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# MANUAL

ON TAKING THE BAR EXAM IN  
KOSOVO



Advocacy Center  
for Democratic Culture

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## PREFACE

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This manual for taking the bar exam in Kosovo was created within the project "Supporting access to justice in the north of Kosovo", implemented by the NGO Advocacy Center for Democratic Culture, with the support of the United Nations Mission in Kosovo (UNMIK).

This manual aims to provide young lawyers from the north of Kosovo with an overview of the most important information regarding the bar exam in Kosovo. The manual contains basic information about the bar exam itself, the conditions that candidates must meet, the procedure for taking the bar exam, as well as the structure of the exam itself. Finally, the manual also contains some concrete examples of tasks from the exam, which will be useful to candidates in preparing for the written part of the exam.

Since this is not a comprehensive manual for taking the bar exam, potential candidates are referred to the manual prepared by the Association of Serbian Lawyers of Kosovo.

On this occasion, we express special thanks to UNMIK for their support to the project, and therefore for the development of this manual. We also express our gratitude to the lawyers and legal experts from northern Kosovo who participated in the implementation of project activities that enabled the development of this manual.



# INTRODUCTION

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The bar exam is one of the most important ways to test the practical knowledge of lawyers. For members of the Serbian community in Kosovo, the bar exam also represents their first official contact with the Kosovo legal system, which they did not have the opportunity to learn about in college, making it particularly complex. The primary idea of this manual is to ease that contact.

From a didactic perspective, the idea behind this manual is to avoid being overly burdensome and duplicating content already present in other manuals, which are covered in the third section. This manual is meant to be practical and to allow students to approach the preparation and taking of the bar exam with as little difficulty as possible. Preparing for the bar exam is undoubtedly one of the most stressful events in the life of any lawyer, so we wanted to contribute at least a little to reducing that stress.

In terms of structure, this manual has three sections. The first section deals with the concept of the bar exam itself and its specificities in Kosovo. The second section provides practical advice for applying, preparing for, and taking the bar exam. In the third section, we list sources for preparation, including other manuals. At the end, there are two appendices – one with examples of tasks and another with examples of acts.

Since law is a dynamic category, we opted for a slightly different approach that would not burden readers with dry summaries or mere copying of laws. We aimed to overcome a problem we found in other manuals – becoming outdated as soon as the laws change – by focusing on what remains unchanged as long as the bar exam is taken in the customary form, and to do so in a legally concise manner, without burdensome scientific apparatus.

Ideally, users of this manual should, in addition to the manual itself, study the laws, and preferably further deepen its practical dimension, starting from the attached examples of tasks and acts. It should be noted here that the attached examples of tasks and acts are for illustrative purposes only and mainly concern criminal law, specifically indictments and appeals. A more comprehensive manual, or in that case, a practical guide, should include other acts within the criminal law matter and the entire civil law matter. Certainly, we owe great gratitude for these examples to lawyers Ljubomir Pantović and Nebojša Vlajić, as well as colleagues from the OSCE Mission in Kosovo who provided us with some practical examples for preparing the written part of the bar exam, which were used during the training program for young lawyers preparing for the bar exam in Kosovo.

Additionally, an immeasurable contribution to the creation of this manual was made by lawyer Vasilije Arsić with his practical experience, for which we thank him here.

We wish all users of this manual successful preparation and passing of the bar exam, as well as good luck in their further professional legal careers.



# ON THE BAR EXAMINATION AND ITS SPECIFICITIES IN KOSOVO

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**How is the Bar exam regulated?** The legal framework for the bar exam is relatively simple. The key act is Law no. 08/L-033 on the bar exam<sup>1</sup> (hereinafter: "Law"). This law regulates the organization of the bar exam, the composition, and work of the Commission for taking the bar exam, as well as the conditions and procedure for taking the bar exam. In addition to the Law, the Administrative Instruction of the Ministry of Justice - no. 06/2022<sup>2</sup> on the method of taking and the program for taking the bar exam (hereinafter: "Administrative Instruction") is also important.

**Bar exam dates.** The law stipulates that the bar exam is organized three (3) times during the calendar year.<sup>3</sup> The Ministry of Justice informs candidates about the deadlines for taking the bar exam by posting dates on its website. Therefore, candidates are recommended to regularly follow the website of the Ministry of Justice to have timely information about the exam dates and to have enough time to prepare the required documentation.

**Costs of the bar exam.** The law prescribes that the candidate bears the costs of taking the bar exam, the amount of which is determined by the Minister of Justice in his or her decision. However, the Law also stipulates that certain categories of candidates may be exempted from paying examination costs. Namely, the law provides that "candidates in a difficult economic and social situation, who are beneficiaries of the social assistance scheme and other candidates who are recognized as having the right to be exempted from public administrative fees, are exempted from paying the costs for taking the bar exam."<sup>4</sup>

**Why is the bar exam required by law?** In addition, a significant part of the legal framework is the regulations that stipulate passing the bar exam as a condition for being appointed to a position or performing an activity. In this sense, passing the bar exam is essential for appointments to positions such as judge, prosecutor, lawyer, notary, or executor. This highlights the significance of the bar exam for law students, as it serves as an entry point into the world of law enforcement.

**Which provisions are key for candidates?** In the opinion of the author of this manual, two key topics for a future candidate from the Law itself are the requirements for taking the exam (Article 8) and the subjects to be taken (Article 9), and in this section, we will focus on them in more detail, as well as technical aspects holding the bar exam itself.

## Admission requirements

The conditions for eligibility to take the bar exam are:

- 1) The candidate is a citizen of Kosovo;
- 2) The candidate graduated from a Faculty of Law; and
- 3) the candidate worked or completed an internship for one (1) year in courts, state prosecutor's offices, or law offices; or two (2) years in the legal profession in the offices of public notaries, executors' offices, public institutions, companies, state agencies, companies, professional experience in non-governmental organizations in the field of justice or in the management of international institutions in Kosovo or abroad.

**Citizenship.** We consider the first condition clear enough, and in that sense, we believe further elaboration is unnecessary. However, if the candidate is not a citizen of Kosovo, and holds a diploma from a law faculty

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<sup>1</sup>See at: <https://md.rks-gov.net/desk/inc/media/5A8FA3B5-128C-411D-A60C-F6F3EF764637.pdf>

<sup>2</sup>See at: <https://md.rks-gov.net/desk/inc/media/D9F8C25D-AD07-4048-B144-A5B1267EBB58.pdf>

<sup>3</sup>Article 4.2 of the Law on the Bar Examination (08/L-033).

<sup>4</sup>Ibid. Article 6.2.



accredited in Kosovo, a candidate can take the bar exam only with a residence permit (Article 8.4 of the Law), which may be of importance for some students of the Faculty of Law in North Mitrovica.

**Diploma.** Two remarks should be made regarding the second condition:

- Persons who graduated from law schools outside of Kosovo cannot take the bar examination if their diplomas have not been certified (Article 8.3 of the Law);
- However, for individuals who graduated from the Faculty of Law in North Mitrovica, their diplomas must be **verified** under the technical agreement on university diplomas. This is the first formal specificity of the bar exam for members of the Serbian communities in Kosovo. The verification procedure itself will be briefly presented from the practical side in the second section.

**Experience.** The third condition is certainly important, but its practical application will depend on the candidate's experience.

