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## **Judicial Council in the System of Constitutional Bodies of the Republic of Kosovo**

**Keywords:** Republic of Kosovo, judiciary, judicial council

**Słowa kluczowe:** wymiar sprawiedliwości, Republika Kosowa, rada sądownictwa

### **Abstract**

On February 17, 2008 Kosovo declared independence. The foundation for the creation of the Republic of Kosovo was the international community, which created the legal framework for the future statehood of Kosovo. The concept developed in the Athisari Plan of making the Judicial Council the guarantor of judicial autonomy and independence of judges was also a kind of anticipation of the subsequent fundamental changes in the system, introduced under the 2008 Constitution. This article attempts to analyze the systemic position of the Kosovo Judicial Council in the state system formed under the 2008 Constitution. It presents the composition of the Council, the procedure for the appointment of its members and the principles of its organization and functioning. The solution adopted in the Kosovo Basic Law is in line with the widely understood Southern European organizational model of judicial councils.

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## Streszczenie

### Rada sądownictwa w systemie organów konstytucyjnych Republiki Kosowa

W dniu 17 lutego 2008 r. Kosowo ogłosiło niepodległość. Fundamentem powstania Republiki Kosowa była społeczność międzynarodowa, która stworzyła ramy prawne przyszłej państwowości Kosowa. Wypracowana w planie Athisarięgo koncepcja uczynienia z rady sądownictwa gwaranta niezależności sądów i niezawisłości sędziów była także swoistą antycypacją późniejszych zasadniczych zmian ustrojowych, wprowadzonych na podstawie Konstytucji z 2008 r. Niniejszy artykuł stanowi próbę analizy pozycji ustrojowej Rady Sądownictwa Kosowa w systemie państwowym ukształtowanym pod rządami Konstytucji z 2008 r. Przedstawia skład Rady, procedurę powoływania jej członków oraz zasady organizacji i funkcjonowania. Rozwiązanie przyjęte w kosowskiej ustawie zasadniczej wpisują się w szeroko rozumiany południowoeuropejski model organizacyjny rad sądownictwa.

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## I.

On February 17, 2008, Kosovo declared its independence. More than thirteen years after the Declaration of Independence, the question of the political and legal assessment of Kosovo's statehood continues to divide the international community<sup>2</sup>. Nevertheless, the foundation for the creation of the Repub-

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<sup>2</sup> Today, the Republic of Kosovo continues to struggle with the lack of universal international recognition. The question of Kosovo's recognition remains problematic. First of all, there is the problem of a nation exercising the right to state – in the case of Kosovo, the doubts are undeniable. Limited international legal subjectivity means limited presence in the arena of international relations. Kosovo is therefore confronted with different approaches to its own statehood. More extensively on this issue in: W. Benedek, *Implications of the independence of Kosovo for international law*, [in:] *International Law between Universalism and Fragmentation*, eds. I. Buffard, J. Crawford, A. Pellet, S. Wittich, Leiden 2008, pp. 391–412; B. Bing JIA, *The Independence of Kosovo: A Unique Case of Secession?*, "Chinese Journal of International Law" 2009, vol. 8, iss. 1, pp. 27–46; P. Hilpold, *The Kosovo Case and International Law: Looking for Applicable Theories*, "Chinese Journal of International Law" 2009, vol. 8, iss. 1, pp. 47–61; M. Ioannidis, *Kosovo's Declaration of Independence and the Creation of a New Legal Order: Can*

lic of Kosovo was laid by the international community, which created the legal framework for the future statehood of Kosovo. The purpose of this article is to present the constitutional position of the Judicial Council in the Republic of Kosovo formed under the 2008 Constitution. Additionally, by analyzing the principles of creation of this body and its internal organization, the author attempts to answer the question of whether Kosovo's normative solutions meet international standards of judicial independence in terms of the composition and election of council members. Due to the framework of this study, the praxeological aspects of the Kosovo Judicial Council's activities were not analyzed.

