

Ways towards Justice

IS THE JUDICIARY INDEPENDENT (IV)

THE TRAINING OF JUDGES AND ITS IMPORTANCE FOR AN INDEPENDENT PERFORMANCE OF THE JUDICIAL DUTIES

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In order to have a judge who will be genuinely independent in his/her work, not only must he/she have perfect knowledge of the rules that are being implemented and gain mastery in skills which will enable a successful performance; he/she must also be a person of broad education who understands both the significance and responsibility of the judicial function and the social and economic circumstances in which justice is being administered.

The independence of the judiciary is guaranteed also by the very personality of the judge. In case that the judge is not independent as a person, if he/she is vulnerable to external influences, and particularly so in regard to influences from the other two branches of power - then the judiciary will not be independent regardless of the existence of legal and material guarantees to this effect. The independence of the judge as a person depends on his/her character (honesty, courage, personal integrity, open-mindedness), and also on how free he/she is as a person and how much he/she is in the position to use this freedom, as well as on his/her general education, expertise and material independence. Hence, the independence of the judge as a person is not determined solely by his/her character, but is rather something that is being built and nurtured. The training of the judges has a very important role in this process, both prior to taking the office and later during the career. Of course, the training of the judge has primarily to secure the quality and efficiency of the judge's work, but it is of no less importance in regard to the judge's independence. In order to have a judge who will be genuinely independent in his/her work, not only must he/she have perfect knowledge of the rules that are being implemented and gain mastery in skills which will enable a successful performance; he/she must also be a person of broad education who understands both the significance and responsibility of the judicial function and the social and economic circumstances in which justice is being administered.

How significant the training of judges is for their professional, efficient and independent performance, both before their appointment (initial training) and during the career (permanent training), is best proven by the fact that a big number of international declarations and resolutions deal with this question. Some of them are of particular importance for the establishment and understanding of international principles and standards upon which it should be established. We shall quote some of their most interesting parts:

"Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law." (Basic Principles on the Independence of the Judiciary – UN 1985)

"Judges should in particular have the following responsibilities: ... g) to undergo any necessary training in order to carry out their duties in an efficient and proper manner. (Recommendation R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges, 1994, Principle V);

"An important aspect of ensuring that the most suitable persons are appointed as judges is the training of lawyers. Professional judges must have proper legal training. In addition, training contributes to judicial independence. If judges have adequate theoretical and practical knowledge as well as skills, it would mean that they could act more independently against the administration and, if they so wish, could change legal profession without necessarily having to continue to be judges."

"With a view to ensuring that the law is properly applied, it is not enough merely to require, at the selection stage, that judges possess suitable qualifications; they must also be given appropriate training before their appointment and during their career."

"In order to counterbalance the obligation placed on States to provide for appropriate training for judges before their appointment and during their career (Principle III.1.a), judges should participate in any training needed for the efficient and proper performance of their duties." (Explanatory Memorandum to the Recommendation R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges, 1994);

"The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. The authority referred to at paragraph 1.3 hereof ("authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary"), ensures the appropriateness of training programs 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."

"The statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the State pays for, and ensures its organization whilst respecting the conditions set out at paragraph 2.3 hereof" (as quoted in the previous paragraph). "...This means that the high level of competence and of ability is a constant requirement for the judge in examining and adjudicating on cases, and also that he or she must maintain this high level, if necessary through further training. As is pointed out later in the text, judges must be granted access to training facilities."...

"The nature of judicial office, which requires the judge to intervene in complex situations that are often difficult in terms of respect for human dignity, is such that "abstract" verification of aptitude for such office is not enough. Candidates selected to discharge judicial duties must therefore be prepared for the task by means of appropriate training, which must be financed by the State. Certain precautions must be taken in preparing judges for the giving of independent and impartial decisions, whereby competence, impartiality and the requisite open-mindedness are guaranteed in both the content of the training programs and the functioning of the bodies implementing them. This is why the Charter provides that the authority referred to in paragraph 1.3 ("authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary") must ensure the appropriateness of training programs 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. The said authority must have the resources so to ensure. Accordingly, the rules set out in the statute must specify the procedure for supervision by this body in relation to the requirements in question concerning the programs and their implementation by the training (underlined by the author) bodies." (European Charter on the Statute for Judges, Council of Europe, 1998). "...The definition of these guarantees set out in paragraphs 2.3 and 4.4 on training is very flexible, enabling them to be tailored to the various national training systems: training colleges administered by the Ministry of Justice, institutes operating under the higher council of judges, private law foundations, etc." (Explanatory Memorandum to the European Charter on the Statute for Judges, Council of Europe, 1998).