## Subjects to be taken

**The subjects** to be taken are:

- 1) Criminal law (material and procedural);
- 2) Civil law (substantive and procedural);
- 3) Constitutional law and the foundations of the judicial system;
- 4) Commercial (economic) law, labor law, and administrative law; and
- 5) International (private and public) law and European Union law.

**Methods of passing the subject.** All subjects are examined orally, with the first two also having a written component. The written part of the exam takes place before the oral part and must be passed to access the oral part (Article 15 of the Law).

**Content of the subjects.** The detailed content of the bar exam is provided by the Plan and Program, which regulate the subjects, legal sources, and material for each subject (Article 11 of the Law, as well as the Administrative Instruction). Specifically, the Administrative Instruction for these cases lists the following legal sources:

### 1. CIVIL (MATERIAL AND PROCEDURAL), FAMILY, INHERITANCE AND OBLIGATION LAW:

- LAW NO. 04/L-139 ON EXECUTIVE PROCEDURE AND LAW NO. 05/L-118 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 04/L-139 ON EXECUTIVE PROCEDURE;
- LAW NO. 04/Z-077 ON OBLIGATION RELATIONS;
- LAW NO. 03/L-154 ON OWNERSHIP AND OTHER REAL RIGHTS;
- LAW NO. 03/L-007 ON NON-LITIGATION PROCEDURE AND LAW NO. 06/L-007 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 03/L-007 ON NON-LITIGATION PROCEDURE;
- LAW No. 03/L-006 ON LITIGATION PROCEDURE AND LAW NO. 04/L-118 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 03/L-006 ON LITIGATION PROCEDURE;
- LAW NO. 2004/32 THE LAW OF KOSOVO ON THE FAMILY AND LAW NO. 06/L-077 AMENDING LAW NO. 2004/32 ON THE FAMILY OF KOSOVO;
- LAW NO. 2004/26 ON INHERITANCE IN KOSOVO AND LAW NO. 06/L-008 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 2004/26 ON INHERITANCE IN KOSOVO;
- LAW No. 04/L-193 ON ADVOCACY;
- LAW NO. 06/L-010 ON PUBLIC NOTARY;
- LAW NO. 03 L- 182 ON PROTECTION AGAINST FAMILY VIOLENCE.

### 2. BUSINESS LAW, LABOR LAW AND ADMINISTRATIVE LAW:

- LAW NO. 06/L-016 ON BUSINESS COMPANIES;
- LAW NO. 04/L-220 ON FOREIGN INVESTMENTS;



- LAW NO. 03/L-087 ON PUBLIC ENTERPRISES AND LAW NO. 04/L-111 ON AMENDMENTS TO LAW NO. 03/Z-087 ON PUBLIC ENTERPRISES AND LAW NO. 05/L-009 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 03/L-087 ON PUBLIC ENTERPRISES AMENDED BY LAW NO. 04/L-111;
- LAW NO. 02/L-75 ON ARBITRATION;
- LAW NO. 06/L-009 ON MEDIATION;
- LAW NO. 03/L-209 ON THE CENTRAL BANK OF THE REPUBLIC OF KOSOVO AND LAW NO. 05/L-150 AMENDING LAW NO. 03/L-209 ON THE CENTRAL BANK OF THE REPUBLIC OF KOSOVO;
- LAW NO. 08/L-056 ON THE PROTECTION OF COMPETITION;
- LAW NO. 08/L-055 ON INDUSTRIAL DESIGN;
- LAW NO. 08/L-075 ON TRADEMARKS;
- LAW NO. 08/L-059 ON PATENTS;
- LAW NO. 06/L-086 ON THE SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO FOR MATTERS RELATING TO THE PRIVATIZATION AGENCY OF KOSOVO;
- LAW NO. 04/L-065 ON COPYRIGHT AND RELATED RIGHTS AND LAW NO. 05/L-047 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 04/L-065 ON COPYRIGHT AND RELATED RIGHTS AND LAW NO. 06/L-120 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 04/L-065 ON COPYRIGHT AND RELATED RIGHTS, AMENDED BY LAW NO. 05/L-047;
- LAW NO. 04/L-093 ON BANKS, MICROFINANCIAL INSTITUTIONS AND NON-BANKING FINANCIAL INSTITUTIONS;
- LAW NO. 06/L-034 ON CONSUMER PROTECTION;
- LAW NO. 04/L-034 ON THE KOSOVO PRIVATIZATION AGENCY AND LAW NO. 05/L-080 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 04/L-034 ON THE KOSOVO PRIVATIZATION AGENCY, AMENDED BY LAW NO. 04/L-115 AND LAW NO. 06/L-023 ON AMENDMENTS TO LAW NO. 04/L-034 ON THE KOSOVO PRIVATIZATION AGENCY, AMENDED BY LAW NO. 04/L-115 AND LAW NO. 05/L-080;
- LAW NO. 05/L-083 ON BANKRUPTCY;
- LAW NO. 06/L-114 ON PUBLIC OFFICERS (Judgment No. KO203/19, Published: 13.07.2020, located at the Judgment, Constitutional Court) AND LAW NO. 08/L-128 ON AMENDMENTS TO LAW NO. 06/L-114 ON PUBLIC OFFICERS;
- LAW NO. 04/L-161 ON SAFETY AND HEALTH AT WORK;
- LAW NO. 06/L-048 ON THE INDEPENDENT SUPERVISORY BOARD OF THE CIVIL SERVICE OF KOSOVO (Judgment no. KO171/18, Published: 05/29/2019, located at the Judgment, Constitutional Court);
- LAW NO. 03/L-202 ON ADMINISTRATIVE DISPUTES;
- LAW NO. 05/L-031 ON GENERAL ADMINISTRATIVE PROCEDURE;
- LAW NO. 06/L-113 ON THE ORGANIZATION AND FUNCTIONING OF STATE ADMINISTRATION AND INDEPENDENT AGENCIES.

### 3. CRIMINAL LAW (MATERIAL AND PROCEDURE):

- CODE NO. 06/L-074 ON THE CRIMINAL CODE OF THE REPUBLIC OF KOSOVO;
- CODE NO. 04/L-123 ON CRIMINAL PROCEDURE;
- CODE NO. 06/L-006 JUVENILE JUSTICE;
- LAW NO. 08/L-132 ON THE EXECUTION OF CRIMINAL SANCTIONS;
- LAW NO. 04/L-213 ON INTERNATIONAL LEGAL COOPERATION IN CRIMINAL MATTERS AND LAW NO. 08/L-026 ON AMENDMENTS TO LAW NO. 04/L-213 ON INTERNATIONAL LEGAL COOPERATION IN CRIMINAL MATTERS.

### 4. CONSTITUTIONAL RIGHTS AND BASICS OF THE JUDICIAL SYSTEM:

- CONSTITUTION OF THE REPUBLIC OF KOSOVO;
- LAW NO. 06/L-055 ON THE JUDICIAL COUNCIL OF KOSOVO;
- LAW NO. 03/L-225 ON THE STATE PROSECUTOR AND LAW NO. 05/L-034 ON AMENDMENTS AND AMENDMENTS TO LAW NO. 03/L-225 ON THE STATE PROSECUTOR AND LAW NO. 06/L-025 ON



AMENDMENTS TO LAW NO. 03/L-225 ON THE STATE PROSECUTOR, AMENDED BY LAW NO. 05/L-034;

- LAW NO. 06/L-054 ON COURTS;
- LAW NO. 03/L-052 ON THE SPECIAL PROSECUTOR'S OFFICE OF THE REPUBLIC OF KOSOVO;
- LAW NO. 02/L-37 ON THE USE OF LANGUAGE;
- LAW NO. 03/L-121 ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO;
- LAW NO. 03/L-053 ON THE COMPETENCES, SELECTION AND DISTRIBUTION OF COURT CASES AND PROSECUTORS OF THE EULEX MISSION IN KOSOVO.

