

LAW NO. 06/L –057

ON DISCIPLINARY LIABILITY OF JUDGES AND PROSECUTORS

Assembly of the Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts

LAW ON DISCIPLINARY LIABILITY OF JUDGES AND PROSECUTORS

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose and scope**

This Law defines the disciplinary offences, the procedure of initiating the investigation of alleged disciplinary offenses of judges and prosecutors, the disciplinary procedure before the Kosovo Judicial Council and the Kosovo Prosecutorial Council, disciplinary sanctions, and legal remedies related to disciplinary offenses before the Supreme Court.

**Article 2
Definitions**

1. The terms used in this Law shall have the following meaning:

1.1. **Competent Authority** - shall mean Presidents of the Courts, the President of the Supreme Court, the Chief State Prosecutor, Chief Prosecutors, and the Councils as the competent authorities to receive complaints against judges and prosecutors for alleged disciplinary offenses pursuant to Article 9, paragraph 1;

1.2. **Council** - shall mean the Kosovo Judicial Council and the Kosovo Prosecutorial Council;

1.3. **Court President** - shall mean President of the Basic Court, President of the Court of Appeals and President of the Supreme Court;

1.4. **Chief Prosecutor** - shall mean Chief State Prosecutor, Chief Prosecutor of Special Prosecution Office, Chief Appellate Prosecutor and Chief Prosecutor of Basic Prosecution Office;

1.5. **Serious Criminal Offence** - shall mean the criminal offences defined with the legislation into force.

Article 3
Principles of Disciplinary Liability

Disciplinary procedures against judges and prosecutors shall be conducted and disciplinary sanctions shall be imposed pursuant to this Law and based on the principles of legality, respect for judicial independence, fair trial, proportionality, transparency and accountability.

CHAPTER II
LIABILITY, OFFENSES AND DISCIPLINARY MEASURES AGAINST JUDGES AND PROSECUTORS

Article 4
Disciplinary Liability

Judges and prosecutors shall be subject to disciplinary liability for disciplinary offenses in accordance with procedures set forth in this Law.

Article 5
Disciplinary offenses for judges

1. A judge commits a disciplinary offense if he or she:

- 1.1. is convicted of a criminal offense;
- 1.2. violates the Law; or
- 1.3. violates his/her official duties as a judge.

2. A violation of duties of a judge, pursuant to this Law, shall include the following actions, if committed by a judge intentionally or with gross negligence:

- 2.1. performs official duties disrespecting the principle of judicial independence and impartiality by acting with prejudice or bias based on race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status of a party to the proceedings;
- 2.2. does not accord the treatment required by Law to the parties to the proceedings, their representatives, witnesses and other participants to the proceedings;
- 2.3. communicates to unauthorized persons non-public information obtained in the course of his or her official duty;
- 2.4. accepts any kind of gifts or remuneration which may lead to, or appear to lead to improper influence on official decisions and actions;
- 2.5. abuses the official position in any form to obtain illicit benefits for oneself or other

- persons or for any other purposes in contradiction with the Law;
- 2.6. does not report any case of potential disqualification from proceedings where required by Law;
- 2.7. in continuity fails to timely perform official duties required by Law;
- 2.8. engages in any ex-parte communication concerning the cases;
- 2.9. interferes with the actions of other judges and prosecutors with the intent to influence their activities and decisions in a manner prohibited by Law;
- 2.10. makes public statements during ongoing proceedings which may, or appear to adversely affect fair trial and equal treatment of the parties to the proceedings or which could harm the credibility and reputation of the court, or otherwise communicates to the public information on the composition of court panels, evidences and decisions related to any cases, unless the disclosure of such information is required by Law;
- 2.11. performs any function, duty or service, assumes any responsibility or engages in any activity, is a candidate for, or is elected to any function or duty which is incompatible with the duties of a judge under the Constitution, the Law on Courts, and the Code of Ethics and Professional Conduct of Judges;
- 2.12. in continuity fails to participate in disciplinary procedures and to respond to disciplinary investigations, unless permitted by Law;
- 2.13. provides false or misleading information in matters related to disciplinary proceedings and court related administrative procedures, including promotion and transfers;
- 2.14. in continuity fails to participate without reasonable justification in mandatory training programs prescribed by Law or Council regulations and policies;
- 2.15. engages in behaviour while on duty or in private which harms the reputation of the court or which may harm public confidence in the impartiality or credibility of the judiciary;
- 2.16. becomes a member of a political entity or any other political organization, seeks or holds any political office, is a candidate or is elected to any political post, or otherwise engages in any political activity.