The need for appropriate legal guarantees and an effective judicial system is a fundamental pillar of modern democratic states. In the European legal culture, the judicial councils are usually the bodies entrusted with upholding the independence and autonomy of the courts, as well as the self-government and independent organization of the administration of justice and the judicial system<sup>3</sup>. According to Wim Voermans, they function as “intermediaries between the executive and the judiciary in order to guarantee the independence of the judiciary in some way or in some respect”<sup>4</sup>. The primary rationale for their creation is the need to separate judicial appointments, as well as subsequent career advancement of judges, from political influence. In addition, these bodies also have competences aimed at increasing the efficiency of the quality of justice. It can be assumed, following Nuno Garoupa and Tom Ginsburg, that “Judicial councils are bodies that are designed to insulate the functions of appointment, promotion, and discipline of judges from the partisan political process while ensuring some level of accountability. Ju-

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*a Revolution against International Law Be Legal?*, “Law Open Access Working Papers” 2011, no. 7, pp. 1–17.

<sup>3</sup> It is worth noting that this is not the rule, because even in European Union countries there are other systemic solutions in this area that do not provide for the operation of judicial councils at the federal or nationwide level (Austria, the Czech Republic, Finland, Luxembourg, Germany). The absence of such a body does not, of course, mean that the systemic solutions of a given state are contrary to European standards, but it is necessary that these solutions ensure the independence of the judiciary and the autonomy of judges.

<sup>4</sup> W. Voermans, *Councils for the judiciary in Europe*, “Tilburg Law Review” 2000, vol. 8, iss. 2, p. 121; See: W. Voermans, P. Albers, *Councils for the Judiciary in EU Countries, Council of Europe, European Commission for the Efficiency of Justice (CEPEJ)*, Strasbourg 2003, p. 9.

dicial councils lie somewhere in between the polar extremes of letting judges manage their own affairs and the alternative of complete political control of appointments, promotion, and discipline”<sup>5</sup>.

At present, judicial councils function in more than seventy countries around the world, however, it cannot be assumed that they operate on the basis of one universal model, because the establishment of councils in individual countries resulted from historical, cult and social premises<sup>6</sup>. Nevertheless, the European literature accepts two models for the functioning of judicial councils – the Southern European and the Northern European<sup>7</sup>. The first model is characterized by the fact that the councils are equipped with competences aimed at protecting judicial autonomy. These are competences concerning the appointment and promotion of judges and conducting disciplinary proceedings. The competences of the judicial councils, shaped according to the Northern European model, include matters of judicial administration, management of courts and their budgets. It can be assumed that the purpose of the activities of these councils is the efficiency of court management.

The source of inspiration for the drafters of the Kosovo Basic Law was the Comprehensive Proposal for the Kosovo Status Settlement (the so-called Ahtisaari Plan)<sup>8</sup>, which contained the basic constitutional and institutional framework for the establishment of a democratic state of Kosovo<sup>9</sup>. The plan also provided for the establishment of the Kosovo Judicial Council. According to the provisions of Ahtisaari plan, the judicial council was to propose candidates for judicial positions, promote and transfer judges, and conduct disciplinary proceedings. The plan provided for a thirteen-member council com-

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<sup>5</sup> N. Garoupa, T. Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, “American Journal of Comparative Law” 2009, vol. 57, iss.1, p. 106.

<sup>6</sup> Report of the Special Rapporteur on the Independence of Judges and Lawyers, The Office of the United Nations High Commissioner for Human Rights 2018, A/HRC/38/38, p. 9 <https://www.ohchr.org/EN/Issues/Judiciary/Pages/ReportHRCJudicialCouncils.aspx> (15.06.2021).

<sup>7</sup> See: W. Voermans, *Councils for the Judiciary in Europe: trends and models*, [in:] *The Spanish constitution in the European Constitutional context*, ed. F.F. Segado, Madrid 2003, pp. 2134–2138.

<sup>8</sup> Comprehensive Proposal For the Kosovo Status Settlement, <http://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf> (15.06.2021).

<sup>9</sup> See: A. Gashi, B. Musliu, *Justice system reform in Kosovo*, Prishtina 2013, p. 6 et seq.

posed of judges, prosecutors, and members of parliament. It is worth noting here that most of the solutions from the Ahtisaari Plan were adopted in the 2008 Constitution of the Republic of Kosovo.

## II.

The foundations of the Council's activities are contained in the Basic Law. The regulation of this body is quite detailed as 10 sec. of Art. 108 of the Constitution are devoted to it. The Judicial Council has been placed in the same place as the courts in the Constitution, i.e. in Chapter VII entitled "The Judiciary" which makes its systemic character unclear. The positioning of the Council in the systematics of the Constitution could lead to the conclusion that it is an organ of the judicial power. However, the Council cannot be counted among the organs of the judiciary, since this power – in accordance with the provisions of the Constitution – is exercised by the courts<sup>10</sup>.

