INDIVIDUAL JUDGE AT THE HEART OF THE RULE OF LAW –JUDICIAL ETHICS AND INTEGRITY IN THE LAWS OF SERBIA AND MONTENEGRO[1]

Ana Knežević Bojović
Vesna Ćorić
Milica V. Matijević[2]

Abstract: Judicial independence is strongly correlated to judicial integrity, understood as the ability of the judicial system or an individual judge to resist corruption, while nurturing the values of independence, impartiality, equality, competence, and diligence. It is upon the judiciary itself to formulate a code of professional conduct, assist judges in adhering to the code, and apply corrective measures if judges deviate from it. In countries where the independence of the judiciary from the other two branches of power is still a battle to be won, legislators seem to be keen on setting a strong legislative framework on judicial independence. The tendency to legislate rather than leave the regulation of these issues to judicial self-governance can be attributed to external conditionality, as judicial reforms are more easily seen to be done through legislative instruments. Over the past decade, Serbia and Montenegro have made significant changes to their regulatory frameworks, demonstrating their commitment to ensuring judicial independence. The authors posit that, in order to ensure judicial independence, all rule of law principles should be interpreted in conjunction with the judicial ethics dimension of the principle of judicial self-governance. Against this background, the paper examines the ways in which Serbian and Montenegrin legislators have addressed issues related to judicial ethics and judicial integrity. They find that legislators purposefully regulate issues that should be left to the judiciary itself, thus disregarding

[1] This paper is a result of the research conducted by the Institute of Comparative Law financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia under the Contract on realisation and financing of scientific research of SRO in 2023 registered under no. 451-03-47/2023-01/200049.
[2] Institute of Comparative Law, Belgrade, Serbia

international standards and judiciary-led progress, while underpinning their solutions with a threat of sanctions.

Keywords: judicial independence, rule of law, ethics, Serbia, Montenegro

Introduction

Judicial independence stands at the very heart of the rule of law, and the core of the judiciary is the individual judge. Judicial independence standards are formulated in various documents sponsored by international organisations and professional judicial associations addressed at governments and legislators, such as the United Nations Basic Principles on the Independence of the Judiciary[3], the Mount Scopus international standards of judicial independence, and others.[4] The practical implementation of the said standards is in some European countries currently under the close scrutiny of two supranational courts: the European Court of Human Rights and the Court of Justice of the European Union.[5]

---

[3] Basic Principles on the Independence of the Judiciary adopted on 06 September 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985

[4] Mount Scopus international standards of judicial independence promulgated by the International Association of Judicial Independence and World Peace (JIWP). They were adopted in hey were approved in 2008 and consolidated in 2015 (available at: https://www.icj.org/wp-content/uploads/2016/02/Mt-Scopus-Standards.pdf). The standards are currently being reviewed, updated and adjusted to the reality of European jurisdictions as well as to current challenges to judicial independence in some of the European countries within a project conducted within the European Law Institute (Towards ELI-Mount Scopus European Standards of Judicial Independence. See: https://www.europeanlawinstitute.eu/news-events/news-contd/news/towards-eli-mount-scopus-european-standards-of-judicial-independence/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=235e7141385a529f88a83b657222d747).

[5] An overview of the Court of Justice of the European Union jurisprudence related to judicial independence can be found in MANKO, R. European Parliament Briefing ECJ case law on judicial independence A chronological overview, available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753955/EPRS_BRI(2023)753955_EN.pdf, accessed November 2, 2023. Regarding the caselaw of the European Court of Human Rights, we primarily refer to the judgments in cases: Oleksandr Volkov v Ukraine, Application No. 21722/11, Baka v Hungary Application No. 20261/12, Ramos Nunes de Carvalho e Sá v Portugal, Application No. 55391/13, Alpasarlan Altan v Turkey

In high correlation with judicial independence is judicial integrity, understood as the ability of the judicial system or an individual judge to resist corruption while respecting the values of independence, impartiality, equality, competence, and diligence.[6] Judicial ethics is of key relevance for judicial reputation, and judges must take care of the reputation of the entire judiciary in order to maximize their individual reputations.[7] The identification of the most appropriate avenue to regulate judicial ethics and integrity issues requires taking into account various potentially conflicting claims.

Through the historical record and modern scholarship, judicial independence has been described as one of the core principles of the rule of law. It implies that the laws should be applied in an unbiased, even-handed manner by an independent judiciary.[8] Hence, judicial independence as a foundation of the rule of law leaves room for the judicial branch to further strengthen its independence and integrity through the setting of properly balanced autonomous standards and rules governing integrity and ethics to which the individual judges obey.

However, the other recognized core principles of the rule of law such as separation of powers and the existence of open government give rise to opposite directions with regard to the most adequate avenue to regulate the issue of judicial integrity. Since the time of Aristotle, the separation of powers principle was formulated to ensure that the power should be clearly separated between the law-making body and the law-applying body.[9] By doing so, it will be avoided having „laws which are made „for particular cases, springing oftentimes from partial motives, and directed to private ends".[10] In a similar vein, in favour of an approach towards

---

Application No. 12778/17 Eminagaoglu v Turkey, Application No. 76521/12, Guðmundur Andri Ástráðsson v Iceland Application, No. 26374/18, Reczkowicz v Poland, Application No. 43447/19, Xero Flor w Polsce sp z.o.o. v Poland, Application No. 4907/18.

[6] See, for instance, Article 11 of the United Nations Convention Against Corruption, Adopted by the UN General Assembly: 31 October 2003, by resolution 58/4.

[7] Garoupa, Nuno., Ginsbourg, Tom: Judicial Reputation: A Comparative Theory. Chicago: University of Chicago Press, 2015. 65, 188.

[8] STEIN, A. Robert: What Exactly Is the Rule of Law?, Houston Law Review, vol. 57, (2019), s. 188.

[9] ARISTOTLE: Aristotle's Rhetoric and Poetics 20-21 (ROBERTS W. Rhys-BYWATER Ingram translations, 1954.) as referred to in: STEIN, A. Robert: What Exactly Is the Rule of Law?, Houston Law Review, vol. 57, (2019), s. 193.

[10] PALEY, William: Of the Administration of Justice. In: The Works of William Paley. D.D. 1833, 123.

regulating judicial integrity matters by the legislature also goes the rule of law principle envisaging that processes by which the regulations are enacted must be accessible.[11]

Besides, taking into account the declared core principles of the rule of law, it is equally important to consider the relevance of the concept of judicial self-governance, which also includes the power of the judiciary to enact relevant bylaws. Recent political developments indicate that elected political actors show considerable interest in regulating issues related to the judiciary, as delegated powers reduce the field of their possible intervention.[12] This creates a disbalance between the two considerations raised above. However, the contemporary tailored understanding of judicial self-governance is not deemed as being in conflict with the core understanding of the rule of law since it contributes to fostering judicial independence as one of its foundations. Recent legal and political science scholarship has also clearly identified judicial ethics as an important dimension of judicial self-governance.[13]

The full recognition of the judicial ethics dimension of the concept of judicial self-governance is underscored through the applicable soft-law standards relating to judicial ethics and integrity. They are for the most part addressed to the judicial profession itself and also to the individual judge. The most relevant ones include, but are not limited to: the

[11] See World Justice Project, Rule of Law Index (2019), p. 9, https://worldjustice project.org/sites/default/files/documents/WJP-ROLI-2019-Single%20Page%20View-Reduce d_0.pdf [https://perma.cc/Z3J8-VFQQ],; PECH, Laurent: The Rule of Law as a Well-Established and Well-Defined Principle of EU Law. In: Hague Journal on the Rule of Law, vol. 14, 2022, 123.

[12] KOSAŘ, David., ŠIPULOVÁ, Katarína: How to Fight Court-Packing. In: *Constitutional Studies*, 6, (2020), pp. 133–164.

[13] ŠIPULOVA, Katarina, et al: Judicial Self-Governance Index: Towards Better Understanding of the Role of Judges in Governing the Judiciary, In: *Regulation & Governance*, 17, (2023), pp. 22–42; KOSAŘ, David: Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe. In: *German Law Journal*, 19(7), (2018), pp. 1567-1612.

understand the ethical dimension of judicial self-governance to include decisions on preparation and interpretation of the code of judicial conduct and also on individual ethical issues. Interestingly, in the four countries on which Šipulova at el. tested their Judicial Self-Governance Index, the ethical dimension was among the ones that showed the lowest level of regulation, and the ones only slowly attracting the attention of legislatures.

Bangalore Principles of Judicial Conduct,[14] Consultative Council of European Judges (hereinafter: CCJE) Opinion No. 3 on ethics and liability of judges,[15] CCJE Opinion No. 18 on the position of the judiciary and its relation with the other powers of the state in a modern democracy[16], European Networks of Councils for the Judiciary (hereinafter: ENCJ) judicial ethics report[17] and the Bologna and Milan Global Code of Judicial Ethics aiming to clarify standards for the ethical conduct of judges and at setting standards applicable both to national and international judges.[18] Such soft-law standards are resorted to not only by national legislators and self-regulating stakeholders within the judiciary[19] but also by supranational courts as a legal basis to sustain the principle of independence of the judiciary both in *abstracto* and *in concreto.*[20] Furthermore, the fourth round of Group of States against Corruption (hereinafter: GRECO) evaluations, dedicated to the prevention of corruption with respect to members of parliament, judges, and prosecutors, frequently examined the existence of rules of professional conduct for judges and bodies supporting their implementation.[21]

[14] The Bangalore principles of judicial conduct were endorsed by the United Nations in ECOSOC resolution 2006/23; the principles are accompanied by the Commentary on the Bangalore Principles of Judicial Conduct

[15] Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, CCJE (2002) Op. N° 3

[16] Opinion No. 18 (2015) "The position of the judiciary and its relation with the other powers of state in a modern democracy", CCJE(2015)4

[17] European Network of Councils for the Judiciary Judicial Ethics Report 2009-2010, endorsed by the London Declaration on Judicial Ethics

[18] International Conference of Judicial Independence approved in 2015 the Bologna and Milan Global Code of Judicial Ethics is available at: <https://www.icj.org/wp-content/uploads/2016/02/Bologna-and-Milan-Global-Code-of-Judicial-Ethics.pdf>.

