

KOSOVO JUDICIAL INSTITUTE

Annual Report 2006

Introduction

In accordance with its Continuous Training Program Kosovo Judicial Institute (KJI) has continued with the organization of its trainings. During this year this institution was characterized with some special achievements.

On 24 April 2006 the Special Representative of the Secretary General signed the regulation for promulgation of the Law on Establishment of Kosovo Judicial Institute, which was adopted by the Kosovo Assembly on February 2006. This law establishes KJI as an independent professional body and a main institution for training the judiciary. KJI will exercise its functions based on the principles of legality impartiality and efficiency.

All of the activities which are organized by KJI are based on the needs and actual difficulties of judges and prosecutors during their everyday work. KJI adapts its training activities to the changes, legal environment and the needs of the judiciary. The dilemmas and difficulties which are encountered during the judicial practice are motivating KJI to further use new methodology of trainings with the purpose of removing and eliminating these dilemmas and difficulties. One of the specialties that characterized KJI in 2006 was the cycle of practice oriented trainings or simulations of judicial trials all over the regions in Kosovo. The cases selected for the purpose of these simulations were from both criminal and civil field. This method was highly evaluated by the participants due to the fact that it reflects the actual practice in the courts and prosecutor's offices.

KJI is developing and will continue to develop practical methods which will serve the efficient functioning of the judicial system. It is worthwhile to mention and to great the assistance of KJI external trainers and contact persons (presidents of district courts) in different training events especially trainings in the regions. These training events have been assessed as very productive, due to the fact that with concrete selection of topics for every region KJI was very close to the needs of judges and prosecutors.

During 2006 KJI in cooperation with the Council of Europe, has organized trainings on European Convention on Human Rights. The national judges and prosecutors who have been certified by the Council of Europe were for the first time trainers in these trainings. The organization of training sessions from this Convention shall continue in the future.

KJI has made efforts to involve other professionals from different fields in the capacity of trainers with the purpose of improving the quality and efficiency of its training programs. One good example in this respect was the cooperation with the Kosovo Police Service and the Probation Service in Kosovo. In some specialized trainings, besides judges

and prosecutors there were also participants from the ranks of KPS and Probation Service of Kosovo. This sort of practice was implemented in the trainings which involved joint procedural issues which require interaction between judges, prosecutors, police and probation service. This method was proven to be successful because it provided for the possibilities of improvement, interaction and coordination between these stakeholders in the criminal procedure.

I. Continuous Legal Education Program – CLEP

During one year period from January-December 2006 KJI has realized 63 (sixty-three) training sessions (seminars, workshops and simulations of trials). Out of the total number of 1410 participants (one-thousand-four-hundred and ten) 1179 (one-thousand-one-hundred and seventy-nine) are judges including lay judges and minor offence judges, 231 (two hundred and thirty-one) prosecutors. Out of the total number of participants 1312 (one-thousand-three-hundred and twelve) are Albanian, 61 (sixty-one) Serb and 19 (nineteen) from other minorities in Kosovo.

Taking into consideration the need of judges and prosecutors for interaction with the police and other institutions, KJI in its different trainings has involved 39 Kosovo Police Service officers and 21 (twenty-one) probation officers. There were also 86 participants in the trainings of KJI who participated in the capacity of observers (professional legal assistants, legal officials from the Department of Justice OSCE etc).

The statistical data indicate that most of the judges and prosecutors attended in three to five training sessions in one year. The aim of KJI is to provide for possibility of every judge and prosecutor to have equal access in the trainings. At the same time the presidents of courts and chief-prosecutors are playing an important role in the process of applying for attendance in the trainings.

I.1. Seminars, workshops and simulations of trials in the Criminal Field

I.1.a. Seminars and workshops

During 2006 KJI organized 23 (twenty-three) trainings from the criminal field. Every since the time when the Criminal Code and Criminal Procedure Code of Kosovo entered into force the focus of the trainings was mainly on the topics and issues in which judges and prosecutors are facing difficulties during the application of the law, respectively the topics that have been treated have been selected based on the practical needs of judges and prosecutors. The trainings have been highly evaluated by them.

