



Parliamentary Research: **Accountability and Integrity in the Justice System**



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About KLI:

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

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Content

Executive Summary	7
Introduction	8
Draft Law on the Disciplinary Liability of Judges and Prosecutors	11
Amendment 1 – Classification of violations according to their actual severity....	11
Amendment 2 – Distinguishing disciplinary liability from criminal liability	13
Amendments 3, 4 and 5 – Independence of disciplinary proceedings from criminal proceedings.....	14
Amendment 6– Recidivism and expunged records	16
Amendments 7, 8, 9 and 10 – Parties and legal remedies in disciplinary proceedings.....	17
Amendment 11 – Publication of investigative panel reports	21
Amendment 12 – Review of anonymous notifications.....	21
Draft Law on the Recruitment, Performance Evaluation, Integrity Checks, and Status of Judges and Prosecutors.....	24
Amendments 1, 2, 3 and 4 – Removal of unjustified assessments as grounds for dismissal	24
Amendments 5 and 6 – A confirmed indictment as a condition for excluding candidates	25
Amendments 7 and 8 – Definition and objective assessment of integrity.....	28
Amendment 9, 10 and 11 – Consequences of presidential silence and refusal..	30
Amendment 12 – Postponement of training on objective grounds.....	33
Amendment 13 – Limiting remuneration for professional activities	34
Amendment 14 – Removal of the Council's protective competence	35
Amendments 15, 16 and 17 – Performance evaluation and consequences for heads of institutions.....	36
Amendment 18 – Reformulation of integrity checks.....	38

Executive Summary

The Kosovo Law Institute (KLI), through this report, examines two draft laws regulating important aspects of accountability, recruitment, performance evaluation, integrity, and status of judges and prosecutors. Through the proposed amendments, KLI aims to address ambiguities and shortcomings that, according to report's assessment, may affect the fair, predictable, and constitutionally compliant implementation of these laws.

This first part examines Draft Law No. 11L-010 on the Disciplinary Liability of Judges and Prosecutors. The proposed amendments focus on classifying violations according to their actual severity, distinguishing disciplinary liability from criminal liability, and ensuring that the two proceedings may be conducted independently. They also seek to clarify the impact of previous violations in cases of recidivism, the status of parties and the right to appeal, and to strengthen procedural transparency through the publication of decisions and investigative panel reports. The report further proposes that specific information submitted anonymously be examined where it may give rise to reasonable suspicion of disciplinary misconduct.

The second part examines Draft Law No. 11L-007 on the Recruitment, Performance Evaluation, Integrity Checks, and Status of Judges and Prosecutors. The proposals seek to remove unjustified wealth as a ground for dismissal until the relevant constitutional amendments have been adopted, and to establish a court-confirmed indictment as a criterion for disqualifying candidates. They also propose a clearer definition of integrity and the procedures for assessing it, clarification of the consequences of presidential silence or a reasoned refusal in appointment and dismissal procedures, and rules allowing training to be postponed for objective reasons. This section also includes proposals concerning restrictions on and transparency of remuneration from professional activities, the powers of the Councils, and the authority, consequences, and standards governing the performance evaluation of court presidents and chief prosecutors.

Overall, the proposed amendments aim to make the provisions clearer and more enforceable, strengthen procedural safeguards, and ensure that legal consequences are based on clearly defined criteria and the constitutional and legal framework in force.

Introduction

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, with the aim of ensuring that justice reform was carried out as a joint institutional process. Through this Declaration, the institutions committed to cooperating in assessing, conceptualizing, and drafting legal initiatives aimed at clarifying, supplementing, and strengthening the legal framework of the justice system. The reform covered key areas, including the recruitment, appointment, and reappointment of judges and prosecutors, performance evaluation, disciplinary liability, integrity checks, and professional development.

Working groups were established to implement these commitments, and meetings and workshops were held to discuss initial reports and concepts. However, the process was characterized by inter-institutional disagreements and, at certain stages, a lack of genuine coordination among the signatory institutions. A process initially conceived as a joint reform was gradually led primarily by the Ministry of Justice, undermining the original spirit of the Declaration. Although the institutions re-engaged in the later stages, the reform experienced considerable delays and was prolonged for more than three years after the Declaration was signed.

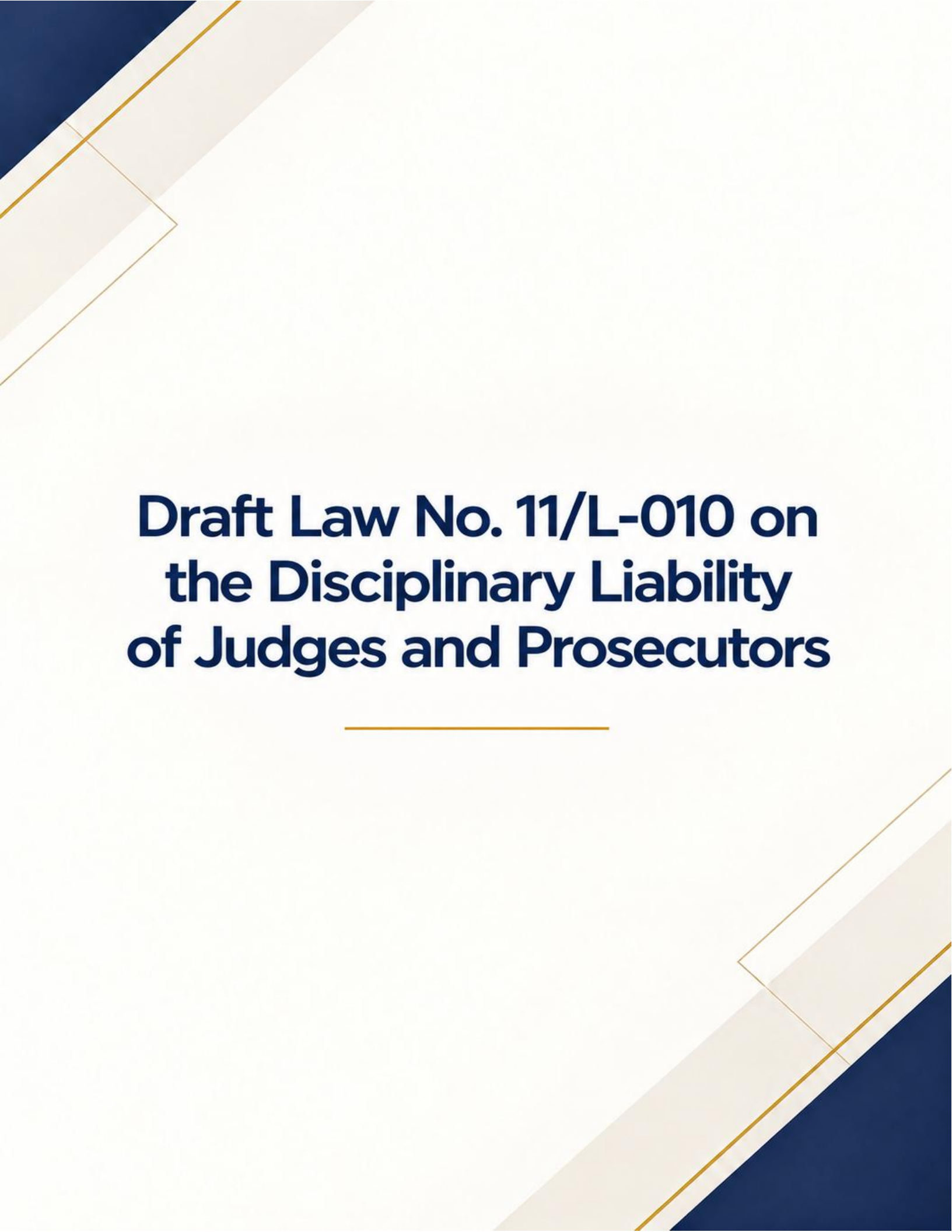
KLI has monitored this process from the outset, participating in discussions on the reform, submitting comments during public consultations, and publishing separate analyses of the draft laws stemming from the Joint Declaration of Commitments. These analyses addressed constitutional, legal, and practical issues related to accountability, integrity, the status of judges and prosecutors, and the functioning of the judicial and prosecutorial systems.