[19] Such as judicial self-governance bodies and professional association of judges.

[20] See: paragraph 6 of the Joint concurring opinion of judges Pinto de Albuquerque and Dedov to the judgment of the European Court of Human Rights in the case of *Baka v. Hungary*, Application no. 20261/12

[21] ESPOSITO Gianluca: Judicial Integrity and Judicial Independence: Two Sides of the Same Coin. In: Pinto de Albuquerque P, Wojtyczek K (ed) Judicial Power in a Globalized World. New York: Springer, 2019. 174. Esposito outlines that the vast majority of GRECO member states received recommendations on codes of conduct, where a third of these were to adopt such codes while the rest focused on substance and implementation, including confidential counselling. p 165-177

The mentioned documents cover similar but not identical issues; nevertheless, a set of standards related to judicial ethics can be deduced from them. They can be summarized as follows: In all of their activities, including everyday life, judges should be guided by principles of professional conduct; The principles should offer guidelines for judges on how to proceed, thereby enabling them to overcome the challenges they face as regards their independence and impartiality; The principles should be drawn up by the judges themselves and be separate from the judges' disciplinary system; It is desirable to establish in each country one or more bodies within the judiciary to advise judges who are confronted with a problem related to judicial ethics; and judges should receive proper training on ethical conduct.

The said developments have given impetus for a number of regulatory and institutional interventions in the Council of Europe (hereinafter: CoE) member states.[22] Although the aforementioned standards clearly acknowledge the judicial ethics and integrity dimension of the concept of judicial self-governance, they were not fully implemented in all European countries, for various reasons. In some countries, particularly those where the principle of unity of powers was the leading principle for decades, tended to regulate certain issues relating to judicial conduct or judicial ethics in the laws governing the judiciary. In that context, Šipulova *et al*. identified the increase in legislative regulation of judicial governance prompted by the EU accession process.[23] Most likely, this is attributable to the fact that some of these EU candidate countries have been strongly influenced by the external conditionality of the EU accession process[24],

[22] KNEŽEVIĆ BOJOVIĆ, Ana, MATIJEVIĆ, Milica V., GLINTIĆ, Mirjana: International Standards on Judicial Ethics and the Pitfalls of Cursory Legal Transplantation. In: Popović, D.V., Kunda, I., Meškić, Z., Omerović, E. (eds) Balkan Yearbook of European and International Law 2021. Balkan Yearbook of European and International Law, vol 2021. Springer, Cham. 163-184

[23] ŠIPULOVA, Katarina, et al, op. cit.

[24] Legal scholars prevailingly explain the phenomenon of conditionality through the EU bargaining model known as External Incentive Model (EIM). In the said model, the EU sets the adoption of its norms and rules as conditions that the target states (prospective candidates for the membership) have to fulfil in order to receive a reward. EU conditions comprise both political conditions (such as democracy and the rule of law) and regulatory conditions (pertaining to the EU's public policies). the explanatory power of the external incentives model has been compared to two alternative models of Europeanization in candidate states: social learning and lesson drawing. SCHIMMELFENNIG, Frank., SEDELMEIER, Ulrich: The Europeanization of Eastern

where various issues are under the close scrutiny of a plethora of bodies, such as GRECO and the Venice Commission. In these cases, progress or change, especially on the part of the executive and legislative power, it is easier to demonstrate in the form of a legislative norm than to rely on the judiciary to adopt the relevant bylaws or develop consistent practice. This also allows the executive and the legislative powers a certain level of control over the rules. However, in opting for explicit regulation, the legislators also sometimes deviate from the standards, or, as cynics would say, intentionally leave room for exerting some level of control over the rules. These rules can also be designed to have a penalising effect rather than fostering a culture of compliance and internalization of high values and standards.

In this paper, the authors posit that in order to ensure judicial independence, all the declared rule of law principles should be interpreted in conjunction with the judicial ethics dimension of the principle of judicial self-governance. Against this background, the paper examines the ways in which Serbian and Montenegrin legislators have addressed issues related to judicial ethics and judicial integrity. Serbia and Montenegro are currently frontrunners for EU accession; over the past decade both countries have made significant changes to their constitutional and legal framework, demonstrating their commitment to

---

Europe: The External Incentives Model Revisited. In: *Journal of European Public Policy*, 27(6), (2020), pp. 814-833. Grabbe, Heather: *The EU's Transformative Power Europeanization through Conditionality in Central and Eastern Europe*. Basingstoke: Palgrave Macmillan UK, 2006. KELLEY, G. Judith: *Ethnic Politics in Europe: The Power of Norms and Incentives*. Princeton: Princeton University Press, 2004. PRIDHAM, Geoffrey: *Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe*. Basingstoke: Palgrave Macmillan UK, 2005. SCHIMMELFENNIG, Frank., ENGERT, Stefan., KNOBEL, Heiko: *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*. Basingstoke: Palgrave Macmillan UK, 2006. SCHIMMELFENNIG, Frank., SEDELMEIER, Ulrich: Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe. In: *Journal of European Public Policy*, 11(4), (2004), pp. 661-679. SCHIMMELFENNIG, Frank., SEDELMEIER, Ulrich (eds.): *The Europeanization of Central and Eastern Europe.* Ithaca: Cornell University Press, 2005. VACHUDOVA, A. Milada: *Europe Undivided: Democracy, Leverage, and Integration after Communism*. Oxford: Oxford University Press, 2005. ZHELYAZKOVA, Asya., DAMJANOVSKI, Ivan., NECHEV, Zoran, SCHIMMELFENNIG, Frank: European Union Conditionality in the Western Balkans: External Incentives and Europeanisation, paper In: *The Europeanisation of the Western Balkans*. Cham: Palgrave Macmillan, 2019, pp. 15-37.

ensuring the independence of their judiciaries. They are still under considerable influence of external EU conditionality which makes them particularly suitable for examination.

The authors will focus on examining the operationalisation of key standards. Firstly, the principle enshrined in the relevant standards that the formulation of rules of ethics or rules of professional conduct should be judiciary-led will be examined. Secondly, the paper will examine the standard mandating that there should be one or two bodies in charge of not only monitoring the observance of the rules of professional conduct or ethics but also providing guidance to judges in cases where they have dilemmas. In doing so, the paper will particularly highlight the underlying idea behind instituting such a body, which is for it to have an advisory role and to promote compliance, rather than to penalise judicial misconduct. Thirdly, the paper will focus on the standard stating that judicial ethics is separate from judicial discipline, as are the bodies in charge of promoting and monitoring the rules of judicial conduct and disciplinary bodies. This standard also implies that a breach of ethical rules can only in extreme circumstances result in the disciplinary liability of a judge.

Legislative norms on codes of ethics

As underlined before, the standards imply that the judges themselves should develop their own codes of conduct. Ideally, this should be done in a broad consultative process that will include judges from all levels of jurisdiction *i.e.,* from both the general and specialised courts. Globally, prior to the 1970s, detailed codes of judicial conduct existed almost only in the United States. Thereafter, codes of judicial conduct started to be developed by both common law and civil law countries; this effort was considerably contributed to by the Bangalore principles of judicial conduct.[25] Curiously, the judges' organisation in one of the former Socialist Federal Republic of Yugoslavia (hereinafter: SFRY) republics, Slovenia, had adopted its Code of Ethics already in 1972.[26] While the Code

[25] UNODC "Resource Guide on Strengthening Judicial Integrity and Capacity", 128. Available at: /https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

[26] In 1972, the Slovenian Association of Judges adopted the Code of Judicial Ethics. ETHICS AND INTEGRITY COMMISSION: Code of judicial ethics Commentary, 7.

was a rarity even on a global scale, it applied only to the judges who were members of the Slovenian Association of Judges. Similarly, the first judicial code of ethics adopted in Serbia was promulgated by the Judges' Association of Serbia in 1998.[27] Similarly, the Montenegrin Association of Judges adopted the Code of Ethics in the late 1990s.[28] The Code was binding only on the members of the association but did not envisage a monitoring mechanism.

It was only around 2008 when both Serbian and Montenegrin legislation envisaged the adoption of a code of ethics that was binding on all judges in the country. In Montenegro, the basis for the adoption of an all-binding Code of Ethics was prescribed in the Law on the Judicial Council (hereinafter: JC), whereby the draft code was to be proposed by the JC and adopted by the Conference of Judges, a body comprised of all judges and court presidents in Montenegro, which also had the mandate to elect members of the JC.[29] This Code of Ethics was adopted in 2008[30] and subsequently amended in 2012.[31] A new code was adopted in 2014, *inter alia*, to respond to the measures planned in the Action Plan for Chapter 23 and the Judicial Reform Strategy.[32] Given that the judicial reform efforts in Montenegro also entailed constitutional amendments in 2013[33] and the adoption of a new set of judicial laws in 2015[34], and that the Code

---

Available at: http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf

[27] DRUŠTVO SUDIJA SRBIJE, Standardi sudijske etike, Beograd, 2003, 5.