The workshop entitled: “Cooperation in the Pretrial procedure between the Prosecutor and police” was the first one to start the training cycle from the criminal field. The flow of the pretrial procedure, joint practice and difficulties which are faced by the

prosecutors and the police were the topics that were presented and discussed during this workshop. One of the main tasks of this workshop was to improve coordination and interaction between these responsible authorities in the pretrial procedure.

One of the topics which has provoked special attention every since the Criminal Code and Criminal Procedure Code entered into force is undoubtedly the issue of detention. KJI has organized a workshop which treated this issue through different cases from the court practice, which provoked a lot of discussions on the dilemmas and problems in all the stages of the criminal procedure related to detention, including here detention of juveniles and persons with mental disorder.

On 14 March 2006 KJI organized a workshop on the Juvenile Justice Code. The topics which were treated during this workshop were mainly focused on the interpretation of the Juvenile Justice Code, application of the diversity measures, their purpose and types, implementation of educational measures, applicable criminal sanctions (cases from the court practice) and the cooperation between the competent bodies on the efficient implementation of these measures and punishments pursuant to the Juvenile Justice Code.

Heaving into consideration that the phenomena of trafficking in human beings is a very sensitive issue, during 2006 KJI held two training sessions on this topic. The participants in this training were judges, prosecutors, KPS officers. The topics which have been treated are related to the active role of the prosecutor and police in combating this crime, with a special emphasis on the application of covert and technical measures of surveillance and investigation as a very efficient in preventing and combating this crime as well as dilemmas which are encountered during the court practice. Special focus was paid to the assistance and treatment of victims of trafficking especially when they are children. The main purpose of these two workshops was to present the mechanisms and ways to integrate the interests of victims of trafficking in human beings and ways to realize these rights through the criminal procedure in the best possible way.

On 14 April 2006 KJI organized a workshop on the Evidence in the Criminal Procedure pursuant to the new Provisional Criminal Procedure Code (PCPCK). The topics discussed during this workshop, mainly focused on the procedure of evaluating the evidence during the judicial trial, the admissible and inadmissible evidence, the requests of defense attorneys for announcing the evidence inadmissible pursuant to PCPCK.

One of the interesting topics that were treated during 2006 was the one on the measures for ensuring the presence of the defendant in the criminal procedure. During this workshop which was held on 26 April 2006 there was discussion on the difficulties and dilemmas related to these measures. The novelties in these measures especially the ones related to house arrest were presented through cases from the court practice.

On 18 May 2006 KJI held a seminar on the criminal offences against life and body. This training focused on the material aspects of the Provisional Criminal Code of Kosovo and treated the elements of this criminal offence and the most common forms of its appearance with the purpose of unification of court practice in these cases.

On 01 June 2006 KJI organized a seminar on the Cooperation Between the Prosecutor and Police in cases of riots. The agenda of this training covered different aspects of cooperation between the public prosecutors and Police in cases of riots. Many dilemmas were cleared and recommendations were given for the cooperation of the stakeholders in this procedure through presentations and interactive debate, in order to prepare them for the

future and to make them more vigilant in any situation pursuant to the applicable legal provisions.

Heaving into consideration that the Criminal Procedure Code of Kosovo contains a lot of novelties in the criminal procedure, KJI has organized and evaluated a workshop on the covert and technical measures of surveillance and investigation. Topics which have been treated in this workshop were the notion and importance of these measures in the pretrial procedure, the measures which are ordered by the public prosecutor, pretrial judge and the dilemmas and difficulties in the application of these measures.

Another interesting topic that was treated in 2006 was the role and protection of witnesses in the criminal procedure, with special emphasis on the novelties that have been foreseen in PCPCK on the witnesses, the types of their examination, importance of the witness statement as evidence in the criminal procedure etc. This training was organized on 21 June 2006.

On 12 September 2006 KJI organized the workshop on the issues of confiscation and the procedure of confiscation. This workshop treated the material and procedural aspects such as confiscation of property acquired through the commission of criminal offence, the procedure for confiscation, the purpose of confiscation and problems which are encountered during the application of confiscation. Another topic which was treated in this workshop was the accessory punishment of seizure of property.

