



Newsletter

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May 2020

Introduction

As a result of the circumstances created by the COVID 19 pandemic and the measures taken by the Government of the Republic of Kosovo, the Academy of Justice has continued its activity by re-designing the training activities in both continuous and initial trainings in accordance with the requirements of ZOOM platform.

During May, in addition to training, were also carried out other activities, with special emphasis on various staff meetings, meetings with trainers or even with various associates of the Academy have been virtually conducted from

home, through electronic and other communications means.

Furthermore, the newsletter in the following sections reflects the general activities in favor of the implementation of training programs, activities carried out by the Continuous Training Program specified according to the training topic, its duration and beneficiaries, as well as activities of the Initial Training Program delivered according to training sessions and modules

General activities

Cooperation with donor projects

During May, in the course of cooperation with friends and partners of AJ, virtual meetings were held to concretize the activities of the development assistance and implementation of training programs. In this regard has been conducted a virtual meeting with OSCE representatives, regarding their readiness to assist the AJ, in the development and advancement of the training curriculum on legal writing related to the indictments of prosecutors. During the meeting it was agreed that the OSCE will engage three international consultants who will assist in the preparation of training modules as well as the ToT module. Also, three trainers from AJ (two prosecutors and one judge) will assist international consultants in the implementation of this project.

Following, a virtual meeting was held with UNDP representatives to discuss the form of cooperation in support of the Special Department in the Basic Court, as well as opportunities for cooperation in the development of the training curriculum in the field of discrimination.

AJ, has continued the communication with the German development organization IRZ, where the organization of the Webinar on the Basics of Law and Politics of the European Union has been coordinated, where the lecturer in this seminar will be: Prof. Dr. Jan Bergmann, Chairman of the Senate at the Baden-Württemberg High Administrative Court.

Further discussion and coordination with the EC project KOSEJ for the design and development of the training curriculum on Courts and Prosecution Management, has continued during May, mainly through electronic communication aiming at establishing a better coordination. KOSEJ has pledged to assist AJ with online software that enables the training needs assessment, first for CEPEJ indicators and then for other training needs.

OPDAT has recommended that part of the prosecution management module be taken over by KOSEJ, while OPDAT representatives will provide assistance.

In addition, the questionnaire was processed to the Serious Crimes Department, a process supported by OPDAT, which aims to gather information from department leaders regarding the assessment and analysis of AJ capacities through the SWAT methodology. The purpose of this analysis is to assist AJ in identifying needs, improving training methodology, assessment methodology, and evaluating the structure of training programs.

Activities from Continuous Training Program (CTP)

Specialized training program on Money laundering – Session I

May 6 and 7 2020, Academy of Justice within its Continuous Training Program conducted a specialized training on Money Laundering – Session I, that was conducted virtually through the Zoom platform.

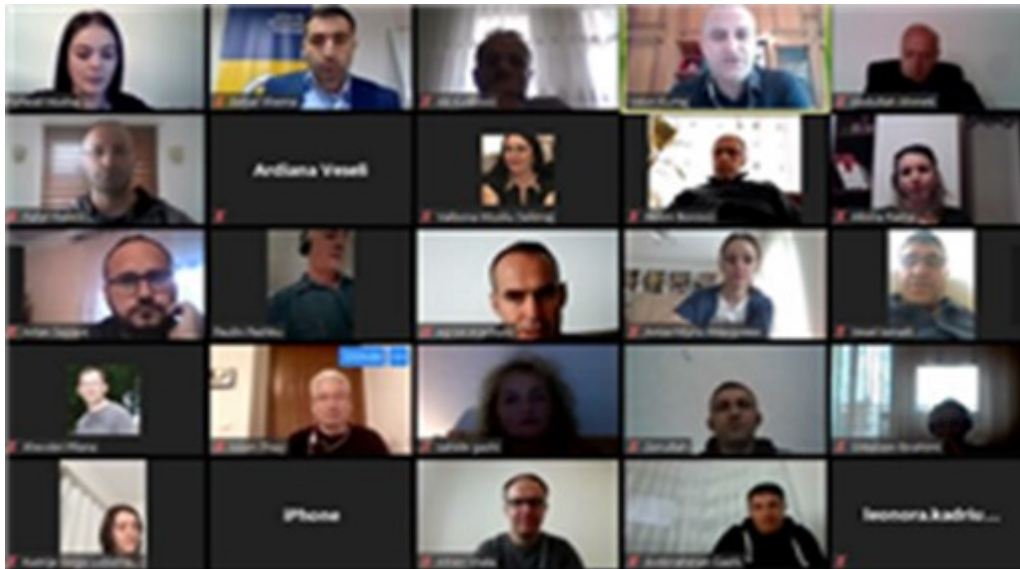
Purpose of this training was to extend knowledge on international cooperation for successful investigation, collection of evidence and problematic issues that occur in practice when investigating and adjudicating money laundering and related crimes.

