

KJI NEWSLETTER

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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.

CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR JUDGES AND PROSECUTORS*

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1. Definition of Ethics

Ethics as a branch of philosophy emerges from the ancient times. Ethics were treated by a lot of philosophers such as Aristotle, Socrates, Plato, Zhan Paul Sartre, Mahatma Gandhi, Mao Ce Tungu and others. Ethics as a branch of philosophy deals mainly with messages and statements on moral values. The most important branches of ethics are: subjective ethics, or subjective values, ethics of interests, existential ethics, ethics of responsibility and many others. In all the schools of ethics, the principal values and characteristics are those which are determinant for the functioning of life itself, especially in an organized society and its important professions or professions that bare in-themselves responsibility and authority.

Some of the most important values are known in the earliest religions and are passed through generations until now, they promote respect for life and judgment for the killing of a human being, respect for the honor, personality etc. The biggest religions have their codes of conduct for example Jews and Christians have ten commitments, Islam has fundamental rules and principles that enable the society to survive etc.

The following values are essential for the welfare of the society: Sincerity, Credibility, Integrity, humanity, accuracy, love for the justice etc. I think that these are the virtues that judges and prosecutors should strive to achieve. Although the above mentioned legal provisions existed, life has shown how hard it is to serve justice, because the trial may not serve the justice especially when it is delayed "delayed justice is denied justice". Although we apply the legal provisions sometimes, certain right may be violated because of collision of the principles of ethics. This is when a certain conduct is unacceptable by the society but this conduct is not prescribed in the law and therefore is not sanctioned. Every society sets out its rules of conduct for persons with responsible functions. These rules serve the best accomplishment of duties of persons with responsibility. Many times these provisions set fourth as rules for the conduct of people with function responsibilities, are not concrete and do not envisage every conduct that may be in violation with the ethics of that function, however people with responsible functions know and should know how to conduct themselves and how to act in these cases.

For violation of rules of ethics the competent bodies may impose respective sanctions. The functions in the public sensitive bodies, such as religious leader, doctor, lawyer, pharmacist,

journalist, government official, member of the parliament, have set out their own rules of conduct which rules are recapitulated and codified in one code called the Code of Ethics.

Judges and Prosecutors have their own code of ethics.

As it was mentioned earlier, the codes of ethics are more general and don't have exact definition as the definitions that one could find in criminal, civil law, human rights and fundamental freedoms or property issues. The competent body authorized by law shall assess and interpret the rights and obligations pursuant to the codes. When dealing with the sanctions for violation of the code of ethics, the principle of imposing double sanction (*neb is in idem*) is not applicable. Judges and prosecutors have special relations with the state. This relation gives special privileges but also imposes corresponding duties and in a case of negligence additional sanctions may be imposed.

Judges and Prosecutors are in a judicial system. The judiciary should be independent from the legislative and executive powers in every possible aspect, but it bears responsibility for its work. The judiciary should gain their legitimacy from the representatives of people and are responsive to them for their work. Public Prosecution should also be a state body that is independent with some cooperation ties with the executive power in some general issues, or issues of public interest, that are not of individual nature.

Judge should be independent in his or her work and in decision-making but always in accordance with the law. This right should be cultivated and preserved from any supervisory body. Higher instance courts may give suggestions and interpretations in a form of decisions, these decisions need to be published, and codified, these decisions make up the judicial practice without which the criminal law is unimaginable. Judges of lower instance courts and judges in general shall respect the positions of the general hearing of the Supreme Court. With respect to prosecutors the issue of independence is slightly different. The function of the prosecutor is exercised on a hierarchy so that the authorizations of the lower instance prosecutor are derived from the authorizations of the highest prosecutor (art 8 and 49 of the Law on Public Prosecutor's Offices). This indicates that lower instance prosecutors shall respect the legal guidelines given by the higher authorities, and they are bound by them. They have the right to receive the guidelines in written.

Code of Ethics for judges contains the general provisions and special provisions.

