

No. 26/24

Belgrade, 27 August 2024

The Ministry of Justice
22-26 Nemanjina, Belgrade
Jovan Ćosić, Assistant to the Minister

ON THE PROCEDURE OF ADOPTING THE LAW ON THE JUDICIAL ACADEMY AND THE PRINCIPLES FOR A LAW ON TRAINING IN THE JUDICIARY

Introduction

The Constitutional Law for the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia, promulgated on 9 February 2022, stipulated that the Law on Judges, the Law on the Organization of Courts, the Law on the Public Prosecution Service, the Law on the High Judicial Council and the Law on the State Prosecutorial Council will be harmonized with the Amendments within one year from their entry into force, and that the provisions of other laws will be harmonized with the Amendments within two years. All the aforementioned laws were adopted and published within the deadline, which was designed to expire on 9 February 2023. The two-year deadline for harmonization of other laws, including the Law on the Judicial Academy, i.e. the law dealing with training in the judiciary, expired on 9 February 2024, without the said laws being passed.

In this regard, and in the invitation for the initial meeting of the Working Group for drafting the Law on the Judicial Academy (hereinafter referred to as "WG"), the Ministry of Justice (hereinafter referred to as "MoJ") informed the invitees that it had established the WG in question¹, by means of a decision adopted on 25 July 2024. At the initial meeting

¹ The Working Group is composed of the following members: Jovan Ćosić, head of WG, Jelena Deretić, Branislav Stojanović and Vladimir Vinš, all assistants to the Minister of Justice; Nenad Vujić, director of the Judicial Academy; Marija Arandžević Jureša, member of the High Judicial Council from the rank of judges; assistant professor Miroslav Đorđević, PhD, Vice President of the High Prosecutorial Council; Gordana Komnenić, Judge at the Supreme Court; Jasmina Kiurski, PhD, Public Prosecutor at the Supreme Public Prosecution Office; Nada Đorđević, Judge at the Higher Court in Belgrade and Deputy President of the Management Board of the Judges' Association of Serbia; Goran Ilić, PhD, Public Prosecutor of the Supreme Public Prosecution Office and honorary president of the Association of Prosecutors of Serbia; Suzana Plavšić, judge at the Misdemeanor Court in Belgrade and member of the Main Board of the Association of Judges of Misdemeanor Courts of the Republic of Serbia; Zoran Nikolov, public prosecutor of the Basic Public Prosecution Office in Kragujevac and member of the Management Board of the Association of Judges and Prosecutors of Serbia; Nebojša Đuričić, president of the Management Board of the Forum of Judges of Serbia; Veljko Delibašić, PhD, president of the Bar Association of Serbia, and professor Zoran Lončar, PhD, full professor at the Faculty of Law in Novi Sad.

of the WG, which was held on 1 August 2024, and was attended, on behalf of the Judges' Association of Serbia (hereinafter referred to as "JAS"), by Snežana Bjelogrić, president of the Association and elected member of the High Judicial Council (hereinafter referred to as "HJC") from the ranks of judges, those present were informed:

- that it was necessary to fulfil the interim benchmark in the Action Plan for Chapter 23 which foresaw *a single entry point into the judiciary*, but in a way as to ensure protection from undue influence during the election of judges and public prosecutors, and
- that the law needs to be passed as soon as possible, i.e. by 10 September 2024, which is why the members of the WG were given a deadline of 25 August 2024 to submit their proposals, after which the MoJ will draft the law on its own, and such draft which will be discussed at the WG meetings scheduled for 4, 5 and 6 September, after which the law will be translated and communicated to the Venice Commission, while at the same time, a series of round tables intended for debate will take place.

