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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KOSOVO

REVISED DRAFT AMENDMENTS
TO THE LAW ON THE PROSECUTORIAL COUNCIL

Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria – Vlada – Government

DRAFT LAW
ON AMENDING AND SUPPLEMENTING LAW NO. 06/L-056
ON KOSOVO PROSECUTORIAL COUNCIL

The Assembly of the Republic of Kosovo,

Pursuant to Article 65 (1) of the Constitution of the Republic of Kosovo,
Approves:

LAW
ON AMENDING AND SUPPLEMENTING THE LAW NO. 06/L-056
ON KOSOVO PROSECUTORIAL COUNCIL

Article 1
Purpose

The purpose of this law is to amend and supplement the Law no. 06 / L-056 on the Kosovo Prosecutorial Council (hereinafter the Basic Law), by changing the composition of the Council, conditions and procedure for election of its members, and determining the provisions for decision-making of the Council and prevention of conflict of interest, in order to guarantee an efficient, accountable and independent prosecutorial system.

Article 2

Article 2 of the Basic Law, after paragraph 1.12, the following paragraphs are added:

“1.13. Integrity – action based on clear values, service as an example of honesty, integrity and humbleness for the others, political impartiality”.

1.14. Managerial skills and vision – understanding of human resources and finance management systems, capability to plan and organize and ability to delegate responsibilities as well as ability to see things in broader contexts and articulate long-term vision for the organization and preparing plans of such vision”.

Article 3

Article 7 of the Basic Law shall be amended as follows:

1. In paragraph 1, sub-paragraph 1.4, after the sentence “shall decide on the appointment of Chief Prosecutors of Basic Prosecutions, Special Prosecution and Appellate Prosecution” the words “as well as by recommendation from the Chief Prosecutor of the respective prosecution, shall decide about deputy chief prosecutors and heads of departments” are added and the text shall continue as in the provision of law.

2. In paragraph 1, sub-paragraph 1.27, after the sentence “Chief Prosecutors of Prosecution Offices” the words “deputy chief prosecutors and heads of departments” are added.

Article 4

Article 8 of the Basic Law shall be amended as follows:

“Article 8
Conditions for appointment as member of the Council

1. The candidate for appointment as a prosecutor member in the Council must meet the following conditions:

1.1. Be a prosecutor with a permanent mandate;

- 1.2. Have a positive performance appraisal in the last three (3) years;
 - 1.3. Show and demonstrate high integrity, vision and managerial skills;
 - 1.4. Not to have a filed indictment;
 - 1.5. To have no imposed disciplinary measure, with the exception of admonition or non-public reprimands in the last three (3) years;
 - 1.6. Not to be in a marital or extramarital relationship, or not to be related by blood in a straight line, or in an indirect line up to the second degree, or by relationship by affinity up to the second degree, with members of the Assembly of Kosovo, members of the Government or the President of Kosovo.
2. The candidate for appointment as lay member of the Council must meet the following requirements:
- 2.1. Be a citizen of the Republic of Kosovo;
 - 2.2. Have a university degree in the area of justice, economy or management;
 - 2.3. Have at least 5 (five) years of professional experience in legal matters, the area of human rights or areas of economy or management;
 - 2.4. Show and demonstrate high integrity and vision and managerial skills;
 - 2.5. Not to be a member or exercise a function in any political entity, association or foundation affiliated with any political entity, or not to have been elected directly in elections or not to be a member of the Government or a political appointee, in the last five (5) years;
 - 2.6. Not to be in a marital or extramarital relationship, or not to be related by blood in a straight line, or in an indirect line up to the second degree, or by relationship by affinity up to the second degree, with prosecutors, members of the Assembly of Kosovo, members of the Government or the President of Kosovo.
 - 2.7. Not to have exercised the function of the prosecutor in the last five (5) years;
 - 2.8. Not to have a filed indictment;
 - 2.9. Not to have been convicted of a criminal offence.”
3. In order to prove the non-existence of circumstances from sub-paragraph 1.6, respectively 2.6 of the present Article, the candidate running for a Council member shall sign the affidavit.