[28] AKCIJA ZA LJUDSKA PRAVA: Odgovornost za kršenje sudijske etike u Crnoj Gori, 2017, 6. Available at: https://www.hraction.org/wp-content/uploads/Odgovornost-za-krsenje-sudijske-etike-u-Crnoj-Gori.pdf

[29] Zakon o sudskom savjetu, Službeni list CG 13/2008 [Law on Judicial Council, Montenegro Official Gazette 13/2008], Article 23, paragraph 10.

[30] Etički kodeks sudija, Službeni list CG 45/2008 [Code of Ethics of Judges, Montenegro Official Gazette 13/2008]

[31] Izmjene i dopune Kodeksa sudijske etike Službeni list CG 17/2012 [Amendments to the Code of Ethics of Judges, Montenegro Official Gazette 12/2012]

[32] Etički kodeks sudija Službeni list CG 16/2014 [Code of Ethics of Judges, Montenegro Official Gazette 16/2014]. See also:AKCIJA ZA LJUDSKA PRAVA, *op.cit*.

[33] Amandmani I do XVI na Ustav Crne Gore, Službeni list CG 38/2013 [Amendments I do XVI to the Constitution of Montenegro, Montenegro Official Gazette 38_2013]

[34] Zakon o sudskom savjetu i sudijama, Službeni list CG 11/2015 [Law on Judicial Council and Judges, Montenegro Official Gazette 11/2015], Zakon o sudovima, Službeni list CG 11/2015 [Law on Courts, Montenegro Official Gazette 11/2015], Zakon o državnom tužilaštvu, Službeni list CG 11/2015 [Law on State Prosecutor's Office, Montenegro Official Gazette 11/2015]

of Ethics was not fully aligned with the new regulatory framework, it was again amended in 2015.[35]

As can be seen, the adoption of the Code of Ethics for Montenegrin judges was not entirely judiciary-led, yet, it should be noted that the legislator did not go into too much detail as to the contents of the Code itself. The legal norm vested the competence for the adoption of the final text of the code with the Conference of Judges, a body established by law that, however, comprises the entire Montenegrin judicial corps. This can be said to have ensured that the Code is adopted by the judges themselves, as mandated by the standards. Nevertheless, it is also true that the reformulation of the Code of Ethics for judges in Montenegro, along with other related activities, was propelled by the Action Plan for Chapter 23, an instrument of external conditionality *par excellence.*

The adoption of the Code of Ethics in Serbia followed a similar path. The main difference was that the various iterations of judicial laws adopted after 2008 vested the competence for the adoption of the Judicial Code of Ethics in the High Judicial Council (hereinafter: HJC). Firstly, the Law on Judges, adopted in 2008 and subsequently amended numerous times (hereinafter: 2008 Law on Judges) [36] proclaimed in its Article 3, paragraph 4, the duty of all judges to abide by the Code of Ethics, which is passed by the HJC. This provision was reiterated in the Law on the High Judicial Council (hereinafter: 2008 Law on HJC).[37] Therefore, unlike in Montenegro, where the JC only drafted the Code, and the body comprising all judges in Montenegro adopted it, in Serbia, it was the HJC that adopted the Code. The HJC at that time was a body composed of a

---

[35] Etički kodeks sudija Službeni list CG 24/2015 [Code of Ethics of Judges, Montenegro Official Gazette 24/2015].

[36] Zakon o sudijama, Službeni glasnik RS 116/2008, 58/2009 (Odluka Ustavnog suda), 104/2009, 101/2010, 8/2012 (Odluka Ustavnog suda), 121/2012, 124/2012 (Odluka Ustavnog suda), 101/2013, 111/2014 (Odluka Ustavnog suda), 117/2014, 40/2015, 63/2015 (Odluka Ustavnog suda), 106/2015, 63/2016 (Odluka Ustavnog suda), 47/2017 [Law on Judges, Republic of Serbia Official Gazette 116/2008, 58/2009 (Constitutional Court decision), 104/2009, 101/2010, 8/2012 (Constitutional Court decision, 121/2012, 124/2012 (Constitutional Court decision), 101/2013, 111/2014 (Constitutional Court decision), 117/2014, 40/2015, 63/2015 Constitutional Court decision), 106/2015, 63/2016 (Constitutional Court decision), 47/2017]

[37] Zakon o Visokom savetu sudstva, Službeni glasnik RS 116/2008, 101/2010, 88/2011, 106/2015 [Law on High Judicial Council, Republic of Serbia Official Gazette 116/2008, 101/2010, 88/2011, 106/2015], Article 13, paragraph 1, line 14.

majority of judges, who were elected by their peers but formally appointed by the National Assembly, but which also had in its composition representatives of executive and legislative powers.[38] This meant that the legislator entrusted the adoption of the Code of Ethics to a body comprised of a majority of judges. It is therefore questionable to what extent the relevant standard of the Code of Ethics being adopted by the judges themselves was observed in this case. This is particularly poignant given that the Venice Commission criticized the provisions of the HJC when the 2006 Serbian Constitution was adopted[39] for the potentially excessive political influence on the election of its members given the envisaged appointment procedure in the National Assembly.[40] In a nutshell, the HJC was deemed a body that was at risk of politicisation and, as such, was not duly representative of the judicial power, let alone the best body to adopt a Code of Ethics for all Serbian judges. Consequently, while on the one hand, the position that a body mandated with guaranteeing judicial independence should promulgate the standards of professional conduct for judges can be defended, on the other, it seems that the legislator did not fully take into account the relevant international standards when deciding so.

The Code of Ethics was adopted in 2010[41] and was largely inspired by the Standards of Judicial Ethics of the Judges Association of Serbia; this also means that it was largely aligned with the Bangalore Principles of Judicial Conduct.

---

[38] In the 2008-2023 period, the Serbian High Judicial Council had 11 members: the president of the Supreme Court of Cassation, the Minister in charge of the judiciary, the president of the relevant National Assembly judiciary committee, and eight members appointed by the National Assembly – six of those were judges elected by their peers while two were reputable lawyers, one of whom is a barrister, while the other one is a law professor. See: Ustav Republike Srbije, Službeni glasnik RS 98/2006-3 [Constitution of the Republic of Serbia, Republic of Serbia Official Gazette 98/2006-3], Article 153 and 2008 Law on HJC

[39] See Opinion on the Constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 16-17 March 2007) CDL- AD(2007)004, paragraph 70)

[40] See also: Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008) CDL-AD(2008)006-e

[41] Etički kodeks sudija, Službeni glasnik RS 96/2010 [Code of Ethics of Judges, Republic of Serbia Official Gazette 96/2010]

In 2022, the Serbian Constitution was amended in the part pertaining to the judiciary, precisely in order to minimize the politicization of the judiciary.[42] The composition of the HJC was amended, so that it now comprises six judges elected by their peers, the president of the Supreme Court, and four reputable lawyers elected by the National Assembly. The HJC is also vested with more powers in the areas of judicial career but also vis-à-vis the judicial budget. The new set of judicial laws adopted in 2023 – the Law on Judges (hereinafter: 2023 Law on Judges) [43] and the Law on High Judicial Council (hereinafter: 2023 Law on HJC)[44] - brought some not-so-welcome innovations regarding judicial ethics. Firstly, the 2023 Law on Judges reiterates that all judges are to abide by the Code of Ethics at all times. Secondly, the Law expressly prescribes in Article 4 the ethical principles of the exercise of judicial function. These are independence, impartiality, accountability, and dignity. This means that, for the first time since 2008, the legislator has also opted to directly regulate the substance of the Code of Ethics, albeit only in general terms. Even though the prescribed principles are in line with the relevant international sources of law, the impression is that the legislator somewhat unnecessarily intervened in an area that should be regulated by the judges themselves. The same article goes on to elaborate on some of these principles, but not all of them. Further, the prescribed principles do not include one important principle guaranteed by the Code of Ethics – the freedom of association of judges, which has been a tenet of the functioning of the professional associations of judges since 2000.[45]

[42] Odluka o proglašenju Akta o promeni Ustava Republike Srbije, Službeni glasnik RS 16/22 [Decision on Promulgation of the Act on the Change to the Constitution of the Republic of Serbia, Republic of Serbia Official Gazette 16/22]

[43] Zakon o sudijama, Službeni glasnik RS 10/2023 [Law on Judges, Republic of Serbia Official Gazette 10/2023]

[44] Zakon o Visokom savetu sudstva, Službeni glasnik RS 10/2023 [Law on High Judicial Council, Republic of Serbia Official Gazette 10/2023]

[45] Serbian Code of Ethics of Judges, principle 6 (Etički kodeks sudija, Službeni glasnik RS 96/2010 [Code of Ethics of Judges, Republic of Serbia Official Gazette 96/2010]. On the freedom of association of judges in Serbia in sum see: KNEŽEVIĆ, BOJOVIĆ, Ana., MISAILOVIĆ, Jovana: Judges' Associations and Trade Unions – International Standards and Selected National Practices. In: Strani pravni život, 66 (4), (2022), pp. 387-410.

Finally, the law states that the HJC regulates in more detail the ethical principles of the exercise of judicial power, with the aim of advancing the said principles.

The new Serbian legislation thus narrows down considerably the scope of powers of the judiciary to adopt its own rules or code of professional conduct. The legislator expressly prescribes the key principles of the ethical conduct of judges. Even though these principles in themselves are not problematic, they are rather limited and do not necessarily cover all the values judges should aspire to uphold and be guided by in their work and everyday conduct. Having these principles prescribed by law is, in fact, contrary to the prevailing idea that the rules governing the conduct of judges should be drawn up by the judges themselves. The law then goes on to vest the power of elaborating these principles in the HJC, again, a body that does guarantee judicial independence but also a body that does not *per se* guarantee that its decisions and acts are adopted in a broad consultative process and that they will have sufficient ownership. The Serbian legislator seems to have done a disservice to the judicial profession by intervening normatively in an issue that should be in the exclusive purview of the latter.

