



Parliamentary Research: **Reform of the Judicial Council, the Prosecutorial Council and the Academy of Justice**



Author: Gzim Shala

Editorial team: Ehat Miftaraj and Betim Musliu

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

The content of this publication is the sole responsibility of the Kosovo Law Institute (KLI) and does not reflect the views of the National Endowment for Democracy or the Rockefeller Brothers Fund (RBF).

Implemented by:

Supported by:



About KLI:

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

KLI, Ilaz Agushi Street

Prishtina

E: info@kli-ks.org

www.kli-ks.org

October 2026

Prishtina, Republic of Kosovo

Contents

Executive Summary	7
Introduction	8
Draft Law No. 11/L-009 amending and supplementing Law No. 06/L-055 on the Kosovo Judicial Council	11
Amendments 1 and 2 – Composition of the Council's non-judge membership	11
Amendments 3, 4 and 5 – A confirmed indictment as an eligibility criterion	13
Amendment 6 – Representation of judicial instances	14
Amendment 7 – Assessment of integrity and managerial skills	16
Amendment 8 – Shortlist of candidates for the Assembly	18
Amendment 9 – Open competition for the Performance Evaluation Commission	19
Amendments 10 and 11 – Composition of and criteria for the Commission	20
Amendment 12 – Disciplinary offences of Council members.....	21
Amendments 13 and 14 – Majority required for the election and dismissal of members....	22
Amendments 15, 16 and 17 – Disciplinary proceedings against Council members	24
Amendment 18 – Terms of office of court presidents and supervising judges	27
Amendment 19 – Administration of the judicial system.....	29
Amendments 20 and 21 – Criteria for IVU officials.....	30
Draft Law No. 11/L-008 amending and supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council	33
Amendment 1 – Election of non-prosecutor members of the KPC.....	33
Amendments 2 and 3 – Open competition for the Performance Evaluation Commission .	34
Amendment 4 – Performance evaluation of chief prosecutors.....	36
Amendment 5 – Regulation of the administration of the prosecutorial system	37
Draft Law No. 11/L-011 on the Academy of Justice	40
Amendment 1 – Composition of the Academy's Governing Board	40

Executive Summary

Through this report, the Kosovo Law Institute (KLI) presents concrete proposals for amendments to three draft laws governing the functioning of the Kosovo Prosecutorial Council, the Kosovo Judicial Council and the Academy of Justice. These amendments seek to clarify the proposed provisions and strengthen safeguards for institutional independence, accountability and the consistent implementation of these laws.

The first part examines Draft Law No. 11/L-009 amending and supplementing the Law on the Kosovo Judicial Council. The amendments address the Council's composition and eligibility criteria, including the use of a court-confirmed indictment as the threshold for legal consequences. They include proposals concerning the representation of judicial instances, the assessment of integrity and managerial skills, the selection and performance evaluation of judges, and disciplinary liability and proceedings for Council members. This part also examines the terms of office of court presidents and supervising judges, the regulation of judicial administration and the criteria for officials of the Inspection and Verification Unit.

The second part examines Draft Law No. 11/L-008 amending and supplementing the Law on the Kosovo Prosecutorial Council. The proposals focus on the election of non-prosecutor members of the KPC, through a requirement for broader parliamentary support, and on an open competition for members of the Commission for the Performance Evaluation of Prosecutors. They seek to ensure that chief prosecutors' performance is evaluated by the KPC and that provisions concerning the administration of the prosecutorial system are not included in the law governing the Council.

The third part examines Draft Law No. 11/L-011 on the Academy of Justice. It proposes that the Minister of Justice should not sit on the Governing Board and that this body should consist of representatives of the Supreme Court, the State Prosecutor, the KJC and the KPC.

Overall, the proposals seek to define powers and procedures more clearly, ensure that selection and evaluation are based on defined criteria, and enable justice institutions to operate with stronger safeguards for independence and accountability.

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 pursuing justice reform as a joint institutional process. Through this Declaration, the institutions committed to cooperating on the assessment, conceptualization and drafting of legislative initiatives aimed at clarifying, supplementing and strengthening the justice system's legal framework. The reform covered essential areas such as 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 the initial reports and concepts. However, the process was marked by interinstitutional disagreements and, at certain stages, a lack of genuine coordination among the signatory institutions. A process conceived as a joint reform gradually came to be led primarily by the Ministry of Justice, undermining the Declaration's original spirit. The institutions rejoined the process at later stages, but the reform experienced considerable delays and dragged on for more than three years after the Declaration was signed.

KLI has followed this process from the outset, participating in reform discussions, submitting comments during public consultations and publishing dedicated analyses of the draft laws arising from the Joint Declaration of Commitments. These analyses have examined constitutional, legal and practical issues concerning accountability, integrity, status 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 is continuing its contribution through Parliamentary Research. For each issue identified, this research sets out the specific legislative change, the precise wording of the amendment and the corresponding reasoning, so that members of the Assembly have concrete proposals available when considering the draft laws between the two readings. The aim is to address the remaining constitutional, legal and practical problems and strengthen legal certainty, accountability and the independence of the justice system before final adoption.

This Parliamentary Research report is the second part of the examination of the legislative package arising from the reform under the Joint Declaration of Commitments. It focuses on three draft laws: the Draft Law amending and supplementing the Law on the Kosovo Judicial Council, the Draft Law amending and supplementing the Law on the Kosovo Prosecutorial Council and the Draft Law amending and supplementing the Law on the Academy of Justice.

The first part examines the other two draft laws in this reform: 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.

Through these two parliamentary research reports, KLI seeks to provide a concrete contribution to all five draft laws in the reform, moving the analysis from identifying problems to proposing specific solutions that the Assembly can address directly between the two readings.

**Draft Law No. 11/L-009
amending and supplementing
Law No. 06/L-055 on the
Kosovo Judicial Council**



Draft Law No. 11/L-009 amending and supplementing Law No. 06/L-055 on the Kosovo Judicial Council

Amendments 1 and 2 – Composition of the Council's non-judge membership

Article 2, paragraph 2, of the Draft Law, through the new paragraph 1.a of Article 8 of the Basic Law, provides that the three (3) non-judge Council members elected by the Assembly shall be elected from among users of the judicial system, such as lawyers, prosecutors, university lecturers at law faculties and representatives of civil society organizations working in the field of justice. This arrangement is further specified in Article 3 of the Draft Law, which restricts eligibility for non-judge membership to certain professional categories connected to the justice system.

This arrangement stems from the Venice Commission's recommendation that, in the absence of constitutional reform, the law should provide for at least three non-judge members from among users of the judicial system. However, in Kosovo's constitutional context, KLI considers that this is not an appropriate model and does not substantively address the problem it was intended to resolve.

First, this composition is not new to Kosovo's constitutional system. Before Constitutional Amendment 25, of the four members elected by deputies holding seats allocated through the general distribution of seats, at least two had to be judges and one had to be a member of the Kosovo Bar Association. Amendment 25 changed this structure and removed mandatory representation of the Bar Association. The Constitution was thus redesigned around a different balance, and ordinary legislation should not reintroduce, in another form, mandatory representation of specific professional categories.

