



# Newsletter

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June 2020

## Introduction

Also during June, as a result of the circumstances created by the pandemic COVID 19, the Academy of Justice has continued its activity by redesigning the training activities in both continuous and initial trainings and other activities in accordance with these circumstances. Based on the decision of the government and respecting the distance and other measures, the trainings were carried out through the ZOOM platform, while the meetings and other activities were carried out physically but in small groups and respecting the preventive measures.

Furthermore, in this newsletter in the following

sections are presented general activities for the implementation of training programs, the activities carried out in the Continuous Training Program specified according to the training topic, duration and its beneficiaries, the activities from the Initial Training Program according to training sessions and modules, as well as activities from the Research and Publications Program.

## General activities

### Cooperation with donor projects

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During June, in continuation of the cooperation with friends and partners of AJ, virtual but also physical meetings were conducted to concretize the activities of assistance in developing and implementing training programs.

In cooperation with the representatives of the US Embassy, OPDAT office, with the joint initiative of AJ was continued with the analysis of AJ capacities through the SWOT methodology. The purpose of this analysis is to assist AJ in identifying needs, evaluating and improving training needs assessment methodology, and evaluating the structure of training programs. In addition, the support continued in the field of training with special emphasis on the implementation of training on: "Specialized Training Program - Public Procurement - Session I".

Cooperation with the EU project Civil Code Support Phase 2, has continued, which further results in the implementation of training on: "Sources of law, analogy and interpretation of legal capacity and capacity of natural and legal persons, as well as legal affairs"

From the USAID Commercial Justice (CJA) project, AJ has received a concept paper for cooperation in the implementation of training in the field of commercial law for judges.

The cooperation with the organization INJECT Kosova, has continued, whereas AJ has re-

ceived video trainings in the field of "Domestic Violence", prepared to be launched on the E-learning platform.

At the request of the EC office in Prishtina, AJ together with the President of the KJC, the President of the Supreme Court, the Judge of the Court of Appeals, the President of the BC in Prishtina and the President of the BC of Ferizaj, participated in the virtual meeting held with members of the Venice Commission where comments on the institute of "trial in absentia" were discussed.

Cooperation with the EC KOSEJ project has continued during this month. In the virtual meeting between the representatives of the KOSEJ project and AJ was discussed the need for a joint meeting with the heads of the KJC and KPC regarding the development of training curriculum for indicators and CEPEJ reporting methodology.

Following the cooperation with the GIZ / LARP project, the inclusion of joint activities in the CTP training calendar for the period September-December 2020 was discussed. During the meeting were also discussed the activities that will have a larger number of Serbian applicants to be supported by GIZ.

## Activities from Continuous Training Program (CTP)

### Sources of law, analogy and interpretation of legal capacity and the capacity to act of natural and legal persons, as well as legal affairs

June 2nd 2020, Academy of Justice within the Continuous Training Program in cooperation with the EU Project on Support to Civil Code-Stage II, conducted training on “Sources of the law, analogy and interpretation of the legal capacity and capacity to act of natural and legal persons, as well as legal affairs”. This training was held virtually through the Zoom pro platform live starting at 13:00-16:00.

Purpose of this training was to extend the participants knowledge on novelties to the Draft Civil Code, with particular emphasis on distinction from the current regulation where sources of law are mainly treated in the theoretical aspect, whereas now, with the draft Civil Code the sources of law are explicitly foreseen.

During this training the following topics were presented: sources of law, analogy and interpretation of the legal capacity and capacity to act of natural and legal persons; Definition of types of legal affairs and their validity – invalidity; Review of the cases of relative and absolute annulment of legal affairs.

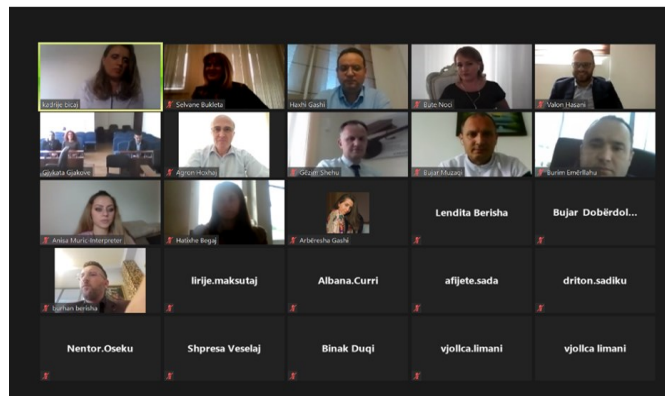
This training also elaborated on consequences of invalidity of legal affairs, and distinction between absolute and relative invalidity, also it was discussed about whether the court shall reject the claim when the legal action required to

be cancelled is absolutely null, or it shall issue a judgment of declarative nature concluding the absolute invalidity.