Now that the draft laws have been submitted to the Assembly and adopted at first reading, KLI continues its contribution through Parliamentary Research. For each issue identified, this research sets out the specific legislative intervention, the precise wording of the proposed amendment, and the corresponding justification, providing Members of Parliament with concrete proposals to consider when reviewing the draft laws between the first and second readings. The aim is to address the remaining constitutional, legal, and practical shortcomings before final adoption, while strengthening legal certainty, accountability, and the independence of the justice system.

This Parliamentary Research constitutes the first part of the examination of the legislative package arising from the reform under the Joint Declaration of Commitments. It focuses on two draft laws: Draft Law No. 11/L-010 on the Disciplinary Liability of Judges and Prosecutors, and Draft Law No. 11/L-007 on the Recruitment, Performance Evaluation, Integrity Checks, and Status of Judges and Prosecutors. These two draft laws address some of the most sensitive issues concerning the status, integrity, and accountability of judges and prosecutors.

The second part of the Parliamentary Research addresses the three remaining draft laws within this reform: 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.

Through these two parliamentary research reports, KLI aims to provide a concrete contribution to all five draft laws comprising the reform, shifting the focus from identifying problems to proposing specific solutions that the Assembly can address directly between the first and second readings



Draft Law No. 11/L-010 on the Disciplinary Liability of Judges and Prosecutors

Draft Law on the Disciplinary Liability of Judges and Prosecutors

Amendment 1 – Classification of violations according to their actual severity

The Draft Law divides disciplinary violations into minor and serious violations, while Article 9 links these two categories to different disciplinary measures. Thus, the way in which a violation is classified directly affects the type of sanction that may be imposed.

However, this distinction has not been made entirely adequately. The main problem lies in the fact that violations have been divided and formulated primarily according to their type, rather than according to their intensity, circumstances, and the consequences that may produce in practice. The same violation may carry a substantially different disciplinary weight depending on how it is committed, whether it is repeated, its duration, the degree of responsibility, and the consequences it causes.

For example, Article 7 treats as a minor violation a judge's or prosecutor's failure to report circumstances that may require their exclusion from proceedings, where reporting is required by law. This may occur in a single instance, as a result of negligence and without significant consequences. In practice, however, there may also be cases in which the same omission by the same person results in very serious consequences. In such a situation, the intensity and consequences of the violation may be significantly more severe. Nevertheless, under the current structure, the violation remains classified as minor solely because it has been categorized as such in advance by law.

The same logic applies in the opposite direction. Even where violations are categorized as serious, there may be cases in which, considering the manner in which the violation was committed, its intensity, the specific circumstances, the degree of responsibility, and the consequences caused, its actual severity does not justify treating it as a serious violation. For this reason, classification should not be absolute or detached from the specific circumstances of the case.

This approach creates a real risk that disproportionate sanctions may be imposed in practice. On the one hand, a violation that is serious in the specific circumstances may result in only the measures prescribed for minor violations because the law has classified it in advance as such. On the other hand, conduct

formally categorized as a serious violation may be treated as serious even where its actual intensity and consequences are substantially less severe.

Article 9, paragraph 5, does not fully resolve this problem either. Although this provision requires proportionality, the seriousness of the violation, its consequences, the circumstances, and the conduct of the subject during the proceedings to be taken into account when imposing a measure, it does not address the fundamental shortcoming. Before determining the measure, the decision-making body must first treat the violation as either minor or serious. Therefore, proportionality in determining the measure does not necessarily correct an inappropriate classification of the violation itself.

For this reason, it is proposed that the classification of violations set out in Articles 7 and 8 remain the general rule, but not an absolute one. In exceptional cases, the classification should be adaptable to the actual severity of the conduct, taking into account, among other factors, the intensity and manner in which the violation was committed, its duration and repetition, the degree of responsibility of the judge or prosecutor, the motives and circumstances in which it was committed, the nature and extent of the breach of official duties, the consequences for the parties and third persons, the impact on the fair and proper conduct of proceedings, and the impact on the integrity, impartiality, and credibility of the justice system.

This solution preserves the clarity of the catalogue of minor and serious violations while avoiding an overly rigid classification. Accordingly, a minor violation may be classified as serious where its actual severity justifies such a classification, while a serious violation may be classified as minor where the specific circumstances demonstrate that its intensity and consequences are substantially less severe. In this way, classification is linked not only to the formal type of conduct but also to its actual severity, enabling proportionate disciplinary measures to be imposed.

Proposed amendment:

The following paragraph shall be added after paragraph 2 of Article 6:

“3. 3. As a general rule, a minor disciplinary violation or a serious disciplinary violation shall be considered to be the violation designated as such in Articles 7 and 8 of this Law. By way of exception, taking into account the intensity and manner in which the violation was committed, its duration and repetition, the degree of responsibility of the judge or prosecutor, the motives and circumstances in which it was committed, the nature and extent of the breach of official duties, the consequences caused to the parties and third persons, the

impact on the fair and proper conduct of proceedings, and the impact on the integrity, impartiality, and credibility of the justice system, a violation specified in Article 7 may be classified as a serious violation, while a violation specified in Article 8 may be classified as a minor violation, where the actual severity of the violation justifies such a classification."

Amendment 2 – Distinguishing disciplinary liability from criminal liability

The Draft Law does not limit itself solely to sanctioning disciplinary violations. In several instances, it also includes as disciplinary violations conduct that essentially constitutes criminal offences. This is evident in Article 8, which lists as serious disciplinary violations, among other things, communicating non-public information to unauthorized persons, accepting a gift or reward that leads, or appears to lead, to unlawful influence, abusing official position for unlawful benefits, and interfering with the actions of other judges or prosecutors with the intention of influencing their decision-making.

This approach is problematic because disciplinary liability and criminal liability are two distinct forms of liability. Disciplinary liability differs from criminal liability, has different elements, and is applied under a different standard of proof. Criminal proceedings concern criminal guilt, whereas disciplinary proceedings concern the disciplinary aspects of conduct. For this reason, these two forms of liability should operate separately and should not be conflated.

In this regard, the provisions proposed for deletion clearly overlap with provisions of the Criminal Code. Abuse of official position for unlawful benefits is covered by the criminal provisions on abuse of official position or authority. Accepting a gift or benefit in exchange for an official act or omission is covered by the provisions on bribery. The exercise of undue influence is criminalized, while the disclosure of protected information to unauthorized persons, where official secrets are concerned, is also regulated by the Criminal Code. This demonstrates that, rather than maintaining disciplinary misconduct as an autonomous concept, the Draft Law enters into matters that fall within the domain of criminal liability in these cases.

The fact that certain conduct may also have disciplinary consequences does not justify reproducing the elements of criminal offences as such in the catalogue of disciplinary violations. The Draft Law provides a separate mechanism for cases in which the facts underlying an alleged violation give rise to suspicion of a criminal

offence, requiring the matter to be referred to the State Prosecutor. Therefore, it is unnecessary to repeat conduct criminalized by law as disciplinary violations using formulations that essentially describe criminal offences.