Second, the Venice Commission's recommendation itself goes beyond the arrangement proposed in the Draft Law. According to the report, the Commission considered that, to provide sufficient safeguards against corporatism, all six members elected by the Assembly would need to be non-judge members. Only in the absence of constitutional amendments was it recommended, as a minimum, that the law ensure at least three non-judge members from among users of the judicial system. This is therefore a minimum recommended in the absence of constitutional reform, rather than a model that necessarily resolves the underlying problem.

Third, requiring three non-judge members does not actually resolve the problem of corporatism. Under this model, the KJC would still consist of at least ten (10) judges—seven elected by the judiciary itself and at least three elected by the Assembly—compared with three (3) non-judge members. The minimum ratio thus remains 10 to 3, preserving the clear dominance of judges within the Council. Legally requiring three non-judge members therefore creates no new structural balance, but merely gives formal effect to the minimum recommended in the absence of constitutional amendments.

Fourth, experience with the KPC's previous composition shows that this numerical ratio has not been an adequate solution to corporatism. A composition of ten prosecutors and three non-prosecutor members proved corporatist and unsustainable, and the balance changed only after the Council's entire composition was reconfigured. For the KJC, such structural change cannot be achieved without constitutional amendments.

It is therefore unreasonable for the Draft Law to predetermine that three specific positions among the members elected by the Assembly must necessarily be filled by non-judge members, and even more so to restrict these candidates to specific professional categories, such as lawyers, prosecutors, university lecturers or civil society representatives.

It is proposed that this matter remain regulated as in the Basic Law and in accordance with the Constitution, without establishing a mandatory category of three non-judge members by law or restricting in advance the professions from which members may be elected. This does not prevent the Assembly from electing non-judge members from these categories, but avoids requiring three positions to be reserved exclusively for them.

This preserves the scope already afforded by the Constitution and the law, while any genuine change in the balance between judge and non-judge members should, if pursued, be addressed through constitutional reform rather than limited legislative amendments.

Proposed Amendment 1:

In Article 2 of the Draft Law, paragraphs 2 and 4 shall be deleted.

Proposed Amendment 2:

In Article 3 of the Draft Law, which rewords Article 9 of the Basic Law, paragraphs 2.7 and 2.8 shall be deleted.

Amendments 3, 4 and 5 – A confirmed indictment as an eligibility criterion

Article 3 of the Draft Law, which rewords Article 9 of the Basic Law, provides in paragraph 1, subparagraph 1.4, that a judge seeking Council membership must “not have an indictment filed against them”. The same standard is set for non-judge candidates in paragraph 2, subparagraph 2.9. Article 13 of the Draft Law, which rewords Article 36 of the Basic Law, also provides in paragraph 6, subparagraph 6.4, that an IVU official must “not have an indictment filed against them”.

Given the importance of these positions, high integrity standards must apply to the relevant candidates and officials. Yet precisely because these positions are important, criteria that result in exclusion from candidacy or ineligibility for appointment must be sufficiently robust, precise and protected against arbitrariness.

The criterion of a “filed indictment” sets a low threshold for such a consequence. An indictment for any criminal offence, before undergoing judicial review, should not in itself exclude a candidate from the procedure or render them ineligible for the position concerned.

At this stage, a filed indictment represents only the position of the State Prosecutor. Until it has been reviewed by a court and confirmed for trial, it remains a prosecutorial document. Merely filing an indictment, without any judicial scrutiny, thus creates a real possibility of excluding a candidate on the basis of a document that has not yet been reviewed by a judicial authority.

This is particularly important for KJC members, given the Council’s role in safeguarding independence and administering the judicial system. The same reasoning applies to IVU officials, considering the sensitive nature of their inspection, verification and integrity-related support duties.

It is therefore proposed that the threshold be raised and that the wording “not have an indictment filed against them” be replaced in all three provisions with “not have a court-confirmed indictment against them”. This preserves the high integrity standard for these positions while ensuring at least some judicial scrutiny before an indictment affects a person’s eligibility or appointment.

This change makes the criterion more precise, more foreseeable and better protected against arbitrariness, without lowering the integrity standard required to perform these functions.

Proposed Amendment 3:

Article 3 – Article 9 of the Basic Law, paragraph 1, subparagraph 1.4, shall be reworded as follows:

“1.4. not have a court-confirmed indictment against them”

Proposed Amendment 4:

Article 3 – Article 9 of the Basic Law, paragraph 2, subparagraph 2.9, shall be reworded as follows:

“2.9. not have a court-confirmed indictment against them;”

Proposed Amendment 3:

Article 13 – Article 36 of the Basic Law, paragraph 6, subparagraph 6.4, shall be reworded as follows:

“6.4. not have a court-confirmed indictment against them;”

Amendment 6 – Representation of judicial instances

Article 2, paragraph 1, of the Draft Law, which rewords Article 8, paragraph 1, subparagraph 1.1, of the Basic Law, provides that seven (7) judge members of the Council shall be elected by members of the judiciary: two (2) 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.

Article 4 of the Draft Law, through the new Article 9/A of the Basic Law, provides in paragraph 4 that Council candidates may nominate themselves or be proposed by judges' associations. Paragraph 11 further provides that voting shall take place at the general conference of all judges. Under the current arrangement, both entry into the contest and the final election therefore take place without any specific role for Supreme Court and Court of Appeals judges in putting forward candidates from their respective instances.

The aim of ensuring that Council members represent the judiciary as a whole, rather than only the interests of the court instance from which they come, is legitimate. The model in which the final election is conducted by the entire judiciary should therefore be retained. The Venice Commission has also criticized the model under which each member was elected solely by judges of

their own rank and recommended that at least some members be elected by the judiciary as a whole.

However, since the Draft Law itself establishes specific quotas by court instance, those instances should also have a meaningful role in putting forward candidates. Otherwise, the quota of two Supreme Court members and two Court of Appeals members remains largely a formal eligibility category, while the actual selection of the individuals filling those positions is determined entirely by votes from judges at other instances.

This problem is particularly relevant to the Supreme Court and the Court of Appeals because their judges are vastly outnumbered by Basic Court judges. If candidates from the Supreme Court and the Court of Appeals proceed directly to a vote by the entire judiciary, without a prior process in which their peers at the same instance help put forward candidates, there is a risk that representation of these two instances will, in practice, be determined mainly by Basic Court votes. This weakens the rationale for the quotas established by the Draft Law itself.

An intermediate mechanism is therefore proposed. For candidates from the Supreme Court and the Court of Appeals, judges of the respective instance should have a role in the preliminary nomination of candidates from among their peers, while the power to make the final election should remain with the entire judiciary.

Under this arrangement, Supreme Court and Court of Appeals judges do not themselves elect the final Council member. They merely determine in advance which candidates from their instance enter the final contest. The final decision continues to be taken by a vote of all judges.

This preserves two objectives simultaneously: the elected member does not become a delegate of their own court instance, because the final election is made by the entire judiciary, while the Supreme Court and the Court of Appeals have a meaningful role in putting forward candidates for the quotas reserved for them by law.

The proposed amendments therefore do not alter the principle of a final vote by all judges. Instead, they add a preliminary nomination stage for Supreme Court and Court of Appeals candidates, balancing meaningful representation of court instances with representation of the judiciary as a whole.

