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ORIGINAL SCIENTIFIC ARTICLE

*Ana Knežević Bojović**
*Vesna Ćorić***

JUDICIAL SELF-GOVERNANCE IN SERBIA: CHALLENGES TO AND RESULTS OF A QUANTITATIVE APPROACH

Abstract: *Serbia has been continuously changing its judicial regulation landscape since 2000, in an effort to assert judicial independence and judicial self-governance, under strong EU external conditionality. The authors utilize the Judicial Self-Governance Index developed by Šipulová et al. as the main methodological tool aimed to determine whether the achieved level of judicial self-governance in Serbia is consistent with the demands of external conditionality. The research shows that judges control over 50% of relevant competencies, with a gradual increase in judicial self-governance in Serbia during the 2003–2023 period. This is consistent with the external conditionality demands and with the de iure implementation of the judicial council model. The research also points to some limitations of the applied methodology and highlights the need for a comprehensive examination of de facto judicial self-governance, while giving due regard to all integral parts of the complex rule of law principle.*

Key words: Judges, Judicial Self-governance, Judicial Council, Judicial Self-Governance Index, Rule of Law, European Union, External Conditionality, Serbia.

* Senior Research Associate, Institute of Comparative Law; e-mail: a.bojovic@iup.rs ORCID ID: 0000-0002-3746-5747. The paper is a result of the research conducted at the Institute of Comparative Law, financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, under the Contract on realization and financing of scientific research of SRO in 2024, No. 451-03–66/2024–03/200049.

** Senior Research Associate, Institute of Comparative Law; e-mail: v.coric@iup.rs ORCID ID: 0000-0003-4240-7469. The paper is a result of the research conducted at the Institute of Comparative Law, financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, under the Contract on realization and financing of scientific research of SRO in 2024, No. 451-03–66/2024–03/200049.

1. Introduction

Judicial self-governance is a topic that has received considerable attention in legal scholarship in the past decade.[1] The affirmation, and sometimes even reaffirmation of the separation of powers principles, was reflected in the strong impetus toward the establishment of judicial councils, deemed to be the optimal model for promoting judicial self-governance and judicial independence. These two notions are not only interlinked, but are sometimes also perceived as interdependent.[2] Nevertheless, ample literature has also demonstrated the limitations of judicial councils in supporting and promoting judicial independence.[3] More recently, attempts have been made to define judicial councils as fourth-branch institutions, *i.e.*, institutions that

1 The full body of work dedicated to the issue is too comprehensive to be addressed here. We will therefore provide a selection of the recent scholarly work that will not be extensively cited in this paper: Bunjevac, T., 2020, *The Rise of Judicial Self-Governance in the New Millennium: An Institutional and Policy Framework*, Singapore, Springer; Castillo-Ortiz, P., 2023, *Judicial Governance and Democracy in Europe*, Cham, Springer; Bobek, M., Kosař, D., 2014, Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe, *German Law Journal*, Vol. 15, No. 7, pp. 1257–1292; Spác, S., Šipulová, K., Urbániková, M., 2018, Capturing the Judiciary from Inside: The story of Judicial Self-Governance in Slovakia, *German Law Journal*, Vol. 19, No. 7, pp. 1741–1768; Garoupa, N., Ginsburg, T., 2009, Guarding the Guardians: Judicial Councils and Judicial Independence, *American Journal of Comparative Law*, Vol. 57, No. 1, pp. 103–134; Pérez, A. T., 2018, Judicial Self-Government and Judicial Independence: The Political Capture of the General Council of the Judiciary in Spain, *German Law Journal*, Vol. 19, No. 7, pp. 1769–1800; Preshova, D., Damjanovski, I., Nechev, Z., 2017, *The Effectiveness of the 'European Model' of Judicial Independence in the Western Balkans: Judicial Councils as a Solution or a New Cause of Concern for Judicial Reforms*, The Hague, Centre for the Law of EU External Relations, (https://www.asser.nl/media/3475/cleer17–1_web.pdf, 2. 10. 2024); Castillo-Ortiz, P., 2019, The politics of implementation of the judicial council model in Europe, *European Political Science Review*, Vol. 11, No. 4, pp. 503–520; Dallara, C., Piana, D., 2015, *Networking the Rule of Law: How Change Agents Reshape Judicial Governance in the EU*, London–New York, Routledge; Kosař D., 2016, *Perils of Judicial Self-Government in Transitional Societies*, Cambridge, Cambridge University Press.

2 See, *inter alia*, Knežević Bojović, A., Ćorić, V., 2024, Educational Dimension of Judicial Self-Governance in the Exercise of the Judicial Independence Principle: The Case of Serbia in the European Integration Process, *Sociological Review*, Vol. 58, No. 1, p. 181; Knežević Bojović, A., Ćorić, V., Matijević, M. V., 2023, Individual Judge at the Heart of the Rule of Law – Judicial Ethics and Integrity in the Laws of Serbia and Montenegro, pp. 241–276, *Bratislava legal forum 2023: State as a protector and violator of individual rights*, 11–12 September.

3 Spáč, S., Šipulová, K., Urbániková, M., 2018, Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia, *German Law Journal*, Vol. 19, No. 7, pp. 1741–1768; Urbániková M., Šipulová K., 2018, Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?, *German Law Journal,* Vol. 19, No. 7, pp. 2105–2136; Bobek, M., Kosař, D., 2014, Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe, *German Law Journal*, Vol. 15, No. 7, pp. 1257–1292; Castillo-Ortiz, P., 2023.

derive their legitimacy independently of all three classical branches of power, but also regulate the judiciary.[4] At the same time, scholars have started to point out that judicial self-governance actors include not only judicial councils, but also court presidents and the judges themselves.[5]

Some authors have tried to systematize regulations pertaining to the judiciary, classify and even measure judicial self-governance. An interesting academic exploration on how to regulate judges is given by Devlin and Dodek,[6] who propose a regulatory pyramid comprised of four meta elements (values, processes, resources, and outcomes) in order to identify the multiple variables involved in the regulation of judges and highlight their interconnectivity and interdependence.[7]

In a different strand of academic literature, scholars have focused more on the classification and measurement of judicial self-governance, aiming, *inter alia*, to identify the role of judges in judicial self-governance and the extent of their empowerment.[8] A pivotal step in that direction was taken by Šipulová *et al.*, who have built on the existing knowledgebase on the issue and offered a comprehensive, well-structured and convincing Judicial Self-Governance Index (hereinafter: the JSG Index), which will be used as the methodological underpinning of this paper.[9]

4 Kosař, D., Šipulová, K., Kadlec, O., 2024, The Case for Judicial Councils as Fourth--Branch Institutions, *European Constitutional Law Review*, Vol. 20, No. 1, p. 83.

5 Kosař, D., Šipulová, K., Politics of judicial governance, in: Tushnet, M., Kochenov, D., (eds.), 2023, *Research Handbook on the Politics of Constitutional* Law, Cheltenham, Edward Elgar Publishing, p. 270; Mathieu, E., Verhoest, K., Matthys, J., 2016, Measuring Multi-Level Regulatory Governance: Organizational Proliferation, Coordination and Concentration of Influence, *Regulation* & *Governance*, Vol. 11, No. 3, pp. 252–268; Jordana, J., Sancho, D., Regulatory Designs, Institutional Constellations and the Study of the Regulatory State, in: Jordana, J., Levi-Faur, D., (eds.), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, Cheltenham, Edward Elgar Publishing, pp. 296–320.

6 Devlin, R., Dodek, A., Regulating Judges: Challenges, Controversies and Choices, in: Devlin, R., Dodek, A., (eds.), 2016, *Regulating Judges Beyond Independence and Accountability*, Cheltenham, Edward Elgar, pp. 1–30.

7 *Ibid*., p. 29.

8 See, *e.g*., Feld, L. P., Voigt, S., 2003, Economic growth and judicial independence: cross-country evidence using a new set of indicators, *European Journal of Political Economy*, Vol. 19, No. 3, pp. 497–527; Castillo-Ortiz, P., 2019, pp. 503–520; Smithey, S., Ishiyama, J., 2000, Judicious Choices: Designing Courts in Post-Communist Politics, *Communist and Post-Communist Studies*, Vol. 33, No. 2, pp. 163–182; Hayo, B., Voigt, S., 2014, Mapping constitutionally safeguarded judicial independence – A global survey, *Journal of Empirical Legal Studies,* Vol. 11, No. 1, pp. 159–195; Akutsu, L., Aquino Guimarães, T. de, 2015, Governança Judicial: Proposta De Modelo Teórico-Metodológico, *Revista de Administração Pública*, Vol. 49, No. 4, pp. 937–958; Kosař, D., 2018, Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe, *German Law Journal*, Vol. 19, No. 7, pp. 1567–1612.

9 Šipulová, K. *et al*., 2023, Judicial Self-Governance Index: Towards better Understanding of the role of judges in governing the judiciary, *Regulation & Governance*, Vol. 17, No. 1, pp. 22–42.

Judicial self-governance is also an issue tackled by various international, mainly advisory bodies. The developed standards are applicable in all European states.[10]

The EU, through its external conditionality mechanisms, has been instrumental in promoting the judicial council model, as the best solution for ensuring judicial independence and balancing it with judicial accountability,[11] which has been adopted in most Central and East European countries as a part of their pre-accession efforts. The current EU accession candidates are facing additional pressures of EU conditionality: Judiciary and Fundamental Rights are the backbones of the accession methodology, meaning that the state of play and progress in this field is under close scrutiny by the EU Commission. In 2024, this was further underpinned by the Rule of Law Report, for the first time covering not only EU member states but also EU accession candidate countries.[12] Consequently, the

10 In Europe, the Consultative Council of European Judges (CCJE), a Council of Europe (CoE) advisory body, is at the forefront of the efforts aimed at reinforcing the role of the judiciary and judges in regulating various aspects of their status and work, including standard-setting in this field. The Venice Commission, through its reports and individual opinions, sets and interprets the standards related to different aspects of judicial self-governance. In the past decade, the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) has evolved in the area of judicial regulation and judicial independence. The jurisprudence of the two courts included an investigation into national practices concerning judicial appointments (ECtHR, *Guðmundur Andri Ástráðsson v. Iceland*, No. 26374/18, Judgment of 1 December 2020 [GC], paras. 253–295) and disciplinary rules for the judiciary (CJEU, Joined Cases C-585/18, C-624/18 and C-625/18, *A. K. and Others v. Sąd Najwyższy*, *CP v. Sąd Najwyższy*, and *DO v. Sąd Najwyższy*, Judgment of 19 November 2019, ECLI:EU:C:2019:982). In the European Union (EU), various aspects of judicial self-governance, most notably judicial independence, are also closely scrutinized under different mechanisms and tools; the EU Justice Scoreboard and the annual Rule of Law Report both address, analyze and measure judicial independence, but also judicial efficiency. The scrutiny is reinforced by the Article 7 mechanism and the new conditionality regulation (for more see Knežević Bojović, A., Ćorić, V., 2023, Challenges of Rule of Law Conditionality in EU Accession, *Bratislava Law Review*, Vol. 7, No. 1, pp. 51–52). All of these can be considered internal conditionality mechanisms. An overview of the CJEU jurisprudence related to judicial independence can be found in Manko, R., 2023, *European Parliament Briefing ECJ case law on judicial independence: A chronological overview*, (https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753955/EPRS_BRI(2023)753955_EN.pdf, 11. 10. 2024). Similarly, an overview of the ECtHR jurisprudence related to judicial independence is provided in the following factsheet: ECtHR Press Unit, 2023, Independence of the justice system (https://www.echr.coe.int/documents/d/echr/FS_Independence_justice_ENG, 4. 10. 2024).

