

Krystian Nowak

Uniwersytet Rzeszowski

ORCID: 0000-0003-4853-1591

LEGAL STATUS OF JUDGES IN THE REPUBLIC OF KOSOVO. THEORETICAL AND LEGAL ANALYSIS

Introduction

The legal status of judges is a very important issue from the point of view of the standards of a democratic state and because of the role played by the judiciary in such a state. The purpose of this article is to examine the legal status of judges in Kosovo by subjecting to theoretical and legal analysis the procedure of their appointment and dismissal, the qualifications required for candidates for judicial positions, as well as the guarantees of their independent status. The analysis is based on the 2008 Constitution of the Republic of Kosovo, laws and regulations of the Kosovo Judicial Council. Due to the limitations arising from the narrow research area and the volume of this small study, it does not include references to the constitutional practice, judicial decisions and current problems of the judiciary in Kosovo, as they do not affect the status of judges and are not its subject matter.

Thirteen years after the adoption of the Kosovo Declaration of Independence, the issue of international recognition of Kosovo remains unresolved. The issue of recognition of Kosovo's independence has quite visibly divided the international community. Nevertheless, the foundation for the creation of the Republic of Kosovo was laid by the international community, which created the legal framework for the future statehood of Kosovo. The essential document that created this legal framework for Kosovo was the Comprehensive Proposal for the Kosovo Status Settlement (the so-called Ahtisaari Plan)¹, which laid the foundations for the creation of a democratic state². Currently, it is primarily the Constitution of the Republic of Kosovo, which was passed by parliament on 8 April 2008. The Basic Law has 162 articles and includes a Preamble and fourteen chapters. The first chapters contain

¹ Comprehensive Proposal For the Kosovo Status Settlement, <http://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf> (15.08.2021).

² See: A. Gashi, B. Musliu, *Justice system reform in Kosovo*, Prishtina 2013, p. 6 et seq.

regulations on the constitutional principles (Chapter I), the status of the individual in the state (Chapter II) and national minorities (Chapter III). In Chapter IV we find regulations concerning the legislative power. The next two chapters concern the executive power – the President of the Republic and the government. Chapters VII and VIII regulate the organization and functioning of the judiciary, the prosecutor's office and the Constitutional Court. On the basis of the subject criterion, the issues of economic relations (Chapter IX) and the security sector (Chapter XI) have been distinguished. The issues of local self-government are regulated in Chapter X. Chapter XII regulates the organization and functioning of the People's Representative, the Auditor General of Kosovo, the Central Election Commission and the Central Bank of Kosovo. Chapters XIII and XIV contain transitional provisions. It is also worth noting that the Constitution has already seen 26 amendments, the penultimate of which concerned the modification of the procedure for the election of members of the Kosovo Judicial Council.

The constitutional principles contained in the Constitution of Kosovo constitute a classic catalog of fundamental rules of modern democratic states. The constitutional system of Kosovo is based on several fundamental principles: 1) a republican form of government; 2) state sovereignty and independence; 3) a democratic state; 4) division, checks and balances of power; 5) a secular state, and 6) equality before the law and protection of the rights of minority groups³. A catalog of these principles indicates that Kosovo's constitutional system has its origins in democratic rules for the exercise of state power⁴.

Procedure for appointing judges

The principle of separation of powers, checks and balances between the legislative, executive and judiciary is the key to determining the constitutional position of the judiciary⁵. This principle is defined in Article 4(1) of the Constitution, where it is simultaneously combined with the principle of democracy and republican form of state. Legislative power is exercised by the Assembly of the Republic of Kosovo. The executive power is dualistic, as it is exercised by the President and the Government of the Republic of Kosovo. Judicial power, on the other hand, is exercised by the courts. According to the provisions of the Basic Law, the Constitutional Court of the Republic of Kosovo, which is an independent body for the protection of the constitutionality of the law and at the same time responsible for the final interpretation of the Constitution, is not included in the judiciary.

³ K. Nowak, *Konstytucja Republiki Kosowa. Wstęp i tłumaczenie*, Rzeszów 2008, p. 26.

⁴ *Ibidem*, p. 27.

⁵ See: N. Çeku, H. Xhemajli, *Constitutional principles and their impact on the establishing of the constitutional order and rule of law in Kosovo*, "Zbornik radova Pravnog fakulteta u Splitu" 2020, no. 4, p. 1081 et seq.