Article 6

Disciplinary offenses for prosecutors

1. A prosecutor commits a disciplinary offense if he or she:

- 1.1. is convicted of a criminal offense;
- 1.2. violates the Law, or

1.3. violates his or her official duties as a prosecutor.

2. Violation of duties of a prosecutor, pursuant to this Law, shall include the following actions, if committed by a prosecutor intentionally or with gross negligence:

2.1. continuously, fails to take any prosecutorial action required by the Law into force or fails to exercise prosecutorial within the deadlines foreseen by Law, except when the seriousness of failure to act or the level of the offense serves as a basis for initiation of the disciplinary procedures for a single violation;

2.2. fails to consider inculpatory as well as exculpatory evidence and facts during the investigation and does not make sure that the rights of the defendant are respected during the investigation;

2.3. communicates with the unauthorized persons the confidential information taken during the exercise of the official duty;

2.4. fails to ensure that evidence and facts during the investigation are collected in accordance with Law;

2.5. fails to take into consideration the rights of witnesses and injured parties, particularly to undertake measures in order to protect their life, security and privacy in compliance with the legislation into force;

2.6. fails to comply with the lawful decisions or instructions of the Chief Prosecutor;

2.7. fails to participate in disciplinary procedures and to respond to disciplinary investigations, unless permitted by Law;

2.8. provides false or misleading information in matters related to disciplinary proceedings and prosecution related administrative procedures, including promotion and transfers, except if otherwise provided by Law;

2.9. in continuity fails to participate without reasonable justification in mandatory training programs prescribed by Law or relevant regulations and policies;

2.10. engages in behaviour while on duty or in private which harms the honour and dignity of the State Prosecutor or which may harm public confidence in the impartiality or credibility of the State Prosecutor;

2.11. accepts any form of gifts or remuneration which may lead to, or appear to lead to improper influence on official decisions and actions;

2.12. abuses the official position in any form to obtain illicit benefits for oneself or other persons or for any other purposes in contradiction with the Law;

2.13. becomes a member of a political entity or any other political organization, seeks or holds any political office, is a candidate or is elected to any political post, or otherwise engages in any political activity.

Article 7

Disciplinary sanctions

1. One or more of the following disciplinary sanctions may be imposed by the Councils on judges and prosecutors for a disciplinary offense:

- 1.1. non-public written reprimand;
- 1.2. public written reprimand;
- 1.3. temporary wage reduction up to fifty percent (50%) for a period of up to one (1) year;
- 1.4. temporary or permanent transfer to a lower level court or prosecution office;
- 1.5. proposal for dismissal.

2. Disciplinary sanctions shall be imposed only in compliance with the principle of proportionality and taking into account:

- 2.1. the number and seriousness of the disciplinary offenses committed by a judge or prosecutor;
- 2.2. the consequences of a disciplinary offense;
- 2.3. the circumstances under which the disciplinary offense was committed;
- 2.4. the overall performance and behaviour of the judge or prosecutor;
- 2.5. the behaviour and level of cooperation of the judge or prosecutor during the disciplinary proceedings.

3. A decision on the disciplinary liability of a judge or prosecutor shall be issued also in cases when a judge or prosecutor has after the initiation of disciplinary procedures resigned from duty or whose function as a judge or prosecutor was terminated in any other manner.

4. With the exception of the non-public reprimand, all final decisions on disciplinary sanctions shall be published without delay, but not later than fifteen (15) days, by the respective Councils on their web-site.

5. The Council shall maintain a disciplinary evidence record which shall register all disciplinary investigations and sanctions against a judge or prosecutor. Records on a disciplinary investigation or sanction shall be deleted after a period of five (5) years with the exception of disciplinary sanctions imposed for an intentional violation of Law or for a disciplinary offense which has resulted in a conviction for a serious criminal offense.

Article 8
Dismissal of judges and prosecutors

1. The President of the Republic of Kosovo based on a proposal by the respective Council shall decide to dismiss a judge or a prosecutor. The respective Council shall propose to the President of the Republic of Kosovo the dismissal of a judge or a prosecutor only upon conviction of the judge or prosecutor of a serious criminal offense, an intentional violation of Law, or for serious neglect of duties.

2. Upon dismissal, all rights and privileges arising from the office of judge or prosecutor shall be terminated with the exception of any entitlements provided for by Law which are related to the office and which by Law are not affected by the dismissal.

