

KOSOVO JUDICIAL INSTITUTE

NEWSLETTER

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Preface

The month that we are leaving behind was very busy with numerous activities which in a visible manner helped the professional abilities of judges and prosecutors.

The purpose of this Newsletter is to publish the conclusion and findings at the end of every training session with the goal to harmonise the judicial practice.

During the month of May, KJI organized several great events. One of the most important was the round table on the Provisional Criminal Procedure Code of Kosovo, which produced valuable results for the publication of a special edition of the next KJI monthly newsletter. This event should lead to new amendments in Kosovo Criminal Legislation. Another special event was the study visit of a KJI delegation to the European Court for Human Rights in Strasbourg. This was realised through an invitation by the Council of Europe.

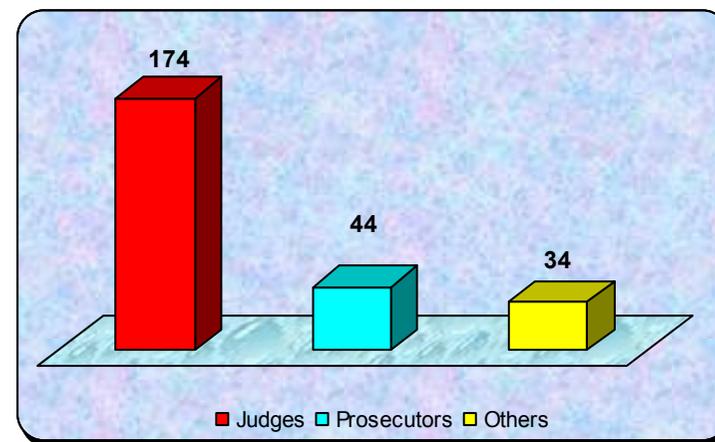
One of the success stories of May was the continuous application of the most advanced training methodologies by KJI experts. This was achieved thanks to the continuous support and devotion of KJI staff, judge and prosecutor trainers and participants in each training.

It is my pleasure to conclude by saying that KJI is constantly changing its day to day operation in a positive direction so that they may fulfil the obligations envisaged by the Law on the Establishing of the Kosovo Judicial Institute. That means becoming a new magistrate school which will prepare all new judges and prosecutors who are desperately needed for a fair and just judicial system in Kosovo.

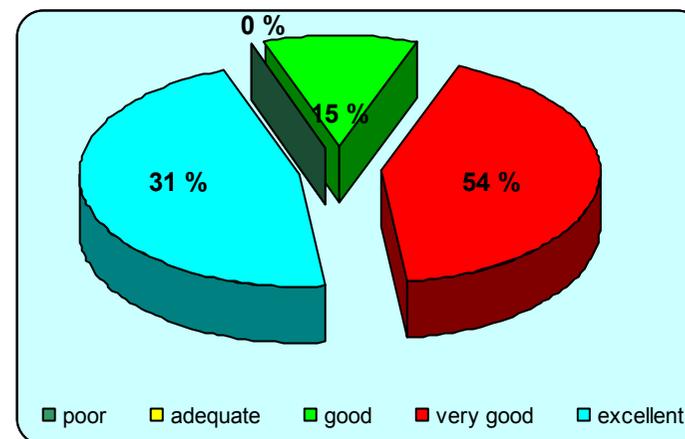
Sincerely,

Lavdim Krasniqi

Acting Director, KJI



Number of participants



For all your comments, suggestions, and remarks please contact us on email address:
kji_newsletter@hotmail.com

Workshop on the European Convention

On 30 and 31 May 2007, KJI in close cooperation with the Council of Europe, organised a two day training session on the European Convention on Human Rights, the respective session was devoted to the judges and prosecutors from the Mitrovica region. The experts engaged during the aforementioned training were four national experts (judges and prosecutors) certified by the Council of Europe.

The subjects that were elaborated during this session were mainly focused on the Article 2 and 3 of the ECHR.

The right to life as foreseen by the Article 2 of the ECHR, the definitions of the right to life, positive and negative obligations of the state, the excessive use of force by a state entities, efficiency of investigations conducted by state entities, efficiency of compensation, disappeared persons, were the main issues discussed during the first day of the training session.