This training elaborated on money laundering which as highlighted in this training, is a process used to hide the source of money that derives from criminal activity. It further highlighted that in general it includes turning of the proceeds of crime into a legal form, including col-

lection, processing and analysis of the financial data, with the purpose of qualifying them as evidence. Initially attention was given to investigation of wide scale money laundering, tax and custom crimes, including the national and international cooperation that is more than necessary, in order to investigate and adjudicate these crimes that present a risk for economic development of a country.

Training methodology was based on interactive discussion of participants and the trainers on topics of interest.

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



The main trial and means of proof



On May 13-14, 2020, the Academy of Justice, in the framework of the Continuous Training Program, in cooperation with the EU project "Support to the Civil Code Phase 2", organized training on: "Main trial and means of proof".

Unable to perform the classic training, this training was held virtually through the electronic platform Zoom. The training was held live for two days, day on: 13.05.2020 from 13: 00-15: 30 and day II on: 15.05.2020 from 13: 00-15: 30.

The purpose of this training was to advance the knowledge of judges regarding the main trial and the means of proof.

Within the two days of the training, the following topics were addressed: Convocation and holding of the main trial, means of proof and taking evidence, types of evidence in contentious proceedings, and the burden of proof in the contentious procedure and the provision of evidence.

During the training was emphasized that the main trial is the most important stage of the contentious procedure, the center of the most important procedural events because in terms of the evidentiary procedure, in the main trial the claims and theses of the parties are verified and the procedural material is verified. The LCP determines the obligations of the litigants to prove the facts on which they base their claims and allegations. The evidence includes all the facts that are important for the issuance of the decision, while the court decides which evidence will be taken in order to prove the decisive facts.

The training highlighted the opinion that the applicable LCP determines the order of undertaking procedural actions, including taking of evidence, then determines the procedure of interrogation of witnesses, experts and parties. Also, during the training, was elaborated the procedure which takes place in the main trial regarding the way of proving, since this has been identified as a challenge during the court procedure.

The special treatment of cases with civil elements that have been treated in the Constitutional Court, or those that preoccupy judges in the Republic of Kosovo, when it is known that the decisions of the Constitutional Court are final and enforceable without the possibility of appeal, was of special benefit in training. Here the focus was on the standards applied by the Constitutional Court of Kosovo in matters relating to the main trial, the main procedural principles and other procedural categories, accompanied by the interpretations made by the ECtHR in Strasbourg on this topic. Separately, the requirements and guarantees contained in the Constitution of Kosovo and the European Convention on Human Rights regarding the principle of fair trial and their application in the practice of the regular judiciary and the Constitutional Court in cases

with civil elements in the Republic of Kosovo were elaborated.

During this training, combined methods of explanation were used, including theoretical and practical explanations, followed by examples from case law, where each of the participants had the opportunity to be active throughout the training.

Beneficiaries of this training were: Judges from the Court of Appeals, as well as judges and prosecutors of the basic level from different regions of Kosovo.