It is also important to point out here that both the Serbian and the Montenegrin legislators have decided to prescribe clear links between violations of the Code of Ethics and the disciplinary liability of judges, albeit in different formats. In Montenegro, this is done through the power of the body in charge of monitoring the adherence to the Code to initiate disciplinary proceedings against a judge, as will be elaborated further in the text.

Legislative Norms on Bodies Monitoring the Observance of the Codes of Ethics

The codes of ethics and relevant laws in both countries expressly prescribe that conduct contrary to the Code of Ethics is a violation of the Code, and envisage the existence of a body in charge of establishing whether a given conduct constitutes such a violation.

When it comes to Montenegro, the 2008 Code of Ethics did not envisage the existence of a special body that would establish violations of its provisions. Rather, this power was vested with the JC[46] and had not been prescribed in the law. However, in 2011, the Law on the Judicial Council and the Code of Ethics were amended to prescribe the existence of the Ethics Commission.[47] The law was rather general in terms of the competence of the Ethics Commission, stating that its mandate is to monitor adherence to the Code of Ethics. The Ethics Commission, according to the law, is elected by the Conference of Judges. The law also went on to prescribe its composition, which seemed to be underpinned by some form of hierarchy. More specifically, its president was to be elected from among the JC members who are not judges; one member was to be elected by the extended session of the Supreme Court from among judges, while the third member is *ex officio* the president of the Montenegrin Association of Judges.[48] Administrative support for the Ethics Commission was to be provided by the JC Secretariat, and the Ethics Commission was to report to the JC at least once a year. It was only in 2012 that the Code of Ethics was amended to reflect this legislative change. The Code was more precise in prescribing the mandate of the Ethics Commission, stating that its duty is to establish whether conduct constitutes a violation of the Code of Ethics.[49] The Code also prescribed that a judge is entitled to file an objection against such a decision with the JC. The final decision on the violation was to be recorded in the judge's personal file. The Code of Ethics adopted in 2014 included considerably more detailed provisions on the procedure before the Ethics Commission. Most importantly, the Code envisaged that while the Commission was deciding on the violation of the Code, if it found that the judge's conduct showed elements of a disciplinary violation, it should stop its proceedings and file an initiative for the commencement of disciplinary proceedings. The establishment of such a clear link between ethical violations and disciplinary proceedings is, according to relevant standards, reserved only for exceptional situations.

---

[46] Article 14 of the 2008 Montenegrin Code of Ethics for Judges.

[47] 8. Zakon o izmjenama i dopunama Zakona o Sudskom savjetu Službeni list CG, 39/2011 [Amendments to the Law on Judicial Council, Montenegro Official Gazette 39/2011], Articles 2 and 3

[48] Ibid.

[49] Article 14 of the 2012 Amendments to the Code of Ethics

The 2015 Law on Judicial Council and its subsequent amendments did not alter the norms on the composition of the Ethics Commission, nor did they substantially intervene in the norms on its competence. In a nutshell, the law prescribes that anyone can address the Ethics Committee and seek its opinion on whether a certain behaviour of a judge is in line with the Code of Ethics.[50] This provision is further elaborated in the Code of Ethics and the Commission's Rules of Procedure, adopted by the Commission itself.[51] The initiative must include the name of the judge and the description of the conduct. The Ethics Commission must also obtain a statement from the judge in question. Interestingly, the Ethics Commission seeks this statement through the court president, which means that the president will always be informed of any initiative, even though the Ethics Commission may find no violation of the code. The decisions of the Ethics Commission are published, but the data about the judge in question are to be anonymised.

While the Rules of Procedure of the Commission are not prescribed by the legislator, the overall impression is that the body itself did not engage too deeply in regulating the procedure or affirming its position. This is particularly visible with regard to the relationship between ethics and disciplinary accountability, which will be elaborated later on. At this point, it is also worth noting that the violations of the ethical code have implications for judges' performance evaluations, as prescribed by the relevant rules adopted by the Judicial Council.[52]

Even though the legislator and the Code of Ethics do not envisage such competence, the Rules of Procedure of the Commission state that the Commission shall adopt guidelines, opinions, and decisions on adherence to the Code of Ethics.[53] The Commission does that in practice, as is visible on the JC webpage.[54] The fact that the Montenegrin Ethics Commission has broadened its own powers is a very positive step, as it seems that the

[50] Article 11 of the Law on Judicial Council and Judges adopted in 2015.

[51] Poslovnik o načinu rada i odlučivanja Komisije za etički kodeks sudija, 2019 [Rules of Procedure on the Method of Work and Decision-Making of the Commission for the Code of Ethics of Judges], available at https://sudovi.me/static/sdsv/doc/Poslovnik_Komisije_za_Eticki_kodeks_sudija.pdf

[52] Pravila za ocjenjivanje sudija i predsjednika sudova, Službeni list CG 75/15 15, 087/21 and 107/21 [Rules for Performance Evaluation of Judges and Court Presidents, Montenegro Official Gazette 75/15 15, 087/21 and 107/21]

[53] Article 5

[54] https://sudovi.me/sdsv/sadrzaj/dBEN

legislator saw the Ethics Commission primarily as a body with the power to penalise. It is also worth noting, however, that in its IV round of evaluations, GRECO recommended that Montenegro should significantly strengthen and further develop mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for judges.[55]

When it comes to Serbia, for a considerable period of time after the adoption of the 2010 Code of Ethics, no specific body was in charge of monitoring compliance with the Code or providing advice to judges on ethical issues. This was noted in the IV round of GRECO evaluations[56] and it was recommended that Serbia provides confidential counselling on ethical issues to all judges. In response to this recommendation, and also to the obligation it has taken up in the Action Plan for Chapter 23[57] Serbia promptly set up an Ethics Committee of the High Judicial Council, comprising members of the Council from among judges. This was done through the amendments to the Rules of Procedure of the HJC[58] and the adoption of a separate HJC decision setting out the composition and competence of the Ethics Committee.[59]

The solution was less than ideal. The Committee consisted of three members of the HJC, had a rather limited mandate, and was not set up as a permanent HJC body, which means that it was to meet on an *ad hoc* basis; naturally, such a setup did not foster certainty. In fact, the Ethics Committee could not be established as an HJC permanent body without the Law on HJC being amended, as it prescribed the permanent HJC bodies as *numerus clausus.*[60] Additionally problematic was the composition of the Ethics Committee. Namely, as the HJC is a second-instance body in disciplinary proceedings, including the power to decide

[55] Greco Eval IV Rep (2014) 6E, paragraph 94

[56] Greco Eval IV Rep (2014) 8E, paragraph 131

[57] Akcioni plan za Poglavlje 23, usvojen 27.4.2016. [Action Plan for Chapter 23 adopted on April 27, 2016], Activity 1.2.2.8.

[58] Poslovnik o radu Visokog saveta sudstva, Službeni glasnik RS 29/2013, 4/2016, 91/2016, 24/2017, 7/2018, 69/2018, 38/2021, 90/2021, 48/2023 [Rules of Procedure of the High Judicial Council, Republic of Serbia Official Gazette 29/2013, 4/2016, 91/2016, 24/2017, 7/2018, 69/2018, 38/2021, 90/2021, 48/2023]. Relevant amendments were published in the Official Gazette 4/2016.

[59] Odluka Visokog saveta sudstva 119-05-142/2016-01 [High Judicial Council decision 119-05-142/2016-01]

[60] Article 15, paragraph 1 of the 2008 Law on HJC.

on judges' dismissal, it was not particularly likely that judges would address the Ethics Committee for advice and guidance on what could constitute a disciplinary violation with such a composition.

In 2021, major steps were made to promote and advance judicial ethics issues in Serbia. Firstly, the 2008 Law on Judges and the 2008 Law on HJC were amended to establish the Ethics Committee as a permanent body of the HJC.[61] The HJC also adopted a Rulebook on the Work of the Ethics Committee.[62] The Rulebook expanded the procedural rules regarding the monitoring of the implementation of the Code of Ethics, stepping away from the idea that the Ethics Committee should be mostly focused on reprimanding judges in cases when they violate the Code of Conduct, and expressly envisaging its competence to adopt guidelines on the interpretation and application of the Code of Ethics. Further, the Rulebook envisaged that the Ethics Committee would consist of seven judges, appointed by the HJC following a public announcement.[63] This not only made the appointment procedure more transparent, but also invited judges to actively contribute to the observance of ethical norms. Finally, in 2021, the HJC appointed the members of the Ethics Committee. Three of them were retired judges – a solution taken from the comparative practice of Slovenia, aimed to guarantee a distance from the everyday „judicial politics".[64] A confidential counsellor on ethical issues was also appointed.[65]

---

[61] Zakon o izmenama i dopunama Zakona o sudijama, Službeni glasnik RS 76/2021-3 [Amendments to the Law on Judges, Republic of Serbia Official Gazette 76/2021-3] and Zakon o dopuni Zakona o Visokom savetu sudstva 2021-3 [Addendum to the Law on High Judicial Council, Republic of Serbia Official Gazette 76/2021-3]

[62] Pravilnik o radu Etičkog odbora Visokog saveta sudstva, Službeni glasnik RS 89/2021 [Rulebook on the Work of the Ethics Committee of the High Judicial Council, Republic of Serbia Official Gazette 89/2021]

[63] Izveštaj o radu Visokog saveta sudstva za 2021. godinu [Report on the Work of the High Judicial Council in 2021], 32.