The composition of the Kosovo Judicial Council is important in determining its constitutional position. According to Art. 108 sec. 6 of the Basic Law, the Council consists of 13 members and all of them are elected. Since the adoption of the Constitution of the Republic of Kosovo, most of the members of the Council were elected by the People's Assembly. Eight members were appointed by the Parliament (including at least four judges) and five members were judges appointed by members of the judiciary. This type of arrangement, according to the European Commission, could lead to strong political interference and consequently affect the independence of the judiciary<sup>11</sup>. Consequently, on February 24, 2016, the People's Assembly passed the 25th Constitutional Amendment, which guarantees a majority in the 13-member Council to judges elected by members of the judiciary. The council consists of two Supreme Court judges elected by Supreme

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<sup>10</sup> Art. 102 sec. 1 of the Constitution of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (15 June 2021).

<sup>11</sup> V. Morina, *Prospective Constitutional Changes in Kosovo Emanating from the EU Pre-Accession Process*, "Croatian Yearbook of European Law & Policy" 2016, vol. 12, no. 1, p. 300. See also Organization for Security and Co-operation in Europe, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, p. 29, <https://www.osce.org/kosovo/87138> (20.06.2021).

Court judges, two Court of Appeals judges elected by the judges of this court, and three basic courts judges elected by basic court judges. In contrast, six members are elected by parliament. Two members are elected by the deputies of parliament holding seats attributed during the general distribution of seats and at least one of these two must be a judge. A characteristic solution resulting from Kosovo's nationality structure is that national minorities are guaranteed representation in the Judicial Council<sup>12</sup>. Therefore, two members shall be elected by the deputies of the Assembly holding reserved or guaranteed seats for the Kosovo Serb community and at least one of the two must be a judge. The other two members shall be elected by the deputies of the Assembly holding reserved or guaranteed seats for other Communities and at least one of the two must be a judge. The way the Council members are elected in this way results in at least ten of the thirteen Council members being judges (seven elected by the other judges and three elected by parliament). The way the members of the Council are appointed, and especially the composition that also includes persons other than judges, indicate that it is a special organ of the state.

The procedure for the election of members of the Council is extensive and follows a two-pronged approach, differently for judges (judicial procedure) and differently for persons appointed by the parliament (parliamentary procedure). Detailed rules for the election of the Council's members are set out in subconstitutional acts<sup>13</sup>. The judicial procedure begins three months before

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<sup>12</sup> The Constitution of the Republic of Kosovo has created a modern legal framework for the protection of national minorities by, inter alia, ensuring the representation of national minorities in: the Parliament, the Government, the Supreme Court, the Courts of Appeal, the Constitutional Court, the Central Electoral Commission, the ombudsman institution, as well as in local self-government bodies. More extensively on this issue in: E. Bujwid-Kurek, *Status instytucjonalny i polityczny mniejszości serbskiej w Kosowie*, "Wschodnioznawstwo" 2015, no. 1, pp. 287–303; R. Rajczyk, *Prawno-instytucjonalny wymiar podmiotowości politycznej mniejszości etnicznych w Republice Kosowa*, "Studia Politicae Universitatis Silesiensis" 2017, t. 18, pp. 61–73; K. Nowak, *Konstytucja Republiki Kosowa wobec problemu mniejszości narodowych*, [in:] *Nowe wyzwania i rozwiązania w europejskim systemie ochrony praw człowieka*, eds. J. Jaskiernia, K. Spryszak, Toruń 2018, pp. 604–616; N. Çeku, H. Xhemajli, *Constitutional principles and their impact on the establishing of constitutional order and rule of law in Kosovo*, "Zbornik radova Pravnog fakulteta u Splitu" 2020, no. 4, pp. 1084–1087.

