

## KOSOVO JUDICIAL INSTITUTE NEWSLETTER

### Preface

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#### Functions of the KJI

Kosovo Judicial Institute, based on the Law no.02/L-25, is established as an independent professional body and as main responsible institution to provide professional training for judges and prosecutors of Kosovo, training of candidates for judges and prosecutors and for other issues related to the judicial system of Kosovo. The content of the aforementioned law is composed by the following:

**I. Preparatory exam** (Article 2.1.b and Article 7 of the Law on the establishment of KJI)

KJI is responsible for the assessment and organisation of the preparatory exam for judges and prosecutors and other persons who intend to become judges or prosecutors, who prior to their nomination shall be subjected to the preparatory exam and special training courses as a precondition for the selection.

**II. Training of the potential office holders in judiciary – Initial Legal Education Program** (Article 2.1.a, Article 7 and 8).

This training program is dedicated to potential candidates who intend to become judges or prosecutors in the future who after the Preparatory Exam shall undergo the aforementioned training program, composed by several modules and within determined time limit.

**III. Training of the office holders in judiciary – Continuous Legal Education Program** (Article 2.1.a) is dedicated to judges and prosecutors who are under current exercising of their function.

**IV. Training courses for promotion of judges and prosecutors**

This program is dedicated to judges and prosecutors who have been selected for promotion (Article 10).

**V. Training course for lay-judges**

This training program provides for the lay-judges basic training courses about their role and importance in the judicial system in Kosovo (Article 9).

**VI. Training courses for other professional in the area of judiciary as identified by KJI**

Within this program will be included other professionals who are considered to be closely related and assist efficient functioning of judicial system (Article 2.1.e).

**VII. During its work KJI:**

- Develops short, medium and long term training plans for an efficient, effective and impartial judiciary (Article 2.2.a)

May perform other professional activities as a professional and research institution for the development of judiciary in Kosovo in line with European standards (2.2.b).

## European Convention on Human Rights and Freedoms

On 27 and 28 June 2007, KJI in close cooperation with the Council of Europe organised two day training session dedicated to the judges and prosecutors from the region of Gjilane, on the Article 5 and 6 of the European Convention on Human Rights, the experts engaged during the aforementioned training session were four national trainers (judges prosecutors) certified by the Council of Europe .

Amongst other issues it is worthy to specify the following:

Convention guarantees to everyone the right to liberty and security , only under exceptional circumstances envisaged by the Convention, During the interpretation of the Article 5 of the ECHR, the state may arrest or detain an individual only in line with the procedure prescribed by law, which is also regulated by the provisions of the PCPCK and every breach of the respective provisions represents violation of the law, .

If a state arrests or detains an individual for longer period then foreseen by the domestic legislation it will consist *prima facie* violation of the respective provision.

Therefore, deprivation from liberty shall be always under exceptional circumstances, objectively justified and shall not last longer then absolutely necessary,

Article 5 and 6 of the European Convention on Human Rights are two fundamental articles foreseeing the procedure for a fair trial,

ECHR provides minimum of guarantees obliging every member state to ensure them to their citizens, however, this does not mean that the respective states cannot ensure more rights.



During the two day training session was also done the harmonisation of the case law of the European Court with the Kosovo judicial practice followed by concrete cases and observations comprising provisions of the PCPCK and Convention

Despite of different theoretical observations, the experts presented to the participants few case studies breaking them into working groups what made the training session more attractive and increased the interest of participants on the subject matter.

For all your comments, suggestions, and remarks please contact us on email address:  
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## Trafficking in persons – protection of trafficked victims

On 26 June 2007, KJI in cooperation with UNDP and OSCE co-organised a Workshop on the Trafficking in Persons and Protection of Trafficked Victims, the experts engaged during the aforementioned workshop were from Kosovo Public Prosecution Office, KPS and OSCE.