Article 5

Article 9 of the Basic Law, paragraph 1 shall be amended as follows:

“1. The Council shall consist of seven (7) members as follows:

- 1.1. The Chief State Prosecutor ex officio;
- 1.2. Three (3) prosecutor members, selected by the prosecutorial system, as follows:
 - 1.2.1. One (1) prosecutor selected by the Appellate Prosecution Office or Special Prosecution Office;
 - 1.2.2. Two (2) prosecutors selected from among basic prosecution offices, and
- 1.3. Three (3) lay members, as follows:
 - 1.3.1. Two (2) elected by the Assembly and
 - 1.3.2. One (1) appointed by the Ombudsperson.”

2. Paragraph 3 of Article 9, of the Basic Law shall be deleted.

3. Paragraph 4 of Article 9 in the Basic Law shall be amended as follows: “When electing members of the Council, the Council and the Assembly shall ensure the multiethnic and gender representation of the Council”.

4. The following new paragraph shall be added after paragraph 5 of Article 9:

5/a. Up to two (2) years following completion of the mandate, the Council member cannot take advantage of promotion opportunities in the prosecutorial system, which were created because of decisions in which they took part as members of the Council.

5. In Article 9, paragraph 6, words “full time”, shall be deleted.

Article 6

Article 10 of the Basic Law shall be amended as follows.

“Article 10 Procedure for election of members by the Assembly

1. The procedure for election of the members of the Council by the Assembly shall be based on principles of competition, non-discrimination, transparency, integrity and objectivity.
2. The procedure under paragraph 1 of this article shall start six (6) months before the mandate of a member expires.
3. Exceptionally from paragraph 1 of this Article, when the mandate ends prematurely as defined by this law, the procedure for electing the member shall begin within thirty (30) days from the day the position remained vacant.
4. The Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency (hereinafter: the Committee) shall announce the vacancy for election of the members of the Council, in media and in official languages, as well as on the official website of the Assembly. The duration of the vacancy cannot be shorter than fifteen (15) days, nor longer than thirty (30) days.
5. After the deadline provided in paragraph 4 of this Article expires, the Committee, within fifteen (15) days, shall evaluate whether candidates meet the requirements set out in the law to be elected members of the Council, with the exception of the requirement set out in subparagraph 2.4 of Article 8 of the Law, and shall reject the candidacies that do not meet the foreseen conditions.
6. The Committee shall conduct an interview with each candidate who meets the requirements to be elected a member of the Council.
7. In the interview, the integrity, competence and suitability of the candidate as well as his/her vision and managerial skills to be a member of the Council, are evaluated. To this end, every candidate shall prepare a concept containing data and practical examples, according to the concept structure published jointly with the vacancy, in order to prove they meet these requirements. This concept shall be submitted to the Committee along with the express for interest to become a Council member. Concepts of the candidates shall be published in the Assembly official page.
8. Each Committee member shall evaluate the interviewed candidate by separate points in relation to integrity, competence, vision and managerial skills of the candidate. On the basis of the received information and the results of the interview, the Committee prepares a short list of candidates.
9. The list for the Assembly session consists of at least two (2) candidates for one (1) position. In case the election procedure takes place simultaneously for two (2) members of the Council, then the list for the session of the Assembly consists of at least four (4) candidates for two (2) positions.
10. The Assembly elects the Council members through a secret voting.
11. If in the first round the candidates proposed by the respective Committee of the Assembly do not receive the majority of votes of deputies present and voting, then a second round shall be conducted.”
12. If the Assembly fails to elect the member of the Council, the competition for Council member shall take place again.

Article 7

After Article 10, the following Articles 10/A, 10/B and 10/C shall be added:

“Article 10/A

Lay member appointed by the Ombudsperson

1. The Ombudsperson appoints one member to the Council, who fulfils the conditions from Article 8 paragraph 2 of this Law.
2. The Ombudsperson holds a meaningful consultative meeting with civil society organization which are active in the field of prosecutorial system in Kosovo, prior to appointing the Council member.
3. When the mandate of the member from paragraph 1 of this Article ends prematurely as defined by this law, the Ombudsperson appoints the new member, with the regular mandate, within thirty (30) days from the day the position remained vacant.