<sup>13</sup> Law no. 06/L-055 on Kosovo Judicial Council, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18335> (20.06.2021); Regulation of the Judicial Council of Kosovo (No. 09/2019)

the end of the term of office of a given judge. In this procedure, candidates for the Council can be judges with a permanent mandate<sup>14</sup>, who possess the necessary qualifications and experience. Candidates should not have any disciplinary record within the last three years and must not have been convicted of a criminal offence. Generally, Presidents of the Courts may not stand for election as a member of the Council unless they resign from their position within three days of the announcement of the recruitment to the Council. Judicial Council shall initiate the procedure for the election of a member three months before the expiry of the term of office of the member concerned or three months before the retirement of the member concerned. In other cases causing the expiry of the term of office of a member of the Council (e.g. death, resignation), the Council shall initiate the procedure for the election within 15 days from the day on which the position of the Council member was actually vacated. A committee consisting of three members of the Council oversees the election process, including evaluating the candidates in terms of formalities. The judges vote for the candidates in the respective categories of voters, that is, the judges of the Supreme Court vote for the candidates from among the judges of the Supreme Court, the judges of the Court of Appeals for the judges of that court, and the judges of the basic courts for the judges from among the basic judges. The election of a candidate for a member of the Council shall be by secret ballot. The candidate who receives the largest number of votes obtains a mandate as a member of the Council. If two or more candidates receive an equal number of votes, a second round of voting is held from among the candidates who received the most votes. If in the sec-

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on the procedure and criteria for the election of members of the Council of the Republic of Kosovo by members of the judiciary, [https://www.gjyqesori-rks.org/wp-content/uploads/lgs/92188\\_Rregullore\\_Nr\\_09\\_2019\\_per\\_Proceduren\\_dhe\\_Kriteret\\_Zgjedhjes\\_%20Anetareve\\_te\\_KGJK-se\\_nga\\_Gjyqesori.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/lgs/92188_Rregullore_Nr_09_2019_per_Proceduren_dhe_Kriteret_Zgjedhjes_%20Anetareve_te_KGJK-se_nga_Gjyqesori.pdf) (20.06.2021).

<sup>14</sup> The Kosovo Constitution provides for an initial judicial mandate of 3 years. In case of re-election, the mandate of the judge is permanent and remains in force until the retirement age. It is worth noting at this point that the Venice Commission strongly recommends that ordinary judges be appointed permanently until retirement. Probationary periods for judges in office are problematic from the point of view of independence. See Venice Commission, Report on the Independence of the Judicial System Part I: The Independence of Judges, March 16, 2010, note 24, *supra*, §38, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)004-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)004-e.pdf) (21.06.2021).

ond round the candidates receive an equal number of votes, the election procedure shall be repeated.

The parliamentary procedure for the election of the members of the Council shall begin six months before the expiry of the term of office of the member concerned. In case of premature expiration of the term of office, the procedure shall start thirty days from the date of vacancy. According to the Law on the Judicial Council of Kosovo, the People's Assembly declares a vacancy for a member of the Judicial Council and a parliamentary committee determines the requirements for candidates. It can be assumed that this type of solution allows to set different requirements for each procedure of selection of Council members, since the Constitution in this regard is limited only to stating that each Council member should have appropriate qualifications and professional experience. The recruitment announcement may not be shorter than 15 days and not longer than 20 days. After the lapse of the recruitment announcement period, the committee shall verify the candidates formally and shall conduct interviews with each candidate meeting the competition requirements. The committee draws up a list of two candidates for one position. If in the first round the candidates proposed by the committee do not obtain a majority of votes of all the deputies of the Assembly present and voting, the candidate with the highest number of votes shall be deemed elected in the second round.

### **III.**

The term of office for Council members is five years. The Constitution does not mention the possibility of re-election, but the Judicial Council Law prohibits the re-election of the same person to the Council. The law provides for the prohibition of combining the position of a member of the Council with the position of a court president, prosecutor, judge with an initial judicial mandate, member of the government, mayor, member of the Municipal Assembly, with the mandate of a deputy of the People's Assembly, with employment in the administration (in institutions established by the Constitution or laws), holding any function in a political party or foundation associated with a political party. The Chairman, Vice-Chairman and members of the Coun-



cil may not perform other paid public or professional duties, with the exception of teaching work in universities. The function of a member of the Judicial Council shall cease upon the expiration of the term of office, in the event of death, resignation, conviction of a criminal offence (except for offences committed by omission), termination of the status on which the appointment is based, incapacity to perform his/her duties for proven medical reasons, repeated absence from Council meetings (for more than three months) and in the event of reaching retirement age. Members of the Council shall be removed from office before the end of their term of office in the event that the Judicial Council has issued a disciplinary measure in the form of removal from office.

