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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**KOSOVO**

**DRAFT FOLLOW-UP OPINION**

**TO THE PREVIOUS OPINIONS CONCERNING AMENDMENTS  
TO THE LAW ON THE PROSECUTORIAL COUNCIL**

**On the basis of comments by**

**Ms Janneke GERARDS (Substitute Member, Netherlands)**  
**Mr Jørgen Steen SØRENSEN (Member, Denmark)**  
**Ms Hanna SUCHOCKA (Expert, Honorary President)**

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## Table of Contents

I.	Introduction .....	3
II.	Background .....	3
III.	Scope of the Opinion .....	4
IV.	Analysis .....	5
A.	Composition of the Kosovo Prosecutorial Council .....	6
1.	Election of lay members .....	6
2.	Election of prosecutor members .....	7
B.	The Performance Evaluation Committee (PEC) .....	8
1.	Status and composition of PEC .....	8
2.	Selection of members of PEC; term and dismissal .....	8
3.	Criteria for conducting individual performance evaluations .....	9
C.	Performance evaluation of the Chief Prosecutors .....	9
D.	Inspection and Verification Unit (IVU) .....	9
1.	Status and composition of IVU .....	10
2.	Selection of IVU members .....	10
3.	Regulations on IVU and its accountability .....	10
E.	Transitional provisions .....	11
F.	Level of regulation .....	11
G.	Dismissal and disciplinary procedures .....	12
H.	Other recommendations .....	13
V.	Conclusion .....	13

## I. Introduction

1. By letter of 3 December 2024, the Minister of Justice of Kosovo, Ms Albulena Haxhiu, requested an opinion of the Venice Commission on the draft amendments to the Law on the Kosovo Prosecutorial Council (“the Law on the KPC”). In June 2025, another set of amendments to the Law on the KPC entered into force after the Constitutional Court of Kosovo confirmed their constitutionality in May of the same year. The proposed and adopted amendments ([CDL-REF\(2025\)031](#)) are interrelated, and it was agreed with the Ministry of Justice that both sets of amendments would be assessed conjointly, in the light of previous recommendations of the Venice Commission as a follow-up Opinion.

2. Mr Sørensen, Ms Suchocka, and Ms Gerards acted as rapporteurs for this opinion.

3. Following a mission carried out on 30 and 31 January 2025, the adoption of the Opinion – initially scheduled for the March 2025 plenary session – was postponed twice. This was due to a pending decision of the Kosovo Constitutional Court concerning part of the amendments submitted to the Venice Commission. After the judgment of the Constitutional Court last May, on 25 August 2025, the rapporteurs, assisted by Mr Taras Pashuk and Mr Giacomo Palombino, held a series of further online meetings. Overall, between the in-person meetings held in January and the online meetings in August, the rapporteurs held exchanges with representatives of the Ministry of Justice and Government Officials, the Chairperson of the Kosovo Prosecutorial Council, the Acting State Prosecutor, members of the Kosovo Prosecutorial Council and the State Prosecutor’s Office, the National Assembly Committee on European Integration, the Justice Academy, the Bar Association, civil society organisations, and international partners. The Commission is grateful to the authorities of Kosovo and the staff of the Council of Europe office in Pristina for the excellent organisation of the mission and the online meetings.

4. This opinion was prepared in reliance on the English translation of the proposed and adopted amendments to the Law on the Kosovo Prosecutorial Council. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 30-31 January and 25 August 2025. *[The draft opinion was examined at the meeting of the Sub-Commission on ... on ... 2025]. Following an exchange of views with ..., it was adopted by the Venice Commission at its ... Plenary Session (Venice, ... 2025).*

## II. Background

6. The Law on the KPC has been the subject of several opinions of the Venice Commission, which were adopted in 2021,<sup>1</sup> in 2022,<sup>2</sup> and in 2023.<sup>3</sup> The background of these opinions is the reform process that the Kosovo judicial system has been undergoing in recent years. With regard to the KPC, the following reforms have generally been addressed: the composition of the KPC; the procedures for electing prosecutor members and lay members; the status of the prosecutor members and the lay members; the composition and functioning of the committees responsible for performance evaluation; integrity control.

7. After the Opinions of 2021 and 2022, the Assembly of Kosovo adopted changes in the structure of the Prosecutorial Council. In particular, a different composition of the KPC was proposed, with changes to the modalities of selection and election; measures were adopted to prevent the risks

<sup>1</sup> Venice Commission, [CDL-AD\(2021\)051](#), Kosovo, Opinion on the draft amendments to the Law on the Prosecutorial Council.

<sup>2</sup> Venice Commission, [CDL-AD\(2022\)006](#), Kosovo, Opinion on the revised draft amendments to the Law on the Kosovo Prosecutorial Council.

