

Comments on the Draft Law on the Judicial Academy

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1. General comments and suggestions to the Draft Law as a whole

Partners for Democratic Change Serbia, as part of the National Convention on the European Union (NCEU) for Chapter 23, has identified several serious procedural shortcomings in the preparation of the Draft Law on the Judicial Academy ("Academy"). These issues are summarized below:

1. Inadequate Time Frame: The working group was given a very limited period to draft the law, which did not allow for a thorough consideration of different approaches, including the critical issue of whether the Academy should be the sole entry point into the judiciary.

2. Lack of Early Public Consultations: The drafting process did not include early-stage public consultations, despite this being a statutory obligation of the law's proponent. This phase should have involved publishing the basic principles of the law, inviting public comments during the initial drafting stage, and preparing a report on the consultations conducted.

3. Exclusion of Key Stakeholders: Professional associations and other relevant stakeholders were not invited to participate in the drafting process.

4. Insufficient Information and Marginalization: The NCEU Working Group for Chapter 23, which actively monitors judicial reforms, was not informed about the establishment of the working group and was only granted observer status after an intervention.

5. Internal Conflicts: The only working group meeting was disrupted when members of the Judges' Association of Serbia walked out, and observers from CEPRIS were treated inappropriately, further undermining the quality of the drafting process.

6. Unjustified Urgency: Although the deadline for aligning the law was February 2024, the rush to complete the draft was unwarranted after this deadline had already been missed.

These concerns were highlighted in an NCEU statement regarding the drafting process of the Law on the Judicial Academy, available at the following [link](#). The missed adoption deadline should not justify a rushed drafting process without a comprehensive review of the Academy's operations, an assessment of the current situation, or an evaluation of the actual needs of the judicial system and state capacity. This approach indicates a lack of strategic planning, absence of a well-considered methodology, and no detailed expert analysis, as well as shortcomings in a consultation process.

The described procedural deficiencies have led to a lack of consensus within the professional community, particularly concerning the purpose of adopting a new Law on the Judicial Academy.

Partners Serbia, along with other civil society organizations and some professional associations, call for a thorough review of the entire Draft Law, as the current version does not reflect the recent constitutional amendments and newly adopted judicial laws.

To address these issues, Partners Serbia proposes organizing a comprehensive dialogue among

stakeholders, including the Ministry of Justice, the Judicial Academy, expert bodies, the European Commission, the Venice Commission, professional associations, and the broader civil sector. This dialogue would aim to consider all proposals and ensure the participation of all stakeholders in drafting a new version of the law.

The Issue of Article 56 of the Draft Law

Partners Serbia has analyzed the Draft Law, particularly focusing on ensuring transparency in the operations of the Judicial Academy. Given that transparency is closely linked to the long-standing demand for enhancing the Academy's independence, we support the positions articulated in the analysis by the Judges' Association of Serbia and the Association of Judges' Assistants. Their report, "[Analysis of Training in the Serbian Judiciary – Experiences and Perspectives.](#)" argues for the development of a completely new Draft Law that aligns with the new judicial regulations. They emphasize that the Academy cannot serve as the sole entry point into the judiciary without first establishing its operational independence, a prerequisite that has yet to be fulfilled.

The arguments against making the Judicial Academy the only entryway into the judiciary at this time are thoroughly presented in the aforementioned analysis and will not be reiterated here.

Transparency in the Operations of the Judicial Academy

The Judicial Academy in Serbia is expected to play a crucial role (with the Draft Law **assigning it a central function**) in shaping professional and competent judicial staff, necessitating a high level of accountability to the public. However, **the Draft Law lacks provisions on transparency, which is a significant oversight.** In modern democratic systems, transparency in public institutions is not merely a matter of best practice but a fundamental requirement for building public trust, ensuring institutional independence, and preventing abuses and corruption.

