



Strasbourg, 18 March 2025

CDL-AD(2025)010

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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**

**Adopted by the Venice Commission
at its 142nd Plenary Session
(Venice, 14-15 March 2025)**

on the basis of comments by

**Mr Richard BARRETT (Member, Ireland)
Mr Tomáš LANGÁŠEK (Substitute Member, Czechia)
Mr Cesare PINELLI (Substitute Member, Italy)**

Opinion co-funded
by the European Union



Table of Contents

I.	Introduction	3
II.	Background and scope of the Opinion.....	3
III.	Constitutional background and proposed amendments	4
IV.	Analysis.....	6
A.	Legislative process and public consultation of the draft laws	6
B.	Draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors.....	7
C.	Draft law amending the Law on disciplinary liability of judges and prosecutors.....	22
V.	Conclusion.....	24

I. Introduction

1. By letter of 3 December 2024, the Minister of Justice of Kosovo, Ms Albulena Haxhiu, requested, among others, an Opinion of the Venice Commission on the legislative package related to the justice reform in Kosovo, including the draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors ([CDL-REF\(2025\)006](#)), the first draft law) and the draft law amending the Law on the disciplinary liability of judges and prosecutors ([CDL-REF\(2025\)007](#)), consolidated version, the second draft law), which are the subject of the present Opinion. The opinion request on the legislative package also includes the draft law on amending and supplementing the Law on Kosovo Judicial Council ([CDL-REF\(2024\)048](#)), which is the subject of Opinion ([CDL-AD\(2025\)015](#)).

2. Mr Barrett, Mr Langášek and Mr Pinelli acted as rapporteurs for this Opinion.

3. On 28 and 29 January 2025, a delegation of the Commission composed of Mr Langášek and Mr Pinelli, accompanied by Mr Nikolaos Sitaropoulos from the Secretariat, travelled to Kosovo and held meetings in Pristina with the Deputy Minister of Justice, Mr Vigan Qorrolli, and other representatives of the Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the National Assembly of Court Presidents and Supervising Judges, the Association of Prosecutors, as well as representatives of international organisations and civil society organisations. The Commission is grateful to the Ministry of Justice of Kosovo, which facilitated the excellent organisation of this visit by the Council of Europe Office in Pristina.

4. This Opinion was prepared in reliance on the English translation of the above draft laws. 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 in Pristina on 28-29 January 2025. Following an exchange of views with Mr Vigan Qorrolli, Deputy Minister of Justice of Kosovo, it was adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14-15 March 2025).

II. Background and scope of the Opinion

6. In the aforementioned letter, the Minister of Justice of Kosovo noted that the draft laws under examination are the outcome of the Joint Commitment Statement on the Justice Reform in Kosovo¹ which was signed on 14 March 2023 by the Ministry of Justice, the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC), the Supreme Court and the State Prosecutor, and the preparatory work carried out by working groups established after the signature of the Joint Statement.

7. The Venice Commission welcomes the determination and ongoing efforts of the Kosovo authorities to enhance the quality and efficiency of the justice system, whose necessity was underlined by all the interlocutors that the Venice Commission delegation met in Pristina. It is recalled that serious shortcomings were identified by the Commission in its 2022 Opinion on the Concept Paper on the vetting of judges and prosecutors and draft amendments to the Constitution,² consisting notably of massive backlog of cases and delays in judicial proceedings, weak and inefficient management of the judiciary and an ineffective judicial and prosecutorial evaluation system. Consequently, the Commission considered that a reform of the judiciary was necessary. Key recommendations included the introduction of legislative changes that would improve the system of judicial discipline, as well as strengthening the system of asset declarations and the vetting units of the KJC and the KPC. As regards a possible system of

¹ [Press release](#) of Ministry of Justice, 15/03/2023; [link](#) to the Joint Commitment Statement.

² Venice Commission, [CDL-AD\(2022\)011](#), Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution.

integrity checks, the Commission recommended that these be limited to the judicial and prosecutorial councils, court presidents and chief prosecutors. During the mission to Pristina, the persistence of the aforementioned serious shortcomings in the justice system was underlined by the Deputy Minister of Justice, Mr Qorrolli, who also stressed that the draft laws under scrutiny were considered essential for improving the quality of justice and welcomed the advice that the Venice Commission may provide to the authorities.

8. In a similar vein, in October 2024 the European Commission, in its Report on Kosovo related to the EU enlargement policy,³ underlined a number of shortcomings in the justice system concerning notably the independence and impartiality of the judiciary and the prosecution service which are guaranteed by the Constitution and the law but whose implementation requires improvement. The European Commission also underlined the need for improving the efficiency of the systems of disciplinary proceedings of the KJC and KPC and their alignment with European standards.

9. In her letter addressed to the Venice Commission, the Minister of Justice noted that the authorities “prefer that the assessment of the Commission is especially focused on specific matters such as performance evaluations of judges and prosecutors, asset declaration and integrity check system, retirement of judges and prosecutors, and authorities to be involved and with decision making powers in disciplinary procedures, as those were the most discussed matters during the development of [the] draft laws”. Thus, the present Opinion examines these as well as certain other specific issues that the Commission considered necessary to be scrutinised. If this Opinion remains silent on other elements of the draft laws, this is not to say that the Venice Commission agrees with them or that it may not raise them at a later stage.

III. Constitutional background and proposed amendments

10. The Constitution of Kosovo⁴ provides for the general principles of the justice system in Kosovo and sets out the fundamental provisions for its judges and prosecutors. The main provisions read as follows:

Article 102 [General Principles of the Judicial System]

1. Judicial power in the Republic of Kosovo is exercised by the courts.
 2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.
 3. Courts shall adjudicate based on the Constitution and the law.
 4. Judges shall be independent and impartial in exercising their functions.
 5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law.
- The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.

Article 103 [Organisation and Jurisdiction of Courts]

1. Organisation, functioning and jurisdiction of the Supreme Court and other courts shall be regulated by law.
2. The Supreme Court of Kosovo is the highest judicial authority.
3. At least fifteen percent (15%) of the judges of the Supreme Court, but not fewer than three (3) judges, shall be from Communities that are not in the majority in Kosovo.
4. The President of the Supreme Court of Kosovo shall be appointed and dismissed by the President of the Republic of Kosovo from among the judges of the Supreme Court for a non-renewable term of seven (7) years upon proposal by the Kosovo Judicial Council for the appointment or dismissal.

³ EC [Kosovo 2024 Report](#), 30 October 2024 p. 27. See also Group for Legal and Political Studies (GLPS), [Rule of Law Performance Index](#), 2023, GLPS, [Tracking Kosovo's Commitment](#): Monitoring Adherence to the Venice Commission Rule of Law Checklist in 2023, 2024; Kosovo Law Institute et al., [Civil Society Report](#) – UN Convention against Corruption, 2024, p. 58 ff.

⁴ Available at: [CODICES](#).

5. Presidents of all other courts shall be appointed in the manner provided by law.
6. At least fifteen percent (15%) of the judges from any other court established with appeal jurisdiction, but not fewer than two (2) judges, shall be from Communities that are not in the majority in Kosovo.
7. Specialised courts may be established by law when necessary, but no extraordinary court may ever be created.

Article 104 [Appointment and Removal of Judges]

1. The President of the Republic of Kosovo shall appoint, reappoint and dismiss judges upon the proposal of the Kosovo Judicial Council.
2. The composition of the judiciary shall reflect the ethnic diversity of Kosovo and internationally recognised principles of gender equality.
3. The composition of the courts shall reflect the ethnic composition of the territorial jurisdiction of the respective court. Before making a proposal for appointment or reappointment, the Kosovo Judicial Council consults with the respective court.
4. Judges may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties.
5. A judge has the right to directly appeal a decision of dismissal to the Kosovo Supreme Court.
6. Judges may not be transferred against their will unless otherwise provided by law for the efficient operation of the judiciary or disciplinary measures.

Article 105 [Mandate and Reappointment]

1. The initial mandate for judges shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.
2. The criteria and procedures to reappoint a judge shall be determined by the Kosovo Judicial Council and they may be different in degree from the criteria used for the removal of judges.

Article 106 [Incompatibility]

1. A judge may not perform any function in any state institution outside of the judiciary, become involved in any political activity, or be involved in any other activity prohibited by law.
2. Judges are not permitted to assume any responsibilities or take on any functions that would in any way be inconsistent with the principles of independence and impartiality of the role of a judge.

Article 108 [Kosovo Judicial Council]

1. The Kosovo Judicial Council shall ensure the independence and impartiality of the judicial system.
2. The Kosovo Judicial Council is a fully independent institution in the performance of its functions. The Kosovo Judicial Council shall ensure that the Kosovo courts are independent, professional and impartial and fully reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality. The Kosovo Judicial Council shall give preference in the appointment of judges to members of Communities that are underrepresented in the judiciary as provided by law.
3. The Kosovo Judicial Council is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office. The Kosovo Judicial Council is also responsible for transfer and disciplinary proceedings of judges.
4. Proposals for appointments of judges must be made on the basis of an open appointment process, on the basis of the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the territorial jurisdiction of the respective court. All candidates must fulfil the selection criteria provided by law [...].

Article 109 [State Prosecutor]

1. The State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law.
2. The State Prosecutor is an impartial institution and acts in accordance with the Constitution and the law.
3. The organisation, competencies and duties of the State Prosecutor shall be defined by law.
4. The State Prosecutor shall reflect the multiethnic composition of the Republic of Kosovo and shall respect the principles of gender equality.
5. The mandate for prosecutors shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.
6. Prosecutors may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties [...].