#### 5. INTERNATIONAL LAW (PRIVATE AND PUBLIC) AND EUROPEAN UNION LAW:

- BODIES OF THE EUROPEAN UNION;
- TYPES OF ACTS ISSUED BY THE EUROPEAN UNION;
- LEGISLATIVE PROCEDURES IN THE EUROPEAN UNION;
- REPORT BETWEEN EUROPEAN LAW AND MEMBER STATE LAW;
- PRINCIPLES ON THE RIGHTS OF THE EUROPEAN UNION;
- UNIVERSAL DECLARATION OF HUMAN RIGHTS;
- EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS;
- INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS;
- INTERNATIONAL CONVENTION ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS;
- CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION;
- EUROPEAN COURT OF HUMAN RIGHTS;
- LAW NO. 08/L-020 ON INTERNATIONAL LEGAL COOPERATION IN CIVIL MATTERS;
- LAW NO. 08/L-028 ON PRIVATE INTERNATIONAL LAW.

**The specificity for members of the Serbian community in Kosovo.** In this regard is the fact that, as we mentioned, they have not studied most of this material at the university, except for a significant part of international law and, to some extent, certain segments of substantive civil law. Thus, they must undertake additional efforts and practically educate themselves from the beginning as part of their preparation for the bar exam. This does not necessarily have to be difficult, as the regulations studied at the university and those that make up the bar exam material are somewhat similar, but there are also significant differences. The sources for studying relevant regulations and for preparation are covered in more detail in the third section.

## Organization of the Bar Exam

**Exam deadlines.** The law stipulates that the Ministry of Justice sets the deadlines for taking the bar exam (Article 13), but in practice, the bar exam is usually held once or twice a year (rather than the three times per year stipulated by the law). The Ministry of Justice also determines the location of the exam and publishes a notice on its website, in a special section dedicated to the bar exam, at least 30 days before the exam is to take place. The notice of the time and place of the exam is published at least 10 days in advance (Article 8.2 of the Administrative Instruction).

**The written part of the bar exam** is held over two days, one for each subject (Article 11 of the Administrative Instruction), and it is taken collectively by all registered candidates (Article 16 of the Law). Candidates must bring a personal identification document with a photo (ID card or passport) and show it to an authorized person for identification purposes (Article 12 of the Administrative Instruction). Candidates are allowed to use texts (not comments) of relevant laws, and in practice, they are permitted to bring only a blue pen. All other materials such as notes, and electronic devices, are prohibited by law, and their use will result in the candidate's disqualification and the invalidation of their exam. The same applies to communication with other people during the exam, although technical questions directed at authorized persons may be tolerated. Leaving the exam room is only allowed in justified cases (Article 13.5 of the Administrative Instruction), as assessed by authorized persons on a case-by-case basis. The written part



lasts four hours, and the candidate must submit their written work and leave the exam room upon completion. If a candidate does not submit their written work within the four-hour period or withdraws from the exam, it will be considered that they have failed the exam.

**Material of the written work.** Regarding the content of the written part of the exam, the same article of the Administrative Instruction provides that the candidate's ability to prepare a lawsuit, response to a lawsuit, indictment, decision (judgment or ruling), or legal remedy against a decision is evaluated. The tasks in the written part consist of a factual situation, based on which one of these documents needs to be written.

**Assessment of written work.** The written part of the exam is graded with "passed" or "failed", where a "passed" grade can carry a minimum of 15 and a maximum of 25 points for each subject (Article 18 of the Law). The results of the written part of the exam are published on the Ministry of Justice's website, in the section dedicated to the bar exam, no later than 15 days after the exam is held.

**Oral part of the bar exam.** After passing the written part of the exam, the candidate proceeds to the oral part (Article 19 of the Law) at a designated time and place. Candidates take exams in individual subjects, which resemble university exams. Depending on the number of candidates and the examination method, the oral part of the exam can take some time, since it starts in the morning and usually ends in late afternoon, depending on the number of candidates. If a candidate withdraws or fails to attend the oral part of the exam without a valid reason, it will be considered that they have failed the exam (Article 20 of the Law). There is also the possibility of postponing the oral exam at the candidate's request in justified cases (Article 17.6 of the Administrative Instruction), as assessed by the Commission on a case-by-case basis. The practice indicates that such reasons may include health situations or other urgent situation that may cause a significant damage for a candidate if postponed. If allowed, the written part of the exam that the candidate passed remains valid until the next exam term.

**Evaluation of the oral part.** The oral part of the exam is graded with individual scores for each subject, where each subject can be graded with a minimum of 6 and a maximum of 10 points (Article 21 of the Law), similar to the traditional university grading system.

**Final Exam Result and Retake of Exam:** Upon receiving the final exam result, a candidate who is not satisfied can request a review (Article 25 of the Law), upon which the Commission will decide, which can be further challenged in an administrative dispute. On the other hand, a candidate who fails the oral part of the exam must retake it in the next exam term. If they fail to do so, it will be considered that they have failed the exam (Article 22 of the Law).

**Language and Exam Costs:** Finally, it should be noted that the bar exam can also be taken in Serbian, but the candidate must indicate this in their application (Article 4.3 of the Administrative Instruction). Additionally, there is a fee for the bar exam, but candidates in difficult economic and social situations can request an exemption from this fee (Article 9.4 of the Administrative Instruction).

#### REMINDER FOR CANDIDATES:


- If you are not a Kosovo citizen, you must have a residence permit;
- If you graduated from a university that is not accredited, you must have a notarized or verified diploma;
- Make sure you have the required experience;
- Take enough time to familiarize yourself with regulations not covered during your university studies;
- Ensure that you arrive on time at the designated place for the written and oral parts of the exam;
- For the written part of the exam, bring only a blue pen and the texts of laws if you consider them necessary;
- Keep in mind that the oral part of the exam can take a considerable amount of time.

# TIPS FOR APPLYING, PREPARING AND PASSING THE BAR EXAMINATION

**Website of the Ministry of Justice.** The procedure for registering for the bar exam is conducted before the Ministry of Justice. The Ministry of Justice website has a special section dedicated to the bar exam, where all relevant documents and information are published - a call for applications, notices of the time and place of the exam, etc. When a call for applications is published on this website, candidates follow the instructions in that call and apply. If their application is accepted, they take the exam as described in the previous section, at the time and place specified in the notice published on that website.

## Check-in

**Application notice.** The call is published no later than 30 days before the exam. Below is an example of the most recent call for applications from the Ministry of Justice website.