Firstly, transparency in the Academy's operations would enable the public and relevant professional and oversight bodies to monitor the processes of selection, training, and advancement of judges and prosecutors. A lack of public oversight in these procedures increases suspicions regarding the Academy's objectivity and impartiality, potentially undermining the integrity of the entire judicial system. Legal provisions guaranteeing access to information on the Academy's activities would help ensure the fairness and objectivity of these processes, thereby strengthening trust in the institution.

Secondly, transparency is crucial for ensuring accountability. Clear legal requirements for the publication of information about the Academy's decision-making processes, access to all decisions, annual and periodic reports, financial data, training programs, and selection results would promote managerial accountability and efficient resource use in line with public interest. Without access to this information, **the risk of abuse and irresponsible conduct is significantly heightened.**

Thirdly, disclosing data on judicial training and the criteria for selection and advancement contributes to uniform standards in the judiciary. Without such openness, the selection processes may remain opaque, subject to subjective decisions, and result in favoritism and inequality.

For these reasons, it is necessary to include legal provisions that guarantee transparency in the operations of the Judicial Academy to build its independence and strengthen the rule of law in Serbia.

The issue of transparency in the Academy’s operations must be regulated by law rather than secondary legislation (e.g., rules or regulations), for several key reasons:

- Legal Certainty and Stability: Provisions enshrined in law provide greater legal certainty, as they undergo a more rigorous amendment process and are less susceptible to arbitrary or politically motivated changes. If transparency is mandated by law, it cannot be easily circumvented through internal acts that may be amended without public debate or legislative oversight.
- Limiting Managerial Discretion: Such an important issue directly affecting the Academy’s independence and accountability should not be left to the discretion of its management. Allowing internal bodies to determine transparency could lead to selective or interest-driven practices.
- Enhanced Public and Institutional Oversight: Legal provisions mandating transparency enable broader public and institutional scrutiny. When transparency principles are defined by law, their implementation can be overseen by independent bodies like the Commissioner for Information of Public Importance and Personal Data Protection, the High Judicial Council, the High Prosecutorial Council, and the National Assembly. If regulated only by secondary legislation, the oversight is narrower and less effective.

In conclusion, although Partners Serbia believes that a new draft of the Law on the Judicial Academy should be initiated—withdrawing the current version and conducting extensive consultations on the Academy’s purpose, function, and role within Serbia’s judicial system—we nonetheless present concrete proposals below to enhance transparency in the Academy’s operations.

Finally, it is necessary to conduct a realistic assessment of the financial resources required for implementing the Law on the Judicial Academy. Often, proponents of the law claim no additional financial resources are needed. However, this should not apply to the Judicial Academy Law, as the necessary technical and human resources for ensuring transparency and fulfilling other obligations must be anticipated and included in the law’s implementation framework.

2. Specific parts of the Draft Law which you propose to amend and your amendment proposal

Proposal 1: An article of the Law guaranteeing the public character of operation needs to be introduced. This article should also contain provisions on the institutions responsible for supervising the fulfillment of obligations regarding the transparency of work.

Proposal 2: Article 4 of the Draft

The article should be amended as follows:

The Academy shall prepare **quarterly** and annual work reports that shall be submitted to the High Judicial Council and the High Prosecutorial Council **and posted publicly on the website of the Academy.**

The Academy shall prepare quarterly and annual financial reports, which shall be submitted to the High Judicial Council and the High Prosecutorial Council, and be made publicly available on the website of the Academy.

Proposal 3: Article 6 Activity of the Academy

The following should be added to the list of activities of the Academy:

- Create and publish quarterly and annual reports on its work and present them publicly.
- Prepare and publish quarterly and annual financial reports and present them publicly.
- Conduct other activities aimed at informing the public about its work.

Proposal 4: Introduction of Article 12 a. The public character of work of the Management Board

The sessions of the Management Board shall be public. The public character of sessions shall be ensured by notifying the public in a timely manner about the holding of the session, and by establishing technical prerequisites for the long-distance transmission, storing and broadcasting of picture and sound (through the introduction of audio and video transmissions). The monitoring of Management Board sessions in real time and after their holding shall be made possible through the use of technical devices for the transmission of picture and sound. The minutes of the Management Board meetings shall be prepared and made publicly available.