A special activity organized by KJI this year was the round table on the PCPCK. This workshop held in Ohrid from 12 to 15 September. This round table treated the actual issues of PCPCK, which are problematic for interpretation or implementation in practice such as: the role and relationship between the judge prosecutor and police in the pretrial procedure, investigations, site inspection and reconstruction, covert and technical measures of surveillance and investigation, measures for ensuring the presence of the defendant, prevention of recidivism, and ensuring of proper flow of the criminal procedure with special emphasis on detention, confirmation of indictment, main trial, judgment and legal remedies. This workshop led to some joint conclusions which will be published in the KJI December 2006 edition Newsletter.

In the partnership with the Council of Europe on 22 June 2006, KJI organized a training session on investigation and trial of corruption related criminal offences. This session made a theoretical and practical view of corruption. The methods for prevention and combating this negative phenomena, financial investigations and money laundry were some of the topics that were covered during the training. Practical cases which explained this negative phenomenon in the society were also shown.

On 10 October 2006 KJI organized a workshop on prescription as important legal tool. Many issues related to prescription of criminal offence, prescription of execution, prescription of execution of punishments, accessory punishments, and the measures of mandatory treatment

On 27 October 2006 KJI organized a workshop on the legal remedies – appeal, the appeals procedure. This workshop treated topics like, the reasons of appeal. Appeal against judgment in the procedure of punitive order, the appeal against the judgment of the second instance and the appeals procedure. Presentation of cases and examples offered a clear overview on how to act in different situations without heaving a violation of human rights and freedoms

In cooperation with the council of Europe on 12 December 2006 KJI has organized a training session on Alternative Sanctions to Imprisonment. The subject of this training were different issues starting from the pre-sentencing stage until the stage when the sentence is served, the duties and responsibilities of the probation service and relationship between the probation service, prosecution authorities, courts etc.

I.1.b. Simulations

One of the most practical forms of trainings used by KJI in 2006 was the simulation of trials, based on the concrete needs of judges and prosecutors in the regions. .

The first simulation in 2006 was held in Pristina region, where through a very important case many details on how the trial is held were reviewed. The purpose of this simulation was to clarify the novelties in the Criminal Procedure Code related to the judicial trial, with special emphasis on eliminating the difficulties and obscurities which are faced in the court practice.

The other simulation was the simulation of the main trial in Gjilan on 03 March 2006, during which the participants, judges and Prosecutor had the possibility to present and discuss a very interesting case on falsification of money. The actors in this simulation, through roles presented their competencies and responsibilities which are faced by them in their everyday work as judges and prosecutors.

KJI has paid special attention to the organization of training session from the field of juvenile justice. On 03 May 2006 at the premises of District Court in Pristina KJI organized a training for judges and prosecutors from all the regions in a form of simulated trial. A practical case was reviewed. In this case the perpetrator was a juvenile person. The flow of the trial went through all the procedural stages as foreseen by the law. Special focus was paid to the need for application of legal provisions and guaranties with the purpose of preserving the interest and personality of the juvenile during the court procedure.

One of the novelties of the Criminal Procedure Code was the confirmation of indictment. KJI organized a simulation of a trial in Peja Region on this topic. Through a case from the court case-law the manner of procedural actions at this stage of criminal procedure was presented. The purpose of this training is to understand the importance of the Confirmation of Indictment procedure, reasoning of the decision for confirmation of the indictment and harmonization of the judicial practice on this stage of the criminal proceedings.

On 21 September KJI organized a simulation of a trial in Prizren region on the main trial. Through a concrete and a very interesting case (murder case) the main trial was reviewed and the novelties in the PCPCK were put forward. It is worthwhile to mention that guilty plea was a very important topic for the participants and was one of the most important points of the simulation

On 15 November KJI organized the last criminal simulation of a trial in Mitrovica region. The topic of this simulation was the session for imposing the detention on remand.. This was the first time that this topic is treated every since the PCPCK entered into force. The manner of organization, and involvement of almost all the participants in this

simulation through their active roles, made the participants exchange their experience and gain concrete lessons on the novelties foreseen in PCPCK.

