



# Newsletter

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January 2019

## Activities from Continuous Training Program (CTP)

### Measures to ensure presence of the defendant in the criminal proceeding

On January 17 2019, academy of Justice within the Continuous Training Program conducted training for the judges and prosecutors on Measures to ensure presence of the defendant in the criminal proceeding.

This training elaborated on issues that relate to measures for ensuring presence of the defendant in the criminal proceeding. Principal attention was paid to the detention as a measure to ensuring presence of the defendant, and to protect citizens from the crime perpetrator, and achieving efficiency in criminal procedure.

Beforehand, the measures of house arrest, obligation to appear in police station, banning to approach a victim, bail, and other measures were also discussed.

Purpose of this training was to extend the judges and prosecutors professional knowledge for correct application of provisions and legal requirements related to circumstances in which they may be imposed, including the internationally set standards for application of detention, as the most serious measure that may be imposed for ensuring presence of the defendant in the court proceeding.

The training methodology applied was combined with theoretical lecturing with interactive discussions and with work in groups.

Beneficiaries of these trainings were judges and prosecutors from all regions of Kosovo



## Preliminary review of the lawsuit

On January 21st 2019, Academy of Justice within its CTP organized training on “Preliminary review of the lawsuit”. Purpose of this training was to enhance the judge’s knowledge related to preliminary review of the lawsuit as a special stage of the contested procedure.

First part of the training elaborated on issues pertaining to procedural presumptions, classification of procedural presumptions, procedural presumptions related to the court, procedural presumptions related to the parties, related to the object of the dispute and procedural presumptions related to the lawsuit.



Whereas the second part focused on identification of the procedural obstacles in this stage of the procedure, elaborating court decisions to avoid procedural obstacles, dismissal of the claim as unpermitted, existence of territorial and case jurisprudence as procedural presumption, and postponing the decision for some issues as well as responses to the claim.

It was further concluded that the preliminary review stage is a filter that helps the court to elimination of all the obstacles in order to continue with other stages of the procedure.

This enables correct implementation of the Law on Contested Procedure in relation to verifying accomplishment of procedural presumptions like: presumption related to the court, the parties, object of the dispute, and presumptions related to irregularities of the lawsuit.

Emphasis was put to the fact that courts shall be cautious when deciding to return the lawsuit for completion, asking from the plaintiff to present facts on which he built the claim.

It is advised that the court return the claim for completion of this element only in cases when the claim has not presented any fact on which the plaintiff bases his claim. It is advised to act in this way because if the plaintiff does not present facts as per the obligation set by the court for completion of the claim, then the court will consider the claim as withdrawn.

It was also concluded that if the plaintiff did not mention at all the value of the object of the dispute in the lawsuit, or if such a value was determined by him too high or too small, then the court ex officio or in the rejection of the respondent, at the preparatory hearing, and if this is not done, then at the main hearing session, but before the review begins, shall set the value of the object of the dispute quickly and appropriately.



This training used methods of theoretical training based on cases from the judicial practice and accompanied with interactive discussions, training handouts, analysis of practical cases, as well as elaboration of the LCP provisions that relate

to the topic.

Beneficiaries of this training were judges of basic courts – civil division, general department and professional associates.

## Alternative procedures

On January 24 and 25 2019, Academy of Justice within the Continuous Training Program conducted training on Alternative Procedures.

This training elaborated on alternative procedures that provide opportunities for solving cases without sending them to the judges, respectively after negotiation of the agreement, and the court shall assess if it will accept it as such for further processing.

This is particularly important for the criminal justice system that guarantees fair trial of criminal cases at the right timing for safeguarding the rights of all parties. The training responded to

questions and dilemmas that occur in practice related to implementation of alternative procedures as a possibility for faster solution of criminal cases.

The goal of this training was to extend the participants knowledge about the legal infrastructure in place which would impact on decreasing the large number of cases in prosecutorial offices and in courts.

Beneficiaries of this training were judges and prosecutors of the basic instance from all regions of Kosovo.



## Legal persons as perpetrators of minor offences

On January 28th 2019, Academy of Justice within the Continuous Training Program conducted a training on “Legal persons as perpetrators of minor offences”.