Wherein, the subjects presented for discussion during the second day included, Article 3 of the ECHR, the prohibition of inhuman and degrading treatment, serving of punishments in detention centres, extradition and expulsion from the state, discrimination and ill-treatment during the arrest. During the entire session the trainers made efforts to present the case law of the European Court of Human Rights and comparison with the judicial practice of Kosovo Courts. They also tackled the issues of the case law of the European Court of Human Rights in the view of applications lodged by individuals, nongovernmental organisations or a group of individuals who allege to be the victims of the violations of rights granted by the Convention.



Foto nga vizita studimore në Gjykatën Evropiane në Strasburg

Observations



May 2007 was a historic month for KJI. In the middle of May KJI hosted for the second year in a row the roundtable on comments to the criminal code. A full report of that committees finding should be released in June. During the last two weeks in May KJI held trainings every day of the week. This included train the trainer programs for KJI fulltime trainers.

Also in May 2007 KJI started the first of many monthly round tables on important areas We hope this forum will allow for the timely and concrete discussion on the law. of the law. This first roundtable was on juvenile justice. It is planned that in June 2007 the roundtable will be on anti-discrimination law.

Finally, the end of May was marked with the approval of the majority of KJI's managing board. What a great month!

Sincerely

Harold D. Dampier, Jr.

OSCE Special Advisor to the KJI



Osoblje KIP

3 Workshop on the Annulment of Contracts and Legal Consequences

On 02 May 2007, at the District Court in Prizren, KJI organized a practical training on the "Annulment of Contracts". The purpose of this training was to develop the professional abilities of judges working in this field of the law. The beneficiaries of the training were civil law judges from the region of Prizren.

At the opening of the training, Mr. Ymer Hoxha, President of District Court in Prizren, emphasized that the subject matter was based on actual cases in Prizren, he also stated that, because of the dilemmas and difficulties which arise during the judicial practice, KJI organized a simulation of a trial on the Annulment of Contracts, followed by professional debate.

With respect to the nullity of contracts, legal nature and foreseen periods related to this issue, President Hoxha mentioned cases in which the legal effect was related to the irresponsible parties, applicable principles in civil procedure (*bona fides* and honesty principle). He also discussed the distinction between the absolute and relative nullity of contracts with the possibility of convalidation. During this training the issue of compensation of damage and which contracts may be convalidated, was also discussed.

After the opening remarks, President Hoxha started the simulation of the trial.

The simulated hearing was composed of all the elements which are foreseen at a real trial. He also used role playing by judges. During the simulation all procedural phases starting from the examination of witnesses, evidence procedure, final assessment, voting and the announcement of the judgement were used.

The simulation was prepared at such a level that the procedural actions practiced during the simulation sent a clear message to the participants. During the final debate every procedural action played by the parties including the *pro et contra* arguments, were discussed.

The training was evaluated as excellent by the trainees. It was agreed that past and future judgements of the Supreme Court of Kosovo shall be analysed and read by all, because it provides the possibility to eliminate mistakes in the future.

An interactive debate was held at the end of the training so that participants could exchange their useful suggestions and opinions.



Snimak za vreme rada radnih grupa

Workshop on the Juvenile Justice Code

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On 29 May 2007, KJI in cooperation with the European Union Planning Team for Kosovo organised a Workshop on the Juvenile Justice Code of Kosovo (JJCK), where the expert was Mr. Dierk Helmken, Juvenile Judge from Germany, who is engaged as a legal expert at the European Union Planning Team for Kosovo. The beneficiaries of the respective session were juvenile judges and prosecutors. From the presentation delivered by the expert and the outcome of the discussions of this workshop it was concluded that Juvenile Justice Code shall be applied according to its provisions and it is necessary to fulfil the following conditions:

Assignment of special prosecutors to deal with juveniles, who shall be trained in adequate manner,

Assignment of special police unit to deal with juveniles, who shall be trained in an adequate manner,

Establishment of at least one disciplinary centre according to the Article 19 of the Juvenile Justice Code, in Lipjan or Prishtina,

Establishment of at least one educational centre according to the Article 24 of the Juvenile Justice Code in Lipjan or Prishtina, and

Finally the establishment of one association which shall involve all juvenile justice entities with the purpose to promote juvenile justice in Kosovo.



Snimak sa okruglog stola u vezi Privremenog Krivcnog Zakona Kosova

Seminar for Minor Offence Judges

On 25 May 2007, KJI organised a workshop for Minor Offence Judges, special attention during the workshop was paid to the field of: traffic safety and public peace and order.

The purpose of the breakout session

was to simulate a real case and promote discussion between the participants. In the capacity of experts during the respective workshop were engaged judges from the High Minor Offence Court.