II. 2. Seminars, workshops and simulations in the civil field

II.2.a. Seminars and workshops

During 2006 KJI has realize a considerable number of trainings (seminars, Workshops, simulations of trials etc) in the civil field.

On 17 January 2006, KJI has organized a workshop on the family law under the topic of settlement of marriage. Within the scope of this workshop there were topics related to the procedure for settlement of marriage, with the consent of spouses, due to a disagreement between spouses, rights and obligations of the parents and spouses for the alimony of their children, as well as other issues related to the procedure of granting the permit for entering into marriage relationship

On 14 February 2006 KJI has organized a workshop on the Labor Law. This training session focused on the case law of the Independent Oversight Board of Kosovo, working relationship based on the contract, judicial procedure and respective cases from the labor relationship, identification of the discriminatory practice in the employment procedures and judicial protection of employee's rights.

The issue of compensation of damage was a topic of discussion on the workshop organized by KJI on 17 February 2006. This workshop reflected the court practice related to the types of material and non-material damage. A special space was left for the issues of compensation of damage from auto or traffic-liability and the practical problems which are faced by judges during their everyday work. Besides judges the pool of experts in this workshop was also composed of experts from the field of insurances.

On 23 March 2006, KJI has organized a seminar on execution of civil judgments. This seminar treated very important topics which show the difficulties and dilemmas from the aspect of court practice. Condemnatory execution with fine, executable document in the execution procedure, acknowledgement and execution of foreign judgments and the possible challenges in the executive procedure were the main content of the seminar.

Heaving into consideration that there are a lot of novelties in the actual legislation respectively t he promulgation of UNMIK Regulation 2006/10 on settlement of claims related to private immovable property, including agricultural and commercial land, KJI has organized a seminar on property issues. This seminar treated issues like the establishment, composition and functioning of Kosovo Property Agency, Issues related to settlement of claims related to private immovable property including agricultural and commercial land and issues related to co-ownership and joint ownership.

On the 6 June 2006, KJI organized training in a form of a workshop for the judges of civil field, on the Law on Inheritance. Heaving into consideration that this law has entered into force based on the UNMIK Regulation 2005/7 within the framework of this regulation the main topics of this workshop were the following: testamental witnesses, testament based on the law, inheritance based on the testament, as well as dilemmas and

difficulties which are faced by judges and prosecutors when deciding on the legal-inheritance issues.

On 29 June 2006, KJI organized a training on the contractual relationship and their specifics. This training treated important topics including general overview of contractual relationship from the court practice point of view, some novelties on the commercial contracts, convalidation and conversion of contracts and the nul and void contracts. The participants in this training were civil judges from all the regions of Kosovo including judges from the District Commercial Court in Pristina.

The procedure of announcing a missing person dead is one of the topics which was treated during a workshop organized by KJI on 28 September 2006. This workshop treated issues such as the conditions that need to be met for announcing a missing person as dead, initiation of the procedure, the competencies of the court and cases from the court practice which reflect the actual situation related to this procedure.

On 12 October KJI organized a workshop on the execution of civil judgments. The subjects of discussion in this workshop were the issues that are related to the execution in general, the challenges and possible solutions in the executive procedure, legal remedies in the executive procedure and the procedure of execution in real estates.

The Family Law of Kosovo and its novelties were the subject of a seminar which was held on 26 October 2006 in KJI. The discussions in this seminar mainly focused on issues which are related to, the novelties, Law on Family from the material aspect, verification of parenthood, adoption and child custody in case of divorce. Special focus during this seminar was paid to the difficulties which are encountered by judges during the application of the new provisions of the Family Law when reviewing civil cases from this field.

The Administrative Conflict was a subject of discussion during a seminar on the Administrative Law which was held on 17 November 2006. Judicial protection of rights in an administrative conflict, protection of constitutional rights and freedoms in the procedure of an administrative conflict, the claim suit in the administrative conflict and administrative act as an object of administrative conflict were some of the topics that were treated during this seminar.