11 Kosař, D., 2016, *Perils of Judicial Self-Government in Transitional Societies*, Cambridge, Cambridge University Press, p. 4.

12 This is a positive step toward increased compatibility of the EU's internal and external conditionality in the domain of rule of law, which can also be expected to influ-

extent to which an EU candidate country incorporates the standards related to judicial self-governance into its legislation is directly linked to its prospects in the accession process.

The notions of separation of powers, judicial independence and judicial self-governance are mutually interlinked and all of them constitute important elements of the rule of law, as a value on which the EU is founded. The rule of law also represents one of the basic criteria for EU accession.[13] However, it is important to keep in mind that the rule of law is a complex principle made up of collections of subprinciples, which may sometimes create tensions between its integral parts.[14] It seems that judicial independence, including judicial self-governance, which is deemed an integral part of the fundamental democratic principle of the rule of law, does not always lead in the same direction as other rule of law principles, such as legal certainty, transparency, and legality. Namely, the latter principles imply the existence of a transparent, accountable, democratic and pluralistic law-making process, ensuring legal certainty.[15] Such a transparent and pluralistic process sometimes may not coincide with the requirements of judicial self-governance, which tend to reserve the regulation of judiciary within the judges' own hands, *i.e.*, which leads to increased judicialization of judicial governance.[16] Although some scholars recognized the complexity of the rule of law principles and the need to maintain the coherence of its integral parts and overcome the potential tensions, it seems that this issue has not been systemically examined in legal literature so far and that further investigation into this matter is needed.

Serbia has taken the path of reforming and empowering its judiciary since the overthrow of the Milošević regime in 2000, and the start of its path toward EU accession.[17] This process was characterized by frequent legislative changes and two changes to the Constitution. As early as 2001,

ence the legislation and practices of regulating judges in prospective EU member states. For more on challenges to rule of law conditionality see Knežević Bojović, A., Ćorić, V., 2023, pp. 41–62.

13 Knežević Bojović, A., Ćorić, V., 2024, p. 192.

14 Igwe, O. I. C., 2021, Rule of Law and Constitutionalism in Nigerian Democracy: A Critical Relativism Discuss in the Context of International Law, *Athens Journal of Law*, Vol. 7, No. 3, p. 320.

15 Bingham, T., 2010, *The Rule of Law*, London, Penguin Books, p. 16; Stein, R., 2009, Rule of Law: What Does It Mean?, *Minnesota Journal of International Law*, Vol. 18, No. 2, p. 301; Pech, L., 2022, The Rule of Law as a Well Established and Well-Defined Principle of EU Law, *Hague Journal on the Rule of Law*, Vol. 14, Nos. 2–3, p. 123.

16 Kosař, D., Šipulová, K., 2023, p. 272.

17 Knežević Bojović, A., 2011, Harmonizacija kompanijskog prava sa pravom Evropske unije i pravila o slobodi osnivanja privrednih društava u Sporazumu o stabilizaciji i pridruživanju, *Strani pravni život*, Vol. 55, No. 1. p. 133; Grubač, M., 2000, Problems

Serbia introduced its first High Judicial Council (HJC), which had limited competencies due to the constraints of the constitutional framework dating back to 1992. In 2006, a new Serbian constitution was adopted, marking the discontinuation with the Milošević regime and a new era in the Serbian social, political and legal environment. The ensuing judicial reform was only partially successful in reinforcing judicial independence in normative terms, while at the same time suffering from major deficiencies in implementation.[18] Continued internal and external pressures, including a commitment toward further changes to the constitutional framework governing the judiciary[19] (Action Plan Chapter 23), within the wider framework of the EU accession process, brought about one more major judicial reform. In early 2022, government-sponsored constitutional amendments were supported at a national referendum and consequently promulgated. The amendments were followed by a package of reformatory laws pertaining to the judiciary, which were adopted in early 2023. In 2024, the HJC adopted a series of bylaws operationalizing new legislative solutions.[20]

This constantly changing landscape of judicial regulation in Serbia is generally seen as a campaign for asserting more judicial independence and judicial self-governance, particularly through extending the competencies of the HJC over a number of issues that had previously not been within its purview.[21] However, the extent to which judicial self-governance has been

of Judiciary in Serbia – A Restitution of Integrity, *Glasnik of the Bar Association of Vojvodina*, Vol. 60, No. 12, pp. 453–462.

18 Simović, D., 2023, Constitutionalization of the Judicial Council in North Macedonia and Serbia – Can We Learn from Each Other?, *Foreign Legal Life*, Vol. 67, No. 4, p. 633; Rakić Vodinelić, V., Knežević Bojović, A., Reljanović, M., 2013, *Judicial Reform in Serbia 2008–2012*, Belgrade, Centar za unapređivanje pravnih studija.

19 Activities 1.1.2. to 1.1.6. of the Government of Serbia Action Plan for Chapter 23, adopted on 27 April 2016.

20 However, some pieces of secondary legislation are still missing. Furthermore, one key piece of legislation, governing the initial and in-service training of judges, prosecutors, non-judicial and non-prosecutorial staff, was recently drafted and forwarded to the Venice Commission, despite heavy criticism voiced about the process underpinning the drafting and the legislative solutions incorporated therein. See, *e.g.*, Judges' Association of Serbia, 2024, *Neprimerena brzina šteti kvalitetu zakona o Pravosudnoj akademiji*, (https://www.sudije.rs/Item/Details/1020, 30. 9. 2024).

21 This is clearly visible from the increasing number of competencies of the HJC enumerated in the relevant laws. In 2003, the competence of the HJC in the relevant law (Law on High Council of the Judiciary, *Official Gazette of the RS* Nos. 63/2001, 42/2002, 39/2003, and 41/2003) stipulated in Article 1 that the HJC proposes judges to the Parliament, appoints judge jurors and exercises other powers as stipulated by law. In 2023, Art. 17 of the Law on the High Judicial Council (Law on the High Judicial Council, *Official gazette of the RS* No. 10/2023) enumerates as many as 30 competencies of the HJC, the last of which is the exercise of powers as stipulated by law.

truly achieved in Serbia has not been thoroughly investigated so far.[22] In fact, forays into academic quantitative research related to the judiciary in Serbia are scarce and when ventured into, are usually limited to just one aspect of the functioning of the courts[23] or judicial self-governance.[24]

Against this background, this paper sets out to analyze the extent to which judicial self-governance in Serbia has changed over the course of the past two decades, more specifically, during the 2003–2023 period. Namely, our approach is based on the desire to map the changes in judicial self-governance and judicial empowerment in the post-Milošević period, and under the clear and formal influence of the EU external conditionality. The year 2003 was determined as the starting date since that was the moment when the Republic of Serbia proceeded with unilateral harmonization with the EU *acquis*.[25]

The authors will utilize the Judicial Self-Governance Index, as developed by Šipulová *et al.*, as a tool for mapping and measuring judicial self-governance in Serbia. Our hypothesis is that we will see formal *de iure* judicial self-governance in Serbia increasing over time, which would be consistent with the demands stemming from EU external conditionality. This would also correspond to the data offered by Šipulová *et al.*, showing that judicial self-governance increased in the analyzed four EU Member States over the examined period. Through testing our initial hypothesis, we believe that we can contribute to the ongoing debate in the legal theory as to whether external conditionality in the rule of law area is effective in promoting *de iure* judicial independence and judicial self-governance, with the caveat that the changes were also influenced by internal demands.

We further propose that increased judicial empowerment in Serbia is an illustrative example of a *de iure* implementation of the judicial council model, as a guarantor of judicial independence and accountability.

Before proceeding with the quantitative study of the self-governance in Serbia, it is pertinent to elaborate in more detail the methodological

22 Marinković, T., 2022, *Judicial Self-governance and Judicial Culture in Serbia,* Skopje, Institute for Democracy "Societas Civilis", (https://idscs.org.mk/wp-content/uploads/2022/05/B5_JUDICIAL-SELF-GOVERNANCE-AND-JUDICIAL-CULTURE-IN-SERBIA.pdf, 12. 10. 2024).

23 Spajić, B., Đorđević, M., 2024, Who Works More, and Who Works Smarter? Comparing Judicial Performance in Europe, *Pravni zapisi*, Vol. 15, No. 1, pp. 121–150.

24 Knežević Bojović, A., 2020, *Disciplinska odgovornost EU za Srbiju – Ažurirani pregled pravnog okvira i prakse*, Belgrade, Support to the High Judicial Council of the Republika of Srbija–GIZ, (https://support-to-high-judicial-council.euzatebe.rs/rs/preuzimanje/145, 12. 10. 2024); Papić, T., 2016, *Pravo i praksa disciplinske odgovornosti sudija u Srbiji*, Belgrade, OSCE Mission to Serbia, (https://www.osce.org/files/f/documents/2/1/263896.pdf, 12. 10. 2024).

25 Knežević Bojović, A., 2011.

approach that will be taken in the paper. Therefore, in the first part of the paper, the authors will present the JSG Index, which will be used as the main methodological tool, and specify how they will overcome the identified limitations of the JSG Index and inherent difficulties that come from utilizing methodologies developed by others. In this context, particular attention will be given to the issue of the extent to which the JSG Index methodological underpinning reflects all the relevant elements of the complex rule of law principle. After that, the quantitative study of eight individual dimensions of self-governance in Serbia will be presented, followed by a presentation of the aggregate JSG Index for Serbia for five points in time in the 2003–2023 period. Finally, the authors will provide their insights and conclusions as to whether the initial hypothesis was confirmed and what are the lessons learned from the conducted exercise.

2. Adjustments, Challenges and Caveats in Applying the JSG Index To Serbia

The JSG Index identifies and measures judicial self-governance across eight dimensions: regulatory, administrative, personal, financial, educational, informational, digital, and ethical. This classification reflects the diverse sets of competencies that are of relevance to the functioning of the judiciary, which are either distributed among or shared by the legislative, executive and judicial branches. It also helps identify the extent of judicial empowerment in any given country, at any point in time, or over a given period of time. The JSG Index further elaborates indicators for each of the eight dimensions, and then awards scores on a five-point scale of 0 to 1, based on the extent of decision-making power held by judges.

Table 1. Scale for JSG Index scoring

Table 1	
To what extent are judges *de iure* involved in deciding on a competence?	Value
judges decide	1
judges or non-judges decide (independently of each other)	0.75
judges negotiate with non-judges (both have veto power)	0.5
judges are consulted	0.25
not at all	0

Source: Šipulová K. *et al*., 2023, Appendix, p. 6, Table A.1.

The eight dimensions are sub-divided into a total of sixty indicators, and the powers of the various actors are scored as described above. Finally, Šipulová *at el.* provide a number of alternatives for aggregating the results of the JSG Index, to produce the final scores of the JSG Index.

