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Who is Responsible for Ethical Legal Education, for what and to whom? Case of Kosovo.

Abstract

Legal education continues to be one of the most demanded areas of study from the younger generation in Kosovo. As result, the number of law graduates is quite high. On the other hand, the rule of law sector is quite fragile, judges and lawyers are perceived by parts of the society to be ethically dysfunctional. The trust in judicial institutions is quite low. The debate which is going on now is whose main responsibility for such a situation that is. Is the duty of the higher education institutions providing legal education, or is it a responsibility of educational institutions at all levels? Or shall the government and judicial institutions be more responsible in this regard by developing and strengthening the implementation of value based policies? In order to better understand the responsibility in these terms, and to answer these questions, an analytical approach and comparative approach was applied. These research approaches and survey of opinions of professionals, officials and students, show that the ethical legal education is a shared responsibility between higher education institutions providing legal education, government officials responsible for diffing general principles of education, and, of course, primary,

secondary schools. The role of judicial institutions is to put in place policies and mechanisms that ensure ethical reasoning of legal professional and decision making.

Introduction

“When we talk of ethics, the judges normally comment upon ethics among politicians, students and professors and others. But I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base...[2]” - Hon'ble Mr. Justice S.H. Kapadia, (Chief Justice of India)³

This article addresses the topic of ethical legal education in Kosovo, an issue which continues to impact upon the rule of law, functional aspect of independence to individual judges, and the equitable enjoyment of human rights. The focus is who is responsible for ethical legal education for judges since the judiciary in the Republic of Kosovo, like in most other countries facing after-war-effects, has been under tremendous heaviness. It faces a host of complex and serious challenges including enormous backlogs, complex property disputes, a legacy of executive influence, poor infrastructure, etc. These challenges have been noted by the OSCE⁴ and number of them by the European Commission, which stated recently: *“Administration of justice is slow and inefficient, and there is insufficient accountability of judicial officials. The judiciary is still vulnerable to undue political influence and rule of law institutions suffer from lack of funding and human resource.”*⁵ Despite the fact that the European Commission, and other international and national actors have recognized that there have been made efforts to address these challenges, there are still observers that consider that these efforts made so far are

³ V.G.Ranganath, “Ethics of Judges & Judicial Accountability” June 2010. The Article is accessible online at: <http://www.legalservicesindia.com/article/article/ethics-of-judges-&-judicial-accountability-214-1.html> (accessed on 1 May 2017).

⁴ OSCE Report on “Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions,” June 2012. See <http://www.osce.org/kosovo/87138?download=true> for a collection of such reports (accessed 20 May 2017).

⁵ European Commission Kosovo Progress Report 2016, SWD(2016) 363 final, Brussels, 9.11.2016., p.5.

not moving the justice system in a desired path, as there is still a lack of confidence from the public in the judicial system.⁶

With respect to the independence of judiciary necessary to meet European and other international human rights standards, outstanding issues remain in legal education quality. On 3rd of December 2016, Mr. Aleksandër Lumezi, Head of the Kosovo State Prosecution Office, stated on the occasion of the IV Conference of Kosovo Judicial Council: “*Despite the work done in 2016, it does not mean that it has been done enough to restore the proper trust of citizens to the courts.*”⁷ He further stated that in the days to come judges and prosecutors will be facing even greater difficulties, and one of the many things to do is to restore citizens' confidence in the justice system. A similar conclusion was made by the Head of Kosovo Supreme Court, Mr. Fejzullah Hasani” “*Justice is not an end in itself, it is given to citizens and should be perceived by them as such.*”⁸

Indeed, the society of Kosovo is now debating whose responsibility is the greatest for the current situation in this sector. Is it the duty of the higher education institutions providing legal education or is a responsibility of education institutions at all levels to ensure that law students are educated enough on ethical legal education? Or shall the government and judicial institutions be more responsible in this regard by developing and strengthening the implementation of values based policies value based? So the main objective of such research is to find the main actor that is responsible for ethical legal education of

⁶ See United Nations Development Programme (UNDP), Early Warning Report, Kosovo, for 2007, 2008 and 2009. However, the 2010 Report notes that while the judiciary remains the institution that people in Kosovo are “least satisfied” with, the polling figures indicate an increase in satisfaction over previous years. See UNDP 2010 Early Warning Report, Kosovo, for 2010 #28, p. 12, http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf (accessed 22 May 2017). See also a report by Freedom House on the category of Judicial Framework and Independence. Kosovo’s judiciary receives a 5.75 rating on a 1–7 scale (7 being the lowest) <http://www.freedomhouse.eu/images/Reports/NIT-2010-Kosovo-final-final.pdf> (accessed 22 August 2016).

