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# **ANALYSIS OF TRAINING OF JUDGES IN SERBIA - EXPERIENCES AND PERSPECTIVES**

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## I INTRODUCTION

1. On 13 September 2024, the Ministry of Justice of the Republic of Serbia (hereinafter: MoJ) informed the Serbian public that the working version of the Law on the Judicial Academy had been submitted to the Venice Commission for expertise on the previous day. Along with that news, the MoJ's website published the working version of the aforementioned law and the accompanying amendments to the Law on Judges and the Law on Public Prosecution in two variants - depending on whether Article 56 of the working version of the Law on the Judicial Academy will be retained. In this regard, the Judges' Association of Serbia (hereinafter: JAS) and the Association of Judicial Assistants (hereinafter: AJA) are indicating certain important circumstances for completing the picture related to the aforementioned legal acts.

2. At its session held on 9 February 2022, the National Assembly of the Republic of Serbia passed the Act on Amendments to the Constitution of the Republic of Serbia, as well as the Constitutional Law for the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia. Previously, the Act on Amendments to the Constitution of the Republic of Serbia was endorsed by the will of the citizens at the republican referendum held on 16 January 2022, which ended a nearly decade-long and, occasionally, very turbulent process of amending the Constitution of the Republic of Serbia in its part related to the judiciary, and at the same time initiated the process of harmonizing the laws from the area of the judiciary with the Amendments to the Constitution of the Republic of Serbia.

3. The Constitutional Law for the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia<sup>1</sup>, stipulated that the Law on Judges, the Law on the Organization of Courts, the Law on the Public Prosecution, 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 the Amendments' entry into force, and that the provisions of other laws will be harmonized with the Amendments within two years. All the aforementioned laws, which needed to be adopted within one year, were adopted and published within the deadline, which was designed to expire on 9 February 2023. However,

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<sup>1</sup> The Announcement of the republican referendum for endorsement of the Act on Amendments to the Constitution of the Republic of Serbia, along with the text of the Act on the Amendments, the reasoning of the Act, and the Constitutional Law for the Implementation of the Act on Amendments to the Constitution were published in *The Official Gazette of Republic of Serbia*, No. 115, 30 November 2021. The reasons for amending the Constitution were stated in the reasoning of the Act.

The Decision on the Promulgation of the Act on Amendments to the Constitution of the Republic of Serbia and the Decision on the Promulgation of the Constitutional Law for the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia were published in *The Official Gazette of Republic of Serbia*, No. 16, 9 February 2022.

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.

4. By virtue of this Analysis, JAS and AJA<sup>2</sup> contribute to the reflection and understanding of the process in which the previous work on drafting of the working version of the Law on the Judicial Academy was undertaken, as well as on the legal framework for training in the judiciary in Serbia, the socio-historical context that influenced the training of future judges in Serbia, and the functioning of the Judicial Academy so far. The signatories of this Analysis are convinced that, only by taking such a comprehensive approach, it can be properly assessed whether the intention of electing only those who have completed the initial (*previous*) training at the Judicial Academy as judges is in accordance with the reasons for amending the legal framework (constitutional and legal) implemented in 2022/2023<sup>3</sup>. Also, such an approach will also answer the questions of whether such an intention is feasible in the current conditions and whether it will contribute to strengthening the independence of the judiciary and the functioning of the rule of law in Serbia.

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<sup>2</sup> The [Judges' Association of Serbia](#) is the oldest and most numerous association of judges in Serbia. It was established in 1996 as a sign of judges' refusal to legalize election theft in local elections through court decisions. The intention was, and remains, to publicly condemn and stop any interference of politics in the making of judicial decisions and persist in the demand for judicial independence and respect for the principle of separation of powers. At the moments, it gathers a little more than 1,100 members (judges and retired judges) from the total number of about 2,600 judges in Serbia.

JAS has been a member of the *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL) since 2008 and of the International Association of Judges (IAJ) since 2009, and is the most persistent promoter of European values and international judicial standards in Serbia.

The systems of evaluation of the work of judges, initial and continuous training, and disciplinary liability were introduced into the judicial laws at the initiative of JAS. In 2001, the Judges' Association persuaded the Government of Serbia into joint establishment of the Judicial Center, which was the forerunner of the Judicial Academy.

The [Association of Judicial Assistants](#) is a voluntary, non-governmental, professional association of judicial assistants in the Republic of Serbia, established for achieving goals in the area of the rule of law, with the main focus on protecting rights and interests of judicial assistants and improving their legal and financial position.

<sup>3</sup> The situation in which the High Judicial Council would be obliged to only elect those graduate lawyers who, in addition to the condition that they meet other requirements for election to the position of judge prescribed by the Law on Judges, have completed training as beneficiaries of the Judicial Academy to the position of a judge, is described as the *Judicial Academy as "the single entry point into the judiciary"* expression by the expert public.

Since such an expression is known to the professional public, and for the reason of being more brief, when this expression or its variants such as *one door to enter the judiciary*, *the only point of entry into the judiciary* and the like are used in the remainder of the text, they will refer to the situation in which the HJC is obliged to elect as a judge only a graduate lawyer who, in addition to fulfilling the other conditions for election to the position of judge prescribed by the Law on Judges, has completed training as a beneficiary of the Judicial Academy, i.e. in a situation where there training completed at the Judicial Academy stands as an *additional* condition for election to the position of judge

5. JAS and AJA are aware that the election of judges only among candidates who have completed training at the judicial academy does not represent a legal standard in European countries. Even if such a standard existed, its proper application would require prior interpretation and consideration of various possible solutions, bearing in mind the legal tradition, legal order, experiences and actual possibilities of a specific state that would opt for it. If the solution stemming from a legal standard would not be realistically applicable in a specific country, and if it would threaten the integrity and independence of the judiciary, it should neither be recommended nor accepted.

6. In this Analysis, the specific reasons for which the two associations deem unacceptable both the current process and the content of the legal acts submitted to the Venice Commission for expertise, as well as the joint specific proposals of both associations, will be presented.

## II THE PROCESS OF ADOPTION OF THE DRAFT LAW

7. This process was initiated on 25 July 2024, by the establishment of the Working Group for drafting the Law on the Judicial Academy (hereinafter: WG), by virtue of a resolution adopted by the Minister of Justice<sup>4</sup>, and convening its first meeting for 1 August 2024<sup>5</sup>. In order to clarify at what speed everything related to the work on this law took place, the events related to the work on this law will first be presented chronologically. Events overtook each other day by day. Inappropriate haste, confusion, preventing the participation of those who could significantly contribute to its work, lack of information (not only to the public, but also to the judges and members of the WG) made up the atmosphere in which this process took place. Such an atmosphere did not allow to approach this important work

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<sup>4</sup> The Working Group was 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 Aranđelović 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.

<sup>5</sup> It is worth noting that the Working Group was established for drafting the Law on the Judicial Academy only. It was not mandated with amending the Law on Judges.

in a suitable way, nor to consider the reasons for the adoption of the new law, the purpose of the training, as well as its possible training modalities considering the legal tradition of Serbia, past experiences in the functioning of the Judicial Academy (since 2010) and actual possibilities of Serbia. Everything mentioned should be considered in the context of the fact that, even in Europe, there is no such standard that would prescribe training completed at the academy as a condition for *entering the judiciary*.

8. At the initial meeting of the Working Group, which was attended, on behalf of the JAS, by Snežana Bjelogrić, president of the Association and elected member of the High Judicial Council (hereinafter: HJC) from the ranks of judges, those present were informed by Jovan Ćosić and Branislav Stojanović, assistants to the Minister of Justice, that:

- the Law on the Judicial Academy needs to be adopted for the reasons of harmonizing it with the Constitution and the laws adopted in 2023, with the goal of improving the training system,
- the training conducted by the Judicial Academy (hereinafter: Academy) needs to be put into the right place, in accordance with the new legislation
- 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 - 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.
- 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

9. At this meeting, judge Snežana Bjelogrić stressed that the already broad composition of the WG allowed for all relevant stakeholders to be represented, and expressed her regret that the representatives of the Alumni Club of the Judicial Academy, as well as the representatives of the AJA were not invited to take part, and invited the MoJ to consider the possibility of subsequently including representatives of these professional associations in the work of the WG.

10. Following the request submitted on 31 July, the Working Group for Chapter 23 of the National Convention of the EU (hereinafter: WG23 NCEU) were allowed to attend the WG meeting as observers, but only as of 28 August 2024.

11. On 27 August 2024, JAS, along with AJA, provided MoJ with its letter [On The Procedure Of Adopting The Law On The Judicial Academy And The Principles For A Law On Training In The Judiciary](#) which contains the principles on which the new law on training in the judiciary should be based on, at the same time expressing its position on the

foreseen procedure of adopting the law. It has once again disclosed its concern of both professional associations due to insufficient inclusivity and an inappropriately short deadline for adoption of the law, as well as the concern over the planned concept of the Academy becoming *the single entry point into the judiciary*.

12. The members of the WG, as well as JAS, were provided with materials from the associations represented in the WG, and the WG's members, namely, on 6 August, a letter from Nenad Vujić, director of the Judicial Academy; on 21 August, a letter from Jasmina Kiurski, PhD, public prosecutor of the Supreme Public Prosecution Office; on August 27, the proposals of the Association of Prosecutors of Serbia and the Forum of Judges of Serbia; and on 2 September, the document provided by JAS and AJA on 27 August 2024.

13. On August 30, the members of the WG, as well as JAS, received the Draft Law on the Judicial Academy. It was stated to have been drafted by MoJ in cooperation with the Judicial Academy, as the initial text which will later be worked on by the WG. From the material submitted as a basis for the work of the WG, it was clear that MoJ did not intend to, on its own or within the framework of the WG, discuss the theoretical issues of training and on what the concept of the law on training in the judiciary should be.

14. For this reason, JAS, the Alumni Club of the Judicial Academy and AJA issued a joint public statement on 2 September 2024, once again stating the associations' concerns due to the fact that civil society and professional associations that have the most direct experience with training, and whose narrowest focus is on the status and functioning of the Judicial Academy, were not represented in the Working Group: the Alumni Club of the Judicial Academy, whose members are judges and public prosecutors who completed training at the Judicial Academy, and the Association of Judicial Assistants, whose members are judicial assistants - graduate lawyers who received traditional mentoring training and passed the bar exam. The joint public statement stated that:

- the good practice of inclusive and thorough work that existed while amending the Constitution in 2021 and judicial laws in 2022, was abandoned, although, the state has, by means of the Action Plan for Chapter 23, committed to the adoption of the Law on the Judicial Academy in a process in which the representatives of the judiciary and the profession were actively and equally involved, as well as to exploit the benefits of civil society expertise and a real and systematic dialogue with civil society,

- no urgency can justify working on such an important law essentially in a single meeting, creating an impression that the establishment of the WG is only scenery of inclusivity and democratic dialogue

- the content of the interim benchmark, the urgent fulfilment of which was pointed out at the initial meeting of the Working Group, does not arise from the Revised Action Plan for Chapter 23.

With special relation to the submitted draft version of the law, which should serve as a starting point for the work at the scheduled meeting, the signatory associations of the said

statement express justified concern that the law will not follow the principles they stand for, which are, among others:

- A systemic approach to the improvement of training, in order to ensure the conditions for building a powerful and independent institution for training in the judiciary.

- Training that fully *follows* the concept of the Constitution and new judicial laws regarding the established competences of the councils for the judiciary.

- Training that should correspond to the purpose - strengthening the expertise and integrity of the holders of judicial office and the needs of the judiciary.

- Training fully in accordance with the educational autonomy carried out by an entity independent of the legislative and executive powers, based on programs that meet the criteria of openness, expertise and impartiality inherent in the judicial function, with the obligation of the state to provide adequate financial resources.

15. On the same day, 2 September 2024, an informal group of judicial and prosecutorial assistants announced, via social networks, that it has addressed a letter to the president and members of the WG, in which it had:

- expressed opposition to the concept of the law according to which the Academy would represent *the single entry point into the judiciary*

- endorsed the aforementioned document of JAS (and AJA) from 27 August 2024

- suggested that the President of the WG forward their letter to all WG members, and

- demanded that representatives of judicial and prosecutorial assistants be allowed to participate in the work of the WG.

16. The revised Draft of the Law on the Judicial Academy was submitted to the members of the WG on 2 September. This time, the Draft Law on Amendments to the Law on Judges was also submitted, which introduced a new condition for the election of a judge, as the amendment stipulated that *the expertise and competence of a candidate for a judge who is elected to the position of judge for the first time is determined by a certificate of completed training at the Judicial Academy*. From the submitted Draft Law on Amendments to the Law on Judges, it was clear that MoJ, contrary to the proposal of the JAS and AJA, and without voting of the members of the WG, opted for a training concept that essentially prescribed training completed at the Judicial Academy as an additional condition for the election of judges, i.e. to amend (supplement) the conditions for the election of judges beyond those prescribed by the 2023 Law on Judges.

17. In the afternoon of 3 September, ahead of tomorrow's meeting of the WG, the Minister of Justice and her assistants held a meeting with judicial assistants from AJA, the Association of Judges and Prosecutors<sup>6</sup> (hereinafter: AJPS) and the mentioned informal

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<sup>6</sup> The [Association of Judges and Prosecutors of Serbia](#) was established in September 2018 and instantly started its work with strong support of the Ministry of Justice and media aligned to it. Its members are not only judges and public prosecutors, but judicial and prosecutorial interns as well.

group at which it was announced that the assistants' representatives would be allowed to follow the work of the WG in the capacity of observers (with travel and accommodation expenses covered only for one person).

18. The meeting of the WG which was held 4-6 September 2024 will be discussed separately. At this point, it should be noted that, at the end of that meeting, it was agreed that the text of the Draft Law on the Judicial Academy, agreed at the meeting, would soon be delivered to the members of the WG. This, however, didn't happen.

19. On the occasion of the Draft Law on the Judicial Academy, the Judicial Research Center (JUREC) issued a statement on 5 September 2024, titled [\*Another attempt by the executive power to interfere in the selection of judges and prosecutors\*](#)<sup>7</sup>, mentioning that: ... *shift the selection of judges and prosecutors from the judicial councils to the Judicial Academy, by urgently proposing a new Law on the Judicial Academy and urgent amendments to the Law on Judges and the Law on Public Prosecution. It also noted that solutions from said laws would make the Judicial Academy, which is organizationally and financially dependent on the executive power, become "the single entry point into the judiciary", even though in its proposed management structure the undoubted majority is held by persons elected by political bodies (National Assembly and Government of Serbia) together with those persons elected in bodies in which representatives of political bodies already have a majority (such as the High Prosecutorial Council), also stressing that it would hinder the Constitution, which was amended in 2022 precisely for the reason of preventing such influences, and emphasized that some professional associations have already reacted to another attempt to attack the independence of the judiciary and the independence of the prosecution.*

20. On the same day (5 September 2024), the Ministry of Justice had publicly [\*denied\*](#) the statement, and emphasized that ...*The working version of the Law on the Judicial Academy does not provide for the Judicial Academy to be the single entry point into the judiciary, although this was requested by the European Commission as part of the assessment of the fulfilment of the interim benchmarks for Chapter 23: "Judiciary and Fundamental Rights", nor that representatives of political bodies should be part of the governing body of the Judicial Academy. The working version that is currently being considered at the meeting of the WG envisages alternative models for the election of judges and public prosecutors, with the passed exam within the initial training at the Judicial Academy being one of them...* It was stated that the Minister of Justice is one of the 11 members of the Administrative Board of the Judicial Academy and that: *Only two members of the Program Council are representatives of the executive power, namely the State Secretary in the Ministry of Justice and the State Secretary in the Ministry of Finance. Bearing this in mind, it is unequivocal that there is no influence of the executive and legislative powers on the election of judicial office holders, nor that the majority are held by persons elected by political bodies (National Assembly and Government) and it is more than obvious that the Center for Judicial Research is once again*

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<sup>7</sup> The representative of JUREC was allowed to follow the work of the WG as an observer.