Proposed amendment:

Article 4 – Article 9/A of the Basic Law, paragraph 4, shall be reworded as follows:

“4. Candidates for Council membership from the Basic Courts or the first instance of specialized courts may nominate themselves or be proposed by judges’ associations. Candidates from the Supreme Court and the Court of Appeals or the second instance of specialized courts shall first undergo a nomination process involving judges of the respective instance, in accordance with paragraph 4.a of this article.”

After paragraph 4, a new paragraph 4.a shall be added:

“4.a. For Council membership positions from the Supreme Court and the Court of Appeals or the second instance of specialized courts, preliminary nominations shall be made by a vote of judges of the respective instance. Candidates nominated under this paragraph shall be subject to a final vote by all judges, in accordance with paragraph 11 of this article. The Council shall determine, by secondary legislation, how the preliminary nomination process is to be organized.”

Amendment 7 – Assessment of integrity and managerial skills

Article 4 of the Draft Law, through the new Article 9/A of the Basic Law, provides in paragraph 8 that the ad hoc Election Commission shall assess whether candidates meet the eligibility requirements for Council membership under Article 9, paragraph 1, while expressly excluding high integrity and managerial ability from this assessment. Paragraph 10, meanwhile, requires each candidate to prepare a concept paper containing information and practical examples demonstrating their integrity, competence and managerial skills.

The Draft Law thus establishes high integrity and managerial ability as a legal requirement for judge candidates and requires candidates to submit information and examples demonstrating these qualities in a concept paper, but does not specify who assesses compliance with this requirement, at what stage, or under what methodology.

This ambiguity becomes even clearer when compared with the procedure for members elected by the Assembly. In that procedure, the Draft Law expressly provides that the Commission shall interview candidates and assess their integrity, competence and managerial skills using the relevant methodology. For

candidates elected by the Assembly, there is therefore an assessing authority and an assessment mechanism; for judge candidates elected by the judiciary, this step is missing.

As drafted, the requirement under Article 9, paragraph 1, subparagraph 1.3, risks remaining merely formal. Requiring a candidate to submit a concept paper does not itself verify high integrity and managerial ability where no authority is designated to assess it and no assessment standard is specified.

It is therefore proposed that, after the formal eligibility checks have been completed and candidates have submitted their concept papers, the ad hoc Election Commission assess whether the requirement of high integrity and managerial ability is met. The assessment must take place before voting, using a predetermined, published methodology, so that the criteria are known and apply equally to all candidates.

This clearly defines the competent authority, methodology and procedural stage for the assessment, as called for in the report. Without such a mechanism, the requirement of high integrity and managerial ability remains only on paper.

Proposed amendment:

Article 4 – In Article 9/A of the Basic Law, after paragraph 10, a new paragraph 10.a shall be added as follows:

"10.a. After submission of the concept paper under paragraph 10 of this article and before voting is organized, the ad hoc Election Commission shall interview each candidate and, using the methodology adopted by the Council, assess whether the candidate meets the requirement of high integrity and managerial ability under Article 9, paragraph 1, subparagraph 1.3, of this Law. The methodology shall specify the assessment criteria and method and shall be published on the Council's website before the assessment process begins. Only candidates found to meet this requirement shall proceed to the vote under paragraph 11 of this article. The right to appeal against the Commission's decision shall apply in accordance with paragraph 9 of this article."

Amendment 8 – Shortlist of candidates for the Assembly

Article 5 of the Draft Law rewords Article 10 of the Basic Law in its entirety, governing the election of Council members by the Assembly. Under paragraph 11, the Commission shall prepare a proposal for a plenary vote in the Assembly, containing a shortlist of candidates ranked by score. However, the following sentence provides that the shortlist must contain more candidates than the number of “non-judge members” to be elected.

This provision links the shortlist solely to the number of non-judge members, although Article 10 governs the nomination, assessment and proposal procedure for all Council members elected by the Assembly, rather than non-judge members alone.

This creates a regulatory gap concerning the other membership positions filled by the Assembly. Where the same Article 10 procedure applies to a position that, under the Constitution and the Basic Law, may be filled by a judge, the current wording does not clarify the required ratio between positions and shortlisted candidates for that position.

It is therefore proposed that the wording refer to the legally relevant category—members elected by the Assembly—rather than their status as judges or non-judges. This makes the provision equally applicable to every position filled by the Assembly and eliminates the regulatory gap identified in the report.

Proposed amendment

Article 5 – Article 10 of the Basic Law, paragraph 11, shall be reworded as follows:

“On the basis of the information submitted and the interview results, the Commission shall prepare a proposal for a plenary vote in the Assembly containing a shortlist of candidates ranked by score. The shortlist shall contain more candidates than the number of Assembly-elected members to be elected, but no more than five (5) candidates per vacant position.”

Amendment 9 – Open competition for the Performance Evaluation Commission

Article 10 of the Draft Law, through Article 27/A, paragraph 1, of the Basic Law, provides that members of the Commission for the Performance Evaluation of Judges shall be appointed “through a call for nominations by the Council”. It further provides that the President of the Supreme Court and the President of the Court of Appeals shall nominate candidates from their respective courts for appointment to the Commission.

Under the current wording, despite the reference to a call for nominations, actual entry into the procedure does not take place through an open competition in which interested judges may apply directly, but depends on nomination by the President of the Supreme Court or the President of the Court of Appeals.

This arrangement gives the two court presidents an excessively powerful role. Although Commission members are formally appointed by the Council, in substance the Council's choice is limited to candidates previously nominated by the respective presidents. The Council is thus unable to consider a judge who meets the legal requirements but has not been nominated by the President of the Supreme Court or the President of the Court of Appeals.

This restricts competition and prevents other interested, qualified judges from entering the procedure. It is therefore proposed that exclusive nomination by the President of the Supreme Court and the President of the Court of Appeals be replaced with an open competition in which judges from the relevant instances who meet the legal criteria may apply directly.

The final selection remains within the Council's powers and must respect the composition specified in Article 27. This better preserves the Council's role, opens competition to all qualified candidates and avoids unnecessary concentration of influence in the presidents of the two courts.

Proposed amendment:

Article 10 of the Draft Law – Article 27/A of the Basic Law, paragraph 1, shall be reworded as follows:

“1. The judge members of the Commission for the Performance Evaluation of Judges under Article 27, subparagraphs 3.1 and 3.2, of this Law shall be appointed through an open competition announced by the Council. Judges of the Supreme Court and the Court of Appeals or equivalent instances of specialized courts who meet the requirements under paragraph 2 of this article

shall be entitled to apply directly. The Council shall appoint Commission members from among candidates who meet the legal requirements, respecting the composition specified in Article 27 of this Law."

Amendments 10 and 11 – Composition of and criteria for the Commission

Under Article 27, paragraph 3, the Commission consists of seven (7) members appointed by the Council: four (4) Supreme Court judges, two (2) judges from the Court of Appeals or equivalent instances of specialized courts, and one (1) non-judge Council member.

However, Article 27/A has not been aligned with this change. Paragraph 2 continues to state generally that a "candidate shall be appointed as a Commission member" who, among other requirements, must have at least five (5) years' experience as a judge, face no disciplinary proceedings for a serious offence, have received no disciplinary sanction during the preceding five years and have a performance rating of at least "good".

These provisions are inconsistent. On the one hand, the Law expressly requires one of the Commission's seven members to be a non-judge Council member. On the other, the provision setting the appointment criteria for a "Commission member" requires at least five (5) years' judicial experience and a judicial performance evaluation.

