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# EUROPEAN UNION'S SUPPORT TO THE JUDICIAL ACADEMY



**REVIEW OF THE EXISTING CURRICULA OF THE JUDICIAL  
ACADEMY  
WITH A GAP ANALYSES**

**Autor:  
Ivana Krstic**

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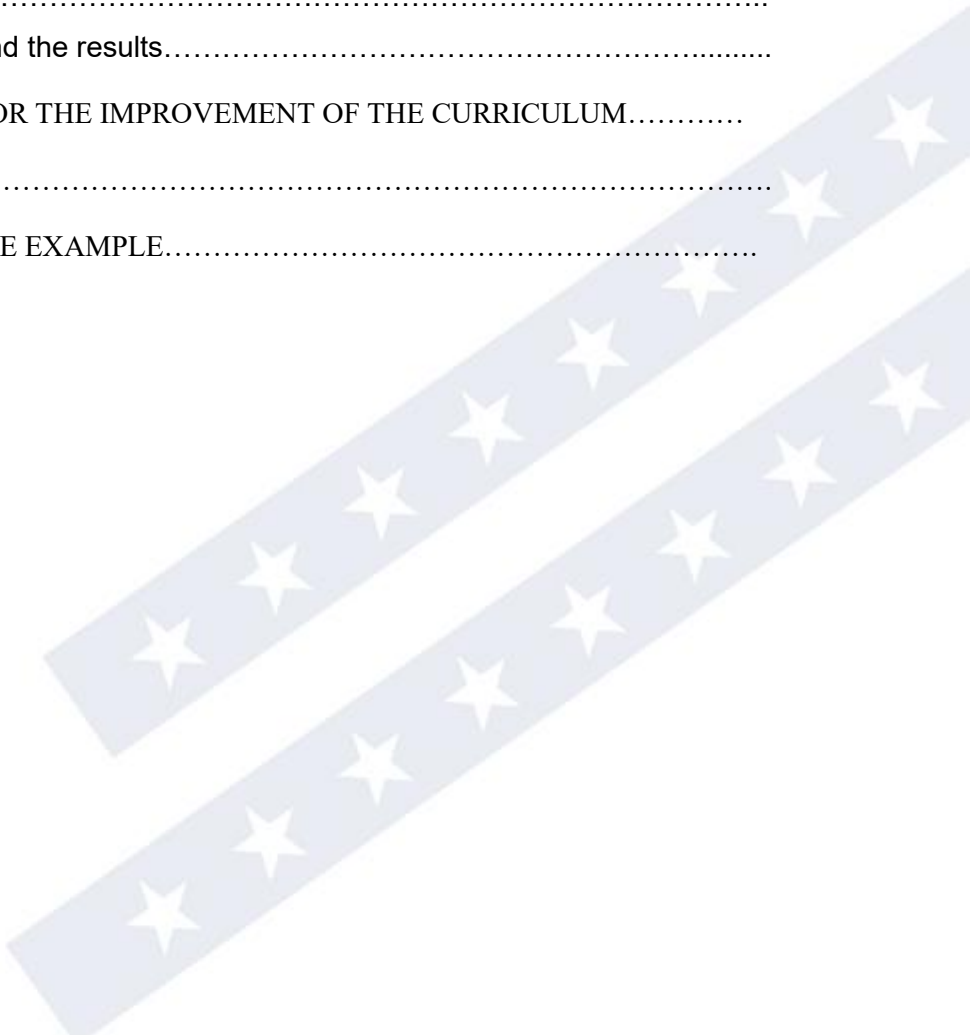
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## ABREVIATIONS

JA	Judicial Academy
PC	Program Council
HJC	High Judicial Council
SPC	State Prosecutors' Council
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EU	European Union
CJEU	Court of Justice of the EU
CoE	Council of Europe
NPAA Acquis	National Plan for the Adoption of the
CC	Constitutional Court
EIPA Administration	European Institute of Public
ToT	Training of Trainers
ToM	Training of Mentors

## INTRODUCTION

With the commencement of the work of the Judicial Academy, in January 2010, the transformation of the Judicial Training Centre had been completed, which, in the period from 2002 to 2009, conducted programs of continuous training of judges and prosecutors in Serbia. The Judicial Academy was founded by enactment of the Law on Judicial Academy<sup>1</sup>, which regulates its status, activities, management bodies, financing, as well as the system of professional advancement/training in the judiciary, i.e. the initial and continuous training of judges and prosecutors (public prosecutors and deputy public prosecutors), training of judicial and prosecutorial assistants and trainees, and the training of judicial and prosecutorial staff.

The JA has been established for the purpose of "providing professional, independent, impartial and effective performance of judges and prosecutors, as well as efficient performance of judicial and prosecutorial staff".<sup>2</sup> It is expected that this goal must be integrated into the curriculum of the initial and continuous training organized by the JA.<sup>3</sup> The Action Plan for Chapter 23<sup>4</sup>, as the key negotiation document in the EU accession process that provides a clear overview of the necessary legislative changes and actions to be taken to align the Serbian judicial system with European standards, recognizes the JA's role in achieving independence, impartiality, accountability, professionalism, competence and efficiency.

New areas of law, involving concepts in the existing legal areas, as well as the defragmentation of international norms and establishment of different international bodies requires from judges new competences in interpreting and applying international norms, especially in areas which were not covered by the university curricula when they were students. A "Life Learning" concept requires from legal professionals to constantly challenge their professional knowledge, behavior, attitudes and values as in the quickly-evolving judicial world, nothing can be taken from granted.<sup>5</sup> However, this process will be successful only if the curricula for the judicial training is carefully designed, based on a training needs assessment and with the involvement of all relevant stakeholders.

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This research was conducted under project Component 2: Enhancing educational activities of the JA in order to improve efficiency and effectiveness of trainings, Activity 2.2: Conduct an overall review of the existing curricula for the initial and continuous education, along with a gap analyses, aimed at curricula improvement in the areas identified as priority.

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<sup>1</sup> The Law on Judicial Academy, *Official Gazzete of the Republic of Serbia*, Nos. 104/09, 32/14 – the Decision of the CC.

<sup>2</sup> Article 2 of the Law on JA.

<sup>3</sup> Article 5 of the Law on JA, Article 3 of the Statute of the JA. The Steering Committee adopted the Statute in July 2010.

<sup>4</sup> Action Plan for Chapter 23, Republic of Serbia, Negotiation Group for Chapter 23, April 2015, see at <http://www.mpravde.gov.rs/files/Action%20Plan%20Ch%2023%20Third%20draft%2020.04.2015..pdf>

<sup>5</sup> EJTN, Handbook on Judicial Training Methodology in Europe, p. 15; available at [http://www.ejtn.eu/Documents/Methodologies\\_Resources/Training%20Methods/EJTN\\_TT\\_Handbook\\_Final.pdf](http://www.ejtn.eu/Documents/Methodologies_Resources/Training%20Methods/EJTN_TT_Handbook_Final.pdf)

The aim of this report is to tackle and analyze the following sections:

- Organization methodology for preparing and implementing initial and continuous training;
- Quality and structure of the initial and continuous training curriculum implemented by the JA;
- Financial, technical, space and facilities preconditions for training preparation and delivery both in seat Belgrade, and branch offices; and
- Gap analyses with regard to preparation, organization and implementation aimed at curricula improvement performed.

After an assessment of all elements mentioned above, this report provides set of recommendations for curricula improvements.

In the preparation of this report several sources were used:

- existing legal and strategic framework which regulate the curriculum of the JA;
- policy papers, PROFID study and EU progress reports for Serbia;
- materials available on the website of the JA, as well as materials provided by the JA;
- results of the interviews with key stakeholders: members of the JA managing and Program Council, training coordinators, members of the working groups, representatives of professional associations of judges and prosecutors, JA alumni association, representatives of the HJC and the SPC, representatives of the Bar;
- results of the questionnaire sent to court presidents and public prosecutors, as well as to other stakeholders, which contained several questions of concern for this study: the areas of law which should be included in the curriculum of the JA, as well as desirable forms of work and teaching methodologies implemented during the training; and
- the training needs assessment (TNA) undertaken under the component 2.1: In close cooperation with the High Judicial Council and the State Prosecutorial Council, conduct a needs assessment analysis in order to identify future training requirements within the judicial system.

Finally, it is important to mention that mentorship system and curriculum for judicial and prosecutorial staff are covered by other project components, and therefore left out from this analyses.

## 1. Legal and strategic framework

Primary legal sources that regulate the competences and responsibilities of key institutions of the judicial system of the Republic of Serbia are: the Constitution of the Republic of Serbia,<sup>6</sup> the Law on Judicial Academy, the Law on Judges,<sup>7</sup> the Law on High Court Council,<sup>8</sup> the Law on Organization of Courts,<sup>9</sup> the Law on Public Prosecution,<sup>10</sup> the Law on the State Prosecutorial Council,<sup>11</sup> the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.<sup>12</sup>

### 1.1. The Law on the JA

The Law on JA regulates the status of the Academy, its activities, management bodies, financing, as well as the system of professional advancement/training in the judiciary. By enacting the Law on JA, this institution was founded with primary goal to contribute to better performance of judicial and prosecutorial functions.<sup>13</sup> The Law is further elaborated in the Statute of the JA.<sup>14</sup>

The Law on JA prescribes that the training of judges and prosecutors shall imply organised acquisitions and advancement of practical and theoretical knowledge and skills required the independent, i.e. autonomous, professional and efficient performance of their office,<sup>15</sup> which must be reflected in a training program. The Law further specifies that an initial training program includes the application of substantive and procedural laws, judicial and prosecutorial practice, ethical standards for judges and prosecutors, international legal standards, internal organisation of work of courts and prosecutor's offices, scientific and professional papers in the fields of national and international law, as well as the skills required for the performance of judicial and prosecutorial duties.<sup>16</sup>

The purpose of the continuous training is an acquisition of advanced theoretical and practical knowledge and skills for the purpose of professional and efficient performance of judicial and prosecutorial function.<sup>17</sup> The Law prescribes that it can be voluntary and mandatory.<sup>18</sup> The rule is that a continuous training is voluntary, unless it is envisaged as mandatory by a decision of

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<sup>6</sup> The Constitution of the Republic of Serbia, th *Official Gazzete of the Republic of Serbia*, No. 98/06.

<sup>7</sup> The Law on Judges, *Official Gazzete of the Republic of Serbia*, Nos. 116/08, 58/09 – the CC, 104/09, 101/10, 8/12 – the CC, 121/12, 101/13, 111/2014 - the CC decision, 117/2014, 40/2015, 63/2015 – CC decision, and 106/2015.

<sup>8</sup> The Law on High Judicial Council, *Official Gazzete of the Republic of Serbia*, Nos. 116/08, 101/10, 88/11 and 106/2015.

<sup>9</sup> The Law on Organization of Courts, *Official Gazzete of the Republic of Serbia*, Nos. 116/08, 104/09, 101/10, 31/11 – other law, 78/11 – other law, 101/11, 101/13, 106/2015, 40/2015 and 13/2016.

<sup>10</sup> The Law on Public Prosecution, *Official Gazzete of the Republic of Serbia*, Nos. 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – the CC, 121/12, 101/13, 111/2014 – CC decision, 117/2014, 106/2015 and 63/2016 – CC decision.

<sup>11</sup> The Law on State Prosecutors' Council, *Official Gazzete of the Republic of Serbia*, Nos. 116/08, 101/10, 88/11, 106/2015.

<sup>12</sup> The Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices, *Official Gazzete of the Republic of Serbia*, No. 101/13.

<sup>13</sup> Articles 1 and 2 of the Law on JA.

<sup>14</sup> Statute of the JA is adopted in July 2010.

<sup>15</sup> Article 23 of the JA.

<sup>16</sup> Article 35 of the Law on JA; Article 42 of the Statute of the JA.

<sup>17</sup> Article 41 of the Law on JA.

<sup>18</sup> Article 43 of the Law on JA, Article 50 of the Statute of the JA.



the HJC and the SPC. According to the Law, the continuous training is mandatory in a case of change of specialisation, significant changes of regulations, introduction of new working methods, as well as in situations when it is necessary to remove shortcomings in the work of a judge and a deputy public prosecutor observed in the course of their work, as well as for those judges and deputy public prosecutors who are elected for the first time to the post of a judge or prosecutor and who have not attended the initial training program.

The Law also recognizes general and special continuous training programs. General continuous training program is prepared for judges and prosecutors.<sup>19</sup> A special continuous program is designed for judges and deputy public prosecutors elected for the first time to these posts, who have not attended the initial training.<sup>20</sup> Beneficiaries of the special continuous training program are also judges and deputy public prosecutors who were appointed by the decision of the HJC or SPC, when required, for the purpose of removing shortcomings in the work of a judge and a deputy public prosecutor observed in the course of evaluation of their work.

The JA also offers trainings for lecturers engaged by the JA on a short-term basis for the initial and continuous training.<sup>21</sup>

## 1.2. Other relevant laws

The Law on Organisation of Courts stipulates that the program for training of judicial trainees and assistants is prepared by the institution responsible for judicial training, with the approval of the High Judicial Council.<sup>22</sup>

The Law on Judges<sup>23</sup> and the Law on Public Prosecution<sup>24</sup> provide for the right and obligation of judges, public prosecutors, and deputy public prosecutors to develop professionally. The Law on Judges defines training of judges as organisational acquiring and advancement of theoretical and practical knowledge and skills, necessary for independent, professional and efficient performance of judicial functions.<sup>25</sup> It further prescribes that the content of the program depends on the professional experience of the judge.<sup>26</sup> The Law on Public Prosecution stipulates that the training program for the prosecutor's trainees and assistants is determined by the SPC.<sup>27</sup>

The Law on High Court Council determines the program for the initial training of judges and approves the program for continuous training of judges and court staff, and supervises its implementation.<sup>28</sup> The Law on the State Prosecutorial Council stipulates that it determines the content of the training program for deputy public prosecutors who are elected for the first time, and prosecutor's assistants, and propose training program for public prosecutors.<sup>29</sup>

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<sup>19</sup>Article 44 of the Law on JA.

<sup>20</sup> Article 45 of the Law on JA, Article 52 of the Statute of the JA.

<sup>21</sup> The role of mentors is prescribed in Article 48, where it is envisaged that judicial and prosecutorial assistants and trainees, in the course of their training, have mentors appointed by a President of the court or by a public prosecutor among judges or deputy public prosecutors.

<sup>22</sup> Article 68 of the Law on Organisation of Courts.

<sup>23</sup> Article 9 of the Law on Judges.

<sup>24</sup> Article 54 of the Law on Public Prosecution.

<sup>25</sup> Article 9, par. 2 of the Law on Judges.

<sup>26</sup> Article 9, par. 4. of the Law on Judges.

<sup>27</sup> Article 25 of the Law on Public Prosecution.

<sup>28</sup> Article 13 of the Law on High Court Council.

<sup>29</sup> Article 13 of the Law on the State Prosecutorial Council.

### 1.3. National Reform Strategy

In mid of 2013, the National Judiciary Reform Strategy was adopted for the period 2013-2018,<sup>30</sup> with the aim to build institutional and professional capacity of the newly formed institutions, among them being the JA. The Strategy was adopted with the supporting Action Plan.<sup>31</sup> One of five key principles of the reform, the principle of competence is also specified, which implies the existence of the judicial system in which training is conducted in a comprehensive/organized way, and theoretical and practical knowledge and skills of holders of judicial offices are acquired and improved. It is particularly underlined that there is an urgent necessity to revise training programs, both of the continuous and the initial training, in line with actual needs of courts and public prosecutor's offices. The Strategy further recognizes that, for good performance of a judicial function, it is necessary to reform curricula at law faculties in Serbia. Although it is stated that, in the period from 2006 to 2012, major progress was made on the issue of training of students in the field of implementation of law and practical legal skills, still there is no common strategy of the reform of legal education. Bearing this in mind, it is also pointed to the need to improve cooperation of law faculties with the JA, in terms of harmonization and approximation of curricula and training programs, as well as the possibility to exchange lecturers.

## 2. Organization methodology for preparing and implementing the training curriculum

Designing and adoption of the program of the initial and continuous training is in hands of several bodies within and outside of the JA.

### 2.1. Bodies within the JA

#### 2.1.1. Steering Committee

The Steering Committee is responsible for adopting programs of the initial and continuous training and submitting them to the HJC and SPC for their verification.

The Steering Committee is composed of 9 members: four members appointed by the HJC from the ranks of judges (two of whom are appointed at a proposal of the Association of Judges), two members appointed by the SPC from the ranks of prosecutors (one of whom is appointed at the proposal of the Association of Prosecutors) and three members appointed by the Government (one of whom is the state secretary in the Ministry of justice, in charge of professional advancement of those employed in judiciary and one is from among the employees of the Academy).<sup>32</sup> This provision is fully implemented in practice, as the current composition of the SC corresponds to Article 7, par. 2 of the Law on JA.

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<sup>30</sup> The National Judiciary Reform Strategy for the Period of 2013-2018, *Official Gazzete of the Republic of Serbia*, No. 57/13-3.

<sup>31</sup> The Conclusion on Adoption of the Action Plan for Implementation of the Judiciary Reform Strategy for the Period of 2013-2018, the *Official Gazette of the RoS*, Nos. 71/13, 44/14. It defines concrete measures, activities, deadlines, responsible institutions, and sources of funds for its implementation.

<sup>32</sup> Under Article 7, par. 3, members of the High Judicial Council and State Prosecutors' Council cannot be members of the Steering Committee.

Under Article 9, the Steering Committee adopts the following programs:

- continuous training programs
- training program for judicial and prosecutorial staff
- a special training program for judicial assistants and trainees and
- a special training program for prosecutorial assistants and trainees

The training program for lecturers from the ranks of judges and prosecutors is adopted by the Steering Committee at the proposal of the Program Council.<sup>33</sup>

### *2.1.2. Program Council*

The Program Council is responsible for determining a draft program of the initial training and draft program for the continuous training.<sup>34</sup>

The content and duration of the special continuous training program is laid down in the act of the PC depending on the professional experience of the beneficiary. Also, a special training program can be prepared for judicial and prosecutorial assistants and trainees.<sup>35</sup> The program is established by the PC, in cooperation with court presidents and public prosecutors.

PC is a professional body composed of 11 members, appointed by the Steering Committee from among judges and prosecutors, other experts and judicial and prosecutorial staff. The Law further specifies that at least five members of the Program Council are judges, at least three of them are prosecutors (of whom one member shall be proposed by the Judges' Association or Prosecutors' Association), and one member is among the judicial and prosecutorial staff.<sup>36</sup> This composition is respected in practice as members of the PC are judges (7 of them), and public prosecutors and their deputies (3 of them) and the secretary of the High Judicial Council. However, although the Law does not exclude the possibility that experts are appointed in the PC, this possibility is not used in practice.

### *2.1.3. Standing commissions*

The work of the PC in determining a draft program for initial and continuous training is supported by standing commissions. Article 25 of the Statute prescribes that standing commissions prepare the program of the training, analyse the conducted trainings and improve the training with international standards and the EU law.

According to the Law, the JA is responsible to establish the following standing commissions: 1)-standing commission for the initial training and the final exam (5 members); standing commission for continuous training (14 members); standing commission for the training of judicial and prosecutorial staff (6 members); standing commission for the training of judicial and prosecutorial assistants and trainees (5 members); and standing commission for the

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<sup>33</sup> Article 47 of the Law on JA, Article 54 of the Statute of JA.

<sup>34</sup> Article 17 of the Law, Article 23 of the Statute.

<sup>35</sup> Article 50 of the Law on JA, Article 57 of the Statute of JA.

<sup>36</sup> The law also prescribes that members of the High Judicial Council, State Prosecutors' Council and members of the Steering Committee may not be members of the Program Council.

evaluation of mentors and lecturers, and the training (8 members).<sup>37</sup> All these standing commissions are established and operate in practice.

Members of the standing commissions are appointed by the PC with the approval of the Steering Committee. Although the Law on JA stipulates that their number and composition will be regulated by the Statute, it only prescribes that their members are appointed by the PC, without any more precise provision on the composition of the standing commissions. In practice, a number of members of standing commissions vary. However, members for all groups are selected among judges and prosecutors, while only the program group for the evaluation of mentors, lecturers and the training has two university professors who are teaching andragogy. Although their composition is not defined, the prevailing opinion is that only judges and prosecutors should be appointed in these bodies, as practitioners express fear that university professors and other experts will be more theoretically oriented. However, there are some areas of law which are emerging and which were not offered in university curriculum for majority of practitioners. Also, some new areas of law, such as human rights and the EU law, are becoming an integral part of the curriculum at the JA and knowledge of experts dealing with these matters would be valuable for the work of standing commissions in shaping the program.

Each commission has regular monthly meetings, although there are indications that some commissions, such as the commission for the initial training and the commission for the training of mentors and lecturers, meet more regularly than others in order to discuss different issues. Commissions have a supervisory function in relation to the training, as they monitor the realisation of the program. Commissions also examine whether seminars that are covering priority topics are conducted, is the format of the work appropriate, they assess evaluations of lecturers, etc. The commission does not bring a formal decision on necessity to change the program, but it can conclude that there is a need to slightly change it. There are no adopted Rules of Procedure for these bodies, which defines the composition and the method of work of these bodies.

#### 2.1.4 Program groups

Although there is no mention of program groups in the Law on JA and its Statute, the JA established several working groups, under the auspices of the standing commission for initial and the standing commission for continuous training. These program groups create the program in its first stage, which suggests their importance in this process. Each working group works under the auspices of corresponding commission, while the PC appoints their members. Each member of the PC is also a member of the working group which is closely link to their area of work. Members of these groups are, among judges and prosecutors, university professors and other experts, who suggest changes in the existing program from the position of their areas of expertise.

Under the Commission for the initial training, the *program group for the initial training* is established. It has 8 members, all of them judges and deputy prosecutors.

On the other side, several program groups were established for continuous training. there are:

- Program group for *criminal law* (10 members: 5 judges and 5 deputy prosecutors)

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<sup>37</sup> Article 18 of the Law on JA.

- Program group for *civil law* (9 members: all of them judges)
- Program group for *administrative law* (5 members: all of them judges)
- Program group for *commercial law* (9 members: all of them judges)
- Program group for *human rights and minors* (8 members: one judge, one deputy prosecutor, 3 university professors, the Commissioner for the Protection of Equality, Agent before the ECtHR, NGO representative)
- Program group *EU law* (7 members: judge of the Constitutional court, 2 university professors, 2 employees at the Office for EU integrations, Head of the Negotiating Team for the Accession of the Republic of Serbia to the EU, one expert)
- Program for *court presidents* (8 members: all of them presidents of highest courts)
- Program group for *Ethics* (5 members: 4 judges and one deputy prosecutor)
- Program group for *misdemeanour courts* (6 members: all of them judges of misdemeanour courts)
- Program group for the training of *judicial and prosecutorial assistants* (6 members)
- Program groups for judicial and *prosecutorial staff* (5 members)
- Program group for the *training and evaluation of mentors, lecturers and the program* (8 members: 5 judges, one deputy prosecutor, 2 university professors)

#### 2.1.5. JA Coordinators

The Director of the JA appoints coordinators for each commission among its employees. There are 7 employees appointed as coordinators, some of them being in charge for maximum three program groups. They coordinate the work of program groups, monitor the implementation of the program and suggest and justify the need to change the program during the calendar year, based on the evaluations of attendees of the continuous training, proposals to give priority to some topics, etc.

#### 2.2. External bodies

When a Steering Committee adopts the program, it is referred to the HJC and the SPC for their official approval.

A special training program for judicial assistants and trainees is adopted by the Steering Committee, with the approval of the HJC, while a special training program for prosecutorial assistants and trainees is adopted by the Steering Committee and submitted to the SPC for verification.

Even when these two bodies request the mandatory continuous training program,<sup>38</sup> the JA is responsible to draft a program, in accordance with the decisions of the HJC or SPC.<sup>39</sup> These two bodies approve the program, but they can also influence its content in a consultation phase.