JAS and the Association of Judicial Assistants (hereinafter referred to as "AJA") are once again emphasizing the position expressed at the initial meeting of the WG by the JAS president, which means to say that the broad composition of the WG allowed for all relevant subjects to be represented, but that unfortunately this was not ensured, and stating that:

1) The content of the interim benchmark, the urgent fulfilment of which was indicated at the initial meeting of the WG (*which envisaged "a single entry point into the judiciary" but in a way to ensure protection from undue influence during the election of judges and public prosecutors*) does not emerge from the Revised Action Plan for Chapter 23. The Revised Action Plan for Chapter 23 foresees (within Interim Benchmark 1.1.3) the adoption of the Law on the Judicial Academy, ***through a transparent process, in which the representatives of the judiciary and the profession were actively and equally involved, which, bearing in mind the recommendations of the Venice Commission and European standards, ensures the independence of the judiciary from political influence, maximally limiting the influence of the legislative and executive powers in the election, nomination, appointment, transfer and termination of office of judges, court presidents and (deputy) public prosecutors, and which must be based on precise criteria. The Constitution and judicial laws guarantee all candidates, without discrimination, entry into the judicial system which is based on objective criteria, fair election procedures, open to all candidates with appropriate qualifications and transparent from the point of view of the professional and general public. The roles of the HJC and the State Prosecutorial Council in the management of the judiciary, as well as in terms of supervision and control of the work of the judiciary, have been strengthened...***

2. According to the Screening Recommendation and the Interim Benchmark 1.1.3. the following is planned: development of the Judicial Academy as a center for continuous and initial training of judges and prosecutors in line with the rulings of the Constitutional Court on the provisions of the laws on the public prosecution and the Judicial Academy, including through:

- *introducing a yearly curriculum covering all areas of law, including EU law and*
- *providing the necessary resources and introducing a quality control system for initial and specialized training (recommendation) and for the state to ensure that that the Judicial Academy adopts a multi-annual work program, covering human and financial resources and a further development of its training program, as well as a sustainable and long-term solution for financing the Judicial Academy, and to also apply a quality control mechanism and regularly and effectively assess the impact of the training. (interim benchmark).*

3. Regarding the recommendations of the Venice Commission referred to in the Revised Action Plan for Chapter 23, it should be taken into account that:

- The Revised Action plan for Chapter 23 was adopted on 10 July 2020, at a time when the procedure for amending the Constitution in the part related to the judiciary was stalled, after the MoJ had previously drafted four versions of Constitutional Amendments in 2018, changing them one after another. Regarding those changes, commenting on the proposed solutions, the Venice Commission submitted Opinion [CDL/AD\(2018\)011](#) on 25 June, 2018². Since the first working version of the Constitutional Amendments prescribed training completed in a training institution as a condition for the appointment of judges, the Venice Commission stated the following: *Two main objections were raised with respect to including an indirect reference to the Judicial Academy in the Constitution: the independence of this institution is not guaranteed by the Constitution and the practical experience of the judicial assistants, who are traditionally working in the court system with the expectation that this may open, for at least some of them, the possibility to become judges, is not taken into account (Paragraph 40) and pointed out, with which JAS agrees, that Having a national judicial academy is welcome and not unusual by any means, and that the Academy's role as a sole gatekeeper to the judiciary seems well founded with*

² Venice Commission's Opinion On The Draft Amendments To The Constitutional Provisions On The Judiciary, No. 921/2018 CDL/AD(2018)011, 25 June 2018

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)011-e)

The complete Constitutional Amendment process, with all the relevant documents (in Serbian) is available on JAS website: <https://www.sudije.rs/Item/Index/3>

the aspiration and commitment to strengthen the calibre and professionalism of judicial and prosecutorial training, but it would be advisable to protect the Academy from possible undue influence by providing it with a firm status within the Constitution (Paragraph 42).

- During 2021, when the work on amending the Constitution resumed, the Venice Commission indicated in its Opinion [CDL/AD\(2021\)032](#) of 18 October 2021³ that: *There is a great variety of different methods for the appointment of judges in domestic legal orders, with the result that there is no single 'model' that would ideally comply with the principle of the separation of powers and secure full independence of the judiciary (Paragraph 32) and that: The Judicial Academy was initially foreseen as being the institution that would provide a "point of entry" into the Serbian judiciary. It was therefore to be given a preeminent role to protect the appointment process from undue influence (see also GRECO's fourth evaluation round) but has been excluded from the draft Amendments. The latter no longer stipulate that entry into the judiciary is conditional on completion of the Judicial Academy, nor do the draft Amendments provide for a constitutional basis for the Judicial Academy (Paragraph 97). Consideration should be given to regulate the functioning of the Judicial Academy in an ordinary law, should this not be the case (paragraph 98). The Urgent Opinion that was last delivered, [CDL/PI\(2021\)019](#)⁴ of 24 November 2021, does not address the training.*
- The Venice Commission has never expressed a position, let alone a request, according to which the system of training through the Academy would be the only one possible, nor according to which only those candidates who completed training in the Academy should be appointed as judges.