*misleading both experts and the general public, leading them astray regarding the solutions contained in the Working version of the law.*

21. On [13 September 2024](#), the Ministry of Justice published the Draft of the Law and Judges and the Law on the Public Prosecution – variants A and B (depending on whether the solution from Article 56 of the Law on the Judicial Academy, which enables persons who haven't completed training at the Judicial Academy to be elected as judges/public prosecutors, will be retained or deleted), as well as the Draft of the Law on the Judicial Academy, on its website.

22. At the same time, the Ministry [informed](#) the public that, **on the previous day**, *the working version of the law was communicated to the Venice Commission on 12 September 2024, in order to obtain an opinion on the compliance of the working text with the standards of the Council of Europe. According to the work plan of the Ministry of Justice, the public debate on the working version of the law will be held in October.*

23. The members of the WG were not provided with the version of the law agreed upon on the working meeting. Drafts of laws submitted to the Venice Commission on 12 September 2024 were only delivered to the WG members in the afternoon of the following day.

24. On the occasion of the publication of the draft of the Law on the Judicial Academy, on 14 September 2024, media portals such as [Tanjug](#), [Kurir](#), [Večernje novosti](#), announced that the Ministry of Justice adopted the proposals of AJPS on amendments to the Law on the Judicial Academy *following the meeting of representatives of this association with Maja Popović, the Minister of Justice, and the president of the Working Group for drafting the Law on the Judicial Academy, which was held on 3 September 2024.* The members of the WG were never informed that such a meeting will be held, nor were they provided with a proposal from AJPS, although this association also had its representative in the WG.

25. Following the publication of the Draft of the Law on the Judicial Academy on 16. September 2024, professional associations have released statements once again. The [Association of Public Prosecutors](#) informed the public that, *as a result of the work of the PAS representatives in the WG, a number of normative solutions were significantly improved, two of which are the most important for professionals and the general public - the first, which concerns the issue of the status of the Judicial Academy and the introduction of supervision over its work by the councils of the judiciary, while the second solution concerns the entry into the judicial professions of judges and prosecutors.* Namely, it was pointed out that the initial text provided for *one entry track* by stipulating the previous training at the Judicial Academy as a condition for election, that this professional association opposed and advocated for the preservation of the existing solution, which implies a second track of entry by passing a test before the councils of the judiciary. *There were several reasons for this position. The first lies in our belief that judicial and prosecutorial assistants, who were, until now, mostly been elected after taking an exam before councils of the judiciary, represent an extremely important source of human resources in the judiciary*

*and that the judiciary is not in a position to give up that resource. Another reason lies in the fact that judicial professions are less and less popular among young lawyers, and that the improvement of human resources in the judiciary requires a multi-track policy, that is, more flexible forms of entry into judicial professions. The third reason is the question of the tradition of the Serbian judiciary, which we believe is worth preserving. As a result of our efforts, Article 56 was included in the working version of the Law, which maintains the existing model of elections for judges and prosecutors. Truth be told, the Ministry of Justice also prepared an alternative working version that envisages the deletion of Article 56, which would return to the solution from the initial text. In this regard, the PAS has informed the public that it will use every opportunity to stand for the decision from Article 56 of the working version, in front of national and international stakeholders, and that, should the said decision remain, the Association of Public Prosecutors will, in principle, support the working version of the draft law.*

26. On the same day, 16 September 2024, JAS, together with AJA, issued the joint statement, titled *Inadequate speed harms the quality of the law on the Judicial Academy*, in which it reminded of the procedural setbacks in the work on the Draft of the Law on the Judicial Academy. It has stated that the grounds for the work of the WG was the working concept of the Law on the Judicial Academy, which is, in many aspects, opposite to the systemic laws (the Law on Judges, the Law on the High Judicial Council, and the Law on the Organization of Courts) that were only passed in 2023 in fulfillment of the obligations prescribed by the Constitutional Law for Implementing the Act on Amendments to the Constitution of the Republic of Serbia. It was once again stated that initial training should be mandatory for all judicial trainees and assistants, according to the program established by the High Judicial Council, that the practical part should be carried out by the courts (as before), and the theoretical (interdisciplinary) by the Judicial Academy, with the fact that judges who have been elected for the first time, and have not completed the initial training, shall also complete the initial training, which should, in terms of time and content, be adapted to their previous professional experience. The signatories expressed the position according to which it was necessary for the text of the entire law to be harmonized with the applicable systemic judicial laws and improved by nomothetical interventions. Only then, the assessment can be made on whether the solution alternatively offered by Article 56 of the draft Law on the Judicial Academy follows the concept of the Constitution and the new judicial laws with regard to the established competences of the councils of the judiciary. The Judges' Association of Serbia and the Association of Judicial Assistants have also openly invited:

- The Ministry of Justice: not to wait for the Venice Commission to submit its opinion, but instead to immediately continue the work on the drafting of the law by ensuring that the Working Group and observers are able to hold working meetings at which the principle issues and possible and applicable concepts of training in the judiciary in Serbia would be discussed, and to organize related public discussions on the matter at the same time

- The High Judicial Council: to analyze the draft laws, take its position on whether they intrude the jurisdiction of the High Judicial Council regulated by the Constitution and laws and threaten the independence of the judiciary, and publish its own detailed analysis of the law
- The Supreme Court of Serbia: to consider the draft law without delay and encourage the debate on this important issue, which would involve judges, judicial assistants and interns in all courts
- All the aforementioned authorities together: to make discussions, i.e. the minutes and conclusions of these discussions, publicly available.

27. At the end of September 2024, the Draft Law on the Judicial Academy and the Draft Law on Amendments to the Law on Judges, along with their reasonings, both dated 20 September 2024, as well as the conclusions on conducting a public hearing for both draft laws in the period from 1 October to 1 November 2024, dated 24 September 2024, were published on the MoJ website. It was foreseen that relevant state authorities, representatives of civil society, the professional public, as well as other interested parties will participate in the public debate, and that round tables will be held in October 2024, namely: on 10 October in Niš, on 17 October in Kragujevac, on 24 October in Novi Sad, and on 31 October 2024 in Belgrade.

#### **The first and only meeting of the Working Group for drafting the Law on the Judicial Academy**

28. The meeting of the WG was held in the period 4-6 September 2024. It is important to note that it was also the first and last working meeting of the WG, given that the initial meeting on August 1 was of a protocol nature. At the beginning of the meeting, judge Nada Đorđević, JAS representative in the WG, proposed that the members of the WG first agree on the way of working, keeping minutes and deciding on disputed issues (whether decisions will be reached unanimously or by majority vote, and whether alternatives will be proposed). All the above-mentioned questions were simply passed without discussion or answer. The representatives of MoJ only announced, regarding the proposal to take minutes at the meeting, that the minutes will be taken in such a way that only the discussions of those members who request for the minutes to be taken, will be included. Although judge Đorđević requested that her statement is noted in the minutes, as of the date of submitting this Analysis to the Venice Commission, the minutes have not been delivered to the WG members.

29. The JAS representative pointed out the reasons for amending the Constitution, which were stated in the [Act on Amendments of the Constitution of the Republic of Serbia](#), and

published as its integral part - *harmonization of the Serbian legal system of Serbia with the legal system of the European Union, i.e. building and strengthening the rule of law in accordance with European standards and achieving, in practice, a higher level of realization of the fundamental principle of the rule of law, which, among other things, presupposes a consistently organized and enforced separation of powers, the independence of the judiciary and the judicial protection of human rights and freedoms guaranteed by the Constitution*. Therefore, she proposed that the WG first consider the principle issues concerning training in the judiciary, the concept of the law and the principles on which it should be based.

30. With regard to the submitted draft laws, judge Đorđević pointed out that the Draft Law on the Judicial Academy drawn up by the Ministry of Justice essentially introduces an additional condition for election to the position of judge and prosecutor – completion of previous training at the Academy<sup>8</sup>. She emphasized that the Law on the Judicial Academy is of the organizational nature and that it cannot prescribe an additional condition for election, which is not provided for by the currently valid systemic laws - the Law on Judges and the Law on To the Public Prosecutor's Office. She also added that the systemic laws, which were adopted on 9 February 2023 preceded by a *rounded* - transparent and inclusive process (as assessed by both the Venice Commission and the European Commission), cannot be amended in such a way as to adapt to a law of the organizational type. In addition to the above, she pointed out that the proposed concept of the law, which envisages the Academy as the single entry point into the judiciary, i.e. completion of training at the Academy as a new condition for the election of judges, retains all the shortcomings of the previous law, which was also addressed by the Constitutional Court of the Republic of Serbia in 2014, when certain provisions of the applicable Law on the Judicial Academy were declared unconstitutional<sup>9</sup>. All these observations and proposals of JAS, which were supported by AJA, were disregarded without discussion.

31. Stefan Gojković, representative of AJA, supported the remarks and suggestions of the representative of JAS, indicating that no type of training can be favored over others, i.e. that training completed at the Judicial Academy cannot be a condition for election to the position of judge, as that would ignore the fact that there are 2,000 judicial and prosecutorial assistants being professionally trained by working in courts. He stated that the current training system needs to be improved. As AJA was only allowed an observer's status in the

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<sup>8</sup> The term *previous* training was first introduced into the Serbian legal order by this draft law.

According to the previously applicable judicial laws and the applicable Law on the Judicial Academy, as well as according to the applicable judicial laws adopted in 2023 (Article 51 of the Law on Judges, Article 17 of the Law on the High Judicial Council), there are only *initial* and *continuous* training.

<sup>9</sup> 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, *The Official Gazette of the Republic of Serbia*, No. 104/2009, published in the *The Official Gazette of the Republic of Serbia*, No. 32/2014, 20 March 2014.

WG one day before the meeting, he distributed the [Remarks and Proposals of the Association of Judicial Assistants regarding the Draft Law on the Judicial Academy and the Draft Amendments to the Law on Amendments to the Law on Judges](#) to all members and observers of the WG.

32. In relation to what the JAS representative presented, Branislav Stojanović, the assistant to the Minister of Justice and a member of the WG stated that *strategic documents are out of date*, and that *the European Union recently made a U-turn and informally requested that the Judicial Academy be the only entrance to the judiciary*, and in support of his claims, presented to the WG members an untitled page displaying a single row extracted from an untitled table in English, featuring the following lines in the English language, the meanings of the columns were not indicated on which, not allowing to determine the nature of such a document. The first column reads: *Interim Benchmark 4: Serbia establishes an initial track record of implementing a fair and transparent system based on merit for the management of the careers of judges and prosecutors including recruiting, evaluating and promoting judges and prosecutors based on periodic, professional performance assessment (including at senior level)*. The second column reads: *The current system for recruiting, transferring and promoting judges and prosecutors needs to be revised in line with the new judicial legislation. It will be essential to establish merit-based judicial careers*. The third column features the following text: *Adopt all implementing legislation and by-laws related to recruitment and career management of judges and prosecutors, aligning with European standards. Adopt the Law on the Judicial Academy, making it the sole nationwide entry point to the judicial profession and ensuring its protection from "undue influence" in line with the Venice Commission's recommendation. Establish a track record following implementation of new rules that demonstrate a fair and effective system. (Note: such initial track records may be established on the basis of data stretching back to the date of formal adoption of the EUCPs on 23 and 24)*.

<p>IBM 4: Serbia establishes an initial track record of implementing a fair and transparent system based on merit for the management of the careers of judges and prosecutors including recruiting, evaluating and promoting judges and prosecutors based on periodic, professional performance assessment (including at senior level).</p>	<p>The current system for recruiting, transferring and promoting judges and prosecutors needs to be revised in line with the new judicial legislation. It will be essential to establish merit-based judicial careers.</p>	<ul style="list-style-type: none"> <li>- Adopt all implementing legislation and by-laws related to recruitment and career management of judges and prosecutors, aligning with European standards.</li> <li>- Adopt the Law on the Judicial Academy, making it the sole nationwide entry point to the judicial profession and ensuring its protection from "undue influence" in line with the Venice Commission's recommendation.</li> <li>- Establish a track record following implementation of new rules that demonstrate a fair and effective system (Note: such initial track records may be established on the basis of data stretching back to the date of formal adoption of the EUCPs on 23 and 24)</li> </ul>
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33. Judge Nada Đorđević, a member of the WG and of JAS, concluded that such conditions exclude her further participation in the WG meeting. First of all, it is unacceptable for judges to ignore a valid strategic document (Revised Action Plan for Chapter 23), and especially the newly adopted Constitution and judicial laws, in order to act on something that represents only an informal request of the European Union. This is because the principles of the rule of law apply both in the European Union and in Serbia. And according to those principles, binding strategic and legal acts are adopted by competent authorities (in this case, the Government), in a predetermined, transparent, inclusive and democratic procedure, and are publicly announced. Only after being adopted and published in this way, such documents oblige everyone to respect and implement them. In addition, prescribing the Academy as the single entry point into the judiciary would mean that the Academy takes over the constitutional role of councils of the judiciary to elect judges/prosecutors, since the election for those positions would actually be carried out by the Academy, before the official election, meaning, by a factor that is not competent, at the moment of selection of training participants. JAS has a number of other compelling reasons why the Academy, under the current circumstances, should by no means become the single entry point into the judiciary, and these reasons will be presented below. Since further participation in the work would mean agreeing to deviations from the reasons for which the Constitution and judicial laws were amendment, the annulment of the constitutional Competences of the HJC and the weakening of the independence of the judiciary, the member of the WG from the ranks of JAS, judge Nada Đorđević, left the working meeting on 4 September 2024. The JAS Management Board held an emergency meeting on the same day and discussed the above-mentioned events. It was concluded that the member of the WG acted in everything according to the views and instructions of JAS, and that her action, which had not been applied by JAS representatives during two decades of participation in the work of various working groups, was appropriate to the seriousness of the situation. In spite of everything stated above, the leaving of the meeting of the WG by JAS representative was accepted with approval.