The JSG Index itself seems to be developed as a value-neutral tool, meaning that it does not set out to advocate for judges to be in control of all the matters categorized in this index, nor does it expressly call for the alignment with the applicable international soft law standards on judicial self-governance. It is here important to note that Kosař and Vincze, for example, argue that soft law standards are being used as hard law by the ECtHR and the CJEU, which underscores the importance of alignment with them.[26] Nevertheless, the score for each indicator implies that the JSG Index favors the decisions that are made by judges, as the score when judges do not decide is "0", as opposed to "1" when judges are in control of a decision.

In developing the JSG Index, however, Šipulová *at el.* have acknowledged the expanding competencies vested with judicial councils in Europe and the growing demand for them or other judge-led bodies to be in charge of making important decisions in the judicial governance domain. This is because the elaboration of the methodology for the computation of the JSG Index, or, more specifically, the dimensions and indicators particularized and examined under each of the eight dimensions, testify to Šipulová *at el.* extensively understanding the standard-setting efforts by various international bodies related to judicial self-governance.

At the same time, Šipulová *et al.* have identified an increased tendency of legislative intervention related to issues that are categorized as indicators of certain dimensions of judicial self-governance.[27] The said occurrence is particularly visible in Central and Eastern European (CEE) countries, and has already been identified in Serbia and Montenegro.[28] The increased normative activity means that rules and norms that should, as per relevant soft-law standards, be regulated or decided on by judges themselves are fully or partially prescribed by the legislator. The JSG Index *per se* cannot detect or account for this occurrence, but its underlying methodology helps identify the tendency and the extent of the legislators' encroachment on judicial self-governance, particularly in cases where soft-law standards call for the judges – not the legislator – to regulate and decide on certain matters. This goes to show that the JSG Index, despite its underlying un-

26 Kosař, D., Vincze, A., 2023, European Standards of Judicial Governance: From Soft Law Standards to Hard Law, *Journal für Rechtspolitik*, Vol. 30, No. 4, pp. 491–501.

27 Šipulová, K. *et al.*, 2023, pp. 35–36.

28 Knežević Bojović, A., Ćorić, V., Matijević, M. V., 2023.

derstanding of the soft-law standards related to judicial self-governance, remains value-neutral even in cases where the legislator purposefully intervenes and limits the decision-making powers of judges, *i.e.*, *de facto* encroaches on judicial self-governance. Finally, while the JSG Index takes into account the situation where judges are consulted in principle, but their opinion is not binding and as such does not have a bearing on the final decision, which is in the hands of the executive or the legislative, the JSG Index can register it, but does not see it as either negative or neutral.

The JSG Index is also subject to limitations. The first limitation is the one referred to above: the very scoring method, which seems to implicitly favor judicial decision-making, even when the substance of the indicators is such that it is customary for judges to not have a decisive say on the matter. For example, the regulatory dimension of the JSG Index addresses matters that are customarily within the purview of the legislator, which is also recognized by Šipulová *et al.*[29] It is noteworthy that such an implicit favoring of judicial decision-making to the detriment of the transparent and pluralistic legislative-law-making process does not fully reflect all the subprinciples encompassed by the complex rule of law principle. Namely, the full achievement of the independence of judges along with the judicial self-governance should be carefully balanced with the accomplishment of a transparent and pluralistic decision-making process that will not undermine legal certainty. Such a balancing exercise can be successful only if judges do not hold unlimited power to regulate the judiciary within their own hands. It could be consequently argued that the JSG Index would be better aligned with all the rule of law dimensions if it were to provide higher scores for high-quality solutions pertaining to judicial self-governance when they are introduced through a transparent legislative process that involves representatives of different branches of government. The second limitation is the one stemming from the fact that JSG Index looks at formal, *de iure* competencies related to the eight identified judicial dimensions while not delving into their practical implications. In other words, the index looks only at the competence for deciding on a given issue as it is regulated in a constitution, law, or a piece of secondary legislation, but does not examine how these rules are used in practice.

The interpretation of the JSG Index results provided by Šipulová *et al.* shows that even in countries that have not implemented the judicial council model, increased judicial self-governance or increased empowerment of judges can be noted. This additionally underlines the complex environment of judicial regulation and reinforces the roles of actors, such as courts, court presidents and other bodies that do not necessarily operate under the judi-

29 Šipulová, K. *et al.*, 2023, p. 37.

cial council umbrella.[30] This is an important conclusion as it suggests that judges may direct their efforts aimed at boosting judicial self-governance not only towards ensuring that judicial councils, where they exist, have increased powers, but also toward targeted interventions in legislation governing the daily functioning of courts, information and digitalization in the work of courts, and also at carefully framing the role of court presidents.

The calculation of the JSG Index for Serbia is a challenging endeavor as one can only rely on what is reported, without insight into the choices made by Šipulová *et al.* when encountering tricky or ambiguous situations. Consequently, all the choices made when computing the JSG Index for Serbia are based on our interpretation of the methodological approach used by Šipulová *et al*. Hence, any and all transgressions and departures from it can solely be attributed to us.

While the frequent legislative changes in the set of laws related to the judiciary prompted us to consider changing the frequency of the observation interval from five years to three, we finally opted for the original, five-year interval. We coded the state of legislation as of December 31 for each year. Further, we took into account the laws as they were promulgated in the given year, even if their application was delayed for a certain period, as this meant that the prescribed norm was applicable throughout the majority of the five-year period under observation. This particularly applies to the laws adopted in 2008, whose application was, as a rule, delayed until the constitution of the new HJC, or, alternatively until 2010. A different coding would mean that no changes in judicial self-governance would be noted in the 2008–2013 period, which would be contrary to the state of facts.

Instead of offering only the aggregate JSG Index for Serbia, we have opted to present and briefly comment on each of the eight dimensions. We took this approach because we believe that the investigation of the level of judicial self-governance across various dimensions and over time will provide a better understanding of judicial empowerment, or lack thereof, in Serbia. This approach is also proposed by Kosař and Šipulová.[31] In order to obtain results for each individual dimension of judicial self-governance, we applied part of the model C suggested in Šipulová *et al*.,[32] where we did not use default values for missing or inapplicable indicators. In other words, we used the formula:

$$D_x = \frac{q_i + (\ldots) + q_n}{n_{D_x}},$$

30 The JSG Index has so far been used to look at judicial self-governance in four countries: Slovakia, the Czech Republic, Germany, and Italy. See Kosař, D., Šipulová, K., 2023, p. 266.

31 *Ibid.*, p. 268.

32 Appendix to Šipulová *et al.*, 2023, p. 8.

where q_i + (...) + q_n refers to the sum of the values of all indicators in dimension D_x, and where n_{D_x} refers to the total number of indicators in dimension D_x, without those that were coded as *NA*s or missing values.

The model that we utilized, however, produced some anomalies: the scores were higher for the years when certain indicators were coded as "not applicable", *i.e.*, when the issue was not regulated at all, than for the years when these indicators were coded. We still find the coding per dimension useful for identifying overall trends in judicial empowerment across time and legislative changes under individual dimensions. However, the anomalies highlight the need for a comprehensive understanding of the entire system that is being scored, and point to the need for further narrative contextualization of the results. Finally, we found that these anomalies are mitigated in the calculation of the overall JSG Index.

There is one more challenge we encountered in the process of scoring indicators in cases when a given matter is expressly prescribed by law: the intuitive decision would be to score all such indicators with 0, meaning that judges do not take part in making the decision at all, since this is the exclusive power of the legislative body, however, the provisions of the Serbian Government Rules of Procedure[33] envisage that, when developing a draft law, the Government must obtain the opinion of the state body that is directly affected by the draft. *Vis-à-vis* judges, this refers to the draft laws affecting their status, the laws governing the judicial council, the organization of courts, and also procedural laws implemented by the courts. Consequently, we coded all the indicators that are expressly regulated in a law that directly affects judges with 0.25, meaning that judges are consulted in the process.

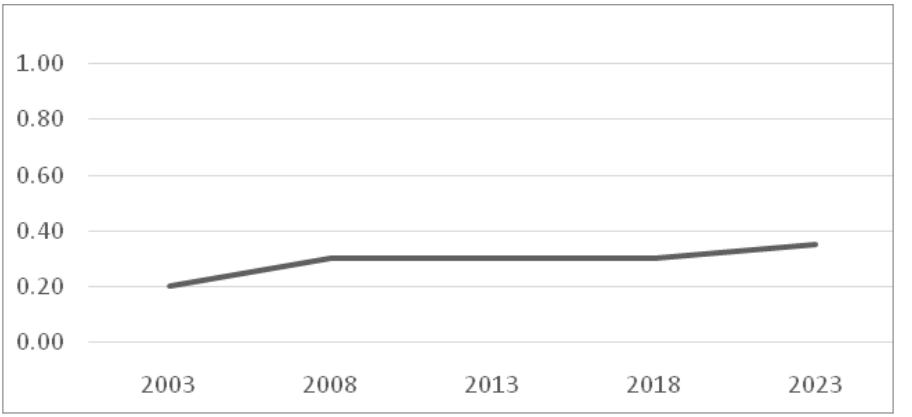
3. Judicial Self Governance Index for Serbia – One Dimension at a Time

3.1. REGULATORY DIMENSION

Regulatory competencies, as a dimension of judicial self-governance, are rather low in Serbia; on a scale from 0 to 1, they range from 0.30 to 0.35 across the observed period.

33 Government Rules of Procedure, *Official Gazette of the RS*, Nos. 6/2002, 12/2002, 41/2002, 99/2003, and 113/2004, Art. 30; Government Rules of Procedure, *Official Gazette of the RS*, Nos. 61/2006, 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011, 30/2013, 76/2014, and 8/2019, Art. 46.

Figure 1: Regulatory dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

At first glance this observation may seem somewhat counterintuitive to those who are aware of the fact that, while the legislative competence is vested with the Parliament, the HJC in Serbia has been and still is vested with the competence to pass a multitude of bylaws.[34]

The key reason for the low rating of judicial self-governance in the regulatory dimension lies in the very indicators assigned to it in the JSG Index. The issues covered by this indicator, *e.g.*, who decides on the establishment, abolition, or competence of a court, the court statute, and the legal procedural rules in courts, are customarily regulated by law in the Serbian legal system, as is the case with other countries.[35] The establishment and abolition of courts, the determination of their subject matter, and territorial competence are regulated exclusively by law in Serbia. This rule is now firmly embedded in the Constitution[36] and further elaborated

34 This competence has been enhanced progressively. The current competencies are determined by the Law on the HJC as well as by other laws. The competences of the HJC for passing relevant bylaws are stipulated in the laws governing the HJC, judges, and court organization. These include bylaws governing disciplinary proceedings (selection of disciplinary bodies and disciplinary procedure), procedure related to the monitoring of the Code of Ethics (appointment of relevant bodies and their powers), performance appraisal rules for judges and court presidents, rules of performance appraisal of judicial assistants, anonymization of HJC decisions, etc. A mapping exercise conducted in 2023 by the authors of this paper, on the scope of the subject-matters to be regulated by the HJC pursuant to the 2023 Law on HJC, identified more than 40 topics and potential separate bylaws.

35 Šipulová *et al.*, 2023, p. 37.

36 Art. 143 of the Constitution of the Republic of Serbia, *Official Gazette of the RS*, Nos. 98/2006 and 115/2021.

in the Law on Organization of Courts.[37] Consequently, judges generally have very little say on the matter, other than their consultative role as explained in the methodological part of this paper.

