

KJI NEWSLETTER ***August 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 and external experts relating to issues of interest to judges and prosecutors working in Kosovo.

2005 Mid-Year Report **Kosovo Judicial Institute**

Introduction

During the first six months of 2005, the Kosovo Judicial Institute (KJI) has continued to provide efficient training to the Judiciary and Prosecution of Kosovo aiming to develop further the professional skills and legal knowledge of Kosovo magistrates.

The KJI continuously adapts its training activities to the changing legal environment and needs. The KJI started with general trainings on human rights standards and criminal law for the benefit of all members of the judiciary. Subsequently, the KJI focused on specific legal subjects of concern, such as criminal law, criminal procedure law and civil law, with reference to international human rights standards, intended to refresh and update their legal knowledge. The scope training activities of the KJI is constantly expanding. By increasing professional and technical competences of Kosovo judges and prosecutors, the KJI supports the implementation of the Standards for Kosovo, in particular of the Equal Access to Justice and Property Rights.

In order to achieve these objectives, the KJI formulated its curriculum based on input and feedback from many different sources. Presidents and Chief Prosecutors of the various courts and prosecutors offices in Kosovo are regularly consulted on the needs of the magistrates. Furthermore, reports from the UNMIK Department of Justice (DOJ), the Department of Judicial Administration (DJA), the Legal Systems Monitoring Section and the different Human Rights and Rule of Law sections of the OSCE raise issues that can be addressed through legal training. Finally, the KJI receives information directly from judges and prosecutors who attend the training events, conducting an evaluation of each of its seminars and recording all such information.

Currently, the KJI is still a part of the OMIK-HRRoL. However, a draft law on the establishment of the KJI, which will set up the KJI as an independent institution within the overall governmental structure in Kosovo, is expected to be adopted by the Kosovo Assembly in 2005. Thus the KJI will function as a sustainable institution providing initial training for future judges and

prosecutors, basic training for lay judges, training for judges and prosecutors in case of promotion, as well as continuous training for the Kosovar judges and prosecutors.

The KJI activities are divided in two main training programs: Initial and Continuous Legal Education Programs.

I. Initial Legal Education Program

With a decision of the Kosovo Judicial and Prosecutorial Council (KJPC), KJI was mandated with a new challenging task: to conduct the first Initial Legal Education Program (ILEP) as a pre-appointment pilot module for judicial candidates. In doing so, KJI has been assisted by the European Agency for Reconstruction (EAR) through a technical assistance project named "Institution Building of the KJI". The ILEP Pilot Training started on 15 April 2005 and lasted till 24 June 2005. The ILEP training curriculum is organized into 15 modules, covering all the relevant topics from the Civil and Criminal Law fields as well as practical exercises, visits to the relevant courts, institutions, correctional facilities and police stations.

After a highly competitive Judicial Entry Examination, 60 candidates were selected by the KJPC for the ILEP Pilot Training. They are required to attend the training on a daily basis for the period of three months. Over 40 distinguished legal professionals: sitting judges and prosecutors from all the levels of the judiciary and prosecution in Kosovo, lawyers and university professors were involved as trainers in the ILEP. Additionally International Experts also contributed to the drafting of the training manuals, study cases and methodology for the Initial Program.

After the completion of the entire course of ILEP, 57 candidates have shown final results of more than 50% success out of the overall maximum score. Therefore the KJI considered those candidates as successful in their attendance and completion of the ILEP.

However, the KJPC will make the final assessment of the knowledge and professional skills of the candidates for judicial positions. This assessment will be made through interviews and will result in recommendation for appointment to the judiciary of the most successful candidates.

II. Continuous Legal Education Program

During the reported period KJI organized in total 36 (thirty six) training events (seminars, workshops and round table discussions) with the participation of 725 (seven hundred twenty five) judges and 165 (one hundred sixty five) prosecutors. The number of judges includes as well the number of minor offences court judges and lay judges who have been trained.

II.1. Seminars and Workshops on Criminal Law

Seminars and Workshops organized on Provisional Criminal Code, Criminal Procedure Code of Kosovo, Juvenile Justice Code of Kosovo and Regulation on Criminal Procedure including the Perpetrators with Mental Disorder.