Workshop on Juvenile Delinquency

KJI in close cooperation with the Council of Europe on 28 May 2007 organised a seminar on the Juvenile delinquency. In the capacity of an expert during the training was Ms. Helena Bolieiro, judge and judicial trainer at the Centre for Judicial Studies in Portugal. Items discussed during this training included: the psychological and social aspect of the juveniles, the phase of childhood and youth with special focus on the fulfilment of the basic physical and emotional needs of a child as care giving. An overview was also done as to the adolescence phase and how difficult it was to have an adolescent at home, as well as how difficult it was for judges and prosecutors to deal with delinquents of the respective category.

Therefore, it is very important to have good knowledge of the law in order to come to just decisions and it is also important for the juvenile judges to consider the emotional and psychological needs of a child prior to rendering a decision. The participa-



Snimak za vreme obuke

tion of a parent during the entire procedure is also important and most important is the participation of parents during the execution of the imposed measures. The purpose of the entire process is to come to the appropriate mechanisms for the re-socialisation of juveniles, and to ensure professional and technical support to the probation officers, pedagogues, psychologists.

During the last part of the training delivered by Ms. Helena Bolieiro, she referred to the rights of the juvenile perpetrators by mentioning a number of applicable recommendations and guidelines for the prevention of the commission and re-commission of criminal offences including the integration and re-socialisation of juvenile perpetrators.

Practical Criminal Case Study

On 04 May 2007, KJI organised a practical training on how to be a judge from A-Z. International Judge Timothy Baland was the expert who was assisted by four national trainers of KJI. The purpose of the training was to demonstrate practical skills through the administration, assessment of evidence and rendering of a judgement on a recent case. The case was taken from judicial practice and involved two criminal offences against three defendants who were judged by the aforementioned international judge.

During this training the most advanced training methodologies were used such as: break out and working groups composed of judges and prosecutors and supervised by the national trainer. The breakouts also engaged in actual judicial

opinion drafting which gave each participant the opportunity to be active. During the training the working groups assessed the relevant facts of the case, the grounds for the determination of the punishment, the purpose of the punishment, the aimed objective etc. At the end of the training the international judge distributed to the participants a copy of a judgement rendered by him on the concrete case, which was very similar to the one rendered by the participants of the training. The methodology applied during the practical criminal case study was assessed as excellent, easy to adapt and appropriate for the participants. A similar training session with different beneficiaries (judges and prosecutors) was organised by KJI in the beginning of April 2007.

Workshop on the Role of the Public Prosecutor

On 07 May 2007, KJI organised a Workshop on the role of the Public Prosecutor. The beneficiaries of the training were prosecutors and judicial police officers. The main focus of this Workshop was on practical experiences when implementing the new criminal codes aimed at promoting professional skills.

Some of the interesting situations tackled during the Workshop were:

1. the provision of the Article 211,
2. grounds recognised by the European Court of Human Rights in Strasbourg for ordering the arrest or detention and
3. defence of the defendant.

The provision of the Article 211 is unclear and with legal gaps, and as such is inapplicable.



Snimak sa okruglog stola—Polozaj Javnog Tuzioca

This provision does not specify further competencies of the pre-trial judge in a concrete case.

Article 211 is in contradiction with the Article 212, paragraph 5 and Article 282 paragraph 1 of the PCPCK.

The grounds recognised by the European Court of Human Rights in Strasbourg for ordering the arrest and detention are as follows:

1. The risk of fleeing,
2. The risk of interfering judicial proceedings,
3. The need to prevent the crime, and
4. The need to maintain public order.

All of these grounds, except the last one, are required to be met for a lawful arrest or detention and in conjunction with the Article 281 of the PCPCK.

Defence of the Defendant

Theory and practice provide contradictory opinions in relation to whether the defence is mandatory or not at the time

when a person is under the arrest or police detention.

According to some opinions, the arrested person at the time of provisional arrest or police detention shall have a defence, the defence is mandatory and every statement taken without the presence of the defence counsel shall be inadmissible evidence in court.

According to the second opinion, the defence of a person under the provisional arrest or police detention is mandatory only in exceptional cases when: the arrested person is mute deaf, or displays signs of mental disorder or disability. In other cases the defence is not mandatory and the statements taken by the police or the public prosecutor without the

presence of the defence counsel are admissible evidence in court, upon the condition that the arrested person is notified of his rights, and that in a voluntary and informed manner waived the right to defence.



