



# Sixth Expert Forum on Criminal Justice for Central Asia

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Tashkent, Uzbekistan

Report

Organization for Security and Co-operation in Europe  
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*Participants to the Sixth Expert Forum listen to welcoming remarks by the speakers. (ODIHR)*

## I. INTRODUCTION AND OUTLOOK

Criminal justice reforms in Central Asia continue at a steady pace. Uzbekistan is introducing major legislative changes aimed to democratize and liberalize its criminal justice system. Kazakhstan has recently adopted new Criminal, Criminal Procedure, and Criminal Executive Codes, and is currently adjusting them to the implementation. Kyrgyzstan will soon adopt new Criminal, Criminal Procedure and Criminal Executive Codes, and complete its reform on the reclassification of offences.<sup>1</sup> Turkmenistan has just adopted a new Constitution which introduces a number of provisions related to criminal justice system.<sup>2</sup>

Amid these completed and ongoing reforms, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) organized the Sixth Expert Forum on Criminal Justice for Central Asia on 16-18 November 2016 in Tashkent, Uzbekistan. In this endeavour, ODIHR could count on the partnership and support of the OSCE Field Operations in Central Asia, particularly the Project Co-ordinator in Uzbekistan (PCUz), the United Nations Office on Drugs and Crime (UNODC), and on the contribution of Penal Reform International and the International Commission of Jurists.

The Expert Forum on Criminal Justice for Central Asia has been organized by ODIHR since 2008 in the framework of its Rule of Law program. The Expert Forum was first organized in Zerenda, Kazakhstan, in 2008. It was conducted afterwards in Issyk-Kul, Kyrgyzstan, in 2009, in Dushanbe, Tajikistan, in 2010, in Almaty, Kazakhstan, in 2012, and in Bishkek, Kyrgyzstan, in 2014. Over time, the Expert Forum became a leading platform for professional discussion among prominent experts and law- and policy-makers in the countries of Central Asia and other parts of the OSCE region on criminal justice and judicial reform, human rights and fair

<sup>1</sup> The codes mentioned for Kyrgyzstan were been adopted in January 2017 and will enter into force on 1 January 2019. All codes are available at <http://www.adviser.kg/>.

<sup>2</sup> ODIHR has prepared a legal opinion on the draft Constitution of Turkmenistan, see: OSCE/ODIHR, Comments on the Draft Constitution of Turkmenistan, Warsaw, 21 July 2016, available at: <http://www.legislationline.org/documents/id/20014>.

trial rights as well as the harmonization of national legislation with relevant international standards and the OSCE commitments.

Over the three days of the Expert Forum, 97 representatives (38 women and 59 men) of the judiciary, prosecution, police, attorneys, academics and civil society actors from Uzbekistan, Kazakhstan, Kyrgyzstan, and Turkmenistan discussed recent reforms, trends and challenges in the criminal justice sector in Central Asia and other parts of the OSCE region. International and regional experts on criminal justice reform from Estonia, the Netherlands, Norway, the Russian Federation, Ukraine, the United Kingdom, and the United States of America, provided examples of practices and experiences from beyond the Central Asian region. All the presentations from the experts and latest publications of partner organizations were made available to participants by flashcards and distribution of printed material.

In their opening remarks, Mr Shayunus Gaziev, Chairperson of the Supreme Court of Uzbekistan, Mr Michael Link, Director of ODIHR (through video statement), Mrs Svetlana Artikova, Deputy Speaker of the Senate of the Oliy Mazhlis of Uzbekistan, Ms Ashita Mittal, UNODC Regional Representative for Central Asia, Mr Sanzhar Khamidullaev, Deputy Ombudsperson of Uzbekistan and

Ambassador John MacGregor, OSCE Project Co-ordinator in Uzbekistan, stressed the importance of effective criminal justice systems in line with human rights, rule of law and judicial independence.

In 2016, participants discussed the following issues during the five plenary sessions and four working groups: sentencing policies; institutional and functional reform of the penitentiary systems; plea bargaining and other abbreviated procedures; reform of post-Soviet classification of offences; modernization of pre-trial investigation in criminal proceedings; alternatives to pre-trial detention during criminal proceedings; investigation, prosecution and adjudication of drug-related offences; prosecution of terrorism-related offences based on a human rights approach; and the use of ICT in criminal court proceedings. In addition to these sessions, the Sixth Expert Forum introduced for the first time side events to give participants additional opportunities to debate on current topics in criminal justice. Side events were organized on a voluntary basis by counterpart organizations throughout the Expert Forum. This time, ODIHR and Penal Reform International organized an event on countering institutional incentives for torture and other cruel, inhuman or degrading treatment or punishment; UNODC conducted the side event on gender in the criminal justice system, while ODIHR prepared the event on independence of legal professions in Central Asia and the International Commission of Jurists held a side event on comparative perspectives on judicial independence

While the present report aspires to be as comprehensive as possible, it does not provide an exhaustive account of all discussions and interventions. Instead, it provides an overview of the discussions that took place and highlights from the constructive and detailed exchanges held, the recommendations and conclusions reached by participants.

The Expert Forum also represented an opportunity for participants to voice particular requests for support, including for legislative assistance focused on existing legislation or draft legislation. ODIHR, UNODC and PCUz will be following up with Central Asian counterparts to offer targeted assistance to ongoing criminal justice reform efforts in the region.

Finally, ODIHR, UNODC and PCUz would like to express their gratitude to the authorities of Uzbekistan, particularly the Supreme Court of Uzbekistan, who hosted the Expert Forum and to ODIHR's counterparts in the region, in particular the OSCE Field Operations and the United Nations Office for Drugs and Crime, Penal Reform International, and the International Commission of Jurists.



*Ambassador John MacGregor, OSCE Project Co-ordinator in Uzbekistan (second to the right), delivers his welcoming speech, joined by Mr Jan Haukaas, Special Advisor to the Director of ODIHR, Ms Ashita Mittal, UNODC Regional Representative for Central Asia, Mr Shayunus Gaziev, Chairperson of the Supreme Court of Uzbekistan, Ms Svetlana Artikova, Deputy Speaker of the Senate of the Oliy Mazhlis of Uzbekistan, and Mr Sanzhar Khamidullaev, Deputy Ombudsperson of Uzbekistan. (ODIHR)*

## II. KEY CONCLUSIONS AND RECOMMENDATIONS<sup>3</sup>

### PLENARY SESSION I: SENTENCING POLICIES

- *The State's prosecution priorities and sentencing policies favouring diversion, alternatives to deprivation of liberty and adapted sentences will impact positively on the incarceration rate.*
- *A sentence must be proportional to the damage caused and the personal circumstances of the defendant, among others, in a fair criminal justice system. Alternatives to detention should be favoured over deprivation of liberty which is to be used only when strictly necessary.*
- *A consistent approach to sentencing increases public trust in the justice system. Rules to delineate possible sentences to be ordered are often useful.*

### PLENARY SESSION II: INSTITUTIONAL AND FUNCTIONAL REFORM OF THE PENITENTIARY SYSTEM

- *Penitentiary bodies should be demilitarized and work towards convicts' re-socialization.*
- *It is essential that penitentiary system is sufficiently funded, including through adequate payment of qualified staff.*

<sup>3</sup> Disclaimer: the opinions expressed in this report are those of the experts and participants to ODIHR's Sixth Expert Forum on Criminal Justice for Central Asia and do not necessarily represent the position of ODIHR.

- *Rehabilitation and reintegration of inmates should be prioritised over the penitentiary's punitive functions.*
- *Policies preventing prisoner from radicalization to violent causes should be adopted in accordance with the principles of proportionality and human rights.*
- *National preventive mechanisms need to continue their work in detention and prison facilities. NPMs should have access to all the detention facilities.*

## WORKING GROUP 1: PLEA BARGAINING AND OTHER ABBREVIATED PROCEDURES

- *Abbreviated criminal proceedings, including plea agreements, may reduce the costs of administering justice and improve compensation to victims.*
- *Judges play an essential role in plea agreement procedures by verifying that defendants accept the agreement in an informed manner and that the situation of victims is preserved.*
- *The provision of effective legal assistance to defendants entering a plea agreement is indispensable to balance the coercive nature of plea bargaining.*

## WORKING GROUP 2: REFORM OF POST-SOVIET CLASSIFICATION OF OFFENCES

- *Administrative law should be defined as a body of law dealing only with the activities and obligations of the State, especially its interaction with individuals. This body of law should be distinguished regulations on violations perpetrated by private individuals.*
- *Central Asian countries should use the opportunity of reclassifying offences to adopt a human rights approach in their criminal justice policies.*
- *If a contravention or minor offence entails deprivation of liberty, all guarantees of the right to a fair trial must be afforded to the defendant.*
- *Criminal codes should provide a clear framework on sentencing and individualization of punishment to ensure consistent and fair sentencing for offences of similar nature and gravity.*

## SIDE EVENT 1: COUNTERING INSTITUTIONAL INCENTIVES FOR TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *To further reinforce the principle of inadmissibility of evidence obtained through torture and ensure its application, targeted training for the judiciary and lawyers is recommended.*
- *All allegations of torture should be properly and thoroughly investigated by an impartial and independent body.*
- *Police performance evaluation systems should not result in promoting the use of torture, the reliance on forced confessions. Police clear-up rates constitute a debated indicator of performance in Central Asia.*
- *It is necessary to make sure that procedural guarantees, such as access to a lawyer of one's choice and access to an independent medical expert, are available upon the moment of arrest and especially during first 72 hours of deprivation of liberty.*
- *ODIHR could promote the fight against torture by preparing a compilation of good practices for Central Asia in that area.*

## PLENARY SESSION III: MODERNIZATION OF PRE-TRIAL INVESTIGATION IN CRIMINAL PROCEEDINGS

- *It is necessary to clearly divide the powers between actors in criminal proceedings and ensure that the same body is not allowed to review complaints about its own alleged violations.*
- *The judge is best placed to be an independent and impartial overseer of abidance to human rights and freedoms in the pre-trial phase of criminal proceedings.*
- *States should fully implement habeas corpus rights in their legislation, reducing the term for the arrested person to be brought before a judge to 48 hours, and providing judges with the power to review the legality of arrest and detention and to order release, where it is found that the arrest procedure was substantively violated.*
- *In order to achieve fully adversarial criminal proceedings, it is essential to provide defence lawyers with the possibilities to access case files at the earliest stage possible, participate at investigative actions without prior permission from the investigator or prosecutor, and collect evidence on their own.*

## PLENARY SESSION IV: ALTERNATIVES TO PRE-TRIAL DETENTION DURING CRIMINAL PROCEEDINGS

- *Preventive measures against a suspect should be authorized solely by a judge who will not be sitting at the trial.*
- *Material and procedural grounds must be proved by the prosecutor or investigator in their application for preventive measures. The severity of the crime cannot be the sole ground for imposing a preventive measure.*
- *Non-custodial preventive measures should be considered first of all before ordering pre-trial detention. The latter should be ordered only when non-custodial measures are found unsuitable. Systematic and regular review of the applicability of a preventative measure must be ensured as there should be no automatic renewal of such measures.*
- *Central Asian countries should expand the use of existing preventive measures such as bail, personal recognisance, and electronic measures of control.*
- *Defendants, assisted by a defence lawyer, should benefit from a court hearing where he or she can present arguments against the prosecutor or investigator's request for deprivation of liberty or other preventive measures to the judge.*
- *Judges, prosecutors and defence lawyers should have targeted training to prepare for the hearings on preventive measures.*

## WORKING GROUP 3: INVESTIGATION, PROSECUTION AND ADJUDICATION OF DRUG-RELATED OFFENCES

- *The collection of disaggregated data is necessary for the development of effective policies to fight drug-related crimes and drug use.*
- *Diversion schemes, alternatives to pre-trial detention, and non-custodial sentences should be widely implemented to tackle drug-related offences and help decrease prison overcrowding.*
- *Legislation on drugs needs to be designed and defined in a way that allows for efficient response to new drugs on the market and that prevents legal loopholes.*
- *Harm reduction and community treatment programs should be widely introduced, particularly in prison facilities where drug use is endemic.*
- *Voluntary participation in drug treatments should be promoted to reduce the resort to compulsory programs.*

## WORKING GROUP 4: PROSECUTION OF TERRORISM-RELATED OFFENCES BASED ON A HUMAN RIGHTS APPROACH

- *The exercise of a person's fundamental rights including the right to freedom of expression, religion or belief cannot suffer undue restrictions on the grounds of the "fight against terrorism" as restrictions need to be strictly justified by their necessity in a democratic society.*
- *Terrorism and violent extremism offences and their elements should be clearly and specifically defined by law.*
- *Defendants in terrorism or violent extremism cases should also benefit from the principles of presumption of innocence and equality of arms.*
- *Persons accused of terrorism should benefit from the right to legal counsel, including the right to effective legal assistance and the possibility to select a lawyer of one's choice.*

## SIDE EVENT 2: GENDER IN THE CRIMINAL JUSTICE SYSTEM

- *Negative cultural and gender stereotypes preventing female victims from reporting crimes should be addressed in state reforms and policies.*
- *Central Asian authorities should systematically collect comprehensive, sex-disaggregated statistics on criminal offences. Such statistics should be made available to the public.*
- *Continuous training on gender and crime prevention for law enforcement and justice professionals should be offered.*

## SIDE EVENT 3: INDEPENDENCE OF LEGAL PROFESSIONS IN CENTRAL ASIA

- *Bar Associations carry the important role of protecting its members and enhancing their sense of unity through the multiplication of exchange and discussion opportunities.*
- *It is recommended that bar associations function on the principle of self-administration and independence, free from the influence of state authorities.*
- *Lawyers benefit from procedural guarantees related to their status and the conduct of their work which should not be violated by undue restrictions on the performance of their duties.*
- *Lawyers should be provided with opportunities for professional development and continuous learning, including training, participation in conferences and legislation drafting.*

## PLENARY SESSION V: THE USE OF ICT IN CRIMINAL COURT PROCEEDINGS

- *The implementation of ICT systems in the work of the judiciary would increase its efficiency and would improve its cooperation with the other state agencies. Such systems might also collect statistics, which can further be used as an input for reforms.*
- *Technological solutions, such as an automated distribution of court cases and audio/video recording of proceedings, may reduce corruption, limit misconduct and promote public trust in the judiciary.*
- *The exercise of the right to defend oneself would be unduly obstructed should defendants and their lawyers be prohibited from using technological tools such as telephones, smartphones or laptops in the preparation of one's defence and to collect evidence.*

- *Technology may facilitate access to justice by providing individuals with up-to-date information regarding the court cases and court decisions online, by providing a remedy to the remoteness of individuals from the court through videoconference, and by enabling interpretation of court proceedings.*

## SIDE EVENT 4: COMPARATIVE PERSPECTIVES ON JUDICIAL INDEPENDENCE

- *Judicial ethics preserves public trust and fairness in the justice system and is intrinsically linked to the principles of judicial independence and impartiality.*
- *Independence of judges should not be simply defined as a theoretical value but secured in practice through life tenure appointments, independent selection procedures, adequate remuneration for judges, and education.*
- *Clear and foreseeable rules of judicial conduct are necessary to preserve the proper balance between judicial independence and accountability.*



*Ms Leila Sydykova, Deputy President of the Kyrgyz-Russian Slavic University for International Affairs (left), and Ms Róisín Pillay, ICJ Director of the Europe Regional Programme (right), participate in the discussion on the independence of lawyers. (ODIHR)*

### III. COUNTRY PRESENTATIONS

In order to ensure that discussions at the Forum were informed by the reform agenda of each country, the Expert Forum provided representatives of Uzbekistan, Kazakhstan, Kyrgyzstan, and Turkmenistan with the opportunity to present the latest developments on criminal justice reforms in their countries.