⁷ Magazine article “Kthimi i besimit të qytetarëve në drejtësi, mbetet sfidë “ (title in english: “Returning the trust of citizens to justice remains a challenge), Telegrafi.com, 03.12.2016. The Article is accessible online the following address: <http://telegrafi.com/kthimi-besimit-te-qytetareve-ne-drejttesi-mbetet-sfide/> (accessed on 30.06.2017).

⁸ See above, supra note 5.

judges as it is one of the aspects that contributes to the trust of citizens on the judicial system and functional independence of judges.

Methodology

The answer to the abovementioned research questions will be determined by applying qualitative analysis as the research methodology. The research methodology is focused on the analysis of survey results. The survey method or research (observation) has been realized in an external field. The method contains access to survey data, information and opinions on the subject studied. This method is reliable and valid to the extent that the information collected is relevant. Shortcomings of the method arise if the subjects' disclosures are of a subjective or emotional character, or are not given by the respondent as true. In order to conduct the interview I have prepared a questionnaire with ten questions (see attached the questionnaire). The main format of this method is structured interviews with questions prepared ahead in a specific way. The questionnaire yielded responses by one hundred six (106) persons, with different ages and of both genders. Respondents that answered to this questionnaire were experts on legal affairs, academic staff, and students, officials from different institutions of Kosovo including judicial institutions and non-governmental organization, and ordinary people. The data collection was done through personal and direct interviews, in writing and by e-mail, so the data / resources are primary information.

Table 1: Characteristics of respondents in tabular form

Gender	No.	Age	No.
Female	51	Up to 30	54
Male	55	30-50	43
		50-75	9
Total No.	106		106

Results

Assessment and Trust on the work of judiciary in Kosovo:

Based on the answer given by respondents, 36 out of 106 surveyed respondents rated the work of the judiciary with mark 3 out of 5 (1-5 ranking). From the total number of respondents, 51 were women and 18 of them rated the judiciary with the mark 3, and 15 them with mark 4. While among the 55 men surveyed, 18 of them have assessed with mark 3 and 2. There is a gender difference as women evaluate the work of the judiciary better than men. Of 36 of those who have rated the judiciary with mark 3, 16 respondents hold a Master's degree, 12 of them hold Bachelor's degree, 20 of them are 19-30 years of age, 14 of them are aged 35-50 years, and two of them are aged 50-75 years.

Concerning levels of trust in a judge's independence, the results show that 75 of the respondents believe **moderately** on the independent work of judges. 26 of them are women and 29 are men. 41 of them are 19-30 years old, 27 of them are from 30-50 and seven of them are from 50 to 75 years old. Their level of education was: 26 of them have their Bachelor's degree and 29 of them possess a Master's degree. 11 out 106 have **no confidence** in the independence of the judiciary, of which four are female and seven are male, seven of them are 19-30 years old, two of them are aged 35-50 and two of them are aged 50-75 years. Six of them hold a Bachelor's degree and five of them a Master's degree.

In order to understand if the opinions of respondents about their trust in the work of judiciary has been given based on their experience directly with the work of the judges or it is more of a perception, it is important to analyze the results on the question: "Did you ever face directly any court trial and court service?" 67 out of 106 of the respondents never faced directly the work of the court or a court trial, as they have chosen the option on the answer, "other capacity," which means they never faced directly the work of judges. 40 out these 67 respondents were women and 27 were men, of whom 46 were age of 19-30, 18 of them from 35-50 years old and three of them from 50-75 years old, of which 30 had finished a Bachelor's degree and 26 a Master's. 16 out of 106 of the respondents had access to the court trial as a

witness (two of them were women and fourteen men). Five were 30 years old, nine aged 35-50 and two aged 50-75 years. Five had completed secondary school, six held a Bachelor's degree and three a Master's degree. 39 out of 106 respondents had directly experienced court work or a court trial in the capacity of an accused person, plaintiff, witness, or as an employee of the court.

It is important to mention that 33 out of 57 of the those respondents who assessed the work of judges moderately have faced directly the court trial or court services in different capacities as mentioned above. While 42 out of these 75 respondents had not faced directly the court trial in the capacity mentioned above. This result shows that there is no significant difference on the assessment of the court work from those that have faced directly the court trial and those that did not. So, the trust and the assessment on the work of the judges and judiciary in Kosovo is not a perception but reality.

Whose responsibility is to provide ethical legal education?

The results above show that the trust of citizens in the work of the judges needs to be further strengthened. It is important to emphasize that every advanced democratic country has in place its own procedure of judicial accountability. Some countries have developed such procedures through different mechanisms, as is the case in India, where such procedures have been developed through the constitution of a National Judicial Commission.⁹ Strengthened mechanisms on judicial independence and judicial accountability that are neither incompatible nor mutually exclusive will contribute in this regard.¹⁰ The functionalization and proper implementation of the judicial accountability concept depends on the ethic of judges or whether the code of conduct is followed by judges.