The training also elaborated on finding the sources of law for solving concrete cases, finding the similarities for cases when the solution can be found through the analogy due to lack of specific provisions, and to increase the ability to understand importance of the legal capacity to act.

Training methodology used for this training was lecturing combined with interactive discussions, presentation of the participant’s points of view, power-point presentation, question & answers and analysis of practical cases.

Beneficiaries of this training were: judges of the basic instance (Civil division) from all regions, professional associates and legal officials.



## Diversion Measures

On June 03-04, 2020, the Academy of Justice, within the Continuous Training Program, conducted training on: "Diversion Measures".

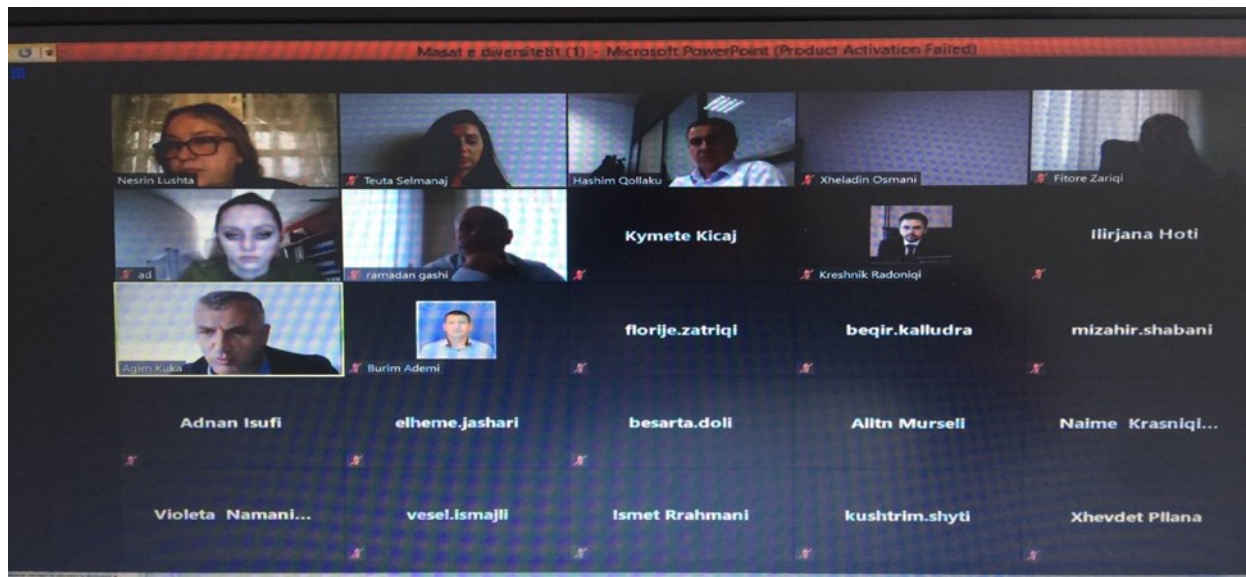
The purpose of this training was to properly implement diversion measures.

During this On-line training on the Zoom platform, the conditions for imposing diversion measures, assessing adequate measures for specific situations and identifying to whom and for what actions these measures can be imposed were addressed. During this session, the local legislation was addressed, with special emphasis on the Juvenile Justice Code, which highlighted the shortcomings and problems in the practical implementation of the diversion measures, especially of the new measures that have entered into force.

In this context, we discussed the consent of the minor for the imposition of the diversion measure, the presence of the minor, the parent and the defense counsel in the session for the imposition of the diversion measures, as well as the decision-making for the imposition of the diversion measures.

The training methodology is based on interactive discussions between training participants and trainers.

Beneficiaries of this training were Judges from the Court of Appeals, judges and juvenile prosecutors from the regions of Kosovo.



## The right to Liberty and Security - Article 5 of the ECHR

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On 10-11 June 2020, the Academy of Justice within the Continuous Training Program, conducted training on: “The Right to Liberty and Security – Article 5 of the ECHR

The purpose of this training was to increase professional capacity through discussions and presentation of best practices of proper implementation of the European Convention and in accordance with the case law of the European Court of Human Rights.

During this On-line training on the Zoom platform was treated the Article 5 of the ECHR- The right to liberty and security of person, which is of great importance in a democratic society. Therefore, in accordance with the basic principles of this article, the ECtHR is of the opinion that the prohibition, arrest, detention, of an individual in violation of this article constitutes a complete denial of the fundamental

guarantees set out in the Convention and a very serious violation of this provision. During the training it was emphasized that in case of deprivation of liberty, it is of particular importance to fulfill the general principle of legal certainty. Consequently, it is essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be envisaged in its implementation, in order to meet the criteria of legality, which the Code of Criminal Procedure has settled this matter perfectly.