Snimak sa medjunarodnim sudijom
Trenenom KIP

Workshop on the Provisional Criminal Code

From 09 to 11 May 2007, KJI organised a Workshop on the Provisional Criminal Code of Kosovo. The main purpose of the Workshop was to identify and discuss difficulties and dilemmas which arise during the practical implementation of

the Provisional Criminal Code of Kosovo. Another purpose was to come up with concrete recommendations and proposals which shall be submitted to the competent entities for amending the respective provisions.

The ownership as a legal institution can be recognised and approved, but not as is often stated in the ruling of judgements, for example when the respondent is obliged to surrender the certain property under the possession to the claimant, such formulation is neither true or accurate, because the ownership is a legal power over certain property, whereas, possession is one of the property authorizations and factual power over the property.

In some of the claim suits during our judicial practice, in the capacity of respondents, are also Municipal Assemblies, it is an irregularity, because only Municipalities can be sued not Municipal Assemblies.

If during the contested procedure, the claim suit is amended within a subjective meaning, instead of the first respondent it is a different person, in that case the Supreme Court of Kosovo has rendered the following stand opinion:

“When during a dispute on obstruction of possession, the claimant during the course of the proceedings amended the claim suit, instead of the previous respondent he includes a different person and after declaring the change wants to proceed with the dispute, the period of the claim suit shall be assessed according to the date when the claim was submitted against the first respondent.”

The adjudication of the claim suit on

obstruction of possession can be limited only to the last stage of the verification factual state of the possession (weather the property on which an obstruction was placed is under the claimant's possession) and the obstruction (whether it was placed on the possession and in which manner), but at this stage it is not necessary to verify the legal grounds about the possession the responsibility or irresponsibility of the possessor including the compensation of the damage.

The respondent subjected to the dispute on the obstruction of the possession may present his defence through the following objections: if the claimant has filed the claim suit after the prescribed periods when the property is under the possession of the respondent, when the claimant withholds under possession the disputable property, based on the law and when the property was acquired through lawful self-defence.

The execution of the ruling on the obstruction of possession shall be carried out within 30 days upon the expiry of a period specified in the ruling.

It is worthy to emphasize that co-possessors may realize their defence within two aspects as: against the third persons and against other co-possessors. Co-possessors have the right to the entire defence against third persons, while against the other co-possessors may do so only when factual possession is impossible.

Seminar for lay-judges

In continuation of the KJI efforts to provide continuous legal education, on 22 May 2007, KJI organised a seminar dedicated to the lay-judges from the region of Peja. The participation of lay-judges was at a very satisfactory level. The subjects that were presented during this training were focused on the role of lay-judges during the criminal, civil and juvenile procedure, also treated was the different aspects of



Snimak tokom seminara

the code of ethics for lay-judges. Participation by the trainees was not lacking, they posed many questions to the experts in relation to the rights and obligations of lay-judges during court proceedings and their role in the decision making process. Based on the comments made by the lay-judges it may be concluded that they are lacking support and adequate training.

Workshop on the Obstruction on Possession

On 24 May 2007, KJI organised a Workshop on "Obstruction on Possession", legal protection and different points of view related to the possession, contested procedure, and obstruction on possession.

AT the end of the Workshop the following conclusions were made:

Very often during the judicial practice ownership and possession are mixed, without making a distinction between them, although these institutions are different within the judicial civil point of view.

The ownership as a legal institution can be recognised and approved, but

not as is often stated in the ruling of judgements, for example when the respondent is obliged to surrender the certain property under the possession to the claimant, such formulation is neither true or accurate, because the ownership is a legal power over certain property, whereas, possession is one of the property authorizations and factual power over the property.

In some of the claim suits during our judicial practice, in the capacity of respondents, are also Municipal Assemblies, it is an irregularity, because only Municipalities can be sued not Municipal Assemblies.

Study Visit to the Council of Europe in Strasbourg

(General Directorate of Human Rights – DGII, Human Rights Cooperation and Awareness Division, European Court of Human Rights in Strasbourg

14 -16 May 2007).

As part of the continuous cooperation between the KJI and Council of Europe, whose aim is to improve the implementation of the European Convention on Human Rights, a study visit was organized to Strasbourg. This was realised through an invitation from the Council of Europe. During this study visit (refreshing training seminar) important issues were discussed as to the: Relationship between the Council of Europe and European Union and the scope of the European Committee for the Prevention of Torture. Attention was also paid to the review of complaints when an individual, nongovernmental organisation or group of individuals alleges to be a victim of a violation of the rights granted by the Convention. The object of this training was to study the procedure on the execution of judgements rendered by the European Court of Human Rights.

