Introduction

Kosovo Judicial Institute during its first quarter of 2008 noted very important developments within the management aspect as well as in the successful implementation of the Continuous Legal Education Program.
What is worthy to be specified within the management aspect is that the Managing Board of the Kosovo Judicial Institute, approved the most important by-laws, the Statute and the three year Strategic Plan of the Kosovo Judicial Institute, two fundamental documents based on which is supported the transformation of the KJI as the Magistrate School with a mandate to prepare new generations of judges and prosecutors.
Whereas, within the scope of the implementation of training curricula, KJI managed to implement the topics requested by judges and prosecutors from all instances and refresh the training program with new topics, based on the need and upon the entry into the force of the new laws.
The vision of the KJI is that through the continuous efforts, cooperation and partnership becomes the leading Institution not only in Kosovo, but also in the region, in developing and promoting effective training curricula, which would help in professional capacity building of judges and prosecutors.
The main support towards the implementation of the KJI functions was continuously provided by all judges and prosecutors, whereas, a valuable support was also provided by the other actors managing the judicial system in Kosovo including different donors. On this opportunity KJI thanks all the aforementioned actors for the provided support by expecting even greater cooperation upon the commencement of new processes, which will be implemented together.

Best regards,

Lavdim Krasniqi

Director of the Kosovo Judicial Institute

Seminar on Civil Law
Kosovo Inheritance Law

On 24th January 2008, was organised a seminar on the Inheritance Law. The subjects that were treated during this training session were mainly focused on the issues related to the life endowment contract, unworthiness for inheritance and the inheritance from a parent who died without any descendants. The following conclusions were rendered from the aforementioned seminar:

- Concerning the dilemmas related to the Article 68 of the new Law on Inheritance, which provides for that the life endowment contract is regulated by the Law on Obligations, however, it is not specified the concrete law, whether it is the applicable law or the one pending its adoption, moreover was stated that such definition represents legal gaps which enable different misinterpretations, therefore, the clearance of the actual judicial practice was requested. If the parties wish to be secure, they shall apply the written form by including all the relevant elements in the contract, because what is not foreseen by the contract or the law it is considered null and void, thereof, the parties as well as the court shall consider these elements in order not to face these circumstances. The other dilemma was concerning the cases when a party submits the contract before the judge for the final affirmation, how shall the judge act, sign the contract or guide the party to do this with the court registrar.

- Thus, it would be good if the court presidents organize the work in the way that would enable the continuation of the actual practice, pursuant to the law, due to its seriousness, it is the judge competent to sign the contract not the court registrar, because the registrar may determine the identity of a person, but the judge knows best to deal on many principal issues as on the: determination of the capacity of parties to enter into a contract, notification about the legal consequences after entering into a contractual relationship, its effects, comprehensive notification on the legal grounds, clarification of mutual rights and obligations etc., actions which are not binding for the court registrar to perform, so the court is competent to guide the parties until the final approval of the Law on Obligations.

- The prevailing opinion regarding the written form of the real estate movement was that there are no legal gaps, because the principles of the material Law on Obligations are applicable to such cases, whereas, concerning the affirmation procedure of the contract, the non-contested procedure foreseen by the Law on non-Contested Procedure shall in an explicit manner apply in the part related to the affirmation of documents.
- Empowering and affirmation of the respective contract is regulated by the previous Inheritance Law, according to which the judge was competent to determine the lawfulness and confirmation of the contract, whereas, the procedure was regulated by the Law on non-Contested Procedure. Currently there is no provision which binds the judge to empower the respective contract, but it is an advantage that the procedure for the affirmation of the contract is being conducted pursuant to the present practice.
- The outcome of the seminar was that the aforementioned argumentations are a valuable contribution, which can serve as a recommendation upon the adoption of the new Law on Obligations, for the lawful resolution of cases. The procedure on the draft-Law on Obligations is currently ongoing, which regulates the issue of the life endowment contract, but is not adopted yet by the competent legislative body, thus, as long as this new law is not adopted, for the disputes related to the life endowment contracts, after the promulgation of the new Kosovo Inheritance Law, shall apply the provisions of the applicable Law on Obligations, due to the fact that this contract, based on the legal nature cannot be treated as judicial-hereditary contract, but a contractual obligation pursuant to the provision of the Article 25, representing an additional principle, which provides for that the provisions of the respective law related to the contracts, shall apply for all types of contracts, unless otherwise provided for the business agreements.
- The presence of both parties is binding when entering into the contractual obligation, the respective process can not be conducted through their authorised party.
- It is disputable within the judicial theory, that an obligation of the alimony acceptor, towards the spouse and children, can become questionable only in cases when the property of the acceptor is assigned under the ownership of the maintenance assignor. If by a contract is not regulated the status of these persons, while the right of the ownership is already transferred, often when it is a question about the farmer's economy, the contract also applies for the spouse and children, who were maintained by the assignor up to that moment. They acquire the right to the alimony together with the acceptor, which contract shall be concluded with the acceptor, unless otherwise the life endowment alimony is contracted for any of the mentioned persons. However, since the Inheritance Law does not provide any provisions related to the rights of these persons and there are no other applicable legal provisions, according to the judicial practice, the obligation of the assignor, based on the life endowment contract, after the death of the acceptor (ancestor), is not related to the spouse or children, if such obligation is not determined in the contract.
- Unworthiness, as the institution of the inheritance law, applies pursuant to the legal power not based on certain provision of the testament. The existence of this institution if justified based on the social moral, due to the fact that it would be immoral, if as an heir is the person who attempted to murder, have murdered the decedent or a person who disrespects the willpower of the decedent.

