



Association of Judicial Associates of Serbia Belgrade

KEY POINTS OF THE OBJECTIONS ON THE DRAFT OF THE AMENDMENTS TO THE LAW ON JUDICIAL ACADEMY

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According to the conclusion of the Ministry of Justice 05 number 011-5863 / 2015 of 27.05.2015, a public debate was planned by sending an e-mail on the objections concerning the set of judicial laws which differs from the very meaning and purpose of the notion of public debate. The public debate implies the right and the ability of all stakeholders to make their positive or negative opinion about a particular proposal which they will publicly express and also to get a public answer why their position may or may not be accepted. Considering the foregoing, we hoped to the last day of the deadline for the submission of the objections that the proponent of the law will realize substantial omissions and will allow us realistically and not just formal participation in the debate. While we understand that giving objections to the above-mentioned method has the purpose of merely filling out the forms, but we are convinced that all parties in this "debate" act in the interests of the profession, the rule of law and democracy, which is why we try to give you and once again point out the legal and factual reasons for the shortcomings of the proposed Article 5 of the Draft Law on Amendments to the Law on Judicial Academy that directly places one group of candidates in a privileged position and another into a discriminatory one:

- In the Draft Law on Amendments to the Law on the Judicial Academy, in Article 5 it is proposed that in the Article 40 of the Judicial Academy ("Official Gazette" no. 104/09 and 32/14 - US), after paragraph 3 a new paragraph 4 is introduced and is as follows: "Attending the initial training is considered to be work experience in the legal profession." The previous par. 4 to 9 become paragraphs 5 through 10.

The reasons for the adoption of such legal solution is that by the decision of the Constitutional Court IUZ No 497/2011 ("RS Official Gazette", No. 32/14) the provisions of Article 40 para. 8, 9 and 11 of the Law on Judicial Academy ("RS Official Gazette", No. 104/09) ceased to apply, and that in the explanation of the decision it is stated, among other things, that the law cannot bound the High Judicial Council or the State Prosecutorial Council to propose to the National Assembly for the first election to judicial office or the Deputy Public Prosecutor the candidates who have completed initial training at the Judicial Academy, but that the law may prescribe rules by which the SPC and HJC will evaluate initial training at the JA in the process of nominating candidates for the first time for judges of the basic and misdemeanor courts (public prosecutors) post, and for this reason that the proposed amendment to the Law on Judicial Academy and the corresponding amendments to the Law on Judges and the Law the Public Prosecutor's Office were made, which is in line with the explanation given by the Constitutional Court in the above decision. In the explanation of basic legal institutes and individual solutions, it is further explained among other things that with the Article 5 and its amendments necessary amendments to Article 40 are being made, because the decision of the Constitutional Court deleted the provisions of paragraphs. 8, 9 and 11 of Article 40 of the Law on Judicial Academy, it is therefore necessary that attending (enrollment) to initial training is considered working experience in the legal profession, given that a certain number of years of work experience is a requirement for becoming a judge, or



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deputy public prosecutors.

- By decision of the Constitutional Court IUZ No 497/2011 of 6 February 2014, published in the "Official Gazette of RS", No. 32/14 of 20 March 2014, the provisions of Article 40, paragraph. 8, 9 and 11 of the Law on Judicial Academy ("RS Official Gazette", No. 104/09) ceased to be valid. In the reasons for the decision, amongst other things, stated that the law cannot bound the High Judicial Council and State Prosecutorial Council to propose in a mandatory way to the National Assembly for the first appointment for judicial office candidates who have completed initial training at the Judicial Academy, but that the law may prescribe rules by which the High Judicial Council, that is State Prosecutorial Council, will value the completed initial training at the Judicial Academy in the process of proposal of the judges, deputy public prosecutor's, to be elected for the first time.

- Given the foregoing, the Constitutional Court through the above-mentioned decision, expressed a clear and unequivocal position - that the law may prescribe rules by which the SPC and HJC will evaluate initial training at the JA in the process of nominating candidates for the first time for judges of the basic and misdemeanor courts (public prosecutors) post. It is also completely unclear how did the proponent of the draft of the amendments of the law concluded that it is necessary that the law prescribes that the enrollment to the initial training considers to be a working experience in the legal field.

- In this regard, we emphasize the reasoning part of the Constitutional Court IUZ No 497/2011 that says: "... *The Constitutional Court did not dispute the vocational training of the judicial personnel, and not only for those persons who are preparing for judicial and public prosecutor's office, but also of elected judges, public prosecutors and their deputies, contributes to raising quality in performing these functions and should therefore be adequately evaluated within the legally prescribed criteria as for the first appointment to a judicial or prosecutorial function, and during the elections in the higher court, the public prosecutor's office, **but is constitutionally unacceptable that the legal solutions according to which all persons who have not completed initial training at the Judicial Academy, therefore, substantially are eliminated from the round of candidates for the first election of a judge for certain types of courts and deputy public prosecutors of certain types of public prosecutor's office. This especially when having in mind that the participants of the Academy during the initial training primarily perform tasks of judicial and public prosecutor assistants, as well as the judicial and prosecutorial assistants who are not "users" of that training.*** Therefore it cannot be concluded that the introduction of that the enrollment to the initial training considers to be a working experience in the legal field is the duty of the legislator, nor the purpose of the challenged provisions can be explained by quoting parts of the decisions of the Constitutional Court, however that these stylishly shaped, especially if they are quoted outside the right context.