Article 110 [Kosovo Prosecutorial Council]

1. The Kosovo Prosecutorial Council is a fully independent institution in the performance of its functions in accordance with law. The Kosovo Prosecutorial Council shall ensure that all persons have equal access to justice. The Kosovo Prosecutorial Council shall ensure that the State Prosecutor is independent, professional and impartial and reflects the multiethnic nature of Kosovo and the principles of gender equality.
2. The Kosovo Prosecutorial Council shall recruit, propose, promote, transfer, reappoint and discipline prosecutors in a manner provided by law. The Council shall give preference for appointment as prosecutors to members of underrepresented Communities as provided by law. All candidates shall fulfil the selection criteria as provided by law.
3. Proposals for appointments of prosecutors must be made on the basis of an open appointment process, on the basis of the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the relevant territorial jurisdiction [...].

11. In 2022 the government of Kosovo proposed constitutional amendments, *inter alia*, to Articles 104 and 109 of the Constitution (on these provisions see below sections on performance evaluations and termination of office), concerning the integrity of judges and prosecutors and the possible expansion of the conditions for their dismissal. Following a referral by the President of the Assembly of Kosovo to the Constitutional Court in 2023, the latter issued a judgment⁵ on 25 January 2024. The Court found constitutional the proposed constitutional amendment under which the ground for dismissal of judges or prosecutors due to “serious neglect of duties”, which is now provided for by the Constitution, may consist of the following elements: judges or prosecutors’ “continuous insufficient performance”, or committal of “serious disciplinary violations” or acquisition of unjustifiable assets established by a final judicial decision. As of end January 2025 these constitutional amendments had not been adopted by the Assembly of Kosovo, while on 9 February 2025 parliamentary elections took place in Kosovo, and it is not as yet known whether the procedure concerning these proposed constitutional amendments will proceed.

IV. Analysis**A. Legislative process and public consultation of the draft laws**

12. The Venice Commission recalls that under its Rule of law Checklist,⁶ the public should have access to draft legislation, at least when it is submitted to Parliament, and a meaningful opportunity to provide input. It has further underlined that complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on

⁵ [KO55/23](#), judgment of 22 December 2023, published on 25 January 2024.

⁶ [CDL-AD\(2016\)007](#), Chapter II A 5.

which some kind of public consultation takes place. The process of public consultations should be accompanied by an (informal) public discussion in the media and in the civil society, facilitated by a pluralist media coverage and respecting political freedoms (such as the freedom of speech, freedom of assembly etc.).⁷

13. In the aforementioned 2022 Opinion, the Venice Commission recommended that legislative changes should be prepared on the basis of a sincere dialogue and in close cooperation with all stakeholders, the Ministry, KJC, KPC but also civil society and interested academics. During the mission to Pristina the Venice Commission delegation was informed by its interlocutors that expert civil society organisations and international organisations had been invited by the authorities and had provided input on the draft texts produced by working groups established on the basis of the above-mentioned Joint Statement of Commitment between the Minister of Justice, KJC, KPC, the Supreme Court and the State Prosecutor whose representatives have participated in the elaboration of the draft laws under scrutiny. In their written comments, the Ministry of Justice emphasised that they ensured a transparent and inclusive drafting process, with several rounds of consultations: on 1 May the 2024 the draft laws were sent for comments to the relevant stakeholders, including civil society organisations; between 15 May and 5 June 2024, preliminary consultations were conducted; and between 10 June and 2 July 2024, the draft law was published on the official portal for public consultation. The transparency and inclusiveness shown by the authorities are welcome. A number of non-state interlocutors met in Pristina expressed nonetheless their regret that, further to their input provided to the working groups, they were not systematically informed about the progress of the legislative work, including the latest versions of the draft laws, which underwent further revisions after the consultations were completed in July 2024. The Commission acknowledges the efforts of the Ministry of Justice to ensure transparency and inclusiveness and invites the authorities to continue and increase their efforts to ensure the effective participation and systematic provision of information to all major stakeholders, including expert civil society organisations and academic experts, at the subsequent stages of the legislative process.

B. Draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors

Chapter I – General provisions

14. The Commission recalls that judicial and prosecutorial independence is a fundamental principle, an essential element of any democratic state, a pre-condition of the rule of law.⁸ As stressed notably by the Venice Commission Rule of Law Checklist, only an independent judiciary and prosecutorial service is able to render justice impartially on the basis of the law and prevent the abuse of power. It is indeed of vital importance for the rule of law that there is public trust in the proficiency of the judiciary and of prosecutors to operate in an independent and impartial manner.⁹ Thus the Commission stresses that the authority of the judiciary and the prosecutorial service can only be maintained if the legal system puts in place adequate mechanisms to ensure that candidates for these positions are not appointed as a judge or prosecutor if they do not have the required competences or do not meet the highest standards

⁷ [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, §§ 74-79. See also [CDL-D\(2024\)021](#), Georgia - Opinion on the draft constitutional law on Protecting Family Values and Minors, § 22.

⁸ [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges; [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service.

⁹ Rule of Law Checklist, [CDL-AD\(2016\)007](#), II.E; See also [CDL-AD\(2017\)002](#), Amicus Curiae Brief for the Constitutional Court of Moldova on the Criminal liability of judges, § 16. [CDL-AD\(2018\)028](#), Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, § 27, [CDL-AD\(2024\)012](#), Montenegro – Urgent Follow-up Opinion on the revised draft amendments to the Law on the Judicial Council and Judges, §§ 15-16. See also Recommendation CM/Rec(2010)12 of the Committee of Ministers on Judges: independence, efficiency and responsibilities, CCPE, Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors.

of integrity. This is essential in view of the role a judiciary and a prosecutorial service play in a state governed by the rule of law.¹⁰

15. In this context, the Commission notes that draft Article 4 § 3 (and, similarly, draft Article 13 § 1¹¹) provides that judges and prosecutors “shall exercise their functions” based, *inter alia*, on the principles of independence and impartiality, thus enshrining the principle of functional independence of judges and prosecutors. It thus fails to mention the importance of institutional independence,¹² which is a much more fundamental element of the rule of law than the concept of functional independence of judges and prosecutors as public officials, as suggested by the first draft law. The Commission underlines that Article 102 of the Constitution enshrines the institutional independence of the “judicial power”, while Article 109 of the Constitution provides for the institutional independence of the State Prosecutor. In view of the above, the Commission recommends that the principle of institutional, and not solely functional, independence of judges and prosecutors be expressly incorporated in the draft law, in line with European standards and the Constitution of Kosovo.

Chapter II – Recruitment, appointment and reappointment of judges and prosecutors

Appointment and recruitment of judges and prosecutors

16. Draft Article 5 of the first draft law (concerning the conditions for appointments) provides that the KJC and the KPC, through public announcement, shall invite “all qualified legal professionals to apply for recruitment as judges or prosecutors”, whilst having regard to the principles of meritocracy, integrity and transparency. Draft Article 5 § 4 allows the respective councils to establish specialised committees to administer the recruitment process. Draft Article 5 § 1 also lists the general conditions for the appointment of a candidate to the position of judge or prosecutor which are the following:

- be a citizen of the Republic of Kosovo;
- have a valid degree from the Faculty of Law in the Republic of Kosovo;
- have passed the Bar Examination, valid in the Republic of Kosovo;
- have integrity;
- have no indictment filed against him/her or have not been convicted of a criminal offence, except for offences committed through negligence;
- have at least three (3) years of professional work experience in the legal area, and
- have passed the judge exam for the position of the judge, and the prosecutor have passed the exam for the position of the prosecutor”.

17. Draft Article 6 § 2 (concerning recruitment) repeats that the KJC and KPC shall invite “all qualified legal professionals to apply for recruitment as judges or prosecutors, respectively”. Draft Article 6 § 5 cites as recruitment criteria the following:

- professional knowledge, work experience and performance, including the understanding and respect for human rights;
- capacity for legal reasoning demonstrated through professional activities;
- professional ability based on past career results, including participation in organised forms of training where performance has been evaluated;
- ability and capacity to analyse legal issues;
- ability to perform duties impartially, honestly, carefully and responsibly, and communication skills”.

¹⁰ See also [CDL-AD\(2022\)005](#), Croatia - Opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act, § 14; CCPE Opinion No. 19 (2024) on managing prosecution services to ensure their independence and impartiality.

¹¹ Under draft Article 13 § 1 judges and prosecutors “shall act” independently, impartially and objectively.

¹² See Recommendation CM/Rec(2010)12 of the Committee of Ministers on Judges: independence, efficiency and responsibilities; CCPE Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors.

The Commission observes that these criteria of recruitment differ from the above-mentioned ones contained in draft Article 5 § 1 concerning appointment, for example no law degree or legal professional experience is mentioned in draft Article 6, unlike draft Article 5. In order to ensure that the judges and prosecutors' recruitment criteria are consistent with appointment criteria, it is recommended that the draft law clarify that applicants for recruitment should be qualified in accordance with the appointment criteria in order to apply for a position as judge or prosecutor, excluding the relevant examination, which may be part of the recruitment process rather than a condition of being recruited. Elaboration on the role of the judges and prosecutors' examinations should also be included in these draft provisions.

Effective remedies concerning appointment and recruitment of judges and prosecutors

18. The European Court of Human Rights and the Venice Commission have stressed the importance of judicial review (judicial remedy) of judicial (applicable *mutatis mutandis* to prosecutorial) appointment/recruitment decisions, which would safeguard procedural fairness of these decisions and remedy any procedural irregularities. The Commission has also recommended that in exercising its appellate review, the court should act with deference to the appointment body (such as a judicial or prosecutorial council) and primarily check whether the appointment procedure has been followed and formal eligibility criteria have been respected.¹³

19. While under draft Article 6 § 6 during the recruitment process, the right to appeal to the relevant council against decisions of the recruitment committee shall be guaranteed, no possibility of an appeal is provided against decisions of the respective councils before they are sent to the President by the relevant councils (draft Article 8 § 1). While draft Article 12 allows the relevant councils to adopt "special regulations" on these processes without expressly providing for a judicial review (remedy), the Commission recommends that the authorities consider introducing in the draft law the right to an effective judicial remedy against council decisions of recruitment and appointment.