By the very nature of the position, these criteria cannot apply to the Council's non-judge member. If Article 27/A is read as currently worded, the non-judge member expressly provided for in Article 27.3.3 would therefore be unable to meet the criteria for appointment to the Commission.

The problem does not concern the criteria for judges. The requirements concerning judicial experience, disciplinary history and performance evaluation are logically connected to the Commission's judge members. The problem is that the Draft Law presents them as criteria for all Commission members, although the Commission's composition now also includes a non-judge member.

Article 27/A must therefore clearly distinguish between these two categories. The criteria under paragraph 2 should apply only to the Commission's six judge members. For the non-judge member, it should be expressly stated that the Council appoints them from among its non-judge members and that criteria linked to judicial status and performance do not apply.

The same approach should be reflected in Article 27/B. Version B provides that the term of a “Commission member” also ends “upon the end of their term as a judge”, although one Commission member is not a judge. This provision must therefore distinguish between the end of a judicial term for judge members and the end of Council membership for the non-judge member.

Proposed Amendment 10:

Article 27/A – After paragraph 2, a new paragraph 3 shall be added

“3. The non-judge Commission member under Article 27, paragraph 3, subparagraph 3.3, of this Law shall be appointed by the Council from among its non-judge members and shall not be subject to the requirements under paragraph 2 of this article.”

Proposed Amendment 11:

Article 27/B, paragraph 1, subparagraph 1.3, shall be reworded as follows:

“1.3. upon the end of their term as a judge, for the Commission's judge members, or upon the end of their term as a Council member, for the Commission's non-judge member;”

Amendment 12 – Disciplinary offences of Council members

Article 8 of the Draft Law adds a new Article 13/A to the Basic Law, dividing disciplinary offences by Council members into minor and serious offences. Among the serious offences, paragraph 3 includes disclosing non-public information to unauthorized persons, abusing official position for unlawful gain and interfering with the actions of judges or other officials to influence their decisions in a manner prohibited by law. Paragraph 5 prescribes dismissal from office as the disciplinary sanction for all serious offences.

As worded, these forms of conduct overlap directly or substantially with conduct criminalized by the Criminal Code. Abuse of official position for unlawful gain is covered by the criminal provision on abuse of official position or authority. Interference in judges' activities to exert unlawful influence likewise falls within conduct relating to trading in influence under the Criminal Code. Defining these acts as disciplinary offences therefore creates unnecessary overlap between criminal and disciplinary liability.

This distinction matters because criminal and disciplinary liability are separate forms of liability with different elements and standards. The fact that they may

coexist does not mean that the list of disciplinary offences should copy or incorporate the constituent elements of criminal offences. Disciplinary proceedings should instead remain focused on breaches of the duties and standards arising from Council membership.

Furthermore, the Draft Law already regulates the consequences of criminal liability separately. Article 7 of the Draft Law, through Article 13, paragraph 1, subparagraph 1.7, of the Basic Law, provides for the termination of a Council member's term following conviction by a final judgment for specified categories of criminal offences. The link between criminal liability and the legal consequence for the member's term is thus already separately regulated.

It is therefore proposed that these provisions be deleted from the list of disciplinary offences. This draws a clearer distinction between the two forms of liability: conduct that essentially constitutes a criminal offence is addressed under criminal legislation, while the disciplinary list retains conduct involving breaches of Council members' professional and ethical obligations.

Proposed amendment:

Article 8 of the Draft Law – Article 13/A of the Basic Law, paragraph 3:

Subparagraphs 3.3, 3.5 and 3.6 shall be deleted.

Amendments 13 and 14 – Majority required for the election and dismissal of members

Article 2, paragraph 2, of the Draft Law, through the new paragraph 1.b of Article 8 of the Basic Law, provides that Council members elected by the Assembly shall be elected by secret ballot and by a majority of the votes of members present and voting. Article 5 of the Draft Law, through Article 10, paragraph 14, of the Basic Law, provides that members elected by the Assembly shall be dismissed on a proposal from the Council and by an Assembly decision, "using the same form of voting as applies to their election".

As regards election, the Draft Law continues to permit election by a majority of members present and voting, rather than requiring a majority of the votes of all members of the Assembly.

Although this arrangement is not unconstitutional, the KJC's composition directly affects judicial independence. The election of Council members by the Assembly should therefore not be treated as an ordinary parliamentary procedure, but should follow a standard ensuring broader political and

institutional support. A higher majority is not a procedural obstacle; it is an additional safeguard for the Council's integrity, inclusiveness and independence.

A higher voting threshold reduces the possibility that a member of an independent constitutional institution will be perceived as the product of only a narrow parliamentary majority. Requiring a majority of the votes of all members, by contrast, creates the conditions for broader support and legitimacy for elected candidates.

This reasoning is also supported by the Venice Commission. In its opinion on the Law on the KJC, it emphasized that international standards call for broader consensus than a simple majority and recommended that non-judge KJC members always be elected by an absolute majority in the Assembly. The Constitutional Court recalled the same reasoning in Judgment KO46/23, emphasizing that, notwithstanding Article 80 of the Constitution, the Assembly may establish higher majorities for independent institutions and that a stronger statutory safeguard serves to reinforce an institution's independence and representative character.

It is therefore proposed that the criterion of a "majority of members present and voting" be replaced with a "majority of the votes of all members of the Assembly".

As regards dismissal, however, the new majority requirement in the Draft Law lowers the standard. KLI's report on this Draft Law noted that, under the existing arrangement, although members could be elected by a lower majority, their dismissal required a majority of the votes of all members of the Assembly.

The Draft Law changes this arrangement in a way that represents regression rather than progress. Article 10, paragraph 14, now links dismissal to the "same form of voting" used for election. Since Article 8, paragraph 1.b, provides for election by a majority of members present and voting, this wording extends the same lower standard to dismissal.

This is more than a technical matter of alignment. It lowers the existing standard protecting Council members' independence. Stability of tenure and protection against dismissal by a low parliamentary majority are important elements of the independence of members of an institution constitutionally tasked with safeguarding judicial independence.

If a majority of members present and voting is sufficient for dismissal, a Council member could, in certain circumstances, be dismissed with substantially fewer

votes than a majority of the Assembly's full membership. This weakens security of tenure.

It is therefore proposed that Article 10, paragraph 14, should not link dismissal indirectly to the "same form of voting" used for election, but should expressly require a majority of the votes of all members of the Assembly.

This establishes a coherent standard for the two decisive stages of a term of office: election and dismissal both require a majority of the votes of all members, ensuring broader support for appointment and stronger protection of tenure against intervention by a low parliamentary majority.

Proposed Amendment 12:

Article 2 of the Draft Law – Article 8 of the Basic Law, new paragraph 1.b, shall be reworded as follows:

"1.b. Without prejudice to other provisions of the Law, Council members elected by the Assembly under Article 65, paragraph 10, of the Constitution shall be elected by secret ballot, by a majority of the votes of all members of the Assembly, from the shortlist of candidates for each position advertised through an open competition."

Proposed Amendment 13:

Article 5 of the Draft Law – Article 10 of the Basic Law, paragraph 14, shall be reworded as follows:

"14. Council members elected by the Assembly shall be dismissed on a proposal from the Council and by an Assembly decision, by secret ballot and by a majority of the votes of all members of the Assembly."