Round table discussion on the Criminal Law
Public Prosecutor

The training session in the form of the **round table discussion,** under the topic of "**Public Prosecutor"** was organised on **29th January 2008.** The main topics that were presented during the aforementioned training were mainly focused on better understanding of the role, duties and authorisations of the public prosecutor, including the issue of the arrest and police detention. Within the scope of the legal authorisations, the prevailing opinion was that the public prosecutor is an independent body, responsible for the investigation of criminal offences, prosecution of persons suspected for the commission of criminal offences prosecuted *ex-officio* or upon the motion of an injured party, responsible for the supervision of the judicial police during the investigation of suspected persons for the commission of criminal offences and gather information relevant for the initiation of criminal proceedings and other duties prescribed by law.

On the same occasion was emphasised that public entities can not influence the formal or informal way, neither direct the duties of the public prosecutor towards the individual criminal issues or impact the course of the investigative procedure. Upon the initiation of the investigative procedure, the public prosecutor is bound to analyse the inclupatory and exculpatory facts and evidence and ensure that the investigation is conducted by fully respecting the rights of the defendant and that gathering of evidence is not in contradiction of the law. The following conclusions resulted from the aforementioned training session:

- Public prosecutor is competent to decide about the form of the investigation.
- Is responsible for the supervision and successful conduct of the investigation, which process depends on the professional skills of the prosecutor.
- Public prosecutor shall supervise and direct the investigation, authorise and instruct the judicial police and specify the objects of the investigation.
- If deemed necessary to gather additional evidence, the public prosecutor may give additional authorisations to the judicial police.
- Public prosecutor is competent to supervise and assess the process of gathering of the evidence, in order to determine is there a grounded suspicion for the commission of a criminal offence.
- The chief-prosecutor (subsidiary principle) may exercise the duties and responsibilities of a junior prosecutor in a certain criminal case or delegate the case to the other prosecutor.
- The chief-prosecutor who wants to exercise the duties of a junior prosecutor is obliged to promptly notify the competent court of the first instance.
- Public prosecutor shall represent, with a dignity, every part of the indictment during all stages of the criminal proceedings.

Whereas, concerning the arrest and police detention, the afternoon session was conducted through working group case studies, after the intensive work, each working group reported the findings of the assignment in relation to these two measures, the outcome of what were the following conclusions:

- This measure shall last as long as necessary in order to bring the arrested person before the court or in the police station. The public prosecutor shall, for the further instructions, be notified of the arrest not longer than six hours from the time of the arrest.
- The person arrested by persons other than the police shall be immediately turned over to the police. After this, the public prosecutor shall be notified about the arrest, who is competent to decide about further measures in relation to the ground of his detention,
- The arrested person shall without delay be brought before the pre-trial judge who is competent to decide about further procedural actions,
- The arrested person shall have the right to appeal a decision on his detention before the pre-trial judge.

Round table discussion on the Civil Law
Expropriation

On 05th February 2008, KJI organised a round table discussion on the Civil Law under the topic of the **"Expropriation"**. The subjects that were treated during the respective training were mainly focused on the issues related to the procedure on the determination of the compensation on the expropriated property, the current practice related to the de-expropriation, the judicial practice etc.

The outcome of the aforementioned training resulted in the following recommendations:

- Mr. Rifat Zylfiu, judge of the Supreme Court of Kosovo, initially emphasised that it is more appropriate to use the term "determination of the compensation on the expropriated property" rather than "payment of the remuneration on the expropriated property".
- The respective procedure shall be initiated and directed by the competent administrative body. If the administrative body couldn't come to the settlement on the amount and the form of the compensation with the former owner of the real estate subjected to the expropriation, in that case one of the parties (the former owner or the administrative body) must initiate the non-contested procedure.
- If the respective parties failed to reach the settlement on the compensation, the competent court determines the form and the amount of the compensation for the expropriated value.
- If the settlement between the administrative body and the former owner is reached, the respective settlement has the power of the executive document and it may serve as a base for the execution of the compensation on the expropriated property.
- If the administrative body and the former owner fail to reach the settlement within the term of three months, the administrative body is obliged to submit before the municipal court the final ruling along with all submissions of the file, in order to determine the compensation on the expropriated property.
- The court may reject the settlement reached between the parties on the determination of the expropriated value, if such settlement is in contradiction with the norms of the social moral.
- The need for the Public Attorney exists, but it shall be based on the law.
- Law on Expropriation does not provide, during the procedure conducted before the administrative body, the right to appeal against the court decision rejecting the respective settlement, however, such possibility exist according to the Law on Contested Procedure, where the party has the right to appeal against every court decision within the term of 15 days.
- In a case from the judicial practice, the court of first instance rejected the settlement of the litigant parties (petitioner and respondent) on an issue of legal obligations (not the matter of expropriation) due to the fact that the parities attempted to abuse their procedural authorisations and misuse the socially owned assets (funds). The court of the first instance has only entered in the records the rejection of the settlement, but has not served the respective decision on the litigant parties, thus after certain period the parties filled an appeal before the court of second instance (Supreme Court), the same abrogated the decision of the first instance due to the procedural violations and returned the case for reassessment emphasising that he parties have the right to appeal every court decision, the fact itself that the parties were not served with the decision on the rejection of their settlement they didn't have the possibility to exercise the right to appeal. With those remarks the case was returned for the review, in this way the court of the first instance acted in line with the remarks of the Supreme Court and the same as a last instance affirmed the decision of the first instance court after the procedural corrections.