The training on the new criminal codes and other abovementioned legal acts was a priority during the last two years. The training sessions focused on the application of the material and procedural norms according to the new criminal law system.

KJI offered 17 training sessions in total. In the course of these activities were treated many fields and specifics which are related to the new criminal provisions, types of punishments and new proceedings. The novelties introduced with the new codes have been treated in general same as many other valuable points which are related to the implementation of the international standards with the new judicial system of Kosovo.

During the course of the training sessions were elaborated the following topics: crime scene inspection and reconstruction of the crime scene, conduction of the judicial expertises and issuance of the order for expertise, role and structure of the Forensic Unit, the procedure for the confirmation of indictment, the detention on remand and rendering of the decision, extension of the detention on remand at the pre-trial procedure and after the filing of the indictment, appointment and extension of the detention after the communication of the judgment. One of the elaborated topics was also the detention on remand for the persons with mental disorder and the proceedings for the persons incapable to fit before the trial, perpetrators of the criminal offences with mental disorder and diminished mental capacity. The training covered the illnesses that cause mental disorder and diminished mental capacity, the judicial proceedings in the cases including the perpetrators with mental disorder and diminished mental capacity at the time of the commission of the criminal, imposition of measures and sanctions against the perpetrators with mental disorder and diminished mental capacity, judicial decisions review and termination of the mandatory psychiatric rehabilitation, main hearing, appointment and extension of the detention after the communication of judgment and drafting of the judgment. One of the new training topics was the appeal procedure: the appeal as ordinary legal remedy, the right to file an appeal, the legal term and appealing subjects, appealing bases.

KJI organized a seminar on trafficking of human beings with a special attention on the victims and witness protection and the respective jurisprudence of the courts in Kosovo.

One of the most successful seminars was the War Crimes Seminar held in June. The training focused on the applicable legislation in Kosovo in relation to the war crimes, the Case law from The Hague Tribunal and the cooperation with the Kosovo courts, the admissibility of the evidence before the Tribunal, the punishments according to the law and the investigation of the war crimes.

KJI as well has extended its training program in the form of workshops trying to involve all regions of Kosovo. The organized workshops were held in all the regions of Kosovo from the beginning of January 2005 until the end of June by elaborating the new provisions of the criminal laws. The judges and prosecutors have shown a great interest as a result of the difficulties and dilemmas which judges and prosecutors face during the everyday practice by applying the laws, because of the short period of time they have experience in applying the new

codes, and because they haven't created a necessary judicial practice with the newly promulgated laws.

The workshops were delivered to judges and prosecutors whom have expressed a need in order to jointly elaborate and eliminate many dilemmas with respect to the newly promulgated codes.

In 2005 KJI continued to organize workshops in collaboration with the Association of Judges, Association of Prosecutors and Kosovo Chamber of Advocates. The three professional organizations have initiated in 2004 the initiative for organizing the training sessions trying to include all the regions of Kosovo in order to find a way and focus to eliminate the dilemmas during the implementation of the new Criminal Code and Criminal Procedure Code of Kosovo as well as other new Regulations mentioned above.

The trainings were practice orientated and very interactive with a lot of case studies and simulations. During the debates in the organized sessions the judges and prosecutors were invited to focus on discussions and elaborate a case study, which case included the dilemmas and difficulties in applying the new Codes.

The aim of these debates during the workshops in regions and in the premises of KJI was to achieve a standardization in interpretation and implementation of the legal provisions and offer an assistance in harmonising the the judicial practice by referring to the provisions which present dilemmas and difficulties in application.

The outcome of the fruitful discussions was that the judges and prosecutors could come to unique stand points. However, the basic principle is that the respective stand points and guidelines cannot be obligatory for the courts and every judge or prosecutor is fully independent in deciding the cases.

Not only local but also international experts contributed to the training sessions. Thus, at the workshops and seminars have participated 4 (four) international judges and 2 (two) international prosecutors, as well as other experts and legal advisers from the OSCE, NCSC, ICTY/ICTR, UNMIK DOJ/ Criminal Division, UNICEF, Probation Service of Kosovo.