The provisions of the Constitution do not indicate in detail the systemic structure of the judiciary, being limited to highlighting the systemic position of the Supreme Court, which is the highest judicial body in Kosovo. Its President is elected and dismissed by the President of the Republic from among the judges of the Supreme Court on the proposal of the Kosovo Judicial Council for a seven-year term. The detailed system of the court system, its jurisdiction, organization is left to be regulated in the form of a law. An analysis of the provisions of the Law on Courts allows us to conclude that the court system has a three-tier nature (Basic Courts, Court of Appeals and Supreme Court).

A characteristic constitutional solution resulting from the nationality structure of Kosovo is the guarantee of representation of national minorities in various state institutions. The Constitution of Kosovo has original solutions concerning national minorities⁶. These solutions include political rights aimed at creating real participation of minority representatives in the exercise of power (e.g. 20 seats in the 20-seat Kosovo parliament are guaranteed to national minorities, at least two ministers are representatives of national minorities, three members of the Central Electoral Commission are elected by members of parliament whose seats are guaranteed to national minorities). This type of solution was also applied to the judicial authorities. According to Article 104(2) of the Basic Law, the structure of the judiciary is to reflect the ethnic diversity of Kosovo, and the composition of the courts is to reflect the ethnic structure in the given area of jurisdiction of the individual courts (Article 104(3) of the Constitution). Therefore, the Constitution guarantees that at least 15% of the judges of the Supreme Court (but not less than three judges) are to be drawn from the minority communities of Kosovo (Article 103(3) of the Constitution), at least 15% of the judges of the courts having the powers of courts of appeals, (but not less than two judges) are to be drawn from the minority communities of Kosovo (Article 103(6) of the Constitution)⁷. It is guaranteed that in the composition of the Kosovo Judicial Council two members of the council are elected by members of parliament holding seats reserved or guaranteed to the Serb-Kosovo community, and two members of the council are elected by members of parliament holding seats reserved or guaranteed to other communities. In contrast, candidates for judges that are reserved for members of Kosovo's minority communities can only be recommended by a majority of Council members who have been elected by Assembly deputies holding seats reserved or guaranteed to members of Kosovo's

⁶ More extensively on this issue in: E. Bujwid-Kurek, *Status instytucjonalny i polityczny mniejszości serbskiej w Kosowie*, "Wschodnioznawstwo" 2015, nr 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.

⁷ In practice, there have been serious problems in implementing these guarantees. See: A. Imami, *Sfidat e reformimit të sistemit gjyqësor në Republikën e Kosovës*, "Centrum" 2017, no. 8, pp. 35–36.

minority communities. Only if this group of Council members fails to propose a candidate for a judicial position at two consecutive sessions of the Council, then any member of the Council may put forward a candidate for that position. A further guarantee is contained in Article 108(10) of the Constitution according to which candidates for judges of basic courts whose jurisdiction covers only the territory of one or two local government districts in which the Serb-Kosovo community constitutes the majority of the population may be proposed by two members of the Council who have been elected by members of parliament holding seats reserved or guaranteed to the Serb-Kosovo community, acting jointly and unanimously. If these two members fail to propose a candidate for a judicial position at two consecutive Council meetings, any member of the Council may put forward a candidate for that position. Such arrangements are intended to ensure that the structure of the judiciary reflects Kosovo's ethnic diversity. Similar solutions have been adopted by the Kosovan legislature with respect to the executive, legislative and self-governing bodies, as well as with respect to the composition of the Constitutional Court – the decision to recommend two candidates for Constitutional Court judges to the President of the Republic is taken in the so-called double majority procedure, i.e. by a majority vote of MPs present and voting, after having received the prior consent of a majority of MPs holding seats reserved for or guaranteed to representatives of national minorities⁸.

The essential procedure for the appointment of judges is set out in Article 104(1) of the Constitution, according to which judges are appointed by the President of the Republic upon the proposal of the Kosovo Judicial Council. It must be assumed that the President is bound by the proposal of the Judicial Council and cannot refuse to appoint the proposed candidate for judge by the Council. According to Enver Hasani, the President cannot assess the legitimacy of such a proposal, as this would constitute a direct interference with the independence of the judiciary and the role of the Judicial Council as a guarantor of judicial independence⁹.

