



Association of Judicial Associates of Serbia Belgrade

Provisions of Art. 50 of the Law on Judicial Academy prescribes mandatory training of judicial and prosecutorial assistants and interns, and interns-volunteers to a special training program approved by the Managing board on the proposal of the JA Program Council and with the approval of the High Judicial Council and State Prosecutorial Council. Since the adoption of the Law on Judicial Academy to this day special training required under Art. 50 Law on JA is not implemented in practice, although the full and correct application of the legal provisions for judicial and prosecutorial assistants, is of particular importance, not only because this provision directly defines their rights and obligations, but also due to the fact that the essence of judicial and prosecutorial assistants training is the acquisition and improvement of practical and theoretical knowledge and skills necessary to perform judicial or prosecutorial functions, and that the expertise and capability are the requirements that candidates must meet in order to be elected to a judicial or prosecutorial function. According to the opinion of the Constitutional Court of Serbia expressed in the decision IUz-497/2011, Published in „Sl. Gazette of RS „No. 32/ 2014 from 03.20.2014. The completed initial training at the JA cannot be substantially decisive condition for the availability of judicial or prosecutorial functions, because this prevents the adequate evaluation of other prescribed conditions for these functions. From this decision it is implied that the High Judicial Council and State Prosecutorial Council can evaluate completed initial training at the Judicial Academy as one of the elements within the legally established criteria of expertise, competence and integrity, and completed initial training could be considered a rebuttable presumption of compliance with the terms of expertise and qualifications of candidates proposed for election to judicial or prosecutorial function. The views expressed in the decision of the Constitutional Court of Serbia suggest the following conclusions, which are, in our opinion, very important for the current status of judicial and prosecutorial assistants:

1. The essence of the initial training of the JA was misinterpreted when the initial training was set as a crucial condition for the evaluation of qualification and competence during the nomination of candidates for election for the first appointment for a judge of the Basic Court, Misdemeanor Court and the Deputy Public Prosecutor in the Basic Public Prosecutor's Office.

2. That the solution is unsustainable which put judicial and prosecutorial assistants who meet the statutory requirements for becoming a judge, or public prosecutor, and have not completed initial training in JA, in a position to practically be excluded from the circle of candidates for the first appointment of judges (to particular types of courts and Deputy Public Prosecutors to certain types of public prosecutors offices), especially considering the fact that the participants of the Academy during the initial training essentially perform duties of judicial and of prosecutorial assistants, equally as judicial and prosecutorial assistants who are not beneficiaries of the training.

3.

1. Art. 50, paragraph 2 provides that a special training programme for judicial assistants and interns is adopted by the Managing Board with the approval of the High Judicial Council, while paragraph 3 of the same article stipulates that a special training program for prosecutors' assistants shall be sent to the State Prosecutorial Council so it would be determined by it. Regardless of the different formulations of the provisions of paragraphs 2 and 3 of the said Article, APSS/AJAS believes that these provisions are not substantially different, and that is the practical application of these provisions is essential consent of the HJC, or SPC, because without their consent, the proposed programs can't be adopted.

On the other hand, the Law on Judicial Academy provides several types of training for different categories of users, with the legal terminology, a distinction between the initial, ongoing and specific training. In practice, only initial training is present, and continuous training of judges and prosecutors is conducted sporadically. Special training required under Art. 50 Law on JA has not been implemented. However, the urgent implementation of the legal provisions and the implementation of this type of training in the courts and public prosecutors in Serbia could be a satisfactory solution to the current situation for the judicial and prosecutorial assistants.

The provisions of Art. 50 par. 6 Law on JA provides that judicial and prosecutorial assistants who have



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completed initial training are not required to attend a special training program in par. 2 and 3 of this Article. The quoted provision indicates that specific mandatory training may represent another opportunity for the adoption and promotion of practical and theoretical knowledge and professional skills acquired during initial training on JA.

Due to the limited capacity of the Judicial Academy, teaching base for conducting special training required under Art. 50 LJA must be courts and public prosecutor's offices, and those who will conduct training will be mentors "certified" by the Judicial Academy in the sense of Art. 48 LJA. Article 50 Para. 5 of the Law on Judicial Academy stipulate that presidents of courts and public prosecutors submit annual report to the Academy on the work of judicial and prosecutorial assistants and interns, as well as the opinion of a mentor. Taking into account that the implementation of special training will be followed by the presidents of courts, public prosecutors, and the opinion of the success of overcoming the special training are given by mentors, we believe that in this way skills and expertise of judicial and prosecutorial assistants are valued and they should be issued appropriate certificates that would constitute evidence of qualification and competence of equal value to that of initial training users on the JA which are gained by successful completion of the training.

We emphasize that, in our view, the implementation of special training required under Art. 50 LJA does not exclude the right of judicial and prosecutorial assistants to other forms of voluntary training and professional development. Given the status of assistants who are also civil servants, this right is guaranteed by the provisions of Art. 10 par. 2 Civil Service Act, which provides that a civil servant has the right and duty to vocational training according to the needs of the state authority.

Given the aforementioned, the proposal of the Association of judicial associates of Serbia is urgent implementation of Article 50 of the Law on Judicial Academy, with the evaluation of previous work experience, and especially the fact that judicial and prosecutorial assistants perform their duties in cases that actually exists, as a kind of special training.

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2. We believe that the "Work report" actually means grade of success in mastering the training program, because regular work and success, expertise and diligence in performing the job is specifically evaluated and assessed in accordance with the provisions of the Law on Civil Servants.