Since the WG only considered the version of the Draft without Article 56 in the remainder of the working meeting, the representative of AJA, Stefan Gojković, stated at the end of the meeting that AJA is fundamentally opposed to the proposed concept of a single point of entry into the judiciary, and pointed out that no transitional solution can eliminate the shortcomings of the Draft, which makes the *previous* training at the Judicial Academy a crucial condition for election to the position of judge.

#### **Public Statement of the WG23 NCEU**

34. Summarizing the information received so far, [WG23 NCEU](#), in a statement dated 27 September 2024, warned the public about serious procedural failure, indicating:

- that the Draft Law was prepared in MoJ and then presented to the WG,
- on the absence of involvement of all interested parties, i.e. that representatives of professional associations who have direct experience in the field of judicial training were not invited to participate in the work of the WG, as well as that representatives of the WG23 NCEU, who have a formal role in monitoring Serbia's progress in the fields of judiciary, fight against corruption, and fundamental rights, were not informed about the establishment of the WG, nor were they invited to be observers, and only after the intervention of the NCEU and a formal request sent on 31 July 2024, was the observer status granted to the WG23 NCEU at the meeting scheduled for 4 - 6 September 2024
- that, despite the MoJ's statement that the European Commission instructed the Academy to be single entry point into the judiciary, within the assessment of the fulfilment of the interim benchmarks for Chapter 23, such an instruction was not specified in the formal interim benchmarks, nor in the Action Plan for Chapter 23
- to the rejection of the proposal made by some members of the WG to consider the basis of the proposed solutions and to consider approaches different from the proposed one, which included the Academy as the single entry point into the judiciary
- that the meeting of the WG scheduled for 4-6 September 2024 was marked by the facts that JAS left the WG and that WG23 NCEU observer from the ranks of IUREC was unpleasantly treated, after both organizations expressed their opposition to the conceptual approach taken in the Draft Law
- that, given the non-compliance with the prescribed deadlines, the described urgency was not necessary,
- that all of the above calls into question the quality of the legislative process.

By means of the same announcement, it invited the MoJ to review the steps taken so far, consider the comments submitted by members of the WG23 NCEU, enable a more inclusive dialogue and ensure that the law is drafted in accordance with the standards of the Council of Europe and the needs of the Serbian judicial system. It was concluded that transparency and cooperation with professional associations and civil society are key to a successful reform process in the judiciary.

### **Conclusion on the process of the work on the Law on the Judicial Academy**

35. With this approach which dictates unreasonable and breakneck speed and prevents thorough work and essential and equal participation of all relevant subjects, contrary the strategic goal, the good practice of inclusive and thorough work that existed while amending the Constitution in 2021/2022 and judicial laws in 2022/2023, was abandoned.

36. It is a fact that the deadline for adopting a new law on training has been exceeded by half a year, as stipulated by the Constitutional Law, and by more than two years in relation to the Revised Action Plan for Chapter 23. Still, the failure to pass the law within the deadline must not be an excuse for subsequent rush, work during the summer, and essentially in a single meeting without analyzing the Academy's functioning so far, as well as the current state and actual needs of the judicial system and capabilities of the state. It also cannot excuse other shortcomings: insufficient inclusivity, lack of consultation with all relevant stakeholders, the absence of exchange of arguments. Such atmosphere and manner of work lead to the logical impression that the establishment of the WG is only scenery of inclusivity and democratic dialogue.

37. It is worth remembering that one of the important reasons for the deadlock in the Constitutional Amendment process of 2018/2021 was the fact that the entire professional public, backed by civil society organizations dealing with the protection of human rights, was united in the assessment that the planned amendments to the Constitution would worsen the Constitutional provisions applicable at the time, and threaten the independence of the judiciary. This experience also influenced the way in which the process of amending the Constitution of the Republic of Serbia in 2021/2022 and passing of judicial laws in 2022/2023 was carried out, given that this was performed in an exemplary, inclusive and thorough manner. And exactly during this process, there was no conclusion that training at the Academy was a necessary condition for election to the position of a judge, and such a condition was never prescribed. Not by accident, but for a reason. All the more, it is not acceptable, nor in accordance with good practice, that the concept of the future Law on the Judicial Academy, which is of an organizational nature, is *adjusted* to the recently adopted systemic laws, according to which the completion of training at the Academy is making a comeback and being imposed as an additional condition for election of judges.

### III STRATEGIC, CONSTITUTIONAL AND LEGAL FRAMEWORK FOR TRAINING IN THE JUDICIARY

38. In order for a person to become a judge, they must go through two main stages. The first is completed by passing the bar exam, and the second by passing the *judicial* exam or completing the initial training at the Academy. The first stage is common to everyone. First of all, one must complete education at a law faculty, and then work in legal profession, during which practical knowledge and skills are acquired, and, finally, pass the bar exam, which tests the professional competence of graduate lawyers. The bar exam<sup>10</sup> is one of the

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10 The purpose of the bar exam, the conditions for taking it, the subjects, the exam board, the way of its taking and other matters are regulated by the [Law on Bar Exam](#), *The Official Gazette of the Republic of Serbia*, No. 16, 16 April 1997.

necessary conditions for a graduate lawyer that wishes to become a judge, public prosecutor, public defender, attorney at law, notary public, or a public bailiff. It can be taken by a person who graduated from a law faculty, and gained some work experience in the profession after graduation, namely: two years in a court, public prosecution office, public attorney's office and legal practice, or three years in the legal profession in another state authority, authority of territorial autonomy and local self-government, or four years in a company, institution or other organization. In terms of structure, the bar exam consists of a written part – practical application of criminal and civil law in solving cases, and an oral part – exams in constitutional and judicial organizational law, criminal law, civil law, commercial law, international private law, administrative law and labor law. The procedure and program of taking the exam is prescribed by the Rules on the Program of the Bar Exam, adopted by the Minister of Justice. The exam board before which the candidates take the exam is formed by the Minister of Justice from the ranks of prominent lawyers who have passed the bar exam, that is, law faculty professors teaching on courses of currently applicable legal regulations who have not passed the bar exam.

After passing the bar exam, graduate lawyers can resume are allowed to choose. They can resume their work and train through work in the legal profession for at least another two to three years. Should they continue working in the court, they shall work and be trained according to the mentoring principle, in accordance with the [Law on the Organization of Courts](#)<sup>11</sup> and the [Court Rules of Procedure](#), according to long-term and established practice, and the Law on the Judicial Academy (Article 48, Paragraph 1)<sup>12</sup>. After working in the legal profession for a period of two years for the position of a judge of misdemeanor court, or three years for a position of a judge of a basic court, in accordance with the Law on Judges, they shall take the judicial exam, after which they have fulfilled the conditions for applying for election to the position of judge. Graduate lawyers who have passed the bar exam can, in accordance with the applicable Law on the Judicial Academy, pass the matriculation exam at the Academy, and complete two years of initial training, most of which is conducted in court, following which they have acquired the conditions to apply for election. Therefore, the regulations applicable in 2024 in the Republic of Serbia enable two different tracks leading to the same goal - the acquisition of expertise and competence for election to the position of judge, in both cases based on the decision on the election adopted by the HJC, in accordance with its jurisdiction prescribed by the Constitution and law.

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11 The Law on the Organization of Courts, *The Official Gazette of the Republic of Serbia*, No. 10, 9 February 2023, Articles 70 and 72 in connection with Articles 59-69

12 The matter is regulated in more detail by means of Articles 71, 74 and 75 of the Court Rules of Procedure, *The Official Gazette of the Republic of Serbia*, 10/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15 - *corrigendum*, 39/16, 56/16, 77/16, 16/18, 78/18, 43/19, 93/19, 18/22 and the Law on the Judicial Academy (Article 48, Paragraph 1)

39. [The Judicial Development Strategy for the period of 2020-2025](#)<sup>13</sup> sets the development of the judiciary as one of the key strategic priorities of the Republic of Serbia, as well as a permanent process of modernization and harmonization of the judiciary in line with the needs of the state and society, with a view to ensuring rule of law and enhancing legal certainty. The Strategy's general objective is *further strengthening of the rule of law, access to justice, and legal certainty for the purpose of quality and efficient realization of the protection of rights and freedoms of citizens, and raising the level of trust in the judicial system*, followed by six more specific objectives: *strengthening judiciary's independence and autonomy, advancement of judiciary's impartiality and accountability, advancement of judicial competences, advancement of judiciary's efficiency, development of e-Justice, and advancement of transparency and accessibility of judiciary.*

40. The [Revised Action Plan for Chapter 23](#)<sup>14</sup> stipulates (within Interim Benchmark 1.1.1) the adoption of a new Constitution, and the appropriate harmonization of the judicial laws, among others, of the Law on the Judicial Academy, *through a 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...** Other than that, according to the Screening Recommendation and the Interim Benchmark 1.3.1. from the Revised Action Plan for Chapter 23, 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).*

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<sup>13</sup> Judicial Development Strategy for the period of 2020-2025, *The Official Gazette of the Republic of Serbia*, No. 101 of 17 July 2020, No. 18 of 11 February 2022

<sup>14</sup> The Revised Action Plan for Chapter 23, together with the National Judicial Development Strategy for the period of 2020-2025, was adopted by the Government of 10 July 2020

41. [The Constitution of the Republic of Serbia](#) defines Serbia as the state of the Serbian people and all citizens who live in it, based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and belonging to European principles and values (Article 1). The rule of law is the basic premise of the Constitution and rests on inalienable human rights; it is achieved through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, independent judicial authority and obedience of the authorities to the Constitution and the law (Article 3). The legal order is unique, and the organization of the government is based on the separation of power into legislative, executive and judicial (Article 4). The judiciary is independent (Art. 4 and 142). The principle of the independence of the judiciary was *strengthened* by defining the authority that elects judges - the High Judicial Council - as an independent state authority that ensures and guarantees the independence of courts, judges, court presidents and lay judges (Article 150).

42. [The Law on Judges](#)<sup>15</sup>:

- stipulates that independence, impartiality, responsibility and dignity as **ethical principles of exercising the judicial function**, that a judge is required to preserve confidence in his independence and impartiality at all times and to conduct proceedings impartially, in accordance with his own assessment of facts and interpretation of law, ensuring fair hearings and compliance with procedural rights of parties guaranteed by the Constitution, confirmed international treaties, contract, law, and in accordance with the generally accepted rules of international law (Article 4). For judges to be able to act according to these principles, they need to be trained adequately.

- defines the **training of judges** as judges' right and duty, at the expense of the Republic of Serbia, as stipulated by a separate law, that the training of judges is a structured process for acquiring and developing the theoretical and practical knowledge and skills required for the professional and efficient performance of judicial function, that it is mandatory, pursuant to the law or a decision of the High Judicial Council, in case of change of specialisation, substantial changes in regulations, introduction of new work techniques, and in order to eliminate deficiencies in the work of a judge observed during the evaluation of the judge's work, and that content of the training program is defined in relation to the professional experience of a judge (Article 10). The training is regulated more precisely by the Law on the Judicial Academy, which is currently being amended. Mandatory training for acting in certain specific and particularly sensitive matters for judges who will handle them, regardless of previous experience, is prescribed by the by the Law on Juvenile Offenders and the Criminal Protection of Minors, the Law on Prevention of Domestic Violence, the Law on Civil Procedure (when it comes to disputes related to family relations), the Law on the Protection of Whistleblowers and the like.

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15 The Law on Judges, *The Official Gazette of the Republic of Serbia*, No 10/2023, 9 February 2023

- regulates the election of judges (conditions, procedure) by stipulating general and other conditions for the election and necessary working experience.

- A citizen of the Republic of Serbia who meets the general requirements for work in state bodies, who has graduated from law school, passed the bar exam, who is professional and worthy of exercising the judicial function can be elected as a judge (Article 48-50).
- The required professional experience in the legal profession following the bar exam is two years for a judge of a misdemeanour court, three years for a judge of a basic court, six years for a judge of a higher court, a commercial court, and the Misdemeanour Appellate Court, ten years for a judge of the Appellate Court, the Commercial Appellate Court and the Administrative Court, twelve years for a judge of the Supreme Court.
- Expertise implies the possession of the theoretical and practical knowledge necessary for the performance of the judicial function.
- Competence implies the skills that enable the effective application of specific legal knowledge in solving the court cases.
- Worthiness implies moral qualities that judges should possess and conduct in accordance with those qualities. Moral qualities that judges should possess are: honesty, conscientiousness, fairness, dignity, perseverance and exemplary behaviour, and behaviour in accordance with these qualities means preserving the reputation of the judge inside and outside the service, awareness of social responsibility, maintaining independence and impartiality, reliability and dignity in the service and outside of it and assuming responsibility for the internal organisation and a positive image of the judiciary in the public.
- The indicators for the assessment of expertise, qualification and worthiness are set by the HJC, in accordance with the law.

- specifies the Constitutional norm by stipulating (Article 51) that the HJC elects a judge by checking the expertise and competence of a candidate for a judge who is elected for the first time to the position of judge at the *judicial exam*<sup>16</sup> (determines the program and method of taking the exam and organizes and implements it; success in the exam is expressed by grades from 1 to 5) and conducts an interview with the candidate (which is conducted and evaluated in accordance with the act adopted by the HJC<sup>17</sup>). As an exception to this rule, candidates who are elected to the position of judge to a basic or misdemeanor court for the

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<sup>16</sup> The Rules on the Procedure for Election of Judges and Court Presidents, *The Official Gazette of the Republic of Serbia*, No. 34/2024

<sup>17</sup> The Rules on Conducting and Evaluating Interviews with Candidates for the Position of a Judge, *The Official Gazette of the Republic of Serbia*, No. 48/2023

first time and who have completed initial training at the Judicial Academy - they do not take the *judicial* exam, instead, their final grade at the initial training at the Judicial Academy is taken as a measure of expertise and competence.

43. [The Law on the High Judicial Council](#)<sup>18</sup> stipulates that the High Judicial Council elects judges<sup>19</sup> and, among other things, approves the permanent training program for a judge and determines the initial training program for a judge (Article 17, Points 1, 14 and 15).

44. It is clear that from the new Constitutional and, in accordance with the adopted Constitutional amendments, legal framework, it does not follow that training completed in a training institution (Judicial Academy) is a condition for the election of a judge. In order for a person to be elected as a judge, it is necessary to meet the criteria of expertise, competence and worthiness. Also, the new legal framework does not place, which is correct, a sign of equality between the expertise and qualification and training completed in a training institution. What the new legal framework implies is proper training both before and after the election as a judge. In order to ensure that the judicial function is performed by judges of integrity (independently, impartially, responsibly and with dignity), comprehensive training of graduate lawyers who have passed the bar exam before they are elected as judges, and for judges after election, is required.