[64] The process was supported by the Project "Strengthening Independence and Accountability of the Judiciary" HORIZONTAL FACILITY FOR WESTERN BALKANS AND TURKEY II. For more details see: CARDOSO, José Manuel Duro Mateus, INSTITUTE OF COMPARATIVE LAW, DOKMANOVIĆ Mirjana: Final Report With Recommendations For A System Of Confidential Counselling For Judges And Prosecutors On Ethical Matters, available at: https://rm.coe.int/hf9-confidential-counselling-eng/1680a35870

[65] Zapisnik sa prve konstitutivne sednice Etičkog odbora, 15.10.2021. [Minutes of the first constitutive session of the Ethical Committee of October 15, 2021], available at:

The Ethics Committee was quick to affirm itself within the Serbian judicial corps. This is particularly visible from the results of its work: in 2022, the Ethics Committee adopted twelve principal opinions, and in 2023 (to date), it adopted six principal opinions, all of which are published on the HJC webpage[66]. The Report on the Work of the Ethics Committee in 2022[67] additionally shows that the Confidential Counsellor on Ethical Issues has provided his opinions upon sixteen requests made by judges.[68] As can be seen, this progress was made with minimal legislative intervention and was largely judiciary-led, thus bringing the Serbian rules on judicial ethics more in line with relevant international standards. The step forward, however, seems to have been somewhat thwarted by the recent judicial reform interventions in Serbia. How so?

The 2023 Law on HJC not only expressly envisages the existence of the Ethics Committee as an HJC body[69] but also regulates in more detail its composition and mandate.[70] More specifically, the law states that the Ethics Committee takes care of the observance and application of the Code of Ethics, which is a rather general provision, that needs to be complemented not only by the provisions of the Code of Ethics itself, but

https://vss.sud.rs/sites/default/files/attachments/Прва%20конститутивна%20седница%20Етичког%20одбора%20ВСС%2015.10.2021.%20године.pdf

[66] https://vss.sud.rs/sr/%D1%81%D1%82%D0%B0%D0%BB%D0%BD%D0%B0-%D1%80%D0%B0%D0%B4%D0%BD%D0%B0-%D1%82%D0%B5%D0%BB%D0%B0/%D0%B5%D1%82%D0%B8%D1%87%D0%BA%D0%B8-%D0%BE%D0%B4%D0%B1%D0%BE%D1%80, 30.8.2023.

[67] Izveštaj o radu Etičkog odbora Visokog saveta sudstva za 2022. godinu [Report on the Eork of the Ethics Commitee of the High Judicial Council in 2021] /https://vss.sud.rs/sites/default/files/attachments/ИЗВЕШТАЈ%20О%20РАДУ%20ЕТИЧКОГ%20ОДБОРА%20ВИСОКОГ%20САВЕТА%20СУДСТВА%20ЗА%202022.%20ГОДИНУ.pdf.p 3

[68] For comparison, during a two-year mandate, the confidential counsellor on ethics in integrity in Slovenia has provided only three opinions. This information was communicated at the workshop on confidential counselling for judges and prosecutors organised by the Project Strengthening Independence and Accountability of the Judiciary" HORIZONTAL FACILITY FOR WESTERN BALKANS AND TURKEY II, held on Novemebr 24, 2021, where the first Slovenian Ethics and Integrity Advisor, retired judge Janez Vlaj, was one of the speakers. The workshop was attended by one of this paper's authors, and the information on the number of opinions provided was taken from her notes.

[69] Article 19 of the 2023 Law on HJC

[70] Article 24 of the 2023 Law on HJC

also by the secondary legislation to be adopted by the HJC.[71] This process is still ongoing, and for the time being, the bylaws adopted pursuant to the former Law on the High Judicial Council are applied.

The law also prescribes the composition of the Ethics Committee. The provision whereby a member of the HJC cannot be a member of the Ethics Committee can be seen as an important step towards ensuring that the Committee is indeed an independent body. However, the provision whereby the Ethics Committee is comprised of five acting judges appointed by the HJC, without the possibility of reappointment disregards the previous judiciary-led progress based on good comparative practices, as it explicitly excludes retired judges from the composition. This intervention on the part of the legislator is particularly unwelcome in light of the fact that the current president of the Ethics Committee is a renowned and highly regarded retired judge.[72] The legislator additionally went on to prescribe that the Ethics Committee passes its decisions by majority vote. It is unclear why it was necessary to regulate this issue expressly in the law, thus somewhat encroaching on the autonomy of the judiciary to regulate the issues relating to its own Code of Ethics by itself. Furthermore, the legislator has completely disregarded the issue of confidential counselling on ethical issues, another judiciary-led advancement that was also in line with the relevant GRECO recommendations. While there is nothing in the law that prohibits the Ethics Committee from again establishing the confidential counselling mechanism, it is rather telling that the legislator opted to prescribe the composition of the body in charge of monitoring compliance with the Code of Ethics, and, as we will see further in the text, elaborate on its role vis-à-vis disciplinary proceedings against judges, while failing to recognise a very important, compliance-oriented role of the Ethics Committee.

---

[71] Namely, the transitional and final provisions of the Law on High Judicial Council prescribe that the HJC will adopt relevant secondary legislation within one year from the date the new HJC was constituted. One such piece of legislation is the bylaw regulating in more detail the work of the Ethics Committee. The Law also prescribes that the bylaws adopted according to the previous law shall continue to apply until the new bylaws are promulgated, provided they are not contrary to the Law.

[72] 14. Zapisnik sa prve konstitutivne sednice Etičkog odbora, 15.10.2021. [Minutes of the first constitutive session of the Ethical Committee of October 15, 2021], available at: https://vss.sud.rs/sites/default/files/attachments/Прва%20конститутивна%20седница%20Етичког%20одбора%20ВСС%2015.10.2021.%20године.pdf

The legislative amendments have also extended the mandate of the Ethics Committee, but this was done in a way that in fact increases fragmentation and creates confusion.

Firstly, the 2023 Law on Judges states that the Ethics Committee decides which office, job, or private interests are contrary to the dignity and independence of a judge and detrimental to the reputation of the judicial office, based on the Code of Ethics.[73] Interestingly, in the next article, the law goes on to state that a judge must inform the HJC on the existence of another office, job, or private interest that could be incompatible with the judicial office, and that the HJC will then conduct the relevant procedure, in which will decide on the incompatibility.[74] In is unclear how the legislator intended to delineate these competencies. Moreover, the law also expressly states that the judges are subject to the provisions of the relevant anti-corruption legislation law, as they are public officials, which includes their obligations according to such laws.[75] The Serbian Anti-Corruption Law[76] expressly states that it is the mandate of the Anti-Corruption Agency to provide opinions on the conflict of interest of public officials and also on the incompatibility of their office with other jobs or activities prior to appointment to office and in the course of the exercise of the office.[77] These norms apply to judges as well. When read together with the provisions of the new Law on Judges, these rules create a lot of confusion, because judges do not know which body to address with regard to the issues of incompatibility of office: the Ethics Committee, the HJC, or the Anti- Corruption Agency or all three of them. While it seems that the legislator wanted to affirm a special position of judges as the emanation of the third branch of power when introducing the said powers of the Ethics Committee and the HJC, the effect achieved is fragmentation. This is particularly visible in the fact that there is no solution to what happens in procedures before these bodies run in parallel. The implications of non-compliance are also not clear.

---

[73] Article 31, paragraph 4 of the 2023 Law on Judges

[74] Article 32 of the 2023 Law on Judges

[75] Article 33 of the 2023 Law on Judges

[76] Zakon o sprečavanju korupcije, Službeni glasnik RS 35/2019, 88/2019, 11/2021 – autentično tumačenje, 94/2021 and 14/2022 [Law on Corruption Prevention, Republic of Serbia Official Gazette 35/2019, 88/2019, 11/2021 – authentic interpretation, 94/2021 and 14/2022]

[77] Articles 40-46 of the Law on Corruption Prevention

The core competence of the Serbian Ethics Committee with regard to the Code of Ethics is not regulated in detail in the relevant laws. The Law on HCJ only states that the Ethics Committee takes care of compliance with the Code and its implementation. On the one hand, this could be seen as a good approach on the part of the legislator, leaving it to the judiciary itself to carve out the approach to judicial ethics. On the other hand, the legislator seems to have almost purposefully disregarded the competences that the Ethics Committee established in late 2021 has assigned to itself with approval from the HJC, including the existence of a mechanism for confidential counselling.

The competence of the Ethics Committee is regulated in more detail in the Rulebook on the work of the Ethics Committee, which was amended in 2022, at the initiative of the Committee itself.[78] These amendments constitute a positive step forward, as they introduce more consistency and address some of the legal gaps and inconsistencies. First of all, Article 34 of the new rulebook prescribes that anyone can file an initiative with the Ethics Committee to adopt a principled opinion on whether the given conduct of a judge is contrary to the Code of Ethics. The Rulebook also expressly prescribes that, when the Ethics Committee may, at its own initiative, adopt guidelines. Finally, the Rulebook underscores that the opinion of the confidential counsellor is not binding either on the Ethics Committee or on the judge requesting the advice; this puts the advice of the confidential counsellor in the realm of an informed opinion, which is set to promote compliance rather than in the context of pre-emptive penalisation in case a judge does not follow such an opinion.

Links Between Monitoring Compliance with the Code of Ethics and Disciplinary Proceedings

Cear links, established by law, between the outcome of the work of the bodies charged with monitoring compliance with the Code of Ethics and disciplinary proceedings, as regulated in Serbia and Montenegro, have considerable potential to be weaponized against judges.