<sup>3</sup> Venice Commission, [CDL-AD\(2023\)043](#), Kosovo, Follow-up Opinion to the previous opinions concerning amendments to the law on the Prosecutorial Council.

of politicisation and corporatism identified in previous Opinions; and new mechanisms were introduced concerning the assessment of prosecutor members as well as verification and inspection. These developments were examined in the 2023 Opinion, as discussed in Sections III and IV.

8. A first set of amendments to the Law on the KPC was adopted and has entered into force in June 2025, after the KCC confirmed their constitutionality. A second set is still pending before the Assembly. Both sets of amendments have been submitted to the Commission for examination. As will be analysed in greater detail below, they introduce further changes to the modalities of selection and election of lay and prosecutor members; redesign the composition and functioning of the Performance Evaluation Committee and the Inspection and Verification Unit (mandate and composition); and provide for a distinct configuration of the Council during the transitional period.

### III. Scope of the Opinion

9. The present opinion aims to provide a follow-up to the previous opinions on the KPC, in particular the 2023 Opinion. The latter contains the following key recommendations in paragraph 83:

- (1) Appropriate safeguards against the risk of politicisation in the process of selection and election of the lay members of the KPC both at the pre-selection and the nomination stage should be introduced. If constitutional amendments for the election of lay members with qualified majorities are not possible in the current circumstances, the Commission recommends the adoption of a solution which provides for input from independent experts and bodies in the Assembly committee selection process. This recommendation has been made previously and remains valid.*
- (2) In line with the earlier recommendations made in the December 2021 and March 2022, the draft Law should make clear that candidates for both prosecutor and lay members of the KPC cannot be rejected on the basis of imprecise notions like “high integrity” and/or “managerial skills” linked with the added definitions in Article 2, but only on the basis of clearly defined criteria and eligibility requirements. This recommendation has been made previously and has not been fully addressed.*
- (3) If a temporary solution is maintained in the future drafts, the transitional provisions for the temporary composition of the KPC should be revised to avoid the “KPC enlargement” with members elected by the simple majority of the Assembly, a measure that would increase, even if temporarily, the risk of politicisation of the KPC and is against the integrity and stability of the mandates of constitutional bodies like the KPC. This is a new recommendation made in reference to the proposal to increase the membership of the KPC by eight lay members until 11 January 2026.*
- (4) To avoid undue blockages of the KPC's functioning, the Law should provide for more stringent and effective disciplinary measures for failure to participate effectively in the activities of the KPC without a valid justification. This recommendation has been made previously and remains valid in respect to the multiple quorums introduced by the proposed amendments.*

10. The present opinion intends to assist the authorities in identifying priorities in further improvements of the Law on the KPC and provides additional guidance and assistance on the implementation of recommendations. The Venice Commission will further examine certain new aspects emerging from the amendments under review, as well as some previous recommendations that have not been fully followed. The absence of comments on certain provisions of the proposed or adopted amendments should not be interpreted as tacit approval of those provisions.

#### IV. Analysis

11. The Venice Commission welcomes that a significant part of the key recommendations made in the 2023 Opinion has been followed.

12. With regard to **the first key recommendation** on the nomination and selection of lay members, the adopted amendments have abandoned the previous procedure whereby one of the lay members was to be nominated to the Assembly by the Ombudsperson. The Venice Commission had previously considered that such a mechanism could put at risk the independence of the member selected in this manner. In its current form, the Law on the KPC does not establish any distinction among the three lay members, who are to be selected and elected through the same procedure. Moreover, the Venice Commission welcomes that Article 10, as entered into force, no longer entrusts the pre-selection procedure of lay candidates to a committee composed primarily of members of the Assembly,<sup>4</sup> but instead provides for a special committee in which individuals who do not represent political parties also take part.

13. **The second key recommendation** concerned the need to avoid candidates – both lay members and prosecutor members – being rejected on the basis of unclear criteria such as “high integrity” and/or “managerial skills”. The Commission considers that the Law on the KPC has now been properly amended. In particular, in relation to both the procedure for the election of lay members (adopted Article 10) and to that of prosecutor members (adopted Article 10/A), provisions have been introduced to make it clear that these criteria cannot constitute grounds for rejecting a candidacy. Specifically, Article 10(5) and Article 10/A(9) state that the Special Committee (dealing with lay member candidates) and the Election Commission (dealing with prosecutor member candidates) will reject those candidates who fail to comply with the requirements set out in Article 8(1), “except for the requirement of high integrity and managerial skills”.

14. Likewise, the Commission welcomes that the authorities have amended the transitional provisions in line with **the third key recommendation**. Instead of the previous provision that the Council should operate in an enlarged composition until the implementation of the new composition of seven members, Article 37/A(2) – when entered into force – establishes a regime of *prorogatio* for the members already in office.