Amendments 15, 16 and 17 – Disciplinary proceedings against Council members

Article 9 of the Draft Law rewords Article 19, paragraph 2, of the Basic Law, providing that a Commission of three (3) members shall decide on disciplinary sanctions, including the suspension and dismissal of any Council member. A new paragraph 3.a is also added after paragraph 3, providing that the investigative procedure conducted by disciplinary panels for judges, and the rights and obligations of the person subject to disciplinary proceedings under the Law on the Disciplinary Liability of Judges and Prosecutors, shall also apply *mutatis mutandis* to Council members.

The problem is that a general reference to provisions of another law applying “mutatis mutandis” does not itself establish a disciplinary procedure for KJC members. The Law on Disciplinary Liability governs a comprehensive regime for judges and prosecutors, defining the competent authorities, initiation of proceedings, investigative stages, taking of evidence, burden of proof, position of the person subject to proceedings, suspension and appeal mechanisms. For Council members, at least the fundamental principles of these elements must be expressly set out in the Law on the KJC.

The proposed amendments therefore clearly define the initiation of proceedings, the competent authority, the main procedural stages, the status and rights of the person subject to proceedings, suspension, the right of appeal and the authority taking the final decision. The Law on Disciplinary Liability remains applicable mutatis mutandis only to technical and procedural matters not expressly regulated in the Law on the KJC. This preserves coherence with the existing system without leaving proceedings against Council members dependent solely on a general reference to another law.

In addition to the shortcomings identified in the report, the Draft Law has created a direct inconsistency between Article 19 and Article 10.

Article 19, paragraph 2, provides that the three-member Commission may also decide on the “dismissal of any Council member”. Article 10, paragraph 14, however, expressly provides that Council members elected by the Assembly shall be dismissed on a proposal from the Council and by an Assembly decision.

These two provisions cannot coexist in their current wording. For the same Assembly-elected member, one provision gives the Commission the power to decide on dismissal, while the other reserves the final decision to the Assembly.

This ambiguity is particularly problematic because the authority deciding on termination of a term of office is not a secondary procedural matter, but an essential element of a Council member’s status and independence. The law must clearly define who establishes liability, who proposes the sanction and who takes the final decision.

The amendment therefore distinguishes between two categories. For members elected by the judiciary, the procedure concludes within the Council’s system: the Commission takes the decision, subject to appeal to the Council. For members elected by the Assembly, the Commission establishes disciplinary liability and proposes a sanction, the Council decides whether to propose dismissal to the Assembly, and the Assembly retains the final decision on dismissal.

This aligns Article 19 with Article 10.14 and draws the necessary distinction.

Proposed Amendment 14:

Article 8 of the Draft Law – Article 13/A of the Basic Law, paragraph 5, shall be reworded as follows:

“5. Serious disciplinary offences shall be sanctioned by dismissal from office, in accordance with the procedure and by the competent authority specified in Article 19 of this Law, taking into account the manner in which the Council member was elected.”

Proposed Amendment 15:

Article 9 of the Draft Law – Article 19, paragraph 2, of the Basic Law shall be reworded as follows:

“2. To conduct disciplinary proceedings against Council members, the Council shall establish a Commission of three (3) members: one (1) judge member of the Council, one (1) non-judge member of the Council and one (1) member from among judges. The Commission shall conduct the disciplinary proceedings, establish disciplinary liability and decide on disciplinary sanctions in accordance with this article.”

Proposed Amendment 16:

Article 9 of the Draft Law – After Article 19, paragraph 3, of the Basic Law, subparagraph 3.a shall be replaced with subparagraphs 3.a–3.g as follows:

“3.a. Disciplinary proceedings against a Council member shall be initiated on the basis of a disciplinary complaint or information giving rise to reasonable suspicion that a disciplinary offence has been committed. The Council, without the participation of the member concerned, shall decide on the initiation of proceedings and refer the matter to the Commission under paragraph 2 of this article.

3.b. Disciplinary proceedings shall comprise an initial examination, a disciplinary investigation, the collection and taking of evidence, hearing the person subject to proceedings and reaching a decision. The member concerned shall have the right to be informed of the allegations against them, access the case file, be represented, submit evidence, be heard and receive a reasoned decision.

3.c. The person subject to disciplinary proceedings shall be the Council member against whom the proceedings are conducted. The disciplinary complainant shall be informed of how the complaint is handled. The Commission shall be

responsible for conducting the investigation and establishing the facts relevant to disciplinary liability.

3.d. During the proceedings, the Commission may order the Council member's temporary suspension by a reasoned decision. Suspension shall be an interim measure, shall not prejudge disciplinary liability and shall end upon the final decision, unless lifted earlier.

3.e. Where the Commission establishes liability for a serious disciplinary offence by a member elected by the judiciary, it shall order dismissal. An appeal against the Commission's decision may be lodged with the Council. The Council, without the participation of the member concerned, shall take the final decision in the disciplinary proceedings.

3.f. Where the Commission establishes liability for a serious disciplinary offence by a Council member elected by the Assembly, it shall propose that the Council initiate the dismissal procedure. After examining the Commission's findings and any appeal by the member, the Council shall decide whether to submit a proposal for dismissal to the Assembly. The Assembly shall take the final decision on the dismissal of an Assembly-elected member in accordance with Article 10, paragraph 14, of this Law."

"3.g. For procedural matters not expressly regulated by this Law, the provisions governing the investigative procedure, taking of evidence, rights and obligations of the person subject to proceedings and appeal procedure under the Law in force on the Disciplinary Liability of Judges and Prosecutors shall apply *mutatis mutandis*, insofar as they are compatible with the nature and status of Council membership."

Amendment 18 – Terms of office of court presidents and supervising judges

Article 11 of the Draft Law amends Article 30 of the Basic Law in three respects. First, paragraph 5 is reworded to provide that court presidents shall be appointed for a four (4) year term, renewable for one further consecutive four (4) year term. Second, a new paragraph 5.a is added, providing that the term limit applies only at the same court instance. Third, supervising judges are also assigned a four (4) year term, renewable for one further consecutive four (4) year term.

This change abandons the current model under Law No. 06/L-055, whereby court presidents are appointed for a non-renewable five (5) year term, and

essentially reintroduces the model that existed under previous legislation. As KLI's report emphasized, the return to the previous model has not been accompanied by a clear analysis explaining why the current system should change.

The issue is all the more important because the change concerns more than the length of the term. The Draft Law both reduces it from five years to four and allows re-election. This creates a different relationship between the office-holder and the body deciding on their re-election.

The Venice Commission has also addressed this issue. In its opinion on the Draft Law on the KJC, it emphasized that shortening the term from five (5) to four (4) years and allowing re-election for a second term poses a potential risk to the independence of these office-holders. At the same time, the Commission noted that its interlocutors in Prishtina supported this change 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 be supported by a clear, specific and documented analysis.

In particular, the possibility of re-election creates a situation in which a court president or supervising judge may, during their first term, have a direct interest in securing another term. A model with a single, longer term therefore provides stronger safeguards against the prospect of re-election influencing the exercise of the office.