In Kosovo, the Judicial Council was created based on the Southern European organizational model of judicial councils. This is due to the fact that it has been equipped with broad powers to protect judicial independence – powers to appoint, promote and transfer judges and powers to manage the judicial administration. In addition, the Council itself also proposes candidates or appoints specific persons to particular positions in the judiciary. Taking into account the composition of the Council, it should be noted that the Council is of mixed nature, as it is composed of persons appointed by the Parliament and by the judges from all three folds of the Kosovo judiciary. It is pleasing to note that in the 13-member council, the majority of its members are judges and there are at least ten of them (seven elected by the

⁸ K. Nowak, *The Constitutional Court of Kosovo – Introductory Remarks*, “Przegląd Prawa Konstytucyjnego” 2020, nr 6, p. 506.

⁹ E. Hasani, comment on art. 84 [in:] E. Hasani, I. Čukalović, *Komentar: Kushtetuta e Republikës së Kosovës*, Prishtinë 2013, p. 406.

other judges and three elected by the parliament). Among the council's constitutional duties there is the obligation to consult with the courts before submitting a request for judicial nominations in order to ensure that the composition of courts reflects the ethnic composition of the area of jurisdiction.

With regard to the issue of judicial appointments, Kosovo's Basic Law adopts a specific solution of accepting an initial judicial mandate that lasts three years. Only the re-appointment to the office of a judge – under an identical procedure, i.e. by the President of the Republic on the proposal of the Kosovo Judicial Council – results in a permanent judicial mandate, which is valid until retirement age. It can be assumed that this solution is intended as a kind of method for appointing the best candidates to the office of judge, and that the three-year initial mandate is intended to allow the National Judicial Council to assess its suitability to fulfill the duties of a judge. However, this solution raises a number of doubts in terms of the principle of irremovability and independence of judges. It is quite obvious that the renewal of a judge's mandate must make the judge dependent on the decision-makers renewing his or her appointment. It is satisfactory that the decisive role of the Judicial Council in determining whether a judge should receive a permanent appointment is constitutionally guaranteed. Also, the criteria and procedures for judicial reappointment are determined solely by the Council – with the Constitution indicating that the criteria and procedures used for reappointment of judges with initial appointments may differ from the constitutional procedure for removal of judges with permanent appointments. This situation undoubtedly affects the position of the initial mandate judge. It could be assumed that the adoption of the institution of the initial mandate of judges is modelled on the Serbian solutions. The current Serbian Constitution in Articles 146 and 147 also provides for an initial judicial mandate, which lasts three years¹⁰. However, the origins of the appointment of judges for renewable terms can also be traced to the Socialist Federal Republic of Yugoslavia, which provided for the appointment of judges by the parliaments of the respective republics. It is worth adding that the Venice Commission in its opinions criticises this solution and expressly recommends that ordinary judges be appointed permanently until retirement. Probationary periods for judges in office are problematic from the point of view of independence¹¹. It is also significant that

¹⁰ A similar solution exists in Azerbaijan (Article 96 of the Law on Courts and Judges) and Finland, where in exceptional situations specified by law the head of state may appoint judges for a fixed period. Also, the 1990 Constitution of Croatia provided for a five-year period of appointment for judges who took office for the first time. Similarly, the 1992 Constitution of the Slovak Republic, as in effect until 1 July 2001, provided for the election of judges by the parliament at the request of the government for four years, with the election thereafter made permanent by the same procedure.

¹¹ Venice Commission, Report on the Independence of the Judicial System Part I: The Independence of Judges, 16 March 2010, note 24, *supra*, para. 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) (28.08.2021); Venice Commission CDL-AD(2007)028, Report on Judicial Appointments - Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16–17 March 2007), para. 40–43, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2007\)028.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2007)028.aspx)

there is no control mechanism in a situation where the Judicial Council has passed a so-called negative resolution, refusing to present a particular candidate to the President with a request for reappointment to a permanent judicial seat. The Council merely provides such a person with a reasoned decision. The law does not provide for any means of appeal against the Council's resolution itself.