Proposal 5: Introduction of Article 18 a. The public character of work of the Program Council

Meetings of the Program Council shall be public. Their public character shall be ensured by notifying the public in a timely manner about the holding of the meetings of the Program Council and program commissions and establishment of technical conditions for the long-distance transmission, storing and broadcasting of picture and sound (by introducing audio and video transmissions). The monitoring of the meetings in real time and after their holding shall be made possible through the use of technical devices for the transmission of picture and sound. Minutes of the meetings of the Program Council and program commissions shall be prepared and made publicly available.

Proposal 6: Article 38. Submitting a report

A paragraph should be added specifying the method in which reports will be published as well as the time frame within which the report on a public competition with the ranking list will be made publicly available.

A legal obligation of reporting on the number and structure of candidates, and on key decisions made in connection with the admission and advancement of candidates should be introduced.

Proposal 7: Article 43 Final Exam Commission

This Article should be amended by the following paragraph:

The Final Exam Commission shall prepare a report on the final exam, which shall be made publicly available.

Proposal 8: Complaint against the grade:

The following paragraph should be added:

The Program Council decision on the complaint shall be an integral part of the report on the final exam and shall be made publicly available.

Proposal 9: A new article should be introduced prescribing the obligation to make publicly available the program of all types of training and the obligation to create and publish the evaluation and satisfaction rating (satisfaction survey) of participants in the training.

3. Explanation of the proposal for amending the Draft Law

Proposal 1: *An article of the Law guaranteeing the public character of operation needs to be introduced. This article should also contain provisions on the institutions responsible for supervising the fulfillment of obligations regarding the publicity of work.*

Explanation:

In the part of the form referring to General Comments, we stated the reasons why we believe that the transparency of work of the Academy must be envisioned in the Law. We will repeat some of the arguments here. The Judicial Academy in Serbia should play an important role (and the Draft Law even envisions its key role) in the formation of professional and competent judicial staff, which implies an extremely high level of accountability to the public. If transparency is defined in the law, it is not easy to circumvent or change this principle through the Academy's internal acts that can be amended without a wider public debate or checks made by legislative authorities.

Such an important issue which directly affects the independence and accountability for the operation of the Academy should not be left to the discretion of the management or bodies of the Academy, since this would make it possible to treat transparency selectively or in accordance with internal interests.

The introduction of provisions on the public character of work enables greater public and institutional scrutiny. When the principles of transparency are defined by law, their implementation is subject to the supervision of independent institutions, such as the Commissioner for Information of Public Importance and Personal Data Protection, the High Court Council, the High Prosecutorial Council, the National Assembly, etc. If transparency is regulated only by secondary legislation, the supervision of its implementation is much narrower and less efficient.

Proposal 2: *Article 4 of the Draft: The Academy shall prepare **quarterly** and annual activity reports that shall be submitted to the High Judicial Council and the High Prosecutorial Council, and posted publicly on the website of the Academy.*

The Academy shall prepare quarterly and annual financial reports, which shall be submitted to the High Judicial Council and the High Prosecutorial Council, and be made publicly available at the website of the Academy

Explanation:

The Judicial Academy, as an institution of key importance for the training and selection of judicial staff, should prepare quarterly and annual reports on its operation in order to ensure systematic monitoring and evaluation of its activities. These reports should serve as a mechanism for analyzing the efficiency and quality of implementation of programs, as well as for determining possible shortcomings and management of risks. Quarterly reports make it possible to ensure continuous monitoring of work, while annual reports provide a

comprehensive overview of achieved results and enable strategic planning for the next period. This is particularly important in the context of the ongoing judicial reform.