In his presentation, Mr. Aziz Mirzaev, Assistant to the Chairperson of the Supreme Court of Uzbekistan, stressed that recent legislative changes<sup>4</sup> in Uzbekistan were guided by the principles of judicial independence and human rights. Concretely, these changes included the expansion of the judge's powers during the pre-trial investigation phase (including power to order temporary suspension from the work during the criminal investigation, and power to place a suspect into a medical institution). On the other hand, judges are not anymore entitled to initiate criminal proceedings. In addition, Mr Mirzaev mentioned the expanded use of fines for economic crimes as an alternative punishment to deprivation of liberty, the introduction of a new type of sentence, restriction of liberty,<sup>5</sup> the introduction of house arrest as a preventive measure, and early expungement by a court of a prior criminal record. In conclusion, he noted that the current reforms support the full implementation of habeas corpus rights, the expansion of reconciliation procedures, and the further decriminalization of offences which do not pose a danger to the public order.

4 See the Measures to Further Reform the Judicial and Legal System, Strengthen the Guarantees of Solid Protection of Citizens' Rights And Freedoms (Decree of the President of the Republic of Uzbekistan of 21 October 2016), available, in Russian language only, at [http://lex.uz/pages/getpage.aspx?lact\\_id=3050494](http://lex.uz/pages/getpage.aspx?lact_id=3050494)

5 See Article 48-1 of the Criminal Code of Uzbekistan. The punishment prescribes a total ban for the convicted to leave the house under one pretext or another, or restrictions on leaving the house at a certain time of day. The punishment may be ordered for 6 months and up to 5 years.

Mr. Yerlan Abaev, Deputy Chief of the Department of Oversight of the Pre-Trial Phase of the Investigation at the General Prosecutor's Office of Kazakhstan, informed of the main novelties brought by the recently adopted Criminal Code and Criminal Procedure Code in Kazakhstan. Among major legislative changes in the Criminal Code, Mr Abaev stressed the reform of the classification of offences which shifted a number of minor crimes to the misdemeanours category. As to the new Criminal Procedure Code, a large number of changes were introduced. First, the procedure of initiation of criminal proceedings and pre-investigation checks were abrogated. A new figure in the criminal proceedings was established – a pre-trial judge, responsible for authorizing intrusive investigative measures and preventive measures. New forms of abbreviated procedures, including plea agreements, were introduced as well as new grounds for bail but also for reconciliation procedures, including in cases of grave crimes. Newly introduced institutes such as the deposition of victims' and witnesses' testimonies and the possibility of remote interrogations on video link made the procedure more efficient. Finally, the Criminal Procedure Code introduced the obligation to inform suspects about their rights upon arrest (or so-called "Miranda Rule"), indications on what moment constitutes the initial deprivation of liberty of a suspect, and the criteria which help identify a "reasonable term" in various procedures within criminal proceedings. As to ongoing reforms, he mentioned the creation of a compensation fund for victims of crime.

As explained by Ms. Kymbat Arkharova, a judge of the Oktyabrsky District Court of Bishkek city, the legislative changes to the criminal legislation of Kyrgyzstan are set forth in the draft Criminal Code and Criminal Procedure Code, still currently being discussed in Parliament. The draft Criminal Procedure Code intends to remove prosecutorial bias in criminal proceedings and police discretion in selecting for cases for initiation of criminal investigations, to introduce the position of pre-trial judge, and to strengthen the position of defence counsel. The draft Code also provides an exhaustive list of special investigative measures and the rules of their application, creates the institute of procedural cooperation, and clarifies the procedure of criminal investigation against legal persons. The Criminal Code reform revises the classification of offences, moving all minor crimes into a separate Code on Misdemeanours which does not foresee any sentence of deprivation of liberty nor criminal records. A probation body will be created to follow through of the application of sentences of misdemeanours. Additionally, the maximum prison term for crimes was reduced from 20 to 15 years. New crimes related to medical misconducts were added while others were reclassified or clarified. Provisions on amnesty will be removed from the Criminal Code into a separate legal act.

Ms. Bestyr Eyvanova, the Chairperson of Presidium Ashgabat City Bar Association, reminded the audience that Turkmenistan has updated its Criminal Procedure Code and Criminal Code in 2009 and 2010 respectively. As to recent and current legislative developments, she informed of the new version of the Constitution, adopted on September 14, 2016, which introduced the institute of the Ombudsperson. In addition, she explained that Turkmenistan is currently working on the modernization of its laws related to anti-money laundering, corruption, and human trafficking.



*Mr Aziz Mirzaev, Assistant to the Chairperson of the Supreme Court of Uzbekistan (center), intervenes to discuss the current torture prevention mechanisms in Central Asia. (ODIHR)*

## IV. SUMMARY OF DISCUSSIONS

### A. PLENARY SESSION I: SENTENCING POLICIES

#### **Main conclusions and recommendations of the session:**

- *The State's prosecution priorities and sentencing policies favouring diversion, alternatives to deprivation of liberty and adapted sentences will impact positively on the incarceration rate.*
- *A sentence must be proportional to the damage caused and the personal circumstances of the defendant, among others, in a fair criminal justice system. Alternatives to detention should be favoured over deprivation of liberty which is to be used only when strictly necessary.*
- *A consistent approach to sentencing increases public trust in the justice system. Rules to delineate possible sentences to be ordered are often useful.*

#### **Summary of discussions:**

- 1. Prosecution and sentencing policies can help reduce prison population. In that regard, diversion options, alternatives to deprivation of liberty and more adapted sentences need to be considered.**

An expert from the UK highlighted that among European countries, Germany and the Netherlands show a clear trend of decrease in prison population within the last 12 years. This is explained by the possibility to divert a criminal case (including for relatively serious crimes) from the prosecution at the pre-trial stage, after certain conditions were met, such as compensation of the victims' damages. Also, non-custodial preventive measures are favoured and the use of pre-trial detention is limited. In addition,

these two countries adopted low minimum sentences in their codes compared to other similar countries,<sup>6</sup> and introduced specific arrangements for juvenile offenders whereby sentences are more often reduced. Moreover, probation and community work sentences are used to replace the deprivation of liberty, not fines as is often the case in other countries. Finally, probation regimes in these two countries are more flexible as failure to comply with an obligation does not automatically result in deprivation of liberty. About the experience of Central Asian states, participants discussed whether the judge should take into consideration existing public resources (financial and facilities-wise) before handing down a certain sentence. Participants from Kazakhstan and Kyrgyzstan mentioned that courts in their countries keep ordering life sentences when there is not enough space for convicts sentenced to life in prison.

- 2. Proportional sentencing is an essential requirement for a fair criminal justice system.** Proportionality requires that a sentence takes due regard of the type and seriousness of the offence, including the harm caused by the offence, the degree of liability of the offender and his/her personal situation. In this respect, participants underlined the widespread sentencing of deprivation of liberty even when it might not always be the most appropriate sentence. To tackle the extensive use of custodial punishments, an expert from Kyrgyzstan explained that reforming the reclassification of offences within the criminal sphere could help reduce the number of offences resulting in possible deprivation of liberty.
- 3. The consistency in sentencing is necessary for public confidence in the criminal justice system.** The notion of consistency requires that similar offences committed in similar circumstances should entail similar sentences. In the UK, where at times sentences are not clearly limited by law, this problem was resolved through the adoption of sentencing guidelines for judges which required them to adopt the same approach in sentencing a particular offence. For Central Asian countries, the UK expert recommended to limit the broad judicial discretion in deciding on the sentences defined in criminal codes in cases where minimum and maximum sentences are too different. Participants finally discussed whether the relevance of the deterrence effect created by harsher sentences, looking at examples from the United States where prison can be automatically ordered in certain re-offending cases regardless of the seriousness of the offences and the personal situation of the defendant. Also, imprisonment sentences of over 100 years can be ordered against one individual. In such cases, the UK expert recommended considering the effectiveness a sentencing policy in prevention of re-offending rather than its potential deterrence effect. Finally, the expert from the UK cautioned against designing sentencing and criminal justice policies based on what the public opinion favours as the general public usually believes that sentences are too lenient and often form their opinion based on sensational cases reported in the news. He stressed the importance of raising awareness and educating the public on the criminal justice system, including the reality of life in prison.

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6 For example, in the Netherlands, a theft will entail a minimum sentence of 4 years of imprisonment, in Germany 5 years, while in the UK, it would entail 7 years.



*Mr Rob Allen, Co-Director and Consultant on Criminal Justice and prisons, Justice and Prisons, and Mr Rene Elkerbout, former Judge of the District Court of the Hague in the Netherlands, listen the discussion on the institutional incentives to torture. (ODIHR)*

## B. PLENARY SESSION II: INSTITUTIONAL AND FUNCTIONAL REFORM OF THE PENITENTIARY SYSTEM

### **Main conclusions and recommendations of the session:**

- *Penitentiary bodies should be demilitarized and work towards convicts' re-socialization.*
- *It is essential that penitentiary system is sufficiently funded, including through adequate payment of qualified staff.*
- *Rehabilitation and reintegration of inmates should be prioritised over the penitentiary's punitive functions.*
- *Policies preventing prisoner from radicalization to violent causes should be adopted in accordance with the principles of proportionality and human rights.*
- *National preventive mechanisms need to continue their work in detention and prison facilities. NPMs should have access to all the detention facilities.*

### **Summary of discussions:**

- 1. Penitentiary bodies should be demilitarized and pursue the social objective of inmate re-socialization.** An expert from Kyrgyzstan noted that Central Asian countries adopted the Soviet heritage of considering the penitentiary more as a punitive rather than re-socialization system. The expert from the UK stressed that the social rehabilitation function of the penitentiary is essential as set forth in the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) which encapsulate the main international standards in the field of treatment of prisoners.<sup>7</sup> As a first step, it was recommended

<sup>7</sup> UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution/adopted by the General Assembly, 8 January 2016, A/RES/70/175, available at: <http://www.refworld.org/docid/5698a3a44.html>.

that penitentiary bodies, including probation bodies, be part of the civilian structure of government, such as in the Ministry of Justice. Service of civil servants in the penitentiary should be considered social work rather than part of law enforcement. In addition, the function of investigating crimes committed in prisons should not lie with the penitentiary.

- 2. Qualified and adequately remunerated penitentiary staff is a prerequisite for a humane and effective penitentiary system.** An expert from the UK underlined the negative global trend of cutting the costs dedicated to prison staff and their trainings. The ratio between the number of prisoners and the number of prison staff has grown which increases the risk of assaults and injuries on both groups. The issue of underfunding may also lead to corruption. It was also recommended to dedicate sufficient financial resources for the training of penitentiary personnel to ensure improvement of their knowledge and skills. The expert also underlined that prisoners' access to new technologies such as TV or Internet access cannot be an excuse for reducing the number of prison staff, as human interaction remains essential for rehabilitation of prisoners.
- 3. Rehabilitation and reintegration of a convict into society should be prioritized.** An expert from the UK stressed that the conditions in prison should be as similar as possible to life outside although inmates cannot leave the premises. This means that educational, psychological and healthcare services of the same quality as in the community should be offered to inmates. Moreover, adjustments to accommodate prisoners with physical, mental or other disabilities must be made.<sup>8</sup> It is recommended also to place prisoners close to their home to facilitate their rehabilitation.<sup>9</sup> Solitary confinement should be used only in exceptional cases as a last resort measure and for as short a time as possible and never more than 15 days.<sup>10</sup> The expert has also underlined that post-sentencing support for recent convicts is essential for their re-socialization. Therefore, supervision programs for persons recently released, including financial support, should be set up to facilitate their transition back into society. Moreover, access to a convict's criminal records should also be limited not to impede his or her reintegration.
- 4. Policies aimed at preventing radicalization to violent extremism in prisons should be developed while taking into consideration proportionality and human rights principles.** An expert from Kyrgyzstan noted that the management of violent extremist prisoners presents a challenge to prison authorities of Kyrgyzstan because they have to achieve a balance between the threat that such prisoners may pose, including the risk that they will seek to radicalize others to violence, and the obligation to treat all prisoners in a decent and humane manner. Lack of separation of convicts on the basis of individual risk assessments may contribute to the radicalisation of inmates to violence and the recruitment of other prisoners. He also emphasized that a fundamental principle of good prison management is that prisoners should be subject to the least restrictive measures necessary for the protection of the public, other prisoners and staff.<sup>11</sup> Therefore, the prison authorities should be able to assess the risk posed by each individual prisoner in order to make sure that each one is subject to the appropriate conditions of security. A participant from Kazakhstan explained that recently all prisoners considered "religious radicals" were sent to the same prison to prevent the radicalization of other prisoners but the government quickly ceased this practice probably due to the risks for prison staff. Further, an expert from Kyrgyzstan mentioned that the current draft of the Criminal Executive Code of Kyrgyzstan foresees isolated detention for violent extremist and terrorist inmates with the prohibition to change the detention regime. He warned that relevant authorities must make a careful and proportionate assessment prior to imposing such a regime since not all persons

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8 Rules 2, 5, UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution/adopted by the General Assembly, 8 January 2016, A/RES/70/175, available at: <http://www.refworld.org/docid/5698a3a44.html>.

9 Ibid, Rule 59.

10 Ibid, Rule 43-46.

11 Ibid, Rule 36.

convicted for terrorism- or “violent extremism”-related offences pose such a serious threat to society. An expert from the UK stated that the Council of Europe is currently working on this issue and has recently issued Draft Guidelines for prison and probation services regarding radicalisation and violent extremism. These guidelines aim to adopt a human rights approach when dealing with radicalization and violent extremism in prison and set forth measures to be taken by prison and probation services in order to prevent radicalization to violent extremist views within detention facilities and to detect, manage and resettle radicalised persons.<sup>12</sup> A UNODC representative has informed that UNODC has developed the Handbook on the management of violent extremist prisoners and prevention of radicalisation to violence in prisons.<sup>13</sup>

- 5. National preventive mechanisms are effective tools to fight torture and ill-treatment.** Participants from Kazakhstan, Kyrgyzstan, and Uzbekistan have underlined the effectiveness of the work of recently created National preventive mechanisms (NPM) in their countries and stressed their important role in fighting torture. A participant from Kazakhstan called for mandating access to all places of detention for NPMs, including at military units and juvenile institutions, as the latter are not accessible yet to the NPM of Kazakhstan. A good practice from Kyrgyzstan was discussed whereby the NPM is able to contract external experts as a solution to NPMs’ limited resources, where such experts can support the NPM’s daily work, in particular in the field of health protection and with the monitoring of detention facilities.

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12 Directorate General Human Rights and Rule of Law, Draft Guidelines for Prison and Probation Services Regarding Radicalisation and Violent Extremism, Strasbourg, 23 September 2015, PC-CP (2015) 2 rev 3, accessed at: [https://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202015/PC-CP%20\(2015\)%202%20Rev%203\\_E%20Guidelines%2023%20September.pdf](https://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202015/PC-CP%20(2015)%202%20Rev%203_E%20Guidelines%2023%20September.pdf).

13 United Nations Office on Drugs and Crimes, Handbook on the Management of violent extremist prisoners and prevention of radicalisation to violence in prisons, New York, 2016 (published in January 2017), available at: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_VEPs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf).



