

Between Governance and Independence: Judicial and Prosecutorial Councils in Serbia in Comparative Perspective

Marina Matić Bošković¹

Institute for Criminological and Sociological Research, Belgrade, Serbia

Submitted: 2026-05-13 • Accepted: 2026-05-27 • Published: 2026-07-07

Abstract: Judicial and prosecutorial councils are widely regarded as key institutional mechanisms for safeguarding the independence and autonomy of the judiciary and prosecution services while ensuring effective governance and accountability. In Serbia, these bodies were established in 2009 following the adoption of the 2006 Constitution, with the aim of depoliticising appointment, promotion, and disciplinary procedures within the judiciary and prosecution system. Constitutional amendments adopted in 2022 and implemented through a new set of judicial laws in 2023 substantially reshaped the composition and competences of both the High Judicial Council and the High Prosecutorial Council. However, further amendments to judicial legislation adopted in January 2026 reopened the debate on the effectiveness of these councils in balancing two objectives: institutional governance and the protection of judicial and prosecutorial independence (autonomy). This article adopts a problem-oriented approach to examine whether the current institutional design and practice of judicial and prosecutorial councils in Serbia effectively contribute to the protection of independence and autonomy, or whether particular governance arrangements may undermine these aims. The analysis focuses on the legal framework and the councils' practical functioning, assessing their composition, competences, and role in key decisions affecting the judiciary and prosecution services. The Serbian model is evaluated in the light of relevant European standards, including opinions of the Venice Commission and other Council of Europe bodies, as well as comparative examples from European jurisdictions. On this basis, the article identifies structural and practical challenges that may constrain the councils' capacity to safeguard independence while ensuring transparent and accountable governance of the justice system.

Keywords: judicial and prosecutorial councils, judicial independence, prosecutorial autonomy, rule of law, European standards.

INTRODUCTION

As an EU candidate country, Serbia is expected to align its constitutional and legal framework with EU rule of law requirements. In the accession negotiations, Chapter 23 (Judiciary and Fundamental Rights) places particular emphasis on judicial independence,

¹ Corresponding author: m.m.boskovic@roldevelopmentlab.com • ORCID: 0000-0003-1359-0276.



eISSN 2620-0406

This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/). Authors retain copyright of the published papers and grant to the publisher the non-exclusive right to publish the article, to be cited as its original publisher in case of reuse, and to distribute it in all forms and media. The published articles will be distributed under the [Creative Commons Attribution International License \(CC BY 4.0\)](https://creativecommons.org/licenses/by/4.0/).



accountability, and efficiency; accordingly, judicial councils have been promoted as instruments of judicial self-governance, especially in Central and Eastern Europe (Council of the European Union, 2016; Council of Europe, 1994; Consultative Council of European Judges, 2010). In Serbia, the 2006 Constitution established the High Judicial Council and the State Prosecutorial Council (in 2022 renamed the High Prosecutorial Council) as central governance bodies for the judiciary and the prosecution service. From the outset, however, their design attracted criticism due to the fact that they still permitted significant political influence over appointments and career advancement (Council of Europe, European Commission for Democracy through Law [Venice Commission], 2007).² One of the key interim benchmarks under Chapter 23 therefore required constitutional change to reduce political influence, resulting in amendments adopted in February 2022 and implementing judicial laws enacted in 2023 (Venice Commission, 2021; European Commission, 2023). Nevertheless, legislative amendments adopted in 2026 reopened questions regarding the resilience of achieved standards and the councils' effective functioning, in the context of broader challenges in Serbia's EU integration process (Venice Commission, 2026), including the implementation of the Growth Plan (Regulation (EU) 2024/1499). These dilemmas are not unique to Serbia as council-based models across Europe face persistent tensions between independence and accountability, risks of politicisation, and recurrent difficulties in ensuring effective institutional performance (Bobek & Kosař, 2014; Kosař, 2016; Garoupa & Ginsburg, 2009).

Against this background, the paper analyses how the introduction and subsequent reform of judicial and prosecutorial councils in Serbia have affected judicial independence and the effective administration of justice, assessing the domestic framework in the light of European standards, including Venice Commission opinions and Council of Europe principles (Venice Commission, 2010; Consultative Council of European Prosecutors [CCPE], 2014). Methodologically, it applies a comparative legal approach, combining analysis of Serbian constitutional and legislative reforms with selected European models of judicial and prosecutorial governance. The study examines the national legislation, relevant soft-law instruments, Venice Commission opinions, and draws on European Commission reports and academic literature to evaluate effectiveness in practice. By situating the Serbian experience within a broader European context, the paper contributes to debates on how councils can safeguard the rule of law and identifies considerations for future reforms aimed at strengthening both independence and institutional effectiveness (Pech & Scheppele, 2017).

THE EVOLUTION OF JUDICIAL AND PROSECUTORIAL COUNCILS IN SERBIA

The institutional development of judicial and prosecutorial councils in Serbia reflects an evolving reform path shaped by efforts to strengthen independence, align with European standards, and respond to identified systemic shortcomings. Since their establishment

² Para 60 "...the overall impression of an excessive influence of parliament on the judiciary remains." Para 65 "...The involvement of parliament in judicial appointments risks leading to a politicisation of the appointments and, especially for judges at the lower level courts, it is difficult to see the added value of a parliamentary procedure..."



under the 2006 Constitution, these bodies have undergone significant transformation, which sought to enhance their role in safeguarding judicial and prosecutorial autonomy (European Commission, 2023).³ These reforms have been marked by significant tensions between the formal objective of depoliticization and the continued preservation of political influence over judicial governance (Simović, 2022; Orlović & Rajić, 2023). Against this background, the following sections examine the establishment, reform, and the latest developments concerning the councils, with a particular focus on their composition, competences, and compliance with European standards.