4. The Alumni Club of the Judicial Academy, whose members are judges and lawyers who completed training at the Judicial Academy, and AJA, whose members are judicial assistants (graduate lawyers who received traditional mentoring training and passed the bar exam) were not included in the WG, although they would have significantly contributed to its work, having the most direct experience with different training practices and their positive and negative sides. These are professional associations for which training in the judiciary and the status and functioning of the Judicial Academy are in the narrowest focus, whose members have worked for decades in the judiciary,

³ Venice Commission's Opinion On The Draft Constitutional Amendments On The Judiciary And The Draft Constitutional Law For The Implementation Of The Constitutional Amendments, Nos. 1027/2021 and 1047/2021 CDL-AD(2021)032, 18 October 2021

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)032-e)

⁴ Venice Commission's Urgent Opinion On The Revised Draft Constitutional Amendments On The Judiciary, Nos. 1027/2021 and 1067/2021 CDL/PI(2021)019, 24 November 2021

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)019rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)019rev-e)

and for which it is therefore of crucial importance that the training in the judiciary is optimal.

5. With this approach to work on the law on the training in the judiciary, which dictates unreasonable and breakneck speed and prevents thorough work and essential and equal participation of all relevant subjects, contrary to Interim Benchmark 1.1.6 according to which *Serbia fully recognizes and exploits the benefits of civil society expertise and therefore engages in a real and systematic dialogue with civil society*, the result of which should be that *civil society organizations and professional associations participate in defining future steps in the reform process*, the good practice of inclusive and thorough work that existed while amending the Constitution in 2021 and judicial laws in 2022, was abandoned. In a situation where the deadline for adopting a new law on training has been exceeded by half a year (and two years in relation to AP23), no urgency can justify working on such an important law during summer, essentially in a single meeting, without analysing the previous practice, recommendations and exchange of arguments. That is why the impression is created that the establishment of the WG is a mere cover for the non-existent inclusivity and democratic dialogue.

On expertise and training

Expertise is a prerequisite for performing the function of a judge and, in addition to the integrity of a judge, one of the basic requirements that every society sets before a person who should perform the function of a judge. The expertise of judges is necessary both for judges and the judiciary, for defending independence and impartiality, and for citizens, serving their quality legal protection, including legal certainty and efficiency.

However, while the expertise and integrity of those who are to become judges are crucial, the manner in which they are trained is not, as the same effect (judge's expertise) can be achieved in different ways. *There are large and numerous differences between European countries in relation to the first, initial, and subsequent training, during the performance of the work of a judge. Those differences may partly arise from the specificities of various judicial systems, but in a certain respect they may not be inevitable or necessary.*⁵ Different methods of training are equally functional and applicable, depending on the tradition and economic possibilities of each country.

Judicial Training in Serbia

In Serbia, the Supreme Court was the first to determine the types and methods of professional training of judges, while the implementation of the training was entrusted

⁵ *Ibid*, Paragraph 13

to presidents of the courts. Training, including initial training, was not formally and systematically regulated for a long time in Serbia's history as a modern country, but it has always rested on the mentoring principle. The mentoring principle means that young graduate lawyers (judicial interns) were taught the judicial *craft* in court. After a few weeks or months of "strolling" through all services of a court and becoming familiar with what is done where and how, they would move on to training under the supervision of a judge (mentor)⁶. From today's perspective, it is very interesting that, during the 1970s and 1980s, the profession a judge (along with that of physicians and officers) was one of the three most valued and respected professions.⁷

Bearing in mind the ground-shaking social and political changes that occurred in the country at the end of the 20th century (transition from a socialist system to a neoliberal one, from a one-party system of unity of power to a multi-party system of separation of powers, and the dissolution of the federal state), based on the belief that the expertise of a judge is the starting point for judicial reform, JAS, together with the Government of Serbia, established the Judicial Center in 2001. The absence of a legal framework (both constitutional and legal) was not an obstacle to forming an institution for training of judges.

The Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Judicial and Prosecutorial Assistants⁸, adopted in 2006, was the first legal

⁶ By talking to judges and reading case files, they would become familiar with the subject of disputes, follow the judge's orders to the clerks (and later also issue them themselves) and the clerk's actions upon receiving them, communicate with state authorities and other stakeholders, attend trials, talk to the judge about the nature of the disputes, which facts are important and how they should be determined, which evidence proposals to accept and which not and why, what means of evidence to present and how and what is expected from which evidence, what to state in the minutes and how, what happens at the hearings, what remains to be done on the next one, whether and when the case is ready to be solved, how each to evaluate each piece of evidence separately and everything together as a whole, what a court decision looks like, how it should be written, etc. After a certain period of time (which used to be one year, but is two years of working in the court nowadays), their theoretical and practical knowledge would be checked in a written and oral bar exam (which includes about twenty exam subjects). After that, interns would resume their work in the court as judicial assistants, and after gaining appropriate work experience in legal practice and passing the bar exam, they would be eligible to apply for the position of judge.

⁷ See: Uglješa Zvekić, *Profesija sudija*, Belgrade, Institute of Criminological & Sociological Research, 1985

⁸ The Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Judicial and Prosecutorial Assistants, *Official Gazette of the Republic of Serbia*, No. 46/2006, application started on 1 March 2007. When talking about subjects it is applied to, the Law uses the generic term "holders of judicial duties".

The transitional and final provisions stipulated that, upon the entry into force of that law, the competence of the Supreme Court of Serbia to determine and prescribe the types and methods of professional training of judges from Art. 28 and 41, Paragraph 1 of the Law on the Organization of Courts (*Official Gazette of RS*, No. 63/01, 42/02, 27/03, 130/03, 29/04 and 101/05) and Article 8, Paragraph 2 of the Law on Judges (*Official Gazette of RS*, no. 63/01, 42/02, 17/03, 25/03, 27/03, 29/04, 35/04, 44/04, 61/05 and 101/05), as well as the competence of the Republic Public Prosecutor to determine and prescribe the types and methods of professional training of

regulation that systematically regulated the matter of training of judges and public prosecutors, as well as judicial and prosecutorial assistants. The training envisaged was initial and continuous: the initial training was attended by holders of judicial duties before taking office, as well as judicial and prosecutorial assistants, while the permanent training was attended by holders of judicial offices. The training was voluntary, unless certain forms of training were determined as mandatory by means of a law or based on the decision of the High Council of the Judiciary⁹ in the case of a change in specialization, significant changes of the legislation, and the introduction of new work techniques. The beneficiaries of the initial training from the ranks of judicial and prosecutorial assistants were elected by the High Council of the Judiciary in a narrower composition, according to established objective criteria, which were based on demonstrated work results and work experience, following a proposal of the court president, i.e. the public prosecutor, after acquiring the opinion of the session of all judges, i.e. the collegium of all deputy public prosecutors.

The Law on the Judicial Academy¹⁰ was adopted in 2009, with the explanation that there is a need for achieving the judges' and public prosecutors' right and obligation

public prosecutors and deputy public prosecutors from Art. 19, Paragraph 2 and 38, Paragraph 2 of the Law on Public Prosecution (*Official Gazette of RS*, no. 63/01, 42/02, 39/03, 44/04 and 61/05), will be no more.

⁹ The High Council of the Judiciary was originally established by means of the Law on the High Council of the Judiciary (*Official Gazette of RS*, no. 63/01, 42/02, 39/03, 41/04-correction, 44/04 and 61/05). It had five permanent members and eight members by invitation, all of whom were judges and public prosecutors. The President of the Supreme Court of Serbia, the Republic Public Prosecutor and the minister in charge of the judiciary, all of them *ex officio*, one member elected from the ranks of attorneys by the Bar Association of Serbia, and one member elected by the National Assembly out of three candidates proposed by the Supreme Court of Serbia from the ranks of lawyers who are not judges, public prosecutors or deputy public prosecutors, were permanent members. Concerning the members by invitation, there were six judges, and two public prosecutors.