Initial training following appointment for the initial three-year term

20. The Commission notes that draft Article 8 provides for the appointment of judges and prosecutors by the President of Kosovo following the recruitment process and the proposal by the respective councils.¹⁴ The initial term following appointment shall last three years, during which initially appointed judges and prosecutors shall undergo training administered by the Academy of Justice, as set out in draft Article 9. While the provisions requiring training within the first three-year term are welcome, it is recommended that more detailed provisions relating to the nature of the training (set out in draft Articles 9 and 15) should be set out instead in the (draft) Laws governing training and the Academy of Justice. The Commission recalls that "placing initial training before appointment ensures that candidates are adequately prepared, enabling a genuine merit-based evaluation of their qualifications later at the selection process. If professional training occurs after the appointment decision, the sequence becomes inconsistent, as it may weaken the merit-based nature of the appointment process".¹⁵

¹³ ECtHR (GC) *Denisov v. Ukraine*, judgment of 25/09/2018, ECtHR, *Dolińska-Ficek and Ozimek v. Poland*, judgment of 08/11/2021, ECtHR (GC), *Grzęda v. Poland*, judgment of 15/03/2022, ECtHR, *Oktay Alkan v. Türkiye*, judgment of 20/06/2023; [CDL-AD\(2014\)031](#), Joint Opinion on the draft Law on Amendments to the Organic Law on General Courts of Georgia, § 60; [CDL-AD\(2017\)019](#), Opinion on the Draft Judicial Code of Armenia, §§ 150-151; [CDL-AD\(2012\)001](#), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, §§ 57-58. [CDL-AD\(2020\)021](#), Georgia - Opinion on the draft Organic Law amending the Organic Law on Common Courts, § 24; [CDL-AD\(2022\)030](#), Serbia - Opinion on three draft laws implementing the constitutional amendments on Judiciary, § 40.

¹⁴ Under Article 8 of the draft law "4. Within sixty (60) days after receiving the proposal, the President shall issue a decree on the appointment to the position of judge, respectively prosecutor, of the candidate proposed by the respective Council. 5. If, within the period specified in paragraph 4, the President does not appoint the judge or prosecutor, the respective Council may present the proposed candidate once again along with additional written justification. The President shall thereafter appoint the judge or prosecutor according to the proposal of the Council".

¹⁵ Venice Commission, [CDL-AD\(2025\)011](#), Kosovo – draft Opinion on the draft amendments to the Law on the Academy of Justice, § 47.

21. The Venice Commission wishes to recall that it has dealt extensively with the question of appointing ordinary judges for probationary periods. In its previous work, the Commission noted that “in countries with relatively new judicial systems there might be a practical need to first ascertain whether a judge is really able to carry out his or her functions effectively before permanent appointment”.¹⁶ At the same time, the Commission underscored that “abolishing probationary periods for judges is a guarantee against attempts to influence their behaviour and is a definite improvement in terms of the judicial independence”.¹⁷ Therefore, the Commission strongly recommended “that ordinary judges be appointed permanently until retirement”.¹⁸ The Commission notes that the initial appointment of the judges for three-year mandate has been provided for in Article 105 § 1 of the Kosovo Constitution (see para. 10 above), it follows that as a sustainable solution recommended by the Venice Commission in its previous opinions, a constitutional amendment would be necessary to abolish the probationary period. Pending constitutional reform, the three years should strictly be training and not probation. That being said, the Venice Commission notes that the present opinion focuses on the draft statutory law, not an amendment to the Constitution or the Constitution itself.

Reappointment of judges and prosecutors

22. Draft Article 11 governs the reappointment of judges and prosecutors after their initial three-year term. A judge or prosecutor who receives a “positive performance evaluation” in their initial term shall be proposed for appointment with a permanent term by the relevant council, and the President shall make the appointment accordingly. However, this provision lacks clarity and foreseeability since it does not make clear which performance evaluation rating levels are considered to be “positive”. Similarly, draft Article 32 uses the phrase ‘positive performance evaluation’ in relation to promotion. Under draft Article 24, rating levels are the following: poor; sufficient; good; and very good. It is recommended that the above draft provisions be reviewed in order to be harmonised and clarify whether “positive performance evaluation” means all evaluations other than the lowest one (‘poor’).

Chapter III – Exercise of the function of the judge and prosecutor

23. Draft Article 14 (“Standards of ethics and rules of conduct”) sets out certain “measures” that judges and prosecutors should adopt and abide by, including measures to protect the dignity of their function, the reputation of the judicial authorities, and public trust in the judicial and prosecutorial system.

24. While draft Article 14 § 3 directs the councils to adopt their relevant Codes of Professional Ethics for judges and prosecutors, it is unclear what relationship arises between the provisions in the draft law and the Codes of Ethics. The Venice Commission recalls that in many European countries, codes of ethics are self-regulatory instruments and distinct from the disciplinary framework. This practice corresponds to the approach that has been maintained by the Council of Europe bodies, including the Venice Commission. In view of their aspirational purpose, setting out general principles of conduct, such codes often include provisions drafted in broad and vague terms which make them unfit for direct application in disciplinary proceedings.¹⁹ Thus, in order to enhance legislative clarity and effective application of the above-mentioned principles, it is recommended that the draft law specify whether the duties (“measures”) listed in the draft law are to be expanded on or added to the Codes of Professional Ethics.

¹⁶ Venice Commission, CDL-AD(2007)028, Report on Judicial Appointments, § 41.

¹⁷ Venice Commission, CDL-AD(2018)003, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, § 19.

¹⁸ Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, §§ 37-38.

¹⁹ [CDL-AD\(2024\)005](#), Bulgaria - Joint Opinion on the Code of Ethical Conduct for Prosecutors and Investigators, §§ 15-18; [CDL-AD\(2024\)004](#), Bulgaria - Joint Opinion on the Code of Ethical Conduct for Judges, §§ 15-18.

Chapter IV - Performance evaluation of judges and prosecutors

25. Evaluation of court and justice systems is a good means of implementing managerial or political decisions aimed at improving these systems, even though the evaluation of the performance of individual judges or prosecutors may be seen as undermining their independence. Although this danger may well exist, it should not prevent an evaluation from taking place.²⁰ The Commission has consistently emphasised the need to make a clear distinction between the performance evaluation of judges or prosecutors and the disciplinary accountability system. Professional evaluations should be kept separate from the disciplinary proceedings since they have different purposes and are based on different principles.²¹ The aim of individual evaluations must be to improve the quality of the work of judges and prosecutors, thus the country's whole justice system. The fundamental rule for any individual evaluation must be that it maintains total respect for the independence of judges and prosecutors.²²

26. Thus, the Commission welcomes the introduction in the draft law of performance evaluation procedures, which aim to improve judges' and prosecutors' work quality and performance. Under Council of Europe standards, the basis and main elements for formal evaluations should be set out clearly and exhaustively in primary legislation. Details may be regulated by subordinate legislation which should also be published, while judicial/prosecutorial councils should play an important role in assisting in formulating these matters, especially the criteria for evaluation. Also, evaluations must be based on objective criteria. Such criteria should principally consist of qualitative indicators but, in addition, may consist of quantitative indicators. In every case, the indicators used must enable those evaluating to consider all aspects that constitute good performance.²³

Bodies competent for evaluation

27. At the outset, it is noted that the first draft law lacks clarity regarding the bodies competent for evaluating the performance of judges and Court Presidents as well as of prosecutors and Chief Prosecutors. As it appears from draft Articles 9, 22 and 24, the Performance Evaluation Committee within the relevant Council (i.e. Judicial or Prosecutorial Council, as defined in Article 3 of the first draft law) shall carry out the performance evaluation of judges and prosecutors. Draft Article 25 sets out the evaluation procedure for Court Presidents and Chief Prosecutors, without specifying the competent evaluating body. With reference to other draft laws submitted within the same legislative package (see para. 9 above), it is the understanding of the Venice Commission that the respective Performance Evaluation Committees are set out in the draft laws on the Judicial Council (Article 27 concerns the Performance Evaluation Committee for judges and Article 27A provides for a separate Performance Evaluation Committee for Court Presidents) and the draft Law on the Prosecutorial Council (Article 27 concerns the Performance Evaluation Committee for prosecutors and Article 27A provides for a separate Performance Evaluation Committee for Chief Prosecutors). Noting that the above-mentioned provisions will be examined

²⁰ [CDL-AD\(2014\)007](#), Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, § 11 See also [CDL-AD\(2019\)027](#), Ukraine – Opinion on the legal framework governing the Supreme Court and judicial self-governing bodies, § 60; [CDL-AD\(2017\)018](#), Opinion on the Judicial System Act of Bulgaria, §§ 67-68.

²¹ [CDL-AD\(2024\)031](#), Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §§ 45-46; [CDL-AD\(2021\)015](#), Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§ 55 and 60; [CDL-AD\(2014\)007](#), Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§ 28, 102 and 108. See also CCJE Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, Recommendation 10.

²² CCJE Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence § 6; CCPE Opinion No. 19 (2024) on managing prosecution services to ensure their independence and impartiality § 25.

²³ CCJE Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, para 49, CCPE Opinion No. 19 (2024) on managing prosecution services to ensure their independence and impartiality, para 25. See also [CDL-AD\(2022\)050](#), Opinion on the draft amendments to the Law on the Judicial Council and Judges of Montenegro, § 48, [CDL-AD\(2019\)008](#), Opinion on the Draft Law on the Judicial Council of North Macedonia, §§ 43-45; [CDL-AD\(2018\)022](#), Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts of "The former Yugoslav Republic of Macedonia", § 53; [CDL-AD\(2014\)038](#), Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, § 59, [CDL-AD\(2014\)007](#), Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§ 37-40, 42-43, 49-50 and 77-78.

in separate Opinions,²⁴ the Commission recommends that draft Chapter IV be revised in order to expressly name the competent bodies involved in the evaluation procedures, cross-referencing to relevant legislation, thus ensuring clarity, transparency and coherence.