#### IV DEVIATIONS FROM THE STRATEGIC DOCUMENTS IN THE PROCESS OF DRAFTING OF THE LAW

45. According to Interim Benchmark 1.1.6 of the Revised Action Plan for Chapter 23, *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.* From everything presented so far, it is clear that this interim benchmark was abandoned this time. The participation of the representatives of the judicial assistants, even only in the role of observers, was made possible, which is commendable, but only following serious investment of their effort. Judges and prosecutors, who have completed training at the Academy, as well as trainees at the Academy, convened in the Alumni Club of the Judicial Academy, whose insight into the functioning of the Academy would contribute to the work of the WG, were not allowed to participate in the work of the WG, even in the capacity of observers. despite the public appeals of both that association and AJA and JAS. The

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<sup>18</sup> The Law on the High Judicial Council, *The Official Gazette of the Republic of Serbia*, No. 10/2023, 9 February 2023

<sup>19</sup> The same is stipulated by Article 150 of the Constitution.

expertise and proposals of JAS, the most experienced and representative professional association of judges in Serbia, were ignored without reason or explanation.

46. At the initial meeting of the WG, held on 1 August 2024, the MoJ stressed the need for urgent fulfilment of an interim benchmark that, allegedly, *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*. Such an interim benchmark does not exist in the Revised Action Plan for Chapter 23. The Revised Action Plan for Chapter 23 foresees (within Interim Benchmark 1.1.1) 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...*** In addition, according to the Screening Recommendation and the Interim Benchmark 1.3.1. 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).*

47. It should be noted that the announcement of the Ministry of Justice of 5 September 2024 no longer claims (what was previously stated by its representatives at the WG's initial and working meetings) that there is an interim benchmark according to which the Academy should become the single entry point into the judiciary. The statement declares that the European Union requires the Academy to be the *single entry point into the judiciary* within the *fulfillment of the interim benchmarks for Chapter 23*. Also, it is clear that there is no new Action Plan for Chapter 23 (as there was no social dialogue on it, nor was it adopted by the Government). This is because the European Union could not demand, contrary to the principles on which it was founded, the fulfilment of something that (even if it was internally agreed) was not *transposed* into an appropriate strategic document, following the

implementation of an appropriate democratic, inclusive and transparent procedure, adoption of the decision of a competent authority, and public disclosure of the adopted document.

48. Regarding the recommendations of the Venice Commission referred to in the Revised Action Plan for Chapter 23 (when, in accordance with benchmark 1.1.1, Serbia plans to adopt, among other things, a Law on the Judicial Academy: *taking into account the recommendations of the Venice Commission and European standards and based on a wide and inclusive consultation process*, 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, 2018<sup>20</sup>. 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 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 2021<sup>21</sup> 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*

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20 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>

21 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)

(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](#)<sup>22</sup> 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.

## V SOCIO – HISTORICAL CONTEXT OF JUDICIAL TRAINING IN SERBIA

### Training before the establishment of the Academy

49. For the sake of better understanding of the best way of providing the most optimal way for professional judges of integrity to *enter* the judiciary in Serbia, it is necessary to have an insight into the socio-historical context in which the judiciary functioned. Judicial training in the modern Serbian state, whose judiciary was developed under strong Austrian influence during the XIX century, including initial training, was not formally and systematically organized for a long time. It is an interesting fact that during the 1970s and the 1980s, the profession a judge (along with that of physicians and officers) was one of the three most valued and respected professions in the former Yugoslavia.<sup>23</sup>

50. In Serbia, the Supreme Court of Serbia first established the types and methods of professional development of judges. The training was performed under the mentoring principle, during which young graduate lawyers (judicial trainees) 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

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22 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)

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

under the supervision of a judge (mentor)<sup>24</sup>. The implementation of the training was entrusted to the presidents of the courts.

51. Bearing in mind the ground-shaking social and political changes that occurred in the country at the end of the XX 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, the dissolution of the federal state, aftermaths of war), 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 for training and professional development (hereinafter: Judicial Center) in 2001. The absence of a legal framework (constitutional and legal) was not an obstacle to forming an institution for training of judges

52. [The Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Judicial and Prosecutorial Assistants](#)<sup>25</sup>, adopted in 2006, was the first legal 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

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<sup>24</sup> 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.

<sup>25</sup> The Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Judicial and Prosecutorial Assistants, *The Official Gazette of the Republic of Serbia*, No. 46/2006, entered into force on 1 March 2007. When referring to the persons it applies to, the generic term *holder of judicial duties* was used.

The transitional and final provisions prescribed that, 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 Articles 28 and 41, Paragraph 1 of the Law on the Organization of Courts (*The Official Gazette of the Republic of Serbia*, No. 63/01, 42/02, 27/03, 130/03, 29/04 and 101/05) and Article 8, Paragraph 2 of the Law on Judges (*The Official Gazette of the Republic of Serbia*, 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 public prosecutors and deputy public prosecutors from Article 19, Paragraph 2 and Article 38, Paragraph 2 of the Law on the Public Prosecution (*The Official Gazette of the Republic of Serbia*, No. 63/01, 42/02, 39/03, 44/04 and 61/05).

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 Judiciary<sup>26</sup> 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 number of training beneficiaries for each calendar year was determined by the High Council of the Judiciary in an expanded composition, as well as initial training programs (on the proposal of the Training Commission), while continuous training programs were determined by the Judicial Center. The supervision of the implementation of the initial and continuous training program was carried out by the High Council of the Judiciary. The content and duration of the training program were determined depending on the beneficiaries' previous professional experience.

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<sup>26</sup> The High Council of the Judiciary was originally established by means of the Law on the High Council of the Judiciary (*The Official Gazette of the Republic of Serbia*, No. 63/01, 42/02, 39/03, 41/04-*corrigendum*, 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 High Council of the Judiciary 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 High Council of the Judiciary 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.

## The establishment and functioning of the Judicial Academy

53. The Judicial Academy was established by the [Law on the Judicial Academy](#) in 2009<sup>27</sup>, as the *successor* of the Judicial Center. The proclaimed goal of its establishment was contributing to a professional, independent, impartial and efficient performance to the functions of judges and public assistants (Article 2). The Academy began its activities on 1 January 2010, although the initial training program was first approved by the HJC and the High Prosecutorial Council (hereinafter: HPC) only in 2015. The newly established Academy was conferred not only with organization and implementation of initial training for future judges and public prosecutors, but also with selection of the training's beneficiaries. Practical training, which is the predominant part of the training, is still carried out in courts and public prosecution offices, under supervision of judges and prosecutors (mentorship training). Essentially, it is done in the same way as with judicial, i.e. prosecutorial assistants. Only the theoretical part of the training is carried out in the Academy itself (while it is not clear what the theoretical part of the training consists of, because there is no information about it on the website of the Judicial Academy).

54. During the course of its existence, the Academy only partially fulfilled the duties the law entrusted to it, and only in terms of initial training. According to the data available to JAS<sup>28</sup>, since the Academy started its operation on 1 January 2020, by the end of July 2024, the councils of the judiciary have determined a total number of 414 initial training participants (HJC – 259, HPC - 155). 413 beneficiaries enrolled in the initial training for judges and public prosecutors at the Academy, 67 of which are currently undergoing training. During or after the completed training, 17 candidates gave up. 215 were elected to the position of judge, and 37 to the position of public prosecutor. Another 136 beneficiaries who completed the training are awaiting election to the position of judge or public prosecutor. In terms of continuous training, the Academy, for the entire time of its existence, failed to fulfill its obligation to provide training in every case when it is noticed that a judge has a need to be trained in certain area or activity (during the procedure of evaluation of their work), when a judge changes the matter in which they act, as it is prescribed by the Law of Judges, nor in other cases for which there is a need or interest.

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<sup>27</sup> The Law on the Judicial Academy, *The Official Gazette of the Republic of Serbia*, No. 104/2009, 16 December 2009, 32/2014 – The Decision of the Constitutional Court, 106/2015

<sup>28</sup> The information on the names and numbers of initial training beneficiaries (enrolled, graduated, elected to positions of judges or public prosecutors) at the Academy are not available to the public.

55. Various bodies have raised numerous objections to the way the training works. The European Union constantly does this in its annual Progress Reports on Serbia<sup>29</sup>. [The Working Group for the Development of guidelines for the Reform and Development of the Judicial Academy](#) made a similar statement in its recommendations of 2 June 2014: *In the basic provisions, (it is necessary to) clearly define who are the beneficiaries of the training. The Academy does not have enough capacity to achieve the goals foreseen by the Strategy. For now, it is necessary to train the holders of judicial and prosecutorial functions, judicial and prosecutorial assistants and court staff*<sup>30</sup>. The Working Group for Drafting the Analysis of Amendments to

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29 Initial training so far does not guarantee the standards needed by people entering the profession. The offered continuous training is insufficient to help practitioners overcome the serious challenges posed by numerous changes in the law and the poor overall quality of the laws. Judicial and prosecution assistants so far do not receive training. (Serbia 2015 Progress Report)

Judicial education needs to play a more prominent role in the evaluation process. The initial and continuous training programmes provided by the Judicial Academy need to be improved in terms of quality, and better respond to training needs by, for example, focusing on judicial skills. A rulebook on assessing training needs was adopted, while a quality review to evaluate the effectiveness and adequacy of judicial training has yet to be set up. The academy's expertise and administrative capacity to carry out such reviews needs to be strengthened. The Judicial Academy has 45 envisaged job positions, 37 are filled. There is need to ensure the academy's capacity to become a proper entry point to the judicial profession. (Serbia 2018 Progress Report)

The quality of initial and continuous training programmes provided by the Judicial Academy needs to be improved. Training should better respond to real needs by, for example, focusing on judicial skills and ethical values, including the role of a judge in a democratic society. Continuous training activities, which also require coordination efforts in order to avoid overlapping, are still highly dependent on different donors. The cooperation between the Judicial Academy and the HJC should be strengthened... A multi-annual work programme on judicial training still needs to be adopted. A quality control mechanism, which regularly and effectively assesses the impact of the training provided, is yet to be put in place. Overall, there is no systematic approach to the professional improvement through training of the judiciary staff. Further improvement of internal capacity and organisation of the Judicial Academy is pending. (Serbia 2019 Progress Report)

The Judicial Academy operates under the supervision of the Ministry of Justice. There is still an urgent need to improve the academy's professionalism, notably as regards its internal capacity and organisation. In addition, its cooperation with the councils needs to be strengthened... The development of a multiannual work programme based on a thorough needs assessment has been delayed. A systematic approach to the training of judiciary staff is still lacking. Continuous training activities, which also require coordination efforts in order to avoid overlapping, continue to be highly dependent on different donors. The academy is an observer to the European Judicial Training Network (EJTN) but is not proactively benefiting from the expertise within the network. (Serbia 2020 Progress Report)

In line with the Venice Commission's recommendation, the Academy should be effectively 'protected from possible undue influence'. The independence and professionalism of the Academy remain essential to it becoming the sole entry point to the judicial profession. (Serbia 2023 Progress Report)

30 The first of 37 recommendations of this Working Group.

The Working Group for the Development of guidelines for the Reform and Development of the Judicial Academy was established by the Commission for the Implementation of the National Strategy of Reforming the Judiciary. Its members were: Vida Petrović Škero, president of the Working Group, judge at the Supreme Court of Cassation; Danilo Nikolić, PhD, State Secretary in the Ministry of Justice and State Administration; Miroljub Tomić, member of the HJC from the ranks of judges; Ljubica Milutinović, judge of the Supreme Court of Cassation and member of the Management Board of JAS; Gordana Janičijević, Deputy Republic Public Prosecutor; Branko Stamenković, Special Prosecutor for high-tech crime and member of the State Prosecutorial

the Constitutional Framework<sup>31</sup>, in its [Legal Analysis of the Constitutional Framework on the Judiciary in the Republic of Serbia](#), stated the following in Item 6: "*Regarding the provision of the Judicial Academy as a mandatory condition for the initial election of judges and public prosecutors, this Working Group supports the position taken by the Working Group for Reforming and Developing the Judicial Academy, according to which the Judicial Academy should not become a constitutional category. The provision of the Judicial Academy as a mandatory condition for the initial election of judges and public prosecutors can be a strategic goal that can be achieved after a fundamental reform of the concept of the Judicial Academy.*"

56. From the very beginning of the work of the Academy, the Serbian judiciary faced a problem that arose from an insufficiently well-designed initial training position. Among other things, the Law on the Judicial Academy mandated the HJC to, when nominating candidates to be elected as judges to the National Assembly, prioritize candidates who have graduated at 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<sup>32</sup>. At the end of 2013, the Law on Judges was even

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Council; Zlatko Šulović, Deputy Higher Public Prosecutor in Valjevo and Vice President of the Management Board of the Association of Prosecutors of Serbia; Mag. Miroslav Simić, deputy of the Basic Public Prosecutor in Obrenovac and member of the Association of Prosecutors of Serbia; prof. Vladan Petrov, PhD, associate professor of constitutional law and vice dean of the Faculty of Law in Belgrade; Zoran Jevrić, vice president of the Bar Association of Serbia; Nenad Vujić, director of the Judicial Academy; Nada Đorđević, representative of the Association of Assistants in the Judiciary of Serbia; Nenad Stefanović, President of the Association of Judicial and Prosecutorial Assistants of Serbia.

<sup>31</sup> The Working Group for Drafting the Analysis of Amendments to the Constitutional Framework was established by the Commission for the Implementation of the National Judicial Reform Strategy on 19 November 2013. Its members were: Dragomir Milojević, President of the Working Group, President of the Supreme Court of Cassation and the HJC; Danilo Nikolić, PhD, Deputy President of the Working Group, State Secretary in the Ministry of Justice and State Administration; Snežana Andrejević, Judge of the Supreme Court of Cassation; Đorđe Ostojić, Deputy Republic Public Prosecutor; Branko Stamenković, Special Prosecutor for High-tech Crime, member of the State Prosecutorial Council; Radovan Lazić, President of the PAS Management Board; Dragana Boljević, judge of the Appellate Court in Belgrade and President of JAS; prof. Vladan Petrov, PhD, Associate Professor of Constitutional Law and Vice Dean of the Faculty of Law in Belgrade; prof. Darko Simović, PhD, Professor of Constitutional Law at the University of Criminal Investigation and Police Studies in Belgrade; prof. Irena Pejić, PhD, Full Professor of Constitutional Law at the Faculty of Law in Niš, and prof. Slobodan Orlović, PhD, Associate Professor of Constitutional Law at the Faculty of Law in Novi Sad.

<sup>32</sup> The Law and Amendments and Supplements to the Law on Judges, The Official Gazette of the Republic of Serbia, No. 101/2013, 20 November 2013.

According to that law, Paragraph 4 of Article 50 of the Law on Judges, which used to read: *The HJC proposes one candidate for election to one judicial position to the National Assembly*, was supplemented by the following provision: *When nominating a candidate for initial election of a judge at a misdemeanor or basic court, the HJC is obliged to nominate a candidate who has completed training at the Judicial Academy, in accordance with a special law.*

*adjusted* to the Law on the Judicial Academy, as it also stipulated the duty of the HJC to prioritize candidates who completed initial training at the Academy.