Mediation in the civil, criminal and commercial law areas

May 20-21 2020, Academy of Justice within its Continuous Training Program in cooperation with the USAID Commercial Justice Program, implemented by CHECCHI and COMPANY conducted training on Mediation in the civil, criminal and commercial law areas.

Purpose of this training was to extend the professional knowledge of judges, prosecutors and other legal professionals on provisions of the Law on Mediation and their correct implementation in practice which would result on direct reduction of cases in courts and prosecution offices.

During this training that was held online through the Zoom platform, mediation was treated as an alternative form of dispute resolution between parties, which successfully resists the time and at the same time qualifies as an advantage of this process, more than solution of

cases in courts. The Training paid particular attention to issues that occur in practice for judges and prosecutors and for the staff of courts and prosecution offices for easier identification of suitable cases that may be referred to mediation.

Besides this, the training discusses also on principles of mediation, initiation of mediation procedure, mandatory mediation, procedure and obligations of judges, conducting mediation procedure, mediation agreement and its effects, the rights and obligations of parties in mediation procedure.

Training methodology was based on interactive discussion of participants and the trainers.

Beneficiaries of this training were judges, prosecutors, professional associates and mediators from the region of Gjakova and Prizren.



Judicial proceeding in cases of damage compensation and the assessment criteria

May 26-27 2020, Academy of Justice within its Continuous Training Program organized training in cooperation with the EU funded project “Support to Civil Code – Stage II” on the topic of “Judicial proceeding in cases of damage compensation and the assessment criteria”. Due to circumstances, it was not possible to conduct this in form of classical training, therefore it was delivered online through the Zoom Pro platform, in two days: 1st day on 26.05.2020 from 13:00-15:30 hrs; and the 2nd day on 27.05.2020 from 13:00-15:30 hrs.

Purpose of this training was to extend the judges knowledge on the topic of judicial procedures in cases of damage compensation and he assessment criteria.

In these two training days the following was elaborated: subjects of the law in cases of causing damage, auto liability insurance and insurance of employees at work, the TPL insurance policy and coverage limits, request for damage compensation, reimbursement of the material and nonmaterial damage by the insurance policy, the right to rent and damage regression.

This training emphasized that in the judicial practice, largest number of disputes for damage compensation comes from the area of damages caused in road traffic, and as a result of injuries caused at work. Focus of this training was on ways of handling the damage, compensation of damage, basis of liability and regression in cases of insurance, then undertaking necessary measures by the employer for ensuring working conditions for their employees, including the criteria for damage assessment in these cases.

This training presented the court case law and European and international standards in cases of damage compensation. Then it elaborated on experiences and best practices from the regional countries in relation to damage compensation, breaking down also the assessment criteria used in these cases. It also highlighted that the court case law is relatively developed on this topic, but the large number of cases in courts of Kosovo, the dynamics of the increasing number of cases filed for compensation, have caused the differences in the court case law pertaining to determining the height of the damage, particularly of the non-material damage. Therefore, discussion of all aspects of damage compensation, as a material source of the legal relations of obligation in this training was serving to unification of the judicial practice and quality increase.

A very useful part of this training was elaboration on issues that relate to the court case law in cases of damage compensation and the assessment criteria used in the Constitutional Court. Focus of this part of the training was on standards used by the Kosovo Constitutional Court on issues that relate to the judicial procedure in cases of damage compensation, accompanied with interpretations of the ECtHR in Strasburg on the same topic, and the assessment criteria in relation to human rights and drafting of the court judgments in a fair proceeding in compliance with Article 31 of the Kosovo Constitution and Article 6 of the ECHR.

This training used combined method of theoretical and practical presentations, followed by examples from the judicial case law and discussion of the ways of merit based judgments brought for concrete cases.

Beneficiaries of this training were judges of the Appeals Court and Basic Courts from all regions of Kosovo, including administrative staff from Peja region.