15. The Commission further welcomes the adopted amendments intended to bring the Law on the KPC in line with **the fourth key recommendation** made in 2023, concerning the need to avoid undue blockages of the KPC’s functioning and to provide for more stringent and effective disciplinary measures in cases of failure to participate effectively in the activities of the KPC without valid justification. A positive development can, for example, be observed in the combined effect of Articles 13(3.1) and 19(3/a). Thus, Article 13(3.1) provides that a member of the Council may cease to hold office prematurely in case of a failure, twice in a row, to attend the meetings of the KPC without valid justification, while Article 19(3/a) establishes that in the event of repeated absences by a member, in addition to disciplinary proceedings against that member, the Council may operate with a reduced quorum of four, instead of the standard quorum of five as set forth in Article 15(1).

16. In addition to the four key recommendations, the 2023 Opinion offered a cautionary remark about the composition of the Election Commission, commenting on the fact that one of its three members was *ex officio* member of the KPC Secretariat (paragraph 19). This recommendation has been followed, as the inclusion of an *ex officio* member of the KPC Secretariat has been removed. Current Article 10/A(5) provides that the Election Commission for the administration of the electoral process is composed of one prosecutor member that is a member of the

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<sup>4</sup> Venice Commission, [CDL-AD\(2023\)043](#), Kosovo, Follow-up Opinion to the previous opinions concerning amendments to the law on the Prosecutorial Council, paras. 41-51.

Prosecutorial Council – Chair, one prosecutor member from the Office of the Chief State Prosecutor, and one prosecutor member assigned by the Prosecutorial Council.

## **A. Composition of the Kosovo Prosecutorial Council**

### **1. Election of lay members**

17. The selection and election of lay members is a delicate and controversial issue in the architecture of the KPC. While representing a numerical minority within the Council, lay members constitute a balancing element in the body's composition, aimed at reducing the risks of corporatism. At the same time, given that they are elected by the Assembly of Kosovo, it is necessary to create specific safeguards in the election procedure to prevent lay members from becoming subject to political influence. The Venice Commission has provided several recommendations concerning this matter in its previous opinions.

18. Although it was observed in Sections III and IV above that significant improvements have been made to the nomination process, the Venice Commission notes that the first key recommendation of the 2023 Opinion has been followed only partially. In particular, the Venice Commission reiterates its concerns regarding the risks of political influence to which the three lay members elected by the Assembly may be exposed due to the electoral formula provided. As also emerged during the discussions with certain stakeholders, the rule allowing the Assembly to elect lay members by a simple majority remains problematic, as it means that lay members could – at least potentially – reflect solely the ruling party.

19. As noted in previous Opinions – most recently in the 2023 Opinion (paragraph 31) – the most appropriate way to ensure a pluralistic composition of the KPC would be to require a qualified majority for the election of lay members. However, the Venice Commission is aware that such a development would require a constitutional amendment, given that the Constitution of Kosovo currently mandates a simple majority.<sup>5</sup> Also in light of its discussions with the Kosovo authorities, the Venice Commission understands that, at present, given the political situation in Kosovo, implementing a constitutional revision would be difficult.

20. For these reasons, the Venice Commission stressed in the 2023 Opinion (paragraph 51) “that if constitutional amendments on the election of lay members with qualified majorities are not possible in the current circumstances, the Law should devise a solution which provides for input from independent experts and bodies to strengthen the impartiality and objectivity of the selection process in the Assembly committee”. In essence, the Venice Commission reiterates that, if alternative solutions to the simple majority formula cannot be implemented at this stage due to constitutional obstacles, it is necessary to ensure that at least the selection of candidates to be submitted for the Assembly's vote promote a pluralistic composition of the lay component of the KPC.

21. In this regard – as also mentioned above in paragraph 12 – Article 10(3) of the Law on the KPC provides for the establishment of a special committee for the administration of the selection process of the lay members of the Council. Its task is to evaluate and recommend candidates for lay members of the KPC, whereas the Assembly is competent to decide on their appointment, as laid down in Article 65(10) of the Constitution. The establishment of this special committee was reviewed by the Constitutional Court, which declared that its existence and mandate are not in conflict with the Constitution since they do not limit the power of the Assembly to elect non-prosecutor members.<sup>6</sup>

<sup>5</sup> Article 65 (10) and Article 80 (1) of the [Constitution of Kosovo](#).

<sup>6</sup> Kosovo Constitutional Court, [judgment in cases nos. KO153/24 and KO156/24](#), paras. 176-189.

22. In the Venice Commission's view, the presence of the special committee can mitigate the above risk of politicisation only if its composition is genuinely pluralistic and if the committee is structured in such a way as to ensure a certain degree of independence from the Assembly. On this matter, Article 10(3) of the Law on the KPC provides that the special committee shall be composed of the following members: the President of the Assembly of the Republic of Kosovo or a member of the Assembly as his/her delegated representative; one prosecutor assigned by the Kosovo Prosecutorial Council; one judge assigned by the Kosovo Judicial Council; the representative of the Consultative Council for Communities, and the Director of the Agency for Prevention of Corruption.

