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EUROPEAN UNION'S SUPPORT TO THE JUDICIAL ACADEMY

CONCEPT PAPER
ON THE ESTABLISHMENT OF
THE EXPERT JUDICIAL NETWORK FOR ECHR
IN THE REPUBLIC OF SERBIA

Annex 3 to 2nd Progress Report



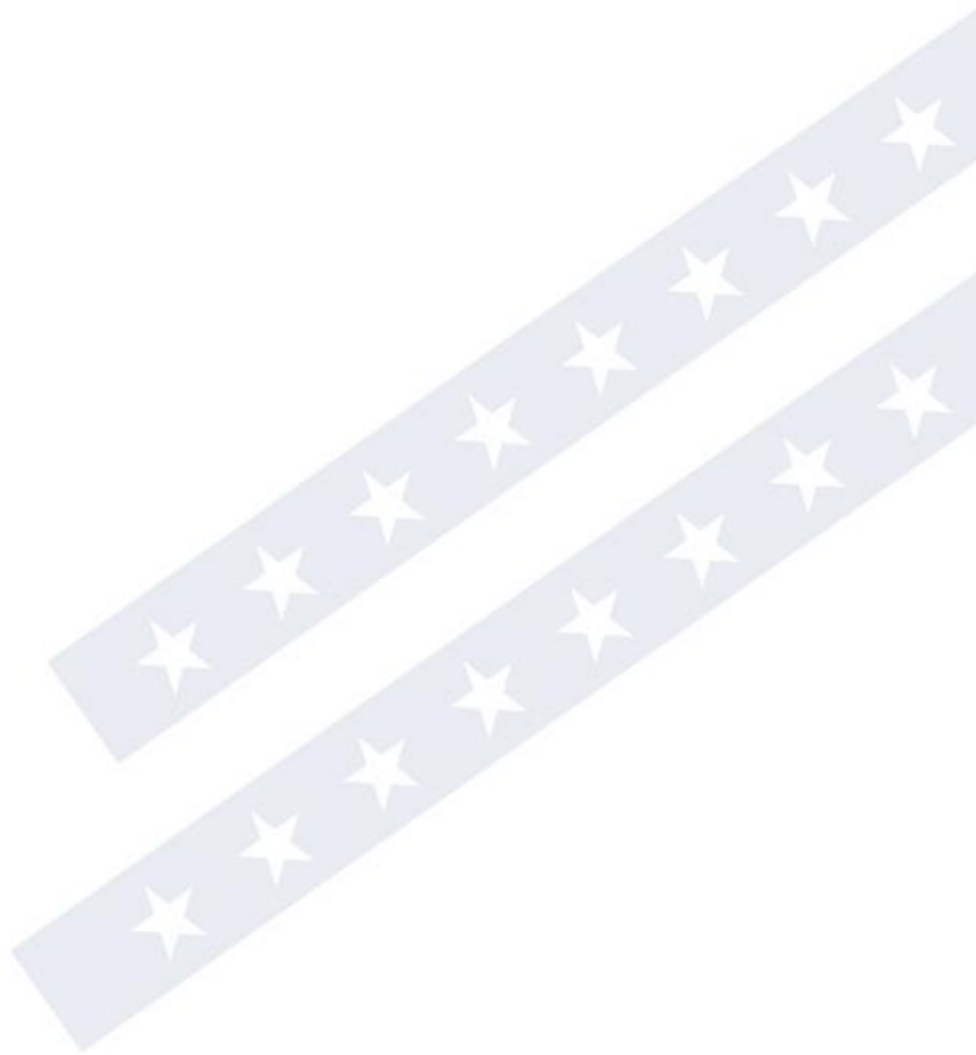


**Concept Paper
on the Establishment of
the Expert Judicial Network for ECHR
in the Republic of Serbia**

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Project “Enhancing Educational Activities and Improvement of Organisational Capacities of the Judicial Academy” EuropeAid/135635/IH/SER/RS

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Background

It has been recognized not only in Serbia, but also in other European countries, that knowledge among judges and prosecutors in EU law, ECHR, mutual legal assistance is insufficient due to significant increase in European and international legislative agenda and case law. To address this issue some countries like Italy, Netherlands, Bulgaria and Spain have established national judicial networks, which has greatly contributed to peer to peer learning culture and case law harmonization on national level. Not all the judges and prosecutors in some country can become experts in EU law or ECHR and there is no need for that, since their main job is to apply domestic legislation. But a specialist could be trained to provide advise and support to other colleagues within the judicial networks and this way state will solve problems that may appear in inadequate application of ECHR or EU law. Similar types of networks have been established on regional and international level like European Judicial Network, European Judicial Training Network, HELP Program, International Hague Network of Judges etc. to ensure the effective exchange of information and knowledge and promote direct judicial communication and cooperation in Europe.