Protection of the rights of children without parental care and in case of changes to their status

May 29-30 2020, Academy of Justice organized training in cooperation with the EU funded project: Support to Civil Code – Stage II”, on the topic of “Protection of the rights of children without parental care and in case of changes to their status” within the AJ’s Continuous Training Program. This training was held virtually through the online platform Zoom Pro, for two days: 1st day on May 29th 2020 from 13:00 – 15:30 hrs, and 2nd day on May 30th 2020 from 13:00 – 15:30 hrs.

Purpose of this training was to extend the judges knowledge on the topic of protecting the rights of children without parental care and in cases of changes to their status.

The two training days covered the following aspects: Protection of the rights of children without parental care; Adoption; Maternity and paternity; Ways and methods of communication of the court with the children in judicial proceeding; and Protection of the rights of children in cases of objection or proving of paternity or maternity and the principle of the best interest for the child.

The training elaborated on protection of the rights of children without parental care and form of special protection of these children that are stipulated with the Law on Family, in reference to the Convention on the Children Rights. It was also discussed about the way and meth-

ods of communication of the court with the children in judicial proceedings, principle of the best interest for the child, role of the court and of the custody body in proceedings that relate to protection of the rights of children without parental care and in cases of changes to their status.

The training elaborated on the legislation for protection of the children rights in our country and judicial practices in comparison with international standards for protection of the rights of children particularly with the Convention on Human Rights and consequently it presented the best practices for protection of the rights of children in regional countries and according to the ECtHR case law.

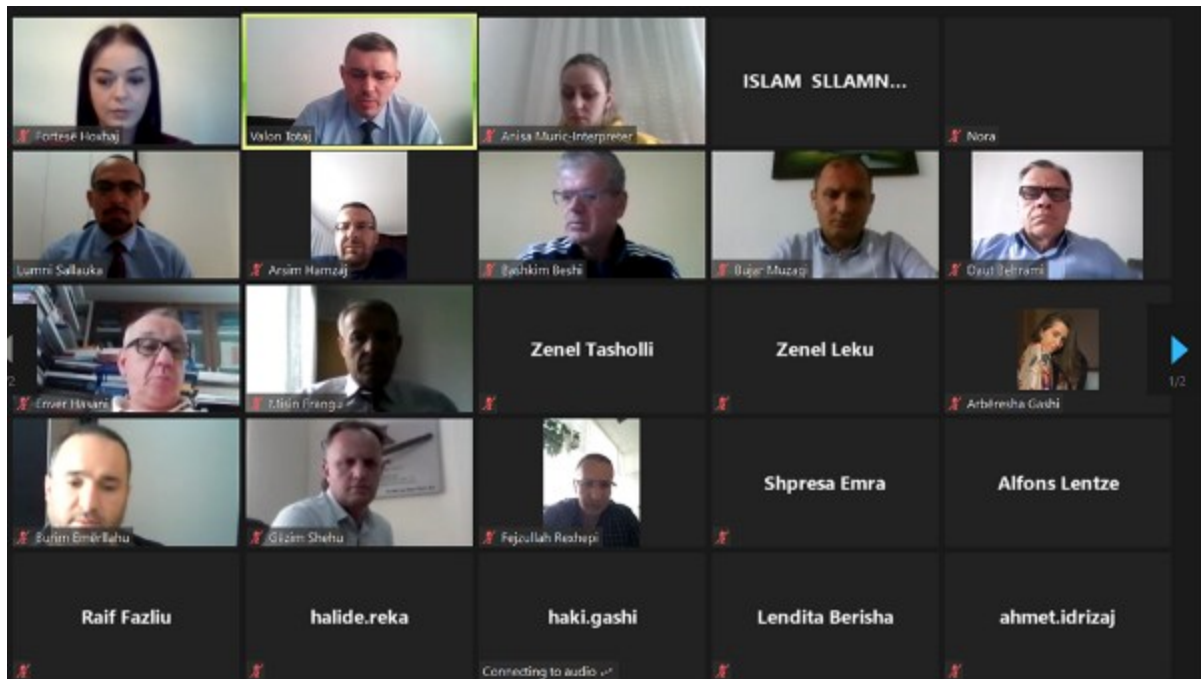
Using comparative analysis, it provided recommendations on the active role that the court shall have in cases when part of the proceeding are minors. The goal was the effort that judges and other staff involved in proceedings where it is needed to protect the rights of children, have the professional competence to apply the highest standards of both national and international domains in protecting children according to the principle of the best interest for them, which shall be a guiding principle in every case and a proceeding.