When a judge is first appointed, he or she undergoes initial training, which is organized by the Academy of Justice, which is the institution responsible for the professional development of judges and prosecutors. The bodies of the Academy are: Managing Board, Program Council and Executive Director. The Managing Board has broad powers, including creative powers in the form of appointing the members of the Program Council and the Executive Director. The composition of the Managing Board is mixed, as it includes three groups of members. The first group consists of virile members, i.e. persons included in it by virtue of their function, whose term of office on the Managing Board is closely related to the term of office. These are: President of the Supreme Court and the Chief State Prosecutor. The second group of members are representatives of the Judicial Council of Kosovo, which appoints to this body one judge of the Basic Court, one judge of the Court of Appeals and one member of the Secretariat of the Judicial Council of Kosovo. The third group consists of representatives of the Kosovo Prosecution Council, which appoints to this body one prosecutor from the Basic Prosecution Office, one prosecutor from the Appellate Prosecution Office and one member from the Secretariat of the Kosovo Prosecution Council. The organizational structure of the Council formed in this way is intended to ensure a comprehensive and adequate representation of the judicial bodies and to guarantee the independence and impartiality of the Academy in the best interest of the judicial and prosecutorial system of the country. Initial training for judges lasts twelve months.

The basic requirements for candidates for the positions of judges include those of a formal nature, such as having citizenship of the Republic of Kosovo, having no criminal record (with the exception of the criminal offenses committed by negligence), having a law degree, having passed the Bar Examination and the Judicial Examination, and having at least three years of legal professional experience, as well as qualities of a personal nature, such as integrity and high professional reputation. In addition, there are number of additional specialized requirements for serving as a judge in the various divisions of the basic courts. A candidate to serve as a basic court judge in the Serious Crimes Division and the Juvenile Division should have at least three years of experience as a criminal law judge. A candidate to serve as a judge in the Administrative Affairs Division or the Business Division of the basic court should have at least six years of experience as a judge in administrative and

(28.08.2021); Venice Commission CDL(2005)066, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in "the former Yugoslav Republic of Macedonia", para. 23; 29–30, [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2005\)066-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2005)066-e) (28.08.2021).

business matters. A candidate to serve as a judge in the Special Division should meet the qualifications to serve as a judge in the Serious Crimes Division and the Juvenile Division and have a positive performance evaluation. Additionally, a candidate for the position of judge in the Court of Appeals should have at least five years of judicial experience, a candidate for the position of judge in the Supreme Court should have at least eight years of judicial experience.

The President of the Supreme Court is elected by the President of the Republic from among the judges of the Supreme Court on the proposal of the Kosovo Judicial Council for a seven-year term. The presidents of other courts, namely the Court of Appeals and the Basic Courts, are elected by the Kosovo Judicial Council. In turn, according to Article 114 of the Constitution, the judges of the Constitutional Court are appointed by the President of the Republic upon the proposal of the Assembly. The term of office of the judges is 9 years, without the possibility of re-election. A citizen of the Republic distinguished by a high level of moral sense, with full legal capacity, who is an outstanding lawyer with an excellent professional reputation, who has at least ten years of professional experience, especially in the field of public and constitutional law, as evidenced by his/her practice as a judge, prosecutor, lawyer, civil servant, academic teacher or in any other position related to legal activities, and who has not been convicted of any crime, may be appointed as a judge of the Constitutional Court. The President and Vice President of the Constitutional Court shall be elected by secret ballot by the majority of judges of the Court for a term of 3 years¹².

Guarantees for the status of judges

The status of a judge is clearly delineated in the provisions of the Basic Law, which has equipped judges with guarantees of this status in the form of irremovability, non-transferability, incompatibility and immunity.

Under the provisions of the Constitution, judges in the exercise of their functions should be independent and impartial. The principle of independence means the independence of a judge from all factors that could, in the process of exercising the administration of justice, interfere with the content of his/her decisions. Judges are also supposed to be impartial in relation to the participants in judicial proceedings. Under Article 102(3) of the Constitution, courts adjudicate on the basis of the Constitution and the law in force, thereby binding the judge to the effect that any decisions made by him in his independent adjudication must be in accordance with the Constitution and laws. Thus, applicable law determines the scope of influence of judicial independence.

¹² See: N. Mansfield, *Creating A Constitutional Court: Lessons From Kosovo*, East-West Management Institute Occasional Paper Series, Spring 2013, p. 6.