⁹ See above supra note nr.1.

¹⁰ Jaan Ginter, "Judicial Independence and/or(?) Efficient Judicial Administration", JURIDICA INTERNATIONAL XVII/2010.

As the focus of this essay is the case of Kosovo, it should be clarified beforehand if the Kosovan judicial institutions have developed ethical codes. Even though Kosovo has enjoyed its statehood only for ten years, the legal infrastructure has been put in place quite well, but the main problem remains the implementation of it. The same is true with the documents related to the ethics of the judge, prosecutor, and lawyers. The Kosovan judicial institutions have developed their Code of Conduct (Ethics) but the remaining challenge is its implementation by judges, prosecutor and lawyers.¹¹ Therefore, the following part of the essay will present the results of the survey on the question if the Judges in Kosovo do follow the code of conduct, and whose responsibility is the ethical legal education of judges?

41 out of 106 of the respondents think that judges respect the Code of Ethics in cases when they use competence to decide based on their conviction, of whom 21 are female and 19 are male. 19 of them are 19-30 years old, 17 of them 35-50 years old and four of them aged 50 -75. 14 of them have finished a Bachelor's degree and 13 hold a Master's degree. 25 out of 106 of the respondents think that judges do not follow the Code of Ethics, of which nine are female and 16 male and 17 are from 19-30 years old and eight are 35-50 years old. 11 of them are hold a Bachelor's degree and ten a Master's degree. From this result, it can be concluded that men and young people do think that judges do not follow the Code of Ethics.

The results show that the ethic of judges is a problem in and of itself; it is not enough to have only the Code of Ethics approved but it also needs to be implemented. If the Code of Ethics is not followed by judges, their decisions will be unethical, and, as a consequence, the whole sector suffers and the trust of citizens in their work will be low. One of the reasons for the non-implementation of such

¹¹ Lawyers Code of Professional Ethics, Kosovo Bar Association, Prishtinë, december 2012. The text is accessible on the following address: [http://www.oakks.org/repository/docs/Code_of_Ethics_2012_\(ENG\)_update_January_2014\)_638576.pdf](http://www.oakks.org/repository/docs/Code_of_Ethics_2012_(ENG)_update_January_2014)_638576.pdf) (Consulted on 07.13.2017).; Professional Ethic Code for Judges, Kosovo Judicial Council , 17.08.2016.; The Code of Ethics and professional conduct for members of the Kosovo Prosecutorial Council, July 2012. The code of ethics and professional conduct for prosecutors. The code of professional ethics for support staff. The text of all three codes are accessible online: <http://www.kpk-rks.org/en/sistemi/121/kodi-i-etiks-profesionale-/121> (consulted on 13.07.2017), Kosovo Prosecutor Council, July, 2012.

codes by judges is inadequately taught professional and legal ethics in law faculties/schools in Kosovo. Based on the research done by the American Bar Association, the public and some private law universities offer elective legal ethics courses, but many students graduate without taking these courses and it is not clear what subjects are covered in the courses.¹² According to the author of such a report, without a required ethics course for all law students, it will be difficult for law faculties in Kosovo to properly prepare their students for legal practice in countries that adhere to European standards for the ethical practice of law. Based on this report, one may conclude that the main responsible institution for ethical legal education is university.

However, the 106 respondents during the present research answered differently. As can be seen from the data presented below, more than 50% of the respondents answered that the institutions providing training for judicial staff are responsible for developing and providing ethical legal education to judges. As the respondents had to choose more than one option, it seems that the 34-38% of respondents considered that responsibility for ethical legal education is shared between universities, judicial institutions, and institutions providing training for judicial staff (for example, the Justice Academy). 31% of respondents think that the responsibilities of the legal education are shared among various institutions, such as the Ministry of Education, universities, judicial institutions and institutions providing training for court staff. There are only 9% of respondents that do consider the early education institutions as the only institutions responsible for legal education. These nine respondents do not see the lack of courses in professional ethics as a major shortcoming.

The present research shows different results from the previous research done by the American Bar Association as most interviewees did not regard the lack of courses in professional ethics as a major

¹² Legal Education Reform Index for Kosovo Report, American Bar Association, July 2010. The text is accessible online: https://www.americanbar.org/content/dam/aba/directories/roli/kosovo/kosovo_legal_education_reform_index_07_10_eng.authcheckdam.pdf (Consulted on 13.07.2017).

deficiency.¹³ This shows that the respondents of the present research appear to be more educated in this regard.