23. The question arises whether the composition of this body offers a sufficient guarantee of its independence. On this matter, several interlocutors expressed concern, pointing out that the "expert input" is in the minority: only 2 out of 5 members are judges and prosecutors appointed by the Kosovo Judicial Council and the KPC respectively. Two other members are the President of the Assembly and the Director of the Agency for Prevention of Corruption, who are selected directly with a simple majority by the Assembly. The fifth member from the Consultative Council for Communities – which also consists of representatives of the Government – would stand in a close relation to the executive.

24. In the Venice Commission's view, the composition should be revised to achieve greater pluralism and independence. This is crucial in a situation where it is difficult to change the provision of the Constitution on voting with a qualified majority. A revision of the composition could be achieved, for example, by replacing one of the non-experts by a member of the bar association, law faculties, or civil society. A recommendation to this effect has been made earlier with respect to the Assembly committee provided for in the previous version of the Law on the KPC, but it remains valid also with respect to the special committee established by the recently enacted Article 10.

25. Linked to these aspects, the Venice Commission notes that adopted Article 9 of the Law on the KPC does not provide any indication concerning the minimum requirements for applying to the special committee. In a previous version of the Law, Article 9 required that, in addition to the member appointed by the Ombudsperson, the other two members be a lawyer from the Kosovo Bar Association and a university professor of law. The Venice Commission welcomes the departure from this rigid division into three distinct backgrounds for lay members. At the same time, it considers that the Law should specify which background candidates for lay membership of the KPC are expected to possess to ensure sufficient experience and knowledge. Accordingly, as also mentioned above, the Law could provide that such candidates be selected among lawyers of the Kosovo Bar Association, university professors of law and/or representatives of civil society.

## **2. Election of prosecutor members**

26. The 2023 Opinion (paragraphs 17-18) – recalling the 2022 Opinion – recommended that the Law should describe more clearly the process of election of prosecutor members by the community of prosecutors, as provided by Article 10/A. The main concern expressed by the Venice Commission regarded the practical application of the principle "one prosecutor – one vote" in the voting process for the three prosecutor members of the KPC. In particular, it was observed that such a mechanism could facilitate the formation of blocs of prosecutors. In turn, this could lead to all three prosecutor members being expression of the same bloc – or, in any case, of those enjoying the support of a larger electorate – thereby limiting the representation of minorities.

27. The 2023 Opinion (paragraph 17) invited the authorities to consider as a possible solution the use of a proportional voting system, for instance allowing prosecutors to mark three names on the general list of the candidates (or less, if less than three vacancies were to be filled). On the basis of this recommendation, the electoral formula has been revised. Under new Article 10/A



(12), “[e]ach prosecutor shall vote two most preferred candidates for one position of the prosecutor member of the Council, or one preferred candidate in case there are only two candidates for one position of the prosecutor member”.

28. The Venice Commission welcomes this revision but invites the authorities to consider increasing the number of votes to be cast from two to three, that is, one for each available position. If fewer than three seats are vacant, the number of available votes can be lowered accordingly. By voting for three candidates, each prosecutor would be called upon to express a preference regarding the overall configuration of the seats allocated to prosecutors. By applying a proportional electoral formula, the outcome of the vote would ensure the most pluralistic configuration possible.

## **B. The Performance Evaluation Committee (PEC)**

### **1. Status and composition of PEC**

29. According to draft Article 27(1) of the Law on the KPC, the performance evaluation of prosecutors is entrusted to a specific committee – the Performance Evaluation Committee (PEC). This is the same Committee as is provided for in new Article 16(1), which refers to a “Committee on the Performance Evaluation of Prosecutors”. Therefore, in accordance with Article 16(1), the PEC must be regarded as a standing committee of the KPC. However, Article 16(1) should be read in conjunction with the provisions of draft Article 27(2) regarding the composition of the PEC, which suggests that the PEC is composed of individuals external to the KPC.

30. Moreover, pursuant to draft Article 27(2), the PEC is composed of five prosecutors appointed by the KPC, three (3) of whom are prosecutors from the Office of the Chief State Prosecutor, and two (2) are prosecutors from the Appellate Prosecution Office. Article 27 might suggest that the five prosecutor members must be appointed from amongst the members of the KPC. However, as set out in Article 9(1), there is only one member from the office of the Chief State Prosecutor (the CSP him/herself) and one member from the Appellate Prosecution Office. Consequently, draft Article 27(2) must be read as to mean that the PEC will not be formed within the KPC, but will be a new body under the law.

31. To avoid any ambiguity as to the composition of the PEC, the Venice Commission recommends further coordination between the relevant provisions and further clarification of how the PEC will be composed.

### **2. Selection of members of PEC; term and dismissal**

32. No rules have been included in the Law to govern the selection of members, the qualifications required for selection, or the grounds for dismissal. The Venice Commission therefore recommends providing the procedure and criteria for selecting the members of the PEC.