Serbia Judicial Functional Review also encourages such initiatives - in Recommendation 100, Part 2 Internal performance, it clearly promotes the introduction of peer to peer learning among judges "Peer-to-peer learning could also be further fostered. Both the NJRS and IPA 2012 call for the development of a national network of peers for sitting judges. In a positive move, and though this effort has yet to begin, additional peer-to-peer training may be offered to individual judges at their court sites as an effective form of on-the-job training. Institutional linkages with European judiciaries could be intensified to provide greater peer-to-peer exchange. Routine colloquia could be convened to discuss specific issues, share experiences, and adopt best fit practices from abroad. Such efforts may further boost capacity, morale, and performance". Expert judicial network could be a useful secondary training tool in continuous education of Serbian judges and prosecutors having in mind limited resources and frequency and dynamics of inputs and case law in this area.

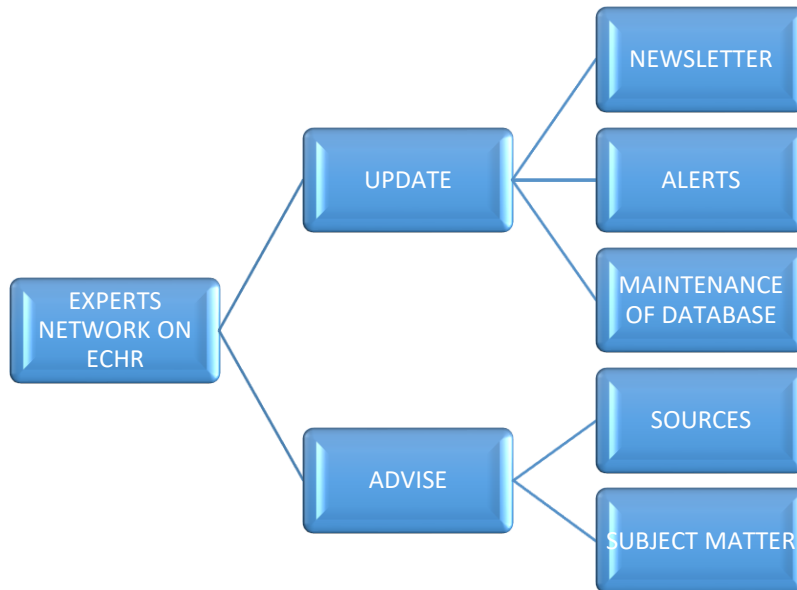
Mission of the network

The network will aim to:

- Introduce peer-to-peer learning as a new cost-effective and sustainable model of continuous training of judges;
- Enhance knowledge on ECHR and establish an interactive communication channel for judges, public prosecutors/deputy public prosecutors and court associates, to improve their knowledge and skills to efficiently process cases;
- Enhance consistency and case law harmonization by providing uniform advises and standardized knowledge for all judges (provide hub for judges' and prosecutors' knowledge);
- Ensure the effective exchange of information on Convention case-law and related information and promote direct judicial communication;
- Promote an improved coordination among international and national institutions on human rights training initiatives for legal professionals.

Task of the network

Possible tasks of the network could include following:



Who are possible members of the network?

1. Judges
2. Public prosecutors/deputy prosecutors
3. Judicial Advisers and Associates

Institutions that are source for network members:

- **High Court Council and State Prosecutorial Council** (champions and promoters of the network, establishing contacts with similar networks in other countries and design reforms and regulation for the network functioning);
- **Constitutional Court** (final instance in Serbia before the Strasbourg court, case law of this Court is also important knowledge base for the network members);
- **Supreme Court of Cassation** (experienced judges to be champions and promoters of this effort to advise, court advisers who will provide valuable inputs for newsletters and alerts);
- **Republic public prosecutor's office** (experienced deputy public prosecutors as champions and advisers, advisers for newsletters and alerts);
- **Appellate Courts and Public Prosecutors Offices** (most of the network members should be recruited from this part of judiciary, enough experience and respect from other colleagues for advises task among judges and prosecutors and associates could be a valuable resource for newsletters and alerts);
- **Higher and Basic Courts and Public Prosecutors Offices** (considering specificity of the ECHR law and necessity of strong language skills, valuable members for the network could be also identified within these group of younger, less experiences but enthusiastic judges. Same apply for court associates. This group could at the beginning focus on newsletters and alerts and progressively become advisers.)
- **Specialized courts (Administrative, Commercial and Misdemeanor)** particular needs of this group in relation to ECHR has to be discussed and analyzed further in order to define possible contribution and participation in the network.