CHAPTER III
COMPLAINTS, INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS

Article 9
Complaints against judges and prosecutors for disciplinary offenses

1. Natural and legal persons may submit complaints against a judge or prosecutor concerning an allegation of a disciplinary offense to the following authorities (hereinafter the “Competent Authority”):

1.1. the President of the Basic Court and Court of Appeals where the judge is employed concerning alleged disciplinary offences of that judge;

1.2. the President of the Supreme Court concerning alleged disciplinary offences of the Presidents of the Basic Courts and the President of the Court of Appeals;

1.3. the Kosovo Judicial Council concerning alleged disciplinary offences of the President of the Supreme Court;

1.4. the Chief State Prosecutor concerning alleged disciplinary offences of Chief Prosecutors;

1.5. the Chief Prosecutor concerning alleged disciplinary offences of prosecutors employed at the prosecution office for which the Chief Prosecutor is responsible;

1.6. the Kosovo Prosecutorial Council concerning alleged disciplinary offences of the Chief State Prosecutor.

2. When the complaint is sent to the non-competent authority, such authority shall transfer the complaint to the competent authority, in accordance with the Law on the General Administrative Procedure.

3. Natural and legal persons may also submit complaints against a judge or prosecutor to the Ombudsperson.

4. Natural and legal person shall submit the complaint in writing. The complaint shall state the following:

- 4.1. the identity of the natural or legal person who submits the complaint;
- 4.2. the identity of the judge or prosecutor who shall be the subject of investigation;
- 4.3. a concise description of the factual and legal aspects which give rise to the allegation for a disciplinary offense.

5. All formal complaints shall be recorded and archived by the respective Competent Authority, which shall immediately provide a written notice to the respective Council on the receipt of such complaint. In case the Ombudsperson receives a complaint, it shall forward the complaint within five (5) working days to the Competent Authority determined in accordance with Article 9, paragraph 1.

6. The Competent Authority pursuant to Article 9, paragraph 1, shall review the complaint within thirty (30) days from the day it has received the complaint and shall proceed in accordance with Article 12, paragraph 2 unless it determines that the complaint is evidently frivolous, unsubstantiated, not related to a disciplinary offence or subject to statutory limitation. The Competent Authority shall immediately inform the person who has submitted the complaint in writing of its decision. A copy of the decision shall also be submitted to the respective Council, and in cases provided for in paragraph 3 to this Article, also to the Ombudsperson.

7. Failure by a Court President or the Chief Prosecutor to review and decide on the complaint or to inform the person who has submitted a complaint of the reasons for the dismissal of the complaint as required in paragraph 6 shall be considered a disciplinary offense.

Article 10 **Statutory limitation**

A Competent Authority shall not request the initiation of investigations, and the Council shall not initiate investigations against a judge or prosecutor for disciplinary offenses if five (5) years have passed from the time that the alleged disciplinary offense has been committed, unless the disciplinary offence constitutes criminal offence. In that case, the provisions of the Criminal Code in relation to the statutory limitations shall be applicable.

Article 11 **Criminal offense**

1. In cases when the alleged disciplinary offense contains elements of a criminal offense, the Competent Authority shall *ex-officio* refer the case to the State Prosecutor and provide written notification thereof to the Council and the Ombudsperson.

2. If the State Prosecutor decides not to prosecute the offence, he or she shall inform the Competent Authority in writing of the decision, which shall then proceed in accordance with Article 9, paragraph 5 of this Law.

3. Referral of the case to the State Prosecutor shall interrupt the statute of limitation and suspend the disciplinary proceedings.

4. If the referral of the case to the State Prosecutor results in a criminal conviction or acquittal, the State Prosecutor shall inform the Competent Authority in writing on the outcome of the criminal proceedings, and the Competent Authority shall proceed in accordance with Article 9 of this Law if the disciplinary case or the criminal case contains elements of a disciplinary offense.

Article 12

Investigation procedure

1. The Council shall initiate disciplinary procedures based on a request submitted pursuant to Article 9, paragraph 1 of this Law.

2. A Competent Authority shall request the Council to initiate disciplinary investigations based on a complaint submitted by a natural or legal persons which is not dismissed according to Article 9, paragraph 6 of this Law, or *ex-officio* when it has reasonable grounds to believe that a judge or a prosecutor has committed a disciplinary offense.