The training methodology is based in interactive discussions of training participants and the trainers, treating as well decisions and practical cases of the ECHR.

Beneficiaries of this training are: Judges and prosecutors of the basic instance, as well as professional associates.





## Judicial proceeding in cases of expropriation

June 15-16 2020, Academy of Justice with the support of GIZ organized trainings on the following topic: “Judicial procedure in cases of expropriation” within the CTP. Training was held live for two days through the Zoom Pro platform. The first day, on June 15 2020 started at 13:00 – 15:30, and the second day on 16 June 2020 from 13:00 – 15:30.

Purpose of this training was to extend the judges knowledge on correct implementation of the judicial procedure in cases of expropriation. During the two-days of this training the following was elaborated: legal conditions for expropriation; expropriation procedure in cases when expropriation entity is the government or the municipality, preliminary decision and final decision for expropriation, legal remedies and ways and criteria for determining compensation in expropriation cases.

The training also covered expropriation of real estate specifically how it is regulated by Law no 03/L-139 on Expropriation of Real Estate published on April 23 2009, which has abolished the Law on Expropriation of the 1979 (Official Gazette of the SAPK 21/78). This law determined the rules and conditions based on which the Government of municipalities can make expropriation of the property or other rights in the real estate of a person, respectively it can make several limitations of the rights and provisional use of the real estate.

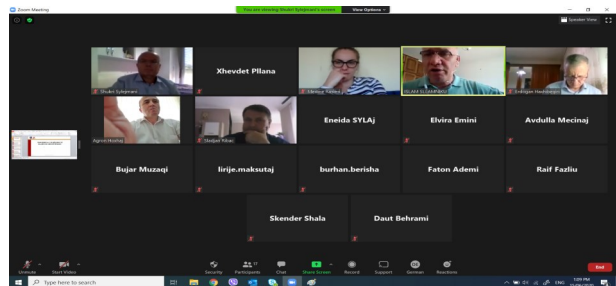
The training followed with emphasis that this Law determines the terms and rules that regulate the expropriation procedure of real estate, limitation of ownership, procedure for setting the height of the compensations for the expropriated real estate before the expropriation enti-

ty, and complaints about the amount of compensation before the court. It was explained about situation of setting the compensation for expropriated property, when the previous owner of holders of the interest to the property are unsatisfied with the amount of compensation set by a final decision.

Also, it was highlighted that the expropriating legal entity allows the possibility that the owner is deprived the right of ownership only under the conditions foreseen by law, with a condition that the expropriation is made for purposes of general interest.

This training also elaborated on the ECtHR case law on expropriation. Also, it presented on best practices of regional countries pertaining to expropriation, by analyzing their procedures, and identifying preliminary conditions that need to be applied for expropriation.

This training used combined methods of explanation, including theoretical and practical explanations, followed with practical examples from the judicial case law, and discussion about the ways of merit based deciding on concrete cases. Beneficiaries of this training were judges of the Supreme court, the Appeals Court and judges from the basic instance.



## Specialized Training Program - Public Procurement - Session I

On June 17-18, 2020, the Academy of Justice in the framework of the Continuous Training Program (CTP) in cooperation with the US Legal Department / OPDAT conducted training through the Zoom platform on "Specialized Training Program - Public Procurement - Session I".

The purpose of this training is to advance the knowledge of participants regarding public procurement and the correct implementation of provisions related to the investigation and adjudication of criminal offenses of this nature.

