

# KJI NEWSLETTER

## June 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.*

### **New International Co-Director**

Greetings from Minnesota - in the Heartland of the USA. My name is Phil Kanning and I am the new International Co-Director of KJI. I am looking forward to working with Judge Nesrin Lushta and her dedicated staff in achieving the hopes and dreams of our organisation and your region. I will tell you about my background and about the similarities and differences between our two justice systems.

I have been a judge for 19 years. In Minnesota, judges are elected by the people and serve 6-year terms. Unlike Kosovo, which has different levels of trial court, as a district judge, I hear every kind of case—from murder to family law and juveniles—everything civil and criminal. We have an Intermediate Court of Appeals and a Supreme Court, which may review my decisions.

Minnesota has a population of about 5 million people and a land area of about 132,000 square kilometres. We are known as the Land of 10,000 Lakes. (Actually we have 13,000 lakes larger than 30 hectare.) There are ten judicial districts (I believe Kosovo has five) with a total of 272 trial (District Court) judges.

The Supreme Court sets state-wide court policies and rules for training and education of judges and lawyers after consultation

with the Conference of Chief Judges. (Each judicial district has an elected Chief and Assistant Chief Judge—I was our Assistant Chief Judge before coming to Pristina.)

Unlike Kosovo, which uses lay judges, our system uses juries of 6 or 12 citizens to make certain decisions. As the trial judge, however, if I think the jury has made a mistake in their decision, I can correct it. I hear thousands of different matters every year. My main role is to get the parties to come to a negotiated settlement. Nearly 95% of our civil and criminal cases are settled in this manner so that a trial is not necessary. Because the parties themselves reach agreement with my help, there are very few appeals.

My primary job at KJI will be to help develop and maintain a training program for magistrates. There is much that I must learn about the present system and the system that the Kosovo people want before this training program can begin.

All of the people that I have met, both national and international, have been helpful and friendly as I begin my work here. I am delighted to have the opportunity to work with all of you in achieving our shared and common goals.

**Judge Philip Kanning**

*International Co-Director - Kosovo Judicial Institute*



## Several Specifications Of Juvenile Procedure

By Nesrin Lushta, National Co-Director, Kosovo Judicial Institute

The juveniles, as a specific category of criminal offence perpetrators, according to provisions of the Criminal Procedure Law (CPL) enjoy a specific treatment in many different points of view. I would like to discuss some of them in this forum.

### The Procedure Is Urgent

Article 462 of this law states, “Authorities participating in the proceeding against a minor and other agencies and institutions from whom information, reports or opinions are sought must proceed with the greatest urgency so that the proceeding is completed with the greatest urgency to be completed as soon as possible.”

This provision, as well as other provisions that I will mention below, has great importance. Thus, it is in the juveniles’ interest that the procedure ends and for him to know what his fate will be, i.e. will educational measures or other criminal sanctions be pronounced, or will the procedure be suspended. Then, it is more than important that possibly, the main trial, or the session of the first-degree panel and the entire procedure to end at the time while the juvenile is still under the age of 18. This is because, if at the time of the trial the juvenile has become an adult, many limitations regarding the possibility of holding the trial or pronouncing other criminal sanctions exist. (E.g. if the juvenile at the time of the trial was 21, or older, he may no be tried for the criminal offence which he committed as a juvenile; in some other cases only the punishment with imprisonment for juveniles or institutional educational measures etc. may be pronounced on him).

Other subjects in Art. 462 CPL also oblige the court to act in an urgent manner. In the provision of Art. 479 of the CPL it is stated that the judge for juveniles shall report monthly to the president of the court on the juvenile cases which are still pending and the reasons why proceedings have not been completed for the individual cases. The president of the court shall take steps as needed to speed up the proceedings.