During the respective sessions they have given their professional recommendations and they were assessed very highly by the national judges and prosecutors as well by the trainers – experts of KJI.

KJI has organized many other specific seminars in cooperation with the international experts in relation to the issues of organized crime, war crimes, trafficking in human beings, protection against domestic violence, general aspects for the unique implementation of the law on anti-discrimination, international legal aid etc.

In addition KJI offered 2 training sessions for the minor offences judges. The sessions were performed in accordance with the training program by including the respective topics on minor offences. The seminars were highly assessed by the minor offence court judges.

The training topics of the seminar were compiled by the judges who work in the High Court of Minor Offences. The aim was to offer the possibility to every minor offences judge to upgrade his/her knowledge in applying the novelties in the judicial system of Kosovo.

II.2. Seminars and Workshops on Civil Law

During the year 2005 KJI organized a variety of training sessions on the Civil Law, as part of the continuous training program. The different seminars and workshops focused on the applicable legislation in Kosovo and the ongoing changes in the civil law and procedure. Again the harmonization of the judicial practice was the aim of the training.

The main goal of the Institute was to cover as many different legal matters as possible and to involve the judges working in the specific fields.

KJI organized training sessions on Inheritance Law, Labour Law, Regulation on protection against Domestic Violence, Cadastral Law, Mortgage Law, Law on Marriage and Family Relationship, Contested Procedure and Non Contested Procedure, Procedure for Execution, Law on Obligations as well including different Regulations as the Regulation on Sale of Goods etc.

Therefore, in relation to this component of training activities, KJI offered concrete topics during the sessions organized in the form of seminars and workshops trying to involve the five regions of Kosovo. During these training sessions were elaborated the priority topics in relation to the Property Law and other fields of the Law within the Civil Law which are considered substantial human rights according to the European Conventions. The training focused on the compatibility of the domestic legislation with the legislation and court practice of the most advanced states in regard to the legal defence of the fundamental rights.

All the training sessions were conducted in the form of interactive debate followed by concrete case studies from judicial practice. The sessions were held in all the regions of Kosovo.

After the adoption of the amendments to the Codes of professional conducts of judges, prosecutors and lay judges by the KJPC, a special attention was paid to the organization of training on judicial ethics and professional conduct for all judges and prosecutors of Kosovo. In June 2005 were held 12 training sessions on judicial ethics, independence and professional conduct for the magistrates of Kosovo, in cooperation with the USAID/National Centre for State Courts (NCSC). So, the aforementioned activities and cooperation shall continue in the future as well, having into the consideration that the issue of judicial ethics and professional conduct of judges and prosecutors is very important for successful exercising of their functions. The topics elaborated during the respective sessions were mainly focused on responsibilities and novelties in the applicable Code of Conduct for the judges and prosecutors of Kosovo.

Therefore, during the 12 training sessions organized in this field were engaged national trainers and one international judge with wide experience in the respective field.

The fruitful cooperation with the NCSC is expected to continue with joint training on court and case management as well.

II.3. Training of lay judges

In March 2005 KJI started a cycle of induction training for lay-judges which was held in all five regions in Kosovo. 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-judges.

II.4. Training of Trainers

In November 2004 the Council of Europe in cooperation with KJI organized the first specialized training programme for Kosovar judges, prosecutors and judicial trainers on European Convention on Human Rights in Strasbourg, France. This year the training course was finalized. At KJI were conducted 4 training sessions. Several experts from the OMIK Department of Human Rights/Rule of Law engaged by the Council of Europe delivered the training in order to support the creation of a core team of local trainers who will be dealing with the future trainings in the field of applicable laws and conventions that regulate the issue of protection of human rights. The group of 18 (eighteen) participants was compound of judges and prosecutors from all regions of Kosovo working at the Municipal and District Courts and Prosecution offices of Kosovo and the Supreme Court of Kosovo. The training staff of the KJI attended the training. The aforementioned program was manly focused on the special advanced methods used up to now within the scope of this field. The aim was to increase the legal knowledge of the experts and to upgrade their practical skills giving them a possibility to conduct training sessions on Human Rights issues applying the learned methodology during the sessions. The purpose of this training activity was to train the group of experts how to deliver a presentations and practical case studies during the trainings, designing training programs drafting of the presented cases according to the European standards and mechanisms on Human Rights. After the performance of the 4 training sessions the candidates were tested. Eight of the participants have been selected to become part of the future team of experts.