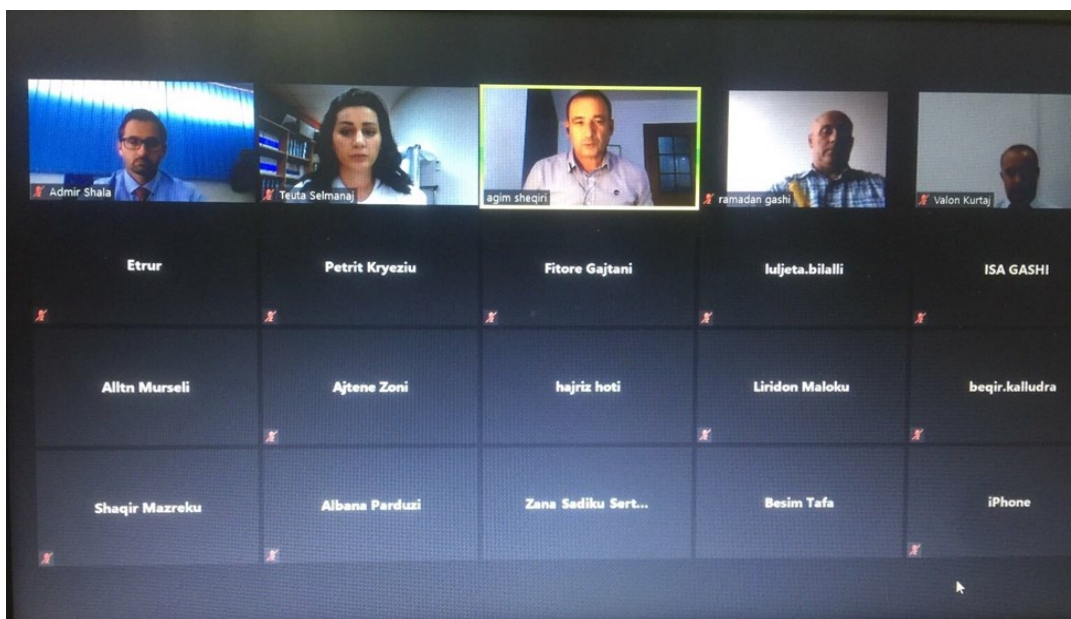
The focus of this training was the implementation phase of the contract as well as the investigation and trial of criminal offenses of this nature.

During this training, among others, the needs assessment was elaborated, including procurement planning, indicative notification and tech-

nical specification. Also during the first training session was discussed the design process and preparation of bidding documents such as dossier and tender submission, dossier submission and public opening. Part of the training was also the selection of the contractor and the award phase including the evaluation commissions, the evaluation criteria and the recommendation of the winning operator.

The methodology applied was of a combined nature, with theoretical explanations and interactive discussions.

Beneficiaries of this training were: Judges from the Court of Appeals, Judges from the Basic Court of all regions, state lawyers and legal officers.





## Money laundering with Italian public and private sector experts

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On 17 and 18 June 2020, the Academy of Justice and the UNDP Office in Kosovo through the SAEK II Project facilitated the participation of Kosovo judges and prosecutors in the Money Laundering Webinar with Italian public and private sector experts.

The purpose of this activity was to increase the professional capacity of Kosovo judges and prosecutors in investigating and handling money laundering cases.

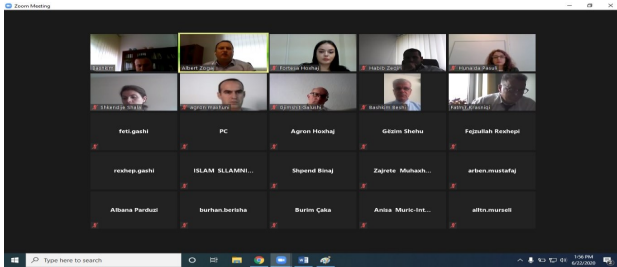
In this activity, experts from the Italian Central Bank and the Guardia di Finanza (Financial Police) discussed and presented the use of strate-

gic analysis in money laundering and tracing of beneficial ownership as well as providing knowledge about the use of legal entities and other corporate mechanisms in foreign jurisdictions.

This activity was attended by 4 judges from the Basic Court of Prishtina and 7 prosecutors who were mainly from the Basic Prosecution in Peja, Gjakova, Prizren and Ferizaj.

## Writing and reasoning of court decisions

June 22-23 2020, Academy of Justice is organizing training on “Writing and reasoning of court decisions” within the CTP. This training was held virtually through the Zoom platform. The training was conducted on 22-23 June 2020 starting from 13:00 – 15:30. Purpose of this training was to extend the judges knowledge on the topic of writing and reasoning court decisions.



The two training days elaborated on the following topics: types of legal reasoning and principles of good legal writing. Legal requirements for writing and reasoning court decisions and implementation of IRAC method while writing court decisions.

The training emphasized that quality of court decisions mainly depends on the quality of reasoning. It further said that reasoning of judgments not only enables the parties to easily understand and accept the decisions, but on top of all it represents protection from arbitrariness. First of all, reasoning obliges the judges to respond to the parties’ allegations, to present positions that justify decision and make it lawful, enable the society to understand the functioning of the judicial system.

Also, it was highlighted that IRAC method, gives the possibility to elaborate the issue at hand in logical, consistent and complete manner. Initially, it identifies the judicial issue or the problem that is addressed, then it explains the legal norm (first premise), continuing with its

application in specific facts of the situation of the issue (secondary premise), to reach to the conclusion with response to the question raised in the first step.