- Whereas, regarding the possibility to file the extraordinary legal remedies, the Law on non-Contested Procedure does not provide any provision which enables the revision against the final decision of the second instance court. However, the respective law emphasises that revision is allowed in property-legal issues according to the conditions set forth in the provision of the Article 382 of the LCP.
- The Law on Expropriation provides for a provision which expressively excludes the possibility to file revision, except in cases related to the confiscated amount.
- The extraordinary legal remedy is allowed against the final decisions in the form of a request for the protection of the lawfulness, which remedy may be filled by the Public Prosecutor on the assessment of the lawfulness of lower instance court decisions. Within the procedure on the determination of the compensation on the expropriated property may be filled the proposal for the repetition of the procedure concluded by a final ruling.
- The issue of the de-expropriation is regulated by the provision of the Article 21 of the Law on Expropriation (Official Gazette of SAP 21/1978) and the Article 10 of the amended Law on Expropriation (Official Gazette of SAP KSAK nr.46/1986).

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Round table discussion on the Criminal Law
Measures to Ensure the Presence of the Defendant during the Criminal Proceedings

On 07th February 2008, was held the round table discussion under the topic of "**Measures to Ensure the Presence of the Defendant during the Criminal Proceedings"**. The subjects that were tackled during the aforementioned training session were mainly related to **the attendance at a police station, house detention and bail** as the three most important measures to ensure the presence of the defendant for a successful conduct of the criminal proceedings. The following conclusions resulted in relation to the measure of the attendance at a police station:

- The respective measure shall be ordered by a pre-trial judge up to the filling of the indictment, whereas, after the filling of the indictment the respective measure shall be ordered by the presiding judge. However, there are exceptions from this rule, the law allows ordering of this measure in exceptional circumstances, not by the pre-trial judge or the presiding judge, but may be ordered by the three judge panel.
- This measure shall be ordered by a court ruling which shall be served on a defendant, public prosecutor and a copy shall be sent to the relevant police station on the territory which is close to the place of defendant's residence.
- In parallel to this measure, prior to, may be ordered any of the other measures applicable to ensure the presence of the defendant.
- There is a handicap within the judicial practice toward the application of the respective measure due to the collision of the law.
- This measure may last as long as the detention on remand.

The following conclusions were drawn in relation to the court ruling on the measure of the **house detention**:

- The court may order the measure of house detention if the conditions foreseen by law are met.
- The police shall act in compliance with a court ruling and is obliged to conduct the adequate search of a premise where the measure is to be implemented in order to directly observe the implementation of this measure.
- At the same time the court which has order this measure may directly search the premise where the measure of the house detention will be implemented and verify its implementation.

- The court may order detention on remand, if the defendant violates the ruling on the house detention or if the police have information of any possible violation. The defendant must always be informed of the consequences of non-compliance with a court ruling.

Whereas, concerning the third measure, **bail** as a measure to ensure the presence of the defendant during the criminal proceedings, the following conclusions resulted from the aforementioned training:

- The ruling on bail shall be ordered or cancelled by the pre-trial judge prior of filling of the indictment and, after the indictment has been filled, by the presiding judge of the trial panel, after hearing the opinion of the public prosecutor, if the criminal offence is being prosecuted *ex-officio*, and the opinion of the defendant or the defence counsel.
- The travel document of a person subjected to a ruling on bail may be temporarily confiscated.
- The law does not provide the exact determination of the amount of bail, but the court is competent to determine the amount of money relative to the gravity of the criminal offence.

In addition to the theoretical and aspects and the interactive discussion between the participants during the aforementioned training, was applied the working group method and treatment of practical examples.

Seminar on Civil Law
The Family Law of Kosovo

On 12th February 2008, was held the round table discussion under the topic of "**The Family Law of Kosovo"**. The subjects that were treated during the aforementioned training session were mainly focused on the issues related to the adoption procedure, determination of the alimony and property relations between the spouses according to the Kosovo Family Law. The beneficiaries of this training were civil law judges from all regions of Kosovo.

Thereunto, the following conclusions, in the form of recommendations, resulted from the respective training:

- The main and fundamental domestic legislation applicable on the adoption procedure is the new Kosovo Family Law, however, this legal institution is also protected and guaranteed by the International Conventions (International Convention on the Rights of the Child, adopted in Hague on 29.05.1993, the same entered into the force on 01.05.1995, by which is regulated the international adoption procedure).
- In order to have a proper decision on the adoption, the court is bound to cooperate with the guardianship authority and other social services, but as well as with the other experts from the field of the child custody.
- Based on the provision of the Article 161 paragraph 1 of the FLK it comes up that this provision does not determine the real competency of the court which shall conduct the adoption procedure. Due to this fact, there are different practices within the judicial practice in relation to the adoption procedure. The Courts and Centres for Social Work in Kosovo have different attitudes in relation to the application of the respective provision. In this direction was emphasised that the adoption procedure, in certain cases, shall be conducted by the District Courts based on the fact that this procedure is linked with the marital disputes, while on other cases the respective procedure shall be conducted by the Municipal Courts, because based on its content the respective disputes fall within the scope of the non-contested procedure and are related to the status of a person.
- The municipal courts, in certain cases regarding the submitted claims, have rejected the claims due to the lack of the real competency of the court. However, there are cases when the respective procedure is still being conducted by the guardianship authority respectively Centres for Social Work.

