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

**KOSOVO**

**DRAFT AMENDMENTS TO THE CONSTITUTION**

**Assembly of the Republic of Kosovo;**

Pursuant to Article 65 (2) and 144 of the Constitution of the Republic of Kosovo,  
Approves

**AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF KOSOVO****I****Amendment no. 27**

After paragraph 4 of Article 104 a new paragraph is added as follows:

**4a.** Serious neglect of duties from paragraph 4 of this Article includes cases when the judge has been rated with insufficient performance, or has been found to have unjustifiable wealth, or vulnerable integrity, or has committed serious disciplinary offenses, as regulated by law.

**II****Amendment no. 28**

After paragraph 6 of Article 109 a new paragraph is added as follows:

**6a.** Serious neglect of duties from paragraph 6 of this Article includes cases when the prosecutor has been rated with insufficient performance, or has been found to have unjustifiable wealth, or vulnerable integrity, or has committed serious disciplinary offenses, as regulated by law.

**III****Amendment no. 29**

After Article 162 new articles are added as follows:

**Article 163  
Transitional Evaluation**

1. Notwithstanding other provisions of this Constitution, from the entry into force of this constitutional amendment, and within a period of five (5) years, a transitional evaluation is made of judges, prosecutors, and positions determined by law in the justice system, as well as of candidates for such positions.
2. The transitional evaluation may continue for a maximum of two (2) more years, if determined by law.
3. The transitional evaluation from paragraph 1 of this Article is conducted only once for each subject under evaluation and includes performance, wealth, and integrity.
4. The appeal procedures against the transitional evaluation do not count towards the time limits defined in paragraphs 1 and 2 of this Article.
5. The transitional evaluation of performance includes the evaluation of professional knowledge, knowledge and observance of the law and human rights, capacity for legal reasoning, and other professional competencies determined by law.
6. The transitional evaluation of wealth includes the evaluation of the declaration of assets of the subject under evaluation or of his family members, as determined by law, in view of assessing the accuracy of such declaration and identifying the cases of discrepancies between the assets of the subject under evaluation and his or her legitimate income.

7. The transitional evaluation of integrity includes the evaluation of undue contacts and influences in the performance of the duties and responsibilities in an impartial and objective manner by the subject under evaluation, or the vulnerability of integrity that may affect those duties and responsibilities.

8. The transitional evaluation under this Article shall not include judges of the Constitutional Court of Kosovo.

#### **Article 164** **Transitional Evaluation Authority**

1. To carry out the transitional evaluation process from Article 163, the Transitional Evaluation Authority shall be established. The composition, selection, organization, function, and competencies of the Authority shall be regulated by this constitutional amendment and by a special law.

2. The Transitional Evaluation Authority consists of the evaluation panels, the Appellate Panel, and the Secretary of the Authority.

3. All members of the Transitional Evaluation Authority exercise their responsibilities based on the principles of accountability, integrity, and transparency with a view to establishing an independent and professional justice system.

4. The evaluation panels evaluate the subjects from Article 163, paragraph 1, with the support of the Secretariat, and take decisions based on the findings of the transitional evaluation, in accordance with the law.

5. Evaluation panels shall consist of three members.

6. Evaluation panels for the subjects under evaluation for judges and members of the justice system from the judiciary, consist of two judge members and one non-judge member.

7. Evaluation panels for the subjects under evaluation for prosecutors and for the members of the justice system from the prosecution, consist of two prosecutor members and one non-prosecutor member.

8. Evaluation panels, in the composition under paragraphs 5, 6 and 7 of this Article, are formed separately for each case. The number of members who shall serve on the evaluation panels is determined by law.

9. The members of the evaluation panels are distinguished lawyers and personalities of the highest integrity. Other criteria are regulated by law.

10. Each panel is chaired by a chair, who is elected by its members.

11. The Appellate Panel decides on appeals against the decisions of the evaluation panel. The Appellate Panel shall also decide on the proposal for disciplinary measures for the members of the evaluation panels and the Appellate Panel and shall discipline the Secretary of the Transitional Evaluation Authority, as well as decides on measures to avoid conflicts of interest.

12. The Appellate Panel consists of five judges. Judges of the Appellate Panel are distinguished judges and personalities of the highest integrity. Other criteria for members of the Panel are determined by law.

13. The Transitional Evaluation Authority is headed by a president, who is elected from among judges or prosecutors. The manner of selection, the mandate and his authorizations are determined by law.

#### **Article 165**

##### **Procedure for election and dismissal of members of Transitional Evaluation Authority**

1. The Office of the President of Kosovo organizes the open and transparent process of recruiting members of the evaluation panels, the Appellate Panel, and the Secretary of the Authority.
2. The recruitment and verification procedure of members from paragraph 1 of this Article, including the possibility for cooperation with international institutions or organizations in this process, are determined by law.
3. The criteria for transitional evaluation apply to the same extent for the verification of the members from paragraph 1 of this Article.
4. Upon completion of the recruitment procedure, the President proposes for appointment to the Assembly of the Republic of Kosovo the list of members proposed under paragraph 1 of this Article.
5. Members from paragraph 1 of this Article are voted as a package by the Assembly of the Republic of Kosovo and are elected by a majority vote of all its deputies.
6. Other procedures for the election of members from paragraph 1 of this Article are determined by law.
7. The recruitment and dismissal of other members of the Secretariat is carried out in accordance with the criteria and procedures set forth by law.
8. The member of the Transitional Evaluation Authority bears disciplinary responsibilities. Cases of disciplinary offense and the procedure are determined by law.
9. The member of the Transitional Evaluation Authority is dismissed upon the proposal of the Appellate Panel by a vote of 2/3 of all the deputies of the Assembly. The procedure for dismissal is determined by law.
10. In case of dismissal of the member of the Transitional Evaluation Authority, the procedure for the appointment of the new member begins, who must be subject to the evaluation process by the Transitional Evaluation Authority.

