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(VENICE COMMISSION)

KOSOVO

OPINION

**ON THE LAW ON THE JUDICIAL COUNCIL
AND THE DRAFT LAW AMENDING AND SUPPLEMENTING IT**

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

on the basis of comments by

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I. Introduction

1. By letter of 3 December 2024, Ms Albulena Haxhiu, Minister of Justice of Kosovo, requested among others an Opinion of the Venice Commission on the draft Law on Amending and Supplementing the Law on the Kosovo Judicial Council (see [CDL-REF\(2024\)047](#) and [CDL-REF\(2024\)048](#)), which is the subject of the present Opinion. The Opinion request on the legislative package also includes the Draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors ([CDL-REF\(2025\)006](#)) and the Draft law amending the Law on the disciplinary liability of judges and prosecutors ([CDL-REF\(2025\)007](#)), which are the subject of the Opinion No. 1220/2024 ([CDL-AD\(2025\)010](#)).

2. Mr Gaspar, Ms Gerards and Mr Giovagnoli acted as rapporteurs for this Opinion.

3. On 27 and 28 January 2025, a delegation of the Venice Commission composed of Mr Gaspar, Ms Gerards and Mr Giovagnoli, accompanied by Mr Adrià Rodríguez-Pérez and Mr Taras Pashuk from the Secretariat, travelled to Pristina and had meetings with representatives of the Ministry of Justice, the Kosovo Judicial Council (hereinafter, the KJC), representatives from international organisations as well as with civil society organisations. Following their visit, written exchanges were held with the Ministry of Justice and the Secretariat of the Assembly. The Venice Commission is grateful to the authorities of Kosovo and the Council of Europe Office in Kosovo for the excellent organisation of the visit.

4. This Opinion was prepared in reliance on the English translation of the proposed amendments and Law No. 06/L-055 on Kosovo Judicial Council (hereinafter, respectively, the draft law and the Law on the KJC). The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 27 and 28 January 2025. The Opinion was examined at the Joint Meeting of the Sub-Commissions on the Judiciary, the Rule of Law and Latin America (Venice, 13 March 2025) and adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14-15 March 2025).

II. Background

A. General remarks

6. On 3 December 2024, the Minister of Justice of Kosovo requested the Opinion of the Venice Commission on a package of six laws on justice reform. The Opinion of the Venice Commission was sought, particularly, on aspects related to the “performance evaluations of judges and prosecutors, asset declaration and integrity check system, retirement age of judges and prosecutors, and authorities to be involved with decision making powers in disciplinary procedures.” This Opinion focuses on the Law on the KJC and the draft law.

7. In the aforementioned letter, the Minister of Justice noted that the draft laws under examination are the outcome of the Joint Commitment Statement on the Justice Reform in Kosovo which was signed on 14 March 2023 by the Ministry of Justice, the 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.¹

8. The judicial system in Kosovo has undergone numerous analyses aimed at improving its functionality.² The 2024 Kosovo Report by the European Commission noted *inter alia* that the

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

² For a more detailed description, see 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, paras 19-23.

functioning of the KJC is adequate, with the KJC investing in transparency and improved communication with the public.³ Both councils had also appointed new Deputy Chairpersons. However, according to the report, “[t]he implementation of the Joint Commitment Statement, signed by heads of justice system institutions in March 2023, experienced serious obstacles and delays. The drafting process of these key reform laws did not ensure a meaningful consultation of relevant national and international stakeholders.”⁴ Additionally, the report also notes that full composition of the KJC has not been consistently ensured, and recommends improvements in planning activities, appropriate use of resources, overall management practices, decision-making, and communication.⁵

9. During the meetings held in Pristina, several stakeholders confirmed these findings. The interlocutors acknowledged the overall positive perception of the KJC’s work, noting substantial improvements in recent years. However, the interlocutors also raised concerns regarding unresolved issues, particularly the vacant seats corresponding to the Serb community in the Assembly, and the insufficiency of judicial oversight within the courts, attributed to the absence of adequate hierarchical supervisory mechanisms. Overall, the interlocutors argued that the Law of the KJC is commendable on paper, but that its provisions are not always implemented in practice.

B. Scope of the Opinion

10. The main changes introduced by the draft law relate to the performance assessment of judges. Article 3 of the draft amendments modifies the composition of the Performance Evaluation Committee for judges (amending Article 27 of the Law on the KJC) and introduces a Performance Evaluation Committee for Presidents of the Courts (with a new Article 27/A of the Law on KJC). Article 6 of the draft law also further details the functions of the Inspection and Verification Unit as well as the requirements for verification officers (amending Article 36 of the Law on the KJC). The draft law also expands the franchise of the judges electing their peers at the KJC to the recently created first and second instance of specialised courts (Article 2 of the draft law, amending Article 8 of the Law on the KJC); reduces the appointment period of Court presidents and supervisory judges from five (5) to four (4) years, and allows them to be re-elected for a second mandate (Article 4 of the draft law amending Article 30 of the Law on the KJC); and modifies the provisions on the selection, appointment, and dismissal of the General Director of the Secretariat (Article 5 of the draft law amending Article 35 of KJC).

11. These amendments need to be assessed in the framework of the KJC’s constitutional mandate “to ensure the independence and impartiality of the judicial system” (Article 108(1) of the Constitution) and its responsibility to recruit, propose candidates for appointment and reappointment to judicial office, as well as for transfer and disciplinary proceedings of judges (Article 108(3)). The Unit Responsible for supporting the integrity checks for judges is also under the responsibility of the KJC. To assess the role of the KJC on the matters requested by the Minister of Justice in her letter, it is necessary to assess the overall composition as well as the working methods of the KJC. The Venice Commission has, moreover, not previously assessed the Law on the KJC. Therefore, the current Opinion provides an overall assessment of the Law on the KJC, as proposed to be amended, and, specifically, its mandate, composition and the election of its members, as well as its structure and working methods. The absence of comments on other provisions of the Law should not be seen as tacit approval of these provisions.

³ European Commission, [Kosovo 2024 Report](#), page 5. See also the [Rule of Law Index](#) by the World Justice Project, which in 2024 ranked Kosovo in the 58th position of out of 142 countries.

⁴ European Commission, [Kosovo 2024 Report](#), page 26.

⁵ European Commission, [Kosovo 2024 Report](#), page 26.

III. Analysis

A. Composition of the KJC and the election of its members

12. Judicial independence is an integral part of the fundamental democratic principles of the separation of powers and the rule of law. It is guaranteed, *inter alia*, by Article 6 of the European Convention on Human Rights (ECHR).⁶ In the case of Kosovo, it is enshrined in Articles 4 and 31, as well as in Chapter VII of the Constitution. According to international benchmarks, “independence means that the judiciary is free from external pressure and is not subject to a political influence or manipulation, in particular by the executive branch.”⁷ As stressed notably in 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.

13. In democratic states governed by the rule of law, one option is to entrust judicial councils with ensuring and safeguarding the independence of the judiciary. Owing to the richness of legal culture in Europe, however, at this point there is no single model which applies to all countries. The Venice Commission is very much conscious of the diversity of legal systems in Europe, and it has never advocated a self-governing judiciary as a general standard.⁸ In its opinion, a balance needs to be struck between judicial independence and self-governance, on the one side, and the necessary accountability of the judiciary, on the other.⁹

14. One way to achieve this goal is to establish a judicial council with a balanced composition of its members. As often mentioned by the Venice Commission, most recently in its Opinion on the composition of the Council of Judges and Prosecutors of Türkiye and the procedure for the election of its members, “[t]he composition of the Council must be such as to guarantee the conditions of independence and impartiality for the exercise of its powers. To this end, the Venice Commission has identified some key parameters on judicial and prosecutorial councils:

- At least half of the members of judicial councils should be judges elected or appointed by their peers.
- The judicial component in a council should represent the whole judiciary and should respect the pluralism inside the judiciary. Hence, there should be a balanced representation of judges from all different levels and courts and the widest possible diversity and representation of gender and regions.

