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KJI NEWSLETTER
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This newsletter is published to fully inform the magistrates in Kosovo on the activities of the Kosovo Judicial Institute (KJI). This publication is distributed to judges and prosecutors throughout Kosovo. The Monthly KJI Newsletter features articles relating to issues of interest to judges and prosecutors working in Kosovo.

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EVIDENCE AND THEIR EVALUATION IN MINOR OFFENCE PROCEEDINGS

Introduction,

I am convinced that we all share the view of the importance of a fair, correct and impartial trial in minor offence cases through applying regular legal procedures correctly and fully determine the factual state and consequent application of material rights as well as of imposing adequate sanctions against the responsible offenders by applying, where possible the principles and standards of international law, thereby building a genuine modern and democratic judicial system in Kosovo.

To this end, an immediate duty of the court is the issue of fully ascertaining (determining) the factual situation with respect to any issue reviewed under the minor offence procedure.

In view of the fact that the minor offence procedure is initiated and developed exclusively *ex-officio* from the state and other social authorities, hence the active role of the court is of overall interest, irrespective of the fact whether the claimant will file or drop charges.

This public interest may not be attained without the full involvement of judges but also of parties to proceedings in regard to: providing, obtaining, classification, administration and evaluation of appropriate evidence, depending on the nature and complexity of the offence, and therefore in this presentation we will focus in defining the meaning of fact and its importance, as well as defining evidence, its meaning, means of evidence, classification of evidence, the objects requiring verification, responsibility to provide evidence, obtaining-securing evidence, treatment of evidence and finally judging and evaluating a proof, with the view of concluding whether the issue under review exists or not.

At the conclusion of last year's seminar, when we discussed the procedure under regular legal remedies, we, *inter-alia*, explained the reasons and grounds for appeal against an offence procedure, agreeing that one such reason was false or incomplete establishment of factual situation.

False or incomplete establishment of factual situation may occur if the court, though revealed an important fact, failed to properly appreciate it during the proceedings.

Example

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In cases when the respondent, in his defence, presents a decree absolute by which he was found responsible and punished for the same act, while the court fails to consider this (proven) evidence, thereby failing to acknowledge the principle of "Res Jujridikata" or "Nebi is idem", in contradiction with article 198 par.1 item 4 of the Law on Minor Offences.
Usually, false findings with respect to factual situation may also occur in cases of lack of facts or sufficient evidence to conclude and verify the situation reviewed under offence proceedings.

Example
In cases of traffic accident between two vehicles, when both parties involved leave the accident scene, where the signs and traces that may have been made in the scene are obscured by weather, coupled by lack of witnesses, and the evidence may not be obtained through other ways (such as site survey, or facts that could be obtained through a later reconstruction), whereas the parties involved have not expressed interest to determine the circumstances leading to the accident. In similar situation, due to lack of evidence the offence procedure is terminated by virtue of article 198, par. 1, item 8 of the Law on Offences. We also said that false verification of factual situation may occur in cases when provision or selection of a fact or evidence is wrongly done, but the court based its decision upon that disputed fact.

Example
Cases of sand and gravel excavation without permission by appropriate authorities. The respondent claims, in his defence that he had purchased the said excavation site, but the court fails to prove this claim through a valid land sale contract, but instead finds that there are circumstances that acquit the offender of the offence, and in view of Article 198 par. Item 2 of the Law on Offences, terminates the offence proceedings. We also agreed that false verification of factual situation may occur in cases when the court finds that an obtained and submitted fact or evidence is inexistent, and rests its decision upon other not so important legal evidence.

Example
The respondent, after being forcibly taken to Police Station, under the influence of alcohol behaves arrogantly, shouting and breaking a chair while being escorted to detention area. He is assumed to have committed an offence under Article 18, par. 1 item 10 of the LRQP, and for that the court finds him responsible and cites appropriate punishment.
In this case, the court has failed to consider the decisive fact, that the respondent has committed the act in a closed area, which under the applicable law (Article 3 of the LRQP), is not considered a public place. In this case, the court has attached decisive importance to action of the respondent during his/her detention to the confined area, not to the site – basic fact where the action occurred. In this case the court should have terminated the proceedings in view of Article 198, item 1. of the Law on Offences on the grounds of inexistence of elements to prove that the offence he is charged for exists.
We definitely explained that the false verification of factual situation may also occur in cases when the court during the hearing on a case, decides to not disclose other more important evidence, believing that the factual situation has been proved to a sufficient extent, and therefore reaches a final decision.