III. Plans until the end of 2005

CLEP

The development of the KJI training curriculum till the end of 2005 results from a detailed training need assessment, which KJI runs on a regular basis. At the end of 2004 KJI developed The KJI Yearly Training Program for 2005 which had resulted from the evaluation of the training needs of the judiciary and prosecution during the year. Based on those evaluations and on the

ad hoc arising training needs a result of the recent promulgation of new legislation, KJI had completed large amount of the planned training activities and in addition had delivered additional training upon requests coming from judges, prosecutors and partner organizations. Till the end of the year KJI will continue to implement the yearly training program with an emphasis on the topics covered by the Standards Implementation Plan, newly adopted legislation as well as to the topics with a significant legal complexity and those creating ambiguous judicial practice.

Concerning the methodology of the training it has been proven that the new training strategy aiming at more practice oriented and discussion based training sessions is the more efficient one. Therefore the KJI will continue to provide those kinds of training in order to meet and fully respond to the most urgent needs of the judges and prosecutors. Meanwhile, in the context of the Justice Transition Strategy undertaken by the International Community and the PISG-s in Kosovo, the KJI shall look more closely into further determination of the training programs and into the development of separate training curriculum for judges, prosecutors and lay-judges. In addition to that the KJI shall stay flexible to meet further specific training needs arising from the newly adopted legislation and/or further restructuring of the Judicial System in Kosovo.

In the meanwhile the KJI shall look more closely at the new opportunities for training arising from the upcoming challenges before the Kosovo Judiciary. Those challenges are related to the commitments made by the Kosovar society to the highest international standards of Human Rights and Rule of Law. Additional training dedicated to the European and International Law as well as training on the Human Rights Standards should be amongst the priority areas for future training at KJI. Particularly on European Law Kosovo magistrates have received very little training, mainly as a part of their preparation for taking the Bar exam. Therefore further elaboration on the topic is needed.

Project Activities July 2005

Round Table Discussion on the Implementation of *UNMIK Regulation 2005/16 on the Movement of Persons into and out of Kosovo*

On 5, 11 and 13 July 2005 Kosovo Judicial Institute (KJI) and the UNMIK Department of Justice (DOJ) co-organized the aforementioned round table discussion aiming to present the provisions of the Regulation before the Municipal, District and Supreme Court Presidents. As the Regulation had recently entered into force, the subjects that were discussed focused on the responsibility of the courts under the Regulation and on the practical aspects of trying cases arising from the application of the Regulation. All the aforementioned sessions, were held at the KJI premises in Prishtinë/Pristina.

Workshop on Property Rights

On 6 July 2005 KJI organized a training session for the civil law judges from the region of Mitrovicë/ Kosovska Mitrovica. The workshop will be the fourth one after the training organized in

Prizren, Gijlan/Gnijlane and Pejë/Pec. The participants will discuss the competences of the regular courts and the Kosovo Trust Agency (KTA) and the legal aspects of ownership right. The training session was held in Mitrovicë/Kosovska Mitrovica.

Induction Training for Lay-Judges

On 7 July 2005 KJI conducted the last session of the induction training programs for lay-judges in Mitrovicë/Kosovska Mitrovica. The first one-day session was held in Prishtinë/Pristina in March 2005. After the completion of the session in July KJI had completed the entire cycle of 5 induction seminars attended by over 150 lay-judges throughout Kosovo. The Induction training program gives a 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.

Workshop on the Juvenile Justice Code

On 12 July 2005 KJI in collaboration with the UNICEF Office in Kosovo organized the third training session on the new Juvenile Justice Code of Kosovo for the year 2005. Distinguished Kosovar Judges as well as an International Trainer from UNICEF Office in Kosovo presented the relevant legal instruments applicable in the proceedings involving juveniles. The objectives of the workshop aimed 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 Workshop took place at the premises of the KJI in Prishtinë/Pristina.