⁶ See also the [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#). See also Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, para. 74, and Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges. See also Venice Commission, [CDL-AD\(2023\)015](#), France - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, para. 18.

⁷ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, para. 74.

⁸ See, for example, Venice Commission, [CDL-AD\(2020\)017](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on amendments to the Law on the Common courts, the Law on the Supreme court and some other Laws, para. 9.

⁹ See, *inter alia*, Venice Commission, [CDL-AD\(2014\)008](#), Bosnia and Herzegovina - Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, paras 32 and 35; Venice Commission, [CDL-AD\(2015\)022](#), Bulgaria - Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria, para. 45; Venice Commission, [CDL-AD\(2015\)037](#), Armenia - First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, para. 179; Venice Commission, [CDL-AD\(2017\)019](#), Armenia - Opinion on the Draft Judicial Code of Armenia, para. 89; Venice Commission, [CDL-AD\(2017\)018](#), Bulgaria - Opinion on the Judicial System Act of Bulgaria, para. 24; Venice Commission, [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 of Romania, paras 138 and 139.

- The risk of corporatism within the judiciary should be counterbalanced by the participation of non-judicial (lay) members belonging to other legal professions, e.g., attorneys, notaries, academics, and civil society.
- Non-judicial members should have the same protection as judicial members especially as concerns security of tenure and the right to a fair hearing in case of discipline, suspension, and removal, as a crucial precondition for the independence of the Council. Any difference in treatment between judicial and non-judicial members should be duly justified.
- If non-judicial members are elected by Parliament, this should be done with the broadest agreement, in principle by a qualified majority vote which involves the opposition, following an open and transparent competition. Effective anti-deadlock mechanisms should be provided. [...]
- Members of judicial councils should enjoy security of tenure and functional immunity as key safeguards of their independence.”¹⁰

1. Composition of the KJC

15. In line with Article 108(6) of the Constitution, Article 8 of the Law on the KJC, as amended by Article 2 of the draft law, establishes that the KJC has 13 members:

- Seven (7) members are judges elected by members of the judiciary, out of which two (2) are judges of the Supreme Court, two (2) are judges of the Court of Appeal or the second instance of specialised courts, and three (3) are judges of Basic Courts or the first instance of specialised courts.¹¹
- Six (6) members are elected by the Assembly. Of these six, two are elected by the Assembly Members holding their seats during the general allocation of seats; two by the Assembly members whose seats are reserved or guaranteed for the Serb community, and two by the Assembly members whose seats are reserved or guaranteed for the other communities. Each of these three groups of two members must include at least one judge (elected, respectively, by the Assembly Members holding their seats during the general allocation of seats; by the Assembly members whose seats are reserved or guaranteed for the Serb community, and by the Assembly members whose seats are reserved or guaranteed for the other communities).

16. The Venice Commission has repeatedly stated that at least half of the members of judicial councils should be judges elected or appointed *by their peers and representing the whole judiciary*. In order to provide for democratic legitimacy of the Judicial Council, the other members should be elected by Parliament among persons with appropriate legal qualifications taking into account possible conflicts of interest.¹² Lay members should not be judges but rather come from the ‘users’ of the judicial system, e.g., attorneys, prosecutors, notaries, academics, or members of civil society.¹³

¹⁰ Venice Commission, [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, para. 29.

¹¹ As it will be explained in para 27 below, specialised courts include the recently created commercial and administrative courts.

¹² Venice Commission, [CDL-AD\(2007\)028](#), Report on Judicial Appointments by the Venice Commission, para. 29.

¹³ Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, para. 32. See also Venice Commission, [CDL-AD\(2018\)003](#), Republic of Moldova - Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, para. 56; Venice Commission, [CDL-AD\(2020\)015](#), Republic of Moldova – Urgent Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending the law No. 947/1996 on Superior Council of

17. As noted in the above-mentioned Opinion on Türkiye, “the purpose of electing lay members to a judicial council is to obtain a plural, democratically legitimised composition that can help to strengthen the council's external legitimacy and reduce the negative aspects (and deviations) of corporatism.”¹⁴ Entrusting the Assembly with the election of lay members is a common and efficient manner of providing democratic legitimacy to this body and avoid risks of corporatism in a council. Moreover, election of lay members by Parliament or appointed otherwise, guarantees a “democratic element” of such councils.¹⁵ At the same time, election by Parliament bears an inherent risk of being subjected to the logic of political compromise and the strength of majoritarian forces, especially when the election can be won through a simple majority (as will be explained below).

18. Against this backdrop, the Venice Commission finds that the presence of seven judges elected by their peers amongst the different court levels (out of 13 members of the Judicial Council) is in line with the standards. However, the Venice Commission also notes that according to the provisions of Article 8 of Law on KJC, at least 10 members of the KJC will be judges, but it is not excluded that all members of the KJC could in fact be judges. This is not regarded as problematic by the interlocutors, and some have even emphasised that it would be desirable for all members to be judges. In this respect, it should be noted that while the Constitution provides that at least 10 of the 13 members must be judges, it is silent on the status of the remaining three members. This suggests that the law could stipulate that these members must be non-judicial or genuine lay members. The Venice Commission finds that the current rules on the non-judicial component of the KJC are not in line with the standards as recalled in its previous opinions.¹⁶ To offer sufficient safeguards against corporatism and to allow for different backgrounds and expertise to be represented in the KJC, it is necessary for all six members of the KJC appointed by the Assembly to be genuinely lay members.

19. In this respect, the Venice Commission observes that the current Law on the KJC provides for the possibility for non-judge lay members with diverse professional backgrounds to be elected to the KJC. Notably, Article 8(5) of the Law on the KJC stipulates that “[r]espectable professionals can be appointed outside the legal field and may include persons with expertise in management, finance, information technology or social sciences.” The Venice Commission recommends that, in the absence of a constitutional reform, the Law should at least provide that the three members elected by the Assembly who are not judges include one member of the Bar association, one law professor, and one representative of civil society to achieve a pluralistic composition of the KJC.¹⁷

Magistracy; Venice Commission, [CDL-AD\(2023\)015](#), France - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, para. 23; Venice Commission, [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, para. 29.

¹⁴ Venice Commission, [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, para. 45.

¹⁵ Venice Commission, [CDL-AD\(2017\)031](#), Poland - 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, para. 18.

¹⁶ In addition to the above-mentioned Opinions by the Venice Commission, see also CCJE, [Opinion n. 24 \(2021\)](#), on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para. 31, which states “An election of judge members by parliament or selection by the executive must be avoided. An election by parliament of *non-judicial members* might, however, be acceptable.” [emphasis added].

¹⁷ Venice Commission, [CDL-AD\(2021\)051](#), Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, para. 49. In turn, this nomination mechanism entails its own risks, as the experience with the KPC shows. In the case of the Prosecutorial Council, it had to function “with eleven (11) members since the Assembly failed to secure the election of two lay members due to the lack of nominations for one lay member from the Kosovo Bar Association and a lack of interests from representatives of civil society organisations to apply for the other vacant position of one lay member.” See Venice Commission, [CDL-AD\(2023\)043](#), Kosovo - Follow-up opinion to the previous opinions concerning amendments to the Law on the Prosecutorial Council, para. 12.

20. During the exchanges held in Pristina, several interlocutors conveyed concerns that former non-judge members of the KJC had experienced a general lack of inclusion in decision-making processes, potentially undermining their effective participation and institutional engagement. In the view of the Venice Commission, this apparent tendency to marginalise non-judge members underscores the need to enhance their involvement within the KJC.