Judges can only be removed from office if they are found guilty of a serious crime or serious misconduct. The dismissal of a judge is carried out in a manner analogous to the procedure of appointment to office, i.e. the act of dismissal is carried out by the President of the Republic upon the proposal of the Judicial Council. In addition, the Constitution guarantees a judge an appeal to the Supreme Court against the decision of the President of the Republic to remove him from office. In turn, judges of the Constitutional Court may be dismissed by the President of the Republic at the request of 2/3 of the judges of the Constitutional Court only in the event of committing a serious crime or serious neglect of duty. It is worth noting that the legislator expanded the catalog of grounds for dismissal of Constitutional Court judges, which may raise constitutional concerns¹³.

The possible transfer of a judge without his/her consent will result in a violation of the constitutionally guaranteed standard of judge independence. Therefore, the Kosovo Constitution provides for only two possibilities to transfer a judge against his or her will – only to ensure the effectiveness of the judiciary and in the case of disciplinary measures. The transfer of a judge for up to 30 days is decided by the Chairman of the Judicial Council, in case of transfer for more than 30 days the Kosovo Judicial Council takes the decision. The proposal of the President of the Judicial Council for the transfer of a judge must contain a justification.

Judicial immunity is necessary to ensure the judiciary's role in the mechanism of checks and balances of powers, and thus the proper performance of its task of administering justice. Judges of all courts in the Republic of Kosovo have essentially identical formal and substantive immunity. Formal immunity consists in the fact that judges are – according to the provisions of the Constitution – protected from judicial prosecution and civil litigation. The essence of substantive immunity, on the other hand, boils down to the fact that judges cannot be removed from office for actions taken, decisions made and opinions expressed that fall within the scope of their duties as a judge or judge of the Constitutional Court.

Another instrument designed to ensure judicial independence is the institution of incompatibility. The principle of *incompatibilitas* is a development of the so-called judicial impartiality. The Basic Law provides that a judge may not perform any function outside the administration of justice, may not engage in any political activity or engage in any other activity specified by statute. Judges may not accept duties or undertake any functions that would in any way conflict with the principles of independence and impartiality of the judicial office. The legislature has extended this principle to prohibiting any action that would otherwise be incompatible with the duties of a judge or the provisions of the Kosovo Code of Ethics and Professional Conduct of Judges¹⁴. The

¹³ Art. 9 (1) Law on the Constitutional Court of the Republic of Kosovo (no. 03/L-121).

¹⁴ See: A. Shabani-Rama, *Kodi i etikës gjyqësore si faktor i domosdoshëm për rritjen e besimit të publikut në sistemin gjyqësorë*, “Justicia. Revistë shkencore juridike e kandidatëve të Programit të Trajnimit Fillestar 2013/2015 në Institutin Gjyqësor të Kosovës” 2015, no. 5, p. 128 et seq.

introduction of the above prohibitions stems from the need to ensure the separation of the judicial power from the legislative and executive powers.

A judge of the Constitutional Court may not simultaneously hold paid employment or any other public office, with the exception of a lecturer in legal sciences at accredited universities. In addition, a judge may not be: a member of political parties or other political movements or organizations; a member of the board of directors of public companies, enterprises and non-governmental organizations; or a member of a trade union.

Article 35 of the Law on Courts mandates that judges be provided with remuneration commensurate with the dignity of their office and the scope of their duties. Remuneration shapes the material status of a judge, which must be determined in such a way as to ensure freedom to perform judicial duties. The judicial remuneration system is regulated as follows: The President of the Supreme Court is paid no less than the Prime Minister of the Republic of Kosovo, judges of the Supreme Court are paid 90% of the salary of the President of the Supreme Court, the President of the Court of Appeals is paid the equivalent of the salary of a judge of the Supreme Court, other judges of the Court of Appeals are paid 90% of the salary of the President of the Court of Appeals, the President of the Basic Court is paid the equivalent of the salary of a judge of the Court of Appeals, Basic Court judges are paid 80% of the salary of the President of the Basic Court. In turn, the salary of judges of the Constitutional Court is 1.3 times the salary of judges of the Supreme Court.