“Article 10/B

Selection of prosecutor members

1. The process of selection of prosecutor members shall be based on the principles of competition, non-discrimination, transparency, integrity and objectivity.
2. The Council shall announce elections for Council members at least 6 months before the end of the mandate of the Council member.
3. Duration of the competition for prosecutor members shall be fifteen (15) days.
4. In cases when the mandate of any of the members of the Council ends before the end of the regular mandate, the Council will take a decision and will announce the vacancy immediately.
5. When the competition is announced, the Council shall establish the Electoral Commission in order to administer the electoral process. The commission shall be composed as follows:
 - 5.1 One (1) prosecutor member from the Prosecutorial Council-Presiding;
 - 5.2. One (1) prosecutor member from the Office of the Chief State Prosecutor;
 - 5.3. One (1) official member from the KPC Secretariat.
6. Members of the Election Commission of the Council may be replaced by the persons of the institution they represent in case of objective impossibility or conflict of interest, to be part of the Commission.
7. The mandate of the members under paragraph 5 of this Article shall last until the process of election of prosecutor members of the Council is over.
8. After the competition deadline expires, the Commission, within fifteen (15) days, shall evaluate whether the candidates meet the requirements for election as members of the Council, except for the requirement defined in sub-paragraph 1.3 of Article 8 of the Law and shall reject candidacies that do not meet the requirements defined by law.
9. Prosecutors, whose candidacy is not confirmed, have the right to complain to the Council within twenty-four (24) hours of being notified about the decision of the Commission. The Council shall review the complaints and finally decide within three (3) days.

10. Each candidate for a member of the Council shall prepare a concept containing data and practical examples according to the concept structure approved and published by the Council, in order to prove competence and suitability of the candidate as well as his/her vision and managerial skills to be a member of the Council, which will be submitted to the Commission at least fifteen (15) days before the voting is organized. This concept shall be published on the webpage of the Council.

11. Voting shall be organized in the general conference of all state prosecutors. Each prosecutor shall have the right of casting one vote for the candidate running for office. Voting shall be secret.

12. The prosecutor, who receives the most votes for the position for which he is running, shall gain the right to be selected. In case of a tied vote, voting shall be repeated on the same day, only for candidates with equal votes, until one of the candidates wins the most votes.

13. After completion of the election process, the Election Commission shall submit a report to the Council regarding the candidates and the number of votes for each candidate, and shall inform the candidates about the election result and the right to appeal the process. Candidates shall have the right to file a complaint to the Council against procedural violations, within seventy-two (72) hours after notification of the result.

14. After reviewing the appeals, the Council, within seven (7) days, shall announce and certify final results of the election process.

15. Exceptionally from paragraph 14 of this article, the Council may take a decision to repeat the electoral process, in case of ascertainment of legal violations.

Article 10/C

Monitoring of the selection process of the Council members

1. The procedure for selection of the Council members may be monitored by interested parties, including but not limited to: civil society organizations in the field of justice, media, and natural persons.

2. For the monitoring under paragraph 1 of this Article, the parties must notify the Chairman of the Assembly Commission about the members who are elected by the Assembly and the Chairman of the Election Commission about the members elected by the Council, not later than eight (8) days from the closing date of the competition."

Article 8

1. In Article 11 of the Basic Law, paragraph 1, shall be amended as follows: "The Council shall elect the Chairman from among its prosecutorial members, with exception of the Chief State Prosecutor, and shall elect the Deputy Chairman from among its lay members, for a term of three (3) years. The election to these functions does not extend the term of the Council member."

Article 9

1. Article 12 of the Basic Law, paragraph 1, at the end of the sentence the words 'in the next regular mandate' shall be added.

2. Article 12 of the Basic Law, paragraph 2, shall be amended as follows: "Members of the Council shall serve on the Council full time".

3. Article 12 of the Basic Law, paragraph 3, shall be amended as follows: "Prosecutor members of the Council shall suspend the duty of the prosecutor while serving as Council members. But they will not lose the status of the prosecutor and have the right to return to serving

as a prosecutor of the prosecution office they were appointed to before the start of the mandate of the Council member.”