On 21 November 2006 KJI organized a seminar on the property law with the topic: Ownership and Servitudes. The right to a pre-emption in real estates and acquisition of the ownership right in real estates on stronger legal bases, obstruction of possession of servitudes, gaining of servitude based on the possession were subjects of discussion during this seminar. Special focus was paid to the difficulties which are faced by judges in settlement of these cases respectively in the legal-property relationships.

On 23 November 2006 KJI in Cooperation with the Council of Europe organized training with the topic, Interpretation, management of cases and Management of Court. This training session presented issues related to the responsibility of judge during the trial, irregularities in the court, integrity of the court, communication of the judge with parties, media etc.

II.2.b. Simulations – civil field

On 9 March 2006 KJI has started its cycle of simulations in the civil field with participation of civil judges in Prizren region. The simulated case was related to the compensation of damage in a case of motor vehicle accident. Special focus during this simulation was paid to the procedural and material issues including the forms of material and non-material damage.

On 11 May 2006 KJI continued with organization of civil field simulations in Mitrovica region. This simulation treated a case related to the compensation of damage in one traffic accident. The judges from Mitrovica region including judges from minority communities were engaged in the capacity of experts during this seminar.

On 07 September 2006 KJI organized a simulation of a civil trial in the premises of District Court in Gjilan. The participants in this training were civil judges of this region. The subject of this simulation was a case of obstruction of possession. This simulation uncovered the practical difficulties of implementation of the concrete legal provisions in cases similar to this. Discussion and clarification of some dilemmas in the cases of obstruction of possession was in the center of discussion during this training.

Another simulation is the one held in Peja region organized on 04 October 2006. This practical exercise treated a concrete case from the court practice related to servitudes. This training session mainly focused on management of the procedure and the decision-making in cases of servitudes with special focus on the servitude of access. This training answered some of the dilemmas and diverging practices of implementation and interpretation of legal provisions related to this legal provision.

On 2 November 2006 KJI organized a simulation of a trial in Pristina region. The topic which was treated during this simulation was related to the compensation of material and non-material damage. Special focus was paid to the difficulties which are faced by judges during the application of legal provisions in settling the civil cases from this field.

III. Seminars for lay judges

In accordance with its mandate KJI has continued with organization of seminars for lay judges throughout 2006 in all the regions of Kosovo.

This training program is a program of an advanced level and it aims to further improve and develop the knowledge of lay judges. The main topics of the agenda are the ones that are related to the role of lay judges in the civil criminal, juvenile justice procedure and code of ethics. The group of experts in this training of lay judges is composed of judges from district courts in the different regions of Kosovo. This year the training of lay judges has started with Pristina Region. The first training was held in Pristina on 07 February 2006, the second one on 12 April 2006 in Mitrovica region, the third one on 13 June 2006 in Prizren, the fourth one on 26 September in Peja and the fifth and the last one on 09 November in Gjilan.

IV. Workshop for Minor offence judges

Within the scope of its competencies Kosovo Judicial Institute has developed a specialized program for minor offence judges such as: minor offence liability, liability of legal entity and liability of responsible person of the legal entity and evidence in the, minor offence procedure. This year KJI has organized another practical training in which minor offence judges through a group work and interactive discussions had the possibility to practically develop procedural actions in the field of traffic and public peace and order. The experts in these trainings were judges from the High Court for Minor Offences.

V. Workshops on the Code of Ethics

During this year KJI has organized five workshops on the code of ethics in five regions of Kosovo. The topics which were reviewed during these training sessions mainly focused on the responsibilities and obligations of judges and prosecutors according to the new supplementations and amendments in the Code of Ethics and Professional Conduct. The lecturers in this training were selected judges from the Supreme Court, Kosovo Prosecution Office, whereas in one of the training sessions there was one international expert (judge) involved. Besides judges and prosecutors from the regular courts there trainings were also attended by minor offence judges.