Thus far, this consultation process was not so intensive and HJC and SPC mostly only approved the program without further suggestions or corrections. Much more intensive consultation phase exists with the Supreme Court of Cassation and appellate courts who are sending their feedbacks and comments on the curriculum. However, on 22 January 2016, the HJC adopted a decision on the necessity to organize trainings on the Law on Enforcement and Security, that was adopted at the end of 2015, while most of the provisions of the Law begin to apply on 1 July 2016.<sup>40</sup> Thus, it was necessary to provide training before the Law started to apply as it has introduced numerous novelties compared to the previous legal framework in order to accelerate the proceedings and remove uncertainties which emerged in practice. The JA established an *ad hoc Working group* to prepare a program for this training. The Working group was established by the decision of the PC, and consisted from both, professionals and university professors. In a case of urgent matters, the members can communicate electronically or by the telephone, in order to expressly prepare and adopt the training program. The program was completed in February 2016 and in mid of May the JA prepared an interim report on all conducted trainings and the list of judges who undergo the training.

### 2.3. Time frame for the adoption of the program

The Law on JA does not specify timeframe for conducting TNA, and preparing and adopting the curriculum. There is only a provision stipulating that for a voluntary continuous program, the JA is obliged to submit a framework annual program for the next calendar year to the courts and public prosecutor's offices for voluntary continuous training once a year, no later than 1<sup>st</sup> of December.<sup>41</sup> Judges and prosecutors submit applications for the programs to the Academy by December 31 of the current year, for the following calendar year. The Law also prescribes that for each program the JA needs to determine beneficiaries and inform the courts and public prosecutor's offices thereof.

In practice, this process is much slower and in 2015, the JA submitted proposals for initial and continuous training to the HJC and the SPC on 6 April 2015. The HJC determined the program of the initial training and approved the draft program for the continuous training for judges on 21 April 2015,<sup>42</sup> while the SPC determined the program for the initial training and gave its approval for the continuous training of prosecutors on 14 May 2015.<sup>43</sup> This process was quicker

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<sup>38</sup> The mandatory continuous program can be introduced in two cases: 1) if so requested by the relevant law (e.g. Family Law, the Law on Juvenile Offenders, The Law on the Protection of Whistle-Blowers), and 2) when the High Judicial Council or State Prosecutors' Council require mandatory continuous training for certain categories of judges and prosecutors.

<sup>39</sup> Article 45 of the Law on JA.

<sup>40</sup> "Official Gazette of the Republic of Serbia" no. 106/2015.

<sup>41</sup> Article 46 of the Law on the JA, Article 53 of the Statute of the JA.

<sup>42</sup> Communication no. 153-03-30/2015-01, 21 April 2015; available at [http://www.pars.rs/files/sken\\_20150519\\_0001.pdf](http://www.pars.rs/files/sken_20150519_0001.pdf)

<sup>43</sup> Decision no. A. br. 195/15, 14 May 2015; available at [http://www.pars.rs/files/sken\\_20150519\\_00021.pdf](http://www.pars.rs/files/sken_20150519_00021.pdf)

in 2016, then the JA submitted proposals on 4 March 2015, and the HJC approved the program on the continuous training for judges on 15 March 2016.<sup>44</sup>

#### 2.4. Modifications of the existing program during the calendar year

Although there is no institutional mechanism to adjust the program during the calendar year, it is possible to modify it in order to satisfy some urgent needs of judges and prosecutors. That initiative can come from judges, the presidents of courts who can influence the program for the next year (as it was the case last year when the program for the investigation of car accidents was adopted). Also, this initiative can be joint, as judges and prosecutors requested in 2015 the training on forensic analyses in car accidents due to the problem of investigation which required some special knowledge on traffic forensics, collection of traces, etc. In addition, the economic education was included in the program under the initiative of several judges. Initiatives are processed by program coordinators, who can request additional information on the needs for certain training, and then the initiative is submitted to program groups and at the end to the PC for adoption. The JA, in cooperation with the Ministry of Justice, also follows the legislative work in proposing and adopting certain laws. When the new law is adopted, the PC considers the need for the training, e.g. domestic violence.

When the program is adopted for that calendar year, program groups adopt a 6 months operational plan which contains the number of trainings, venue, lecturers, tentative dates, target groups and the format of the training. Also, they adopt 3 months schedule, which shows what topics from the list of all topics included in the program should be realized in near future. However, this information are not posted on the website and made available to the public.

### 3 Quality and structure of the training curriculum

#### 3.1. Initial training program

The Law on JA specifies that an initial training program includes the application of substantive and procedural laws, judicial and prosecutorial practice, ethical standards for judges and prosecutors, international legal standards, internal organisation of work of courts and prosecutor's offices, scientific and professional papers in the fields of national and international law, as well as the skills required for the performance of judicial and prosecutorial duties. This provision is very general, but provides some broader guidelines, at least that the initial training program should include ethics and that relevant international standards are an integral part of the training.<sup>45</sup>

The initial training lasts for two years, starting on 1 October for the each academic year. It comprises of the theoretical and practical part. The duration of the training for each of the fields is determined by the initial training program. The theoretical part is delivered in the field of constitutional, civil, criminal and misdemeanour law, as well as general and professional culture, through presenting different topics organised by the JA. The practical part is conducted

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<sup>44</sup> Communication no. 150-00-00004/2016-01, 15 March 2016; text available at [http://www.pars.rs/files/IMG\\_20160524\\_0004.pdf](http://www.pars.rs/files/IMG_20160524_0004.pdf)

<sup>45</sup> Article 35 of the Law on JA; Article 42 of the Statute of the JA.

at the court of law, public prosecutor's office as well as in other state bodies, bar chambers and other organisations. It implies the work in judicial bodies under the supervision of a mentor, as well as a work in judicial institutions.

Current initial training program, determined in 2015, contains 47 pages. It is divided into several segments:

- Civil procedure
- Extrajudicial procedure and execution
- Criminal law
- Misdemeanour
- Professional knowledge and skills, EU law and international standards
- Workshops

The novelties introduced in 2015, and initiated after the publication of PROFID study,<sup>46</sup> resulted in better focus on the acquisition of professional skills, as well as in a more practical forms of work, reflected in introducing workshops. However, the structure of the program is divided into subjects, professional skills and workshops and this division seems to be inconsistent. First of all, program either needs to be divided into theoretical part and development of professional skills (and marked into subjects: ethics, writing of judgments, techniques of interviewing, etc), either need to be integrated in a program for each area of law. Second, workshops need to be integrated into the program as they represent the manner of delivering a training, and not a subject matter. Although an intension was to give better focus on workshops, they should be treated as forms of work and integrated into the curriculum.

For each section, the program contains topics that will be covered, as well as the aim of the training, content of activities, form of work, teaching materials and duration. Topics are further divided into subtopics. Content of activities includes the preparation for the training and the role of a lecturer or a mentor, which is indicated as: to explain certain topic, to discuss examples of good and bad practice, to analyse court practice, to analyse hypothetical cases, etc. For each topic, the form of work is also determined as: discussion, individual work, analyses of hypo and real cases, lecture, workshop, practical work and consultations with the mentor, visit to police office (for the Criminal Law module), and simulation. Therefore, the form of work (individual work, work in pair, group work) is mixed with the teaching methodology (lecture, discussion, simulation, etc) and this part should be further elaborated in the program.

Program does not contain any specific reference to lecturers, except their profession. However, among lecturers and mentors who are lawyers, representatives of some other professions are also indicated as lecturers, mainly for development of professional skills. Thus, psychologists are marked for teaching about the technics of interviewing and for forensic psychology, expert witnesses in economy, medicine or transportation or forensic are indicated for providing basic knowledge on the facts that can be established by witnessing, on collecting traces and their preservation during an investigation.

*Civil procedure* module contains 14 topics. It includes all phases in civil procedure, starting with the claim, and ends with special procedures. Duration of the training varies from 1 to 5, 10 or 15 days. However, the last topic is reserved for substantive civil law, and this training is projected for 11 days, covering the following areas: property law, contracts, family law, labour law, media law and medical law, housing and inheritance law. For this module, training program reserves 99 days in total.

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<sup>46</sup> PROFID, Study on Development Requirements of the Judicial Academy, January 2014.



Module on *extrajudicial procedure and execution* contains 3 topics: extrajudicial procedures, enforcement procedure and exchange of experience gained in practice. Program reserves 60 days for this part of the training. First two topics are presented in the form of 5 day lectures, and in the form of practical work under the supervision of mentor (in total 20 days). This form of work is explained as analysing practical examples and preparing and writing different decisions individually or in pair, and then discussing and analysing the results under the supervision of the mentor. For the enforcement procedure, it is specified that training is conducted while beneficiaries of the initial training stay in execution departments in basic courts.

The last topic is dedicated to the exchange of experience gained in practice, with the aim to eliminate ambiguities and dilemmas and to develop critical position towards performed work of beneficiaries. This part of the program is projected to last for 10 days, and during this time, beneficiaries keep a diary on their work, their observations and dilemmas, and have 15 minutes presentation before other trainees. Mentors and other beneficiaries discuss some disputable questions in the group. However, again, this is not a topic, but a form of work.

*Criminal law* module contains 9 topics (from pre-trial phase to decision on appeal, including substantive criminal law) and lasts for 199 days. Duration of the training ranges from 1 to 6 days, 10 or 15 days. The program also contains general information on the number of days spent in prosecutor's office and in the court. The last topic is common for all beneficiaries and is focused on the exchange of experience gained in practice, with the aim to eliminate ambiguities and dilemmas and to develop critical position towards performed work of beneficiaries, including acquisition of different investigation models. However, this is not a topic, but a form of work. This part of the training lasts for 10 days, and during this time, beneficiaries keep a diary on their work, their observations and dilemmas, and discuss them with their mentors. During this time, trainees also stay in the Special department.

Module for *misdemeanours* is divided into substantive and procedural law. Substantive law program contains 4 topics (sanctions, basis for exclusion of liability, sanctions against minors, statute of limitations), while procedural law contains 6 topics (jurisdiction, an authorized applicant, measures for securing absence of the accused, search, judgments and decisions, execution of judgment). It is projected for 27 days (16 for the first and 11 days for the second part). The methodology of work is specific as it consists of three stages: preparation at home and different formats of work in the group (lectures, discussion, case analyses, and workshop), analyses of good and bad practice, and workshop where beneficiaries analyse the hypo case and discuss it before the whole group.

*Professional knowledge and skills, EU law and international standards* are presented as one diverse module, which is practically oriented, with the aim to improve practical skills and knowledge of beneficiaries. In total, it lasts for 37 days. Indicated forms of work are: lectures, discussion, workshops, simulations, case study.

It contains 7 areas:

- *the acquisition of knowledge and skills of judges and prosecutors* - involves case management, communication skills, and forensic psychology (5 days)
- *organization of judiciary and ethics for holders of judicial functions* - includes organization of the judiciary, internal organization of the court and prosecutor's office, status of holders of judicial functions, as well as international and domestic standards on ethics (4 days)
- *Council of Europe and the ECHR* - contains presentations in the form of lectures and discussions on historical overview and organization of the CoE, importance of the ECHR and

ECtHR's practice primarily concerning Articles 5, 6, and 8 of the ECHR. Program does not indicate any specific subtopics that will be covered during the training (4 days)

- *EU law* - lectures and discussions on EU institutional law, EU law and human rights, European judicial cooperation in civil and criminal matters, Social charter and the EU Labour law, Family law, domestic violence, the status of minors in EU and CoE legal systems, ECHR – civil law and ECHR – criminal law (8 days)

- *case management and legal software* - implies development of skills necessary for the use of software in the form of a simulation (2 days)

- *special knowledge in accordance with the laws* - oriented towards the acquisition of knowledge of the position of minors who are victims of criminal acts and the application of the Law on juvenile offenders and legal protection of minors in the family law, including the relevant international standards (7 days), and

- *special knowledge in the area of discrimination, gender equality and domestic violence* - this program is divided in three subtopics. Only the protection from discrimination lasts for 3 days. Beneficiaries are acquainted with relevant international standards and practice of the ECtHR, which are implemented in hypo cases in the form of case studies. There are very brief information about this program and it is only indicated that program of work is shaped by the training curriculum (7 days).

*Workshops* are included in the program due to complexity of certain areas which requires additional case analysis, workshops, simulations and lectures. This module is divided into civil law, criminal law and prosecutorial function. Civil law module prescribes five activities: 2 lectures on different topics and lecture on how to adequately write judgments, 5 workshops on different topics, 5 case analyses and discussion, and 3 simulations. This program is the only one that contains provisional schedule for 8 months. Criminal law module also contains topics for 4 lectures, 2 case analyses, 4 workshops and 3 simulations. The last module contains topics for 4 lectures, 4 workshops and one case analyses and discussion. However, this part of the program is confusing as it is marked as workshops, while the program contains different formats of work (e.g. lectures). Also, in practice, the JA organizes workshops in other areas, such as non-discrimination and domestic violence, and they should be also formally included in the curriculum.

### 3.2. Continuous training program

The curriculum for continuous training for 2016 contains 125 pages. It is very comprehensive, covering three groups of programs: for specific categories, compulsory program, and for specialised programs. However, program is not divided as such, and contains the following sections:

1. training program for criminal law judges and their assistants
2. training program under the Law on Juvenile Offenders and criminal protection of minors
3. program for civil law judges and their assistants
4. training program for commercial court judges, advisor and assistants
5. training program for administrative court judges, advisor and assistants
6. training program on the ECHR and training program on the ECHR for the Supreme Court of Cassation advisors
7. training program on the EU Law

8. training program for misdemeanour court judges
9. training program on the protection of whistle-blowers
10. special training program for judges of extrajudicial department under the topic Legal capacity as a prerequisite of Equality under the Law on the Prevention of Discrimination of Persons with Disabilities
11. special program on Judicial/prosecutorial ethics
12. program on the PR in public prosecutor's offices
13. education of the administrative staff office of the HJC
14. training of trainers (ToT)
15. training for mentors (ToM)
16. training program for the vocational training of the administrative staff in courts and prosecutor's office
17. basic training program for mediators under the Law on Mediation
18. special training programs for judicial managers
19. special training programs for the court presidents
20. trial within reasonable time

This structure is bit confusing and the program will be presented divided into the several segments: courses for certain holders of judicial functions, training courses and specialized courses of special relevance for the project.

#### *4.2.1. Target group courses*

As it was mentioned above, in 2016, training program for the following categories is offered:

1. training program for criminal law judges and their assistants
2. training program for public prosecutors, deputies and their assistants
3. training program for civil law judges and their assistants
4. training program for commercial courts judges, advisor and assistants
5. training program for administrative court judges, advisor and assistants
6. training program for misdemeanour court judges

Training program for different categories of holders of judicial functions contains several elements:

- the aim of the program (usually the acquisition with new legislation)
- purpose of the program (usually to adequately and uniformly apply legal provisions and efficiently and professionally leading the case and delivering a judgment)
- beneficiaries (very broadly mentioned as all individuals that belong to the category for which the training is organized)
- the venue (very generally as JA premises, seats of the appellate, higher, basic courts, commercial courts, prosecutor's office)
- duration of each section of the program (preferably in a form of a one day seminar)

- general information on the materials (its format, such as handbooks, national legislation and relevant international standards)
- teaching methods (lectures (with and without PPTs), discussions, panel discussions, work in small groups, simulations, case analyses, hypothetical situations, transfer of experience through dialogue, and round tables)
- lecturers (it is only indicated that they will be engaged from the JA's list among judges, public prosecutors and their deputies, attorneys, experts, which number varies depending on the concrete topic)

This information is very provisional, and needs to be more concretized.

#### 1. Training program for criminal law judges and their assistants

Program is designed with the aim to acquaint judges of criminal departments and their assistants with new legal development in the area of criminal law in order to adequately apply new institutes. Beneficiaries of this program are all criminal judges, as well as their assistants for certain topics. In 2016, 13 topics for seminars were identified, one of them being in special focus - *Conducting investigations*. For this topic, training comprises of 10 days and contains 5 different modules (in the form of one day seminar and round table) for each: 1) dwelling, crime scene investigation and secret surveillance 2) forfeiture, 3) initiation and development of an investigation plan, 4) assessment of evidence, secret funds and off shore banking, and 5) electronic surveillance and legal protection of communication. Topic *Hearing and judgment* is projected to last for 3 days (2 trainings and a round table), while all other topics are presented in the form of a one day seminar. Each topic is ramified into subtopics and for some of them, it is indicated that international sources will be covered: application of Article 5 of the ECHR, selected conventions and recommendations of the CoE, EU directives, UN conventions. However, it is not specified what topics are offered to judges and what to their assistants.

#### 2. Training program public prosecutors, deputies and their assistants

Program is designed with the aim to acquaint these categories with new legal acts, and to train them on processing and identification of certain criminal offenses. Beneficiaries are public prosecutors, deputies and their assistants, police officers and judges for preliminary proceeding. In 2016, 16 topics for seminars were identified. For each topic one seminar is provided, except for the topic *Criminal acts with corruptive elements, with emphasis on abuses in procurement procedure* that is organized in the form of 2 one-day seminars. Relevant international standards are mentioned for the following areas: the application of Article 5 of the ECHR in relation to grounds for deprivation of liberty, EU directives in the area of public procurement and financial investigations, and UN and CoE standards in the area of money laundering and financing of terrorism. However, as in the previous case, it is not specified what topics are offered to prosecutors, deputies and what to their assistants.

### 3. Training program for civil law judges and their assistants

This program defines that the goal of 68 seminars planned in 2016 is better application of acquired knowledge in order to increase quality and efficiency of trial. Beneficiaries of this program are all civil judges, divided into two groups: judges of first and judges of second instance.

Program for first instance judges is focused on several aspects: 1) consideration of the role and status of judges, the conduct of the judge in the courtroom and outside of it, towards parties, colleagues, employees; the basic procedural and substantive legal issues in the course of civil proceedings; 2) application of basic knowledge and skills in conduct of the proceeding and decision-making process; 3) improvement of knowledge in the area of procedural and material law, and 4) acquisition of special knowledge and skills that influences the quality of trial.

Program for second instance judges is designed in order to: 1) improve knowledge in the area of procedural and material law, and 2) acquisition of special knowledge and skills that influences the quality of trial.

Program is divided under topics, and not under the category of judges, although for each topic it is indicated who is a target group. However, it would be easier to follow the program if it is divided from the perspective of these two categories. For example, first topic is the Civil Procedure Law. In the program, it is indicated as two topics, each for the 1<sup>st</sup> and for the 2<sup>nd</sup> instance judges. However, it can be presented as one topic, which is then divided into two modules. Also, for some topics, it is not indicated who is a target group, so it is bit confusing to follow. On the other side, the program contains different topics for different groups, which demonstrates that program was carefully prepared according to the needs of each target group. There are 7 wide topics prepared for 2016: civil procedure Law, Law on Enforcement and Security, family law, labour law, compensation for damages, ownership and possession, disputes from contractual relations. There are 56 planned seminars in total, mostly in the form of a one day seminar. Only seminar on compensation for damages is projected to last for 2 days, with enlisted topics for each day.

Methodology of work is briefly indicated as work in small groups, simulation, round table, panel discussion, hypothetical situations, and transfer of experience through dialogue. Also, round tables in the form of professional meetings between judges of the Supreme Court of Cassation, appellate courts, higher and basic courts, are planned if necessary, and under request of the HJC, Supreme Court of Cassation and the Ministry of Justice. Relevant international law in the form of the ECHR is mentioned only in relation to the protection of property (Article 1 of the ECHR), and in relation to compensation (Articles 5 and 6). For other topics, such as extramarital community, domestic violence, deprivation of legal capacity, child protection, etc. it is not mentioned that relevant international standards will be covered during the training. This shows certain inconsistencies in the preparation of the program.

### 4. Program for commercial court judges, advisors and assistants

This program is divided into general seminars, thematic seminars, specialized seminar and professional meetings. The aim of these activities is the improvement and better application of acquired knowledge and skills in order to attain better quality and efficiency of the trial. Beneficiaries are all commercial court judges. However, general seminars are organized in the form of one day seminar, applying the methods of round tables, hypothetical situations, and

transfer of experience through dialogue. While general seminars are designed to improve the knowledge of judges in the area of material and procedural commercial law, thematic seminars are designed in order to acquire specific knowledge and skills, which affect the quality of adjudication.

In 2016, 7 topics for the general seminar were proposed: disputable issues in the application of the Law on Bankruptcy, disputable issues in the application of the Civil Procedure Code, new Law on Enforcement and Security, disputable issues in the application of the Law on Commercial Companies and the Law on Privatization, sources and the cessation of obligations (compensation and unjust enrichment), disputable issues in the application of basic institutes of the Law on Contracts (with emphasis on the typical commercial contracts), and disputable questions in the application of the law in the area of intellectual property. In total, 21 seminar is planned, 3 for each topic. Method of work is determined more precisely as a short presentation of good and bad examples, and a round table.

Furthermore, in 2016, 3 thematic seminars are planned for the following topics: EU institutions, jurisdiction and jurisprudence of the CJEU and adjudication in cases with international element, mediation in commercial matters and disputable issues in specialized areas (interest, mortgage, etc.). In total, 9 one-day seminars are anticipated. As a method of work, presentations and hypothetical cases are indicated or round tables.

A new program for 2016 is introduced in the form of a specialized course under the title Economic education of judges of commercial courts. Its aim is to provide more comprehensive knowledge of judges in this area, and comprises of 6 one-day seminars (2 blocks of three days) for the following topics: introduction on economic analyses, uncertainty and risk, company, privatisation and public companies, financial intermediation and capital market, and financial companies. Indicated methods of work are presentations, workshops and hypothetical cases.

In addition to this, two other one-day seminars are planned: for disputable issues in the application of the Law on Bankruptcy, and the presentation and application of ethical codes in the exercise of judicial functions in the commercial courts. It is not stipulated how many seminars will be organized in 2016 for these two topics. Proposed methods of work are presentations, brief introduction, hypothetical case, workshops.

#### 5. Program for administrative court judges, advisor and assistants

Program is created with the aim to improve the implementation of acquired knowledge and skills in order to increase quality and efficiency of adjudication. Seminars are mostly projected as a one- day seminar.

There are 3 target groups recognized in the program:

- seminar for judges under 3 years of experience, in a form of 5 days intensive training with the aim to improve their knowledge in the following areas: the role of Administrative court, the Law on general administrative procedure, the Law on administrative disputes, jurisprudence of the Administrative court through the application of hypothetical cases, transfer of experience in the form of a dialogue, simulations, workshops).

- seminar for judges with more than 3 years of experience and for judicial assistants is designed in order to improve their knowledge of material and procedural law through the application of hypo cases, transfer of experience in the form of a dialogue, simulations, workshops. This activity is projected to last for 7 days and to cover different issues and areas of law. It is particularly interesting that a first day of this seminar is dedicated to a presentation and analyses of division of competencies among the court of general jurisdiction and the Administrative court, and consideration of the importance and the role of Administrative court in existing social circumstances, but also covers skills necessary for conducting the procedure, organization of administrative courts in Europe and the application of the Law on administrative disputes in European countries. Other days cover the following topics: analyses of basic institutes of material and procedural law in administrative dispute, application of specific laws (the Law on asylum, the Law on planning and construction, the Law on public procurement, etc), restitution and protection of competition, application of some specific regulations (tax, customs, regulatory bodies, public servants, etc.), trial within reasonable time and adjudication and execution of judgements.
- seminar for all judges and judicial assistants in order to improve their knowledge in the area of the jurisprudence of the ECtHR). This seminar covers the right to fair trial (Article 6 of the ECHR), discrimination (Article 14 of the ECHR and Article 1 of the Protocol no. 12), education (Article 2 of the Protocol no. 1), political rights (Article 3 of the Protocol no. 1), expropriation (Article 1 of the Protocol no. 1), freedom of thought, conscience and religion (Article 9 of the ECHR), immigration and expulsion (Articles 2,3, 5, 8 of the ECHR and Articles 3 and 4 of the Protocol no. 4), extradition (Article 3 of the ECHR), health care in institutions (Articles 3, 5 and 8 of the ECHR), social security (Article 6 of the ECHR and Article 1 of the Protocol no. 1) and taxes (Articles 5, 6, 14 of the ECHR and Article 1 of the Protocol no. 1).

#### 6. Program for misdemeanour court judges

This training program covers 14 topics, for 72 projected seminars in 2016. An aim, target group and methodology is indicated for each topic. The general goal of these activities is to present new legal regulations in the area of misdemeanour law which entered into force with the new law in March 2014, as well as to provide expert assistance in this area. Seminars cover the application of the new Law on misdemeanours (subjects, sanctions, execution, warrant, register of fines, responsibility for misdemeanours), but also the application of laws that regulate domestic violence, protection of whistle-blowers, asylum seekers in misdemeanour procedure. International law is covered by the program and includes application of the ECHR in misdemeanour procedure and the CoE Criminal Law Convention on Corruption. However, this part of the program is very brief and does not include subtopics that will be covered during the seminar.