Purpose of this training was to extend professional knowledge of the participants for implementation of legal basis for the ways of conducting minor offences procedure against business entities as legal persons, responsibility of the person in charge of the legal entity, and cases when the person in charge of the legal entity is not held accountable.

This training elaborated on who is considered as person in charge in the legal entity, ways of

carrying out minor offence procedures against business entities as individual businesses, and it was also elaborated on distinctions between the minor offence and the criminal offence.

This training used combined methods of presentation, providing practical examples and interactive discussion between the participating judges, who were equipped with alternatives on their uncertainties and difficulties when applying the minor offences law in practice.



## Property right - the European Union Court of Human Rights jurisprudence

On January 29 2019, Academy of Justice within the CTP organized training on the Property right – The European Union Court of Human Rights jurisprudence.



Purpose of this training was to increase the judge's knowledge about the property rights from the perspective of the European Union Court of Human Rights in Strasbourg.

First part of the training elaborated on the rules of Protocol 1 of the European Convention on Human Rights (ECHR) – with emphasis on ways of evaluation of breaches by the ECtHR, admissibility of the request, main concepts, legitimate property and expectation. Whereas the second part covered the part of interference to peaceful enjoyment of property, proportionality and reaching the fair balance, and problematic cases from the countries of Western Balkans focusing on expropriation and returning of the property.

Training began with emphasis that the right to property is a right guaranteed with Article 1 of the ECHR protocol 1. Although the text of the Convention is approved in 1950 by the Council of Europe, the right to property was not included up until 1952, when the 1st protocol of this Convention was approved. This delay can be explained from hesitation of some countries, particularly Sweden and United Kingdom had in relation to safeguarding this right, because of the fear that this may interfere with their plans for nationalization, and as such the text pro-

vides considerable space for interference of the state in peaceful enjoyment of property.

It was further concluded that the core of interference to peaceful enjoyment of property is that here out to have been termination or limitation of the rights of owners. To have this requirement met, the ECtHR does not take into account only situations when there is formal expropriation or transfer of property, but also situations when this expropriation or limitation may have happened de facto.

Also, the concept of “property” according to protocol 1 has autonomous meaning, therefore as a term it shall be interpreted depending on the formal qualification in the national legislation of the member states. Despite this, the term “property” is extensively interpreted by the ECtHR. This term nowadays includes not only real estates and movable property, but also shares, intellectual property, final decisions of the arbitration chambers and courts, pension entitlements, the right to rent, and even the rights deriving from running a business.

It was further concluded that second part of this article requires that any kind of interference or deprivation from peaceful enjoyment of property is made in compliance with the law. The principle of lawfulness within this article requires that provisions of the applicable legislation are accessible, clear and predictable.

This training used theoretical training as well as case law of the ECtHR accompanied with interactive discussions, the handouts, case analysis, and elaboration of the ECHR provisions of Article 1, protocol 1.

Beneficiaries of this training were judges of basic courts – civil division, general departments, and from the Appeals Court.

## Specialized training program for professional capacity increase in combating money laundering

During January 30-31 2019, Academy of Justice within the Continuous Training Program conducted a Specialized training for professional capacity increase in combating money laundering.

Purpose of this training was to elaborate on crimes of money laundering that is one of the most serious crimes that targets attacking economic development of society. As form of criminality, it manifests in different forms like: fiscal evasions, various criminal activities, money laundering, etc.

All the criminal offences related to the money laundering are committed through criminal activities. These crimes seriously harm develop-

ment of democracy and the rule of law, mining the human rights and economic growth of the country.

Objective of this training was to extend the participants knowledge related to the legal infrastructure for combating money laundering, forms or actions to be undertaken for investigating and adjudicating money laundering, as well as issues that occur in practice with the purpose of efficiently implementing the respective mechanisms.

Beneficiaries of this training were judges of the Appeals Court, and judges and prosecutors of the basic instance from all regions of Kosovo.