Frequency of evaluation

28. Under draft Article 22, the evaluation of judges and prosecutors shall be conducted every three years for those with permanent terms, while the evaluation of judges and prosecutors carrying out an initial three-year term shall be completed before their completion of the initial three-year mandate. It is recalled that the Consultative Council of European Judges found that regular evaluations permit a full picture of a judge's performance to be created. They should not take place too often, however, in order to avoid an impression of constant supervision which could, by its very nature, endanger judicial independence²⁵ Applying this standard, the Venice Commission previously found that a two-year period for regular evaluation appeared to be too short/frequent as it would have practically meant permanent assessment, which may affect negatively the independence and efficiency of judges.²⁶ In conclusion, the evaluations' frequency provided for in draft Article 22 may be considered appropriate and in line with the Council of Europe standards.

Criteria of performance evaluation

29. As regards the criteria of performance evaluation, the Venice Commission reiterates that it is important that the evaluation is primarily qualitative and focuses on professional skills, and personal competencies.²⁷ Thus it is indeed positive that draft Article 22 § 7 provides that the qualitative criteria shall prevail over the quantitative criteria in the outcome of the performance evaluation. Draft Article 22 also contains the criteria under which the evaluation shall be carried out, dividing them into qualitative criteria ("professional competence"²⁸ and "personal competencies"²⁹) and quantitative criteria³⁰ (including the number of confirmed decisions of both judges and prosecutors and as regards prosecutors (draft Article 22 § 6) the number of cases initiated and completed).

30. The Commission has stressed that evaluation procedures must be based on criteria that are clear and foreseeable.³¹ Most of the criteria mentioned in Article 22 meet these standards. However, it is noted that one of the qualitative criteria – "capacity for legal analysis and reasoning" – involves in fact assessing a judge's or prosecutor's capacity to provide well-reasoned decisions. Various qualitative methods can be employed for this assessment, including the analysis of quashed decisions. As a general observation, such methods must be applied with caution to avoid undermining the principle of *res judicata* and to respect the notion that court decisions are subject to review through the appellate process.³² It is also noted that

²⁴ See Venice Commission, [CDL-AD\(2025\)015](#), as regards the draft amendments to the Law on Kosovo Judicial Council.

²⁵ CCJE Opinion No. 17(2014), On the evaluation of judges' work, the quality of justice and respect for judicial independence, § 40. [CDL-AD\(2022\)050](#), Opinion on the draft amendments to the Law on the Judicial Council and Judges of Montenegro, § 47.

²⁶ [CDL-AD\(2024\)031](#), Armenia - Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §§ 35-37, [CDL-AD\(2022\)050](#), Opinion on the draft amendments to the Law on the Judicial Council and Judges of Montenegro, § 47, [CDL-AD\(2018\)022](#), "The former Yugoslav Republic of Macedonia" – Opinion on the Law amending the Law on the Judicial Council and on the law amending the law on courts, § 47.

²⁷ [CDL-AD\(2024\)031](#), Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §39, [CDL-AD\(2018\)022](#), Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts of "The former Yugoslav Republic of Macedonia", § 53.

²⁸ "Professional competence, including knowledge of applicable legislation, the ability to conduct judicial or investigative procedures, capacity for legal analysis and reasoning, as well as the ability to write clearly and justify decisions or legal submissions".

²⁹ "Personal competencies, including the ability to administer the legal, respectively investigative, communication skills, ethics and general behaviour of the judge or prosecutor, as well as the utilization of information technology tools in his/her work".

³⁰ "The quantitative criteria for evaluating the performance of the judges and prosecutors shall be the implementation of case norms and the number of confirmed decisions. The quantitative criteria for evaluating the performance of the prosecutor shall include the number of cases initiated and completed, as well as the number of actions taken by the prosecutor".

³¹ [CDL-AD\(2013\)015](#), Opinion on the Law on the Courts of Bosnia and Herzegovina, § 68.

³² [CDL-AD\(2024\)031](#), Armenia - Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), § 39.

the qualitative criteria include “ethics and general behaviour” (Article 22 § 4.2). The Venice Commission usually deems such provisions inappropriate due to their lack of clarity and foreseeability.³³ Similarly, among the quantitative criteria is “the implementation of case norms” (Article 22 § 5), the meaning of which is not immediately apparent, especially given its supposed quantitative nature. The authorities are thus invited to revise these two provisions in order to provide them with clarity and foreseeability.

31. As regards, in particular, the quantitative criterion of “confirmed decisions” (draft Article 22 § 5), the Commission has underlined there should not be performance evaluations on the basis of the content of the decisions and verdicts, and in particular, quantitative criteria such as the number of reversals and acquittals should be avoided as standard basis for evaluations.³⁴ As a consequence, the Commission recommends that the quantitative criterion of “confirmed decisions” be applied with caution to respect the notion that judges’ and prosecutors’ decisions are subject to review through the appellate process. In any event, no criterion should be decisive by itself and the circumstances surrounding the judges’ and prosecutors’ work during the evaluation period should be duly taken into account. Thus, the Commission recommends that the draft law be reviewed in order to provide that the quantitative criteria take into account circumstances surrounding the judges’ and prosecutors’ work during the evaluation period, such as staffing situation, influx of cases, and the complexity of the cases dealt with the reference period, thus making sure that simple case numbers cannot predominate.³⁵ The criteria could be more specific for prosecutors, as is the case in draft Article 22 § 6, as they are typically in a hierarchical structure and the constraints of judicial independence do not apply.

Extraordinary performance evaluation

32. Under draft Article 22 § 13, the Performance Evaluation Committee “may decide for an extraordinary performance evaluation of the judge or prosecutor in the event of a continuous failure to complete the continuous tasks of a judge or prosecutor, respectively”. The Venice Commission has repeatedly stated that too frequent evaluations may negatively affect the independence and efficiency of judges.³⁶ Given the provision of the three-year period for regular evaluation, and that a “poor” mark automatically leads to another performance evaluation one year after the completion of mandatory training at the Academy of Justice (Article 24 §§ 2-3), the purpose of an additional performance evaluation seems unclear.

33. Furthermore, the draft law does not indicate whether the extraordinary performance evaluation would affect the timing of the next regular evaluation, which could potentially lead to judges and prosecutors being burdened with constant evaluations. This could be concerning, especially considering that the criteria for initiating an extraordinary performance evaluation are not entirely clear. Article 22 § 13 states that the Performance and Evaluation Committee “may decide” to initiate such an evaluation (presumably only upon request by the Court President or the Chief Prosecutor, and not *ex officio*), but it is not clear what is meant by the “continuous failure to complete the continuous tasks” which is foreseen as basis on which the decision to initiate or not initiate this evaluation is made. In view of the above, it is recommended to clarify the terms “continuous failure” and “continuous tasks” in order for the draft law to fully comply with the legislative quality criteria of clarity and foreseeability.

³³ [CDL-AD\(2024\)005](#), Joint Opinion on The Code of Ethical Conduct for Prosecutors and Investigators, § 17.

³⁴ [CDL-AD\(2024\)031](#), Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), § 39. See also [CDL-AD\(2018\)032](#), Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §§ 82-84; [CDL-AD\(2018\)022](#), Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts of “the former Yugoslav Republic of Macedonia”, §§ 43-46.

³⁵ See also [CDL-AD\(2024\)031](#), Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), § 39; See also CCJE Opinion No 17 (2014) on the evaluation of judges’ work, the quality of justice and respect for judicial independence, § 13.

³⁶ [CDL-AD\(2018\)022](#), Opinion on the Law Amending the Law on the Judicial Council and on the Law Amending the Law on Courts of “the former Yugoslav Republic of Macedonia”, § 47.

Poor performance evaluation and dismissal

34. It is first noted that as regards the “poor” performance evaluation of judges and prosecutors during the initial mandate, the draft law treats them less favourably than the permanent ones (see below). Under draft Article 24 § 7 if a judge or prosecutor with an initial mandate is evaluated as “poor” they shall not be proposed for a permanent term. On the other hand, a permanent judge or prosecutor whose performance is assessed as “poor” is obliged under draft Article 24 §§ 2-3 to attend training at the Academy of Justice and will be reassessed one year after completion of this mandatory training. The Venice Commission reiterates that a refusal to confirm a non-permanent judge (*mutatis mutandis* a prosecutor³⁷) should be made according to objective criteria and with the same procedural safeguards as they apply where a permanent judge is to be removed from office.³⁸ It is thus recommended that draft Article 24 § 7 be reviewed so that the consequences of “poor” performance evaluation of judges and prosecutors with an initial mandate are similar to those concerning permanent judges and prosecutors, in particular, providing also judges and prosecutors with an initial mandate the possibility to be trained at the Academy of Justice and a subsequent assessment.

35. As regards a “poor” performance evaluation of a permanent judge or prosecutor, under draft Article 24 § 2, this will result, *inter alia*, in the mandatory training at the Academy of Justice. Under draft Article 24 § 4 if the permanent judge or prosecutor concerned fails to attend this training or their performance is evaluated twice as “poor” this will be considered “a serious violation of duties and shall constitute grounds for dismissal” (similarly, under draft Article 35 judges and prosecutors may be dismissed if, among other grounds, they are evaluated twice as having a poor performance, see below).