#### 4.2.2. *Specialized programs*

In 2016, JA offers several specialized training programs:

1. special training program for judicial managers
2. special training program for the presidents of courts

3. special program for judicial and prosecutorial ethics
4. public relations in public prosecutor's office
5. a basic training for mediators under the Law on Mediation<sup>47</sup>

*Special program for judicial and prosecutorial ethics* is intended to judges and public prosecutors, with the aim to gain additional knowledge on prevention of corruption, conflict of interest, and the application of Ethical Code for judges/public prosecutors. This program contains 4 topics:

- international standards and their application in national legislation
- conflict of interest
- hypothetical questions, examples
- disciplinary proceedings in cases of violation of Ethical Code and establishment of clear channels for consideration of dilemmas on ethical issues

The aim of the training, target group, methodology and working materials are indicated for each topic. For some seminars lecture and presentations (PPTs) are indicated, and for others work in small groups and analyses of hypothetical cases. The total number of projected seminars in 2016 are 8.

#### 4.2.3. Training programs

The JA is offering two programs which are skills based. There are ToT and ToM.

The program of the ToT contains the notion, definition and the importance of this training. The positive side is that this program refers to the new concept of education which is closely associated with andragogy. The aim of this training is to present the basis of adult's learning, the motivation of adults, technics of presentation, and interactive training. Special attention is focused on the development of the process of teacher competencies process: planning, organizing, and leading of training, as well as an evaluation. The program contains two levels of training: development of practical skills, and the method of simulation. The target groups are judges, public prosecutors and their assistants, and other lecturers engaged by the JA. The methodology is mentioned as the work in the small groups and the pair work, as well as the use of role play (simulation). Working material is named, but not specified. There is no working plan, except the fact that 4 trainings are planned for 2016, in seats of each appellate court, and that training will last for two days.

The training program for mentors contains the same elements as the ToT, but the text abounds with some theoretical definitions of the mentorship, which does not need to be part of the curricula. The aim of this program is to raise awareness among future mentors on the importance of this role, its characteristics and development phases of sensibility for the transfer of personal experience and knowledge.

#### 4.2.4. Courses on specialised areas of law

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<sup>47</sup> *The training for mediators* program contains information on the duration of the program (5 consecutive days, the number of classes per day), topics, target group, methods of work, and literature.



## 1. Human and minority rights

There are some areas of law which are developing or which should be of particular importance for the training of judges and prosecutors concerning the number of judgments against Serbia delivered by the ECtHR, or the opening of charters 23 and 24.

In 2016, the JA offers several important human rights based courses:

- *training program on the ECHR*
- *training program on ECHR for judges of the Supreme Court of Cassation*
- special program for judges of extrajudicial department under the topic Legal capacity as a prerequisite of Equality under the Law on the Prevention of Discrimination of Persons with Disabilities
- ToT and other trainings for judges of different jurisdictions on non-discrimination law

### 1.1. *Training program on the ECHR*

Training program on the ECHR is very comprehensive and contains 30 pages. It is designed for judges and prosecutors, and for advisors of the Supreme Court of Cassation. The aim of this course is to improve the quality and efficiency of proceedings, as well as uniformity of judicial practice. There is no mention on the need to adequately apply international norms and standards, which are an integral part of domestic legal system. It is projected that one-day seminars will be conducted according to the schedule established by the working group for each topic. There is no projected number of beneficiaries, except very broad approach that all judges and prosecutors are beneficiaries. Implemented methods are lectures with presentations, work in groups, practical examples, Q&A, discussion, evaluation. It is specified that the form of work will be seminars, and materials will be presented in the form of lectures, discussion and practical work on cases. Materials will be prepared as brochures, publications, etc, and with the use of HUDOC database.

The general course is divided for civil law judges and criminal law judges and prosecutors.

There are 10 topics identified for civil law judges: the right to fair trial (Article 6), the property and expropriation; housing and rental policy; pensions; contracts; damage (Article 1 of the Protocol no. 1), the right to privacy (Article 8), freedom of thought, conscience and religion (Article 9), defamation and the right to reputation (Article 10), the right to an efficient remedy (Article 13), the prohibition of discrimination (Article 14).

For prosecutors and criminal law judges 18 relevant topics are identified: deprivation of liberty (Article 5), the right to fair trial (Article 6), punishment solely pursuant to law (Article 7), detainees (Articles 2, 3, 6, 8, 9 and 10), protection from the use of force or threats to life (Article 2), hate crime (ECHR and Article 54a of the Serbian Criminal Code), the prohibition of torture and other forms of ill-treatment (Article 3), abortion (Articles 2 and 8), domestic violence

(ECHR and other CoE standards), euthanasia (Article 2), extradition (Articles 2, 3 and 6), the freedom of thought, conscientious and religion (Article 9), defamation and the right to reputation (Article 10), homosexuality and other sexual orientations (Articles 8 and 14), the rights of minors (Article 5), searching and collecting evidence (Article 8), terrorism and organized crime (Article 15 of the ECHR and other CoE instruments), military law (Articles 8, 9 and 10).

For civil law judges who are acting in family disputes several topics are specified: general principles of Article 8, abortion, adoption, guardianship, domestic violence, homosexuality, children born out of wedlock, the marriage and divorce, parental rights, private life, the right to property, transsexuals.

Also, the program identifies 12 topics relevant for the Administrative law: the right to fair trial, discrimination, education, political rights, expropriation, compensation for offenses, the freedom of thought, conscience and religion, immigration and expulsion, extradition, health care in psychiatric institutions, social security and taxes and customs.

### 1.2. *Training program on ECHR for judges of the Supreme Court of Cassation*

Training program on the *ECHR for advisors of the Supreme Court of Cassation* is planned with the aim to increase quality and efficiency of the trial and to prevent excessive delays, long duration of proceedings and inconsistent jurisprudence. This special program is developed for judges and appellate courts under several topics:

- the harmonisation of jurisprudence, which is indicated in Action Plan for the charter 23
- real estate cadastre
- the right to an efficient legal remedy
- judges of the Commercial court
- ToT for the ECHR

For those judges that are deciding in labour disputes, several topics for seminars are indicated: the freedom of expression, the freedom of thought, conscience and religion, the right to privacy, the prohibition of discrimination, degrading treatment and molesting, trade unions, forced labour, collective negotiation, preferential treatment, the right to strike and union rights.

It is not specified how many seminars will be organized in 2016, but they will be in a form of a one-day seminar, while other activity will be publication of working materials. Teaching methodologies indicated in the program are lectures with presentations, work in groups, practical examples, Q&A, discussion and evaluation. For advisors of civil law department, the same 10 topics are recognized as for the general course on the ECHR. The same situation is in relation to labour disputes and for the Administrative law. However, for advisers of criminal law department, the list of topics is shorter than for the general course and does not include hate crime, abortion, homosexuality and other sexual orientations, searching and collecting evidence and the military law. Also, the novelty in this program is that program anticipates also seminars for advisers and appellate courts with the aim to harmonize court practice in some areas specified in the program. These areas are identified in charter 23 and include: the trial within reasonable time, publication of judgments, execution of disputable solutions, especially between basic and commercial courts, and anonymisation of court decisions according to the rules established by the ECtHR. Also, based on the evaluation of participants, it is possible to organize the same meeting for taxes and customs, Article 8 of the ECHR, real estate cadastre, the right to an efficient legal remedy and bankruptcy.

In May 2016, three seminars were organized for advisors of the Supreme Court of Cassation, as well as for advisors of the HJC, under the financial support of the World Bank.

Civil law modul contained the following topics: the right to fair trial (Article 6 of the ECHR), the property and expropriation, pensions and contracts (Article 1 of the Protocol no. 1), compensation, and the right to privacy, the right to family life, home and correspondence (Article 8). The seminar was conducted by the judge of the Appellate court, Agent before the ECtHR and law professor.

Criminal law module contained the following topics: the right of detainees (the basis for the detention and the length of detention, the right to privacy (contact with relatives, correspondence and communication with the outside world, the right to the legal assistance, the right to medical care, the protection from torture), the procedural aspects for the fair trial, juvenile justice (special procedural rules, special position of juvenile suspects, the position of juvenile victim), searching and gathering the evidence: the search, seizure, surveillance (Article 8 of the ECHR), collection of information (fingerprints, DNA, the right to respect home and correspondence against interference by the authorities, secret surveillance “in accordance with the law”. The seminar was conducted by the CoE representative, an attorney and HELP focal point, law professor and the Deputy Public Prosecutor.

These two seminars lasted for two days. Methods of work indicated in these programs were interactive lectures, discussion and analyses of the relevant case law of the ECtHR.

Administrative law module was organized in a form of a one day seminar and contained the following topics: the right to an efficient legal remedy, forced evictions, the trial within reasonable time, the prohibition of discrimination in the area of social security and taxes. The seminar was conducted by law professors, practitioner and the judges of the Supreme Court of Cassation.

## 2. Vulnerable groups (minority rights)

Topics enlisted for trainings on human rights do not explicitly include issues related to minority rights. However, lecturers include case law analyses which refer to the vulnerable position of certain groups. For example, topics related to the position of detainees also referred to the case law of the ECtHR that concerns minors and persons with disability. However, it should be underlined that the JA, with the OSCE support organized many trainings in the previous years on different topics related to discrimination, including presentation of the case law concerning specific vulnerable groups (persons with disability, sexual minorities, Roma).

### 2.1. *Training program on non-discrimination law*

At the end of 2012, the training program was prepared for judges of misdemeanour courts, including basic and higher courts. The trainings were conducted in 2013, with the aim to enable judges to adequately decide on minor offenses stipulated in Articles 50-60 of the Law on the Prohibition of Discrimination by acquiring necessary knowledge in the field of non-discrimination. The training was based on examples of good practices and European legislative misdemeanor framework, as well as to the practice of courts of general jurisdiction and magistrates' courts. Judges received a basis on the concept and forms of discrimination, and the relevant international standards in the field of non-discrimination were presented. Another part of the training focused on the legislative framework of the Republic of Serbia, the

practice of courts of general jurisdiction (criminal and civil), and the role of the Commissioner for the Protection of Equality, with particular emphases on the cases concerning Roma segregation in education. The last part of the training was dedicated to the legal framework and European practice on misdemeanor protection, with particular emphasis on Roma segregation in education. The training was delivered by law professor and judges, staff of the Commissioner for the Protection of Equality, as well as judges of the High Magistrate Court in Belgrade.

At the end of 2013, the training program for a two-day seminar for judges of civil courts and their assistants entitled as Civil judicial protection from discrimination was prepared by the project partners, the JA, the Commissioner for the Protection of Equality and the OSCE mission in Serbia. The training was delivered by law professor, a judge of the Supreme Court of Cassation, Deputy Appellate Public Prosecutor and staff from the Office of the Commissioner for the Protection of Equality and NGO representative. The aim of this training was to obtain a specific knowledge of civil legal protection from discrimination. Participants received an overview of the relevant international standards in the field of civil law protection from discrimination (with special reference to the relevant jurisprudence of the ECtHR). Another aspect of the training had focused on particularities of the civil legal proceeding in discrimination cases, particularly to evidence (the practical application of statistical data as evidence, the role of voluntary discrimination testers - testers and the reverse burden of proof). Also, a training program aimed to deepen the knowledge of judges to the specific roles of the Commissioner for the Protection of equality, its jurisdiction and procedure, and the Commissioner's position in strategic litigation. In , addition, participants had an opportunity to become familiar with statistical data related to the number of cases in the field of protection against discrimination in Serbia. Finally, this program included the deepening of knowledge about other forms of legal protection against discrimination - criminal and misdemeanor - and their differentiation from civil protection. At the end of the seminar, participants were informed of the results of the research conducted in 2012 by the NGO YUKOM on the number of civil discrimination cases, and the quality of their decisions. Not only that topics for the seminar were carefully chosen, but also the methodology had been changed compared to previous trainings. Thus, in addition to interactive lectures, participant were engaged in a group work, and through case studies they were supposed to answers very specific questions concerning the recognition of the existence of discrimination, identification of forms of discrimination (direct or indirect), finding of the comparator, the basis for discrimination, etc.

In December 2015, the program for the ToT on non-discrimination was adopted designed for 8 judges of higher courts. It contains the objective of the program, which has been developed in order to fulfill three basic objectives: 1) to strengthen the capacity of future trainers by transferring professional skills, knowledge and information; 2) to increase knowledge in the field of non-discrimination, including the national legal framework and applicable international law, and 3) the harmonization of court practice in the area of discrimination by specializing judges of different courts who will become recognized authorities in this field.

The program also contains the following forms of work:

- five seminars in 2016 in the form of 2 two-days, 2 three-days seminars and one-day final seminar (period: March, May, September, November, December). Seminars will be interactive, with very active participation of future trainers.
- work at home that will require a reading of previously prepared materials, case study, and essay writing in a form of comments on the judgment.
- three-day study visit to the ECtHR. The visit is scheduled for the summer period (July-September), with remark that the exact date will be determined according to the schedule of oral hearing in a case that will involve discrimination as a matter. Upon return, judges will critically reflect the case in a written form.

The rest of the program contains very specific topic for each activities, list of lecturers, form of work, as well as literature (monographs, commentary, handbooks, as well as specific reference to the jurisprudence of the ECtHR and the CJEU).

The program also contains very relevant topics such as breaking stereotypes and prejudices and workshop on stigmatization. It also covers discussion on religious discrimination with a workshop on the use of religious symbols, discrimination of national minorities (particularly the definition of national minorities, their rights and the analyses of the court practice and opinions of the Commissioner on the Protection of Equality). Another topics covered by the program are: discrimination of children in education, sex and gender discrimination, discrimination of LGBT members, age discrimination, discrimination of persons with disabilities, discrimination based on health status, and discrimination based on political opinion or trade union affiliation. The final activity is a one day seminar, which will reflect the acquired skills and knowledge of judges to a hypothetical case. Also, an anonymous final test is intended in the form of selection of offered answers, open questions, analysis of hypothetical situations.

## 2.2. *Specialized compulsory program on juvenile offenders*

This is obligatory specialization for those who are involved in the proceedings against minors. Program covers material and procedural criminal law. It's aim is to enable correct and uniform application of this Law. Beneficiaries are public prosecutors and judges of basic, higher, and appellate courts, attorneys, police officers, social workers and communal police. Seminars are offered in the form of a one-day seminar in appellate courts and public prosecutor's offices, bar associations and the Ministry of Interior. Multidisciplinary approach is guaranteed engaging also lawyers, psychologists, psychiatrists, representatives of child support unit in criminal proceeding. It is specified that 4 lecturers are organized for each seminar. Teaching methodology includes lectures with presentations, practical examples, Q&A, discussion, evaluation. Teaching materials are also very broadly adduced as national legislation and international acts. In 2016, several seminars are planned under the following topics:

- material law – selection and pronouncing of criminal sanctions against minors
- procedural provisions and their application in practice
- problems in the implementation of the Law, real cases, material and procedural aspect
- ECHR, with particular emphasis on the concept of the “Child-Friendly Judiciary”
- international framework for the application of the principle of restorative justice
- application of diversion order – national legal framework
- application of diversion order – legal solution, future novelties
- process of piloting - jurisprudence

Additional seminar is planned under the title Informative sessions on the support of child victims and witnesses in criminal and civil proceedings, but it is not specified who are the beneficiaries of this seminar, what informal sessions means, and how many of them will be organized in 2016.

## 2.3. *Training program on legal capacity*

Special program for judges of extrajudicial department under the topic *Legal capacity as a prerequisite of Equality under the Law on the Prevention of Discrimination of Persons with Disabilities* is a continuation of the pilot program launched by the Commissioner for the Protection of Equality and the NGO MDRI (Initiative for the rights of persons with mental disability), who in November 2014 organized a seminar for 20 judges of extrajudicial

departments throughout of Serbia, and who raised concern on some confusion which relates to some institutes in relation to this topic and their application. This program contain very informative introduction on Serbian international obligations in relation to this matter, as well as the current situation concerning deprivation of legal capacity of persons with mental disability. Program recognizes a basic and advanced training for those who attended the first level seminar. The aim of the basic training is to acquire knowledge on key concepts in relation to legal capacity, to discuss main problems and inconsistencies in national legislation with international standards, and to find ways to implement those standards before the national legislation. Advanced training is designed with the purpose to acquire in-depth knowledge on this matter, especially in relation to international jurisprudence, to discuss current problems, to improve skills of communication with persons who are deprived of legal capacity and to find a way to implement international standards before legislative changes. Each seminar is organized for a group of 25 to 30 judges of basic and higher courts, and court assistants. Methodology of work implies interactive process in the form of lectures, analyses of practical examples and discussion, and includes presentations, pair work, work in small groups, individual work and discussion in plenum.

In 2016, 2-3 basic and 1-2 advanced seminars are projected. The program does not contain special topics that will be covered for these seminars. However, this program includes more specific information on working materials: relevant international law that is enlisted, judgement of the ECtHR, concrete publications, as well as some topics which will be covered in publications, such as stereotypes and prejudices, discrimination, stigmatisation, different approaches to disability, etc.

### 3. EU law

Training program on the *EU Law* was previously included in a training program on the ECHR. However, with the raise of importance of this area of law, this program is presented as a specialized program in 2016. The program is designed to meet the needs of judges and prosecutors in a way to offer explanations and analyses of the relationship between the EU law and national legal systems, some basic principles related to budgeting, analyses of judgments of EU courts, presentation of the Lisbon Treaty and Principles from Copenhagen, and to increase their capacity to use and apply relevant principles in adjudication. This is the first program which indicates that topics are selected according to the training needs of judges and prosecutors expressed in the survey conducted by the JA. The program is conducted in a form of a one day and two- day seminars. It is indicated that groups contains no more than 30 participants (judges and prosecutors). Venue is indicated as the seats of higher courts, according to the schedule which is determined by the working group. Teaching methodology is also indicated as lectures with presentations, work in group, practical examples, Q&A, discussion and evaluation.

In 2016, 6 topics are recognized as of a top priority: EU institutional law, EU law and human rights, EU judicial cooperation in civil matters, EU judicial cooperation in criminal matters, Social charter and labour law in the EU, the status of minors in the legal system of EU and CoE. Each topic is further developed into subtopics that will be covered during the seminar.

Thus, for EU institutional law, the following topics are indicated: 1) historical overview of EU integration; 2) sources of EU law and direct effect doctrine; 3) EU law and relationship with EU and national law; 4) judicial system; 5) Court of Justice of the EU (CJEU); 6) execution and

control; 7) principle of supremacy of EU law and the status of candidate country; 8) jurisprudence of the European Court of Auditors and the CJEU; 9) general principles which applies to candidate countries: proportionality, equality, the protection of legitimate expectation and transparency; 10) administration of funds and responsibility of candidate countries; 11) transparency of administration of funds and revision; 12) responsibilities of candidate countries in relation to the budget and administration of common EU funds; 13) direct complaint and responsibility of the candidate country and EU institutions.

Judicial cooperation in civil and criminal matters contains comprehensive list of EU sources, mostly directives, which are relevant for this area.

Discrimination, Social Charter and labour law are presented with the following topics: 1) gender discrimination; 2) multiple discrimination; 3) personal and property rights of women in marriage; 4) extramarital relationship and family community; 5) labour relationships and mobbing; and 6) misdemeanour aspects of discrimination in the area of labour and gender equality.

Final topic is dedicated to the status of minors in EU law and covers: 1) introduction of CoE Guidelines for child friendly judiciary; 2) relevant practice of the ECtHR; 3) relationship between the police and children in international and domestic arena and in different phases, as well as 5) discussion in relation to disputable questions raised during the seminar.

In the last three years, 2 to 3 seminars on the EU were organized with the support of the EIPA (European Institute of Public Administration). In 2012, the focus was on the EU Family Law. Thus, two- day seminar, conducted in June 2012 covered the following topics: 1) Practical application of the Regulation EC no. 2201/2003 (the parental responsibility, jurisprudence of the CJEU concerning material scope, relationship with the national legislation, habitual residence, temporary measures, detention, as well as the rules concerning jurisdiction and the applicable law in a case of divorce); 2) **Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions of authentic instruments in matters of succession and on the creation of a European Certificate of Succession;** 3) **Proposal for Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. Seminar is conducted by EIPA lecturer and an attorney in a form of lectures, with reserved time for discussion.**

In 2013, the focus was on the right to a fair trial, procedural rights of suspects and accused and the right of victims. The training program covered the following topics: 1) the map of EU Criminal Procedural Law; 2) establishment of common minimum standards of the rights of suspects and accused in criminal proceedings; 3) the right to interpretation and translation in criminal proceedings (standard of the ECtHR, relevant legislation of the EU Members, application of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, the questions of its application); 4) the right to information (standards of the ECtHR, relevant legislation and practice of the EU Members, application of the Directive 2012/13/EU on the right to information in criminal proceedings, the questions of its application); 5) the right to an attorney (**Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty and some main problems**); 6) **retention before the trial** (strengthening of the mutual trust in the European judicial authorities, Green Paper on the application of EU criminal legislation in the field of detention); 7) EU Agenda on procedural safeguards for suspects or accused persons: Strengthening the foundation of the European Area of Criminal Justice (Communication COM (2013)820/2); 8) the right to fair trial – package of proposals to further strengthen procedural safeguards for

citizens in criminal proceedings (Directive **on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings** ,Directive **on procedural safeguards for children suspected or accused in criminal proceedings**, Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings, [Commission recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings](#) , and [Commission recommendation on the right to legal aid for suspects or accused persons in criminal proceedings](#)); 9) the scope and content of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. The training is provided in a form of lectures and discussion by one international expert.

In 2014, the training program focused on Mutual recognition, recognition and enforcement in EU judicial cooperation in civil and commercial matters instruments – the new EU Brussels I-bis Regulation and European procedures. This program is designed to offer thorough understanding of the legal consequences of cross-border civil and commercial matters within the EU by providing a detailed account of the recast Brussels I Regulation. The purpose of this Regulation is to facilitate and speed up the circulation of judgments in civil and commercial matters within the EU, in line with the principle of mutual recognition. The program includes the method of work, which are lectures, case studies and discussion. Objective of the program is to provide a theoretical and practical overview of the recast Brussels I Regulation applicable to civil and commercial matters, and also to map out its relation to other EU private international law instruments. It included the following topics: 1) the main aspects of the recast of the Brussels I-bis Regulation (the extension of jurisdiction to third state defendants, the interface with arbitration that arise from the reform of the Brussels I Regulation, the new rules of prorogation of jurisdiction, the validity and effectiveness of a choice of court agreement under the recast Brussels I Regulation that facilitates cross-border litigation and removes obstacles to the independence of choice of forum court in a Member State); 2) the abolition of exequatur proceedings in the new Brussels I-bis Regulation; 3) recognition and enforcement of judgments in civil matters in Serbia; 4) recognition and enforcement in civil and commercial matters and European Civil Procedure Instruments (European Enforcement Order, European Order for Payment –EOP, European Small Claims Procedure-ECSP); 5) European Account Preservation Order-EAPO. This training was organized in June 2015 by two international experts and one domestic expert (former judge in the First Basic Court in Belgrade).

Another training program prepared in 2015 was on the Mutual recognition in sanctions: financial penalties, probation decisions and sanctions, protection order. This program is designed to present a number of post-trial instruments ensuring that criminal sanctions remain applicable and effective in cross border situations throughout Europe (EU instruments concerning financial penalties, custodial sanction, probation, parole and confiscation). Indicated methods of work are lectures, discussions and workshops. The objective of the seminar is to help practitioners to understand and to apply the available EU instruments ensuring the cross border enforcement and implementation of custodial and non-custodial sanctions and penalties. It includes the following topics:1) mutual recognition to financial penalties (Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties); 2) national implementation of the mutual recognition principle regarding financial penalties; 3) mutual recognition to custodial penalties (Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, and Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to



provisional detention); 4) probation and parole (Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions); 5) confiscation (Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation order); 6) perspectives of future EU mutual recognition instruments in sanctions: the European Protection Order and professional disqualification? The program indicated the method of work in the form of lectures and workshops on confiscation and financial penalties. The program was conducted in June 2015 by two international experts.