Deleting these provisions would preserve a clear distinction between disciplinary and criminal liability and prevent the conflation of two legal concepts that have different purposes, elements, and standards of assessment. Disciplinary proceedings should remain focused on breaches of the professional duties of judges and prosecutors, while liability for conduct criminalized by law should be established in accordance with the rules and safeguards of criminal proceedings.

For this reason, it is proposed that the provisions of Article 8 that essentially describe conduct criminalized by law be deleted from the catalogue of disciplinary violations, thereby ensuring a clear distinction between these two forms of liability.

Proposed amendment:

In Article 8, paragraph 1, of the Draft Law subparagraph 1.2, 1.3, 1.4 and 1.5 shall be deleted.

Amendments 3, 4 and 5 – Independence of disciplinary proceedings from criminal proceedings

Criminal liability and disciplinary liability are two distinct forms of liability. As the Venice Commission has also emphasized, these two types of liability differ in their standard of proof and are not mutually exclusive. Disciplinary measures may also be applicable where criminal proceedings establish that a judge or prosecutor has not committed a criminal offence. Likewise, the fact that no criminal proceedings have been initiated does not mean that no disciplinary violation has occurred. Criminal proceedings do not consider the specific disciplinary aspects of misconduct, but rather criminal guilt.

Nevertheless, Article 13, paragraph 2, of the Draft Law provides that referring a case to the State Prosecutor interrupts the limitation period and suspends the disciplinary proceedings. Furthermore, paragraph 5 of the same Article provides that disciplinary proceedings may resume only after the criminal proceedings have concluded with a decision not to prosecute or an acquittal. In this way, the conduct of disciplinary proceedings becomes dependent on criminal proceedings, despite the distinct and autonomous nature of these two forms of liability.

Such an arrangement is inconsistent with the distinction between disciplinary and criminal proceedings. Disciplinary liability is separate and applies different criteria and standards of proof from those applicable in criminal proceedings. These differences may give rise to situations in which a judge or prosecutor is acquitted of criminal liability but must nevertheless be held accountable for a disciplinary violation. Similarly, certain conduct may not meet the threshold for criminal liability but may constitute a breach of professional obligations and, consequently, give rise to disciplinary liability.

For this reason, it is proposed that referring a case to the State Prosecutor should have no effect on the conduct of disciplinary proceedings. Criminal and disciplinary proceedings should be able to proceed in parallel and independently of one another, each according to its respective subject matter, criteria, and applicable standard of proof.

Following the same logic, a decision not to prosecute or an acquittal should not preclude disciplinary liability. If the conduct of a judge or prosecutor contains elements of a disciplinary violation, their liability should be assessed in disciplinary proceedings, regardless of the outcome of the criminal proceedings.

The amendment does not affect the possibility of suspending a judge or prosecutor from the exercise of their functions under Article 15 of the Draft Law, where the conditions for such a measure are met. It merely separates this issue from the suspension of the disciplinary proceedings themselves, ensuring that referring a case for criminal investigation does not prevent the exercise of disciplinary accountability.

Proposed amendment 3:

Article 13, paragraph 2, shall be reformulated as follows:

“2. Referring a case to the State Prosecutor shall neither interrupt the limitation period nor suspend or otherwise affect the conduct of disciplinary proceedings. Disciplinary proceedings and criminal proceedings may proceed in parallel and independently of one another.”

Proposed amendment 4:

Article 13, paragraph 3, shall be reformulated as follows:

“3. Upon referring a case to the State Prosecutor, the respective Council may suspend the judge or prosecutor in accordance with the provisions of Article 15 of this Law..”

Proposed amendment 5:

Article 13, paragraph 5, shall be reformulated as follows:

“5. A decision not to prosecute or an acquittal shall not preclude the disciplinary liability of a judge or prosecutor if their conduct contains elements of a disciplinary violation under this Law”.

Amendment 6– Recidivism and expunged records

The current version of the Draft Law has clarified one of the previously identified ambiguities concerning recidivism. Article 8, paragraph 2, now provides that, once a judge or prosecutor has committed two minor disciplinary violations, any subsequent minor violation shall be considered a serious disciplinary violation. This makes it clear that the provision refers to the third violation.

However, the relationship between this provision and the time limits for expunging disciplinary records from the register remains unclear. The Draft Law stipulates that records of disciplinary investigations or sanctions shall be expunged after a period of five (5) years, but does not specify whether previous minor violations may continue to be counted for the purposes of recidivism after they have been expunged from the register.

This is not merely a technical issue. If the law does not link recidivism to the status of previous violations in the register, the possibility remains that a violation committed many years earlier, which has since been expunged from the register and no longer produces legal effects, could still be used to reclassify a new violation as serious. This would undermine, to some extent, the intended legal effect of the time limit for expunging records.

For this very reason, KLI's report emphasized that the Draft Law should expressly clarify whether previous violations must still be active in the register to be taken into account for the purposes of recidivism. The report also raised the question of whether such violations should fall within a specified period or may be counted regardless of when they occurred.

It is therefore proposed that, for the purposes of recidivism, only minor disciplinary violations established by a final decision, for which the records have not been expunged from the register pursuant to Article 10 of the Draft Law, should be taken into account. This would directly link the relevant period for recidivism to the period established by the Draft Law for retaining disciplinary records.

This solution would make the provision clearer and ensure its consistent application, prevent expunged violations from continuing to produce legal effects, and align the recidivism rule with the system for recording and expunging disciplinary measures established under Article 10.

Proposed amendment:

Article 8, paragraph 2 to be reformulated as follows:

“2. If a judge or prosecutor, having committed two (2) minor disciplinary violations established by final decisions and for which the records have not been expunged from the register pursuant to Article 10 of this Law, commits another minor disciplinary violation, that violation shall be considered a serious disciplinary violation under this Law”.

Amendments 7, 8, 9 and 10 – Parties and legal remedies in disciplinary proceedings

The current version of the Draft Law has significantly changed the structure of the initial stage of disciplinary proceedings. The competent authority has been removed from the process, and notifications of disciplinary violations are now submitted directly to the respective Council. The Council conducts an initial assessment of the notification and decides whether there are reasonable grounds to initiate disciplinary proceedings or whether their initiation should be rejected. If proceedings are initiated, the case is referred to the Investigative Panel and, once the investigation has been completed, returned to the Council for a decision.

This change addresses some of the previously identified problems concerning the role of the competent authorities. Indeed, the Venice Commission had also called for the responsibility for deciding whether to initiate disciplinary proceedings to rest with the Council, while other authorities should be limited to notifying it of potential disciplinary violations. The Commission had also called for the Council's initial decision-making stage to be governed by clear procedural rules.¹

¹ Venice Commission, *Opinion on the Draft Law on Recruitment, Performance Evaluation, Integrity Control, and Status of Judges and Prosecutors and on the Draft Law Amending the Law on the Disciplinary Liability of Judges and Prosecutors*, CDL-AD(2025)010, 18 March 2025, paragraphs 68–69.

Nevertheless, despite the change in the institutional structure, the Draft Law still does not define who qualifies as a party to the proceedings. This definition is essential because the status of a party determines who must be notified of decisions, who participates in the proceedings and, in particular, who has the right to seek a legal remedy. Article 3 currently defines only the term “Council” and does not provide a definition of a party to the proceedings.

This ambiguity is also evident in the provisions of the Draft Law itself. Article 11, paragraph 9, stipulates that the person who submitted the notification must be informed of the Council's decision. Article 16, paragraph 6, provides that the final decision must be sent both to the judge or prosecutor who is the subject of the investigation and to the person who submitted the notification. However, Article 17, paragraph 1, merely states that an appeal against a disciplinary decision “shall be permitted”, without specifying who is entitled to lodge it, while subparagraph 4.3 explicitly uses the term “party”, which is not defined anywhere in the Draft Law.