Focus was that the standards applied by the Kosovo Constitutional Court in matters that relate to this topic, and considering also the interpretations of the ECtHR in Strasbourg pertaining to human rights and drafting of the judicial decisions in a fair proceeding according to Article 31 and 53 of the Kosovo Constitution, and Article 6 and 8 of the ECHR.

This training used combined methods of explanation including theoretical and practical presentations followed by practical examples

from the court case law and discussion on the way of merit based judgments on concrete cases.

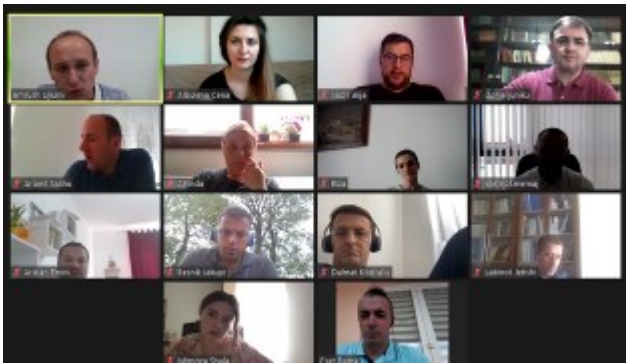
Beneficiaries of this training were judges of the Appeals Court and Basic Courts (Civil division) and legal officials.



Activities from Initial Training Program (ITP)

Initial Training program activities for the newly appointed prosecutors

During May, the theoretical training part was conducted virtually through the online platform Zoom. According to the schedule, training sessions were delivered from respective modules.



The theoretical training for the newly appointed prosecutors was conducted in ten training sessions from the modules on: Personal and cross-disciplinary skills, and the National and International legal order.

The sub-module on “Case management” for the newly appointed prosecutors was delivered in three sessions that covered the following: Management and its specifics; Planning as main function of management, Evidence, sources and their collection as well as the investigation files; Maintaining case files; and Preparing files in the electronic form “SMIL”.

The sub-module on “Professional ethics” conducted six training sessions where the newly appointed prosecutors had the opportunity to acquire new knowledge related to the Code of Conduct an importance of its application in the justice system; Impartiality – content and legal values of this principle. Furthermore, this train-

ing elaborated on forbidding of the misuse of confidentiality and information, social contacts with lawyers, family members and close persons and the necessity of prompt action for exclusion or withdrawal from the case review – informing the parties about the facts and general principles of the ethics and professional conducts for prosecutors and lay judges, independence and impartiality in the profession, activities – prosecutorial and non-prosecutorial responsibilities. Particular attention was also paid to education and trainings for prosecutors – a duty and specific principle of ethics and protection of the suspects, injured parties and witnesses – specific principle of the prosecutorial ethics.

Also, a training session was conducted from the area of “EU Legislation”, in which case the participants extended their knowledge on the European arrest warrant, the mandate, function and judicial review in the European Union.

In these training session, the newly appointed prosecutors had the opportunity to elaborate in details about the elements of the topics and raise questions, present different examples based on the professional experience.

In this period, the newly appointed prosecutors attended also the practical training in prosecutorial offices.

Initial Training Program is being attended by 12 newly appointed prosecutors of the 8th generation.