## Activities from Initial Training Program (ITP)

### Activities of the Initial Training program for the newly appointed prosecutors during January 2019

During January 2019, the Initial Training Program for the newly appointed prosecutors conducted activities in the theoretical and in practical training areas.

This training period provided total of sixteen training sessions from the following modules: “Criminal Procedure Code”, “Personal and inter-personal skills”, “Legislation and additional skills”, and “The national and international legal order”.

The “Case management” sub-module delivered three training sessions, where prosecutors could extend their knowledge related to management, objective –based planning, case planning in prosecution, compiling case file material, planning of individual measures, meaning and importance of evidence in criminal procedure, sources of evidence, structure of the investigation file, etc.

Also, the sub-module on “Organization of the judicial and prosecutorial system” delivered two training sessions, where the participants had the opportunity to discuss about new organization of the justice system in Kosovo, activities of the basic court, the appeals court and the supreme court, legal basis of the Kosovo Prosecutorial Council, organizational structure of the prosecution, mandate of the KPC members, performance evaluation of the prosecutors and the disciplinary committee.

According to the training program, the newly appointed prosecutors attended two training sessions from the sub-module of “Reasoning of decisions (complaints/ incriminatory acts)” and elaborated on the legal writing of each legal documents, starting from combination of the

material elements with the procedural ones on the facts of a case at hand to be solved, efficient writing and the IRAC method of legal writing, principles of the legal writing, analysis of legal norms as well as comparison of the legal writing in the USA and in Kosovo.

During this reporting period, the newly appointed prosecutors attended one training session from the module of “International legal order”, in which they were acquainted with the following: International legal cooperation, limitation of cooperation, extradition procedure, the simplified procedure and review of extradition, transfer of the criminal proceedings, confiscation of the proceeds of crime, joint investigations, as well as writing of an effective request for ILC.

The sub-module on “Procedural costs and legal property claims” conducted one training sessions for the newly appointed prosecutors who had the opportunity to discuss the advance payment of the costs of criminal proceedings, translation costs in cases of mandatory defense, the decision for the costs of criminal proceedings, the persons authorized to file a legal property claim, the return of the object, the temporary measures for insuring the property claim. Also, under the sub-module of the “Juvenile Justice Code”, the newly appointed prosecutors attended one training session which covered the age of criminal liability, procedural urgency and shortened timelines for these cases, no trial of the juvenile in absence, preparation procedure against juveniles, termination of the preparation procedure, division and merging of the criminal proceedings, educational measures, diversion measures, trial panel for juveniles, etc.



In January, the newly appointed prosecutors undertook six training sessions from the module of “legislation and additional skills”, the sub-module “Trial advocacy skills”. In this training the prosecutors had the opportunity to elaborate on the topics like: the opening statement, defense of the client, structure of the opening statement, understanding the direct examination, negative and hostile witnesses, indirect examination, impeachment, denial witness, re-examination and the closing statement.

During this month, the newly appointed prose-

cutors attended a visit to the Kosovo Cadastral Agency as per the training schedule.

For this period, the newly appointed prosecutors undertook thirteen practical training days in respective prosecutorial offices as foreseen in the training program.

The Initial training program is being attended by 21 newly appointed prosecutors, two of them are of the Serbian community.

## Activities of the Initial Training program for the newly appointed judges during January 2019

Academy of Justice, with the aim of fulfilling the training program, continued carrying out activities planned under the Initial Training Program that is attended by the newly appointed judges.

Under the theoretical training part, the Criminal Code of the Republic of Kosovo was covered with eighteen training sessions.

The “Criminal Code” module delivered sixteen training sessions to elaborate on the following: classification of criminal offences, economic crimes, minor offences and criminal offences, meaning of the act, violence and threat, casualty, venue and time of the crime perpetration, unlawfulness, relation between the unlawfulness and gravity of offence, elements of criminal liability, the guilt, intent, negligence, deception, attempt, inciting to commit criminal offence, alternative punishments, additional punishment, characteristics of enforcing criminal sanctions, crimes under the Chapter XX (sexual assault, sexual abuse), crimes under Chapter XVII, sexual abuse of persons under the age of 16, use, production and processing of narcotic substances, money counterfeiting, theft, robbery, tax evasion, un-

lawful usurpation of property, and driving in incompetent state, etc.