- It is of a positive interest that the issue of the adoption procedure is now under the competency of the court, by what it fulfilled the obligation deriving from the provision of the Article 9 of the International Convention on the Rights of the Child, according to which the status of a child can be changed only by a court decision.
- During the treatment of various issues in relation to the adoption procedure it comes up that application of the Article 161 paragraph 1 of the FLK is different in the judicial practice, because by this provision is not expressively determined the real competency for the adoption procedure.
- The Family Law of Kosovo does not provide any legal gaps within the context of the real competency, on the adoption procedure, because this issue is regulated by the respective law under the transitional provisions of the Article 353 paragraph l of the FLK, where is foreseen that "the rules of procedures for courts, the Custodian Body, other bodies and authorized persons as mentioned in this Law are regulated in the applicable Law until a new law regulating this matter is adopted".
- The conclusion was that through a proper interpretation of the respective law there is no longer a dilemma on the application of the aforementioned provision, what results that upon the promulgation of the new laws respectively the Law on Regular Courts and the Procedural Laws, the adoption procedure shall be conducted by the Centre for Social Work, however, this issue shall be regulated by the final attitude of the Supreme Court of Kosovo, what would enable the proper application of the provision set forth in the Article 161 paragraph 1 of the FLK.
- Whereas, concerning the child alimony, the court is competent to *ex-officio* decide about. The legal provisions on the child alimony are of imperative nature, therefore, also in these cases the judgment can not be rendered based on the admission.

Round table discussion on the Criminal Law

Investigative Actions

The training session in the form of a round table discussion under the topic **"Investigative Actions"** was held on **14th February 2008**. the subjects that were treated during the aforementioned session were focused on the issues related to the investigation within the criminal procedure, the purpose of which is to gather the necessary material evidence for the filling of the indictment, as well as to ensure other evidence which might be lost if not collected during this phase, whereas, in cases when there are insufficient grounds for the filling of the indictment, the main hearing can not be conducted. The following conclusions resulted from the training:

- The public prosecutor is not obliged to summon the defendant, his defence counsel or an injured party to appear during the hearing of a witness or the expert.
- With respect to the summoning of a defendant and his defence counsel, the public prosecutor shall always act in line with the contradictory principle based on the fact that there is no admissible evidence in court without giving them opportunity to challenge it during some stage of the criminal proceedings.
- The legal institute of the extraordinary investigative opportunity provides for the possibility for hearing closed to the public, during which can be present the pre-trial judge, the defendant and his defence counsel, the injured party and his legal representative or authorised representative shall also be of the hearing.
- As the part of the investigative action is also the site inspection, which process shall be conducted by the public prosecutor and the court.
- On the occasion of the site inspection or reconstruction a written record shall be compiled based on the accuracy, credibility and legal provisions, the same must in a credible manner represent the crime scene.
- The defendant and his defence counsel have the right to be present at the site inspection.
- A reconstruction of a crime scene as a procedural action shall be always conducted in cases of contradictory evidence and it serves to the purpose of recreating facts or situations under the circumstances in which on basis of the evidence taken the event

occurred. The presiding judge, the public prosecutor and witnesses can be present at the site reconstruction, but the injured party shall as well be notified.

Round table discussion on the Civil Law Contracts

On 20th February 2008, was held the training in the form of the round table discussion under topic of **"Contracts"**. The subjects that were treated during this training session were mainly related to the legal nature of the nullity with special emphasises the usury contract, the practice related to the practice of the nullity of contracts in general and in particular the judicial practice in the region of Peja. The beneficiaries of this round table discussion were civil law judges from all regions of Kosovo.

The following conclusions and recommendations were drawn from the aforementioned training session:

- According to the applicable provisions, special rules are applicable in Kosovo on the prohibition of the usury contract, as well as other applicable provisions on the resolution of the contract due to the serious damage or change of circumstances, as a means to protect an injured party, respectively to fight the irregularities in relation to the contractual relations and prevent the exploitation within the respective relationship.
- The discrepancy, on the mutual relationship, between the parties will be present in a contract if the equilibrium is damaged in a high extend, between that what one of the contracting parties accepts to do and what is obliged to provide.
- Currently, there is no provision which in an expressive way provides the equilibrium of interests, thus the hopes are up, that the new Law on Obligations, which is expected to enter into the force very soon, will provide a provision where is expressively foreseen the resolution of this problem.
- Certain countries have determined in their legislation the sanction of the relative nullity, based on the fact that individual interest of an injured party shall be taken into consideration, whereas, some countries consider that it is a question of a general interest, therefore, such contract was qualified as absolutely null and void.
- In contradiction with the provision of the Article 107 of the Law on Obligations, pursuant to which it comes up that the null and void contract can not be valid if later on, due to the nullity, it will be terminated, however, it is foreseen if an injured party requests the reasonable deduction of his obligation, the court may approve such request if the requested deduction is possible, whereas, the contract upon certain changes shall remain valid, this would be a type of convalidation of the contract even though this is impossible with the null and void contracts. Under this situation, it is not a question of willpower of the parties to enter into the contractual relationship, but by a specific contract, pursuant to the law, the concluded contract remains valid always when, based on the aspect of the public order, such thing is possible.