33. Paragraph 4 of Article 27 relates to the need for the PEC to reflect “ethnic and gender representation in accordance with the applicable legislation”. The Commission finds this provision imprecise. The exact legal provision that the Article is referring to should be specified and specific mechanisms should be provided to ensure the representation of ethnic minorities and the underrepresented gender. It is important to revise this provision to strengthen its safeguards, consistent with the considerations set out in paragraph 60 of this Opinion.

34. Draft Article 27(3) contains a cooling off period of one term for PEC members – who serve a five-year term – before they may stand for reappointment for a subsequent term. During the online meetings, the authorities clarified that such cooling off period aims to avoid that the assigned functions remain in the hands of the same individuals for an excessively long period of



time. To clarify this provision the Venice Commission recommends replacing the reference to “the subsequent term” with “the subsequent five years”.

35. Furthermore, the Law does not offer any provisions regarding the accountability of PEC members, including the grounds for their dismissal. The uncertainty surrounding the appointment and dismissal procedures affects the understanding of the relationship between the PEC and the KPC and, more importantly, whether the PEC is accountable or subordinate to the KPC. The Venice Commission considers it essential that more clarity be offered in this respect.

### **3. Criteria for conducting individual performance evaluations**

36. Article 27 provides that the PEC shall conduct performance evaluations and monitor the implementation of the findings from individual performance evaluations and shall report on this matter to the Council. However, the Law does not provide any modalities and criteria for assessing the performance of prosecutors. Moreover, as also mentioned above, it is not clear how the PEC and the Council interrelate.

37. The Venice Commission recommends therefore amending Article 27 in order to provide a clear basis for the procedure and criteria for the evaluation of the PEC, accountability of its members and clarifying the relationship between the PEC and the KPC.

### **C. Performance evaluation of the Chief Prosecutors**

38. Draft Article 27/A solely establishes that “the performance evaluation of the Chief Prosecutors shall be conducted by the Chief State Prosecutor in accordance with the applicable law and relevant bylaw adopted by the Council”. This provision is lacking in detail regarding the legal conditions for such evaluation. More specifically, the reference to the applicable law is too generic, as it is unclear whether it refers to an existing law, one to be enacted, or one to be identified on a case-by-case basis. The referral to bylaws does not sufficiently solve this, as regulation of such a delicate matter should be entrusted to primary, not secondary, legislation.

39. Moreover, the draft provision allocates the task of setting methods and criteria fully to the Chief State Prosecutor. This has the result of concentrating a considerable degree of power with one particular official, instead of the legislature.

40. The Commission therefore recommends reviewing the text of draft Article 27/A so as to include the most important elements of the methods and criteria of the evaluation in the law as such.

### **D. Inspection and Verification Unit (IVU)**

41. The Inspection and Verification Unit (IVU) already has been the subject of other Opinions of the Venice Commission,<sup>7</sup> including in the context of the Kosovo Judicial Council.<sup>8</sup> In its previous opinions, the Commission has expressed several concerns regarding the IVU, the regulation of which appeared incomplete and lacking in clarity. With regard to the draft Article 31/A on the IVU, the Commission notes certain critical issues concerning the legislative technique employed. The main aspects of the IVU are regulated through provisions drafted in an insufficiently detailed manner, as explained below.

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<sup>7</sup> Venice Commission, [CDL-AD\(2025\)010](#), Kosovo, 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, paras. 44-51.

<sup>8</sup> Venice Commission, [CDL-AD\(2025\)015](#), Kosovo, Opinion on the Law on the Judicial Council and the draft Law amending and supplementing it, para. 64.

## 1. Status and composition of IVU

42. Draft Article 31/A(1) provides that tasks of the IVU are to support the KPC and its relevant Commissions for court administration, recruitment, performance, and discipline of prosecutors; to propose to the KPC policies and guidelines for reforming or improving the work of the Prosecutor's Office; to support and conduct the administrative investigation procedure of integrity control, collecting, processing data, and preparing relevant reports; and to support the preparation of integrity check methodologies. It is not entirely clear if and, if so, how the IVU differs from the other committees established by the Law. Although the IVU is not among the committees that Article 16(1) defines as standing committees, its duties and responsibilities seem to overlap with those of the committees referred to in the same Article. The law should define more clearly the position of the IVU within the KPC's structure and specify how its activities are coordinated with those of the standing committees provided by Article 16(1).

## 2. Selection of IVU members

43. Likewise, a lack of clarity can be found regarding the composition of the IVU. Under draft Article 31/A(3), the IVU consists of "professional and support officials who hold the status of public officials", and therefore not of KPC members. The provision neither gives any information as to the appointment procedure of members of the IVU and the responsibility for their appointment, nor does it state how many members the IVU should have, how long their mandates will be, and how procedures for dismissal could be effectuated. The Venice Commission recommends introducing a provision that clearly sets out the procedure for selecting the members of the IVU, as well as other related aspects, such as the required qualifications. Given the tasks entrusted to the IVU, these aspects should not be delegated to secondary legislation but should be regulated within the Law on the KPC itself.