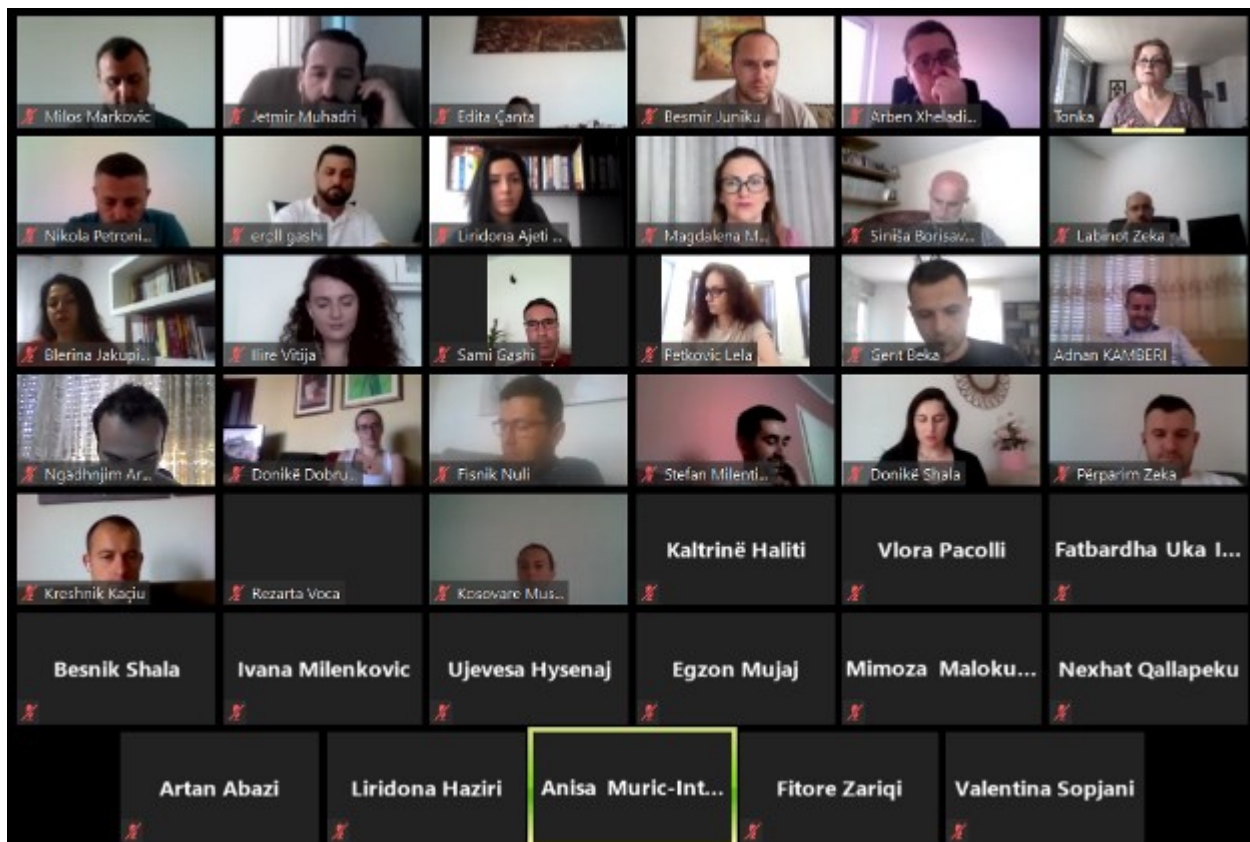
Activities carried out in the initial training for newly appointed judges

During May, judges proceeded with the implementation of theoretical training through the online platform "Zoom" according to the training calendar. Within the theoretical training for newly appointed judges, were conducted (8) training sessions under the sub module: Criminal Procedure Code.

Whereas, within the submodule "Witnesses and injured in the criminal procedure" three (3) training sessions were held, where judges were informed about the: Protected and collaborative witnesses, prohibition of asking questions that may reveal the identity, access and protection of the victim in the case file, the amendment of the final judgment regarding the legal property claim, and measures for the temporary provision of the request the legal property claim against third parties.

From the sub module "Defendant in the criminal procedure" were conducted five (5) training sessions, where newly appointed judges had the opportunity to deepen their knowledge on the : Defendant as a subject of the criminal procedure, the defendant's statement as evidence, his rights and obligations during criminal procedure, the position of the defendant during and after the confirmation of the indictment, the defendant during the trial and the right to use of the legal remedies, as well as the defendant during short procedure and procedure of international legal assistance.