For this reason, the Draft Law should clearly establish that the parties to the proceedings are the judge or prosecutor against whom a notification has been submitted or disciplinary proceedings have been initiated, and the person who submitted the notification.

A separate problem remains the absence of a legal remedy against a Council decision refusing to initiate disciplinary proceedings. Under Article 11, paragraph 7, the Council may terminate the matter at the initial stage by finding that the notification is manifestly unfounded, does not concern a disciplinary violation, or relates to a violation that is time-barred. Once this decision is taken, the matter is concluded, but the Draft Law provides no mechanism for reviewing that decision.

This omission must also be considered in light of Article 32 of the Constitution of the Republic of Kosovo, which guarantees everyone the right to use legal remedies against judicial and administrative decisions that infringe their rights or interests, in the manner prescribed by law. Article 54 of the Constitution also guarantees the right to judicial protection and effective legal remedies in the event of a violation of a right guaranteed by the Constitution or by law.

Furthermore, the Venice Commission explicitly addressed this issue in relation to Kosovo's disciplinary legislation. In Opinion CDL-AD(2025)010, the Commission noted that the draft law did not provide for a review mechanism where the competent authority decided not to request the initiation of a disciplinary investigation. The Commission identified this omission as a gap that should be

remedied through amendments to the draft law. Specifically, the Venice Commission stated:

“Moreover, during the visit to Pristina, a number of interlocutors expressed concern that the draft law does not contain provisions providing for a mechanism to review decisions of the competent authorities, which, under the draft law, may request the initiation of disciplinary investigations. Article 9, paragraph 9, of the consolidated draft law provides only that the competent authority is deemed to have committed a disciplinary violation if it fails to review and decide on the complaint within the prescribed time limit, or if it fails to notify the complainant of its decision. However, no possibility of review is provided for cases in which the competent authority decides not to request the initiation of disciplinary investigations. This constitutes a legal gap which the Venice Commission recommends addressing through amendments to the draft law”.²

In the current version, the competent authority has been removed and initial decision-making has been transferred directly to the Council. However, the problem identified by the Venice Commission has not disappeared; rather, it has been carried over into the new structure. The Council can now refuse to initiate proceedings, yet no legal remedy is available against that decision. For this reason, the Venice Commission's recommendation remains relevant to the current version.

The legal remedy should enable judicial review of the lawfulness of a decision not to initiate proceedings while, at the same time, preserving the Council's competence to decide whether disciplinary proceedings should be initiated. Accordingly, it is proposed that the person who submitted the notification be entitled to appeal a decision refusing to initiate proceedings directly to the Supreme Court, which should have the authority to uphold the decision or annul it and refer the matter back to the Council for reconsideration. The Court should not initiate disciplinary proceedings itself, as the decision to initiate such proceedings must remain within the Council's competence, consistent with the standard emphasized by the Venice Commission.

Along the same lines, the right to appeal a final disciplinary decision should also be clarified. Article 17.1 currently provides for the possibility of an appeal but does not identify the person entitled to lodge it. Defining the parties and stipulating that each party has the right to appeal would eliminate this ambiguity and clarify the

² Ibid, paragraph 70.

procedural position of both the subject of the proceedings and the person who submitted the notification.

These amendments would clearly establish the status of the parties to the proceedings, ensure judicial review of decisions that conclude a matter at the initial stage, and clarify the right to appeal final disciplinary decisions. In this way, they would strengthen procedural certainty, the Council's accountability, and the effectiveness of the disciplinary system, without undermining the Council's constitutional and legal competence to decide on the initiation of disciplinary proceedings.

Proposed amendment 7:

In Article 3, the following subparagraph 1.2 is added after subparagraph 1.1:

"1.2. Party to the proceedings – means the judge or prosecutor against whom a notification of a disciplinary violation has been submitted or against whom disciplinary proceedings are conducted, as well as the person who submitted the notification of a disciplinary violation."

Proposed Amendment 8

Article 11, paragraph 9, is amended to read as follows:

"9. The decision of the Council under paragraph 7 of this Article shall be in writing, reasoned, and shall contain information on legal remedies. The decision shall be immediately served on the person who submitted the notification, while a decision to initiate disciplinary proceedings shall also be served on the judge or prosecutor against whom the notification was submitted. The respective Council shall publish the decision in accordance with this Law."

Proposed Amendment 9

The following paragraphs 10 and 11 are added after paragraph 9 of Article 11:

"10. The person who submitted the notification shall have the right to appeal directly to the Supreme Court of Kosovo against the Council's decision refusing to initiate disciplinary proceedings under paragraph 7, subparagraph 7.2, of this Article, within fifteen (15) days from the date of receipt of the decision.

11. The Supreme Court shall review and decide on the appeal referred to in paragraph 10 of this Article within thirty (30) days from the date of its receipt. The Supreme Court may uphold the Council's decision or annul it and remand the matter to the Council for reconsideration. Where the matter is remanded for

reconsideration, the Council shall issue a new decision within thirty (30) days, taking into account the legal findings of the Supreme Court."

Proposed Amendment 10

Article 17, paragraph 1, is amended to read as follows:

"1. Each party to the proceedings shall have the right to appeal the Council's disciplinary decision directly to the Supreme Court of Kosovo within fifteen (15) days from the date of receipt of the decision."

Amendment 11 – Publication of investigative panel reports

The Draft Law [Article 14.10] provides that, upon completion of the investigation, the Investigative Panel shall submit a written report to the Council setting out the facts and evidence gathered. However, Article 10.3 uses the term "recommendations of the investigative panels", even though Article 14.10 provides for the preparation of a report rather than a recommendation.

The Investigative Panel's report is the primary document underpinning disciplinary decision-making. Therefore, to ensure transparency and full access to the factual basis of the decision, it is proposed that the Law explicitly require the publication of the Investigative Panel's report alongside the disciplinary decision. This would align Article 10 with the terminology and content of Article 14.

Proposed Amendment

Article 10, paragraph 3, is amended to read as follows:

"3. Reports of the Investigative Panels and decisions on disciplinary proceedings shall be published by the respective Councils on the official website of the respective Council within no more than fifteen (15) days, in anonymized form."

Amendment 12 – Review of anonymous notifications

The Draft Law requires a notification of a disciplinary violation to include the identity of the person submitting it. This requirement is reasonable for a formal notification, but it should not result in relevant information being disregarded solely because its source is anonymous.

There may be cases in which an anonymous notification contains specific, serious, and verifiable information about a potential disciplinary violation. It is therefore proposed that such a notification not be treated as a formal notification, but that its contents be assessed by the Council and, where they give rise to reasonable grounds for suspicion, the matter be addressed *ex officio*.

This approach preserves the integrity of the procedure while preventing relevant information from being lost for purely formal reasons.

Proposed Amendment

The following new paragraph 6 is added after paragraph 5 of Article 11:

"6. An anonymous notification shall not be treated as a formal notification under paragraph 5 of this Article. However, the respective Council shall assess its contents and, if the notification contains sufficient, specific, and verifiable information giving rise to reasonable grounds for suspicion of a disciplinary violation, shall address the matter ex officio in accordance with paragraph 4 of this Article." The subsequent paragraphs shall be renumbered.

**Draft Law No. 11/L-007 on
the Recruitment, Performance
Evaluation, Integrity Checks,
and Status of Judges and
Prosecutors.**

Draft Law on the Recruitment, Performance Evaluation, Integrity Checks, and Status of Judges and Prosecutors

Amendments 1, 2, 3 and 4 – Removal of unjustified assets as grounds for dismissal

The Draft Law continues to provide for unjustified assets as grounds for the dismissal of judges and prosecutors. Article 35, paragraph 1, subparagraph 1.3, stipulates that a judge or prosecutor may be dismissed if it has been established that they possess unjustified assets on the basis of a court decision ordering the confiscation of assets. References to unjustified assets are also found in Article 3, Article 28, and the transitional provision in Article 36.