Study visit to Bulgaria

From 24 to 29 July 2005 KJI organized a study visit to Bulgaria. All the administrative staff of the Institute took part of the visit. The programme included two days visit to the Bulgarian National Institute of Justice and two additional days staff retreat. The participants had an opportunity to discuss the organization of judicial training in Bulgaria. They received a lot of information and materials regarding the structure of Bulgarian judicial system, the role and place of the Public Judicial Institute in the overall justice system. All the staff members attended different workshops focusing on the specific subject matters: initial training, continuous training, European Union Law training, finance, IT technology and database, administration and human resources, building maintenance and technical support.

During the staff retreat held in Borovetz was discussed the current and future status of KJI, the planning of the different training programmes until the end of 2005 and for 2006 and the future development of KJI as an independent institution within the overall governmental structure.

Forthcoming events

Workshop on Minor Offences

Target Group: Minor Offences Judges

The Workshop is a continuation of a series of Workshops with the same title offered by KJI to the Minor Offences Judges. Participants will look at possibilities to reduce the workload at the Minor Offences Courts by developing proposals supported by their practical experience for handling specific cases. The training session will be held at the KJI premises in Prishtinë/Pristina.

Planned date: 13 September 2005

Seminar: Labour law

Target group: judges hearing labour cases

The seminar will provide information about recent developments regarding labour legislation in Kosovo and in EU countries including anti-discrimination issues in relation to the employment and labour.

Planned date: 15 September 2005

Round Table Discussion on the Criminal Procedure Code

Target group: Judges handling criminal cases and prosecutors

The subjects that will be discussed at the RTD will focus on criminal proceedings under the provisions of the Criminal Procedure Code of Kosovo. The training will offer an interactive discussion to the participants on the disputable issues in the aforementioned proceedings. The discussion will focus mainly on examining the casework and specific procedure for court hearings on criminal cases. The RTD will take place in Pejë/Pec.

Planned date: 20 September 2005

Training of Trainers

Target group: selected judges and prosecutors who will become trainers on the European Convention on Human Rights

The Council of Europe (CoE) in collaboration with the OSCE Mission in Kosovo, Department of Human Rights/Rule of Law and KJI will organize a follow up training for eight selected judges and prosecutors in September, October and November. This is the third part of the training programme for local judges and prosecutors aiming to develop the specific training skills and to further upgrade the professional and legal knowledge of the future trainers in regard to the application of the European Convention on Human Rights. The training programme will focus on some of the articles of the European Convention (i.e. art.2, 3, 5, 6, 8 and 10) and the jurisprudence of the Court in Strasbourg. International experts will deliver and assess the training.

Planned dates: 21 – 24 September 2005

Seminar on International Judicial Assistance

Target group: Judges trying criminal cases and prosecutors

KJI is planning to organize a Seminar on the abovementioned topic for the judges and prosecutors from all the regions in Kosovo. The KJI will be looking for cooperation with UNMIK DOJ, Office of returns and communities and other partners possibly involved in the procedure. The seminar will aim to survey through presentations and discussions the new provisions related to International Judicial Assistance and application of the respective legal instruments such as: Requests for extradition, repatriation of immigrants, requests for International Legal Assistance to Foreign Authorities (service of documents, rogatory requests), Execution of Judgments and the Transfer of Sentenced Persons, the principal features of the European Arrest Warrant (legal and practical aspects regarding its implementation), the International Arrest Warrant

Planned date: 22 September 2005

Workshop on the Criminal Procedure Code

Target group: Judges handling criminal cases and prosecutors

The subjects that will be discussed at the Workshop will focus on criminal proceedings and on measures for protection of witnesses and victims. The training will offer an interactive discussion to the participants on the disputable issues in the aforementioned proceedings. The discussion will focus mainly on examining the casework and specific procedure for court hearings on criminal cases when special protection to the witnesses and victims is needed. The Workshop will take place at the premises of KJI in Prishtinë/Pristina.

Planned date: 27 September 2005