THE PROMISE AND CONSTRAINTS OF JUDICIAL SELF-GOVERNANCE UNDER THE 2006 CONSTITUTION

The establishment of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC)⁴ under the 2006 Constitution of the Republic of Serbia represented a pivotal institutional reform aimed at strengthening judicial independence and aligning the domestic legal framework with European standards. These bodies were conceived as autonomous institutions entrusted with safeguarding the independence and accountability of the judiciary and prosecution, particularly through their competences in appointments, promotions, and disciplinary proceedings (Petrov, 2023). However, the constitutional design was criticized for its internal inconsistencies and insufficient guarantees of institutional autonomy. The constitutional framework retained substantial political leverage over the judiciary despite formally introducing judicial self-governance mechanisms, while also failing to establish sufficiently coherent safeguards against political influence in appointment procedures of the members and holders of judicial functions (Simović, 2022).

The composition of both councils was prescribed by the Serbian Constitution. The 2006 Constitution provided for a largely mirroring composition, combining members from within the judiciary/prosecution with attorneys-at-law, law professors, and *ex officio* representatives of the executive and legislative branches (Matić Bošković, 2017). While this model was supposed to balance professional independence with external oversight, it also raised concerns about potential political influence over judicial governance, particularly through parliamentary and governmental representation and through the direct or indirect election of Councils members by the Parliament (Venice Commission, 2007).

Initial expectations surrounding the Councils were closely linked to the broader objective of depoliticizing the judiciary and prosecution. However, empirical and academic assessments demonstrated that these expectations were only partially realized. From the perspective of European standards, judicial councils should be independent from political influence and composed predominantly of members elected by their peers (Matić Bošković, 2017; Matić Bošković & Nenadić, 2018; Matić Bošković, 2020). Early assessments highlighted that the Serbian framework fell short of these standards, particularly considering concerns regarding politicization (Venice Commission, 2007).

The significant role of Parliament in judicial appointments, coupled with the presence of political actors within the Councils, limited their capacity to function as fully independent self-governing bodies (Ilić & Matić Bošković, 2019).

³ More on reform of prosecution in Matić Bošković and Kostić (2022).

⁴ Article 162 of the 2006 Constitution of the Republic of Serbia.



Comparative constitutional analysis further demonstrated that Serbia's model reflected broader patterns characteristic of transitional democracies, where formal institutional guarantees coexist with persistent political influence over judicial governance (Simović, 2023).

THE 2022 CONSTITUTIONAL AMENDMENTS – ADVANCING INDEPENDENCE OR RESHAPING INFLUENCE?

The constitutional amendments adopted in 2022, followed by the enactment of judicial laws in 2023,⁵ represented a comprehensive attempt to address earlier shortcomings (Petrov, 2023). These reforms were undertaken within the framework of Serbia's EU accession process and were informed by European standards and expert recommendations (European Commission, 2023; Venice Commission, 2021; 2022).

A central reform element concerned the composition and election procedures of the Councils. The composition of the Councils is not mirroring any more. The State Prosecutorial Council was renamed the High Prosecutorial Council (HPC). The representative of Parliament was removed, thereby lowering the number of *ex officio* members. Importantly, although certain elements of political representation were formally reduced, the Minister of Justice remains a member of the HPC, maintaining a direct link between the executive and the prosecutorial governance body. However, four “distinguished lawyers” were introduced, elected by the National Assembly, to replace the earlier combination of a law professor and a representative of the Bar. At the same time, the number of elected prosecutors was reduced from six to five. Another key change was that the Supreme Public Prosecutor was no longer the chair of the Council, addressing a long-standing concern about the excessive concentration of authority. A comparable, though not identical, reform approach was applied to the composition of the HJC. The HJC is composed of six judges elected by their peers, alongside four non-judicial members, “distinguished lawyers”, elected by the National Assembly, and the President of the Supreme Court as *ex officio* members (Turnjanin, 2024).⁶

The 2022 amendments introduced certain improvements regarding prosecutorial autonomy, particularly by reducing direct parliamentary involvement and removing the automatic dominance of hierarchical prosecutorial actors within the council structure (Orlović & Rajić, 2023). However, the continued presence of the Minister of Justice in the High Prosecutorial Council and the parliamentary election of distinguished lawyers preserve important channels of political influence over prosecutorial governance. These concerns align with the broader assessment of the Venice Commission (2021; Petrov, 2023). The reforms can therefore be seen as partially strengthening institutional independence, notably through the reduction of *ex officio* members (Venice Commission, 2021).⁷

⁵ Law on Judges, Law on Public Prosecution, Law on High Judicial Council, and Law on High Prosecutorial Council of the Republic of Serbia.

⁶ It should be stressed that presidents of Supreme Court have significant powers. More on the powers of presidents of Supreme Court in Kosař and Šipulova (2025).

⁷ CDL-AD(2021)032 Opinion on the draft constitutional amendments on the judiciary and the draft constitutional law on the implementation of constitutional amendments, adopted by the Venice Commission at its 128th Plenary session, Venice and online 15–16 October 2021, para 110 (in the composition of the HPC, there are now fewer prosecutors than in the past, this is not to be recommended; there is a difference between



The competences of the Councils were also expanded, particularly in relation to appointments, promotions, and disciplinary procedures. The reforms introduced more structured criteria for decision-making and aimed to strengthen merit-based career systems (Matić Bošković, 2023), while also improving the institutional safeguards for the autonomy of public prosecutors. The operationalization of these novelties is reflected in the introduction of specific legal remedies designed to protect public prosecutors in situations where their autonomy (independence) may be at risk, including objections to the annual schedule, objections to decisions on devolution and substitution, and objections to mandatory instructions. These mechanisms function as corrective tools within hierarchical prosecutorial structures. Decisions on such objections are entrusted to the HPC, which acts as the key guarantor of prosecutorial independence⁸ and ensures independent and objective oversight of the contested decisions.