*Mr Stephen Thaman, US Professor of Law, discusses the pros and cons of the introduction of plea bargaining. (ODIHR)*

## C. WORKING GROUP 1: PLEA BARGAINING AND OTHER ABBREVIATED PROCEDURES

### **Main conclusions and recommendations of the session:**

- *Abbreviated criminal proceedings, including plea agreements, may reduce the costs of administering justice and improve compensation to victims.*
- *Judges play an essential role in plea agreement procedures by verifying that defendants accept the agreement in an informed manner and that the situation of victims is preserved.*
- *The provision of effective legal assistance to defendants entering a plea agreement is indispensable to balance the coercive nature of plea bargaining.*

### **Summary of discussions:**

- 1. Plea bargaining and other abbreviated procedures may help decrease the costs related to criminal justice and enhance compensation to victims of crime.** The US expert highlighted that the high cost of putting in place criminal procedures affording all required guarantees has encouraged States to introduce abbreviated procedures. Among Central Asian states only the 2015 CPC of Kazakhstan foresees procedural agreements<sup>14</sup>, in the form of a plea agreement and of an agreement on cooperation. As to the other countries, expedited proceedings related to minor offenses exist in Kyrgyzstan<sup>15</sup> and Tajikistan<sup>16</sup>. Procedural agreement on cooperation is also included in the draft Criminal Procedure Code of Kyrgyzstan<sup>17</sup>. In Kazakhstan, long prison sentences and little compensation for victims of crime have prompted the

14 Chapter 63 of the CPC of Kazakhstan.

15 Chapter 45-1 of the CPC of Kyrgyzstan.

16 Chapter 46 of the CPC of Tajikistan.

17 Chapter 41 of the Draft CPC of Kyrgyzstan, available at: [http://www.president.kg/files/docs/proekt\\_ugolovno-protsessualnogo\\_kodeksa.pdf](http://www.president.kg/files/docs/proekt_ugolovno-protsessualnogo_kodeksa.pdf).

government to institute procedural agreements in order to trigger compensations for victims. According to a participant from Kazakhstan, it is reported by the General Prosecutor's Office of Kazakhstan that around 4000 procedural agreements were concluded from 2015 and until November 2016. It is expected that detailed statistics will be published shortly in relation to which categories of offence procedural agreements were concluded for, what sentences were reached, what economic effect was achieved and how it has impacted the criminal justice system generally.

- 2. Judges should verify that a plea agreement is entered into with the informed consent of the defendant and that the position of the victim is taken into consideration.** The different checks for the fairness of a plea and its voluntariness were discussed during the session. Among such, good practices from Kazakhstan were discussed, namely the requirement for the victim's consent before the approval of a plea agreement<sup>18</sup> and the obligation for the judge to review the legal qualification of the offence, the amount for compensation to the victim, or the type and severity of a sentence.<sup>19</sup> Ultimately, the judge can decide to hear the case under the ordinary procedure should the plea agreement not satisfy the legal requirements. An ODIHR representative proposed a number of additional guarantees which could be introduced to mitigate the negative consequences of a plea agreement taking as an example some good practices from South-Eastern European jurisdictions who also introduced plea agreement procedures as part of recent judicial reforms. First, the judge has the duty to verify whether the defendant enters into a procedural agreement voluntarily and understands the consequences of the agreement during a hearing.<sup>20</sup> Also, the judge is required to review the evidence in the case file to verify whether the amount and quality of the evidence successfully justify the sentencing proposed by the prosecution.<sup>21</sup>
- 3. When introducing plea bargaining in a legal system, it is essential to mitigate potential risks to justice and fairness by ensuring the right to effective legal assistance.** Experts highlighted that plea bargaining entails an undeniable element of coercion since the defendant faces the choice of agreeing to the sentence proposed by the prosecution or going to trial and risk a higher sentence – sometimes much higher – if found guilty. Therefore, effective assistance of a legal council is necessary to make sure that the defendant's interests are taken into account. However, there is a risk that suspects are not provided effective legal advice when relying on state-appointed lawyers (i.e. lawyers appointed and remunerated by the authorities when a defendant did not appoint a lawyer of his/her choice) due to the phenomenon of "pocket lawyers". In the context of plea agreements, pocket lawyers are likely to recommend their clients to follow the prosecutor's plea bargain offer in order to remain in the good graces of the authorities and ensure future work as a state-appointed lawyer. This would be in contravention of their responsibility to independently and effectively advise their clients on the consequences of entering such agreement. Finally, widespread use of plea bargaining may lead to a deterioration in the investigation and trial skills of prosecutors, attorneys, and judges who will be less often involved in traditional procedures.

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18 Article 613 (1) of the CPC of Kazakhstan.

19 Article 623 (1) of the CPC of Kazakhstan.

20 See for example Article 488 (3) of the CPC of the Former Yugoslavia Republic of Macedonia.

21 See for example Article 489 (1) of the CPC of the Former Yugoslavia Republic of Macedonia.



*Ms Svetlana Artikova, Deputy Speaker of the Senate of the Oliy Mazhlis of Uzbekistan (left), Mr Ildar Fayzullin, National Project Officer at the OSCE Project Coordinator in Uzbekistan (center), and Marcin Walecki, Head of the Democratization Department at ODIHR (right), exchange ideas on co-operation opportunities for the future. (ODIHR)*

## D. WORKING GROUP 2: REFORM OF POST-SOVIET CLASSIFICATION OF OFFENCES

### **Main conclusions and recommendations of the session:**

- *Administrative law should be defined as a body of law dealing only with the activities and obligations of the State, especially its interaction with individuals. This body of law should be distinguished regulations on violations perpetrated by private individuals.*
- *Central Asian countries should use the opportunity of reclassifying offences to adopt a human rights approach in their criminal justice policies.*
- *If a contravention or minor offence entails deprivation of liberty, all guarantees of the right to a fair trial must be afforded to the defendant.*
- *Criminal codes should provide a clear framework on sentencing and individualization of punishment to ensure consistent and fair sentencing for offences of similar nature and gravity.*

### **Summary of discussions:**

1. **Central Asian countries should refrain from including offences of criminal character into the sphere of administrative law.** As mentioned by an expert from Ukraine, a number of criminal acts were reclassified during the Soviet time as administrative offences in order to artificially decrease crime rates. However, the nature of administrative law is not to punish citizens for minor offences, but to protect citizens from the misconduct of state officials and institutions. Additionally, the expert recommended that reclassification reforms ensure that administrative law defines the state's rights and obligations, addresses violations committed by state authorities and prescribes the relevant legal remedies. There are two classification models used in Central Asia and generally in the post-Soviet sphere: a two-tier system including only

misdemeanours (including “administrative offences”) and criminal acts (as in Estonia and Moldova) or a three-tier system with contraventions, misdemeanours, and crimes (see Latvia, Lithuania, Kazakhstan, the introduction of such model is also expected in Kyrgyzstan). It was also recommended to avoid using the terms “administrative offences” to avoid confusions with “administrative law” and the terms “criminal misdemeanours” to prevent confusion with “serious criminal offences.”

- 2. Reclassification of offences constitutes an opportunity for Central Asian states to design criminal justice policies in accordance with human rights.** For example, Kyrgyzstan is planning to use its new classification of offences as a tool to “humanize” and restructure its criminal law. The current draft Code on Misdemeanours includes offences of criminal nature which previously were classified as administrative offences (around 40 offences), such as domestic violence, and minor crimes taken from the Criminal Code (which currently constitute around 25% out of all the crimes in the draft Code). In this code, misdemeanours will neither entail restriction or deprivation of liberty, nor criminal record of conviction. The current Code on Administrative Offences of Kyrgyzstan will cease to exist: minor offences not resulting in serious harm to the society but which still need prevention efforts by the authorities would be listed in a new code named Code on Contraventions. Moreover, the liability of public officials would be addressed in another code regulating administrative procedures. The classification also aims to reduce criminality and address the problem of prison overcrowding, in particular with people who are being jailed for minor crimes.
- 3. Misdemeanour or “administrative offences” cases which can lead to deprivation of liberty should be tried through the same procedure as criminal cases procedure offers the necessary fair trial guarantees for the defendant.** Since the commission of misdemeanours or “administrative offences” can entail a sentence of deprivation of liberty in some countries in Central Asia, individuals accused of such offences should receive all procedural rights and guarantees present in the criminal procedure but usually absent from the administrative procedure. Currently in Central Asia some of the contraventions or “administrative offences” which have a criminal character and are likely to be classified as misdemeanours in other countries, like hooliganism, might result in a short-term prison sentence. Yet, they are being dealt with in an abbreviated manner, often without fair trial guarantees such as the right to legal counsel and sufficient time to prepare for the trial. To use defence rights and standards from the criminal procedure law to deal with such offences was recognized as a good practice, as it is the case in Estonia and Moldova.
- 4. When reforming the classification of offences, it is necessary to ensure that sentences are proportional to the acts committed and are individualized to the situation of the defendant.** An expert from Kyrgyzstan highlighted the importance of avoiding unreasonably wide minimums and maximums for sentences as this leads to inconsistent sentencing and goes against the individualization of the sanction. She further explained that indicating an “average sanction” in the criminal codes, i.e. an indicative yet specific sanction between the minimum and maximum foreseeable sentences which would be ordered for an offence committed in ordinary circumstances, would be beneficial. Additional circumstances, such as aggravating and mitigating factors, would thus be interpreted within the court’s judicial discretion, bringing the sentence above or below the average sentence. In addition, she expressed concerns that often in the criminal codes of Central Asia there are a number of possible punishments prescribed for a given crime, yet there are no clear criteria as to how those punishments correlate to each other. For example, one particular offence might entail one year of imprisonment or a fine of high amount, while another offence of similar character would result in a similar prison sentence but a very different fine. The expert recommended to establish clear criteria regarding the composition and calculation of sentences and to keep proportionality in mind while deciding upon different sanctions.



*Mr Joachim Wenz (center) shares his experience on how to counter institutional incentives for torture as Mr Azamat Shambilov, Regional Director for Central Asia at Penal Reform International (left), and Ms Kyra Hild, International Legal Advisor at REDRESS (right), listen to his presentation. (ODIHR)*

## E. SIDE EVENT 1: COUNTERING INSTITUTIONAL INCENTIVES FOR TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

### **Main conclusions and recommendations of the session:**

- *To further reinforce the principle of inadmissibility of evidence obtained through torture and ensure its application, targeted training for the judiciary and lawyers is recommended.*
- *All allegations of torture should be properly and thoroughly investigated by an impartial and independent body.*
- *Police performance evaluation systems should not result in promoting the use of torture, the reliance on forced confessions. Police clear-up rates constitute a debated indicator of performance in Central Asia.*
- *It is necessary to make sure that procedural guarantees, such as access to a lawyer of one's choice and access to an independent medical expert, are available upon the moment of arrest and especially during first 72 hours of deprivation of liberty.*
- *ODIHR could promote the fight against torture by preparing a compilation of good practices for Central Asia in that area.*

### **Summary of discussions:**

- 1. Confessions obtained under torture should not be admissible in criminal cases. Any torture allegation should be promptly and impartially investigated by competent and independent authorities.** An expert from the UK highlighted that it is not sufficient that international law enshrines

the principle of inadmissibility of evidence obtained under torture,<sup>22</sup> it is equally important to ensure that the principle is enforced in practice. She recommended conducting targeted training for the judiciary and defence attorneys to ensure this principle is known, understood and applied. The expert also discussed problems related to using confessions obtained under torture in Central Asia as sole evidence to prove guilt. She stressed that the burden of proof is on the prosecution to demonstrate that torture was not used to obtain the confession, and there is no judicial discretion possible regarding the exclusion of tainted evidence. A participant from Kazakhstan mentioned that judges often ignore allegations of torture and view such claims as a way to avoid prosecution although under international law the authorities have the obligation to conduct a prompt and impartial investigation of torture allegations.<sup>23</sup>

- 2. Police performance evaluation methodologies should not, directly or indirectly, foster the use of torture.** A participant from Kazakhstan explained that there is a practice in Kazakhstan whereby the police is first and foremost asked to designate the person who committed the crime, and only then to investigate and collect evidence supporting his or her guilt. This is explained by the fact that in Central Asia the swift handling of an investigation or so called the “clear-up rate” is often used as a performance indicator. Such approach may result in police officers obtaining confessions under pressure, ill-treatment or even torture, as a confession would offer a swift resolution of the case and support a positive performance evaluation and even promotion opportunities and salary increase. The suggestion that acts of torture are primarily motivated by the obtaining of a confession is supported by empirical data.<sup>24</sup> An expert from Kyrgyzstan explained that in her country the police performance evaluation system was partially reformed and clear-up rates are not used as an indicator of performance for all the crimes, but only for grave and especially grave crimes, and not as a sole or main criterion.
- 3. States should provide procedural guarantees during the first 72 hours of deprivation of liberty.** An expert from Kazakhstan explained that in around 70 percent of cases, torture happens immediately after the detention and prior to the first interrogation.<sup>25</sup> Moreover, in the majority of cases, the victim was incommunicado, not able to inform anyone of their situation or whereabouts. This illustrates the importance to have strong procedural guarantees, such as the right to be informed about the charges against oneself, access to a lawyer of one’s choice, and access to an independent medical expert, from the very moment of arrest. One suggestion was made by a participant from Uzbekistan who asked ODIHR to compile best practices to fight against torture in Central Asia.

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22 Article 15, UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html>.

23 Articles 12 and 13, *Ibid*.

24 According to the statistics collected by an NGO from Kazakhstan, in 80 percent of registered torture cases, torture is used in order to get a confession. The statistics are based on a study of 20 cases identified between 2008 and 2014 by the Coalition of NGO against Torture in Kazakhstan. The study presented in the report “Circumstances of torture acts and punishment of those who are guilty in Kazakhstan”, Almaty, 2014, available at: <https://bureau.kz/news/download/449.pdf>

25 This information comes from the preliminary results of a project currently implemented in Kazakhstan with the General Public Prosecutor.



*Mr Marcin Walecki, Head of ODIHR Democratization Department, highlights the importance of co-operation among Central Asian countries in judicial and legal reforms. (ODIHR)*

## F. PLENARY SESSION III: MODERNIZATION OF PRE-TRIAL INVESTIGATION IN CRIMINAL PROCEEDINGS

### **Main conclusions and recommendations of the session:**

- *It is necessary to clearly divide the powers between actors in criminal proceedings and ensure that the same body is not allowed to review complaints about its own alleged violations.*
- *The judge is best placed to be an independent and impartial overseer of abidance to human rights and freedoms in the pre-trial phase of criminal proceedings.*
- *States should fully implement habeas corpus rights in their legislation, reducing the term for the arrested person to be brought before a judge to 48 hours, and providing judges with the power to review the legality of arrest and detention and to order release, where it is found that the arrest procedure was substantively violated.*
- *In order to achieve fully adversarial criminal proceedings, it is essential to provide defence lawyers with the possibilities to access case files at the earliest stage possible, participate at investigative actions without prior permission from the investigator or prosecutor, and collect evidence on their own.*

### **Summary of discussions:**

- 1. To ensure that criminal proceedings remain adversarial, it is essential to clearly separate oversight, prosecution and investigation functions between different justice actors.** One solution might be to remove investigation and some oversight functions from the prosecutors' powers, leaving them primarily with the ability to prosecute cases in courts. Since in some Central Asian countries both the prosecutor and the investigator can investigate a case, investigation functions should be left to the latter with the prosecutor having only some supervision powers over the investigator. The oversight powers during the pre-trial phase related to authorizing certain investigative measures and deciding on complaints shall be transferred to the judge. Currently, such separation of powers has been done only in Kazakhstan, where a

pre-trial judge was established. Kyrgyzstan will introduce a similar judge under its new CPC. Participants discussed the title of such judge, who is literally called 'investigative judge'. Yet, this denomination could be misleading, referring to the French model of investigative judge, whereas these two offices have very different, even opposite, functions. Thus a recommendation was made to give the pre-trial judge the name of "human rights judge."

**2. The pre-trial judge in criminal proceedings should act as a guarantor for the right to a fair trial.**

The oversight functions of such a judge should include taking actions aimed to protect human rights (particularly in cases where detention has been ordered), authorizing investigative measures which limit human rights of defendants, such as searches or covert investigation measures, and reviewing complaints and appeals by the parties during the pre-trial phase. Allowing the judge, a seemingly independent and impartial body, to have these functions could help ensure equality of arms and guarantee adversarial proceedings. As to the practice of Central Asian countries, all countries in the region foresee that judges can dispose of oversight functions during the pre-trial phase, with the exception of Turkmenistan where judges are confined to adjudicating the case and delivering the verdict.

**3. The judge should have the power to review the legality of an arrest and detention and to order release if the arrest or detention was unlawful.**

Such international obligation is prescribed by Article 9 (3) and (4) of the ICCPR. Yet, as an expert from Uzbekistan noted, only in Kyrgyzstan does the judge have the powers to verify the legality and grounds for an arrest. At the same time, it is unclear how this verification works in practice, since the CPC of Kyrgyzstan does not mention violation of arrest procedure as a ground for a person's release.<sup>26</sup> Moreover, international standards prescribe that the person arrested shall be brought promptly before a judge within 48 hours of his/her deprivation of liberty<sup>27</sup> for a judicial review of the arrest. Yet, in all Central Asian countries, with the exception of Kyrgyzstan, this can occur within 72 hours. A positive development on this issue was observed in Uzbekistan where according to the recent Presidential Decree<sup>28</sup>, this deadline will be reduced from 72 to 48 hours from April 1, 2017 onwards.