2. The election of the KJC members

21. Article 108(4) of the Constitution does not provide for any criteria for the selection of the members of the KJC, but states that these shall be “provided by law.” Despite the delegation to the law in the Constitution, the Law on the KJC only briefly describes the procedure for nomination, election, and dismissal of the Council members by the Assembly (Article 10). The entirety of election procedures for the judges elected by their peers is left to by-laws adopted by the KJC, whereas the Rules of Procedure of the Assembly (hereinafter, the Rules) do not further elaborate the procedure described in Article 10 of the Law on the KJC.

22. In this regard, it should be noted that members of judicial councils “must be selected in a transparent procedure that supports the independent and effective functioning of the Council and the judiciary and avoids any perception of political influence, self-interest or cronyism.”¹⁸ Therefore, the Venice Commission recommends that the Law on the KJC be amended to include the procedures and recommendations described herein, rather than leaving this to the internal regulations of the KJC and the Assembly.

a. Overall provisions on qualifications and ineligibility criteria

23. Article 8(1) of the Law on the KJC stipulates that all members must possess professional qualifications and expertise. However, it does not set out specific minimum professional requirements to ensure that members, particularly those who serve as judges, possess the requisite and adequate professional and practical experience necessary for the proper discharge of their duties. This omission is at odds with established standards, which have consistently emphasised the need for such criteria with the goal of enhancing the authority of, and consequently public confidence in, a judicial council.¹⁹ In addition to adding such criteria, the introduction of a provision prescribing a minimum period of professional service as a prerequisite for appointment to the KJC (for instance, five years) could be considered.

24. Article 9 of the Law on the KJC declares that someone cannot be member of the KJC if they are the president of a court or a judge with initial mandate; are actively involved in one of the other state powers (e.g. as member of the Assembly or the Government, exercising a function in a political party or in the administration); or are a prosecutor. It is also stated that an elected Council member shall be dismissed if they do not resign or suspend an inconsistent position. Excluding members of the executive and legislative powers, as well as candidates with a significant political affiliation, is in line with international requirements.²⁰ The incompatibilities thus established in Article 9 appear balanced and justified by the nature and responsibilities of the Council. However, the wording of Article 9(1.5), which holds that the incompatibility provision

¹⁸ CCJE, [Opinion n. 24 \(2021\)](#), on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, paras 27, 29, 31, 34.

¹⁹ See Venice Commission, [CDL-AD\(2020\)015](#), Moldova, Republic of - Urgent Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending the law No. 947/1996 on Superior Council of Magistracy, para. 30.

²⁰ See Venice Commission, [CDL-AD\(2020\)001](#), 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 the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy, para. 54; Venice Commission, [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, para. 10; and Venice Commission, [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, para. 47.

applies also to “persons performing duties in the Government of administrative bodies, institutions established by the Constitution or created through legislation”, is excessively vague and even seems to be contradictory to the fact that the courts from which the judges are elected are created by the Constitution and through legislation.

25. Regarding the political ineligibility criteria, the Venice Commission further recommends introducing a cooling off period, thus requiring that candidates should not have had significant political affiliations for some years prior to their election to the KJC (e.g., five years).²¹ In the opinion of the Venice Commission, this would create some “safety distance”, particularly between lay members and politics, which could contribute to ensuring the political neutrality of the KJC.²²

26. A further ineligibility criterion is related to the conviction of a criminal offence, with the exception of offences committed by negligence (Article 9(1.2) of the Law on the KJC). Whereas candidates to the KJC may be declared ineligible due to their criminal conviction, indiscriminate rules which do not sufficiently consider the severity of the offence are at odds with international standards. The Venice Commission therefore recommends amending the law to ensure that the ineligibility due to criminal conviction in Article 9(1.2) of the Law on the KJC is limited to criminal offences of a certain gravity.²³

b. Members elected by the judiciary

27. Whereas Article 108(6) of the Constitution provides that seven members of the KJC shall be judges elected by the members of the judiciary, the Law on the KJC, as amended by the draft law, establishes that two are judges of the Supreme Court, two are judges of the Court of Appeal or the second instance of specialised courts, and three are judges of Basic Courts or the first instance of specialised courts. During the meetings in Pristina and the follow-up exchanges with the authorities, the delegation was informed that these amendments were aimed at enfranchising the recently created commercial and administrative courts. The Venice Commission welcomes that the draft law now includes the first and second instance of specialised courts among the ranks of courts out of which the judges are elected by their peers, thereby extending the franchise to all practising judges.²⁴ Nevertheless, it is advisable to supplement the reference to specialised courts with an explicit reference to the legal framework governing these courts.

28. The Venice Commission reaffirms the fundamental principle of ensuring broad and equitable representation in a judicial council across all levels and categories of courts, as this is essential to upholding judicial pluralism.²⁵ The distribution in the Law on the KJC seems to be aimed at

²¹ Venice Commission, [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, para. 33.

²² See Venice Commission, [CDL-AD\(2021\)030](#), Montenegro - Urgent Opinion on the revised draft amendments to the Law on the State Prosecution Service, para. 29, and Venice Commission, [CDL-AD\(2021\)051](#), Kosovo – Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, para. 34.

²³ Venice Commission, [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim follow-up opinion to previous opinions on the High Judicial and Prosecutorial Council, para. 60.

²⁴ According to the authorities, the provision regulating the Commercial Court can be found in Law No. 08/L-015 on Commercial Court, whereas the provisions regulating the Administrative Court are to be found in Draft Law on the Administrative Court. The delegation was also informed that the Law on the Administrative Court was approved by the Assembly, but contested by the opposition in the Constitutional Court of Kosovo due to procedural reasons for its approval, along with a number of other laws.

²⁵ CCJE, [Opinion n. 24 \(2021\)](#), on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems. See also Venice Commission, [CDL-PI\(2022\)005](#), International Round Table - "Shaping judicial councils to meet contemporary challenges", Rome (Italy), 21-22 March 2022 - General conclusions; Venice Commission, [CDL-AD\(2021\)043](#), Cyprus - Opinion on three Bills reforming the Judiciary, paras 49 and 60; Venice Commission, [CDL-AD\(2023\)015](#), France - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, para. 31; and [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, paras 29 and 36.

ensuring a wide representation of the judiciary in the Council, as required by European standards.²⁶ Nevertheless, the current distribution seems to be particularly imbalanced in favour of the Supreme Court, the Court of Appeals, and the second instance of specialized courts.²⁷ The Venice Commission therefore recommends considering re-balancing the representation of lower and higher courts.

29. A further reason for concern is the election methods prescribed in the KJC's Regulation No. 09/2019 on the procedure and criteria for the election of members of the Kosovo Judicial Council by the Judiciary (hereinafter, the Regulation). According to these rules, each of the judges from the three instances are elected *only* by the judges *in their ranks*, whereas, according to the Law on the KJC, the judges elected by their peers are *from among*, respectively, the members of the Supreme Court, the Court of Appeals, and the Basic Courts. Hence, the internal rules limit the election of each member to the judges from their own ranks.

30. The Venice Commission would like to recall that the members of a judicial council should act in the interest of the judiciary and the justice system as such, and not in the interest of a group of judges of a certain type of court.²⁸ Quotas for judges across different levels and jurisdictions may facilitate pluralism and broad representation within the judiciary.²⁹ However, the current allocation of judges elected by their peers disproportionately favours those serving in the Supreme Court, Courts of Appeal, and second-instance specialised courts, to the detriment of judges from Basic Courts and first-instance specialised courts, who collectively constitute the majority of the judiciary in Kosovo. Moreover, the current system for election discussed in para. 29, which is not necessitated by the Law on the KJC as such, exacerbates the disproportionate representation of certain courts over others. The Venice Commission recommends that the method for electing the judges of the KJC ensure that they do not represent the interests of their respective judicial tiers, but the judiciary as a whole. One way to achieve this is to require that at least some of the judges at the KJC be elected by the entire judiciary, rather than solely by their peers within the same rank. Various models of direct elections are possible, and the choice belongs to the Kosovar authorities, provided that it meets the relevant standards and the system is enshrined at the level of the Law on the KJC.