This approach remains contrary to the Constitution of the Republic of Kosovo, since unjustified assets do not fall within either of the two constitutional categories that may serve as grounds for the dismissal of judges and prosecutors. Article 104, paragraph 4, of the Constitution stipulates that judges may be dismissed from office on the grounds of a conviction for a serious criminal offence or serious misconduct. Article 109, paragraph 6, establishes the same grounds for prosecutors.

The inclusion of unjustified assets as grounds for dismissal is based on proposed Constitutional Amendments 27 and 28. Through these amendments, it was proposed that serious misconduct should include, among other things, the establishment that a judge or prosecutor possesses unjustified assets. The Constitutional Court had assessed that the proposed amendments did not diminish the rights and freedoms set out in Chapter II of the Constitution and had therefore allowed the procedure for their adoption to proceed.

However, following the Constitutional Court's decision, the Assembly did not adopt these constitutional amendments. The Constitutional Court's decision in this procedure does not make the proposed amendments part of the Constitution; it merely allows the constitutional procedure for their adoption to continue. As long as the Assembly has not adopted them, they remain draft amendments and cannot serve as a basis for establishing legal provisions that introduce new grounds for the dismissal of judges and prosecutors.

The fact that the current version links unjustified assets to a court decision ordering the confiscation of assets does not resolve this problem. The issue is not merely which authority establishes the existence of unjustified assets, but that unjustified

assets themselves have not been established as an independent ground for dismissal under the current Constitution.

Nor is the problem resolved by Article 36, which provides that these provisions shall become applicable only upon the entry into force of a separate law on the verification of unjustified assets. Postponing the application of the provision until another law is adopted does not change the fact that the constitutional basis on which this approach rests has not been adopted. These provisions may be included only if the relevant amendments become part of the Constitution.

If unjustified assets were considered already to fall within the concept of "serious misconduct", there would have been no need to propose specifically regulating this issue through constitutional amendments. The very proposal to amend Articles 104 and 109 demonstrates that this ground cannot be established through ordinary legislation.

For this reason, it is proposed that all provisions of the Draft Law that treat unjustified assets as grounds producing consequences for the status of a judge or prosecutor be removed.

Proposed Amendment 1

In Article 3, paragraph 1, subparagraph 1.2 is deleted.

Proposed Amendment 2

Article 28, paragraph 5, is deleted.

Paragraph 6 is amended to read as follows:

"6. A judge or prosecutor shall be dismissed from office as a result of a conviction for the criminal offence relating to the declaration of assets."

Proposed Amendment 3

In Article 35, paragraph 1, subparagraph 1.3 is deleted.

Proposed Amendment 4

Article 36 is deleted.

Amendments 5 and 6 – A confirmed indictment as a condition for excluding candidates

The Draft Law continues to provide for unjustified assets as grounds for the dismissal of judges and prosecutors. Article 35, paragraph 1, subparagraph 1.3, stipulates that a judge or prosecutor may be dismissed if it has been established

that they possess unjustified assets on the basis of a court decision ordering the confiscation of assets. References to unjustified assets are also found in Article 3, Article 28, and the transitional provision in Article 36.

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However, following the Constitutional Court's decision, the Assembly did not adopt these constitutional amendments. The Constitutional Court's decision in this procedure does not make the proposed amendments part of the Constitution; it merely allows the constitutional procedure for their adoption to continue. As long as the Assembly has not adopted them, they remain draft amendments and cannot serve as a basis for establishing legal provisions that introduce new grounds for the dismissal of judges and prosecutors.

The fact that the current version links unjustified assets to a court decision ordering the confiscation of assets does not resolve this problem. The issue is not merely which authority establishes the existence of unjustified assets, but that unjustified assets themselves have not been established as an independent ground for dismissal under the current Constitution.

Nor is the problem resolved by Article 36, which provides that these provisions shall become applicable only upon the entry into force of a separate law on the verification of unjustified assets. Postponing the application of the provision until another law is adopted does not change the fact that the constitutional basis on which this approach rests has not been adopted. These provisions may be included only if the relevant amendments become part of the Constitution.

If unjustified assets were considered already to fall within the concept of “serious misconduct”, there would have been no need to propose specifically regulating this issue through constitutional amendments. The very proposal to amend Articles 104 and 109 demonstrates that this ground cannot be established through ordinary legislation.

For this reason, it is proposed that all provisions of the Draft Law that treat unjustified assets as grounds producing consequences for the status of a judge or prosecutor be removed.

Proposed Amendment 1

In Article 3, paragraph 1, subparagraph 1.2 is deleted.

Proposed Amendment 2

Article 28, paragraph 5, is deleted.

Paragraph 6 is amended to read as follows:

“6. A judge or prosecutor shall be dismissed from office as a result of a conviction for the criminal offence relating to the declaration of assets.”

Proposed Amendment 3

In Article 35, paragraph 1, subparagraph 1.3 is deleted.

Proposed Amendment 4

Article 36 is deleted.

Amendments 5 and 6 – A Confirmed Indictment as a Condition for Excluding Candidates

The Draft Law establishes the absence of an indictment as a condition for appointment, both for candidates seeking appointment as judges or prosecutors and for candidates seeking appointment as lay judges. This criterion sets a low threshold for excluding candidates from the recruitment process.

High standards of integrity are essential for such positions. However, precisely because of the importance of these functions, the criteria that lead to a candidate's exclusion must be precise, robust, and protected against arbitrariness.

The filing of an indictment represents the position of the State Prosecutor and, until the indictment has undergone judicial review, it remains a prosecutorial document. The mere filing of an indictment, for any criminal offence and without

any judicial scrutiny, should not in itself be sufficient to exclude a candidate from competing for the position of judge, prosecutor, or lay judge.

The legal and professional consequences in such cases are significant. Exclusion from the recruitment process requires a more stringent standard than the mere existence of a filed indictment.

For this reason, it is proposed that the threshold be raised from “an indictment has been filed” to “an indictment has been confirmed by the court”. This standard preserves the requirement for high integrity among candidates while ensuring a minimum level of judicial scrutiny before an indictment results in exclusion from the recruitment process.

Proposed Amendment 5

Article 5, paragraph 1, subparagraph 1.5, is amended to read as follows:

“1.5. not have an indictment confirmed by the court;”

Proposed Amendment 6

Article 7, paragraph 2, subparagraph 2.4, is amended to read as follows:

“2.4. not have an indictment confirmed by the court;”

Amendments 7 and 8 – Definition and objective assessment of integrity

Integrity is one of the central concepts of the Draft Law. It is used as a condition for the appointment of judges and prosecutors and, at the same time, is the subject of a separate vetting procedure. For this reason, the meaning of this concept must be clear, predictable, and capable of consistent application.

The current version has formally addressed the previously identified omission by including integrity in Article 3. However, the definition provided relies primarily on general and subjective concepts, such as “moral strength”, “a sense of honesty”, and “absolute sincerity”. These expressions do not clearly indicate which concrete facts the competent body should rely on when assessing whether a candidate meets the integrity requirement.

When such a central concept lacks precise and enforceable content, it creates considerable scope for interpretation and arbitrariness. This is particularly important in a field where the consequence may be a candidate's exclusion from the recruitment process.