Judges are subject to disciplinary responsibility under the rules set forth in the Act on Disciplinary Responsibility of Judges and Prosecutors. The subject matter of disciplinary liability encompasses disciplinary offences that a judge commits under the Act if he or she is convicted of an offence, violates the law or breaches official duties. The legislature enumerates a catalog of acts causing a judge to violate his or her official duties¹⁵. Disciplinary proceedings are conducted by the Kosovo

¹⁵ Article 5(2) Law on disciplinary liability of judges and prosecutors: „A violation of duties of a judge, pursuant to this Law, shall include the following actions, if committed by a judge intentionally or with gross negligence:

2.1. performs official duties disrespecting the principle of judicial independence and impartiality by acting with prejudice or bias based on race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status of a party to the proceedings;

2.2. does not accord the treatment required by Law to the parties to the proceedings, their representatives, witnesses and other participants to the proceedings;

2.3. communicates to unauthorized persons non-public information obtained in the course of his or her official duty;

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

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

2.6. does not report any case of potential disqualification from proceedings where required by Law;

2.7. in continuity fails to timely perform official duties required by Law;

Judicial Council, which adjudicates by a nine-member panel, with a simple majority decision. Disciplinary sanctions are written non-public reprimand, written public reprimand, temporary salary reduction of up to fifty percent (50%) for up to one year, temporary or permanent transfer to a lower court, and a request for dismissal. The sanction of a request to the President of the Republic for removal from office of a judge may be ordered only if the judge has been convicted of a serious criminal offence, a intentional violation of Law, or a serious neglect of duties. A judge may appeal directly to the Supreme Court against the decision of the Judicial Council. The complaint against the decision of the Council has a suspensive effect and suspends the execution of the decision until the complaint is reviewed. The complaint shall be reviewed, within 30 days, by a panel of three judges appointed by the President of the Supreme Court. The decision of the Supreme Court shall be final.

Conclusions

The analysis of Kosovo's constitutional solutions leads to the conclusion that the adopted model of separation of powers does not rely solely on the qualification of individual bodies to the various segments of government. The Kosovo Basic Law also provides for mechanisms of mutual interaction, which serve mutual control and balance of legislative, executive and judicial powers. There is no doubt that the principle of balance of powers is an important element of the principle of

2.8. engages in any ex-parte communication concerning the cases;

2.9. interferes with the actions of other judges and prosecutors with the intent to influence their activities and decisions in a manner prohibited by Law;

2.10. makes public statements during ongoing proceedings which may, or appear to adversely affect fair trial and equal treatment of the parties to the proceedings or which could harm the credibility and reputation of the court, or otherwise communicates to the public information on the composition of court panels, evidences and decisions related to any cases, unless the disclosure of such information is required by Law;

2.11. performs any function, duty or service, assumes any responsibility or engages in any activity, is a candidate for, or is elected to any function or duty which is incompatible with the duties of a judge under the Constitution, the Law on Courts, and the Code of Ethics and Professional Conduct of Judges;

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

2.13. provides false or misleading information in matters related to disciplinary proceedings and court related administrative procedures, including promotion and transfers;

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

2.15. engages in behaviour while on duty or in private which harms the reputation of the court or which may harm public confidence in the impartiality or credibility of the judiciary;

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

separation. At the same time, the mechanism of checks and balances, by its nature, presupposes the possibility of some interference in the scope of judicial power, but it cannot touch the judicial independence in the exercise of office.

The Kosovo legislature left to the parliament to regulate the issues of the structure of the judiciary. The executive has little influence over the process of judicial appointments, as proposals for judicial nominations are submitted by the Judicial Council after undergoing a procedure for judicial candidates determined by the Council regulation. The constitutional position of the Judicial Council created by the Basic Law makes it a special body of the state, which is mixed in terms of its composition, while the vast majority of its members are judges elected by the other judges.

The status of a judge in Kosovo finds a normative basis in the Constitution, the provisions of which give judges a guarantee of independence. Doubts from the point of view of the principle of judicial independence remain with regard to the institution of the initial judicial mandate. The lack of remedies in a situation where the Judicial Council has passed a resolution refusing to present a particular candidate to the President with a request for reappointment to a permanent judicial mandate should be strongly criticised. Kosovo, which is not a state with a stable democracy and well-established democratic customs, should avoid this type of solution. An additional element negatively affecting the judiciary and the status of judges are the still unformed mechanisms of legal culture¹⁶. This is why real and effective guarantees of judicial independence are so important. The solutions for ensuring the representation of national minorities in the judiciary, which stem from the nationality structure of the republic, and the history of the region, and whose foundations were outlined in the Ahtisaari Plan, should also be emphasized.