With regard to the regulatory dimension, as well as to other JSG dimensions, it is true that judges can have some agency *vis-à-vis* the adoption of new laws, either by engaging in public debates on draft laws, or by being delegated or appointed as members of working groups for drafting laws; this activity is expressly allowed in the text of the 2023 Law on Judges,[38] and has customarily been in practice since before the 2000s. However, the weak regulatory power of the judges, *vis-à-vis* issues that are set to be regulated only by law, comes from the fact that, while judges can be members of the relevant working groups, there is no legal obligation for this. Additionally, even if judges are included in the legislative drafting exercise, this does not guarantee that the text of the legislative draft or bill subsequently presented in the public debate or submitted to the Parliament will include solutions that have previously been agreed upon within the working group, or which were advocated by judges. A case in point can be found in the comments of two judges who were members of the working group tasked with developing a draft Law on the HJC in 2023, considering that two judges protested against the working version of the said draft law during the public debate, pointing out the differences between this version and the version previously developed by the working group.[39]

The minor differences in the value of the JSG Index for the regulatory dimension across the overall observed period can be attributed to the changes in the competence for the adoption of the Court Rules of Procedure. In the 2008–2023 period, the Court Rules of Procedure were passed by the minister in charge of the judiciary (line minister), having previously obtained the opinion of the president of the Supreme Court. However, a positive opinion is not a requirement in order for the minister to adopt it (customarily, it should be), which is why we coded it at 0.25 in terms of the powers of the judges to decide in 2008, 2013, and 2018. Conversely, in the 2003–2008 period, the Law on Organization of Courts required consent from the President of the Supreme Court for the Court Rules of Procedure to be passed lawfully by the line minister, which is why we coded it at 0.5 for 2003 and 2008. In 2023, an additional step in judicial empowerment can

37 Law on Organization of Courts, *Official Gazette of the RS*, No. 10/2023.

38 See Art. 31, para. 7 of the Law on Judges, *Official Gazette of the RS*, No. 10/2023, which regulates activities that are permitted and those that are deemed incompatible with judicial office.

39 Bjelogrlić, S., Boljević, D., 2022, *Odstupanja Radne verzije zakona o Visokom savetu sudstva od predloga Radne grupe – komentari*, (https://www.mpravde.gov.rs/files/2022%2009%2015%20Zakon%20o%20VSS%20Dragana%20Boljević%20i%20Snežana%20Bjelogrlić.pdf, 12. 10. 2024).

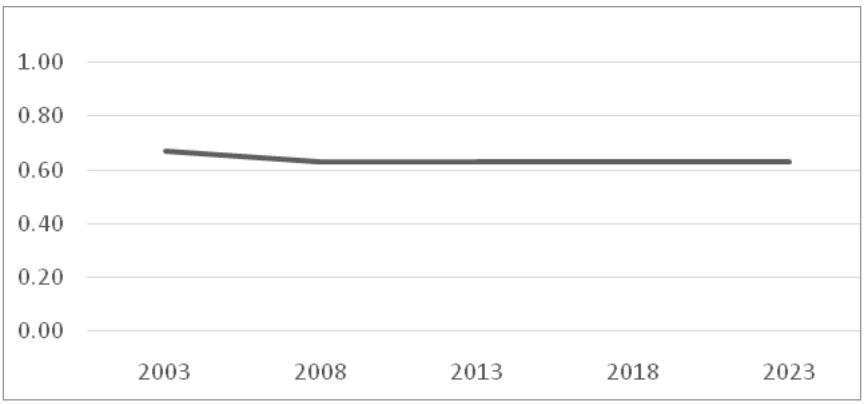
be seen in terms of the key actors of judicial self-governance, as the president of the highest court in the country, as a key self-governance actor in the adoption of the Court Statute, has been replaced by the HJC. Moreover, according to the 2023 Law on Organization of Courts, the Court Statute is passed jointly by the line minister and the HJC, which is comprised of both judges and non-judges. Consequently, our coding of the power of the judges to decide in this year is 0.5. From the standpoint of the scoring within the JSG Index, it does not make any difference whether it is a single judge or the HJC that decides. Consequently, what is perceived as an important new competence of the HJC as of 2023 does not have a bearing on the score. This reinforces the role of the court presidents in judicial self-governance.

Based on the content of the indicators for the regulatory dimension of judicial self-governance, it would be very difficult to advocate for more judicial empowerment concerning the abolition of courts or setting the territorial, material, and functional competence of courts, as the demands of legal certainty call for these to be governed by law.

3.2. ADMINISTRATIVE DIMENSION

It is interesting to see that the administrative dimension of judicial self-governance is relatively high in Serbia, and that this has been a steady feature within the Serbian judicial system over the past two decades; in fact, the changes in the score of this dimension are the smallest and amount to 0.04 points in total, as the score ranges from 0.67 in the 2003–2008 period, to 0.63 in the 2008–2023 period, on a scale of 0 to 1. However, contrary to our initial expectations of an increase in judicial empowerment within this dimension after 2008, we saw a small decline.

Figure 2: Administrative dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Author's calculations

This again initially seemed counterintuitive if we take into account the legislative changes promulgated in 2008, which were aimed at increasing judicial self-governance. One such major intervention was the change in the rule on who determines the number of judges, which is one of the indicators for this dimension: in the 2003–2008 period, this was done by the National Assembly at the proposal of the HJC, while after 2008 it was the HJC that had the full power to determine the number of judges. At the same time, the powers related to determining the number of court staff changed: prior to 2008 the number of needed court staff was set by the court president, based on framework criteria adopted by the HJC, while after 2008 the framework criteria were adopted by the line minister. Consequently, there is a decline in the coding from 1 in the 2003–2008 period, to 0.5 in the 2008–2023 period.[40] This score may provide further support for the idea that the competencies related to court staff, including judicial assistants, should be fully transferred to the HJC, as opposed to the current solution, where these competencies are split between the HJC and the line ministry.[41]

It is important to point out here how we made the decision on the scoring of the indicator related to case reassignment, which is one of the indicators within this dimension. Namely, the indicator looks at whether the court president or a different judge has the competence to take the case from a judge and assign it to someone else. The Serbian regulations, during the entire period of observation, reserve the possibility of case reassignment only for exceptional circumstances, such as prolonged illness of the judge, the judge's suspension, transfer to another court, or the prolonged inactivity of the judge in the given case. While the decision on reassignment is passed by the court president, the grounds for reassignment are stipulated in the law. The reassignment itself needs to follow the rules on the initial assignment of cases, which is done by the court registry, and as per Šipulová *et al.* should be coded as 0.[42] Consequently, we opted to score this competence as 0.5, even though at first sight it could be claimed that this is a par excellence competence of the court president and an illustration of full judicial empowerment. We faced a similar dilemma when deciding on how to score the indicator examining who decides on

40 In 2023, the relevant law states that the line minister adopts the framework criteria after consulting the HJC, which is an important step in the right direction. However, this step could not be reflected in the score since it still did not mean that judges and the line minister could decide independently of each other.

41 The Strategy of Human Resources in the Judiciary for the 2022–2026 period, *Official Gazette of the RS*, No. 133/ 2021.

42 Appendix to Šipulová *et al.*, 2023, p. 11.

the number of the panels in the court and the composition of the panels. In the Serbian regulatory framework, this is done by the court president, in the annual work plan of the court. However, the number of judges on a panel is set forth by the procedural laws, and the court president cannot assign five judges to a panel which, according to the law, comprises three judges. Consequently, we also coded this indicator as 0.5.

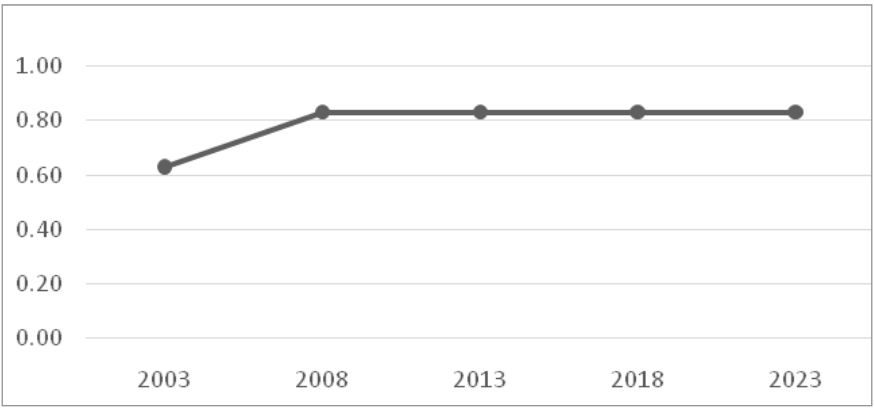
Finally, when we looked at the "court evaluation" indicator, we understood it to refer to the competence of oversight over the work of the court within the meaning of Serbian laws. This posed a specific challenge given the distinction made in Serbian law between "court administration", which is understood as the operations and activities in service of the exercise of judicial power (*e.g.*, organization of the work in courts, acting on complaints, execution of judgments, informing the public of the work of the court etc., *i.e.*, the everyday operation of the courts), and so-called "judicial administration", which is understood as the implementation of laws and other regulations concerning the organization and work of the courts. The distinction also means that judges of a superior court can exercise oversight over the work of a lower court in the domain of "court administration", whereas, as of 2008, the competence of oversight over the "judicial" oversight over the "judicial administration" is split between the line ministry and the HJC (it had previously been the sole competence of the line ministry). Faced with a dilemma as to how to code this indicator, we opted to code it as 0.75, given that the superior court can exercise oversight over the work of a lower court independently of the oversight exercised by the line ministry and the HJC in their respective domains.

3.3. PERSONAL DIMENSION

The personal dimension of judicial self-governance in Serbia is high. In 2003 it was already 0.63 on a scale of 0 to 1, meaning that judges were mostly in charge of passing decisions related to the careers of judges, including appointment, dismissal, promotions, etc. The score increased to 0.83 in 2008, following the adoption of the new constitution and the new set of judicial laws, which expanded the competencies of the HJC to include disciplinary accountability of judges, and increased HJC competence related to judicial appointment and removal. The score remained constant in 2013, 2018, and 2023, at 0.83.

It is curious to see, however, that following the 2022 constitutional amendments and the 2023 changes to the set of judicial laws, no increase in the level of judicial self-governance is noted with regard to the personal

Figure 3: Personal dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

dimension. This can be attributed to the fact that some of the interventions, while nominally giving more power to the judges or judicial self-government bodies, do not in fact change considerably the power of the relevant actors, as will be illustrated below, on the example of judicial appointments and removals. The most important issue within the personal dimension of judicial self-governance for Serbian judges is the competence for the appointment of judges. At this point, it is important to underline that the Serbian judicial system does not recognize the concept of promotion *per se:* every time a judge wishes to change the court in which they adjudicate, they have to apply to the open call for an open judicial position and undergo the appointment process. There are some exceptions to this general rule, *i.e.*, transfers of judges, but these are either limited in time or are prompted by changes to the judicial network (*e.g.*, abolishment of a court or changes to the competence of a court). Consequently, the competence for a judicial appointment implies the competencies for both initial appointments and subsequent appointments to higher courts or courts of specialized jurisdiction.[43]

The regulatory solutions have changed considerably since 2003 and the introduction of the HJC. Namely, in 2003, the HJC only had the competence to propose candidates for judicial appointments, while the

43 In the Serbian legal system, the appointment to a court of specialized jurisdiction, such as the commercial court or appellate court, is also considered a promotion, in the light of the minimal number of years of service mandated by law for these appointments, which is generally higher than the same requirement for courts of general jurisdiction.