The training continued with the structure and content of court decisions according to provisions of the LCP and reasoning of court decisions (analysis of establishing the facts, assessing the evidence and implementing legal norm).

It also highlighted that the writing and legal reasoning are part of the daily work for each judge and prosecutor, therefore it is a prerequisite to increase the quality of court decisions and other acts, consequently a prerequisite for the efficiency and the public trust on court decisions. The good legal writing consists of accuracy, analytical approach, good organization, concreteness, convincing reasoning and clarity.

In relation to the judgment it was highlighted that the court with a judgment decides on the grounds of a claim that is subject to trial. Upon decision on the main issue the court is related to the party’s request. It may not decide on other than what the party has requested. The court, then deciding based on merits is obliged to decide on all requests comprehensively.

This training used combined methods of teaching, including theoretical and practical explanations followed by samples from the judicial case law, and provided answers to the questions and uncertainties raised on all components of the good legal writing and reasoning.

Beneficiaries of this training were basic court judges and professional associates.

## Specialized Training Program – Cybercrime, electronic evidence – Session I

On June 24-25, 2020, the Academy of Justice in the framework of the Continuous Training Program (CTP), conducted specialized training on "Cybercrime Training-Electronic Evidence - Session I"

The purpose of this training was to advance the professional knowledge of judges and prosecutors about the forms of cybercrime and criminal offenses related to cybercrime.

The focus of this training session was on cross-border and international cooperation in the fight against cybercrime, the competent institutions dealing with these offenses and other offenses related to cybercrime, the possibilities of successful prosecution of international e-crime and cybercrime.

During the training, cybercrime and the challenges in combating it, the dilemmas and difficulties of proving the nature of cybercrime, the

interconnection of this crime or the use of the information system in committing other related criminal offenses were addressed.

The training was conducted through interactive discussions, and with the handling of practical cases, where the challenges in practice and the difficulties that judges and prosecutors face in their work were discussed. Also in this training were used the methods of comparing the local legislation with the international one that sanctions cybercrime as well as the best international practices in combating this phenomenon.

Beneficiaries of this training were: Judges from the Court of Appeals, Judges and Prosecutors from the Basic Court from all regions of Kosovo and a lawyer from the State Advocacy.



## Enforcement remedies

On June 29-30, 2020, the Academy of Justice within the CTP and with the support of GIZ, organized the training on: "Enforcement remedies". This training was held virtually through the electronic platform Zoom. The training was conducted live for two days, day I on 29.06.2020 from 13: 00-15: 30 and day II, on 30.06.2020 from 13: 00-15: 30. The purpose of this training was to advance the knowledge of judges regarding the enforcement remedies.

In the two days of the training, the following topics were addressed: Types of enforcement remedies in the enforcement procedure; Categorization of enforcement and enforcement proceedings according to the judicial enforcement procedure. Then, issues related to enforcement of movable property, enforcement actions, public sales session, authorization to sell the pledged item, auctions, sale by agreement, immovable property with many owners, bank liabilities and delivery and taking of the child were also handled.

During the training was emphasized that the Law on Enforcement Procedure regulates the procedure through which courts and private bailiffs determine and apply enforcement on the basis of enforcement documents and credible documents, unless otherwise provided by a special law. In the sense of this law, the capacity of the enforcement body is vested in the private bailiff and the court of first instance, which has not been foreseen by the previous laws of the enforcement procedure. Through this law, it is intended that enforcement cases, due to their urgent nature, can be addressed within the shortest possible time, which would directly have a positive impact on the protection of citizens' rights to timely fulfill their requirements.

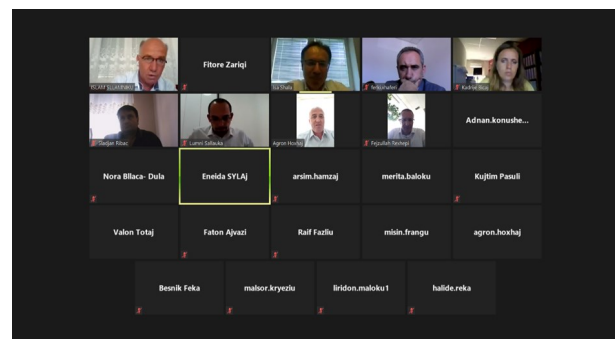
It was also emphasized that the enforcement remedies are methods by which the enforcement

body, even without the consent of the debtor, undertakes actions for the realization of the creditor's credit. Enforcement actions are carried out for the purpose of application of enforcement. Enforcement is made up of actions taken by enforcement agencies, such as the court or private bailiff, to create a new material legal situation between the parties to the proceedings, or between the parties and other participants who acquire any rights in procedure. Types of enforcement remedies are as a result of the dynamics of the development of economic circumstances, the necessity for the most efficient realization of the creditor's claim, always based on the principle of protection of the debtor, his dignity, not violating with these actions the material goods deemed necessary for existence.