Furthermore, the Draft Law does not regulate the situation of court presidents and supervising judges already serving non-renewable five (5) year terms. It does not specify whether the new 4+4 model would apply only to appointments made after the Law enters into force or whether current office-holders could also benefit from the new right to re-election. KLI's report identified this as a serious ambiguity that could create practical difficulties and problems of legal certainty.

If the proposed 4+4 model were retained, the Draft Law should at least contain a transitional provision clearly defining the status of current terms. However, the need for such a provision does not resolve the underlying problem: the absence of a documented analysis justifying departure from the current model and the potential risk to independence associated with re-election.

Rather than creating a transitional regime for an insufficiently justified new model, it is therefore proposed not to proceed with the amendment of Article 30 of the Basic Law. This is achieved by deleting Article 11 of the Draft Law and retaining the current model: a single, non-renewable five (5) year term.

Proposed amendment:

Article 11 of the Draft Law shall be deleted.

Amendment 19 – Administration of the judicial system

Article 14 of the Draft Law provides for Articles 36/A–36/F to be added after Article 36 of the Law on the Kosovo Judicial Council. These provisions govern the administration of the judicial system, civil servants in that administration, court administrators, legal associates, translators and interpreters, and other positions in the administration of the judicial system.

By their nature, the matters governed by these articles concern the organization, administration and functioning of courts, rather than the organization and functioning of the Council itself.

The Basic Law on the KJC states that its subject matter is the duties, responsibilities, organization and functioning of the Kosovo Judicial Council. The Law on Courts, meanwhile, governs the organization, functioning and jurisdiction of courts. This legislative distinction requires matters directly related to court administration to be placed in the law governing the courts themselves, rather than the law governing the Council.

The overlap is particularly apparent in the case of court administrators. Proposed Article 36/C regulates this matter in the Law on the KJC, although it is currently governed by Article 29 of the Law on Courts. As a consequence of this transfer, Article 17 of the Draft Law proposes repealing Article 29 of the Law on Courts.

This approach unnecessarily mixes the subject matter of the two laws and transfers matters concerning the functioning of courts into the Law on the KJC. It is therefore proposed that Article 14 of the Draft Law be deleted in its entirety, so that Articles 36/A–36/F are not incorporated into the Law on the KJC. Article 17 of the Draft Law must consequently also be deleted, so that this Draft Law does not repeal Article 29 of the Law on Courts.

This does not mean that the matters covered by Articles 36/A–36/F should not be regulated or reformed. Rather, if new regulation is needed for judicial administration, court administrators, legal associates, translators, interpreters and other administrative positions within courts, these changes should be made by amending and supplementing the Law on Courts, placing the provisions in the law whose subject matter is the organization and functioning of courts.

This preserves a clear distinction between the two laws: the Law on the KJC governs the Council, while the Law on Courts governs the organization and administration of courts.

Proposed amendment:

Articles 14 and 17 of the Draft Law shall be deleted.

Amendments 20 and 21 – Criteria for IVU officials

Article 13 of the Draft Law rewords Article 36 of the Basic Law and, in paragraph 6, sets the requirements for officials of the Inspection and Verification Unit. Under subparagraph 6.4, an official must “not have an indictment filed against them”, while subparagraph 6.5 requires that they “have no criminal conviction”.

Subparagraph 6.5 imposes an absolute bar on anyone convicted of any criminal offence, without distinguishing between intentional offences and those committed through negligence. This standard is inconsistent with the approach adopted for other categories within the same justice reform package. For those categories, a criminal conviction was treated as a bar except in the case of offences committed through negligence.

Retaining a stricter standard solely for IVU officials within the KJC has not been accompanied by any explanation of why this category should be treated differently. The fact that IVU positions require high integrity does not in itself justify eliminating the distinction between intentional and negligent offences, particularly when that distinction is recognized for other comparable categories.

It is therefore proposed that subparagraph 6.5 be aligned by adding the words “except for criminal offences committed through negligence”. This avoids unequal and unjustified treatment of IVU officials and preserves consistency in integrity standards within the legislative package.

At the same time, subparagraph 6.4 continues to require that an official “not have an indictment filed against them”. As already noted, this threshold is too low, because an indictment, before judicial scrutiny, represents only the State Prosecutor's position. Excluding a candidate or official on the basis of an indictment not yet reviewed by a court creates an unnecessary risk of arbitrariness.

The same standard proposed for Council candidates should therefore apply to IVU officials: instead of requiring that a person “not have an indictment filed against them”, the requirement should be that they “not have a court-

confirmed indictment against them". This preserves the high integrity standard while ensuring that the legal consequence is linked to an indictment that has already undergone judicial review.

These two changes make the criteria for IVU officials more consistent and proportionate: an indictment produces consequences only after court confirmation, while the disqualification based on a criminal conviction excludes offences committed through negligence.

Proposed Amendment 19:

Article 13 of the Draft Law – Article 36 of the Basic Law, paragraph 6, subparagraph 6.5, shall be reworded as follows:

"6.5. have no criminal conviction, except for criminal offences committed through negligence."

Proposed Amendment 20:

Article 13 of the Draft Law – Article 36 of the Basic Law, paragraph 6, subparagraph 6.4

Subparagraph 6.4 shall be reworded as follows:

"6.4. not have a court-confirmed indictment against them;"

Draft Law No. 11/L-008 amending and supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council



Draft Law No. 11/L-008 amending and supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council

Amendment 1 – Election of non-prosecutor members of the KPC

Article 9, paragraph 3, of the Basic Law, as amended and supplemented by Law No. 08/L-249, provides that the three (3) non-prosecutor Council members elected by the Assembly shall be elected by secret ballot, by a majority of the votes of members present and voting. The current Draft Law does not amend this provision.

This arrangement does not provide sufficient safeguards for selecting non-prosecutor members of a constitutional institution directly important to the independence and functioning of the prosecutorial system. Under the current standard, the three non-prosecutor members may be elected solely with the votes of the current parliamentary majority, without needing broader support for their candidacies in the Assembly.

The Venice Commission has also raised concerns about this issue. As noted in the report, the Commission considered that electing non-prosecutor members by a simple majority remains problematic because it allows those members to reflect only the governing majority. A more pluralistic composition would, in its view, be better guaranteed by a higher majority for their election. The Commission further emphasized that election by a qualified majority would be the most appropriate means of ensuring pluralism. In the same opinion, it added that, under the current circumstances, such an arrangement would require constitutional amendment, as the Constitution currently mandates a simple majority.

The report also takes account of the constitutional issue relating to Article 80, paragraph 1, of the Constitution, under which Assembly decisions are generally taken by a majority of the votes of members present and voting. However, constitutional practice and standards show that this rule does not necessarily exclude the possibility of ordinary legislation providing a stronger safeguard aimed at reinforcing an institution's independence and representative character.

KLI's report refers in this regard to the Venice Commission's position in the case of Bulgaria: constitutional amendment is generally required where a safeguard is lacking, rather than where ordinary legislation sets a stricter standard strengthening an institution's independence and representative character.

Along the same lines, in Judgment KO46/23, the Constitutional Court recalled that, notwithstanding Article 80 of the Constitution, the legislature has in various instances prescribed higher majorities for electing and dismissing members of independent institutions, expressly mentioning non-prosecutor KPC members and KJC members. The Court also recalled the Venice Commission's position concerning Bulgaria, whereby a higher statutory majority may serve as an additional safeguard for an institution's independence and representative character.