In 2016, training program for two seminars was prepared. One training program is dedicated to the EU Family Law. It contains the target groups (representatives of the judiciary and public servants interested in judicial cooperation in civil matters), and the aim (to provide an overview of the EU law in relation to judicial cooperation concerning family law). The program contains several topics: 1) Regulation 2201/2003 (EC) **concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility** - "Brussels II bis" - parental responsibility and some selected disputable issues; 2) jurisprudence of the CJEU (material scope, relationship towards the national law, residence, temporary measures and detention; 3) Regulation no. 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation; 4) Rules on jurisdiction and law applicable in divorce matters; 5) Council Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; 6) EU Regulation no. 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. The program was conducted by two international experts in April 2016.

Another program in the form of two-day seminar was prepared under the title EU contractual law in a digital era. It included the following topics: 1) European Commission Strategy to make cross-border e-commerce work better, EU legislation in relation to the implementation of the consumer sale (Consumer Rights Directive 2011/83/EU, Directive 1999/44/EC on **certain aspects of the sale of consumer goods and associated guarantees**, Directive 93/13/EC on **unfair terms in consumer contracts**); 2) **the consumer's rights in cross-border e-commerce (relevant guidelines)**; 3) **novelties in the contracts on sales and goods in the EU (European and international level)**; 4) **novelties in the insurance contract law in the EU (new trends in the work of the European Commission in this area of law, with particular emphasis on its initiative on 29th voluntary regime, its aims and difficulties)**; 5) **the role of the CJEU in the area of commercial contracts**; 6) **the role of the CJEU in the area of consumer's transactions**. The seminar is organized in the form of lectures, Q&A and discussion, and is provided by three international experts. The program was realized in May 2016.

In the past several years, 3 to 5 judges and prosecutors were sent for a three day study trip to Luxembourg in order to get familiar with the work of this international body.

#### 4. Organized crime and corruption

One of the novelties introduced in a program of the JA is better focus on corruption and inclusion of this topic in training program for different holders of judicial offices, while organized crime is primarily introduced in the training program for prosecutors.

It was already mentioned that the compulsory program is organized on the protection of whistle-blowers. The beneficiaries of this program are judges who are deciding in cases which are directly or indirectly connected with whistle-blowers. The aim of this training program is to

explain some specific solutions which are introduced by the Law, as well as the relationship between this Law and the Civil Procedure Code.

The program is divided into two groups: for judges of general jurisdiction and for judges of special jurisdiction. The beneficiaries of the first group are judges of basic, higher and appellate courts, as well as judges of the Supreme Court of Cassation.

Program for the first group is presented in a form of a two days seminar, and covers the following topics: relevant international standards and domestic law, basic concepts prescribed in the Law, types of whistle-blowing, misdemeanours, protection of whistle –blowers and compensation, application of the law in labour disputes, and the relationship of the Law towards basic principles of civil procedure. In 2016, 20 seminars are planned.

The beneficiaries of the second group are judges of administrative courts. Program for the second group contains the same topics, except misdemeanours and also includes the Law on General Administrative Proceeding. The program indicates two phases in training on whistle-blowing. First phase includes seminars, where beneficiaries still work in small groups and through simulations, while the second phase includes practical training in the form of workshops for appointed persons authorized to act on the reports in connection with the whistle – blowing (courts of general jurisdiction, misdemeanor courts, misdemeanor appellate courts, administrative court, public prosecution offices).

Training program for public prosecutors, deputies and their assistants contains different topics of the relevance for corruption and organized crime. First of all, it includes two level seminars (basic and advanced) on Criminal acts with corruptive elements, with emphasis on abuses in procurement procedure. This topic is covered from different angles, including the relevant EU directives in the area of public procurement and financial investigations, and UN and CoE standards in the area of money laundering and financing of terrorism.

The basic level covers the general concept of corruption, its sources, economic aspects, the concept and process of public procurement procedure, its organizational weakness; the role of the police and the Agency for the fight against corruption; the role and practice of the State Audit Institution, the Public Procurement Office, the Republic Commission for the Protection of Rights in Public Procurement Procedure. It also covers the legal framework; abuse of authorities; court's practice; indicators of corruption and instruments and measures that the prosecutor may propose during the proceedings and investigations.

Advanced level contains the following topics: criminal investigations; data at disposal by different institutions: Privatization Agency, the Agency for fight against corruption, the National Bank, the Commission for Securities, the Customs Administration, Tax Administration, the Agency for Business Registers and their cooperation with the prosecution; legislative framework; financial investigations; obtaining evidence in criminal investigations; monitoring and analysis of financial flows; proactive financial investigations; Responsibilities of the Directorate for the Prevention of Money Laundering; characteristics of offenses in relation to financial crime; forms of corruption in public sector with emphasis on public procurement; the institutional framework of financial investigations; international aspects (EU *acquis*); measures envisaged in the National strategies and action plans for chapters 23 and 24 in connection with the promotion of the state bodies in this field; the role, responsibilities and co-operation of the State Audit Institution with the judicial authorities; the difference between private audit firms; and indicators of corruption.

In 2015, the focus was on financial investigations in the search, seizure and confiscation of gains obtained from a criminal offence and collection of evidence, monitoring and analysing of financial evidence, proactive financial investigations, economic criminal acts, criminal acts

against official duties, criminal acts with corruptive elements, criminal acts against the security of computer data. Training program for judges of misdemeanour courts also includes the protection of whistle-blowers, as well as the application of the CoE Criminal Law Convention on Corruption.

The training program on the ECHR for judges of criminal departments and advisers in the Supreme Court of Cassation contains special topic Terrorism and organized crime, which covers the following subtopics: special international measures for combating terrorism (CoE standards), the prohibition of torture, inhuman and degrading treatment or punishment, the right to liberty, the fair trial, the rights of prisoners, immigration and expulsion, the protection of witnesses, the protection of victims and compensation, derogation (Article 15 of the ECHR), and search and data collection, special investigative measures.

Training program for the staff of the administrative office of the HJC covers the application of the Law on public procurement and fight against corruption. Seminar on the fight against corruption is offered for 10 employees and includes the following topics: the notion of corruption and integrity, personal integrity, ethics and ethical dilemmas, myths about corruption, the role of officials in combating corruption, individual responsibility, system of public responsibility, the responsibility of citizens in prevention of corruption; international documents and standards in relation to the fight of corruption; prevention of conflict of interests and the control of property that belongs to officials; plan of integrity. The aim of this seminar is to provide knowledge on institutes and ways of combating corruption in order to implement them and to adopt an integrity plan.

Program for the vocational training of the administrative staff in courts and prosecutor's office is not in the focus of this analysis, but it is worth mentioning that it also contains several topics, such as the principle of publicity and integrity, corruption and anticorruption measures, state's responsibility for the work of administrative bodies, organized crime and disciplinary and material responsibility of employees.

Also, a special program for judicial and prosecutorial ethics is offered to judges and public prosecutors, with the aim to gain additional knowledge on prevention of corruption, conflict of interest, and the application of Ethical Code for judges/public prosecutors. Particular emphasis within this course is to tackle the conflict of interests.

## 5. Emerging forms of special types of crime

### 5.1. *Cyber crime*

Cyber-crime is one of the topics that are also represented in the program of the JA. The training program for criminal law judges and their assistants includes cybercrime as criminal offenses against the security of computer data. This topic covers the following issues: concept and domestic legal framework; damage to computer data and programs; creating and introducing computer viruses; computer fraud; unauthorized access to a protected computer, computer network and electronic data processing; preventing and limiting access to the public computer network; unauthorized use of a computer or computer network; the international legal framework; and other offenses committed by means of electronic devices and installations (offenses against intellectual property). In addition, the training program for public prosecutors also includes training on computer data, networks, different program and viruses. This training program applies only to the deputy public prosecutor and prosecutorial assistants at the Higher

Public Prosecutor's Office - Department for the fight against cyber-crime and the Prosecutor's Office for Organized Crime.

The program is outdated as it was prepared 3 years ago. Currently, a coordinator at the JA who is responsible for these topics prepares a draft program, based on the previous experience and the need assessment. In addition, this program will be further developed as on January 2016, the Joint Project of the European Union and the Council of Europe on targeting crime proceeds on the Internet in South-eastern Europe and Turkey (iPROCEEDS) under the Instrument of Pre-Accession (IPA) has been started. The project will provide an overview of the current situation from each country included in the project and the region, as a whole, as to their exposure to cybercrime and money laundering on the Internet, as well as their legislative and practical capabilities to respond to the threats and trends regarding criminal money flows on the Internet. Based on this report, the training program will be developed and initiated.

## 5.2. *Money laundering*

The training program on money laundering was developed in cooperation with the MOLI (Money Laundering and Terrorist Financing) in Serbia. Due to this experience, money laundering and financing of terrorism are included as a separate topic in the training program for public prosecutors and their deputies and assistants. It includes the analyses of domestic legal framework and practice, as well as international standards (Vienna and Palermo UN conventions, conventions dealing with the finance of terrorism, Global Program UN against money laundering, CoE conventions, FATF (The Financial Action Task Force) recommendations, EGMONT agreement). However, only several trainings were conducted in this area and there is a need to further develop this training program and to secure the continuity of trainings. This program was funded by the European Union and co-funded by the Council of Europe.

On 1 March 2016 the first working meeting on terrorism and terrorism funding took place. This work meeting was conducted in order to prepare the regional education program related to terrorism and specific topics. It was discussed what topics should be included in the program from the aspect of judges. It was decided to include the following topics: definition of the problem (notion, classification, background and complexity of terrorism, modern terrorism), legal framework concerning terrorism, the application of the Criminal Code and the Criminal Procedure Code of the Republic of Serbia, differences compared to political violence and criminal offences, features – violence, classifications, international legal framework, examples of good practice, cooperation of public bodies in procedural relation.

It was also discussed what topics should be included in the program from the aspect of prosecutors. It was decided to include the following topics: -prevention of terrorism; proactive investigation; joint investigative teams; operative work; gathering of information (strategy and tactics); method of informing; and education of the public; examples of good practice of prosecutorial investigation.

Finally, it was also discussed what topics should be included in the program from the aspect of the police. The program will be further developed in mid of September on a regional conference, where Serbian judges and prosecutors will be present. The trainings are planned for 2017 from the UNODC donation. Afterwards, the JA will secure sustainability of the program for the following years.

### *5.3. Illicit trafficking of cultural property*

Illicit trafficking of cultural property was not offered as a specialized program thus far partially as it was a problem to find experienced lecturers, partly due to the lack of money, as donors were not interested to cover this activity.

On the other side, trainings on human trafficking for judges and public prosecutors were continuously organized in the past several years covering different issues, such as the definition and elements of human trafficking, the needs of victims, international and domestic legal framework, and with particular emphasis on criminal proceedings and victim's rights. However, in 2013, a particularly interesting training was conducted for prosecutors in the cooperation with NGO Astra. It was very practically oriented, and provided mostly by therapists. The two days training included the following topics: first interview with the victim and the knowledge and competence on prosecuting with regard to victims' rights, both in the form of a role play, where actors were engaged in order to revive the real situation, and the knowledge and competence on victims' rights in practice prosecuting THB regard to victims' rights, in the form of a case study, real experiences from a victims' attorney and tips from the therapist. Second day was dedicated to the national referral mechanism, when several topics were presented (knowledge about the national referral system and its components, knowledge about the available victim assistance services, role of NGO's in supporting victims, and cooperation between prosecutors and NGOs). Afterwards, participants had presentations on compensation for victims, covering the relation between the role of the prosecutor and the victim's right to compensation, as well as a judge's and prosecutor's view on legal framework and practice in this area. This part was presented in the form of presentations and discussion. However, human right trafficking is not including in 2016 program.

## 6. Intellectual property

The training program concerning Intellectual property rights is undertaken under the support of the European Patent Office (EPO) from Minhen. This topic is very specific and on several occasion, the JA sent judges interested for this topic to international conferences and seminars. However, some programs are also prepared for continuous training.

In 2013, the program was developed for the EU patent law. The program is offered in a form of a two-day seminar and includes the following topics: 1) the role of the European Patent Office; 2) a harmonized EU patent protection - a review of the substantive provisions (Regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, Council Regulation (EU) No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements); 3) the role of the Commission and the CJEU, as well as the national competition authorities and the courts; 4) the Unified Patent Court (UPC) (UPC Agreement and its Rules of Procedure); 5) the jurisprudence of the CJEU and national courts concerning the patent law; 6) combating criminal acts against intellectual property, with particular emphasis on counterfeiting and piracy (Eurojust, EJM, Europol, OLAF, European Observatory on Counterfeiting and Piracy, SELEC and PCC-SEE); 7) regional and EU instruments of judicial

cooperation in combating counterfeiting and piracy (trans- boundary reactions); and 8) internet piracy (illegal downloading, ACTA – Agreement on Combating Trafficking in Forgeries).

The program does not contain its aims and the method of work. The program was realised in November 2013, and was conducted by three international experts.

However, the training program for judges and advisers of commercial courts contains the topic Disputable issues in the application of the laws regulating intellectual property. The aim of this program is to apply acquired knowledge and skills and to raise the quality and efficiency of the trial. Indicated methods of work are presentations, workshops and hypo cases. In 2016, it is projected to organize 3 one-day seminars. As the Commercial court in Belgrade is competent for disputes concerning copyright and related rights and protection and use of inventions, industrial designs, models, samples, trademarks, geographical indications, topographies of integrated circuits, topography of semiconductor products, and plant breeders, it is very important to organize continuous professional training of judges of the Commercial Court of Belgrade in this area. However, the program does not contain any further reference to topics that will be covered during the training.

## 7. Civil law

The training program for judges in civil departments and their assistants contains the whole module dedicated to different civil law topics, both procedural and substantive aspects. Substantive part includes topics related to Family law, Labour Law, compensation for damages, ownership and possession, contracts. This training program is comprehensive, but more integrative approach towards the application of the ECHR in relation to certain topics is missing (application of Articles 8 and 14 of the ECHR). However, these aspects are covered by the training program for judges of civil department which act in family disputes. Therefore, some important aspects are included: Article 8 – the right to private life (including the access to information, and DNK data base), and the right to family life, limitation of Article 8 (lawfulness of the test, legitimate interest and the standard “necessary in democratic society”), domestic violence, the right to euthanasia, the right to abortion, homosexuality (the right to family life, the right to marry, guardianship and adoption of the child), children born out of wedlock, the transsexuals (the right to legal recognition, change of IDs and change of data in the birth registrate). Furthermore, the judges who are deciding in labour disputes are also covering: the freedom of expression, the freedom of thought, conscience and religion, the right to privacy in the office and in the workforce (phone/Internet/emails surveillance, sexual orientation), the prohibition of discrimination, compulsory work, trade unions, and the right to strike.

## 8. Article 6 of the ECHR

Article 6 of the ECHR is comprehensively included in the curriculum of the JA. The training program for judges of civil departments includes topic on compensation for non-pecuniary damages in the context of the trial within reasonable time, where the presumption of innocence and procedural guarantees of Article 6 are also covered.

Training program for judges of Administrative court learn about the right to trial within reasonable time in context of the administrative procedure. However, in this part, reference to Article 13 is missing (the right to an effective remedy) and distinction between these two rights.

The training program for all judges and their assistants contain the right to fair trial (Article 6), with particular reference to the case law of the ECtHR.

The training program for all judges on Article 6 contains all aspects of this right: general principles, determination of civil rights and obligations, access to the court, contestation or denial of civil rights, equality of arms, rules of evidence, independent and impartial tribunal, the length of the processing, legal aid, presence at the court, fair and public hearing and judgment, communication with the court, professional code of conduct and judicial ethics. All these aspects are also covered in the specialized course on the ECHR concerning the right to fair trial for judges of civil departments, judges of the Administrative court, and advisers in the Supreme Court of Cassation. Additional topics covered by this training program for judges of criminal departments and public prosecutors are: criminal charge, ne bis in idem, presumption of innocence, the right to prompt information on the reasons for the charge, adequate time and facilities for the preparation of defense, legal representation, the right to call and cross-examination of witnesses, and the help of the interpreter.

Training program on the trial within reasonable time is a compulsory program, which in 2016 was offered as a ToT and training program for all judges. This training program is divided into three phases: implementation, jurisprudence of the ECtHR and a workshop. Projected number of seminars and workshops is specified to be 38 in 2016. The target groups for all phases are judges of appellate, higher and basic courts.

First phase is dedicated to the implementation of the Law on the Right to Trial within a Reasonable Time and presentation of the ECHR standards in the forms of a one-day seminar through lectures, discussion and work in bigger group.

Second phase is dedicated to the jurisprudence of the ECtHR and its application in national legislation in the form of two-day seminars through lectures and discussion. This part of the program is more specific than others as it contains the several segments: topics, duration for each activity and the method of work. First day is divided into two segments: presentation of international standards (jurisprudence of the ECtHR) and domestic practice (Constitutional Court, Supreme Court of Cassation), which lasts for 45 minutes, and aspects for consideration by the ECtHR, that lasts for 280 minutes. Lecturers first present cases for each of 4 aspects, and then prepare participants for practical work in the form of workshops and discussion. Participants are divided into groups with the task to assess each aspect for consideration by the ECtHR. Each group has 10 minutes to present their findings to the rest of the group. Final activity for the first day is work on practical cases. Second day is practically oriented as participants continue to work on the assigned cases, and then present arguments for the applicant and for the State to the rest of the group. Afterwards the whole group present their conclusion in relation to the decision. After the each case, lecturers reserve time for discussion.

Third phase is present in a form of a one day workshop, projected for 20 participants. A workshop is dedicated to procedure established by the Law and the application of the ECtHR standards. Workshop is divided into 3 parts: first, each group receives one case from domestic jurisprudence and applies the Law and the ECtHR standards (180 minutes); second, each group presents reasons for their decision (20 minutes) which is followed by discussion; and third, a group receives anonymous test (60 minutes) and after its competition, lecturers explains correct answers.

## 9. Article 1 of the Protocol no. 1

The right to property guaranteed by Article 1 of the Protocol no. 1 is also, like in the previous case, is comprehensively included in the curriculum of the JA. The program of training for civil law judges and judicial assistants contains one-day seminar under the topic Possession and property. These aspects cover domestic legal framework, but also application of Article 1, as well, especially concerning the acquisition of property and the protection of property. However, the program is not so ramified in order to conclude what exactly aspects of Article 1 are considered. The training program of judges, advisers and assistants in the Administrative court with more than 3 years of experience covers the restitution, while the training program for all judges and their assistants covers: question of expropriation (formal and de facto, public interest, proportionality test, compensation), social protection in the context of property rights, and taxes (retroactive measures). The training program on the ECHR has a more comprehensive approach and covers the following topics:

- property rights and expropriation (definition of the property, enjoyment in property, proportionality test, formal and de facto expropriation, lawfulness, legitimate interests, compensation, state control over the use of property, the right to health environment, measures of seizure and confiscation, bankruptcy measures, transformational process, interrelation with the right to family)
- housing problems and tenancy (measures for the regulation of the rent, regulation of the housing problems, the right of tenants)
- pensions (property rights and interrelation with discrimination)
- contracts (protection of the property and the prohibition of the imprisonment sentence for debt)

The training program for judges and prosecutors includes expropriation as one of the topics. This issue covers: formal and de facto expropriation, public interest, proportionality test, and compensation. These subtopics are also covered by the training program for judges of the Administrative court. In addition, it covers social protection (discrimination based on gender and nationality, application of Article 6 and property rights), as well as taxes and customs (taxes, discrimination, monetary and non-monetary penalties, retroactive measures and the conscientious objection).

## 4. **Gap analyses with regard to preparation, organization and implementation of the curriculum**

### 4.1. Preconditions for delivery for training preparation and delivery of trainings

In the Strategy for the Reform of the Judiciary, the JA is recognized as an important stakeholder in the reform of the judiciary. However, for the JA to develop as the modern institution which is fully competent to provide the necessary professional advancement for the purpose of enhancement of the work of holders of judicial offices, according to the PROFID study, the JA needs to be space-wise and technically equipped in order to be able to respond to those tasks. Also, The National Plan for the Adoption of the Acquis (NPAA) for the period 2014 –



2018 suggests that the Judicial Academy needs to improve its educational and organizational capacities.

Modern judicial training institutions have a main goal - to adequately prepare and implement a needs' oriented training program. In the Strategy for the Reform of the Judiciary, the JA is recognized as an important stakeholder in the reform of the judiciary. However, for the JA to develop as the modern institution which is fully competent to provide the necessary professional advancement for the purpose of enhancement of the work of holders of judicial offices, according to the PROFID study, the JA needs to be space-wise and technically equipped in order to be able to respond to those tasks. Also, the National Plan for the Adoption of the Acquis (NPAA) for the period 2014 – 2018 suggests that the JA needs to improve its educational and organizational capacities.

Preconditions for training preparation and delivery in Serbia depend on several aspects: 1) financial resources; 2) organisational capacities of the JA ; and 3) space and technical conditions for delivery of trainings.

#### *4.1.1. Budget*

Budget for the JA was 1.5 million in 2014<sup>48</sup>, 1.496 million in 2015 (30 staff),<sup>49</sup> and 1.6 million euros in 2016. Although this sum looks pretty high, it is mostly spent on the maintenance of the JA and for the realisation of the initial training. Some activities, especially for the continuous program very much depend on donations, but the JA takes care on the sustainability of the program (e.g. the training program on the trial within reasonable time, training on the novelties of the Criminal Procedure Code, anti-discrimination, etc). It is illustrative that that the training on the new Criminal Procedure Code<sup>50</sup> was very intensive and the JA organized 45 trainings with the support of the donors. Afterwards, each year the JA offers one to two trainings on this matter from its own budget. In this second stage, the focus is given on some disputable questions that arise in practice, so the program is adjusted to the current needs. If the JA does not secure donations, priority trainings are conducted from the budget, while other trainings are postponed under the proposal of the Director of the JA, which adopts the PC. However, bearing in mind the importance of continuous training program, it is necessary to increase the amount for the realisation of the continuous training program.

#### *4.1.2. Organisational capacities*

Currently, there are 30 employees out of 75 projected optimal number of employees. Also, the JA has 27 employees in the following departments: regional offices in Nis and Novi Sad, civil law, criminal law, commercial law, juvenile justice, administrative law, international cooperation, evaluation and initial education. However, this number is not adequate in order to secure smooth realisation of all activities. It is primarily visible in relation to the role of coordinators in monitoring and evaluating the program, as coordinators usually have three or even more working groups under their supervision, with all other tasks that include organization of numerous trainings.

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<sup>48</sup> Progress Report for Serbia for 2015, p. 50.

<sup>49</sup> Progress Report for Serbia for 2015, p. 12.

<sup>50</sup> Official Gazette of the Republic of Serbia, No. 72/11, 101/11, 121/12, 32/2013, 45/2013 and 55/2014.

#### 4.1.3. *Space and technical conditions*

Space and technical conditions are very important preconditions as they shape the reality – what can be delivered under the current conditions. According to the PROFID study, space and technical conditions are not adequate for the increasing number of trainings delivered each year within the JA auspices.

The Judicial Academy is located in Belgrade, at no. 41, Terazije Street, on the first floor of the building where the Institute for Comparative Study is situated. The Academy currently has 260 m<sup>2</sup> of space, which consists of offices, a server room, a sanitary block, as well as appurtenant communications. The building and the actual space have been partly renovated, but their visual and technical condition is far below the level required for this type of an institution. The space that is currently used is deficient in all aspects, particularly from the aspect of the necessary rooms for the work and training. The Academy does not have its own hall at disposal but uses a hall of 70 m<sup>2</sup> on a rental basis. The size of this hall is below the standard and requirements and, therefore, the organization and the number of attendants are adapted to the existing capacity. This considerably slows down and even prevents the work, in view of the fact that in bigger and adequate spaces, a considerably greater number of persons could join in the work at the same time.

Key deficiencies of the current space is lack of rooms for lectures and workshops, a courtroom for simulations of trials, specialized cabinets, as well as spaces that are adequate for its tasks. This problem is very significant as it influences the methods of work. For example, it is extremely hard to organize simulations under these conditions. In addition, other activities must be also reduced, or the JA has to find a way to overcome the problem (for example to organize an event in some other institution, such as the conference room of the Faculty of Law).

Furthermore, the JA is decentralized, as it has its own premises in the seats of all appellate courts: Belgrade, Nis, Kragujevac and Novi Sad. In such a way, trainings are regionally represented, costs are reduced and the training is more efficiently organized. However, centres in Novi Sad and Nis are small and it is not possible to organize some bigger events at these outposts, such as conference or round table.

