KEY POINTS OF THE OBJECTIONS ON THE DRAFT OF THE AMENDMENTS TO THE LAW ON JUDGES

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According to the conclusion of the Ministry of Justice 05 number 011-5863 / 2015 of 27.05.2015, a public debate was planned by sending an e-mail on the objections concerning the set of judicial laws which differs from the very meaning and purpose of the notion of public debate. The public debate implies the right and the ability of all stakeholders to make their positive or negative opinion about a particular proposal which they will publicly express and also to get a public answer why their position may or may not be accepted. Considering the foregoing, we hoped to the last day of the deadline for the submission of the objections that the proponent of the law will realize substantial omissions and will allow us realistically and not just formal participation in the debate. While we understand that giving objections to the above-mentioned method has the purpose of merely filling out the forms, but we are convinced that all parties in this "debate" act in the interests of the profession, the rule of law and democracy, which is why we try to give you and once again point out the legal and factual reasons for the shortcomings of the proposed Article 1 of the Draft Law on Amendments to the Law on Judges that directly places one group of candidates in a privileged position and another into a discriminatory one:

• **The Draft Law on Amendments to the Law on Judges**("Official Gazette" no. 116/08, 58/09 - US, 104/09, 101/10, 8/12 - US , 121/12, 124/12 - US, 101/13, 111/14 - US and 117/14), after Article 45, art. 45a was introduced. Even though the expertise and competence of candidates for the judicial functions and the criteria for their appointment to judicial office already exist in Serbian law for many years the introduction of examinations from the art.45a for those who have not completed initial training at the Judicial Academy (in order to check whether they are professional and trained to perform these functions) **are in direct collision of the decisions of the Constitutional Court IUZ No 497/2011 of 6 February 2014** (published in the "Official Gazette of RS", No. 32/14 of 20 March 2014) and IUZ No 427/2013 of 12 June 2014 (published in the "Official Gazette of RS", no. 111/14 of 15 October 2014), **and with the provisions of Articles 43 to 49 of the Law on Judges.**

• By the decision of the Constitutional Court IUZ No 427/2013 of 12 June 2014, published in the "Official Gazette of RS", no. 111/14 of 15 October 2014, the second sentence of Article 50, paragraph 4 of the Law on Judges ("Official Gazette" no. 116/08, 58/09 - US, 104/09, 101/10, 8 / 12 - US, 121/12, 124/12 - US and 101/13), that stipulated that the High Judicial Council shall, when nominating candidates for judges of misdemeanor or basic court, nominate a candidate who has completed initial training in Judicial Academy, in accordance with the law ceased to be valid. This decision of the Constitutional Court is actually a result of a decision of the Constitutional Court IUZ No 497/2011 of 6 February 2014, published in the "Official Gazette of RS", No. 32/14 of 20 March 2014, which made the provisions of Article 40, paragraph. 8, 9 and 11 of the Law on Judicial Academy ("RS Official Gazette", No. 104/09) ceased to be valid. In the reasons for the decision, amongst other things, stated that the law cannot bound the High Judicial Council to propose in a mandatory way to the National Assembly for the first appointment for judicial office candidates who have completed initial

training at the Judicial Academy, but that the law may prescribe rules by which the High Judicial Council will value the completed initial training at the Judicial Academy in the process of proposal of the judges to be elected for the first time.

• Given the foregoing, the Constitutional Court through the above-mentioned decision, expressed a clear and unequivocal position - that the law may prescribe rules by which the SPC and HJC will evaluate initial training at the JA in the process of nominating candidates for the first time for judges of the basic and misdemeanor courts (public prosecutors) post.

• In this regard, we emphasize the reasoning part of the Constitutional Court IUZ No 497/2011 that says: *"... The Constitutional Court did not dispute the vocational training of the judicial personnel, and not only for those persons who are preparing for judicial and public prosecutor's office, but also of elected judges, public prosecutors and their deputies, contributes to raising quality in performing these functions and should therefore be adequately evaluated within the legally prescribed criteria as for the first appointment to a judicial or prosecutorial function, and during the elections in the higher court, the public prosecutor's office,* ***but is constitutionally unacceptable that the legal solutions according to which all persons who have not completed initial training at the Judicial Academy, therefore, substantially are eliminated from the round of candidates for the first election of a judge for certain types of courts and deputy public prosecutors of certain types of public prosecutor's office. This especially when having in mind that the participants of the Academy during the initial training primarily perform tasks of judicial and public prosecutor assistants, as well as the judicial and prosecutorial assistants who are not "users" of that training."*** Therefore it cannot be concluded that the introduction of an examination in order to verify the expertise and proficiency in a particular category of candidates for the election, is the duty of the legislator, nor the purpose of the challenged provisions can be explained by quoting parts of the decisions of the Constitutional Court, however that these stylishly shaped, especially if they are quoted outside the right context.