From the theoretical presentations it is worthy to specify the following:

- Trafficking in persons for the first time in Kosovo was qualified as a criminal offence in 2001 by the UNMIK Regulation 2001/4, then later on with amended regulations aiming to combat the phenomena of trafficking in persons, in particular by the



Puna në grupe gjatë trajnimit

- Entry into the force of the Provisional Criminal Code of Kosovo, where it is foreseen that trafficking in persons is special criminal offence sanctioned by law,

- Criminal offence of trafficking in persons differs from the criminal offence of

smuggling of migrants, establishing slavery, facilitating prostitution etc. which according to the Code are foreseen as special criminal offences that compose elements of trafficking in persons, but they are not qualified as trafficking in persons,

The benefits acquired by the commission of a criminal offence of trafficking in persons shall be confiscated, but currently in Kosovo such confiscation is impossible, not only for such type of criminal offences, but also for many others.

After the delivery of theoretical presentations, the participants were braked out into working groups to analyse and conclude a case study in the view qualification of a criminal offence of trafficking in persons, especially in cases with elements of other criminal offences as smuggling of migrants, establishment of slavery etc.

## Code of Ethics

On 05 June 2007, KJI organised a seminar on the Code of Ethics and Professional Conduct for judges and prosecutors from the region of Prizren. The subjects that were presented during the aforementioned training session were mainly focused on the role of the judges in case management, Code of Ethics and Professional Conduct for prosecutors, judges and lay-judges, during the respective session was also presented the role of the Judicial Inspection Unit. In the view of these issues can be specified the following conclusions:

The fundamental purpose of the case management is to facilitate justice system to promptly, within a reasonable time and impartially function in all cases,

- The role of the judge in case management implies the phases as: the moment when the case is assigned to a judge, commencement of main hearing, drafting of a judicial opinion and serving of a judgment to the parties,

- The essence of the Code of Ethics lies within the perceptions of third person, such perception is the main issue envisaged by the Code of Ethics and Professional Conduct in the view of the opinion of the suspect, family members, witnesses, etc.,

Case management in prosecution offices

requires from the prosecutor to work with responsibility and efficiency, thus, the prosecutors have to be careful and always act with professionalism by respecting provisions set forth in the law, because if it comes to any breach of those provisions it implies that he is in contradiction with the Code of Ethics and that he will be subjected before the competent authorities due to those violations.



Fotografi gjatë trajnimit

According to the President of the District Court in Prizren Mr. Ymer Hoxha, the subject of the training was of special importance, he considered that it is never to much to hear about the Code of Ethics.

“The main attribute of a judge is to comply with the Code of Ethics, if the respective code is violated the judge will never gain good image, reputation and be just”. Therefore, according to him, Code of Ethics shall be obligatory to all judges and prosecutors.

The presented topics on the Code of Ethics were completed with the presentation delivered by the expert from the Judicial Inspection Unit presenting practical examples of cases when judges and prosecutors have breached the Code of Ethics. The characteristic of this training session was the interactive discussion about the problematic issues arising during the practical implementation of the Code of Ethics.

### Appeal during the civil procedure

Kosovo Judicial Institute in cooperation with the European Agency for Reconstruction EAR, on 07 June 2007 co-organised a Workshop on the Civil Law. At the training were engaged one international and two national experts who presented some of the issues related to the appeal during the civil procedure, appeal at the second instance and revision as extraordinary legal remedy. The international expert from Germany during his presentation introduced German experiences he also made a comparison between the systems, whereas, the national experts have mainly focused on the domestic practice. As a result of discussions developed during the aforementioned Workshop can be rendered very valuable conclusions related to the revision and the same could serve to the judicial practice, as the ones specified below:



Foto gjatë seminarit

Revision is triple remedy, because the court of first instance is obliged that post revision, prior of forwarding the case to the revision court, to send to the adversarial party and to the competent public prosecutor a completed copy of valid exemplar, Revision principally is a devolutive legal remedy on which shall decide the highest instance court,