While these reforms were broadly aligned with European standards, evaluations indicated that some recommendations were only partially implemented. Concerns remained regarding the balance of power within the Councils and the potential for indirect political influence (European Commission, 2024; Knežević Bojović & Ćorić, 2024).

The 2022 reform process was strongly shaped by external conditionality and political necessity. The constitutional amendments were driven primarily by EU integration requirements rather than by a coherent internal constitutional vision and consensus on strengthening judicial independence (Simović, 2022). Consequently, the reforms reflected a predominantly compliance-oriented approach aimed at satisfying external benchmarks (EU interim benchmarks), while leaving unresolved deeper structural questions concerning the balance between judicial self-governance and accountability. This dynamic contributed to the emergence of reforms that strengthened formal guarantees of independence without fully transforming the underlying legal culture of judicial governance. As a result, mechanisms of indirect influence and control remained embedded within the system, limiting the transformative potential of the reforms in practice.

THE 2026 AMENDMENTS AND THE REASSERTING OF HIERARCHICAL GOVERNANCE

The 2026 amendments to judicial legislation introduced further changes affecting the governance and competences of the HPC. Although presented as technical in nature, these amendments have raised concerns regarding their substantive impact and have been perceived as a shift away from the reform trajectory established in 2023. In particular, the

the HJC and the HPC with respect to the inclusion of ex officio members, ideally, the two positions of ex officio members of the HPC should be abolished and there should be six public prosecutors elected by their peers; the members elected by the National Assembly should also not have any present or future hierarchical (or de facto) subordination links to the Supreme Public Prosecutor and represent other legal professions).

8 The HPC adjudicates objections concerning annual schedules and their amendments, while specialized commissions established by the HPC decide on objections related to binding instructions, substitution, and devolution decisions. Articles 18, 22, 39 Law on public prosecution, and Art. 19 Law on High Prosecution Council. The HPC bylaws: Rules of Procedure of the Commission for Deciding on Objections against Mandatory Instructions for Work and Conduct in a Specific Case, Objections against Decisions on Substitution, and Objections against Decisions on Devolution; Rulebook on Deciding on Objections against the Decision on the Annual Schedule in a Public Prosecutor's Office or the Decision Amending the Annual Work Schedule in a Public Prosecutor's Office.



amendments have substantively altered the balance of competences by removing the authority of the HPC to decide on objections concerning the annual work schedule, devolution, substitution, and mandatory instructions, areas previously central to the protection of prosecutorial independence. The transfer of these competences to hierarchical superiors within the prosecution service effectively replaces independent, collegial oversight with internal hierarchical control, thereby weakening mechanisms designed to prevent undue influence and ensure accountability (Venice Commission, 2026).

At the same time, the expanded possibility of appointing acting heads of prosecutorial offices for up to three plus three years prolongs interim leadership arrangements and increases discretionary power, with potential implications for institutional stability, predictability, and merit-based governance. Furthermore, the introduction of a requirement for prior consent from the Minister of Justice for international legal cooperation undertaken by the Supreme Public Prosecutor introduces an additional layer of executive involvement in core prosecutorial functions. Taken together, these changes suggest a reassertion of hierarchical and external control, potentially constraining the practical effectiveness of safeguards intended to secure prosecutorial autonomy (Venice Commission, 2026).

These developments also confirm broader concerns regarding the fragility of institutional guarantees where constitutional and legislative reforms remain dependent on shifting political majorities and insufficiently entrenched safeguards of independence (Simović, 2022).

Concerns regarding the legislative process of 2026 amendment adoption have focused on the limited scope of consultation with key stakeholders, particularly the Councils, raising issues of transparency and compliance with standards of good law making (Venice Commission, 2026). At the same time, the transfer of competences over temporary assignments to the HPC may be viewed positively, as independent oversight in this area contributes to preventing the use of such mechanisms as indirect tools of influence. The Venice Commission's 2026 opinion explicitly recommends restoring the HPC's authority to decide on objections to mandatory instructions and annual work schedules, underscoring that such review functions should be exercised by a body institutionally detached from the prosecutorial chain of command.

THE GAP BETWEEN FORMAL GUARANTEES AND PRACTICAL EFFECTIVENESS

The core competences of the HJC and HPC include the appointment, promotion, and disciplinary oversight of judges and prosecutors, as well as broader responsibilities related to the organization of the system (Knežević Bojović & Ćorić, 2024). However, the practical functioning of these bodies has revealed significant challenges. One of the most notable issues has been the difficulty in ensuring timely and effective appointment procedures, particularly within the prosecution service. Delays in the selection of prosecutors have raised concerns regarding transparency, merit-based criteria, and the influence on the process (European Commission, 2025).

In addition, the functioning of the HPC has at times been affected by institutional blockages, particularly in the context of the election of its members in early 2026, which has



hindered its ability to fully exercise its constitutional role.⁹ On 23 March 2026, the Constitutional Court upheld the appeals of three candidates for membership in the HPC and ordered the Council to publish the final voting results and formally confirm the election of its members without delay.¹⁰ However, the President of the HPC addressed a letter to the President of the Constitutional Court arguing that the decision constituted a ‘precedent’ exceeding the Court’s constitutional and statutory competences. The letter further asserted that the Constitutional Court could not act as an anti-deadlock mechanism intended to prevent institutional blockage, nor could it effectively proclaim electoral results on behalf of the Council itself (Visoki savet tužilaštva, 2026). This dispute demonstrates the fragility of institutional procedures governing the constitution and functioning of the HPC, particularly in situations of political or institutional deadlock. Furthermore, it reflects unresolved ambiguities concerning the constitutional relationship between the Constitutional Court and independent judicial governance bodies. The episode illustrates how procedural disputes may themselves become mechanism capable of delaying or obstructing the functioning of institutions tasked with safeguarding prosecutorial autonomy.