**4. Defence lawyers should, to the extent possible, benefit from an equal status as the prosecution in order to comply with the principle of equality of arms.**

Defence lawyers should thus benefit from unobstructed and prompt access to case files and powers to collect evidence, including possibility to use the services of private detectives. This is especially important as some Central Asian countries such as Kazakhstan and Kyrgyzstan decide to bring their criminal procedure closer to the adversarial model. It is equally important that the right for the defence lawyer to be present during most of the investigative measures without a prior permission by the investigator be enforced. It is however clear that a defence lawyer should always be present during the questioning of the accused. One good practice was discussed in that regard concerning Article 75 of the Russian Federation's CPC which prescribes that any testimony by the defendant received in the absence of the defence lawyer and not confirmed in court is inadmissible.

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<sup>26</sup> See Article 97 (1) of the CPC of the Republic of Kyrgyzstan. According to this provision, only expiration of the detention term is a ground for release, while any other serious procedural violations can never lead to a release.

<sup>27</sup> See Concluding Observations of the Human Rights Committee on Gabon's second periodic review, CCPR/CO/70/GAB, 10 November 2000, par. 13; and Human Rights Committee, Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), *Borisenko v. Hungary*, Communication 852/99, par. 7.4., where the HRC found a violation of article 9(3) with the detention of a person for 3 days (72h) before being brought to a judge. Also see generally Article 9(3) of the ICCPR which reads: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power..."

<sup>28</sup> The Decree of the President of Uzbekistan "On measures regarding further reform of the judicial system, strengthening guarantees of the secure protection of the rights and freedoms of citizens" of 21.10.2016 № УП-4850, published at "Collection of laws of the Republic of Uzbekistan" of 31 October 2016, N 43, p. 497, available at: <http://www.press-service.uz/ru/document/5353/>.



*Mr Batyr Saparbaev, UNODC Legal Expert, highlights the current problems in dealing with drug-related offences in Central Asia. (ODIHR)*

## G. PLENARY SESSION IV: ALTERNATIVES TO PRE-TRIAL DETENTION DURING CRIMINAL PROCEEDINGS

### **Main conclusions and recommendations of the session:**

- *Preventive measures against a suspect should be authorized solely by a judge who will not be sitting at the trial.*
- *Material and procedural grounds must be proved by the prosecutor or investigator in their application for preventive measures. The severity of the crime cannot be the sole ground for imposing a preventive measure.*
- *Non-custodial preventive measures should be considered first of all before ordering pre-trial detention. The latter should be ordered only when non-custodial measures are found unsuitable. Systematic and regular review of the applicability of a preventative measure must be ensured as there should be no automatic renewal of such measures.*
- *Central Asian countries should expand the use of existing preventive measures such as bail, personal recognisance, and electronic measures of control.*
- *Defendants, assisted by a defence lawyer, should benefit from a court hearing where he or she can present arguments against the prosecutor or investigator's request for deprivation of liberty or other preventive measures to the judge.*
- *Judges, prosecutors and defence lawyers should have targeted training to prepare for the hearings on preventive measures.*

### **Summary of discussions:**

- 1. The judge should be the only one in charge of authorizing preventive measures.** Currently in most of Central Asian countries, preventive measures can be applied by the judge, the prosecutor or the investigator. Yet, it is recommended that judges solely could decide on them since they are best placed to

impartially and independently assess whether such measures are required. It is important that a different judge decides on the merits of the case during the trial phase to ensure absolute impartiality. Therefore, a separate judge should be in charge of deciding upon pre-trial measures: Kazakhstan, recently introduced the pre-trial judge in its 2015 CPC and Kyrgyzstan plans to establish a similar judicial body according to its draft CPC. Nevertheless, it is not recommended to create independent judicial bodies outside of the current judicial system for these purposes, as this was tried in Moldova, and resulted in those bodies formally authorizing the requests directed to them without their critical assessment.

- 2. The decision to apply preventive measures should be reasoned and should not be motivated solely by the severity of the crime.**<sup>29</sup> In order to justify the necessity to use preventive measures, substantive and procedural grounds have to be demonstrated by the prosecutor or the investigator. The material ground to be demonstrated is a reasonable suspicion that the suspect committed the criminal offence in question, while the procedural ground includes a serious risk for the suspect to abscond, hindrance to the course of justice or commission of a new crime if no preventive measure is applied. Regarding the latter procedural ground, an expert from the US commented that the principle of presumption of innocence should be borne in mind. If those grounds are not established, a preventive measure should not be ordered. Moreover, systematic and regular review on the application of preventive measures must be put in place. The extension of the measure cannot be automatic, and new evidence has to be presented to justify the continuing need for the imposed measure. If there is no such evidence, the measure has to be cancelled.
- 3. Judges should order pre-trial detention only if non-custodial measures were found unsuitable. The use of non-custodial measures should be increased.** In Central Asian countries, pre-trial detention continues to dominate among the preventive measures ordered, although the legislation of all the countries provides a wide array of alternatives including, but not limited to, bail, house arrest, or personal recognizance. Participants highlighted that the legislation must foresee the possibility for the judge to order a measure different from the one requested by the prosecutor or investigator. In addition, the use of non-custodial measures is particularly important where vulnerable groups are concerned. Some participants called for Central Asian countries to follow the example of Kazakhstan<sup>30</sup> which introduced a mechanism promoting the use of bail in criminal cases displaying lesser risk for judicial control violation. This positive practice requires that the judge who decides to order pre-trial detention pending trial systematically considers the possibility of judicial supervision measures through bail and the completion of certain obligations (not to leave the territory, not to approach certain persons, etc.). This way, the pre-trial detention order already contains the amount of bail to be paid to remain out of detention, while it is also assumes that if bail or the accessory obligations are breached, the bail measure could be commuted to pre-trial detention. Experts from Ukraine and Uzbekistan recommended adding new types of alternative measures into the legislation, such as electronic measures of control,<sup>31</sup> which might be applied both as a primary or additional measure, and, therefore, constitute an effective alternative to detention.
- 4. The application of preventive measures should be decided at an oral hearing in the presence of the suspect assisted by a defence lawyer.** Conducting a court hearing is essential for the process to be adversarial, as it provides the suspect with an opportunity to challenge the petition of the prosecutor or investigator before the judge and present his or her arguments, while being assisted by a lawyer. A hearing in front of a judicial body also helps in uncovering and remedying possible abuses related to deprivation of liberty (such as ill-treatment), as well as requiring that defendants are assisted by a lawyer from the

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29 See Article 9 of the ICCPR.

30 See Article 148 (8) of the CPC of the Republic of Kazakhstan.

31 The Minister of Internal Affairs of the Republic of Kazakhstan has recently announced that the system of electronic monitoring of convicted is planned to be implemented as of 2018 (see related information at <https://www.zakon.kz/4823675-v-kazahstane-vnedrjat-sistemu.html>; <http://dknews.kz/sistemu-e-lektronnogo-monitoringa-za-osuzhdenny-mi-vnedryat-v-kazahstane-s-2018-g/>)

moment of arrest. Some participants expressed their concerns regarding the possibility to waive one's right to legal assistance for such hearings as it has been reported that such waivers are at times made under the pressure of law enforcement bodies. In order to make sure a defendant waives his/her right voluntarily, some lawyers proposed that the waiver is made in the presence of the lawyer whose services are rejected. However, it was noted that both prosecutors and defence lawyers need targeted training on applying or challenging preventive measures. One expert from Uzbekistan explained that participants to the criminal procedure do not know what should be proven during such hearing and how.



*Ms Ashita Mittal, Regional Representative for Central Asia at UNODC (right), presents the results of the research on the alternatives to imprisonment for drug-related crimes in Central Asia. (ODIHR)*

## H. WORKING GROUP 3: INVESTIGATION, PROSECUTION AND ADJUDICATION OF DRUG-RELATED OFFENCES

### Main conclusions and recommendations of the session:

- *The collection of disaggregated data is necessary for the development of effective policies to fight drug-related crimes and drug use.*
- *Diversion schemes, alternatives to pre-trial detention, and non-custodial sentences should be widely implemented to tackle drug-related offences and help decrease prison overcrowding.*
- *Legislation on drugs needs to be designed and defined in a way that allows for efficient response to new drugs on the market and that prevents legal loopholes.*
- *Harm reduction and community treatment programs should be widely introduced, particularly in prison facilities where drug use is endemic.*
- *Voluntary participation in drug treatments should be promoted to reduce the resort to compulsory programs.*

### Summary of discussions:

- 1. It is a key that Central Asian countries improve data collection regarding drug-related crimes to develop more effective anti-drugs policies.** A UNODC expert mentioned that one of the most serious challenges in studying alternatives to imprisonment in Central Asia was the lack of disaggregated data on drug crimes and drug use, particularly in prison settings. She stressed that such data would help design more appropriate solutions to the problem of drug-related crimes and drug use in general, such as implementing diversion procedures whenever appropriate and thus helping to decrease the overcrowding in places of detention.
- 2. States should apply existing or introduce new alternative measures in the context of drug-related offences within all stages of the criminal procedure to respond to prison overcrowding.** Currently in

Central Asian countries it is not possible to rely on diversion schemes which would allow the defendant to benefit from a procedure where the offence is dealt with 'out of the court', avoiding criminal prosecution and allowing referrals to appropriate social and medical services if appropriate. Most of the Central Asian countries implement harm reduction programmes aiming to reduce the harms from psychoactive drug use in people unable or unwilling to stop, but they do not lead to diversion from criminal prosecution. Additionally, while a number of preventive measures are available at a pre-trial stage, such as bail or house arrest, pre-trial detention is commonly applied to suspects in drug-related crimes. Moreover, while non-custodial sentences exist for drug offences under the law, preference is most often given to deprivation of liberty. In Kyrgyzstan, this sentence amounts to 56 percent of all sentences for drug offences, according to an expert from Kyrgyzstan, but this percentage is decreasing.

- 3. Legislations in Central Asia need to be defined and designed in a way that allows for an efficient response to a fast-changing and growing drug market.** Some new drugs, for example synthetic drugs and spices, are being created so fast that legislators are unable to prohibit them in a timely manner. The ways prohibited drugs are defined in the legislations vary: in Kazakhstan<sup>32</sup> the list of prohibited substances is defined by law, whereas in Kyrgyzstan it is prescribed by a government bylaw<sup>33</sup>. The latter model of drug regulation by bylaw provides for more flexibility and adaptability as such type of bylaw can be expanded or modified more easily and faster. At the same time, the Kyrgyz model creates a situation where the drug-related legislation is tied to governmental acts which do not hold as much legal authority as rules adopted by the legislature. Participants also highlighted that prohibited substances are often defined on the basis of the amount of the narcotic compound in a given substance. This so-called purity criterion is often being exploited by traffickers, as technically a given drug may not fall into a prohibited category due to the low proportion of the narcotic compound. Legislations thus need to take into account such type of loopholes. Additionally, participants agreed that the drug-related laws and criminal justice systems are the most effective against low-level traffickers, but rarely help to catch high-profile criminals.
- 4. States should introduce harm reduction and community treatment programs widely, including for persons in detention facilities.** An expert from Kyrgyzstan mentioned that prisons are a place where drugs are often available and used and that a UNODC survey conducted in Kyrgyzstan indicated that the majority of prison population consumes drugs.<sup>34</sup> A UNODC expert presented a recent UN General Assembly Resolution called "Our joint commitment to effectively addressing and countering the world drug problem"<sup>35</sup> which recommends, inter alia, enhancing access to treatment against drug use disorders for those incarcerated. Additionally, the document call on authorities to address the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned.
- 5. Central Asian states should promote voluntary participation in treatment programs so to limit the use of compulsory drug treatment.** All Central Asian countries have some form of compulsory drug treatment as an alternative or an additional measure for those who misuse drugs. An expert from Kyrgyzstan clarified that long-term compulsory treatment programs are very problematic as they might go against the will of the patient while short-term medical assistance to drug users are acceptable and needed.

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32 The law of the Republic of Kazakhstan "On narcotic drugs, psychotropic substances, their analogues and precursors and on measures countering illegal trafficking and misuse of drugs" of July 10 1998 № 279-I, available at: [http://online.zakon.kz/Document/?doc\\_id=1009806#pos=4;-209](http://online.zakon.kz/Document/?doc_id=1009806#pos=4;-209).

33 Bylaw of the Government of the Kyrgyz Republic "On narcotic drugs, psychotropic substances, and precursors subject to control in the Kyrgyz Republic" of 9 November 2007 № 543, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/58704?cl=ru-ru>.

34 As part of its program in Kyrgyzstan UNODC conducted a survey among the prison population in September 2016 and which was not published yet at the time of the Expert Forum.

35 United Nations General Assembly, Resolution A/RES/S-30/1 adopted on 19 April 2016, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/S-30/1>.



*Mr Rene Elkerbout, former Judge of the District Court of the Hague in the Netherlands (right), highlights the Dutch legislation on terrorism-related offences during the working group session moderated by Ms Nathalie Tran, ODIHR Rule of Law Officer (left). (ODIHR)*

## I. WORKING GROUP 4: PROSECUTION OF TERRORISM-RELATED OFFENCES BASED ON A HUMAN RIGHTS APPROACH

### **Main conclusions and recommendations of the session:**

- *The exercise of a person's fundamental rights including the right to freedom of expression, religion or belief cannot suffer undue restrictions on the grounds of the "fight against terrorism" as restrictions need to be strictly justified by their necessity in a democratic society.*
- *Terrorism and violent extremism offences and their elements should be clearly and specifically defined by law.*
- *Defendants in terrorism or violent extremism cases should also benefit from the principles of presumption of innocence and equality of arms.*
- *Persons accused of terrorism should benefit from the right to legal counsel, including the right to effective legal assistance and the possibility to select a lawyer of one's choice.*

### **Summary of discussions:**

- 1. Activities falling within one's exercise of fundamental rights such as the right to freedom of expression, religion or belief should not be unduly restricted or criminalized for the sake of "fighting terrorism".** In democratic societies, the exercise of fundamental freedoms can suffer permissible

restrictions only in very limited cases.<sup>36</sup> All forms of ideas, information or opinions fall under the protection of the right to freedom of expression, including those that “offend, shock or disturb” the population or part of it.<sup>37</sup> Thus, in the Netherlands, openly sympathizing with the objects and actions of radical organizations including by means of posting messages on the Internet, without calls for engagement in unlawful actions, falls within one’s right to freedom of expression. Similarly, studying ideologies which might be considered extreme or radical is an exercise of freedom of belief while protesting against democracy as a form of government is an exercise of a freedom of assembly.<sup>38</sup> These activities should not be restricted, as long as they are done in a peaceful manner and in respect of fundamental human rights and freedoms.<sup>39</sup>

- 2. Definitions of terrorism-related crimes should be as clear and as specific as possible.** Participants acknowledged that due to the absence of an agreed definition of “terrorism” under international law, terrorism-related crimes are formulated and interpreted very differently from one country to another. The same problem concerns so-called “extremism-related offences”<sup>40</sup>: an expert from Kazakhstan noted that the Criminal Code of Kazakhstan criminalizes acts such as “abetting extremism”<sup>41</sup> without providing a definition of “extremism” or of “violent extremism”. Thus, legal provisions on crimes related to terrorism and “extremism” in the criminal codes of Central Asian states often cover a wide scope of activities, using broad language, to criminalize as many acts as possible. This practice contradicts the principles of legal certainty, foreseeability and specificity of criminal law and opens up the risk of abuses. Participants observed that broad and vague definitions of criminal offences have at times led to politically-motivated prosecutions of activists. In addition, legal provisions on criminal offences being quite recent, there is rarely established jurisprudence offering solid legal interpretation. In such cases, the expert from Kazakhstan strongly recommended to adopt a narrow interpretation of the provisions and to interpret them in favour of the accused. Finally, participants highlighted the need for research on the causes and participation in terrorist activities to design more effective prevention policies in line with human rights.
- 3. Individuals accused of terrorism and “extremism” offences must benefit from the presumption of innocence and equality of arms.** As explained by the Dutch expert, individuals accused of terrorism offences should be able to exercise the same rights as any other defendant and, consequently, courts have to use the same procedural framework as applicable to any ordinary criminal proceedings, including, but not limited to, the same standard of guilt.<sup>42</sup> An expert from Kazakhstan explained that according to the Kazakh CPC, persons suspected of terrorist crimes cannot request a jury trial which is available for many grave crimes<sup>43</sup>. This can be interpreted as putting suspects of such crimes in a less advantageous position since jury trials tend to result in a higher number of acquittals than trials by professional judges. In addition,

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36 For example, in the Netherlands, restrictions to fundamental freedoms must be assessed on a case-by-case basis, taking into account risks for public safety, and with an adequate justification. One example of permissible restriction to the exercise of freedom of expression was given by the Dutch expert: public incitement to discrimination or hatred and violence against people on the grounds of their race, religion or sexual preference is prohibited and falls outside of the realm of freedom of expression. See for instance para 1.6 of the judgement delivered by the District Court of the Hague in Prosecutor v. Imane B. et al., December, 10, 2015, available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:16102> (“the Judgement”).