Round table discussion on the Criminal Law Evidence Procedure

On 22nd February 2008, was organised the round table discussion on the Criminal Law under the topic of **"Evidence Procedure"**. The subjects that were presented for discussion during the aforementioned training were mainly related to the assessment of the evidence during the main hearing, cases of inadmissible evidence and the way how does the court assess the evidence. The following conclusions were drawn from the general discussion amongst the audience:

- The probative means are the objects (documents and submissions), actions (e.g. site inspection etc.) and persons (witnesses, experts and the defendant).
- Every evidence taken in contradiction with the legal provisions, based on which is determined the manner it was taken, is considered inadmissible evidence.
- The evidence in general is an instrument to confirm the decisive facts.

- The judge shall, during the assessment of the evidence, comply with the rules on the assessment of the evidence without exceeding legal boundaries.
- Every evidence assessed as admissible or inadmissible shall be well justified in the judgment.
- The evidence in the procedure shall be verified through the analyses and according to the other evidence e.g. confrontation of witnesses, comparing of the previous statements etc.
- Every decision rendered based on inadmissible evidence is null and void.
- The court may, based on the assessment of the evidence, render inculpatory or exculpatory judgment.

The training methodology applied during the aforementioned training was breakout into the working group exercises, on which occasion every participant, through the improvised examples, had the opportunity to be active and stress out their opinion, comments, etc.

Round table discussion on the Code of Ethics

On 26th February 2008, was held the round table discussion on the Code of Ethics and Professional Conduct for judges and prosecutors. The subjects that were treated during the aforementioned training were mainly focused on the duties and responsibilities of judges and prosecutors within the context of the new amendments of the Code of Ethics and Professional Conduct. The following conclusions were rendered during this training session:

- The rules provided for by the Code of Ethics aim to determine the standards on the professional conduct of judges and prosecutors, which due to misconduct, provide for appropriate sanctions.
- These rules aim to increase the public confidence in the judicial system.
- Judges and prosecutors shall be cautious in the public appearance, their behaviour shall always be pursuant to the professional ethics.
- Judges and prosecutors shall agree on certain restrictions, which are not limited for ordinary citizens, as: maintaining of official secrecy, not allow to be influenced, receive gifts, favours and privileges, solicitation of founds, membership in the political parties etc.
- Avoid every situation or conduct which might bring in question the impartiality and the integrity of a judge or prosecutor.
- They shall not create an impression to the public that certain people enjoy special status, which might influence the decision of a judge.

Workshop on the Criminal Law Prosecuting Cases Involving Trafficking in Persons and Related Offences

On 27th February 2008, Kosovo Judicial Institute in cooperation with the USA Department of Justice, Office in Pristina, organised the round table discussion under the topic of **"Prosecuting Cases Involving Trafficking in Persons and Related Offences".** The beneficiaries of the respective training were public prosecutors and police. The purpose of this training was to conduct a comprehensive study on that how shall the public prosecutor and police apply the law on trafficking in persons and related criminal offences, throughout the essential elements of this criminal offence, the purpose of the investigation, duties of the public prosecutor and police during the investigative stage, including the identification and impact of these criminal offences as well as application of best practices in the view of drafting of the indictment and development of the judicial strategy.

Seminar on the European Convention on Human Rights and Freedoms

Two days in the row, **on 28th and 29th February 2008,** in the region of Pristina was organised the Seminar on the European Convention on Human Rights and Freedoms, the subjects that were treated during the respective training were mainly focused on the Article 5 and 6 of the Convention (ECHR). The beneficiaries of this session were judges, prosecutors and professional associates from the region of Pristina. During the interpretation of the respective articles was emphasized the issue of how the Article 5 and 6 can be applied within the everyday work of judges and prosecutors of the respective region and that similar approach is also provided for by the Criminal Procedure Code of Kosovo, therefore, due to this and the special importance, the European Court in Strasbourg does broader interpretation on these articles. A special attention, by the trainers, was paid to the reasons of the deprivation of a person from his liberty, time length of the deprivation, presumption of the innocence, the rights of the defendant, fair trial, reasonable time guarantee etc., aiming to provide a clarification on how to eliminate the dilemmas during the application of the respective articles.

Round table discussion on the Civil Law Lawsuits

On 04th March 2008, was organised the round table discussion on the **"Lawsuits"**. The subjects that were presented for discussion during this training session were mainly focused on the issues related to the response and modification of a lawsuit, eventual irregularities, correction and modification of the lawsuit and the judicial practice in the view of the lawsuits.