- When the proposed changes to the law are brought in connection with the Law on Judges and Law on Public Prosecutors Offices, it becomes clearer how the proposed solution is discriminatory, illogical and unfair and it is best seen from several aspects:

According to Article 35 of the Judicial Academy, the initial training program includes the application of substantive and procedural law, judicial and prosecutorial practice, standards of judicial and prosecutorial ethics, international legal standards, the internal organization of courts and prosecutors' offices, scientific and professional papers in the area of domestic and international law as well as the skills of judicial and prosecutorial work. The initial training program is determined by the HJC and the SPC on the basis of the proposals that established the Program Council and adopted by the Governing Board. Initial training lasts for two years, beginning on October 1 and consists of theoretical and practical work in the field of constitutional, civil, criminal and misdemeanor law, as well as general and professional culture. The practical part of the initial training is done in court, the public prosecutor's office, as well as in other state institutions, law firms and other



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organizations. The duration of training for each area is determined by the initial training program. For example the theoretical part of the training takes place through the processing of certain thematic units organized by the Academy, and the practical part of the work of the judicial authorities under the supervision of a mentor and through work in institutions outside the judiciary. **Rating of the initial training** (which is normally done in the court and the prosecutor's office), according to Article 36, paragraphs 1 and 2 of the cited law, shall be carried out so that, upon completion of each part of the initial training, **mentor and lecturer from that particular part of the training is giving a rating of 1 to 5**. This means that this, in fact, represents the opinions of mentors. Work in institutions outside the judiciary is not graded. The provisions of Art. 37 paragraph 1 and 2 of the Law prescribes that, upon completion of the initial training, users take the final exam which "checks" only practical knowledge and skills acquired in the initial training for the job of a misdemeanor court judges, the basic court and deputy public prosecutor in basic prosecutor's office, evaluation of the final exams are from 1 to 5. At the end of the initial training a final assessment is acquired that is made of sum of scores obtained from certain parts of the training and assessment of the final examination (Art. 38 of this Law). **The conclusion is from the above mentioned process that the users of initial training in JA practically are not checked for their theoretical knowledge, and in addition, as candidates for judicial offices, by the newest amendments, are exempted from the proficiency checks and proficiency exam,** which, according to the legislative amendments which we have objections to, are organized by the HJC and the SPC . This initial training on the JA is set again as a crucial condition for evaluation of expertise and competence when nominating candidates for the first election of a judge of the misdemeanor and the Basic Court and the Deputy Public Prosecutor at the Basic Public Prosecutor's office.

- **On the other hand, those same institutions in which the initial training of JA users perform their "initial training" - the courts and public prosecutor's offices, judicial and prosecutorial assistants work, who also apply to the judiciary functions.** They perform their tasks in actual cases, starting with the undertaking of specific procedural actions in the proceedings-like hearings, to the drafting of the final version of judicial and prosecutorial decisions. Checking and evaluation of their work is done by qualitative and quantitative measures and criteria four times a year by the judge or a panel, or deputy public prosecutor who they are assigned to, and at the end of the year they receive a final assessment of the work. Furthermore we would like to remind that beside the general requirements when applying for the judicial post **judicial and public prosecutor's associates are also subjected to above mentioned process of the evaluation - marks from 1 to 5 from their superiors in a detailed process prescribed by the Law on Public prosecutor's Office and Law on Courts.**

- What especially should be taken into account is that it is widely known that the initial training program, as well as a final exam, are not verified by the HJC and the SPC, **rulebook on the passing of the final exam has not been publicly released and made available to the public,** final exam is actually a simulation of the trial and that the **guidelines adopted by the Working Group of Ministry of Justice for guidelines for reforming and developing the JA has not been implemented** primarily by the Judicial Academy, as an institution in whose interest guidelines were made in 2014. Baring in mind everything mentioned above, it remains arguable why the initial training of the JA is given an advantage during the selection of the candidates for judicial functions, especially considering that a logical, objective and plausible explanation wasn't given and therefore placed entire categories of candidates that are not from the JA in a discriminatory position. Those categories are beside associates, lawyers with more than 20 years of practical experience in courtrooms and representatives of companies that represent them in litigation.

Having regard to the proposed changes to the law and the situation in practice, one can draw only one **conclusion - that attending initial training at the JA, has' 'more weight' than concrete work experience in the profession,** because this represents the predominant requirement for appointment to judicial offices. The **completed initial training on the JA and the proposed amendments to a set of judicial laws is valued in a**



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multiply way during the election to the Judiciary - as a work experience, as a proof of expertise and as a proof of qualification. On the other hand, the work experience in the profession can in no way be an advantage that, under the proposed amendments to the law, is only given to the candidates attending initial training when applying for the first election to the judiciary function. **In fact, marks that are given to candidates outside of the group of the ones at initial training on JA are not taken into account no matter how much professional experience they have, and with the latest amendments they have to be put through an exam in order to prove their expertise and competence. At the same time, candidates from the JA that have completed the initial training will account as work experience, and as a reason to be excluded from the exam that could verify, expertise and training, so it is clear that the proposed legislative amendment will in a jointly manner introduce double standards in the process of nominating candidates for the first time that will be elected for judges of misdemeanor courts or deputy basic public prosecutor, which is completely contrary to the decisions of the Constitutional Court to which the proponent calls.**

Advocating for the rule of law and the principle of separation of powers, believing that the proponent of the law will realize that our efforts are not based on personal interests or to protect the rights of individuals, but on moral and legal principles that we have adopted over the many years of professional development and training, we hope that the draft Law on Amendments to the Law on Judicial Academy art 5 will be withdrawn from the procedure. We found that we would be at least in some sense in an equal position if changes would not be drafted in that way. If the Ministry of Justice still remains of the view that it is appropriate to return to the legal system recently removed discriminatory provisions, we will be again forced to turn to the competent domestic and the international institutions.