• When the proposed changes to the law are brought in connection with the Law on Judicial Academy, it becomes clearer how the proposed solution is discriminatory, illogical and unfair and it is best seen from several aspects:
For example the theoretical part of the training takes place through the processing of certain thematic units organized by the Academy, and the practical part of the work of the judicial authorities under the supervision of a mentor and through work in institutions outside the judiciary. **Rating of the intial training** (which is normally done in the court and the prosecutor's office), according to Article 36, paragraphs 1 and 2 of the cited law, shall be carried out so that, upon completion of each part of the initial training, **mentor and lecturer from that particular part of the training is giving a rating of 1 to 5**. This means that this, in fact, represents the opinions of mentors. Work in institutions outside the judiciary is not graded. The provisions of Art. 37 paragraph 1 and 2 of the Law prescribes that, upon completion of the initial training, users take the final exam which ‘’checks’’ only practical knowledge and skills acquired in the initial training for the job of a misdemeanor court judges, the basic court and deputy public prosecutor in basic prosecutor’s office, evaluation of the final exams are from 1 to 5. At the end of the initial training a final assessment is acquired that is made of sum of scores obtained from certain parts of the training and assessment of the final examination (Art. 38 of this Law). **The conclusion is from the above mentioned process that the users of initial training in JA practically are not checked for their theoretical knowledge, and in addition, as candidates for judicial offices, by the newest amendments, are exempted from the proficiency checks and proficiency exam,** which, according to the legislative amendments which we have objections to, are organized by the HJC and the SPC . This initial training on the JA is set again as a crucial condition for evaluation of expertise and competence when nominating candidates for the first election of a judge of the misdemeanor and the Basic Court and the Deputy Public Prosecutor at the Basic Public Prosecutor's office.

• **On the other hand, those same institutions in which the initial training of JA users perform their " initial training " - the courts and public prosecutor's offices, judicial and prosecutorial assistants work, who also apply to the judiciary functions.** They perform their tasks in actual cases, starting with the undertaking of specific procedural actions in the proceedings-like hearings, to the drafting of the final version of judicial and prosecutorial decisions. Checking and evaluation of their work is done by qualitative and quantitative measures and criteria four times a year by the judge or a panel, or deputy public prosecutor who they are assigned to, and at the end of the year they receive a final assessment of the work. Furthermore we would like to remind that beside the general requirements when applying for the judicial post **judicial and public prosecutor's associates are also subjected to above mentioned process of the evaluation - marks from 1 to 5 from their superiors in a detailed process prescribed by the Law on Public prosecutor's Office and Law on Courts**.

• What especially should be taken into account is that it is widely known that the initial training program, as well as a final exam, are not verified by the HJC and the SPC, **rulebook on the passing of the final exam has not been publicly released and made available to the public,** final exam is actually a simulation of the trial and that the **guidelines adopted by the Working Group of Ministry of Justice for guidelines for reforming and developing the JA has not been implemented** primarily by the Judicial Academy, as an institution in whose interest guidelines were made in 2014. Baring in mind everything mentioned above, it remains arguable why the initial training of the JA is given an advantage during the selection of the candidates for judicial functions, especially considering that a logical, objective and plausible explanation wasn't given and therefore placed entire categories of candidates that are not from the JA in a discriminatory position. Those categories are beside associates, lawyers with more than 20 years of practical experience in courtrooms and representatives of companies that represent them in litigation.

Advocating for the rule of law and the principle of separation of powers, believing that the proponent of the law will realize that our efforts are not based on personal interests or to protect the rights of individuals, but on moral and legal principles that we have adopted over the many years of professional development and training, we hope that the draft Law on Amendments to the Law on Judges and the Law on Public Prosecutors office will be withdrawn from the procedure. We found that we would be at least in some sense in an equal position if changes would not be drafted in that way. If the Ministry of Justice still remains of the view that it is appropriate to return to the legal system recently removed discriminatory provisions, we will be again forced to turn to the competent domestic and the international institutions.