The legal status of Council members is distinguished by certain specificities. In principle, the mandate in this body is differentiated in that the Chairman of the Council, the Vice-Chairman, the Chairman of the Normative Affairs Committee, the Chairman of the Judicial Performance Evaluation Committee and the Chairman of the Judicial Administration have a mandate of a professional nature and, for the duration of these functions, the performance of their duties as judges is suspended. The law guarantees them a return to the performance of their duties as judges in the courts in which they worked before they took office in the Council. During their term of office, members of the Judicial Council cannot be promoted to a higher court and cannot assume the position of court president. An additional guarantee of independence for members of the Council who, prior to their appointment to the Council, were employed in the public administration or a publicly funded institution, is the right to return to employment to the position held prior to their appointment to the Council. Among the norms of fundamental importance for Council members is immunity. Members of the Council have substantive immunity (*non-liability privilege*) in that they are not subject to criminal or civil liability for opinions expressed in the performance of their functions. Judges who are members of the Council have in addition the immunity guaranteed by Art. 107 of the Constitution, which protects them from prosecution, civil litigation and removal from office for actions taken, decisions made and opinions expressed that fall within the scope of their duties as a judges.

The Kosovo Judicial Council is headed by a Chairman. The Law on the Council prescribes the election of a Chairman and a Vice-Chairman from among the members who are judges for a three-year term. The Council de-

liberates in meetings, which are headed by the Chairman. The Vice-Chairman shall have all the powers of the Chairman in the event of his absence or impediments to his office. Meetings of the Council shall be public and the agenda shall be made public at least 48 hours before the meeting. Acts and decisions of the Council shall be taken collectively. As a rule, decisions of the Council shall be taken by a simple majority of votes, and decisions at meetings of the Council may be taken if at least nine members attend the meeting. The results of the votes are not made public, but the Council's decisions are published on its website.

#### IV.

The analysis of the provisions of the Constitution allows us to assume two basic constitutional functions carried out by the Judicial Council. The first, which consists in ensuring the independence and impartiality of the judicial system. The second function entails making sure that the courts in Kosovo are independent, professional, impartial and reflect the ethnic diversity of Kosovo and respect the principles of gender equality. This function is carried out by the Council through its competences, which can be divided into several areas. In exercising its constitutionally defined functions, the Council is first and foremost endowed with competences concerning personnel matters of judges: it submits to the President nominations for judges<sup>15</sup>, decides on the organization of examinations for candidates for judges, decides on promotion and transfer of judges, decides on the number of judges, determines criteria for regular evaluation of judges, adopts the Code of Professional Ethics for members of the Council, judges, jurors and also the Code of Ethics for court administration employees, as well as supervises implementation of the principle of representation of national minorities in the judiciary. It should also be noted that the Council has the exclusive competence to conduct disciplinary proceedings against judges. The second area of competence

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<sup>15</sup> It should be noted that while the President appoints judges, he is bound by the proposal of the Council and the Constitution explicitly requires him to consider the Council's proposal. For this reason it can be assumed that the executive's influence on judicial nominations is symbolic.

concerns presenting candidates or appointing specific persons to particular positions in the judiciary. In this area of competence, the Council proposes to the President of the Republic a candidate for the President of the Supreme Court of the Republic of Kosovo, and also appoints and dismisses the President of the Court of Appeals and the presidents of the basic courts, as well as visiting judges. The third area of competence concerns the management of judicial administration and ensuring the smooth functioning of the courts. The Council is responsible for setting standards and guidelines for the training of judges, jurors and other judicial personnel. The Council prepares and oversees the budget for the judiciary, and approves annual reports on court operations and budgetary expenditures for the judiciary. In addition to its budgetary powers, the Council also has a number of functions in the area of managing the organization of the courts (e.g. setting court fees, managing the central criminal register).

The Judicial Council exercises these powers through an appropriately organized internal structure. The law provides for five standing committees: 1) Committee on Normative Affairs, 2) Judicial Performance Evaluation Committee, 3) Judicial Administration Committee, 4) Budget, Finance and Personnel Committee, 5) Training Committee. The Council's advisory body on matters related to court administration is the Assembly of Court Presidents and Visiting Judges. The Assembly consists of: President of the Supreme Court, President of the Court of Appeals, Presidents of Basic Courts and visiting judges from each basic court. The proper functioning of the Council in organizational terms is ensured by the Secretariat of the Council.