36. The Commission recalls that dismissals may occur only where the inevitable conclusion of the evaluation process is that the judge (*mutatis mutandis*, the prosecutor) is incapable or unwilling to perform his/her functions to an objectively assessed minimum acceptable standard.³⁹ It is unclear whether a failure to attend the mandatory training in the Academy of Justice (which may occur also unintentionally for objective *force majeure* reasons) or the “poor” rating, even when given consecutively twice, meet this threshold according to the draft law. As regards, in particular, the “poor” rating, it is the lowest rating on a scale of only four, and no explanation is provided as to what constitutes “poor” performance (see also below section on disciplinary offences and sanctions). Furthermore, it is recalled that the Venice Commission has cautioned against the unsatisfactory performance of a judge forming the basis for a “most severe disciplinary offence”, when repeated twice in a row,⁴⁰ stressing that professional evaluation of a judge or prosecutor and disciplinary liability should be kept clearly distinct. It is thus recommended that the failure to attend the mandatory training in the Academy of Justice remain only a possible disciplinary offence and regulated by the Law on disciplinary liability of judges and prosecutors.⁴¹ In case the authorities retain this possibility, it is recommended that the draft law be amended and specify that as a result of these two consecutive evaluations, it is inevitably concluded that the assessed judge or prosecutor is

³⁷ [CDL-AD\(2008\)005](#), Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, § 34.

³⁸ [CDL-AD\(2023\)039](#), Opinion of the Draft Amendments to the Constitution of Bulgaria, § 60; See also [CDL-AD\(2024\)006](#), Lebanon - Opinion on the draft law on the Administrative Judiciary, § 50, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, § 37, [CDL-AD\(2015\)042](#), Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of “The Former Yugoslav Republic of Macedonia”, §§ 45-50.

³⁹ CCJE Opinion No. 17 (2014), On the evaluation of judge’s work, the quality of justice and respect for judicial independence, § 44. See also [CDL-AD\(2021\)015](#), Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, § 60; [CDL-AD\(2018\)022](#), Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts of “The former Yugoslav Republic of Macedonia”, §§ 58-62; [CDL-AD\(2018\)033](#), Opinion on the draft law amending the law on Courts of “the former Yugoslav Republic of Macedonia”, § 43; [CDL-AD\(2018\)032](#), Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, § 77.

⁴⁰ [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, § 63.

⁴¹ Articles 5 § 2.14 and 6 § 2.9 of the draft consolidated Law on disciplinary liability of judges and prosecutors provide as a disciplinary offence the failure, in continuity, to participate without reasonable justification in mandatory training programs prescribed by law or regulations and policies.

incapable or unwilling to perform their functions to an objectively assessed minimum acceptable standard (see also section below on termination of office).

37. During the mission to Pristina, certain legal experts noted that draft Article 24 § 4 raises also issues of compatibility with Articles 104 and 109 of the current Constitution, under which judges and prosecutors may be removed from office only “upon conviction for a serious criminal offence or for serious neglect of duties”. As a result, draft Article 24 raises issues of compatibility with the letter of Articles 104 and 109 of the Constitution which is in force, and thus the principle of the supremacy of the constitutional provisions, and the conformity of legislation with the Constitution, which are fundamental rule of law principles.⁴² Furthermore this non-alignment of the draft law with the wording of the current Constitution may lead to legal unclarity and uncertainty, contrary to the rule of law principles and benchmarks developed by the Venice Commission.⁴³ During the meeting of the Commission delegation with the representatives of the Ministry of Justice, the latter submitted that the above provisions of the draft law raise no issue of constitutionality because the Constitutional Court in the aforementioned decision of January 2024⁴⁴ approved the proposed constitutional amendments of 2022 (not yet adopted) under which the current dismissal ground of “serious neglect of duties” contained in the Constitution would include “continuous insufficient performance” (or committal of “serious disciplinary violations” or acquisition of unjustifiable assets established by a final judicial decision). The Venice Commission notes that it is beyond its competence to assess the constitutionality of the provisions of the draft law, and it refers to its above comments concerning the compatibility of draft Article 24 § 4 (and similar draft Article 35, see below) with European standards and recommendations.

38. In this context it is also noted that dismissal of judges and prosecutors is also provided for by Article 8 of the draft consolidated Law on disciplinary liability of judges and prosecutors which provides that dismissals may occur upon conviction of a serious criminal offence, an intentional violation of the law or for serious neglect of duties. Although the letter of this provision seems to be aligned with Articles 104 and 109 of the Constitution, it is not in harmony with the above-mentioned draft Article 24 (and draft Article 35 on dismissals, see below), a situation which compounds terminological confusion and legal unclarity, which the authorities are invited to eliminate by further thorough review of the draft laws.

Effective remedies

39. As regards effective remedies against evaluation decisions, the draft law in Article 22 §§ 9-10 allows all judges and prosecutors (including court presidents and chief prosecutors, under draft Article 25) to access the evaluation files and appeal against the performance evaluation decisions to the councils, whose decision is final upon appeal. The Commission has underlined that the more serious the consequences of an evaluation can be for a judge or prosecutor, the more important are rights of effective independent review. In principle, a council seized with an appeal against an evaluation may be considered to be a “tribunal” under Article 6 § 1 ECHR on condition that it exercises a judicial function, that is to say, determines matters within their competence on the basis of legal rules and after proceedings conducted in a prescribed manner, satisfying also a series of further requirements, such as independence, in particular of the executive, impartiality, and duration of its members’ terms of office.⁴⁵ Notwithstanding this, the Commission has noted that a model where the entire process, including performance evaluation and appeal, remains within a single institution, such as a council, may not be the most optimal

⁴² [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.A.

⁴³ [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.B.

⁴⁴ [KO55/23](#), judgment of 22 December 2023, published on 25 January 2024.

⁴⁵ ECtHR, *Guðmundur Andri Ástráðsson v. Iceland*, [GC], [no. 26374/18](#), judgment of 01/12/2020, § 219; *Xhoxhaj v. Albania*, [no. 15227/19](#), judgment of 09/02/2021, § 282.

solution.⁴⁶ Given that the evaluation committees are set up inside and form part of the councils, the Venice Commission recommends that the performance evaluation and appeal should not remain within a single institution and that the authorities consider the possibility of providing also for a judicial remedy for the event of dispute arising from the result of a performance evaluation.

Chapter V – Integrity control of judges and prosecutors

40. The Venice Commission reiterates that the preservation of the necessary authority of the judicial and prosecutorial services requires that: (a) the legal system should put in place adequate mechanisms to ensure that candidates are not appointed as a judge or a prosecutor if they do not have the required competencies, do not meet pre-determined eligibility criteria or do not meet the highest standards of integrity; and (b) ordinary means of disciplinary and criminal proceedings result in dismissals of those who are found to be incompetent, corrupt or linked to organised crime. In 2022, the Commission considered that a reform of the judiciary in Kosovo was necessary and that this may involve some form of effective integrity checks. It was, however, the Commission's opinion that any (vetting or) integrity checks system introduced should be proportionate and could be limited to court presidents and chief prosecutors and the KJC and KPC who exert disciplinary power over the other members of the judicial system. It would then be for the KJC and the KPC to deal with problems in the rest of the judicial system, both as concerns integrity and professionalism.⁴⁷

41. The first draft law introduces a system of expanded integrity control concerning serving judges and prosecutors, candidate judges and prosecutors and judges and prosecutors with an initial mandate: Draft Article 27 provides for integrity control of serving judges and prosecutors through asset verification and disciplinary systems. Draft Article 28 sets out stricter requirements for the candidate judges and prosecutors, including checking criminal conviction and disciplinary sanctions, asset control and "other actions that make the candidate indecent to exercise the function of a judge or prosecutor". Draft Article 28 also specifies the public bodies and private entities that have an obligation to co-operate and provide such data. If necessary, the information on a candidate's criminal records can also be collected from other countries or international organisations. A separate provision, draft Article 29 provides for integrity control for judges and prosecutors with an initial mandate, which shall include checking past actions from the moment of appointment including criminal convictions and disciplinary sanctions, assets control, as well as "any other action that makes them unfit to exercise the function of a judge or prosecutor with a permanent mandate". Finally, draft Article 29 mirrors draft Article 28 as regards public bodies and private entities that have an obligation to provide such data.

42. The Venice Commission notes that having integrity is one of the conditions for the appointment of judges and prosecutors. Integrity control components and requirements regarding candidate and permanent judges and prosecutors, as well as judges and prosecutors with an initial mandate, are provided. However, the draft law does not define "integrity". For clarity, foreseeability and coherence, the Law should provide a definition of "integrity" or at least refer to a relevant legal act where such a definition is to be found. That being noted, the draft provisions on integrity control call for the following observations.

a) Assets control

43. The Venice Commission considers that assets controls are highly important in order to ensure the integrity of state officials, including judges and prosecutors, and the examination of asset declarations should be performed within the framework of a general system applicable to all state officials.⁴⁸ In this context it is noted that under Article 35 § 1 "[a] judge and

⁴⁶ See [CDL-AD\(2024\)031](#), Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §§ 47, 49-50 and 84; CCJE, Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, § 41, CCPE Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors, § 47.

⁴⁷ [CDL-AD\(2022\)011](#), op. cit., §§ 130 and 133.