Under the sub-module on “Crimes of corruption and against the official duty”, one training session was delivered for the newly appointed judges who had the opportunity to extend their knowledge related to these offences according to the criminal procedure code, misuse of the official duty, conflict of interest and unauthorized use of property.

The sub-module on: Serious Crimes, conducted one training session to cover the following: trafficking in human beings, removal of organs, consent of the adult, consent in cases of minor persons, financial investigation unit, cybercrimes and terrorism.

During this reporting period, eleven days of practical training were conducted by the judges in their respective courts according to the training schedule. The Initial Training Program is being attended by five newly appointed judges of the Serbian community.



## “Report on the visit of the newly appointed prosecutors (generation VII) in the Kosovo Cadastral Agency

On January 31st 2019, Academy of Justice within the Initial Training Program organized a visit to the Kosovo Cadastral Agency for the newly appointed prosecutors (generation VII).

In this visit, prosecutors were closely informed with the legal basis, the work, activities, and problems that these institutions face.

Prosecutors were briefed about the Agency’s work, activities, laws and systems that it uses to administer the property registers, with particular emphasis on the textual and graphical parts of the property data.

In this training, prosecutors were informed with the Agency’s objectives that relate to registration

of parcels, buildings, business facilities, provision of permits for residence, naming of the streets, photographing of the residence areas and their insertion into topographic maps, geodesy work and state measurements. Focus of this overview was also introduction of the e-kiosk, a new system for obtaining the ownership certificate.

Prosecutors raised complaints and requests as well as challenges that they face while handling cases. They also addressed the possibilities to increase the level of cooperation, in the sense of sharing accurate and qualitative information.

Beneficiaries of this training were the newly appointed prosecutors (generation VII) 2018-2019.



## Other Activities

### Meeting of the Academy of Justice's Executive Director with the Dean of the AAB College Law Faculty

Prishtina, January 4 2019, Executive Director of the Kosovo Justice Academy Mr. Valon Kurtaj hosted in a meeting the Dean of the AAB College Law Faculty Mr. Veton Vula, and the Vice Dean Mr. Fatmir Qollakaj.

Director informed the guests about the work of the Justice Academy, its training programs for judges, prosecutors and other professionals, the exchange programs, as well as the internship program for students.

On the other hand, Mr. Vula focused mainly on the learning program of the AAB Law Faculty in preparing its students for the job market and

have them ready for joining the working process after completion of the studies.

This highlighted the need to involve the students in internship programs in institutions, and have them complete the practical part of professional development.

At the end of the meeting, both parties agreed on extending their cooperation with reaching and signing a Memorandum of Understanding setting all the institutional cooperation aspects that will contribute to professional growth of the beneficiaries of both institutions.



## Academy of Justice signed Memorandum of understanding with the AAB college - Law Faculty

Pristina January 11th 2019, Mr. Valon Kurtaj – Executive Director and Mr. Besim Morina Program Director of the Academy of Justice had a responsive meeting with representatives of the AAB college - Law Faculty.



Purpose of this meeting was to sign a memorandum of understanding for having students of the

AAB College Law Faculty conduct internship at the Academy of Justice.

Both parties agreed to organize joint professional activities in order to exchange best practices pertaining to increase of the internship quality for the students. Also, they agreed about the necessity to have common research and scientific projects.

During this visit at the AAB college, AJ representatives delivered lecture and had discussions with the Law Faculty students, whom they informed about the scope of work and role of the Academy of Justice for the capacity increase in the judicial and prosecutorial system of Kosovo.



## Continuation of the UNDP support for the Academy of Justice

Prishtina 18 January 2019, as a result of good cooperation a meeting between representatives of the Academy of Justice and the UNDP was held.

At the beginning of this meeting, Mr. Valon Kurtaj- Executive Director of the Academy of Justice expressed the gratitude for the UNDP as a supporter of the Academy in completion of its mandate and accomplishment of the activities during the previous years and its readiness for continuing this support in 2019.