Example
The respondent, during the court session, declares in his defense that he has a valid driving licence, but that on the day when he was asked to produce it by police officer, had accidentally forgotten it home. Another example is when an owner of business premises declares in court that during the inspection of his premises by sanitary inspector, he had not been present and therefore his employee could not

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open the drawer in which all sanitary documentation for all employees was stored. Therefore, the court decided to issue a punitive decision, without presenting other facts and evidence to prove the said case.

A.1. Defining a fact and its importance in offence procedure

The notion of a fact has the meaning of an event, occurrence, thing or phenomenon of objective reality related to other facts, which as such, consists the basis of whether or not an offence exists, which is subject to the process of proving and verifying under the offence procedure.

The facts are, in essence, the object of proving, and in this regard the court has a primary duty to commit itself, professionally and technically to verify them, as in most cases, the parties to procedure are unable to do so.

The facts that need verifying are otherwise known as "relevant legal facts", and in legal terminology are usually called decisive facts, important facts, indicative facts (indicators), and complementary fact. However, an issue of importance remains verification or lack of their existence during the appropriate procedure.

In offence procedure, similarly to the criminal procedure, effort should be made to directly verify all the facts, either through the personal perception of the judge, or through the perception of other persons. However, in some cases due to the specific nature of the cases, this is difficult to achieve, and therefore the court may decide on the existence or inexistence of an offence through indirect ways.

In view of above, it may be concluded that the importance of the fact during a fair proceeding is not in its quantity, but in its quality and integrity, which is conditionally related to other facts on the basis of which the court establishes the situation of a case in objective reality, and therein rests its decision. In such cases, it is difficult to challenge it.

A.2 The meaning of evidence

The court learns of disputed facts through the process of proving by direct personal perception, or by statements of other natural persons.

In criminal proceeding too, there may be different evidence through which important facts are established.

The notion proof-evidence implies any data, which during the court proceeding may specify (prove) the authenticity of an important fact. More specifically, proof is the source of knowledge on facts being established-found during the offence proceeding.

Evidence is encountered during any phase of offence proceedings; they may be submitted by claimant in conformity with Article 135, item 5 of Law on Offence, may be submitted by parties to proceeding, and may be submitted through regular remedies (appeal or opposition), or through extraordinary legal remedies (motion for extraordinary review of an decree absolute in view of Article 234 of Law on Offence, or motion for repetition of offence proceeding, as specified under Article 228 of the Law on Offence).

A.3. The means of evidence

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The means of evidence is the source of proof and serves as an instrument through which the content of the evidence is submitted from its source to court.

In offence proceeding, the means of evidence are usually persons, e.g. the respondent, witness or expert; things e.g. notes, monies, documents (registration licence, driving licence, sanitary record, work permit, etc.) or actions e.g. claimant interrogation, witness examination, expert testimonies, site survey, raid of persons or premises (Article 158-188 of Law on Offence), etc.

The use of means of evidence must be carried out through adequate technical-scientific methods, which requires professional skill and experience in many different areas in order to preserve the personality, dignity and integrity of an individual.

The issue of handling the evidence has procedural and social impact, as the factual situation may not be established summarily by reference to issuance, obtaining, systematization or evaluation of evidence, as there are legal restrictions applying in this regard.

The Law on Offence, presently in force in Kosovo, lacks some norms with respect to such restrictions (Article 159 of LO), although it is explicitly state that the personality of a claimant must be respected, and that no force, threat, fraudulent practice or similar means shall be used in obtaining his statement.

A case in point may be when a respondent is suspected of having driven under alcohol. To establish that fact, the respondent is not obliged to give blood for analysis, as there are other scientific-technical ways to establish the fact. However, if the respondent himself requests to give blood for purposes of analyses in order to establish the level of alcohol in blood, then it is permitted as it represents an undisputed evidence. No fraudulent practice, misleading, coercion or use of narcotics is allowed to be used against the respondent, witness or expert, so as to obtain their views on a particular alleged offense in such circumstances or position.

Such evidence is deemed illegal and as such is unacceptable, and therefore may not serve as a basis for a court ruling. On the contrary, it will be challenged through legal remedies.

A.4 Classification of evidence

The Law on Offence, presently applicable, contains no provisions on classification of evidence, although in practice there is various evidence – depending on the nature and elements of offence, and therefore in analogy with the criminal procedure, the following classification may be done:

- Aggravating (alleging) evidence and defensive evidence,
- Direct and indirect evidence,
- Original and derived evidence,
- Personal and material evidence,
- Complete and incomplete evidence, etc.