The initial training was attended by (37) newly appointed judges, seven (7) from the Serbian community.



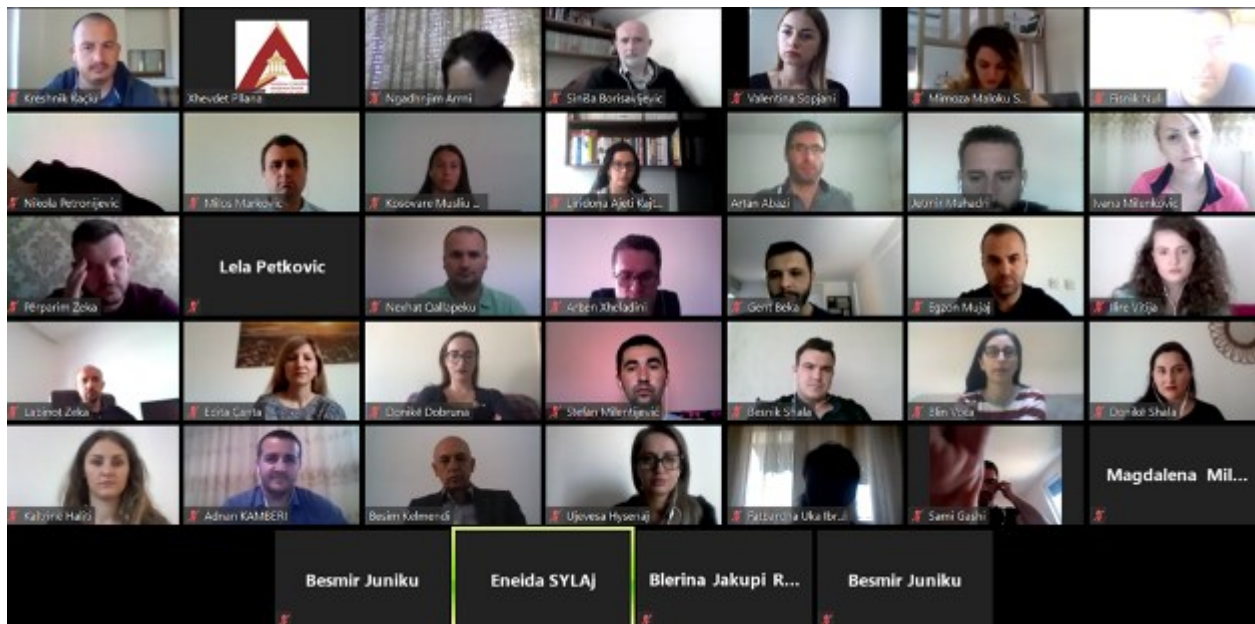
Initial Training program activities for the newly appointed judges