2. Special Provisions

General provisions are those related to the conduct and the manner of gaining public confidence, dignity, integrity and independence of the judicial power. A judge should at all times manifest the highest standards of professional and personal conduct, he or she should respect and apply the law, exercise duties in his or her function in an impartial and careful manner. Judge should avoid every misconduct or situation that would reasonably question the integrity, impartiality or independence of the judge and judiciary. The judge should exercise his or her duties in accordance with the internationally recognized human rights standards. This includes not only the professional but also the private life in cases when the action of a judge may damage the image of a judge in the eyes of public, such a conduct or misconduct would have an impact on the image of the judiciary as a whole.

3. Special rules of Ethics

It is the duty of a judge to protect human rights and freedoms of all persons during the judicial proceedings.

It is the duty of a judge to implement the law correctly in accordance to the highest internationally recognized standards, to treat issues with fairness, always trying to avoid discriminatory positions on any grounds be it discrimination on grounds of gender, sexual orientation, race color, genetics, language, religion, political convictions, national or social origin, relations with minority groups, wealth, health, invalidity or any other grounds.

Judge should be well informed with the cultural values of all the communities in order to better know the social or personal problems of people that he or she is going to encounter during the exercise of his or her function.

The judge should especially be responsible for:

Acting in an independent and impartial manner in all cases basing his or her decision on facts without direct or indirect influence or pressure from any kind of outside factor;

Judge should avoid any kind of possible conflict of interest on family social or financial grounds, shortly saying any kind of conflict of interest. According to the new novelties in the Code of Ethics, judges are now requested to make transparent every kind of possible conflict of interest regardless to what decision will be rendered or at what stage is the procedure at that moment. The judge is obliged to inform the president of the court on every possible conflict of interest and to possibly require his or her disqualification from the case. It is crucial that the parties in the procedure should be notified on the conflict of interest, if the parties in the procedure agree that the same judge may continue to hear the case it is than possible for the judge to continue hearing the case if there are no legal obstacles.

The list of conflict of interest or reasons for asking for disqualification may not be general therefore it needs to be assessed in case to case basis.

4. Non-judicial activities

The judges in general may exercise other non-judicial activities outside of their judicial mandate including the activities related to the civil or other fields related to the professional and personal interests. Therefore, these rights are limited as far as the non-judicial activities are incompatible with confidence, impartiality and independence of the judge or activities that may hinder the judge's objectivity in carefully hearing the cases in front of him or her. Having into the consideration other aforementioned provisions the judge may exercise the activities mentioned but, always with permission of the Judicial – Prosecutorial Council:

Speaking, writing, lecturing and participating in other legal activities related to the judicial system and judicial administration including respective activities organized by any governmental organization or agency dedicated to their improvement, judges have the right to exercise activities such as sports, arts, social entertainment activities and also to join in civil charity activities. In particular the judges shall not deal with any political activities that are incompatible with the function of a judge and is strictly prohibited for a judge to be a leader of any political party. The judge shall always represent the judicial system and its independence; the judge shall never encourage, support or participate in any organization supporting any kind of discrimination, the judge shall not solicit any kind of funds on behalf of any organization or agency nor allow the use his judicial prestige and name for such purposes. The judge shall not

deal with any kind of financial matters or any kind of business that may reflect negatively in his impartiality, impact in performance of judicial duties in inappropriate manner, use of his position as judge for economical purposes with lawyers or persons who can or could become parties in his Court.

During the exercising of judicial function the judge is prohibited to exercise any other judicial practice, nor privately perform any judicial function as defense counsel, mediator, and negotiator. In addition, not only judge but also his or her family members should not in any case accept any gifts, privileges, favors or promises in exchange for financial assistance that will directly or indirectly have a vested interest in case which is being heard by the judge. Judges and prosecutors are obliged to disclose financial statements and annually declare movable and immovable property of their family. Judges and prosecutors are obliged to present a written report before the Judicial and Prosecutorial Council on all the financial incomes annually or every six month.

