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LESSONS LEARNED ON PRACTICAL JUDICIAL AND
PROSECUTORIAL SKILLS TRAINING FOR KOSOVO:

Training Program

Practical Judicial and Prosecutorial Skills Training Program for Kosovo
29 October 2002-17 September 2003 (Pristina, Kosovo).

I. Background

On June 25, 2002, an agreement was concluded between IDLO and the U.S. Agency for International Development (“USAID”) whereby IDLO agreed to provide activities pertaining to training and technical assistance in the rule of law field. The project was managed through a cooperative process in which USAID and the Kosovo Judicial Institute (“KJI”) shared decision-making.

II. Scope of IDLO Training Program

The objective of the project was to bring all existing judges and prosecutors to a minimally acceptable level of competence in practical skills.



Source: www.ppu.org.uk

“The task before the international community is to help the people in Kosovo to rebuild their lives and heal the wounds of conflict.”

Kofi Annan
UN Secretary-General

UPCOMING DLU:

MAY:

Judicial & Prosecutorial Reform in Post-conflict Countries: IDLO Lessons Learned and Findings

The project focused on certain practical skills which were considered to be the cornerstones of the capacity-building process; namely, for prosecutors and judges from both civil and criminal benches to improve their knowledge and ability in the following areas:

- Managing a courtroom
- Managing witness attendance
- Ensuring accurate recording of testimony
- Presenting an argument and overall case
- Writing a well-reasoned and argued opinion
- Managing a pre-trial detention
- Overseeing the execution of judgments
- Fully understanding their role in the justice system

In order to successfully achieve the aforementioned objectives of the project, IDLO agreed to provide an assessment of practical skills training needs for Kosovar judges and prosecutors and formulate a tailored curriculum based on the assessment, documentary research and results of surveys conducted.

III. Country Analysis and Findings

The training sessions focused on the following topic areas:

Part I.

1. The role of the court and judge in a modern democracy. This discussion focused on how the courts can contribute to building a democratic society, and how the judges in their daily work play an active part in institution building in Kosovo.
2. The relationship between a judge’s decision-making skills and Art.6 of the European Convention for the Protection of Human Rights (ECPHR). The discussion centered on how judges’ decision-making skills affect the protection of human rights of the citizens they serve, and on the macro level, how the citizens’ (and possible foreign investors’) perception of the judiciary can contribute to further or hinder (economic) development of the province.

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3. Pre-trial detention for Criminal Court Judges. This module focused on the need for judges to exercise their discretion in approving pre-trial detention in a proper manner. IDLO's assessment suggested that defendants were often detained for an excessive period before trial, in violation of their human rights, or alternatively, were not detained when detention would have been warranted.
4. Ethics. This discussion highlighted the premise that it was not enough for the judges themselves to know that their conduct was ethical. Instead, citizens must perceive that the judges' conduct was ethical in order to be certain the relevant parties received a fair trial by an independent and impartial tribunal.
5. Case Flow Management. According to Article 6 of the ECPHR, everybody is entitled to a fair trial within a reasonable time. Hence, in order to meet this requirement, attention would have to be placed on case flow and reduction of court delays; the role of judges for the task of "court administrator"; as well as monitoring case load and decisions. The session began with several case studies of rulings by the European Court of Human Rights where the country in question was found in breach of Article 6 due to severe delays in the court system. The participants offered several suggestions, including the use of the "praktikant" to do more research, and specific reference was made to how a court in one district had taken charge over a situation and restored the citizens' registry (while awaiting an official solution) in order to be able to make decisions on certain matters.
6. Evidence. Topics discussed were the judge's responsibility for gathering sufficient evidence, how the evidence had been gathered and by whom, what had happened to the evidence after it had been gathered, and whether the evidence was relevant to deciding the case. The purpose of the discussions was to focus on the judge's responsibility not to decide a case without sufficient evidence, and to have a critical approach to the evidence presented during a trial. A large number of participants stated that this section of the training was highly appreciated; moreover, commentary during the session and in evaluations seem to suggest that the prosecutors and judges will be more critical in their presentation of and acceptance of evidence in the future.
7. Witnesses. The training session on witnesses highlighted the summoning of witnesses, and compelling witness attendance; questioning techniques for different types of cases and parties; and the interpretation and assessment of the relevance of witness statements. The positive response received regarding this training module, also suggests that judges and prosecutors will be more critical in their acceptance of witness statements in the future.