Then after, during the training was elaborated the case law of the ECtHR in Strasbourg on the enforcement subject, followed by good practices on enforcement of the states in the region and judicial practice in analyzing the enforcement procedure and its stages.

During this training, combined methods of explanation were used, including theoretical and practical explanations, followed by examples from case law and discussions on how to make a decision on concrete cases.

The beneficiaries of this training were the judges of the Court of Appeals and the basic courts (civil division), from all regions of Kosovo.





## Activities from Initial Training Program (ITP)

### Initial Training program activities for the newly appointed prosecutors

During June, the newly appointed prosecutors continued attending the theoretical training part delivered virtually through the Zoom platform, as well as the practical training in respective prosecution offices.

The theoretical training part conducted ten training sessions from the Module on Personal and interdisciplinary skills, and the National and international legal order.

The sub-module on “Professional ethics” had two training sessions in which the newly appointed prosecutors extended their knowledge on: Cooperation and mutual coordination between the prosecution and police in sensitive cases, as well as on transparency, communication, trust and mutual respect, and accepting police experiences – legal instructions by the prosecutor.

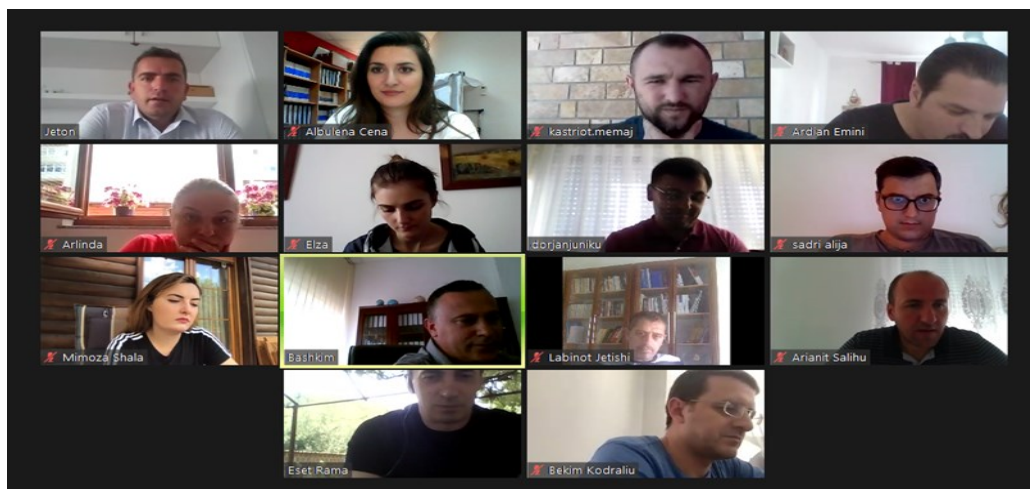
The sub-module on “Reasoning of judgments” had six training sessions to cover the following aspects: Legal writing principles, legal writing and the use of IRAC formula, reasoning of prosecutor’s decisions and correct interpretation of legal norms and the reasoning.

The theoretical training part for June concluded with organization of the training on the sub-module on “organization of the judicial and prosecutorial system”, in which the newly appointed prosecutors attended two training sessions and obtained knowledge on: organization of the judicial system according to the Law on Courts – from the Basic instance Courts, the Appeals Court, as well as the supreme Courts; Legal basis of the prosecutorial system, the Kosovo Prosecutorial Council and its mandate, the State Prosecutors, Special Prosecution for the Republic of Kosovo, the Appeals Prosecution and its duties, competencies and performance evaluation of the state prosecutors.

During the theoretical trainings the prosecutors had the possibility to interact with the trainers and elaborate cases from the prosecutors practice.

During this period, the newly appointed prosecutors conducted twelve days of practical training in prosecution offices.

The Initial Training is being attended by 12 newly appointed prosecutors (generation VIII).



