HUMAN RIGHTS
EDUCATION AND TRAINING
FOR JUDGES IN SERBIA

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REPORT

ON HUMAN RIGHTS EDUCATION AND TRAINING FOR JUDGES IN SERBIA

Support to the judiciary in Serbia in the implementation of the European Convention on Human Rights

REPORT

ON HUMAN RIGHTS EDUCATION AND TRAINING FOR JUDGES IN SERBIA

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EXECUTIVE SUMMARY

This report is concerned with the content and arrangements for the human rights education and training of intending judges, serving judges and judicial assistants. It finds that there is, in principle, an appropriate component of human rights training included in the initial training programme for those intending to become judges. However, there is a need for a greater focus on actual training as opposed to the imparting of information and for the subject of the training to be followed up in the practical component. It also finds that there is still a need to improve the capacity of judges to apply the European Convention on Human Rights and the case law of the European Court of Human Rights and that addressing this weakness, which also concerns judicial assistants, should be a priority. In the longer term, the education and training on human rights should be able to build on appropriate foundations in university legal education but this will first require significant changes to both curriculum and methodology. The legislative framework relating to the Judicial Academy is generally appropriate, although continuing education should be made a mandatory requirement for the judges and the existing requirement for judicial assistants needs to be implemented. However, the institutional arrangements with regard to education and training have yet to be fully implemented and proper evaluation of the education and training provided should be systematically undertaken and the results acted upon. There is also a need to lessen the dependence on international trainers through developing and better utilising capacity in Serbia. In addition, appropriate resourcing for the Judicial Academy should be ensured so that it can fulfil its responsibilities with respect to human rights education and training. However, the task of updating on case law developments is not one that should only be carried out by the Judicial Academy. The process of reform now under way has the potential for remedying the current weaknesses.

1. INTRODUCTION

1. This report is concerned with the content, form and practical arrangements for the education and training of judges with respect to human rights, and in particular the European Convention on Human Rights ('the European Convention') and the case law of the European Court of Human Rights ('the European Court').

2. The report has been prepared by Dusan Ignjatovic[1], Jeremy McBride[2] and Ivana Roagna[3] at the request of the Council of Europe pursuant to the latter's project "Support to the judiciary in Serbia in the implementation of the European Convention on Human Rights at the national level", funded by the Kingdom of Norway ('the Project').

3. For the purpose of preparing this report, the authors had meetings in Belgrade in May and September 2014 with representatives of relevant institutions, namely, the Constitutional Court, the High Judicial Council, the Judicial Academy, the Ministry of Justice and the Supreme Court of Cassation, as well as with individual members of the judiciary, judicial assistants, trainee judges and university professors of law, as well as one non-governmental organisation involved in training for lawyers[4]. These meetings were concerned with both legal education in general and the specific content, form and practical arrangements that currently exist for training and education of the judiciary on human rights, together with questions on access to resources concerning human rights in Serbian, the linguistic skills of judges and judicial assistants[5] and the capacity of judges to act as trainers.

4. Also of assistance for the preparation of the report was the *Fact-finding mission Report Serbia (18–22 November 2013)*[6] prepared for the Council of Europe in November 2013. This is because it was concerned with methods of harmonising Serbian jurisprudence with the European Convention and the case law of the European Court and thus addressed some of the issues relevant to education and training on human rights.

5. In addition, account was taken of the proposals made in the *Action plan for Implementation of the National Strategy for the Judiciary Reform (period 2013–2018)*('the *Judicial Reform Strategy*')[7].

6. Of particular importance for the proposals included in a report aimed at enhancing the arrangements for education and training for judges with respect to human rights are Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities[8], European Charter on the statute for judges[9] and Opinion no 4 of the Consultative Council of European Judges('CCJE')on appropriate initial and in-service training for judges at national and European levels[10], all of which place emphasis on the importance of appointees having received some initial training before taking up their posts. Both the CCJE

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4 For the list of meetings, see Annex A.

5 "A judicial assistant assists a judge, prepares draft court decisions, studies legal issues, case law and legal literature, prepares draft legal opinions, prepares adopted legal views for publication, and autonomously or under the supervision and guidance of a judge carries out tasks set forth by law and the Court Rules of Procedure"; Article 58 of the Law on Court Organisation. There are three categories of them: judicial associate, senior judicial associate and court advisor. They must have passed the bar exam. Senior judicial associates must have a minimum two years' experience in the legal profession and court advisors must fulfil the conditions for election as a higher court judge. The latter perform "professional tasks relevant to a court department or the whole court" (Article 60).

6 Hereafter the *Fact-finding mission Report*. This report was prepared by Aleksandra Ivankovic-Tamamovic, Bert Maan and Nina Vajic.

7 Adopted by the National Assembly on 1 July 2013.

8 Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies.

9 Approved at a multilateral meeting organised by the Directorate of Legal Affairs of the Council of Europe in Strasbourg on 8–10 July 1998.

10 27 November 2003.

Opinion and the CCJE's later Opinion No. 9 (2006) on the role of national judges in ensuring an effective application of international and European law[11] underline the need for initial training to cover the European Convention[12].

7. Also of significance in this connection are Recommendation Rec(2004)4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training[13]and *The European Convention on Human Rights: the need to reinforce the training of legal professionals,* a Resolution of the Parliamentary Assembly of the Council of Europe[14], together with the Explanatory Memorandum prepared by Mr Jean-Pierre Michel[15] and his earlier Introductory Memorandum on the topic[16].

8. Education is a term often used to describe the process of learning the theory whereas training is one used to cover the one involved in giving the skills necessary to put this theory into practice. This report is, however, concerned with the way in which both processes are handled with respect to the Serbian judiciary. Furthermore, although training is of especial importance for those who are charged with implementing the law, it should be borne in mind that enhancing knowledge can be equally important for those who already have the necessary skills but need to be kept up to date about relevant developments for their use.

9. This report first looks at the context in which human rights education is to take place, particularly as regards the human rights commitments undertaken by Serbia and certain issues relevant to the role of the judiciary in their implementation. Thereafter, it reviews the current requirements for judicial appointments, the educational background of serving and candidate judges and the existing arrangements for providing education and training for judges on human rights. It then analyses the responses to a survey of judges and assistants as to their training needs relating to human rights and reviews a number of reform initiatives currently under way. Thereafter the report sets out suggestions for developing and enhancing these arrangements, both as regards initial training and continuing education and training after appointment. It concludes with an overall assessment of the present arrangements and the scope for enhancing them.

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11 10 November 2006.

12 Paragraph 44 of the former states that "In order to promote this essential facet of judges' duties, the CCJE considers that member states, after strengthening the study of European law in universities, should also promote its inclusion in the initial and in-service training programmes proposed for judges, with particular reference to its practical applications in day-to-day work" and the latter states that "10. The CCJE considers that it is important that international and European legal issues be part of university curricula and also be considered in entry examinations to the judicial profession, where such examinations exist. 11. Appropriate initial and in-service training schemes on international subjects should be organised for judges, in both general and specialist areas of activity. Although differences exist among European countries with respect to the systems of initial and in-service training for judges, training in international and European law is equally important to all the judicial traditions in Europe".

13 Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session.

14 1982 (2014), 7 March 2014; "The Assembly invites the member States to improve the training provided to law professionals on the Convention by: 10.1 ensuring that the Convention and the Court's case law form an integral part of the basic and further training they receive; 10.2 translating, in so far as possible, the case law of the Court into their national language(s); 10.3 calling on the services of the HELP Programme to meet their needs for co-operation in the training of law professionals on the Convention".

15 Doc. 12843.

16 AS/Jur (2013) 22, 13 June 2013.

2. BACKGROUND

10. This section is concerned with the status of the European Convention (and other international human rights treaties) within the Serbian legal system, the initial training and education on them before and after their ratification, the principal problems affecting implementation (both substantive and ones tied to the nature of the legal tradition), the use made in practice of the European Court's case law and the availability of European Convention-related material in Serbian and related languages.

11. Serbia has been a party to the European Convention since 3 March 2004 and has also ratified its First, Fourth, Sixth, Seventh, Twelfth and Thirteenth Protocols[17], which have added to the rights and freedoms which States party to it undertake to secure. In addition, it is also party to a considerable number of other human rights treaties, both at the United Nations level[18] and within the framework of the Council of Europe[19].

12. This is important not just because they are international commitments but because they are also particularly relevant to the work of the courts in Serbia.

13. Thus, Article 18 of the Constitution of the Republic of Serbia provides that:

> Human and minority rights guaranteed by the Constitution shall be implemented directly.
>
> The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. (...)
>
> Provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.

14. Furthermore, paragraph 2 of Article 145 of the Constitution provides that:

> Court decisions are based on the Constitution and Law, the ratified international treaty and regulation passed on the grounds of the Law.

15. Finally, according to paragraphs 4 and 5 of Article 194 of the Constitution,

> Ratified international treaties and generally accepted rules of the international law shall be part of the legal system of the Republic of Serbia(...)
>
> Laws and other general acts enacted in the Republic of Serbia may not be in noncompliance with the ratified international treaties and generally accepted rules of the International Law.

16. As a consequence all the treaties previously noted are an integral part of the body of law to be applied by the courts in Serbia and indeed judges are specifically required to give priority to them over any ordinary laws which have provisions that are in conflict with their requirements.

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17 All at the time of ratifying the Convention itself but the Seventh only entered into force on 1 April 2004, the Twelfth on 1 November 2009 and the Thirteenth on 1 April 2005.

18 Namely, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (12 March 2001), the Convention on the Elimination of All Forms of Discrimination against Women (12 March 2001), Convention on the Rights of Persons with Disabilities (31 July 2009), the Convention on the Rights of the Child (12 March 2001), the International Convention for the Protection of All Persons from Enforced Disappearance (18 May 2011), the International Convention on the Elimination of All Forms of Racial Discrimination (12 March 2001), the International Covenant on Civil and Political Rights (12 March 2001), the International Covenant on Economic, Social and Cultural Rights (12 March 2001), the Optional Protocol of the Convention against Torture (26 September 2006), the Optional Protocol to the International Covenant on Civil and Political Rights ('the International Covenant') (6 September 2001) and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (6 September 2001). It has also signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (11 November 2004).

19 The Council of Europe Convention on Action against Trafficking in Human Beings (14 April 2009), the Council of Europe Convention on preventing and combating violence against women and domestic violence (21 November 2013), the European Charter for Regional or Minority Languages (15 February 2006), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (3 March 2004), the European Social Charter (Revised) (1November 2009) and the Framework Convention for the Protection of National Minorities (1 September 2001).

17. Although all these mechanisms have procedures for assessing the extent to which the fulfilment of the relevant obligations have been achieved, in practice the most immediate indication of any potential difficulties in this regard is likely to be found in the procedures whereby individuals can complain about their specific problems in exercising their rights and freedoms at the national level. Apart from the possibility under the European Convention of submitting applications to the European Court, Serbia has accepted several other individual complaints procedures under the United Nations treaties[20], but the number of complaints before the UN committees is insignificantly small compared to the petitions addressed to the European Court of Human Rights.

18. Thus, by the end of 2013 there had been 97 judgments by the European Court in respect of applications submitted in respect of Serbia, with violations of at least one provision of the European Convention being found in 85 of them. These violations have concerned the lack of an effective investigation into loss of life, inhuman and degrading treatment, the lack of an effective investigation into allegations of such treatment, the right to liberty and security, the right to a fair trial, the length of proceedings, the non-enforcement of judgments, the right to respect for private and family life, the right to freedom of expression, the right to an effective remedy, the prohibition of discrimination and the protection of property[21].

19. The greater part of these violations have been concerned with various facets of the administration of justice and especially the operation of the courts. Many of them are also repetitive in nature – meaning that earlier rulings have not been remedied by a change in approach at the national level – and the systemic nature of some of the problems addressed is particularly evident in the cases concerning the length of proceedings and the non-enforcement of judgments, as well as in the fact that the European Court has adopted a pilot judgment regarding the need to account for the whereabouts and fate of missing persons[22]. However, the rulings as a whole illustrate the failure so far of the European Convention system – and in particular the methodology employed by the European Court in applying its provisions –to adequately permeate the judicial culture with the result that human rights issues can be satisfactorily resolved more often in the relevant national fora than in Strasbourg.

20. Furthermore, it should be noted that the level of applications submitted to the European Court remained relatively constant, with 4,891 allocated to a judicial formation in 2012 and 5058 in 2013 but this fell to 2787 by the end of 2014[23]. It can thus be expected that the findings of violations of the European Convention that will for some time be at least broadly comparable in number to those previously found by the European Court. Moreover, while some encouragement might be drawn from the fact that Serbia has fallen out of "the top 5" club of countries which have the largest number of applications pending before the European Court, something noted in the *Fact-finding mission Report*[24], it has only fallen to sixth place[25] and, in population terms, it is still the Council of Europe member state with the highest per capita ratio of applicants[26].

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20 Under Article 22 of the Convention against Torture (12 March 2001), Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance (18 May 2011), Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (12 March 2001), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (31 July 2003) and Optional protocol to the Convention on the Rights of Persons with Disabilities (31 July 2009). It has also accepted a number of inquiry procedures established by United Nations treaties – under Article 10 of the Convention against Torture (12 March 2001), Article 33 of the International Convention for the Protection of All Persons from Enforced Disappearance (18 May 2011) Articles 8 and 9 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (31 July 2003) and Article 6 and 7 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities – but these are not material for present purposes.

21 http://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf.

22 *Zorica Jovanović v. Serbia*, no. 21794/08, 26 March 2013.

23 http://www.echr.coe.int/Documents/Stats_analysis_ENG.pdf.

24 At para. 6.

25 At 31 December 2014 there were 2,698 applications pending (3.6% of the total) as compared with 11,250 (11.3%) on 31 December 2013.

26 Per 10,000 people there were 5.12 applications in 2011, 6.76 in 2012, 7.05 in 2013 and 3.9 in 2014. The next highest states in 2014 descending order were Liechtenstein (3.24), Ukraine (3.14), Moldova (3.11) and Croatia (2.58), with the average number of applications per head of population being just 0.68.

21. So far only two communications relating to Serbia have been determined by the United Nations Human Rights Committee. The first resulted in a finding of a violation of the right to freedom of expression as a result of the way in which the courts applied the law of defamation[27] and the second a finding of a violation of the obligation to properly investigate the death of the victim and to take appropriate action against those responsible[28]. However, it is understood that other communications are pending.

22. In this connection, the following statement of the Committee in its concluding observations on Serbia's last periodic report under Article 40 of the International Covenant is particularly pertinent

> The Committee takes note of the information that the provisions of international human rights treaties, including those under the Covenant, are part of the State party's laws and can be invoked directly in court. The Committee notes, however, that there are only limited examples where the provisions of the Covenant have been invoked in particular cases. While welcoming the delegation's contention that the provisions of the Covenant will be part of the curricula of the Judicial Academy, the Committee expresses concern about the insufficient awareness of the provisions of the Covenant among the judiciary and the wider legal community, and the practical application of the Covenant in the domestic legal system (art. 2).[29]

23. This observation is equally applicable to the general level of familiarity on the part of the judiciary in Serbia – although there are notable exceptions – with the rights and freedoms guaranteed by the European Convention and especially the case law of the European Court, which gives real substance as to their scope and facilitates their proper application.