In addition to the High Judicial Council and the High Prosecutorial Council, which have a supervisory role, the public must also have an insight into these reports. Transparency with regard to the publication of reports ensures that the activities of the Academy are subject to public scrutiny, that the possibility of abuse is reduced, and that the mechanisms for promoting the accountability and independence of the Academy are strengthened.

Until now, the Academy has not demonstrated a satisfactory level of transparency either in its operation, or when it comes to financial transparency. At this point, it is important also to emphasize that the [State Audit Institution](#) has repeatedly stated that the Academy has made serious violations of the obligation to conduct business in good faith, as well as that it did not submit evidence on the removal of substantively significant irregularities within the set deadline.

The Academy's financial accountability can be additionally ensured through a provision prescribing that the State Audit Institution (SAI) regularly analyze the financial operation and publish the audit results. Also, reports on the implementation of the SAI recommendations and clear specifications of the sources and amount of funds for the implementation of programs and operation of the Academy as a whole would improve the financial operation of the Academy.

At the time when these comments were written (October 2024), the annual work report for 2023 was still not available on the Judicial Academy [website](#), which is why we believe that it would be of utmost importance to include among legal norms the obligation to prepare and publish work reports and financial reports, as well as to set appropriate deadlines for the publication of these reports.

Proposal 3: Article 6 Activity of the Academy

The following should be added to the list of activities of the Academy:

- Create and publish quarterly and annual reports on its work and present them publicly.
- Prepare and publish quarterly and annual financial reports and present them publicly.
- Conduct other activities aimed at informing the public about its work.

Explanation: this proposal is a follow-up of the previous Partners Serbia proposal, where the explanation has already been provided.

Proposal 4: Introduction of Article 12 a. The public character of work of the Management Board

The sessions of the Management Board shall be public. The public character of a session shall be ensured by notifying the public in a timely manner about the holding of the session, and by

establishing technical prerequisites for the long-distance transmission, storing and broadcasting of picture and sound (through the introduction of audio and video transmissions). The monitoring of Management Board sessions in real time and after their holding shall be made possible through the use of technical devices for the transmission of picture and sound. The minutes of the Management Board meetings shall be prepared and made publicly available.

Proposal 5: Introduction of Article 18 a. The public character of work of the Program Council

Meetings of the Program Council shall be public. Their public character shall be ensured by notifying the public in a timely manner about the holding of the meetings of the Program Council and program commissions and establishment of technical conditions for the long-distance transmission, storing and broadcasting of picture and sound (by introducing audio and video transmissions). The monitoring of the meetings in real time and after their holding shall be made possible through the use of technical devices for the transmission of picture and sound. Minutes of the meetings of the Program Council and program commissions shall be prepared and made publicly available.

Joint explanation of Proposals 4 and 5:

Proposals 4 and 5 were prepared on the model of provisions of the Law on the High Prosecutorial Council and the Rules of Procedure of the High Prosecutorial Council. The work of the Academy has so far been insufficiently transparent. Draft Law envisions the introduction of new competencies of the Academy, which will decrease the roles of the High Judicial Council and the High Prosecutorial Council, **and give the Academy a key role in the selection of judicial staff.** In view of this, the Academy should have the same level of transparency and openness in its work. Different strategic documents and European Commission reports quote enhanced independence of the Academy as one of the main challenges, and progress in this area has not been demonstrated so far. Moreover, the Draft does not even declare that the Academy is independent, so that concerns regarding the future method of work of this institution are justified.

The recording and broadcasting of sessions contributes to greater accountability of the Management Board and Program Council members. When the public can monitor the work of these bodies in real time or view the recordings later, members are under greater pressure to provide arguments when they explain their positions and decisions. This kind of visibility is a deterrent from arbitrary decisions and ensures that each participant in the discussion works in the interest of the public, rather than in the individual or political interests. In addition to this, the publication of minutes from the sessions and meetings of these bodies makes it possible for each step in the decision-making process to be available for analysis and evaluation by independent bodies, media, professional associations, and civil society, which helps to establish a culture of transparency and public scrutiny. Enabling the public to monitor

the work of the Academy in all of its stages will contribute to the legitimacy of its decisions and reinforce the impression that the process of selection and other activities of the Academy are free from political influence.