From a broader rule-of-law perspective, the controversy also highlights the limited institutional resilience of prosecutorial self-governance structures in transitional constitutional systems. Comparative scholarship emphasizes that judicial and prosecutorial councils require not only formal guarantees of independence, but also stable procedural frameworks and effective dispute-resolution mechanisms capable of preventing institutional paralysis (Kosař & Šipulova, 2023). The Serbian case demonstrates that where such mechanisms remain contested or insufficiently defined, institutional conflicts may undermine both the legitimacy and operational effectiveness of judicial governance bodies.

Moreover, the explicit rejection by the HPC President of the Constitutional Court’s potential ‘anti-deadlock’ role reflects a broader constitutional dilemma concerning who ultimately guarantees the continuity and functionality of judicial governance institutions in situations of institutional blockage. This raises important questions regarding the balance between institutional independence and constitutional supervision, particularly in systems where political contestation surrounding appointments remains pronounced. This situation therefore suggests that formal constitutional reforms alone are insufficient where institutional actors do not share a common constitutional understanding of the role, limits and mutual accountability of judicial governance institutions.

A key structural limitation lies in the fragmented allocation of responsibilities between the Councils, the Ministry of Justice, and the Supreme Court/Supreme Public Prosecutor’s Office. For instance, while the Councils are responsible for judges and prosecutors, the Ministry retains authority over administrative staff, infrastructure, and ICT systems, directly affecting efficiency and system performance (Multi-Donor Trust Fund for Justice Sector Support, 2022; European Commission 2020). This division complicates coherent human resource management and weakens the Councils’ capacity to exercise strategic oversight.

Beyond governance-related issues, the councils face substantial institutional constraints that affect their effectiveness. These include limited human and financial resources, insufficient administrative capacity, and inadequate infrastructure. Such constraints are particularly salient given the expanded competences introduced by the 2023 reform frame-

⁹ More about challenges of the election process in Udruženje tužilaca Srbije (2026b).

¹⁰ Decision of the Constitutional Court (Visoki savet tužilaštva, 2026).



work, which increased the workload and complexity of decision-making processes without a corresponding strengthening of institutional capacity (European Commission, 2024; 2025). With 23 staff in the HPC Administrative Office and 41 in the HJC (Multi-Donor Trust Fund for Justice Sector Support, 2024), resources are largely absorbed by routine functions such as conducting interviews for appointments and carrying out evaluations, leaving limited scope for policy development or strategic planning. Moreover, limited digitalisation and underdeveloped data-management systems further hinder evidence-based decision-making and transparency.

Comparative scholarship emphasises that judicial councils must not only possess formal competences but also demonstrate operational effectiveness in exercising them (Garoupa & Ginsburg, 2009; Kosař & Spáč, 2021). The institutional independence of judicial councils must be supported by adequate resources and administrative capacity; otherwise, formal guarantees may remain largely ineffective (Kosař, 2016). In the Serbian context, these capacity-related challenges constitute a structural obstacle to the effective functioning of the councils.

These structural weaknesses are compounded by the limited effectiveness of safeguards against undue influence. Practical examples include the absence of institutional responses to public statements by political actors commenting on ongoing cases or justice holders, which raises concerns about respect for the separation of powers. Similarly, the Commissioner for autonomy, envisaged as a key protective mechanism, has rarely initiated formal proceedings despite documented instances of alleged pressure reported by professional associations, thereby undermining its deterrent effect (European Commission, 2025; Udruženje tužilaca Srbije, 2026a).

Internal safeguards within the prosecution service have also shown limited impact, mechanisms such as objections to mandatory instructions or annual schedules have been applied inconsistently (Udruženje tužilaca Srbije, 2026a), and their effectiveness has been further reduced following the 2026 amendments, which transferred key review competences from the HPC to hierarchical superiors. Recent analyses indicate that these mechanisms have shown limited impact in practice. The Commissioner for Autonomy has rarely reacted proactively in cases involving public or political pressure, while institutional responses of the HPC itself have often been delayed, inconsistent, or entirely absent in situations involving public comments by political officials on ongoing proceedings. In several prominent cases involving statements by high-ranking political actors, including public comments perceived as exerting pressure on prosecutors, neither the HPC nor the Commissioner issued timely institutional reaction, despite strong criticism from professional associations or parts of the judicial community.

Statistical and empirical assessments further suggest declining confidence in these protection mechanisms. Analysis by the Prosecutors' Association noted a significant decrease in the number of prosecutors addressing the Commissioner for autonomy of prosecution, which has been interpreted as an indication of reduced trust in the effectiveness of institutional safeguards.

While the 2023 reforms strengthened the formal framework, their practical impact has been constrained by institutional fragmentation, limited administrative capacity, and the partial ineffectiveness of protective mechanisms. The 2026 amendments, by reducing certain competences of the Councils and reinforcing hierarchical control, further complicate



this landscape and may weaken existing safeguards. From a normative perspective, this underscores that judicial independence requires not only formal guarantees but also effective institutional design and implementation in practice (Council of Europe, 2010; Pech & Scheppele, 2017).