31. The Regulation defines several eligibility criteria, including that candidate judges must not have been subject to any disciplinary measure within the past three years, except for a non-public written warning or reprimand (Article 5(1.2) of the Regulation). Moreover, Article 6(1) of the Regulation appear to suggest that the Council may establish additional criteria beyond those prescribed by the Law and the Regulation by "specify[ing] from which level of courts the member should be selected, the deadline for submitting the nomination, the criteria and the necessary documentation." Insofar as the formal eligibility criteria described above are concerned, according to the Law on the KJC all permanent judges who are entitled to exercise judicial functions should be entitled to stand for the elections. Regarding the additional criteria in the Regulation, and while welcoming the criterion of not having been subject to any disciplinary measure within the past

²⁶ [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), para 48; Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, para. 32; and CCJE, [Opinion n. 10 \(2007\)](#) on Council for the Judiciary in the service of society, para. 27.

²⁷ According to the statistics in a 2024 [Report prepared by the CEPEJ for the attention of the European Commission](#), the total number of professional judges in 2023 was 424. Of these, 334 served in first-instance courts, 58 in second-instance courts, and 32 in the Supreme Court. This means that the 32 judges in the Supreme Court are represented at a ratio of 16 judges per member of the KJC (2 members), the 58 judges in second-instance courts by a ratio of 29 judges per member of the KJC (2 members), and the 334 judges in the first-instance courts by a ratio of 111 judges per members of the KJC (3 members).

²⁸ Venice Commission, [CDL-AD\(2024\)018](#), Poland – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 38.

²⁹ Venice Commission, [CDL-AD\(2024\)018](#), Poland – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 37.

three years, the Venice Commission recommends that all eligibility criteria be listed at the level of the Law on the KJC.

32. Article 8(2) of the Law on the KJC further prescribes that the Council members should reflect the principles of gender equality in the Republic of Kosovo. In this regard, Article 6(5) of the Regulation stipulates that “[i]f the Council finds that there is gender [...] under-representation in the composition of members from the judiciary, then the announcement of vacancies shall be made for candidate judges from the under-represented gender.” The Venice Commission welcomes that the provisions on gender equality in the Law on the KJC are translated into the Regulation, as it has often stressed that councils should have a balanced representation of gender.³⁰ However, the provisions of the Law on the KJC are excessively broad and do not establish specific criteria to ensure that gender balance is achieved.³¹ The Venice Commission therefore recommends that the regulatory provisions aimed at guaranteeing a gender-balanced composition of the KJC be incorporated into the Law itself.

33. Lastly, Article 6(5) of the Regulation calls for ensuring a balanced ethnic representation in the composition of members from the judiciary. The Venice Commission notes that the Constitution of Kosovo entrusts the KJC with the task of ensuring that the courts “fully reflect the multi-ethnic nature of Kosovo” and that it provides for specific rules of election of the Assembly-elected members of the KJC. According to Article 108 of the Kosovo Constitution, two (2) members are elected by the deputies of the Assembly holding seats attributed during the general distribution of seats; two (2) members are elected “by the deputies of the Assembly holding reserved or guaranteed seats for the Kosovo Serb community”; and two (2) members are elected by the deputies of the Assembly holding reserved or guaranteed seats for other Communities. The multiethnic composition of the KJC is designed to enhance the legitimacy of and public trust in the Council. Nonetheless, the Venice Commission is of the view that “making membership dependent on a person’s affiliation to an ethnic community [...] would undermine the authority and impartiality of [...] an institution governed by the rule of law rather than the interests of ethnic groups.”³² The Venice Commission therefore considers it sufficient that ethnic criteria, alongside linguistic, religious or other criteria, are part of the general considerations of each electing body with a view to achieving a pluralistic and balanced composition of the KJC, without imposing further obligations on the appointment bodies. In other words, there should be no “ethnic quotas” on the KJC.

34. The elections are managed by an Ad hoc Committee consisting of three members of the KJC (Article 7 of the Regulation). This is in line with the principle that elections of representative bodies of the judiciary be managed by the judiciary itself.³³ However, decisions made by the Ad hoc Committee seems to be final, as neither the Law on the KJC nor the Regulation foresee any judicial review neither by the Council itself nor by the Courts. The Venice Commission considers that such a review should be foreseen in the Law on the KJC.

³⁰ Venice Commission, [CDL-AD\(2011\)010](#), Montenegro - Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the law on courts, the law on the state prosecutor's office and the law on the judicial council of Montenegro, paras. 20-22; Venice Commission, [CDL-AD\(2023\)029](#), The Netherlands – Joint opinion on the legal safeguards of the independence of the judiciary from the executive power, para. 42; Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution, para. 48; and Venice Commission, [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, para. 29.

³¹ For equivalent provisions in the Law of the KPC, the Venice Commission concluded that “this provision seems to be merely a matter of pious exhortation but, in absence of further details, it remains too ambiguous to be efficiently enforced in practice.” See Venice Commission, [CDL-AD\(2023\)043](#), Kosovo – Follow-up opinion to the previous opinions concerning amendments to the Law on the Prosecutorial Council, para. 72.

³² Venice Commission, [CDL-AD\(2024\)015](#), Bosnia and Herzegovina - Opinion on the method of electing judges to the Constitutional Court, para. 30.

³³ See, for example, Venice Commission, [CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 40.

35. Pursuant to Articles 8, 9(1.1), and 10(1.1) of the Regulation, candidates are required to nominate themselves. A potential concern arising from this procedure is that highly qualified candidates may refrain from putting themselves forward due to reluctance to self-nominate. Furthermore, the role and influence of judicial associations do not appear to be duly considered in this process. The Venice Commission recommends incorporating alternative mechanisms for the nomination of judicial candidates to the KJC, including the possibility of proposals being submitted by judicial associations or endorsed by a sufficiently representative number of judges.

c. Members elected by the Assembly

36. In contrast to the procedure for the Council members elected by the judiciary, Article 10 of the Law on the KJC does detail the procedure for nomination, election, and dismissal of the Council members elected by the Assembly. Most of the steps are taken at the level of the "relevant" Assembly Committee, which makes a shortlist of two candidates to be submitted to the Assembly. The Assembly then votes on the selected candidates. If none of the candidates proposed receives a majority of votes of all the deputies present and voting, then in the second round the candidate with the highest number of votes shall be considered as elected.

37. The Venice Commission recalls that "[w]hen lay members are elected by parliaments this should be done with the broadest consensus, in principle by a qualified majority vote which involved the opposition, following an open and transparent competition. Effective anti-deadlock mechanisms should be provided."³⁴ To avoid the risk of politicisation in the election of lay members by the parliament, a properly organised selection procedure should be conducted. Such a procedure should meet three cumulative conditions: true pluralism in the selection body; broad support for nominated candidates across the political spectrum; and preventing the majority in the Assembly from circumventing or sabotaging the selection procedure.³⁵ However, the Venice Commission finds that the current procedures as described in the Law on the KJC and the Rules do not fully meet these requirements.

38. The "relevant" Assembly Committee is entrusted with the selection of the candidates, including key steps such as setting out the requirements, assessing whether candidates meet them, conducting the interviews, and shortlisting two candidates. However, neither the Law on the KJC nor the Rules detail which is this committee. During their visit to Pristina, the delegation was informed that the selection procedure is conducted by the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency (hereinafter, the Committee). According to the Rules of Procedure of the Assembly, Parliamentary groups shall be represented in the Committee according to the number of deputies (Article 31(1)). From the perspective of the diversity of opinions it reflects, it is positive that this Committee includes members from various parliamentary parties, which means that this body is formally pluralistic.