37 See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2015 Thematic Report, A/HRC/31/65, 22 February 2016, par 38, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.65\\_AUV.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.65_AUV.docx).

38 Para 1.7 of the Judgement.

39 Ibid.

40 Generally when discussing such offences in the Criminal Codes of the OSCE participating States, ODIHR recommends reconsidering the criminalization of acts of “extremism”, or, at a minimum, that definitions of “extremism” and “extremist activities” include a connection to violence or other criminal acts. See for example OSCE/ODIHR Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan, 6 October 2016.

41 Article 258 of the Criminal Code of the Republic of Kazakhstan.

42 See the Judgement, para. 1.11.

43 Article 631 of the Criminal Procedure Code of the Republic of Kazakhstan.

the expert from Kazakhstan observed a trend of conducting terrorism-related trials in prisons rather than in court buildings. The expert also mentioned the widespread use of anonymous witnesses' testimonies in such cases. While it is possible to cross-examine such witnesses, their testimonies remain difficult to challenge for the defence who will never be able to impeach a witness on the basis of bias, prejudice or unreliability. It was thus recommended that judges strictly assess the need for anonymity of a witness.

- 4. Defendants in terrorism and "extremism" cases must benefit from the right to a lawyer which includes being able to choose one's lawyers and receive effective legal assistance.** The expert from Kazakhstan explained that in his country most terrorism cases are heard in a closed session due to the possible presentation of evidence collected as a result of covert investigation measures whose methods and application are considered state secrets<sup>44</sup>. Most defence attorneys cannot participate in the trial of their clients because the law requires them to obtain a special permission to deal with state secrets which can be delivered only after a long and thorough procedure. This limits the possibility for defendants to hire a lawyer of their choice and brings up the issue of "pocket lawyers" i.e. lawyers who prefer to co-operate with the investigation or prosecution and do not advise their client effectively and independently.

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44 Article 14 (1) of the Law of the Republic of Kazakhstan "On state secrets" of March, 15, 1999, № 349-I.



Group photo of participants from the Sixth Expert Forum. (ODIHR)

## J. SIDE EVENT 2: GENDER IN THE CRIMINAL JUSTICE SYSTEM

### Main conclusions and recommendations of the session:

- *Negative cultural and gender stereotypes preventing female victims from reporting crimes should be addressed in state reforms and policies.*
- *Central Asian authorities should systematically collect comprehensive, sex-disaggregated statistics on criminal offences. Such statistics should be made available to the public.*
- *Continuous training on gender and crime prevention for law enforcement and justice professionals should be offered.*

### Summary of discussions:

- 1. Negative cultural and gender stereotypes on women lead to the under-reporting of crimes by female victims. When designing policies to fight criminality, it is important to include measures contributing to changing the mindset of the society.** An expert from Kyrgyzstan explained that, according to a survey among female victims of crimes,<sup>45</sup> bride kidnapping and sexual crimes are often underreported. For the former offence, 88 percent of the respondents did not report the crime while around 62 percent of respondents did not report the latter offences. Due to cultural stereotypes leading to social stigma for reporting such crimes, women victims are often pressed by their families either not to report the crimes or to abandon the proceedings initiated.<sup>46</sup> Participants debated on the fact that various forces in the society including representatives of the authorities apply pressure on women to retract complaints of domestic violence against their husband for the sake of keeping the family together. Another reason for women not

<sup>45</sup> According to polls conducted by the Civil Union "For reforms and a result", <http://www.reforma.kg/>.

<sup>46</sup> According to Article 331 (4) of the CPC of Kyrgyzstan, if a private prosecutor fails to attend the first hearing following his or her application without sufficient justification, the proceedings are terminated.

to report sexual crimes was raised by a participant from Uzbekistan: it is difficult to prove sexual offences and victims fear to be accused of making a false reporting of a crime.

- 2. Comprehensive, precise, and sex-disaggregated crime statistics should be systematically collected by the authorities and made available to the public.** Participants highlighted that statistics are essential to devising comprehensive and relevant public policies and legislation in the area of criminal justice. For example, an expert from Kyrgyzstan revealed that in her country, where the collection of statistical data on domestic violence include data on substance abuse, around 83% of domestic violence acts were committed under the influence of alcohol.<sup>47</sup> Public policies on domestic violence thus need also to address alcohol abuse. Moreover, statistical data often help direct the attention of law-makers on more urgent areas for public spending. For example, the establishment of hotlines and crisis centers for victims of domestic abuse would substantively reduce the overall spending on police investigation, legal proceedings, social and medical care expenditures resulting from incidences of domestic violence. Finally, an expert from Kyrgyzstan clarified that public access to comprehensive crime-related data is useful for NGOs working in the field of gender based violence, as it also allows them to get a better picture of the situation and, thus, develop their advocacy plans in line with the most pressing needs in the society.
- 3. Relevant justice and law-enforcement personnel should be adequately trained to assist female victims and address gender-related issues in crime prevention.** Often, victims of sexual offences, including of sexual harassment, experience bias from the police who behave as if victims of sexual offences carry part of the responsibility for the event or even provoked it. Participants agreed that there is a need to increase awareness on gender equality and how gender needs to be mainstreamed in light of human rights standards in the work of law-enforcement and justice professionals. In addition, one participant underlined that such training should be conducted on a continuous basis to ensure that new recruits and employees are also sensitized to such issues.

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<sup>47</sup> See the Statistic Compendium on Women and Men in the Kyrgyz Republic, published in November 2016, available at <http://www.stat.kg/en/publications/>.



*At the side event on the independence of legal professions in Central Asia moderated by Ms Gulnora Ishkhanova, Legal Expert (center), the panel of introducers open the floor for discussion. (ODIHR)*

## K. SIDE EVENT 3: INDEPENDENCE OF LEGAL PROFESSIONS IN CENTRAL ASIA

### **Main conclusions and recommendations of the session:**

- *Bar Associations carry the important role of protecting its members and enhancing their sense of unity through the multiplication of exchange and discussion opportunities.*
- *It is recommended that bar associations function on the principle of self-administration and independence, free from the influence of state authorities.*
- *Lawyers benefit from procedural guarantees related to their status and the conduct of their work which should not be violated by undue restrictions on the performance of their duties.*
- *Lawyers should be provided with opportunities for professional development and continuous learning, including training, participation in conferences and legislation drafting.*

### **Summary of discussions:**

- 1. The unity of lawyers is a prerequisite for a strong legal community and an independent Bar Association. The Bar should protect its members and provide them various opportunities for exchange and discussions.** A participant from Uzbekistan explained that lawyers can have a strong position and status only if they are united. Some good examples where legal professionals are united come from Kyrgyzstan, where the Bar and its members actively organize international conferences and provide concrete support to peers under attack (i.e. attorneys subject to illegal searches or under physical threat). Participants explained that bar associations in Central Asia are still in the process of strengthening and building themselves, even though all Central Asian countries have developed nation-wide bar associations and lawyers' chambers except Turkmenistan. Bars and chambers carry an important responsibility to inspire trust to the legal profession and beyond, and play an important role to ensure that its members have a

forum to discuss issues of relevance. In that regard, participants suggested to organize more events and develop an online forum on the Bar web site as a platform for discussions and legislative proposals. Also, attorneys often feel that they are not entirely considered as an equal player by investigators and judges. Finally, it was highlighted that a strong community of attorneys benefits the society and the executive and legislative powers who will find in them a competent counterpart to contribute to legislation development.

- 2. Lawyers should remain independent from the authorities both with regard to the organization and administration of their profession and their status. They should enjoy procedural guarantees in the way they perform their work.** A number of recommendations were discussed to ensure the independence of the legal profession, including entrusting the bar association with the licensing process, direct election of the chairperson by its peers, and adopting measures to ensure the bar association's financial independence. Additionally, independence in the status of lawyers means that criminal prosecution against them needs to be strictly framed, as a participant from Kyrgyzstan noted. For example, in Kyrgyzstan and in Uzbekistan, only the General Prosecutor or his/her deputies can initiate criminal proceedings against a lawyer. Finally, the independence must not be compromised when lawyers perform their duties. Given the current technological developments, lawyers should have the right to use mobile phones and laptops to facilitate the preparation of their case, including to review and to copy documents from the case file. Thus, they should not be subject to seizure of their personal belongings when entering court buildings or generally when dealing with law enforcement.
- 3. Bar associations should provide advanced training opportunities for their members. The legal requirements for the continued legal education of attorneys should be flexible enough to cover a wide range of learning and development activities.** Several participants expressed their concerns regarding deterioration in the skills of some attorneys and the quality of the work of state-appointed attorneys. Participants agreed that lawyers' continuous legal education is essential and that the Bar should play a leading role in advancing it. A participant from Turkmenistan noted that their Bar Associations conduct monthly meetings to discuss the latest legislative developments. A participant from Kyrgyzstan informed that in their system advanced training of attorneys is obligatory, and all attorneys need to dedicate at least 48 hours to their professional development every three years, and failure to do so leads to disciplinary proceedings. A training center for practicing lawyers was established to deliver courses and training on a continuous basis. A participant from Uzbekistan underlined that the scope of activities covered by professional learning should be flexible: for example, participation in relevant training, seminars and conferences outside of the Bar, publication of specialized articles in the media, and contributing to legislative drafts and discussion should qualify as continuous learning and development. Finally, participants also agreed that lawyers are primarily responsible for their professional development and learning, especially given the many opportunities for training and learning available online.



*Mr Arman Zhukenov, Chairperson of the Saryarkin Regional Court of Astana City (center), presents how courts in Kazakhstan modernized their information technology system as Merit Kõlvart, Advisor at the Ministry of Justice of the Republic of Estonia (left), and Oleksandr Banchuk, Criminal Justice Projects Manager at the Centre for Political and Legal Reforms in Kyiv (right), listen to his presentation. (ODIHR)*

## L. PLENARY SESSION V: THE USE OF ICT IN CRIMINAL COURT PROCEEDINGS

### Main conclusions and recommendations of the session:

- *The implementation of ICT systems in the work of the judiciary would increase its efficiency and would improve its cooperation with the other state agencies. Such systems might also collect statistics, which can further be used as an input for reforms.*
- *Technological solutions, such as an automated distribution of court cases and audio/video recording of proceedings, may reduce corruption, limit misconduct and promote public trust in the judiciary.*
- *The exercise of the right to defend oneself would be unduly obstructed should defendants and their lawyers be prohibited from using technological tools such as telephones, smartphones or laptops in the preparation of one's defence and to collect evidence.*
- *Technology may facilitate access to justice by providing individuals with up-to-date information regarding the court cases and court decisions online, by providing a remedy to the remoteness of individuals from the court through videoconference, and by enabling interpretation of court proceedings.*

### Summary of discussions:

1. **ICT systems improve the performance of the judiciary and related state agencies, and can help support future reforms through the collection of data and statistics. The cost of developing such systems needs to be planned in the justice budget.** One example of IT solution that supports efficiency is the automated distribution of court cases which helps equalize the workflow and workload of judges. Court officials who manage case distribution can rely on the IT system to choose a judge automatically, on

the basis of a number of predefined criteria, including current number of cases, the judge's specialization and, possibly, his/her number of years of experience. The expert from Estonia noted that the algorithms behind the automated system should be quantitative and qualitative to take into account the varying complexity of court cases. Additionally, court information systems can provide an automated workspace for judges, making their routine activities easier, and can help them keep track of legal and procedural deadlines through automatic reminders for upcoming verdict delivery. The Estonian expert also presented the advantages of connecting the IT systems of different agencies together: the Estonian E-File system connects the courts, police, and prosecution and allows them to submit documents electronically and monitor their use and the progress achieved in related proceedings. Increased efficiency of the judiciary contributes to conducting court proceedings within a reasonable time, an essential part of the right to a fair trial. Moreover, such systems facilitate automatic data and statistics collection processes which can be used to develop future reforms. Participants also discussed the cost for the installation and maintenance of such systems and highlighted that costs for upgrading existing systems need to be carefully planned and budgeted at the state level. In Estonia, the Court Information System creation was funded by the EU, while Kazakhstan used its own funds.

- 2. The use of technological tools can contribute to increased transparency of courts, limit abuses and, ultimately, increase public trust in the judicial system and judicial independence.** For example, the system of automated distribution of cases previously mentioned can drastically minimize human intervention in the distribution of cases by prohibiting manual choice for a specific judge. Manual distribution can still be used, but only on an exceptional basis and with a proper justification. This contributes to reducing the possibility for manipulation and, ultimately, corruption. In addition, audio/video recording of trials helps deter and document any possible inappropriate or discriminatory behaviour on the part of justice actors during the proceedings.
- 3. New technology is vital for an effective exercise of the right to defend oneself. Court administrations should be mindful not to set up policies and procedures that unduly restrict the right to a legal defence.** As they are dealing with personal data of the parties or other sensitive information in cases heard in the court premises, court officials have established strict security rules and practices within the court buildings. Yet, one participant expressed concerns regarding the current rules on access to courts in Kazakhstan which prohibits defence lawyers from bringing within the court building mobile phones with cameras and internet connection. Such practice seriously undermines the efficiency of the work of the defence lawyer who cannot properly prepare the defence in his/her case and make photographic copies of case material with the phone or other device. Moreover, availability of a public court web site or any other information systems which displays at any time information regarding a case status, court hearings and court decisions reinforces equality of arms of the parties, as both the defence and the prosecution have an equal access to information.
- 4. ICT is a prerequisite for furthering access to justice.** New technologies can help make justice services more accessible to individuals, for instance, by ensuring availability of interpretation, case information and accessibility of court judgments. A good practice from Ukraine was identified whereby, according to the law, all court decisions with the exception of certain issues such as family law related matters should be uploaded into a court decision registry. The registry is open to the public with the possibility to conduct searches on the basis of different criteria, including the case number and keywords. ICT solutions supporting video link as it was recently implemented in Kazakhstan also allow participants in the criminal procedure to effectively participate in the process by countering geographical remoteness of a court. In addition, such solutions significantly reduce the costs spent by parties to commute to the courts.