24. This is not really surprising since, until recently, nothing approaching systematic training on the European Convention and the case law of the European Court has been provided for anyone in Serbia, let alone judges, prior to or following ratification of this treaty.

25. In the period leading up to ratification, there were certainly various efforts initiated or supported by the Council of Europe to raise awareness of the implications of the European Convention. In addition, there was also a compatibility study of the extent of compliance of what was then Yugoslav law with the requirements of the European Convention[30], which identified problems that needed to be addressed. However, these efforts only reached a minority of judges and certainly were not sufficient to equip them for the task of implementation.

26. Since ratification, seminars on particular aspects of the European Convention and the case law of the European Court have been held from time to time, but never on a regular or structured basis. These were organised primarily by the Council of Europe and the Belgrade Center for Human Rights together with the AIRE Centre. The former included ones proposed by Mrs Vida Petrovic Škero, the then President of the Supreme Court, for judges from a range of courts and others in partnership with the Judicial Training Center[31]. These seminars took place both in Serbia and in the form of study visits to Strasbourg. Notwithstanding that some of them led to the first set of national trainers on the European Convention, the seminars were, however, essentially *ad hoc* activities without any sustained follow-up and again they reached only a small minority of judges.

27. The only significant exception in this regard was a training programme organised by the Council of Europe for judges and assistants in the Constitutional Court during 2008–2009, which addressed the main provisions of the European Convention considered then to be relevant to the work of the Constitutional Court. This has been complemented by an arrangement with the

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27 *Bodrožić v. Serbia and Montenegro*, Communication no. 1180/2003, 31 October 2005.

28 *Marija and Dragana Novaković v. Serbia*, Communication no. 1556/2007, 3 November 2010.

29 CCPR/C/SRB/CO/2, 20 May 2011, para. 5.

30 *Compatibility of Yugoslav Law with European Convention on Protection of Human Rights and. Fundamental Freedoms, Belgrade* (Council of Europe, 2002).

31 This had been established by the Government, the Ministry of Justice and the Association of Judges to provide training in the judicial sphere.

European Court whereby some assistants from the Constitutional Court can spend six months working in Strasbourg and thereby enhance their familiarity with the European Convention and case law developments[32].

28. Apart from that programme and the internships in the European Court, the development of any expertise by individual judges and their assistants with respect to the European Convention and the case law of the European Court– which certainly does exist – has really been attributable more to their own efforts and perseverance rather than to any organised activity to assist them in this regard.

29. Moreover, although the limited extent of the training on human rights is mainly attributable to constraints on funding, which in all instances seems to have come from foreign and international donors, it needs to be borne in mind that the heavy workload of judges and the absence of any requirement to undertake continuing education and training, whether as a matter of law or practice[33], has also been an important factor in the absence of more sustained efforts to develop judicial familiarity with the requirements of the European Convention, as elaborated in the case law of the European Court. Certainly, a disincentive to undertake any form of training is the fact that, as no allowance made for undergoing training is made when calculating the workload of judges, participation in it can result in a failure to resolve the cases assigned to a judge in due time, for which disciplinary action can ensue.

30. No specific information was obtained concerning education and training in this period with respect to efforts relating to the International Covenant and other treaty obligations undertaken by Serbia. However, there is no reason to believe that this was more extensive than that directed to the European Convention and, given the absence of information, it is more likely that the treatment of those other obligations was much worse.

31. This situation only began to change with the adoption of the Law on Judicial Academy in 2009[34], which converted the former Judicial Centre for Training and Professional Development into the Judicial Academy and required intending judges to undertake and pass an initial training programme, which started in 2010.

32. As will be seen[35], this initial training specifically includes training on the European Convention and some other human rights treaties. However, this training has so far only been completed by 14 new judges joining the more than 3,000 judges who are already in post. Moreover, the approach to the provision of continuing education and training related to human rights has not significantly changed with the establishment of the Judicial Academy as many of its activities in this regard are still very much *ad hoc*, remaining dependent on obtaining international support and reaching only a minority of judges[36].

33. The absence of any more generally applicable training on the European Convention and the case law of the European Court of a sustained and systematic character is undoubtedly both a contributing factor to the continuation of a legal culture that is at odds with the juridical approach required for the effective implementation of the European Convention and a consequence of such a culture. As was noted in the *Fact-finding mission Report*[37], the positivistic approach to law – in which the law amounts to a collection of instructions providing comprehensive regulation for every issue that might have to be resolved – remains prevalent. From this perspective, there is no requirement for the formal text of a legal provision to be interpreted by a judge in a 'creative' manner so as to give effect to its underlying spirit; cases can only be solved on the basis of the direct instruction in the words used in the provision concerned.

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32 It is also understood that the Constitutional Court now organises training on the Convention and the Court's case law for its younger colleagues.

33 See paras. 70–79 below.

34 *Official Gazette of the Republic of Serbia*, No. 104/2009.

35 See paras. 113–133 below.

36 See further paras. 134–161 below.

37 At para. 6.

34. As the *Fact-finding mission Report* observed[38], judges are concerned to ensure the consistency of rulings with the case law of their own courts but the concept of harmonising this case law with that of the European Court's case law in respect of the European Convention is thus not something that is fully appreciated by them. Consequently, references to the latter case law is very limited and, even when this occurs, that does not mean that its reasoning is actually internalised and embraced. It would, therefore, be unrealistic to expect the courts to go further and interpret laws in a manner that is consistent with the European Court's case law.

35. Furthermore, the law for this purpose is to be found in various legislative measures, namely, codes, laws and decrees and does not include the idea of constitutional provisions as a yardstick against which individual legal provisions might be measured and – despite the formal position – be deprived of legal effect if an incompatibility was established. Moreover there is no overarching principle that legal provisions must meet certain minimum standards – substantive and procedural – such as would lead to either them or a particular use of them being found inadmissible, for example, because the outcome was arbitrary or the impact on liberty was disproportionate. This is in marked contrast to the exacting concept of the rule of law that underpins the application of the European Convention.

36. Thus, as one judge put it, there is approval by judges of the notion of human rights in abstract terms but they do not have a clear idea as to implement them in practice. Indeed, some will just read the text of the European Convention but never consider the case law of the European Court. This is an approach that also inhibits lawyers from invoking provisions of the European Convention and the relevant case law in their submissions, creating a vicious circle in which their relevance to the determination of disputes is not addressed.

37. Even though there are signs of a change in the antipathetic attitude of at least some judges to the European Convention and the European Court's case law, many continue to lack the necessary skill to make effective use of them. In many instances they seem to rely on judicial assistants to inform them about relevant case law and even then the focus is primarily on just the cases that have been decided in respect of Serbia, which limits the ability to discern less evident problems of compatibility.

38. The Constitutional Court does itself make reference to the European Convention and the case law of the European Court in its own rulings on individual constitutional complaints, as well as on other matters within its jurisdiction[39]. In any event, this is not done in a manner that would assist judges in other courts to understand and appreciate the reasoning process involved and thereby stimulate their emulation of it in their own rulings. Furthermore, the relationship between the Constitutional Court and the other courts in Serbia seems somewhat strained as the former is seen as being outside the general judicial system, which is unsurprising given its position under the Constitution as an autonomous and independent body charged with protecting constitutionality, legality and human and minority rights. Indeed, there seems to be some a considerable reluctance within the regular courts to take into account any rulings of the Constitutional Court when applying particular laws, although there are certainly instances in which they have done so.

39. There is also some reference by the Supreme Cassation Court to the case law of the European Court but this remains very limited and does not involve any in-depth analysis of it.

40. Initially, the problem of gaining familiarity was enhanced by the absence of translations into Serbian of many of the judgments of the European Court. However, the Council of Europe has since funded and distributed the translation of many key judgments involving other states. Moreover, all judgments and decisions by the European Court in respect of Serbia are now being translated by the Government and published in the Official Gazette and online[40]. All these translations are also accessible on HUDOC, the official database of the European Court's case law.

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38 Para. 40.

39 See, e.g., Violeta Besirevic and Tanasije Marinkovic, 'Serbia in a "Europe of Rights": The Effects of the Constitutional Dialogue between the Serbian and European Judges', (2012) 24 *European Review of Public Law* 401.

40 On the web page of the Serbian Agent before the Court: http://www.zastupnik.mpravde.gov.rs/lt/.

41. Moreover, as the *Fact-finding mission Report* noted, the linguistic similarities between Serbian and those of some other former Yugoslav republics means that judgments translated into the national languages of Bosnia and Herzegovina, Croatia and Montenegro are also accessible. Nonetheless, at the time of writing[41] the judgments in all four languages totalled just 839 – with a good number within that figure comprised of duplication in the judgments translated – as compared with the 16,674 judgments available in English.

42. However, with funding from the Council of Europe, the AIRE Centre has for many years produced a Serbian version of its Human Rights Legal Bulletin, in which a considerable number of significant judgments were summarised. This used to be distributed widely in a printed format but is now mostly available just online.

43. Another set of summaries of European Court judgments is that which has been produced by the case law department of the Constitutional Court since 2006 which is concerned with those considered to be of particular relevance for Serbia or involve especially significant developments in the interpretation of the European Convention. This is distributed in an electronic format but just to the Supreme Court of Cassation and then only on an informal basis[42]. The latter court also includes summaries of the most important judgments of the European Court in its own bulletin – which is mainly concerned with its own case law – and that is distributed to all its judges and judicial assistants, the Administrative Court and the appellate courts, as well as being downloadable from its website.

44. So far there is only a limited body of analytical literature in Serbian that is concerned with the European Convention and the European Court's case law. However, during their visits the authors were given the impression that the extent of this literature is beginning to become more extensive and certainly the first commentary on the European Convention by Serbian authors is now in preparation[43].

45. The relative paucity of this literature is also a reflection of the limited extent to which the European Convention and the European Court's case law figures in general legal education, which is discussed further below[44].

46. The limited extent of such literature and of a more comprehensive translation of the European Court's case law is significant in the present context because of the generally weak linguistic skills – at least in terms of the English and French, the languages in which this is mainly published – of most Serbian judges.

47. However, although the availability of material on the European Convention in Serbian is far from adequate, more use could probably be made of what is already available. Moreover, a greater and more public acknowledgement of the significance of this material for the work of the courts – both in terms of the basis on which cases are determined and the education and training of those sitting as judges and supporting them as judicial assistants – would almost certainly act as a stimulus for enhancing the extent to which the case law of the European Court and commentaries on it can be read in Serbian.

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41 29 January 2015.

42 *Fact-finding mission Report*, para. 57.

43 The Constitutional Court also has plans to produce – with the Project's support – a compendium of its judgments relating to the fulfilment of the reasonable time requirement for judicial decision-making under Article 6(1) of the Convention.

44 See paras.106–112 below.

3. REQUIREMENTS FOR APPOINTMENT

48. This section is concerned with the educational requirements for appointment as a judge, but especially those relating to human rights in general and the European Convention in particular, the impact on them of a recent ruling of the Constitutional Court, and the role and organisation of the Judicial Academy in fulfilling the educational requirements for judges.

49. Until 2010 appointees to the judiciary were required to be law school graduates, to have passed the bar exam and to have a period of professional experience in the legal profession, the length of which was dependent upon the level of court to which the person concerned was to be appointed, as well has possessing the theoretical and practical knowledge necessary for performing the judicial function, holding the skills that enable efficient use of specific legal knowledge in dealing with cases and having the ethical characteristics that a judge should own[45]. There was, however, no specific requirement concerning education or training in respect of human rights.

50. Many of those appointed would formerly have been judicial assistants who, as already noted[46], were appointed to the latter positions on the basis of being law graduates and having passed the bar exam.

51. This arrangement effectively provided a career path from judicial assistant to judge – although many assistants did not pursue it – but it lacked any formal training as a prerequisite for becoming the latter. However, the practical experience gained while being a judicial assistant would have mitigated this to some extent.

52. Appointment as a judicial assistant did not – and does not – depend on having any specific education or training in respect of human rights and there has never been any general arrangement in place to provide continuing education and training for judicial assistants[47], although some might attend seminars held on particular topics, including ones on human rights.

53. However, since 2010, there has been a requirement that persons to be appointed as judges must first be admitted to an 'initial training' and can only be appointed if they pass this initial training[48] which is partly provided in and generally organised by the Judicial Academy[49]. The latter has also been made responsible for the continuing training of judges after their appointment, as well as of judicial assistants and court staff[50].

54. The requirement to have undergone the initial training does not seem to be an absolute one since Part 9 of Article 40 the Law on the Judicial Academy also provides that:

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45 Articles 43–45 of the Law on Judges.

46 See n. 5 above.

47 But see paras. 83–86, 151–152 and 195–197 below as to the non-implementation of such a requirement under the Law on Judicial Academy.

48 It should be noted that the requirement in Part 8 of Article 40 of the Law on Judicial Academy for candidates for judicial appointment to have undergone the initial training only applies to appointment as a judge at misdemeanour or basic courts. As a result, it is theoretically possible for someone to be appointed as a judge in a court at a level higher than those courts without having completed the initial training. However, it seems more likely that those appointed to courts at the higher level will already be judges, whether appointed as such before the present requirement was introduced or pursuant to it.

49 Article 50(4) of the Law on Judges was amended by Article 18 of the Law on the Amendments to the Law on Judges to provide: "The High Judicial Council shall nominate to the National Assembly one or more candidates for each judge's position. The High Judicial Council shall, when proposing candidates for judges of misdemeanor or basic courts, nominate a candidate who has completed the initial training in the Judicial Academy, in accordance with the special law".

50 The mandate of the Judicial Academy also extends to training tor those who will and have become public prosecutors. This is not considered further in the present report but the role played with respect to the Judicial Academy by the High Council of Justice is played by the State Prosecutorial Council whenever the training of public prosecutors is involved.

> If there are no candidates who have completed the initial training among the candidates for the job, the High Judicial Council (...) may propose the candidate that satisfies the general conditions of election.

Nonetheless, the effect of Parts 8 and 9 of Article 40 is to give priority to those who completed the initial training for the purpose of nomination as a judge in misdemeanour and basic courts.

55. Although completion of the initial training is normally a prerequisite for appointment, it is not a guarantee of actual appointment since there must be a vacancy – which must be published[51] – and, while the High Judicial Council has the power of nomination (and thus has the power to determine whether or not all the relevant requirements have been fulfilled), it is the National Assembly that has the right to decide whether or not the person(s) concerned should be elected as a judge for the first time[52].

56. The notion and goal of all the training of judges has been specified as an

> organised process of gaining of and specialization in practical and theoretical skills and knowledge they need to perform their duties independently, professionally and efficiently[53]

which is certainly apt. The definition of 'training' is broad enough to cover 'education' and it will be seen that in many instances the latter is what is actually provided.