**Republika e Kosovës**  
 Republika Kosovo-Republic of Kosovo  
 Qeveria - Vlada - Government  
 Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice

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Na osnovu Zakona br. 08/L-033 o pravosudnom ispitu i člana 4 Administrativnog uputstva br. 06/2022 o načinu polaganja i programu pravosudnog ispita, Ministarstvo pravde objavljuje:

**OGLAS ZA PRIJAVU ZA POLAGANJE PRAVOSUDNOG ISPITA**

Pozivaju se svi zainteresovani kandidati koji žele da se prijave za polaganje pravosudnog ispita koji će se održati u aprilu 2024. godine, da:

Rok za podnošenje Zahteva i odgovarajuće dokumentacije za prijavu za pravosudni ispit počinje od 22. marta 2024. godine do 29. marta 2024. godine.

**I.** Uz zahtev za podnošenje pravosudnog ispita, koji se nalazi na zvaničnom sajtu Ministarstva pravde, morate priložiti overene dokumente kod Notara koji dokazuju da ispunjavate zakonske uslove iz člana 8. Zakona br. 08/L-033 o pravosudnom ispitu, kako sledi:

1. Zahtev za prijavu za pravosudni ispit, koji se može preuzeti sa ovog linka <https://md.rks-gov.net/page.aspx?id=1.43>.
2. Diplomu Pravnog fakulteta, koja mora biti Noterizovana kopija;
3. Potvrda o radnom/praktičnom iskustvu koja mora da dokaže tačno radno/praktično iskustvo i mora biti dostavljen original ili Noterizovana kopija;
4. Uverenje o državljanstvu Republike Kosova;
5. Kopiju lične karte;
6. Ako je kandidat završio fakultet u inostranstvu, onda kandidat mora da donese Noterizovanu diplomu i Odluku od Ministarstva obrazovanja, nauke i tehnologije Republike Kosova. Diploma i Odluka moraju se dostaviti u Noterizovanim kopijama.

7. Kandidat iz inostranstva koji je završio Pravni fakultet u bilo kojoj visokoškolskoj ustanovi akreditovanoj u Republici Kosova i prijavljuje se za pravosudni ispit, pored dokumenata koje treba podneti iz tačke 1. 2 i 3. ovog oglasa za prijavu za polaganje pravosudnog ispita, treba dostaviti i Noterizovanu kopiju boravišne dozvole u Republici Kosova.

Gore tražena i dostavljena dokumentacija za dozvoljavanje polaganja pravosudnog ispita se ne vraća kandidatima. Nepotpuna dokumentacija u skladu sa uslovima navedenim u oglasu je osnov da Komisija odbije Zahtev za dozvoljavanje polaganja pravosudnog ispita.

**II.** Kandidati koji su ostali na popravnom ispitu od roka Maj 2023. treba da podnesu SAMO ZAHTEV unutar ovog roka da se podvrgnu popravnom ispitu u aprilskom roku 2024. Zahtev za popravni ispit se može dobiti na ovom linku: <https://md.rks-gov.net/page.aspx?id=1.43>.

**III.** Kandidati kojima je prethodno odobren zahtev za polaganje pravosudnog ispita, a koji žele da polažu u ovom roku, treba da podnesu SAMO ZAHTEV za polaganje pravosudnog ispita, koji se može dobiti na ovom linku: <https://md.rks-gov.net/page.aspx?id=1.43>. Zahtev mora sadržati lične podatke, broj i datum Odluke kojim mu je omogućen pristup pravosudnom ispitu i godinu u kojoj mu je dozvoljeno polaganje pravosudnog ispita.

Zahtev za polaganje pravosudnog ispita podnosi se Ministarstvu pravde, bivša zgrada Rilindja, prizemlje, Arhiva Ministarstva pravde, Priština, Republika Kosova, svakog radnog dana, od 08:00 do 16:00 časova, ili putem pošte.

Odlukom se kandidatu dozvoljava polaganje pravosudnog ispita. O Odluci, datumu, vremenu i mestu održavanja pismenog i usmenog ispita kandidati će biti obavješteni putem E-MAIL ADRESE, koju molimo da jasno i tačno označite prilikom prijave, pošto će se komunikacija vršiti isključivo putem e-maila.

Svako obaveštenje o pravosudnom ispitu koje ima veze sa objavljivanjem rezultata pravosudnog ispita biće objavljeno na zvaničnom sajtu Ministarstva pravde samo sa brojem protokola koji ćete prihvatiti prilikom prijave za Pravosudni ispit u Arhivi Ministarstva pravde. Zato vas molimo da prihvatite broj protokola i sačuvate ga kako biste identifikovali svoj rezultat pravosudnog ispita kada će biti objavljen na zvaničnom sajtu Ministarstva pravde.

Za detaljnije informacije možete posetiti zvaničnu internet stranicu Ministarstva pravde <https://md.rks-gov.net>

**Submitting the Application.** After the call is published, potential candidates apply to take the exam (Article 12 of the Law). The content of the application is further regulated by Article 5 of the Administrative Instructions, according to which it must contain the candidate's details (name, father's name, surname, date and place of birth, position, and job). Additionally, the application should state the language in which the candidate wishes to take the exam. The Commission determines whether the candidate meets the requirements by decision, against which an appeal can be lodged with the Ministry of Justice, and against the decision of the Ministry, an administrative dispute can be initiated. An example of the most recent application form from the Ministry of Justice website is provided below.

**Documentation of experience.** The remaining part of the accompanying documentation depends on where the candidate obtained the required experience, i.e. internship, and may include formalities before various

institutions such as the Bar Association, as well as additional notarization of documents. It should be noted here that it is a necessary condition that the work experience has been recorded, that is, that the internship or work experience has been reported, regardless of whether it is carried out in judicial institutions, law offices, private companies or non-governmental organizations. Usually, a certificate from the employer is not enough if the employer has not registered the trainee or employee.

### Preparation

**Preparation tips** are relatively simple, as preparation itself is highly individual - try not to overload yourself with too many sources for preparation. Start with legal sources from the Administrative Instructions (see the first section), then supplement them with some of the manuals from the next section. Depending on your experience, make sure to familiarize yourself with practice, which is crucial for passing the written part, starting from what is examined in the written part of the exam (see the first section). In that sense, at the end of this manual, some examples of tasks and acts are attached to help you with that, but it is advisable to obtain more, which can also be helpful from some of the preparation sources listed in the next section. Candidates who do not have practical experience in the application of procedural law often find it useful to attend trials, but in the context of using the official language in Kosovo for members of the Serbian community, this has practical value only for trials conducted in the Serbian language.

Also, the authors of this manual suggest working in groups to share knowledge and experience, and training organized by non-governmental organizations (e.g., NGO ACDC) or international organizations and missions in Kosovo, such as the OSCE Mission in Kosovo, can be particularly helpful. In this regard, exchanging experiences with young lawyers who have passed the bar exam is of particular importance, as well as consulting with young lawyers and judges in terms of preparing for the practical, i.e., written part of the exam.

### Taking the Exam

**Exam Tips.** In this part, the only advice we can give is for the candidate to stay within the prescribed limits on one hand, and within their own capacities on the other. For the written part, it is ideal to print your own compendium with texts of relevant laws, which is allowed by Article 16, in a format that suits the candidate best. For the oral part, try to be as prepared and rested as possible, as this part of the exam can take time. In that sense, we suggest thorough preparation for the oral part of the exam, which should start in time, as well as a focus on learning with understanding, consulting with other candidates. We also suggest working in groups where simulations of oral exams can be organized, through questioning by lawyers and other legal experts.