⁴⁸ [CDL-AD\(2022\)011](#), op. cit., § 84. See also CCJE Opinion No. 21 (2018) On preventing corruption among judges, § 38.

prosecutor may be dismissed from office”, *inter alia*, if it has been proven that he or she has unjustified assets. In general, this reason may serve as a legitimate ground for removal from office.⁴⁹ However, the Commission has noted that the criteria for dismissal remain ambiguous, as the provision does not establish a clear obligation for dismissal in such cases. It is thus recommended that this provision be amended and clarified accordingly.

b) Authorities competent to exercise the integrity control

44. The Venice Commission notes that similarly to the bodies competent for evaluating the performance (see para. 26 above), the first draft law lacks clarity concerning the bodies competent for carrying out integrity controls. Draft Article 27 does not specify such a competent body. Draft Articles 28 and 29 refer to a “verification unit” and a “vetting unit”, respectively. Information received by the Ministry of Justice of Kosovo indicated that unlike the integrity control of candidates and judges and prosecutors with an initial mandate, the integrity control of permanent judges and prosecutors under draft Article 27 will consist of asset verification every three years by the Anti-Corruption Agency (under Law No. 08/L-108) and of control of acts or omissions which are of potentially disciplinary nature (as per the procedures provided for by the Law on disciplinary liability of judges and prosecutors, see below). This notwithstanding, the first draft law does not clearly indicate which authority will be tasked with the integrity control of permanent judges and prosecutors and in which manner the asset control procedure will be linked with control of possible disciplinary offences and proceedings. Referring to other draft laws of the legislative package, the Venice Commission understands that such bodies are set out in the draft Law on the Judicial Council (Article 36) and the draft Law on the Prosecutorial Council (Article 31A). The Inspection and Verification Unit within the Judicial Council “*supports the conduct*” whereas the Verification Unit within the Prosecutorial Council “*supports and conducts*” the administrative investigation procedure for integrity control by collecting and processing data, as well as preparing relevant reports. Noting that the mentioned provisions will be examined in separate Opinions, the Commission recommends that for clarity, transparency and coherence, draft Articles 27, 28 and 29 be reviewed in order to expressly define the bodies competent for integrity control as well as the procedures to be followed, cross-referencing to applicable legislation.⁵⁰

c) Scope of integrity control of candidates and judges and prosecutors with an initial term

45. As noted above, under draft Article 28 § 2 concerning candidate judges and prosecutors, and draft Article 29 § 3 concerning judges and prosecutors with an initial mandate, integrity control shall include the control of “actions of the past” and any other actions that would make them “indecent” or “unfit” for the function of judges and prosecutors. In addition, under draft Article 28 § 2, the integrity control of candidate judges and prosecutors is also linked to “disciplinary measures” which may have been taken against them. Candidate judges and prosecutors are appointed for an initial term of three years (draft Article 8). Upon receiving a positive performance evaluation at the end of the initial term, they are appointed permanently (draft Article 11). Referring to its Rule of Law Checklist, the Venice Commission recalls that “independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch”⁵¹ and that, unlike the candidates, the vetting of judges, especially when carried out by an executive body, may constitute such an “external pressure”. Furthermore, in its previous opinions, the Commission indicated that vetting and integrity checking can run in parallel, although they serve different purposes and have different procedural and legal features. “In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of

⁴⁹ [CDL-AD\(2015\)042](#), Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of “The Former Yugoslav Republic of Macedonia”, § 39.

⁵⁰ See Venice Commission, [CDL-AD\(2025\)015](#) as regards the draft amendments to the Law on Kosovo Judicial Council § 64.

⁵¹ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, § 74.

impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources. The Venice Commission has dealt with three subcategories of national measures: (i) “pre-vetting” of candidates to a particular position; (ii) integrity checks which are conducted on a more regular basis (for example, the obligation to submit an asset declaration annually); (iii) full-fledged vetting procedures”.⁵²

46. The Commission recalls that legislative provisions should be clear and foreseeable and that “a distinction should be made between the vetting of serving members and the “pre-vetting” of candidates”.⁵³ Thus, it is of the view that the open-ended draft provisions concerning control of “actions of the past” and any other actions which make a candidate indecent to be a judge or prosecutor should be modified. Further to the objective elements which may be controlled, such as convictions for a criminal offence and disciplinary sanctions, adding, for example, professional ethics (academic integrity requirements), inappropriate behaviour that would undermine the authority of the judicial/prosecutorial system, etc., might also be considered.

47. As regards judges and prosecutors with an initial mandate, the Commission recalls that integrity is one of the criteria for the initial recruitment and that a positive performance evaluation assessment of the three-year initial mandate is the main condition for permanent appointment. Therefore, setting strict requirements similar to those for candidates turns such controls, in fact, into a far-reaching extraordinary evaluation, which the Venice Commission considers to be disproportionate and unnecessary. Thus, the authorities are invited to revise the draft law so that the procedure of integrity control of judges and prosecutors with an initial term is limited to the review of asset declarations, and is clearly defined, including the consequences of these controls and the legal rights and obligations of the judges and prosecutors subject to these control procedures.

d) Sources of information for integrity control of candidates and judges and prosecutors with an initial term

48. As noted in para 40 above, draft Articles 28 and 29 aim to use the same method of data gathering about the candidate judges and prosecutors, as well as judges and prosecutors with an initial term. Such a method introduces an obligation for the public bodies and private entities to transfer the data to the respective Verification Unit. The list of the bodies concerned includes central criminal records; court registers, prosecution office and police; bank accounts, tax, customs and other financial intelligence data or information; property register, including data of contracts from the Notary Chamber; business register; registers of declared assets, if the subject has declared assets earlier according to the special Law; previous employers. However, the list is not exhaustive as the last category refers to “other relevant data about the subject”. The Venice Commission considers “other relevant data” as vague and thus lacking clarity and foreseeability. The Commission recommends that as regards candidate judges and prosecutors, draft Article 28 § 4.8 be amended (for example, replacing “other relevant data” with “unsolicited information” received from civil society). As regards judges and prosecutors with an initial term, it is recommended that draft Article 29 § 4 be deleted in light of the recommendation in para. 46 above.

e) Integrity control of serving judges and prosecutors

49. As regards, in particular, the serving judges and prosecutors, it is not clear under draft Article 27 whether this provides for a one-off integrity control or a regular one. During the meetings in Pristina, the Venice Commission delegation interlocutors, including the Ministry of Justice representatives, indicated that these integrity controls are meant to be regular ones, linked

⁵² [CDL-AD\(2022\)011](#), op. cit., §§ 9-10 and 17.

⁵³ [CDL-AD\(2021\)046](#), Republic of Moldova - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, § 14.

primarily to the annual asset declarations that the judges and prosecutors are bound to make and the relevant controls carried out every three years by the Anti-Corruption Agency under Law No. 08/L-108.⁵⁴

50. Such a system of continuous control raises issues of compatibility with the standards developed by the Venice Commission, whose position has been that judges (*mutatis mutandis* prosecutors) who have already undergone integrity testing should not be tested again as part of a general evaluation/control. This, obviously, does not exclude individual measures under disciplinary or even criminal law, when there are indications of wrongdoing after a general evaluation.⁵⁵ In addition, as mentioned above, asset declarations are, in any event, mandatory for judges and prosecutors and are verified by the Anti-Corruption Agency every three years. Furthermore, it is of concern to the Commission that the integrity controls are linked, in an unclear manner, with control of potential disciplinary offences (and proceedings), which turns such controls, in fact, to a far-reaching extraordinary evaluation/vetting of serving judges and prosecutors, which the Venice Commission considers to be disproportionate and unnecessary. Thus, the Venice Commission recommends to the authorities to revise draft Article 27 so that the procedure of integrity controls of permanent judges and prosecutors, as with judges and prosecutors with an initial mandate, is limited to the review of their asset declarations, and is clearly defined, including the consequences of these controls and the legal rights and obligations of the judges and prosecutors subject to these control procedures.

51. Lastly, the Commission notes that the first draft law does not provide for a remedy against decisions concerning integrity controls. As previously noted, there needs to exist judicial review (judicial remedy) of decisions concerning the career of judges and prosecutors, which would safeguard procedural fairness of these decisions and remedy any procedural irregularities, and the authorities are invited to consider introducing such remedies in this context as well.⁵⁶

Chapter VI – Transfer and promotion of judges and prosecutors

52. The Venice Commission has stressed that, in accordance with the principle of irremovability of a judge, transfers against the will of a judge may be permissible only in exceptional cases,⁵⁷ while assignment of a judge to a different court should only be possible under strict criteria clearly identified in the law⁵⁸ and a right of appeal should be provided.⁵⁹ As regards prosecutors, the process of transfers should also be clearly regulated by law and be as close as possible to that of judges.⁶⁰ Although the principle of irremovability applies to judges and not to prosecutors, the

⁵⁴ [Law No 08/L-108](#) On declaration, origin and control of assets and gifts.

⁵⁵ [CDL-AD\(2022\)023](#), Ukraine - Joint amicus curiae brief on certain questions related to the election and discipline of the members of the High Council of Justice, § 31, [CDL-AD\(2022\)005](#), Croatia - Opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act, §§ 16-20; [CDL-AD\(2021\)018](#) Ukraine - Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068) § 59; [CDL-D\(2022\)011](#), Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, § 99.

⁵⁶ See also [CDL-AD\(2024\)041](#), Türkiye - Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, § 86; [CDL-AD\(2024\)031](#), Joint Opinion on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), §§ 47 and 50; [CDL-AD\(2011\)004](#), Opinion on the draft law on Judges and Prosecutors of Turkey, § 76.

⁵⁷ [CDL-AD\(2010\)004](#), Report on the independence of the judicial system – Part I: The independence of judges, § 43.

⁵⁸ [CDL-AD\(2014\)031](#), Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, § 36; See also [CDL-AD\(2018\)033](#), Opinion on the draft law amending the law on Courts of “the former Yugoslav Republic of Macedonia”, § 19. See also European Charter on the Statute for Judges (1998) § 3.4: “A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto. An exception to this principle is permitted only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof”.

⁵⁹ [CDL-AD\(2012\)001](#), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, §§ 77-79.

⁶⁰ CCPE Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors, § 24; [CDL-AD\(2011\)004](#), Opinion on the Draft Law on Judges and Prosecutors of Turkey, §§ 48-49.

latter should have a possibility to appeal against compulsory transfers as well.⁶¹ The Commission has also considered important to ensure in law that the same level of remuneration and an equivalent or similar position is guaranteed to the judge to be transferred,⁶² a safeguard that may reasonably be applied, *mutatis mutandis*, to prosecutors.⁶³

53. It is recalled that under Article 104 § 6 of the Constitution of Kosovo, “judges may not be transferred against their will unless otherwise provided by law for the efficient operation of the judiciary or disciplinary measures”. Articles 109 and 110 of the Constitution on the State Prosecutor and KPC do not contain a similar provision, thus granting the KPC the power to transfer prosecutors without the restrictions contained in Article 104.