39. Apart from the distinction between judges and non-judges in Article 8, the eligibility criteria for candidates, as determined by the Assembly Committee under Article 10(4) of the Law on the KJC, are not explicitly defined in the Law. This lack of clarity grants the Committee significant discretion in setting requirements, thus potentially influencing the selection of KJC members. Such broad discretion raises concerns about the independence of the KJC and, ultimately, the judiciary as such. To address these, the Law on the KJC should explicitly define eligibility

³⁴ See Venice Commission, [CDL-PI\(2022\)005](#), International Round Table - "Shaping judicial councils to meet contemporary challenges", Rome (Italy), 21-22 March 2022 - General conclusions, and Venice Commission, [CDL-AD\(2023\)015](#), France - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, para. 28.

³⁵ See Venice Commission, [CDL-AD\(2021\)051](#), Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, para. 42, and [CDL-AD\(2023\)043](#), Kosovo - Follow-up opinion to the previous opinions concerning amendments to the Law on the Prosecutorial Council, para. 41.

requirements to ensure the shortlisting of the best, merit-based, candidates and their political neutrality.³⁶

40. In addition, the current procedures do not envisage any expert input during the selection process from professional associations of lawyers, law schools, or civil society organisations. During the meetings in Pristina, the professional and civil society organisations informed that they had not been consulted during the selection process at the Committee. To address these issues, provisions on expert input should be enshrined in the Law. Alternatively, legislative amendments could be introduced providing that bodies such as the Bar association, universities, and civil society organisations are involved in the nomination of candidates to be elected by the Committee and, subsequently, the National Assembly.³⁷

41. In contrast to the provisions in the Regulation for the elections of the members elected by the judiciary, the Venice Commission observes that there are no provisions aimed at ensuring a balanced gender representation among the members of the KJC elected by the Assembly. In this regard, and whereas Article 8(2) of the Law on the KJC prescribes that the Council members should reflect the principles of gender equality in the Republic of Kosovo, the Venice Commission was informed that in the current composition of the KJC, out of the 11 current members, only three are women. Therefore, and as emphasised above, the Venice Commission recommends introducing a mechanism to guarantee a balanced gender composition for the lay members of the KJC elected by the Assembly in the Law on the KJC.

42. As underlined above, the Venice Commission is also of the view that the multi-ethnic character of the KJC should not be achieved through ethnic quotas.

43. As the Venice Commission already recommended in its Opinion on the KPC, the Assembly should be able to choose from a sufficiently large pool of candidates to reduce the risks of excessive political influence in the selection process.³⁸ The Commission thus reiterates its advice that it would be useful not to limit the pool of candidates to two per position but to give the Assembly more names to choose from.

44. In the Assembly, members of the KJC are elected by a majority of votes cast by deputies present and voting, as stipulated in Article 10(9) of the Law on the KJC. Moreover, Article 10(9) of the Law on the KJC states that if none of the two candidates receives a majority of votes, then in the second round the candidate with the highest number of votes shall be considered as elected. International standards advocate for a broader consensus, which should be secured through a qualified majority, such as two-thirds or three-fifths of all Assembly members.³⁹ The Venice Commission has noted that the requirement of an absolute majority, in contrast to a simple majority, is acceptable, as it is the lowest level of qualified majority.⁴⁰ In the Kosovo system, however, the absolute majority mechanism in the Law on the KJC for the first round is rendered ineffective if those candidates supported only by the ruling party can be elected by a

³⁶ Venice Commission, [CDL-AD\(2021\)051](#), Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, para. 47.

³⁷ See, for example, Venice Commission, [CDL-AD\(2021\)051](#), Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, para. 32; Venice Commission, [CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 39; and Venice Commission, [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, para. 47.

³⁸ Venice Commission, [CDL-AD\(2023\)043](#), Kosovo - Follow-up opinion to the previous opinions concerning amendments to the Law on the Prosecutorial Council, para. 12.

³⁹ Venice Commission, [CDL-AD\(2018\)015](#), Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, para. 13.

⁴⁰ Venice Commission, [CDL-AD\(2024\)034](#), Poland - Opinion on the draft amendments to the Law on the Public Prosecutor's Office, para. 41.

simple majority in the second round.⁴¹ Since this creates a risk of politicisation, the Venice Commission would therefore recommend that the lay members of the KJC are always elected by an absolute majority of the votes in the Assembly.

45. Because of the risk of deadlock in the appointment of KJC members when absolute majorities are required, the Venice Commission furthermore recommends the adoption of an anti-deadlock mechanism to be invoked should the Assembly fail to elect new members.⁴² This scenario is not just an abstract possibility, as during the visit to Pristina the delegation of the Venice Commission was informed that the appointment of two members of the KJC by the Assembly was still pending. One option the Kosovar authorities could consider is prolonging the mandate of the members already sitting in the KJC as *acting* members until a new lay member is elected.⁴³ Granting the competence to nominate the candidates to another, neutral state institution has been chosen as an anti-deadlock mechanism in other countries.⁴⁴ Another option would be to draw lots among the eligible candidates proposed to the Assembly.⁴⁵ In the case of Kosovo, the Commission notes that drawing lots is a mechanism which was prescribed in the 2105 Regulation on Election of Kosovo Judicial Council Members from the Judiciary (Articles 8(4) and 9(5)). Accordingly, the Venice Commission is of the view that, should the Assembly fail to elect a lay member by an absolute majority, the selection could be determined by the drawing of lots among the candidates proposed by the Committee, rather than by simple majority. Should this process take longer than the mandate of the lay member to be replaced, they could remain at the KJC as *acting* members until a new lay member is elected.

3. Term, termination, dismissal, and disciplinary procedures

46. The principle of security of tenure for officeholders in general, and for members of the judicial councils in particular, is crucial, stemming from the principles of rule of law and judicial independence.⁴⁶ Considering this principle, it is essential to specify all possible substantive grounds for termination of office, dismissal, and disciplinary procedures and introduce adequate procedural safeguards in the proceedings against KJC members.⁴⁷

47. Article 12(1) of the Law on the KJC establishes that the members serve a single, non-renewable, five-year term. Articles 10(10) and 19(3) of the Law on the KJC regulate the dismissal of its members, stipulating that they may be removed upon the proposal of the Assembly Committee or the KJC itself, respectively, by a majority vote. In the case of dismissal by the KJC, the specific procedure is outlined in Article 13(2), which explicitly states that dismissal may only occur following the issuance of a disciplinary measure by the KJC. According to the letter of the Law, *any* disciplinary measure appears to suffice as a basis for dismissal. The Venice

⁴¹ Venice Commission, [CDL-AD\(2018\)015](#), Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, para. 15. See similar concerns in Venice Commission, [CDL-AD\(2017\)031](#), Poland - 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, para. 22.

⁴² Venice Commission, [CDL-AD\(2018\)015](#), Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, para. 19.

⁴³ See a similar proposal in Venice Commission, [CDL-AD\(2018\)015](#), Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, para. 28.

⁴⁴ Venice Commission, [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, para. 27. Whereas this solution would motivate parliamentarians to reach the necessary majority for the appointment of the lay members, implementing it in Kosovo would require amending the Constitution.

⁴⁵ See a similar proposal in Venice Commission, [CDL-AD\(2018\)015](#), Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, para. 35.

⁴⁶ Venice Commission, [CDL-AD\(2024\)018](#), Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland, para. 57.

⁴⁷ Venice Commission, [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, para. 59.