COMPARATIVE LESSONS ON JUDICIAL SELF-GOVERNANCE

The analysis of the institutional development and practical functioning of judicial and prosecutorial councils in Serbia reveals persistent challenges related to composition, effectiveness, and protection from undue influence. A comparative perspective is therefore essential for assessing the Serbian model and identifying viable institutional improvements. The European debate on judicial self-government highlights that judicial councils are not a uniform solution but rather a diverse set of institutional arrangements shaped by national contexts (Kosař, 2018; Simović, 2023). Furthermore, the poorly designed or politically captured councils may even weaken independence (Gutmann & Voigt, 2020). The Serbian case thus aligns with broader findings that judicial self-government in transitional contexts often faces risks of politicization, institutional fragility, and limited effectiveness (Kosař & Šipulova, 2023; Bobek & Kosař, 2014).

A central issue in both Serbian councils concerns their composition and the role of political actors in appointment processes. Comparative practice shows significant variation and confirms that the method of selecting non-judicial members is critical. Comparative scholarship emphasizes that both judicial and prosecutorial councils face a fundamental challenge, balancing independence with accountability (Kosař & Šipulova, 2023; Šipulova & Kosař, 2025). The councils in transitional contexts often struggle to perform this balancing function effectively due to weak institutional traditions and exposure to political pressures (Kosař, 2018).

In terms of competences, both judicial and prosecutorial councils across Europe typically exercise authority over appointments, promotions, and disciplinary proceedings. However, the scope and stability of these competences is important, since the councils have become targets of institutional reforms which often undermine institutional continuity and weaken their authority (Garoupa & Ginsburg, 2009).

THE COMPOSITION OF COUNCILS – BETWEEN PROFESSIONAL SELF-GOVERNANCE AND POLITICAL CONTROL

Comparative analysis demonstrates that both the method of selection and the balance between judicial and non-judicial members are decisive in determining the independence and effectiveness of judicial and prosecutorial councils. In established systems such as Italy, a majority of members of the High Council of the Judiciary (*Consiglio Superiore della Magistratura*) are judges and prosecutors elected by their peers, which is generally regarded as a key structural safeguard of independence. However, recent developments illustrate that even well-established systems remain subject to political contestation and show vulnerabilities to politicisation (Rullo, 2025). A constitutional reform adopted by the Italian Parliament in 2025 proposed significant changes, including the separation of



judicial and prosecutorial career paths, the establishment of separate governing bodies, and modifications to the composition and selection of council members. This reform was ultimately rejected in a confirmatory referendum held in March 2026.

In contrast, the Spanish model, where all members are elected by Parliament, demonstrates how the absence of a judicial majority, combined with full parliamentary control, can generate significant politicisation and institutional deadlock (Venice Commission, 2025; Castillo-Ortiz, 2023). The Serbian model, which includes parliamentary appointment of certain members of both the HJC and HPC, shares these structural vulnerabilities (Simović, 2022). France adopts a hybrid model combining professional and non-professional members, but with a more pronounced role for the executive in prosecutorial governance (Ginsburg & Garoupa, 2009).

European standards consistently emphasise that councils should include a substantial, often majority, proportion of members drawn from the judiciary or the prosecution service and elected by their peers, as a safeguard against political capture (Council of Europe, 2010; CCPE, 2014). At the same time, the inclusion of non-judicial members is considered important for democratic legitimacy, but only where their selection is insulated from direct political control and based on transparent, merit-based procedures.

Experiences in Central and Eastern Europe further confirm that changes in the composition and appointment procedures of councils, particularly those increasing political control, can gradually undermine independence (Pech & Scheppele, 2017; Kosař & Spáč, 2021). Developments in Poland are particularly instructive in this regard. The case law of the Court of Justice of the European Union (CJEU) has established that the independence of judicial councils is intrinsically linked to the method of selecting their members. In *A. K. and Others* (C-585/18, C-624/18, C-625/18), the Court emphasized that parliamentary control over the appointment of judicial members to the Polish National Council of the Judiciary raises serious doubts as to its independence. This reasoning was further reinforced in two cases *Commission v Poland* (C-791/19 and 619/18), where deficiencies in the independence of the council were found to affect the legitimacy of judicial disciplinary bodies, and in *W. Ż.* (C-487/19), where the Court underlined that appointments influenced by a non-independent council may fail to meet EU standards of judicial independence (Matić Bošković, 2020). These cases demonstrate that the composition and functioning of councils are not merely institutional design questions but have direct implications for the validity of judicial decision-making and the rule of law more broadly.

In the Serbian context, the formal design of the HJC and the HPC provides for a mixed composition, including both professional (judges/prosecutors) and non-professional members. However, non-judicial members are elected by the National Assembly, and the overall balance does not consistently ensure a clear and stable majority of members elected by their professional peers. Moreover, even where such a majority formally exists, its practical significance may be diluted by the method of selection of non-judicial members, the role of *ex officio* members, and broader political dynamics within the appointment process. The absence of strong procedural safeguards, such as depoliticised nomination procedures or requirements for cross-party consensus, further increases the risk that political considerations shape the composition and functioning of the councils.

Taken together, comparative experience, CJEU jurisprudence and European standards indicate that both elements, the existence of a genuine majority of judicial/prosecutorial



members and the depoliticized selection of non-judicial members, are cumulative safeguards of independence. Where either element is weakened, councils risk becoming vulnerable to political influence. In the Serbian case, the current composition and appointment procedures suggest that these safeguards are only partially fulfilled, which may affect the Councils' capacity to act as fully independent guarantors of judicial independence and prosecutorial autonomy (Knežević Bojović & Ćorić, 2024).