3. The Ombudsperson may request the Council to initiate disciplinary investigations against a Court President or the Chief Prosecutor if they have reasons to believe that they have committed a disciplinary offense pursuant to Article 9, paragraph 7 of this Law. The Ombudsperson may also request the Council to initiate disciplinary investigations against a judge or prosecutor if they consider that a Competent Authority has decided to dismiss a complaint against such judge or prosecutor in contradiction with Article 9, paragraph 5, in which case they shall provide a reasoning why the complaint should not have been dismissed.

4. The request to initiate disciplinary investigations shall be submitted in writing to the Council and to the judge or prosecutor who is the subject of investigation. The request shall state the identity of the judge or prosecutor who shall be investigated, a concise description of the factual and legal aspects which give rise to the allegation for a disciplinary offense and a proposal for a disciplinary sanction to be imposed by the Council. The Council shall establish and maintain an electronic database, which will register all complaints and requests for initiating disciplinary investigations and information submitted by competent authority. Each case will be registered within the same day that the complaint or request was received by the Council.

5. Within fifteen (15) working days from the receipt of the request to initiate disciplinary investigations, the Council shall establish an investigation panel to conduct the investigation. In cases foreseen in paragraph 3 of this Article, the Council may dismiss the request without forming the investigating panel, if it is considered with no value *prima facie* or not of a serious importance it is not substantial and it does not have any kind of relation with the disciplinary offence or falls under the status of limitations. The investigation panel concerning a judge, respectively president of the court, shall be composed of three (3) judges of a different court. The investigation panel concerning a prosecutor, respectively chief prosecutor for prosecutors, shall be composed of three (3) prosecutors of a different prosecutorial body. The Council shall determine the chairperson of the investigation panel from among the members of the investigation panel. The procedure for the selection and assignment of judges and prosecutors to serve on the investigation panel shall be determined by the Councils. The Council shall provide administrative and professional assistance to the investigation panel.

6. The investigation panel shall establish the facts and collect evidence related to the alleged disciplinary offense. The judge or prosecutor under investigation and the authority which has requested the initiation of investigation procedures may suggest witnesses, submit evidence, as well as request the submission of documents and the evidence held by other persons or institutions.

7. The investigation panel shall give the judge or prosecutor an effective opportunity to be heard in respect of the complaint and to be represented by defense counsel. The judge or prosecutor under investigation shall have access to all evidence collected by the investigation panel.

8. The investigation panel shall complete the investigation within three (3) months from the day it was established by the Council. In exceptional circumstances, the Council may extend the investigation for an additional period of up to two (2) months. Upon completion of the investigation, the investigation panel shall submit to the Council, the judge or prosecutor under investigation and the Competent Authority which has requested the initiation of disciplinary investigations, a written report on all collected facts and evidence. Upon the submission of the report, the investigation panel shall cease its function at the moment when the case becomes final.

9. During the investigation procedure, the Council may *ex officio* or upon request of the Competent Authority, which has requested the initiation of investigations, suspend the judge or prosecutor who is under investigation if this is necessary considering the seriousness of the alleged disciplinary offences and to ensure the integrity and effectiveness of the investigation.

10. During the period of suspension of the judge/prosecutor from the previous paragraph, the same shall receive fifty percent (50%) of the monthly salary.

11. The provisions of the Criminal Procedure Code shall apply *mutatis mutandis* to collection of evidence and the rights of persons under investigation.

Article 13

Voluntary settlement of alleged disciplinary offense

1. During the investigation procedure, the investigation panel and the judge or prosecutor under investigation may agree on a voluntary settlement of the alleged disciplinary offense.

2. The agreement entered into between the investigation panel and the judge or prosecutor shall contain the following:

2.1. a factual declaration of the disciplinary offense admitted by the judge or prosecutor under investigation;

2.2. the agreed disciplinary sanction.

3. The agreement approved by the investigation panel shall have the same legal effect as a decision of the Council on disciplinary offense.

Article 14

Disciplinary Procedures

1. Upon receiving of the written report on the investigation on the judge or the prosecutor, or upon receiving of the agreement based on the Article 13 of this Law, respective Council shall hold a session in the time frame of thirty (30) days. The Council may choose to hold additional sessions if the necessity derives out of the complexity of the case. Parties to the procedure shall be invited to take part in the session of the Council.

2. The judge or the prosecutor against who the disciplinary procedure has been initiated, has a right of defending him/herself or hire a defense lawyer. The Council shall be obliged to provide access to all the evidence collected as well as in all the dossiers of the case.

3. The Council shall decide whether the alleged disciplinary offense has been committed and, if it finds that the judge or prosecutor has committed the alleged disciplinary offense, impose the disciplinary sanction according to the provisions of this Law.