The Venice Commission has explicitly emphasized that, in the interests of clarity, predictability, and coherence, the law should contain a definition of integrity. Furthermore, the Commission has called for provisions allowing scrutiny of “past actions” and other undefined conduct to be revised, suggesting an approach based on objective and verifiable elements, such as criminal convictions, disciplinary measures, professional ethics, and conduct that undermines the authority of the system.

For this reason, it is proposed that integrity should not be defined through abstract moral qualities, but through identifiable standards and verifiable facts. Honesty, independence, impartiality, accountability, compliance with professional ethics, avoidance of conflicts of interest, and rejection of improper influence should constitute the normative content of integrity, while its assessment should be based on objective evidence.

In the same vein, Article 29.2 should also be amended. Expressions such as “past actions” or “other inappropriate actions” are overly broad unless linked to a clear standard and to the relevance of the conduct to the exercise of the function. Therefore, it is proposed that the vetting process focus on specific categories and that any other conduct be taken into account only where it is proven, serious, and directly relevant to the candidate’s suitability for the position.

In this way, the definition and assessment of integrity would become more measurable and predictable, and less susceptible to subjective assessments, while maintaining the high integrity standard required of judges and prosecutors.

Proposed Amendment 7

Article 3, paragraph 1, subparagraph 1.4, is amended to read as follows:

“1.4. Integrity – the demonstrated conformity of a person’s conduct with the law, professional ethics standards, and the obligations arising from the position, manifested through honesty, independence, impartiality, accountability, avoidance of conflicts of interest, and rejection of improper influence. For the purposes of this Law, integrity shall be assessed solely on the basis of objective and verifiable facts directly related to the exercise of, or suitability for, the position, including compliance with professional ethics, criminal convictions, disciplinary measures, compliance with legal obligations concerning asset declarations and conflicts of interest, as well as proven conduct which, by its nature and seriousness, undermines the authority of the judicial or prosecutorial system.”

Proposed Amendment 8

Article 29, paragraph 2, is amended to read as follows:

“2. The integrity check referred to in paragraph 1 of this Article shall be conducted on the basis of objective and verifiable facts and shall include verification of:

2.1. criminal convictions;

2.2. disciplinary measures;

2.3. compliance with professional ethics standards;

2.4. compliance with legal obligations concerning asset declarations and conflicts of interest; and

2.5. other proven conduct which, by its nature and seriousness, significantly undermines the authority of the judicial or prosecutorial system and is directly relevant to the candidate's suitability to perform the function.”

Amendment 9, 10 and 11 – Consequences of presidential silence and refusal

The Draft Law regulates the role of the President in three situations: initial appointment, reappointment for a permanent term, and dismissal. In all three cases, it applies substantially the same normative approach. If the President does not appoint the judge or prosecutor within the prescribed deadline, the Council may resubmit the candidate with supplementary reasoning. The same logic applies to reappointment and dismissal.

The problem lies in the fact that the wording “if the President does not appoint” or “if the President does not dismiss” does not clarify which situation is being addressed. The President may have taken no action at all within the prescribed deadline, or may have reviewed the proposal and expressly refused it. These are two entirely different situations and should not produce the same legal effect.

In cases of silence, the President has not expressed any objection to the proposal but has simply allowed the statutory deadline to expire without taking action. The Draft Law should clearly establish the consequences of the expiry of the deadline in such circumstances. To prevent the appointment, reappointment, or dismissal procedure from remaining unresolved because of inaction, it is proposed that, where the deadline expires without the issuance of a decree or a reasoned decision refusing the proposal, the President be deemed to have acted in accordance with the Council's proposal. In such cases, the legal effect arises upon expiry of the deadline, while the Council merely confirms it by decision.

Express refusal should be treated differently. If the President disagrees with the Council's proposal, this must be done through a written, reasoned decision. This enables the Council to understand the specific grounds for the refusal and gives it an opportunity to reconsider the proposal. If, following reconsideration, the Council maintains its proposal, it resubmits it to the President with supplementary reasoning, and the President must act in accordance with the resubmitted proposal.

For this reason, the proposed amendments clearly distinguish between silence and refusal. Silence following the expiry of the deadline produces a legal effect in accordance with the Council's proposal, whereas refusal requires an express, reasoned decision and triggers a reconsideration stage by the Council. This clearly establishes the procedure and legal consequences for each form of presidential action.

Proposed Amendment 9

Article 8, paragraph 7, is amended to read as follows:

"7. If, within the deadline specified in paragraph 6 of this Article, the President neither issues a decree appointing the candidate nor issues a reasoned decision refusing the proposal, the President shall be deemed to have acted in accordance with the proposal of the respective Council, and the candidate shall be deemed appointed on the date of expiry of that deadline. The respective Council shall, by decision, confirm the candidate's appointment under this paragraph."

The following new paragraph 8 is added after paragraph 7:

"8. If, within the deadline specified in paragraph 6 of this Article, the President refuses the appointment proposal, the refusal must be made by a written, reasoned decision and submitted to the respective Council. The Council shall reconsider the proposal, taking into account the reasons for the refusal. If the Council decides to maintain its proposal, it shall resubmit it to the President together with supplementary reasoning. Within the deadline specified in paragraph 6 of this Article, calculated from receipt of the resubmitted proposal, the President shall issue a decree appointing the candidate."

Proposed Amendment 10

Article 11, paragraph 2, is amended to read as follows:

"2. Within thirty (30) days of receiving the proposal, the President shall issue a decree appointing the judge or prosecutor proposed by the respective Council for a permanent term of office."

The following paragraphs 3 and 4 are added after paragraph 2:

"3. If, within the deadline specified in paragraph 2 of this Article, the President neither issues a decree appointing the judge or prosecutor nor issues a reasoned decision refusing the proposal, the President shall be deemed to have acted in accordance with the proposal of the respective Council, and the judge or prosecutor shall be deemed appointed for a permanent term of office on the date of expiry of that deadline. The respective Council shall, by decision, confirm the permanent appointment under this paragraph."

"4. If, within the deadline specified in paragraph 2 of this Article, the President refuses the proposal for appointment for a permanent term of office, the refusal must be made by a written, reasoned decision and submitted to the respective Council. The Council shall reconsider the proposal, taking into account the reasons for the refusal. If the Council decides to maintain its proposal, it shall resubmit it to the President together with supplementary reasoning. Within thirty (30) days of receiving the resubmitted proposal, the President shall issue a decree appointing the judge or prosecutor for a permanent term of office."

Proposed Amendment 11

Article 35, paragraph 5, is amended to read as follows:

"5. Within thirty (30) days of receiving the proposal, the President shall issue a decree dismissing the judge or prosecutor proposed for dismissal by the respective Council."

The following paragraphs 6 and 7 are added after paragraph 5:

"6. If, within the deadline specified in paragraph 5 of this Article, the President neither issues a decree dismissing the judge or prosecutor nor issues a reasoned decision refusing the proposal, the President shall be deemed to have acted in accordance with the proposal of the respective Council, and the judge or prosecutor shall be deemed dismissed on the date of expiry of that deadline. The respective Council shall, by decision, confirm the dismissal under this paragraph."

"7. If, within the deadline specified in paragraph 5 of this Article, the President refuses the dismissal proposal, the refusal must be made by a written, reasoned decision and submitted to the respective Council. The Council shall reconsider the proposal, taking into account the reasons for the refusal. If the Council

decides to maintain its proposal, it shall resubmit it to the President together with supplementary reasoning. Within thirty (30) days of receiving the resubmitted proposal, the President shall issue a decree dismissing the judge or prosecutor."

The current paragraph 6 is renumbered as paragraph 8 and amended to read as follows:

"8. The judge or prosecutor shall be formally notified by the respective Council of the President's decree, the President's decision refusing the proposal, or the Council's decision confirming the dismissal under paragraph 6 of this Article."