Depending on the issue under consideration, the HCJ worked and adopted decisions in a narrower or expanded composition. The narrower composition consisted of permanent members by invitation (judges, when the issue in question was referring to judges, i.e. prosecutors, when decisions were made on issues concerning the prosecutors). The expanded composition consisted of all permanent members, except for the minister in charge of the judiciary, and the Republic Public Prosecutor, and all members by invitation (both judges and prosecutors).

The HCJ proposed to the National Assembly the election of presidents of courts, judges, public prosecutors and their deputies, the necessary number of judges and deputy public prosecutors, and determined the framework criteria for assessing the number of judges, lay judges and members of court staff, decided on the transfer of judges/prosecutors to another court/ prosecution, on the objection of judges/prosecutors against the decision on incompatibility, on the objection of (deputy) public prosecutors or deputy public against the decision on removal, on the increase of the basic salary in certain cases, on the caretaking Republic Public Prosecutor, appointed lay judges and performed other tasks prescribed by law.

¹⁰ The Law on the Judicial Academy, *Official Gazette of RS*, No. 104/2009 of 16 December 2009, 32/2014 – Decision of the Constitutional Court, 106/2015. The Judicial Academy started its activities on 1 January 2010, although the initial training program was first approved by the HJC and the State Prosecutorial Council only in 2015.

for training, and to that end, the establishment of an institution that will be responsible for the implementation of the training program for holders of judicial functions, as well as the training of judicial and prosecutorial assistants, i.e. judicial and prosecutorial staff. The most significant innovation compared to the previous training system was the initial training for future judges and prosecutors, which was organized and conducted by the Judicial Academy, after electing the training participants itself. Practical training was the predominant part of the training, being carried out in courts and public prosecution offices through judges and prosecutors (mentors), while the theoretical part of the training was carried out in the Academy itself. Since training in a training institution is only one of the possible ways of achieving the goal that was being pursued - ensuring the competence of the judge to that goal, even after the passing of the Law on the Judicial Academy, mentor training in courts and public prosecution offices remained as the predominant form simultaneously.

From the very beginning of the work of the Judicial Academy, the Serbian judiciary faced a problem that arose from an insufficiently well-designed initial training position. The Law on the Judicial Academy mandated the HJC to, when nominating candidates to the National Assembly to be elected as judges, give priority to candidates who have completed the Judicial Academy. Thus, in addition to the basic law that regulated the position of judges and prescribed the conditions for the election of judges (Law on Judges), a new election criterion was introduced, which practically made it impossible for judicial associates with many years of experience to participate in the competition for being elected as judges, should not having previously gone through the initial training program. Regarding the so-called continuous, permanent training, the Academy has, since its inception, failed to fulfil its obligation to provide training in every case when an evaluation of judge's suggests that there is a need for improvement in a certain area or activity, when a judge changes the matter in which they act, as prescribed by the Law on Judges, as well as in other cases for which there is a need or interest. At the same time, the training of judicial staff was completely insufficient, and the training of judicial and prosecutorial assistants was practically non-existent.

In 2014, the decision according to which the HJC was obliged to prioritize candidates who had graduated from the Judicial Academy as candidates for positions of judges was declared unconstitutional¹¹ by the Constitutional Court, having concluded:

- that the Law on the Judicial Academy is the organizational law that establishes the Judicial Academy as an institution that performs activities established by law,

¹¹ Decision of the Constitutional Court *Iuz-497/2011* of 6 February 2014 on the unconstitutionality of the provisions of Article 40, Para. 8, 9 and 11 of the Law on the Judicial Academy, *Official Gazette of RS*, No. 104/2009, published in the *Official Gazette of RS*, No. 32/2014 of 20 March 2014.