#### **REMINDER FOR CANDIDATES:**

- Regularly monitor the website of the Ministry of Justice - the section dedicated to the bar exam;
- Verify your diploma in time, if necessary, i.e., do not wait for the Ministry of Justice website to publish an advertisement, but do it immediately after graduation and issuance of the diploma;
- Get documentation proving your experience on time.



# SOURCES

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## Manuals

There are three relevant manuals we can recommend here:

- The official manual published on the Ministry of Justice website - the part dedicated to the bar exam, from August 2015. It is a classic manual format for the bar exam, where the material is summarized. Please note, however, since it is almost ten years old, it is necessary to correct it with regulations that have been changed or enacted in the meantime, based on legal sources from the Administrative Instructions (see the first section);
- Practical instructions for taking the bar exam with a collection of legal regulations of the Association of Serbian Lawyers of Kosovo from 2013, in two books. This is a much more practical manual, but it is even older than the official one. However, it can also be extremely useful in combination with legal sources from the Administrative Instructions;
- Previous manual of the NGO ACDC, available on the website of this NGO, which can be used in combination with this, as it contains an extremely useful overview of exam questions, which will significantly facilitate the use of all materials.

## Examples

In terms of examples, the following publication stands out:

- Manual for judges on criminal procedure, and Manual for judges in civil procedure, both issued by the Kosovo Judicial Institute in 2015. Both contain useful materials for preparing the written part. In addition, in the absence of a comprehensive practice manual, they are the most referenced material for this area.

## Access to legal sources

The relevant candidate can find the legal sources from the Administrative Instructions listed in the first section in the Serbian language versions in the following ways:

- On the website of the Kosovo Assembly - this source, although the most comprehensive (besides regulations, it also contains a regularly updated overview of all adopted laws), is quite impractical since it does not contain consolidated versions of relevant laws, but only individual original versions, as well as amendments;
- On the website of the Official Gazette of Kosovo - the same applies to this source as to the Assembly;
- On the websites of relevant ministries, where (although not always) consolidated versions of relevant laws can be found;
- Material for the subject of International (private and public) law and European Union law can mostly be found on the websites of the European Union, the Council of Europe, and the UN.



## APPENDIX 1 - Examples of tasks

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### 1.1. The indictment

Mirjana D. is employed as a cashier in one of the convenience stores in Kralja Petra I Street in Kosovska Mitrovica. In that self-service, the daily purchases are taken over by the manager of the self-service at the end of the shift and the money is handed over to the bank, and sometimes directly to the owner of the shop.

On November 25, 2019, at the beginning of the afternoon shift, the foreman told Mirjana D. that at the end of the shift she takes the money from the daily market and takes it to the owner of the convenience store, because he has to leave for Belgrade in the afternoon.

Mirjana D. Followed the instructions of the manager and at 9:00 p.m. that day made a list of the daily market, took the money, put it in her purse, locked the self-service and went to the apartment of the owner who lives in the building "Vampirusha" in K. Mitrovica, less than a kilometer from the self-service. It was cold and few people were on the street. While she was walking on the sidewalk, two people ran out of one of the entrances of the "Beryl Building" and attacked her. One grabbed her left hand, and the other her right hand, where she was holding a purse with money. They tried to steal her purse. Mirjana D. resisted and did not drop her purse. She started calling for help. The purse strap snapped and the purse with the money fell to the ground. At that moment, several guys came out of the neighboring cafe and ran towards Mirjana. When they saw this, the attackers ran away, failing to take the bag with the money.

Mirjana D. stated to the police that she recognized one of the attackers, the one who grabbed her right hand in which she was holding a purse with money. It was Milan P. who sells cigarettes on the street near the convenience store where she works. She was sure it was him.

Milan P. was arrested and admitted that together with his friend Zoran J. He attacked Mirjana with the intention of taking her bag with money.

Task : to compile the text of the indictment, with the following information: which criminal offense is in question (it is not necessary to specify the articles of the law), describe the manner of the commission of the crime, the place and time of the commission of the crime, and state all other circumstances of this event that you believe should be included in the indictments.



## 1.2. The indictment

1. Dragan Torbica is a civil engineer by profession and is employed at the Construction Company "Građevinar" in northern K. Mitrovica.

2. He currently works as a manager of two construction sites of this company, one in northern K. Mitrovica, and the other in Leposavic. In K. A sports hall is being built in Mitrovica, and a residential building in Leposavic. He travels daily on route K. Mitrovica - Leposavić, visits both construction sites, controls the dynamics and quality of works, and is in constant contact with foremen and workers.

3. Very often he was forced to hold short working meetings with foremen, masons and carpenters in the workers' barracks at both construction sites, because he noticed that the quality of the works occasionally deviated from the standard.

4. He received an order from the director of the company to speed up the works on both construction sites, because both construction contracts were amended in the sense that the deadline for the completion of the works was shortened by one month, so the buildings must be completed by May 31, 2021.

4. Around February 1, 2021, Dragan Torbica experienced health issues in the form of weakness and elevated temperature. He contacted a doctor who examined him and referred him to be tested for "COVID-19". The next day, the test showed that he was positive for this virus. Although he was notified of the test result, Dragan Torbica continued to work as usual until February 6, 2021, visited both construction sites, and organized meetings with managers and workers, even though he was feeling worse and worse. He was constantly thinking about the shortened deadline for completing the work. On the evening of March 6, he was placed in the Clinical Hospital Center Mitrovica, with a diagnosis of bilateral pneumonia, in poor health. He spent 20 days in treatment.

5. In the period from March 5 to March 11, 2021, 11 workers of GP "Građevinar", 5 in Leposavic, and 6 in K., were infected with the "COVID-19" virus. Mitrovica. All of them were in multiple contact with Dragan Torbica. Three workers had a very severe clinical picture and according to the doctor's reports, after the treatment was completed, their state of health was severely impaired, with possible permanent consequences for their health. As of September 1, 2020, the order of the Ministry of Health on the mandatory isolation of persons infected with the "COVID-19" virus is in force. All the above data were collected in the investigation. Torbica defended that he did not know he was infected.

**Task:** to draft the text of the indictment. You must use CCK Criminal Code of Kosovo and Criminal Procedure Code of Kosovo. A little help at the beginning - it is a criminal offense from Chapter XXII of the Criminal Code - "Criminal offenses against public health". You can write the defendant's personal information at your own discretion. The indictment must contain all elements from Article 244 of the Criminal Procedure Code of Kosovo. For your convenience, I am submitting a copy of the indictment that was used during an earlier seminar.