National Assembly made the appointments; while the National Assembly could not appoint a candidate who was not proposed by the HJC, it still had the power to not appoint any candidates at all. Following the Constitutional amendments of 2006 and the legislative changes in 2008, the HJC was vested with the mandate to appoint judges who had permanent tenure, while the National Assembly retained the power to appoint judges for the first time (additionally, the National Assembly reserved the competence to appoint court presidents at the proposal of the HJC, which was seen as an avenue for exerting political influence over the judiciary).[44] As of 2023, the HJC is the only body with the competence to appoint judges (and court presidents). Consequently, our coding related to judicial appointments has changed from 0.5 in 2003 and onwards, to 1 in 2023.

It is interesting to note that the competencies for permanent removal of judges are coded differently than in the indicator related to appointment, even following the 2023 legislative amendments. This is because as of 2023, the HJC can pass a decision on the removal of a judge (or court president) only with a qualified majority of votes (eight out of the 11 HJC members have to vote in favor of permanent removal of a judge), meaning that the competence is coded as 0.5, since without the votes of some of the prominent lawyers, a decision on removal cannot be made.

However, this score does not affect the overall scores of judicial self-governance related to personal competencies. This can be seen as a testament to the relative insensitivity of the JSG to some of the normative nuances, which were considered as hard-won battles for judicial empowerment by judges in Serbia.

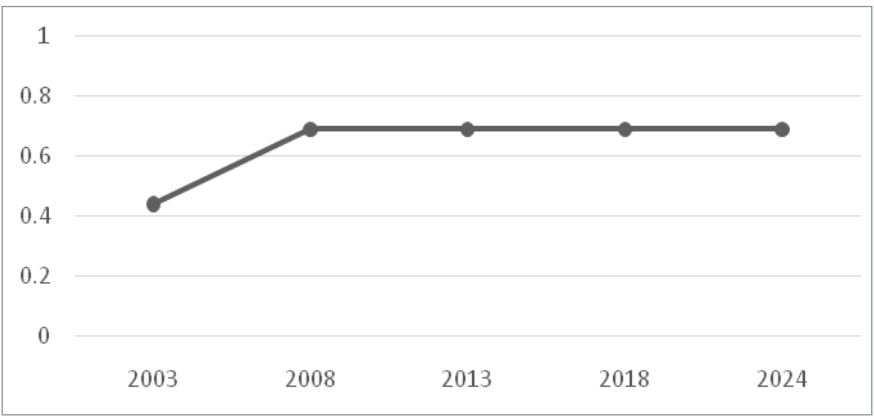
The remaining indicators within the personal dimension of judicial self-governance have remained steadily regulated over time, meaning that the competencies were either clearly assigned to the HJC or its bodies (*e.g.*, initiation of disciplinary proceedings of a judge, temporary transfer of a judge with their consent, etc.), or prescribed by law, and therefore not subject to a decision made by judges (*e.g.*, compulsory retirement age) other than judges being consulted in the legislative drafting process. These competencies have not changed over time. This can perhaps be attributed to the fact that considerable efforts have been put into aligning the Serbian legal framework with the relevant soft-law standards concerning precisely the matters that are used as indicators within this dimension of judicial self-governance. This is unsurprising, as this dimension targets the core aspects of the status of judges.

44 Boljević, D., 2020, *Osporavanje legitimiteta sudske vlasti u procesu ustavnog uređenja nezavisnosti sudstva na primeru Srbije*, Sarajevo, Fondacija Centar za javno pravo (https://www.ceeol.com/search/gray-literature-detail?id=1072499, 10. 10. 2024).

3.4. FINANCIAL DIMENSION

In Serbia, the financial dimension of judicial self-governance is relatively high, with scores ranging from a moderate 0.44 in 2003, to a consistent 0.69 from 2008 to 2023, on a scale of 0 to 1.

Figure 4: Financial dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

The consistent scoring within this dimension in the 2008–2023 period, however, does not mean that the norms regarding the development and negotiation of the court budget have not changed at all during the given period. First of all, in the 2003–2008 period, the Ministry of Justice had the sole responsibility for developing the court budget. In 2008, this changed, as the HJC was given the competence to propose the size and the structure of the court budget, with the exception of the budget required for non-judicial staff, which remained in the purview of the Ministry of Justice. The HJC was also required to obtain the prior opinion on the proposed budget from the Ministry of Justice, but was also tasked with the distribution of the funds to the courts. Additionally, full budgetary autonomy of the HJC was envisaged in Article 32 of the transitional and final provisions to the Law on Organization of Courts adopted in 2013,[45] which were to take effect in 2016. According to the said provisions, the HJC would no longer have to request the prior approval or opinion from the Ministry of Justice. Nevertheless, the taking of effect of Article 32 was postponed several times.[46]

45 See 2013 Amendments to the Law on Organization of Courts, *Official Gazette of the RS*, Nos. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, and 101/2013.

46 See the latter amendments to the Law on Organizations of the Courts aimed to postpone the taking of effect of Article 32, which were successively published in the *Official Gazette of the RS*, Nos. 13/2016, 08/2016, 113/2017, and 87/2018.

Finally, in 2018, the Constitutional Court of Serbia ruled that the provisions of Article 32 were unconstitutional.[47] Given this decision, the 2023 Law on Organization of Courts expressly envisaged full autonomy of the HJC in proposing the scope and structure of budgetary funds necessary for the current expenses of courts, save for the expenses for non-judicial staff, and in allocating such funds to the courts. Prior approval or consent of the Ministry of Justice is no longer required. However, the Ministry of Justice is charged with proposing the budgeting of funds necessary for current expenses for court staff, maintenance of equipment and court buildings, current and capital investments in courts, investments in the judicial information system, and the allocation of these funds. Such split competence obviously encroaches on the HJC autonomy in proposing and allocating the court's budget, as the budget needed for the everyday functioning of the courts is not fully within its purview. Consequently, although an important battle was deemed to have been on the road to the empowerment of judicial self-governance, the effective score in the JSG Index remains unchanged.

The score is additionally contributed to by the fact that the judges have limited decision-making powers *vis-à-vis* two more indicators under the financial dimension of judicial self-governance – the fixed and discretionary component of judge's salaries. Namely, salaries of judges are determined by the base salary set forth by the Ministry of Finance and the coefficient set forth in the Law on Judges, which vary according to the type of court. The inclusion of the base salary and the coefficient in the law, however, means that the judges have been consulted in the development of this norm. Consequently, we coded the indicators related to the base salary as 0.25.

In the observed period, across various changes to the Law on Judges, the HJC had the power to pass a decision to increase the salary of a judge either based on the workload (in 2003–2009 period), due to the fact that not all systematized judicial positions are filled in the given court (during the entire period under observation), or to judges who adjudicate in organized crime and corruption cases. This power, however, was very difficult to score within the framework of the JSG Index, because, in most cases, it is effectively dependent on the caseload or the number of judges; once

47 The provisions of Article 32 were not restricted to budgetary competencies alone; the Law on Organization of Courts envisaged a more comprehensive transfer of competencies from the Ministry of Justice to the HJC. The Constitutional Court deemed that such transfer could not be exercised through transitional and final provisions alone, without prior explicitly granting powers in the relevant articles of the Law on the Organization of the Courts. See Constitutional Court, *IUZ 34/2016*, Decision of 15 November 2018, *Official Gazette of the RS,* No. 88/2018.

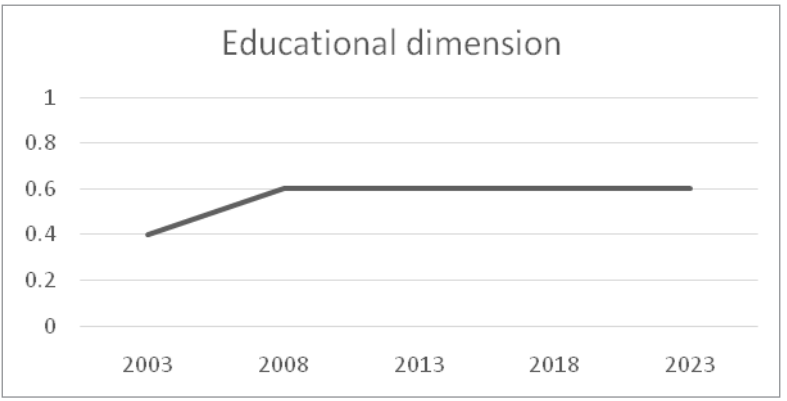
this changes, the decision on the bonus can be revoked at any given time. However, given that the HJC has the mandate to increase the salary of a judge on these grounds and make such an increase permanent, subject to subsequent revocation by the HJC, this it was coded as 1. This has consequently increased the overall score of judicial self-governance with respect to its financial dimension even during the 2003–2008 period, when judicial self-government bodies had very limited budgetary competences.

The analysis of the financial dimension of judicial self-governance in Serbia shows that the HJC has taken over the competencies that had previously been predominantly assigned to the so-called Nordic type of judicial councils.[48] The increased financial competences of the HJC are also consistent with the recognition of this competence of the judicial councils; however, so is the continued shared competence with the line ministry.[49]

3.5. EDUCATIONAL DIMENSION

The educational dimension of judicial self-governance in Serbia is relatively high, with a score of 0.6 on a scale from 0 to 1 in the 2008–2023 period, and a lower score of 0.4 in the 2003–2008 period.

Figure 5: Educational dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

48 See Stanić, M., 2022, *Sudski saveti: sastav i nadležnosti širom Evrope*, Belgrade, Institut za uporedno pravo, pp. 19–21.

49 Aarli, R., Sanders, A., 2023, Judicial Councils Everywhere? Judicial Administration in Europe, with a Focus on the Nordic Countries', *International Journal for Court Administration* Vol. 14, No. 2, p. 12.

The somewhat lower score in the 2003–2008 period stems from the fact that there was no compulsory further education of candidates for first judicial appointments prior to their appointment, apart from the general requirements set forth in the law: that the candidate holds a university degree in law and has passed the bar exam. Additionally, the score can also be attributed to the progression of the approach toward both initial and in-service training of judges, and prosecutors within the Serbian judiciary. Namely, it was only in 2001 that a dedicated judicial training institution was set up in Serbia; this was done jointly by the Ministry of Justice and the Judges' Association of Serbia.[50] The competence related to the content and structure of training of judges was vested in the Supreme Court, *i.e.*, neither initial nor in-service training was mandatory. In 2006, Serbia adopted a law regulating the training of judges, prosecutors, judicial and prosecutorial assistants.[51] This sets grounds for a more structured approach to both initial and in-service training. Nevertheless, training was still not envisaged as mandatory for all candidates for judicial office or appointed judges. Hence, the score in the JSG remained unchanged. The judicial self-governance, however, was supported by the fact that the HJC was charged with deciding on the content of the initial training programs (while the Judicial Training Center decided on the content of the in-service training). The establishment of the Judicial Academy in 2009 was seen as a major step in the institutionalization of judicial training in Serbia. However, at the same time, it created a heated debate around the initial legislator's intention for the Judicial Academy to serve as a single entry point to the Serbian judiciary, resulting in the Constitutional Court deciding that such a norm is contrary to the Serbian Constitution and annulling it.[52] Following this Constitutional Court decision, training in the Judicial Academy was no longer a prerequisite for the first judicial appointment but was still an option for those who wanted to pursue it. Another avenue for entry in the judicial profession was passing a qualification exam organized by the HJC. In terms of our scoring for the JSG Index, this debate remained completely under the radar. This is because we had already scored the power of the judges to decide on the content of the initial

50 Brooks, J., *An Analysis of Magistrates Training in Serbia: Findings and Recommendations*, UNDP, (https://www.undp.org/sites/g/files/zskgke326/files/migration/rs/UNDP_SRB_An_Analysis_of_Magistrates_Training_in_Serbia_–_Findings_and_Recommendations.pdf, 10. 10. 2024).

