among the members of the Council, while the other members are appointed from among prosecutors of these two levels. Furthermore, Article 27/A provides that the appointment is made through an open call for nominations by the Council, but adds that candidates are nominated by the Chief State

Prosecutor and the Chief Prosecutor of the Appellate Prosecution Office. Therefore, actual entry into the procedure is conditioned solely upon nomination by these two Chief Prosecutors.

This solution grants a strong role to the Chief State Prosecutor and the Chief Prosecutor of the Appellate Prosecution Office. Although formally the members of the Commission are appointed by the Prosecutorial Council, in practice the Council's field of choice is limited, because it may select only from candidates nominated by these two Chief Prosecutors. This diminishes the real role of the Council and concentrates power in the hands of the two Chief Prosecutors. Furthermore, this makes the process less open and prevents prosecutors who meet the legal requirements from entering the procedure directly without first passing through the filter of the respective Chief Prosecutors.

For this reason, KLI considers that this provision should be reconsidered. For the appointment of members of the Prosecutorial Performance Evaluation Commission, there should not merely be nominations, but rather an open competition, allowing candidates to apply directly while the Council decides on the basis of legal criteria. This would better preserve the role of the Prosecutorial Council itself and would avoid the excessive concentration of influence in the hands of the Chief State Prosecutor and the Chief Prosecutor of the Appellate Prosecution Office.

15. Allocation of mandates by lottery

Article 13 of the Draft Law provides that the members of the first composition of the Prosecutorial Performance Evaluation Commission, following the entry into force of the law, shall be selected by lottery, with three (3) members serving a five (5)-year mandate and two (2) members serving a four (4)-year mandate. Thus, the Draft Law itself provides a transitional provision for the establishment of the first composition of this Commission.

The Venice Commission has expressly addressed this issue and emphasized that, based on the wording of the draft, it is unclear how the different mandates will be distributed among the members coming from the Office of the Chief State Prosecutor and those coming from the

Appellate Prosecution Office. In this regard, the problem does not lie in the idea of staggered mandates itself. The problem lies in the fact that the Draft Law does not clarify the method for implementing this provision. On the one hand, the law requires that the Commission have a composition structured according to prosecution levels. On the other hand, the transitional provision does not indicate how this structure will be preserved during the allocation of mandates by lottery. If left in this form, there is a possibility that the legal balance may be undermined.

For this reason, KLI considers that Article 13 of the Draft Law should be reconsidered in such a way as to ensure that the balance between prosecution levels is maintained even at the stage of allocating mandates by lottery.

16. Performance Evaluation of Chief Prosecutors

Article 7 of the Draft Law, through the new Article 27/C of the basic Law on the KPC, stipulates that the performance evaluation of Chief Prosecutors shall be carried out by the Chief State Prosecutor. Furthermore, this article provides that the evaluation criteria relate to the organization and management of the prosecution office's work, efficiency, the level of institutional transparency, and the personal competencies of the Chief Prosecutor, while the procedures and evaluation grades are linked to the relevant law on prosecutors' performance evaluation.

This solution is not adequate. Chief Prosecutors are appointed within the competencies of the KPC, and the KPC also plays a central role regarding their status and accountability. For this reason, it is not appropriate for the evaluation of their performance to be left to the Chief State Prosecutor. The performance evaluation of Chief Prosecutors should be conducted within the body that is responsible for the governance of the prosecutorial system, and not transferred to the Chief State Prosecutor.

The problem does not lie only with the evaluating authority. The problem also lies in the very logic of this solution. If the Chief State Prosecutor evaluates the other Chief Prosecutors, then an important part of the control over the performance of the leadership level within the

prosecutorial system becomes concentrated in a single position. This weakens the role of the KPC and transfers an important competency from the Council itself to the Chief State Prosecutor.

For this reason, KLI considers that Article 27/C should be revised. The Draft Law should remove the solution according to which the performance evaluation of Chief Prosecutors is conducted by the Chief State Prosecutor and regulate this issue within the competencies of the KPC.

17. Mixing the law on the KPC with the law on the State Prosecutor

The basic Law on the KPC, in Article 1, stipulates that this law regulates the duties, responsibilities, organization, and functioning of the Kosovo Prosecutorial Council. On the other hand, the current legal order includes Law No. 08/L-167 on the State Prosecutor as a separate law for this institution. Furthermore, the Criminal Procedure Code also stipulates that the competencies and structure of the state prosecution offices are determined by the Law on the State Prosecutor. This distinction clearly shows that the subject matter of the Law on the KPC should be separated from the subject matter relating to the State Prosecutor and prosecution offices themselves.

Through Article 12, the Draft Law on the KPC adds Articles 32/A, 32/B, 32/C, 32/D, 32/E, and 32/F, which regulate the administration of the prosecutorial system, prosecution administrators, professional associates, translators and interpreters, as well as other positions within the prosecutorial system administration. These are matters related to the State Prosecutor and not to the Council itself.