Proposal 6: Article 38. Submitting a report

A paragraph should be added specifying the method in which reports will be published as well as the time frame within which the report on a public competition with the ranking list will be made publicly available.

Explanation:

Article 38 mentions the publishing of a report, and it needs to be specified how and within which time frame the report should be made publicly available.

Proposal 7: Article 43 Final Exam Commission

This Article should be amended by the following paragraph:

The Final Exam Commission shall prepare a report on the final exam, which shall be made publicly available.

Proposal: 8: Complaint against the grade

The following paragraph should be added: The Program Council decision on the complaint shall be an integral part of the report on the final exam and shall be made publicly available.

Joint explanation of Proposals 7 and 8:

The preparation of the report on the final exam, or the so-called ranking list and its publication is based on the need for greater transparency in the process of taking the final exam and handling of complaints against grades. The publication of the Final Exam Commission report and the Program Council decisions on complaints ensures the accountability of all participants in the process and gives the candidates and the public an insight into the objectivity and fairness of the examination procedure. This reduces the risk of irregularities and abuse, promotes trust in the operation of the Academy, and strengthens the integrity of the processes of education and selection of future holders of judicial offices.

Additional clarification of procedures can be secured through a more precise definition and delineation of competences of the Management Board and the candidate selection body with regard to the obligation to publish criteria for the selection and evaluation of candidates. The current Law already sets the framework for selection, but the publication of precise criteria for the selection of candidates, as well as the enabling of public supervision of the selection process, would reduce the risk of subjectivity in decision-making.

Proposal 9: A new article should be introduced prescribing the obligation to make publicly available the program of all types of training and the obligation to create and publish the evaluation and satisfaction rating (satisfaction survey) of participants in the training/program.

Explanation:

The Academy selectively and insufficiently regularly publishes information on programs and implementation of training. For example, at the time when these proposals were written, the last available Permanent Training Program on the [website](#) of the Academy was for the year 2022.

Regarding evaluation, the Academy webpage entitled [Monitoring and Evaluation](#) lists the reasons why the implementation of such activities is important:

"Monitoring and evaluation are of great importance in the field of adult education, if one wants to organize and provide adequate training that meets the needs of users, meets all legal requirements and includes the best existing practice.

"The Judicial Academy conducts continuous evaluation and monitoring of all educational activities in order to monitor the quality of training and maintain the level of efficiency and effectiveness of educational work."

This page also includes the indicators used for the evaluation and monitoring of the educational activities of the Academy. We believe that it is of utmost importance to present the results of these evaluations to the public for each training program once it is completed. The evaluation process also needs to include participants in the program, for the purpose of providing an insight into their satisfaction.

In the 2022 Activity Report of the Academy (the latest published annual report), the monitoring and evaluation of each training are stated as goals, but the report does not present the results of monitoring and evaluation. A justified question is whether monitoring and evaluation are implemented, and if so, whether the evaluation results are used for improving the contents and organization of all types of programs.

Evaluations provide valuable information on the satisfaction of participants with the programs and enable the Academy to identify areas that require improvement. This process helps to create programs that are not only formally satisfactory but are also really useful for those who attend them. The publication of the evaluation results and their impact on the improvement of the training/ program would **additionally increase accountability and convince the public that the Academy approaches the preparation and organization of training/ programs seriously.**

Moreover, transparency regarding evaluations and ways in which they have been used for improving the programs is necessary for ensuring that the Academy **truly responds to the needs of the judicial system.** The public has the right to know whether the participants' suggestions have been taken into account and how they have been used for improving future training/programs, which will ensure that the Academy responds efficiently to the challenges faced by the judiciary.