Initial training

57. As regards initial training, its notion and goal is understandably more limited than that for training in general. Thus, this is supposed to be

> an organised process of gaining practical and theoretical skills and knowledge understanding of the role and the basic principles of actions of judges ... with the aim of ensuring that judges at misdemeanour and basic courts (...) perform their duties independently, professionally and efficiently[54].

58. The requirements for admission to the initial training are that the applicants must have passed both the bar exam and the entrance exam[55], with a condition for taking the bar exam being that the person concerned is a law graduate.

59. The subject matter of the entrance examination – which is meant to determine the level of professional knowledge necessary for undergoing the initial training and ability for performing the duties of judges[56] – is required to include

> the applicable material and procedural civil and criminal law and law on misdemeanours as well as common knowledge[57].

However, only very basic familiarity with human rights issues can figure in the multiple choice format of the written examination, if this is even included[58]. Moreover, such a test does not constitute an assessment of the capacity of the candidates (if any) to apply knowledge in concrete situations.

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51 Article 47 of the Law on Judges.

52 Article 51 of the Law on Judges. However, Parts 10 and 11 of the Law on Judicial Academy provides that: "The High Judicial Council (...) Council may allow the person who has completed the initial training to be employed at the court (...) for a definite period of up to three years at the most if he/she applied for the position of a judge ... and if he/she has not been elected. If a candidate who has completed the initial training does not become a judge at misdemeanour or basic courts (...) within three years after receiving the certificate on the completion of initial training, including the years when the National Assembly elected judges at the misdemeanour or basic courts (...), this fact shall be taken into consideration when nominating for the election to these offices.

53 Law on Judicial Academy, Article 23.

54 *Ibid.*, Article 25.

55 *Ibid.*, Articles 26 and 28.

56 *Ibid.*, Article 29.

57 *Ibid.*, Article 30.

58 There is also a personality test and a requirement to present a case orally.

60. The initial training programme is supposed to encompass

> the implementation of the material and procedural laws, standards of judicial ...practice, ethical standards for judges (...), international legal standards, internal organization of performance of courts and prosecution offices, scientific and professional papers in the field of domestic and international law, as well as skills of the judicial ... work

and should also consist of

> theory and practice in the field of constitutional, civil and criminal law and law on misdemeanours as well as the general and professional knowledge[59].

61. There is no specific requirement concerning education and training in human rights but this is clearly implicit in the reference to 'international legal standards' and constitutional law and it is, in fact, an element of the initial training included in the programme developed for it by the Judicial Academy[60].

62. The initial training lasts for 2 years, during which those admitted become temporary employees of the Judicial Academy and receive 70% of the salary of a basic court judge[61]. The theoretical part is delivered by the Judicial Academy– although there are some court simulation exercises undertaken there as well – and the practical one entails working under judicial mentors in the courts, public prosecutors' offices and other state bodies, law firms and other organisations. The latter part constitutes 80% of the initial training.

63. Those who pass the initial training will then be eligible to be elected for a term of three years by the National Assembly, after which they can be elected to a permanent position by the High Judicial Council[62].

64. So far there have been three rounds of recruitment for the initial training, with the first cohort generally passing and having taken up appointment as judges[63]. The second and third cohorts are still undergoing their training and a fourth cohort is expected to start their training in Autumn 2015.

65. The numbers admitted to the initial training have been 22[64] in the first cohort, 27 in the second and 37 in the third. There will be 24 in the fourth[65], with 14 from the first cohort becoming judges[66].

66. Persons who are already judicial assistants have the qualifications to take the entrance exam and it appears that the majority of persons doing so have in fact previously held that position[67].

67. However, the Constitutional Court – despite underlining the importance of professional training for judicial personnel – has found the scheme of requiring all appointees to undergo the initial training scheme to be unconstitutional on account of Parts 8, 9 and 11 of Article 40 of the Law on Judicial Academy – which obliges the High Judicial Council to nominate as a candidate for the first election of judge by the National Academy only a person who had completed the initial

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59 Law on Judicial Academy, Article 35.

60 See para. 145 below.

61 The employment actually can last for up to 30 months but will end after successful completion of the initial training and election as a judge at a misdemeanour or basic court (or as a deputy public prosecutor); Law on Judicial Academy, Article 40.

62 The same arrangement applies to prosecutors who also go through the initial training partly provided through and generally overseen by the Judicial Academy. Election to a permanent position for prosecutors is, however, by the State Prosecutorial Council.

63 The High Judicial Council and the State Prosecutorial Council are supposed to determine the numbers of persons that can be admitted to the initial training by 1st March and then inform the Judicial Academy accordingly; Law on Judicial Academy, Article 26. This number is to be based on an assessment of the number of vacancies in misdemeanour and basic courts and in public prosecutors' offices that is then increased by 30%.

64 In the *National Judicial reform Strategy for the period 2013 – 2018* figures of 20 and 21 are given respectively at pp. 15 and 28.

65 All these numbers also include intending prosecutors.

66 5 became public prosecutors.

67 According to the Director, 95% of those admitted to the initial training had this background.

training under the auspices of the Judicial Academy[68] – being regarded as having introduced new criteria for the election of judges that were not provided for in the Law on Judges[69].

68. This ruling opens up the possibility of the direct appointment of judicial assistants as judges without the need for them to have undergone beforehand the initial training, although it does not appear that – in such a case – the Constitutional Court ruling would necessarily preclude some form of training requirement for judicial assistants, even if the practical aspect of the initial training would not be particularly relevant for them. This possibility is already provided for under the Law on Judicial Academy's provisions on continuing training[70].

69. Annually, one participant at the initial training costs the budget of Serbia around EUR 15,000, which includes net salary of trainees, taxes, contributions and the allowance received by mentors (10% to their salary). The total amount spent from the budget of Serbia for two-year training of the first cohort is thus around EUR 660,000 and slightly more for the succeeding two cohorts. As a result, this level of running costs for the initial training – which are not at all unreasonable – constitutes a significant proportion of the nearly EUR 1.6 million provided as funding from the State budget for the Judicial Academy in 2014.

Continuing education and training

70. There is also provision in the Law on Judicial Academy for it to provide continuing education and training for judges. The notion and goal of the continuing education and training is stated to be

> a process of specialization in theoretical and practical skills and knowledge with the aim of ensuring a professional and efficient discharge of judicial (...) duties[71]

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68 These provide as follows: "'8. When they propose candidates for election as a judge at misdemeanour or basic courts, or a deputy basic public prosecutor, the High Judicial Council or the State Prosecutorial Council shall have the obligation to propose the candidate that has completed the initial training at the Academy according to the success he/she has achieved at the initial training. 9. If there are no candidates who have completed the initial training among the candidates for the job, the High Judicial Council or the State Prosecutorial Council may propose the candidate that satisfies the general conditions of election. 11. If a candidate who has completed the initial training does not become a judge at misdemeanour or basic courts or a deputy basic public prosecutor within three years after receiving the certificate on the completion of initial training, including the years when the National Assembly elected judges at the misdemeanour or basic courts or deputy public prosecutors, this fact shall be taken into consideration when nominating for the election to these offices".

69 As well as the Law on Public Prosecution; Decision of the Constitutional Court IUz–497/2011, 6 February 2014, published in *Official Gazette* 32/2014 and Decision of the Constitutional Court IUz– 427/2013, 12 June 2014, published in *Official Gazette*111/2014. The Constitutional Court considered that the requirement, when nominating candidates for election as judges, to give priority to those who have completed the initial training operated as a limitation on the power of the High Judicial Council to independently nominate candidates for election as judges and that the completion of the initial training had become the decisive requirement which obliterated and precluded adequate evaluation of the remaining requirements for holding judicial offices, as stipulated by the Law on Judges. It thus concluded that this violated the constitutional guarantees regarding the equality of citizens who are in the same legal situation and the assumption of public functions under equal conditions, as well as the equality of members of national minorities in administering public affairs. Furthermore, it repeated its observation about the nature of the initial training being primarily to do the jobs of judicial and public prosecutor assistants. It also found objectionable the inclusion of this requirement in what it regarded as an "organizational" regulation as opposed to the laws regulating in a systemic way the requirements for election to a judicial function, i.e., the Law on Judges. In both rulings the Constitutional Court did not dispute that: "the professional training of judicial staff, specifically not only of those persons who are being prepared to perform judicial and public prosecutorial functions, but also of the elected judges, public prosecutors and their deputies, contributes to the raising of the quality in performing of those functions and that, therefore, it should be adequately evaluated within the criteria prescribed by the law both for the first election to a judicial, or to a public prosecutorial function, and on the occasion of election to a court, or to a public prosecutor's office of a higher instance, but it finds that the legal concepts are unacceptable under the constitutional law, according to which all the persons, who have not completed the initial training at the *Judicial Academy*, are thereby, essentially eliminated from the circle of candidates for the first election as a judge of a certain type of courts and deputy public prosecutors of a certain type of public prosecutor's offices. This particularly when bearing in mind that the trainees of the *Academy* in the course of the initial training primarily do the jobs of judicial and public prosecutor assistants, equally as judicial and public prosecutor assistants, who are not "beneficiaries" of such training.

70 See paras. 75–76 below.

71 Law on Judicial Academy, Article 41. This is a duty also in respect of public prosecutors.

which is also appropriate. There is no specific reference to human rights as an element of this notion and goal.

71. The Law on Judicial Academy envisages both general and special continuing training programmes being provided by the Academy.

72. The former is to be the means for realising "the right and obligation to continuous specialisation of judges" and is voluntary[72]

73. Each year, by 1st December at the latest, a draft annual programme for the voluntary training to be provided in the following calendar year should be submitted to courts[73].

74. Judges can then apply to take part in particular trainings that are offered but it is the Judicial Academy which actually decides on admission to them[74].

75. The special training is to be provided pursuant to a law or a decision of the High Judicial Council

> in case of a change in specialization, significant modifications of regulations, introduction of new techniques of work and in order to remove shortcomings observed in the work of judges ..., as well as for judges ... who are elected as judges ... for the first time and who have not attended the initial training program[75].

76. Such special training is obligatory[76] and its applicability to first time judges who have not attended the initial training could make it apt to cover the situation of any judicial assistants so appointed following the ruling of the Constitutional Court discussed above[77].

77. There is a requirement to reduce the workload and working hours by 30% during the period when judges are required to undergo the special continuing training programmes, which could help to make this requirement more tolerable in practice. There is not, however, any corresponding requirement for those undergoing other forms of continuing training, not just that which is voluntary but also that which is required for changes of specialisation, etc. This is not just a disincentive where the training is voluntary but an approach that may diminish its effectiveness where undertaking it is required.

78. So far there has been no law or High Judicial Council decision adopted which would require continuing education and training to be undertaken by judges[78]. There is thus no indication as to what might be the scope of special training for those elected as judges for the first time without having attended the Judicial Academy's initial training programme.

79. The Judicial Academy is required to keep a records of all the judges who have participated in its programmes of continuing training to provide this information to the High Judicial Council[79].

Mentors and lecturers

80. Mentors and lecturers at the Judicial Academy are required to be specially trained judges, prosecutors and members of other professions who directly implement its training programmes[80]. However, only judges and deputy public prosecutors can be mentors.

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72 *Ibid.*, Articles 43 and 44.
73 *Ibid.*, Article 46.
74 *Ibid.*
75 *Ibid.*, Article 43(2).
76 *Ibid.*
77 See paras. 67–68 above.
78 See paras. 135 and 147 below
79 Law on Judicial Academy, Article 42. No detailed information on this database and on how the use made of the information in it was received.
80 *Ibid.*, Article 19.

81. The lecturers who are permanent should be either judges or deputy public prosecutors who are sent to the Academy to work for a period of three years or other persons who are employed by it. On the other hand, the occasional lecturers can be persons hired as and when needed.

82. The training for mentors and lecturers who are judges and prosecutors is obligatory and is to be pursuant to a programme adopted by the Judicial Academy's Managing Board on the proposal of its Programme Council[81].

Training for assistants and staff

83. There are also provisions in the Law on Judicial Academy for an entrance examination for trainees to become assistants to judges[82], a special training programme for persons appointed as assistants[83] and the training of judicial staff[84].

84. The special training programme for assistants is obligatory, except for those who have attended the initial training[85]. However, it is not clear what is meant by this 'initial training'. The only references to this term in the Law on Judicial Academy are concerned with the training that is now a prerequisite for appointment as a judge. If that is what is intended, then the assistants benefiting from the exemption from the special training will presumably be persons who have not passed that initial training as otherwise they would have been elected as judges. However, it is possible that some other initial training is intended, even though that is not evident from the Law.

85. The training of judicial staff shall be voluntary, unless a special law says otherwise[86].

86. There is no specification of the requirements for the entrance examination or the special training programme, except that the former is to be adopted by the Judicial Academy's Managing Board on the proposal of its Programme Council[87] and the latter by the Managing Board with the consent of the High Judicial Council[88]. However, while he notion and goal of the training for judicial and prosecutorial staff is stated to be "an organized process of gaining the knowledge and skills with the aim of ensuring a professional and efficient discharge of duties"[89], no further details are given about this in the Law on Judicial Academy.

The Judicial Academy

87. The mission given to the Judicial Academy is to

> ensure the professional, independent, impartial and efficient implementation of judges' ... duties and professional and efficient work of judicial ... staff[90].

88. In more specific terms and apart from its responsibilities for conducting the entrance examination for the initial training and for organising and implementing the initial training and continuing education and training for both judges and prosecutors, the Judicial Academy is supposed to organise and implement the training of lecturers and mentors, as well as to organise and implement the professional specialisation of the judicial and prosecutorial personnel.

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81 *Ibid.*, Article 47
82 *Ibid.,* Article 49.
83 *Ibid.*, Article 50.
84 *Ibid.*, Articles 51–53.
85 *Ibid.*, Article 50(6).
86 *Ibid.*, Article 52.
87 *Ibid.*, Article 49.
88 *Ibid.*, Article 50
89 *Ibid.*, Article 51.
90 *Ibid.,* Article 2.

89. In addition, the Judicial Academy is charged with: establishing and maintaining cooperation with domestic, foreign and international institutions, organisations and associations in connection with its activities; issuing publications and performing other publishing activities; performing research and analytical work and cooperating with scientific institutions; systematically collecting data important for its work of the Academy, especially as regards the implementation and results of the training it has provided; managing a documentation and information centre; collecting and processing judicial practice; and performing such other tasks as are stipulated by the Law on Judicial Academy and the Academy's own Statute[91].

90. The Judicial Academy has premises in Belgrade, Kragujevac, Niš and Novi Sad[92].

91. The organs of the Judicial Academy comprise a Managing Board, a Director and a Programme Council[93].

92. The Managing Board is responsible for the general management of the Judicial Academy and its particular responsibilities cover the adoption of the entrance examination programme for the initial training and the rulebooks for its examination programme and that on the final examination, as well as the adoption of the initial and other training programmes[94].

93. The Director is responsible for the overall implementation of the work of the Judicial Academy[95]

94. On the other hand the Programme Council is described in the Law on Judicial Academy as "the Academy's expert body"[96] and this is reflected in the competences stipulated for it by this Law.