51 Law on Training of Judges, Public Prosecutors, Public Prosecutor Deputies, and Judicial and Prosecutorial Assistants, *Official Gazette of the RS*, No. 46/2006.

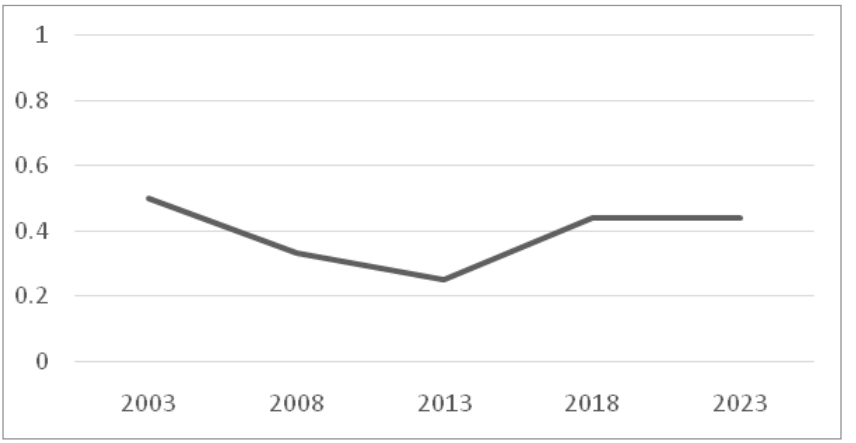
52 Constitutional Court, *IUZ-497/2011*, Decision of 20 March February 2014, *Official Gazette of the RS*, No. 32/14.

training with a 1, and this score remained the same even once the described changes were taken into account.

3.6. INFORMATIONAL DIMENSION

The Serbian regulatory framework demonstrates a relatively low score of 0.25 on a scale of 0 to 1 with regard to the informational dimension of judicial self-governance during the 2013–2023 period, with a score of 0.5 in 2003 and 0.33 in 2008. This score needs some further explanations and caveats.

Figure 6: Informational dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

The Serbian regulatory framework demonstrates relatively low and variable scores with regard to the informational dimension of judicial self-governance. The highest score is recorded in 2003 and amounts to 0.5 on a scale of 0 to 1. The score then falls to 0.33 in 2008, rises to 0.38 in 2013, and reaches 0.44 in 2018 and 2023. This score needs some further explanations and caveats.

First of all, due to how the indicators used for dimension are formulated, a considerable number of them had to be scored as "not applicable" in the Serbian context. For instance, the Serbian regulatory framework contains no legal obligation for the publication of court statistics, annual reports on the work of a court or all courts in the country. Serbian courts do collect and publish court statistics, and the Supreme Court regularly publishes the annual report on the work of courts in Serbia, which also

includes comprehensive statistical information. However, there is no *de iure* obligation to do so and hence our coding for these and similar indicators was "not applicable".

The higher score of the informational dimension in 2003 can be accounted for by the lack of regulations concerning the existence of the obligation of judges to disclose information on their assets and the existence of an obligation to publish the list of judges, which were hence coded as "not applicable", resulting in fewer categories to be used in the computation of the score for this dimension of judicial self-governance in the given period. It should be noted that we faced a dilemma with regard to how to code the obligation related to the publishing of the list of judges, in light of the norms of the Law on Free Access to Information, which also applies to the courts, as public bodies. The Law on Free Access to Information mandates that a directory including main information about the work of any public body is to be published at least once a year. This directory must include information about the organization of the public body, but does not explicitly require all employees in the given body to be named. Such a solution is attributable to the fact that the Law on Free Access to Information is a general act that is not specifically tailored to courts. As of 2009, the Court Rules of Procedure (Article 61) require the directory to include the annual working schedule of the court, which implies that the list of all judges and judicial assistants will be also be included. Consequently, we coded this indicator as 0.5 for 2013, 2018, and 2023, even though this does not mean that the full CVs of judges are published.

The issue of who determines which judgments are published also presented us with a dilemma. This is because during the entire period under observation, the only norm related to the publishing of judgments is the one prescribing mandatory publication of Supreme Court judgments, either only those that are relevant to overall jurisprudence (prior to 2008) or all of the judgments passed by the Supreme Court. The Court Rules of Procedure also mandate that all decisions of the commercial courts related to bankruptcy and liquidation must be published on the court's notice board.[53] The same provision existed in the previous Court Rules of Procedure. In 2022, the amendments of the Law on Local Self-Government Elections and the new Law on Parliamentary Elections envisaged that all legal remedies and the decisions adopted thereof are to be published by the Republic Electoral Commission. Finally, in 2014 the Supreme Court of Serbia adopted the Activity Plan for the Harmonization of Jurisprudence,

53 Article 92 of the Court Rules of Procedure that are currently in force (Court Rules of Procedure, *Official Gazette of the RS*, Nos. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015, 39/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019, 93/2019, and 18/2022).

which remains in force and is applied.[54] This document prescribes that the Administrative Court, the Commercial Court of Appeal, the Misdemeanor Court of Appeal and the general appellate court must publish their decisions, as a contribution to the harmonization of the court practice across Serbia. In 2017, this Activity Plan was reinforced by the Instruction on the Operation of the Court Practice Department of the Appellate Court, which also calls for the publication of relevant court jurisprudence on the court's website.[55] This seems to be a clear case of judges and courts taking agency with regard to their core work.

Finally, we had our doubts as to whether the indicator related to the recording of trials and hearings, included in this dimension, referred to the recording in lieu of an official record, or the recording for the purpose of publication, *e.g.*, by the media. We opted for the latter interpretation, since this is more in line with the overall nature of this dimension, which we find addresses the transparency of the work of the courts and their communication with the general public.

Overall, this closer examination of the informational dimension of judicial self-governance in Serbia and its relatively low score does not come as a particular surprise. Recent research has shown that the informational and digital dimension of judicial self-governance are more prominent in countries that have the so-called Nordic type of judicial council.[56] The above discussion also offers some food for thought *vis-à-vis* the future Court Rules of Procedure, which have been under development in Serbia for the past year and a half. It would be beneficial for this regulatory act to regulate the obligations related to the publication of court statistics, annual reports on the work of courts, and provide further guidance regarding the publication of court decisions that are not covered by the mandatory publication requirements set forth in the mentioned laws.

3.7. DIGITAL DIMENSION

The digital dimension of judicial self-governance, although comprising of only one indicator, proved to be very difficult to score. This is because there is no norm and very little clear information on where data

54 Supreme Court of the Republic of Serbia, 2014, *Activity Plan for the Harmonization of Jurisprudence*, (https://www.vrh.sud.rs/sites/default/files/attachments/PlanAktivnostiVrhovnogKasacionogSuda%20radi%20ujednačavanja%20sudske%20prakse.pdf, 12. 10. 2024).

55 Presidents of Appellate Courts, 2017, Instruction on the Operation of the Court Practice Department of the Appellate Court, (http://www.kg.ap.sud.rs/assets/files/2017/Uputstvo%20o%20radu%20odeljenja%20sudske%20prakse.pdf, 12. 10. 2024).

56 Aarli, R., Sanders, A., 2023, pp. 30–33.

servers are located. The norms of the law governing the organization of courts consistently prescribe that the line ministry is in charge of regulating, developing and maintaining the judicial information system, which could lead us toward coding this indicator with 0 for the entire period under observation, meaning that judges do not decide. This coding was additionally supported by the findings of the 2014 Serbia Judicial Functional Review, which reported the heavy reliance of the Serbian judicial system on outside vendors to provide IT services, with no remote system for data backup.[57] However, the Strategy for the Development of ICT in the Judiciary for the 2022–2027 period clearly states that the main data centers are located in the building of the Supreme Court, the so-called Justice Palace in Belgrade, the Appellate Public Prosecutors' Office in Belgrade, the County Prison in Belgrade, the Appellate Court in Niš, and that one additional data center exists at the Ministry of Justice.[58] Moreover, this Strategy brings one additional positive development: it was developed with considerable input from the Sectoral Council for Information and Communication Technologies within the Judicial Sector of the Republic of Serbia, established in 2016.[59] This is a body comprised of representatives of the HJC, but also the Supreme Court, the Head Public Prosecutors' Office, the High Prosecutorial Council, Judicial Academy, various sectors of the line ministry, and representatives of other institutions. Since this body is, *inter alia*, charged with coordination of ICT-related activities in the judiciary, and with providing specific recommendations on ICT setup, this competence was coded with 0.25 in 2018 and in 2022.

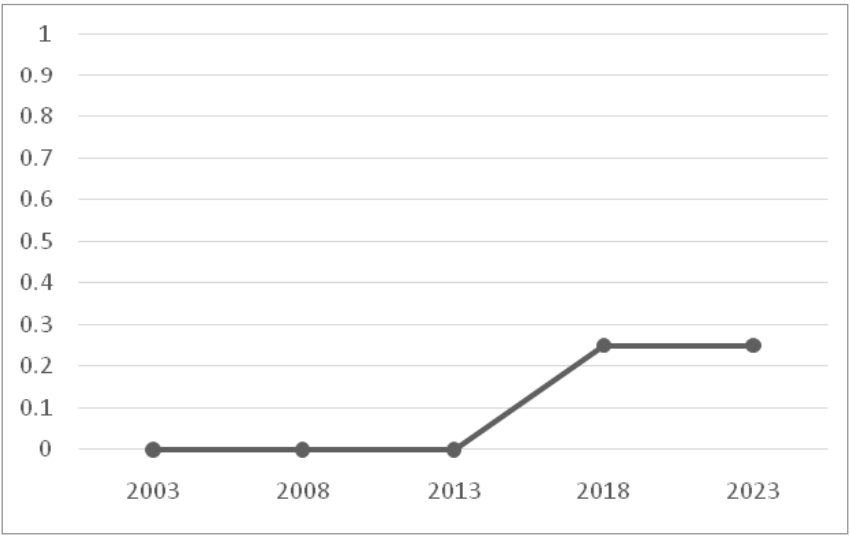
This is objectively a low score for judicial self-governance regarding the digital dimension and there is obviously room for improvement. However, some caution needs to be employed before recommending increased judicial self-governance in this respect. As the 2014 Serbia Judicial Functional Review shows, only ten years ago the ICT infrastructure in the Serbian judiciary was not only dependent on private actors, but also highly fragmented in terms of both hardware and software, with limited interconnectivity. In fact, the centralization of ICT governance was one of the recommendations of the 2014 Judicial Functional Review. Therefore, it would seem prudent to direct potential future efforts,

57 Multi Donor Trust Fund for Justice Sector Support in Serbia, 2014, Serbia Judicial Functional Review, 2014, pp. 317–318, (https://www.mdtfjss.org.rs/en/serbia-judical-functional-review, 14. 10. 2024).