In addition, the JA does not dispose of a fully operational IT system, as the current system does not provide possibility to create reports. Therefore, there is no database on all conducted trainings, and information are defragmented as they are stored at each coordinator. This unable a comprehensive overview of activities and thorough planning of well-targeted curriculum.

Furthermore, the current system is an obstacle for the introduction of e-learning modules. Thus, e- learning exists only in some rudimentary form. The first program offered to trainees of the initial training was the HELP program on anti-discrimination, which was successfully completed by 8 participants. In a second half of 2016, another HELP program on asylum will be offered to attendees of the initial training, as well as to judges and other interested professionals. It would advisable to develop an avatar program for attendees of the initial training, with smart cards and tests for each phase of the training. However, it requires a better IT system.

#### 4.2. Organisational aspects

#### *4.2.1. Composition of bodies adopting the curricula*

A program planning in most European, national and regional judicial training institutions falls within the competency of a steering committee, a governing (managing) board, a board of directors, or the like. These bodies decide on a curriculum, be it semi-annual, annual, or biannual. They normally comprise members of various levels and specializations of the domestic judiciary, as well as members of ministries/departments of justice and – if institutionally foreseen – of self-elected high judicial councils. In some cases, the body merely validates a bundle of training measures conceived in advance by a rather small group of training organizing experts, whereas in other constellations, the competent body's members also play a decisive and substantial role in the concrete planning of the content and of the methods of the upcoming curriculum. The same situation is in Serbia, as it was presented above. There are several bodies that are taking part in this organizational process. It seems that working groups are shaping the curricula, while other bodies: commissions and the PC are adopting the program with minor changes. These bodies are dominantly composed of judges and prosecutors, while only the working group on the ECHR and the EU law has a mix composition and include law professors and other experts. The very "justice-centred" composition of the concerned bodies risks to promote a certain blindness when it comes down to detecting inherent deficiencies of the judicial system and corresponding training needs. First of all, in some other areas of law, university professors and other experts should be appointed in working bodies in order to provide information on recent trends and necessity to include some new institutes in the curriculum. This is of particular importance for the integrated approach on the application of the ECHR, which is already included in the program, but in a rudimentary form and very unsystematically. Also, representatives of civil society and attorneys are aware of some deficiencies in the existing legal system, and also follow the reporting before different UN bodies, which are issuing recommendations for the improvement of the situation in certain areas. Therefore, input from the "outside" world – civil society and especially the academia – can be a particularly fruitful source of reflections during the program building. It can be done in two ways: to include more university professors and other experts in the composition of working bodies, as well as to consult academia and civil society sector during the drafting phase (e.g. consultation meetings, conferences, round tables). If it is not possible to institutionalize such a dialogue, it can be done through surveys and opinion polls on the quality of justice. What exists in a current phase is cooperation with civil sector in the organization of training seminars or their participation in seminars where they present the case-law, or their research on the quality of judgments in certain area of law (e.g. human trafficking, non-discrimination, asylum, trial within reasonable time).

Furthermore, the composition and work of the PC and standing commissions is stipulated by the Statute, which provides very broad provisions that should be further elaborated, while the work of working groups is not regulated by any legal document. Although this approach gives certain flexibility in the work of the JA, it would be important to regulate their activities, at least provisional. Of particular importance is to regulate the sessions, as it appears in practice that some working groups are more active than others and meet on regular basis. Also, the composition for some working groups has to be updated, e.g. the name of the new Commissioner for the Protection of Equality, new Agent before the ECtHR, etc.

#### *4.2.2. Needs' assessment for a well-targeted curriculum*

A vitally important task of any judicial training institution is to detect and to respect the real training needs of holders of judicial offices. Within this project, a TNA was conducted, providing detailed information on the current situation and giving recommendations for the improvement of this process. However, at this point, it should be underlined that needs assessment is provided mainly in a dialogue with the Court of Cassation and appellate courts, who are giving inputs on the need to include certain topics in the training program. The relationship with the HJC and the SPC was not so intensive in previous years. However, situation improves and although the more intensive cooperation needs to be established in a near future, it should be underlined that in early 2016, the HJC for the first time requested compulsory training on the Law on execution and security which program was prepared without delay, and training regularly conducted starting from March 2016. Needs assessment is also undermined by the lack of clear competencies for each group of holders of judicial offices, that should be defined for each holder of judicial offices recognized in the program.

#### *4.2.3. Respecting the time requirements*

It was mentioned above that in the past two years, continuous training program was approved by the HJC and the SPC in period March to May for that calendar year. In the Law on the JA there is no time frame for the adoption of the program, except the provision that for a voluntary continuous program, the JA is obliged to submit a framework annual program for the next calendar year to the courts and public prosecutor's offices for voluntary continuous training once a year, no later than 1<sup>st</sup> of December.<sup>51</sup> Judges and prosecutors submit applications for the programs to the Academy by December 31 of the current year, for the following calendar year. However, this provision is not respected in practice, but the usual standards is that the call for applications take place no later than six months and in the very latest three months ahead of the event. A suitable call for applications properly indicates the teaching methods, the learning goals and the learning level to avoid the participation of under-challenged as well as over-challenged judges or prosecutors.

In order to timely plan the program, it is important to complete the need's assessment process in mid of September, to hold consultations with the highest courts and with other professionals outside of judiciary, and to adopt program in November at the latest, and to submit it to the approval of the HJC and the SCP. This will enable judges to timely plan their activities for the following calendar year, and also enable the JA to timely plan the training activities. Two factors cause delay in this process: adoption of the budget and the unstable legislative activity. However, budget for the previous three years is almost the same and some projection can be done in advance, while unstable legislative change can demand some urgent adjustments in the program, but this risk exists during the whole year and cannot be excluded as such.

#### *4.2.4. Reacting to urgent training needs*

Any modern judicial training institution should reserve sufficient funds, the necessary human resources, open timeslots and infrastructural capacities to be able to organize urgent dedicated training measures with short notice. This foresight is especially important in Serbia, where it was already mentioned that there is unstable legislative activity. The JA has a very good

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<sup>51</sup> Article 46 of the Law on the JA, Article 53 of the Statute of the JA.

cooperation with the Ministry of Justices from whom they receive a projected calendar of legislative activities, and where important legislative reforms are taking place on a regular basis. However, sometimes it is not possible to plan ahead activities, especially if the laws are of low quality and raise many disputable issues in practice. The JA is trained to react to urgent needs, as it was the case with the above mentioned training program on the law on Execution and Security. However, the JA has very limited capacities, mainly financial, to organize other planned seminars in that calendar year, if this situation appears. Thus, sometimes it is very hard to say what percentage of the projected plan has been done. It seems that in that case, compulsory trainings programs are realised not together with, but instead of voluntary training programs.

Also, there is no institutional mechanism within the JA to respond to training needs during the calendar year. The JA, after the assessment of conducted trainings, on the initiative of the Director of the JA or their coordinators initiate some training adjustments. However, it should establish the commitment of the JA to twice in a year, or at least once in a year conduct consultations with the appellate courts, prosecutor's offices and departments for judicial practice on the need to adjust programs, and to focus on the most important topics for that year.

#### *4.2.5. Variety of methods of work*

In judicial training, it is necessary to apply adult-learning principles – andragogy, and to design individual training events and sessions with a high degree of interactivity and alternation of methods. As it was presented above, the both, initial and continuous training program contains reference to different teaching methods. However, the teaching methodology (interactive lectures, simulations, case study, discussion groups, working meetings, study visits) is mixed with the format of work (individual work, work in pair, work in small groups, distance learning, peer support). There is a mix between seminars and workshops. There is a sense, that a seminar is a bit more of a traditional training session, with the preponderance of time spent in presentation of material from the front of the room. A workshop seems to imply relatively more time spent interactively, perhaps in facilitated activities, where the participants generate some form of at the end of the session. Thus, each working method has to be clearly defined and consistently used in practice. For the ToT on the trial within reasonable time, andragogist prepared 50 pages on the importance and special features of Adults Learning, together with the explanation of different methods that can be used during the training. This text can be further developed in order to satisfy this need.

According to responses on the questionnaire prepared for the TNA, the most desirable teaching methods are study visits, working meetings and interactive lectures. Working meetings are desirable way of exchanging ideas and discussing ways to overcome some disputable issues in practice. Working meeting exist in rudimentary form in the curriculum for continuous training, but should be more represented as a mean of unifying court practice in certain area.

In addition, work in small groups, peer support, as well as the combination of different formats of work, were identified as the most desirable way of transferring knowledge in judiciary. While other forms already exist, peer review should be introduced as a good way for overcoming insecurities and doubts for newly appointed judges and prosecutors.

However, although there is a reference to workshops and simulations in the program, one of the key points raised during interviews with regards to possible improvements of the trainings offered by the JA was the need to make the trainings more interactive and practical. This aspect shows that the planning of agenda for each seminar requires prior meeting with lecturers and discussion on the ways of the transfer of knowledge or clear instruction on deliverables provided by JA to lecturers.

Furthermore, the JA organizes conferences and study visits program, but they are not mentioned in the program, except study visit to the CJEU. It seems that program for each study visit is usually provisional, without adequate preparation before study trip. However, the JA has implemented different approach in relation to study visit of judges attending ToT on non-discrimination who will visit the ECtHR in mid of September 2016. They received a training material prepared for this study trip that contains relevant information on the Court, as well as the extract from the judgment in the case on non-discrimination that they will follow during the hearing before the Grand Chamber. It is important to continue with this practice and to adopt guidelines on the preparation of the study visit.

#### 4.2. The structure of the program

Currently, the program of continuous training distinguishes between the following categories of trainees:

- Criminal law judges and judicial assistants
- Civil law judges and judicial assistants
- Administrative court judges, advisors and judicial assistants
- Commercial court judges, advisors and judicial assistants
- Supreme Court of Cassation advisors
- Misdemeanor court judges
- Judges in non-contentious proceedings
- Administrative staff of the HJC
- Administrative staff in courts and public prosecutor's offices
- Court managers
- Court presidents
- Public prosecutors and deputy public prosecutors

This distinction is not consistent throughout the entire curriculum, as some special training modules are offered to all judges, regardless of the court they work in, while other modules are clearly intended for judges of a certain category, which is only visible from the target group in the training (e.g. the special training in EU law is intended for higher/appellate court judges and prosecutors. A separate module is intended for commercial court judges, where training of trainers was also carried out). Furthermore, in some parts of the curriculum it is not clear who is the target group, or the program does not make distinction between judges and prosecutors and their assistants.

There is room for improvement in the presentation of the curriculum so as to facilitate identification of target groups. It is necessary in order to prepare a competency based training program, which is oriented towards acquiring the specific knowledge and skills (competences) needed for certain job. Also, for each target group, it would be valuable to distinguish between the „theoretical“ part and professional skills development module in the program.

#### 4.3. The content of the “theoretical” program

The content of the program can be challenged from the technical and substantive part.

Technically, program contains elements that are usually included in the program, such as the aim and purpose of the program, target group, venue, lecturers, materials and teaching methods. However, the program is inconsistent, as in addition, some programs contain basic information on the program, reasons for its adoption, legal framework in certain areas of law. The curriculum must be uniform and should contain the same elements, which are equally presented. Also, what is missing from the content is a number of projected attendees for each training, while this information exists only in rudimentary form for some activities. In addition, information on professional competences, knowledge and skills that participants will acquire should be further improved.

Furthermore, in majority of cases, these elements are presented with the same text, which leaves an impression that they are not carefully considered for each target group.

The JA prepares 6 months operation plan for the continuous program, while it has streamlined activities for the initial training program. However, the calendar of activities is not placed on the website. It is of high importance to prepare a calendar of activities for the initial training program, as well as at least three month calendar of activities for the continuous program. This calendar of activities will contain information on the title of the training program, its format (seminar, workshop, lecture, etc.), target group and projected number of participants, list of lecturers, the venue, and the date. This way of posting information will allow all interested holders of judicial offices to submit their application timely. Also, it will demonstrate a range of trainings which are organized by the JA, and which are unknown to wider public.

With regard to the subject matter, the initial training program should be carefully revised. However, it must be underlined that the continuous training program is comprehensive and contains subjects which are of high relevance for holders of judicial functions. However, this must be taken with some reserve, as it seems that compulsory training programs are organized at the expense of voluntary programs which include a range of different, important topics for judiciary. Also, it is recommendable to include smaller number of topics in the program, but to concentrate on those of high relevance for that calendar year. In addition, concerning criminal law module, there is a need to advance the curriculum on the human rights module including post penal support and training module on alternative sanctions.

##### 1. Human and minority rights

Bearing in mind that law students do not have human rights as compulsory course during their studies, it is still justifiable to have separate training program on the ECHR. However, other topics in the program should also be covered from the perspective of the jurisprudence of the ECtHR, when it is relevant and applicable.

However, judges in Serbia still to a very small extent refer to the relevant jurisprudence of international bodies, although standards enshrined in these judgments are integral parts of the domestic judicial system. Moreover, judges have an obligation prescribed by the Constitution, to interpret provisions of the national legislation in line with the jurisprudence of the ECtHR, as well as of other bodies that supervise implementation of ratified international treaties. A major

problem in low observance of international jurisprudence is insufficiently raised awareness of the binding character of the ECtHR judgments. This problem can be overcome by integrative approach in presenting this jurisprudence. In other words, every topic should be covered also from the perspective of the Strasbourg court. This integrative approach already exists in some rudimentary form, but needs to be further developed.

Thus far, the program contains referral to articles of the ECHR which are dominantly violated by Serbia. Thus, the jurisprudence of the Strasbourg court in relation to Article 6 of the ECHR and Article 1 of the Protocol no. 1 are highly represented, covering all important aspects for different holders of judicial offices. It also extends to some interesting topics, which are not even covered by the faculty's curriculum, such as the protection of personal data, sexual orientation, transsexuals, etc. However, the program should be enriched with human rights limitations, especially with regards to three hold test. Thus, it should include: the rule of law test, the democratic necessity test, legitimate aim test, and waging between public and private interests (proportionality test). Also, another area which should find its place in the curricula is a jurisprudence of the ECtHR in relation to asylum cases (Article 3, 5,6,8,13 and 14 of the ECHR), especially the relationship between Articles 6 and 13. Discrimination cases are also relevant, and they are comprehensively examined only at the ToT on non-discrimination. Thus, non-discrimination cases should be integrated in different topics contained in the curricula. Although it was mentioned that non-discrimination of national minorities is included in some rudimentary forms in training program on non-discrimination, there is a room for additional inclusion of this topic in relation to affirmative measures, the use of language in court proceedings, segregation in education, and in provision of goods and services.

## 2. EU law

Both initial and continuous training curricula envisage some level of training on EU law. While the curriculum envisages training on judicial cooperation in civil and commercial matters and also on topical issues of family, labour and administrative law, there curriculum does not seem sufficiently comprehensive when it comes to the issues of relations of EU law with national legal system, and role of national judge in the EU legal environment. There is room to consider rollout of the program so as to include judges of basic courts, as in the future they will be the ones most responsible for implementing EU law. Also, although the program for both, initial and continuous training contains very solid basis for studying the EU law, in practice, EIPA Luxembourg organizes very complex trainings, which are specialized and advanced. However, majority of judges didn't have a possibility to acquaintance with some institutional basis of EU law as faculty's curriculum does not reflect this need. Also, these training are predominantly presented in a form of lectures and by international experts, who are not familiar with specific legal environment in Serbia. Thus, it is necessary to reconcile the donor's needs with the need to organize a general training program on the EU law in the next two years, and to introduce special programs for judges of commercial court and the Administrative court. In addition, it is important to start translating the most important decisions of the CJEU and to slowly integrate them in the training materials.



### 3. Fight against corruption and organized crime

One of the novelties introduced in a program of the JA is better focus on corruption and inclusion of this topic in training program for different holders of judicial offices, while organized crime is primarily introduced in the training program for prosecutors. The fight against corruption and financial investigations are an integral part of the continuous training program for public prosecutors, which contains a special module on criminal offences with elements of corruption, where focus is on abuse in public procurement cases. The module has two levels – basic and advanced, and cover the relevant international standards. The advanced level reflects the training needs identified in the Action Plan for Chapter 23 and other public policy documents, such as the National Anti-Corruption Strategy and the Action plan for its implementation. The trainings should ensure that those who have undergone basic training attend advanced training as a follow-up, since only the advanced training fully responds to the requirements set out in the Action plan for Chapter 23, Action plan for the implementation of the National Anti-Corruption Strategy and the Financial Investigations Strategy. In addition, the training program on the ECHR for judges of criminal departments and advisers in the Supreme Court of Cassation contains special topic on terrorism and organized crime. Therefore, organized crime and terrorism are envisaged as a single topic. Even though such systematics is supported in the current regulatory framework in Serbia (The Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Severe Criminal Offences), there is room to either separate training on these two topics, or integrate them into a single module that would also cover corruption offences, including abuses in public procurement. Also, the training program for the staff of the administrative office of the HJC covers the application of the Law on public procurement and fight against corruption. Program for the vocational training of the administrative staff in courts and prosecutor's office contains several topics related to corruption and organized crime. Also, a special program on judicial and prosecutorial ethics is offered to judges and public prosecutors, with the aim to gain additional knowledge on prevention of corruption, conflict of interest, and the application of Ethical Code for judges/public prosecutors. Particular emphasis within this course is to tackle the conflict of interests. However, organized crime is not a prominent topic in the initial training curriculum.

### 4. Protection of whistle blowers

This program was successfully implemented with donor support. The beneficiaries of this program are judges who are deciding in cases which are directly or indirectly connected with whistle-blowers. The program is divided into two groups: for judges of general jurisdiction and for judges of special jurisdiction. The program is comprehensive and it is important that it remains within the corporate memory of the JA. In addition, the JA should extend training to public prosecutors and deputy public prosecutors.

### 5. Cyber crime

The training program for criminal law judges and their assistants includes cybercrime as criminal offenses against the security of computer data. In addition, the training program for public prosecutors also includes training on computer data, networks, different program and

viruses. This training program applies only to the deputy public prosecutor and prosecutorial assistants at the Higher Public Prosecutor's Office - Department for the fight against cyber-crime and the Prosecutor's Office for Organized Crime. This program will be further developed within the regional context, demonstrating growing need for the regional cooperation and preparation of common training programs. It would still be necessary to regularly update the curriculum in order to tackle current challenges. It should also be expanded to cover the issue of securing of evidence and cooperation with court experts.

## 6. Money laundering

The training program on money laundering was developed in cooperation with the MOLI in Serbia. Due to this experience, money laundering and financing of terrorism are included as a separate topic in the training program for public prosecutors and their deputies and assistants. It includes the range of topics, including the relevant international standards. On 1 March 2016 the first working meeting on terrorism funding took place. This work meeting was conducted in order to prepare the regional education program related to terrorism and specific topics. It was discussed what topics should be included in the program from the aspect of judges, what from the perspective of public prosecutors, and what from the perspective of the police. This

The trainings are planned for 2017 from the UNODC donation. Afterwards, the JA will secure sustainability of the program for the following years.

## 7. Illicit trafficking

Illicit training and economic crimes are offered in continuous training curriculum in relation to the specific regulatory environment and practice. However, illicit trafficking was not offered as a specialized program thus far, partially as it was hard to identify experienced lecturers, partly due to the lack of money, as donors were not interested to cover this activity. Bearing in mind that some other judicial training institutions offer illicit trafficking as a special course, the JA can benefit from the best comparative practices and include program on illicit trafficking.

On the other side, the JA continuously provide trainings on human trafficking, but mostly in the cooperation with other partners and from donations. Also, there is no mention of human trafficking in the annual program for 2016. Bearing in mind that Serbia is identified as a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor, including domestic servitude and forced begging, the training program on human rights trafficking needs to find its place in the curriculum, for both initial and continuous training. As there are still no operation procedures for proactive victim identification and referral to protection services, especially no among migrants, refugees, asylum-seekers, and unaccompanied children engaged in street begging, it is important to prepare a training program for misdemeanour court judges who can issue penalties for illegal entry. Also, it is important to prepare a multitasking program on victim-centered approaches in human trafficking cases for the police, judges and prosecutors in order to increase investigations and prosecutions, especially having in mind that there is a decrease of identified victims, prosecutions, investigations, and convictions compared to 2014, while the sentencing polivice is still low and sanctions are not disuasive (between 1.5 and 5.5 years' imprisonment).

## 8. Intellectual property

The training program concerning Intellectual property rights is undertaken under the support of the European Patent Office (EPO) from Minhen. This topic is very specific and on several occasion, the JA sent judges interested for this topic to international conferences and seminars, while some specialized courses were offered since 2013. However, the program does not contain any further reference to topics that will be covered during the training. Thus, it should be further elaborated in the program.

Intellectual property issues are a part of continuous training modules for commercial court judges in the form of 1) separate module dedicated to contentious issues in application of intellectual property laws: and 2) as a part of the module dedicated to economic education of commercial court judges. Intellectual property is not covered by the initial training curriculum, presumably because judges of commercial courts need to have at least six years of professional experience following the bar examination and, moreover, the intellectual property cases are all in the competence of the Commercial Court in Belgrade.

There is a need to further develop course on intelletcual property law, and the JA can benefit from good practice models. Thus, it would be valuable to include topics such as hosting, cloud computing, etc. as well as the economic aspects of litigation in intellectual property, and should extend to administrative court judges, given their competences in administrative disputes related to intellectual property rights.

## 9. War crimes

There is no systematic training on war crimes and international humanitarian law, and judges and prosecutors dealing with war crime cases are not recognized as a separate category o trainees. The existing trainings focus on prevention of torture and other forms of inhuman or degrading treatment, while other issues that are key for acting in war crime cases are not covered at all. This needs to change and a separate module on war crimes needs to be introduced in order to comply with the requirements set out in the Action plan for Chapter 23.

## 10. Domestic and gender- based violence

Domestic violence issues are an integral part of the continuous training curriculum in the field of human rights for civil law judges, criminal law judges and Supreme Court of Cassation advisors. The trainings conducted by the JA in the field of domestic and gender based violence need to become a part of the JA corporate memory, allowing for replication. In order to respond to the goals set out in the National Gender Equality Strategy, additional focus should be given to gender-based violence. The issue should also be more prominent in the education of public prosecutors and deputy prosecutors.

## 11. Hate crime

The standards for efficient suppression of hate crime are integral part of the human rights training module. Specialized donor-funded trainings on this issue should become a part of the institutional memory of the JA to allow for replication.

## 12. Crimes against commerce

Specialized training on prosecution and adjudication on crimes against commerce for a minimum of 80 public prosecutors, 60 members of the police force and 80 judges is envisaged by the National Program for Countering Shadow economy. Specialised training on the topic is not envisaged in the continuous training curriculum.

### 4.5. The content of the “skills oriented” training program

Training on law-related issues is important for judges and prosecutors as it stands in the very core of their every-day work. Initial and training program at the JA adequately responds to these needs. However, aside their legal knowledge, good judges and prosecutors have to have a wide range of psychological, social and methodological skills to properly fulfil their tasks. Novelties recently introduced in initial and continuous program are practically oriented with the aim to develop different skills among different holders of judicial offices. Thus, initial training contains section in the program which is named as professional knowledge and skills, aimed to improve those skills. It involves case management, communication skills, and forensic. It seems that there is a space to introduce some additional topics within this section, such as: 1) legal reasoning; 2) legal writing; 3) communication skills; and 4) legal English. In order to support fluency of trainees, it is recommended to introduce e-learning tool, which can be accessed at any time.

This particularly concerns legal analysis and legal reasoning, which are not a separate module within the initial and continuous training programs.

Continuous training program contains special program on judicial and prosecutorial ethics. JA has included ethics in the program for both initial and continuous trainings. However, there is a need to improve the curriculum to ensure that the focus is not on disciplinary proceedings, but on problems that may arise in practice or that have taken place. In addition, the training program on ethics may be suitable for developing an e-learning module, that can be accessible at any time.

A legal writing is incorporated in the curriculum for different programs and different holders of judicial offices. Methodology and method of decision drafting are an integral part of the initial training program, but are not a part of the continuous training program, except in some rudimentary form. Thus, the program for criminal law judges and their assistants contains the skills for writing judgments, while the training program for judges of misdemeanour when deciding in asylum cases also covers one topic dedicated to adequate writing of judgment. There is a need to introduce these topics as separate modules within both initial and continuous training program. Legal reasoning and decision drafting could also be developed as a distance-learning model, drawing from the experience of Estonia, where double-blind feedback method was used to improve legal reasoning of judges.