It is worthy to mention that, an analytical overview was carried out about the future applicable programs and future plans of the Council of Europe.

One plan discussed was the "Help Program". This program relates to the integration and promotion of the judges and prosecutors from the Central and Eastern Europe. This purpose of professional capacity building will be realised through training. This program contained several phases that need to be implemented such as: drafting of Help Program; preparation of training materials; their access on the internet and drafting the training manual. In addition the implementation of the Convention has been included in this program. Based on this it can be concluded that, the jurisprudence of the European Court aims to protect the life and physical integrity of persons, effective prevention of eventual violations, finding of culprits (State) in cases when preventive steps are impossible and to sanction responsible party with humanisation by always considering the well-being and dignity of persons.

The highlight of the visit was the attendance at a judicial hearing at the European Court of Human Rights. KJI would like thank Mr. David Cupina, Program Advisor at the General Directorate of Human Rights - DG II and supporting staff, to who go all our gratitude and appreciation is offered.

Ramadan Gashi
Judicial Trainer

Workshop on Commercial Law

On 18 May 2007, KJI organised a Workshop on Commercial Law. The subjects elaborated during the session were related to: real competency during the contested procedure, work by contract, construction contract and the interest rate agreement according to the law. Special attention during this workshop was paid to the dilemmas and difficulties faced by judges during the resolution of civil cases within this field. The beneficiaries of the training were civil judges from all regions of Kosovo and judges from the Commercial Court in Prishtina.

The competency of the Commercial Court was also discussed in detail and the particularities of the contract on action as multilateral agreement, such as elements, characteristics, conditions to be met, time length, effects, the rights and obligations of contracting parties, the manner of concluding and terminating the contract, by also paying special attention to the construction contract because its legal nature is a type of contract by work within the broader meaning of this legal institute.

A discussion about the interest rates with a focus on the implication during judicial practice and

exchange of different opinions about the implementation of the Law on Obligations (LO), where the issue of the interest rate was the object of discussion by the highest judicial levels.

The following comments were made with regard to the Law on Obligations (LO):

The interest on arrears does not occur due to legal grounds, it may occur, for example: due to the non-performance of contracting obligations, ungrounded acquisition, delinquent responsibility.

The right of proccessory interest on arrears pursuant to the Article 279 paragraph 2 of the LO, may be realised only during the dispute on the payment of concluded contracting interest and interest on arrears, upon a condition that proccessory interest and the day of submitted law suit may be requested up to the termination of a main hearing.

When the creditor during the dispute has stated that he cannot realise the request for proccessory interest within a special dispute. The proccessory interest on arrears may be claimed until the termination of the main request, which

runs also during the time of calculation and claim suited for the absolute amount by the main request.

The interest on arrears for the indemnity of material damage, but not in money according to the prices at the time of the trial starts to run from the day when the first instance judgement is rendered on the determination of the amount of compensation. If an injured party has resolved the caused damage prior to the court decision, the interest on arrears starts to run from the day when the expenses have been paid.

In cases when the day of the expertise for determining the amount of the material damage, based on the foreseen price, and the day of the judgement do not correspond, according to the practice of the Supreme Court of Kosovo the interest arrears starts to run from the day of the expertise, not from the day of first instance judgement. Such attitude, at the first view presents avoidance from the joint hearing, but it is not, because the conclusion resulting from the joint hearing is the day of the expertise and of the first

instance judgement shall correspond, whereas, the attitude of the Supreme Court of Kosovo considered an exception.

After the presentations delivered by the experts, followed by an interactive debate with the participants, it was concluded that:

Currently in Kosovo Civil Procedural provisions are foreseen within the organisational norms of the courts, fundamental procedural norms inherited from SFRY, UNMIK regulations, administrative directions and laws promulgated by the Kosovo Assembly. Finally, Kosovo has one very complicated procedural system due to the non-existence of the Civil Procedure Code.

Legal norms which regulate the scope of the Special Chamber of the Supreme Court of Kosovo, those which regulate the competencies of certain administrative entities, have caused conflict between the jurisdiction of the Municipal Courts and Commercial Court, including the Special Chamber of the Supreme Court of Kosovo.



Snimak sa buke u KIP