Case law departments within the Supreme Court of cassation, Appellate and other courts will be a right place to look for the members considering their knowledge and role in judicial system.

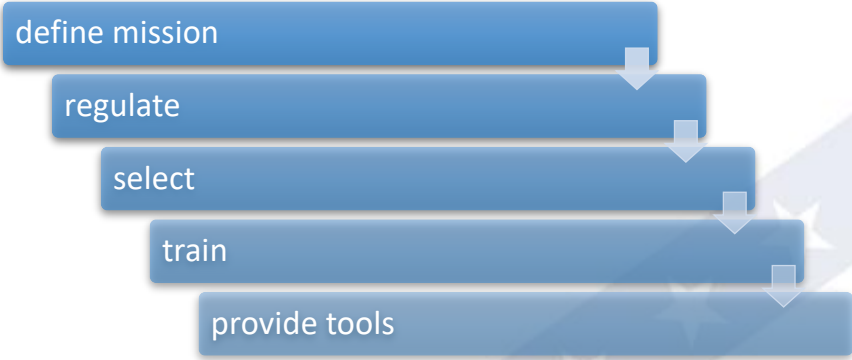
Relation between Constitutional Court and judiciary in general need to be further clarified and participation of Constitutional Court Judges in network, as well as contribution and position of case law of Constitutional Court in relation to ECHR.

Additional cooperation should be established with the State Agent office to communicate needs and novelties important for the judiciary. Forum of Judges or other judicial and prosecutorial association could become Project partners in developing and promoting this initiative.

International partners (like CoE, Twinning Project in HCC, USAID and Department of Justice, OSCE etc. that have already provided support in ECHR training) will be also consulted and their support for the idea and establishment of this network will be valuable and appreciated. Where possible, coordination and joint activities will be agreed and performed to enable sustainability and provide added value.

For the beginning this network should aim for 20 to 30 members.

Judicial Academy will perform the administrative role and will be headquarter of this network. The roster of lecturers for ECHR already established in the Academy will be used as a starting point and valuable resource in selection of judicial network experts.



Methods of selection:

There are 3 possible models for selection of specialists for the national judicial network on ECHR:

Model 1:

Project will prepare and organize a Conference in January to present this concept to wider judicial community. All relevant institutions listed above will be invited, as well as representatives of Judicial Academy, Ministry of Justice, other donors, and experts identified from the Judicial Academy roster of experts etc. Project will prepare a Presentation with clear concept for network establishments and additional foreign experts who are members of similar networks will be contracted or invited to present best practice and advantages of this type of learning and knowledge sharing.

Conference will be an opportunity to invite potential members to apply for participation in this network to JA and Project Team. All applications will be collected and selection of specialists will be conducted in an objective and transparent manner, based on criteria developed for that purpose.

Conference will also be an opportunity to get acceptance and endorsement for the idea by judiciary leaders.

Model 2:

Simpler but less effective model could be to directly communicate with leaders of relevant institutions to present them the idea, familiarize them with the concept and ask them to formally nominate judges/deputy public prosecutors or judicial associates for the national judicial network. A letter could also be used for this purpose.

This model of selection is more subjective and both Project and JA will have to rely on court presidents and public prosecutors' opinion and experience. Proposals could be cross-referenced with information that are available in the Judicial Academy on former trainers on ECHR but still it would be complicated to not accept the formal nomination.

Model 3:

If Project does not have time or resources to organize public presentation or conference, consultative meetings could be used to present the idea to judicial leaders. After that, a call could be published on the web site of the Judicial Academy, High Judicial Council and State Prosecutorial Council to invite interested specialists to apply for this network.

Once applications are received and collected, criteria will be developed to select experts and appropriate number of specialists will be selected and trained to serve this purpose.

How it will be established? Equipment and tools

Network will be established within the Judicial Academy and will present a hub of knowledge and excellence available for the whole judiciary.