Aggravating evidence – is the evidence in which a claim against a person rests, e.g. he is alleged for violation of public law and order, as on 05.05.2005 in village H., he physically the claimant B by hitting him 3-4 times with a stick causing him to bleed, thereby causing the offence by virtue of Article 18, par. 1, item 5 of the LRQP. The evidence is proposed and appropriate legal punishment requested.

Defensive evidence – the respondent A rejects in entirety the alleged offence on all counts, referring to a personal alibi of being in Tirana on that day, and presents his passport as well as address and phone number of his host.

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Direct evidence – this is an evidence that directly proves the existence or inexistence of a disputed fact e.g. the testimony of an eye witness who has directly witnessed the event, in which the person "A", at specific place, time and circumstances committed an offence, with appropriate description of every factual act to detail. A direct evidence is also deemed a statement of the respondent (Article 158-162 of LO), site survey, expert testimony (Article 172-180 LO) or raid of premises or persons (181-183 LO).

Indirect evidence - (indication, sign), is treated as indirect evidence upon which may not rest the court ruling, however, it assists the court in establishing the existence or lack of a fact. E.g. one day during his inspection, the forest guard finds that at a certain location in forest, about 30 trunks of pine wood were cut, but the offender was not known.

Near the site, he encountered some shepherds who told him that some days ago, they have seen person "A" entering the site with his tractor, which was followed by the roar of wood saw and falling of timber. The guard, by virtue of Article

Article 181 of LO, asks the court to issue a search warrant for alleged person's yard or premises, following which the search proceeds in view of Article 183 of LO. Upon completion, 30 trunks of pine trees are found, the wood saw, as well as the tractor presumed to have been used for felling and transporting wood. A report is drawn, which is signed by persons present, the pictures of trees are taken, along with their dimensions, while the report and minutes are submitted to Forest Authority in view of Article 134 and 135 item 4 of LO), which is a request to initiate offence proceeding as per Article 36, par. 2 of the LO.

From the demonstration above, it may be seen how through indirect evidence we reached direct evidence. The claimant presents as direct evidence the forest guard, claimant "A", and three other witnesses who have been present during the search of premises of person "A".

In order to establish whether an evidence is direct or indirect, the report between the evidence and the main fact must be clarified. For e.g. the testimony of a witness who states that on a certain day, time and place before the offence of beating committed by persons A and B against the person C, the witness D was passing by and heard persons A and B threatening to kill person C, constitutes an indirect evidence, as the threat of murder was not enacted. But the fact that the claimant C was physically assaulted and beaten on that very day, time and place suggests that such a circumstance has indirect connection to threatening act, because the main fact is not the threat (Article 19, par. 1, item 1 of LRQP), but is the joint commission of beating person C by accomplices A and B in a public place. Article 18 par.1 item 5 OF LRQP).

From the example above, we may conclude that an indirect evidence – as sole and uncorroborated by other evidence may not serve to establish and prove the doer of the act, because in order fully establish the factual situation whether persons A and B jointly attacked and beat person C, other evidence must be obtained and evaluated, which would shed light on other facts, relationships or circumstances thereby revealing the causes, motives of parties to conflict, their earlier relationships, the facts about how they met at that time and place, what was the state of the claimant, who provided medical assistance, what injuries he/she sustained and what means of assault were used, what was found on the site, etc

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A.5. Original and derived evidence