VI. Trainings on the European Convention on Human Rights

During 2006 Kosovo Judicial Institute has paid a special attention to the training on European Convention on Human Rights (ECHR). Having into consideration the ECHR is now applicable in Kosovo and is binding; KJI has seen the training on this Convention as necessary. This training is an advantage and great achievement due to the fact that it has been realized by the national trainers who have been certified by the Council of Europe. The topics that were discussed during these seminars mainly focused on the clarification of the fundamental human rights guaranteed by the ECHR especially Article 2 the right to life, Article 3 prohibition of torture, Article 5 the right to liberty and security and Article 6 the right to a fair trial as well as the European Court of Human Rights Case-Law. The procedure followed by this court when reviewing the applications based on the Convention the legislation and implementation of the provisions of the Convention in the Court practice in Kosovo were some of the topics that followed these training sessions. The beneficiaries of these seminars were judges and prosecutors from in all the regions of Kosovo including here minor offence judges.

VII. Training of trainers

During 2006 KJI in cooperation with the Council of Europe (CoE) has realized 8 (eight) trainings for the trainers licensed by CoE to become trainers on the European Convention on Human Rights, these trainings have been conducted during the month of April, May and June 2006. The purpose of such training was to increase the capacity building of the national trainers so that they become competent on conducting trainings on the European Convention and the Case-law of the European Court of Human Rights.

VIII. Training Needs Assessment

In order to closely evaluate the training needs, at the end of every training, KJI continuously utilizes the evaluation forms. This form is proven to be efficient and adequate for the assessment of the needs of judiciary in Kosovo.

Another component utilized by KJI is the usual practice of conducting regular meetings with KJI contact persons who are the presidents of five district courts. Their assistance is consisted of correspondence, materials, relevant information, exchange of information, but also in getting professional advice and recommendations in compilation of the most important training programs etc.

With the purpose of reviewing the quality of the trainings held during the year and in order to perform a research on the opinion of judges and prosecutors on the issues that should be covered by KJI during the coming year in this case 2007, in November 2006 KJI has prepared a questionnaires in order to perform the training needs assessment for judges and prosecutors. Through this component KJI aims to prepare a training program which is sustainable and practice oriented which covers not only the immediate needs of the judiciary and prosecution but also the long term priorities which are closely related to the continuous process of judiciary, transition, and judicial reform in Kosovo.

When doing the training needs assessment KJI professional-program staff conducted meetings with judges and prosecutors in all five regions of Kosovo. During these meetings there was discussion on proposals and suggestions for envisaging trainings in the KJI Yearly Program for 2007, as well as suggestions on the organization of trainings by KJI.

IX. KJI training plans for 2007 – challenges

IX.1. Continuous Legal Education Program

Next year has a special importance for the development of KJI. Kosovo Judicial Institute as an independent institution which is facing a lot of difficulties and challenges in the transition period, especially the financial ones according to the law on its establishment has a new leading structure and is obliged to realize some new training programs which require additional engagement. At the same time the training activities should be consistent

with the planning. Realization of continuous program is the main task among other important tasks planned for 2007.

IX.2. Initial Legal Education Program

The new law mandates KJI with the new challenging task which is the organization of Initial Legal Education Program. The modalities of this program respectfully the time-length, criteria, the experts who shall cover this type of training and many other issues shall be determined by the Steering Board of KJI (once functional) and Kosovo Judicial Council.

IX.3. Training of Trainers

During 2007 KJI shall focus in the continuous development of training capacities. For this purpose KJI plans to organize Training of Trainer's sessions the aim of which is to maintain and continuous advancement of professionalism in the trainers who work with KJI for a long time as well as building of new capacities for training.

X. Conclusion

The year of 2006 may be considered as a very successful year for KJI. The experience gained in preparation and organization of various training events indicate that there is a lot of serious potential in KJI towards meeting the needs and requirements of judiciary in the country. At the same time there are a lot of important steps that need to be undertaken such as, strengthening of knowledge of training staff, establishment of a functional and modern administration and basically functioning of complete management capacities of KJI as foreseen for by the law on its establishment.