#### **Article 166**

##### **Competences of the Transitional Evaluation Panel**

1. The transitional evaluation panel conducts the transitional evaluation of the performance, wealth, and integrity of those to whom the evaluation applies under paragraph 1 of Article 163, according to the manner and procedure determined by law.
2. For the exercise of competence from paragraph 1, the Transitional Evaluation Panel is based on the data provided by the subject under transitional evaluation, those provided by public institutions, and other data defined by law.

3. Depending on the result of the transitional evaluation, the Transitional Evaluation Panel confirms the passing of the transitional evaluation for the subject from paragraph 1 of Article 163, or imposes one of the following sanctions:

3.1. For judges and prosecutors, demotion to another lower court or prosecution office;

3.2. For certain positions in the justice system, permanent transfer to a lower position within the institution where they serve;

3.3. Compulsory training, in the manner prescribed by law,

3.4. Proposal for dismissal.

4. Candidates for judges, prosecutors, and certain positions in the justice system who do not pass the transitional evaluation are not appointed to those positions.

### **Article 167 Previous Evaluations**

The transitional evaluation for the subjects is done independently from the evaluation of performance, wealth, and integrity made by other institutions before the entry into force of this amendment.

### **Article 168 Immunity**

Members of the Transitional Evaluation Authority enjoy immunity from prosecution, civil lawsuit, and dismissal for actions and decisions within the scope of their responsibilities as members of the Transitional Evaluation Authority.

### **Article 169 Rights of Subjects under Evaluation**

The subjects to whom evaluation applies are guaranteed all applicable procedural rights, defined in the Constitution and law.

### **Article 170 Access to Data**

1. When conducting the transitional evaluation process, the Transitional Evaluation Authority cooperates with public bodies, natural and legal persons, local or foreign, to verify the veracity and accuracy of the statements made by the subjects under transitional evaluation.

2. The Transitional Evaluation Authority has full access to all the data provided by special law.

### **Article 171 Obligation to Cooperate of Subject under Evaluation**

1. The subject under evaluation submits a formal statement as defined by law, at the beginning of the transitional evaluation to the Secretariat of the Transitional Evaluation Authority, stating the data that enable the evaluation of his or her performance, wealth, and integrity.

2. In the event of a refusal to submit the full statement under paragraph 1, the Panel proposes the dismissal of the subject under evaluation.

**Article 172**  
**Obligation to cooperate of public authorities and private entities**

Any other body, institution, or authority, exercising legitimate power in the Republic of Kosovo, including private entities, is obligated to cooperate and respond to the requests of the Transitional Evaluation Authority and the Appellate Panel in the exercise of their constitutional and legal competences, in accordance with the law.

**Article 173**  
**Resignation**

1. In case the subject under evaluation from paragraph 1 of Article 163 resigns before the day of the beginning of their evaluation procedure, the transitional evaluation against him/her shall not be applied.

2. In case the subject under evaluation from paragraph 1 of Article 163 resigns after the beginning of their evaluation procedure, he may not be appointed a judge or prosecutor, member of the Judicial Council or Prosecutorial Council, or in certain positions in the justice system by law for a period of ten (10) years.

**Article 174**  
**Right to Appeal to the Appellate Panel**

1. The subject under transitional evaluation has the right to appeal against the decision of the Transitional Evaluation Panel to the Appellate Panel, in the manner prescribed by law.

2. The filing of the appeal to the Appellate Panel suspends the implementation of the decision of the Evaluation Panel.

3. When the subject under transitional evaluation files an appeal against the measure of dismissal to the Appellate Panel, the same is suspended from duty until the decision is made by the Panel.

4. The decision of the Appellate Panel is final, enters into force immediately and may not be appealed in regular courts.

5. The Appellate Panel may not decide to return the case for reconsideration to the evaluation panel.

6. The provisions of this Article do not preclude the application of Article 113, paragraph 7.

**Article 175**  
**Transparency**

1. The work of the Transitional Evaluation Authority is public.

2. All decisions and data used for the review and the issuance of decisions are published in accordance with the law.

3. For their work, the Transitional Evaluation Authority shall address the Assembly of the Republic of Kosovo with an annual report.

**Article 176**  
**Termination of Mandate**

1. The mandate of all members of the Transitional Evaluation Authority terminates with the expiration of a period of five (5) years from the entry into force of this amendment, unless their mandate is extended in accordance with Article 163, paragraph 2.
2. Upon termination of mandate of the authorities under paragraph 1 of this Article, the relevant documents and data in their possession, are submitted to Kosovo Judicial Council and Kosovo Prosecutorial Council, respectively.
3. Upon termination of mandate of the authorities under paragraph 1, judge members and prosecutor members of the evaluation panels and the Appellate Panel return to serving as judges or prosecutors in the court or prosecution office in which they had served before their appointment to the Transitional Evaluation Authority, unless otherwise provided by law.

**Article 177**  
**Relation to other Cases and Decisions**

The imposition of the measure from Article 166 shall not be a reason to reopen the cases tried, investigated or the decisions taken by the subject under evaluation, except when the reasons for reopening the procedure are met according to the provisions of the applicable procedural laws.

**Article 178**  
**Transition to Continuous Evaluation**

Upon termination of mandate of the Transitional Evaluation Authority, the continuous evaluation of performance, integrity, and wealth of judges and prosecutors shall continue in accordance with the special law.

**Article 179**

The constitutional amendments shall enter into force immediately after their approval by the Assembly of the Republic of Kosovo.