58 Strategy for the Development of ICT in the Judiciary for the 2022–2027 period, pp. 51–57.

59 Decision on Establishment of the Sectorial Council for Information-Communication Technologies, *Official Gazette of the RS*, No. 33/2016.

Figure 7: Digital dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

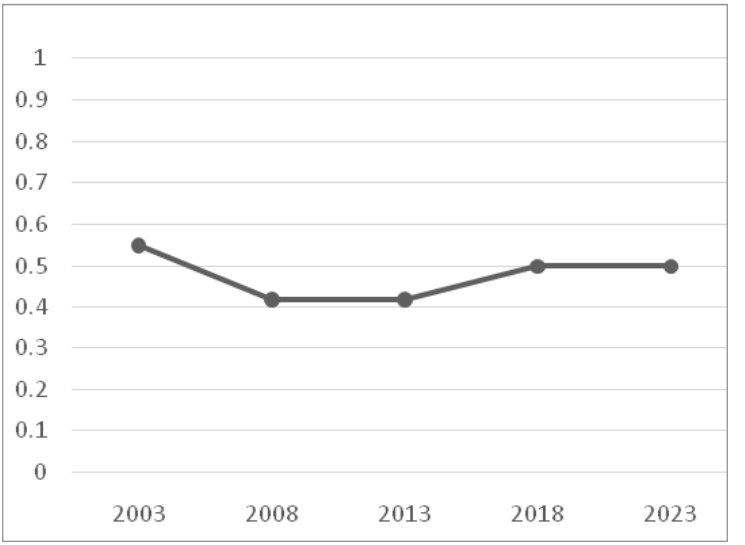
aimed at increasing judicial self-governance in the digital domain, toward a centralized, judge-led decision-making and management body, similar to the project led by the Slovenian Supreme Court that was awarded the Crystal Scales of Justice prize in 2019.[60]

3.8. ETHICAL DIMENSION

When it comes to the ethical dimension, Serbia scores moderately in terms of judicial self-governance, with the score ranging from 0.42 to 0.55 on a scale from 0 to 1. There are, however, some leaps in the score, which will be discussed below. Additionally, some of the indicators were scored as "not applicable" in 2003, but received a score in other years. Due to the methodological approach that we have opted for, this meant that the overall score for the years in which some indicators were not applicable was in fact higher than in the year in which it was scored with 0 or 0.5. This anomaly accounts for a higher result in the scoring for 2003, when a number of competences related to judicial ethics was not regulated at all, then in 2023, where more issues are clearly regulated.

60 CoE, 2019, *Supreme Court of Slovenia wins Crystal Scales of Justice Prize*, 25 October, (https://go.coe.int/6sVRr, 12. 10. 2024).

Figure 8: Ethical dimension of judicial self-governance in Serbia in the 2003–2023 period



Source: Authors' calculations

The first major change in the applicability of indicators within the ethical dimension of judicial self-governance can be seen in 2008, when the Law on Judges introduced the obligation of the HJC to adopt the Code of Ethics that is binding for all judges. The Code of Ethics that had existed previously was adhered to only by the members of one judicial association – the Judges' Association of Serbia. Hence, in 2003 the indicator concerning the Code of Ethics and its interpretation were coded as "not applicable". The second important improvement came in 2021, when the Ethical Committee of the HJC was established as a permanent body of the HJC and the Institute of Confidential Advisor on ethical matters was introduced.[61] Based on this information alone, it could be expected that the level of judicial self-governance in the ethical dimension would be relatively high, but that is not the case. There are two distinct reasons that can explain this discrepancy. The first one is related to the phenomenon of legislative interference with judicial self-governance. Namely, even though the 2023 Law on Judges clearly states that the HJC is charged with adopting the Code of Ethics of Judges, this law lists also the principles that this code shall include. This is a clear encroachment on the judicial self-governance, and

61 Knežević Bojović, A., 2024, Etička i finansijska dimenzija sudske samouprave – prikaz tendencija u Srbiji, *Pravni život,* Vol. 619, No. 1, pp. 75–94.

results in a lower score for this indicator compared to 2018, 2013, and 2008.[62] The other reason, as is the case with other dimensions of judicial self-governance, is related to the indicators used to map and measure this dimension. Namely, some of the indicators included therein are not strictly speaking from the domain of judicial ethics *per se*, but rather concern the relationship between the judicial office and other jobs, functions and affiliations of a judge, *i.e.*, the regulation of off-bench activities, the regulation of political affiliation of judges, etc. In Serbia, these issues are either strictly prohibited by law, as the case is with the political affiliation of a judge, and are therefore coded as 0.25 (judges were consulted in the drafting of the law), or the law stipulates what is prohibited while the HJC, as the highest judicial self-government body, decides on the matter – which resulted in the indicator being scored as 0.5.

4. Judicial Self-Governance Index for Serbia – Overall

When it comes to calculating the aggregate JSG Index, we utilized two methods, namely C and E proposed by Šipulová *et. al.*[63] While Šipulová *et al.* understand the JSG as a compensatory concept and opt for a simple calculation of the aggregate values of the JSG Index according to method C, we still find the non-compensatory approach to aggregation of JSG Index data,[64] where relative weights of the dimensions are used, to be just as illustrative of the overall judicial empowerment tendencies, particularly given the considerable discrepancies between the number of indicators for individual dimension (*e.g.*, there are 19 indicators for the personal dimension and only one indicator for the digital dimension).

While the choice Šipulová *et al.* made was said not to be supported by extensive empirical or theoretical evidence, the relative importance of certain dimensions of judicial self-governance is becoming recognized in academia and the work of international bodies. Both Kosař and Šipulová[65] and Aarli and Sanders[66] acknowledge personal competence as the core dimension of judicial self-governance, particularly in the judicial council

62 Knežević Bojović, A., Ćorić, V., Matijević, M. V., 2023, p. 259.

63 Method C results in a JSG index with dimensions and without default values, while method E results in a JSG index without default values using relative weights of dimensions. See Appendix to Šipulová, K. *et al.*, 2023, p. 9.

64 Šipulová, K. *et al.*, 2023, p. 30.

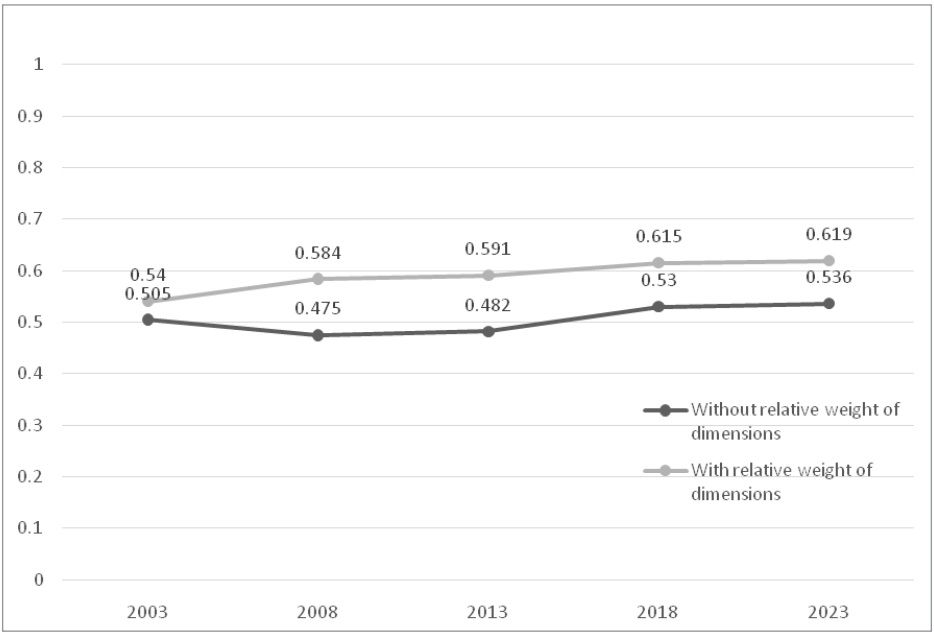
65 Kosař, D., Šipulová, K., 2023, p. 267.

66 Aarli, R., Sanders, A., 2023, p. 17.

model. The focus of the work of the Consultative Council of European Judges[67] leads us to conclude that personal, administrative, financial and ethical dimensions of judicial self-governance seem to emerge as the core dimensions relevant for ensuring individual and institutional independence of judges, which are prerequisites of the rule of law, while the informational dimension is slowly growing in salience. Consequently, we find that the calculation of the JSG Index, both with and without the relative weights of dimensions and their mutual comparison, provides a better general overview.

The aggregated JSG Index for Serbia confirmed our initial hypothesis of a gradual increase in formal *de iure* judicial self-governance in Serbia over the observed period. Additionally, the results are in line with the tendencies of judicial empowerment that were expected to be demonstrated in the countries undertaking regulatory interventions with the aim of facilitating judicial self-governance under strong external EU conditionality.

Figure 9: Judicial self-governance index for Serbia in the 2003–2023 period, with and without relative weights of dimensions, without default values



Source: Authors' calculations

67 See CCJE, *CCJE Opinions and Magna Carta*, (https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta, 10. 10. 2024).

Table 1: JSG Index values without default values, with dimensions, with and without and using relative weights of dimensions

Year	2003	2008	2013	2018	2023
With dimensions, without relative weight of dimensions	0.505	0.475	0.482	0.530	0.536
With dimensions, with using relative weight of dimensions	0.540	0.584	0.591	0.615	0.619

The overall level of judicial empowerment in Serbia shows that judges control close to 50% of all judicial competencies, or as much as over 60% of the competencies, depending on the model used to calculate the aggregate index. It is interesting to note that the values of the JSG Index are higher in the case where the relative weights of dimensions are used, *i.e.*, when the dimensions traditionally considered more important for judicial self-governance are given more weight, which is consistent with the results obtained by Šipulová *et al.*

At this point, we find that some caution needs to be expressed regarding the values of the aggregate JSG Index calculated based on the model we used (Model C), which does not take into account the relative weight of dimensions and does not use default values for indicators that are found to be missing or not applicable. Applied to Serbia, the model shows an unwelcome sensitivity of the JSG Index to the cases where a dimension is excluded from calculation due to its indicators not being applicable in a given year. As a consequence, the aggregate JSG Index calculation shows a falsely higher score compared to other years. This is best illustrated by the JSG Index values for Serbia in 2003: in the model where no relative weights of dimensions are applied, the score is higher than in the two subsequent years under observation, due to the fact that one dimension (digital) is excluded from the calculation as not applicable. Conversely, in the model where relative weights of dimensions are used, the value of the JSG Index in 2003 is lower than in 2008 and 2013.