The following conclusions and recommendations were drawn as the outcome of the aforementioned training session:

- That the effectiveness and lawful flow of the contested procedure depends on the regularity of the lawsuit, within the formal and material aspect, professional practical knowledge and ability of a judge.
- In the judicial practice often occur situations when the plaintiff submits the modified lawsuit after the expiry of the legal term set by a ruling, by which the lawsuit is returned for its modification. So, regarding such situations, the judicial practice determined that the court is bound to conduct the trial according to the modified lawsuit, thus upon the modification, the lawsuit shall not be considered withdrawn.
- If the statement of claim on the affirmation of the ownership over the real estate does not contain all the relevant data from the cadastral register, it is not considered a regular lawsuit, thus the court based on such statement cannot render the decision on merits.
- In order to have a lawful lawsuit, the same shall contain all the relevant geodesic information related to the disputable real estate, as the: number of the parcel, culture, quality, name of the location, surface, number of the possession list and the cadastral zone.
- In cases when the lawsuit is extended during the course of the proceedings, after the annulment of the previous decision upon the appeal of the respondent, seeking compensation of damage, the attitude of the judicial practice, in such cases, is that there is no modification of a lawsuit.
- Material-legal effects or the modification of a lawsuit lead up to that, the presumption on the statement of claim of the modified lawsuit, shall be assessed from the moment when the new statement of claim is submitted, not the date of the first submission.
- The court, which conducts the procedure based on the lawsuit, is competent to rule on the modification of a lawsuit only if the same is the court with a real competency. Otherwise, it is not allowed to rule on the modification of the lawsuit if it is a court of the absolute competency.
- The plaintiff can modify his statement of claim at all times before the termination of the trial in such way as to sue another person in lieu of the original respondent. By such modification of the statement of claim, the plaintiff brings in question the passive legitimacy of the first respondent. The lawsuit in such cases, against the first

respondent, is considered withdrawn. However, in case of the subjective modification of the statement of claim, the appeal of the respondent is unavoidable.

Workshop on Detention on Remand

Based on the fact that the most crucial part of the criminal proceedings is Detention on Remand, KJI deemed necessary to organise the training session held on **06th March 2008** on this topic. The following conclusions were drawn from the aforementioned Workshop:

- Detention on remand shall be ordered upon the written application of the public prosecutor when he finds that all legal conditions for ordering of this measure are met, meaning when there is a grounded suspicion that a person has committed a criminal offence.
- After the arrested person has been brought before the pre-trial judge, he or she shall immediately be informed of his rights according to the law.
- Pre-trial judge shall appoint and conduct a hearing on detention on remand, during which shall be present the public prosecutor and the defence counsel. If the arrested person fails to engage his own defence counsel within twenty-four hours of being informed of such right, the court shall appoint a defence counsel for him *ex-officio*.
- At the hearing on detention on remand, the public prosecutor shall state the reasons for his application for detention on remand, while the arrested person and his defence counsel may respond with their arguments, objecting the allegations of the public prosecutor.
- At any time, the pre-trial judge may terminate *ex-officio* detention on remand while the investigation is in progress, subject to the consent of the public prosecutor.
- The pre-trial judge shall render a ruling on the application of the public prosecutor, but prior to shall verify the determination grounds of the detention on remand.
- The ruling on detention on remand shall be served on the person concerned, his defence counsel and the public prosecutor.
- The ruling can be appealed by each party within the foreseen legal term. The three-judge panel shall rule on the appeal.

The working group breakouts, was one of the functional methods applied during the aforementioned training, where the participants performed the duties assigned by the KJI trainers. During the discussion between the participants was emphasised that:

- The public prosecutor shall be active during the conduct of criminal proceedings.
- The court shall act according to the time period, uninterrupted, and with efficiency.
- When detention on remand is ordered, while solely the identity of the person cannot be established or when the person concerned has presented two-three types of documents, the ruling shall contain the name and surname of the person concerned, his description, meaning, placing of his photo.

Round table discussion on the Criminal Law Covert and Technical Measures of Surveillance and Investigation

On 11th March 2008, was organised the round table discussion on the **"Covert and Technical Measures of Surveillance and Investigation".** The subjects that were treated during the respective training session were focused on the covert technical measures ordered by the public prosecutor and the ones ordered by the pre-trial judge, procedural actions related to the relationship between the public prosecutor and pre-trial judge, their competencies in applying the respective measures. The following conclusions were rendered from the aforementioned training session:

- The purpose of these measures is gathering of information and facts which would facilitate the course of the investigation.
- The respective measures shall be ordered by the public prosecutor and pre-trial judge upon the order which shall include the relevant data of the person concerned, nature of the measure, grounds of the order and the period which the order shall have effect.
- An order for a measure shall be implemented within 15 day intervals from the date of the issuance of the order, which process shall be conducted with utmost cautiousness.
- The evidence obtained without an order issued by the pre-trial judge is inadmissible evidence in court.
- The evidence obtained in contradiction with the law is inadmissible evidence in court.
- The range of persons implementing an order shall be as narrow as possible.
- Before the indictment becomes final, the judge who conducts the proceedings on the confirmation of the indictment shall review the admissibility of the collected materials *ex-officio* and issue to the parties a written ruling as to whether the order was lawful.
- The person subjected to the covert measures shall be informed of the right to seek compensation, may submit a compliant through the Head of the competent public entity in the field of judicial affairs to a Review Panel for adjudication.