- that prescribing the conditions for election to the position of judge, i.e. of public prosecutor, is subject to regulation of laws that regulate these matters in a systematic manner, therefore - the Law on Judges and the Law on Public Prosecution Offices, and not the so-called "organizational" regulation, the subject of which is the establishment of an institution that deals with initial and continuous training of judges, public prosecutors and deputy public prosecutors, training of judicial and prosecutorial assistants and interns, and training of judicial and prosecutorial staff,
- that, in that way, the initial training completed at the Judicial Academy is not only crucial for the evaluation of expertise and competence as general conditions for election, but that it transforms into a condition for the determination of availability of these functions, which actually suppresses and prevents the adequate evaluation of other prescribed conditions,
- that, in that way, a candidate who completed the initial training at the Judicial Academy is given not only an absolute advantage, but also a guarantee that they will be elected if there are any vacancies,
- that, in that way, the principle of equality of citizens who are in the same legal situation is violated, since all persons who have not completed the initial training will essentially be eliminated from the circle of candidates for the first appointment as judge of certain types of courts and deputy public prosecutors,
- that such a system limits the jurisdiction of the HJC and the State Prosecutorial Council, established by the Constitution,
- that such a concept also calls into question the application of Article 77 of the Constitution, which guarantees equality to members of national minorities in the management of public affairs, while in the provision of Paragraph 2 of the aforementioned Article of the Constitution, it is established that in employment, among other things, in state bodies, account is taken of the national composition of the population and the appropriate representation of national minorities to enter public positions under equal conditions.

In the process of implementing the aforementioned decision of the Constitutional Court, in order to objectify the work of the HJC when proposing candidates for election and the appropriate evaluation of the expertise and competence of candidates for election as judges from the ranks of judicial assistants and, in general, those who have not completed training at the Judicial Academy, the Law on Amendments to the Law on

Judges¹² was adopted, stipulating that the expertise and competence of a candidate for a judge who is elected for the first time to the position of judge was checked at an exam organized by the HJC. The Council, then, by its by-law¹³, regulated in detail the manner in which the fulfilment of the criteria prescribed by the Law on Judges (expertise, competence, worthiness) was determined in the case of a candidate for a judge who was elected for the first time. This was determined on the basis of the exam (the method of passing, scoring, and evaluation was regulated), and, as a criterion for the evaluation of expertise and competence, the grade achieved on the judge's exam, that is, on the final exam at the Judicial Academy, was prescribed. The Commission of the HJC then compiles a preliminary list of candidates with the grade from the written test, that is, the grade from the final exam at the Judicial Academy and the grade from the interview it conducts.

JAS had determined four basic problems related to the functioning of the courts in Serbia, from which all other problems in the Serbian judiciary arise, including lack of timeliness, backlogs, and non-harmonized court decisions. In addition to insufficient (institutional and actual) independence of the judiciary, uneven workload of judges and courts, and inconsistent and low-quality regulations, insufficient training of judges, especially continuous training, is also included in the said four problems.

Since it is still interested in building a powerful and independent institution for training in the judiciary, as one of the ways of acquiring and improving the expertise of judges, public prosecutors and other employees in the judiciary, JAS is providing its contribution to the improvement of training in judiciary in this manner.

Principles on which judicial training should be based

- **Training** should be designed **according to the profile of a judge** (characteristics that society expects and requires a judge to have).

¹² By way of the Law on Amendments and Supplements of the Law on Judges, *Official Gazette of RS*, No. 106/2015 of 21 December 2015, Article 45a was added, stipulating that success in the exam is to be valued by grades from 1 to 5, that a candidate for judge who is elected to the position of judge in a basic or misdemeanor court for the first time and who has completed initial training at the Judicial Academy is not obliged to take the exam organized by the HJC, having the final grade at the initial training at the Judicial Academy taken as a measure of expertise and competence, and that the HJC shall prescribe the program and method of taking the exam that assesses the expertise and competence of the candidate for judge.

¹³ Rules on criteria and measures for assessing expertise, competence and worthiness for election of a judge on a permanent judicial position in another or a higher court and on criteria for nominating a candidate for the president of a court, *Official Gazette of RS*, No. 94 of 24 November 2016 and No. 48 of 9 June 2023.

The State Prosecutorial Council acted in a similar way by adopting the Rules on criteria and standards for assessing the expertise, competence and worthiness of candidates in the procedure of proposing and electing holders of the public prosecutor's office, *Official Gazette of RS*, No. 43 of 15 May 2015, No. 80 of 30 November 2016, et al.