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Original evidence is the one obtained directly from its source.
It is considered original, as its transmitter perceived the facts through his senses, e.g. testimonies of an eye witness, claims of the claimant, material evidence, documents, notes, etc.
A derived evidence is the one of which the court or other authority learn indirectly from another source, such as the witness testimonies on what he/she heard from original (eye) witness, copy of a document, excerpt, etc.
Derived evidence have no proving weight as the original evidence, but may serve to disclose an original evidence (except in cases when original evidence is lost, destroyed or if a witness or claimant have passed away).
In order to explain the notion of indirect evidence as a derived evidence, or testimony on basis of what one heard, the following real case will be presented:
Witness "D" 10.10.2005, at 12:00 hrs, reports a case to Police Station stating that in her the respondent "A", who is otherwise her brother-in-law (husband's brother) went to her village H., and told the oldest son "B", to convey his mother that he was there and that she should not create trouble to him and his father, otherwise he would no longer tolerate that his father and he suffer like that. The witness and Police Station consider this a threat case, and therefore the Police Station submitted a request to initiate offence procedure against the respondent "A" for an offence sanctioned under Article 19, par. 1, item 1 of LRQP. Minor Offences Court in P. commences the procedure, in which the respondent "A" denies the alleged act, explaining that on that day he was invited by his brother to his house to inform him in more detail that his brother's marital relationship deteriorated, that his wife takes little or no care about himself and children, but as he was a KPS Police Officer, he was afraid of losing his job if he undertook some action against his wife. Therefore, he asked his brother advise how to overcome the situation. The respondent "D" further asked that the oldest brother's son "B", who was present when two brothers discussed. The witness "D" stated in court that during the time when her brother-in-law respondent "A" went to her house she was at work, but later her son "B" called her on the phone and informed her of the discussion that took place at her house.
The first instance court, based on data stated on the claim and witness testimony, believed that factual situation was sufficiently well-established, and reached a decision in which it found the respondent "A" responsible of an act committed in line with Article 19 par.1 item 1 of LRQP) and accorded appropriate punishment .
The respondent filed an appeal against this court ruling, because of false establishment of factual situation, proposed revocation of said ruling and that a case is sent for remand to first instance court.
As a further prove, he proposed examination of his brother "C", who had personally invited him to his house to discuss how to proceed in order to improve his relationships with his wife "D", or alternately find other suitable solution and also hear his oldest son "B", who had present when the two i.e. the uncle and father discussed the issue. The High Court approved the appeal on the grounds that factual situation with respect to occurrence or not of an offence had not been established to a sufficient degree, revoked the decision and instructs the first instance court to produce additional evidence; to interrogate the brother of the respondent, his son as an eye witness, which would clarify the important fact whether or not the respondent "A" threatened the life or bodily health of person "D", or any of the children to inflict injury or issue any other similar threat, in view of the fact that a court decision may not be relied solely on the testimony of a witness who only heard it tell, and that direct source evidence must be

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produced to corroborate the decision with respect to the issue.

A.6 Objects requiring verification

The objects requiring verification are relevant legal facts related to factual description of offence act, meaning verification of elements constituting an offence, the features of the offender and all the facts and important circumstances necessary to shed light on issue under review. The set of relevant legal facts determines the factual situation of an offence. Identification of an object requiring proof primarily relies upon the claim submitted by the appropriate authority requiring initiation of offence proceedings as well as in proposals of the claimant, respondent or their attorneys, or proposals of any party affected or his/her representatives, which, in court opinion, are deemed relevant. In this regard, the court is authorized to make a selection of facts requiring verification that should be processed, both material or procedural.

Whereas facts that require verification in any offence, are: illegal act, time, place of act, means of commission of such act, consequences caused, etc. which are considered external facts and as such are verified through direct analysis and survey.

Internal facts are related to the doer of offence such as: level of responsibility, motive, pre-meditation, negligence, degree of psycho-social development, level of education or other habits, which in fact represent psycho-social state of the offender. It is implied that these facts are complex and as such are difficult to disclose in entirety.

A.7 The burden of proof

There are three types of proven evidence:

1. Accusatory type – the responsibility to prove such evidence rests with the claimant,
2. Inquisitive type – the function of persecution is transferred to courts, and therefore the responsibility to provide evidence rests with the court, and
3. Mixed type – in this type, the responsibility of evidence belongs to parties in proceeding, primarily the authorized claimant, while in cases of offence, to the body responsible to initiate offence proceedings.

In our offence law (Article 66 of LO), the obligation of the offence court to fully and accurately establish facts that are relevant to reach a decision is explicitly stated, and to strike a balance between the mitigating and aggravating circumstances for the respondent, while the article 69 of LO states that evaluation of evidence shall be done at the discretion of court.

A.8 Obtaining evidence

Obtaining evidence implies identification and discovery of evidence as well as their procedural processing, which will serve during the court hearing.

To discover evidence means to establish the existence of someone who knows something about the important facts or traces of offence, its nature, the object which will serve as evidence in offence proceedings, etc.

In offence proceeding, in principle the parties present evidence, primarily the state authorities or other bodies authorized to lodge a request for initiation of offence proceeding *ex-officio*. They guide the court in advising where the source of

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evidence is, but without excluding the possibility of court initiative to obtain appropriate information on existence of some evidence.

Parties may propose issuance, obtainment, or administration of evidence during the entire duration of offence proceeding, but also during the appeal against a decision of first instance court as legal remedies, but also through extraordinary legal remedies.