Commission reiterates that the early termination of a Council member's mandate should always be linked to a clearly identifiable wrongdoing or a failure to fulfil their duties, and should meet the proportionality requirement. To ensure proportionality and safeguard judicial independence, the Venice Commission recommends amending the Law to introduce a gradation of disciplinary offences, distinguishing between varying degrees of severity and their corresponding consequences, and that the dismissal be foreseen only for those of considerable gravity.⁴⁸

48. As the Venice Commission has stated before, the law should establish clear and limited grounds for disciplinary actions.⁴⁹ In this regard, the Venice Commission is concerned about the lack of clear provisions in the Law on the KJC on disciplinary offences and procedures, as Article 19 delegates this matter to internal Council rules. Whilst a separate regulation could govern some of the more detailed aspects of suspension and dismissal, it would be preferable for the legal framework to at least outline the general principles on disciplinary procedures. Furthermore, judges appointed to the KJC should be protected with the same guarantees as those granted to judges exercising jurisdictional functions and non-judicial members should have equivalent protection.⁵⁰

49. Furthermore, the Venice Commission notes that the disciplinary committee in Article 19.2 consists solely of judges, which could raise a risk of corporatism. To mitigate this, and once the KJC ensures a balanced composition of its members between those elected by the judiciary and the genuine lay members elected by the Assembly, it may be advisable that the committee mirrors the overall composition of the KJC.⁵¹ As regards the voting majority of two thirds of the plenary, given the KJC's judge-dominated composition and for the sake of effective participation of both judicial and lay members, it should be ensured that disciplinary decisions should not be adopted exclusively by the votes of one of those groups.⁵² The Venice Commission therefore recommends enhancing the provisions on the Law on the KJC with clear disciplinary procedures and criteria, enshrining a pluralist composition of the disciplinary committee, and requiring broad majorities.

50. In addition to the disciplinary measures, under Article 13(1.3) the mandate of a member is terminated due to repeated failure to attend to the activities of the KJC for more than three months. This provision does not appear to account for cases where the absence may be justified. At the same time, taking due account of the incomplete composition of the KJC, coupled with the potential use of absenteeism as an obstructionist strategy as experienced in the KPC, three months seem a very lengthy period during which it may be permissible not to attend the activities of the Council, especially for those members serving on a full-time basis (namely, the Chair, the

⁴⁸ Venice Commission, [CDL-AD\(2022\)050](#), Montenegro - Opinion on the draft amendments to the Law on the Judicial Council and Judges, para. 33.

⁴⁹ Venice Commission, [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, para. 59. See also para. 63 and footnote 76.

⁵⁰ See Venice Commission, [CDL-AD\(2023\)029](#), Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on Legal Safeguards of the Independence of the Judiciary From the Executive Power of the Netherlands, para. 55. See also Venice commission, [CDL-AD\(2024\)009](#), Bosnia and Herzegovina - Interim Follow-up Opinion to previous Opinions on the High Judicial and Prosecutorial Council, para. 28.

⁵¹ See, for disciplinary procedures on judges, Venice Commission, [CDL-AD\(2022\)044](#), Armenia - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Judicial Code, para. 35; and Venice Commission, [CDL-AD\(2019\)024](#), Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI), on the amendments to the Judicial Code and some other Laws, para. 19.

⁵² See, for disciplinary procedures on judges, [CDL-AD\(2023\)045](#), Armenia - Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Concept Paper concerning the reform of the Ethics and Disciplinary Commission of the General Assembly of Judges, para. 26, and Venice Commission, [CDL-AD\(2022\)019](#), Republic of Moldova - Opinion on the draft law on amending some normative acts (Judiciary) of Moldova, para.49. See also Venice Commission, [CDL-AD\(2022\)044](#), Armenia - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Judicial Code, para. 42

Vice-chair, and the chairs of the Committee for Normative Issues, Court Administration, and the President of the Committee for Evaluation of the Performance).⁵³ The Venice Commission thus recommends reviewing the period in which a member's failure to attend to the activities of the KJC may end up in the termination of their mandate, foreseeing flexible periods for those members who are not serving on a full-time basis and for justified absences, which should be clearly outlined in the law.

51. Lastly, the dismissal of the members elected by the Assembly is decided on by the Assembly with the majority of the votes of all deputies (Article 10(10)). It is unclear how the dismissal by the Assembly provided by the Article 10(10) correlates with the dismissal for a disciplinary violation which is to be decided by the KJC itself, provided by the existing Article 19, and/or to the termination of a member's mandate due to repeated failure to attend to the activities of the KJC for more than three months under Article 13(1.3).⁵⁴ During the meetings in Pristina and the follow-up exchanges with the authorities, the delegation was informed that the KJC can initiate the procedure and conduct the investigation for all members of the KJC, and only the final dismissal of members elected by the Assembly should be decided on by the Assembly itself, either based on the proposal by the KJC (after conducting the investigation) or on their own initiative, through the "relevant" Committee. The Venice Commission reiterates its findings in the Opinion on the draft amendments to the law of the KPC that "[m]embers [...] should not be "impeached" simply because the parliamentary majority or their colleagues disapprove of the decisions they take."⁵⁵ According to international standards, "non-judicial members should have the same protection as judicial members especially as concerns security of tenure and the right to a fair hearing in the case of discipline, suspension, and removal, as a crucial precondition for the independence of the Council".⁵⁶ Furthermore, any difference in treatment between judicial and non-judicial members should be duly justified.⁵⁷ In the case of Kosovo, there is a further reason of concern as with the current provisions there may be differences in treatment between the judicial members elected by their peers and the judges appointed by the Assembly. Therefore, the Venice Commission recommends that it should be the responsibility of the KJC to ascertain and substantiate the existence of circumstances that may justify the loss of mandate of a member appointed by the Assembly under Articles 13(1.3) and 19, but that the authority to decide on the dismissal of such a member should remain exclusively with the latter. The difference in treatment between the members appointed by the Assembly compared to those representing the judiciary would be justified because of the difference in their respective mandates.

B. Mandate and functioning of the KJC

52. Article 108(1) of the Constitution entrusts the KJC with ensuring the independence and impartiality of the judicial system. This is in line with the task of a judicial council to "protect the independence of both the judicial system and individual judges and to guarantee at the same time the efficiency and quality of justice as defined in Article 6 of the ECHR in order to reinforce public confidence in the justice system."⁵⁸

⁵³ See also Venice Commission, [CDL-AD\(2023\)043](#), Kosovo - Follow-up opinion to the previous opinions concerning amendments to the Law on the Prosecutorial Council, para. 66.

⁵⁴ See similar concerns in Venice Commission, [CDL-AD\(2021\)051](#), Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, paras 53 and 54.

⁵⁵ Venice Commission, [CDL-AD\(2021\)051](#), Kosovo - Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, para. 54.

⁵⁶ CCJE, [Opinion n. 24 \(2021\)](#), on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, paras 37 and 38.

⁵⁷ Venice Commission, [CDL-AD\(2023\)029](#), The Netherlands - Joint opinion of the Venice Commission and Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legal safeguards of the independence of the judiciary from the executive power, paras 55-56.

⁵⁸ CCJE, [Opinion n°10 \(2007\)](#) on Council for the Judiciary in the service of society, recommendation A.b). See also Venice Commission, [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, para. 76.

1. Attributions and competences

53. Article 7 of the Law on the KJC sets out a wide range of attributions and competences of the Council, which are common to most superior judicial councils in systems that have these bodies. The KJC is entrusted with a comprehensive range of functions, including court administration, judicial appointments, transfers, promotions, and disciplinary matters, as outlined in Article 108 of the Constitution. It ensures judicial independence, professionalism, and ethnic and gender diversity in Kosovo's courts. Additionally, the KJC oversees the organisation, management, and administration of the judiciary, supervises recruitment criteria, and conducts judicial inspections. It also manages judicial budgets, determines the number of judges per jurisdiction, and recommends the establishment of new courts. While the Law on the KJC does not have significant gaps in its mandate, it lacks clarity and structure, as all functions are listed in a single, unorganised article without proper grouping or categorisation. The Venice Commission therefore recommends amending Article 7 to ensure its clarity and structure.