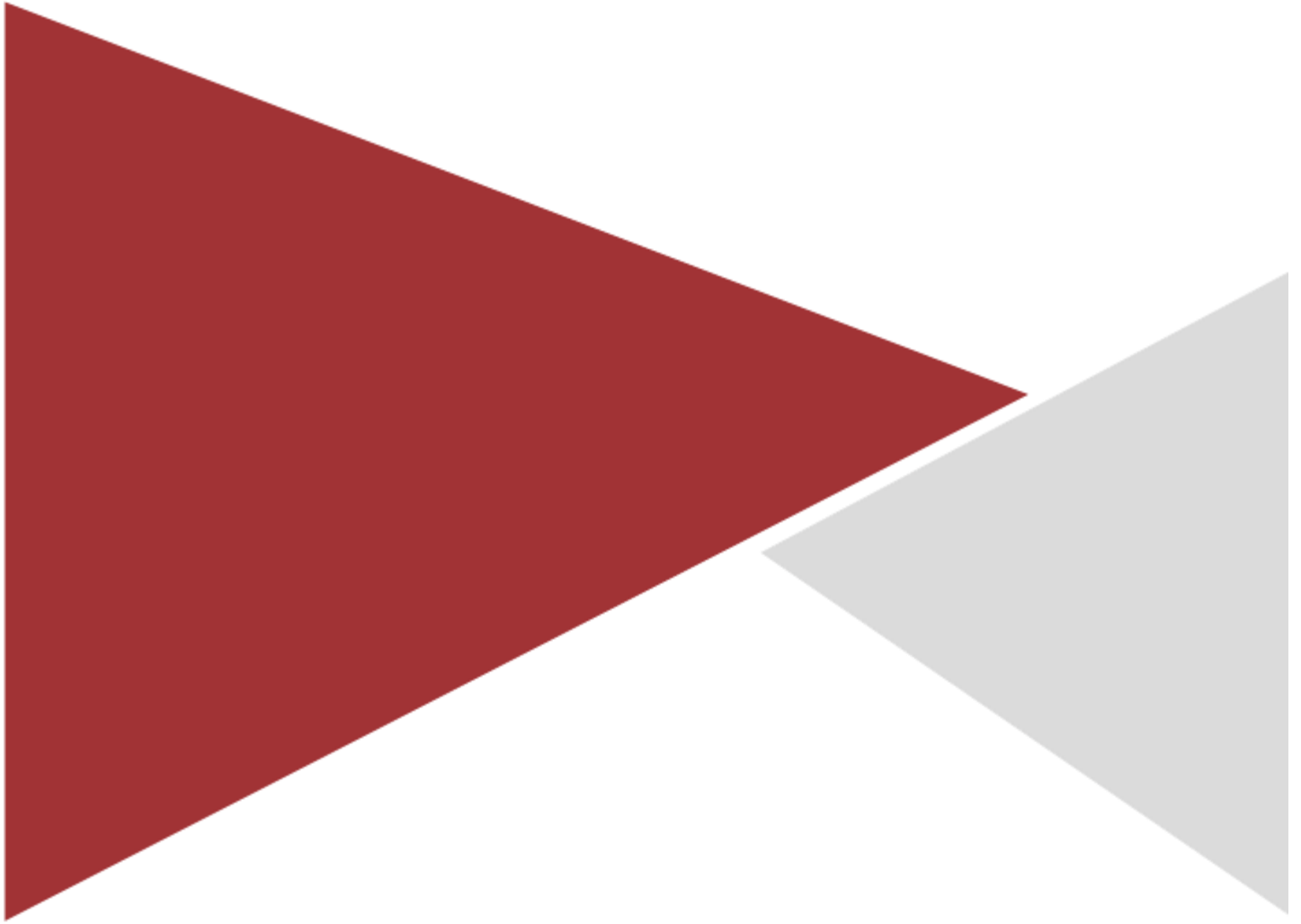
During April, the theoretical training was carried out through the online platform "Zoom" according to the training calendar. In the framework of theoretical training for newly appointed judges, (5) training sessions were conducted under the module: Criminal Procedure Code.

Under the sub module "Evidence in criminal proceedings" were conducted three (3) training sessions, where judges had the opportunity to deepen their knowledge regarding the: Evidence required for confiscation of property obtained through criminal offenses, general rules on the evidence in criminal proceedings, evidence and order in court, the use of previous statements during the trial and evidence for determining of guilt.

In the framework of the sub-module "Witnesses and injured parties in criminal proceedings" have been conducted two (2) training sessions, where judges were informed about: Interrogation and statements of witnesses before the indictment, failure of the witness to appear in court, interrogation and of the statement in the preliminary procedure and the special investigative possibility, the record of the actions in the procedure and the recording of the sessions with audio and video recording.

The initial training was attended by (37) newly appointed judges, seven (7) of whom are from the Serb community





**Address: Lagja e Spitalit
“Muharrem Fejza” str. n.n.
Prishtina, Republic of Kosovo**

**Tel: + 383 38 200 18 660
E-mail: infoad@rks-gov.net
<https://ad.rks-gov.net>**