Round table discussion on the Civil Law Executive Procedure

On 13th March 2008, was organised the round table discussion on the "**Executive Procedure".** The subjects that were presented for discussion during the respective training were mainly focused on the proposal for execution, executive document, legal remedies within the executive procedure, the judicial practice etc. the outcome of the discussion during the aforementioned training resulted in the following conclusions:

- The proposal for execution may be submitted only by the person whose request is based on the executive or trustworthy document.
- The execution for the sake of money demand payment shall specify the concrete wealth of the debtor, in particular if it concerns the real estates, with the purpose of the prompt implementation of the executive procedure.
- Concerning the demands for the execution of final court decisions, decisions of other competent entities, settlements concluded in court or by other competent entities, shall apply the general statutory period of 10 years, unless otherwise foreseen by law.
- The prevailing opinion within the judicial practice is that the proposal for execution shall be submitted before the expiry of the legal term for the voluntary execution, the demand shall not be rejected, but it is necessary to wait until the term for the voluntary execution elapses.
- The execution of the executive document, duly submitted in court, starts upon the final court decision, whereas, the executive document issued by the competent administrative entity can be executed even before the final decision.
- The execution is an official record of a judge, respectively of the authorised person, signed and stamped, which determines that the executive document becomes executable on a specified date.
- The executive document is not executable on the date it becomes final, but this term starts to run from the first day after the voluntary execution.
- It is interesting the attitude of the judicial practice in relation to the judicial settlement as the executive document, because it has the same legal power as the final judicial judgment.
- The court fees for the execution costs shall be paid by the debtor, regardless of that whether the term set by the ruling on the execution has expired, because the debtor by his actions has inflicted those expenses, however, this shall be done upon the condition

that the term set by law on the voluntary execution has expired, based on what the executive decision was rendered.

Workshop on
Juvenile Justice Code of Kosovo

The training in the form of the round table discussion on the **"Juvenile Justice Code of Kosovo"** was held **18th March 2008.** The subjects that were treated during the respective workshop were mainly focused on the educational measures, with special emphasises the advantages of these measures on the reduction of the backlog in courts. The outcome of this training session resulted with the following conclusions:

- The public prosecutor shall not initiate the criminal procedure in cases when the diversity measures can be imposed.
- There is a legal possibility to combine these two diversity measures.
- The law has gaps which need to be supplemented.
- The practice requires more imposition of the diversity measures, which based on the statistics, these measures are not being applied so much.
- The educational measures shall be imposed by the court which determines the appropriate measure, always considering the personality and the best interests of a minor in proportion with the circumstances of the perpetrator and the criminal offence.

Workshop on the Criminal Law
Prosecuting Cases Involving Trafficking in Persons and Related Offences

On 19th March 2008, Kosovo Judicial Institute in cooperation with the USA Department of Justice, Office in Pristina, organised the Workshop under the topic of **"Prosecuting Cases Involving Trafficking in Persons and Related Offences"**, the beneficiaries of which were judges from all regions. The purpose of the respective training session was to conduct a thorough analysis on the applicable legal provisions related to the trafficking in persons and similar criminal offences, in order to assist judges in the view of confirmation of the indictment. Thereunto, the purpose of the working group breakouts was to come to the better understanding of the essential elements related to this criminal offence, during which were applied the elements "Who, When, Where, What, Why & How". The main focus during this workshop was on the grounded suspicion and the admissible evidence.

Seminar for Lay-judges

On 21st March 2008, was organised the seminar dedicated to the lay-judges of the Pristina region. The subjects that were treated during the respective training were mainly focused on the role of lay-judges during the criminal procedure, juvenile procedure, and civil procedure including the discussion on the Code of Ethics for lay-judges. Bearing in mind that lay-judges are a very important factor in the courts, due to the fact that the main hearing cannot be conducted without lay-judges, the failure of lay-judges to respond the court summons creates the prolongation of the procedure, expenses and that the voting of a lay-judge is equal with the voting of the professional judge.

Amongst other issues during this training session, the following issues were raised by the lay-judges:

- Lay-judges shall be notified in advance about the subject matter and shall be duly summoned in the court hearings.
- Lay-judges are not being compensated in time about their contribution.

- Lack of offices creates situations, where lay-judges have to wait for a long time in the corridors.
- The determination of lay-judges shall be considered more on the decisive stage.

Round table discussion on the Criminal Code of Kosovo

Kosovo Judicial Institute paid special attention to the second quarter of the training program towards the discussion, between the respective experts, on the provisions of the Criminal Code of Kosovo, which encountered difficulties during the practical implementation. Therefore, during the respective round table discussions were treated the legal gaps, dilemmas and confusions related to the Criminal Code of Kosovo. Up to now, KJI organised several round table discussions, which were held on: **10, 11, 12, 17, 18, 19, 31 January, on 1, 8, 15 February and 21 March 2008.** The objective of the respective activity is to publish the rendered conclusions and submit them before the competent institutions for the official process, in order to facilitate the amending and supplementing process of the Criminal Code of Kosovo.

On 25th March 2008, was organised the Workshop under the topic of **"Subsidiary Prosecutor"** for the region of Peja. The purpose of the respective workshop was to debate and discuss about the role of the subsidiary prosecutor during the criminal proceedings, dilemmas and possibilities envisaged by the applicable law during the practical implementation.