*Mr Dmitry Nurumov, ICJ Consultant (left), and Mr Rovshan Ahmedov, Head of Chamber of Advocates in Uzbekistan (right) exchange views in the margins of the Sixth Expert Forum. (ODIHR)*

## M. SIDE EVENT 4: COMPARATIVE PERSPECTIVES ON JUDICIAL INDEPENDENCE

### **Main conclusions and recommendations of the session:**

- *Judicial ethics preserves public trust and fairness in the justice system and is intrinsically linked to the principles of judicial independence and impartiality.*
- *Independence of judges should not be simply defined as a theoretical value but secured in practice through life tenure appointments, independent selection procedures, adequate remuneration for judges, and education.*
- *Clear and foreseeable rules of judicial conduct are necessary to preserve the proper balance between judicial independence and accountability.*

### **Summary of discussions:**

- 1. Judicial ethics is necessary to preserve public confidence and fairness in the justice system. Independence and impartiality are the core principles of judicial conduct.** An ICJ expert explained that the judicial ethics is a set of norms for judges on how to maintain independence, impartiality, integrity as well as other core values of judicial conduct. The expert informed of the relevant international standards in this sphere, highlighting the Bangalore Principles of Judicial Conduct<sup>48</sup> and the Kyiv Recommendations

<sup>48</sup> Judicial Group on Strengthening Judicial Integrity, The Bangalore Principles of Judicial Conduct, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, available at: [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

on Judicial Independence<sup>49</sup>. As to the main values of judicial conduct, it was explained that independence of judges implies an ethical obligation for judges to exercise the judicial function without any influence. Participants also discussed the definitions of independence and impartiality as two distinct concepts. The ICJ expert clarified that the former concept is comprised of two aspects: an institutional one where the judiciary is structured in a way that allows judges to be independent from other branches of government, and a personal one where a judge should not be under undue influence personally. Likewise, the notion of impartiality refers to two aspects: first, subjective impartiality where the judge should not act in a biased way and does hold pre-conceived opinions towards a party or the outcome of a case, and secondly, objective impartiality where the behaviour of the judge should not be perceived as biased in the eyes of a reasonable observer.

2. Rules on tenure, selection procedures and remuneration of judges can strengthen the independence of the judiciary. Several experts stressed that life appointments are recommended from the initial appointment, as it is the case in Norway and Ukraine. Indeed, probationary appointments increase the vulnerability of judges to the influence of the executive branch that will be able to retain some control over a judge's reappointment or extension. An expert from Ukraine underlined that in the case of lifetime appointments, it is essential to have a strict appointment process and a truly independent appointment authority. He also underlined that civil society should play an important role in the selection procedure.<sup>50</sup> Other participants expressed concerns as to whether NGO representatives are always acting independently if they can influence the selection process. It was also agreed that adequate financial remuneration of judges is essential in reducing risks of corruption. The Norwegian expert said that independence of the judiciary in his country was achieved primarily through a change in the cultural mindset in the society and in the judiciary, rather than through formal safeguards. He recommended that more emphasis is put on educating judges on the importance of judicial independence.
3. Unclear rules on judicial conduct pose a threat to judicial independence. As stressed by the ICJ expert, rules on judicial conduct and obligations of judges need to be clear. For example, regarding the requirement of judicial professional competency, judges may lack time to participate in educational activities if those are conducted within working hours, or they might not be permitted to attend those events by presidents of courts. The ICJ expert recommended that necessary conditions are put in place to ensure that judges can fulfill their ethics and judicial conduct obligations. He also suggested that careful consideration of each disciplinary case is required: a judge's failure to comply with a certain obligation should not necessarily lead to the engagement of his/her responsibility. One expert from Russia provided an overview of the development and amendment of the Russian judicial code of ethics which contains guidance on what conduct judges are supposed to adopt. The ICJ expert also highlighted the importance of having clearly formulated acts constitutive of violations of judicial conduct. This is all the more important since in some post-Soviet countries such violations entail harsh disciplinary sanctions. He argued that often it is unclear for judges what would constitute a violation of their obligations. As a result, disciplinary bodies have the latitude to interpret these rules subjectively which could lead to possible abuses and targeted reprimand of judges.

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49 OSCE Office for Democratic Institutions and Human Rights/Max Planck Minerva Research Group on Judicial Independence, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, Kyiv, 23-25 June 2010, available at: <http://www.osce.org/odihr/KyivRec?download=true>. Among the other sources, the expert mentioned Article 14 of the International Covenant on Civil and Political Rights (UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>), and Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

50 See for instance recommendation Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009) at para. 97 where the Special Rapporteur recommends that "independent bod[ies] in charge of the selection of judges [...] should have a plural and balanced composition".

## V. ANNEXES

### A. ANNOTATED AGENDA



in co-operation with OSCE and with Field Operations in Central Asia



with the support of Penal Reform International

#### SIXTH EXPERT FORUM ON CRIMINAL JUSTICE FOR CENTRAL ASIA

#### ANNOTATED AGENDA

**16-18 November 2016**

***Regency Ballroom, Hyatt Hotel, Tashkent, Uzbekistan***

Since 2008, the Expert Forum brings together leading experts and policy makers to discuss the latest reforms, trends and initiatives in the criminal justice sector in the countries of Central Asia and other parts of the OSCE region. With this Sixth Expert Forum, ODIHR and its partner UNODC continue to engage in promoting exchange of experiences and expertise between participating States on OSCE commitments and international standards related to the rule of law and criminal justice systems.

#### **Format of the sessions:**

- In the introductory session, one representative of each country delegation will be invited to deliver a presentation on the latest reform efforts in their country in the area of criminal justice and judicial reform. Each representative will be allocated 12 min for their presentation.
- In plenary sessions, each panellist will make a short presentation (15 min each) on different aspects of the session followed by a general discussion with the participants (50 min). Before concluding the session, the moderator will summarize the main recommendations from the discussions (10-15 min).
- In working group sessions, participants will be invited to join one of the two working group sessions offered. Ideally, each session will be attended in equal numbers. For this purpose, all participants will be invited to choose their preferred working group sessions during the registration on 16 November. Due to the limited capacity in each working group, the distribution will take place on a first-come, first-served basis. During the working group sessions, each panellist will make a short presentation (15 min each) on different aspects of the session followed by a general discussion with the participants (50 min). Before concluding the session, the moderator will summarize the main recommendations from the discussions (10-15 min).

## DAY ONE, 16 NOVEMBER 2016

### 08.30 – 09.00 Registration

### 09.00 – 09.30 Welcoming remarks

Moderator: *Mr Jan Haukaas*, Special Advisor to the Director of ODIHR

Speakers: *Mr Shayunus Gaziev*, Chairperson of the Supreme Court of Uzbekistan  
*Mr Michael Link*, Director of ODIHR (video statement)  
*Mrs Svetlana Artikova*, Deputy Speaker of the Senate of the Oliy Mazhlis of Uzbekistan  
*Ms Ashita Mittal*, UNODC Regional Representative for Central Asia  
*Mr Sanzhar Khamidullaev*, Deputy Ombudsperson of Uzbekistan  
*Amb John MacGregor*, OSCE Project Co-ordinator in Uzbekistan

### 09.30 – 10.30 Introductory Session – Presentation of the latest criminal justice reforms in Central Asia

Moderator: *Mr Marcin Walecki*, Head of ODIHR Democratization Department

Speakers: *Mr Aziz Mirzaev*, Assistant to the Chairperson of the Supreme Court of Uzbekistan  
*Mr Yerlan Abaev*, Deputy Chief of the Department of Oversight of Pre-trial phase of the Investigation, Prosecutor General's Office, Kazakhstan  
*Ms Kymbat Arharova*, Judge, Member of the Association of Women Judges of Kyrgyzstan  
*Ms Bestyr Eyvanova*, Member of the Bar Association of Ashgabat city, Turkmenistan

### 10.30 – 11.00 Group photo followed by coffee break

### 11:00 – 12:30 Plenary Session I – Sentencing policies

Moderator: *Mr Azamat Shambilov*, Penal Reform International, Regional Director for Central Asia

Panellists: *Mr Rob Allen*, Co-Director and Consultant on Criminal Justice and prisons, Justice and Prisons  
*Ms Larisa Ilibezova*, Legal Expert, Kyrgyzstan

In accordance with international standards, sentences should be applied in a uniform manner. Similarly situated defendants should receive similar punishment, as disparity in sentencing may erode the public's confidence in the integrity of the criminal justice system. Sentencing should be entirely neutral as to the race, sex, national origin, creed, or socio-economic status of the offender. In order to protect the right to a fair trial, it is essential that courts give reasons for their decisions in a timely manner.

Deprivation of liberty should be regarded as a sanction of last resort, and should be imposed only when the seriousness of the offense would make any other sanction or measure clearly inadequate. The judicial authority should have a range of non-custodial measures at its disposal, and should consider a range of factors, including the rehabilitation of the offender, the protection of society, and the interests of the victim when making a sentencing decision.

This session will explore trends in sentencing policies in Central Asian criminal justice systems. Key questions for discussion are the following:

1. What impact does current reforms of criminal legislation in Central Asian countries have on sentencing policies?

2. To what extent do judges have discretion in applying sentences? What guidelines exist for judges in imposing sentences and what are current needs in terms of the development of such guidelines or other legal instructions on sentencing in line with national legislation?
3. Can judges enhance penalties due to aggravating factors such as repeated violent acts, abuse of a position of trust or authority, etc.?
4. What percentage of the overall female prison population do pre-trial women prisoners comprise? What are the most common offences with which they are charged? What proportion of women held in pre-trial custody is subsequently acquitted?
5. What proportion of prisoners held in pre-trial custody is subsequently acquitted? Of those convicted, what proportion receives a custodial sentence? Does the proportion of prisoners held in pre-trial custody who do not subsequently receive a custodial sentence suggest that incarceration is sometimes used when it is not necessary?
6. To what extent are non-custodial sentences applied? How can the use of non-custodial sanctions be further promoted?
7. What are some of the factors considered according to legislation in Central Asian countries when imposing a sentence (e.g. the grade of the offense; mitigating or aggravating factors; the nature and degree of harm caused by the offense, the community view of the gravity of the offense; the public concern generated by the offense; the deterrent effect a particular sentence may have on the commission of the offense by others; and the current incidence of the offense in the country)
8. How are judges and other criminal justice practitioners trained on sentencing policies? What needs for further capacity development are there in this area?

**12.30 – 13.30**      **Lunch**

**13:30 – 15:10**      **Plenary Session II – Institutional and Functional Reform  
of the Penitentiary Systems**

Moderator:            *Ms Vera Tkachenko* International Programme Manager, UNODC

Panellists:            *Mr Rob Allen*, Co-Director and Consultant on Criminal Justice and prisons,  
Justice and Prisons  
*Mr Batyr Saparbaev*, Legal Expert, UNODC

The Standard Minimum Rules for the Treatment of Prisoners (SMRs) constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in countries all over the world. In 2015, the UN General Assembly adopted a revised version of the SMRs, which are now called the Nelson Mandela Rules, to honour the legacy of the late President of South Africa.

The Nelson Mandela Rules provide a guiding framework for discussion on the development of a strategic approach to addressing prison challenges in Central Asia. These challenges derive from the legacy of the Soviet Union's colony type prison system, which relied heavily on imprisonment rather than non-custodial sanctions. In this session, participants will reflect on these challenges and discuss steps to enhance engagement in (a) reducing the scope of imprisonment; (b) improving prison conditions and prison management; and (c) supporting the social reintegration of offenders upon release.

The following questions are suggested to guide the discussion:

1. What are the key principles of human-rights based approach to prison management and what are good practices concerning organisational structures, human resources policies and public oversight of prison administrations?

2. To what extent are criminal justice policies in Central Asian countries geared towards the application of alternatives to imprisonment and what are the current needs in terms of promoting social reintegration of offenders and offering professional parole and probation services?
3. What efforts are being undertaken in Central Asian countries to modernize prison facilities and improve conditions?
4. What models for training and other capacity development of prison staff exist in Central Asian countries?
5. What are the latest trends in the area of vocational training, employment, social and psychological support and other prison-based rehabilitation programmes?
6. What challenges do Central Asian countries face in managing violent extremist and other high-risk prisoners and what steps can be taken to ensure that prison administrations strike a proper balance between security measures and the treatment of these prisoners in line with fundamental human rights?
7. What are the internal and external mechanisms for the review of prisoners' complaints? Are independent public monitoring mechanisms of places of detention available and effective?

**15.10 – 15.30          Coffee break**

**15.30 – 17.00          Working Group Sessions**

***Working Group 1: Plea bargaining and other abbreviated procedures***

Moderator:            *Mr Dmitry Nurumov, ICJ Consultant*

Panellists:            *Mr Zhan Kunserkin, Lawyer of the Almaty City Bar*  
*Mr Stephen Thaman, Emeritus Professor of Law, Saint Louis University, St. Louis*

Abbreviated procedures for adjudication of cases are gaining attention in Central Asia as cost-effectiveness and efficiency are increasingly a priority. Shortened procedures allow the prosecution to reallocate resources for more demanding cases. Defendants are subject to shorter procedures including shorter periods of detention and the costs linked to legal assistance services are reduced. As a result, the court system is less burdened and caseloads are dealt with more efficiently.

Plea bargaining is considered to be one of the most efficient form of abbreviated procedures. Yet, using plea bargaining or other abbreviated procedures requires careful consideration in balancing fair trial guarantees, and procedural efficiency. Strong safeguards against any misuse or coercion, such as guaranteed effective legal advice for the defendant, a clear obligation for the judge to verify the suspect's voluntariness and the existence of corroborating evidence, must be in place in order for this procedure to function properly. In addition, as a novelty originating from a different procedural model, it is recommended that plea agreement be introduced in conjunction with adapted tools for its implementation – such as sentencing guidelines- and its monitoring – as the development and collection of statistics. Discussions during the working group should be guided by the following questions:

1. What types of abbreviated forms of procedures exist in Central Asian legal systems and how often are they being used? Are there procedures allowing for complete dismissal of charges?
2. Is plea agreement available for all types of criminal offences, including the most serious ones? What elements of the offence does the plea agreement cover (charges or nature and quantum of sentence)? Is recognition of guilt a prerequisite?
3. Is the prosecutor legally bound by the results of police investigations and has to bring charges? Or does the prosecutor have discretion to dismiss the complaint/charges or propose a plea agreement? How often does a prosecutor decline to prosecute due to the possibility of negotiating a plea agreement? Is this decision reviewed, and if so, by whom? What is the nature of the relationship between the prosecutor and the police?

4. What is the prosecutorial policy regarding gender-based crimes? Are plea agreements often used in such cases?
5. What is the role of judge in plea negotiations? To what extent judicial involvement in plea bargaining should be allowed?
6. What are the safeguards against duress and coercion in entering into a bargain, or against its unfairness? Is the assistance of a lawyer mandatory for such procedure?
7. What is a victim's position in a plea bargain procedure? Is the victim's opinion taken into consideration during abbreviated procedures?
8. Are there rules or recommendations guiding the judge, prosecutor and lawyer in initiating, negotiating, or reviewing plea agreements?
9. What does the judgment on such procedures contain? Any reference to evidence proving guilt? Or only evidence justifying the sentence?
10. What are the current statistics regarding the use of these procedures? Is it possible to conclude that the objective of a more expedient administration of justice was achieved?

**Working Group 2: Reform of post-Soviet classification of offences** (*Bukhara meeting room*)

Moderator: *Ms Irina Letova*, Independent Expert, Bishkek

Panellists: *Mr Oleksandr Banchuk*, Manager of criminal justice projects,  
Centre for Political and Legal Reforms, Kyiv  
*Ms Leila Sydykova*, Deputy President of the Kyrgyz-Russian Slavic University  
for International Affairs, Bishkek

Central Asian countries have adopted various models of classification of offences, following different criteria for classification and attributing different sentences for each type. Such classification has an impact on fair trial rights afforded to suspects (for example with the obligation of mandatory defence in serious criminal offences), and on the severity of possible sanctions. Yet, recent reforms in the region have prompted the legislator to place some offences of lesser gravity in categories of offences which can entail more serious sanctions, as a way to more gravely repress certain illegal behaviours. These offences which at times relate to the exercise of fundamental freedoms (for example, freedoms of religion, expression, or association) can end up being sanctioned disproportionately. The session will allow participants to discuss existing models and good practices for classification of offences which respects international standards on criminal procedure and fundamental rights. Participants will be invited to discuss the following questions:

1. On which criteria were recent reforms in the classification of offences based? What are the expected results of such reforms?
2. When a person is suspected to have committed an administrative offence, is a judge involved in reviewing the case or is the alleged offender subject to an administrative decision?
3. What are the main differences between the administrative and criminal procedures in terms of suspects' rights?
4. In case a person subject to administrative procedure for the suspicion of having committed an administrative offence is put under administrative arrest, what rights does he/she have?
5. What is the respective range of sentences that can be imposed on criminal and administrative offenders? If administrative imprisonment can be imposed by law, how is it different from criminal imprisonment, taking into consideration the maximum length of the sentence and detention conditions?