A.9 Review and verification of evidence

This procedural phase represents most important activity of the pre-trial procedure, as in this phase the court focuses on establishment of factual situation as a basis for reaching an appropriate ruling on an offence case, offender, responsibility and on sanctions to be cited.

Evidence under review must be verified in order to eliminate any gaps or obscurities, and compared and evaluated against other evidence.

A.10 Evaluation – judgment of evidence

Is the last and most important phase of the process of establishing important facts, as the court will evaluate every disputed fact as true or false, thereby establishing the truth during the proceeding, the reasons and causes for considering for endorsing some evidence and discarding the other.

The evaluation of evidence is a process of complicated mental operation, which in addition to common sense also requires some knowledge of judicial psychology, which deals with studying the formation and manifestation of participants' mentality in procedure.

In our offence law – the judgment of evaluation is done based on progressive theory, as it is the court's duty to consciously and professionally evaluate any evidence individually against other evidence and reach a judgment whether a fact has been fully proven, on the basis of which the factual situation of the case may be established. This is the reasons why the court of offences in the rationale of its decision must explicitly and fully explain its determination as to why a fact has been endorsed or rejected, when deciding on the case (Article 204 par.4 of LO).

B. Review of evidence

B.1 Respondent's testimony

The interrogation of respondent in an offence proceeding is, in essence, considered a special source of evidence for establishment of disputed facts, without prejudice to his right to defend himself or to remain silent in conformity with Articles 158-162 of the Law on Offence).

In all the court proceedings, any form of abuse is strictly forbidden, as are any application of narco-analysis, fatigue, torture, coercion, fraudulent practice or hypnosis, promise of a gain, use of medicaments to induce weakness or cause loss of memory or affect the ability of the respondent to appreciate the importance of the issue at hand (Article 159 of LO).

Narco-analysis is a method through which data or truth is extorted from person by means of administering narcotics (in the form of injection or through some other forms that affect his consciousness), depriving him of the possibility of logical reasoning in replying to questions,

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and by making him incapable of realizing of the importance of questions, or the extent of damage caused. In such situations, he is capable of making statements, which may be against his will.

The application of hypnosis is also prohibited, as the person in state of hypnosis is not in possession of his brain, i.e. does not control his words or thoughts, or to make leading questions (assumption that the respondent has already claimed something before, which in reality he has not).

B.2 Respondent's claims

There is no doubt that the respondent is the person who knows the truth with respect to alleged offence, for which his claims, particularly if obtained honestly and in normal circumstances, bear special importance to proceedings. Therefore, the claims of respondent are considered as evidence in offence proceeding, although such a fact is not explicitly stated under the provisions of the Law on Offence. However, the issue has to be treated in accordance with the provisions of articles 315-358 and 402 of the Provisional Code of Criminal Procedure in Kosovo, which state that a ruling in criminal proceeding may not be sent for remand on the grounds of false or incomplete establishment of factual situation, if the respondent has pleaded guilty on all charges. The same principle should be applied in the offence procedure, when the respondent pleads guilty on all charges.
Accordingly, when in criminal proceeding the defendant considers himself guilty and pleads so, he is found guilty, while in the inquisitive procedure the plea of the respondent is considered the queen of evidence – has the bearing of full evidence.
Irrespective of this, in our criminal and offence laws, the plea of the respondent is considered evidence and is judged against other evidences at progressive discretion of the judge, based on following principles:

1. The respondent understands the nature of his action and consequences of his plea,
2. The plea must be made on voluntary basis or after consultation of the respondent with his attorney,
3. The claim has to rest on facts, which are a subject matter of claim and
4. There are no circumstances to challenge the claim in view of Article 137 items 1-5 of the LO).

B.3 Witness testimony as evidence

In offence proceeding too, witness testimony has significant importance in establishing a fact regarding offence, offender or other circumstances in which it occurred.
In criminal proceeding, the witness is cross-examined by the parties present during the hearing session. There is a similar provision under Article 161 of the LO, when the court confronts the claimant and respondent or one witness against another (Article 169 of LO).

When a witness is examined on an offence, the court notifies him/her that he is obliged to speak the truth and must not withhold any information, as he will be held responsible for perjury. The court must take due account of psychological features of the witness, such as: children, juvenile, elderly and respect other personality traits.

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Privileged witnesses and other witnesses exempt from the obligation of making a testimony are set out in Article 164 and 165 of LO).