The main focus, during the aforementioned workshop, was paid to the following dilemma:

- When the public prosecutor rejects the submitted criminal report, due to insufficient grounds to continue the criminal prosecution, while an injured party has interest to continue the criminal prosecution, regardless of, that no investigative action was undertaken, what are the competencies of an injured party in such case and how shall the court proceed?. On this occasion, the following conclusions were drawn:

1. The subsidiary prosecutor is not competent to undertake any investigative action or the extraordinary investigative opportunity, because the law-drafter did not provide such possibility to the subsidiary prosecutor, as the competent entity to carry out these proceedings is the public prosecutor, (the subsidiary prosecutor does not have any legal instruments or tools to carry out the site inspection, cross-examine the parties etc.). In this case, the subsidiary prosecutor has the right to undertake prosecution under the available information of the public prosecutor and additional information which would support the indictment filled in court (Article 304).

2. An additional opinion in relation to this issue, was that the subsidiary prosecutor has all necessary legal instruments and they are provided for by the law-drafter, but a logical interpretation is required (Article 62 paragraph 5), since the position of the subsidiary prosecutor during this stage of the proceedings is insecure, thus, the subsidiary prosecutor shall act hopping that will succeed or remain silent and not continue the procedure.

3. The subsidiary prosecutor cannot inherit the duties and powers of the public prosecutor, but the rights the public prosecutors enjoys during the concrete case in the procedure – as undertaking the criminal prosecution and filling of legal remedies.

Upon the conclusion of the round table discussion and upon the identification of dilemmas it was clear that more training is required in order to eliminate these dilemmas.

Round table discussion on the Civil Law
Acquisition of the Ownership

On 27th March 2008, was organised the round table discussion under the topic of **"Acquisition of the Ownership".** The subjects that were presented for discussion during the respective training were mainly focused on the issues related to the acquisition of the ownership through the possession based on the positive prescription, with special emphasize possession of the socially owned property, acquisition of the ownership based on a legal action – contract and based on possession.

The main purpose of the positive prescription is to avoid the permanent disparity between the exclusive possession and the ownership in order to simplify legal circumstances and enable the protection of the legal circulation. Positive prescription has another additional function, which enables the real owner to prove his rights, although it is very difficult (*probatio diabolca* –devil's proving), to prove the ownership over a property through the positive prescription.

The following conclusions and recommendations were drawn from the aforementioned training session:

- According to the applicable legal provisions, there are two types of the positive prescription: ordinary and extraordinary positive prescription. The qualified possession is required for the ordinary prescription, while for the extraordinary prescription is only required the possession in good faith *(bona fides)*.
- The conscientious possessor of the real estate, over which somebody else disposes the property right, shall acquire the ownership over such property by positive prescription, after the expiry of twenty years.
- For the acquisition of the ownership over a real estate based on the extraordinary-absolute prescription is required to have consciousness possession and the necessary statutory period prescribed by law. Conscienceless possessor can not acquire the right to the ownership through the positive prescription, prior of considering the statutory period of the possession.
- During the system of the socialisation, the property under the social ownership used to be the most important form of the ownership. Therefore, it was present over all objects. The intention of the law-drafter was to protect this property in all cases of eventual privatisation and alienation, not only based on the legal work, but as well in the cases when acquisition of the ownership was based on the legal power. Thereof, the provision of the Article 29 of the LBPR provides for that the socially owned property can not be acquired by the positive prescription.
- According to the UNMIK Regulation 1999/24 this law is still applicable. However, the fact that the socially owned real estate is being privatised through the Kosovo Trust Agency, the aforementioned provisions, excluding the possibility to acquire the ownership based on the positive prescription, cannot enjoy legal protection due to the fact that the real estates can be alienated and privatised only based on the legal work, currently the law-drafter – UNMIK by its Regulations abdicated the socially owned property as the most important part of the ownership right, but in contrary to, the private property dominates, thus, the provisions and conditions applicable for the acquisition of the ownership over the private property, shall *mutatis mutandis* apply also for the socially owned property.
- Nevertheless, the acquirer of the ownership, due to his legal security, by the affirmative action, may claim before the court to affirm the acquisition of the ownership by an affirmative judgment, which would serve as a formal-legal base and be registered in the public cadastral register on behalf of the acquirer

Round table discussion on the
Law on Traffic Safety on Roads

On 31st March 2008, was organised the round table discussion on the new Law on Traffic Safety on Roads. The subjects that were treated during the aforementioned training session were focused on the comprehensive content of the respective Law. The presentation on the content and purpose of this law was delivered by two members of the drafting commission, on which event have introduced and elaborated the main characteristics, importance and the objective of the aforementioned law in the field of traffic safety. A detailed elaboration was conducted on the provisions related to the actions and sanctions envisaged by this law, mainly related to the: non-adjustment of lights while driving the vehicle, prohibition on placing dark windows on a vehicle except in certain cases, use of a cellular phones while driving, muddy tires, passengers sitting on a side windows while driving, medical examination of a driver within the time intervals, tearing start of a vehicle, fines and many other sanctions in case of any eventual violation in the traffic safety rules.

The general concern that was treated during this training session was on many legal gaps and dilemmas of the respective law, what make inapplicable many provisions which as well are in contradiction with the Law on Minor Offences.

At the end was concluded and requested by the audience to take into consideration the recommendations resulting from the round table discussion, on the occasion of amending the Law on Traffic Safety on Roads, in order to address the practical problems in an appropriate manner while implementing this law.