

KJI NEWSLETTER

April 2003

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

THE KOSOVO JUDICIAL INSTITUTE DOES NOT ONLY BEAR IN MIND CRIMINAL LAW

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Civil law is the coronation of jurisprudence! This assessment is not the basis of the KJI training program (even though the statement might have some substance). The critical observer in contrary might have had the impression that criminal substantive and procedural Law is prevailing. That is not true as well, at latest not since the last year. Now KJI offers at least two seminars each quarter in the area of civil law, one dealing with substantive and one with procedural law. An example for covering "civil law" (procedural law) is the seminar on Law of Execution of civil judgements KJI offered on Tuesday, 25th March.

Restricted capacity

There is no doubt, the demand for training of judges and prosecutors is great in all areas of the law and the capacity of the KJI is limited. Including the Co-director and the Programme Co-ordinator, there are 5 active judicial trainers. As well, the premises are

restricted, particularly because they are used additionally for other training events coming from outside or for other persons and purposes, for instance, training for the bar-exam. Besides the training program in the main fields of civil and criminal law, KJI offers special induction-courses for newly appointed judges and prosecutors, courses for Minor Offences Court Judges, ethics training and *ad hoc* courses. In all, there are currently 313 judges and prosecutors in Kosovo and KJI has planned to offer 43 training events in 2003. Finally it has to be seen that the judges and prosecutors have to do their job and cannot join in innumerable activities outside of the courts and prosecution offices.

Selection of topics

KJI works towards finding out which areas of practice need help for the daily work and where there are difficulties in interpreting laws, especially the new laws (by Regulation), by contacting the presidents of the courts and special contact persons. This is the situation concerning the garnishment of bank accounts giving the KJI reason to organise the seminar about execution law, enabling the colleagues to make up their minds after listening to experts from the judicial practice and the banking sector. When there is a demand for interaction of representatives of different courts or other professional groups co-operating with courts or prosecutors, KJI will give a forum. Conclusions from the seminar and other topics which need to be covered in the future are drawn from as well by evaluation



of questionnaires, which are answered after termination of each course. The colleagues shall know as well by these lines that we appreciate all suggestions out of the field for actual, substantial training topics.

Structure of the courses

The relevant matters are presented by such experts as professors of the Law Faculty, judges from the Supreme Court in Pristina, specialists out of other working fields, for instance police officers, or as in the seminar concerning execution law, a Legal Counsel of the BPK. Usually two judicial trainers will prepare the seminars in close contact with Co-director and Program Co-ordinator of KJI. The oral representations will be prepared by written composition, translated in Albanian, Serbian and English and provided for each participant at the beginning of the seminar. We try to avoid for any speaker to hold monologues; the participants are encouraged to interrupt and ask questions. In any case, after the presentations time is allotted for discussion. The trainers motivate the audience to cooperate actively.

Invitations to the seminars and workshops

KJI schedules the seminars well in advance. The concrete dates and the topics are announced in the Weekly Report of Department of Human Rights & Rule of Law, the Weekly Report of the Department of Justice, in KJI Monthly Newsletters and by Rule of Law officers in the field who deliver the invitations to the different courts and prosecution offices along with the concrete Agenda.

Evaluation of seminars

As mentioned, the participants will be asked to assess the contributions and the result of the seminar to find out if the aim of the instruction has been reached and if there are gaps left which should be filled by additional training offers. Often talks in a coffee break will reveal if there is understanding of the participants or deficits in presentation. We expect critical answers to the settled questions and constructive suggestions by our colleagues.

Multiplier Effect

Experience shows that not only the participants profit by the seminars. Other colleagues will be informed by the written contributions the participants take with them to the courts and prosecution offices. The talks with participants spread the general information. Oral reports in the OSCE Rule of Law Meeting and of the Department of Justice, connections to the KJPC, all help to promote the information and give suggestions for recommendations to the DoJ and SRSG. KJI is preparing publications to present the results of seminars and other useful information.

Positive side effect

The seminars will lead together colleagues, which helps form a community of judges and prosecutors, to ameliorate the quality of jurisdiction by learning, teaching and exchange of opinions. The solidarity is promoted, self-confidence is stipulated and the consciousness, working together in an important place in society for the general welfare helps work towards stabilisation of the rule of law. It is welcome that the atmosphere in training courses is without any tension resulting from different ethnic



provenance. That might be an encouraging example for other branches.

Special value of Civil Law and corresponding training offers

There is no doubt that the civil law in the European area has a long tradition and application of this law calls for clear, systematic and logical thinking, analysing and subsuming. That means that firstly must obtain knowledge of law, which especially in Kosovo is not clearly codified and completed. The special situation, caused by the disintegration of the former Yugoslavia, the installation of the UNMIK administration, the transfer of powers to provisional institutions of self government are all factors which must be contended with. That effects the work also of the KJI, especially in the field of civil law.