Revision is non-suspensive legal remedy

The purpose of all legal remedies is to ensure lawful judicial decisions, which would provide lawful and just resolution

of concrete cases, in order to ensure effective legal protection of the rights of subjects and interests of parties involved in civil disputes, because it does not stay forced execution of the final judgment. Revision may be also a parallel legal remedy in certain cases, except in cases when revision was filled by the litigant, competent public prosecutor who filled the motion for protection of legality against the same judgment and in cases when the Supreme Court by majority decides on

ordinary and extraordinary legal remedy, Revision is a limited legal remedy, but due to its relevance and subjective rights during several types of disputes (alimony disputes, labour disputes, copy rights disputes), revision is allowed irrespectively of the amount of dispute, The duty of the revision court is to respond on questions whether procedural and material provisions have been applied accordingly and decide on the violations verified according to the law, Revision may be filed on all essential violations of the contested procedure, whereas, due to the relative violations of the contested procedure, revision may be filled only if the alleged violation was committed during the procedure conducted by the court of second instance, Although, it is not expressly stated in the list of essential violations of procedural provisions of the contested procedure, there is no doubt that the same

The ruling of a judgement shall be rational, clear and as short as possible,

The reasoning of a judgement shall contain convincing explanation supporting the allegations of the ruling,

The response to the question whether the slippery stairs of a hotel represent a danger, was yes if they are located in public places, as fore example, stairs of a hotel, restaurant and because of non-maintenance it may come to a damage, so in those kind of cases slippery stairs can be considered dangerous. Whereas,

when certain objects represent serious danger it depends from the place and moment,

With respect to the question whether legal persons have the right to immaterial compensation, the response was that LO does not foresee such possibility for the immaterial compensation of legal persons, while for the material damage always exists the possibility for compensating the respective entity.



Foto gjatë trajnimit

A special attention during the aforementioned training was paid to the liability of responsible person in the category of criminal offences against public traffic safety.

Thus, it is worthy to emphasize the provision of the Article 300 paragraph 1 and 2 of the PCCK, based on what can be concluded that the perpetrator of this kind of criminal offence can be only the responsible person *delicta propria*.

Another interesting issue presented during this training was about the qualifica-

tion of criminal offences, as how to qualify criminal offences committed by the official motor vehicle, for example in a private parking lot, house yard or elsewhere, but in places which are not considered public traffic. In relation to this issue was concluded that in such cases, those criminal offences shall be qualified as causing of general danger, not criminal offences endangering public traffic safety.

### Compensation of damage

On 22 June 2007, KJI organised a practical training on the civil law on "Compensation of Damage". A special attention during the aforementioned training was paid to the compensation of material and immaterial damage for the loss of close family member, forms of the material and immaterial damage, legal nature, manner of compensation, inability to make objective determination on the amount of the damage, inability to determine adequate compensation, the rank of persons entitled to compensation etc. During the first part of the training was mainly discussed on the damage, forms that it may be caused, compensation and conditions which have to be met.

The second part of the

training was practice oriented, the participants reviewed a real case on material and immaterial damage. In the capacity of experts were engaged two judges from the Supreme Court of Kosovo and one from the District level who have presented cases from the judicial practice, then the participants were individually asked to give an opinion about those cases and at the end render final judgement.

The findings from the working groups were presented after the review of cases, then the experts made their comments, suggestions and responded certain questions, amongst which it is worthy to specify:



Fotografi gjatë trajnimit

relevance has also the excess of claim suit,

- Currently judiciary has permanent duty to research and define criteria for the determination of the judicial and factual issues on each concrete case. The performance of this obligation requires close cooperation with the science and practice. In addition to, the experience of the courts from abroad would provide great contribution for further development of judicial system,

Having in mind priority function of the revision for ensuring just implementation of the material law, the revision and court of appeal, is competent to review every mistake done during the implementation of the legal norms, irrespectively whether those mistakes have been or not expressively mentioned by the authority enforcing revision,

- It is considered that it is more appropriate to also send a copy of the judgement rendered by the court of first

instance to the competent public prosecutor not just the judgement rendered by the court of second instance,

- The court of revision is not bound by the proposal filled by the party claimant of revision when deciding about the it, the respective court may abrogate the appealed judgement and request its amendment also when the party claimed its abrogation,

- However, the court of revision is bound by *reformatio in pejus*, so it cannot change the appealed judgement in disfavour of the party claiming revision,

Revision is allowed only against a final ruling rendered by the court of second instance, by which finally ends the procedure and *listispencion* of the concrete case. The court of revision communicates its decision and services all files of a case to the party through the court of second instance.

