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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KOSOVO

REVISED 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 appointed under Chapter VII, 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 approved by 2/3 of the votes of all the members of the Assembly.
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.

**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, competencies, and immunity of the Authority shall be regulated in accordance with this Constitution and by law.

2. The Transitional Evaluation Authority consists of the relevant evaluation panels for judges and prosecutors, 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. Evaluation panels shall consist of three members.
5. 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 lay member.
6. 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 lay member.
7. Evaluation panels, in the composition under paragraphs 5, 6 and 7 of this Article, are formed separately for each case.
8. The members of the evaluation panels are distinguished lawyers and personalities of the highest integrity. Other criteria are regulated by law.
9. 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.
10. The dismissal of the members of the Transitional Evaluation Authority is done by 2/3 of the votes of all the members of the Assembly.
11. The Appellate Panel consists of five (5) 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.
12. 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. Members from paragraph 1 of this Article are voted as a package by the Assembly of the Republic of Kosovo and are elected by 2/3 of the votes of all the members of the Assembly.

4. The member of the Transitional Evaluation Authority is dismissed upon the proposal of the Appellate Panel by 2/3 of the votes of all the members of the Assembly. The procedure for dismissal is determined by law.

5. 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 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 competences 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, proposes or imposes sanctions defined by law. Upon the proposal of the Authority, the President of the Republic of Kosovo dismisses the judge or prosecutor who does not pass the transitional evaluation, according to the procedure provided by law.

Article 167

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 168

Right to Appeal to the Appellate Panel

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

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

3. The right to appeal under paragraph 1 of this Article does not preclude the application of Article 113, paragraph 7.

Article 169

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