**17.00 – 17.05**      **Break**

**17.05 – 18.00**      **Plenary Session III – Reports from the Working Groups**

Rapporteurs:      *Ms Leila Ramazanova*, Advocate, Almaty City Bar  
                         *Ms Gulnora Ishankhanova*, Legal Expert, Tashkent

The rapporteurs from Working Groups 1 and 2 should consolidate and present the main observations from their respective groups, with a view to highlighting key issues. This should serve as a basis for discussion throughout the session, and allow for all participants to exchange views on the topics of the working groups.

**19.00 – 22.00**      **Reception at the Hyatt Hotel, Regency Ballroom**

## **DAY TWO, 17 NOVEMBER 2016**

**08.00 – 09.20**      **Side event 1: Countering institutional incentives for torture and other cruel, inhuman or degrading treatment or punishment organized by ODIHR and PRI (Fergana meeting room)**

Welcoming words  
and introduction:      *Stephanie Selg*, ODIHR Adviser on Torture Prevention

Moderator:      *Mr. Azamat Shambilov*, Regional Director, Penal Reform International office  
                         in Central Asia

Panellists:      *Ms Anastasiya Miller*, Director of Kostanay Branch of Kazakhstan International  
                         Bureau for HR and RoL  
                         *Mr Joachim Wenz*, Police Affairs Officer/Adviser on Fight against Crime,  
                         OSCE TNTD/SPMU  
                         *Ms Kyra Hild*, International Legal Advisor, REDRESS, UK

States have the obligation to prevent, prosecute and punish all acts of torture and other ill-treatment. In the field of torture prevention, traditionally a strong focus lies on the establishment and implementation in law and practice of procedural safeguards as well as the treatment of prisoners and the conditions of detention. Much less has been said and done regarding the question why torture still happens. What are the incentives for law enforcement officials, investigative officers or prosecutors to still use torture, ill-treatment or coercion as a means for investigation or punishment during arrest, police custody and criminal investigation procedures? What are the incentives for prosecutors to not open investigations into allegations of torture or for judges to accept torture tainted-evidence during court proceedings? How do those incentives interrelate with each other and most importantly, how can participating States interrupt this vicious circle and effectively eradicate torture and other ill-treatment within their respective jurisdictions? This side event provides a platform to look into some of the already identified incentives and to eventually identify additional institutional incentives for torture in the Central Asian context.

Panellists will provide input and comments on both the substantive and the advocacy levels, thereby offering strategies for OSCE participating States and civil society organizations on how to best raise awareness regarding the future reinforcement and implementation of the relevant standards across the OSCE region.

Following the presentations of the panellists an interactive dialogue with participants will take place guided by the following questions:

1. What institutional incentives for torture and ill-treatment can be identified in the Central Asian region?

2. How is the exclusionary rule applied in criminal and other proceedings and how does non-application of the rule correlate with the use of torture during criminal investigations? Are forced confessions still deemed admissible by prosecutors and judges? If yes, why and what would be the incentive to dismiss such tainted evidence?
3. Are medical examinations subjected to authorization and is such authorization used to create a delay in order to allow evidence of torture or ill-treatment to heal? Do judges demand external physical evidence of torture or ill-treatment in order to rule evidence obtained by such practices as invalid?
4. What professional and ethical rules for justice actors are in place? Are there incentives for torture included in promotion and performance evaluation for law enforcement officials, prosecutors and judges (e.g. crime solving quotas)?
5. How does external/political pressure on justice and law enforcement system correlate with the use of torture and other ill-treatment?
6. Are there efficient and independent complaint mechanisms in place? Are allegations of torture promptly and effectively investigated, prosecuted and punished? If not, what are the main reasons and how to address them?

**09.30 – 11.00            Plenary Session IV – Modernization of pre-trial investigation  
in criminal proceedings**

Moderator:            *Ms Umida Tukhtasheva*, Head of Criminal Procedure Chair at the Tashkent State University of Law, Tashkent

Speakers:            *Mr Stephen Thaman*, Emeritus Professor of Law, Saint Louis University, St. Louis  
*Ms Gulnora Ishankhanova*, Legal Expert, Tashkent

Current criminal justice reforms in Central Asia countries have modified the roles of the parties. In certain systems, the judge take up new functions related to authorizing arrests or other investigative measures which were previously held by the prosecutor or the investigator. Such changes would conform to the principle that the judicial authority should act as a guarantor of the fairness of the procedure and ensure that the rights of the defence are respected. One important aspect of the judge's role is the requirement for the person arrested to enter into contact with a judicial authority within the first 48h of the arrest. Indeed, such review of the legality of arrest must be performed by the judge itself.

The modification of the roles at pre-trial phase also influences the use of investigative measures in criminal proceedings. Taking into account the principle of presumption of innocence, any requests for and use of investigative measures, especially the most intrusive ones, require careful balancing between the need and severity of such interferences, and the respect of fundamental human rights, namely the right to liberty, physical integrity and security, and the right to privacy. Balancing these two requirements are all the more important when it comes to special investigative measures. Participants will thus be invited to reflect on the following questions:

1. What is the proper balance of powers between the pre-trial judge, the prosecutor and the investigator in terms of approval of investigative measures and oversight of their legality? Who is in charge of the investigation? What is the role of the lawyer?
2. What is the level of representation of women in the judiciary, prosecution and police? What is the ratio of women to men? Do women hold positions of authority in these institutions?
3. What should be proven prima facie in order to have the investigative measure approved? How and to what extent should the decisions for the conduct of investigative measures be substantiated?
4. What is the framework for assessing reasonable suspicion (or probable cause) for the purposes of arrest/ police custody?

5. Concerning arrests/police custody, is the obligation to bring a detained person to a judicial authority fulfilled in practice? If yes, how long since the deprivation of liberty does this appearance usually take place? Does it conform to the rule of a maximum of 48h since deprivation of liberty?
6. Are there specific issues related to the registration of the actual date and time of arrest in practice? Are all necessary procedural safeguards, such as access to legal counsel upon arrest implemented in practice?
7. What are the mechanisms of reviewing the legality of arrests/police custody and who is in charge of this review? Who can initiate such review?
8. For which investigative measures can defence counsel (or defendant) be present? Is there a need to obtain the permission from the investigator/prosecutor?
9. What are the approval, control and review mechanisms for the use of covert measures? Who is responsible for those mechanisms?

**11.00 – 11.15            Coffee break**

**11.15 – 12.50            Plenary Session V – Alternatives to pre-trial detention during criminal proceedings**

Moderator:            *Mr Stephen Thaman, Emeritus Professor of Law, Saint Louis University, St. Louis*

Panellists:            *Mr Oleksandr Banchuk, Manager of criminal justice projects,  
Centre for Political and Legal Reforms, Kyiv  
Ms Gulnora Ishankhanova, Legal Expert, Tashkent*

Even though it is still the most commonly ordered preventive measure in Central Asia, pre-trial detention should remain an exceptional measure. This measure infringes on the principle of presumption of innocence, and should be ordered only if other non-custodial measures such as bail or home arrest have been considered not suitable. It is crucial that legal requirements and conditions of application of non-custodial and custodial measures be clearly defined in the law, with judges having the responsibility to strictly grant them only upon grounded requests from the prosecutor/investigator.

All Central Asian countries have adopted various types of alternative measures to pre-trial detention in their legislations, but implementation is still limited. The benefits of resorting to non-custodial measures are multiple: defendants, especially main income-earners or mothers, can attempt to maintain parts of their work and family life; they are less likely to be subject to risks and abuses linked to being placed in often times overcrowded, closed institutions, and alternatives to detention are less costly. Discussions during the session will be guided by the following questions:

1. In addition to pre-trial detention, which preventive measures are foreseen by the national legislation? Who is in charge of authorizing such measures?
2. Are there any alternatives for specific groups such as female suspects or persons with disabilities? Are there any legal provisions discouraging or prohibiting pre-trial detention for pregnant women or women with dependent children or other dependents? To what extent are these rules reflected in practice? What are these provisions?
3. Are there statistics about the use of and proportion of each type of preventive measures in the Central Asia countries? Are these statistics disaggregated, for example by gender and age of the offender? How do such statistics inform criminal justice reforms?
4. Is the authority approving preventive measures obliged by law to exclude non-custodial measures before ordering pre-trial detention?
5. What is the most used motivation for pre-trial detention orders? To what extent, if at all, is the severity of the criminal offence considered in deciding on a pre-trial detention decision?

6. What can authorities do to promote higher use of non-custodial measures?
7. How does the state ensure that the appropriate budget is allocated to promote an increased use of alternative measures? Who is responsible for court management? Are there sufficient numbers of qualified and trained court administrative staff (clerks, interpreters, etc.)?

**12.50 – 14.00          Lunch**

**14.00 – 15.40          Working Group Sessions**

***Working Group 3: Investigation, prosecution and adjudication of drug-related offences***

Moderator:            *Ms Leila Sydykova*, Deputy President of the Kyrgyz-Russian Slavic University  
for International Affairs, Bishkek

Panellist:             *Ms Ashita Mittal*, Regional Representative for Central Asia, UNODC

In 2016, the UN General Assembly held a Special Session (UNGASS) on Drugs and adopted an outcome document entitled “Our joint commitment to effectively addressing and countering the world drug problem”. Amongst others, this outcome document reaffirmed the need to implement international drug control treaties in accordance with applicable human rights obligations and to promote protection of and respect for human rights and the dignity of all individuals in the context of drug programmes, strategies and policies. This implies effective coordination among domestic authorities at all levels, particularly in the health, education, justice and law enforcement sectors; implementation of criminal justice responses to drug related crimes, which bring perpetrators to justice whilst ensuring legal guarantees and due process safeguards; proportionate national sentencing policies, practices and guidelines for drug-related offences whereby the severity of penalties is proportionate to the gravity of offences; use of alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature that promote the rehabilitation and reintegration into society of persons affected by substance-use disorders and who have committed drug-related offences of a minor nature.

Given that Afghanistan is estimated to produce 90% of the globe’s opiate drugs, Central Asian countries remain geographically vulnerable to drug trafficking. Hence, this year’s UNGASS provides impetus for renewed discussion on appropriate criminal justice responses to illicit drugs trafficking in Central Asia. This Working Group will i.a. discuss the following questions:

1. What are recent trends in terms of Afghanistan’s opium production and related illicit drugs trafficking through Central Asia?
2. What do available statistics say about the prevalence of drug-related crimes in Central Asian countries?
3. What happens after seizures and related arrests are made? What are some of the key challenges Central Asian countries face in investigating drug-related crimes and bringing drug traffickers to justice?
4. What is the profile of drug offenders? Is there any disaggregated data on drug offenders by type of offence, gender and age? To what extent is drug-use associated with offending?
5. What is the judicial practice with regards to drug-related crimes? What sentencing policies are in place and how are these applied by judges?
6. What are key recommendations for legislative and policy reform, aimed at strengthening non-custodial sentencing for minor drug offences at national level in Central Asia?

***Working Group 4: Prosecution of terrorism-related offences based on a human rights approach (Bukhara meeting room)***

Moderator:            *Ms Nathalie Tran*, Rule of Law Officer, ODIHR

Panellists: *Mr Rene Elkerbout*, former Judge, District Court of the Hague in the Netherlands  
*Mr Zhan Kunserkin*, Lawyer of the Almaty City Bar

The rights of suspects and defendants should be upheld in all investigations and criminal prosecutions. The prosecution of terrorism-related offences which often take place in an urgent and tense context is not exempt from this principle. Yet, it is often observed that in practice guarantees related to the right to liberty, physical integrity and to a fair trial are disregarded in counter-terrorism policies and investigations. For instance, illegally obtained evidence, including from forced confessions, is used as a basis for collection of intelligence in such investigations; access to legal counsel is delayed; judicial approval and review of intrusive investigative acts in such cases often take place only after their conduct; arrests last beyond the regular deadline, and evidence justifying detention is often kept confidential.

In the context of Central Asia where counter-terrorism policies extend to other offences, including “extremism offences”, definitions of such offences must be strictly elaborated in accordance with the principles of legal certainty, foreseeability and specificity of criminal law. Mechanisms to ensure the respect of fundamental rights must be developed. To guide the reflection on this topic, participants are invited to consider the following questions:

1. How is the criminal offence of terrorism defined in the national legislations of Central Asia? Are there other criminal offences related to terrorism under national legislation, such as extremism-related offences? Are all these offences strictly defined as required by the principles of legal certainty, foreseeability and specificity of criminal law?
2. Are activities related to the exercise of freedom of movement, religion or expression at times qualified as terrorism-related offences? Are such qualifications properly reasoned? What mechanisms are established to ensure that such activities are not unduly qualified as criminal offences?
3. Are there any differences in the legal regime applicable to an ordinary suspect in comparison with a person suspected of terrorism-related offences? If yes, what are these differences and what is the justification for such differences?
4. In the use of intelligence material as evidence, what practical steps need to be taken to ensure that evidence obtained does not prejudice the right to a fair trial as well as other fundamental human rights?
5. How to ensure that torture tainted evidence is excluded from judicial proceedings, including secondary evidence and evidence obtained by third State parties/foreign intelligence agencies?
6. What steps can be taken to ensure that witnesses’ and victims’ rights are protected? Are there any legal solutions to ensure safety of prosecutors, judges, or defendants who handle terrorism-related cases?

**15.40 – 16.00**      **Coffee break**

**16.00 – 17.00**      **Plenary Session VI – Reports from the Working Groups**

Rapporteurs: *Mr Batyr Saparbaev*, Legal Expert, UNODC  
*Ms Anastasiya Miller*, Director of Kostanay Branch of Kazakhstan International Bureau for HR and RoL

The rapporteurs from Working Groups 3 and 4 should consolidate and present the main observations from their respective groups, with a view to highlighting key issues. This should serve as a basis for discussion throughout the session and allow for all participants to exchange views on the topics of the working groups.

**17:05 – 18:30**      **Side event 2: Gender in the Criminal Justice System** (*Bukhara meeting room*)

Moderator: *Ms Vera Tkachenko* International Programme Manager, UNODC

Panellist: *Ms Larisa Ilibezova, Gender Expert, Kyrgyzstan*

A fair, effective and representative criminal justice system is one that respects the fundamental rights of all women and men. It is gender-responsive and works to identify and address gender biases that have permeated the system, to prevent gender-based crimes, to protect and assist victims/survivors and witnesses, and to encourage women's active participation at all levels of the criminal justice system.

This side event aims to review relevant international standards for gender justice, as a basis for discussion of strengths and weaknesses of criminal justice systems in Central Asia from a gender perspective. Questions to guide the discussion are as follows:

1. To what extent is data available that accurately reflects rates of gender-based crimes in Central Asia? What does available data say about women's experiences of the criminal justice sector as victims, witnesses and offenders?
2. What are some of the main obstacles women and girls face in seeking access to justice?
3. What are key challenges criminal justice systems in Central Asian countries face in investigating and prosecuting gender-based crimes?
4. What training do criminal justice practitioners in Central Asian countries currently receive on equality and gender justice issues? What are some of the needs in terms of developing training programmes on how to apply international human rights standards on criminal justice in the domestic setting?
5. What steps could be taken in Central Asian countries to build the capacity of women to serve at all levels of the criminal justice system, including positions of authority?