### **The Constitutional Court's Position on the Priority of Electing Initial Training Beneficiaries as Judges**

57. Solutions from both the Law on Judges and the Law on the Judicial Academy, according to which the HJC was obliged to prioritize nominating a candidate who graduated from the Academy to the position of a judge, while practically preventing judicial associates with many years of experience from being elected as judges, was declared unconstitutional<sup>33</sup> by the Constitutional Court in 2014, having concluded:

- that the conditions for election to the position of judge are prescribed by the Law on Judges, which systematically regulates the status of judges
- that prescribing the aforementioned duty of the HJC means prescribing a special condition for one's initial election to the position of judge
- 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,
- 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 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 such a 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

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<sup>33</sup> The Constitutional Court's decisions on why the aforementioned solution contained in the following provisions was incompatible with the Constitution:

- of Article 40, Paragraphs 8, 9 and 11 of the Law on the Judicial Academy - Decision of the Constitutional Court *Iuz-497/2011*, 6 February 2014, [The Official Gazette of the Republic of Serbia](#), No. 32, 20 March 2014
- in the second sentence of Article 50, paragraph 4 of the Law on Judges - Decision *IUz - 427/2013*, 12 June 2014, [The Official Gazette of the Republic of Serbia](#), No. 111, 15 October 2014

Practically everything that is mentioned in this regard concerning the courts is also applicable for the public prosecution.

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 such a solution *calls into question ... and limits the position of the HJC established by the Constitution and its jurisdiction in the election of judges established by the Constitution and the law*, as well as its Constitutional function to ensure and guarantee the independence and autonomy of judges by *making the independent body established by the Constitution obliged by the grade used to determine the candidate's success in the initial training, issued by the Judicial Academy, which was established as an institution to perform certain activities related to the professional development of its "beneficiaries"*
- that in this way, those who did not complete the initial training were essentially eliminated from the circle of candidates for the initial election for a judge of a certain type of court, which violates the principle of equality of citizens who are in the same legal situation, even though the *principle of prohibition of discrimination on any basis is expressly prescribed by the Law on Judges*
- 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.

58. It is worth mentioning that, in the process of implementing the aforementioned decision of the Constitutional Court in 2015, the Law on Amendments and Supplements to the Law on Judges was adopted<sup>34</sup>, 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 same solution is included in the applicable Law on Judges (Article 51). In this way, the work of the HJC when evaluating the expertise and

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<sup>34</sup> The Law on Amendments and Supplements to the Law on Judges, *The Official Gazette of RS*, No. 106/2015 of 21.12.2015, added Article 45a, which stipulated that success in the exam is expressed 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, but the final grade at the initial training at the Judicial Academy shall be taken as a measure of expertise and competence, and that the HJC shall prescribe the program and method of taking the exam that evaluates the expertise and competence of candidates for judge.

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, was objectified. The Council, then, by its by-law<sup>35</sup>, 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.

### **Conclusion on the functioning and possibilities of the Academy so far**

59. Fourteen years of functioning of the Academy has demonstrated that it failed to fulfill the demands that were placed before it. Its capacities remained insufficient in every respect. In its 2018 [Analysis of the Working Text of the Ministry of Justice's Amendment to the Constitution of the Republic of Serbia](#), the Supreme Court stated that, *should a provision according to which only a person who completed special training in a training institution can be elected as a judge of the first instance court in the judiciary be discovered in a law, the question of its constitutionality would be legitimately raised because Article 53 of the Constitution guarantees the right of citizens to enter public positions under equal conditions, while, by making the completion of special training at the Judicial Academy a condition for electing a judge to a first instance court, hundreds of judicial assistants with many years of experience in the courts, as well as graduate lawyers who gained enviable knowledge and significant experience working in legal affairs in other workplaces are prevented from being elected to the position of judge; as well as that: the proposed solution did not comply with the Kyiv Recommendations, according to which not only young graduate lawyers with special training should have access to the position of judge, but also graduate lawyers with significant experience gained working in the legal profession.* Even the criteria for appointing commissions, mentors and lecturers are not formally established or reliable, nor are their names available to the public.

60. Since 2018, when there was a standstill in the process of amending the Constitution due to the unified position of the entire professional public (the Supreme Court, the HJC, professors, judges) and civil society organizations dealing with the protection of human

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<sup>35</sup> The HJC first adopted the Rules on criteria and measures for assessing expertise, competence and worthiness for the election of a judge on a permanent judicial position into another or higher court and on criteria for nominating a candidate for the president of the court, *The Official Gazette of the Republic of Serbia*, No. 94, 24 November 2016, No. 48, 9 June 2023.

In line with the applicable Law on Judges, the HJC adopted its Rules on the Procedure for Election of Judges and Court Presidents, *The Official Gazette of the Republic of Serbia*, No. 34, 19 April 2024.

rights that the training completed at the Academy should not be prescribed by the Constitution as a condition for election to the position of judge, no analysis of the work of the Academy was performed. All the more, it is unclear why the political power is bringing back the idea of the Academy as the single entry point into the judiciary, even if that really was a request from of European Union. Furthermore, the events that have taken place in the meantime are clear indicators that the Judicial Academy should not be made the only form of training and a formal condition for election:

- Due to the ill-defined legal employment status of the beneficiaries of the initial training<sup>36</sup>, especially those who have completed the training and have not yet been elected to a judicial position, and its *mismatch* with the relevant regulations, and possibly also due to the inappropriate perception of some beneficiaries of the training in the circumstances in which they work in anticipation of being elected to the position, the Management Board of the Academy adopted a [decision](#) on 4 April 2019, which served as a *reminder* to these beneficiaries of their obligation of going to work regularly, submitting monthly work reports to their supervising judge/public prosecutor, and submitting signed monthly work reports to the Academy's secretariat as well
- On 24 January 2024, the State Audit Institution once again stated that the [Judicial Academy seriously violated the obligation of good business](#) operations *by continuously (2020/2023), contrary to current regulations, paying salaries to the beneficiaries of initial training even after they have completed initial training, and to whom the employment agreement was extended for a fixed period of time several times for six months, in relation to the prescribed duration of the training. The State Audit Institution informed the National Assembly of the Republic of Serbia about the serious breach of the duty of good business conduct and, in accordance with Article 40 of the Law on the State Audit Institution and Article 41 of the Rules of Procedure of the State Audit Institution, submitted to the Administrative Board of the Judicial Academy a request for the dismissal of the responsible person of "the Judicial Academy, Belgrade". It is not known to the public whether and how this request was decided.*
- At the matriculation exam for the Judicial Academy that took place on 14 September 2023, one candidate had on him previously prepared answers to the questions that were posed to him at the exam, and read these answers out loud during the

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<sup>36</sup> The legal employment status and financing of the initial training beneficiaries is regulated by provisions of Article 40 of the applicable Law on the Judicial Academy, however, it is non-compliant and contrary with the provisions of the Law on Labour and the Law on Civil Servants. This matter shall be further discussed separately.

examination<sup>37</sup>, which was recorded and documented while [live streaming the matriculation exam](#)

- By virtue of the [court settlement](#) concluded between the Judicial Academy (*the defendant*) and two authors (*the plaintiffs*) on 19 June 2024, it was established that the Judicial Academy, an institution that should provide training on issues of ethics and integrity, unauthorizably downloaded several authors' works (articles) and published them on its website (<https://e-case.eakademija.com/>), thereby infringing copyrights, which is why it was obliged to compensate the authors and publish the settlement publicly on its website. Although, following the settlement, the Academy committed to publish the settlement on its website, this was done in such a way that even those who were looking for the settlement can hardly find it, which represents another form of the Academy's negligent actions.

61. Meanwhile, in 2022, the World Bank, as part of the [2021 Serbia Judicial Functional Review](#)<sup>38</sup>, presented several recommendations for improving the work of the Judicial Academy. The content of the recommendations clearly speaks of shortcomings in the work of the Academy. It was recommended, among other things, to carry out a comprehensive assessment of training needs for existing judges, prosecutors and employees of the judiciary, raising the standards of the initial and continuous training and evaluation programs, reducing the Academy's funds for initial training activities and increasing them for continuous training activities, as well as redirecting focus on continuous training.

62. There is a deep-rooted fear among judges in Serbia that, if the Academy were to become the *single entry point into the judiciary*, it would be a hidden *conductor* of political influence on the judiciary. According to a 2017 survey, as many as 65% of judges did not consider that the Academy should be the *main entrance* in the judiciary.<sup>39</sup> The results of the research conducted only six years later show that the number of judges who believe that training at the Judicial Academy should not be a condition for election of a judge has increased to over 90%.<sup>40</sup>

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<sup>37</sup> The outcome of the procedure conducted according to the official note on observed irregularities at the exam made by the examination committee, which took place on 14 September 2023, remained unknown to the public. This official note, as well as the candidate's objection, were forwarded to the Program Council only after more than a month and a half.

<sup>38</sup> Recommendations 7.4 on pages 252 and 253 and 7.7 on page 264.

<sup>39</sup> Research on judges' views on the situation regarding the courts and judiciary of Serbia was published by JAS and the Center for Free Elections and Democracy, in the publication [Strengthening of Independence and Integrity of Judges in Serbia](#), Judges' Association of Serbia, Belgrade 2017, page 9, available on [sudije.rs](http://sudije.rs)

<sup>40</sup> [The Study on Professional Integrity of Judges](#), Judges' Association of Serbia, Belgrade, 2023, page 48, available on [sudije.rs](http://sudije.rs).

It should be taken into consideration that, in the past six years, a large number of enrolled beneficiaries of initial training at the Judicial Academy had taken judicial office, and in that way took part in this research, making the results more *dramatic*.

63. Although the legal framework for Serbia's judiciary has been significantly improved in the meantime, there are still a lot of serious system solutions in the real functioning of the judiciary. The reality is that *a big generational change* is coming in the judiciary. Since several hundred judges will retire in the near future, it will be necessary to elect as many new judges, and the interest in working in the judiciary has greatly decreased. Namely, 770 judges (31%) will retire during the next five years, and during the next decade a total of 1,540 or 62% of the total number of judges in Serbia will retire<sup>41</sup>. However, due to judges' salaries being among the lowest in Europe<sup>42</sup>, judges' pensions being even 40-50% lower than inadequate judicial salaries, and the poor labour law position of poorly paid employees<sup>43</sup>, the judiciary has become unattractive for young well-trained graduate lawyers of integrity to being elected as judges<sup>44</sup>. Regarding the poor financial position of judicial assistants, the Government of the Republic of Serbia stated, in its Strategy for the Development of Human Resources in the Judiciary for the 2022-2026 period, in Item 3.4.4., recognized that: *Inadequate financial position is one of the main characteristics of judicial assistants*.

64. All of the above indicates that there is absolutely no basis for concluding that the Academy's capacities and the quality of the training it provides are such that, under the current circumstances in Serbia, it could be entrusted with the demanding tasks of

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41 At the end of 2022, out of 2,503 judges that have acted in cases, there were 571 over the age of 60, and 969 between the age of 55 and 60.

Judges are retired after reaching 65, except for the judges of the Supreme Court, who can work until they are 67,

42 The average annual salary in Serbia in 2020 was EUR 8,471. Judge's salary of EUR 11,410 per year is among the lowest in Europe.

In actual terms, judges in only three European countries have a slightly lower salary than judges in Serbia: those in North Macedonia (EUR 10,981), Moldova (EUR 10,041) and Georgia (EUR 9,540).

However, other independent institutions in Serbia do not have low salaries. For example, the salary of the Commissioner for information of public importance is EUR 2,659, that of the president of the State Audit Institution - EUR 2,868, that of the Ombudsperson - EUR 3,967 (of his deputy - EUR 3,471, and of the assistant general secretary - EUR 1,592), of the judge of the Constitutional Court - EUR 4,335, of the president of the Constitutional Court - EUR 4,955, of the Governor of the National Bank of Serbia - EUR 5,522.

At the same time, judges' salaries were not increased in the same way as the salaries of other civil servants. In the 2017-2023 period, judges' salaries were increased by 44.5%, while the salaries of employees in the Ministry of Internal Affairs were increased by 57.5%, and of those in the Army by 70%.

43 One third of employees in the judiciary are paid close to the minimum (approx. EUR 460). A significant number of employees work for a long time on a fixed-term basis, and a significant number of them also work for free - as volunteers. Even judicial interns, and judicial assistants, being graduate lawyers who have passed the bar exam, work on a voluntary basis.

Such a situation, along with the prospect of being poorly paid as judges, for whom the salary is the only source of income, because a judge cannot exercise any other paid work, makes it impossible to plan a family, solve existential issues, and deters young people from careers in the judiciary.

44 It is possible that in such a situation, postponing the retirement age of judges who are already in the system would be one of the logical measures. However, this measure alone could not solve the problem of disinterest in working in the judiciary.

simultaneously strengthening its capacities for independent functioning and the quality of all type of training, on the one hand, and becoming the single entry point into the judiciary, and to exclusively provide the initial training of future judges and prosecutors, on the other hand. When taking into account the number of beneficiaries who have completed the initial training (both for judges and public prosecutors) and who are expected to be elected to the position of judge/public prosecutor, and the number of beneficiaries who are currently still undergoing initial training<sup>45</sup>, it is clear that the Academy would not be able to provide initial training for the required number of beneficiaries, even if it worked under ideal conditions. And if it were to succeed, it would undoubtedly and necessarily be done by easing the conditions for the selection of training beneficiaries and lowering the quality of the training. Inadequate training, on the other hand, would make future judges insecure and more susceptible to all kinds of pressures, thus jeopardizing the independence of the judiciary.

## VI REMARKS ON THE CONTENT

65. At this point, JAS and AJA will only state a few major objections to the concept and content of the Draft Law on the Judicial Academy (hereinafter: the Draft) and the accompanying Draft Law on Amendments to the Law on Judges, which were submitted to the Venice Commission for expertise on September 12, 2024.

### Deficiencies in Nomothetic

66. First of all, the said acts are at an unusually and unacceptably low level concerning their nomothetic<sup>46</sup>. They *introduce* institutes/terms that do not exist in systemic laws (e.g. *previous training*), they do not regulate nor contain institutes whose foundations are regulated by systemic laws (e.g. *initial training of judges*), they contain provisions that are contrary to systemic laws. For example, contrary to Article 17, Item 15 of the Law on the High Judicial Council, according to which *the High Judicial Council determines the initial training program for judges*, the Draft stipulates that *the Academy adopts the previous training program* (Article 10, Paragraph 1, Item 5, and Article 39, Paragraph 3). Furthermore, contrary to Article 67, Paragraph 4 of the Law on the Organization of Courts, according to which *the procedure for the admission of judicial interns is regulated in more detail by the act of the minister responsible for the judiciary after obtaining the opinion of the High Judicial Council*, the same Draft stipulates that the Management Board *shall adopt the Rules on taking the matriculation exam for*

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<sup>45</sup> In this regard, refer to Paragraph 54.

<sup>46</sup> The National Assembly of the Republic of Serbia has adopted, for drafting regulations that it adopts, [Uniform Methodological Rules for the Drafting of Regulations](#), *The Official Gazette of the Republic of Serbia*, No. 21/2010.