JA will appoint a coordinator and administrator for this network. The network online platform will be a part of a wider Judicial Academy E-PLATFORM that is currently under development. As a part of future ECHR database this intranet portal will be established to enable a secure channel for direct communication among the judiciary and network experts. The methodology and frequency for drafting and sending newsletters, as well as standards for alerts, will be prescribed within the rulebook regulating the operation of the network. The Rulebook will be developed by the Judicial Academy and Network, with Project support. The resources will be free of charge for the user. The methodology will take into account the heavy time pressure imposed on legal professionals in their daily work.

The network will add value to the regular curricula on ECHR delivered by the Academy and the cross-referencing system developed by the Project. It will be designed in a tailor-made basis, meeting participants' specific training needs and learning pace, allowing flexibility.

Almost all court and public prosecutors offices in Serbia are equipped and connected to the internet. At the moment judiciary has to select secure or open internet access but it will also be upgraded with future reforms in this area that are in progress. New platform that is currently under development in JA will enable secure and effective tool for network establishment and will enable quick dissemination of information to whole judiciary.

Before the platform is established, the coordinator could collect e-mails of all judicial experts selected for the network and communication could be piloted via e-mail from contact point in the Judicial Academy. Judiciary could write to the coordinator in the JA and he/she could further distribute questions to network members and send back responses. Also, in the network inception phase, the newsletter and alerts could be distributed via e-mails that any judge or prosecutor in Serbia can easily open at his/her workplace.

Network could be further divided in sub-groups and smaller groups of specialist could be in charge/experts for specific article of the Convention.

Regulation

In order to establish this network to fulfill its mission and provide quality and sustainable peer to peer training to Serbian judiciary, slate legislative and regulatory changes are needed.

Functioning of the network will be regulated with the Statute and Rules of Procedure.

Slate amendments are needed in High Court Council/State Prosecutorial Council rulebooks to introduce some incentives for members of the network. It's not realistic to expect that members/specialists within the network will be additionally paid for this, but considering serious engagement that is required from them some incentives similar to those granted to mentors could be prescribed and introduced. It's also not an international practice to pay this positions separately, but performance of this important task needs to bring some reward or advantages to members: promotion in carrier, reduction of cases defined in clear %, reputation among colleagues, advanced training, study visits. Advanced training courses will be provided to network members by the Project, as well as contacts and trainings in similar institutions on regional and international level.

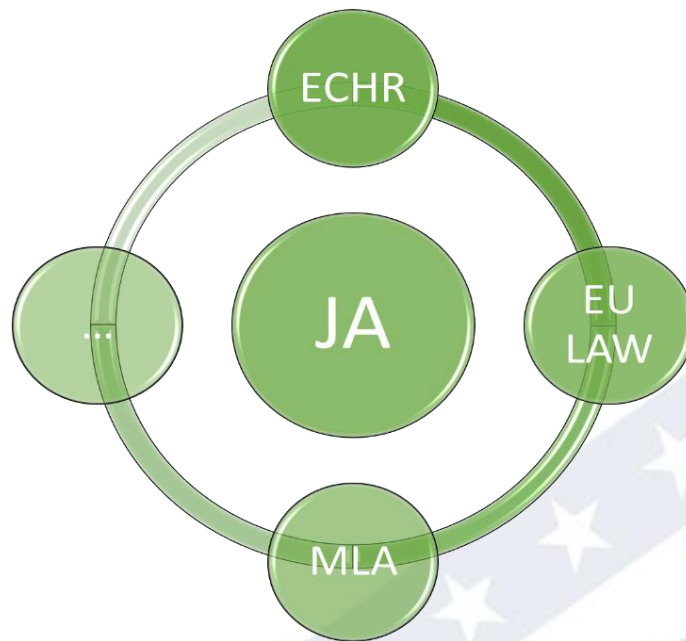
This possibility need to be explored and discussed further with judicial leaders and once decision is made adequate legislative changes will be just a technical mater.

Social Media

Establishing this Network will also allow the JA to provide within its internet resources computer-mediated technologies to allow the creating and sharing of information, ideas, career interests and other forms of expression via virtual communities and networks aimed at members of the Judiciary and the Prosecution.

Future

A positive outcome for this Activity can result in setting up other Networks, in fields in which this tool can reveal itself being particularly useful, such as international Mutual Legal Assistance or Enforcement of the *acquis communautaire*, setting the JA as the manager and support provider for the Networks, reinforcing its role as the hub for judicial knowledge.



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