## V.

To date, the model relationship of the judiciary with the other authorities, and in particular with the executive, has not been clearly defined. In Kosovo, in order to limit the influence of the executive power on the appointment of judges, it was decided to create a council, which is a body with broad powers. Taking into account – created by Nuno Garoupa and Tom Ginsburg – the index of powers/competences (“Power Index”), the Kosovo Council obtains the highest score (Judicial Council Power Index-3), because it has an influence

both on the appointment of judges, transfer of judges and conducting disciplinary proceedings against them, as well as exercising powers related to the functioning of courts and judicial administration<sup>16</sup>. At the same time, it should be remembered that Kosovo still does not have well-established mechanisms of legal culture and traditions that are just beginning to take shape. Therefore, there is a need for normative solutions that will be an effective guarantee of the independence of the Council and the entire judiciary. A characteristic solution for the Kosovo Council, resulting from the national structure of the republic, is the inclusion in the composition of the Council of representatives of national minorities – but this principle applies only to the members of the Council appointed by the parliament.

Referring to international standards for the appointment of members of judicial councils and the functioning of the councils, I will adopt several principles<sup>17</sup>. First, not less than half of the members of such councils should be judges elected by their own circles at all levels of the judicial system with respect for pluralism inside the judiciary. Second, political representation should be minimized. Third, the judiciary should have a significant say in the selection of members of the judicial council. Fourth, members of the judicial councils who are not judges should not be appointed by the executive branch. Fifth, the powers of the judicial council regarding the procedures for appointing judges must be precisely defined in law. In my opinion, Kosovo's constitutional ar-

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<sup>16</sup> N. Garoupa, T. Ginsburg, *op.cit.*, p. 124.

<sup>17</sup> These standards are set forth in, among others, Universal Charter of the Judge, approved by the Central Council of the International Association of Judges in Taipei, Taiwan Province of China on November 17, 1999 and updated in Santiago on November 14, 2017, Council of Europe, European Charter on the Statute of Judges, 1998, art. 1.3, Council of Europe Committee of Ministers, recommendation no. R (94) 12 on the independence, efficiency and role of judges, 1994, principle 1, §2 (c), Consultative Council of European Judges, opinion no. 10 (2007) on the council for the judiciary at the service of society, November 23, 2007, Magna Carta of Judges (Fundamental Principles), adopted at the 11<sup>th</sup> plenary meeting of the Consultative Council of European Judges, held in Strasbourg, France, from 17 to 19 November 2010, §13, Council of Europe Committee of Ministers, recommendation CM/Rec (2010) 12 on judges: independence, efficiency and responsibilities, 2010, Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators: towards strengthening access to justice and the rule of law in the Americas" (December 2013), pp. 240–248. See H. Suchocka, *About European standards concerning the appointment of judges of common courts (based on the experience of the Venice Commission)*, "Polish-Italian Studies in Toruń" 2018, no. XIV, *passim*.

rangements in this regard meet international standards<sup>18</sup>. Also, with regard to the person of the chairman and vice-chairman, the solutions adopted in Kosovo meet the recommendations of the Consultative Council of European Judges, which emphasize that this person should be impartial and without ties to political parties. The Consultative Council of European Judges accepts two models for selecting the chairperson of the council, either the president of the Supreme Court *ex officio* or the council itself from among its members who are judges, as is the case in Kosovo.

One of the main problems related to the creation of each judicial council is its composition and the procedure for selecting its members, which would ensure its autonomy and independence from other segments of power. First of all, the manner in which representatives of the judiciary are selected largely determines the independence of the council, which directly translates into the proper performance of the tasks entrusted to it by the Constitution. In Kosovo, the majority of the Council's members (76%) are judges, and more than half of the Council's composition is made up of judges elected by the judges of the primary courts, the Court of Appeal and the Supreme Court. The Council has in its composition such a high predominance of members-judges over those appointed by the People's Assembly – that it can be treated as the highest representation of the judiciary, acting primarily within the scope of issues of judicial power.

The structure adopted in the Constitution of the Republic of Kosovo has given the Judicial Council of Kosovo the special character of a body situated between the legislative, executive and judicial powers, functionally linked to the administration of justice and representation of the judiciary, having a definite predominance in the composition of this body. Given the institutional nature of the Council, it cannot be assumed that its composition reflects the separation of powers in the republic. This is due to the fact that the bodies creating the composition of the Council are the judicial community and the parliament.

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<sup>18</sup> The implementation of these standards is particularly relevant in the context of Kosovo's aspirations to join the Council of Europe. See K. Istrefi, *Kosovo's Quest for Council of Europe Membership*, "Review of Central and East European Law" 2018, vol. 43, pp. 262–269.

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