*previous training* (Article 10, Item 6) and the matriculation exam program for interns (Article 63, Paragraph 2). Also, both Drafts contain mutually inconsistent provisions. For example, *previous training* is defined as organized acquisition of practical and theoretical knowledge and skills (Article 26), while the final exam taken by the beneficiaries of *previous training only tests practical knowledge and skills* (Article 42).

The legal acts that are the subject of analysis also lack a proper reasoning, which is a mandatory part of the regulations that are passed<sup>47</sup>. It contains mandatory items on which the creator of regulations must declare. Among other things, the explanation must contain: the reasons for the adoption of a regulation, and within them: analysis of the current situation, problems that the regulation should solve, goals that are achieved by the regulation, possibilities considered for solving the problem without the adoption of regulations, and the answer to the question of why is the adoption of regulations the best way to solve problems (Article 59, Paragraph 1, Item 2).

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<sup>47</sup> The provision of Article 59 of the Uniform Methodological Rules for the Drafting of Regulations prescribes the items on which the drafter of the regulations is obliged to declare. As a rule, in accordance with the Rules of Procedure of the National Assembly, the reasoning of a proposed regulation should contain:

- 1) constitutional, that is, legal basis for its adoption;
- 2) the reasons for the adoption of regulations, and within them in particular: analysis of the current situation, problems that the regulation should solve, goals that are achieved by the regulation, possibilities considered for solving the problem without the adoption of regulations, and the answer to the question of why the adoption of regulations is the best way to solve problems;
- 3) explanation of basic legal institutes and individual solutions;
- 4) analysis of the effects of the regulations, which contains the following explanations: who will be most likely to be affected by the content of the regulations and how, what costs will the application of the regulations create for citizens and the economy (especially small and medium-sized enterprises), whether the positive consequences of the adoption of the regulations are such that they justify the costs that it will create, whether the regulation supports the creation of new economic entities on the market and market competition, whether all interested parties had the opportunity to comment on the regulation and what measures will be taken during the application of the regulation to achieve what is intended by passing the regulations;
- 5) assessment of financial resources needed for the implementation of regulations;
- 6) general interest for which retroactive effect is proposed, if the draft law contains provisions with retroactive effect;
- 7) reasons for the adoption of the law by emergency procedure, if an emergency procedure is proposed for the adoption of the law;
- 8) the reasons for which it is proposed that the regulation enter into force before the eighth day from the day of its publication in The "Official Gazette of the Republic of Serbia";
- 9) overview of the provisions of the current regulation that are being amended or supplemented (it is drafted by crossing out the part of the text that is being changed, and writing the new text in capital letters).

If the proposer of the regulation considers that the reasoning should not contain an analysis of the effects from Paragraph 1, Item 4) of this article, they are obliged to explain it separately.

## Hindering the unity of the legal order

67. Furthermore, by excluding the term *initial* training and introducing the term *previous* training, the Constitutional principle of the unity of the legal order (Article 194, Paragraph 1 of the Constitution) is violated, since essentially the same concept is denoted in the Draft by the term *previous* training, while in the Law on Judges and the Law on the High Judicial Council, only the term *initial* training is used for the same thing<sup>48</sup>. This designation of the same term is not a mistake, nor is it a simple nomothetic defect that causes confusion because different terms are used for one and the same thing.

The same negative effect is caused by the fact that the Draft, by replacing the term *initial* with *prior* training, prevents the HJC from exercising its legal authority from Article 17 of the Law on the High Judicial Council to determine the program of initial training.

The introduction of new terms such as *previous* training, *mandatory continuous training for a judge who has been elected to office for the first time and has not completed prior training* (euphemisms for initial training at the Academy) is an attempt to *disguise* the prescription of an additional condition for election of judges and disagreement with the Law on Judges and the Law on the High Judicial Council, as systemic laws, which *are not aware* of a *previous* training. The aforementioned laws only use the concept of initial training, namely the Law on Judges, in Article 51, Paragraph 3, by stipulating that a candidate for judge who is elected to the position of judge for the first time to a basic or misdemeanour court and who has completed initial training at the Judicial Academy is not is obliged to take an exam organized by the HJC, but the final grade at the initial training at the Judicial Academy will be taken as a measure of expertise and competence, while the Law on the High Judicial Council, by virtue of Article 17, Item 15, prescribes that the Council shall determine the initial training program training for judges.

## Depriving the HJC of its Constitutional Competences

68. It is not a usual situation that for one and the same legal act, two different solutions are offered, which fundamentally change the entire concept of the law - and the training and

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<sup>48</sup> Although an organizational law, such as the Law on the Judicial Academy, should be adapted and harmonized with a systemic law, such as the Law on Judges, the MoJ tried to eliminate this inconsistency by amending the Law on Judges by introducing the term *previous* instead of *initial* training. However, the MoJ did not eliminate the inconsistency of the Law on the Judicial Academy with the Law on the High Judicial Council.

election of judges<sup>49</sup>, depending on whether the law will be adopted with one solution (from Article 56) or without it. It is very difficult to make statements about such legal acts concisely and in one place. Generally speaking, the Draft is a deteriorated copy of the applicable Law on the Judicial Academy. It is clear, from the reasoning of the Draft Law on Amendments to the Law on Judges states openly, explicitly and directly that *the reasons for the adoption of the Law on Amendments to the Law on Judges ("The Official Gazette of Republic of Serbia", No. 10/23), is the need to harmonize the said law with the new Law on the Judicial academy, which stipulates, as one of the conditions for candidates who are elected to the position of judge for the first time, that they must have completed previous training at the Judicial Academy*<sup>50</sup>, that this law does not remove the reasons for unconstitutionality, stated in the aforementioned decisions of the Constitutional Court from 2014, which are presented in detail in Paragraph 57 of this analysis. Quite the opposite.

The draft concept, with the decision from Article 56, would legally enable the HJC to elect a candidate who *has not completed* previous training<sup>51</sup> as a judge who is elected for the first time, because such a candidate has the obligation to attend *continuous training for a judge who is elected for the first time*, which takes 30 days, and which they are obliged to start within three months from the day of taking up the position of judge. More will be said about the reasons why this decision threatens the Constitutional authority of the HJC to elect judges in Paragraph 75 of this analysis. In any case, if the decision from Article 56 is not retained in the Law on the Judicial Academy, the accompanying amendments to the Law on Judges will prevent the HJC from electing candidates:

- by independently assessing their expertise and competence, i.e. to perform the constitutional duty to elect judges<sup>52</sup>, because *the expertise and competence of a candidate for a judge who is elected for the first time to the position of judge is determined by a certificate of completed previous training at the Judicial Academy*, as if no one else would have the necessary level of expertise and competence, except for users who have completed training at the Academy
- who come from backgrounds such as teaching, legal practice, commerce, etc. with effect from the entry into force of the law, and from 1 March 2025, also from the ranks of judicial assistants (who are employed on the date of entry into force of the law and who have not completed *previous* training at the Academy).

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<sup>49</sup> Article 56 of the Draft also intertwines with several other Articles (Article 10, Item 9, Article 18, Item 4, Article 55, Paragraph 1, Item 1)

<sup>50</sup> On the inaccuracy of the implication contained in the second Paragraph of the reasoning of the Draft Law on Amendments to the Law on Judges on the existence of the obligation undertaken in the process of joining the European Union that the Judicial Academy is a condition for election of holders of judicial office who are elected for the first time, see Paragraph 46 of this analysis.

<sup>51</sup> Meaning, *initial* training at the Academy.

<sup>52</sup> Concerning the conditions for election to the position of a judge, refer to Paragraph 42 of this analysis.

69. For a more detailed argumentation from the previous paragraph of this Analysis, one should start from the fact that systemic laws - the Law on Judges, the Law on the High Judicial Council, and the Law on the Organization of Courts, in accordance with the Constitution, set the legal framework for the election of judges by prescribing that the HJC shall elect judges<sup>53</sup> from the ranks of candidates who meet the conditions prescribed by the Law on Judges<sup>54</sup> (general conditions for work in a state authority, graduation from law faculty, passing the bar exam, certain period of work experience in the legal profession, worthiness), including the expertise and competence of the candidate, and not limiting the expertise and competence only to training completed at the Academy.

The way in which candidates acquire expertise and competence was not a priority for the legislator. Instead, what is important is that there is a system that will ensure that a candidate with expertise and competence is elected as judge, whether they acquired expertise and competence in a court, another authority, institution, business entity, or at the Academy through initial training (the majority of which - practical training, is carried out in courts).

The legislator entrusted the evaluation of the expertise and competence of candidates, as a basic element of the election decision, to the HJC, which is an independent body whose Constitutional competence is to elect judges and to guarantee and ensure their independence. The HJC does this by means of an exam that it organizes, and whose program and manner of taking are regulated by itself (Article 51, Paragraphs 1, 2 and 4). The legislator also provided an exception, according to which a candidate who has completed initial training at the Academy, and is elected for the first time to the position of judge in a basic or misdemeanor court, is not required to take the exam organized by the HJC, instead of which the final grade at the initial training at the Academy shall be taken as a measure of expertise and competence. When considering several candidates, including those whose expertise and competence it assessed by the exam it organized, and conducting an interview with each candidate, which aims to determine the candidates' communication skills, readiness to perform the function of a judge and professional integrity, the HJC assesses the overall fulfilment of the requirements of each candidate, compares them, decides on certain ones and independently makes a decision, which it is obliged to render in writing and reason, and which is published in *The Official Gazette of Republic of Serbia*.<sup>55</sup>

In a situation where the HJC is not *forced* to elect a candidate who has completed training at the Academy, the legal exception that in certain cases a certificate of completed initial training at the Academy establishes the expertise and competence of a candidate for a judge does not jeopardize the HJC's Constitutional and legal authority to elect judges. This

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53 Article 17 Item 1 of the Law on the High Judicial Council.

54 Articles 48, 49 and 50 of the Law on Judges (general conditions for work in a state authority, graduation from law faculty, passing the bar exam, certain period of work experience in the legal profession, worthiness)

55 Article 58 of the Law on Judges.

solution ensures two important processes at the same time. On one hand, it provides the possibility for the development of the Academy and the strengthening of its capacities so that it can become a truly independent institution. On the other hand, the way is opened to switch to an election system in the foreseeable future, which would enable a more significant role for the Academy. Everything above, of course, with retaining the Constitutional competence of the HJC at its essence. Decisions of the Constitutional Court *IUz - 497/2011* and *IUz - 427/2013* were based on a similar argument, discussed in detail in Paragraph 57 of this Analysis.

### **Violation of the principle of the rule of law – obedience of authorities to the Constitution and the law**

70. The fact that the Draft does not mention initial training at all, but introduces the term *previous training*, is not a mistake. The matter is much deeper and more serious. It is a plan to unconstitutionally *bypass* the legal effect of the decisions of the Constitutional Court *IUz - 497/2011* and *IUz - 427/2013*, which are final, enforceable and generally binding (Article 166, Paragraph 3 of the Constitution). The author of the draft law thereby violates the basic principles of the rule of law from Article 3, Paragraph 2 of the Constitution, stated among which is: *obedience of the authorities to the Constitution and the law*. Simply by replacing the term *initial* with the term *prio*" training in every place where the Constitutional Court uses the term *initial* training, it becomes obvious that the Draft reintroduces a solution that the Constitutional Court has already declared unconstitutional (this time *disguised* as the term *previous training*), because, as the Constitutional Court stated in those decisions:

- prescribing the duty of the HJC to, *when nominating* a candidate for the election of a misdemeanor or basic court judge, propose a candidate who has completed initial training at the Judicial Academy, has the meaning of prescribing a special condition for the initial selection of a person for the position of judge
- the Law on the Judicial Academy is an organizational law that establishes the Judicial Academy as an institution that performs activities established by law
- prescribing the conditions for election to the position of a judge is subject to regulation of laws that regulate these issues in a systematic manner, therefore - the Law on Judges, 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
- in this 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 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

- such a solution *calls into question ... and limits the position of the HJC established by the Constitution and its jurisdiction in the election of judges established by the Constitution and the law*, as well as its Constitutional function to ensure and guarantee the independence and autonomy of judges by *making the independent body established by the Constitution obliged by the grade used to determine the candidate's success in the initial training, issued by the Judicial Academy, which was established as an institution to perform certain activities related to the professional development of its "beneficiaries"*
- in this way, those who did not complete the initial training were essentially eliminated from the circle of candidates for the initial election for a judge of a certain type of court, which violates the principle of equality of citizens who are in the same legal situation, even though the principle of prohibition of discrimination on any basis is expressly prescribed by the Law on Judges

JAS and AJA fully agree with all the arguments presented by the Constitutional Court and present them here as their objections to the content of the Draft.

### **Undermining the Constitutional principle of prohibition of discrimination and the right to participate in the management of public affairs**

71. The Law on the Judicial Academy, which would not include the solution from Article 56 of the Draft, would be unconstitutional, not only in terms of preventing the HJC from exercising its constitutional authority. It would automatically make it more difficult for graduate lawyers who have passed the bar exam and acquired many years of professional experience in the judiciary, teaching, legal practice and other fields to access the position of judge, which would discriminate against them, contrary to the Constitutional prohibition from Article 21, and their right to participate in the management of public affairs, proclaimed by Article 53 of the Constitution would be threatened. University professors and attorneys, for example, would have to interrupt their work in order to attend training, while there would be no absolute certainty that they would be elected to the position of a judge, nor that upon their return to work things would function as before the interruption. And that was exactly one of the reasons why the Constitutional Court declared a similar provision of the applicable Law on the Judicial Academy null and void in 2014.

## Disputable solutions related to the Academy's funding and its financial operations

72. Funding and financial operations of the Academy are regulated vaguely. The Draft does not contain clear provisions on what is considered training costs (especially in the part related to practical training) and to whom they are paid (Article 37), whether to the subject conducting theoretical training (the Academy) or to those who conduct practical training (courts, public prosecution offices, other state authorities or law offices), or both (in this regard, see Article 39 of the Draft), and, depending on the above, why should the Academy be authorized to decide on the total amount of costs, when it only conducts the theoretical part of the training. Since the Academy is a separate legal entity (Article 3, Paragraph 3) and has different sources of funding in the sense of Article 23, Paragraph 1 of the Draft (budget of the Republic of Serbia, income from publishing publications and implementation of projects, donations, gifts and other sources in accordance with the law), it is not clear which costs of the Academy will be financed from which funds, and why is it partially done from budget funds, and not from Academy funds.

73. In contrast to the applicable Law on the Judicial Academy, the Draft introduces the definition *beneficiaries whose training is financed from the budget of the Republic of Serbia* with regard to beneficiaries of *previous training* (Articles 37, 48, 50 of the Draft). It is not clear what difference in funding, status and rights is made between "*beneficiaries of "previous" training whose training is financed from the budget of the Republic of Serbia*" (Article 37, Paragraph 3 of the Draft; hereinafter: budgetary training beneficiaries) and candidates *who are not covered by Paragraph 3 of this article, and have passed the matriculation exam, who ...can attend previous training as beneficiaries of previous training, with the obligation to bear the training costs on their own* (Article 37, Paragraph 4 of the Draft; hereinafter: self-financing training beneficiaries). Apart from the fact that self-financing training beneficiaries would not receive a salary equal to 80% of the basic salary of a judge of a basic court (Article 48, Paragraph 4 of the Draft), malicious persons could think that the right to participate in the management of public affairs (election to a judicial position) is exclusively available to the financially well-off, for an appropriate fee.