The process of transition to a new legal order, based on human rights and the laws of market, leads to a new understanding especially of property rights. Therefore training in private law, in commercial law and other fields of privatisation must be performed intensively. That was as well the reason for choosing the topics of execution of civil judgements. The enforcement of decisions as the last decisive step is imperative; without this a claim is incomplete and useless. Investors in Kosovo will hesitate to act when there is not

a functioning jurisdiction and an effective execution of judgements.

But it is not only needed to promote knowledge in civil law and the consciousness of the new economic order. Training has to be done in promoting systematic thinking of the participants, enabling them to analyse the case, to elaborate the basis of a claim and subsuming the concrete case. Skills for doing the concrete work of judges and prosecutors must be mediated.

Results of the seminar on execution law

Besides the deficits of equipment in the courts, obstacles in execution of civil judgements are titles of the courts, which do not prescribe as accurate as necessary the concrete obligation. That can easily be ameliorated. Concerning the garnishment of bank accounts there remains some uncertainty if the commercial banks are obliged to follow the order of the court to reveal if the debtor has a credit balance. According to the representative of the BBK the banks have to do so. This should encourage the execution judge to make use of this instrument of enforcement.

Dr Proetel is former Judge from Germany with over 25 years of experience in the field of civil law. He is currently seconded by the German Government to work with the OSCE Mission in Kosovo as a Judicial Trainer for the KJI.



Project Activities for April - May 2003

- A Professional Skills Training
- B Seminar on Ethics
- C Seminar on Civil Law
- D Seminar on Criminal Law
- E Seminar for Minor Offences Court Judges
- F Training for the Bar Exam

Professional Skills Training 02 – 04, 07 – 09, 23 – 25 and 28 – 30 April and 14 – 16 and 19 – 21 May, 2003

A. KJI, in conjunction with the International Development Law Organisation (IDLO), and funded by USAID, has organised a series of Professional Skills Training Courses entitled “From Case Assignment to Final Decision: Building Effective Decision Making Skills.” This series of training will focus on development of essential skills necessary in the work of judges and prosecutors. April marks the beginning of the second phase of this training programme. The new topics we plan to cover are as follows:

- The topics covered the first day of training include the importance of practical skills, the relationship between the quality of a decision and court delays, execution of judgements, human rights, preparation of the decision making process will start with a presentation on “Drafting and Presentation Skills”, legislation on content of judgements, indictments and other decisions.
- The second day continues with exercises on formulation of issues, on drafting and with discussion of the outcome of the exercises and a presentation on “Research in Decision Making”.
- The third day concludes the training with exercises related to an analysis of court decisions, a presentation on “Transparency of Judicial Decisions”, an examination of issues related to the execution of judgements with a special focus on monitoring the execution of judgements and a discussions on how to improve the co-operation between responsible parties in the execution process.

The first three-day training of this new phase will be held from 02-04 and 07-09 for Criminal Law Judges and Prosecutors. Then, from 23-25 and 28-30 April, sessions will be held for Minor



Offences Court Judges. Later, from 14-16 and 19-21 May, sessions will be offered for Civil Law Judges. Invitations are being sent out to notify participants which session they are scheduled to attend. All Kosovo Judges and Prosecutors will be invited to the second phase of training, as they were for the first phase.

Seminar on Ethics 16-17 April 2003

B. A Seminar on Ethics for judges and prosecutors is being offered by KJI on the 16th and 17th of April. The topics to be covered include provisions of the Code of Ethics and professional behaviour of judges and public prosecutors, as well as work of the KJPC and the Judicial Inspection Unit of the Department of Justice. There are fifty (50) judges and prosecutors who have been invited for the 16th and the same number for the 17th. This will be the first of four such sessions given throughout the year. KJI plans to invite all Kosovo magistrates to this important ethics training. However, due to the total number of Kosovo magistrates, it is only possible to invite one fourth of the total number per quarter.

Seminar on Civil Law – Family Law 22 April 2003

C. KJI is organising a seminar on Family Law related matters, to be held in April for Civil Law Judges. The topics to be included for this seminar are determination of the competent right in divorces among spouses with different nationalities, proprietary relations of matrimonial and extra-matrimonial spouses, real law of matrimonial property and proprietary relations of spouses – a comparison of law applicable in Kosovo and Germany, and finally legal nature of joint property of spouses.

Seminar on Criminal Law – Legal Defences 06 May 2003

D. A seminar in the area of substantive Criminal Law is scheduled to take place in May for criminal law judges and prosecutors. The topics planned for this event include an examination of legal defences under the law, including Defence of Necessity, Preconditions for Legal Defence, Limits of Legal Defence, and Mistake of Fact and Law.

Seminar for Minor Offences Court Judges 29 May 2003

E. A seminar for Minor Offences Court Judges is scheduled for 29 May. The topics to be covered are the principles and institutions of the minor offences procedure as well as the initiation and course of the offence procedure and the special juvenile procedure.



OTHER EVENTS

Training for the Bar Exam 11 April – 07 June 2003

F. Judicial Training Officers of the KJI are providing ongoing support to the Legal Community Support Section of OSCE, giving lectures in the training for the bar exam review course held each Friday and Saturday at the KJI. The next session begins on 11 April and will continue until 07 June. The next Bar Exam will be held in June 2003.