As we can see in these documents (as well as numerous other ones which are not mentioned) particular attention is given to initial training, i.e. the training which the judges must undergo before they step to their judicial duties.

The existing legal framework and training practice of judges in Serbia, apart from not being harmonized with international standards, does not arrange the system of their training in a comprehensive way nor does it secure its efficient organization and implementation. First of all, the positive rules do not define the notion and aim of the judges' training, nor do they specify the bodies which are to organize and implement it.

Of particular significance for the successful performance of the judge's function is the training that they undergo before their appointment (initial training).

Big influence upon the system and organization of initial training have the procedure and conditions for the election of judges. As judges in all kinds and ranks of courts can be appointed candidates who work in courts (apprentice judges, judges) as well as those who have never worked in the judiciary. In the case of those who were elected from the group of judges' or prosecutor's apprentices we can perceive their training during internship as a kind of initial training.

Such a procedure of election of judges does not guarantee any form of training before election, and as there are no regulations related to obligatory training in the period from election to assuming office, we can conclude that there is no comprehensive system of their initial training. Namely, candidates elected to judicial functions who before that were not working in the judiciary do not have any organized form of initial training. In the case of those who were elected from the group of judges', i.e. prosecutor's apprentices we can perceive their training during internship as a kind of initial training.

This is the existing legal framework regarding interns for the judge and apprentice judges: interns for the judge and apprentice judges constitute the court staff, the number of court staff is established by the president of the court on the basis of general criteria defined by the High Judicial Council (Article 54 of the Act on Organization of Courts).

Interns for the judge:

- interns for the judge are employed upon decision of the president of the court;
- interns for the judge are engaged in municipal, district and commercial courts (Article 61, par. 2 of the Act on Organization of Courts);
- priority for election have candidates who graduated from law school with a high average mark (Article 61, par. 3 of the Act on Organization of Courts);
- the basic training program for interns for the judge are defined by the president of the Supreme Court of Serbia, and the training program itself, according to these basics, by the president of the court (Art. 63, paragraph 1 of the Act on Organization of Courts);
- after internship the intern for the judge takes a judicial exam and if he/she passes cum laudae he/she is accepted to work for an unlimited period in the rank of the judge's associate – one of the ranks of apprentice judges (Article 62, paragraphs 2 and 3 of the Act on Organization of Courts);
- there are no regulations regarding evaluation of the work of interns for the judge in courts in which they spent their internship.

Apprentice judges:

- if in the court there are vacancies for apprentice judges, interns for the judge who passed the judicial exam can by decision of the president of the court be assigned to these posts, otherwise they lose their job (upon the elapse of three years, the period for which they were initially employed);
- the apprentice judge assists the judge; drafts court decisions; studies legal issues, the jurisprudence and relevant literature; drafts legal opinions; prepares the adopted legal opinions for publishing and performs independently or under surveillance of and with instructions from the judge other duties defined by law and the court's rules of procedure (Article 55 of the Act on Organization of Courts);
- apprentice judges have the following ranks: judge's associate, senior judge's associate (with two years of work experience after passing the judicial exam), advisor to the court (who fulfills the conditions for the judge of the District Court) (Article 56 of the Act on Organization of Courts);
- the apprentice judge's work is evaluated annually by the president of court, upon opinion of the session of the department to which the apprentice is associated, i.e. the judge or chamber with which he/she is working in case he/she is not associated with any department (Article 59 of the Act on Organization of Courts);
- the marks are: "unsatisfactory", "satisfactory", "outstanding" and "particularly outstanding", they are based upon the volume and quality of work, conscientiousness, entrepreneurship and publishing of scientific and expert essays (Article 60 of the Act on Organization of Courts);
- a graduate from law school can be accepted to the court without getting the status of the employee (volunteer) with the aim to fulfill the conditions for taking the judicial exam.