Namely, the legislators in both Montenegro and Serbia have decided to interpret more loosely the international standard that the violations of

[78] Pravilnik o radu Etičkog odbora Visokog saveta sudstva, Službeni glasnik RS 68/2022 [Rulebook on the Work of the Ethics Committee of the High Judicial Council, Republic of Serbia Official Gazette 68/2022]

ethical code should result in disciplinary liability only in extreme cases. They also decided to create formal links between the procedures before the ethics bodies and disciplinary bodies. In the case of Montenegro, this is particularly problematic as one of the members of the Ethics Committee is also a member of the HJC, a body that is competent to decide on the most serious disciplinary violations. In the case of Serbia, the problem lies in the fact that the decisions of the Ethics Committee have an important role in disciplinary proceedings. In both countries, the issue is further exacerbated by the fact that every disciplinary violation essentially also constitutes a violation of the Code of Ethics.

In Montenegro, according to the law, the Ethics Commission is one of the bodies that can file a motion for the commencement of disciplinary proceedings against a judge.[79] The law does not go into too much detail, as to when the Ethics Commission shall do so, or on what grounds. The Code of Ethics is a bit more specific as it states that, if the Commission, when deciding on an initiative for establishing a violation of the Code of Ethics, finds that the behaviour in question constitutes a disciplinary violation, it shall cease its proceedings and file the relevant motion with the disciplinary bodies.[80] The problem here, as pointed out before, lies in the fact that any disciplinary violation also constitutes a violation of some of the principles enshrined in the Code of Ethics. Neither the law nor the Code of Ethics provide additional guidance on the issue. There are also no rules on whether the motion to initiate disciplinary proceedings can be filed prior to obtaining the statement from a judge in question on the contested conduct, or not. If the former is the case, this means that a motion for initiating disciplinary proceedings can be filed based even on rather loose allegations. It should also be noted that the Ethics Commission does not have any investigative rights other than the rule that a judge whose conduct is being questioned has to be heard. Additionally, the power of the Ethics Commission to file a motion in disciplinary proceedings is certain to avert judges from seeking an opinion from the Ethics Commission on their own, personal, ethical dilemmas.

To complicate matters even further, the Montenegrin law also envisages that, in parallel, the court president, the president of the immediately higher court, and the president of the Supreme Court can request from

[79] Article 110, paragraph 1 of the Law on Judicial Council and Judges

[80] Article 12, paragraph 6 of the Code of Ethics of Judges

the Ethics Committee an opinion on whether the conduct of the judge, which gave rise to disciplinary proceedings, is in line with the Code of Ethics. The law thus allows for the existence of two parallel procedures: one before the disciplinary bodies and one before the Ethics Commission relating to the same conduct. In theory, the Ethics Commission could find no violation, while the disciplinary body could find a violation. Similarly, both the disciplinary bodies and the Ethics Commission could find that a violation took place, meaning that two decisions relating to the same will be recorded in the judge's personal file.

Essentially, the entire setup is geared towards reporting judicial misconduct and effecting a sanction for such misconduct, either in the form of a finding that the conduct is in violation of the Code of Ethics, which is recorded in the judge's personal file, or in the form of a disciplinary sanction, which is also recorded in the judge's file. On the other hand, compliance mechanisms are not promoted.

In Serbia, prior to the recent judicial reform, there was no formal connection between the procedure before the Ethics Committee and the disciplinary proceedings. However, the law did prescribe, as one of the disciplinary violations, a breach of the code of ethics to a considerable extent.[81] The existence of such a breach was established by the disciplinary bodies. This possibility was resorted to relatively often, as a range of conducts on the part of the judge could not be categorised under the other, very specific and narrowly worded disciplinary violations.[82] However, the introduction of this type of disciplinary violation was also criticised both by legal scholars and legal practitioners, for two reasons. The first criticism was directed at the hybrid nature of the disciplinary violation – a disciplinary violation that constitutes a breach of the Code of Ethics is in contravention of international standards. The second criticism addressed the fact that it introduces an aggravating circumstance in the description of the disciplinary violation, one whose existence needs to be

[81] Article 90, paragraph 1, point 18 of the 2008 Law on Judges

[82] See: SPASOJEVIĆ, Smilja: Disciplinska odgovornost sudija u Republici Srbiji u regulativi i praksi: prikaz zakonskih rešenja, najčešćih razloga odgovornosti i okolnosti koje su dovele do povećanog broja procesuiranja disciplinskih prekršaja. Sarajevo: Fondacija Centar za javno pravo, 2015.24. PAPIĆ, Tatjana: Pravo i praksa disciplinske odgovornosti sudija u Srbiji. Beograd:OSCE, 2016. 50. KNEŽEVIĆ BOJOVIĆ, Ana: Disciplinska odgovornost sudija u Srbiji - Ažurirani pregled pravnog okvira i prakse. Beograd: GIZ. 56.

interpreted in every given case, and built through the consistent practice of the relevant bodies.

In the 2023 Law on Judges, the legislator addressed these criticisms by prescribing the disciplinary offences of a breach of the Code of Ethics to a considerable extent, as established by the Ethics Committee. [83] The law further states that, if so requested, the Ethics Committee must decide whether the Code of Ethics was breached to a considerable extent within 90 days. This legislative intervention means that the responsibility of ascertaining whether a given conduct constitutes a violation of the Code of Ethics is shifted to the Ethics Committee. However, the law remains silent on the operationalisation of these rules. It is unclear who can make such a request to the Ethics Committee – whether this can be done only by the disciplinary prosecutor, the disciplinary commission, or anyone – and at which stage of the disciplinary proceedings can this motion be filed. The situation is further complicated by the fact that the relevant bylaws on the work of the Ethics Committee were passed prior to the normative interventions, and do recognise the specificities of this situation. More specifically, the Ethics Committee, as per the relevant Rulebook, does not decide on initiatives pertaining to conduct that is manifestly contrary to the Code of Ethics, including disciplinary violations.[84] Additionally, even when deciding on whether a conduct is in contravention of the Code of Ethics, the Ethics Committee does not investigate the truthfulness of the allegations. Instead, it provides an abstract description of the situation and the conduct, based on the conduct described in the initiative, and gives an opinion on whether such a behaviour would be in line with the Code of Ethics. The Rulebook does not make a distinction between minor and grave violations of the Code. This approach largely differs from the approach utilised by disciplinary bodies, which have considerable investigative powers. So how can this very general and abstract opinion be used in disciplinary proceedings? Under the current legal framework, it seems that the only option would be for the disciplinary prosecutor to request an opinion of the Ethics Committee on whether a conduct is contrary to the Code of Ethics and then use such a principled opinion in disciplinary proceedings. In this case, the Ethics Committee would also have to ascertain whether the violation

[83] Article 97, paragraph 1, point 20 of the 2023 Law on Judges

[84] Article 42 paragraph 2 of the Rulebook on the Work of the Ethics Committee of the High Judicial Council of 2022

is minor or a considerable one. Then, it would be up to the Disciplinary Commission to establish whether the judge in fact conducted himself or herself in a given manner or not, and pronounce the sanction. On the other hand, there is nothing in the law or the current bylaws to prevent the judge against whom disciplinary proceedings are initiated from filing the same initiative prior to any action taken by the disciplinary prosecutor. Likewise, the request can perhaps be made by the person who has yet to file a report with the disciplinary prosecutor, in order to support the claim that a judge should be charged with a disciplinary offence. Similarly, there is nothing in the regulatory framework that would imply that it is the Disciplinary Commission, not the Disciplinary Prosecutor, who shall request such an opinion when disciplinary proceedings are already underway. It is also unclear whether the Ethics Committee is entitled to dismiss the request, if the described conduct had previously been ascertained to be in line with or contrary to the Code of Conduct.

It seems that the legislator, in an attempt to ensure that misconduct on the part of the judge will not remain unsanctioned, and in order to ensure alignment of the interpretation of the Code of Ethics between the disciplinary bodies and the Ethics Committee, has created confusion. More to the point, the legislator has enabled the weaponisation of the proceedings before the Ethics Committee, as this body, which has no investigative powers, is now vested with considerable power to affect judges' careers with its principled decisions, made based on an abstract interpretation of the circumstances of the case. It has also potentially minimised the role of the disciplinary bodies vis-à-vis the disciplinary offence in question. Finally, it has minimised the willingness of the judges to seek advice from the Ethics Committee, as the opinion has the potential to be used against them in disciplinary proceedings.

As the case is in Montenegro, the legislator is set on ensuring sanctions, while disregarding the mechanism that promote compliance and provide advice. In the case of Serbia, this also undermines the compliance of its legislation with the recommendations provided in the fourth round of GRECO evaluations – a definite step back.

Conclusion

Judicial independence as a foundation of the rule of law needs to be guaranteed by highest national legal acts. However, this legislative

positioning of the principle still leaves room for the judicial branch to further strengthen its independence and integrity through setting properly balanced autonomous standards and rules governing integrity and ethics, which individual judges are to observe.

International, and in particular, European soft-law standards relating to judicial ethics and integrity underscore the full acknowledgment of the judicial ethics dimension of the concept of judicial self-governance. When it comes to opting for the most adequate avenue for regulating judicial ethics and integrity, it is important to consider that the contemporary tailored understanding of judicial self-governance is not deemed as being in conflict with the core understanding of the rule of law since it contributes to fostering judicial independence as one of its foundations. In other words, in order to strengthen judicial independence, all the declared rule of law principles should be interpreted in conjunction with the judicial ethics dimension of the principle of judicial self-governance. This implies, *inter alia*, that processes by which the regulations in the area of judicial ethics are enacted should be accessible in order to respect one of the recognized core principles of the rule of law referred to in as "open government".