Amendment 12 – Postponement of training on objective grounds

The Draft Law regulates the duration, assessment, and repetition of initial training. It also establishes the consequences for a judge or prosecutor who fails to complete the training successfully, even after being given the opportunity to repeat it. However, it still does not regulate situations in which a newly appointed judge or prosecutor is unable to attend or complete the training for objective reasons.

These cases do not concern failure to pass the training. Rather, they involve entirely different circumstances in which participation in the theoretical or practical component is prevented by objective reasons, such as maternity leave, illness, or other serious circumstances. Such cases should therefore not be dealt with under the provisions governing failure to complete or repetition of the training.

In the absence of a specific provision, uncertainty remains regarding the legal position of the judge or prosecutor during the period of objective inability to participate, the continuation of training, and the rights arising from the appointment.

For this reason, it is proposed that the Draft Law explicitly regulate this situation. Training should be allowed to resume once the objective circumstances preventing participation have ceased, and this period should not be treated as a failure to complete the training or affect the status or rights of the newly appointed judge or prosecutor. This would clearly distinguish failure to complete the training from objective inability to participate.

Proposed Amendment

The following new paragraph 7 is added after paragraph 6 of Article 10:

“7. Where a judge or prosecutor is unable to attend or complete initial training due to maternity leave, illness, or other serious and objective circumstances, the training shall be postponed for the duration of the impediment and shall resume thereafter for the remaining period. Objective inability to participate shall not be considered a failure to complete the training under paragraph 5 of this Article and shall not affect the status or rights arising from the appointment of the judge or prosecutor.”

Amendment 13 – Limiting remuneration for professional activities

Article 15 of the Draft Law regulates the professional activities of judges and prosecutors outside their official functions. Subject to the relevant approvals, it permits participation in professional and scientific activities and stipulates that such activities must not create a perception of influence or bias or conflict with the essential interests of the office. However, the Draft Law no longer establishes any maximum limit on the remuneration that may be received for these activities.

The current Law on Courts establishes this limit at twenty-five per cent (25%) of the basic salary and also provides for an obligation to disclose the remuneration received. Similarly, the legislation governing the State Prosecutor sets a limit of 25% of the basic salary for prosecutors and chief prosecutors. This is a clear statutory limit that currently exists.

The problem with the Draft Law is that this ceiling is removed without being replaced by any other limiting standard. The criteria prohibiting the creation of a perception of influence or bias are important, but they do not replace the financial limit. Those criteria determine whether an activity may be undertaken, whereas the monetary ceiling determines the amount of remuneration that may be received for that activity. These are two distinct safeguards.

The 25% limit serves as a safeguard to maintain a balance between the right of judges and prosecutors to engage in professional activities outside their official functions and the need to ensure that such activities do not create an inappropriate public perception. Removing this limit without analysis and without introducing an alternative mechanism reduces the level of existing safeguards.

For this reason, it is proposed that the ceiling of twenty-five per cent (25%) of the basic salary be expressly retained in the Draft Law, together with the obligation to ensure transparency regarding remuneration received. This would preserve the existing standard and prevent the removal of a safeguard without an alternative solution.

Proposed Amendment

The following new paragraphs 8 and 9 are added after paragraph 7 of Article 15:

“8. For professional activities permitted under this Article, a judge or prosecutor may receive remuneration, provided that it does not exceed twenty-five per cent (25%) of the basic salary.”

“9. The judge or prosecutor shall notify the authority that approved the activity under paragraphs 3 and 4 of this Article of the remuneration received, while the President of the Court and the Chief Prosecutor shall notify the respective Council.”

Amendment 14 – Removal of the Council’s protective competence

Article 17, paragraph 3 of the Draft Law stipulates that judges and prosecutors have the right to request special protection measures from the respective Councils for themselves and their families where a threat to their lives or the life of a family member arises from, or is a consequence of, the exercise of their functions and responsibilities.

Despite the legitimate purpose of this provision, its wording does not establish a functional legal protection mechanism. The Draft Law assigns the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) a role in providing special protection measures, although risk assessment and the implementation of concrete protective measures do not fall within the competence of these Councils.

Protection against threats to life and security, including risk assessment and the implementation of appropriate measures, is addressed by the Kosovo Police and other competent authorities under the applicable legislation. Therefore, there is no legal basis for the Draft Law on the Status of Judges and Prosecutors to assign the Councils powers that do not fall within their mandate.

Accordingly, it is proposed that paragraph 3 of Article 17 be deleted without replacing it with any alternative mechanism within the KJC or KPC. This deletion does not deprive judges and prosecutors of their right to protection; rather, it avoids creating the impression that protective measures are requested from or provided by institutions that lack the competence to assess risks and implement such measures.

Proposed amendment:

Paragraph 3 of Article 17 is deleted.

Amendments 15, 16 and 17 – Performance evaluation and consequences for heads of institutions

Article 25 of the Draft Law regulates the performance evaluation of Court Presidents and Chief Prosecutors. Under paragraph 1, Court Presidents are evaluated by a KJC Commission two (2) years after their appointment and before the end of their term of office. Paragraph 2 provides for the same evaluation period for Chief Prosecutors but assigns responsibility for their evaluation to the Chief State Prosecutor. The current version also introduces paragraph 3, according to which the President of the Supreme Court and the Chief State Prosecutor are evaluated three (3) times during their term of office.

The first problem concerns the authority competent to evaluate Chief Prosecutors. Article 25.2 of the Draft Law continues to stipulate that their evaluation is conducted by the Chief State Prosecutor. This arrangement is problematic because Chief Prosecutors are appointed by the KPC and report to the KPC. It therefore makes little sense for their formal performance evaluation to be entrusted to the Chief State Prosecutor rather than to the relevant mechanism within the Council itself.

The problem is even more evident in relation to the Chief State Prosecutor. Article 25.3 of the Draft Law stipulates that the Chief State Prosecutor is evaluated three times during their term of office, but the provision still fails to specify which authority conducts this evaluation. In other words, it establishes when the evaluation takes place, but not who conducts it. Accordingly, it is proposed that the Law expressly provide that Chief Prosecutors and the Chief State Prosecutor are evaluated by the relevant KPC Commission. By the same logic, the President of the Supreme Court should be evaluated by the relevant KJC mechanism.

The second problem concerns the legal consequences of the evaluation. Article 25.6 merely stipulates that Court Presidents and Chief Prosecutors are evaluated according to the rating scale set out in Article 24. Article 24 establishes four ratings: “poor”, “sufficient”, “good” and “very good”. However, Article 25 does not specify what happens during the term of office if a Court President or Chief Prosecutor receives a “poor” or “sufficient” rating.

This creates direct uncertainty regarding the effect of the evaluation itself. The Draft Law establishes the timing, criteria, sources and rating scale for the

evaluation, but does not specify the consequences of the results during the term of office. As currently drafted, the evaluation may remain a merely formal exercise, without clarity as to whether or how it affects the continuation of the individual's leadership mandate.

Accordingly, it is proposed that each rating be assigned a clear consequence. For a "poor" rating, in line with the approach adopted in Article 24 for judges and prosecutors, mandatory training and a subsequent re-evaluation would be required initially, while a second consecutive "poor" rating would have consequences for the leadership mandate. For a "sufficient" rating, the individual would continue in office and undergo specialized training but would not be eligible for reappointment. This would give the evaluation legal effect rather than leaving it without consequences.

The third problem concerns the standard for reappointment. Paragraph 7 of the current version stipulates that only Court Presidents and Chief Prosecutors rated "above the 'sufficient' level" may be appointed for another term.

