

2004 Annual Report **Kosovo Judicial Institute**

Introduction

The Kosovo Judicial Institute (KJI), during the year 2004, has continued to provide the Judiciary and Prosecution of Kosovo with the support granted by its mandate of developing and administering continued professional training for appointed judges and prosecutors. The Continuous Legal Education Programme (CLEP) began in 1999 by the Judicial Training Section of the Department of Human Rights and Rule of Law of the OSCE mission in Kosovo. It was renamed the KJI in February 2000, which has continued to develop and improve its capacity since that time, in order to fit the requirements of the legal environment and to satisfy the needs of the Judiciary and Prosecution in Kosovo.

While the KJI is currently still part of the OSCE, a draft law providing for the legal establishment of the KJI as a Kosovo institution was prepared in co-operation with the Government and in compliance with the Kosovo Standards Implementation Plan. The draft law will enable the KJI to expand its mandate and activities and to function as an independent and professional body (enjoying the status of an autonomous legal entity), established by the Government, within the overall governmental structure. After promulgation of the law, the KJI will be established as a school of magistrates. The law is to be adopted by the Kosovo Assembly in the immediate future.

Once the draft law on the establishment of the KJI comes into force, its new role will include the organization of the course of instruction for applicants who pass the Judicial Entry Examination, the assistance in the selection of candidates and the assessment of the results achieved after conducting the course of instruction. The KJI will also be entitled to provide basic training for lay judges, specialized training for judges and prosecutors who are promoted to a higher court, and the continuous legal education for members of the judiciary and prosecution. In the future, the KJI will also perform other activities as a professional and research institution for the development of magistrates in Kosovo, in line with the European standards.

Further to this aim, the European Agency for Reconstruction (EAR) is funding a technical assistance project for the KJI - "Institution Building of the KJI". The specific objectives of the project are to develop the Institute's administrative, training and management capacity to provide both initial and continuous legal education for judges and prosecutors, and to develop a training programme for lay judges. An extensive curriculum for the future Initial Legal Education Training for candidate judges and prosecutors is under development in order to cover all aspects of the legal system in Kosovo, judicial and prosecutorial skills,

and other management and administration courses. The Project was launched in the beginning of May 2004 for a period of 15 months.

The year 2004 has been a very productive one for the Kosovo Judicial Institute. The KJI has offered a wide variety of training opportunities, both domestic and abroad, to increase the professional and technical competence of the Kosovo magistrates. The KJI has also enhanced the capacity building of its personnel, composed of three international and eighteen local staff, through the organization of diverse training programmes.

The KJI, within this framework, has therefore continued to further adapt its training activities in accordance with new legal and judicial requirements and to contribute in the joint effort to foster a professional, independent, impartial and multi-ethnic judiciary and prosecution service in Kosovo.

In order to achieve these objectives, the KJI formulated its curriculum based on input and feedback from many different resources. 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.

Continuous Legal Education Program

The Year in Review – 2004

KJI's Continuous Legal Education Program (CLEP) in 2004 offered the largest number and variety of training opportunities to date. There were fifty-five (55) different sessions offered throughout the year. The regular training sessions addressed general, criminal and civil matters. In addition to its regular training activities, KJI offered other ad hoc and specific courses. A full listing of all training is attached to this report in Annex I.

Two Induction Courses for Newly Appointed Judges and Prosecutors were held in January 2004 and May 2004. It was in both cases a five-day training course for twenty four (24) newly appointed judges and forty four (44) newly appointed prosecutors, to work in regular courts and prosecutors offices through all the regions of Kosovo. Lectures were given on the applicable law in Kosovo, including the international human rights standards, UNSC Resolution 1244, the Constitutional Framework for Provisional Institutions of Self

Government, the Provisional Criminal Code and Criminal Procedure Codes, recent UNMIK regulations, civil matters, the Code of Ethics of judges and prosecutors, the mandate of the Kosovo Judicial and Prosecutorial Council (KJPC) and the Judicial Inspection Unit (JIU) of the DOJ.

Seminars and workshops on the Provisional Criminal Code and the Provisional Code on Criminal Procedure of Kosovo were another highlight of the CLEP in 2004 due to the entry into force of the Provisional Criminal and Criminal Procedure Codes of Kosovo on 6 April 2004. The KJI focused on both the substantive and procedural aspects of the new criminal law system, offering twenty-five training sessions in total. Many areas such as the new criminal offences, new types of punishments, the new roles of the public prosecutor, judicial police and pre-trial judge as well as other specific aspects of the new codes (plea bargaining and cooperative witnesses, wiretapping) were covered. Some professional skills training were incorporated in order to provide the judiciary with an adequate practical approach to the new criminal system (case management and police-prosecutors relationships, evidentiary and forensic issues in sexual assault cases, new types of judicial forms and decisions). Some of these training sessions were organized together with the Council of Europe and the US Department of Justice. The KJI has also broadened its training activities and offered them in the regions. Given the numerous new provisions included in the new criminal and criminal procedure codes, round table discussions took place from end of February until mid-June in the five regions of Kosovo, aimed at emphasizing specific substantive criminal or procedural concerns that judges and prosecutors of each region face in their legal practice.