5. Judicial responsibilities

The judge during exercising of his function has a duty that to provide just and efficient treatment on matters appointed to him, this is related to the right to be heard and enable all the parties to freely plead and respect all the procedural provisions, avoiding any unreasonable delay or negligence in his work and duties, the same rules are applicable for prosecutors as well.

Judges and prosecutors are obliged to find out the truth without prejudices and for this purpose to use experts of certain fields. The judges and prosecutors shall achieve the highest professional standards and for this purpose to regularly participate on the offered training programs for legal education.

The judges shall avoid *ex-parte* communications, for example to communicate only with the defense counsel of one party without presence of the other party (the Prosecutor). In case of such communication the judge is obliged to immediately inform other parties in the procedure. The judge shall always show the readiness and respect toward the individuals, he or she should always be patient honest and conduct in appropriate manner with parties, defendants, defense counsels, prosecutors, lay judges, and all other persons in the proceedings, the judge shall also require such behavior from defense counsels and personnel of the court.

However, all what was specified is applicable for prosecutors as well, because the Code of Ethics for prosecutors is almost the same as the Code of Ethics for judges, including the exclusions in relation to the competencies which flow from the legal provisions.

At the end I would like to state that this is a very important and broad topic to discuss, so the 45 minutes foreseen for sure will not be sufficient.

* *The material was presented at the Seminar ETHICS IN PRACTICE – New Amendments in the Codes of Ethics, Current Provisions and Vision for the Future* conducted by the KJI in October 2005.

Project Activities September/October 2005

Workshop on the Criminal Procedure Code

Target group: Judges handling criminal cases and prosecutors

On 27 September 2005 KJI organized training on the Criminal Procedure Code. The subjects discussed at the Workshop were focused on criminal proceedings and on measures for protection of witnesses and victims. The training offered possibility for an interactive discussion on the disputable issues in the aforementioned proceedings. The discussion focused 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 took place at the premises of KJI in Prishtinë/Pristina. Seventeen judges attended the workshop. No minority representatives were amongst them. One district court judge, one international prosecutor, two experts from UNICEF and one from the UNMIK/DOJ made presentations during the training.

Workshop on Property Rights

Target Group: Judges trying property related cases

On 29 September 2005 KJI organized the workshop on Property Rights for the civil law judges from the region of Prishtinë/Pristina. The workshop was the fifth one on this specific subject after the training organized in Prizren, Gijlan/Gnjilane, Mitrovicë/Kosovska Mitrovica and Pejë/Pec. The participants discussed the competences of the regular courts and the Kosovo Trust Agency (KTA) and the legal aspects of ownership right. Four judges from the District Court in Prishtinë/Pristina contributed to the training with their presentations. Ten judges attended the training session.

Seminar on Cooperation in the pre-trial procedure

On 6 October 2005 KJI organized a seminar for criminal law judges, public prosecutors and police officers focusing on the competences of the different bodies during the pre-trial procedure with a special emphasis on the proceedings for arrest and detention. The discussions held during the Seminar gave the participants an opportunity to tackle the most common problems and possible ways for their solution in order to ease the cooperation between the different stakeholders in the pre-trial procedure. The training was held at the KJI premises in Prishtinë/Pristina. Thirteen judges and prosecutors and eight police investigators attended the training session. One of the participants was of Serbian ethnicity. Twenty participants were of Albanian ethnicity.

Seminar on Judicial Ethics

On 11 October 2005 KJI in cooperation with the Kosovo Judicial and Prosecutorial Council (KJPC) organized a seminar on the new amendments to the Codes of Ethics and Professional Conducts for Judges and Prosecutors and their legal impact. The Institute aims to include all Kosovar judges and prosecutors in seminars on Judicial Ethics and to raise their awareness of the basic rules, principles and requirements of the codes of conduct. During the seminar the

trainers from KJPC presented a brief overview of the disciplinary proceedings conducted before the KJPC and elaborated on the role of the Judicial Inspection Unit of DOJ/UNMIK. The Seminar took place at the KJI premises in Prishtinë/Pristina. Thirteen participants attended the training session all of them were of Albanian ethnicity.