The KPC's composition directly affects the independence, accountability and functioning of the prosecutorial system. Non-prosecutor members should therefore not be elected solely by a majority of members present and voting. Requiring a majority of the votes of all Assembly members would ensure a higher level of parliamentary support, increase the legitimacy of elected members and serve as an additional safeguard against politicisation of the Council.

It is therefore proposed that, in Article 9, paragraph 3, of the Basic Law, the wording "by a majority of the votes of members present and voting" be replaced with "by a majority of the votes of all members of the Assembly".

Proposed amendment:

After Article 1 of the Draft Law, a new Article 2 shall be added as follows:

Article 2

Article 9, paragraph 3, of the Basic Law shall be reworded as follows:

"3. The three (3) non-prosecutor Council members elected by the Assembly under Article 65, paragraph 10, of the Constitution shall be elected by secret ballot, by a majority of the votes of all members of the Assembly, from the shortlist of candidates for each position advertised through an open competition."

Amendments 2 and 3 – Open competition for the Performance Evaluation Commission

Article 8 of the Draft Law rewords Article 27 of the Basic Law and provides that the Commission for the Performance Evaluation of Prosecutors shall consist of five (5) prosecutors appointed by the Council: one (1) prosecutor member of the Council, who chairs the Commission, two (2) prosecutors from the Office of the Chief State Prosecutor and two (2) prosecutors from the Appellate Prosecution Office.

Article 9 of the Draft Law, through Article 27/A, paragraph 1, meanwhile provides that Commission members shall be appointed through a “call for nominations” by the Council, with candidates nominated by the Chief State Prosecutor and the Chief Prosecutor of the Appellate Prosecution Office.

Although the Prosecutorial Council formally makes the appointments, in practice its choice is limited to candidates previously nominated by the two chief prosecutors. A prosecutor who meets all the legal criteria cannot enter the procedure independently without prior nomination by the Chief State Prosecutor or the Chief Prosecutor of the Appellate Prosecution Office.

This arrangement restricts competition and concentrates a significant degree of influence in two leadership positions. The Council's role remains formal, as it chooses only among candidates put forward by the respective chief prosecutors. Prosecutors who meet the criteria thus have no right to enter the contest directly, while the Council cannot choose from a broader pool of candidates.

It is therefore recommended that nomination be replaced with an open competition allowing candidates to apply directly and the Council to decide on the basis of statutory criteria. This better preserves the Council's constitutional and institutional role and avoids unnecessary concentration of influence in the Chief State Prosecutor and the Chief Prosecutor of the Appellate Prosecution Office.

Article 27, paragraph 3.1, already provides that a prosecutor member of the Council shall chair the Commission, while Article 27/A, paragraph 2, exempts that member from the criteria applicable to other candidates. However, Article 27/A, paragraph 1, continues to describe the procedure in general terms. A clear distinction between the two categories of members is therefore necessary. The Council should designate the Commission Chair from among its prosecutor members, while the other four members should be selected through an open competition from among prosecutors of the Office of the Chief State Prosecutor and the Appellate Prosecution Office.

Proposed Amendment 2:

Article 8 of the Draft Law – Article 27 of the Basic Law, paragraph 4, shall be reworded as follows:

“4. The Commission Chair shall be appointed by the Council from among its prosecutor members. The other four (4) members shall be appointed by the Council through an open competition from among prosecutors of the Office of

the Chief State Prosecutor and the Appellate Prosecution Office, in accordance with the composition specified in paragraph 3 of this article.

Proposed Amendment 3:

Article 9 of the Draft Law – Article 27/A of the Basic Law, paragraph 1, shall be reworded as follows:

“1. The four (4) Commission members under Article 27, subparagraphs 3.2 and 3.3, of this Law shall be appointed through an open competition announced by the Council. Prosecutors of the Office of the Chief State Prosecutor and the Appellate Prosecution Office who meet the criteria under paragraph 2 of this article shall be entitled to apply directly. The Council shall appoint Commission members from among candidates who meet the legal criteria, respecting the composition specified in Article 27 of this Law.”

Amendment 4 – Performance evaluation of chief prosecutors

Article 9 of the Draft Law, through the new Article 27/C of the Basic Law, provides that chief prosecutors' performance shall be evaluated by the Chief State Prosecutor. At the same time, the Draft Law provides that evaluation shall cover the organization and management of the prosecution office's work, its operational efficiency, the level of institutional transparency and the chief prosecutor's personal competencies, while the evaluation procedure and ratings shall be further specified in the relevant law on prosecutors' performance evaluation.

This arrangement is inappropriate in light of the Kosovo Prosecutorial Council's position and powers. As part of its powers, the KPC appoints chief prosecutors and plays a central role concerning their status, accountability and liability. Their performance evaluation should therefore remain with the body responsible for governing the prosecutorial system.

The problem concerns more than the formal designation of the evaluating authority. Assigning this power to the Chief State Prosecutor concentrates a significant part of oversight of the prosecutorial system's leadership performance in a single position. Chief prosecutors head their respective prosecution offices and bear important managerial and institutional

responsibilities. Their performance evaluation is therefore an important accountability mechanism within the prosecutorial system.

If this power is assigned to the Chief State Prosecutor, the KPC's role in relation to the system's leadership is weakened, while the Chief State Prosecutor's institutional influence expands beyond their role in heading the State Prosecutor.

This is particularly important because the Prosecutorial Council is the body responsible for governing the prosecutorial system. Performance evaluation of the heads of prosecution offices should not be placed outside this institutional responsibility and transferred to an individual office-holder within the system.

The amendment implements this recommendation directly by assigning the Kosovo Prosecutorial Council the power to evaluate chief prosecutors' performance. It does not change the evaluation criteria under paragraph 2 or the procedure's link to the relevant law on prosecutors' performance evaluation. It changes only the evaluating authority, placing this power where it belongs in light of the KPC's institutional role.

Proposed amendment:

In Article 9 of the Draft Law, paragraph 1 of the new Article 27/C of the Basic Law shall be reworded as follows:

"1. Chief prosecutors' performance shall be evaluated by the Kosovo Prosecutorial Council."

Amendment 5 – Regulation of the administration of the prosecutorial system

Article 14 of the Draft Law adds Articles 32/A, 32/B, 32/C, 32/D, 32/E and 32/F after Article 32 of the Basic Law, regulating the administration of the prosecutorial system, the status of its civil servants, prosecution office administrators, legal associates, translators and interpreters, and other positions in the administration of the prosecutorial system.

By their nature, these matters concern the organization and functioning of the State Prosecutor and prosecution offices, rather than the organization of the Prosecutorial Council itself. Article 1 of the Basic Law on the Prosecutorial Council defines its subject matter as the duties, responsibilities, organization and functioning of the KPC. Law No. 08/L-167 on the State Prosecutor is a separate law governing the State Prosecutor institution and its organization. The Criminal Procedure Code [Article 45] also links the definition of prosecution offices'

powers and structure to the Law on the State Prosecutor. This legislative distinction requires matters concerning the Council to remain separate from those concerning the organization of prosecution offices.