## 3. Regulations on IVU and its accountability

44. Uncertainties regarding the selection procedures for IVU members also affect the relationship between this body and the KPC. The IVU is intended to be a subordinate body to the KPC, with the latter retaining the final decision-making power in matters addressed by it, particularly when they concern the careers of prosecutors. In this respect, Article 31/A(2) states that the IVU "shall directly report to the Prosecutorial Council for the implementation of the duties and responsibilities outlined in paragraph 1". However, since it is not clear whether the members of the IVU would be appointed by the KPC itself or by an external body, it cannot be ruled out that—in the latter case—the IVU could be subject to political influence.

45. This uncertainty is underlined by the fact that Article 31/A provides no guidance on the functioning of the IVU and on its accountability.<sup>9</sup> Considering the involvement of the IVU in particularly sensitive matters, the Venice Commission finds that draft Article 31/A lacks specific mechanisms capable of ensuring that the evaluation process entrusted to the IVU is carried out transparently and independently. Given the inspection and verification functions listed in paragraph 1, it is necessary to revise the wording of Article 31/A to make it clearer and more detailed. The Venice Commission in particular recommends providing a more precise indication of the IVU's composition, its assigned functions, the procedure and criteria governing its

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<sup>9</sup> The Venice Commission in a recent Opinion already dealt with the mandate of the Inspection and Verification Unit (IVU) and the role it plays in the overall mechanism for integrity control concerning prosecutors. In [CDL-AD\(2025\)010](#), Kosovo, 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, it was mentioned that, overall, the draft law lacks clarity concerning the bodies competent for carrying out integrity controls (para. 44). In fact, it seems that asset verification is carried out every three years by the Anti-Corruption Agency under Law No. 08/L-108. This Opinion also shows that it is not clear what the function of the IVU will be and how often integrity controls will take place (para. 49). Therefore, the Venice Commission recommended clarifying the procedure for integrity controls (para. 50).

operation, and its accountability framework. Furthermore, the Commission recommends detailing these aspects not only at the level of primary legislation, but also within the same Law on the KPC.

### **E. Transitional provisions**

46. Draft Article 37/B (likely misnumbered as Article 10 in the text submitted to the Commission) concerns the selection of the members of the initial composition of the PEC. It provides that they will “be selected by lot with staggered mandates, with three members for five years, two members for four years”. While this is a possible solution, it remains unclear how the mandates will be divided over the members appointed from the Chief State Prosecutor’s Office and the members appointed from the Appellate Prosecution Office to comply with the requirements of draft Article 27(2). This differentiation between the two categories of prosecutors cannot be fully secured if the decision is made by lot. It might be preferable to determine the terms by lot within the two different categories of members.

47. In addition, it is not clear how this provision relates to draft Article 27(3), which states that there is no possibility of re-election *in the subsequent term*. It should be clarified if the members who have been appointed for four years based on the transitional provisions could be re-elected after four years or rather after five. In order to avoid unequal treatment, the Venice Commission recommends specifying that members selected by lot for four years must also wait for a five-year term before being eligible for reappointment.

### **F. Level of regulation**

48. A general concern regarding the legislative technique employed in the drafting of the Law on the KPC is that in many instances, it leaves regulation of important matters to secondary legislation or bylaws. Interlocutors have confirmed that this means that the KPC itself will be responsible for drafting most of these bylaws. This is problematic, as there is then no possibility for deliberation about important regulatory matters in the Assembly. Moreover, the procedure for amending the bylaws appears overly permissive, lacking sufficient parliamentary control. The Commission observes that this concern arises on several important aspects of the draft Law:

- a) disciplinary procedures for KPC members are regulated by rules adopted by the KPC itself, pursuant to Article 19(1), which is already in force;
- b) the performance evaluation of the Chief Prosecutors is conducted on the basis of a KPC bylaw and an undefined “relevant law”, pursuant to draft Article 27/A;
- c) employment conditions for the IVU member positions will be determined by a KPC bylaw, pursuant to draft Article 31/A(3);
- d) the General Director of the Secretariat is selected, appointed, and dismissed by the Council, in accordance with the rules of the Law on Public Officials, and specific or additional conditions are determined by a bylaw issued by the Council, pursuant to draft Article 32(1.1);
- e) during the initial composition of the PEC, verification officers shall be subject to the integrity control procedure in accordance with the bylaws of the Council, pursuant to draft Article 37/B.