95. Thus, these competences comprise:

- Drafting the proposal for the entrance examination for the initial training;
- drafting the final examination proposal for the initial the training;
- drafting the programme proposal for the initial training of judges and prosecutors;
- appointing, with the consent of the Management Board, members of the Judicial Academy's standing commissions responsible for it training and examinations;

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91 *Ibid.*, Article 5.

92 In Belgrade it has 4 training rooms and one court room, offices for staff and the use of a library belonging to another institution but hotels are used for trainings. In Kragujevac it has a conference room, in Niš an office and conference room and in Novi Sad an office and the use of a conference room.

93 *Ibid.*, Article 6.

94 Thus, Article 9 of the Law on Judicial Academy provides that: "The Managing Board of the Academy shall: – adopt the Statute and other acts of the Academy in accordance with the law, and monitor their implementation; – elect and relieve of duty the Managing Board president; – elect and relieve of duty the Academy director, based on previously conducted public announcement; – elect and relieve of duty Program Council members; – adopt the entrance examination program for initial training; – adopt the rulebook on the entrance examination for initial training; – adopt the rulebook on the final examination at initial training; – adopt the programs of initial training and submit them to the High Council and State Prosecutorial Council for approval; – adopt the programs of continuous training, with the agreement of the High Judicial Council and State Prosecutorial Council; – adopt the training program for judicial and prosecutorial staff, with the consent of the High Judicial Council and the State Prosecutorial Council; – adopt a special training program for judges' assistants and trainees, with the consent of the High Judicial Council; – adopt a special training program for prosecutors' assistants and trainees and submit it to the State Prosecutorial Council for approval; – draft entrance examination program for judicial and prosecutorial trainees; – adopt the training program for mentors and lecturers; – decide on the mentors' and lecturers' fees; – adopt the annual report on the work of the Academy and annual computation; – approve the decision on the appointment of standing commission members; – adopt the rules on its activities; – approve the act on the internal organization and systematization of jobs at the Academy; – decide on resource use of the Academy, in accordance with the Law; – perform other duties in accordance with the law and Statute". It is not clear whether there is any significance in the initial training programme needing the 'approval' of the High Judicial Council and that for continuous training requiring the latter's 'agreement' but this is a distinction made in the original Serbian text.

95 Thus Article 14 of the Law on Judicial Academy provides that: "The director shall: – represent the Academy; – implement the decisions of the Managing Board and Program Council; – coordinate and organize the work of the Academy; – participate in the work of the Managing Board and Programme Council; – submit the annual activity report to the Managing Board; – pass the act on internal organization and systematization of positions in the Academy, with consent of the Managing Board; – head the professional and technical services of the Academy; – perform other duties in accordance with the law, Statute and other acts".

96 *Ibid.*, Article 16.

- establishing *ad hoc* committees and working groups in accordance with the Judicial Academy's Statute;
- drafting the proposal for the programme of continuing education and training for judges and prosecutors;
- drafting the proposal for a special training programme for judicial and prosecutorial assistants and trainees;
- drafting the proposal for the entrance examination for judicial and prosecutorial trainees;
- drafting the proposal for the programme for the training of judicial and prosecutorial staff;
- drafting the proposal for the training programme for mentors and lecturers and other specialised training programs;
- appointing, with the consent of the High Judicial Council and the State Prosecutorial Council, permanent lecturers from among judges and prosecutors;
- approving the decision on the election of permanent lecturers who are not judges and prosecutors;
- determining the criteria for nominating mentors and part-time lecturers and nominating them;
- determining the proposal for the rulebook for the entrance examination for the initial training;
- drafting the proposal for the rulebook for the final examination for the initial training;
- adopting its rules of procedure;
- ruling on complaints to the rank list of candidates who took the entrance examination for the initial training; and
- engaging in other activities in accordance with the Law on Judicial Academy and the Academy's Statute[97].

96. These are very extensive competences and the manner in which they are exercised will determine to a considerable extent the success of the education and training for which the Judicial Academy is responsible.

97. The Programme Council is comprised of 11 members, appointed by the Management Board, from amongst the judges and prosecutors, other experts and court and prosecutorial personnel. However, at least five members of the Programme Council must be judges, at least three of them must be prosecutors. In addition, one of the 8 members who are judges and prosecutors should be elected upon the proposal of the Association of Judges, another upon the proposal of the Prosecutors' Association and a third should be elected from amongst judicial and prosecutorial staff. Members of the High Judicial Council, the State Prosecutorial Council and members of the Management Board are precluded from appointment to the Programme Council.

98. Membership of the Programme Council is not a full-time position and is not paid[98] but members may be relieved of up to 50% of their regular duties on account of their work at the Academy, thereby ensuring that there is the possibility of them devoting the time required for extensive competences involved.

99. Under the Law on Judicial Academy, there is provision for the Programme Council to have six standing commissions with responsibility for the following matters: the entrance examination for the initial training; the initial training and its final examination; continuing education and training; the training of judicial and prosecutorial assistants and trainees; the training of judicial and prosecutorial staff; and the training of mentors and lecturers. The members of these standing commissions are appointed by the Program Council with the consent of the Managing Board[99]. There is thus scope to supplement the range of skills and knowledge of those serving on the Programme Council in the exercise of its various competences.

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97 *Ibid.*, Article 17.

98 Members of the Managing Board are entitled to receive 30% of the basic salary of a general court judge – pursuant to Article 7 of the Law on Judicial Academy – but there is no provision for relieving them of their other responsibilities.

99 Law on Judicial Academy, Article 18.

100. However, there was no indication given as to how, if at all, these standing commissions functioned other than that one dealt with the entrance examination for the initial training[100]. Indeed, there is little indication that the Programme Council has been especially active and, in particular, that it developed an effective relationship with the Managing Board. Moreover, the High Judicial Council has made it clear that there was a need for it to fulfil its functions[101].

101. Notwithstanding the roles given to the Programme Council and the Managing Board with respect to elaborating and adopting the various training programmes, this is all subject to the approval or agreement of the High Judicial Council[102], which means that it has – at least formally – a considerable influence over all training issues affecting judges. The latter is comprised of the president of the Supreme Court (who is its chairman), the Minister of Justice, the president of the competent committee of the National Assembly (and eight elective members – six judges, an attorney at law and a law professor – elected by the National Assembly.

102. The scope for influence enjoyed by the High Judicial Council does not seem, however, to have been exercised in practice. In particular, it is not clear whether it ever considered, let alone formally approved, the current human rights curriculum[103], as required by Article 9 of the Law on Judicial Academy.

103. Furthermore, although it has just been noted that the High Judicial Council has commented adversely on the performance of the Programme Council, there do not appear to have been any steps by the former to make the latter discharge its responsibilities. This may be a consequence of the workload of the High Judicial Council but, as consequence, the arrangements for ensuring that appropriate training is provided for judges are likely to be seriously weakened.

Conclusion

104. The present scheme gives the Judicial Academy an exclusive role in the training of first time judges but does not exclude other judges from undertaking education and training with bodies other than itself, except in the case of training required to be taken by a law or decision of the High Judicial Council. There is, however, no provision for the latter education and training to be formally recorded and thus potentially taken into account in the assessment of judges and in decisions affecting their promotion.

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100 *Judicial Academy* (undated), p. 2

101 A new one was in the process of being constituted at the time of the authors' visits.

102 In the case of prosecutors, the State Prosecutorial Council.

103 *Overview of the Standard Curriculum of Training Courses for Judges and Prosecutors in the Area of Human Rights* ('the *Standard Curriculum*').

4. CURRENT EDUCATION AND TRAINING

105. This section considers first the legal education provided by universities and for the bar course. It then examines the training now being provided by the Judicial Academy both for intending and serving judges and by others, with a particular focus on the training with respect to human rights. There is an analysis of the suitability of this training in principle and its effectiveness in practice, as well as an attempt to identify any omissions or shortcomings both in terms of content and reach and the extent of the dependence on donors and foreign trainers for its provision.

University and bar education

106. With limited exceptions, there does not seem to have been any significant development in legal education over the course of the last two decades. Thus, it mainly embodies the positivistic approach, reflecting and reinforcing the approach seen in the judiciary, but at the same time does not take account of the problems arising from the actual practice of law.

107. In general, the focus is on memorising the lectures rather than on promoting understanding and reasoning skills. There is usually no writing to be undertaken as part of assessment, which is essentially based on an oral examination.

108. Some improvements in the approach to legal education have certainly occurred but these have not been generally applicable. Thus, it is noted in the *Judicial Reform Strategy* that

> In the period 2006–2012 a significant progress has been made in terms of training students in the field of application of law and practical legal skills. A series of cooperation agreements have been signed between law schools and judicial representatives. Practical legal education in the form of legal clinics, courses on writing legal documents, moot courts simulating arguments before domestic and international tribunals, internship in courts, prosecutors' offices and law firms have been introduced into the law schools' curricula.
>
> The problem lies in the fact that there is still no uniform legal education reform strategy and that only a small percentage of law students take part in such study programs. The number of students attending the courses, study programs and internships is limited and mainly reserved for students who meet specific criteria, such as a high grade point average or fluency in foreign languages. Apart from that, courses which imply acquiring practical legal knowledge and skills are optional, while the exams in the courses that are most closely related to the functioning of the judiciary test only the level of the acquired theoretical knowledge and only in oral exam[104].

109. To the extent that human rights is an element of the courses taught, this will be a small element within the framework of the compulsory course on constitutional law and of optional courses on public international law. There is generally no integration of the European Convention and the case law of the European Court into substantive subjects for which it has considerable relevance, such as criminal law, civil and criminal procedure, employment law, family law and property. The overwhelming majority of students will thus graduate with at best an overview of the European Convention and have no understanding of how to access the case law of the European Court or to use the reasoning process which the latter employs in its rulings.

110. There are certainly some exceptions to this portrait, with attempts to integrate the European Convention into a wide range of courses at a few universities and the introduction of specialised courses on human rights at both the undergraduate and postgraduate level. Nonetheless, those graduates who have a good understanding of the European Convention and the methodology employed by the European Court are more likely to be ones who have afterwards taken Masters degrees outside the country than those whose university education has solely been in Serbia.

104 Pp. 15–16.

111. The generally limited familiarity of law graduates with the European Convention, as well as their lack of the skills needed to apply it in concrete situations, is not remedied by the subsequent taking of the bar examinations since there is no additional educational programme for them and competence in any aspect of human rights law is not a component of the assessment made.

112. As a result, law graduates who have passed the bar examination cannot be expected to have any significant foundation in human rights in general or in the European Convention and the case law of the European Court in particular. This needs, therefore, to be the current assumption on which the Judicial Academy addresses the training of candidates to become judges.

Initial training

113. Part of the programme provided in this training is said to include the "acquiring of knowledge about the European Convention on Human Rights and standards of the Court of Human Rights in Strasbourg"[105]. Furthermore, it is stated that the "themes on the prohibition of discrimination, prohibition of mobbing, gender equality and protection from family violence are specifically dealt with" but it is understood that these topics are dealt with separately from the treatment of the European Convention.

114. The authors were also told that the training on the European Convention covered Articles 3, 5, 6, 8 and 10 and Article 1 of Protocol No. 1. In addition, they were furnished with the Standard Curriculum, which follows the one found on the HELP website of the Council of Europe[106].

115. As has already been noted[107], it has not been possible to establish whether the Standard Curriculum was ever formally approved by the High Judicial Council. Moreover, it should be noted that this curriculum is described as one for use also in the "continuous training" of judges.

116. The *Standard Curriculum* covers in a fair amount of detail first a general introduction to the European Convention and the procedure before the European Court; as well as the key terms used. There is then a focus on specific areas of law: Constitutional Law (covering the relationship between international and domestic law, elements of Articles 4, 6, 8 and 14); Civil Law (covering the same elements of Article 6 as under Constitutional Law and also elements of Article 8 and 10 and Article 1 of Protocol No. 1); Criminal Law (covering the same elements of Article 6 as under Constitutional but also some additional ones and elements of Articles 2, 3, 5, 7, 8, 9, 10 and 14 (with some overlap with topics under Civil Law)); Family Law (covering elements of Articles 8 and 12 but with some overlap with those under Criminal Law) Administrative Law (covering the same elements of Article 6 as under Constitutional Law and elements of Articles 2, 3, 5, 9 and 14 and Articles 1, 2 and 3 of Protocol No. 1, with some overlap with those under Civil Law); and Labour Law (covering only by headings Articles 3, 9, 10, 11 and 14, with undoubted overlap to those under other headings).

117. Although it is useful to relate the European Convention to particular areas of law in this way, the *Standard Curriculum* by itself – and indeed the HELP one – does not really give any specific indication as to how the topics are intended to be tackled, namely, in what order, how much time is to be devoted to each aspect, how the overlap between the different substantive areas is to be addressed, to what extent the consideration of them is actually integrated with particular aspects of Serbian law, what methodology will be used for the training and what specific expectations are expected of those who have received the training? It does not, therefore, build on the outline provided by the HELP document – which is intended only to offer a basis for creating curricula in individual Council of Europe countries –and apply it to the specific context of training judges in Serbia.

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105 *Judicial Academy*, p. 7.

106 Downloadable from http://help.ppa.coe.int/course/view.php?id=41(registrationneeded).

107 See para. 102 above.

118. Some decisions would, however, seem to have been taken as to how to use the Standard Curriculum, since it was established that the trainees had 20 days devoted to the European Convention, 6 days to United Nations standards and further days devoted to anti-discrimination (4 days), gender equality (2 days), family violations (2 days), protection of children (3 days) and protection of minorities (3 days).

119. The days devoted to the European Convention are generally in blocks of 4 and those for other topics were in the form of 1 or 2 day seminars. All of them were dotted periodically throughout the two years, with the trainees leaving the particular institutions where they were placed for the practical element for their duration. All of these trainings took place in Belgrade and those trainees based outside the city were provided with accommodation by the Judicial Academy.

120. The *Standard Curriculum* refers to the training as taking the form of seminars and workshops but it was not possible to establish how interactive they were. However, it does not seem that the latter would not have entailed any advance preparation since the only time that could really be devoted to the various topics was during the time spent at the Judicial Academy. Nonetheless, the trainees were all provided with laptops which meant that they could have ready access to relevant internet resources both when they were at the Judicial Academy and elsewhere. This was further facilitated by the fact that, reportedly, some 80–85% of trainees understand English.

121. There was no indication as to the order followed for the different blocks of days but it seemed to be based less on a particular plan than on the availability of those giving the seminars and workshops concerned. However, now that there is annual admission of trainees to the Judicial Academy, a particular block might be taken in the first year for some trainees but in the second one for others. This is not necessarily problematic but some topics might be better addressed after others – building on what had previously been learnt – and this did not seem to operate as a consideration governing the timing of seminars and workshops. In this connection there was a feeling amongst trainees that there was a need for more of a structure over the two years but this comment was not specifically directed to the human rights component of the initial training.