### 1.3. Complaint

Basic Court of Mitrovica

C. no. 734/2020

18.03.2021

Mitrovica

#### IN THE NAME OF THE PEOPLE

**BASIC COURT OF MITROVICA - General Department**, Judge Marko Marković, with Recorder Suzana Ilić, in the criminal case against defendant Zoran Stanić from Zvečan, for the criminal offense of Threatening a candidate from Article 208, paragraph 3, in connection with paragraph 1 of the Criminal Code, according to the indictment of the Basic Prosecutor's Office in Mitrovica Kt. no. 1215/20 of 20.10.2020. year, after the main hearing, which was attended by DT Zorica Pešić, the defendant Zoran Stanić, and his defense attorney Mile Čović, a lawyer from Leposavic, on March 18, 2021, he brought and publicly announced

#### THE VERDICT

**THE ACCUSED Zoran Stanić**, father Gojko and mother Milena, maiden name Sekulić, born 21.12.1995 in the village of Brnjak, Municipality of Zubin Potok, now lives in Zvečan, Zvečanska Street 56, driver, without permanent employment, unmarried, graduated from high school for mechanical engineering, poor financial condition, previously convicted for the crime of light bodily harm, no criminal charges are pending against him proceeding for another crime, defending himself from liberty,

#### HE'S GUILTY

**Because** on 05.09.2020 around 10:30 a.m. in Mitrovica, in front of the building of the "Miodrag Petrović," the way that at the moment when the injured Jovanović was leaving the school building after voting, the defendant, who was on the sidewalk across the street from the school, shouted: "Dragan, shame on you, you have always been a coward and a traitor, we know very well why you ran, you will pay dearly for it, you will regret coming to these elections",

**by which** he committed the criminal offense of Threatening a candidate from Article 208, paragraph 3 in connection with Paragraph 1 of the Criminal Code,

so the court, based on Articles 1, 4, 7, 17, 21, 41, 46 and 73 of the Criminal Code and Articles 359, 360, 361, 365, 366 and 495 of the Criminal Code,

#### AND IS IMPOSED A

**PRISON SENTENCE** for the duration of one year and 3 (three) months, which he will serve after the finality of this judgment.

The defendant undertakes to pay 100 euros for the costs of the criminal proceedings, 50 euros for the court fee and 50 euros to the fund for compensation for victims of criminal acts, all within 15 days from the date of finality of this verdict.

The injured Dragan Jovanović is referred to litigation to achieve the property legal relationship.

#### INSTEAD OF REASONING

- The allegations from the indictment were confirmed at the main trial by the victim Jovanović and three other witnesses: Ž. Panić, I. Galjak and P. Shabani who were present, at the scene of the event. They all confirmed that the defendant Stanić uttered the incriminating words and that he directed them to Jovanović and that they heard and saw it well, because they were in the



immediate vicinity, witnesses 5-6 meters from the defendant, and the injured party 10-15 meters away.

- The defendant did not want to present a defense and defended himself by remaining silent.
- Based on the testimony of the witness and the injured party, the court concluded that the guilt of the defendant Stanić was reliably proven.
- The court found two aggravating circumstances on the defendant's side - previous convictions and the increase in this type of criminal offenses in the area of the OS in Mitrovica at the time of the elections. Mitigating circumstance – the defendant is a younger person.

**TASK - write an appeal against this judgment. Mandatory use of the Criminal Code of Kosovo, and the Criminal Procedure Code of Kosovo. The criminal act of Threatening a candidate falls under Chapter XVIII of the CCK the Criminal Code of Kosovo - criminal acts against electoral rights.**



## APPENDIX 2 - Examples of acts

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### 2.1. Example of indictment

**BASIC PUBLIC PROSECUTOR'S OFFICE**

**Kt. no. 215/13**

**11/11/2014**

**MITROVICA**

**BASIC COURT**

**MITROVICA**

Based on Article 240, paragraph 1, Article 241, paragraph 1 and Article 242, paragraph 1 of the Code of Criminal Procedure, I raise,

#### **Indictment**

**AGAINST: SRĐAN ĐURIĆ**, from father Todor and mother Simona, nee Leković, born on September 17, 1980. in Prizren, without a permanent residence, currently resides in Mitrovica, completed elementary school and a construction worker course, construction worker by profession, unmarried, no children, poor financial situation, no previous convictions, no other criminal proceedings are pending against him, in custody since 10.06.2014,

**BECAUSE:** in the early morning hours of June 10, 2014, in the settlement "Brđani" in Mitrovica, in the workers' barracks of the Construction Company "Ibar", he took the life of his girlfriend Slađana L. from Kraljevo in a cruel and insidious manner, in such a way that on the previous day, June 9, 2014, in the afternoon and evening in the company of the now deceased Slađana L. and a group of workers of this construction company, he drank a large amount of alcohol, after which, after midnight, he was completely drunk, together with Slađana L. . went to his room in the same barracks, and later during the night he gave Slađana, who was sleeping in the same bed with him, 37 blows to the body, of which 27 to the chest, 7 to the neck, and 3 to the stomach, of which at least four stab wounds were fatal because the victim was stabbed directly in the heart, so Slađana L. lost her life as a result of these injuries,

- by which he committed the crime of **aggravated murder from Article 179, point 1.4. KZ**,

Therefore,

#### **I propose**

That a main, public hearing be scheduled and held before this court, to which the following should be invited:

**a)** Basic public prosecutor of Mitrovica,

**b)** the defendant Srđan Đurić, who is in the detention center in Mitrovica,

**c)** witnesses: Sretena Žuja and Moma Čutura, employees of GP "Ibar" from Mitrovica and Biljana Jovanović from Leposavic, Street "24. November" number 16. i

**c)** the defence lawyer of the defendant, Miroslav Lisica, a lawyer in Mitrovica,

**II** that in the evidentiary proceedings the evidence be presented by hearing the proposed witnesses and the defendant Srđan Đurić,



III to present the evidence in the evidentiary proceedings by reading the minutes of the investigation of the BPO in Mitrovica Kri. no. 22/14 from 10.06.2014. of the year, extracts from the expert report of the North Police Administration dated 06.10.2014. year, Official notes of PS Mitrovica Sever from 12.06.2014. year and extract from CE in the name of the defendant Đurić from 17.08.2014.

IV that the court, after the public, main hearing, declares the defendant Srđan Đurić guilty and sentences him according to the law.

### Reasoning

1. The existence of the criminal offense and the criminal liability of the defendant Srđan Đurić was established on the basis of the presented evidence.

2. During the preliminary proceedings, the defendant defended himself in such a way that he declared that he did not remember anything that happened on June 10, 2014 in the early hours of the morning and under what circumstances Slađana L. lost her life. However, during the investigation, the factual situation described in the sentence of this indictment was established.

3. Existing evidence confirms that the defendant Srđan Đurić was in a love relationship with Slađana L., which began about a month before the day of the murder. They started living together and used a room in a barrack for the accommodation of GP "Ibar" workers in the "Brđani" settlement, which the defendant received from this company.

4. On June 9, 2014, in the afternoon hours, a group of workers of GP "Ibar" gathered in the workers' barrack at the construction site in the settlement "Brđani". They started consuming alcohol, and among them was the defendant Srđan Đurić, who was drinking strong liquor, grape brandy. Around 10:00 p.m., they were joined by Slađana L., who also consumed alcohol.

5. The defendant Đurić drank a large amount of alcohol and went to his room around midnight, and Slađana L went with him. During the night, at an undetermined time, the defendant took his kitchen knife, blade length 16 cm and now the deceased, who was lying on the bed next to him and sleeping and was powerless to defend himself, gave 37 stabs to the body: 27 to the chest, 7 to the neck, and 3 to the stomach. According to the autopsy report, the victim received at least 4 stab wounds directly to the heart and those injuries caused instant death. The wounds are 5-15 cm deep and were inflicted by the application of physical force, stabbing with a sharp and pointed object that deeply penetrated the victim's body.

6. From the doctor's report, it is established that the defendant is ill from alcoholism and that at the time of the commission of the criminal offense he had about 3 per mille of alcohol in his system, and it was established that at that time his ability to understand the significance of the act and manage his actions was reduced to the degree to significantly reduced sanity.