This wording leaves the applicable standard implicit. Since the rating immediately above "sufficient" is "good", it follows that a minimum rating of "good" is required for reappointment. For a matter of such importance, the Law should not leave this requirement to be inferred through interpretation, but should expressly establish it. Accordingly, it is proposed that the paragraph clearly state that a rating of at least "good" is required for appointment to another term.

In this way, Article 25 would clarify the three elements that remain problematic: who conducts the evaluation, what consequences follow from each rating, and what minimum standard is required for reappointment. This would make the evaluation system functional and predictable.

Proposed Amendment 15:

Paragraph 2 is reformulated as follows:

"2. The regular performance evaluation of Chief Prosecutors shall be conducted two (2) years after their appointment to the position and before the end of their term of office, by the KPC Commission designated under the law in force governing the KPC."

Proposed Amendment 16:

Article 25, paragraph 3 is reformulated as follows:

“3. By way of exception to paragraphs 1 and 2 of this Article, the performance evaluation of the President of the Supreme Court and the Chief State Prosecutor shall be conducted three (3) times during their term of office: initially two (2) years after appointment, subsequently three (3) years after the first evaluation, and finally before the end of their term of office. The evaluation of the President of the Supreme Court shall be conducted by the KJC Commission designated under the law in force governing the KJC, while the evaluation of the Chief State Prosecutor shall be conducted by the KPC Commission designated under the law in force governing the KPC.”

Proposed Amendment 17:

A new paragraph 7 is added after paragraph 6 of Article 25, as follows:

“7. Performance evaluations conducted under this Article shall have the following consequences:

7.1. A Court President or Chief Prosecutor who receives a ‘poor’ rating for the first time shall undergo mandatory training in the areas where shortcomings have been identified and shall be re-evaluated one (1) year after completing the training;

7.2. A second consecutive ‘poor’ rating shall constitute grounds for termination of the individual’s mandate as Court President or Chief Prosecutor, as applicable;

7.3. A Court President or Chief Prosecutor who receives a ‘sufficient’ rating shall continue in office but shall undergo specialized training in the areas where shortcomings have been identified and shall not be eligible for appointment to another term;

7.4. A ‘good’ or ‘very good’ rating shall not result in adverse consequences during the term of office and, provided that the other legal requirements are met, shall allow the individual to be appointed for another term.”

Amendment 18 – Reformulation of integrity checks

Article 28 of the Draft Law seeks to regulate integrity checks for judges and prosecutors, including those serving an initial term of office. However, the way this provision is structured does not establish a clear integrity-checking regime; instead, it reduces the concept almost entirely to the verification of assets.

Specifically, Article 28.1 provides that integrity checks consist of regular checks of judges’ and prosecutors’ assets, carried out by the Agency for the Prevention

of Corruption in accordance with the Law on Declaration, Origin and Control of Assets and Gifts. Paragraph 2 stipulates that judges and prosecutors shall undergo a full asset check every three (3) years.

The only more specific element of this provision is the requirement for a full asset check every three years. For the most part, the remaining provisions reiterate matters already regulated by the specific legislation governing the declaration, origin and control of assets. For this reason, asset verification should remain a component of integrity checks, but its procedures, measures and consequences do not need to be reproduced in this Draft Law, given that this area is already covered by specific legislation.

This is clearly illustrated by paragraph 3, which provides that, in cases of failure to declare assets, the Agency for the Prevention of Corruption shall impose a punitive measure in accordance with the relevant legislation, and by paragraph 4, which provides for criminal proceedings in cases of continued failure to declare assets or false declarations. These matters are already regulated by the applicable legislation, and repeating them in this Article does not establish a distinct integrity-checking mechanism.

The problem is also conceptual. Integrity is not determined solely by the financial circumstances of a judge or prosecutor. If the Draft Law intends to establish a specific integrity-checking regime, that regime should be linked to the definition of integrity itself and encompass elements that can be assessed objectively, such as compliance with the law, professional ethics standards, disciplinary accountability, conflicts of interest and obligations relating to asset declarations. Reducing integrity to financial verification alone is inconsistent with the broader nature of the concept.

This becomes even more evident when Article 28 is compared with Article 29 of the Draft Law. For candidates for judicial and prosecutorial positions, integrity checks cover a much broader range of information, including criminal convictions, disciplinary measures, professional ethics, assets and other relevant conduct. By contrast, for serving judges and prosecutors, Article 28 reduces integrity checks almost exclusively to matters concerning assets. This distinction fails to establish a coherent concept of integrity.

The most serious problem with the current provision arises under Article 28.5. This paragraph stipulates that, where a discrepancy is identified between declared assets and legitimate income, the Agency for the Prevention of Corruption shall notify the relevant authority for further assessment of the justification of the assets under a separate law on the confiscation of unjustified assets. In this way, the

Draft Law establishes a legal provision based on a legal regime that is not operationally part of the legislation in force.

Paragraph 6 goes even further by providing for the dismissal of a judge or prosecutor as a consequence of a judicial decision ordering the confiscation of unjustified assets. This raises again the same constitutional concern addressed earlier in this document: a consequence affecting the status of a judge or prosecutor is based on the concept of unjustified assets, even though the constitutional amendments on which this arrangement was based have not been adopted.

Accordingly, it is proposed that Article 28 be comprehensively reformulated. Integrity checks should have broader substantive content and be based exclusively on objective and verifiable facts. Asset verification should remain one of their components, but procedures and sanctions relating to asset declarations and verification should be governed by the relevant special legislation rather than duplicated in this Draft Law.

At the same time, it should be made clear that an integrity check does not, in itself, establish a new ground for dismissal. Where the checks reveal facts that constitute a disciplinary violation or a criminal offence, these should be addressed in accordance with the procedures and standards established by the applicable legislation. Any consequence affecting the status of a judge or prosecutor must be based on grounds recognized by the Constitution and the legislation in force.

In this way, Article 28 would avoid duplicating existing asset-related legislation, relying on a legal mechanism that is not operational, or establishing a new unconstitutional ground for dismissal. At the same time, integrity checks would acquire clear and functional substance, consistent with the report's recommendation that, if a specific regulatory framework for this matter is intended, it must be designed clearly, functionally and in accordance with the Constitution.

Proposed Amendment:

Article 28 is reformulated as follows:

Article 28

Integrity Checks for Judges and Prosecutors

"1. Integrity checks of judges and prosecutors, including judges and prosecutors serving an initial term of office, shall be conducted on the basis of objective and verifiable facts and shall include an assessment of compliance with the law,

professional ethics standards, obligations arising from the exercise of their functions, rules on the prevention of conflicts of interest, and legal obligations relating to the declaration of assets.

2. In assessing integrity, consideration may be given to criminal convictions, disciplinary measures, established breaches of professional ethics standards, established violations of rules on conflicts of interest and asset declarations, as well as other proven conduct which, by its nature and seriousness, undermines the authority of the judicial or prosecutorial system.
3. The verification, declaration, tracing and examination of the assets of judges and prosecutors shall be carried out by the Agency for the Prevention of Corruption in accordance with the Law on Declaration, Origin and Control of Assets and Gifts. Judges and prosecutors shall undergo a full asset check every three (3) years in accordance with that Law.
4. The measures, procedures and legal consequences relating to failure to declare assets, false declarations or other violations concerning asset declarations and verification shall be determined in accordance with the relevant legislation in force.
5. The results of integrity checks shall not constitute an independent ground for the dismissal of a judge or prosecutor. Where the established facts indicate potential disciplinary or criminal liability, they shall be addressed in accordance with the relevant legislation governing disciplinary or criminal liability. Consequences affecting the status of a judge or prosecutor may arise only in accordance with the Constitution and the relevant legislation in force.