## Activities carried out in the initial training for newly appointed judges

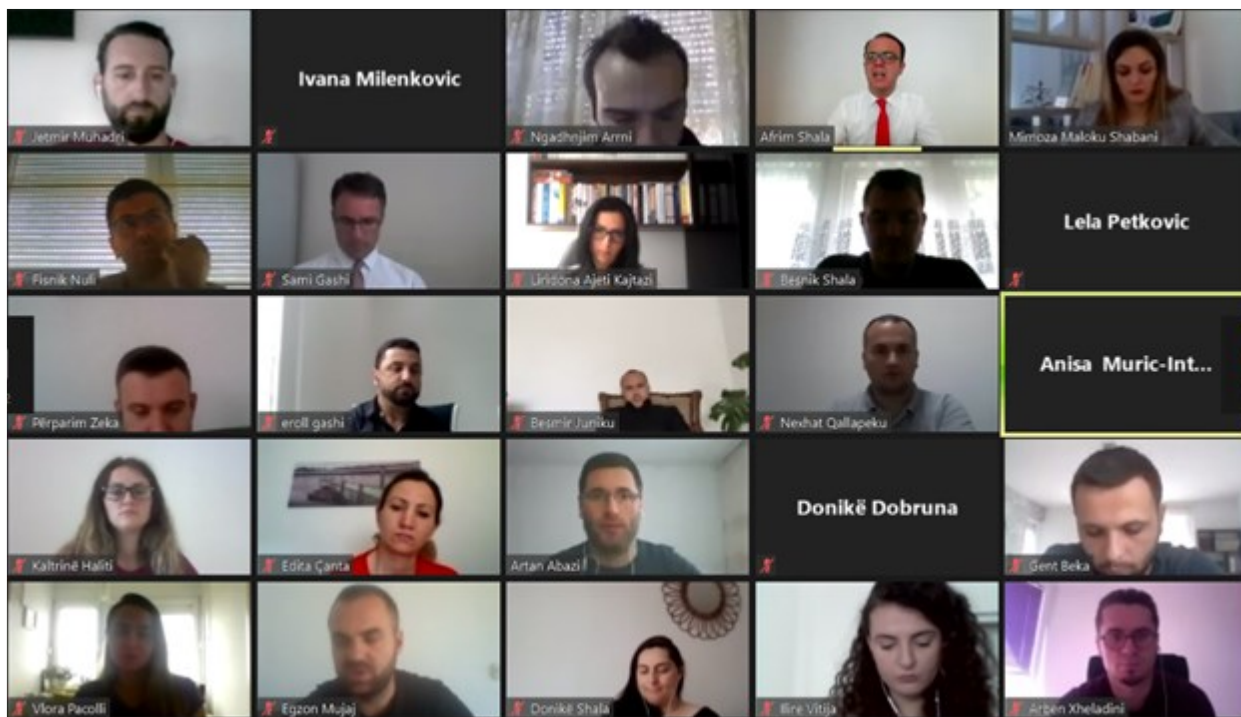
In June, the newly appointed judges continued attending the theoretical training through the Zoom online platform according to the training schedule. The Sessions held under the submodule on “Criminal Procedure Code, and the submodule on “The initial hearing, second hearing and the main hearing” marked completion of the theoretical training for this generation.

The sub-module on “the Criminal Procedure Code” had two training sessions. Also the Sub-module on “The Initial hearing, second hearing and the main Hearing” had two training sessions delivered, in which the newly appointed judges were informed about the judicial hear-

ing, postponement, cease and time for completion of the judicial hearing; the flow of the initial hearing and statement of the defendant. Furthermore, these trainings elaborated on obtaining, drafting and submission of the verdicts.

The newly appointed judges undertook the final exam on June 15, 16, and 17, and completed their practical training part on June 24th.

The Initial Training was attended by 37 newly appointed judges, seven of whom were of the Serbian community.





## Activities of the Research and Publication Program (RPP)

### Meeting of the AJ Editorial Board

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June 24 2020, Editorial Board of the Academy of Justice held its following meeting to review the AJ magazines.



At this meeting, the Editorial Board discussed about the paper work of the newly appointed judges of the 6th generation and of the newly appointed prosecutors of the 7th generation who have completed the ITP. Based on evaluation of these papers and reviews by the authors after recommendations and comments of the Editorial Board, the possibility for publication in the

“Justicia” magazine has been discussed, according to rules and criteria for publication.

At this meeting it was presented the work of the newly appointed judges of seventh generation that will be evaluated by this Board. According to the Regulation on ITP, the newly appointed judges and prosecutors have the obligation to write paper work but it is not an obligation to publish them. Therefore, the Editorial Board emphasized that they will work only with authors whose papers are valuable and who will process their work according to the publication standards.

This meeting was attended also by the AJ Executive Director and Head of the Research and Publications Program.



## Other Activities

### Meeting of the Academy of Justice's Managing Board

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June 23rd 2020, Academy of Justice held its following Managing Board meeting, chaired by Mr. Aleksandër Lumezi, the Chief State Prosecutor.