4. The quorum in disciplinary proceedings shall be nine (9) members of the Council, and Council's decisions shall be made by simple majority vote of the members present.

5. The decision of the Council shall be in written and shall contain the reasons for the decision and legal advice. A copy of the decision shall be sent to the Competent Authority which has requested the initiation of the investigation and to the judge or prosecutor, as well as to the Ombudsman, in cases foreseen in Article 12 paragraph 3 of this Law. The decision of the first instance shall be published in the web site of the Council after it becomes final.

6. The Council shall reach its decision within two (2) months from the receipt of the report of the investigation panel.

Article 15

Complaint against disciplinary decisions

1. Parties shall have the right to appeal against the disciplinary decisions of the Council, directly to the Supreme Court of Kosovo, within fifteen (15) days from the day of receipt of the decision. Other courts in Kosovo shall not have competence to review and decide on the disciplinary procedure against judges and prosecutors.

2. The complaint against the decision of the Council shall have a suspension effect and shall prohibit the implementation of such decision, until the complaint is reviewed.

3. If the Council does not issue a decision in accordance with Article 14, paragraph 6, the judge or prosecutor and the Competent Authority which has requested the initiation of investigations, and in accordance with Article 12 paragraph 3 of this Law, the Ombudsperson may file a complaint before the Supreme Court for failure to act by the relevant Council.

4. The complaint may be filed for the following reasons:

4.1. erroneous application of the Law;

4.2. in case of procedural violation prescribed by Law;

4.3. a clear or obvious factual error that affects substantial rights of the party if it seriously affects the fairness and integrity of the proceedings.

5. The Supreme Court, within a trial panel composed of three (3) members elected by the President of the Supreme Court shall, within thirty (30) days, review and decide on the complaint. If the President of the Supreme Court is the subject of the Council's decision, then the oldest judge of the Supreme Court will elect the members.

6. After reviewing the complaint, the Supreme Court may confirm the decision of the Council, amend it or return to the Council for review.
7. In case the Supreme Court decides to return the case for review to the Council, then the Council shall decide within thirty (30) days from the day when the decision was received, according to the decision of the Court and notify the Court in writing of its decision.
8. In case that the Supreme Court does not receive a notification according to paragraph 6 within thirty (30) days from the day when the case was returned for review, then the Supreme Court shall decide on the case within fifteen (15) days.
9. The decision of the Supreme Court shall be final.
10. The composition of the trial panel before the Supreme Court according to paragraph 5 of this Article and the composition of the investigation panel according to Article 12, paragraph 5 shall not be composed by the members who are subject to disciplinary procedures.

CHAPTER IV TRANSITIONAL AND FINAL PROVISIONS

Article 16 Staff transfer

1. Personnel of the Office of Disciplinary Prosecutor shall be transferred to Kosovo Judicial Council and Kosovo Prosecutorial Council, with the purpose of providing assistance to the investigation panels in developing the disciplinary investigations, in compliance with the provisions of this Law.
2. The Kosovo Judicial Council and the Kosovo Prosecutorial Council shall, within three (3) months from the date of staff transfer, make official the contractual obligations with the transferred staff.

Article 17 Transitional provisions

1. The Councils shall adopt regulations foreseen by this Law within six (6) months from the date of entry into force of this Law.
2. Investigation procedures which were initiated before the entry into force of this Law shall be decided and completed in accordance with the provisions of the Law into force, at the time when the investigation was initiated and shall be completed within six (6) months from the entry into force of this Law.
3. Disciplinary procedures which were initiated before the entry into force of this Law shall continue and shall be completed in accordance with the provisions of the Law into force, at the time when the disciplinary investigation was initiated and shall be completed within six (6) months from the entry into force of this Law.

4. Upon entry into force of this Law, all complaints concerning alleged disciplinary offenses, including those which were allegedly committed before the entry into force of this Law, but for which the investigation has not been initiated before the entry into force of this Law, shall be processed by the competent authorities, in accordance with this Law.

5. Deadlines foreseen in Article 9, Article 12 and Article 14 of this Law shall commence to be applied six (6) months from the entry into force of this Law.

6. During the transitory period, according to this Article, Councils shall have the authority that ex officio to suspend a judge or prosecutor, based on the seriousness of the alleged disciplinary offense.

Article 18

Entry into force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No.06/L - 057
23 November 2018

Promulgated by Decree No.DL-060-2018, dated 13.12.2018, President of the Republic of Kosovo Hashim Thaçi.