Deadlines for undertaking most of procedural actions are shorter than in the procedure against an adult perpetrator. The judge for juveniles has the task to set the main trial, or the session of the panel within the deadline of eight days from the day of taking the public prosecutor’s accusing act, or from the day when the preparatory procedure has ended, or from the day when the session of the panel has decided to hold the main trial. Adjournment or the interruption of the main trial is only done exclusively and the president of the court must be informed about every adjournment of interruption (art 484 CPL). Then, the judge for juveniles has the task to compile the verdict within the deadline of three days from the day of pronouncement, respectively the decision and the deadline for presenting the appeal against the first-degree decision is three days from the day of taking that decision. A specific deadline has to do with the detention. The juvenile during the preparatory procedure may be



held in detention in duration longer than 3 months, whereas in the procedure against an adult this deadline is one year. I consider that this deadline is also relatively short (especially in very complicated cases). It is of importance that the court shall act in a very urgent manner, for the reason that if the accusing act is not risen within three months, the juvenile will be freed despite the existence of eventual reasons for detention.

### **The Procedure Is Not Public**

Taking into account the personal considerations of a young person for whom there is a reasonable suspicion that he/she has committed a criminal offence, the effort to re-socialise the juvenile thus attempts to return him/her into the society as a healthy person who has understood that such actions are harmful and that he/she will not repeat them. This is very important. Therefore, one of the principles of criminal procedure against juveniles is not to publish his identity.

As far as in the procedure against an adult in cases foreseen by the law, the verdict or

other deliveries may be sent even by putting them on the bulletin board of the court. This method is not allowed in the procedure against a juvenile (Art. 460 CPL) because anybody would have the possibility to know his identity and the criminal action for which he is being charged. Neither the course of a criminal proceeding against the juvenile, nor the decision rendered in that proceeding may be made public without permission of court and only that part of the proceeding or that part of the decision covered by permission may be made public. In this case it is forbidden to give the name of the juvenile and other information which might serve as the basis for identifying the juvenile. Usually only the initials are given.

When juveniles are tried, the public is always excluded, whereas the panel may allow that in the main trial persons that deal with the protection and education of juveniles, as well as scientific workers.

These are only two of many the specifications of this procedure.



## Project Activities for June 2003

- Seminar on Criminal Procedure Law
  - Professional Skills Training
  - Seminar on Civil Procedure Law
  - Study Visits Abroad
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### Seminar on Criminal Procedure Law – the Main Trial

**03 June 2003**

KJI is finalising plans for the upcoming seminar on Criminal Procedure Law on 03 June. Criminal Law Judges and Prosecutors from all regions of Kosovo have been invited to attend this event. This training will cover certain aspects of the Main Trial. Lectures will be given on The Flow of the Main Trail and Obstacles to a Guilty Verdict.

### Professional Skills Training

**04 – 06, 09 – 10, 25 – 27 and 30 June – 02 July, 2003**

KJI, in conjunction with the International Development Law Organisation (IDLO), 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 courses will focus on development of essential skills necessary in the work of judges and prosecutors. This is the second phase of the overall programme. The topics covered in this phase 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, 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 and drafting, a 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 discussions on how to improve the co-operation between responsible parties in the execution process.

From 04-06 and 09-11 June, sessions will be offered for Minor Offences Court Judges. From 25-27 and 30 June – 02 July, sessions will be offered for Criminal Law Judges and Public Prosecutors. Invitations have been sent out to notify participants which session they are scheduled to attend. All Kosovo Magistrates will be invited to the second phase of training, as they were for the first phase.



## **Seminar on Civil Procedure Law – Taking Evidence**

**12 June 2003**

A seminar on Civil Procedural Law will be offered on 12 June. The topics to be covered include, Taking Evidence in Civil Proceedings, Evaluation of Evidence, Burden of Proof, a Comparison of Applicable Procedure Laws in Germany and Kosovo, the Role and Importance of Evidence Administration in Civil Procedure, Assigning the Main Session and Administration of Evidence, and the Procedure of Appeal. Civil Law Judges from across Kosovo have been invited to attend.

## **OTHER EVENTS**

### **Study Visits Abroad**

KJI is continuing preparations for the next study-trip offered in our yearly programme, to Switzerland. This study visit was scheduled to take place from 16- 21 June 2003. However, KJI has been notified by Swiss authorities that the study visit will have to be delayed until August. KJI now plans to send ten (10) magistrates and one judicial trainer to this training event. Applications have been accepted and the selection of those who will be sent will be made in June. Preparation for the study visit to Bulgaria has begun. As well, preliminary steps have been made in order to prepare for the study visit to Germany. These events will take part in the third and fourth quarter of 2003.