Part II.

1. The importance of practical skills and the relationships between the quality of judgment and court delays, execution of judgments, appeals and human rights. Discussions focused on the importance of drafting judgments in a manner that ensured all relevant legal issues have been considered, all relevant evidence has been gathered and handled correctly, all relevant witnesses have been called and asked the relevant questions, timely conclusion of the process, and the independence for impartiality of the process.
2. Introduction to drafting/presentation skills. After determining there was no legal impediment for publishing a judgment, attention was placed on whether an ordinary citizen, law student or journalist would understand that the accused or party had been subject to a fair trial through a reading of the judgment.

3. Research and Interpretation. The possibility of conducting proper legal research is limited in Kosovo due to the lack of law libraries and Internet connections in the courts. Furthermore, many participants were surprised to hear that several judges did not consider it their job to interpret the law, but merely to apply it. Although after heated discussions it was agreed that all judges have to interpret the law, it is clear that there are some historical and cultural issues to be overcome in this regard. Directing discussion from research to case law, several judges stated that case law plays no role in the Kosovar legal system, and that legal precedent is not important in their system; nevertheless, some judges stated that they would like to see judgments from other courts in order to learn from them.
4. Formulating the problems of a case. Under this module, participants were given several fact scenarios and asked to formulate the legal issues that they could identify in the scenarios, which required the interpretation of the law. The minor offence court judges needed to analyze whether several articles of the Law on Public Peace and Order were applicable to the case. The judges felt uncomfortable applying the law to the fact scenario; in fact, until we discussed the case, they were unaware that the relevant articles on the Law on Public Peace and Order were in breach of the ECPHR and the UN Declaration on Human Rights, and they did not fully know how to handle this conflict according to UNMIK regulation no. 1999/24. Through this exercise, the judges obtained practical experience on how to apply international conventions when they solve the cases, and thereby secure the human rights of the citizens whom they are serving.
5. Mock Trial. During the mock trial, participants were asked to apply the skills learned thus far to a specific case scenario. Both the judges and prosecutors had to question witnesses to find out what had occurred, formulate the issues of the case, evaluate the credibility of the witnesses, apply the law to the facts and draft a judgment.
6. Analysis of court decision. The final module was spent analyzing a judgment from a transparency point of view. After the six-day training, the judges and prosecutors were extremely critical of the judgment and highlighted various questions that they thought should have been addressed in the judgment. They also made several good suggestions on how to enable the reader of the judgment to understand whether a fair trial was conducted.

IV. Recommendations

During the last year, IDLO Course Managers have spent a substantial amount of time with the judges and prosecutors in Kosovo, and had the opportunity to discuss procedures, practices and concerns that the judges and prosecutors face during their everyday work. The following observations were made by IDLO during the course of the training program:

1. Institution Building. Before the training began, many judges were unfamiliar with the meaning of the term “institution building,” and there remains a need for more in-depth training on the role of the judiciary in the democratization process. It became clear that the role of the judges under the socialist regime in former Yugoslavia was much different from the role we expect judges to play in a modern democracy. In fact, while this training was certainly a good introduction, the degree of the legal change involved suggests the need for more follow-up training. The judges need to be informed of the important role they should play as the judicial branch of the state when building a democratic society in Kosovo.
2. Human Rights. Both the judges and prosecutors need more practical training in human rights. Specifically, they need to obtain a firmer understanding of the concepts of “due process” and “fair trial.” It appears that the criminal court judges have received the majority of the training in human rights, and consequently, the other judges consider human rights to be something that concerns the criminal court judges. Whatsoever, they do not see the connection between the concepts of “due process” and “fair trial” and the possibility for economic development in the region. Furthermore, although all judges claimed they were concerned with human rights, it appeared as though most of the judges from the Minor Offence Courts had not fully understood the meaning of the UNMIK Regulation No. 1999/24 prior to the IDLO training. Thus, the judges need more practical training in order to be able to see when their laws are in breach of international conventions for the protection of human rights, and how to make a decision and reason a judgment as a result of such breach.
3. Predictable Decisions. Most judges, due to their legal tradition, do not consider case law as having a role in their legal system, and do not see the importance of a predictable system based on case law. While case law is not binding, the judges need to obtain a deeper understanding on how previous decisions can be used as a resource in training at the law school, in further educating the judiciary, as well as harmonizing the decisions made by the courts. They also need to understand that harmonizing decisions has a value in itself by both securing the protection of human rights, as well as attracting investors who would like the predictable legal enforcement of contracts, rather than the existence of organized crime as a valid competitor to any potential business they may establish in the province.

4. Research and Interpretation. Since the majority of the judges view their role as applying the law, rather than interpreting it, they partially refer to commentaries drafted by the legislature, and decisions by the Supreme Court for interpretation. In order to further enhance the judiciary and legal system in Kosovo, it is vital that both lawyers and judges receive more in-depth training in legal research and interpretation than what was feasible during the six-day IDLO training. Moreover, it is of paramount importance that the lawyers also be included in such training. If the lawyers do not deviate from previously expressed interpretations in their requests for relief, the judges will never have to actively interpret the law and thereby encouraging the development of law through their decisions.
5. Distribution and Decisions. Resources need to be allocated in order to print and distribute judgments. Not only should more Supreme Court judgments be published, but also full opinions, rather than extracts, which were found to be mostly incomprehensible when read out of context. Judgments from other courts also need to be published in order to inform the other judges about how other courts are solving similar cases, and thereby achieve the harmonization of the decisions.
6. Applicable Law. There appears to be no general understanding as to what the applicable law in civil matters is. The civil court judges seemed reluctant to apply new laws or UNMIK regulations, and found reasons to continue to apply the old laws. Moreover, based on our understanding, the OSCE monitoring system has focused on criminal trials; the result being that the civil court judges receive neither criticism nor guidance in their choice of applicable law. The need for such guidance was strongly expressed during the training.
7. Foreign Languages. Most Kosovar judges speak either Albanian or Serbian, and this lack of English and/or French knowledge is a major obstacle for the development of the judiciary. In fact, even though the judges stated that they wanted access to the Internet from their offices, such access would be ineffective unless they obtain a working knowledge of either language.
8. Promoting the Judges' Association. The management of the Judges' Association needs to be trained in "lobbying" in order to argue effectively for the improvement of the working conditions of its members. They should also be encouraged to cooperate with the Judges' Associations in other countries in order to exchange input and ideas from more advanced associations. The management of the Judges' Association also needs training on how to handle the media, in order to make the media aware of the challenges the judges are facing in Kosovo.
9. Training the Lawyers. In a post-conflict association, re-establishing the judiciary is one of the most important tasks in creating a society based on the rule of law. Nonetheless, training for lawyers is also important; since competent lawyers can contribute to making the courts more efficient and reduce caseload. Competent lawyers are also essential to attracting foreign investment, as investors need to discuss their possible contracts with experts on local law. Thus, it is important that the Kosovar lawyer receive training in local and international commercial and corporate law, investment law and foreign languages in order for them to contribute to the development of the province.

V. Conclusion

The Judicial and Prosecutorial Program in Kosovo, successfully conducted by IDLO, was an important first step in enhancing the practical skills of the judges and prosecutors in Kosovo to a level appropriate for judges and prosecutors in a modern democracy. A vast amount of work was done, and the success of the program is confirmed both by the discussions in class and by the comments given by the participants. Although the program has been a success, as the foregoing analysis reveals, there remains much to be done in order to bring the judiciary in Kosovo up to the level where it can be an effective branch of the state.