Table 2: Responsible institutions for ethical legal education

The ethical legal education of judges is responsibility of:	Answers (%)
<i>Early Education institutions</i>	9.4
<i>Ministry of Education (that defines the education policy)</i>	1.9
<i>Higher Education Institution (Universities)</i>	34.9
<i>Judicial Institutions</i>	38.7
<i>Institutions providing training of judicial staff</i>	52.8
<i>All above institutions</i>	31.1

The current research proves the hypothesis that ethical legal education is more a shared responsibility rather than a responsibility of one institution. The university is one of the institutions that should be more active in this regard. The professional ethics courses need to be included in the programs as obligatory courses, in order to be sure all law students have had information about the meaning and importance of ethics while practicing their legal profession.

Limitations of the study

Limitations of this study were the inability to get information from more respondents from judicial institutions and persons who do understand the essence of the Code of Ethics, as well as the non-inclusion in this questionnaire of international judges present in Kosovo. Having their answers would help

¹³ See above supra note 10.

considerably in observing variability of opinions from both sides, and nationally and internationally, despite the fact the present essay is based also on the reports of international actors present in Kosovo.

This study focuses on whose responsibility is to provide ethical legal education; therefore it does not embrace the full scope of the problem, which can also be seen in the content of material offered to those getting ethical legal education. However, the main question raised in these last ten years in Kosovo has been answered, whose responsibility is to provide legal education. It is clear that the University does share such responsibility also.

Conclusions

The research provides advice on responsibility to Kosovan institutions dealing with legal education and judicial institutions, and encourages such institutions to be more creative in providing such a piece of legal education that is very important for a successful judicial sector. It does not include an in-depth discussion of all the factors that impact the rule of law sector, but provides, as a useful recommendation, a basic knowledge of subject under discussion.

Upcoming research direction

This research may be extended to other countries in the region, especially in neighboring countries and beyond, by applying the comparative method. In future, research should expand the circle of respondents and increase their number so that the information collected would be more comprehensive. The next research should be focused on the content of the legal professional ethics course and methods of teaching such courses, in order to find the best modus for the knowledge transfer to the students but also to the legal profession. In addition, the future research will also study whose responsibility it is within the higher education institution to provide qualitative ethical legal education, and means that contribute to this direction. This will be done through comparative analysis.

Key recommendations

- Early education institutions, Ministry of Education, universities (law schools/faculties), judicial institutions, institutions providing training for court staff shall work further in executing the shared responsibility on ethical legal education:
 - 1) Early education institutions shall make sure that ethical education is provided through education programs.
 - 2) The Ministry of Education shall define policy that requires and promotes ethical education in all the study programs and in particular in law programs.
 - 3) Universities shall first include the professional legal ethics course as a mandatory course and prepare the program of the course in such a way that the ethical legal education be provided as it should. It would be necessary that the course is taught by professors with an understanding of the legal profession.
 - 4) Kosovan judicial institutions shall strengthen the implementation mechanism of the Code of Ethics.
 - 5) Institutions that do provide training for judicial staff shall be careful in explaining correctly and practically the Code of Ethics.
- An awareness raising campaign on the ethics of judges should be organized by the above mentioned institutions.

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Appendix A

Survey instrument

1. Gender?

- 1) Male
- 2) Female

2. How old are you?

- 1) 30 years
- 2) 30-50 years
- 3) 50-75 years

3. Which is your highest level of education?

- 1) High school
- 2) Bachelor
- 3) Master
- 4) PhD
- 5) Exam of Jurisprudence

4. What is your profession?

- 1) Lawyer
- 2) Teacher
- 3) Judge
- 4) Attorney
- 5) Senior official in state institutions
- 6) Economist

- 7) Prosecutor
 - 8) Doctors
 - 9) Others
5. Did you face directly any court trial/service?
- 1) Yes
 - 2) No
6. In what capacity did you face the court trial/service?
- 1) Accused
 - 2) Plaintiff
 - 3) Witness
 - 4) Court official
 - 5) Others
7. How do you assess the work of the judiciary? Rate from 1 to 5:
8. Do you think that judges respect the code of ethics in cases when they use the power to decide on their conviction?
- 1) Yes
 - 2) No
 - 3) Never
 - 4) I have no opinion
9. Judicial Ethics depends on and develops from (*You can choose more than an option*):
- 1) Early education (primary, middle) institutions
 - 2) Ministry of education defining education policy
 - 3) Higher education institutions (Universities)

- 4) Judicial institutions
- 5) Institutions providing training on ethics for judges and judiciary staff in general
- 6) All (point from a-f)

10. How much do you believe in the work of the judiciary?

- 1) Very; 2) Not at all; 3) Moderately; 4) I no opinion