4. In Article 12 of the Basic Law, the following new paragraph shall be added after paragraph 4:

“4/a. While serving the term, a member of the Council may not exercise the function of the judge, administrative staff, including carrying out of tasks in the Government or administrative bodies, institutions established by the Constitution or law”.

Article 10

1. In Article 13 of the Basic Law, paragraph 1.4, words “or meeting of requirements under Article 8 of this Law” shall be added after “termination of status” and the text shall continue as in the provision of the law.

2. In Article 13 of the Basic Law, after paragraph 1 shall be added the new following paragraph “1/a. For the implementation of paragraph 1 of this article, the Council shall take care ex officio”.

3. In Article 13 of the Basic Law, paragraph 3, expression “in the same manner as for the member whose mandate has expired” shall be replaced by expression “in accordance with this law” and the text shall continue as in the provision of the Law.

4. Paragraph 4 in Article 13 of the Basic Law shall be deleted.

Article 11

A new paragraph shall be added after paragraph 4, Article 14, of the Basic Law:

“4/a. The decisions of the Council shall be published in the official page of the Council in accordance with the applicable legislation”.

Article 12

1. Article 15.1 of the basic law is amended as follows: “the quorum for the Council is five (5) members, unless otherwise established by this Law. The quorum is five (5) members also for disciplinary cases”.

2. Article 15 of basic law, after paragraph 2, a new paragraph is added:
“2/a Notwithstanding paragraph 2 of this Article, voting for the positions of Chief State Prosecutor and Chief Prosecutors as well as for disciplinary matters for prosecutors, is done by qualified majority, which requires not less than five (5) votes from the overall composition of the Council, two (2) from non-prosecutor members. The exception provided for in this provision is valid also for adoption of sub-legal acts which regulate the appointment of Chief Prosecutors and appointment, transfer, discipline and promotion of prosecutors.

Article 13

Paragraph 1 of Article 16 of the Basic Law, shall be amended as follows:

“1. The Council shall have its standing commissions as follows:

- 1.1. The commission for normative;
- 1.2. The commission for budget, finance and administration of prosecution offices;
- 1.3. The commission for performance evaluation of prosecutors;
- 1.4. The commission on the ethics of prosecutors;

2. In Article 16 of the Basic Law, a new paragraph shall be added after paragraph 1 as follows:

“1/a. The standing committees are composed of at least one member of the Council.”

Article 14

1. Article 18.1 of the Basic Law shall change as follows:

“1. During their mandate, members of the Council will receive the following salary:

1.1. The Chairperson of the Council shall receive a salary equivalent to the salary of the Chief State Prosecutor.

1.2. The Deputy Chairperson and Council members shall receive a salary equivalent to the prosecutors in the Office of the Chief State Prosecutor.”

2. In Article 18 of the Basic Law, paragraph 2 shall be deleted.

3. In Article 18 of the Basic Law, paragraph 3, words “full time” shall be deleted.

4. In Article 18 of the Basic Law, paragraph 4 shall be deleted.

5. In Article 18 of paragraph 5 of the Basic Law shall be amended as follows: “During working hours, members of the Council shall have no right to exercise any other public or professional duty for which they are rewarded with payment.”

6. In Article 18, paragraph 6, of the Basic Law, the words “Chairperson, deputy chairperson and prosecutor members of the Council” shall be replaced by words “Council members” and the text shall continue as in the provision of the law.

Article 15

1. Article 19 of the Basic Law shall be amended as follows:

“Article 19

Disciplinary procedures for Council members

1. The Council shall determine and publish the rules and disciplinary procedures applicable to its members, including procedures determining investigation, suspension or dismissal of prosecutor member, namely recommendation for dismissal of a lay member of the Council.

2. A Commission composed of three (3) members, who are selected by lot by the Council, shall carry out the disciplinary procedure within thirty (30) days and decide about disciplinary measures and sanctions, including temporary suspension and recommendation for dismissal of a Council member.

3. With the proposal of the Commission under paragraph 2 of this article, the Council may dismiss the prosecutor member of the Council with two-thirds (2/3) of the votes of Council members.

4. The Council, based on the proposal of the Commission under paragraph 2 of this article, shall dismiss the lay member.

5. The member of the Council shall have the right to appeal the decision of the Council for dismissal to the Supreme Court, within fifteen (15) days from the decision on dismissal.