122. Some 9 trainees have also taken part in a distance-learning based course on anti-discrimination law. This was not a formal part of the initial training programme but, if its effectiveness is properly evaluated, the further use of this methodology could become a useful means of providing some training, particularly where the trainees are outside Belgrade and the trainers are even outside the country.

123. Although the *Standard Curriculum* described the lecturers who gave the seminars and workshops as being judges, prosecutors and representatives of institutions and civil sector, the preponderance of sessions devoted to human rights were given by international experts, notably from the AIRE Centre and Human Dynamics. There was no complaint about the quality of the lecturers from the trainees but they did find problematic their inability to follow up with experts coming from outside the country any issues covered in them that might subsequently be of concern. It was thus suggested by some that it would be helpful to have a specialist on human rights within the Judicial Academy who would be familiar with all the topics and could thus respond to any questions that arose some time after the conclusion of a particular seminar or workshop. Others thought that the Judicial Academy should have permanent lecturers.

124. The trainees considered that it would be useful for judges from the Supreme Court of Cassation to be involved in the training so that they could show problems in practice. This suggestion was not, however, specifically related to the human rights aspect of their training.

125. The trainees also emphasised that there was never any follow-up discussion with their mentors concerning the human rights topics covered in the seminars and workshops. This reflected a more general dissatisfaction expressed by some trainees about the suitability of their mentors, with it being pointed out that not only were they never asked to evaluate them but also the mentors did not undertake any evaluation of them and it was felt that that would have been

helpful. Most trainees did not find that what they learnt proved of any relevance to the issues arising during the practical stage but at least one did cite an occasion in which it could be used.

126. There does not appear to be any assessment of the knowledge and skills acquired from the seminars and workshops at the time they occurred. This only occurs at the end of the whole programme.

127. Nonetheless, the trainees were emphatic that it was only in the initial training that they learnt anything about the European Convention and the European Court's case law, which is not surprising given the educational background of most trainees, who had formerly been judicial assistants. Thus, only one of the trainees spoken to had had any educational experience outside the country before the programme, but almost half of the first cohort took summer school courses during their initial training.

128. The trainees were also positive about the practical stage, notwithstanding the criticism of mentors, mainly it would seem because this allowed them to pay attention to the procedural aspects of cases, which they had not been able to do as assistants. Apart from the suggestion of a better structure and permanent lecturers, their main concern was with the premises in Belgrade, which they said lacked sufficient space and video equipment that worked. This did not seem relevant to the human rights training.

129. However, one observation does seem important, namely that there was no updating with respect to developments concerning the European Convention after the completion of the initial training. This is not, of course, a reflection on the initial training but does have implications for the nature of the continuing training, which could be seen to be insufficient to ensure that any achievements in the former are not squandered by insufficient follow-up.

130. On the other hand, dissatisfaction with the initial training was expressed by the chairman of the High Judicial Council on the basis that the practical experience gained was inadequate and not as exacting as that for judicial assistants – the new judges were said to be unable to write a judgment – and there was no practical expansion of knowledge. However, again these criticisms were not related at all to the human rights component and there was no precise elaboration of them.

131. Nonetheless, the time devoted to the European Convention seems to be more focused on imparting information rather than developing skills in applying the methodology of the European Court within the specific context of Serbia and thus more a process of education than training.

132. It is impossible to evaluate the extent to which the initial training has been effective in equipping the new judges with the skills to apply the European Convention in an inappropriate manner, not least because there has been no assessment of their performance in this regard as compared with other judges. There can be no doubt that the training must have raised the level of competence concerning the requirements of the European Convention by the amount of information that the trainees have received. However, there is a need for much more information as to the effectiveness both of this training and of the other aspects of the initial training since general competence as a judge is just as important to the application of the European Convention as knowledge of its provisions and the case law of the European Court. This is something that requires more to be done in assessing those who undergo the initial training.

133. In any event, it is clear that the training on the European Convention, the European Court's case law and other human rights standards needs to have a structure that involves a more incremental development of capacity than at present and to be more clearly integrated with any study of domestic law. At the same time, there is a need for greater focus on the approach to applying the requirements of the European Convention than on gaining information about case law developments with respect to particular rights. This should also be accompanied by a more practical assessment of what is taught and a real link between that and what happens in the practical stage. Furthermore, those teaching human rights should generally be part of the establishment of the Judicial Academy, receive adequate methodological training and be available for follow-up on specific training sessions.

Continuing education and training

134. As has already been noted[108], there is no general requirement for judges to undertake any education and training after their appointment but its provision is part of the responsibilities entrusted to the Judicial Academy.

135. Furthermore, although there are some circumstances in which judges may be required to undergo 'special training' and a specific obligation in this regard for judicial assistants[109], there has so far been no move to exploit the former possibility or to give effect to the latter obligation.

136. According to the Judicial Academy, a number of considerations are taken into account by it when drafting its continuing training programme, namely

a) Newly adopted basic laws passed in compliance with the commitment of Serbia to reform the judiciary, the accession to the EU and attract investments

b) Training of judges and prosecutors for the purpose of implementation of legislative provisions in the fight against corruption, money laundering, human trafficking and organized crime

c) In compliance with the requirements of the judiciary disclosed through evaluations and questionnaires

d) Familiarization of judges and prosecutors with the EU standards, the EU acquis and obligations of the judiciary in the process of accession to the EU

e) Training of judges and prosecutors in the implementation of international Conventions on Human Rights. A special training programme "the European Convention on Human Rights and Fundamental Freedoms and the European Court of Human Rights".

f) Introduction in the annual permanent training programme of thematic units related to the issues of protection against discrimination, family violence and gender equality[110].

137. In addition, the Judicial Academy has indicated that the following considerations are also relevant to the organisation of its training programme:

> the situation that accompanies draft or adopted laws when the postponement of adoption of draft laws takes place or the postponement of implementation of adopted laws. In such a situation, it is necessary to make an assessment of the situation and if necessary, even revise priorities and planned activities. This is necessary in order to pay attention to accountable spending of funds, both budgetary ones and those from donations. The general principle is, when making programmes, to take into account the number of cases in certain areas, criminal, civil, misdemeanours, the prosecution, commercial, administrative, and improvement of work and techniques[111].

138. The former are, in principle, entirely relevant considerations for the planning of education and training programmes for the judiciary. However, according to the Director, the actual provision of these programmes very much depends upon the time and resources available and these do not seem to be sufficient to fulfil all the expectations of the Judicial Academy.

139. Moreover, in practice, a significant consideration for the holding of human rights related seminars is the dependence of the Judicial Academy on securing funding, other support and the provision of trainers by international donors and non-governmental organisations, notably, the AIRE Centre, EIPA – European Centre for Judges and Lawyers in Luxembourg, the European Union, GIZ, the governments of the Netherlands and the United Kingdom, the Organisation for Security and Cooperation in Europe, the United Nations Development Programme, USAID and the United States Department of Justice. This seems to result in much of the training being held on a sporadic and ad hoc basis and it generally precludes any real annual planning.

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108 See para. 72 above.

109 See paras. 75–76 and 78 above.

110 *Judicial Academy*, p. 10.

111 *Ibid*.

140. Indeed, there seems to be a problem in ensuring the effective dissemination of the Judicial Academy's annual programme as many judges were not aware of its content.

141. Furthermore, the suggestions for much of the human rights related training actually undertaken seem to emanate primarily from the donors and they were not a response to the needs identified by individual judges or bodies such as the High Judicial Council or the Association of Judges. However, it also appears that the High Judicial Council has not sought to exercise control over the continuing training programme, despite its right to do so. At the same time, there does appear to be any formal mechanism whereby judges or courts can make suggestions as to the training which they consider necessary or desirable[112]. In addition, there do not seem to be any training needs assessments being carried out before particular activities are planned and undertaken.

142. Moreover, as has already been noted, the High Judicial Council has acknowledged that the Programme Council did not play an active role in determining what continuing training should be undertaken. This was explained by reference to a shortage of judges on the civil side and more generally of knowledgeable members. However, this would not have precluded it from seeking specialist assistance or questioning why certain training was or was not provided and seeking to identify whether the priority needs for judges were being met.

143. Where training is provided at the suggestion and with the support of international donors and non-governmental organisations, these all seem to play a significant role in determining its actual content and the materials to be used for it.

144. The actual 'training' with respect to human rights and human rights related issues in 2013 and 2014 that was undertaken for serving judges and judicial assistants – although primarily for the former[113] – seemed to comprise:

- a number of seminars for judges of basic courts on the European Convention and the jurisprudence of the European Court;
- a number of seminars on the "UN Convention against Discrimination, the Committee Standards and Practice"[114] and standards of the European Court, Article 14 of the European Convention and Protocol No. 12;
- a number of seminars in the area of protection against family violence[115];
- a number of intensive seminars for judges of basic and high courts from Vranje and Novi Pazar on civil and criminal matters linked to the implementation of the European Convention[116]
- 93 seminars on the new Criminal Procedure Code in 2013 focusing on pre-trial investigation and main hearing and procedure involving legal remedies; and
- A programme for judges and judicial assistants in basic courts with respect to the reasonable time obligation following the adoption of the Law on organisation of Courts[117].

145. Some of this training seemed to coincide with that under the initial training programme, particularly where international experts were involved. Furthermore the curriculum for the training on the European Convention is the same as that used for the initial training[118].

146. In addition, there were also a number of study visits to the European Court in Strasbourg, mainly funded by the Council of Europe.

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112 There is a somewhat rosier view in *National Judicial Reform Strategy for the period 2013 – 2018* (2013), which states that ' courts and public prosecutors' offices regularly submit data about their training needs in specific areas', p.15.

113 Prosecutors were also the beneficiaries of the seminars dealing with discrimination.

114 It was not indicated which convention was meant.

115 Prosecutors were also the beneficiaries of these seminars.

116 There was also special work with young jurists and, in respect of Vranje, work with court translators for the Albanian language.

117 Training with respect to human rights is not the only responsibility of the Judicial Academy; "In the course of 2012, 332 training courses were conducted. So far, a total number of 9500 participants completed the training courses conducted by the Judicial Academy" (*National Judicial Reform Strategy for the period 2013 – 2018* (2013), p. 15.).

118 See paras. 114–115 above.

147. No training seems to be being provided for trainees who are proposing to take the examination for trainees to become judicial assistants, although this is not required explicitly by the Law on Judicial Academy. In addition, no special training for judicial assistants required under Article 50 of the Law – the programme for which is supposed to be drafted by the Programme Council and adopted by the Managing Board with the High Judicial Council's consent – appears actually to have occurred.

148. The training sessions tend to take the form of 'seminars', although these generally involved formal presentations of the relevant standards with a small amount of analysis showing the application of the latter in practice. There was also some use of case studies but the scope of these was inevitably limited by the fact that no advance preparation was required for them so that they depended on the information that had been presented. Moreover, they did not always appear to feature in the seminars as the authors received complaints about sessions being no more than ex cathedra lectures, with no real opportunity to practice/apply and discuss the material being covered.

149. The choice of target group for the seminars depends on the issue. For example, those concerned with Article 6 of the European Convention will be focused on judges from the basic and misdemeanour courts and those concerned with protection against family violence were directed to judges who worked in that field.

150. However, although the aim of the programme of seminars with respect to the new Criminal Procedure Code seems to be to cover all or most judges working in the criminal courts, there does not seem to be any goal of ensuring that all judges have training with respect to the European Convention and other human rights issues relevant to their work.

151. The decision as to who attends these seminars is taken by the Judicial Academy but the president of the court concerned has to approve the actual participation of individual judges and judicial assistants.

152. However, apart from the seminars concerned with the issue of reasonable time, there appears to have been no explicit focus on providing training for judicial assistants. While they are not specifically excluded from the trainings provided by the Judicial Academy, individual courts will always give judges priority in allocating any places that might be available.

153. There are normally 30–35 participants at each seminar, with each one lasting 1–2 days and normally being held on Fridays and Saturdays.

154. The trainings are held in hotels if they are in Belgrade but otherwise in court building, except for those held in Kragujevac, Niš and Novi Sad, where the Judicial Academy's own facilities are used. In the case of the training on the new Criminal Procedure Code, seminars were held in several places at the same time.

155. No use is currently being made of distance learning but the authors were told that this was under consideration.

156. The authors were told that all training was evaluated but were not given any details as to the form that this took and, in particular, as to whether the responses had affected subsequent training on the same issue or as to how any improvement in the capacity of those being trained was assessed.

157. The authors were also told that the Judicial Academy had a database on those who had been trained. However, in so far as there is some form of training database, there was no clarity as to the use to which it was being put, such as to stop judges undertaking repetitious training or to build upon the skills of those trained, whether to provide them with follow-up or to develop them as potential trainers.

158. There was a concern on the part of the Director of the Judicial Academy about the insufficiency of available training material in Serbian[119]. He indicated that he was trying to create a database with everything written in this language but he also acknowledged that the documentation and research centre envisaged in the Law on Judicial Academy was not yet in operation. It appears that negotiations with the European Union are in progress to assist its establishment.

159. It is understood that judges doing training get some payment. It is not clear whether or not this is meant to be compensation on account of their caseload not being reduced despite the additional work involved. However, although this is a matter where national practice certainly varies and some payment for giving genuinely occasional lectures is not inappropriate, any commitments for judges to take part in the training programmes of the Judicial Academy that are continuing and/or substantial would be better treated as a normal part of their professional life and thus taken into account in determining their overall caseload.

160. Apart from the continuing training provided under the auspices of the Judicial Academy, it appears that some judges do attend lectures and seminars organised by some universities. However, such attendance is still rather unusual, even though the relevant events are not closed ones.

161. Insofar as it was possible to make any assessment of the education and training on the European Convention being provided, the impression gained was that it reflected an approach that was insufficiently systematic, as well as not doing enough to develop the methodological skills and understanding required to follow the approach of the European Court. In addition, it did not seem to be appropriately responsive (or directed to respond) to the needs of judges to problems in application of the European Convention as they emerged, with much of the continuing education and training on the rights and freedoms that it guarantees appearing to be predominantly what international donors and providers suggested.

Trainers

162. Those undertaking the training were a mixture of international experts and national trainers.

163. The former were generally Council of Europe experts and persons working for or provided by international donors and non-governmental organisations such as the AIRE Centre.

164. As far as the latter were concerned, these were primarily judges from the Supreme Cassation Court but some use had also begun to be made of lawyers.

165. The judges were generally ones who had undergone training on the European Convention in previous years and there appear to have been 4–5 trainings per year for them, which were mainly provided by the AIRE Centre. These trainings were intended to increase the knowledge of the trainers but there does not appear to have been any significant focus on methodology either then or in their previous training. The lack of importance attached to that – and the failure to distinguish between the provision of information and the inculcation of skills as to how to apply it – seems to be reflected in the widespread view that judges can be trainers simply because they have had some training on human rights.

166. The only new training of trainers in recent years seems to have been a course provided in 2013, in cooperation with AIRE Centre, the United Kingdom Embassy and the Council of Europe, for judges and prosecutors who had applied to be lecturers on the programme on the European Convention. This involved four three-day seminars given by experts from the Council of Europe[120].