The program for prosecutors and criminal law judges also includes training on forensic, which can be additionally strengthened in the program. It is particularly interesting that ToT for non-discrimination also included workshops on stereotypes, prejudices and stigmatization, which were very well accepted by judges. In addition, ToT for the trial within reasonable time included some workshops on communication skills and transfer of knowledge among professionals. However, it seems that some other professional skills should be offered to judges, prosecutors

and their assistants. Legal reasoning in a form of workshops would be valuable, as well as legal English and use of IT technologies.

#### 4.6. Management and leadership training

Nowadays, modern judiciary has to accomplish an important range of managerial tasks, either by carrying them out themselves or by influencing people within the “organization” to act towards the organization’s common goals. Management tasks of judges/prosecutors/staff can only be successfully carried out if the court or prosecution office leaders’ management knowledge and skills are accompanied by leadership skills. Training courses on the “soft factors” of change management and project management are essential for this purpose. The curriculum of the JA contains the training program for administrative staff in the office of the HJC, which includes PR in prosecutor’s offices, preparation of the budget and writing projects, IT training (Word, Excel, PPT), communication skills and office administration. The training program for the administrative staff in the courts and prosecutor’s office also contains several topics for development of professional skills: efficient administration of cases, communication with different actors, team building work, and increase of use of IT technologies. It seems that these programs are well addressed in the curriculum.

#### 4.7. Multidisciplinary and multiprofessional training

Judges and prosecutors take their decisions based on legal reasoning, as well as on societal, economic, political and scientific questions and challenges. For example, there is an increase need to offer different courses to judges and prosecutors, such as the knowledge in the area of forensic, psychiatry, medicine, economy, corruption, etc. Unbiased communication in the courtroom requires training of judges and prosecutors on non-discrimination, as well as on typical decision-making processes to allow them to avoid prejudices and stereotypes, and to ethically imposed decision. So judges and prosecutors must be regularly trained on different topics mentioned above. It is evident that the curriculum of the JA follows modern trends. It was presented above that the special training program on ethics is introduced. Also, special program on economic law is established. Moreover, the training program for criminal law judges and public prosecutor’s contains several topics on forensic and transportation. In addition, ToT on non-discrimination contains workshops on breaking stereotypes and prejudices. However, multidisciplinary training program must be more prevalent in the curriculum, particularly topics concerning forensic. Also, bearing in mind that holders of judicial offices in practice have only 5 days for training during the calendar year and those compulsory trainings, and training concerning the application of certain laws are predominant as they concern the every-day work of judges, there is a risk that these multidisciplinary trainings are not in the focus. Therefore, they should be included in a list of priority trainings, and they can be offered also in the form of e-learning tools that can be accessed at any time.

In addition, special place in the curriculum should be reserved for mutliprofessional trainings. Although they already exist in some rudimentary form, it is important to include them in greater extent. According to the findings of the TNA, some suggestions are to give priority to multiprofessional trainings of prosecutors, judges and police in relation to investigations, as well as for the Ministry of Interior, social workers and the police for domestic violence.

#### 4.8. Lecturers

Program planning and quality of program delivery very much depends on the expert's pool. The standing commission on lecturers and mentors chooses lectures on the basis of their knowledge for certain area of law. Every person can submit its application to the JA and this application is referred to the standing commission. An individual can submit application for the special training program, or in general in order to be engaged by the JA when its knowledge and skills correspond to the needs of particular training program. However, the list of short-term trainers is not publicly available, as well the criteria for the selection of trainers. The Program Council adopted Framework criteria for the selection of lecturers. They contain three group of conditions:

general - lecturers can be judges, public prosecutors and their deputies appointed for the permanent position, judges of misdemeanours which before the appointment worked in misdemeanour bodies, as well as prominent experts

special – lecturers need to have prior working experience and knowledge, prior experience in advancement of judges and prosecutors, prior scientific experience (publications, participation in the conferences and symposiums), cooperation with legal journals and skills for preparing the scenario of the training for specific topic

other – lecturers should have good communication skills, and acquaintance with the organisation of educational events

The ToT course is designed and implemented for lecturers. However, it is impossible to reach all potential trainers by this specific training. Also, it is considered that university professors are already trained to deliver a lecture or other format of work and they usually do not undergo the Tot. In any case, the organizer of an individual training event has the task to adequately prepare the lecturers by giving methodological hints. However, this is happening only for some trainings that are financed by donors.

There is a formal list of lecturers which consists of some 196 lecturers, and which is adopted by the Program Council. However, there is a need to review the list of 196 lecturers, as many of them are not actively taking part in training. Also, this process should be made more transparent in order to dispel doubts that lecturers are not the most eminent experts in their field of expertise, or always the same persons. Another concern that can be raised is a conflict of interests with the membership in bodies within the JA who are adopting the training program and engagement as lecturers. However, it should be taken in mind that Serbia is a small country with very limited expert's pool, especially in some developing legal areas. In addition, the conflict of interests diminishes with the fact that several bodies are shaping the curricula, and this process should be additionally supported by consultations with academia and civil society.

In any way, training program does not contain any specific reference to lecturers, except their profession. Only the draft agenda for certain training contains exact names of lecturers. This lack of information can be overcome by posting CVs of all lecturers in certain legal areas. On the other side, it is commendable that representatives of some other professions, apart from lawyers, are also indicated as lecturers, mainly for development of professional skills. Among lecturers and mentors who are lawyers, psychologists are marked for teaching about the technics of interviewing and for forensic psychology, expert witnesses whose professions are economy, medicine or transportation or forensic are indicated for providing basic knowledge

the facts that can be established by witnessing, on collecting traces and their preservation during an investigation.

#### 4.9. Materials

Teaching materials are necessary toll in the preparation of good training curriculum. The curriculum does not contain any specific reference to teaching materials, except general information on the format, such as handbooks, PPTs, Internet sources, case law, etc. During the preparation of the curriculum it is important to identify sources that will be used for each topic in order to identify if there is a need to prepare a handbook in advance. Also, it would be valuable to include references to specific case-law that will be presented and analysed during the training. At least, this information should be included in the agenda, as it appears that in some cases judges are resigned with the fact that they listen about some ECtHR's judgements several times in a row.

Preparation of materials is also influence by the budget, and there is no enough resources for this activity. Thus, the JA is referred to donors, who mainly distribute important teaching materials in the form of handbooks and bulletins. Judges especially indicate the importance of bulletin published by the AIRE centre which contains extracts of judgments and their comments. However, the JA should have more proactive role in ordering judgments that should be translated into Serbian. The working group for the ECHR will be in charge for proposing the list of judgments that should be translated in order to satisfy the needs for trainings for that calendar year.

In addition, although the Law on Judicial Academy provides for the establishment of the Documentation and Information Centre, this provision is not yet implemented in practice. In the Documentation Centre, all the decisions of domestic courts would be deposited, which would enable good preparation of workshops and lectures for all the types of training and, at the same time, they would serve as models for possible forms and contents of future decisions, particularly to persons, who do not have sufficient experience in the given area. Also, the Documentation Centre would deposit, translate, and group judgements of relevant international bodies. Finally, the JA should preserve all materials for the training provided by donors, which will guarantee their sustainability in the future.

#### 4.10. Evaluating the process and the results

Evaluation is highly important in the training cycle to detect whether the initially set training objectives have been met fully, partially or not at all. At the same time, proper training evaluation and assessment looking at the immediate aftermath of the training, as well as the long -term effects, gives a valuable feedback as to existing training needs.

The JA has started developing a comprehensive bidirectional system for monitoring the quality of initial, continuous and specialized training. Once developed, bidirectional evaluation system should become standard practice and be fed in the training needs analysis.

Currently, systematic and rigorous application of scientific methods to assess the design, implementation, improvement, or outcomes of a training program exist only in a rudimentary form. Commissions have a supervisory function in relation to the training, as they monitor the realisation of the program. Commissions also examine whether seminars covering priority topics are conducted, and whether the format of the work is appropriate. They are doing that

by assessing evaluations of lecturers, JA coordinators and evaluation sheets sent to higher courts. The commission does not bring a formal decision on necessity to change the program, but it can conclude that there is a need to slightly change it. In practice, the commission evaluate the performance of lecturers, but they are not informed about the results of evaluation, expect if they request that information. This practice can diminish self-evaluation process, but is also sensitive as lecturers are usually judges of highest instances. Also, the commissions mostly evaluate successfulness of the training taking in mind evaluation sheets and comments of JA coordinators. Also, these comments serve as a good source of identifying training needs for certain holders of judicial offices, but this process need to be improved and formalized.

### **III. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE CURRICULUM**

Professional advancement/training in the judiciary in the Republic of Serbia is conducted through the JA, which was actually founded for the purpose of ensuring professional, independent, unbiased, and efficient performance of judicial and prosecutorial functions. In previous years, the JA extended its activities and organized numerous general and specialized trainings for different holders of judicial offices. The Academy is constantly improving their methods of work, and its curriculum for the initial and continuous training demonstrates that topics, areas of law and directions for development in great extent coincides with the training needs assessment undertaken under the component 2.1.

However, at the same time, the JA is coping with some challenges which are influencing their every-day- work. As it was mentioned in the study, the JA is coping with limited human, space and technical capacities, while its work has been largely expanded in the last two years, and these conditions cannot secure smooth and timely realization of all activities. IT system is not so developed so as to be fully operational and to provide possibility of generating reports. Also, current status of IT system does not allow creation of e-learning modules, which currently exist only in rudimentary form. In addition, the JA is coping with limiting financial resources, and the national resources are mainly used for the maintenance of the Academy and the implementation of the initial training. Thus, the JA mostly relies on donor support for the implementation of the continuous training. It is recommendable to increase financial resources for the realization of the continuous training program, and if possible to separate it from the budget for the initial training. Otherwise, the JA will need to rely on donor support, and in that case, it must be more persistent in imposing topics for seminars that are based on the assessment needs, and not in the focus of donors.

Although these preconditions for adequate and timely preparation and delivery of training program are not responsibility of JA itself, it is important to take them in mind while providing recommendations for the improvement of the training curriculum.

This study identifies some gaps and possible solutions for the improvement of transparency, delivery and training programs within the JA. These recommendations are structured into several segments.

#### Composition of bodies in charge for the adoption of the program



- Although there are no legal obstacles to select university professors and other non-judicial experts for the membership in standing commissions, only judges and prosecutors are appointed, except in the commission for the evaluation of mentors, lecturers and the training. The same situation is with program groups, where other professionals are engaged only in the program group for human rights and minors and the EU law. Bearing in mind that human rights should be an integral part of the curriculum, it is recommendable that human rights experts are appointed in both, commission on the initial and commission on continuous training program, as well as in other program groups.
- As it is advisable to have better focus on multitasking and multiprofessional training programs and development of practical skills, the PC should also appoint members of other professions.
- Although human resources are currently limited in the JA, it is recommendable to split the program group on human rights and minors into two separate groups. Also, bearing in mind increasing focus on development of professional skills, it is recommendable to establish program group for professional skills, composed of experts coming from different fields, such as forensic, IT expert, foreign language teacher, andragogist, etc.
- In addition, program group for e-learning and study visits should be established with the task to develop e-learning modules and to determine criteria for selecting holders of judicial offices that will be sent to study visits.

### Program planning

- The curriculum for the training program should be timely prepared, in order to avoid delays and to allow judges to plan their activities several months ahead, in accordance with the Law on JA, which prescribes that program should be approved until 1 December at the latest for the next calendar year.
- In order to have timely and smoothly planning on the training program, it is important to secure regular meetings of all standing commissions. Their composition, methods of work and decisions should be regulated, together with the methods of work and meetings of program groups.
- The relationship between the HJC and the SPC on one side, and the JA on another side, has been improved, and the HJC for the first time requested compulsory training program on the Law on execution and securities in January 2016. However, there is a need to intensify this cooperation, with more active role of the HJC and the SCP in designing training programs.
- In drafting curricula, input from the “outside” world – civil society and especially the academia – is a particularly fruitful source of reflections during the program building. It is already recommended to include more university professors and other experts in the composition of program bodies and standing commissions. However, it is also recommendable to consult academia, attorneys, and civil society sector during the drafting phase in the form of consultation meetings, conferences, round tables, as well as through surveys and opinion polls on the quality of justice.

- Consultation process with the Court of Cassation and appellate courts in detecting and respecting the real training needs of holders of judicial offices already exists. However, this process should be more intensified and institutionalized in a form of consultation meetings prior to drafting the training program for the next calendar year. In addition, it is important to institutionalize the process of consultations on the assessment of conducted training during a year. Therefore, it is recommendable that JA, at least once in a year, conduct consultations with the appellate courts, prosecutor's offices and departments for judicial practice on the need to adjust programs, and to focus on the most important topics for that year.

#### Availability of information and design of the program

- For the sake of the easier orientation in the program, curriculum should be better designed, in order to be more readable.
- Information on 3 months operational plan is not posted on the website and made available to the public. Therefore, it is recommendable that the JA provides detailed information on its activities on the website, not only in order to make its work to be more transparent, but also to provide insight into the numerous activities being held during the year.
- The training curriculum should be accompanied by a separate calendar of activities for the lectures and other activities organized by the JA.
- JA should benefit from adopting the good comparative practices in terms of distinguishing between different activities, by developing a coding system for the courses. In other words, the JA will assign the code to each course (which preferable contains the type of training method used, year in which it is held, area of law, and basic or advanced level).

#### Program structure

- There is a need to introduce clear and uniform presentation of the training offered in the continuous training curriculum.
- Although the initial training differs on the type of judicial office the trainee plans to hold, all trainees undergo the same training. It is recommendable to reconsider this practice, and to allow more concrete and detailed training according to the trainees' plans and quotas adopted by the HJC and the SPC. In that case, part of the program should be common, and divided into the curriculum for future judges and future public prosecutors. In any way, there is a need to include more topics on interrelation between these two professions, such as the role of public prosecutors in civil cases, as well as knowledge and skills related to forensic and penitentiary law and human rights.
- The initial training program should also integrate workshops into the training program, and not provide them as a separate topic, as it is a form of work.

- There is room for improvement in the presentation of the curriculum, so as to facilitate identification of target groups.
- The continuous training program should be divided into compulsory and voluntary training program, which is further divided into general and specialized training programs. It is recommendable that the general training program is divided into the following areas: criminal law, civil law, commercial law, administrative law, misdemeanor law. Human rights should be integrated into the curriculum, as well as development of practical skills, which should be integrated for each target group separately.
- Specialized courses should follow legislative changes and development of new areas of law, which were not represented in the university curriculum, one of them being EU law.

### Content of the training program

- It is recommendable to prepare instructions on the content of the program, with the explanation what each element should contain, bearing in mind that the content needs to include specific information and skills to be transmitted by the training program. Training curriculum should contain the following elements
  - Title of the course
  - Training purpose and objective
  - Content overview
  - Teaching methods
  - Format of the work
  - Target group
  - Duration
  - Number of projected attendees
  - Number of groups
  - Training delivery schedule ( at least tentative)
  - Location
  - Professional competences, knowledge and skills that participants will acquire
  - Literature

In addition, it is important that JA prepare a detailed online timetable calendar of seminars, indicating:

1. exact date
  2. venue
  3. agenda
  4. lecturers
  5. duration of the training
  6. more detailed information on teaching methods and expectations from attendees
  7. more precise information on the materials.
- Bearing in mind Serbian reality (unstable legislative activity and unstable financing) it is realistic to provide timetable on a shorter basis (3-month plans).

- It is recommendable to include smaller number of topics in the program, but to concentrate on those of high relevance for that calendar year.

## Subject matter

### *Initial training program*

- The initial training curriculum should include more topics aimed to develop professional skills among attendees. Although the JA training curriculum seems to be well-balanced combination of theory after the introduction of novelties in 2015, there is an additional need to revise and modernize the curriculum by introducing new subjects, which would improve practical knowledge and skills, particularly legal reasoning, legal writing, communication skills and English for lawyers.
- In addition, there is a place to develop an additional set of optional courses that the trainees could attend in order to satisfy their interest and need to improve knowledge in certain areas of law. Those seminars can be conducted together with holders of other judicial offices in theoretical part, but practical work should be adjusted to each target group.
- There is a need to improve the curriculum on ethics and to include contents that will more oriented towards ethical dilemmas in practice and case solving.
- The training program on the jurisprudence of the ECtHR should be left as a separate module, but more human rights integrative approach should be developed to all areas included in the program.
- The training program on EU law is well balanced, but better focus on EU institutions, relationship between EU law and national law, as well as the jurisprudence of the CJEU is required.
- A list of specialized courses should be offered to trainees, such as the case with non-discrimination course and course on domestic violence. Selection of courses should be based on the needs assessment, as well as on the criteria of low representation in university curricula, such as: organized crime, asylum law, environmental law, human trafficking, medicine law, sports law, etc. Some of these areas are also indicated in TNA questionnaire.

### *Continuous training program*

- The continuous training program should be designed as competency based program, which implies the adoption of clear competences for prosecutors and judges of all instances.
- It is recommendable to include smaller number of topics in the program, in order to concentrate on those of high relevance for that calendar year.

- It is recommendable to recognize judges under three years of experience as a special target group in the training program, which is designed according to their needs. This program will include the following areas: ethics, legal writing, evaluation of evidence, expert opinion, compensation, and the burden of proof.
- It is recommendable to separate program for judges and prosecutors from their assistants as their needs for the training differ in significant extent.
- Curriculum on ethics should be expanded in order to ensure that the focus is not on disciplinary proceedings, but on problems that may arise in practice or that have taken place. In addition, the training program on ethics may be suitable for developing an e-learning module, that can be accessible at any time.
- It is important that all specialized courses, developed under the donor's support, remains within the corporate memory of the JA, such as the case with protection of whistle-blowers and hate crimes, and to be updated to current needs.
- It is important to adopt integrative approach in presenting the jurisprudence of the ECtHR in every topic covered by the program. This integrative approach already exists in some rudimentary form, but needs to be further developed.
- The EU law training program contains very solid basis for studying the EU law, but there is a space for its improvement when it comes to the issues of relations of EU law with national legal system, and role of national judge in the EU legal environment. In addition, it is important to continue offering general training program on the EU law in the next two years, and to introduce special programs for judges of commercial court and the Administrative court.
- A Training program on cyber crime should be expanded to cover the issue of securing of evidence and cooperation with court experts, and should be regularly updated in order to tackle current challenges.
- It would still be necessary to regularly update the curriculum in order to tackle current challenges. It should also be expanded to cover the issue of securing of evidence and cooperation with court experts.
- An additional effort should be put in place to introduce and set standards in training on usage of ICT system.
- In addition, concerning criminal law module, there is a need to advance the curriculum on the human rights module including post penal support and training module on alternative sanctions.
- Continuous training program should be further adjusted to the needs of specific courts, namely to local needs.
- There is a need to prepare a training program for misdemeanour court judges on human trafficking and asylum. Also, it is important to prepare a multitasking program on victim-centered approaches in human trafficking cases for the police, judges and prosecutors in order to increase investigations and prosecutions, especially having in mind that there is a decrease of identified victims, prosecutions, investigations.

- Corruption is already included in the curriculum, but it is important to continue with the trainings and to develop the curriculum in order to include additional topics on detrimental effect of corruption, and all relevant UN, EU and CoE standards in this area, including the jurisprudence of the ECtHR. Corruption, financial investigations and economy were highly placed in the questionnaire prepared for TNA, and it demonstrates that these topics need to be in the focus in years to come.
- A training program on domestic violence should be further extended in order to include the most relevant international standards and relevant jurisprudence of the ECtHR, as well as to include gender-based violence. These two topics are highly evaluated by respondents in TNA questionnaire.
- There is a need to further develop course on intellectual property law, and the JA can benefit from good practice models. Thus, it would be valuable to include topics such as hosting, cloud computing, etc. as well as the economic aspects of litigation in intellectual property, and should extend to administrative court judges, given their competences in administrative disputes related to intellectual property rights. This topic should be in the focus for the following years, as indicated by respondents to the TNA questionnaire.
- Although many trainings on non-discrimination law for judges of different instances were organized in the past three years, in responses to the TNA questionnaire this topic is still recognized as one of top priorities. Therefore, it is important to adjust the existing training program in order to satisfy more specific needs of different holders of judicial offices, including workshops on breaking prejudices and stereotypes as a powerful tool to understand stigmatisation, and vulnerability of certain groups.
- A training program on money laundering, illicit trafficking, war crimes and international humanitarian law, and crimes against commerce should be developed and introduced in the curriculum, while training program on human trafficking that already exist should be included in the curriculum. This topic is also indicated as priority topic in the response to the TNA questionnaire.

### Training methods

- It is necessary to adopt guidelines on the training methods used in both, initial and continuous training, and to use them uniformly in the curriculum. This would enable more careful consideration on the training goals and objectives, and the trainees' expectations.
- More detailed information on the training methods and expectations from participants should be included in the curriculum.
- The curriculum should reflect different needs of different target groups that are influencing different approach towards trainees and attendees. Thus, trainees should be exposed more to individual work at home, distance learning, as well as to simulations

and role plays, while attendees should be trained more using analysis of cases, through discussion and working meetings.

### Forms of work

- It is recommendable to adopt guidelines on different forms of work used in both, initial and continuous training, not to mix them with training methods, and to use them uniformly in the curriculum.
- Distance learning program curriculum should be designed for different target groups. Two group of programs should be developed: e-learning module for courses that will be open to users at any time, such as Legal English, and an avatar program for trainees, with will operate with smart cards and tests opened in certain phases of the training. This second program will be a component of the initial training program and will be developed in order to increase knowledge and professional skills of trainees, as well as to measure the success of their work with mentors. In addition, while e-learning modules are developing, there is a possibility to increase cooperation with donors that are already organizing this kind of training – ERA academy, HELP program of the CoE, etc.
- Study visits are identified in the response to the TNA questionnaire as the most valuable format of learning. Study visits are mostly covered by donors and therefore, it is difficult to plan them ahead. However, some provisional projection can be included in the training program for both, initial and continuous training and thus, in calendar of activities. The selection criteria should be developed in order to secure the transparency in this process, with particular attention to proportional representation of judges of different instances, and their specialization. In addition, program for each study visit should be developed, with adequate preparation before study trip, following the guidelines on the preparation of the study visit, which should be adopted.
- In the response to the TNA questionnaire, peer support is identified as one of the most desirable ways of transferring knowledge in judiciary. While other forms already exist, peer review should be introduced as a good way for overcoming insecurities and doubts for newly appointed judges and prosecutors.
- Multidisciplinary trainings should be included in a list of priority trainings, and they can be offered also in the form of e-learning tools that can be accessed at any time.
- Currently, the JA is cooperating with EJTN in the area of enhancement of methodology for training of trainers and resources for these activities is been secured from the JA budget and support of international partners (OSCE and USAID). This cooperation should be further expanded to allow for study visits and attendance of selected courses for trainees undergoing both initial and continuous training. This would increase the scope of training methods offered and also allow for a more diverse, yet more focused, training on ECHR and EU law.

## Lecturers

- It is recommendable to introduce a clear, transparent system for the selection of short-term trainers as this would increase trust in the training programs offered by the JA and also ownership of its curriculum.
- The selection process should be introduced only for the first time, while afterwards the JA will prepare a roster of experts that can be engaged when needed, based on prior engagements and evaluation sheets.
- It is necessary to revise current list of lecturers, and to post their CVs on the website of the JA, by areas of their expertise.
- It is commendable that representatives of some other professions, apart from lawyers, are also indicated as lecturers, mainly for development of professional skills.
- The ToT course is designed and implemented for lecturers and it is important that all trainers undergo this specific training, including university professors.
- The JA has the task to adequately prepare the lecturers by giving methodological hints before the training and this practice should be implemented in all cases. Therefore, the planing of agenda for each seminar requires prior meeting with lecturers and disscusion on the ways of the transfer of knowledge or clear instruction on deliverables provided by JA to lecturers.