The problem therefore does not necessarily concern the need to regulate these matters. The administration of prosecution offices and the positions of administrators, legal associates, translators and other staff require more detailed regulation. The problem is the law in which these provisions are being placed.

Including them in the Law on the KPC mixes the subject matter of two different institutions: the Prosecutorial Council as the governing body of the prosecutorial system, and the State Prosecutor and prosecution offices as institutions exercising prosecutorial functions.

It is therefore proposed that Article 14 of the Draft Law be deleted in its entirety, so that Articles 32/A–32/F are not added to the Law on the Kosovo Prosecutorial Council. If these matters are to be regulated as part of the reform, they should be addressed by amending and supplementing Law No. 08/L-167 on the State Prosecutor, preserving a clear distinction between the legal framework of the Prosecutorial Council and that of the State Prosecutor.

Proposed amendment:

Article 14 of the Draft Law shall be deleted.

Draft Law No. 11/L-011 on the Academy of Justice



Draft Law No. 11/L-011 on the Academy of Justice

Amendment 1 – Composition of the Academy's Governing Board

Article 8, paragraph 1, subparagraph 1.1.1, of the Draft Law on the Academy of Justice designates the Minister of Justice as an ex officio member of the Academy's Governing Board. Including the Minister in this body perpetuates a problem previously identified by the Kosovo Law Institute (KLI) and expressly addressed by the Venice Commission. Despite changes to the Governing Board's composition, the Draft Law has not implemented the Venice Commission's recommendation to remove the Minister of Justice from this body.

In Opinion No. CDL-AD(2025)011, adopted on 14–15 March 2025, the Venice Commission specifically addressed the composition of the Academy of Justice's Governing Board. In paragraph 26, it emphasized that including the Minister of Justice as an ex officio member creates a risk of executive influence over the Academy's functioning. In paragraph 29, it explicitly recommended removing the Minister of Justice from the Governing Board. This recommendation was expressly repeated in paragraph 63, point 2, as one of the Opinion's key recommendations. The Commission's wording is clear: the Board's composition should be expanded to include more judges and prosecutors, while the Minister of Justice's participation should be removed.

The Draft Law has addressed this recommendation only partly, increasing the number of judges appointed by the KJC to match the number of prosecutors appointed by the KPC. However, the Minister of Justice remains a Governing Board member. Thus, although the part concerning representation of the judicial and prosecutorial systems has been implemented, the part expressly requiring removal of the executive representative, in this case the Minister of Justice, has not. These are not alternative requirements, but components of the same recommendation. Increasing the number of judges and prosecutors therefore cannot be considered compliance with the recommendation to remove the Minister of Justice from the Governing Board.

This legislative amendment therefore seeks to implement a very specific Venice Commission recommendation requiring the removal of the Minister of Justice from the Governing Board.

This issue is also particularly important given the Academy of Justice's legal status. Article 5 of the Draft Law defines the Academy as an independent public institution with legal personality and a budget administered independently in accordance with the law. In paragraph 62 of the above Opinion, the Venice

Commission emphasized that “The proposed amendments are based on the premise that the Academy qualifies as an independent agency under the Constitution, which implies that it must be protected from undue influence. In this respect, it is a positive development that the Academy is sufficiently distanced from other state powers, while remaining institutionally linked to the Judicial Council and the Prosecutorial Council, which have a constitutional mandate to guarantee the independence of the judiciary and the prosecutorial service”. In this context, including a government member in the Academy’s governing body creates a contradiction between the independence granted to the institution by the Draft Law and the way its governance is organized.

The Minister of Justice holds political office and is part of the executive. Their presence on the Governing Board cannot be treated in the same way as representation by judges and prosecutors, who are directly connected to the Academy’s professional function. Moreover, the Governing Board is not merely advisory. Under Article 10 of the Draft Law, it exercises significant powers in directing the Academy, including decisions on its organization, programmes and functioning. Including the Minister as a voting member allows the executive to participate directly in decisions of an institution that must be protected from political influence. Even if the Minister does not command a Board majority, this does not eliminate the risk of political influence: institutional independence is assessed not only by the number of votes controlled by the executive, but also by its ability, at least in appearance, to influence professional decision-making.

The problem is even more serious in relation to the Governing Board’s powers to assess the initial training of judges and prosecutors. Article 23, paragraph 7, of the Draft Law provides that a trainee may appeal to the Governing Board against the commission’s assessment of the theoretical component or the mentor’s assessment of the practical component, and that the Board shall take the final decision on the training assessment. Under paragraph 8 of the same article, a judge or prosecutor who fails to complete initial training successfully even after two repeat attempts shall not be proposed for permanent tenure. The Draft Law thus creates a situation in which the Minister of Justice, as an executive representative, may participate in the final decision on the professional assessment of judges and prosecutors, potentially resulting in their not being proposed for permanent tenure.

This arrangement is particularly problematic in relation to Articles 108 and 110 of the Constitution of the Republic of Kosovo, which assign the KJC and the KPC powers and responsibilities to safeguard the independence, professionalism and impartiality of the judicial and prosecutorial systems. Although the Academy

does not take the final decision on permanent appointments of judges and prosecutors, assessment of initial training is an important part of their professional development and evaluation. Including a government member in final decisions on these assessments creates the possibility of political influence, at least in appearance, in a process that must, by its nature, rely solely on objective, professional criteria. This risk does not require proof that the Minister has exerted influence in a particular case. The institutional possibility itself of executive interference in the professional evaluation of judges and prosecutors undermines structural safeguards of independence and confidence in the process's impartiality.

The Minister of Justice's inclusion in the Governing Board is not justified by the nature of the Minister's powers under Law No. 08/L-117 on the Government of the Republic of Kosovo either. Under Article 11 of that Law, ministers' powers concern executive responsibilities within their respective ministries' remit, including implementing policies and legislation, exercising ministerial responsibilities and issuing the necessary legal acts. These powers are executive in nature and do not, in themselves, establish a connection or justification for the Minister's participation in the Governing Board of the Academy of Justice.

Beyond these considerations, participation by the Minister of Justice as an office-holder adds no further contribution to the exercise of the Governing Board's powers. The professional needs of the judicial and prosecutorial systems can be represented directly by judges and prosecutors appointed by the KJC and the KPC. Cooperation with the Ministry of Justice on public policy, institutional coordination, legislation or the budget can take place through interinstitutional mechanisms without the Minister needing a vote on the Governing Board. Retaining the Minister on the Board is therefore unnecessary either for institutional cooperation or for the Academy's effective functioning. Instead, it creates an unnecessary risk of politicising the governance of an independent institution, particularly in processes involving the professional evaluation of judges and prosecutors.

In accordance with the Venice Commission's clear recommendation and the constitutional principles of separation of powers and independence of the justice system, it is proposed that the Minister of Justice be removed from the composition of the Academy of Justice's Governing Board.

Proposed amendment:

In Article 8 of the Draft Law on the Academy of Justice, paragraph 1 shall be amended as follows:

"1. The Academy's Governing Board (hereinafter: the Governing Board) shall direct the Academy and shall consist of eight (8) members as follows:

1.1. two (2) ex officio members as follows:

1.1.1. the President of the Supreme Court;

1.1.2. the Chief State Prosecutor;

1.2. three (3) members appointed by the KJC from among judges; and

1.3. three (3) members appointed by the KPC from among prosecutors."