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119 The Constitutional Court publication on the reasonable time requirement for legal proceedings based on its own case law (see n. 43) could undoubtedly be used in trainings on this issue.

120 There also appears to have been some training for mentors and lecturers in 2011–2012 with the support of the OSCE but it is not clear whether this had any human rights dimension; see *Judicial Academy*, p. 17.

167. Nonetheless, there were suggestions that the pool of trainers was diminishing, with the Association of Judges indicating that only a few of the 10 national trainers on the European Convention in particular remained active.

168. At the same time, the Judicial Academy does not seem to be using all the potential trainers at its disposal. Undoubtedly, there are more persons available in Serbia with knowledge of the European Convention and the case law of the European Court than are used by it at present.

169. Indeed, the authors learnt that some judges also teach on university courses and others undertake doctorates, including ones on human rights related topics. At the same time, as was noted in the *Fact-finding mission Report*, not all the persons with expertise on the European Convention can satisfy the formal requirements for recognition of their competence because this was acquired outside the country[121].

170. However, as noted above, knowledge of the European Convention cannot be equated with competence to be a trainer. Thus, even if the pool of potential trainers is expanded, this is unlikely to be beneficial for those being trained unless the provision by the Judicial Academy of appropriate training for would-be trainers in the field of human rights is also enhanced.

171. Moreover, there does not seem to have been any systematic evaluation of trainers and mentors, which would not only enable to determine how effectively they are fulfilling their responsibilities but also provide a basis for determining their future training needs.

121 See para. 16.

5. VIEWS AS TO THE NEED FOR TRAINING

172. Various views were received by the authors during their visits as to the need for training on human rights but a much more extensive sounding of views is to be found in a survey undertaken for the Project, to which 1,044 judges and 716 judicial assistants responded[122].

173. The conclusions of the latter survey are summarised in the following paragraphs and the views expressed to the authors are either integrated with them where relevant or summarised separately where discrete points are involved. The position of judges is considered first, followed by those of judicial assistants.

Judges

174. None of the judges of the Constitutional Court responded to the survey but, in the view of its President, none of its judges need additional training with respect to human rights.

175. Just under half of the judges who did take part in the survey stated that they had already some training on the European Convention but far fewer of them claimed to have had training on other instruments[123]. Moreover, the highest percentage of judges that had received such training were in the Administrative Court (64%), the Supreme Court of Cassation (85%) and the appellate courts (71%),[124] with a much lower percentage being recorded in the basic courts (41%) and the respondents from these constituted 71% of the total respondents. This training had lasted for between 1–5 days for 41% of the judges surveyed but had more often been longer in the case of those from the superior courts.

176. However, 76% of the judges surveyed claimed to have had no training on the European Convention in 2013, with the main exception being judges of the Administrative Court as 55% of the respondents from it had had some such training during that year. Although most judges did not indicate when they had last had some training on the European Convention, 14% of the total stated that this had been in the period 2005–2009 and 16% during 2010–2014. This training was most often indicated as being provided by the Judicial Academy (35%) and then the Council of Europe (14%) but 50% of the respondents did not provide any details concerning this at all. Moreover, it was rare for other providers (ABA/CEELI, the Belgrade Center for Human Rights, other NGOs, OSCE, USAID and universities) to be specifically mentioned.

177. It was thus not surprising that in the meetings with the authors, it was generally emphasised by judges that all judges needed to be trained on human rights. There was particular concern, in this regard, that access to such training should not depend upon the approval of individual court presidents, not least because of its apparent link to promotion. It was also emphasised that more training was needed because the structure and composition of courts had changed following various reforms.

178. In addition, in these meetings there was some emphasis placed on the position of many of the younger judges who had not had the benefit of the exposure to the European Convention and the case law of the European Court shortly after the ratification of the former but had also not taken the initial training now provided by the Judicial Academy.

179. For 34% of respondents the training had been concerned with general topics and for 24% it had dealt with specific rights, although the latter ranged from 43–77% for judges from the superior

122 *Analysis of research on needs for professional education and training for judges and judicial assistants* (2014). This analysis was based on the responses to the questionnaire that forms Annex 2 to the *Fact-finding mission Report*.

123 *Analysis of research on needs for professional education and training for judges and judicial assistants*, a survey undertaken for the Project in March and April 2014.

124 Judges from the Constitutional Court did not respond to the survey.

courts. Moreover, some had had both forms of training but 50% did not give any answer to this question. The topics most often covered overall were the rights relating to fair trial (37%), freedom of expression (16%) and private and family life (23%) but those concerning children were those cited by judges from the basic courts (20%).

180. Overall 43% of the respondents claimed to be "somewhat familiar" and 28% "familiar" with parts of the European Convention relevant to their particular field of work – the principal exception being the Supreme Court of Cassation for whose judges the level of familiarity claimed reached 62% – but only 3% suggested that they were confident about it.

181. 83% of judges considered that they needed to know more about the European Convention and the case law of the European Court, with only 13% saying "maybe" and 3% "no". The only significant variations to this level of response concerned the judges of the Administrative Court and those of the Supreme Cassation Court; 100% of the former considered that such training was necessary, while only 54% of the latter took that view.

182. Furthermore, while 28% of judges suggested that their future training should be at the "proficient" level, 35% and 37% respectively wanted it to be at the "beginner" and "intermediate" levels[125]. In terms of time needed for such training in the year ahead, 44% suggested 5–6 days, 35% 3–4 days and 16% 1–2 days. The overwhelming majority – 90% – were prepared to attend training outside the seat of their court.

183. Some 59% of judges said that they wanted practical training on how to apply human rights principles in their work but 45% also wanted general training. However, in terms of methodology there was a preference of lectures (46%) over case studies (32%), group discussion (28%), moot courts (25%) and drafting judgments (7%). There was, however, greater enthusiasm for the use of case judges on the part of judges in the Administrative Court (64%).

184. In indicating the topics on which they would like to have further training, those most often mention were: the right to a fair trial in civil and criminal proceedings (54% and 49% respectively), the right to respect for private and family life (49%), the right to property (48%),discrimination (45%) and general principles (38%). However, there was also interest in training on the right to liberty and security of the person (38%), freedom of expression (25%), freedom of thought (23%) and the right to life (18%)[126].

185. These aspects of the European Convention were also emphasised in the meetings with authors. However, in addition it was indicated that there was a need for judges to understand the European Convention dimension in their cases dealing with eviction proceedings and the rights of minorities (with the particular issue of abuse of the right to interpretation in court proceedings being cited as a concern).

186. However, apart from substantive issues, some emphasis was also placed on the need for training that was intense and specialised and that would overcome the current approach of judges to thinking that stemmed from their legal education ("the training needs to make them think"), although it was also noted that the workload of judges discourages thinking.

187. Judges also stressed the need for further improvement of their language and computer skills[127]. Furthermore, while 21% claimed to have no internet access at work, 65% stated that they had it but it was "limited" and 12% described it as "unlimited". There was some reflection of this picture in the discussions with the authors but it was also indicated that judges generally had their own computers notwithstanding the limited internet facilities within court buildings.

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125 More nuanced responses were, however, given when it came to particular topics.

126 The percentages varied according to the level of the court. For example, 73% of judges in the Administrative Court wanted training on the rights to property and to respect for private and family life and 100% wanted training on the right to a fair trial in administrative proceedings but for 57% of those in the basic courtsthe right to a fair trial in civil proceedings was the most significant topic for training.

127 30% of judges claimed to be at the "intermediate" level as regards knowledge of English, whereas 7% and 25% respectively said that they were at the "beginner" and "fluent" levels. As regards their level of computer literacy, 53% of judges described themselves as "basic", 27% as "intermediate" and 19% as "proficient". For French, the figures were 6% "intermediate" and 10% "fluent" with 83% not replying.

188. A particular concern about undertaking training on human rights – which was nonetheless recognised as necessary – that was expressed in meetings was the workload and the consequential fear of disciplinary action if taking part in training led to cases not being finished within the prescribed deadline. It was emphasised, therefore, that some allowance for training is needed when allocating work.

189. It was also observed that a context of constant transformation of the judiciary was not a good environment in which to hold such training programmes.

190. In the meetings with the authors, it was indicated that study visits to Strasbourg were useful and that it would perhaps be useful to extend participation in them to basic court judges.

191. Among those met by the authors, including members of the High Judicial Council, there was general agreement that there should be an obligation for all judges to undertake continuing education.

192. There was also no absolute insistence on training being delivered only by judges. There was more concern about the competence of those providing the training rather than their status.

193. A general concern was the absence of any annual programme for continuing programme, which meant that it was often impossible to make arrangements to take part in particular seminars.

Judicial assistants

194. Assistants to judges of the Constitutional Court did respond to the survey, as did those from all the other courts.

195. A quarter of the judicial assistants who did took part in the survey stated that they had already some training on the European Convention and just 8% claimed to have had training on other instruments. Moreover, the highest percentage of judicial assistants that had received such training were in the Constitutional Court (56%), the Supreme Court of Cassation (79%)– who comprised just under 7% of the respondents – and the higher courts (39%), with a much lower percentage being recorded in respect of those in the basic courts (15%) who constituted 56% of the total respondents. This training had lasted for between 1–5 days for 15% of the judicial assistants surveyed but had more often been longer in the case of those working in the Constitutional Court and the Supreme Court of Cassation.

196. However, 89% of the judicial assistants surveyed claimed to have had no training on the European Convention in 2013, with the main exception being assistants in the Constitutional Court, the Administrative Court and the Supreme Cassation Court as 23%, 20% and 24% respectively of the respondents working in those courts having had some such training during that year. Although most judicial assistants did not indicate when they had last had some training on the European Convention, 8% of the total stated that this had been in the period 2005–2009 and 12% during 2010–2014. This training was most often indicated as being provided by the Judicial Academy (15%) and then the Council of Europe (5%) but 74% of the respondents did not provide any details concerning this at all. As with judges, it was rare for other providers to be specifically mentioned by judicial assistants.

197. In a meeting of a representative of judicial assistants with the authors, it was emphasised that training was not generally directed towards assistants. Furthermore, it was claimed that they suffered from having skills but no certificate to demonstrate this, so that their advancement depended solely on the opinion of the judges with whom they worked.

198. It was also emphasised that judicial assistants did need to know about the implementation of the European Convention for the purposes of their work. However, it was suggested that most of their knowledge about the European Convention came through self-education. It was claimed that judicial assistants rarely go on study visits to the European Court in Strasbourg.

199. For 17% of the respondents the training had been concerned with general topics and for 13% of them it had dealt with specific rights, although the latter ranged from 13–53% for judicial assistants working in the superior courts and the Constitutional Court. Moreover, some had had both forms of training but 74% did not give any answer to this question. The topics most often covered overall were the rights relating to fair trial (45%), freedom of expression (15%) and private and family life (19%) but the prohibition on discrimination was also significant for judicial assistants in the basic court (14%).

200. Overall 32% of the respondents claimed to be "somewhat familiar" and 23% "familiar" with parts of the European Convention relevant to their particular field of work – the principal exception being the assistants in the Constitutional Court for whom the level of familiarity claimed reached 59% – but only 4% suggested that they were confident about it.

201. 85% of judicial assistants considered that they needed to know more about the European Convention and the case law of the European Court, with only 11% saying "maybe" and 3% "no". There was no significant variation to this level of response according to courts in which the assistants worked.

202. Furthermore, while 29% of judicial assistants suggested that their future training should be at the "proficient" level, 32% and 39% respectively wanted it to be at the "beginner" and "intermediate" levels[128]. In terms of time needed for such training in the year ahead, 54% suggested 5–6 days, 32% 3–4 days and 10% 1–2 days. The overwhelming majority – 91% – were prepared to attend training outside the seat of their court.

203. Some 66% of judicial assistants said that they wanted practical training on how to apply human rights principles in their work, while only 38% also wanted general training. However, in terms of methodology there was no significant difference in the approach preferred by judicial assistants and judges, with the former favouring lectures (45%) over case studies (33%), group discussion (26%), moot courts (29%) and drafting judgments (19%). There was, however, greater enthusiasm for the use of case studies on the part of assistants working in the Constitutional Court (46%) and the Administrative Court (47%).

204. In indicating the topics on which they would like to have further training, those most often mention were: the right to a fair trial in civil and criminal proceedings (54% and 48% respectively), the right to respect for private and family life (42%), the right to property (47%) and discrimination (50%). However, there was also interest in training on the right to liberty and security of the person (26%), freedom of expression (23%), freedom of thought (21%) and the right to life (12%)[129].

205. In the meeting with the authors, the representative of the judicial assistants also indicated that it would be useful to know how to use HUDOC – the European Court's case law database – and also how to access and use the HELP training material.

206. 55% of judicial assistants claimed to be at the "intermediate" level as regards knowledge of English, whereas 18% and 17% respectively said that they were at the "beginner" and "fluent" levels[130]. As regards their level of computer literacy, 28% of judicial assistants described themselves as "basic", 28% as "intermediate" and 43% as "proficient". Furthermore, while 16% claimed to have no internet access at work, 75% stated that they had it but it was "limited" and 9% described it as "unlimited". This picture was also reflected in the discussion of the assistants' representative with the authors.

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128 As with judges, more nuanced responses were, however, given when it came to particular topics.

129 Unlike the judges, the percentages did not vary that significantly according to the level of the court in which the assistants worked. The principal exception in this regard concerned assistants in the Administrative Court; only 27% as opposed to the overall 56% of respondents wanted training on the right to a fair trial in civil proceedings, while 87% of them as opposed to the overall 12% wanted training on the right to a fair trial in administrative proceedings. Also for 73% of these assistants, as opposed to the overall 42% wanted training on the right to respect for private and family life. Also training on the right to property was considered desirable by 56% of the assistants in the Constitutional Court as opposed to 47% of the overall respondents.

130 For French, the figures were 5% "intermediate" and 11% "fluent" with 83% not replying.

6. REFORM PLANS

207. There are a number of activities regarding possible reform of the operation of the Judicial Academy under way. These emanate not only from the Judicial Academy itself but also from the Ministry of Justice.

208. As regards the former, the Director of Judicial Academy has emphasised the burden in fulfilling its mandate because of the limits on the resources available to it. In effect, it is currently overloaded – "hands totally full" – and this needs to be addressed for its existing responsibilities to be properly discharged, let alone new ones being added.

209. At the same time, there is recognition of the need to strengthen the institutional link between the Academy and the High Judicial Council (and the State Prosecutorial Council) and to improve the mechanisms stipulated in the Law on Judicial Academy. In addition, the possibility of either the two Councils rather than the Managing Board appointing the members of the examination boards or having some members on those boards has been floated, as has the idea of them confirming the list of mentors[131].

210. Taking all these steps could well improve the functioning of the Judicial Academy but they do not directly address the substance of its training.

211. The latter can be expected to be dealt with by the working group which the Judicial Academy was setting up in September 2014 to look at its curricula. This had not, however, been fully constituted at the time of the authors' second visit to Belgrade.