The results of the aggregate JSG Index are also consistent with the initial theoretical and practical underpinnings of the judicial council model, where judicial councils are understood as bodies comprised predominantly of judges, having a "wide range of tasks aiming at the promotion [...] of judicial independence and efficiency of justice,"[68] and where judges are seen better suited to decide on issues of judicial governance.[69]

68 CCJE, *Opinion No. 24 (2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems,* CCJE(2021)11 (5 November 2021), para. 8.

69 Kosař, D., Šipulová, K., Kadlec, O., 2024, p. 95.

Based on the results of the JSG Index, the efforts that Serbia has made in reforming its legislation in order to vest more powers with the HJC, as the key judicial self-governance body, have consequently yielded results. However, the increase may not always be as notable as might be expected, or rather, the efforts put into the development of the regulatory framework are not necessarily proportionally reflected in the JSG Index values. For instance, the difference in the values of JSG Index in 2018 and in 2023, where the latter legal framework reflects major reformatory efforts, are measured in hundredths of a point in the aggregate JSG scores calculated using both methods (0.006 and 0.004, for models C and E, respectively).

How can this disbalance be accounted for? It is possible that as early as 2003 Serbia set solid grounds for transferring a considerable part of competencies related to judicial governance to judges, court presidents, and the HJC and subsequent reformatory efforts followed this initial impetus. Over the following two decades, the key debates that were problematized both internally, by judges mainly through their associations,[70] and within the wider framework of EU external conditionality, were predominantly focused on one core dimension of judicial self-governance – the personal dimension, with additional debates centering around elements of the financial and educational dimension of judicial governance. Indeed, the major aim of the latest constitutional and legislative reform was to depoliticize judicial appointments and minimize the powers of the executive and the legislative to exert undue influence on judges. Consequently, the key debates affected only certain aspects of judicial self-governance and, despite their intensity, did not contribute significantly to the overall results.

In addition, the analysis shows a tendency also identified in the Czech Republic and in Slovakia – an increase in the regulation of judicial governance by the legislator, which can also affect the JSG Index score.[71] Overall, the extent of such regulation is the lowest in the digital and informational dimension, but is very high in the personal, administrative, financial and even ethical dimension of judicial self-governance. When it comes to Serbia, this could be accounted for by two reasons. The first one lies in the fact that Serbia, as an EU candidate country, is strongly influenced by EU external conditionality, where it is often generally easier to demonstrate that a change has been made if a legal norm has been adopted. Indeed, the requirement of a transparent and inclusive legislative process is an element

70 Knežević Bojović, A., Misailović, J., 2022, Judges' Associations and Trade Unions – International Standards and Selected National Practices, *Foreign Legal Life*, Vol. 66, No. 4, pp. 387–410.

71 Knežević Bojović, A., 2024, Etička i finansijska dimenzija sudske samouprave – prikaz tendencija u Srbiji, *Pravni život*, Vol. 619, No. 1, pp. 75–94.

of the rule of law, which needs to be carefully balanced against the judicial self-governance demands. In that regard, inclusive and transparent regulatory intervention can also be seen as an acknowledgment of the complexity of the notion of the rule of law. While it is true that relevant soft-law standards require the issues related to the status of judges to be guaranteed in the highest legal acts in any given country (*e.g.*, the constitution, organic laws), increased regulation on the part of the legislator does not mean that the judges get to decide on more issues.[72] This is where we come to the second possible explanation of increased regulation – the desire of the executive and the legislator to reserve certain powers and competencies for themselves, whilst the judges, on the other hand, want to ensure that the competence of the HJC or judges to decide on a given issue is clearly guaranteed in the law, through express legislative norms.

The analysis underpinning the JSG Index for Serbia is also consistent with the recent findings of Aarli and Sanders[73] whereby the digital and informational dimensions are not in the focus of judicial councils in most CoE countries. Interestingly enough, the administrative dimension of the JSG in Serbia seems well developed, even if the relevant competences of the HJC within it are limited. This particular dimension is a good illustration of the importance of the court presidents as important actors in judicial self-governance, who seem somewhat neglected in the overall Serbian framework. In the Serbian context, however, after 2008, the office of the court president has been seen as potentially very politicized, as the law envisaged that the court presidents are to be appointed by the Parliament, not by the HJC (this has changed only with the constitutional amendments in 2022). As a result, there were reservations among judges regarding the idea of transferring additional powers to court presidents, other than those necessary to ensure the everyday functioning of the courts. This reservation may have contributed to the majority of the judicial self-governance powers in Serbia being vested with the HJC.

Finally, even though judicial self-governance *de iure* shows generally favorable results, this should not be seen as a clear indication of the achieved high level of independence and self-governance in the Serbian judiciary. Some parallels can be drawn with the high rating of the Serbian Law on Free Access to Information in the RTI rating, whereas citizens faced considerable pushback when exercising their right of access.[74]

72 CCJE, *Opinion No. 1 (2001) of the CCJE for the Attention of the Committee of Ministers of the CoE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, CCJE (2001) OP No. 1, (23 November 2001), para. 14.

73 Aarli, R., Sanders, A., 2023, p. 13.

74 See Knežević Bojović, A., Free Access to Information of Public Importance, in: Rabrenović, A., (ed.), 2013, *Legal Mechanisms for Prevention of Corruption in South-*

Only a comprehensive examination of both *de iure* and *de facto* judicial self-governance can provide a definitive conclusion.

5. Conclusion

Utilizing the JSG Index as a tool for mapping and measuring judicial self-governance in Serbia in the 2003–2023 period, we have confirmed our initial hypothesis that *de iure* judicial self-governance in Serbia has increased over time, which is consistent with the demands stemming from EU external conditionality in the field of rule of law. It has shown that in Serbia, judges are in control of at least 50% of all competencies included in the JSG Index.

Our research has provided additional interesting insights into the limitations of the JSG Index, the distribution of judicial governance powers, and the level of regulation in the field of judicial self-governance in Serbia. When it comes to the limitations of the JSG Index, our possibly most pertinent conclusion is related to the very nature of the JSG Index, which measures formal *de iure* competencies and which we see as being value-neutral, and to an extent limited in that respect. The JSG Index *per se* does not call for alignment with relevant international soft-law standards related to judicial self-governance, although its score might imply a preference for judges to have control over decisions on judicial matters. As a result, the JSG Index does not account for situations where legislators purposefully encroach on judicial self-governance through overregulation. At the same time, the JSG Index to an extent disregards the demands for a transparent and inclusive legislative process as an integral part of the complex rule of law concept, particularly when it includes in the examination of the extent to which judges decide on the competencies that are customarily vested with parliaments – and then giving them a low score due to lack of agency on the part of judges.

The investigation of the individual dimensions of the JSG Index has provided interesting insights into the distribution of competencies between various judicial governance actors in Serbia. The examination of the administrative, informational and digital dimensions in Serbia has highlighted the importance of the powers of courts and court presidents – not only of the HJC – in exercising judicial self-governance.

At the same time, this study has demonstrated that, presumably under the influence of the external EU conditionality, the level of regulation in

east Europe with Special Focus on the Defence Sector, Belgrade, Institute of Comparative Law, pp. 131–152; Knežević Bojović, A., Reljanović, M., 2022. *Free Access to Information,* Belgrade, Institute of Comparative Law.

the core dimensions of judicial self-governance in Serbia is high, with the legislator sometimes even encroaching on the powers of the judges, while the level of regulation is somewhat lower *vis-à-vis* competences within the informational and digital dimension. This can perhaps also be attributed to the fact that these are somewhat newer competencies that are yet to be the subject of more comprehensive standard-setting and exploration of the optimal involvement of judges in deciding on these issues.

Finally, our findings position the increased judicial empowerment in Serbia as an illustrative example of a *de iure* implementation of the judicial council model, as a guarantor of judicial independence and accountability. However, this generally beneficial scoring of judicial self-governance cannot be interpreted to imply that judicial self-governance and judicial independence are at a high level in Serbia, in particular if we take into account the shortcomings identified in various reports in terms of Serbia's achievements in the accession process, with regard to meeting the standards of judicial independence, which constitutes an integral part of the rule of law principle. Instead, such beneficial scoring rather proves the identified limitations of the quantitative research based on an advanced index, which is still imperfect and limited in scope. The example of the high ranking of the Serbian Free Access to Information Act in Serbia in the RTI rating, contrasted with the difficulties citizens faced when requesting access to information, is a prime case in point in that respect. With regard to judicial self-governance in Serbia, we can offer several illustrative examples as to why Serbia's JSG Index score may paint a prettier picture compared to the practical effectiveness of the judicial self-governance. One example can be found in the still applicable rulebook governing the evaluation of the work of judges and court presidents.[75] This rulebook was promulgated by the HJC, at the time of a general internal and external policy push for more efficient work of individual judges, which would also preclude unreasonable delays in adjudication. The rulebook set criteria that were at the same time insufficiently broad (they do not recognize all the aspects of work of a judge) and relatively rigid in their quantitative requirement. As a result, the rulebook had to be creatively interpreted by the evaluation bodies so as to accommodate for the reality of judicial work in Serbia. The outcome, however, was that nearly all judges consistently received the highest grades, which rendered the evaluation process almost meaningless, or, in other words, the evaluation process could not be relied on to support the merit-based promotion of judges. This example illustrates the

75 Rulebook on Criteria, Measures, Procedures and Bodies for Evaluating the Work of Judges and Court Presidents, *Official Gazette of the RS*, No. 81/2014–54, 142/2014–240, 41/2015–185, 7/2016–23. As of January 2026, a new rulebook, promulgated in 2024, will start to apply.

deficiencies in the personal, core competence of judicial self-governance. It also underscores the need for complementing the examination of the *de iure* judicial self-governance with an understanding of the practical application of the norms. Only such a comprehensive analysis can shed light on the actual contribution of judicial self-governance to judicial independence and the rule of law.

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SUDSKA SAMOUPRAVA U SRBIJI: IZAZOVI I REZULTATI KVANTITATIVNOG PRISTUPA

Ana Knežević Bojović

Vesna Ćorić

APSTRAKT

Od 2000. godine, pravni okvir kojim se reguliše pravosuđe u Srbiji stalno se menja, u pokušajima da se ojača nezavisnost pravosuđa i sudska samouprava, a pod uticajem spoljašnjeg uslovljavanja EU. Indeks sudske samouprave koji su razvili Šipulova *et al.* autorke koriste kao glavni metodološki alat, kako bi utvrdile u kojoj meri je postignuti nivo sudske samouprave u Srbiji od 2003. do 2023. godine u skladu sa zahtevima koji proizilaze iz mehanizama spoljašnjeg uslovljavanja. Istraživanje pokazuje da u Srbiji sudije učestvuju u donošenju odluka u više od 50% pitanja koja su značajna u tom kontekstu, a primećen je i rast stepena sudske samouprave u Srbiji. Ovakav rezultat u skladu je sa zahtevima spoljašnjeg uslovljavanja i sa *de iure* primenom modela pravosudnog saveta. Istraživanje ukazuje i na ograničenja primenjenog metodološkog pristupa, te osvetljava potrebu za sveobuhvatnim ispitivanjem *de facto* stepena sudske samouprave, uz uvažavanje svih elemenata složenog načela vladavine prava.

Ključne reči: sudije, sudska samouprava, pravosudni savet, indeks sudske samouprave, vladavina prava, Evropska unija, spoljašnje uslovljavanje, Srbija.

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