Although the aforementioned standards clearly acknowledge the judicial ethics and integrity dimension of the concept of judicial self-governance, as does the recent legal and political science scholarship, the operationalisation of this dimension in national legislation has not been full or consistent across different European countries. The Republic of Serbia and Montenegro belong to such a group of states where the judicial ethics dimension of judicial self-governance are not fully acknowledged, since the holder of the legislative initiative, and the legislature itself tend to regulate some of the issues relating to judicial conduct or judicial ethics in the laws governing the judiciary. It seems that such a practice originates from their common legal tradition, namely, the principle of unity of powers, which was the leading principle for decades. The disregard to judicial self-governance in this particular field can be further explained attributed to the fact that both Serbia and Montenegro as EU candidate countries have been strongly influenced by the external conditionality of the EU accession process, where it is easier to demonstrate the required progress or change in the form of a legislative norm than to rely on the judiciary to adopt the relevant bylaws or develop a consistent practice.

It seems that the legislators in both Serbia and Montenegro have taken the approach of legislating for what should essentially be a matter for the profession itself at least in three different aspects/segments. Firstly, both countries imposed the legislative obligation of the adoption of the Code of Ethics. Many European countries still do not have codes of ethics for judges that apply to all judges in the country; this seems to be more of a practice adopted by the countries in transition and former socialist countries. The adoption of the Code of Ethics is also entrusted to a body established by law, or the Constitution; in Montenegro, it is the Conference of Judges, in Serbia, it is the HJC. This does not in itself guarantee wide acceptance or ownership by the judicial corps. However, it should be underlined that the texts of both codes of ethics are generally in line with the relevant international standards. Secondly, Serbia and Montenegro do not recognise the existence of bodies with the role to advise on ethical dilemmas. In both cases, the legislator only sees the potentially penalising role of the bodies charged with monitoring the observance of the Codes of Ethics. Thirdly, the legislators in both Serbia and Montenegro want to ensure that breaches of codes of ethics are sanctioned.

The last two points, in fact, can be seriously deterring for judges. It is possible to imagine situations in which judges would be reluctant to address the ethics committees, either on their own behalf or with regards to behaviour of another judge, as this may mean that they will be exposed to disciplinary sanctions. The way the legislators set up the relationship between ethical and disciplinary liability shows their lack of understanding of the nuances and differences between the two. Also, as pointed out above, this means that the ethics procedure could easily be weaponized.

Bibliography

Books

1. ARISTOTLE: Aristotle's Rhetoric and Poetics 20-21 (ROBERTS W. Rhys-BYWATER Ingram translations, 1954.)
2. GAROUPA, Nuno, GINSBOURG, Tom: *Judicial Reputation: A Comparative Theory*. Chicago: University of Chicago Press, 2015.
3. GRABBE, Heather: *The EU's Transformative Power Europeanization through Conditionality in Central and Eastern Europe*. Basingstoke: Palgrave Macmillan UK, 2006.

4. KELLEY, G. Judith: *Ethnic Politics in Europe: The Power of Norms and Incentives*. Princeton: Princeton University Press, 2004.
5. KOSAŘ, David: *Perils of Judicial Self-Government in Transitional Societies*. Cambridge: Cambridge University Press, 2016.
6. MARCH, James., OLSEN, Johan: *Rediscovering Institutions: The Organizational Basis of Politics*. New York: The Free Press, 1989.
7. PALEY, William: The Works of William Paley. J. J. Woodward, Philadelphia, 1831, s. 123.
8. PRIDHAM, Geoffrey: *Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe*. Basingstoke: Palgrave Macmillan UK, 2005.
9. SCHIMMELFENNIG, Frank., ENGERT, Stefan., KNOBEL, Heiko: *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*. Basingstoke: Palgrave Macmillan UK, 2006.
10. SCHIMMELFENNIG, Frank., SEDELMEIER, Ulrich (eds.): *The Europeanization of Central and Eastern Europe.* Ithaca: Cornell University Press, 2005.
11. SHETREET, Shimon., CHODOSH, Hiram, HELLAND, Eric (eds.): *Challenged Justice: In Pursuit of Judicial Independence*. Leiden: Martinus Nijhoff Publisher, 2021.
12. VACHUDOVA, A. Milada: *Europe Undivided: Democracy, Leverage, and Integration after Communism*. Oxford: Oxford University Press, 2005.

Papers in non-periodical publications

1. ESPOSITO, Gianluca: Judicial Integrity and Judicial Independence: Two Sides of the Same Coin, Paper In: *Judicial Power in a Globalized World*: *Liber Amicorum Vincent De Gaetano*. New York: Springer, 2019, pp. 165-177.
2. ZHELYAZKOVA, Asya., DAMJANOVSKI, Ivan., NECHEV, Zoran., SCHIMMELFENNIG, Frank: European Union Conditionality in the Western Balkans: External Incentives and Europeanisation, paper In: *The Europeanisation of the Western Balkans*. Cham: Palgrave Macmillan, 2019, pp. 15-37.

Journal articles

1. ČENTÉŠ, Jozef – KOLCUNOVÁ, Marta: Kybergrooming v slovenskom Trestnom zákone. In: Státní zastupitelství, Roč. 17, č. 1 (2020), s. 18-27.
2. KNEŽEVIĆ, BOJOVIĆ, Ana., MATIJEVIĆ, V. Milica., GLINTIĆ, Mirjana: International Standards on Judicial Ethics and the Pitfalls of Cursory Legal Transplantation. In: *Balkan Yearbook of European and International Law 2021*, (2021), pp. 163-184.
3. KNEŽEVIĆ, BOJOVIĆ, Ana., MISAILOVIĆ, Jovana: Judges' Associations and Trade Unions – International Standards and Selected National Practices. In: *Strani pravni život*, 66 (4), (2022), pp. 387-410.
4. KOSAŘ, David: Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe. In: *German Law Journal*, 19(7), (2018), pp. 1567-1612.
5. KOSAŘ, David., ŠIPULOVÁ, Katarína: How to Fight Court-Packing. In: *Constitutional Studies*, 6, (2020), pp. 133–164.
6. PECH, Laurent: The Rule of Law as a Well Established and Well Defined Principle of EU Law. In: Hague Journal on the Rule of Law, vol. 14, 2022, 123
7. SCHIMMELFENNIG, Frank., SEDELMEIER, Ulrich: Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe. In: *Journal of European Public Policy*, 11(4), (2004), pp. 661-679.
8. SCHIMMELFENNIG, Frank., SEDELMEIER, Ulrich: The Europeanization of Eastern Europe: The External Incentives Model Revisited. In: *Journal of European Public Policy*, 27(6), (2020), pp. 814-833.
9. SPÁČ, Samuel: The Illusion of Merit-Based Judicial Selection in Post-Communist Judiciary: Evidence from Slovakia. In: *Problems of Post-Communism*, 69(6), (2022), pp. 528-538.
10. ŠIPULOVÁ, Katarína *et al*.: Judicial Self-Governance Index: Towards Better Understanding of the Role of Judges in Governing the Judiciary, In: *Regulation & Governance*, 17, (2023), pp. 22–42.
11. STEIN, A. Robert: What Exactly Is the Rule of Law?, Houston Law Review, vol. 57, (2019), 188.

Legal documents

International legal documents

1. Bangalore principles of judicial conduct were endorsed by the United Nations in ECOSOC resolution 2006/23; the principles are accompanied by the Commentary on the Bangalore Principles of Judicial Conduct
2. Basic Principles on the Independence of the Judiciary adopted on 06 September 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985
3. European Network of Councils for the Judiciary Judicial Ethics Report 2009-2010, endorsed by the London Declaration on Judicial Ethics
4. International Conference of Judicial Independence approved in 2015 the Bologna and Milan Global Code of Judicial Ethics is available at: <https://www.icj.org/wp-content/uploads/2016/02/Bologna-and-Milan-Global-Code-of-Judicial-Ethics.pdf> Mount Scopus international standards of judicial independence promulgated by the International Association of Judicial Independence and World Peace (JIWP). They were adopted in hey were approved in 2008 and consolidated in 2015 (available at: https://www.icj.org/wp-content/uploads/2016/02/Mt-Scopus-Standards.pdf).
5. Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, CCJE (2002)
6. Opinion No. 18 (2015) "The position of the judiciary and its relation with the other powers of state in a modern democracy", CCJE(2015)4
7. United Nations Convention Against Corruption, Adopted by the UN General Assembly: 31 October 2003, by resolution 58/4.
8. UNODC "Resource Guide on Strengthening Judicial Integrity and Capacity", 128. Available at:

/https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

National legal documents

Montenegro

1. Amandmani I do XVI na Ustav Crne Gore, Službeni list CG 38/2013 [Amendments I do XVI to the Constitution of Montenegro, Montenegro Official Gazette 38_2013]
2. Etički kodeks sudija, Službeni list CG 45/2008 [Code of Ethics of Judges, Montenegro Official Gazette 13/2008]
3. Etički kodeks sudija Službeni list CG 16/2014 and 24/2015 [Code of Ethics of Judges, Montenegro Official Gazette 16/2014 and 24/2015]
4. Izmjene i dopune Kodeksa sudijske etike Službeni list CG 17/2012 [Amendments to the Code of Ethics of Judges, Montenegro Official Gazette 12/2012]
5. Poslovnik o načinu rada i odlučivanja Komisije za etički kodeks sudija, 2019 [Rules of Procedure on the Method of Work and Decision-Making of the Commission for the Code of Ethics of Judges], available at https://sudovi.me/static/sdsv/doc/Poslovnik_Komisije_za_Eticki_kodeks_sudija.pdf
6. Pravila za ocjenjivanje sudija i predsjednika sudova, Službeni list CG 75/15 15, 087/21 and 107/21 [Rules for Performance Evaluation of Judges and Court Presidents, Montenegro Official Gazette 75/15 15, 087/21 and 107/21]
7. Zakon o državnom tužilaštvu, Službeni list CG 11/2015 [Law on State Prosecutor's Office, Montenegro Official Gazette 11/2015]
8. Zakon o izmjenama i dopunama Zakona o Sudskom savjetu Službeni list CG, 39/2011 [Amendments to the Law on Judicial Council, Montenegro Official Gazette 39/2011]
9. Zakon o sudskom savjetu, Službeni list CG 13/2008 [Law on Judicial Council, Montenegro Official Gazette 13/2008]
10. Zakon o sudskom savjetu i sudijama, Službeni list CG 11/2015 [Law on Judicial Council and Judges, Montenegro Official Gazette 11/2015]
9. Zakon o sudovima, Službeni list CG 11/2015 [Law on Courts, Montenegro Official Gazette 11/2015]