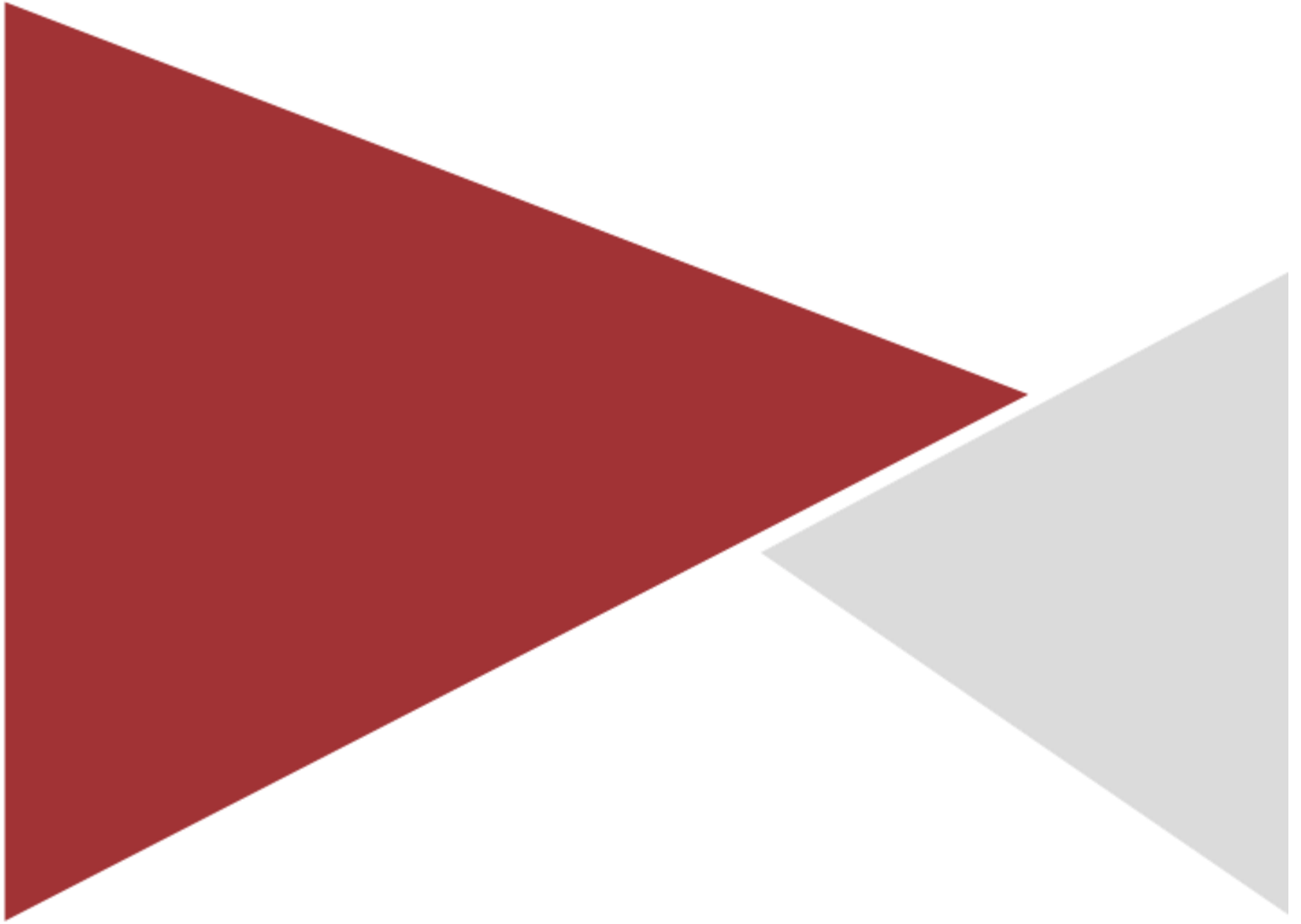
As per the meeting agenda, the Managing Board initially reviewed and approved the Budget Request of 2021-2023 for the Academy of Justice. During review of the budget request, discussions mainly focused on the needs to support the Academy of Justice's for increasing number of the professional and administrative staff for implementing training programs, and for management and administration of general services.

Further, the Managing Board reviewed and approved the Initial Training Program for the newly appointed judges of 2020-2021, approving a recommendation provided by the Program

Council. During discussions, members of the Managing Board considered the work for preparing the initial training program that was harmonized with the needs and requests of the newly appointed judges. This training program was qualified as more advanced from the previous one, with a justification for each topic and more meaningful than the previous one.

During this meeting, the Managing Board discussed and took decisions also on other issues that are under the competence of the Board, related to the functioning of the Academy of Justice.





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