54. Draft Article 30 provides that the KJC may transfer a judge to another court and that the KPC may transfer a prosecutor to another prosecution office for an interim period of up to one year, regardless of their will. This may be done where a court or prosecution office “has an insufficient number of judges or prosecutors”, or it is done “with the aim of increasing efficiency” in the respective court or office. This transfer is for one year but may be extended for another year under draft Article 30 § 1. Article 30 § 8 further requires the KJC and the KPC to adopt regulations on the procedure of transfer according to the provisions in the draft law. Also, under draft Article 30 § 6 and 7, these transfers shall be conducted “within the same level Court or Prosecution Office and Department”, while the salary of the transferred judge or prosecutor cannot be reduced.

55. The Venice Commission welcomes the provision on the irreducibility of salary. The Commission recalls that grounds for transfer without consent of judge/prosecutor should be exceptional and subject to strict criteria clearly identified in the law. “An insufficient number of judges or prosecutors” seems to suggest that the operative criterion for compulsory transfer is that a court/prosecutor’s office is not able to fulfil its main functions. However, this is not clear from the wording. Such unclarity may also imply that either the transfer of the same judge/prosecutor might be renewed or there will be, each time, a need to find another available judge/prosecutor to secure such a transfer – which is another risk for the stability of the system. This is not clear from the draft Law and should be specified. “The aim of increasing efficiency” is unclear as well, in particular, given the specificities of the judicial and prosecutorial systems. Such an unclear formula raises risks of its broad use undermining the independence of judges and prosecutors. Recalling that transfers from one office to another should aim to support the normal functioning of the latter, i.e., be an organisational measure and not a punishment, the Venice Commission recommends to specify the second ground. Finally, the draft law does not mention the right to appeal against transfer decisions. The Venice Commission recommends that the right to appeal against compulsory transfer decisions and more detailed indications of the criteria to be taken into account when such a decision is adopted be explicitly mentioned in the Law.

56. As regards promotions of judges and prosecutors, under draft Article 32 promotions of permanent judges and prosecutors are conditioned on, *inter alia*, “at least a positive performance evaluation”. The wording of this condition raises issues of clarity and foreseeability given that the aforementioned evaluation-related provisions and “rating levels” (draft Article 24) do not contain the term “positive performance evaluation” making use instead of four rating levels: poor, sufficient, good and very good. The Commission therefore recommends that draft Article 32 be

⁶¹ CDL-AD(2014)042, Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, § 80.

⁶² [CDL-AD\(2018\)011](#), Opinion on the draft amendments to the constitutional provisions on the judiciary of Serbia, § 52; See also [CDL-AD\(2018\)033](#), Opinion on the draft law amending the law on Courts of “the former Yugoslav Republic of Macedonia”, § 24; [CDL-AD\(2014\)038](#), Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, § 58; [CDL-AD\(2008\)007](#), Opinion on the Draft Laws on Judges and the Organisation of Courts of the Republic of Serbia, § 23.

⁶³ CCPE Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors, Recommendation xi: “The status, remuneration and treatment of prosecutors as well as the provision of financial, human and other resources for prosecution services should correspond, in a way comparable to those of judges, to the eminent nature of the mission and the particular duties of prosecutors”.

amended in order to make clear which of the foreseen rating levels would allow a promotion of a judge or prosecutor.

Chapter VII – Termination of the term of judges and prosecutors

57. The Commission recalls that under established European standards, a permanent judicial appointment “should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions”.⁶⁴ As regards prosecutors, the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and dismissal. Thus, under European standards, the dismissal of prosecutors should also be subject to strict requirements, similar to those concerning judges, which should not undermine the independent and impartial performance of their activities.⁶⁵

58. Under Article 104 § 4 and Article 109 § 9 of the Constitution of Kosovo, judges and prosecutors “may be removed from office upon conviction of a serious criminal offence or for serious neglect of duties”. However, draft Article 35 § 1 widens the grounds of possible dismissals of judges and prosecutors, reading as follows: “A judge and prosecutor may be dismissed from office due to conviction for a serious criminal offence or in cases where a judge or prosecutor have been evaluated as having a poor performance twice (2), or it has been proven that he/she has unjustified assets, or has committed serious disciplinary violations, as defined by Law”. The Commission refers to the earlier analysis and recommendations concerning draft Article 24 § 4 (performance evaluation), applicable also to draft Article 35 § 1.

59. As regards the remedy and procedural safeguards necessary in the context of disciplinary proceedings,⁶⁶ under draft Article 35 § 2 “the judge and prosecutor shall have the right to appeal directly to the Supreme Court of Kosovo against the decision on dismissal”, while under draft Article 35 § 3 the relevant council “shall, before submitting the proposal for the dismissal of a judge or prosecutor, ensure that all relevant procedures have been completed in accordance with the applicable legislation”. It is presumed that the “applicable legislation” refers notably to the Law on the disciplinary liability of judges and prosecutors (see also relevant section below). In order to enhance clarity, it is recommended that this is also clarified in draft Article 35.

60. As regards the retirement age of judges and prosecutors, Articles 105 and 109 of the Constitution of Kosovo indicate that the mandate of a judge or prosecutor is permanent until the retirement age as determined by law. Exceptionally, Article 109 of the Constitution provides that the Chief State Prosecutor is appointed for a seven-year term. Currently, there is no specific legislation concerning the retirement of judges and prosecutors in Kosovo, these issues being regulated under two Laws on state pensions and on labour, according to which the current retirement age of judges and prosecutors is 65 years.⁶⁷ According to draft Article 33 § 1.5, retains this age limit providing that the term of a judge or a prosecutor shall terminate upon the age of 65 years.

61. The Venice Commission recalls that mandatory retirement age for judges and prosecutors is a common feature in the legal systems of European countries. In general, it is up to the

⁶⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers on Judges: independence, efficiency and responsibilities, § 50. [CDL-AD\(2021\)015](#), Bosnia and Herzegovina - Opinion on the draft Law on amendments to the Law on the High Judicial and Prosecutorial Council, § 55.

⁶⁵ CCPE, Opinion No. 9 (2014) on European norms and principles concerning prosecutors, §§ 53 and 72; CCPE, Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors, § 14. [CDL-AD\(2018\)017](#), Romania - Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy, § 78.

⁶⁶ See [CDL-AD\(2016\)007](#), Rule of Law Checklist, § 78; [CDL-AD\(2023\)015](#), France - Joint Opinion on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, § 62.

⁶⁷ [Law No 04/L-131](#) on pension schemes financed by the state; [Law No 03/L-212](#) on labour.

democratic legislator to define the retirement age of both judges⁶⁸ and prosecutors.⁶⁹ The 65-year retirement age is not out of line with European standards. According to the Venice Commission, the retirement age should be clearly set out in the legislation,⁷⁰ as is done in the draft law.

C. Draft law amending the Law on disciplinary liability of judges and prosecutors

Disciplinary offences and sanctions

62. Articles 5 and 6 of the draft consolidated Law (containing the Law in force and amendments proposed by the draft law) detail a list of disciplinary offences for judges and prosecutors (more than 15 offences in each case) ranging from conviction of a criminal offence to providing false or misleading information in matters related to disciplinary proceedings. While acknowledging that there is no uniform approach to the organisation of the system of judicial or prosecutorial discipline and that practice varies greatly in different countries with regard to the choices between defining in rather general terms the grounds for the disciplinary liability and providing an all-inclusive list of disciplinary violations, the Venice Commission favours specific and detailed description of grounds for disciplinary proceedings,⁷¹ which is the case in Articles 5 and 6.

63. Furthermore, it is noted that Article 7 § 3 of the draft consolidated Law usefully provides that disciplinary measures shall be imposed in accordance with the principle of proportionality taking into account *inter alia* the seriousness of disciplinary violations (in Article 35 of the draft law on recruitment (see above) one of the grounds foreseen for dismissals is also the committal of “serious disciplinary violations”). Given that draft Articles 5 and 6 of the draft consolidated Law contain no gradation of disciplinary offences (thus no definition of “serious disciplinary violations”) which would provide clarity and foreseeability of the disciplinary sanctions and the application of the fundamental principle of proportionality (which prescribes a reasonable relationship between the seriousness of the offence and the nature and the amount of the sanction), it is recommended that the disciplinary offences be categorised according to their gravity and be linked to potential proportionate sanctions.⁷²

64. As regards disciplinary sanctions, under Council of Europe standards⁷³ concerning disciplinary liability of judges (applicable *mutatis mutandis* to prosecutors), they should be clearly defined in law, easily accessible and enumerated in an exhaustive list, while the principle of proportionality must guide the decision. Draft Article 7 of the draft consolidated Law provides for four categories of sanctions: written reprimand, temporary salary reduction, demotion, and proposal for dismissal. The possible temporary reduction foreseen is between twenty and fifty per cent for a period of up to one year. This is echoed in Article 17 § 2 of the draft law on recruitment. The CCJE advocates against the reduction of salary as a disciplinary sanction because judges must be remunerated equally for like work.⁷⁴ In any event, if the

⁶⁸ [CDL-AD\(2017\)031](#), Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, §§ 44 and 45.

⁶⁹ [CDL-AD\(2021\)047](#), Republic of Moldova - Opinion on the amendments of 24 August 2021 to the law on the prosecution service, §§ 55- 56, 59-60.

⁷⁰ [CDL-AD\(2013\)034](#), Opinion on proposals amending the Draft Law on the Amendments to the Constitution to strengthen the independence of judges of Ukraine, § 52.

⁷¹ [CDL-AD\(2023\)015](#), France - Joint Opinion on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, § 56.

⁷² See also [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, §§ 61-62; [CDL-AD\(2015\)042](#), Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of “The Former Yugoslav Republic of Macedonia”, § 15.

⁷³ [CDL-AD\(2023\)015](#), France - Joint Opinion on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, § 62; CCJE, [Opinion n° 27 \(2024\)](#) on the disciplinary liability of judges, § 40.