## Materials

- The materials for trainings should be carefully prepared, especially if they are in a form of handbooks. In order to satisfy human rights integrated approach, it is advisable to present case law of the ECtHR, as well as the jurisprudence of the Constitutional Court and the Court of Cassation. Good example to this is a handbook on trial within reasonable time prepared in April 2016, and the JA should continue with this practice.
- The JA should have more proactive role in ordering judgments of the ECtHR that should be translated into Serbian. The working group for the ECHR will be in charge for proposing the list of judgments that should be translated in order to satisfy the needs for trainings for that calendar year. However, it is important to continue with the practice of preparing extracts of judgements into Serbian.
- Although the Law on Judicial Academy provides for the establishment of the Documentation and Information Centre, this provision is not yet implemented in practice. In the Documentation Centre, all the decisions of domestic courts would be deposited, which would enable good preparation of workshops and lectures for all types of training and, at the same time, they would serve as models for possible forms and contents of future decisions, particularly to persons, who do not have sufficient experience in the given area. Also, the Documentation Centre would deposit, translate, and group judgements of relevant international bodies.



- The JA should preserve all materials for the training provided by donors, which will guarantee their sustainability in the future.
- It is important to start translating the most important decisions of the CJEU and to integrate them in the training materials.

### Evaluation

- Development of monitoring system concerning quality of initial, continuous and specialized training that implies bidirectional evaluation system that would allow the assessment of the results of training or degree of advancement of knowledge of the participants, as well as the assessment of the quality of the program and trainers in cooperation with the Institute for quality assurance of education and with Faculty of Philosophy – Department for pedagogy and andragogy.
- Through reports following the trainings held, the trainers are also currently a part of the training needs assessment, since they also provide valuable feedback to training coordinators. In future, this practice should be formalized and used for the evaluation.

### III MODEL TRAINING CURRICULUM

#### 1. Preparation of the training curriculum

##### **First step: Training Needs Assessment**

TNA conducted under the component 2.1. has demonstrated that non-discrimination law was recommended as a topic that needs to be further elaborated and delivered in a form of the training. Therefore, this topic has been chosen to be presented in a form of as a model curriculum.

This topic was nominated or highly evaluated as important for the following areas of law:

**Labor law** – the Relationship between the Law on the Prohibition of Discrimination and the Labour Law; as well as the Law on the Prohibition of Discrimination and the Law on mobbing.

**Misdemeanor Law** – application of the Law on the Prohibition of Discrimination (Articles 50 - 60)

##### **Second step: Coordinator**

Proposal is submitted to Coordinator for continuous training, who is reviewing the proposal and prepares short report on trainings on non-discrimination law that were conducted in the past three years. The Coordinator prepares report for the program group on human rights. This report contains the following information:

2013 – 10 one-day trainings on non-discrimination law for judges of misdemeanor courts of both instances.

Aim: of the training was to enable judges to adequately decide on minor offenses stipulated in Articles 50-60 of the Law on the Prohibition of Discrimination by acquiring necessary knowledge in the field of non-discrimination.

Methods and forms of work: interactive lectures and workshops (real case analyses)

Topics: - the definition of discrimination

- different forms of discrimination
- international standards on non-discrimination (UN and CoE)
- legislative framework of the Republic of Serbia
- the practice of courts of general jurisdiction (criminal and civil)
- the role of the Commissioner for the Protection of Equality, with particular emphases on the cases concerning Roma segregation in education
- European legislative misdemeanor framework

2014 - 10 two-day seminars for judges of civil courts and their assistants entitled on Civil judicial protection from discrimination

Aim: to obtain a specific knowledge of civil legal protection from discrimination.

Topics: - international standards in the field of civil law protection from discrimination (with special reference to the relevant jurisprudence of the ECtHR).

- particularities of the civil legal proceeding in discrimination cases, particularly to evidence (the practical application of statistical data as evidence, the role of voluntary discrimination testers - testers and the reverse burden of proof)
- the role of the Commissioner for the Protection of Equality, its jurisdiction and procedure, and the Commissioner's position in strategic litigation
- other forms of legal protection against discrimination - criminal and misdemeanor - and their differentiation from civil protection

Methods and forms of work: interactive lectures, work in small groups, case study

2016 - an intensive program for the ToT on non-discrimination was adopted and will be realized until December 2016 (secures good lecturers' pool)

### **Third step: Program groups**

The proposal with prepared report is submitted to the program group on human rights, which can also initiate a joint meeting with program group for civil law and program group for misdemeanors. Program group prepares a draft program, bearing in mind previous trainings. In addition, program group assess if there is a need to offer additional courses on non-discrimination law for civil law judges of higher and appellate courts or criminal law judges and prosecutors, although it was not indicated in TNA. This is important, as sometimes priority areas and concrete topics marked in the questionnaire are set bearing in mind increased backlog of cases in certain area, without looking on another perspective – importance of training holders of judicial functions in legal areas that are new and which are developing through the case law of the ECtHR and CJEU.

### **Fourth step: Standing commissions**

Standing commission for continuous training reviews draft program, and make consultations with some stakeholders outside of judiciary- e.g. the Commissioner for the Protection of Equality who have experience with implementing the Law in practice by misdemeanor courts. The commission bears in mind existing teaching materials and lecturer's pool for this topic (taken from the list of lecturers and also bearing in mind additional list of judges who are attending ToT on non-discrimination law). Standing commission assess if there is a need to offer decides on projected number of judges that should undergo the training, and complete materials submits to the Program Council.

### **Fifth step: Program Council**

Program Council reviews proposal with accompanying materials, discuss it and adopts the program.

2. Model curriculum

**COURSE TITLE: NON-DISCRIMINATION LAW DIS17**

**(for judges of basic courts deciding in labour disputes)**

**INFORMATION THE PROGRAM**

<b>SDIS17B</b> <sup>52</sup>			
Training purpose:			
<ul style="list-style-type: none"><li>- to train attendees to recognize and distinguish discrimination case from ordinary labour dispute</li><li>- to differentiate between discrimination and mobbing</li><li>- to acquaintance with special procedure stipulated in the Law on the Prohibition of Discrimination that can be also used in labour dispute</li><li>- to understand special features of discrimination in employment</li><li>- to train participants in using relevant international labour law to resolve domestic labour disputes</li></ul>			
Training objective: judges deciding in labour law disputes are able to successfully distinguish between labour law, discrimination case and the mobbing and to apply adequate legal framework in order to attain protection.			
Number of persons: 20	Number of groups: 4	Duration: 2 days	Target group: judges of basic courts deciding in labour law disputes
Content overview:			
I. DISCRIMINATION			
<ul style="list-style-type: none"><li>- The definition of discrimination</li><li>- Different forms of discrimination</li><li>- Relevant case law of the ECtHR in relation to discrimination cases in employment</li><li>- Special features of discrimination in employment</li><li>- Procedural aspects of civil protection from discrimination:<ul style="list-style-type: none"><li>a) reverse burden of proof</li><li>b) situation testing</li><li>c) use of statistical data</li></ul></li></ul>			

<sup>52</sup> S – seminar; DIS – area (non-discrimination law); 17 – course offered in 2017; B- basic level

<p>d) importance of the opinion of the Commissioner for the Protection of Equality before the court</p> <p>II. MOBING</p> <ul style="list-style-type: none"> <li>- The definition of mobbing</li> <li>- Protection provided in a case of mobbing</li> <li>- Distinction between mobbing and discrimination</li> </ul>	
<p>Teaching methods: interactive lectures and workshops (case study)</p> <p>Forms of work: discussion, work in small groups</p>	
<p>Materials: Commentary on the Law on the Prohibition of Discrimination, selected cases of the ECtHR, extracts from monographs and articles</p>	
<p>Lecturers: maximum 4 per seminar among judges specialized in the area of non-discrimination and mobbing, as well as other non-discrimination law experts</p>	
<p>Location: Belgrade, Novi Sad, Kragujevac, Nis (the seat of JA and JA regional centres)</p>	<p>Training delivery schedule: March – May 2017</p>

### **INFORMATION IN THE CALENDAR OF ACTIVITIES**

<p><b>SDIS17B<sup>53</sup></b></p>
<p>Training purpose:</p> <ul style="list-style-type: none"> <li>- to train attendees to recognize and distinguish discrimination case from ordinary labour dispute</li> <li>- to differentiate between discrimination and mobbing</li> <li>- to acquaintance with special procedure stipulated in the Law on the Prohibition of Discrimination that can be also used in labour dispute</li> <li>- to understand special features of discrimination in employment</li> <li>- to train participants in using relevant international labour law to resolve domestic labour disputes</li> </ul> <p>Training objective:</p> <p>judges deciding in labour law disputes are able to successfully distinguish between labour law, discrimination case and the mobbing and to apply adequate legal framework in order to attain protection.</p>

<sup>53</sup> S – seminar; DIS – area (non-discrimination law); 17 – course offered in 2017; B- basic level

Number of persons: 20	Number of groups: 4	Duration: 2 days	Target group: judges of basic courts deciding in labour law disputes
<p>Agenda:</p> <p><u>First day</u></p> <p>10.00 – 10.45      Lecture on the definition of discrimination</p> <p>10.45 – 12.00      Workshop on defining different elements of definition (real and presumed personal characteristics, associated discrimination, real comparator)</p> <p>12.00 – 12.30      Break</p> <p>12.30 – 13.00      Lecture on different forms of discrimination (direct and indirect discrimination)</p> <p>13.00 – 14.00      Workshop on distinguishing between two forms of discrimination (case study of real and hypo cases)</p> <p>14.00 – 15.30      Lunch break</p> <p>15.30 – 17.00      Discussion on discrimination in employment (statistics, vulnerable groups, typical forms of discrimination)</p> <p><u>Second day</u></p> <p>10.00 – 10.45      Lecture on Reverse burden of proof in discrimination cases, presentation of the ECtHR and CJEU case law)</p> <p>10.45 – 11.30      Workshop on the Importance of using statistical data in order to find indirect discrimination (case study of real and hypo cases)</p> <p>11.30 – 12.00      Break</p> <p>12.00 – 14.00      Workshop on situation testing (analyses of real cases before the Commissioner for the Protection of Equality, analyses of hypo cases)</p> <p>14.00 – 15.30      Lunch break</p> <p>15.30 – 16.15      Lecture on the definition of mobbing and legal framework for the protection from mobbing</p> <p>16.15 – 17.00      Workshop on distinguishing between discrimination and mobbing (case study of hypo cases)</p> <p>Teaching methods:</p> <ul style="list-style-type: none"> <li>- all lectures will be presented in a form of PPT, and will be interactive in order to engage and involve attendees as active participants</li> </ul>			

<ul style="list-style-type: none"> <li>- workshops will be more practically oriented with the aim to enable attendees to recognize certain institutes and to discuss them with the group</li> </ul> <p>Forms of work:</p> <ul style="list-style-type: none"> <li>- lecturers will engage attendees to take part in discussions, to raise their concerns and questions in relation to the application of non-discrimination law and mobbing.</li> <li>- work in small groups: attendees will get different materials with hypo and real cases from domestic and international jurisprudence in order to analyse and discuss them with the group.</li> </ul>	
<p>Lecturers: maximum 4 per seminar</p> <p>Ass. prof. Tanasije Marinkovic, CV attached</p> <p>Ass. prof. Mario Reljanovic, CV attached</p> <p>Lidija Djukic, judge of the Supreme Court of Cassation, CV attached</p> <p>Employed in the Office of the Commissioner for the Protection of Equality</p> <p>Judges who completed ToT on non-discrimination law, list attached (Irena Garcevic, Jadranka Mali, Jadranka Mitrovski, Ksenija Roncevic, Natasa Stevanovic, Snezana Milicevic, Vesna Sekulic, Vesna Vukovic)</p>	
<p>Materials:</p> <p>N. Petrusic, I. Krstic, T. Marinkovic, Commentary on the Law on the Prohibition of Discrimination, JA, Belgrade, 2014, pp. 30-760, 240 – 280</p> <p>M. Reljanovic, Discrimination at Work – legislation and experience, <i>Anali</i>, 1/2014</p> <p>M. Reljanovic, How to Recognize a Mobbing, <a href="http://www.diskriminacija.ba/kako-prepoznati-mobing">http://www.diskriminacija.ba/kako-prepoznati-mobing</a></p> <p>Materials prepared for workshops (hypo cases and real cases from domestic and international jurisprudence)</p>	
<p>Location: Belgrade, Novi Sad, Kragujevac, Nis (the seat of JA and JA regional centres)</p>	<p>Training delivery schedule:</p> <p>16-17 March 2017 (JA, Belgrade)</p> <p>3-4 April 2017 (JA regional centre Novi Sad)</p> <p>28-29 April 2017 (JA regional centre Kragujevac)</p> <p>7-8 May 2017 (JA regional centre Nis)</p>

JA Coordinator: Momira Matic E-mail: <a href="mailto:momira.matic@pars.rs">momira.matic@pars.rs</a>	Deadline for applications: 1 March 2017

**COURSE TITLE: NON-DISCRIMINATION LAW DIS17  
(for misdemeanour judges)**

**INFORMATION IN THE PROGRAM**

SDIS17A <sup>54</sup>			
<p>Training purpose:</p> <ul style="list-style-type: none"> <li>- to train attendees to adequately apply Articles 50 – 60 of the Law on the Prohibition of Discrimination</li> <li>- to acquaintance with the most problematic issues that arose in current jurisprudence</li> <li>- to understand special features of discrimination cases</li> <li>- to understand detrimental effect of discrimination for vulnerable groups</li> </ul> <p>Training objective:</p> <p>misdemeanour judges are able to adequately apply misdemeanours stipulated in the Law on the Prohibition of Discrimination, together with misdemeanours stipulated in other laws which are overlapping in some cases.</p>			
Number of persons: 20	Number of groups: 6	Duration: 1 day	Target group: misdemeanour judges of first instance
Content overview:			

<sup>54</sup> S – seminar; DIS – area (non-discrimination law); 17 – course offered in 2017; A- advanced level (as trainings were already delivered in 2013).



<ul style="list-style-type: none"> <li>- Presentation of 11 misdemeanours presented in the Law on the Prohibition of Discrimination and their link with misdemeanours prescribed in other laws</li> <li>- Discussion on the misdemeanours that are prescribed with some other laws, and not in the Law on the Prohibition of Discrimination, such as Article 24 (prohibition of discrimination against national minorities) and Article 26 (prohibition of persons with disabilities)</li> <li>- Discussion on special features of discrimination cases: <ul style="list-style-type: none"> <li>in relation to the place and time of the execution of misdemeanours (discriminatory advertisement)</li> <li>in relation to the detrimental effect of discrimination case that must be assessed when determining the range of punishment, emphasis on the jurisprudence of the ECtHR</li> </ul> </li> </ul>	
Teaching methods: interactive lectures and workshops (case study)	
Forms of work: discussion, work in small groups	
Materials: Commentary on the Law on the Prohibition of Discrimination Handbook on the application of antidiscrimination misdemeanour law	
Lecturers: maximum 4 per seminar among judges specialized in the area of non-discrimination, as well as other non-discrimination law experts	
Location: (the seat of JA and JA regional centres) One seminar in Novi Sad One seminar in Kragujevac Two seminars in Belgrade Two seminars in Nis	Training delivery schedule: September – December 2017

### INFORMATION IN THE CALENDAR OF ACTIVITIES

SDIS17A <sup>55</sup>
<p>Training purpose:</p> <ul style="list-style-type: none"> <li>- to train attendees to adequately apply Articles 50 – 60 of the Law on the Prohibition of Discrimination</li> <li>- to acquaintance with the most problematic issues that arose in current jurisprudence</li> <li>- to understand special features of discrimination cases</li> <li>- to understand detrimental effect of discrimination for vulnerable groups</li> </ul>

<sup>55</sup> S – seminar; DIS – area (non-discrimination law); 17 – course offered in 2017; A- advanced level (as trainings were already delivered in 2013).

Training objective:

misdemeanour judges are able to adequately apply misdemeanours stipulated in the Law on the Prohibition of Discrimination, together with misdemeanours stipulated in other laws which are overlapping in some cases.

Number of persons: 20

Number of groups: 6

Duration: 1 day

Target group: misdemeanour judges of first instance

Agenda:

9.30 – 11.00 Presentation and discussion on misdemeanours stipulated in Articles 50 – 55

11.00 – 11.30 Coffee break

11.30 – 13.00 Presentation and discussion on misdemeanours stipulated in Articles 56 – 60

13.00 – 13.30 Presentation and discussion on the application of Article 24 (discrimination against national minorities)

13.30 – 14.00 Presentation and discussion on the application of Article 26 (discrimination against persons with disabilities)

14.00 – 15.30 Lunch break

15.30 – 17.00 Workshop on special features of discrimination cases: discussion on cases dealing with Roma segregation in education

Teaching methods:

- all lectures will be presented in a form of PPT, and will be interactive in order to engage and involve attendees as active participants, especially discussion about real cases from domestic practice
- workshop will be more practically oriented with the aim to enable attendees to understand the detrimental effect of discrimination and to impose punishment that is more proportionate and dissuasive in those cases

Forms of work:

- lecturers will engage attendees to take part in discussions, especially in relation to their cases
- work in small groups: attendees will get materials with the ECtHR case law and domestic materials on Roma segregation in education with the aim to discuss them and to recognize whether domestic practice is in line with the European standards

Materials:

N. Petrusic, I. Krstic, T. Marinkovic, Commentary on the Law on the Prohibition of Discrimination, Ja, Belgrade, 2014, pp, 340 – 380.

Handbook on the application of antidiscrimination misdemeanour law, Commissioner for the Protection of Equality, 2015, pp. 40 -80.

Materials with real cases from international jurisprudence:

- *D.H. and others v. the Czech Republic*, app. no. 57325/00, judgment from 13 November 2007 (GC)
- *Orsus and Others v. Croatia*, ECtHR, app. no. 15766/03, judgment from 16 March 2010

Materials with real cases from domestic case-law in relation to Roma segregation in education

Lecturers:

Branko Nikolic, expert, attached

Jasminka Papic, misdemeanour judge of second instance

Ass. Prof. Tanasije Marinkovic

Employed in the Office of the Commissioner for the Protection of Equality

Location: (the seat of JA and JA regional centres)

One seminar in Novi Sad  
One seminar in Kragujevac  
Two seminars in Belgrade  
Two seminars in Nis

Training delivery schedule:

15 September 2017, Belgrade  
28 September 2017, Nis  
10 October 2017, Kragujevac  
25 October 2017, Novi Sad  
15 November 2017, Nis  
2 December 2017, Belgrade

JA Coordinator: Momira Matic

E-mail: [momira.matic@pars.rs](mailto:momira.matic@pars.rs)

Deadline for applications: 1 September 2017

## IV ANNEX: GOOD PRACTICE EXAMPLE

An example of comprehensive training program in JA was prepared by an non-discrimination expert in December 2015 for the ToT on non-discrimination law. It was drafted under the TNA that was conducted reviewing previous trainings, the existing case-law and problems identified in practice, as well as feedbacks provided from judges who undergo trainings on non-discrimination law. The need assessment showed that:

- There is an undeniable need for a comprehensive and continuous training of future trainers in the field of non-discrimination;
- It is necessary to deepen the knowledge regarding the most contentious issues in practice in order to understand them and to overcome them; and
- There is a need to develop new materials in the field of non-discrimination, which will present the matter, taking into account the particularities of Serbian non-discrimination law and practice, and analysing the latest international non-discrimination practice.

### TRAINING PROGRAM FOR TRAINERS IN NON-DISCRIMINATION LAW

#### 1. The objective of the training

The training program has been designed, according to three basic objectives:

1. to strengthen the capacity of future trainers by transferring professional skills, knowledge and information;
2. to increase knowledge in the field of non-discrimination, including the national legal framework and applicable international law, and
3. the harmonization of court practice in the area of discrimination by specializing judges of different courts who will become recognized authorities in this field and who will have a possibility, in the *follow-up* activities, to exchange ideas and discuss controversial legal issues with other judges of higher and appellate courts.

#### 2. Forms of work in 2016

The training program will consist of:

- Five seminars in 2016 in the form of two two-days, two three-days seminars and one-day final seminar (period: March, May, June, October, December). Seminars will be interactive, with very active participation of future trainers.
- Work at home that will require a reading of previously prepared materials, case study, and essay writing in a form of comments on the judgment.
- Three-day study visit to the European Court of Human Rights. The visit will be held according to the schedule of oral hearing in non-discrimination case, preferably in July-October. On the

first day of the visit, future trainers will have a tour in the court and following discussion, on the functioning and work of the Court, as well as on non-discrimination cases, with particular emphasis on new trends. They will also get a briefing about the case that will be followed the next day. After returning to Serbia, future trainers will write a report on the visit to the European Court of Human Rights, and will critically reflect the case.

### 3. Training program

#### 1. TWO DAYS SEMINAR IN MARCH 2016

Venue: Belgrade

##### **First day**

Workshops – transfer of professional skills, knowledge and information

Trainers: Igor Milovanov, Maja Maksimović, Tamara Nikolić Maksić

The trainer is a person who is responsible for transfer of professional skills, knowledge and information by the use of adult education methodology. What is needed for each coach who works with adults is to know how adults learn, to hear about their motivation, as well as presentation techniques, which should enhance adult's learning.

**Aim:** Future trainers should be acquainted with basics of training work and the acquisition of basic skills of training and process management and interactive organized learning. Special attention is focused on development of competencies to manage the teaching process, through its functions: planning, organizing, leading and control/evaluation.

**Methodology:** work with the whole group (within the introductory theoretical assumptions, using teaching methods/presentation); work in small groups using interactive techniques; as well as working in pairs through the use of drama methods and "role play"; and simulation methods which are characteristics for the role of the coach.

**Working materials:** Printed materials for future trainers (handout): interactive training, the role of trainer in the training, interactive training methods, the rules of visualization and presentation, the table for evaluation; PPP (Power Point Presentation).

##### **Second day**

#### 1. Workshops for the ***identification and suppression of prejudices and stereotypes***

Trainer: Biljana Maletin

**Aim:** to identify prejudices and stereotypes among future trainers. Discussion about the harmful effects of prejudices and the need for their disclosure and suppression. Discussion on the extent to which prejudices and stereotypes can influence the adoption of inadequate judgment in discrimination cases.

Methodology: explanation of prejudices and stereotypes in the form of presentation; presentation of cases; group work – case study with the aim to recognize prejudices and stereotypes; presentation of national and international legal framework that imposes obligation for the State to combat prejudices and discussion on this subject, especially through the prism of the role of judges (Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, the Preamble of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 20, paragraph 2; Article 31, Paragraph 2 of the Law on the Prohibition of Discrimination, Article 41, paragraph 2 of the Law on Gender Equality)

Working materials: PPP (Power Point Presentation), materials for discussion work in groups

## 2. Workshop on the **relationship between stigmatization and discrimination**

Trainers: Dragana Ćuk, Jelena Vranješević

Methodology: interactive work in small groups; discussion on stigmatization, the notion and types of stigma, groups that are exposed to stigmatization through case studies

Aim: understanding of the relationship between stigmatization and discrimination

## 3. Lecture on **universal and European non-discrimination legal framework**

Lecturers: Ivana Krstić, Kosana Beker

Methodology: lecture with discussion on the importance of international conventions and their incorporation in domestic judgments in discrimination cases

Aim: to learn about the non-discrimination international standards which are relevant for the Republic of Serbia and obligation for judges to implement those standards. Particular attention will be dedicated to presentation of EU non-discrimination directives, as they were not analyzed thus far.

Materials: Milan Paunović, Boris Krovokapić, Ivana Krstić, *International Human Rights Law*, The Faculty of Law, Belgrade, 2014; FRA, Handbook on the European Antidiscrimination Law, IRZ, Belgrade 2015; relevant international law

## 1. **THREE DAYS SEMINAR IN MAY 2016.**

**Venue: Vrdnik**

Lecturers: Ivana Krstić, Tanasije Marinković i Kosana Beker

### First day

1. Lecture on the **notion and fundamental elements of discrimination** (acts of discrimination; justified/unjustified differentiation; what is considered to be personal characteristic – open list, real and assumed personal characteristic; as associative discrimination; comparator; subject of discrimination)

- Work in group: analyses and presentation of the following cases:

### international practice

C- 303/06, *Coleman v. Attridge Law*, 2008 (ECJ) – associative discrimination

C-423, *Sarah Margaret Richards v. Secretary of State for Work and Pensions*, 2004 – the question of real comparator

C-177/88, *Eliabeth Jihanna Pacifica Dekker v. Stichting Vormingscentrum voor Jong Volwassenen/VJV – Centrum/Plus*, 1991; C-438/99, ECJ, *Jimenez Melgar v. Ayuntamiento de los Barrios*, 2001, ECJ – when comparator is not necessary

### domestic practice

CPE: complaint no. 360, opinion from 21.03.2012. (assumed personal characteristic), complaint no. 99, opinion from 6.11.2010. (comparator), complaint no. 836, opinion from 27.7.2011. (other personal characteristics)

Methodology: work in small groups, discussion

Aim: a better understanding of the concept of discrimination and fundamental elements of discrimination; better understanding of differences between justified and unjustified differentiation; clarification of the notion of personal characteristics – open list of personal characteristics; better understanding of discrimination based on personal characteristics of family member or other close person; understanding of the concept of comparator and improvement of skills and knowledge for identification of comparator.