Some of the mutual cooperation topics that were discussed in this meeting are: organization of trainings for the Free Legal Aid Agency; organization of the trainings for capacity growth of the integrated prosecutors in the prosecutorial system; capacity increase of the judges and prosecutors related to the ECHR; publication of the

manuals and materials for unification of the judicial practice; support for the capacity increase of the Academy's staff; support in the area of translation and upgrading the distance learning platform.

Mr. Ardian Latifaj, the UNDP Project Manager for the "Support to strengthening the rule of Law in Kosovo" also emphasized that cooperation with the Academy of Justice is vital and the UNDP will support the Academy with the goal of capacity increase of the judicial and prosecutorial system and of other legal professionals in Kosovo.

The meeting concluded with approval of the timeline for accomplishment of the activities that were discussed.



## Continuation of the AJ-KPC good cooperation

Prishtina, 21 January 2019, Mr. Valon Kurtaj – Executive Director of the Academy of Justice visited the Kosovo Prosecutorial Council, meeting Mr. Bahri Hyseni – the new Head of the Kosovo Prosecutorial Council and Mr. Lavdim Krasniqi – Director of the KPC Secretariat.



Mr. Kurtaj initially congratulated the KPC Head Mr. Hyseni on the new election, wishing him a successful road to achievement of the goals in the prosecutorial system.

Mr. Hyseni expressed his readiness to continue close cooperation with the Academy of Justice during his mandate as Head of the KPC.

At this meeting it was discussed about accomplishment of the training plans, particularly the Initial Training Program for the prosecutors that will be recruited during the 2019, as well as for the Continuous Training Program, involving changes to the criminal legislation and reforms in the prosecutorial organizational structure.

This meeting concluded with the agreement to continuous cooperation for the trainings organized by the Academy of Justice as a principal point for the capacity increase of prosecutors and the administrative staff of the prosecutorial system.

## Meeting with representatives of the US Embassy

Prishtina, 22 January 2019, Mr. Valon Kurtaj, Executive Director of the Academy of Justice hosted in a meeting representatives of the US Embassy in Prishtina.

Main topic of discussion was cooperation in delivering trainings on the Criminal Code and the Criminal Procedure Code after the legislation amendments of these codes that are expected to enter into force during this year.

Representatives of the US Embassy reemphasized their readiness to provide support in organization of these trainings and other trainings

as per the mandate of the Academy of Justice contributing to capacity growth of judges and prosecutors.





## Regional Seminar on the Rule of Law and Judicial Ethics

Podgorica 24-25 January 2019, under the auspices of TAIEX and the Centre for Training in Judiciary and State Prosecution, the “Regional Seminar on the Rule of Law and Judicial Ethics” took place.



In this regional event, delegations of the countries like Albania, Bosnia and Hercegovina, Serbia, Macedonia and Kosovo made their presentations. Kosovo Delegation was represented by Valon Kurtaj – Director of the Academy of Justice, Hilmi Bajrami – Judge of the Special Chamber of the Supreme Court, Mahir Tutuli – Judge in the Appeals Court, and Ardian Hajdari – Prosecutor in the Serious Crimes Department in Basic Prosecution of Peja.

First day of this seminar commenced with the speech of Mrs. Senka Dailović – President of the Steering Committee of the Seminar and Di-

rector of the Centre for Training in Judiciary and State Prosecution, followed by Mrs. Doris Obereder – judge and member in the Judicial Ethics Council of the Judges Association in Austria, as well as Mr. Željko Pajalić – Judge of the Supreme Court of Croatia. The Speakers addressed their speeches and presentation giving a particular emphasis to the independence of the judiciary and to the judicial ethics, exchanging important information on experiences in their countries, in comparison with the EU experiences on the independent of judiciary and professional ethics.

First day concluded with presentation of Mr. Maria Dimitrova, representative of the Bulgarian Government in the European Court of Human Rights, who presented experience of the member states in the Council of Europe, and the case law of the European Court on Human Rights, in relation with the judicial independence and professional ethics of judges and prosecutors.

On the second day, participants worked on the training on the judicial ethics and disciplinary liability with cases of the ethical violations.



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