FROM CAREER MANAGEMENT TO INSTITUTIONAL GOVERNANCE

European systems exhibit significant variation not only in the formal competences attributed to judicial and prosecutorial councils but, more fundamentally, in the extent to which these bodies exercise control over the administration of the judiciary, including budgetary, organizational, and managerial functions. In several Southern and Central and Eastern European systems, councils are primarily oriented toward status-related competences, such as appointments, promotions, and disciplinary proceedings. For instance, the Italian High Council of the Judiciary exercises extensive authority over judicial careers, thereby securing a high degree of institutional autonomy, but also raising concerns related to corporatism and limited external accountability (Kosař, 2018; Ginsburg & Garoupa, 2009). Similarly, in Spain, the General Council of Judiciary (*Consejo General del Poder Judicial*) formally holds broad competences, yet its effectiveness has been undermined by politicization in appointment procedures, illustrating that formal powers are insufficient in the absence of institutional independence and depoliticized governance (Kosař, 2018).

By contrast, Western and Nordic models shift the focus from status governance to administrative autonomy, emphasizing institutional capacity and managerial independence as core components of judicial independence. In the Netherlands, the Council for Judiciary (*Raad voor de rechtspraak*) plays a central role in judicial governance by managing budget allocation, performance monitoring, and organizational policy, thereby insulating the judiciary from executive control in its day-to-day functioning (Albers & Voermans, 2008; Langbroek, 2010). Likewise, in Sweden and Norway, judicial administration is entrusted to independent agencies, the Swedish National Courts Administration (*Domstolsverket*) and the Norwegian Courts Administration (*Domstoladministrasjonen*), which are responsible for financial management, infrastructure, human resources, and strategic development of the court system (Aarli & Sanders, 2023). These institutional arrangements reflect a governance model in which effective independence is grounded in control over resources and administration, rather than limited to decisions on individual judicial careers.

Comparative scholarship increasingly emphasizes that administrative and budgetary autonomy constitutes a central dimension of judicial independence, often more consequential in practice than formal competences over appointments and discipline (Garoupa & Ginsburg, 2009; Kosař, 2016). Where the executive retains control over key operational resources, such as infrastructure, staffing, and information systems, the judiciary remains structurally dependent, regardless of formal guarantees. This insight is particularly relevant for hybrid systems, where councils possess significant formal authority but lack the institutional means to implement it effectively.

The Serbian framework illustrates the structural tension: while the HJC and the HPC retain core competences over appointments, promotions, and disciplinary proceedings,



critical aspects of judicial administration, including capital investments, ICT systems, and administrative staff, remain within the remit of the Ministry of Justice (Multi-Donor Trust Fund for Justice Sector Support, 2022). This division of competences constrains the Councils' capacity to exercise comprehensive governance and limits their ability to ensure the effective functioning of the system. Moreover, the frequent reconfiguration of competences, particularly following the 2026 legislative amendments, introduces an additional layer of institutional instability, which may hinder the development of consistent practices and weaken institutional authority.

From a comparative and normative perspective, these findings suggest that the effectiveness of judicial councils depends not only on the scope of their formal powers but on the coherence, stability, and completeness of their governance role, particularly in relation to administrative and financial autonomy. In the absence of such capacities, councils risk remaining formally central but functionally constrained, with limited ability to secure the practical independence of the judiciary and prosecution service in line with European standards (Council of Europe, 2010; Venice Commission, 2010).

CONCLUSIONS

The analysis of the Serbian model of judicial and prosecutorial governance highlights a persistent gap between formal institutional alignment with European standards and practical effectiveness in safeguarding independence. While the HJC and the HPC are constitutionally defined as central guarantors of judicial independence and prosecutorial autonomy, their functioning remains constrained by structural, operational, and normative challenges.

A central issue concerns the composition of the Councils, where the method of selecting non-judicial members continues to expose the system to risks of politicization. Comparative experience, as well as the jurisprudence of the Court of Justice of the European Union, demonstrates that both a genuine majority of judicial/prosecutorial members and depoliticized appointment procedures are cumulative safeguards of independence. In this context, the participation of members of the executive in council structures has been consistently viewed as problematic. The Venice Commission has repeatedly emphasized that representatives of the executive, particularly the Minister of Justice, should not be members of prosecutorial councils, as such participation may compromise both the perception and the reality of independence. In Serbia, although reforms have sought to reduce direct political influence, the broader appointment framework, particularly the role of the National Assembly, remains insufficiently insulated from political dynamics, thereby only partially fulfilling these standards.

The instability and fragmentation of competences further undermine institutional authority. Frequent legislative changes, culminating in the 2026 amendments, have reduced key oversight functions of the HPC, particularly in areas central to the protection of prosecutorial autonomy, such as objections to hierarchical instructions and case allocation. The reallocation of these powers to hierarchical superiors, combined with elements of executive involvement, signals a shift away from the 2023 reforms and weakens institutional safeguards.



At the operational level, mechanisms for protecting independence remain only partially effective. Limited institutional responsiveness to instances of alleged undue influence, such as public statements by political actors or internal hierarchical pressures, raises concerns about the practical enforceability of safeguards. The weakening of complaint mechanisms and the lack of consistent, reasoned decision-making further diminish predictability and trust in the system.

Recent developments concerning the election process for members of the HPC further illustrate the institutional fragility of prosecutorial self-governance in Serbia. The prolonged delays and disputes surrounding the constitution of the Council in 2026 exposed significant procedural ambiguities and demonstrated the susceptibility of the system to institutional blockage. The intervention of the Constitutional Court, which ordered the HPC to publish final election results and formally confirmed elected members, triggered an open institutional dispute regarding the scope of constitutional review and the independence of the Council. These developments revealed that the effectiveness of the HPC depends not only on formal constitutional guarantees, but also on the existence of clear procedural mechanisms capable of ensuring institutional continuity and preventing governance paralysis.