Bibliography

- Asta G., *Il processo di state-building in Kosovo: una rilettura a venti anni dal suo avvio*, "Ordine internazionale e diritti umani" 2020, no 1.
- Bujwid-Kurek E., *Status instytucjonalny i polityczny mniejszości serbskiej w Kosowie*, "Wschodnioznawstwo" 2015, nr 1.
- Çeku N., Xhemajli H., *Constitutional principles and their impact on the establishing of the constitutional order and rule of law in Kosovo*, "Zbornik radova Pravnog fakulteta u Splitu" 2020, no. 4.
- Gashi A., Musliu B., *Justice system reform in Kosovo*, Prishtina 2013.
- Hasani E., *Basic Features of the Constitutional System in Kosovo* [in:] *Rule of Law, Human Rights and Judicial Control of Power. Some Reflections from National and International Law*, eds. R. Arnold, J.I. Martínez-Estay, Springer International Publishing AG 2017.
- Hasani E., comment on art. 84 [in:] E. Hasani, I. Čukalović, *Komentar: Kushtetuta e Republikës së Kosovës*, Prishtinë 2013.

¹⁶ See: G. Asta, *Il processo di state-building in Kosovo: una rilettura a venti anni dal suo avvio*, "Ordine internazionale e diritti umani" 2020, no 1, p. 119 et seq.

- Imami A., *Sfidat e reformimit të sistemit gjyqësor në Republikën e Kosovës*, "Centrum" 2017, no. 8.
- Mansfield N., *Creating A Constitutional Court: Lessons From Kosovo*, East-West Management Institute Occasional Paper Series, Spring 2013.
- Nowak K., *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.
- Nowak K., *Konstytucja Republiki Kosowa. Wstęp i tłumaczenie*, Rzeszów 2008.
- Rajczyk R., *Prawno-instytucjonalny wymiar podmiotowości politycznej mniejszości etnicznych w Republice Kosowa*, "Studia Politicae Universitatis Silesiensis" 2017, vol. 18.
- Shabani-Rama A., *Kodi i etikës gjyqësore si faktor i domosdoshëm për rritjen e besimit të publikut në sistemin gjyqësorë*, "Justicia. Revistë shkencore juridike e kandidatëve të Programit të Trajnimit Fillestar 2013/2015 në Institutin Gjyqësor të Kosovës" 2015, no. 5.

Summary

The status of a judge is a very important issue from the point of view of the standards of a democratic state and because of the role that judges play in the administration of justice. This article attempts to analyze the legal status of judges in the Republic of Kosovo by subjecting constitutional guarantees of judicial independence to theoretical and legal analysis. Indeed, the independent status of a judge is the minimum standard of legal protection that the state should provide to citizens. This study made it possible to formulate a statement that the mechanism of checks and balances of powers formed in the Constitution of Kosovo, which by its nature implies the possibility of some interference in the scope of judicial power, but it cannot touch the independence of judges in the exercise of their office. Some solutions in the Kosovo legal order that are unsatisfactory from the point of view of European standards were also pointed out.

Keywords: judge, judicial independence, judicial council, judicial power, Kosovo

STATUS PRAWNY SĘDZIÓW W REPUBLICE KOSOWA. ANALIZA TEORETYCZNOPRAWNA

Streszczenie

Status sędziego jest bardzo istotnym zagadnieniem z punktu widzenia standardów państwa demokratycznego oraz z uwagi na rolę, jaką sędziowie pełnią w sprawowaniu wymiaru sprawiedliwości. Niniejszy artykuł stanowi próbę analizy statusu prawnego sędziów w Republice Kosowa poprzez poddanie analizie teoretycznoprawnej konstytucyjnych gwarancji niezależności sędziowskiej. Niezawisły status sędziego jest bowiem minimalnym standardem ochrony prawnej, jaki państwo powinno zapewniać obywatelom. Badanie to pozwoliło sformułować wniosek, iż mechanizm kontroli i równowagi władz ukształtowany w Konstytucji Kosowa, który ze swej natury zakłada możliwości pewnej ingerencji w zakres władzy sądowniczej, nie może dotyczyć niezależności sędziowskiej w zakresie sprawowania urzędu. Wskazano również pewne rozwiązania obowiązujące w kosowskim porządku prawnym, które są niezadowalające z punktu widzenia standardów europejskich.

Słowa kluczowe: sędzia, niezależność sędziowska, rada sądownictwa, władza sądownicza, Kosowo