B.4. Eyewitness

Present Law on Minor Offences makes no provision on and fails to explain the meaning of eyewitness. However, the judicial offence practice considers this witness an important tool (he may not be replaced with other witnesses, as may be the case with an expert), as he as a direct perceiver of an event which is a subject being reviewed under offence proceeding.

B.5 Hearing witness

These witnesses have not personally perceived the course of event, but received information from a story of a third party (see case: derived evidence).

During the evaluation of an examination of hearing witness, there are various dilemma and obscurities presented to the court: is it true at all that an eye witness recounted the story to the hearing witness, was the story perceived correctly by the listener, was the witness capable to fully and accurately understand and remember what has been recounted to him.

Judicial psychology here concludes that the ration of misperception here is 1:50, i.e. half higher than the testimony of an eye witness. In view of this finding, such a testimony should not be considered evidence.

C. Expertise as evidence

In offence procedure, in order to shed light upon important facts on offence proceeding, the court may need the knowledge of natural-technical sciences, medical sciences or other areas. In such cases, the court hires professionals of respective profiles, which upon a comprehensive study, provide their findings and conclusions in view of Article 173 of LO.

An expertise is ordered by the judge in writing, at the request of respondent, third party or *ex-officio.* It is recommended that experts views and findings may be recorded in minutes, or alternately submit it in writing.

In normal life, conditions and circumstances, there is a prevailing assumption that any person is responsible for his action or lack thereof.

However, Article l98 par. 1, item 2 of LO, states that offence procedure shall be terminated if there are circumstances excluding the responsibility of alleged doer, if there is a suspicion that the respondent at the time of commission of offence was mentally incapacitated, at reduced mental capacity, or suffered a mental disorder, temporary or permanent. In such cases, the court *ex-officio*, or at proposal of parties to proceeding assign an expert to perform a psychiatric examination in order to establish:

a. If the respondent at the time of commission of offence was mentally incapacitated or at reduced mental capacity, or

b. Under similar circumstances, was unable to understand or control his actions or lack thereof.

A similar definition is also given in Provisional Criminal Proceeding Code in Kosovo (Article 12 of PCPCK). Under such circumstances, the court shall act in conformity with Article 180 of LO, requesting a psychiatric view, which must be obtained before the final verdict of the court is issued.

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Expertise as evidence in offence proceeding is applied more in cases of traffic accidents, especially with regards to material damages of major proportions in which both parties try to evade responsibility and is therefore impossible to obtain sufficient evidence from parties to establish factual situation. If the subject of expertise is complex, the court may assign several experts to perform the same duty. If two or more experts share the same view they may prepare a joint expertise. On the contrary, they will each prepare a separate statement and justify it with their views and findings.
Expertise involving several experts on the same issue may create two different situations:

1. All experts agree on findings, but differ in their views, and
2. Experts disagree in both findings and views on issue under review.

In the first case, the court has no obligation to repeat the expertise, as their findings match the important legal facts (e.g. causes of accidents, mistakes or failures), as each of them has an opinion on the same conclusion, which they justified explaining the methods or scientific rules or skills leading him to conclusion. The court in such case, as a matter of common sense, judge whether the views or findings are correct or otherwise.
The court is not bound by experts' findings, but as the experts differ on conclusion, in this case the court shall reach a decision to analytically evaluate in conformity with all the results of pre-trial proceeding, applying the progressive principle. The court, after all, is not bound by the experts' findings, as it is officially authorized to judge the decisive fact by the professional it asked the assistance from because due to his knowledge of science or skill involved.
However, when the experts' findings differ in essence, or their findings are unclear, incomplete or in clear contradiction, the court may decided to appoint other experts because even in the case of repeated expertise, it may judge that the results may again be the same.

D. Site inspection and reconstruction

Site survey as a source of evidence is required when it is necessary to directly inspect the site where the event occurred.
The Law on Offence does not specify how the procedure should be applied. However, by virtue of Article 172 of LO, it stipulates this possibility in order to clarify a fact, in which in addition to the judge and parties and proceeding, the expert may also attend, in line with Article 254 item.2, 3 and 7 of PCPCK).
It is advisable that the survey may take immediately after the offence, while the reconstruction is usually done later as this type of evidence is very difficult to implement, depending on the case complexity
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E. Material evidence

Material evidence is considered any thing or object which is deemed important to establish important facts in resolving an offence issue.
These evidence are many and varied, depending on the type and nature of the deed, such as tools or equipment used for commission of offence (e. g. knife, metal bars, rubber bars, stick, etc.), things gained – misappropriated through offence (e. g. firewood from illegal woodcutting), things which contain the traces or fingerprints of the offender (e. g. stick, bar or other bloodied item, loading bill or forged delivery note), or impounded food items because of expired date, or other similar items, etc.