74. Finally, the statements in the reasoning of both draft laws, that: *For the implementation of this law, it is not necessary to provide financial resources in the budget of the Republic of Serbia* (Draft of the Law on Amendments to the Law on Judges), i.e. that: *For the implementation of this law, it is necessary to provide additional financial resources* (Draft of the Law on the Judicial Academy) are stated only as mere formality. The reasoning of the regulation contains mandatory items on which the creator of the regulation must declare. Among other things, the reasoning must also include: an analysis of the effects of the regulation, which contains the following explanations: who will be most likely to be affected by the content of the

regulations and how, what costs will the application of the regulations create for citizens and the economy (especially small and medium-sized enterprises), whether the positive consequences of the adoption of the regulations are such that they justify the costs that it will create, whether the regulation supports the creation of new economic entities on the market and market competition, whether all interested parties had the opportunity to comment on the regulation and what measures will be taken during the application of the regulation to achieve what is intended by passing the regulations (Article 59, Paragraph 1, item 4). In the event that the proposer of the regulation considers that the reasoning should not contain an analysis of the effects from Paragraph 1, Item 4) of this article, they are obliged to explain it separately (Article 59, paragraph 2). Finally, the reasoning must also include assessment of financial resources needed for the implementation of regulations (Article 59, Paragraph 1, Item 5). Undeveloped and unclear provisions on the status, functioning, funding and financial operations of the Academy prevent a proper assessment of the volume of financial resources needed for its work. Such action does not essentially satisfy the formal condition that a draft law must meet in order to enable the legislator to gain a clear idea of the financial effects of the proposed law. That is why the provisions of the Draft relating to the funding and financial operations of the Academy are not sufficiently clear, specific and predictable. This violates the principle of the rule of law prescribed by Article 3 of the Constitution, since this principle, as one of the fundamental principles of every democratic society, implies that the norms of every general legal act should be clear, definite and predictable, as the European Court of Human Rights defined by the standard of the autonomous concept of law.

### **Commercialization of the training and its negative effects**

75. These solutions imply that the commercialization of *previous* (initial) training at the Academy is being introduced, as a condition for election to judicial office. The commercialization of training would certainly lead to the *hyperproduction* of beneficiaries completing it, and this would further inevitably lead to the collapse of the quality of training, which should be improved anyway. In addition, solutions that introduce the commercialization of training *bypass* the legal provisions according to which the councils of the judiciary determine the required number of beneficiaries of the *previous* (initial) training at the Academy, and threaten the councils' possibility to rationally manage the judicial system.

When it is taken into account that the Minister of Justice establishes the criteria for determining the number of judicial staff<sup>56</sup> and the long-standing practice of not admitting a

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<sup>56</sup> According to Article 57, Paragraph 3 of the Law on Organization of Courts, the Minister of Justice establishes the criteria for determining the number of court judicial staff. According to Paragraph 1 of the same article, court staff includes judicial trainees and judicial assistants.

sufficient number of judicial interns and judicial assistants to the courts<sup>57</sup>, as well as the fact that a significant number of them work for free, even if the version of the Law on Judicial Academy containing Article 56 was to be adopted, it is clear that the hands of the HJC would be tied.

*Hyperproduction* of users of *previous* training at the Academy exceeding the number determined by the HJC, in the long run, would render the possibility of electing candidates who did not complete training at the Academy meaningless and would not be worth the paper it is written on. Namely, although the solution from Article 56 of the Draft, at first glance, preserves the Constitutional authority of the HJC to make the election, actual circumstances (insufficient number of candidates from the ranks of judicial assistants, hyperproduction of training beneficiaries) would force the HJC to make the election for judges in the largest measures among those candidates who completed training at the Academy. At the same time, HJC wouldn't be the one to assess the expertise and competence of candidates, but the Academy, since expertise and competence are determined by a certificate issued by the Academy. And in the case of such an election, all the same remarks that have already been set forth in Paragraphs 68 and 69 of this Analysis, regarding the concept of the Law on the Judicial Academy not including the solution from Article 56, would apply. In addition, it is already clear from the documents submitted to the Venice Commission, that it is quite possible that the solution from Article 56 of the Draft will not even be retained in the final text of the law.

### **Legal employment status of training beneficiaries that is unclear and inconsistent with systemic laws**

76. The status of budget and self-financing beneficiaries from Article 37 of the Draft is also unclear and inconsistent with other laws. A solution that introduces the possibility for candidates who have passed the matriculation exam for *previous* training, *and are not on the ranking list of admitted candidates whose training is financed from the resources of the Republic of Serbia* (budgetary training beneficiaries), shall bear the costs of the training on their own, in the amount determined in accordance with the act of the Academy's Management Board (self-financing training beneficiaries) is unacceptable for several reasons. As budgetary training beneficiaries establish fixed-term employment agreement in the Academy, this puts

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The same law stipulates that the Minister of Justice, by their act, regulates in more detail the procedure for the admission of judicial interns (Article 65, Paragraph 5) and judicial assistants (Article 58, Paragraph 2).

<sup>57</sup> According to a by-law, the total number of judicial interns and judicial assistants should be equal to the total number of judges, with the provision that the number of judicial interns should not exceed 1/3 of that number (which would mean that there should be around 870 judicial interns, and around 1,740 judicial associates). Exact data on the total number of judicial interns are not available even to the professional public. However, it is known that there are not even 200 of them.

self-financing training beneficiaries in a legally absurd situation of paying to perform work and discriminates against budgetary training beneficiaries. Namely, the obligations of these two categories of beneficiaries do not differ in any way during the practical part of the training (in court, public prosecution office, other state authorities, law offices and other organizations), because they perform the same tasks. The only difference between these two categories of training beneficiaries is that they are paid differently for the work they perform. One category of beneficiaries is paid in the amount of 80% of the basic salary of a judge of the basic court for the duration of the fixed-term employment agreement in the Academy (Article 48, Paragraph 4 of the Draft)<sup>58</sup>, and the other category is not only not paid, but it pays an undefined compensation for expenses to an undefined subject. The aforementioned solution for self-financing training beneficiaries is contrary to the Constitution of the Republic of Serbia, the Labor Law, and the Law on Civil Servants<sup>59</sup>.

77. In addition, the proposed solution will create a gap between candidates who have passed the matriculation exam and can afford to bear the training costs, on the one hand, and those candidates who have passed the matriculation exam and cannot afford to bear the training costs, on the other hand. Bearing in mind that the certificate of completed previous training exempts the beneficiary of *continuous training for judges and public prosecutors who are elected for the first time*, a graduate lawyer who would not have the possibility to pay *training costs*, even if they had more points than the one who has to pay, would not have the opportunity to attend previous training and, in case of election to the position of judge, would be obliged to attend *continuous training for judges and public prosecutors who are elected for the first time*.

78. The labour position of budgetary training beneficiaries after the completion of *previous training* is also unclear, and inconsistent with other laws. Depending on the length of their training, they are guaranteed (after 24 months of training) or enabled (after 12, six or three months of training) to establish a fixed-term employment agreement with a council of the judiciary for a maximum of two years in the duties of a judicial, i.e., prosecutorial

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58 According to the current Law on the Judicial Academy (Article 40, Paragraphs 1 and 3), the *beneficiary of the initial training establishes a fixed-term employment agreement at the Academy for a duration of 30 months; and has a salary in the amount of 70% of the basic salary of a judge of the basic court, for the duration of the fixed-term employment agreement at the Academy.*

59 Article 60 Paragraph 4 of the Constitution, stipulates that: *everyone has the right for their personal dignity to be respected at work, to safe and healthy working conditions, to necessary protection at work, limited working hours, daily and weekly rest, paid annual leave, fair compensation for work and legal protection in case of termination of employment. No one can waive those rights.*

The Labor Law, Article 12, stipulates that: *an employee has the right to an appropriate salary, safety and health at work, health care, protection of personal integrity, personal dignity and other rights in the event of illness, reduction or loss of work ability and old age, financial security during temporary unemployment, as well as the right to other forms of protection, in accordance with the law and the general act, that is, the employment contract.*

The Law on Civil Servants, Article 13, stipulates that: *a civil servant has the right to salary, allowances and other income according to the law regulating salaries in state authorities.*

assistant in a court, i.e., public prosecution office, or on professional duties in the HJC (Article 50 of the Draft). The presented solution is unacceptable, as it is contrary to the applicable legal solutions on the legal employment status of persons who have graduated from law faculty, passed the bar exam and are employed in courts or public prosecution offices, which also violates the unity of the legal order.

79. From the existing proposal, it is not possible to determine what legal employment status, according to the applicable systemic laws, will apply to persons who have completed *previous* training, and whether the provisions of the Law on Civil Servants shall apply to them, as is the case of judicial assistants employed in courts, or the Labour Law, which applies in cases of employees in other legal entities. Simply put, it is not clear, who is the *boss* of these persons, who assigns them to which jobs, and what exactly is expected of them. Because it would be inappropriate to continue with the current practice that beneficiaries who have completed training at the Academy are independently assigned by the director of the Academy to work in certain courts and that he determines which beneficiary will be assigned to work with which judge, as well as that according to which beneficiaries do not consider that their work is subject to the same rules, in terms of expectations of mastering the scope and deadlines, or the work of judicial assistants.

Judicial and prosecutorial assistants are civil servants<sup>60</sup> and are subject to the Law on Civil Servants, which prescribes the *numerus clausus*<sup>61</sup> of cases in which a civil servant can

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<sup>60</sup> The Law on Organization of Courts (Article 59, Paragraph 1 and Article 72, Paragraph 2) and the Law on Civil Servants (Article 2, Paragraph 1).

<sup>61</sup> According to Article 63 of the Law on Civil Servants:

A fixed-term employment agreement can be based on:

- 1) replacing an absent civil servant, until their return;
- 2) temporarily increased volume of work that the existing number of civil servants cannot perform, for a maximum of six months;
- 3) workplaces in the cabinet, while the official's duty lasts;
- 4) the purpose of training interns, while the internship lasts;
- 5) the purpose of replacing a civil servant who has been appointed as an acting official, while their duty lasts;
- 6) the purpose of replacing a civil servant whose employment agreement is suspended due to the performance of an internship.

Fixed-term employment in the case referred to in Paragraph 1, Item 1), 3), 5) and 6) of this article is based without the obligation to conduct an internal or public competition, and the employment agreement for a fixed period of time in the case referred to in Paragraph 1, Item 2) and 4) of this article is established after a public competition has been conducted in accordance with this law and if the need for employment is shown in the human resources plan.

As an exception to Paragraph 2 of this Article, a state authority may hire, on the basis of a fixed-term agreement, a person who, in the previous four years, participated in a public competition conducted by the state authority and met the criteria prescribed for selection in that competition procedure, if they meet the conditions for working in that position, and have the necessary competencies.

A civil servant who has, after a public competition, established a fixed-term employment agreement due to a temporarily increased workload, may, in the same state authority, without the obligation to conduct a public competition, establish a new fixed-term employment agreement due to an

establish a fixed-term employment agreement, as well as the duration of a fixed-term employment agreement, and any other way of establishing of this kind of employment agreement in contradiction with that systemic law. Unlike the Law on Civil Servants, the fixed-term work of beneficiaries of *previous* (initial) training lasts, according to the Draft, for 30 months during training (Article 48, Paragraph 1) and up to two years (Article 50, Paragraph 1), a total of four and a half years.

The Strategy for the Development of Human Resources in the Judiciary for the 2022-2026 period foresees, considering the nature and importance of the work performed by judicial assistants, that the possibility of *dislocation* of the legal status of judicial assistants from the position of civil servants will be considered, and direct jurisdiction over this category of judicial staff will be established by the councils of the judiciary, however, this has not yet been done, despite the efforts undertaken by the representatives of JAS in the Working Group for drafting judicial laws in 2022. Given that this issue must be solved uniquely, at this moment there is no justified reason for those who have completed previous training at the Academy to establish a working relationship in the HJC.

It would only make sense for those persons to exercise all rights and obligations, i.e. establish a fixed-term employment agreement in the body in which they work, and to which the HJC may assign them according to the needs of the courts. Thus, the legal position of those persons could be adequately adapted to the position of a judicial assistant, who should be involved in the performance of judicial duties, and must be supervised by judges.<sup>62</sup> Such a solution could be deviated from only if there is a need for the work of such personnel in the HJC, when the beneficiaries would establish a working agreement for a certain period of time in this body. All of the above is especially due to the fact that, according to applicable regulations, funds for the salaries and other benefits of judicial and prosecutorial assistants are provided by the MoJ, and the proposed solution would unnecessarily burden the budget of the HJC, i.e. HPC. Also, taking into account that Article 43, Paragraph 3 of the Draft stipulates that previous training beneficiary who is employed by another employer has a suspended employment agreement, it should be prescribed that these beneficiaries shall return to work at the parent employer after completing the training.

Finally, there is also the question of the expediency of guaranteeing a job after completing *previous* (initial) training. The assumption is that the beneficiary who has completed the relevant training has acquired specific knowledge and skills, due to which they are in a favourable position on the labour market, and as such can be employed through a public competition in the position of judicial assistant (if they wish to), without major difficulties.

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increased workload in a classified workplace in the same and lower rank than the workplace whose duties the civil servant performed, if they meet the conditions for working in that workplace and have the necessary competencies.

<sup>62</sup> Opinion No. 22 of the Consultative Council of European Judges on the role of judicial assistants, Conclusions – Recommendations.

The success of such employment of training beneficiaries at the Academy would valorize the Academy's work on the market.

The provisions of the Draft relating to the legal employment status of Academy beneficiaries are also not sufficiently clear, specific and predictable, nor are they harmonized with other systemic laws - the Law on the Organization of Courts, the Law on Civil Servants, the Labor Law, thereby violating the principle of the rule of law prescribed by Article 3 of the Constitution, since this principle, as one of the fundamental principles of every democratic society, implies that the legal order is unique and the norms of every general legal act are clear, definite and predictable.