- **Training should suite the purpose** (strengthening of expertise) **and the needs** of the judiciary. Since training is a concept broader than the institution through which it is carried out (and only partially and to a lesser extent), and that the goal of training is to strengthen expertise and not merely to establish an institution, the **name of the law** should reflect its subject, and should therefore be called **the Law on the Training in the Judiciary**.
- **Defining the training** - the shaping of a judge who is capable of correctly applying the law, who has a critical and independent opinion, who is sensitive to social issues, and has an open mind.
- **Expertise is a goal** that is achieved through training, and training can be carried out in different ways - in a court, a public prosecution office, the Judicial Academy, another state authority, an international organization, and the like. That is why expertise **must not be reduced to the way of attending training** (Judicial Academy) and only for one (smaller) area (practical training has not been carried out in the Judicial Academy, but in a court or a public prosecution office, while the Judicial Academy has held the appropriate missing theoretical training).
- **The training should be carried out by an entity independent** of the legislative and executive powers, in full accordance with educational autonomy, so that initial and supplementary training programs meet the criteria of openness, expertise and impartiality inherent in the judicial function.
- The responsibility for **organizing and supervising training** should rest with **the judiciary**, while training **programs** that are specific to the exercise of the profession of a judge should be decided upon by the **training institution, the lecturers and the judges themselves**.
- The training of judges does not refer to the renewal of examination materials from the faculty, mere familiarization with the content of laws, nor only to the acquisition of narrow professional knowledge. Judges are part of society, the decisions they adopt make their way into everyday social life, as well as the personal lives of individuals, meaning that, for them to be able to judge properly, they need to know and understand the broader social context. **The fundamental and comprehensive knowledge of judges should go beyond the boundaries of applicable law and include all significant areas of social importance**.
- **Judges should have and improve skills necessary for working in courtrooms** (such as skill in argumentation, hearing and conducting proceedings) **and personal skills** (security, decency, calmness, communicativeness, ability to resolve conflicts,

ability and willingness to make a decision, to successfully organize their work, to help in matters of wider importance for the court and the judiciary, thoroughness).

- **The initial training of judges** should be organized according to a *several tracks – one entry system* for entering the courts, which specifies that:
 - the **beneficiaries of the initial training of judges** were elected to the position of a judge for the first time (regardless of the rank of the court for which they were elected).
 - the **initial training of judges** is carried out **after the election, and before taking office**, bearing the following in mind:
 - the training of judges elected from the ranks of judicial or prosecutorial assistants, or graduates of the Judicial Academy, possibly also attorney trainees, would take the shortest and would last until taking office.
 - the training of judges who had no previous training or work experience in judicial authorities would take longer, according to their previous work experience, and their entry into office would be delayed for justified reasons until the end of the training, based on the decision of the HJC, in accordance with Article 63 of the Law on Judges.
 - that the **programs and duration** of the initial training be **individualized**, depending on the previous work experience of newly elected judges (if possible, taking into account the matter in which the newly elected judge will act)
 - the training that precedes the election may be the training of judicial assistants and that it could be taken into account when evaluating the competence of the candidate for the position of judge
 - the **focus** of the law should be shifted to **continuous training**, which would require:
 - prescribing types of beneficiaries,
 - analysing their needs,
 - informing those interested in a timely manner, so that they are able to make plans,
 - ensuring that, without exception, experienced and well-proven experts are chosen as lecturers,
 - making the training interactive.

