

KJI NEWSLETTER ***February 2005***

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

Background Information on the proposed Judicial Entry Examination and the Initial Legal Education Program for candidates who want to be appointed to the position of judge or prosecutor *

The Institutional Building Project of the Kosovo Judicial Institute is an EU funded project (managed by the European Agency for Reconstruction) and implemented by a consortium led by Transtec. One of our consortium partners is the Kosovo Law Center.

One of the components of the Project is to prepare, in cooperation with key stakeholders and for the approval of the Kosovo Judicial Prosecutorial Council, a Judicial Entry Examination (JEE) and an Initial Legal Education Program ("ILEP") for persons wanting to be appointed to the position of judges or prosecutor.

The aim of this program is to strengthen the selection and appointment procedures for judges and prosecutors in Kosovo and to secure the best suited candidates to fill the position of judge or prosecutor.

Since May 2004, the Project has been working on the development of the JEE and ILEP. After much consultation with key stakeholders, a Working Group was formed under the chairmanship of the Judicial Training Expert of the Project, Dr. Rainer Deville (a German Judge with substantial experience both as a judge and a trainer of judges). The Working Group members

comprised Zivojin Jokanovic (KJPC), Prof. Dr. Enver Hansani (University of Pristina), Ms. Radostina Nedeva, Legal Officer in the Professional Development Section in the Department of Justice and Rrustem Qehaja (KJI Trainer responsible for the entry exam).

Following the final recommendations of this Working Group, the Project again undertook consultations with key stakeholders and modified the content accordingly.

Thereafter, the Project presented to the Kosovo Judicial Prosecutorial Council its recommendations along with a mock Judicial Entry Examination and the curriculum of the Initial Legal Education Program for its approval. Following its meeting of the 15th February 2005, the Council approved the introduction of the Judicial Entry Examination (JEE) and the ILEP on a "pilot/trial" basis.

This means that for the next round of recruitment process for judges and prosecutors, in addition to the formal requirements for the appointment of judges and prosecutors set out in UNMIK Regulation 2001/8(2001), as part of the screening process the Kosovo Judicial Prosecutorial Council will require all

candidates to sit the Judicial Entry Examination. Those candidates who successfully pass this examination will be required to successfully complete the 3 months Initial Legal Education Program which covers the subjects shown within Annex A hereto.

The Judicial Entry Examination comprises:

Day 1: written tests, General intelligence test, multiple choice test
Written statement.

Day2: oral examination
Case study (oral presentation),
Oral examination

The Judicial Entry Examination should not be seen as a re-examination of the Bar Examination which all candidates need to have a pre-requisite for applying for the position of judge or prosecutor. The aim is to assess the ability of the candidates to apply their legal knowledge to real cases to simulate effectively the role of a judge or prosecutor and providing through the Initial Legal Education Program vocational training that will see these new recruits much better equipped to perform their duties as judges and prosecutors. The Judicial Entry Examination should realise the selection of candidates with practical skills, such as management, team building and communication.

The Judicial Entry Examination as designed will be able to evaluate more precisely the:

- (i) Legal and Professional knowledge of the candidates;
- (ii) Ability to use such knowledge in the performance of his/her duties;

- (iii) Ability to understand, analyse and synthesise complex cases in a proper way;
- (iv) Time management
- (v) Case management abilities
- (vi) Writing skills
- (vii) Oral skills
- (viii) Capacity to preside over a panel of judges.

In addition, the entry exam will focus on two subjects which so far have not been comprehensively tested during the previous exams. These are aspects of Human Rights and European Conventions, being directly applicable according to Chapter 3 of the constitutional framework, and philosophy and ethics, being one of the major issues to be dealt with in the judiciary.

The Judicial Entry Examination will have to be sat over two days. This examination comprises three written tests: a general basic intelligence test (see Annex A for a sample of the type of question covered under this Part), a multiple-choice test with legal questions from all branches of law (see Annex B for a sample of the type of questions covered) and a written statement.

The **general intelligence test** is a standard test available on the market to check the intelligence quotient with an emphasis on analytical skills. Experts are well aware that the outcome of these tests is limited as candidates may obtain a higher score by previous training. But at least the test provides an indication that candidates have the general capacity to learn successfully during the initial training and during the rest of their professional life.