Due to the many dilemmas rose during those round table discussions, the Kosovo Judges and Prosecutors associations, as well as the Kosovo Chamber of Advocates decided to initiate with the support of the KJI some workshops focusing on unclearness and contradictions in applying the new criminal code and criminal procedure code. The issues dealt with related to the proceedings of the confirmation hearing/confirmation of the indictment and the detention on remand. Judges and prosecutors were invited to work and discuss real case scenarios, which demonstrated dilemmas that can be experienced in the application of the Codes. The objective of these workshops was to achieve standardisation on the interpretation of the new criminal provisions and to help develop better practices for addressing provisions causing the difficulties. Some guidelines of interpretation have been drawn from the discussions and common standpoints on how to apply these provisions were published by the institute. International judges and prosecutors as well as experts from the Council of Europe were present at these sessions in order to provide the Kosovan Judiciary and Prosecution with their input and recommendations.

Furthermore, the KJI organised this year seminars on specific legal issues such as organised crime, Trafficking in Human Beings, Money Laundering and International Legal Assistance.

The KJI also organized an *ad hoc* seminar on the new Juvenile Justice Code of Kosovo one month after this code entered into force. This introductory session was followed by two workshops in Prizren/Prizren and Prishtinë/Priština regions, with the cooperation of UNICEF, Terre des Hommes and the Kosovo Probation Service.

Four training sessions for Minor Offences Court Judges took place according to a new curriculum addressing among other topics the relationship between the new criminal procedure code and the Minor Offences procedure.

Seminars and Round Table Discussions on civil matters

Since civil matters remain of great importance, these areas continued to be covered in 2004. KJI training sessions addressed different civil law and civil procedure law matters, such as subjects concerning Family law, Labor Law, Inheritance Law, protection of domestic violence, execution procedure, copyright law, civil liabilities in the field of traffic matters and administration of evidence in civil procedure. The KJI has also emphasized priorities on property rights and carried out this year five (5) training programmes related to this component. Two (2) sessions were conducted with the cooperation of the Housing and Property Directorate and two others with the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters. The KJI also led three other sessions covering the subjects of mortgages and pledges, expropriation and compensation as well as servitudes.

As every year, the KJI also found relevant to tackle the issue of ethics and professional conduct of the Judiciary. A conference dealing with the independence of the Judiciary was co-organized with the Council of Europe. The KJI Institution Building Project and the National Center for State Courts with the assistance from KJI organized a workshop on judicial ethics.

Study Abroad Programs and Training of Trainers

A total of six (6) study abroad programs were conducted by KJI in 2004, including two (2) study visits, two (2) internships and two (2) training of trainers.

KJI sent a total of twenty (20) magistrates from Kosovo for *study visits* in 2004. Magistrates were sent to Germany in March and October. The study visits are intended to foster and promote discussions over the problems of judicial systems in post-communist

countries and to observe examples of other working systems. The participants, on their return, share their experience with their colleagues and envision solutions in order to improve the actual judicial practices and techniques in Kosovo. In 2004, the participants had the opportunity to visit the Ministries of Justice, the State Council for the Judiciary, the Prosecutors' Offices and the associations for judges and prosecutors as well as to attend the court proceedings in the first and second instances.

The *internships* allow for observing and assisting a judge or prosecutor at work in a foreign judicial system over a longer period of time. This activity aims to develop certain areas of the magistrates' work, such as legal reasoning, questioning techniques, docketing and court management. In preparation for an internship, the participants attend an intensive three-day course on the judicial institutions of the foreign country. Finally, the participants share their experiences with their colleagues upon return to Kosovo during workshop sessions in all the regions of Kosovo. This year KJI sent five (6) magistrates from Kosovo to Germany for two intensive three-week internships in November.

Training of Trainers

In order to support the capacity building of the KJI and to develop a pool of experts available for the future training, the KJI initiated two (2) Trainings of Trainers this year. One course was provided from 27 to 30 October for a group of 19 Kosovan judges, prosecutors, KJI training staff and external experts. Training experts from the Bulgarian National Institute of Justice organized this training in Sofia, Bulgaria. The programme focused on different teaching techniques used in developing and performing training events and contributed to the strengthening of the practical skills of the trainers allowing them to deliver training programmes in accordance with an appropriate methodological approach.

The Council of Europe in Strasbourg delivered the second course from 8 to 11 November for eighteen (18) judges and prosecutors and seven (7) KJI staff members. The programme intended to train the participants on how to deliver presentations, design training programmes, and draft case studies on European Human Rights standards and instruments.

Plans for 2005

For 2005 the KJI identified the legal issues, which need to be addressed, among them the new civil and civil procedure codes that are under drafting process. The KJI, with the assistance from KJI Institution Building Project, will offer a new curriculum, which will cover trans-sectoral training sessions, workshops and seminars on criminal/civil substantive and procedure law as well as skills and career training. Additionally, the KJI will continue to provide training sessions regarding specific, newly enacted legislation to keep the

magistrates in Kosovo informed and educated on the current status of the law. Field training courses are also scheduled to take place within the regions. They will focus on legal matters that will take into consideration specific concerns or problems that are occurring in the judicial practice of courts and prosecutors offices of each region. The KJI also envisages organizing of a regional conference in the field of organized crime with other partners. Finally, the KJI will proceed with the planning of more study visits and internships throughout 2005.

In 2004 the KJI was funded by the Kosovo Consolidated Budget. The Institute submitted the budget request for the next three years. Other specific contributions by donor countries may also be realized.