54. The draft amendments introduce some changes related to the mandate of the KJC. The amendments are mainly related to the performance evaluation of judges and Presidents of the Courts. The draft Law on the KJC does not provide for the criteria, procedure or levels of performance evaluation, which are set out in the draft law on recruitment, performance evaluation, integrity control, and status of judges and prosecutors.⁵⁹

55. Article 3 of the draft law, amending Article 27 of the Law on the KJC, establishes that the Performance Evaluation Committee of the KJC is composed solely of judges, specifically seven judges, including four from the Supreme Court and three from the Court of Appeals or equivalent courts. Given the current imbalance in the KJC's composition, the Venice Commission recommends the Performance Evaluation Committee be given a mixed and pluralistic composition to mitigate the risk of corporatism, including with lay members from the KJC or other qualified professionals, who should be appointed based on clear criteria.⁶⁰

56. Article 3 of the draft law also introduces Article 27A to establish Performance Evaluation Committees for Court Presidents. In contrast to the general Performance Evaluation Committee, the Committee in Article 27A is composed of five members from the KJC, which would allow for the inclusion of non-judiciary members. During the meetings in Pristina and the follow-up exchanges, the delegation of the Venice Commission was informed that currently the Evaluation Committee for Presidents of the Court already can include Council members who are not judges, based on Article 4(2) of the Regulation on Performance Evaluation of the Presidents of the Court and supervisory judges. The Venice Commission welcomes that this composition is now possible at the level of the Law on the KJC, but recommends that the draft Law on the KJC be amended so as to expressly guarantee such a pluralistic composition in the Performance Evaluation Committees for Court Presidents.

57. Article 5 of the draft law amends Article 30 of the Law on the KJC to shorten the term of Court Presidents and supervisory judges from five years to four years, permitting re-election for a second term. Although this reduction poses a potential risk to the independence of officeholders, interlocutors in Pristina expressed support for the change due to the current system and the

⁵⁹ See Venice Commission, [CDL-AD\(2025\)010](#), Kosovo – Draft Opinion on 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, paras 25-39.

⁶⁰ Venice Commission, [CDL-AD\(2024\)031](#), Armenia - Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on the draft amendments to the Judicial Code of Armenia (regarding evaluation of judges), paras 21-26. See also [CDL-AD\(2014\)007](#), Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia.

limited number of judges, which necessitates that all judges take on these roles, despite not all excelling in managerial duties.

2. Transparency of the KJC meetings and decision-making procedures

58. KJC meetings, as stipulated in Article 14 of the Law on the KJC, are generally open to the public, with the agenda published at least 48 hours in advance. Transparency is further ensured by Article 14(7), which mandates the publication of decisions and policies on the KJC's official website. While the legislation provides for the public nature of Council meetings, it also contains certain exceptions for closed sessions. According to Article 14(3) of the Law on the KJC, the Council may conduct closed meetings with the agreement of the majority of its members in specific circumstances, such as issues related to state secrets, personnel matters, performance evaluations, or sensitive business information. The Venice Commission observes that, according to the Law, meetings in which a final disciplinary decision is made by the Council against a judge cannot be held *in camera*. In this context, it notes that disciplinary infractions should be included in the list of exceptions, given the distinct principles, their nature, and the consequences they involve. The mandatory publicity implied by the Law may risk causing undue harm to both the institution and the individual judge affected by the procedures, lacking preventive effects and creating interpretive challenges regarding the final decisions rendered. The Venice Commission therefore recommends amending the Law on the KJC to ensure that exceptions to the principle of publicity are permitted in relation to disciplinary hearings and final decisions. However, this should not preclude the possibility of making the decision public if deemed appropriate by the adjudicating authority.

59. Article 15 of the Law on the KJC stipulates that the Council requires a quorum of nine members for decisions to be made. Decisions are made by a simple majority. This means that, in practice, a decision at the KJC can be reached with as few as five votes in favour, potentially allowing for outcomes based either solely on the support of members elected by the judiciary or those elected by the Assembly, without due consideration for the perspectives of the other group. The current requirement for the quorum and a simple majority in decision-making thus appears inadequate in view of the Council's unbalanced composition, and it is suggested to implement a qualified majority decision-making procedure for significant decisions so as to ensure a more pluralistic approach. The Venice Commission advises the Kosovo legislature to establish rules that do not allow either the judges elected by their peers or the lay members to govern alone, while at the same time excluding the possibility of blockages of meetings. A "special majority" preventing either judicial or lay members to govern alone could be envisaged, at least for the most important decisions, combined with an anti-deadlock mechanism. The specific parameters of such majorities and the anti-deadlock mechanism should be identified by the legislator in dialogue with the main stakeholders and international partners.

60. The absence of provisions addressing deadlocks in scenarios where the quorum is not reached, which could arise if not all seats in the KJC have been filled (as it is currently the case), also poses a concern. While no concrete situations of deadlock have been reported for the KJC, the risk of blocking the decision-making in the KJC remains a possibility. Furthermore, Article 15 lacks a mechanism to resolve tie votes, and it would be prudent to introduce a provision granting the president a casting vote in such instances. It is recommended that the Law on the KJC be amended to include provisions addressing deadlocks or tie votes.

C. Structure of the KJC

61. The organisation of a judicial council depends on the conditions and choice of each national judicial system. Several solutions are possible and each legal system adopts the one best suited to its circumstances.⁶¹

62. The KJC elects its Chair and Vice-chair from among its judge members for a non-extendable three-year term (Article 11(1) of the Law on the KJC). Some international standards, like those by the CCJE, do support that a judge is elected as Chair of the Council.⁶² Nevertheless, the current composition of the KJC, coupled with the composition of some of the committees, heavily favours judges, raising concerns about balance and pluralism. The Venice Commission has previously criticised the requirement for a judge to serve as chair, warning against corporatist tendencies.⁶³ In view of the current composition of the KJC, and in the absence of a constitutional reform ensuring that all the members elected by the Assembly are non-judge members, the Venice Commission recommends entrusting either the Chair or the Vice-Chair of the KJC to a lay member to increase democratic legitimacy and credibility before the public or, alternatively, to introduce a rotational system between judge and non-judge members for the position of Chair.

63. Pursuant to Article 16 of the KJC, the Council maintains several standing committees, dealing with respectively, Normative Issues, Evaluation of Judges' Performance, Court Administration, Budget, Finance and Personnel, and Training. The provision permits the establishment of additional committees as necessary. Article 16 expressly mandates that each committee be chaired by a Council member to ensure direct oversight. The subsequent delegation of duties and responsibilities is solely governed by supplementary regulations and explicit eligibility criteria are absent. The Commission considers that, given the critical nature of these committees in safeguarding judicial independence, the above provision would benefit from clearer wording or the establishment of minimum eligibility requirements.

64. Pursuant to Article 6 of the draft law (amending Article 36 of the Law on the KJC), the Inspection and Verification Unit has a dual mandate. Firstly, it supports the implementation of integrity checks for judges, as outlined in the draft Law on recruitment, performance evaluation, integrity control, and the status of judges and prosecutors (draft Articles 27 to 29).⁶⁴ Secondly, it is responsible for conducting integrity checks on verification officers within the Inspection and Verification Unit, with the specific details to be prescribed in a sub-legal act issued by the KJC (see amended Article 36(4) on the Law on the KJC). The Venice Commission has underscored the necessity of a robust legal and regulatory framework for such verification units.⁶⁵ Therefore, the Venice Commission recommends refining these provisions further. Paragraph 3 should specify minimum professional requirements for the members of the Inspection and Verification Unit, particularly given its mandate over judicial independence, recruitment, performance, and disciplinary matters. Similarly, paragraph 4 would benefit from adding clearer principles governing

⁶¹ Venice Commission, [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, para. 92.

⁶² CCJE, [Opinion n°10 \(2007\)](#) on Council for the Judiciary in the service of society, para. 33. See also Venice Commission, [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, para. 99.