Institutional capacity constraints represent an additional structural obstacle. The Councils' limited human and administrative resources, coupled with their restricted role in judicial administration, significantly reduce their ability to perform complex governance functions. Comparative experience, particularly from Western and Nordic systems, demonstrates that control over administrative and budgetary functions is a critical dimension of effective independence, often more consequential in practice than formal authority over appointments and discipline.

The findings also underscore the interdependence of judicial and prosecutorial governance. Weaknesses in either the HJC or HPC, whether related to composition, competences, or capacity, have systemic implications for the overall functioning of the justice system, including its ability to address complex and sensitive cases such as corruption and organized crime.

These issues carry broader implications for the rule of law and Serbia's EU integration process. The European Commission has consistently emphasized that judicial independence must be both formally guaranteed and effectively implemented. The 2026 amendments, together with identified operational shortcomings, raise concerns regarding the sustainability of earlier reform achievements and alignment with EU rule of law benchmarks. In particular, the reduction of independent oversight mechanisms, increased reliance on hierarchical control, and elements of executive involvement may affect both the perception and the reality of independence.

In conclusion, while Serbia has established a dual-council model broadly consistent with European frameworks, its effectiveness ultimately depends on the coherence between institutional design and implementation. Strengthening judicial and prosecutorial independence will require not only preserving and clarifying competences, but also ensuring depoliticized appointment procedures, enhancing institutional capacities, and fostering a professional culture of independence and accountability. Without such developments, the Councils risk remaining formally compliant but functionally constrained, limiting their capacity to act as effective guarantors of the rule of law.



Acknowledgements: The current paper is part of a research endeavour funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, (based on the contract No. 451-03-33/2026-03/200039) with the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

REFERENCES

- Aarli, R., & Sanders, A. (2023). Judicial councils everywhere? Judicial administration in Europe, with a focus on the Nordic countries. *International Journal for Court Administration*, 14(2), Page/Article 3. <https://doi.org/10.36745/ijca.487>
- Albers, P., & Voermans, W. (2003). *Councils of the judiciary in EU countries*. Council of Europe, European Commission for the Efficiency of Justice.
- Bobek, M., & Kosař, D. (2014). *Global solutions, local damages: A critical study in judicial councils in Central and Eastern Europe*. *German Law Journal*, 15(7), 1257–1292. <https://doi.org/10.1017/S2071832200019362>
- Castillo-Ortiz, P. (2023). *Judicial governance and democracy in Europe*. Springer.
- Consultative Council of European Judges. (2007). *Opinion No. 10 (2007) on the Council for the Judiciary at the service of society*.
- Consultative Council of European Prosecutors. (2014). *Opinion No. 9 (2014) on European norms and principles concerning prosecutors*. coe.int.
- Council of Europe. (1994). *Recommendation No. R(94)12 of the Committee of Ministers to member states on judges: Independence, efficiency and role of judges*.
- Council of Europe. (2010). *Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: Independence, efficiency and responsibilities*.
- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2007, March 17–18). *Opinion on the Constitution of Serbia* (CDL-AD (2007)004). coe.int.
- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2010, March 12–13). *Report on the independence of the judicial system. Part I: The independence of judges* (CDL-AD(2010)004). coe.int.
- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2010, December 17–18). *Report on the independence of the judicial system. Part II: The prosecution system* (CDL-AD(2010)004). coe.int.
- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2021, December 10–11). *Serbia Urgent opinion on the revised draft constitutional amendments on the judiciary* (CDL-AD (2021)048). coe.int.
- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2022, December 16–17). *Serbia – Opinion on two draft laws implementing the constitutional amendments on the prosecution service* (CDL-AD (2022)042). coe.int.



- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2025, October 9–10). *Spain – Opinion on the manner of election of the judicial members of the General Council of the Judiciary* (CDL-AD(2025)038). coe.int
- Council of Europe, European Commission for Democracy through Law (Venice Commission). (2026, April 24). *Serbia – Urgent Opinion on the 28 January 2026 amendments to Laws governing the judiciary and the prosecution* (CDL-PI(2026)007). coe.int.
- European Commission. (2020, October 6). *Serbia 2020 Report* (SWD(2020) 352 final).
- European Commission. (2023, November 11). *Serbia 2023 Report* (SWD(2023) 695 final).
- European Commission. (2024, October 31). *Serbia 2024 Report* (SWD(2024) 695 final).
- European Commission. (2025, November 4). *Serbia 2025 Report* (SWD(2025) 755 final).
- European Parliament, Council of the European Union. (2016, July 8). *European Union Common Position for Chapter 23 – Judiciary and Fundamental Rights (Serbia)* (AD 20/16).
- European Parliament, Council of the European Union. (2024, May 14). *Regulation (EU) 2024/1499 of the European Parliament and the Council of 14 May 2024 on establishing the reform and growth facility for the Western Balkans*.
- Garoupa, N., & Ginsburg, T. (2009). Guarding the guardians: Judicial council and judicial independence. *American Journal of Comparative Law*, 57(1), 103–134.
- Ginsburg, T., & Garoupa, N. (2009). The comparative law and economics of judicial councils. *Berkeley Journal of International Law*, 27(1), 53–83.
- Gutmann, J., & Voigt, S. (2020). Judicial independence in the EU: A puzzle. *European Journal of Law and Economics*, 49(1), 83–100. <https://doi.org/10.1007/s10657-018-9577-8>
- Ilić, G., & Matić Bošković, M. (2019). *Javno tužilaštvo u Srbiji: istorijski razvoj, međunarodni standardi, uporedni modeli i izazovi modernog društva*. Institut za kriminološka i sociološka istraživanja.
- Knežević Bojović, A., & Ćorić, V. (2024). Judicial self-governance in Serbia: Challenges to and results of a quantitative approach, *Pravni zapisi*, 15(2), 352–393. <https://doi.org/10.5937/pravzap15-54236>
- Kosař, D. (2016). *Perils of judicial self-government in transitional societies: Holding the least accountable branch to account*. Cambridge University Press.
- Kosař, D. (2018). Judicial self-government in Europe. *German Law Journal*, 19(7), 1567–2188.
- Kosař, D., & Šipulova, K. (2023). Politics of judicial selfgovernance. In M. Tushnet & D. Kochenov (Eds.), *Research handbook on the politics of constitutional law* (pp. 262–285). Edward Elgar Publishing.
- Kosař, D., & Šipulova, K. (2025). Judicial empowerment of chief justice in Central Europe through supranational means: Judicial self-defense or judicial self-dealing? *International Journal of Constitutional Law*, 23(1), 279–297. <https://doi.org/10.1093/icon/moaf017>