The inadequacies of the training of the interns for the judge and apprentices are the following: this system of training is not unified and is divided in two phases, the training of interns for the judge and the training of apprentice judges;

Interns for the judge:

- the number of interns for the judge does not correspond with the number of apprentice judges and judges needed (the number of interns for the judge is much bigger, their number in every court is established by the president of the court through the regulation related to work posts which is based upon framework criteria of the High Judicial Council);
- there are no unique criteria for the appointment of interns for the judge (the decision is left to the discretionary judgment of each president of court, which does not guarantee access for the best candidates);
- neither a unique system nor content and quality of training of the interneers within the court have been secured in essence. The framework of the training program of interns for the judge is established by the president of the Supreme Court of Serbia, and the training program itself in accordance with this

framework – by the president of the court. Thus a unique basis for professional specialization of interns for the judge is only formally secured, whilst in real life their realization, content and quality depend on the engagement of each individual president of court, on material possibilities of each court and, what is most important, the quality of training depends on the dedication, ability and expertise of the very judges who are assigned to train the interns, which altogether – in essence – does not secure equal quality of training for all interns and what brings them into unequal positions when they make the judicial exam;

- within the Judicial Centre there is no training program for interns (although the Program Council formed the working group);

- although interns for judges (as the name itself indicates) prepare for the profession of the judge, not only are there no guarantees (regardless of their success in the training) that they will be elected as judges, there are also no guarantees that they will stay in the court at all, since they were appointed for a limited period of three years (unless they pass the judicial exam cum laudae, when they are accepted to work for an unlimited period of time);

- a significant number of interns for the judge leaves the court after passing the judicial exam, and most often they join the Bar (which is the consequence of appointing an unplanned, much bigger number of interns than is the number of posts for apprentice judges), so that in practical terms the courts also train future attorneys. This is not rational, both in view of costs which the state covers for their training, and in view of the possibility to get a better quality training of the interns (because of their number);

Apprentice judges:

- there is no unique criterion for the selection of apprentice judges (the decision is left to the discretionary right of each president of the court, which does not guarantee access to the best candidates);

- the number of apprentice judges does not correspond with the number of apprentice judges and judges needed (the number of interns for the judge is much bigger, their number is in each court defined by the president of the court through the regulation on the number of work posts established on the basis of framework criteria of the High Judicial Council);

- there is no program for the training of apprentice judges within the court (their training is left to each individual president of court);

- within the Judicial Centre there is no special training program for apprentice judges (it is implemented within the training program for judges with up to three years of work experience as a judge, hence, a program which is not adapted to them and to which they do not have secured access);

- there are no unique criteria for the evaluation of the work of apprentice judges (the law defines the criteria and grades, but the evaluation is made by each president of court, without clearly established unique elements which would secure a unique implementation of criteria). In the process of selecting candidates for judges this is a problem when it comes to ranking their expertise (as one of the criteria for election, i.e. proposing them for election as a judge) by the High Judicial Council, which can diminish their motivation to attend the training;

- participating in training programs is not clearly defined as one of the criteria for the expertise of the candidate for election as a judge. The law says that the High Judicial Council proposes to the National Assembly candidates for judges only on bases of their expertise and worthiness, but it does not define which these criteria for their evaluation are.

In regard to the permanent training of judges positive law only defined that the judge has the right to professional specialization on the expense of the Republic of Serbia, and that the types of training and the methods are defined by the Supreme Court of Serbia at the General Session (Article 8 of the Act on Judges, and Art. 28 and 41 of the Act on Organization of Courts). In the same manner is regulated also the training of public prosecutors and their deputies.

Such a scanty and only general regulation of permanent training of those who perform judicial functions does not guarantee either that they will have access to it, or that this decision will be successfully implemented, which is the consequence first of all of the fact that neither its notion nor the aim are defined, nor are the special bodies for its organization and implementation specified.