- ensuring that training programs are publicly available in a timely manner,
- separating the mentor function from the evaluator function.
- **Continuous training** should be voluntary, and mandatory only in exceptional cases, prescribed by law (when judges change the matter in which they act, when they advance, when the evaluation of their work indicates the need for additional training, when laws are amended significantly, etc.); **available and predictable**, carried out according to **meaningful and interactive programs** with the **obligation of competent authorities** to provide judges with appropriate financial resources for training, time, rules that would respect the need for absence due to training and would not negatively reflect on the work of judges and the evaluation of their work (suspending influx of cases during training, not including the time spent on training in the deadlines for various actions, etc.) and everything else that is necessary for conducting training while performing work.
- The law should regulate both the **unique training of judicial interns** and the **unique training of judicial assistants through a mentoring system combined with seminars**, bearing in mind that the mentoring type of training has been applying for a long time and is still prevalent in the national legal system, realistically feasible and the most economical. Such training would be conducted as follows:
 - practical - in courts, public prosecution offices, possibly in other state authorities and institutions, and
 - theoretical (missing at faculties) - at the Judicial Academy.
- **The law on training in the judiciary should contain two basic parts.** The first part should be **substantive** and should define training in the judiciary, regulate the types and forms of training, and venues where each of them is to be carried out (courts, public prosecution offices, the Judicial Academy, other state authorities, etc.), prescribe the appropriate competences of the HJC in the "conceptualization" of the training and the election of participants, as well as the participants themselves, taking part in the training in different ways (beneficiaries, lecturers, mentors), the criteria for the election of participants, the duration of the training, the evaluation of the work of all participants. The second part should **regulate the institution** responsible for conducting the training (the Judicial Academy), its competences

(organization and, partially, conduction of the training), bodies, financing, functioning, etc.

- It is necessary to **provide the Judicial Academy with an independent status and functioning** in order not to jeopardize the independence of the judiciary and the jurisdiction of the HJC prescribed by the Constitution. The law on training in the judiciary should regulate the matters of its internal organization and functioning and thus avoid the corresponding application of the law regulating public services, or any other law, as well as the supervision of MoJ. Training is always conducted by an independent body, fully in line with educational autonomy. Therefore, and to the extent that it trains persons whose independence is guaranteed by the Constitution, the Judicial Academy should be independent and have educational autonomy. Otherwise, the Judicial Academy could become an instrument of political influence on the election of judges.
- **The director** of the Judicial Academy should be a **holder of judicial office** who meets the conditions for the election of a judge of the Supreme Court.
- It is necessary to prescribe and regulate the **duty of transparent functioning** of JA.
- **The election** of participants of JA, the election of commissions, mentors and lecturers and the evaluation of their activities should be dislocated from the Academy and entrusted to the HJC, i.e. an independent body elected by the Council.
- **Transitional provisions** of the law should prescribe deadlines and regulate situations that will occur in the future, given the fact that there are unelected candidates who completed the initial training at the Judicial Academy or passed the judges exam (judicial assistants, possibly other candidates).

To wrap things up: In order for **training** in the judiciary to be truly possible in Serbia exclusively through an exemplary Judicial Academy as an institution that would be guaranteed formal independence and actually function independently, a time-consuming, expensive and comprehensive intervention in society and the provision of a completely new legal framework would be necessary. This would require appropriate changes in the curricula of law faculties, amendments to the Law on Higher Education, the Law on the Bar Exam, the law on training in the judiciary and consequently, after a suitable transition period, the adoption of new laws on the judiciary. In the absence of a systemic approach to the improvement of training in the judiciary, when fifteen years of experience have shown that the training institution itself should first be strengthened with the necessary guarantees of independence and stabilized by proven quality work, **insisting on a law that would deal with the institution (Academy) and not the purpose** of that institution

(training) and which would prescribe that institution as the single point of entry to the position of a judge (and public prosecutor), would be disastrous for the independence of the judiciary (and the autonomy of the public prosecution service) in Serbia. In addition, by adopting a new law based on the same premise – that the training at the Judicial Academy is a condition for being elected as judge, the problems caused by the 2009 law, which determined the Constitutional Court to annul the provisions of the Law on the Judicial Academy, would still remain unresolved. The conditions for election as judge are prescribed by the newly adopted Law on Judges, and the principles of constitutionality and legality imply that no other regulation can establish additional conditions for election.

- In Serbia, which has only amended its Constitution (2022) in its part relating to the judiciary and passed new laws on courts, judges, public prosecution and on the judicial and prosecutorial council (2023), whose capacities are unfortunately insufficient, the existing **realistically applicable methods of training**, which function successfully in numerous other European countries should be developed, strengthened and combined, and **new ones should be developed gradually**.

- The law on training in the judiciary is not to weaken and endanger, but strengthen the independence and impartiality of those who will become judges and judges themselves.