Serbia

1. Action Plan for Chapter 23
2. Etički kodeks sudija, Službeni glasnik RS 96/2010 [Code of Ethics of Judges, Republic of Serbia Official Gazette 96/2010]
3. Odluka o izmenama i dopunama poslovnika o radu Visokog saveta sudstva, Službeni glasnik RS 4/2016 [Decision on Amendments to the Rules of Procedure of the High Judicial Council, Republic of Serbia Official Gazette 4/2016]
4. Odluka o proglašenju Akta o promeni Ustava Republike Srbije, Službeni glasnik RS 16/22 [Decision on Promulgation of the Act on the Change to the Constitution of the Republic of Serbia, Republic of Serbia Official Gazette 16/22]
5. Odluka Visokog saveta sudstva 119-05-142/2016-01 [High Judicial Council decision 119-05-142/2016-01]
6. Poslovnik o radu Visokog saveta sudstva, Službeni glasnik RS 29/2013, 4/2016, 91/2016, 24/2017, 7/2018, 69/2018, 38/2021, 90/2021, 48/2023 [Rules of Procedure of the High Judicial Council, Republic of Serbia Official Gazette 29/2013, 4/2016, 91/2016, 24/2017, 7/2018, 69/2018, 38/2021, 90/2021, 48/2023]
7. Pravilnik o radu Etičkog odbora Visokog saveta sudstva, Službeni glasnik RS 89/2021 [Rulebook on the Work of the Ethics Committee of the High Judicial Council, Republic of Serbia Official Gazette 89/2021]
8. Pravilnik o radu Etičkog odbora Visokog saveta sudstva, Službeni glasnik RS 68/2022 [Rulebook on the Work of the Ethics Committee of the High Judicial Council, Republic of Serbia Official Gazette 68/2022]
9. Zakon o izmenama i dopunama Zakona o sudijama, Službeni glasnik RS 76/2021-3 [Amendments to the Law on Judges, Republic of Serbia Official Gazette 76/2021-3]
10. Zakon o dopuni Zakona o Visokom savetu sudstva 2021-3 [Addendum to the Law on High Judicial Council, Republic of Serbia Official Gazette 76/2021-3]
11. Zakon o sprečavanju korupcije, Službeni glasnik RS 35/2019, 88/2019, 11/2021 – autentično tumačenje, 94/2021 and 14/2022 [Law on Corruption Prevention, Republic of Serbia Official Gazette 35/2019, 88/2019, 11/2021 – authentic interpretation, 94/2021 and 14/2022]

12. Zakon o sudijama, Službeni glasnik RS 116/2008, 58/2009 (Odluka Ustavnog suda), 104/2009, 101/2010, 8/2012 (Odluka Ustavnog suda), 121/2012, 124/2012 (Odluka Ustavnog suda), 101/2013, 111/2014 (Odluka Ustavnog suda), 117/2014, 40/2015, 63/2015 (Odluka Ustavnog suda), 106/2015, 63/2016 (Odluka Ustavnog suda), 47/2017 [Law on Judges, Republic of Serbia Official Gazette 116/2008, 58/2009 (Constitutional Court decision), 104/2009, 101/2010, 8/2012 (Constitutional Court decision, 121/2012, 124/2012 (Constitutional Court decision), 101/2013, 111/2014 (Constitutional Court decision), 117/2014, 40/2015, 63/2015 Constitutional Court decision), 106/2015, 63/2016 (Constitutional Court decision), 47/2017]
13. Zakon o sudijama, Službeni glasnik RS 10/2023 [Law on Judges, Republic of Serbia Official Gazette 10/2023]
14. Zakon o Visokom savetu sudstva, Službeni glasnik RS 116/2008, 101/2010, 88/2011, 106/2015 and 76/2021 [Law on High Judicial Council, Republic of Serbia Official Gazette 116/2008, 101/2010, 88/2011, 106/2015 and76/2021]
15. Zakon o Visokom savetu sudstva, Službeni glasnik RS 10/2023 [Law on High Judicial Council, Republic of Serbia Official Gazette 10/2023]
16. Ustav Republike Srbije, Službeni glasnik RS 98/2006-3 [Constitution of the Republic of Serbia, Republic of Serbia Official Gazette 98/2006-3]

Case law

1. Alpasarlan Altan v Turkey Application No. 12778/17
2. Baka v Hungary Application No. 20261/12,
3. Eminagaoglu v Turkey, Application No. 76521/12,
4. Guðmundur Andri Ástráðsson v Iceland Application, No. 26374/18
5. Joint concurring opinion of judges Pinto de Albuquerque and Dedov to the judgment of the European Court of Human Rights in the case of *Baka v. Hungary*, Application no. 20261/12
6. Ramos Nunes de Carvalho e Sá v Portugal, Application No. 55391/13,
7. Oleksandr Volkov v Ukraine, Application No. 21722/11
8. Reczkowicz v Poland, Application No. 43447/19,
9. Xero Flor w Polsce sp z.o.o. v Poland, Application No. 4907/18

Other sources

1. AKCIJA ZA LJUDSKA PRAVA: Odgovornost za kršenje sudijske etike u Crnoj Gori, 2017, 6. Available at: https://www.hraction.org/wp-content/uploads/Odgovornost-za-krsenje-sudijske-etike-u-Crnoj-Gori.pdf
2. CARDOSO, José Manuel Duro Mateus, INSTITUTE OF COMPARATIVE LAW, DOKMANOVIĆ Mirjana: Final Report With Recommendations For A System Of Confidential Counselling For Judges And Prosecutors On Ethical Matters, available at: https://rm.coe.int/hf9-confidential-counselling-eng/1680a35870
3. DRUŠTVO SUDIJA SRBIJE, Standardi sudijske etike, Beograd, 2003
4. ETHICS AND INTEGRITY COMMISSION: Code of judicial ethics Commentary, available at: http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf
5. Greco Eval IV Rep (2014) 6E,
6. Greco Eval IV Rep (2014) 8E 5.
7. Izveštaj o radu Etičkog odbora Visokog saveta sudstva za 2022. godinu [Report on the Eork of the Ethics Commitee of the High Judicial Council in 2021] /https://vss.sud.rs/sites/default/files/attachments/ИЗВЕШТАЈ%20О%20РАДУ%20ЕТИЧКОГ%20ОДБОРА%20ВИСОКОГ%20САВЕТА%20СУДСТВА%20ЗА%202022.%20ГОДИНУ.pdf.
8. Izveštaj o radu Visokog saveta sudstva za 2021. godinu [Report on the Work of the High Judicial Council in 2021]
9. Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008) CDL-AD(2008)006-e
10. KNEŽEVIĆ BOJOVIĆ, Ana: Disciplinska odgovornost sudija u Srbiji - Ažurirani pregled pravnog okvira i prakse. Beograd: GIZ. 56.
11. MANKO, R. European Parliament Briefing ECJ case law on judicial independence A chronological overview, available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753955/EPRS_BRI(2023)753955_EN.pdf
12. PAPIĆ, Tatjana: Pravo i praksa disciplinske odgovornosti sudija u Srbiji. Beograd:OSCE, 2016. 50.

13. SPASOJEVIĆ, Smilja: Disciplinska odgovornost sudija u Republici Srbiji u regulativi i praksi: prikaz zakonskih rešenja, najčešćih razloga odgovornosti i okolnosti koje su dovele do povećanog broja procesuiranja disciplinskih prekršaja. Sarajevo: Fondacija Centar za javno pravo, 2015.24.
14. Zapisnik sa prve konstitutivne sednice Etičkog odbora, 15.10.2021. [Minutes of the first constitutive session of the Ethical Committee of October 15, 2021], available at: https://vss.sud.rs/sites/default/files/attachments/Прва%20конститутивна%20седница%20Етичког%20одбора%20ВСС%2015.10.2021.%20године.pdf
15. World Justice Project, Rule of Law Index (2019), available at https://worldjustice project.org/sites/default/files/documents/WJP-ROLI-2019-Single%20Page%20View-Reduce d_0.pdf

Internet sources

1. https://www.europeanlawinstitute.eu/news-events/news-contd/news/towards-eli-mount-scopus-european-standards-of-judicial-independence/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=235e7141385a529f88a83b657222d747
2. https://sudovi.me/sdsv/sadrzaj/dBEN
3. https://vss.sud.rs/sr/%D1%81%D1%82%D0%B0%D0%BB%D0%BD%D0%B0-%D1%80%D0%B0%D0%B4%D0%BD%D0%B0-%D1%82%D0%B5%D0%BB%D0%B0/%D0%B5%D1%82%D0%B8%D1%87%D0%BA%D0%B8-%D0%BE%D0%B4%D0%B1%D0%BE%D1%80, 30.8.2023.

Contact data

Ana Knežević Bojović, Ph.D.,
Senior Research Associate
a.bojovic@iup.rs
Institute of Comparative Law
Serbia

Vesna Ćorić, Ph.D. ,
Senior Research Associate
v.coric@iup.rs
Institute of Comparative Law
Serbia

Milica V. Matijević, Ph.D.,
Research Associate
m.matijevic@iup.rs
Institute of Comparative Law
Serbia