49. In the Venice Commission’s view, the reference to bylaws can be considered admissible only when aimed at defining detailed rules or technical provisions. On the contrary, when the reference to the bylaws is made in order to regulate matters such as those previously identified, this may create challenges in terms of the foreseeability of the legal framework, legal stability, transparency, and potential risks of abuse. In order to avoid these risks, these matters should be regulated at the level of primary legislation. Consequently, the Venice Commission recommends amending these provisions.

## **G. Dismissal and disciplinary procedures**

50. The Venice Commission observes that paragraphs 3.2 and 3.3 of Article 13 contain overly general criteria allowing for the possibility that a member of the KPC may be dismissed before the expiry of their mandate. Paragraph 3.2 provides that the removal of a member may be approved where he/she does not perform in accordance with the Constitution and the law, while paragraph 3.3 states that a member may be removed if he/she exercises his/her functions in a manner contrary to his/her duties and responsibilities.

51. On this point, as stated by the Venice Commission in its Opinion on the KJC, “the early termination of a Council member’s mandate should always be linked to a clearly identifiable wrongdoing or a failure to fulfil their duties and should meet the proportionality requirement. To ensure proportionality and safeguard judicial independence, the Venice Commission recommends amending the Law to introduce a gradation of disciplinary offences, distinguishing between varying degrees of severity and their corresponding consequences, and that the dismissal be foreseen only for those of considerable gravity”.<sup>10</sup> The Venice Commission is of the view that it is necessary to define more detailed criteria for the termination of a member’s mandate before its expiry and to ensure that any decision based on these criteria is duly reasoned.

52. As regards the procedure for dismissal of lay members, Article 10(10) provides that “[d]ismissal of non-prosecutor members of the Council shall be done by the Assembly with the majority of votes of all members of the Assembly, upon the proposal of the respective Committee or Council”. In this way, two distinct regimes are created with regard to lay members and prosecutor members, whose dismissal procedure is provided for in Article 19. During the meetings, interlocutors confirmed that the procedure established by Article 19 applies only to prosecutor members.

53. As also observed in the 2025 Opinion on the draft Law on the KJC,<sup>11</sup> the Venice Commission notes that it is possible to subject prosecutor members and lay members to distinct regimes regarding the body responsible for deciding on their respective dismissal, insofar as the difference stems from and can be duly explained by the different nature of their respective mandates. However, the responsibility to ascertain and substantiate the existence of circumstances that may justify the loss of mandate of a member should be attributed to the KPC itself, in line with previous Opinions.<sup>12</sup> Therefore, the KPC itself should be tasked with initiating the procedure and submitting the dismissal of the lay members to a vote of the Assembly.

54. Article 10(10) does not clarify the procedure leading to a proposal for dismissal and its submission to the Assembly vote. Indeed, Article 10(10) provides that such a proposal may be initiated by the KPC – which represents the appropriate mechanism – or by the “respective Committee”. However, it is not clear which Committee should be responsible for this step. Similarly, it is not established according to which procedure and on the basis of which criteria the assessment of dismissal grounds should take place.

55. The Venice Commission therefore recommends that the procedure for the dismissal of members be expressly and precisely laid down within the same Law on the KPC. In particular, with regard to lay members, it recommends establishing that the assessment of the member’s conduct should be carried out within the KPC, which should also be responsible for submitting the dismissal proposal to the Assembly vote.

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<sup>10</sup> Venice Commission, [CDL-AD\(2025\)015](#), Kosovo, Opinion on the Law on the Judicial Council and the draft Law amending and supplementing it, para. 47.

<sup>11</sup> Venice Commission, [CDL-AD\(2025\)015](#), Kosovo, Opinion on the Law on the Judicial Council and the draft Law amending and supplementing it, paras. 46-51.

<sup>12</sup> Venice Commission, [CDL-AD\(2025\)015](#), Kosovo, Opinion on the Law on the Judicial Council and the draft Law amending and supplementing it, para. 51.

## H. Other recommendations

56. In its 2023 Opinion the Venice Commission noted (paragraph 66) that Article 8(1) and (2) of the Law on the KPC – at the time still a draft amendment – established different ineligibility criteria for lay and prosecutor members, raising concerns of a double standards. Lay candidates would be disqualified for any criminal offence, including those committed through negligence (Article 8(2)), while prosecutors would be exempt if the offence was only negligent (Article 8(2)). Additionally, the requirement of having no indictment lacks clarity as to whether it refers to pending or past indictments. The amendment entered into force in the formulation already examined, and the recommendation was not followed.

57. The 2023 Opinion further recommended (in paragraph 70) revising Article 8(2.2), where the educational qualifications for lay members – limited to law, economics, management, or public administration – may be overly restrictive, excluding qualified individuals from other relevant disciplines. The recommendation has only been partially followed in new Article 8(2.3). The current list includes a reference to criminology, but overall, it is still not as comprehensive as previously recommended by the Venice Commission.