⁷⁴ See also [CDL-AD\(2014\)006](#), Joint Opinion on the draft law on disciplinary liability of judges of the Republic of Moldova, § 41: “As concerns reduction of salary...it is recommended to specify that reduction of salary may be applied only in cases of deliberate wrongdoing and not in cases having more to do with performance”.

authorities consider necessary to retain this provision it is recommended that it be reviewed in order to provide that this sanction must be proportionate and limited in time, and make clear whether the sanctioned person is required to carry out their functions as normal, although their salary is significantly reduced.

Publication of disciplinary decisions

65. Articles 7, 9, and 14 of the draft consolidated Law require that the decisions of the relevant councils on disciplinary measures be published on the councils' official website. While it is consistent with the expectation of transparency that disciplinary decisions and sanctions be published, the Commission recommends that they should be anonymised⁷⁵ in general, save where a sanctioned judge or prosecutor could be named at the end of all relevant appeal proceedings.

Temporary suspension of a judge or prosecutor

66. Article 12/B of the draft consolidated law provides that in exceptional cases when the council "possesses reliable information about the alleged disciplinary violation of the subject under investigation", it may temporarily suspend the judge or prosecutor for a period not exceeding 30 days. An appeal against this decision is possible before the Supreme Court. The Commission notes that the provision referring to "reliable information" lacks clarity and foreseeability and therefore recommends to amend it.

Authorities involved in disciplinary proceedings

"Competent authorities"

67. Under Article 9 of the draft consolidated Law, a complaint against a judge or prosecutor is to be submitted by any natural or legal person to a "competent authority" (the President of the Court, the President of the Supreme Court, the KJC, the Chief State Prosecutor, the Chief Prosecutor, or the KPC), which reviews whether the complaint is evidently frivolous, unsubstantiated, unrelated to a disciplinary offence, or subject to statutory limitation. If not, the competent authority shall request the initiation by the respective council of a disciplinary investigation (Article 12 § 6). The respective council then establishes an investigation panel composed of three judges or prosecutors to conduct the investigation. Upon receiving the written report on the investigation, the relevant council proceeds with the disciplinary procedure and decides whether the alleged disciplinary offence has been committed (Article 14). If so, the council shall impose the corresponding disciplinary sanction. The subject of the investigation shall be entitled to appeal the disciplinary decision before the Supreme Court (Article 15).

68. As regards the authorities involved in the initiation of disciplinary proceedings, the Venice Commission recalls that, in order to effectively safeguard judicial independence, the responsibility for initiating disciplinary proceedings against judges should lie solely with the judicial council, while other authorities should be limited to only *informing* the council about a judges' potential disciplinary liability. Ensuring that the judicial council has the sole authority to decide on dismissing or initiating disciplinary proceedings would provide a higher guarantee of judicial independence.⁷⁶ This principle is applicable *mutatis mutandis* also to prosecutors,

⁷⁵ See also CCJE, [Opinion n° 27 \(2024\)](#) on the disciplinary liability of judges § 36: "...Disciplinary decisions should be properly reasoned, i.e. address all relevant aspects brought forward by the investigatory body and the judge. They should be publicly announced and published. When published, names may be anonymised..."

⁷⁶ [CDL-AD\(2023\)011](#), Montenegro - Follow-up Opinion to the opinion on the draft amendments to the Law on the Judicial Council and Judges, §§ 30-31, [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges §§ 58, 68 ; [CDL-AD\(2014\)032](#), Joint Opinion on the draft law on making changes to the law on disciplinary liability and disciplinary proceedings of judges of General Courts of Georgia, § 23.

whose independence should also be effectively safeguarded in a democratic state governed by the rule of law.⁷⁷

69. Article 12 § 6 of the draft consolidated Law raises issues of compatibility with these principles, since it provides that the competent authority shall *request the initiation* by the respective council of a disciplinary investigations, while the text of Article 12 lends credence to the interpretation that the respective council is bound to establish an investigation panel composed of three judges or prosecutors to conduct the investigation. In view of the above, the Commission recommends the amendment of Article 12 § 6 so that authorities other than the KJC and KPC have the competence to only *inform* the councils about potential disciplinary offences. It also recommends that the draft law be complemented by provisions containing clear procedural rules concerning the councils' decision-making process at this initial stage of disciplinary proceedings.⁷⁸

Review of competent authorities' decisions

70. In addition, during the mission to Pristina a number of interlocutors expressed their concern that the draft law contains no provisions of a review mechanism concerning the decisions of competent authorities who, under the draft law, may request the initiation of disciplinary investigations. Article 9 § 9 of the draft consolidated law only provides that the competent authority shall be considered to have committed a disciplinary violation in case it fails to review and decide on the complaint in a timely manner or fails to notify the complainant of its decision. Nonetheless, no review is possible in cases where a competent authority decides that it should not request initiation of disciplinary investigations. This is a lacuna which the Venice Commission recommends to remedy by an amendment of the draft law.

Investigative panels of the councils

71. As regards the investigative panels of the councils, Article 12 of the draft consolidated law provides that a pool of nine judges/prosecutors is appointed by the respective councils for a term of five years. Given the crucial role played by these panels in the disciplinary proceedings it is recommended that the draft law be amended in order to clarify the membership and the method of election of the investigation panels of the councils. It is also recommended that the draft law clarify that the burden of proof in the context of disciplinary proceedings, including investigations rests on the authorities that initiate and carry out the relevant proceedings.⁷⁹

V. Conclusion

72. By letter of 3 December 2024, the Minister of Justice of Kosovo requested an Opinion of the Venice Commission on a number of draft laws related to the justice reform in Kosovo, including the draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors, and the draft law amending the Law on the disciplinary liability of judges and prosecutors, which are the subject of the present Opinion.

73. The Venice Commission welcomes the determination and ongoing efforts of the Kosovo authorities to eliminate serious and persistent shortcomings and to enhance the quality and efficiency of the justice system, whose necessity was underlined by all the interlocutors that the Venice Commission delegation met in Pristina. The Commission also thanks the Minister for having submitted the request prior to the finalisation of the draft laws and trusts that its assistance at this stage will contribute to the improvement of the draft laws' clarity, coherence and

⁷⁷ CCPE Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors § 24.

⁷⁸ See also CCJE Opinion No. 27 (2024) on the disciplinary liability of judges, in fine Recommendations § 15; CCPE Opinion No. 13 (2018) Independence, accountability and ethics of prosecutors § 24.

⁷⁹ Draft Article 12 § 13 provides that "The provisions of the Criminal Procedure Code shall apply *mutatis mutandis* to the collection of evidence and the rights of persons under investigation".

compliance with European standards, and to the further progress of the ongoing justice reform process. At the same time, Given the complexity of the issues at hand, the Venice Commission invites the authorities to submit the draft laws to meaningful public consultations ensuring the continued effective participation in the legislative process and systematic information of all major stakeholders, including expert civil society organisations and academic experts.

74. The Venice Commission finds that the draft laws under scrutiny in the present Opinion overall represent steps in the right direction towards establishing a viable, efficient and European standards-compliant system of recruitment, evaluation, integrity control and status of judges and prosecutors, as well as fair and efficient disciplinary liability proceedings. Notably, the first draft law under scrutiny introduces performance evaluation procedures which aim to improve judges' and prosecutors' work quality and performance, expressly prioritising the qualitative criteria of evaluation over the quantitative criteria, which is in line with the standards; the frequency of these evaluations may be considered appropriate and in line with the Council of Europe standards. It is also positive that the second draft law under scrutiny expressly provides that the principle of proportionality will guide all disciplinary measures and that disciplinary decisions of the councils are subject to review by the Supreme Court.

75. The Venice Commission considers nonetheless that a number of issues should be further examined, and the relevant provisions reviewed and amended in order to enhance their clarity, coherence and alignment with European standards. In particular, the Venice Commission makes the following *key recommendations*:

76. *As regards the draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors:*

1. The authorities should consider introducing in the draft law the right to an effective judicial remedy against council decisions concerning recruitment and appointment.
2. The terms "continuous failure" and "continuous tasks" should be clarified.
3. The possibility of dismissals (under draft Articles 24 and 35) in case of two consecutive "poor" performance evaluations should be removed. In case the authorities retain this possibility, it is recommended that the draft law specify that as a result of these two consecutive evaluations, it is inevitably concluded that the assessed judge or prosecutor is incapable or unwilling to perform their functions to an objectively assessed minimum acceptable standard.
4. Providing also for a judicial remedy for the event of dispute arising from the result of a performance evaluation should be considered.
5. The procedures of integrity controls should be limited to the review of asset declarations, and should be clearly defined, as the consequences of these controls and the legal rights and obligations of the judges and prosecutors subject to these control procedures. Introducing effective judicial remedies against decisions concerning integrity controls of judges and prosecutors should be considered.
6. The grounds for compulsory transfer should be clarified. The right to appeal against compulsory transfer decisions and more detailed indications of the criteria to be taken into account when such a decision is adopted should be explicitly mentioned in the Law.

77. *As regards the draft law amending the Law on disciplinary liability of judges and prosecutors*

1. Disciplinary offences should be categorised according to their gravity and should be linked to potential proportionate sanctions.
2. The provision concerning temporary suspension of a judge or prosecutor based on "reliable information" should be amended, as this term lacks clarity and foreseeability.
3. The draft law should be amended so that authorities other than the KJC and KPC only have the competence to *inform* the councils about potential disciplinary offences. It is also recommended that the draft law be complemented by provisions containing clear

procedural rules concerning the councils' decision-making process at this initial stage of disciplinary proceedings.

4. The membership and the method of election of the investigation panels of the councils should be clarified, and it should be explicitly provided that the burden of proof in the context of disciplinary proceedings, including investigations, rests on the authorities that initiate and carry out the relevant proceedings.

78. The present Opinion contains also other recommendations addressed to the authorities.

79. The Venice Commission remains at the disposal of the authorities of Kosovo for further assistance in this matter and their efforts concerning the justice reform.