This demonstrates an unnecessary mixing of the subject matter of two separate laws. If the intention is to regulate the administration of the prosecutorial system and matters directly related to the functioning of prosecution offices, the proper place for such regulation is the Law on the State Prosecutor. For this reason, KLI considers that this part should be revised and that provisions related to the organization and administration of prosecution offices should be addressed in the Law on the State Prosecutor rather than in this Draft Law.

18. Officials within the Verification Unit

Article 13 paragraph 2 of the Draft Law stipulates that "current verification officials within the Council's verification unit" shall undergo the integrity control procedure within six (6) months from the entry into force of this law, mutatis mutandis according to the integrity control procedure for candidates for prosecutors. On the other hand, this same Draft Law, through Article 10, establishes the Inspection and Verification Unit as a new separate professional support unit within the organizational structure of the KPC. Thus, the Draft Law simultaneously creates a new unit while, in the transitional provision, referring to a "verification unit" as though it were an existing structure.

The problem is that a "verification unit" currently does not exist in the law. Basic Law 06/L-056 recognized the "Unit for Reviewing Prosecutorial Performance," regulated under Article 30, as well as the director of this unit under Article 33. However, Law No. 08/L-249 deleted precisely Articles 30, 33, and 36 of the basic law. This means that neither the Unit for Reviewing Prosecutorial Performance exists anymore in the current law, nor does a "verification unit."

For this reason, the transitional provision of the Draft Law is unclear and unsupported by an existing legal basis. If the intention was to refer to officials of some current Council structure, this does not emerge from the law. If the intention was to refer to the former Unit for Reviewing Prosecutorial Performance, this also does not stand, because that unit was abolished by Law 08/L-249. In this form, the Draft Law constructs a transitional provision based on a structure that does not exist in law.

For this reason, KLI considers that Article 13 paragraph 2 should be revised. The Draft Law should clearly specify which structure it refers to, who the officials subject to this provision are, and on which current legal basis this transitional provision is built. Otherwise, the Draft Law leaves an unclear reference to a unit that does not exist in law and creates legal uncertainty in implementation.

PART III

DRAFT LAW ON THE ACADEMY OF JUSTICE (AJ)

Part V: Draft Law on amending and supplementing Law No. 05/L-095 on the Academy of Justice

Within the framework of the laws adopted under the justice reform according to the Joint Declaration of Commitments, the Draft Law on Amending and Supplementing Law No. 05/L-095 on the Academy of Justice (hereinafter: the Draft Law) is also included, the draft law of which has been published for comments on the public consultations platform. Regarding this Draft Law, KLI had previously submitted comments and published a separate analysis.

19. The Minister of Justice in the Governing Council

Article 3 of the Draft Law amends Article 8 of the Basic Law and stipulates that the Governing Council of the Academy shall consist of nine (9) members, five (5) of whom are ex officio members, including the Minister of Justice. Thus, even in the current draft, the Minister of Justice remains part of the body that supervises the Academy.

Regarding this issue, the Venice Commission has been clear. It recommended that the composition of the Governing Council be expanded in order to increase the participation of judges and prosecutors appointed by the KJC and KPC, while removing the Minister of Justice from the Governing Council. Therefore, the recommendation was not only to increase the numerical representation of the judicial and prosecutorial systems, but also to remove the executive branch from this body.

The current draft addressed this issue only partially, in that it now provides for two (2) judges appointed by the KJC and two (2) prosecutors appointed by the KPC. However, the main problem remains. The Minister of Justice has not been removed. This means that the executive branch continues to be part of the supervisory body of an institution that must preserve its professional and institutional independence.

For this reason, KLI considers that this part of the Draft Law should be revised so that the Minister of Justice is removed from the Governing Council of the Academy of Justice.

20. Provisions regarding the implementation of training

Article 14 of the Draft Law, which adds Article 19/A of the Basic Law, stipulates that the initial training for judges and prosecutors lasts twelve (12) months, consists of theoretical and practical component, and that after its completion participants are subject to evaluation by the Academy and mentor. However, the same article provides that the manner of implementing the training and evaluation shall be determined by a sub-legal act approved by the Governing Council.

The Venice Commission has emphasized that key issues of initial training should not be left to sub-legal acts, but should be regulated more clearly in the law itself. According to the Commission, the law should determine in more detail the final evaluation of participants, the evaluation criteria, the evaluation procedure, the consequences of unsuccessful completion of the training and the possibility of appeal.

The current draft does not do this. It merely states that there will be an evaluation and that the manner of the implementation will be determined later through a sub-legal act. This regulation is insufficient. In such a sensitive matter, where the outcome of the initial training is directly linked to the exercise of the function of judge or prosecutor, the law itself must provide the fundamental framework. Otherwise, the most important issues remain open and dependent on the discretion of the governing body.

For this reason, Kli considers that this part of the Draft Law should be revised. The law itself should regulate, clearly and sufficiently, the evaluation criteria, the procedure, the consequences of unsuccessful completion, and the right to appeal rather than leaving these matters to be regulated through a sub-legal act.