### **Lack of solutions that would ensure the independent functioning of the Academy**

80. According to the Draft Law on the Judicial Academy, the Judicial Academy is not an independent institution, because the Draft:

- does not even contain a proclamation that it is an independent institution that enjoys educational autonomy. Moreover, the Draft stipulates that the conditions of the functioning of the Academy is prescribed by the Government (Article 23, Paragraph 2), that representatives of the executive power are members of its bodies, namely, the Management Board, of which the minister responsible for justice and a member appointed by the Government are members, and the Program Council, of which the state secretary in the ministry responsible for finance and the state secretary in the ministry responsible for justice are members (Articles 8 and 17), while bodies with such composition further make all decisions on which the activity of the Academy depends
- prescribes that provisions of the law regulating public services shall apply accordingly to its internal organization and the tasks it performs, unless otherwise specified by the said law (Article 3, Paragraph 5)
- does not *require* that the director of the Academy be only not an experienced judge or public prosecutor, as is usually the case in countries in which Academies exist, but not even having to pass the bar exam, which makes him *disposable* and therefore susceptible to the influence of political authorities (Article 14)
- unnecessarily *binds* remuneration for work in its bodies to salaries that are among the highest in the judiciary (for members of the Management Board - 20% of the salary of a judge of the Supreme Court, for members of the Program Council - 10% of the salary of an appellate court judge, for mentors - 10% of the salary of a judge of a higher court), which can have a corrupting effect, since it makes the members of those bodies, i.e. mentors, financially interested and therefore susceptible to undue influences (Article 8, Paragraph 5, Article 17, Paragraph 10, Article 21).

Despite the fact that it was not established as independent, the Judicial Academy:

- performs the selection of participants of the *previous* (initial) training on its own
- determines the program of the *previous* (initial) training on its own
- trains and appoints trainers and mentors on its own
- conducts the final exam on its own
- is the only issuer of the certificate of expertise (according to the Draft of the amendments of the Law on Judges, should Article 56 of the Draft Law of the Judicial Academy be deleted).

Last, but not least, the Academy is still not obliged to function transparently, not even to publish data on the established number of beneficiaries, the number of beneficiaries enrolled, their status and names, on the criteria based which training providers are elected, on the persons who have completed training for mentors and lecturers, etc.

## VII SUGGESTIONS

81. Based on everything presented above, JAS and AJA's belief is that passing a law that would deal with the purpose (expertise achieved through training) and not the institution (academy) that the institution serves is the only purposeful and logical thing to do<sup>63</sup>. That is why, first of all, that law should be named: the Law on Training in the Judiciary. The law should, then, be appropriate to Serbia's traditions and capabilities and immediately applicable. This means that training in the judiciary, based on combining existing training methods, should be prescribed by law. This would be d not be unusual, because such training in the judiciary works successfully in numerous other European countries (since training through the academy is not a European standard).

82. The Law on Training in the Judiciary should be based on a clear and transparent structure. Thus, the first part of the law should first define general issues of training, and the second part should define the status and functioning of the Academy. The first part should define and arrange:

- **Subject of the Law**, e.g.

*This law shall determine the goal, the forms, the manner of carrying out and the duration of training in the judiciary, the beneficiaries, and other subjects (mentors, lecturers) of the training, and regulate the status, the work, the management bodies and the funding of the Judicial Academy.*

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<sup>63</sup> The legislator respected this principle when it comes to fighting corruption. Namely, the Law on the Anti-Corruption Agency from 2011 was replaced in 2019 by the Law on Prevention of Corruption

- **The Concept and the Goal of the Training**, e.g.

*The training in the judiciary represents the organized acquisition and improvement of multidisciplinary theoretical and practical knowledge and skills required for an autonomous, professional and efficient performance of the duties entrusted by law and the strengthening of citizens' trust in the judiciary.*

*The training of judges and public prosecutors should ensure the strengthening of independence of judges and autonomy of prosecutors from political and other external influences, impartiality in the performance of the function they perform, awareness of the importance of ethical principles and integrity of the judiciary, and knowledge of international standards and good practices in the judiciary.*

*The special goal of the training of judicial and prosecutorial assistants is to improve the knowledge and skills needed to successfully pass the judicial/prosecutorial exam.*

*The special goal of the training of judicial and prosecutorial interns, who only attend initial training, due to their specific (transitional) legal employment status is to improve their theoretical knowledge and to acquire practical skills needed to successfully pass the bar exam.*

- **Training Beneficiaries**, who are, e.g.: judges, public prosecutors, judicial and prosecutorial assistants, judicial and prosecutorial interns, judicial staff, and other beneficiaries in accordance with the Law.

- **The Right to Training**, e.g.: the beneficiaries have the right and obligation to a professional training, the expenses of which shall be covered by the Republic of Serbia.

- **The Forms of Training**, e.g.: the training is initial and continuous, and is carried out in a practical and theoretical way.

- **Initial training**, e.g.

*Initial training is mandatory.*

*Initial training beneficiaries are judicial and prosecutorial interns, judicial and prosecutorial assistants, and judges and prosecutors who have been elected to office for the first time, but have not completed the initial training for judicial and prosecutorial assistants.*

*The initial training is carried out by working in courts and public prosecution offices (the practical part of the training) and by attending seminars, lectures, study visits and in other ways organized by the Judicial Academy in its seat and the seats of appellate courts for judicial and prosecutorial assistants in courts and public prosecution offices with seats in the area of the corresponding appellate court (the theoretical part of the training).*

*Judges and public prosecutors who have been elected to office for the first time, but have not completed the training referred to in the second paragraph of this article are initial training beneficiaries adapted to their previous professional experience.*

- **Continuous Training**, e.g.

*Continuous training can be voluntary or mandatory.*

*Continuous training is mandatory if prescribed by law or by a decision of the High Judicial Council and the High Prosecutorial Council in the event of a change in specialization, significant legislation amendments, the introduction of new work techniques, and in order to eliminate deficiencies in the work of judges and deputy public prosecutors observed during the evaluation of their work.*

*Continuous training beneficiaries are judicial and prosecutorial assistants, judges, public prosecutors, judicial staff and other beneficiaries in accordance with the Law.*

*Continuous training is timely, financially and organizationally available to beneficiaries without discrimination, predictable, interactive and organized at the expense of the Republic of Serbia.*

*Continuous training beneficiaries are provided with the conditions necessary for the smooth performance of other duties (suspension of the flow of cases during training, not including the time spent on training in deadlines for various procedures, etc).*

- **Training Programs**, e.g.

*Training programs are created based on the needs of the judiciary, that is, the function performed by the training user.*

*Ethics training is mandatory and common for all training beneficiaries.*

*Training programs cover all areas of social importance that reflect the functioning of the judiciary.*

*The content of the training program and the duration of the training are determined depending on the previous professional experience of the training beneficiary.*

*The High Judicial Council and the High Prosecutorial Council determine the initial training programs following the proposal of the Judicial Academy.*

*The Judicial Academy establishes permanent training programs with the consent of the High Judicial Council and the High Prosecutorial Council.*

*The High Judicial Council and the High Prosecutorial Council shall supervise the implementation of the initial and continuous training programs.*

- **The Duration of Initial Training**, e.g.: *The training of initial training beneficiaries from the ranks of judicial and prosecutorial interns and from the ranks of judicial and prosecutorial assistants would last two years, while the training of judges and public prosecutors who have been elected for the first time, but have not completed the initial training lasts from one to three months, depending on their previous professional experience.*

- **Organization of Training**, which would be organized by the Judicial Academy.

- **Carrying out of the Training**, with the practical carried out by the courts and public prosecution offices as a rule, and the theoretical training by the Judicial Academy.

In its first part, the law should define mentors and lecturers, criteria for their selection, training, the procedure for analysis and evaluation of training, and other issues related to training in the judiciary.

In the second part, the law should be devoted to the Judicial Academy, its status and functioning. The Judicial Academy should be organized as an independent institution for training in the judiciary, which means, among other things, that representatives of political authorities should not be members of its bodies. The requirement for the Academy to function transparently, for its director to be an experienced holder of judicial office, should be emphasized.

### **Advantages of the proposed solutions**

83. Solutions proposed by JAS and AJA:

- would ensure that training in the judiciary is carried out without violating the Constitutional competence of the councils of the judiciary to carry out the election and that, within its framework, they assess on their own whether the candidates for the position of judge/public prosecutor meet all the conditions for the election, including their expertise and competence. Such a solution would make it impossible for the Academy to be the one that essentially elects judges during the selection of its beneficiaries, and have the councils of the judiciary only to elect judges/public prosecutors among the ranks of those who have completed the training, and were previously *selected* by the Academy;
- would provide the conditions for an independent functioning and development of the Academy, removing the previous and preventing the upcoming shortcomings of its functioning resulting from the solutions contained in the Draft;
- would not expose the budget of the Republic of Serbia to any special expenses for the practical training of the initial training beneficiaries, but on the contrary, it would enable savings in the budget. This is because assistants are paid for their work, during which they are practically trained, which is performed in the courts/public prosecution offices where they work;
- would make it possible to overcome the problem of insufficient funding and irregular training of judges, especially judicial and prosecutorial assistants and other court staff, even though these trainings constitute the majority of the legal competences of the Academy, which was caused by the circumstance that the costs for the salaries and contributions of the initial training beneficiaries were a huge share in the structure of total costs (about 90%) of the Academy, and for the Academy to fully dedicate to all its responsibilities;

- would make it possible to specify what the training costs are (initial and continuous, practical and theoretical), to whom and which of them are paid (courts/public prosecution offices, the Academy),
- would make the Academy's financial operations clear and transparent and would remove the repeated findings of the competent authorities about serious violations of the obligation of good business operations by the Academy (see Paragraph 60 of this Analysis)
- would enable the legal employment status of initial training beneficiaries to be precisely determined and easily fit into the existing legal framework (in relation to the undefined status of initial training beneficiaries and their work duties in the court/public prosecution office, refer to the letter from the President of the Academy's Management Board to beneficiaries who have completed initial training at the Academy and were then assigned to the court in Paragraph 60 of this Analysis)
- would prevent the commercialization of initial training, the hyperproduction of beneficiaries who have completed it, the lowering of the quality of training and the violation of the legal competence of the councils of the judiciary in the management of the judicial system, as explained in Paragraph 73 of this Analysis,
- would prevent unequal treatment and discrimination of candidates for judges/public prosecutors who meet the legal requirements for election (those who passed the training program before the election as beneficiaries of the Academy and those who did not) in terms of the assessment of expertise and competence, because all candidates would take an exam for assessment of expertise and competence organized by councils of the judiciary.

## VIII CONCLUSION

84. The main reasons for amending the Constitution in 2022, as well as the set of judicial laws in 2023, in accordance with those amendments, was the depoliticization of the judiciary and the strengthening of its independence. One of the obligations of Serbia, undertaken as part of the Action Plan for Chapter 23, which concerns the amendment of the constitutional provisions on the judiciary, with the aim of *strengthening its independence is to ensure that the system of election, nomination, appointment, transfer and termination of office of judges, court presidents and (deputy) public prosecutors is independent from political influences, and that entry into the judicial system is based on objective evaluation criteria and fair election procedures and open to all candidates with appropriate qualifications and transparent from the point of view of the professional and general public (1.1.1.1)*. In accordance with such obligations and goals, the Amendments to the Constitution and the set of adopted judicial laws represent a significant

step towards the progress of democracy and the strengthening of the independence of the judiciary.

85. Despite what has been stated, there is still the impression that political authorities desire to take back what they have renounced by amending the Constitution and adopting the new judicial laws (in particular, the initial election of judges), and persist in their aspiration to *install* the Academy as a conduit of their influence. Therefore, should the Judicial Academy be solely approached as a single entry point into the judiciary, the government would ensure that the election of judges (and public prosecutors) is not carried out by the councils of the judiciary, which is their constitutional competence, but by the Academy, covertly and in advance, having previously secured its influence in the Academy's bodies by means of its representatives, as prescribed by the Draft, in an insufficiently controlled and non-transparent procedure of selection of training beneficiaries.

86. Regardless of the way of training the country chooses, an independent authority should ensure, fully in accordance with educational autonomy, that training is designed according to the profile of a judge (characteristics that society expects and demands from a judge), that initial and supplementary training programs meet the criteria of openness, expertise and impartiality inherent in the judicial function, and that such training must be provided by eminent and recognized lecturers and in an adequate interactive way. The accuracy of this conclusion is also confirmed by the statement of the Austrian judge Gerhard Reisner, former president of the Consultative Council of European Judges and honorary president of the International Association of Judges: *As I was involved in the drafting of Opinion No. 4 on the initial and in-service training of judges, adopted by the Consultative Council of European Judges, please allow me to finish by emphasizing the four principle ideas contained in this act, which can be useful for the work of this conference: 1) Training is essential for the quality of the judiciary. Together with independence, it is a decisive factor for trust in the judiciary. 2) Opinion No. 4 is not determined by the existence of the judicial academy. Numerous training systems are recognized and each country must choose the one that best suits its system. 3) It is absolutely necessary for the judiciary to play a significant role in organizing the training and its content. It is necessary to form an independent body that would deal with the issue of training, so that it would not be dealt with by the Ministry. It is necessary to provide funds for the work of that independent body. 4) At the end of the Opinion, the importance of international cooperation, comparison and exchange of knowledge is highlighted.*

87. 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 great differences among European countries with respect to the initial and*

*in-service training of judges. These differences can in part be related to particular features of the different judicial systems, but in some respects do not seem to be inevitable or necessary. Some countries offer lengthy formal training in specialised establishments, followed by intensive further training. Others provide a sort of apprenticeship under the supervision of an experienced judge, who imparts knowledge and professional advice on the basis of concrete examples, showing what approach to take and avoiding any kind of didacticism.*<sup>64</sup> Different ways of acquiring expertise (training) are equally functional and applicable, depending on the tradition and economic possibilities of each country.

88. JAS and AJA do not find it disputable, as it was not disputable for the Constitutional Court in its decisions *IUz - 497/2011* and *IUz - 427/2013* from 2014, that professional training of judicial personnel, and not only those persons who are preparing for the exercise of the duty of a judge, but also the elected judges, contributes to raising the quality of the judicial function and therefore should be adequately evaluated within the criteria prescribed by law both for the initial election to the judicial function, and in case of election to a higher court. However, the legal solution according to which, in the near future, all persons who did not complete the initial training at the Academy would essentially be eliminated from the circle of candidates for the initial election for a judge of a certain type of court, is constitutionally unacceptable, moreover when taking into account that the beneficiaries of the Academy during the initial training primarily perform the duties of judicial assistants, the same as judicial assistants who are not *beneficiaries* of that training, as well as due to the fact that objectively there is always a *numerus clausus* when it comes to the possibility of obtaining this level of education, i.e. when enrolling at the Academy.

89. The academy should serve the purpose of training, so that judges, like other judicial staff, are professional and of integrity, and not to *take over* the judiciary and deprive the councils of the judiciary of their Constitutional duties to guarantee and ensure the independence of the judiciary and the autonomy of the prosecution and independently elect judges and prosecutors. Insisting on a law that would deal with the institution (academy) and not the purpose that institution serves (training) and that would prescribe that institution as the only point of access to the judicial function, and essentially deprive the councils of the judiciary of their Constitutional duty to elect judges/public prosecutors, and evaluate the fulfilment of the criteria for election to the position of judge (including expertise and competence) within it can be disastrous for the independence of the judiciary. In any case, a law that would *obey* to such insistence would render the amendments to the Constitution and systemic laws from 2022/2023 meaningless.

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<sup>64</sup> Opinion No. 4 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of The Council of Europe on appropriate initial and in-service training for judges at national and European levels, Paragraph 6