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F. Documents as evidence

The meaning of document as evidence in offence proceeding, similar to the criminal proceeding are written documents containing facts that require verification such as: certificates, decision, other state authorities documents, or of institutes with public authority, business books, attestations, reports, etc. Similarly, private letters of citizens, minutes, statements, medical examinations in health institutions are also considered.

From the perspective of documents author, they may be public or private. However, before it is admitted as evidence the court must establish if it contains evidence qualities, by establishing the author, as the author knows the best the origin of data contained in the document.

In the offence practice, very often it happens that such documents are submitted to court as evidence of irregularities or abuse, e. g. a false driving licence shown as true, registration licence for completely different vehicle, work permit in the name of another person, expired health registration card, etc.

Technical recordings

Scientific and technical discoveries may be applied as evidence via sound or video records, etc. (audio, visual recordings showing footages of detailed events or phenomena outside, such as: pictures, filming, audio or video recording, etc.) These represent important facts that require verification and as such may be used to establish the authenticity or otherwise of an event, which is a subject of offence. Such technical recordings may serve as evidence in proceeding.

It is recommended that any object, thing or item which may serve as evidence may be taken by the person for later use during proceedings (Article 184 of LO).

Recently, there has been progress in the performance of competent authorities in pursuing the offenders, which in some areas may be used very effectively, particularly in cases of traffic accidents, deforestation, trade, goods exposure in public areas, public law and order, exploitation of mineral resources, overloading of transport vehicles, etc.

The judgment on material evidence and their correct evaluation is of tremendous importance. They are otherwise known as “mute evidence” as, by nature, they are impartial to what they prove. Technical recordings on the other hand, are more precise than human senses and his memory, and are not prone to subjective weaknesses, prevalent among human beings.

In view of above, it may be concluded that material evidence administered in offence proceeding, as in other court proceedings, provide a high degree of accuracy, thereby diminishing the importance of witness testimony. Depending on the case complexity, best effort should be exerted to reach a balanced combination of material and personal evidence.

With respect to the issue raised, the judge evaluating the evidence in proceeding should hot hesitate to reach a decision in favor of the respondent, as in absence of some important evidence he shall be guided by the well-known principle of “in dubio proreo”.

KJI Training Activities
July 2006

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Acknowledgement and Execution of Criminal Judgements

On 04 July KJI organised a training with the above mentioned topic. The purpose of this training was to initiate discussions exchange information and unify the existing practices. There were also information on the existing experience on the legal assistance by the foreign agencies and public bodies which are competent in the field of judicial-criminal issues. These problems are hampering the efficiency of the judicial system in Kosovo. The existence of criminal decisions is seen as one of the hurdles for implementation of procedures which are guarantee for an effective judiciary.

Seminar on European Convention on Human Rights

On 05 and 06 July KJI organised training on European Convention on Human Rights in Mitrovica region. This was two day session which aimed to give a detailed overview on practical implementation of the provisions of Articles 5 and 6 of the European Convention on Human Rights with the purpose of increasing the knowledge of Kosovar judges and prosecutors towards the case law of European Court of Human Rights. Four national trainers who have been certified by the Council of Europe acted as trainers in this session.

Training for Minor offence Judges

On 12 July 2006 KJI Organised a training session for minor offence judges. Throughout 2006 KJI will continue to organise special training sessions for Minor Offences judges. The third training session for this year focused on the Minor Offence Procedure with special emphasis on the Minor Offence Liability, co-liability of natural and legal persons and collection of evidence during the procedure.

Report from the National Conference of Judicial Centers and Institutions held on 3 and 4 July 2006

On 3 and 4 July 2006 a regional conference of judicial institutions, academies and centers for training of judges and prosecutors was held in Belgrade under the organization and patronage of UNDP office and Center for Training of Judges and Prosecutors in Serbia and Montenegro. This conference was attended by the representatives of UNDP office in Serbia and Montenegro, different projects financed by EU and EAR, European Judicial Training Network (EJTN), USAID office and representatives of all institutions and centers which deal with judicial training in the region from countries like Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Kosovo, Romania, Serbia, and Macedonia.

During this conference all of the mentioned institutions presented their achievements, problems and difficulties which they encountered in the past, their preset situation their current activities, results challenges for the future and they all stressed the need to institutionalize the cooperation for the future and to exchange useful experience.