Workshop on Commercial Law

On 13 October 2005 KJI organized a Workshop on Commercial Law .The Workshop aimed to initiate a discussion on some of the most common dilemmas in the judicial practice related to Commercial contracts, Transactions and particularly Commercial Agreement on Sell of Goods. KJI invited as trainers some of the outstanding practitioners in the field of Commercial Law in Kosovo. The Workshop contributed to the harmonization of the court practice on the Commercial cases by offering a fruitful discussion between the judges hearing Commercial cases from all instances of the court system in Kosovo. The Workshop took place at the KJI premises in Prishtinë/Pristina Twenty five participants attended the training session. Twenty three of them were Kosovo Albanians. One was of Serbian ethnicity and one had different minority ethnic background.

Workshop on the Execution of Criminal Sanctions

On 18 October KJI organized a workshop on Criminal matters for the judges trying criminal cases and court presidents. The workshop focused on the Execution of Criminal Sanctions under the applicable law in Kosovo. The participants were given an opportunity to hear presentations on the main procedural issues. Distinguished legal professionals – judges from District and Supreme Courts and Prison management officers present different cases giving a possibility for discussion on the specific problems regarding the conduct of Execution of Criminal judgements. Thirty six judges and court presidents attended the Seminar. All of them were of Albanian ethnicity.

Training of Trainers (TOT)

The KJI in collaboration with the Council of Europe (CoE) continue to organize a follow up training for twenty selected judges and prosecutors. The October session took part from 19 to 22 October 2005 at the KJI premises in Prishtinë/Pristina. The TOT 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 in October focused on the next articles of the European Convention (i.e. art. 5, 6, 8 and 10) and the jurisprudence of the Court in Strasbourg. Distinguished International experts delivered and assessed the training.

Seminar: Mediation Practices in the Civil Procedure

As a response to the constantly increasing interest of the magistrates in the Alternative Dispute Resolutions and Mediation, on 8 November KJI organized the aforementioned seminar for the judges hearing civil cases. The training aimed to explore the best practices and European legislative models for mediation. By exploring further those models, KJI aimed to facilitate the

development of deeper understanding amongst judges handling Civil Cases on the possibilities of establishment of mediation practices in the Civil Proceedings under the applicable law in Kosovo. Team of International and local experts delivered the training. The Seminar took place at the KJI premises in Prishtinë/Pristina. Thirteen judges attended the Seminar. Twelve of them were of Albanian ethnicity and one – Gorani.

Forthcoming events

Workshop on protection against Domestic Violence

Target group: Judges hearing cases on 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 first Seminar on this topic was held in February 2005. The program addresses the responsibilities of the courts that have jurisdiction over these cases. The Workshop aims to initiate a discussion on the implementation of the Regulation and to encourage the participants to present the cases they have been working on and the practical difficulties they have been facing. Judges, experts from the Ministry of Social Welfare, Police Officers will take part in the discussion of the aforementioned topic. The Workshop will take place at the KJI premises in Prishtinë/Pristina.

Planned date: 15 November 2005

Seminar on Minor Offences

Target group: Judges hearing Minor Offences Cases

In November 2005 KJI will organize the next training session for a group of Minor Offences Court judges. The seminar is a continuation of a series of training events offered by KJI to the Minor Offences Judges. The training agenda covers the minor offences in the frame of the new Criminal Code, the discussion of cases when the juveniles are involved and the court procedures in case of appeal.

Planned date: 17 November 2005

Workshop on Criminal Law – Punishments, Kinds of Punishments, Alternative Punishments

Target group: Judges handling criminal cases and prosecutors

The subjects that will be discussed at the Workshop will focus on criminal proceedings under the provisions of the Criminal and Criminal Procedure Code of Kosovo. The training will offer an interactive discussion to the participants on the disputable issues in the calculation of punishments, kinds of punishments and alternative punishments. The discussion will focus mainly on examining the casework and specific procedure for court hearings on criminal cases. The Workshop will take place in at the KJI premises in Prishtinë/Pristina.

Planned date: 23 November 2005