212. In addition to the ideas of the Judicial Academy itself, there is recognition of the need for improvement to be made to its training activities in the *Judicial Reform Strategy*. Thus, it states that

> The establishment of the Judicial Academy created an institutional framework which must be further improved in terms of strengthening the institutional and staff capacities, as well as developing a comprehensive plan of activities of the Judicial Academy regarding further development of training courses in order to ensure the highest quality training of judicial office holders, as well as other judicial staff ...
>
> The improvement of the initial training remains a goal to strive for, but this applies to continuous training programs as well, since continuous training programs of judges and prosecutors are conducted in a limited manner, as the capacities of the Academy are mainly focused on initial training programs[132].

213. Furthermore, the *Judicial Reform Strategy* emphasises that

> Continuous training and professional development of judges and public prosecutors represents a prerequisite for establishing an independent judicial system and ensuring access to justice, as well as substantially strengthening public trust in the judiciary. Constant adoption of a large number of new regulations and their harmonization with the EU *Acquis*, the need to monitor case law of national courts and the European Court of Human Rights, are just some of the reasons indicating that it is necessary to introduce compulsory training for all judicial office holders[133].

214. The *Judicial Reform Strategy* thus envisages the improvement in the initial training programme (including to the mentoring and evaluation system) and the enhancement of continuous training in the Judicial Academy, as well as the introduction of compulsory continuous training for all judicial office holders. The last of these changes would entail the need for the Law on Judicial Academy to be amended.

215. Training on human rights will be especially important as the *Judicial Reform Strategy* has as two of its strategic guidelines for the improvement of the access to justice and the protection of human and minority rights and the uniformity of case law

131 *Judicial Academy*, p. 8.

132 Pp. 27–28

133 *Ibid.*, pp. 40–41.

> incorporation of positions from the decisions of the Constitutional Court, national and international courts (European Court of Human Rights, the Court of the European Union)[134]

and

> to regulate the harmonization of court decisions and to more precisely define the role of the Supreme Court of Cassation in this area, as well as to fully ensure harmonization with the decisions of the European Court for Human Rights and practice of other relevant international institutions[135]

216. Furthermore, it is relevant to the *Judicial Reform Strategy*'s goal of improving the judgment drafting methodology as the *Action Plan for the Implementation of the National Judicial Reform Strategy for the period 2013–2018* (the '*Action Plan*') for its implementation envisages this being developed with the case law of the European Court being used as the model.

217. As a result, it is not surprising to find the *Judicial Reform Strategy* emphasising that

> Continuous training and professional development of judges and public prosecutors represents a prerequisite for establishing an independent judicial system and ensuring access to justice, as well as substantially strengthening public trust in the judiciary. Constant adoption of a large number of new regulations and their harmonization with the EU *Acquis*, the need to monitor case law of national courts and the European Court of Human Rights, are just some of the reasons indicating that it is necessary to introduce compulsory training for all judicial office holders[136].

218. Further detail regarding this is found in the *Action Plan*, which provides for one or more working groups to draft programmes with a view to improving knowledge on the case law of the European Court and further strengthening of the continuous training program segment related to human rights[137].

219. In addition, the *Judicial Reform Strategy* envisages support for reforms to the educational system in the law schools in order to ensure compliance and alignment of academic and training curricula[138]and the harmonisation of the Bar exam program with the Judicial Academy curriculum in order to better ensure adequate professional training of future judicial office holders. Such changes, once achieved, would clearly have implications for the form and content of the initial training programme then being provided.

220. It is also recognised in the *Judicial Reform Strategy* that the Judicial Academy needs to have adequate premises and other resources in order to discharge the role that it will be expected to play.

221. The ultimate outcome sought from all this reform

> is gradually creating the conditions for Judicial Academy to become an institution that will dictate the dynamics of employment in the justice sector, and its transformation into a "single entry point" for the training of judges, public prosecutors and deputy public prosecutors, judges and prosecutorial assistants and interns, as well as judicial and prosecutorial administrative – technical staff, training of all officials, specific professions, and by that way contribute to the reform of the Judicial system[139].

222. As part of the reform process, one of the working groups established pursuant to the Action Plan has already produced *Guidelines and Recommendations* with respect to the functioning of

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134 *Ibid.*, p.38.

135 *Ibid.*, p.39.

136 *Ibid.*, pp. 40–41.

137 Points 3.1.2.1 and 3.1.2.2.

138 It also wants "to enhance the exchange of lecturers or to introduce internship of students in courts and public prosecutors' offices. It is essential to support cooperation between law schools and bar associations in order to help students to gain all the necessary legal skills, to enable their internship in law offices. It is necessary to evaluate the results of the achieved level of cooperation between law schools and the judiciary, within the framework of cooperation agreements and to enhance this cooperation, if deemed necessary. Also it is essential to support the initiative of introduction of human rights and legal ethics as compulsory courses law school curriculum", p. 16.

139 *Terms of reference for short-term consulting services for drafting a Study of development needs of the Judicial Academy in accordance with the obligations set in the new strategic framework* pursuant to the Ministry of Justice's Project "Support to strengthening of institutional capacities to implement judiciary system reforms in the context of applying the public administration reform rationalization principle"(Tender documents PROFID No. 3–4).

the Judicial Academy. These not only relate to the performance in practice of the requirements set out in the Law on Judicial Academy and the way in which the organs of the Judicial Academy but also makes a number of proposals relating to its training programmes. The most significant for the purpose of the present Report are:

- the publishing of all programmes on its website;
- the adoption by November of the training programmes for the following year;
- the monitoring of the work of mentors and lecturers;
- the checking of the training programme process;
- the completion of the mentor training programme by all mentors; and
- keeping records on users of continuing training so as to provide conditions for specialisation and acquisition of knowledge, enabling this to become one of the criteria for advancement[140].

223. All these proposals are entirely appropriate means of enhancing the training activities undertaken by the Judicial Academy.

224. In addition, in support of the fulfilment of the *Action Plan*, the Ministry of Justice has launched a Project "Support to strengthening of institutional capacities to implement judiciary system reforms in the context of applying the public administration reform rationalization principle", funded by the Swedish International Development Agency. Its task is to provide a comprehensive analytical base for further planning of capacity building of the Judicial Academy and the production of a draft Strategy for Development of the Judicial Academy, thereby contributing to the improvement of the functioning of the judiciary system[141]. The Project was supposed to run from May-October 2014 but it did not appear to have started during the authors' visits and it is not known whether the final version of the study expected has yet been produced.

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140 2014.

141 The expected activities under the Project are: Analysis/inventory of all responsibilities of the Judicial Academy arising from the relevant strategy documents and regulations; Based on previously conducted analysis and previous practice in the organization and implementation of trainings, a projection of the planned scope of work of the Judicial Academy (including the total number and type of training program, the expected number / frequency of implementation of planned training, number and structure of the target group, the expected number of participants, etc..) should be made; Presenting preliminary findings to the Expert working group' Drafting of a study of developmental needs of the Judicial Academy, which, along with the aforementioned projections should include, inter alia, the following elements (a) optimal organizational structure of the PA (including the required number and profile of employees), the projection of the required number of lecturers, as well as a detailed description of work / business processes, (b) conceptual design / preliminary sketches of the future "ideal model" of the facility of the Judicial Academy, including the required number, purpose, size, possible layout of the desired facilities (classrooms, halls, offices, utility rooms, etc.), projections related to the optimal technical requirements for functioning (appropriate furniture equipped, ICT infrastructure and other aspects of equipping), as well as key requirements for exterior and supporting infrastructure (including parking space, adequate access to the facility, especially adjusted for people with special needs, the proximity of accommodation facilities, etc.), which would in total allow for performing all expected activities within the Judicial Academy at its full capacity, (c)assessment of the costs related to the improvement of organizational and technical capacity of the Judicial Academy; Presentation of the draft study to the members of the Expert Working Group and incorporate their comments and suggestions; Consideration of the draft study with other interested parties (other agencies, relevant professional associations, representatives of the donor community, etc.); Preparation of the final version of the study.

7. RECOMMENDATIONS FOR DEVELOPING HUMAN RIGHTS EDUCATION AND TRAINING

225. This section makes a number of recommendations for developing the human rights education and training for those seeking to become judges, as well as for those who are already judges or their assistants and those who undertake this education and training. However, before dealing in turn with the initial training, continuing education and training and the formation and support for trainers, there are a number of general recommendations which need to be acted upon in order to ensure that any efforts to develop capacity with respect to human rights are truly fruitful.

226. Firstly, it is essential that the various organs and institutions with a role in the functioning of the Judicial Academy really perform the functions entrusted to them under the Law on Judicial Academy. The failure for this to occur so far has weakened the way in which programmes are developed and the oversight over their implementation. The impression gained by the authors was that the relevant organs and institutions were either not functioning at all or failed to work together in a constructive manner. Instead there was a tendency to refer to the shortcomings of others and an unwillingness to identify how they could themselves contribute to improving matters. Remedying this weakness is undoubtedly a matter of ensuring that the composition of the organs and institutions are appropriately constituted, which in turn depends not only on having the right skills but also a genuine interest and willingness in performing the functions concerned[142].

227. Secondly, there is a need for the provision of education and training to be regularly appraised[143] and this should be undertaken by some entity independent of the providers – whether the Judicial Academy or those to whom it delegates the task – and those determining what should be provided[144]. Such an entity should be responsible for prescribing the form of evaluation to be undertaken for particular types of education and training and reviewing periodically both whether or not the education and training being provided is, in principle, suitable for the goals being pursued and whether or not it has actually proved effective in practice. In addition, it should put forward recommendations based on this evaluation so that adjustments in the provision of training are put in place accordingly. Such an entity should be comprised of specialists in education and training and members of the judiciary from all levels of courts who are not currently serving on any of the organs or institutions otherwise involved in the work of the Judicial Academy. It should report to the High Judicial Council.

228. Thirdly, an enduring solution to the weak legal educational basis of potential entrants to the Judicial Academy requires a thorough overhaul of the approach to legal education at the university stage since that is where the positivistic approach to law continues generally to be inculcated[145]. Apart from a change in the approach to teaching, all those who graduate from university

142 In this connection, it should be recalled that the European Charter on the statute for judges envisages the intervention of an authority independent of the executive and legislative powers to ensure "the appropriateness of training programmes and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties" (points 1.3 and 2.3).

143 This has been emphasised in the CCJE's Opinion no 4 on appropriate initial and in-service training for judges at national and European levels: "22. Training methods should be determined and reviewed by the training authority, and there should be regular meetings for trainers to enable them to share their experiences and enhance their approach".

144 As indicated in the CCJE Opinion cited in the preceding footnote.

145 The importance of this is underscored in the Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, adapted by the OSCE Office for Democratic Institutions and Human Rights and the Max Planck Minerva Research Group on Judicial Independence, 23–25 June 2010): "18. Access to the judicial profession should be limited to those candidates with a higher law degree. In the university curriculum more attention should be given to the training of analytical skills. Elements such as case studies, practical experience, law clinics and moot courts should be integrated. The same level of education should be guaranteed in State and private universities, including distance learning programmes. External evaluation of curricula may positively contribute to their improvement".

law schools should understand the European Convention system and methodology, know how to access and read the case law of the European Court and the requirements of the European Convention should be integrated into all the specific subjects of study to which they are relevant rather than just be taught as an optional specialism[146].

229. Fourthly, continuing education and training will not bring about the desired results simply by making it mandatory for judges. Although the imposition such a requirement would be entirely appropriate and welcome[147], there needs to be a genuine recognition that this is an integral part of the obligations for judges and that this is properly taken into account when assessing the allocation of cases and compliance with deadlines in resolving them. Sending overloaded judges on training programmes will not be productive since it will not allow them to focus on and benefit from the training. The only outcome will be a loss of time both for developing capacity and progressing cases.

230. Finally, it is essential that the Judicial Academy have an allocation of resources that is truly commensurate with the responsibilities entrusted to it. Such resources comprise not just the premises and the finance for those charged with education and training but also appropriately qualified trainers (including as regards adult education and training techniques) and the ready availability of suitable training material (especially judgments of the European Court and commentaries on it in Serbian). Furthermore, these resources need to be available in sufficient timing to permit advance planning both by the Judicial Academy and the beneficiaries of its education and training programmes. This has implications for the tendency, at least as regards education and training in the field of human rights, to be over-reliant on the support of international donors and non-governmental organisations. This does not mean that their support should not be sought – and in some instances their expertise is going to make them indispensable in at least the short-term – but it is essential that their role only be a complementary one and not one that makes definitive planning impractical. In addition, the Judicial Academy needs to be more proactive in directing the support of international donors to activities that fit within the programme that it designs for judges than it fitting with their proposals.

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146 In this connection, the recommendation that member states "I. ascertain that adequate university education and professional training concerning the Convention and the case-law of the Court exist at national level and that such education and training are included, in particular: – as a component of the common core curriculum of law and, as appropriate, political and administrative science degrees and, in addition, that they are offered as optional disciplines to those who wish to specialise; – as a component of the preparation programmes of national or local examinations for access to the various legal professions and of the initial and continuous training provided to judges, prosecutors and lawyers; – in the initial and continuous professional training offered to personnel in other sectors responsible for law enforcement and/or to personnel dealing with persons deprived of their liberty (for example, members of the police and the security forces, the personnel of penitentiary institutions and that of hospitals), as well as to personnel of immigration services, in a manner that takes account of their specific needs; II. enhance the effectiveness of university education and professional training in this field, in particular by: – providing for education and training to be incorporated into stable structures –public and private – and to be given by persons with a good knowledge of the Convention concepts and the case-law of the Court as well as an adequate knowledge of professional training techniques;– supporting initiatives aimed at the training of specialised teachers and trainers in this field" in Recommendation Rec(2004)4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training is thus recalled.

147 The need for such an approach is indeed emphasised the CCJE's Opinion no 4 on appropriate initial and in-service training for judges at national and European levels: "2. The independence of the judiciary confers rights on judges of all levels and jurisdictions, but also imposes ethical duties. The latter include the duty to perform judicial work professionally and diligently, which implies that they should have great professional ability, acquired, maintained and enhanced by the training which they have a duty, as well as a right, to undergo. 3. It is essential that judges, selected after having done full legal studies, receive detailed, in-depth, diversified training so that they are able to perform their duties satisfactorily. 4. Such training is also a guarantee of their independence and impartiality, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms. 5. Lastly, training is a prerequisite if the judiciary is to be respected and worthy of respect. The trust citizens place in the judicial system will be strengthened if judges have a depth and diversity of knowledge which extend beyond the technical field of law to areas of important social concern, as well as courtroom and personal skills and understanding enabling them to manage cases and deal with all persons involved appropriately and sensitively. Training is in short essential for the objective, impartial and competent performance of judicial functions, and to protect judges from inappropriate influences". This was reaffirmed in the CCBE's *Magna Carta of Judges (Fundamental Principles)*; adopted, during its 11th plenary meeting, 17–19 November 2010): "8. Initial and in-service training is a right and a duty for judges. It shall be organised under the supervision of the judiciary. Training is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system".