- Kosař, D., & Spáč, S. (2021). *Post-communist chief justice in Slovakia: From transmission belts to semi-autonomous actors?* *Hague Journal of the Rule of Law*, 13, 107–142. <https://doi.org/10.1007/s40803-021-00150-w>
- Matić Bošković, M. (2017). Tužilački saveti i garancija tužilačke autonomije u državama Zapadnog Balkana. *Anali Pravnog fakulteta u Beogradu*, 65(1), 169–186. <https://doi.org/10.5937/AnaliPFB1701169M>
- Matić Bošković, M. (2020). Role of Court of Justice of the European Union in establishment of EU standards on independence of judiciary. *EU and Comparative Law Issues and Challenges Series*, 4, 329–351. <https://doi.org/10.25234/eclic/11907>
- Matić Bošković, M. (2023). Selection and evaluation of judges – Impact of criteria and procedure on independence of judiciary. *Regional Law Review*, 249–269. https://doi.org/10.56461/iup_rlr.2023.4.ch16
- Matić Bošković, M., & Kostić, J. (2022). Reform of Public Prosecution in Serbia in line with the EU accession requirements. In J. Čentěš, L. Kurilovská et al. (Eds.), *Efektivnost prípravného konania: súčasný stav a výzvy pro futuro: Zborník príspevkov* (pp. 392–416). Wolters Kluwer.
- Matić Bošković, M., & Nenadić, S. (2018). Evropski standardi u oblasti pravosuđa. *Strani pravni život*, 62(1), 39–56. <https://doi.org/10.5937/spz1801039B>
- Multi-Donor Trust Fund for Justice Sector Support. (2022, June). *2021 Serbia judicial functional review: Report*. World Bank Group. https://mdtfjss.org.rs/archive/file/2021_Serbia_Judicial_Functional_Review-Full_Report-EN.pdf
- Multi-Donor Trust Fund for Justice Sector Support. (2024). *Human resource analysis of the High Prosecutorial Council Administrative Office: Key findings and recommendations*. World Bank Group. <http://mdtfjss.org.rs/archive/file/Human-Resource-Analysis-of-the-High-Prosecutorial-Council-Administrative-Office.pdf>
- Orlović, S., & Rajić, N. (2023). Promene ustavnopravnog položaja javnog tužilaštva ustavnom revizijom iz 2022. godine. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 57(1), 137–160. <https://doi.org/10.5937/zrpfns57-43269>
- Pech, L., & Scheppele, K. L. (2017, December). Illiberalism within: Rule of law backsliding in the EU. *Cambridge Yearbook of European Legal Studies*, 19, 3–47. <https://doi.org/10.1017/cel.2017.9>
- Petrov, V. (2023). Judicial reform in Serbia in light of “the Venetian Concept” of the rule of law. *Central European Journal of Comparative Law*, 4(2), 233–257. <https://doi.org/10.47078/2023.2.233-257>
- Rullo, L. (2025). “Governing without judges.” Executive ambitions and judicial resistance in Italy. *Politics & Policy*, 53(6), e70087. <https://doi.org/10.1111/polp.70087>
- Simović, D. (2022). Ustavni amandmani iz nužde: kritički osvrt na ustavnu reformu sudske vlasti. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 56(1), 85–119. <https://doi.org/10.5937/zrpfns56-37949>



Simović, D. (2023). Constitutionalization of the judicial council in North Macedonia and Serbia – Can we learn from each other? *Foreign Legal Life*, 67(4), 623–642. https://doi.org/10.56461/SPZ_23403KJ

Šipulova, K., & Kosař, D. (2025). Purging the judiciary after a transition: Between a rock and a hard place. *Hague Journal on the Rule of Law*, 17, 61–93. <https://doi.org/10.1007/s40803-024-00201-y>

Turnjanin, V. (2024). The role and importance of the High Judicial Council in the Republic of Serbia: Towards democratisation in the field of the judiciary. *University of Bologna Law Review*, 9(1), 73–98.

Udruženje tužilaca Srbije [Prosecutors Association of Serbia]. (2026a). *Rad Visokog saveta tužilaštva u zaštiti od neprimerenih uticaja*.

Udruženje tužilaca Srbije [Prosecutors Association of Serbia]. (2026b). *Izveštaj o izborima za Visoki savet tužilaca*.

Visoki savet tužilaštva [High Prosecutorial Council]. (2026, March 23). *Odluka Ustavnog suda* (VIIIU-272026). [Serbia]. <https://vst.jt.rs/wp-content/uploads/2026/03/Dopis-predsedniku-Ustavnog-suda-povodom-Odluke-Ustavnog-suda-Broj-VIIIU-272026-od-23.-marta-2026.-godine.pdf>