The second test is a **written multiple-choice test**. The advantage of the test is the possibility to check legal background

without spending too many resources in evaluating the outcome. These tests need to be designed, organized (plenty of people in one room) and evaluated. This requires more time and is more expensive. The disadvantage of this kind of test is its tendency to prefer people who are trained to pass this kind of test and this skill is not required in the professional life of a judge or a prosecutor. In addition, multiple choice tests measure at best learned materials but no skills. To this end it is still a useful procedure. Multiple choice tests of this type provide usually four at least probable and reasonable sounding somehow similar answers among which one is correct only. Candidates normally have to know the correct answer and cannot guess the right answer simply by common sense. The questions may cover all branches of law and should focus especially on practical knowledge and should include procedural law. Even purely practical questions, e.g. the calculation of interests or costs for civil cases may be added.

The third part of the first day follows, which is a **written statement** on a general subject. Within one hour candidates are required to prepare a written opinion concerning the judicial system (Why do you want to become a judge or prosecutor? Is there a need for a specific administrative court?), a practical problem of the day-to-day work on an actual legal or political development (What do you expect from the opening of the permanent EU representation in Kosovo? Why standards before status?) or on any general subject. The objective of this statement is to test the capacity of candidates to express themselves in written form and to present a subject in a structured and logical manner.

Candidates who have passed Part I are invited for Part 2 (held on a different day).

The second day starts with a presentation of the candidate to the president of the evaluation panel. This is the occasion to reflect individual developments in the life of the candidate. Candidates form a group of six. They receive a practical case which has to be presented individually to the examination panel and they go as a group in the oral exam.

In the case presentation exercise the candidates receive each of them a practical case. This case had been designed for examination purposes. It is about 10 pages long and represents a file. The candidates will have one hour preparation time. The candidates have to read the file, understand (and demonstrate an understanding of the facts and issues) and present orally the facts and a practical solution to the case within ten minutes to the exam panel. This exercise is geared towards assessing legal knowledge, evaluation of the candidates ability to understand complex cases and demonstrate such understanding, evaluating the capacity of the candidate to distinguish disputed and undisputed facts, relevant and irrelevant facts, practical working skills and oral presentation are tested.

Then an **oral examination** of the same group follows. Every member of the panel will ask questions from one branch of law (civil, criminal, public). Any specialisation is checked within these subjects (e.g. labour law as a part of civil law, EU law as a part of public law). This is the opportunity to ask the standard questions so far used by KJPC and to add free and judicial questions. Usually every candidate is interviewed about ten minutes on every of the three subjects, which is one hour per field of law with six candidates.

Those candidates who pass the Judicial Entry Examination are then required to

undertake the Initial Legal Education Program (ILEP). The provisional timetable and content of ILEP is attached as Annex (C) hereto. The ILEP Program will initially be run on a pilot basis for 3 months (although the Law on KJI (if promulgated in due course) envisages the equivalent of the ILEP being run over 10 months). The goal of the ILEP is to provide as far as possible to the candidates vocational training on specific areas of law and practice: particularly criminal law and procedure; civil law and procedure; case study and management; writing/drafting skills; practical aspects of the European Convention on Human Rights; Professional Conduct and

Ethics, simulation of the role of a judge and prosecutor.

It is also hoped that the candidates who successfully complete both parts of the JEE and ILEP will be able to take advantage of a short internship of between 4 – 6 weeks in a Court or Prosecutor's Office in a European member state. Efforts are being made to identify funds for this purpose.

**** The material has been developed and presented by the EAR Funded Project for Capacity Building of Kosovo Judicial Institute at the Round Table Discussion co-organized by the Project, KJI and KJPC, held on 25 February 2005 in Prishtinë/Pristina.***

Project activities February 2005

Seminar on Non Discrimination

On 7 and 8 February 2005, Kosovo Judicial Institute in collaboration with OSCE organized a Seminar on principles of Non-Discrimination for judges and prosecutors from all the regions in Kosovo. The law on Non Discrimination has been recently promulgated in Kosovo and has entered into force in 2004. As such legislation is still a novelty in Kosovo the Seminar aimed to inform and present to the judges and prosecutors the issues related to discrimination in both private and public sector. Twenty six participants attended the two days of the Seminar. Amongst them was one minority judge.

Seminar: Science and technology in courts

On 10 February Kosovo Judicial Institute organized a Seminar on the abovementioned topic that aimed to clarify and contribute to the harmonization of the court practice concerning the conduct and impact of the expertise in the Criminal proceedings. Experts from judiciary, prosecutorial service as well as from the KPS and Scientific Organizations were invited to present relevant topics at the Seminar. Nineteen participants attended the Seminar; all of them were of Albanian ethnicity.