Initial training

231. The amount of time allocated in the initial training programme for issues relating to human rights issues – and the European Convention in particular – is certainly sufficient. Furthermore, given the present legal educational background of most of those concerned, it is also appropriate for the training in the short to medium-term – i.e., until the reform of university legal education begins producing graduates with an appropriate background in human rights standards and methodology – to start from the assumption that those admitted to this programme do not really have a firm grounding that could then be built upon by the Judicial Academy.

232. However, until there has been this transformation in university legal education – it would be more appropriate to use this time in a way that focuses more on developing the capacity to apply human rights requirements in the Serbian context than on ensuring an overly broad coverage of guaranteed rights and freedoms. It is of lesser importance for trainees to have extensive familiarity with what the European Court (or the United Nations Human Rights Committee) has decided – as seems to be the predominant approach at present – than with being able to identify the possible existence of issues under the European Convention (or the International Covenant) and to find out what is the relevant case law and commentary that needs to be taken into account when resolving those issues in the specific situation of a case. This does not mean that there should not be some such familiarity but trainees cannot be equipped with knowledge on all aspects of the case law existing at the time of the training, let alone those rulings that come afterwards.

233. There is a need, therefore, for greater emphasis on actual training than on the imparting of information. This means more time being given to case studies in which the trainees are expected to find out the relevant requirements as set out in the case law of the European Court (or the United Nations Human Rights Committee) and to apply to a concrete situation of the kind that they can expect to encounter in their judicial positions following the completion of their training so that is an effective integration of human rights standards and Serbian law (with due account being taken also of any relevant rulings of the Constitutional Court and the Supreme Cassation Court). This application should take the form of preparing both research exercises to find the case law on a particular issue and written rulings that apply this to a fact situation. The aim should be to help the trainees to understand how to apply Serbian law consistent with the country's human rights obligations and not to be a judge of the European Court (or member of the United Nations Human Rights Committee).

234. Particular emphasis in this regard should be given to how to apply the limitations that are possible in respect of particular rights and freedoms, taking into account the complexities involved in applying the principle of proportionality and of the extent to which the margin of appreciation might be relevant. As the Explanatory Memorandum to the European Charter on the statute for judges has emphasised:

> The ability to apply the law refers both to knowledge of the law and the capacity to put it into practice, which are two different things[148]

235. In addition, some attention should be paid to the way in which certain rights are of a cross-cutting character – especially the prohibition of discrimination and the right to a fair hearing – and others can be relevant to certain situations even though this might not be immediately apparent (such as the relationship between the right to property and social security and of various rights and freedoms to decisions concerning deportation and extradition). Moreover, there ought to be consideration of the concept of positive obligations involved in the rights and freedoms and the limits of their applicability.

236. Furthermore, there is a need to review the current sequencing of the issues addressed so that the later sessions build on the earlier ones. At present, the order in which particular topics are

148 Approved at a multilateral meeting organised by the Directorate of Legal Affairs of the Council of Europe in Strasbourg on 8–10 July 1998; point 2.1.

addressed tends to be determined more by the availability of trainers than by a sense of what should be considered first because it is foundational and what should come later because it is more advanced. The sequencing should also take account of what is being undertaken in the practical stage so that the relevance of human rights to a particular field of law can be more clearly appreciated. In addition, there should be an expectation of follow-up to what has been done in a particular training session both through assignments/exercises to be undertaken during the subsequent practical stage and engagement by mentors as to the applicability of what has been covered and the work currently being done.

237. Although the contribution of international experts to developing capacity can be very important, reliance on this could be reduced through making more use of video recordings and podcasts of past events, as well as other material available online (especially that on the Council of Europe's HELP website[149]). What cannot be dispensed with, but which is currently lacking, is expertise within the Judicial Academy that is available throughout the initial training programme to provide responses to follow-up questions to individual training sessions, to oversee the different elements of the training and to generally ensure that its different threads are adequately pulled together.

238. Overall, the aim should not be to make the trainees experts on human rights but to ensure that they can recognise their relevance to a given situation, appreciate the strength or otherwise of submissions being made in respect of them, know how to find the material relevant for the resolution of a case and be able to produce a ruling that uses that material in an appropriate manner.

239. The human rights component of the initial training in this revised form should also be a requirement for judicial assistants to undertake should it become possible for them, pursuant to the Constitutional Court ruling, to be appointed as judges without passing the programme as a whole.

240. Once university legal education has been transformed in the manner suggested above[150], there will undoubtedly be a need to revise this aspect of the initial training programme but this is a relatively distant prospect.

Continuing education and training

241. As the outcome of cases brought against Serbia in the European Court and the survey of judges on training on human rights both demonstrate, there is a considerable need for the familiarity of judges with the European Convention and the case law of the European Court (as well as with other human rights commitments made by Serbia) to be enhanced. There are, however, two elements of this need; the first is to ensure that all judges have the necessary skills and understanding to apply these human rights standards within the context of the Serbian legal system – which entails genuine training – and the second is updating as to developments in their interpretation and application by the European Court and the United Nations Human Rights Committee, which is more a matter of continuing education. It is the former element rather than the latter one that is the source of the difficulty leading to those international rulings.

242. Furthermore, the need to be trained on the methodology of applying human rights seems still to be a requirement for the majority of judges. Addressing this need should, therefore, be a priority for the Judicial Academy

243. Such training should be devoted principally to showing how a line of reasoning has developed, how some variation in the facts could result in a different outcome and thus how the specificities of the Serbian situation might or might not mean that a particular line of reasoning would not lead to the same ruling as in cases already determined by the European Court. Every effort

149 See n.107.

150 See para. 228.

should be made to direct participants to consider situations for which there is some division in the relevant cases as to the appropriate outcome so that they are required to reason for themselves. Ideally the cases chosen should also be ones that are less well-known to the participants so that they do not give 'text-book' answers.

244. The training should in addition seek not only to alert the judges to what the European Convention requires but also deal with the ways in which this can be achieved through the application of specific Serbian laws. At present there is a tendency both to apply existing law in a manner that fails to give effect to the European Convention (and the Constitution) and to avoid doing anything – despite the possibilities of achieving this through interpretation – by relying on the need for legislative reform which is not forthcoming.

245. There will certainly be a need for some introductory presentations in training sessions but these should generally be relatively brief, with the focus being more on actually using the European Convention than being just told about it. Furthermore, with the latter in mind, participants should be expected to have done – and be given the time to do – some preparatory reading in advance of the training so that they are already in a position to contribute in an active way to the main sessions of the training, namely, ones devoted to working through the application of case law to hypothetical cases derived from situations currently being faced by the courts. The training being provided should thus avoid the 'one way' round table format which tends to encourages passivity and discourages engagement with the issues being addressed, notwithstanding the preference expressed by many judges to be trained by lectures.

246. It would be appropriate to organise this training by reference to the particular areas of work of courts or judges involved so that training is as practically relevant as possible to those taking part in it. Thus, this training should certainly have, as illustrative material, the development of particular case law relating to certain rights, with the specific illustrations chosen varying according to the actual area of judicial work undertaken by the judges being trained. However, the aim should be to ensure a good understanding of the methodology required to apply the European Convention and not to provide them with a comprehensive coverage of the way in which individual rights and freedoms have been interpreted and applied.

247. The latter should be the focus of specific continuing education (not training) sessions to be taken once the fundamentals of using the European Convention have been mastered.

248. There is a tendency to argue that a visit to Strasbourg is the best way of understanding how to apply the European Convention but this tends to detract from the fact that it is what domestic judges do that really counts. Thus, insofar as any study visits to Strasbourg are included in training programmes (and there will undoubtedly be a demand for this), such visits should only be organised if they can clearly build on training already done *in situ* and standard presentations by judges and Registry staff should thus be avoided. Furthermore those who take part in such visits should be called upon to contribute to the training of others on the European Convention and the case law of the European Court. Indeed it would be appropriate to make a commitment to make such a contribution a condition of providing any support for study visits to the European Court.

249. The immediate focus of this training should be on the judges in the higher courts as they regulate the work of the lower courts and the rulings of the former can, if appropriately framed, provide guidance to the latter. The aim should be to contribute to changing the mind-set of those judges who have a leadership role and enabling them also to bring about such a change in others. Nonetheless, the aim should be to ensure that all judges ultimately benefit from this training. For this training to be effective, more than one-off sessions will be needed.

250. In the immediate future, the particular substantive areas of the European Convention for which there is both a need and a demand for continuing education – after the fundamentals of using this instrument have been acquired – relate particularly to Articles 5, 6, 8, 9, 10, 11, and 14 and

Protocol Nos. 1 and 12. However, this will certainly change, both with the emergence of potential new problems and subsequent significant rulings by the European Court.

251. In this connection, there will certainly be a need for some focus on recent and forthcoming legal changes which might on their face be compatible with the European Convention but which could give rise to entirely fresh sets of violations if not appropriately implemented. It will thus be important for judges applying such changes to be aware of the relevant case law of the European Court so that they are given effect in a manner that is compatible with the requirements of the European Convention. At the same time, the Judicial Academy needs to ensure that account of forthcoming legislative initiatives that have implications for compliance with human rights commitments are sufficiently factored into its planning process, with any support from international donors that might be required being sought early enough to ensure the necessary activities can be undertaken at the time required.

252. Regular updating with respect to the case law of the European Court will, of course, be necessary as judges will only have a current understanding of what the European Convention's provisions entail and an appreciation of the emerging trends if there is ongoing exposure to the developing case law, together with some appropriate analysis and critique of it.

253. There will also be a need for a better understanding of the role of the courts in giving effect to judgments of the European Court. It would thus be appropriate for some training – directed to those courts most likely to be involved in this work – that explains the role of the Committee of Ministers in the execution of judgments and the different requirements involved in individual and general measures. The emphasis should be on enabling judges to do all within their competence to prevent the repetition of abuses that have been identified in the rulings of the European Court. Although the implementation of European Court rulings is not something for judges alone, it is important to demonstrate to them the scope which they have for making a contribution to this process.

254. The Judicial Academy is rightly beginning to consider the possibility of using e-/distance learning techniques, both by themselves and in connection with more traditional sessions at which judges are present. It is doubtful whether this would be a particularly good technique for training directed to the fundamentals of the European Convention – not least given the inappropriate preference expressed by many judges to be trained by lectures and the need to ensure that the training received is actually effective – but it could well be useful to begin experimenting with it for updating on case law developments. In addition, as with the initial training programme, the Judicial Academy could usefully make available online video recordings or podcasts of lectures and training events so that judges could have resort to them at their own convenience. It should also encourage and make better known other material available online and, in particular, that on the Council of Europe's HELP website and that being produced by bar associations and in neighbouring countries whose language can readily be understood.

255. In addition, there is a need for the Judicial Academy to develop a comprehensive database covering the number/type of education/training provided by or through it[151], the topics concerned, the name and functions of both the participants and those doing the training or updating, as well as details about the way in which particular education and training (including the providers) have been evaluated by the participants. This is crucial as, for the purpose of ensuring the efficacy of its undertakings, it should be ina position to know both whether or not a given judge has received a particular form of education or training and whether or not a certain form of education or training and its provider has been considered satisfactory. The former should preclude unnecessary duplication of education and training for individual judges and allow what they have already received to be built upon at a later stage, while the latter should ensure that appropriate quality levels are maintained.

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151 To the extent possible, this should be complemented by information on training provided by external bodies. Such information could actually come from participants themselves, particularly if continuing training becomes, as is suggested, mandatory.

Judicial assistants

256. In view of the role played by judicial assistants in the administration of justice, it is as important for them as much as judges to have both the necessary skills and understanding to apply human rights standards within the context of the Serbian legal system and to benefit from updating as to developments in their interpretation and application.

257. Judicial assistants should thus be systematically included both in the methodological training on the European Convention and the arrangements for updating which were discussed in the preceding sub-section.

Trainers and mentors

258. There is no reason why continuing education in form of updating on case law developments – as opposed to the training – should be provided only by or through the Judicial Academy and indeed it is probably unrealistic to expect it to be in a position to meet the diverse updating needs of more than 3,000 serving judges every year. Certainly, there are conferences organised by some university law faculties and by the bar associations which could contribute usefully to the performance of this function although the Judicial Academy's website could provide a useful conduit for disseminating information about such events.

259. However, the persons involved in genuine training (i.e., the trainers) for the Judicial Academy need to have the capacity to deliver training in line with the principles of adult education and not just be experts in human rights in general and the European Convention in particular. It should not be assumed, therefore, that being a judge who has had the benefit of some lectures or even some real training on one or more aspects of the European Convention and the case law of the European Court automatically qualifies her or him to train other judges. As a consequence, the Judicial Academy should appraise the capacity of all those currently providing training in respect of human rights to ensure that they are really qualified to so act. It should also seek to develop its roster of trainers by giving more judges the necessary training that will equip them to become effective trainers of their colleagues. Although this does not mean that judges who have not had such training cannot be involved in the provision of updating lectures, such persons should not be given the responsibility of providing the training needed to develop the capacity to interpret and apply the European Convention and other human rights standards in the Serbian context.

260. In addition, there is a need to ensure that the mentors for those undergoing the initial training programme are equipped to provide some relevant follow-up in the practical stage to what has been covered in the sessions relating to human rights organised by the Judicial Academy. This should entail them become human rights experts but they should be able to engage with the trainees in a way that the latter can appreciate through practical experience the way in which account needs to be taken of particular human rights standards when processing and determining specific cases.

8. CONCLUSION

261. The legislative framework establishing the Judicial Academy and requiring initial training for intending judges is generally appropriate. The principal deficiency with it is the absence of a mandatory requirement for judges once appointed to undertake continuing education and training.

262. As regards education and training specifically on human rights in general and the European Convention in particular, the general conception of the initial training programme is also appropriate. There are, however, weaknesses in its realisation, partly due to the heavy dependence on international trainers and support but also because it tends to be more 'education' than 'training' and is not properly integrated with the practical component of the programme.

263. The ability of the judiciary as a whole to give practical effect to the requirements of the European Convention and the case law of the European Court still needs to be significantly improved, even though there is an increasing awareness that these requirements are relevant for the proper administration of justice in Serbia. There continues, therefore, to be a need for a sustained and comprehensive training programme to equip judges to perform the task of giving effect to this aspect of Serbia's international obligations, as they are required to do under the Constitution. This training should also be provided to judicial assistants.

264. Once this training has been effectively carried out, there will also be a need to ensure the continued updating of judges and judicial assistants as to developments in the case law of the European Court. The provision of such updating is not, however, something that needs to be organised by or provided through just the Judicial Academy as universities and other professional bodies can usefully contribute to this task.

265. The Judicial Academy should seek to develop its pool of Serbian trainers and ensure that they have the appropriate skills to undertake adult education and training.

266. All education and training provided by or through the Judicial Academy should be regularly evaluated by a body independent of it and the findings of such evaluation should shape the development of future programmes.

267. Current reform proposals, if implemented, can go some way to fulfilling the needs that have been identified. However, it is also essential that those serving in all the institutions concerned continuing education and training of judges fully discharge the responsibilities that have been trusted to them. In addition, the Judicial Academy should be assured of having in a timely manner the resources required to discharge its responsibilities.