⁶³ See Venice Commission, [CDL-AD\(2012\)024](#), Montenegro - Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro, para. 22; Venice Commission, [CDL-AD\(2015\)022](#), Bulgaria - Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria, para. 71; Venice Commission, [CDL-AD\(2015\)042](#), North Macedonia - Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia", para. 66; Venice Commission, [CDL-AD\(2019\)008](#), North Macedonia - Opinion on the Draft Law on the Judicial Council of North Macedonia, para. 12.

⁶⁴ See Venice Commission, [CDL-AD\(2025\)010](#), Kosovo – Draft Opinion on 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, paras. 40-51.

⁶⁵ Venice Commission, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, [CDL-AD\(2022\)011](#), para. 67.

verification procedures. The Venice Commission thus recommends enhancing Article 36 of the Law on the KJC, introducing explicit appointment criteria and professional requirements for the members of the Inspection and Verification Unit and providing clearer principles governing their verification procedures.

D. Comments on certain other provisions and the legislative process

65. In light of the aforementioned findings and recommendations, the Venice Commission emphasises the significance of adhering to the principles of the rule of law in the legislative drafting process. The intricate web of laws, regulations, and rules could undermine the duty to implement the law as well as its foreseeability, cornerstones of the principle of legality.⁶⁶ The Venice Commission has argued that “[a]n ambiguous and complex system of laws impenetrable for outsiders could be an obstacle to such implementation.”⁶⁷ While none of the stakeholders consulted in Pristina expressed concerns regarding these issues, certain provisions would benefit from clarification and redrafting. It has been already mentioned that Article 7, enumerating KJC functions, lacks a fully coherent structure. More significantly, Articles 8(3) and 8(4) of the Law on the KJC, which mirror Articles 108(9) and 108(10) of the Constitution, do not pertain to judicial members of the Council but rather to specific judicial positions reserved for non-majority communities within the court system. Article 9(1.6) appears misplaced, as it relates to dismissal procedures rather than incompatible functions and overlaps with Article 9(2). The relationship between the Assembly's power to dismiss under Article 10(10) and the KJC's authority to dismiss for disciplinary violations (Article 19) or absenteeism (Article 13(1.3)) remains unclear. Lastly, Article 36 of the Law on the KJC presents ambiguity regarding integrity procedures. Article 36(1.3) concerns administrative investigations for integrity control of judges and candidates, whereas Article 36(4) mandates an integrity check for verification officers within the Inspection and Verification Unit, requiring a distinct procedure to be regulated by a sub-legal act. The Venice Commission therefore recommends a thorough review of the Law on the KJC to enhance its clarity and structure.

66. From a constitutional law standpoint, it is also noteworthy that numerous interlocutors appeared to accept the regulation of even important matters through by-laws enacted by the KJC. This delegation of regulatory authority is considered justified on the grounds of the need for flexibility and the challenges associated with amending formal legislation. However, legal norms must uphold the principles of legal certainty and foreseeability. They should be written in an intelligible manner and formulated with sufficient prevision and clarity to enable people and legal entities to regulate their conduct in conformity with the law's requirements.⁶⁸ The Venice Commission therefore recommends establishing clear foundations in the Law, thus providing sufficient safeguards for the democratic legitimacy of procedural rules, particularly for those provisions governing the election of judicial and lay members of the KJC, on disciplinary procedures for the members, on the duties and responsibilities of the different committees at the KJC, as well as on the composition and procedures of the Inspection and Verification Unit.

67. Lastly, according to the Venice Commission's Rule of Law Checklist the process for making law must be “transparent, accountable, inclusive and democratic.”⁶⁹ To satisfy this requirement, the public should have access to draft legislation and should have a meaningful opportunity to provide input.⁷⁰ During the country mission, the Venice Commission delegation was informed that expert civil society organisations and international organisations had been involved in the drafting process. In their written comments, the Ministry of Justice emphasised that they ensured

⁶⁶ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.A.7.

⁶⁷ Venice Commission, [CDL-AD\(2019\)025](#), Kosovo - Opinion on the draft law on legal acts, para. 11.

⁶⁸ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.B.3.i and para 58.

⁶⁹ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.A.5. In the case of Kosovo, the importance of observing these parameters has already raised by the Venice Commission, [CDL-AD\(2019\)025](#), Kosovo - Opinion on the draft law on legal acts, para. 16.

⁷⁰ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, II.A.5.iv.

a transparent and inclusive drafting process, with several rounds of consultations: on 1 May, the 2024 the draft law was 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 is welcome. Meanwhile, several non-state interlocutors expressed regret that, despite their contributions to the working groups, they were not systematically informed about the progress of the legislative process, including access to the latest versions of the draft law, 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 invites the authorities to continue and increase their efforts to ensure the effective participation and the systematic provision of information to all major stakeholders, including expert civil society organisations and academic experts, at the subsequent stages of the legislative process.

IV. Conclusion

68. At the request of the Minister of Justice of Kosovo, the Venice Commission has assessed the Law on the KJC and its draft amendments, focussing on its mandate, composition and the election of its members, as well as its structure and working methods.

69. The Venice Commission notes that the judicial system in Kosovo has undergone significant efforts to enhance its functionality. It welcomes recent improvements in the functioning and transparency of the KJC. During the exchanges held in Pristina, stakeholders expressed positive perceptions of the KJC's work, recognising the substantial advancements achieved in recent years and the progress made in merit-based judicial appointments, which significantly enhances the credibility of the judiciary.

70. Notwithstanding the foregoing, the Venice Commission makes the following key recommendations:

- The six members of the KJC appointed by the Assembly should be genuinely lay members. Pending a reform of the Constitution on this point, the law should provide that at least three lay members should be chosen from the 'users' of the judicial system, e.g., attorneys, prosecutors, notaries, academics, or members of civil society. Furthermore, the Law should establish specific eligibility criteria for these appointments.
- The procedures for the selection of the members to the KJC should be enshrined in the law, with clear criteria for the selection of the candidates, and prescribing sufficient expert input.
- The procedures for the election of judiciary members by their peers should ensure that they act in the interest of the judiciary as a whole and be detailed in the law.
- Lay members by the Assembly should always be elected based on qualified majorities, providing for an anti-deadlock mechanism that does not discourage broader political negotiations, such as drawing lots.
- A mechanism to guarantee a balanced gender composition of the KJC should be introduced in the Law, for both the judge members elected by their peers as well as for the lay members elected by the Assembly.
- Disciplinary procedures should be clearly outlined in the Law on the KJC, specifying limited grounds for disciplinary actions and dismissal. To mitigate the risk of corporatism, the disciplinary committee should mirror the composition of the KJC, and broad majorities including by the judicial and the lay members should be ensured in all disciplinary

decisions. The substantive grounds for termination of office should be explicitly defined, with adequate procedural safeguards in dismissal proceedings.

- In the absence of a constitutional reform enhancing balance and pluralism among the members of the KJC, the Chair or the Vice-Chair of the KJC should preferably be a lay member, or the Chair could be selected through a rotational system between judicial and non-judicial members. A “special majority” preventing either judicial or lay members to govern alone should be envisaged, at least for the most important decisions, combined with an anti-deadlock mechanism. A provision granting the Chair a decisive vote should be considered to resolve tie votes.
- Article 36 of the Law on the KJC should introduce explicit appointment criteria and professional requirements for the members of the Inspection and Verification Unit and provide clearer principles governing their verification procedures.

71. The Venice Commission underscores the necessity of ensuring legal certainty and foreseeability by establishing a clear legislative foundation for these key rules at the level of the Law on the KJC.

72. The Venice Commission also invites the Kosovar authorities to reflect on the fact that some of its recommendations cannot be implemented as they are regulated by the Constitution, and, therefore, any change to these provisions would need to be made via constitutional amendment. The Venice Commission stands ready to provide assistance in this respect.

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