6. The Supreme Court shall decide about appeals under paragraph 5 of this article within thirty (30) days from receipt of the appeal.”

Article 16

Article 22 of the Basic Law shall be amended as follows:

1. The title of Article 22 shall change as follows: ‘Appointment of the Chief State Prosecutor and Chief Prosecutors, deputy-chief prosecutors and heads of departments’.

2. After paragraph 1, a new paragraph shall be added, as follows:

“1 / A. The Council shall appoint the Deputy Chief State Prosecutor, upon the recommendation of the Chief State Prosecutor, for a four (4) year mandate”.

3. Paragraph 2 shall be amended as follows:

“2. The Council, as well as by recommendation from the Chief Prosecutor of the respective prosecution, appoints Chief Prosecutors for all other units of the State Prosecutor, as well as Deputy Chief Prosecutors and heads of departments when such positions are determined by a special law. Every prosecutor who is subject to the qualifications defined by the Law on State Prosecutor has the right to be nominated for these positions.”

4. In paragraph 5, after the word “Chief Prosecutor”, the words ‘deputy chief prosecutor, head of the department’ shall be added and the text shall continue as in the provision of the Law.

Article 17

After Article 23 of the Basic Law, Article 23A shall be added, as follows:

“Article 23/A The right to appeal

1. Against the decision of the Council for appointment and reappointment, the dissatisfied party shall have the right to file an appeal to the Supreme Court within fifteen (15) days from receipt of the decision.

2. A panel of the Supreme Court, composed of three members, shall decide on the appeal within thirty (30) days.”

Article 18

1. Article 36 of the Basic Law, shall be amended as follows:

“1. No later than fifteen (15) days from entry into force of this law, the Assembly of the Republic of Kosovo, shall make a public announcement for application of candidates for two (2) positions of lay members of the Council that are elected by the Assembly in accordance with the provisions of this Law, and completes the procedure of their election within three (3) months from entry into force of this Law.”

2. No later than thirty (30) days after entry into force of this law, the Ombudsperson appoints the Council member based on the provisions of this Law.

3. No later than seven (7) days from the election of all lay members, the President of the Supreme Court of Kosovo, together with the Chairperson of the Kosovo Judicial Council and the Ombudsperson, have the obligation to organize and carry out drawing of the lot, in order to appoint members of the Council, who continue to remain members from among prosecutor members of the Council.

4. The draw shall be arranged in two parts, first part is arranged for the prosecutor member who will continue to remain on the Council from amongst the prosecutors of Appellate Prosecution Office and Special Prosecution Office and the second part is arranged for the two (2) prosecutor members who will continue to remain on the Council from amongst the prosecutors of Basic Prosecution Offices. The President of the Supreme Court of Kosovo shall convene and chair the meeting and at the end of the process shall sign the result of drawing lots.

5. The procedure of drawing lots under paragraph 4 of this article shall be public.

6. Members appointed by lot from among prosecutors shall exercise their duty until the end of the term for which they were initially selected.
7. After the appointment of members by lot, who continue to remain members of the Council from among prosecutor members, the mandate of other Council members from among prosecutors shall end.
8. With the election of all lay members of the Council according to the provisions of this Law, the mandate of the lay member elected before the entry into force of this Law, shall end.
9. After the completion of the lot as foreseen by this Article, the Council shall begin its work with the new composition in accordance with this Law.
10. Notwithstanding the paragraph 3 of this Article, in case the Assembly or the Ombudsperson does not elect, respectively appoint, the members of the Council according to the deadlines defined in this Article, the lottery process and the end of the mandates shall apply in accordance with paragraphs 3 to 7 of this Article, and the Council shall begin its work with this composition.

Article 19

Paragraph 3 of Article 37 shall be amended as follows:

“3. The bylaws provided by the Basic Law, shall continue to be implemented until the new bylaws are issued, to the extent that they are not in conflict with this law.”

Article 20

This Law shall enter into force eight (8) days from the day of its publication in the Official Gazette of the Republic of Kosovo.

Glauk Konjufca

***President of the Assembly
of the Republic of Kosovo***