The Kosovo Delegation in this conference was composed by Mr. Lavdim Krasniqi, KJI coordinator and Mr. Islam Sllamniku judicial trainer. The presented the achievements the methodologies of work and functioning, the structure of KJI, planes for the future and the challenges which will follow KJI. One impressing result for the participants was presentation of KJI law which entered into force

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on 24 April 2006 through UNMIK Regulation 2006/23 which defines KJI as an independent institution, responsible for training of office holders and potential office holders in judiciary (judges and prosecutors) assesement and organization of the preparatory exam for judges and prosecutors, special training courses for promotion of judges and prosecutors, basic training for lay judges and training courses for other professionals in the area of judiciary as defined by the KJI.. Most of the countries represented in the conference did not have a law for their establishment and as a result the position of their academies, institutions and training centers for judges and prosecutors was fragile and was not defined in relation to other state institutions.

The KJI law and the form of applying for the trainings as it is now in Kosovo were considered as positive examples by most of the participants in the conference and they considered it as stimulation for their activities in the future. The participants were happy with the compilation of the materials that we presented which gave an overview and identification for KJI. The compilation contained KJI Law reports on the work of KJI, activity programs, and statistic data. The compilation was distributed to all the participants in the outset of the conference. KJO delegation answered many questions that were made by participants during the final debate of the conference.

Forthcoming events
September 2006

Seminar on European Convention on Human Rights

Target group: judges and prosecutors from Pristina region. KJI will organise a training On the European Convention on Human Rights in Pristina region. This will be a two day session which aims to give a detailed overview on the implementation of provisions of Article 5 and 6 of the Convention with the purpose of increasing the knowledge of Kosovar judges and prosecutors in relation to the case law of the European Convention on Human Rights. Four national trainers who have been certified by the Council of Europe will act in t he capacity of trainers in this session.

Planned date: 04 and 05 September 2006.

Practical skills training: Simulation of a trial

Target group: civil judges

KJI is planning a practical simulation of a trial for civil judges from the region of Gjilan. A problematic case from the court practice will be selected for the purpose of this simulation. The participants will discuss the problems related to the civil procedure in the cases similar to the selected case.

Planned date: 07 September 2006

Workshop - Confiscation and the procedure of confiscation

Target group: judges and prosecutors

The main purpose of this workshop is to present and analyse the problems of the judicial practice through cases from the court practice that are related to the confiscation and the procedure of confiscation.

Planned date: 12 September 2006.

Workshop on Code of ethics

Target Group: judges and prosecutors

Within the scope of its training activities throughout the regions of Kosovo KJI will

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organize a workshop on the Code of Ethics. This time the beneficiaries of this training will be judges and prosecutors from Mitrovica Region. The purpose of this training will be to give a detailed overview on the experience and practice where the independence of a judge may be worrying. The training will focus on the position of a judge as individual decision maker and as decision maker in a panel.
Planner date: 19 September 2006

<u>Simulation of a trial – Criminal field</u>
Target group: judges and prosecutors
Simulations of trials from the criminal field have been organized in different regions in Kosovo, this time such training will be organized in Prizren region.
A case study from the court practice will be selected for the purpose of this training, this case will contain a lot of problematic issues related to the difficulties which are encountered by judges and prosecutors from Prizren region.
Planned date: 21 September 2006

<u>Seminar – Investigation of corruption related criminal offences</u>
Target group: judges and prosecutors
In cooperation with the Council of Europe KJI is planning to relies a seminar related to investigation and hearing of the corruption related criminal offences. It is envisaged that during the work of this seminar there will be international experts with vast experience in this field in the capacity of trainers who will pass their knowledge into participants.
Planned date: 22 September 2006

<u>Seminar for lay judges in Peja region</u>
Target group: lay judges
In accordance to its mandate KJI is organizing trainings for lay judges in the regions throughout Kosovo. This time training for lay judges will be organized in the region of Peja. The training will focus on the practical aspects of the procedures in criminal and civil fields, including some aspects of the Code of Ethics.
Planned date: 26 September 2006

<u>Workshop – the procedure for announcing the missing person dead</u>
Target group: civil judges
Taking into consideration the general post war situation, the huge number of missing persons and the reflection of this issue in property relationships the non-contested procedure provides for conditions which have to be met for a missing person to be announced as dead. These and other issues foreseen in the legal provisions elaborated through case studies from the court practice will be subject of discussion during his workshop.
Planned date: 28 September 2006

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