### Summary proceedings, issuance of the punitive order and judicial admonition

On 12 June 2007, KJI organised a workshop on the summary proceedings, issuance of punitive order and judicial admonition, the purpose of the session was that through interactive discussion to elaborate the issues related to the aforementioned topic, thus, the main conclusions resulting from the



Trajnim në seminar

Workshop were the following:

Summary proceedings apply to the criminal offences punishable by fine or imprisonment of up to three years,

The conditions for ordering detention on remand are the same, except that are ordered

for three categories of criminal offences: the ones against the public order and security, criminal offences against sexual integrity and criminal offences consisting elements of violence punishable from 2 or over years,

Main hearing does not differ that much, but still has its own characteristics. The procedure is more prompt, during the summary proceedings attached to the summons is also send the indictment to the defendant, he gets also notified in case he fails to appear in court. The main hearing can be conducted in absence of the defendant, but in case he is present there shall also be his defence counsel during the phase when the statement of a defendant given to the police is being read,

With respect to the punitive order, the judgement can be rendered without conducting the main hearing. However, in case the judge finds that he cannot impose the punishment without conducting the main hearing due to the lack of evidence, in that case regular summary procedure shall be



Trajnim në IGJK

### European Union Criminal Law

On 14 and 15 June 2007, KJI in cooperation with the European Agency for Reconstruction (EAR), organised two day training on the European Union Criminal Law. During the aforementioned training the participants were informed in detail about the meaning of the EU criminal

conducted,

Judicial admonition is a special sanction of a warning nature for the perpetrator, not to repeat the attempted criminal offence because if he will attempt to do so the sanction will be more severe.

Judicial admonition can be imposed only under conditions set forth by law. The second part of the training was completed by the practical case study, on which occasion the participants haven been braked out into small working groups to discuss about a case of traffic accident consisted by the elements on which apply the provisions foreseen by the legal institution treated during the aforementioned training.

law, harmonisation of the national and EU law, police and judicial cooperation, approximation of the EU and national law for better cooperation, extradition and European arrest warrant, mutual legal assistance, money laundering, trafficking in persons etc.

### Simulation of a trial from a criminal law

On 20 June 2007, KJI organised a simulation of a trial for the judges and prosecutors from the region of Prizren. A special attention during the aforementioned training was paid to the statement of the defendant on the guilty plea and criminal offences against public traffic safety. On this occasion were made several questions on which was given a concrete response.

1. *With respect to the guilty plea, the posed questions were the following:*

- What happens when the accused person pleads guilty, but denies the criminal offence, for example he refers to the mandatory defence?
- How shall the court act in case when the indictment contains several different criminal offences, but the defendant pleads guilty only for some of them? Can such indictment be confirmed?

How shall be done the guilty plea?

The response to those questions was that:

• In the first situation, the benefits of the accused person are that the guilty plea will be assessed as mitigating circumstance at the phase of calculation of the punishment, pursuant to the Article 64 of the PCPCK.

In case we are referring to the provisions of the Article 315, 359 paragraph 1 and 359 paragraph 2 we may conclude that guilty plea is considered admissible when the defendant will plead guilty in whole

not only in part. The guilty plea cannot be accepted only because the defendant has pleaded guilty, but such pleading shall have other elements as that: the accused shall understand the consequences of the guilty plea, it shall be consistent to the facts and other evidence in the indictment, shall be convincing, honest, to be assessed by the court, shall be taken the opinion of the public prosecutor etc.

2. *In relation to the commission of the criminal offences against public traffic safety* was stated that one of interesting and disputable issue which is currently occurring at the judicial practice it is the qualification of these types of criminal offences. In the actual practice in almost all cases these criminal offences are qualified as criminal offences committed by negligence.

On this occasion was concluded that such qualification is wrong because such type of criminal offences are com-



Trajnim ne IGJK

mitted by eventual intent, not by negligence. Another conclusion resulted from the debate in relation to the criminal offences of public traffic was that cannot be committed by direct intent, but by eventual intent, because if committed by direct intent, in that case would fall within the category of criminal offences against life and body.