7. This factual situation was established on the basis of the statements of witnesses Sreten Žuja, Moma Čutura and Biljana Jovanović, and also from the statement of the defendant himself. Witnesses Žujo and Čutura confirmed that the defendant and the victim were present in the room of the workers' barracks where a group of workers consumed alcohol. From their statements, it is established that Slađana L. and the defendant lived together, and also that they left the room together that night where alcohol was consumed. And from the defendant's statement, it is reliably established that he and the victim lived together and that they used the room where the murder took place. Witness Biljana Jovanović also confirmed that the defendant lived together with the victim in a barracks room, as well as that he previously had outbursts of jealousy towards Slađana L. and suspected him of infidelity.

8. The defendant's defense that he does not remember anything contradicts the collected evidence and is aimed at avoiding criminal responsibility.

9. The murder was undoubtedly cruel, because, due to the way it was carried out, it was accompanied by severe physical suffering of the victim, and it was also carried out in an insidious way, when the victim was asleep and had no possibility to defend herself. - **Public Attorney Jovan Jovanovic**



## 2.2. Example of a complaint

C. no. 721/2017

BASIC COURT OF MITROVICA

General Department

MITROVICA

FOR THE

COURT OF APPEALS

Department in Mitrovica

MITROVICA

Against the judgment of the Basic Court of Mitrovica K. no. 721/2017 of 02.07.2020 year, as the defense attorney of the defendant [REDACTED], timely, on the basis of Article 380, paragraph 1 of the CPC (Criminal Procedure Code of Kosovo), I declare

### COMPLAINT

**Due to: significant violation of the provisions of the criminal procedure,**

**wrongly established factual situation and**

**decisions on punishment and costs of the procedure**

### Reasoning

1. By the aforementioned verdict of the Basic Court in Mitrovica, the defendant [REDACTED] was found guilty of the criminal offense of Endangering public traffic from Article 297, paragraph 5 of the Criminal Procedure Code of Kosovo, and was sentenced to 9 (nine) months in prison.

2. This judgment was made in significant violation of the provisions of the criminal procedure and the violation of the criminal law, a wrongly established factual situation, which is why the decision on the penalty and the costs of the criminal procedure is not correct.

#### **a) A significant violation of the provisions of the criminal procedure**

3. The first-instance verdict was affected by a significant violation of the provisions of the criminal procedure in the sense of Article 384, paragraph 2, item 1 of the CPC (Criminal Procedure Code of Kosovo), because the first-instance court improperly and to the detriment of the defendant applied Article 361, paragraph 2 of the CPC, and this had an impact on the decision about guilt. The first-instance court did not properly assess all the facts of this case, and the reasons for the decisive facts are not completely clear.

4. Namely, the basic issue and decisive fact for this criminal case is the issue of contribution to the occurrence of the traffic accident on the part of the accused motorcycle driver and the now deceased pedestrian. The first-instance court resolved this very issue in an unclear manner, which contributed to the impugned verdict being unclear and flawed. Three very important circumstances would give an answer to the questions of who contributed to the occurrence of the traffic accident and whether it is true that the omissions were mutual and if so in what proportion, the court failed to determine in a clear way, namely:

- motorcycle speed,
- the distance between the motorcycle and the pedestrian at the moment when the motorcyclist saw the pedestrian on the roadway i
- the proportion of fault of both participants in a traffic accident.

5. As for the first circumstance, the court relied on the very problematic report of a traffic expert who determined that the motorcycle was moving at a speed of 55 kilometers per hour at the critical moment. Another important circumstance - the distance between the motorcycle and the pedestrian at the moment



when the pedestrian stepped onto the roadway was determined by the court through an equally vague, arbitrary and problematic opinion of the expert, finding that it was 30 m. And the third circumstance, the proportion of guilt of both participants: 70% on the side of the motorcycle driver, and 30% on the side of the pedestrian, the court also established on the basis of the completely arbitrary statement of the expert at the main trial, which in no way has any basis in the facts of this case.

6. Regarding the alleged speed of the motorcycle of 55 km/h, the court found that this finding is *logical, justified and based on standards and acceptable formulas in the field of traffic...* This finding is anything but logical and justified. Namely, in the written report and opinion, the expert wrote verbatim, quote p. 4. findings, point 3.7.: *"it is impossible to determine the speed of movement of the motorcycle-vehicle at the moment of impact..."* . But right after that, *based on the analysis of the case,*" the expert determined that the speed of the motorcycle was exactly 55 km/h.

7. The same applies to the distance of 30 meters between the motorcycle and the pedestrian at the moment when the pedestrian entered the roadway. In the text of the findings and opinion, the expert did not provide any information on the basis of which we could determine how he came to this information. At the main trial, when asked on the basis of which data he calculated that the distance was really 30 meters, the expert simply said, quote: *"I determined that based on scientific tables."* He omitted to explain what the scientific tables were and how he determined the distance between two road users with their help.

8. Also, although he did not write a single word about it in the text of the findings and opinion, at the main hearing the expert in the field of traffic "without batting an eyelid" said that the mistakes of the motorcycle driver contributed 70% to the occurrence of the accident, while the mistakes of pedestrians accounted for 30% . The expert made all of these findings, without even providing a single exact piece of information that would confirm that this assessment is based on facts.

9. Therefore, it is evident that all the decisive facts of this case were established by the first instance court on the basis of a very flawed, incomplete and unclear finding and opinion of experts, which is why the impugned judgment is affected by the mentioned essential violation of the provisions of the criminal procedure.

#### **b) Wrongly established factual situation**

10. The factual situation was wrongly established in the majority of the judgment. It has already been explained that the findings of the first-instance court on the speed of movement of the motorcycle, the distance between the motorcycle and the pedestrian and the percentage of fault of both participants in the accident (70% - 30%) were given completely arbitrarily and incorrectly. For none of the most important questions about the causes of the accident and the omissions of the participants (speed of movement, distance, etc.), the first-instance court did not provide exact data, or an even acceptable explanation.

11. How is it possible that numerous pedestrian failures in this traffic situation, which the court also found, are almost ignored:

- crossing the street outside the pedestrian crossing,
- complete lack of attention before moving to cross the street,
- avoiding to miss a moving motorcycle,
- entering the road immediately in front of a moving vehicle i
- indecisive crossing the road at the moment when he was already on the road (moving forward, backward...).

12. In this way, the now deceased pedestrian violated a whole series of traffic regulations, namely: Article 146, paragraph 3, Article 147, paragraph 1, point a), Article 147, paragraph 1, point c) of the Law on Road Traffic Safety. On the other hand, the accused driver can only be charged with the famous Article 54 of the ZOBDS, which hypothetically prescribes that *the driver must drive at such a speed that he can stop the vehicle in front of any obstacle...*



**13.** What about the fact that the damage to the motorcycle is minor (only the windshield plastic is cracked). Does that indicate a speed of 55 km/h, or a significantly lower speed?

**14.** Therefore, the first-instance court promoted a flawed and unclear traffic expert report as the only truth about how this traffic accident happened.

**c) Decision on penalty**

**15.** A prison sentence of nine months is too severe. First of all, the court completely misinterpreted the article 67, paragraph 4 of the PKSK, which it referred to. According to this norm, the sentence of at least one year can be reduced *to three months of imprisonment*, and not *to three months of imprisonment*, as considered by the first-instance court.