2. Lecture on **different forms of discrimination** (direct and indirect discrimination, the violation of equal rights and obligations, disturbing and degrading treatment)

- Work in groups: analyses and presentation of the following cases:

### international practice

C-4/02, 5/02, *Schonheit and Becker*, ECJ, 2003; C-184/98, *Helga Nimz v. Freie und Hansestadt Hamburg*, ECJ, 1991 – indirect discrimination

*Vona v. Hungary*, application no. 35943/10, judgement from 09.07.2013. - disturbance

### domestic practice

CPE, complaint E.P. v. Bank A., no. 947/2011, opinion from 01.08.2011. – indirect discrimination, complaint no. 07-00-488/2013-02, opinion from 13.9.2013. (indirect discrimination)

Decision of the Constitutional Court no. IV z – 27/2009, from 21.03.2013. – different treatment

CPE, complaint no. 489, opinion from 19.04.2012; complaint no. 622/2011, opinion from 25.05.2011; complaint no. 959, opinion from 25.06.2012; complaint no. 07-00-533/2013-02, opinion from 14.10.2013.– disturbing and degrading treatment

Methodology: work in small groups, discussion in the whole group

Aim: better understanding of different forms of discrimination, particularly the difference between direct and indirect discrimination

3. Workshops with case analyses where it is necessary to determine:

a) existence/non-existence of discrimination

b) form of discrimination – particularly indirect discrimination and hate speech

c) identification of comparator

Methodology: individual work, discussion in small groups, discussion in the whole group

Aim: a better understanding of the basic concepts related to discrimination, exercise through practical work which improves skills of future trainers for identification and proper distinction of basic elements and forms of discrimination

Materials: prepared materials with hypo cases for workshops

## **Second day**

1. Lecture on **other forms of discrimination** (calling into account, association to commit discrimination, hate speech)

- Work in groups and analyses of the following cases:

### Calling into account

*X v. Brighton and Hove City Council, Brighton Employment Tribunal, 2006/7* – victimisation

CPE, complaint no. 07-00-00518/2013-02, opinion from 17. 3. 2015. (victimisation)

### Association to commit discrimination

*Refah partisi and Others v. Turkey*, applications no. 41340/98 and others, judgement of the Grand chamber from 13.02.2003. – the prohibition of association

Conclusion of the Constitutional Court VIIIU no. 279/2009, from 17.03.2011; Decision of the Constitutional Court, VIIIU no. 249/2009, from 12.06.2012; Decision of the Constitutional Court VIIIU no. 4827/2011, from 14.11.2012. – inciting racial, national and religious hatred and the prohibition of organization

### hate speech

*Vejdeland and Others v. Sweden*, application no. 1813/07, judgement from 09.02.2012; *Feret v. Belgium*, application no. 15615/07, judgement from 16.07.2009; *Zana v. Turkey*, application no. 69/1996, judgement from 25.11.1997; *Surek v. Turkey*, application no. 26682/95, judgement of the Grand Chamber 08.08.1999. – hate speech

CPE, complaint no. 1080, opinion from 30.07.2012; complaint 171/2011, opinion from 28.2.2011.

First Basic Court, judgement from 7.3.2013

Appellate Court in Belgrade, Gž. 2426/14, judgement from 11.6.2014.

Methodology: work in small groups, discussion in the whole group

Aim: a better understanding of the basic concepts related to discrimination, exercise through practical work which improves the skills of future trainers to identify and properly distinguish the basic elements and forms of discrimination

2. Lecture on **positive measures**



- Work in groups and analyses of the following cases:

#### international practice

C-450/93, *Kalanke v. Freie Hansestadt Bremen*, ECJ, 1995; C-409/95, *Marshall v. Land Nordrhein-Westfalen*, ECJ, 1997; C-158/97, *Georg Badeck and others*, ECH, 2000; C-407/98, *Amrahamsson v. Forelquist*, ECJ, 2000

#### domestic practice

Appellate court in Belgrade,. Gž. no. 3216/13, judgement from 10.05.2013.

CPE, complaint no. 07-00-114/2013-02, opinion from 21.06.2013; complaint no. 07-00-148/2013-02, opinion from 21.06.2013; complaint no. 07-00-357/2013-02, opinion from 23.07.2013.

Methodology: work in small groups, discussion in the whole group

Aim: a better understanding of legal and factual equality, understanding of the concept of special measures, and the reasons for their introduction; acquaintance with basic elements of special measures

Materials: Equinet, *Positive action measures: the experience of the equality bodies*, Brussels, 2014

### 3. Lecture on the **proportionality principle**

- Work in groups and analyses of the following cases:

Decision of the Constitutional Court IU z – 455/2011, from 16.01.2013.

CPE, complaint no. 1673, opinion from 16.10.2012. – elements of the test of discrimination

Methodology: work in small groups, discussion in the whole group

Aim: better understanding of the principle of proportionality in the field of non-discrimination and its application to specific cases

### **Third day**

Lectures and workshops on the **most frequent areas of discrimination**

#### Discrimination in procedures before public authorities

Discrimination as a consequence of discriminatory legal provisions (*Van Ralte v. The Netherlands*, application no. 20060/92, judgement from 21.02.1997.; CPE, complaint no. 1010, opinion from 17.07.2012)

Discrimination as a result of discriminatory practice (*Karlahajnc Smit v. Germany*, application no. 13580/88, judgement from 18.07.1994; CPE, complaint no. 1800, opinion from 14.11.2012; complaint no. 07-00-184/2013 -02, opinion from 27.07.2013.

Methodology: lecture, work in small groups, discussion in the whole group

Aim: a better understanding of the most common areas in which discrimination occurs, particularly discrimination in proceedings before public authorities

### 1. Discrimination in employment

Relationship between the Labour Law and the Law on the Prohibition of Discrimination

Differentiation between mobbing and discrimination

Analyses of the practice:

*I.B. v. Greece*, application no. 552/10, judgement from 21.10.2013; *Kijatin v. Russia*, application no. 2700/10, judgement from 10.03.2011.

Supreme Court of Cassation, Rev 2 537/12, judgement from 27.06.2012; Basic court in Vrsac, no. II 6. P. 1. 749/10, judgement from 01.03.2012.

CPE, complaint no. 1110/2011, opinion from 12.09.2011; complaint no. 685/2011, opinion from 15.06.2011.

Methodology: lectures, work in small groups, work in the whole group

Aim: a better understanding of the most common areas in which discrimination occurs, particularly distinguishing discrimination and mobbing

### 2. Discrimination in the provision of public services and the use of facilities and spaces

Analyses of practice:

Supreme Court of Cassation, Rev 99/11, judgement from 10.02.2011.

CPE, complaint no. 998/2011, opinion from 07.09.2011; complaint no. 593, opinion from 14.05.2012; complaint no. 1449/2011, opinion from 25.11.2011.

Methodology: lectures, work in small groups and discussion in the whole group

Aim: a better understanding of the most common areas in which discrimination occurs, particularly discrimination in the provision of public services and use of facilities and spaces

Materials: Nevena Petrušić, Ivana Krstić, Tanasije Marinković, *Commentary on the Law on the Prohibition of Discrimination*, Judicial Academy, Belgrade, 2014; international and domestic practice, Nevena Petrušić, Kosana Beker, *Handbook for the Protection of Discrimination*, Belgrade, 2012.

### 3. **TWO-DAYS SEMINAR IN JULY 2016.**

**Venue:**

**Analyses of domestic legal framework and discussion on controversial legal issues**

#### **First day**

Lecturers: Nevena Petrušić, Lidija Đukić, Team for strategic litigation of the Commissioner for the Protection of Equality

Workshop with practical examples and hypothetical cases

Topics:

### **1. Use of statistical data as an evidence before the court**

Discussion on cases *D. H. and Others v. The Czech Republic*, application no. 57325/00, judgement from 13.11.2007 and *Orsus and Others v. Croatia*, application no. 15766/03, judgement from 13.03.2010.

### **2. About the Commissioner for the Protection of Equality, with emphasis on active legitimation**

### **3. Importance of the opinion of the Commissioner for the Protection of Equality before the court**

Analyses of domestic judgements who relates to *Vuckovic and Others v. Serbia*, application no. 17153/11 and others, judgement from 28.08.2012.

### **4. The rules on the reverse burden of proof and its application in practice**

Analyses of the following cases:

judgement of Appellate court in Novi Sad, Gž 4778/12 from 16.09. 2013.

judgement of Appellate court in Nis, Gž 865/13 from 27.06.2013.

judgement of Appellate court in Belgrade, Gž 512/14 from 10.03.2014.

judgement of Appellate court in Kragujevac, Gž1-322/13 from 05.03.2013.

Methodology: lecture, work in small groups, discussion in the whole group

Aim: acquaintance with some important institutes of non-discrimination law, a better understanding of the rules on the reverse burden of proof

## **Second day**

Workshops with practical examples and hypothetical cases

Topics:

### **1. Active and passive legitimation**

### **2. Urgent procedure**

### **3. Strategic litigation**

### **4. Situational testing**

Methodology: lectures, work in small groups, discussion in the whole group

Aim: a better understanding of certain issues that appears in practice, and analysis of domestic judgments in order to adopt skills and knowledge for their further application

Materials: examples from international and domestic practice

## **4. THREE-DAYS SEMINAR IN OCTOBER 2016.**

**Venue: Novi Sad**

## **Discrimination of particular groups**

Lecturers: Nevena Petrušić, Ivana Krstić, Tanasije Marinković, Kosana Beker, Professional Service of the Commissioner for the protection of Equality

Methodology: Lectures and workshops

### **First day**

#### **1. Religious discrimination**

Lectures and workshops on the following topics:

- The concept of religion and belief – analyses through the court practice (*Cambell and Cosans v. UK*, application no. 7511/76, 7743/76, judgement from 25.02.1982)
- *Forum internum* of freedom of religion and belief (*Buscarini and Others v. San Marino*, application no. 24645/94, judgement from 18.02.1999)
- *Forum externum* of religion and belief (work in groups: *Shaare Shalom v. France*, application no. 27417/95, judgement Grand Chamber from 27.06.2000, *Manusakis and Others v. Greece*, application no. 18748/91, judgement from 29.08.1996; *Mitropolitan Church of Bessarabia and Others v. Moldavia*, application no. 45701/99, judgement from 13.12.2001; *Sherif v. Greece*, application no. 38178/97, judgement from 14.03.2000; *Aga v. Greece*, application no. 50776/99, 5291299, judgement from 17.01.2003; *Hasan and Chaos v. Bulgaria*, application no. 30985/96, judgement Grand Chamber from 26.10.2000; *Kokkinakis v. Greece*, application no. 14307/88, judgement od 25.05.1993; *Larisis and Other v. Greece*, application no. 23372/94 and Others, judgement from 24.02.1998)

Workshop on the **use of religious symbols**

Materials: *Leyla Sahin and Others v. Turkey*, application no. 44774/98, judgement from 29.06.2004; *Eweida v. UK*, application no. 48420/10 and others, judgments from 15.01.2013; *Ladele and McFarlane v. United Kingdom*, application no. 48420/10 and other, judgment from 08.03.2013.

#### **2. Discrimination of national minorities**

Lectures and workshops on the following topics:

- The notion of national minorities
- The rights of national minorities
- Analyses of the CPE's practice (complaint no. 84, opinion from 20.01.2013; complaint no. 07-00-63/2013, opinion from 07.06.2013; complaint no. 15/2012, opinion from 11.08.2010; complaint no. 07-00-241/2013-02, opinion from 22.07.2013)

#### **3. Discrimination of children in education**

Lectures and workshops on the following topics:

- Discriminatory conditions for admission to the institution (CPE, complaint no. 360, opinion from 21.03.2012; complaint no. 07-00-148/2013 -02, opinion from 21.06.2013)
- Discrimination in institutions (CPE, complaint no. 07-00-498/2013-02, opinion from 11.10.2013, complaint no. 07-00-63/2013 -01, opinion from 07.06.2013; complaint no. 902, opinion from 11.06.2012; pritužb no. 07-00-401/2013-02, opinion from 15.10.2013).
- Upholding of stereotypical attitudes (CPE, complaint, no. 168, opinion from 18.01.2012)

## **Second day**

### **1. Discrimination of gender/sex**

The relationship of the Law on the Prohibition of Discrimination and the Gender Equality Law

Lectures and workshops on the following topics:

- difference between sex and gender (*Christine Goodwin v. UK*, application no. 28957/95, judgement from 11.07.2002; *L. v. Lithuania*, application no. 27527/03, judgement from 11.09.2007; *Van Cook v. Germany*, application no. 35968/97, judgement from 02.06.2003)
- the role of prejudices and stereotypes (*P.K.B. v. Turkey*, application no. 28/2010, decision from 24.02.2012; *Petrovic v. Austria* application no. 20458/92, judgement from 27.03.1998; *Konstantin Markin v. Russia*, application no. 30078/06, judgement Grand chamber from 22.03.2012.)
- sex discrimination (Supreme Court of Cassation, Rev. 647/2013, judgement from 25.07.2013; Appellate court in Novi Sad, judgement GŽ1. 2261/11, 30.03.1021; Supreme Court of Cassation, Rev2 687/2012, 27.12.2012; Appellate court in Novi Sad, no. GŽ1. 1013/12, judgement from 09.05.2012.

Work in groups and analysis of the CPE's practice:

(complaint no. 07-00-112/2013-01, opinion from 22.07.2013; complaint no. 1368, opinion from 28.09.2012; complaint no. 202, opinion from 24.02.2012)

Workshop on detrimental effect of multiple discrimination through case study analyses

### **2. Discrimination against sexual minorities**

Lectures and workshops on the following topics:

- Understanding of notions LGBTTIQA and their differentiation
- Margin of appreciation (analyses of: judgement C-267/06, *Tadao Marukov. Verorgungsanstalt der deutschen Buhnen*, ECJ, 2008; *Smith and Grady v. UK*, application no. 33985/96, judgement from 27.09.1999; *Lastig Prein and Beckett v. UK*, application no. 31417/96, 32377/96, judgement from 27.09.1999; *Salgeiro da Silva Mota v. Portugal*, application no. 33290/96, judgement from 21.12.1999; *Frette v. France*, application no.

36515/97, judgement from 26.02.2002; *Karner v. Austria*, application no. 40016/98, judgement from 24.07.2003; *Šalk i Korf protiv Austrije*, application no. 30141/04, judgement od 24.06.2010; *Valianatos i drugi protiv Grčke*, application no. 29381/09, 32684/09, judgement od 07.11.2013)

Work in groups and analyses of the CPE's practice:

(complaint no. 160, opinion from 08.02.2013; complaint no. 171/2011, opinion from 28.02.2011; complaint no. 07-00-566/2013, opinion from 20.12.2013; complaint no. 919/2011, opinion from 29.07.2011; complaint no. 163/2011, opinion from 28.02.2011)

### **3. Age discrimination**

Lectures and workshops on the following topics:

- Area of employment (CPE, complaint no. 1110/2011, opinion from 12.09.2011; complaint no. 571/2011, opinion from 13.05.2011; complaint no. 947/2011, opinion from 01.08.2011)
- Exemption of equal treatment in relation to age (judgement C-447/09, *Reinhard Prigge and Others v. Deutsche Lufthansa AG*, EUECE, 2011; C-132/11, *Tyrolean Airways Tiroler Luftfahrt GmbH v. Betriebsrat Bord*, EUECE, 2012)

## **Third day**

### **1. Discrimination of persons with disabilities**

The relationship between the Law on the Prohibition of Discrimination and the Law on the Prevention of Discrimination of Persons with Disabilities

Lectures and workshops on the following topics:

- discrimination in transportation (Supreme Court of Cassation, Rev. 3602/10, 16.12.2010; Supreme Court of Cassation, Rev. 66/12, 02.2012)
- non-pecuniary damages (Basic court in Kraljevo P no. 2580/10, 19.05.2010; Higher court in Kraljevo, Gž. no. 953/10, 01.09.2010)
- accessibility (CPE, complaint no. 1374/2011, opinion from 08.11.2011; complaint no. 936, opinion from 03.08.2011)
- no discrimination (CPE, complaint no. 1374/2011, opinion from 08.11.2011)
- offensive behaviour (CPE, complaint no. 906, opinion from 15.06.2012)

Workshop - analyze of discrimination against persons with intellectual and psychosocial disabilities (institutionalization, segregation, deprivation of legal capacity - non-compliance of national legislation with the provisions of the Convention on the Rights of Persons with Disabilities)

## **2. Discrimination based on health**

Lectures and workshops where international and domestic practice will be analysed:

(Appellate court in Novi Sad, Gž1 2334/12, judgement from 17.09.2012; CPE, complaint no. 07-00-488/2013-02, opinion from 13.09.2013; complaint no. 07-00-409/2013-02, opinion from 23.09.2013; complaint no. 07-00-474/2013-02, opinion from 20.12.2013; complaint no. 07-00-450/2013-02, opinion from 30.12.2013)

## **2. Discrimination based on political opinion or trade union affiliation**

Lectures and workshops on the following topics:

- characteristics of discrimination due to political or trade union affiliation
- exemption from the prohibition of discrimination (analyses of Constitutional Court decision no. VIU – 249/2009; *United Communist Party of Turkey v. Turkey*, application no. 19392/92, judgement from 30.01.1998; *Refah Partisi (Welfare Party) and Others v. Turkey*, application no. 41340/98, judgement from 13.02.2003; CPE, complaint no. 188, opinion from 18.01.2013; complaint no. 1480, opinion from 28.09.2012.)
- CPE, complaint no. 07-00-127/2014-02, opinion from 4. 9. 2014. – discrimination based on political opinion

## **5. FINAL ONE-DAY SEMINAR IN DECEMBER 2016.**

### **Venue: Belgrade**

Work on judgments

Aim: application of acquired skills and knowledge to a hypothetical situation

Methodology: individual work and work in pairs in order to prepare materials with hypothetical cases and writing of judgments based on the given fact and application of acquired knowledge, the presentation of results, discussion in the whole group

First part of the workshop:

- each group of two future trainers receives one hypothetical case
- the group has a task to apply the Law on the Prohibition of Discrimination and other relevant laws, as well as the relevant international law in order to prepare judgment and to incorporate the standards of the European Court of Human Rights in the reasoning of the decision

The time of work in groups is 180 minutes

Second part of the workshop:

- Each group presents a reasoning based on the relevant national and international practice
- Each group has 20 minutes for presentation
- Discussion after the presentation of all groups

Final test

The time: 60 minutes

*Aim:* to carry out future trainers through the entire matter covered by the training

*Methodology:* anonymous individual test in the form of selection of offered answers, open questions, analysis of hypothetical situations

Lecturers will give explanation of correct answers. Discussion about questions and answers and discussion on some issues that are still controversial or unclear to future trainers.

#### **4. Activities in 2017**

In early 2017, the trainers will take part in preparation of the syllabus for basic training of judges of higher courts, together with the lecturers who participated in the training. Afterwards, the training for judges of higher courts will be organized, and the trainers will provide a training, under the supervision of lecturers. Lecturers will give comments after the completion of the seminar in the form of praise and suggestions for improvement - from training skills, to the essence of basic training on the prohibition of discrimination.

#### **5. Follow – up activities**

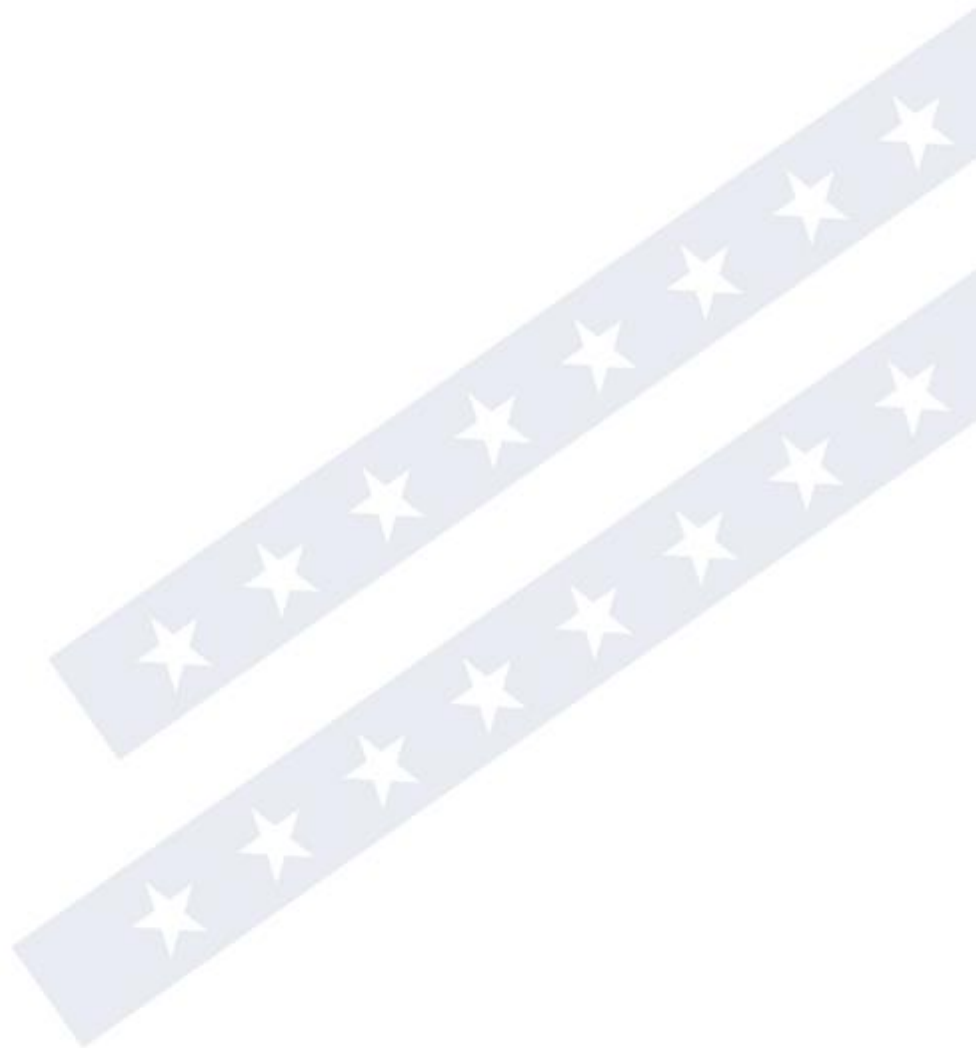
Every year after the training (starting from 2017) a two-day seminar will be organized with the aim to open discussion for the latest trends in the field of non-discrimination and to identify disputable issues in practice. In this way, trainers will have an opportunity to exchange opinions with other colleagues on some specific cases, to talk about the obstacles they have encountered in the course of the training for judges, which will allow the Judicial Academy to assess the need for additional training in the field of transmission of professional skills, knowledge and information for trainers. It will be desirable to include judges of appellate courts, so that they can together discuss disputable legal issues and unequal judicial practice.

#### **6. Materials**

For each topic in the program the list of domestic and international practices is proposed for the preparation of lectures and workshops. This list is not exhaustive and certainly will be updated during the program, depending on the appearance of new international practice, as well as available domestic practice, which will largely be provided by trainers themselves. Also, for each topic the available literature in Serbian is proposed. However, for the purpose of the training, it would be desirable to prepare a comprehensive textbook that would be adjusted to the Serbian context and which will provide a solid theoretical and practical basis of the concept and forms of discrimination to judges, as well as the most common areas in which discrimination occurs and the most discriminated groups. In addition, all future trainers will be involved in a creation of the handbook for future training at the end of training, which would



primarily analyze domestic judgments in the context of the national legal framework and in the light of the relevant international practice.



## **EUROPEAN UNION'S SUPPORT TO THE JUDICIAL ACADEMY**

Terazije 8/I, 11000 Belgrade, Serbia

**T:** +381 11 3023 869

**F:** +381 11 3023 877

[info@jap.rs](mailto:info@jap.rs)



This project is implemented by  
a consortium led by the British Council