Workshop on Legal Defence

This Workshop was a continuation of series of discussions on the problems

concerning unclearness and contradictions in applying the new Codes. The Workshop was organized by KJI in Collaboration with the Association of Judges, Association of Prosecutors and Kosovo Chamber of Advocates. Twenty six participants were in the list of participants for the Workshop, all of them were of Albanian ethnicity.

Seminar: Harmonization of the Case Law in Civil Cases

The seminar aimed to provide information on the recent developments and pending promulgation regulations in the field of civil law in Kosovo. In addition participants were given an opportunity to attend group exercises on practical cases in order to try to harmonize their practice on most common types of civil cases. The number of participants at the seminar was 15 in total. One of the participants was of Serbian ethnicity.

Workshop on Minor Offences

The Workshop was a continuation of a series of Workshops with the same title

offered by KJI to the Minor Offences Judges. The number of participants was 17 judges, all of them of Albanian ethnicity

Seminar on the protection against Domestic Violence

The Kosovo Judicial Institute (KJI) offers a seminar on implementation of UNMIK Regulation 2003/12, *Protection against Domestic Violence*. As the members of judiciary have shown great interest for this matter KJI included the topic in its program for 2005. The program addressed the responsibilities of the courts that have jurisdiction over these cases. The number of participants at the seminar was 21-16 judges, 4 prosecutors and 1 lawyer. All of the participants were Kosovo Albanians.

Forthcoming events

Workshop on Commercial Law

Target group: judges hearing civil and commercial cases.

The Workshop will present to the participants the most common dilemmas in the judicial practice related to Commercial contracts, Transactions and Sell of Goods with defects. KJI had invited as trainers some of the outstanding practitioners in the field of Commercial Law in Kosovo. The Workshop aims to initiate a professional discussion between the judges hearing

Commercial cases from all the instances in order to facilitate the

harmonization of the court practice on the Commercial cases.

Planned date: 9 March 2005

Workshop on the Juvenile Justice Code

Target group: judges hearing Juvenile cases and prosecutors

The KJI in collaboration with the Kosovo Judges Association, the Kosovo Prosecutors

Association and the Kosovo Chamber of Advocates had planned to organize second training session on the new Juvenile Justice Code of Kosovo. The objective of the workshop will be to present an analysis of the recent implementation of the new Code and to improve the coordination and interaction of all stakeholders involved in the proceedings of this Code. The participants will try to identify and discuss how loopholes and contradictions related to some of the provisions of this recent legislation could be solved in practice.

Planned date: 10 and 11 March 2005

Seminar: Interpretation and development of Civil Legislation

Target group: judges hearing civil cases

The seminar aims to provide information on the recent developments and pending promulgation laws in the field of civil law. In addition participants will be given an opportunity to attend group exercises on practical cases to be resolved by interpretation of the applicable law. The participants will have an opportunity to hear commentaries and interpretations of Civil Laws by university professors, legal practitioners, judges.

Planned date: 15 March 2005.

Induction Training for Lay-Judges

Target group: newly appointed lay-judges

In March 2005 KJI will start a cycle of induction training programs for lay-judges which will be held in all five regions in Kosovo. The first one-day session will be held in Prishtinë/Pristina. The following sessions will be in

Prizren, Gijlan/Gnjilane, Pejë/Peč and Mitrovicë/Kosovska Mitrovica. The Induction training program aims to provide basic overview on the functions and responsibilities of the lay-judges in both criminal and civil procedure as well as main ethics related aspects of the position of lay-judge.

Planned dates:

17 March 2005 - Prishtinë/Pristina;

14 April 2005 - Pejë/Peč;

15 May 2005 – Prizren;

16 June 2005 - Gijlan/Gnjilane;

7 July 2005 Mitrovicë/Kosovska Mitrovica;

Workshop on the Provisional Criminal Procedure Code of Kosovo

Target group: judges trying criminal cases and prosecutors

The KJI, in collaboration with the Kosovo Judges Association, the Kosovo Prosecutors Association and the Kosovo Chamber of Advocates will organize a workshop on the Provisional Criminal Procedure Code of Kosovo for the judges and prosecutors from Mitrovicë/Kosovska Mitrovica region. The workshop will focus on the confirmation of indictment. The participants will have practical exercise and discussions in order to overcome some of the difficulties and to avoid the most common mistakes judges and prosecutors make proceeding with the confirmation of indictment in the Criminal procedure.

Planned date: 23 and 24 March 2005