**16.** the only thing correctly found by the first instance court is the fact that there is not a single aggravating circumstance on the part of the defendant [REDACTED]

- Earlier, and impunity after this event,
  - The incident happened more than 11 years ago,
  - At the time the crime was committed, the defendant was a minor, only 20 years old.
  - He was not under the influence of alcohol.
  - He had passed the "A" category driving test,
  - He first helped the injured pedestrian,
  - In the meantime, he started a family, he is the father of one minor child,
  - And the pedestrian significantly contributed to the accident,
  - Relations between both families were never disturbed,
  - It is a negligent act.
- For these reasons,

**I propose**

That the Court of Appeals - Division in Mitrovica accept this appeal and the judgment of the Basic Court of Mitrovica - General Division C. no. 721/2017 of 02.07.2020 is changed in such a way that:

- that the defendant [REDACTED] be given a suspended sentence for the criminal offense for which he was accused, the sentence of which is possible on the basis of Article 44, paragraph 1 of the Criminal Code, or Article 49, paragraph 2 of the Criminal Code, with a prior mitigation of the sentence, which the first-instance court did,
- to be sentenced to imprisonment for six months, which will be replaced with a fine by applying Article 44, paragraph 1 of the Criminal Code, with his consent, or
- to cancel the contested judgment and return the case to the first instance court for retrial.

**In Mitrovica,**

**08.09.2020**

**Defense Lawyer**

\_\_\_\_\_  
**Esq, Marko Markovic**



## 2.3. Example of a Complaint

**C. no. 123/2018**

**BASIC COURT OF MITROVICA**

**General Department**

**MITROVICA**

**FOR THE**

**COURT OF APPEALS**

**Division in North Mitrovica**

**MITROVICA**

Against the judgment of the Basic Court of Mitrovica C. no. 123/2018 of 16.12.2020. year, as the defender of the defendant **MM** from Mitrovica, in a timely manner, based on Article 380, paragraph 1 of the Criminal Procedure Code of Kosovo, I hereby file

### **AN APPEAL**

**Due to: significant violation of the provisions of the criminal procedure,**

**violations of the criminal code,**

**wrongly established factual situation and**

**decisions on punishment and costs of the procedure**

### **Reasoning**

1. By the aforementioned verdict of the Basic Court of Mitrovica, the defendant M.M. was declared guilty of the criminal offense of child abuse or abandonment from Article 250, paragraph 1 of the Criminal Code of the Republic of Kosovo, and she was sentenced to eight months in prison, which will not be suspended. be executed if the defendant does not commit another criminal offense during the two-year probation period.

2. This judgment was made in significant violation of the provisions of the criminal procedure and the violation of the criminal law, and the factual situation was incorrectly established, which is why the decision on the penalty and the costs of the criminal procedure is not correct.

#### **b) A significant violation of the provisions of the criminal procedure**

3. The first-instance verdict was affected by a significant violation of the provisions of the criminal procedure in the sense of Article 384, paragraph 2, item 1 of the CPC (Criminal Procedure Code of Kosovo), because the first-instance court improperly and to the detriment of the defendant applied Article 361, paragraph 2 of the CPC, and this had an impact on the decision about guilt. The first-instance court failed to declare all decisive facts of this case, it did not appreciate some in a proper way, and the reasons for the decisive facts given in the challenged verdict are not completely clear.

4. Namely, the two basic questions and decisive facts for this criminal case are:

- what concrete evidence confirms the finding of the first instance court that the defendant caused slight physical injury to the child i
- Does the defendant, as a kindergarten teacher, belong to the group of persons who can commit the criminal offense of child abuse or abandonment from Article 250, paragraph 1 of the Criminal Code of Kosovo?

5. The answer to the first question was presented in the first-instance judgment in an incomplete and unclear manner, and the answer to the second, the most important question and decisive fact for this criminal case, is not in the judgment. When it comes to the court's belief that the defendant slapped the



girl, the court relies on the testimony of her parents. The statements of other witnesses - employees of the daycare center were ignored, with the explanation that they were not eyewitnesses to the event, although neither were the child's parents.

**c) Violation of the Criminal Code**

6. The first-instance verdict violated the criminal law to the detriment of the defendant, in the sense of Article 385, point 1.1. Criminal Procedure Code of Kosovo, because the crime for which she was declared guilty is not a criminal offense. Namely, by Article 250, paragraph 1 of the Criminal Code, four categories of persons can commit this crime:

- a. the child's parent,
- b. the child's adoptive parent
- c. guardian of the child and
- d. other persons who have parental authority.

7. In the specific case, the defendant, as a kindergarten teacher, does not belong to any of the categories of persons listed in Article 250, paragraph 1 of the Criminal Code of Kosovo. It is more than clear that in this case, she is not a parent, adoptive parent, guardian, or any other person who would have a parental capacity toward the child whom it is claimed she slapped. In the specific case, she was taking care of the child as part of her work duties at the kindergarten. This cannot, in any case, be equated with guardianship as an institution of family law, which is based on the decision of the competent guardianship body. Therefore, the defendant could not commit this criminal act for which she was found guilty and sentenced.

**d) Wrongly established factual situation**

8. As already stated, the factual situation was wrongly determined by the first-instance court. The statements of witnesses - employees of the kindergarten were disqualified with the explanation that they were not eyewitnesses to the event and that they testified about what happened after the event. On the other hand, the statements of the child's parents were accepted, *"because they agreed with each other in essential elements"*, although they were not eyewitnesses to the event, and they also testified about what happened after the disputed situation. The surveillance camera footage, which is mentioned several times in the explanation of the verdict, also does not show anything of the disputed event, because the cameras are installed in the corridor of the kindergarten, and there are no cameras in the children's room, where everything happened. And the otherwise chaotic finding and opinion of the medical expert is only mentioned in the explanation, without a single word about what the expert determined.

9. Instead of presenting the assessment of each piece of evidence individually and in relation to other evidence in the first-instance verdict and drawing the necessary conclusions based on such an assessment, such evidence is only authorized (witness testimony), while the other evidence is only listed, without analysis and assessment (material evidence and expert report). That is not enough to be considered that the factual situation has been correctly established and that the court's conviction of guilt has been confirmed by the evidence.

10. On the other hand, the court's finding that the defendant allegedly *"expressed anger towards the child"* and that this was the motive for committing the crime is completely incorrect and is not supported by any evidence. First of all, it is not indicated on the basis of which the court determined that the defendant exhibited this behavior. When, where and in what way did she express it towards the child. This was not stated in the explanation of the verdict. All heard witnesses, four of them, who worked in the same institution unanimously stated that she had a good attitude towards children, their parents, colleagues at work and towards her work duties. Also, all four witnesses said that they had never observed such behavior in the defendant, especially not towards children.

**d) Decision on penalty**

11. When the verdict is affected by a significant violation of the provisions of the criminal procedure, a violation of the criminal law and is based on an incorrectly established factual situation, it is clear that the decision on the penalty and costs of the criminal procedure is not correct either.



For these reasons,

**I propose**

That the Court of Appeals - Division in Mitrovica accept this appeal and the judgment of the Basic Court in Mitrovica - General Division C. no. 123/2018 of 16.12.2020. year, on the basis of Article 364, item 1.1. Criminal Procedure Code of Kosovo, change it in such a way that it will acquit the accused M.M. of the charges.

**In Mitrovica,**

**26.01.2021**

**Defense Lawyer**

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**Mr. Milan Milanović**