58. The 2023 Opinion also recommended (in paragraph 71) revising Article 8(2.5) as it was found to lack sufficient clarity on the definition of “political entity” and on whether this notion includes NGOs, political foundations, think tanks, or informal party affiliates, including advisers. The amendment entered into force in the formulation already examined, which means the recommendation was not followed.

59. Another concern expressed in the 2023 Opinion related to Article 9(2), which stated that chief prosecutors of any prosecution office cannot simultaneously serve as KPC members. The Venice Commission noted that this provision could have the unintended consequence of excluding some of the most senior prosecutors from the governance of the prosecution system (paragraph 20). By contrast, the Venice Commission observed that such a mechanism had favoured the election to the KPC of prosecutors still in their probationary period and therefore lacking the necessary knowledge of the prosecution system, a situation which is not desirable. This recommendation remains valid, as Article 9(2) has not been changed.

60. The Venice Commission noted in its 2023 Opinion (paragraph 72) that Article 9(4), which refers to ethnic and gender representation, stated a mere principle without real prospects for implementation. To date, the provision – which has now entered into force – remains vague and unenforceable without concrete implementation mechanisms. In this regard, the Venice Commission recommends introducing a more detailed and concrete provision aimed at ensuring gender balance and pluralistic ethnic representation. More specifically, concerning gender representation, the Venice Commission recommends that the regulatory provisions aimed at guaranteeing a gender-balanced composition of the KPC be incorporated into the Law itself. With regard to ethnic representation, the Venice Commission has previously considered it “sufficient that ethnic criteria, alongside linguistic, religious or other criteria, are part of the general considerations of each electing body with a view to achieving a pluralistic and balanced composition” of the KPC, “without imposing further obligations on the appointment bodies”. In other words – as affirmed with respect to the KJC – there should be no “ethnic quotas” on the KPC.<sup>13</sup>

## V. Conclusion

61. At the request of the Minister of Justice of Kosovo, the Venice Commission has examined the amendments to the Law on the Kosovo Prosecutorial Council adopted in June 2025, as well

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<sup>13</sup> Venice Commission, [CDL-AD\(2025\)015](#), Kosovo, Opinion on the Law on the Judicial Council and the draft Law amending and supplementing it, paras. 32-33.

as the draft amendments to the same Law. It welcomes the significant changes made to the Law on the KPC in response to previously made recommendations.

62. In particular, the authorities have ensured greater independence with regard to the members elected by the Assembly by excluding the involvement of the Ombudsperson in the selection of one of the three lay members. In addition, they have strengthened the objectivity of the candidate selection process – both for prosecutor and lay members – by ensuring that the criteria of “high integrity” and “managerial skills” no longer play a decisive role (Articles 10.5 and 10/A.9).

63. The Venice Commission furthermore commends the authorities for fully adhering to its recommendations concerning the transitional composition of the KPC by providing that current members remain in office until the new Council is formally constituted (Article 37/A).

64. At the same time, the Venice Commission observes that several recommendations have not, or only partially, been addressed. The process for selecting lay members to be submitted to the Assembly needs further improvement as regards involvement of independent experts in the selection committee (Article 10). Moreover, both the Performance Evaluation Committee (PEC) (Article 27) and the Inspection Verification Unit (IVU) (Article 31/A) should be regulated in greater detail within the Law on the KPC itself, particularly with respect to the status, composition, functioning, and accountability of these bodies.

65. The Venice Commission further highlights a broader concern regarding the legislative technique adopted in the amendments. The frequent reliance on secondary legislation or bylaws should be avoided as it creates challenges in terms of the foreseeability of the legal framework, legal stability, transparency, and potential risks of abuse.

66. The Venice Commission, therefore, makes the following key recommendations:

1. Additional safeguards should be introduced to prevent the risk of politicisation in the selection and election of lay members of the KPC. In view of the fact that constitutional amendments to require qualified majorities for their election appear to be currently unfeasible, the authorities should ensure greater involvement of independent experts and bodies in the Assembly Committee's selection process.
2. More detailed regulation should be provided with regard to the PEC. In particular, the Law on the KPC should set out the modalities for the appointment of its members, as well as the procedures for carrying out the evaluations, the criteria on which they are based, and the accountability of the PEC itself and its members.
3. Similarly, with regard to the IVU, the Law on the KPC should set out the modalities for the appointment of its members, as well as the procedures for carrying out the evaluations, the criteria on which they are based, and the accountability of the IVU itself and of its members.
4. The allowance in the Law on the KPC for regulation by secondary legislation and bylaws should be limited. Such matters as the rules and disciplinary procedures applicable to KPC members, the procedures for the performance evaluation of the Chief Prosecutors, the main employment conditions for the IVU member positions, and the control procedure of the first Performance Evaluation Committee, should be provided for at the level of primary legislation, and preferably within the Law on the KPC itself.

67. The Venice Commission remains at the disposal of the authorities of Kosovo for further assistance in this matter.