**19.00 – 22.00**      **Dinner on behalf of the Republic of Uzbekistan**  
**(BAKHOR Restaurant, 8 Istiqbol Str., Tashkent)**

## **DAY THREE, 18 NOVEMBER 2016**

**08:00 – 09:20**      **Side event 3: Independence of Legal Professions in Central Asia**  
**organized by ODIHR** (*Fergana meeting room*)

Moderator: *Ms Gulnora Ishankhanova, Legal Expert, Tashkent*

Introducers: *Ms Mavliuda Kulikova, Advocate, researcher at the "Legal Problems Study Centre",  
Tashkent*

*Ms Leila Ramazanova, Advocate, Almaty City Bar*

*Ms Gulniza Kozhonova, Chairperson of Bar Council of the Kyrgyz Republic*

*Ms Bestyr Eyvanova, Member of the Bar Association of Ashgabat city*

International law entitles all individuals subjected to criminal proceedings to a fair and public hearing by a competent, independent and impartial tribunal established by law. As a minimum guarantee of the right to a fair trial, individuals are afforded the right of defence with the concomitant right to legal assistance if so chosen. As the United Nations Basic Principles on the Role of Lawyers and OSCE Commitments in Copenhagen 1990 and in Moscow 1991 set forth, the adequate protection of individual rights and freedoms requires that all persons have effective access to legal assistance, provided by an independent legal profession. An independent Bar and an unobstructed working environment for lawyers are key to a functioning of the criminal justice system based on the rule of law and human rights.

The session will provide an opportunity for exchanges among lawyers and other actors of the judicial chain on the regulatory framework underpinning the institutional independence of Bars and the security and

independence of lawyers in the Central Asian region. Participants will share examples of challenges faced by lawyers when seeking to develop their independence and good practices for strengthening the independence of the legal profession in compliance with international standards. The following questions will be discussed:

1. Why is an independent legal profession a prerequisite of the right to a fair trial? What barriers are faced by lawyers in the Central Asia Region when fulfilling their professional duties to provide effective representation in court? What are the repercussions of such obstacles to legal practice?
2. What guarantees for the institutional independence of Bars and the independence and security of lawyers are established by international principles and benchmark standards developed by international bodies and organizations?
3. What is the role of state authorities in safeguarding the independence of the legal profession?
4. Are lawyers and Bars in the region properly qualified and trained to ensure the provision of qualitative legal services? What could be improved in that regard?
5. What challenges have Bars from the Central Asia region faced when seeking to strengthen their institutional independence? What steps towards asserting their independence have been successful? Can these examples provide best practices for bar associations across the Central Asia Region?

**09.30 – 11.00          Plenary Session V – The use of ICT in criminal court proceedings**

Moderator:            *Mr Oleksandr Banchuk*, Manager of criminal justice projects,  
Centre for Political and Legal Reforms, Kyiv

Panellists:            *Ms Merit Kõlvart*, Advisor, Ministry of Justice of the Republic of Estonia  
*Mr Arman Zhukenov*, Chairperson, Saryarkin Regional Court of Astana City

A modern, functioning, and efficient ICT system directly supports the administration of justice, particularly in the processing of court cases. Central Asian countries would benefit from learning from each other and from good practices from abroad on relevant ICT systems supporting court proceedings. Tools such as automated case management contribute to increasing efficiency but also help curb abuses and corrupt practices. Other tools contribute to public trust in and transparency of the justice system and access to justice (through case law and case information, for instance), and to monitoring of court activity and reform processes (i.e. through statistical data collection). In this session, countries from Central Asia will also discuss how ICT systems can help facilitate judicial cooperation and exchange of information to tackle complex, cross-border crimes. The following questions will form the basis of the discussion:

1. What are the latest ICT systems and tools introduced in Central Asian courtrooms? Have they improved the efficiency of the justice system?
2. Are ICT systems designed and implemented in a way that deter and prevent manipulations?
3. In the region, how do ICT systems contribute to improving judicial independence, access to justice and public trust in the judiciary?
4. How do ICT systems in the region support the rights of the defendant and of the victim?
5. What portion do ICT systems installation, maintenance and upgrading in courts account for in the overall budget dedicated to the judiciary in Central Asian countries? To what extent do countries rely on the financial support of external donors?
6. Is there a detailed, reliable statistical data collection system? Does the system allow for the collection of gender and diversity disaggregated data? How are these statistics used?

**11.00 – 11.15          Coffee break**

**11.15 – 12.30          Concluding session – Final remarks**

Moderator: *Mr Dmitry Nurumov, ICJ Consultant*

Panellists: *Mr Marcin Walecki, Head of ODIHR Democratization Department*  
*Ms Vera Tkachenko International Programme Manager, UNODC*

**12.50 – 13.30 Lunch**

**14.00 – 18.00 Side event 4: Comparative Perspectives on Judicial Independence  
organized by ICJ (Bukhara meeting room)**

Moderator: *Mr Dmitry Nurumov, ICJ*

Panellists: *Mr Ketil Lund, former Judge of the Norwegian Supreme Court*  
*Ms Tatyana Andreeva, former judge of the High Arbitration Court  
of the Russian Federation*  
*Ms Róisín Pillay, ICJ Director of the Europe Regional Programme*

Judicial ethics is an important element of a fair, independent and impartial adjudication. Judges are entrusted by the society with an important function that is essential to the rule of law. They should therefore uphold and be seen to uphold the highest standards of competence, independence, professionalism and integrity.

Participants, including senior national judges from the ICJ network, will present comparative national perspectives on judicial Codes of Ethics and their implementation in practice, placing these in the context of global and regional standards as well as discuss current ethnic issues in adjudication.

**19.00 – 21.00 Dinner at the Hyatt Hotel**

## B. EXPERTS' BIOGRAPHIES

### **Stephen C. THAMAN (United States)**

Stephen C. Thaman holds a J.D. from the University of California, Berkeley, and a PhD in Law from Albert-Ludwig-University (Freiburg, Germany). He taught criminal law, criminal procedure and comparative law at Saint Louis University in the U.S. from 1995 until 2016, where he will now have Emeritus status. He advised law- and policy-makers on the reform of the codes of criminal procedure in Russia, Latvia, Georgia, Kyrgyzstan, Indonesia and the Philippines. Before becoming a professor in St. Louis, he worked for 12 years as an Assistant Public Defender in California, was a Fulbright Fellow at the Free University of Berlin (1987-88), and an attorney-trainee at the European Commission of Human Rights (Strasbourg, France). Later, Thaman worked at the International Institute for Higher Studies in Criminal Sciences in Syracuse, Italy (1990-91), at Moscow at the Institute of State and Law, and at the American Bar Association CEELI program (1992-95). Mr. Thaman, was a member of the Scientific Advisory Board of the Max-Planck Institute for Foreign and International Criminal Law in Freiburg, Germany, from 2009-2015, and is currently on the Board of Directors of the International Association of Penal Law. Mr. Thaman's articles on comparative criminal law and procedure have appeared overseas in several languages and in prominent U.S. journals. In 2008 the second edition of his book "Comparative Criminal Procedure: A Casebook Approach" was published. Recent books are: "World Plea Bargaining" (2010); "Exclusionary Rules in Comparative Law (2013); and "Comparative Criminal Procedure: a Research Handbook (co-editor with Jacqueline Ross, Elgar, 2016).

### **Oleksandr BANCHUK (Ukraine)**

Oleksandr Banchuk holds a PhD degree in Law from Kyiv National Taras Shevchenko University. He is also a Ukrainian lawyer and is on the managing board of the think-tank Centre for Political and Legal Reforms since 2003. In that capacity, he coordinates the implementation of various projects in the field of human rights, criminal proceedings, anti-corruption, and administrative offences. Mr. Banchuk was involved in the preparation of several draft laws in Ukraine such as the Law on Normative and Legal Acts, on Free Legal Aid, on Prosecutor's office, on Police and Police Activities, the Criminal Procedure Code, the Code of Administrative Offenses and the Code of Criminal Infractions. He was also a member of the working group on drafting the Criminal Procedure Code and the Code on Criminal Infractions of Kyrgyzstan (2013-2014). Mr Banchuk authored and co-authored 20 books, approximately 100 articles and researches on public law, legal aid, and legal reforms in Ukraine, Armenia and Kyrgyzstan.

### **Merit KÖLVART (Estonia)**

Ms Kõlvart works as an Adviser at the Courts Unit of the Ministry of Justice of Estonia, where she is responsible for the development of Estonian court information system. There, she is in charge of analyzing the needs and possibilities for interfaces between different government databases and information systems; coordinating the communication between different government institutions; analyzing the needs of end-users; ensuring the conformity of planned improvements with procedural law; supervising the data entry in the system by the courts to ensure the data quality in the court information system and government registries. Ms Kõlvart is also responsible for guiding and training internal trainers on the court information system to ensure quick and efficient assistance to system users. Before being appointed as an Advisor, she worked as a Secretary of the Court at Harju County Court, Tallinn, and Tallinn Circuit Court. She is currently pursuing her PhD degree in the field of Informatics.

### **Gulnora ISHANKHANOVA (Uzbekistan)**

Gulnora Ishankhanova graduated in 1984 from law faculty of Tashkent State University. Since then and up to 2009 she was a practicing lawyer at the Tashkent City Bar where she became in 2000 the Chairperson of

Tashkent City Department of advocates of Uzbekistan and the co-chairperson of the Qualification Commission under Justice Department of Tashkent City. Since 2009 she acts as an expert at the Centre of Legal Problems Studies. She also serves as Commissioner of the International Commission of Jurists in Geneva since 2010. As a lawyer, she participated in several working groups on the improvement of legislation and judicial reforms related to criminal procedure, Bar, and juvenile justice under the Ombudsman of the Oliy Mazhlis of Uzbekistan. She also acted as an expert in various development projects in Uzbekistan and worked specifically on the draft legislation related to arbitration, administrative procedure, the rights of patients and juvenile justice. Ms Ishankhanova is the author of several legal reviews of Central Asian laws, and the co-author of an ICJ practical guide for lawyers on international standards of fair trial and criminal procedure laws in Uzbekistan.

### **Zhangazy KUNSERKIN (Kazakhstan)**

Zhangazy Kunserkin graduated from the Law Faculty of Kazakh State University in 1990. He became a practising lawyer of the Almaty City Bar in 1992. As co-founder and a member of Almaty Helsinki Committee on Human Rights, since 1995 Kunserkin has been engaged in human rights work in the field of freedom of conscience and religion and electoral affairs. In 2012-2013, Mr. Kunserkin took part in UNODC Program on Strengthening Criminal Justice Capacities of Central Asian Countries to Counter Terrorism in Compliance with Principles of Rule of Law, during which he was actively cooperating with the Working Group on the development of draft Criminal Code amendments on terrorism-related crimes. He often participated in working groups of the Mazhilis of the Parliament of Kazakhstan as a representative of human rights organizations, particularly in discussions of draft laws on religious activity and organizations, non-commercial organizations. Mr Kunserkin has also participated in a civil campaign towards the abolishment of death penalty.

### **Azamat SHAMBILOV (Kazakhstan)**

Azamat Shambilov graduated from Kazakh Law University and completed his LL.M degree at City University London in the United Kingdom. Azamat Shambilov is the Regional Director of Penal Reform International (PRI) Office in Central Asia which is based in Astana, Kazakhstan. He has been working on various projects, including programs on health in prison, the abolition of death penalty, reintegration of prisoners, women prisoners, and improvement of prison system, torture prevention, and justice for children, and countering violent extremism in prisons in Central Asia countries. Since April 2015, Mr. Shambilov is the Secretary of the Coordination Council of the National Prevention Mechanism at the Ombudsman Office in Kazakhstan, and a member of working groups at the Parliament of Kazakhstan on behalf of CSOs working on criminal justice reforms. He has been actively supporting human rights work in Central Asia by promoting criminal justice reform with a human rights and gender-based approach.

### **René ELKERBOUT (Netherlands)**

René Elkerbout has recently retired from the District Court of the Hague where he served as a Senior Judge since 1988, primarily working on cases related to civil, criminal, and international criminal law. Before becoming a judge, he was a lecturer at Law Faculty of the University of Leiden (1972), and Deputy Clerk at the Parliament of the Netherlands (1973-1988). He obtained his LL.M in Law and a degree in Political Science from the University of Leiden (1964-1971). In addition, he studied Political Science and International Relations at the School for Advanced International Studies (SAIS), John Hopkins University, Bologna (1971-1972).

### **Marcin WALECKI (Poland)**

Marcin Walecki possesses over 20 years of democracy assistance and governance experience working in more than 40 countries around the world. He also presents regularly at international conferences, seminars, and has written for numerous publications on democratization, political corruption, political financing, elections, political parties, gender equality and good governance. A Polish citizen, Walecki holds a doctorate of philosophy

in politics from St. Antony's College at Oxford University and a master's in Law from the Department of Law and Administration at the University of Warsaw. He is a former Max Weber Fellow at the European University Institute in Florence, Italy and a board member of the International Political Science Association Research Committee on Political Finance and Political Corruption.

#### **Kymbat ARKHAROVA (Kyrgyzstan)**

Ms Arkharova is a judge of the Oktyabrsky district court of Bishkek city, Kyrgyz Republic. She is also a member of the Association of Women Judges of the Kyrgyz Republic and was previously a member of the Bar of Chui Oblast. She was awarded several medals and honorary certificates, including an honorary certificate of the Bar association of the Kyrgyz Republic, the Kyrgyz Lawyers Association, PF Development of the Rule of Law. She possesses 30 years of legal experience.

#### **Arman ZHUKENOV (Kazakhstan)**

Arman Zhukenov is the Chairperson of Saryarka District of Astana city Court. He was at the origin of the creation and implementation of juvenile justice in the Republic of Kazakhstan, working from 2009 to 2014 as a judge of a new specialized Inter-District Court for cases related to minors in Almaty. For the last three years, he has been a member and a secretary of the association "Union of judges of the Republic of Kazakhstan" acting to implement and protect the interests of judicial community. Mr. Zhukenov has been repeatedly awarded with certificates of appreciation for the administration of justice and for his contribution to the development of mediation in the Republic of Kazakhstan. He is the author and designer of several scientific articles, methodological recommendations in the field of application of the legislation on protection of the rights of minors. Arman Zhukenov studied "Jurisprudence" at the Kazakh National University. He possesses a Master Degree from the Institute of Justice of the Academy of Public Administration the Republic of Kazakhstan under the President of Kazakhstan.

#### **Leila SYDYKOVA (Kyrgyzstan)**

Sydykova Leila holds a PhD in Law and is a University Professor of criminal law and criminology and criminal-executive law. She is the Vice-president of the Kyrgyz-Slavic University of Kyrgyzstan. Ms Sydykova also participated in the preparation of several bills in the Parliament of the Kyrgyz Republic. She was the Scientific Director of projects of the Penal Code, the Criminal Executive and Criminal Procedural Codes of Kyrgyzstan of 1997. She is the Chairperson of the Special Council for doctoral theses of KRSU. She was a member of the Central Election Commission, consultant of the Supreme Court of the Kyrgyz Republic, member of the National Council on Justice, as well as several state committees of the Kyrgyz Republic. She was the chair of NGO "Independent legal scholars of the Kyrgyz Republic". She worked as an independent expert for a few UN programs, "Soros' Foundation, and OSCE. In 2014 she managed the working group on drafting the new Criminal Code, Code of misdemeanor and Code of offences of the Kyrgyz Republic, as well as many other draft laws. Ms. Sydykova is the honored Worker of Education of the Kyrgyz Republic. In 2009, she was awarded the highest state medal "Honour".

#### **Larisa ILIBEZOVA (Kyrgyzstan)**

From 1990 to 1999 Ms Ilibezova worked in the information-analytical center of the Ministry of Internal Affairs of Kyrgyzstan. In 1998, she graduated from the Kyrgyz State National University, Institute for Advanced Studies in Law. Since 2000 she has been working in the non-governmental sector as a consultant in gender statistics and was engaged in carrying out sociological studies. She was also the author of numerous publications and reports in the area gender-based violence. She is a member of several working groups on the development of state programs and laws on violence against women and girls. Ms Ilibezova actively collaborates with key governmental and international organizations; she is an expert for UNODC, UNFPA, OSCE, and the National

Statistical Committee of the Kyrgyz Republic. Since 2015, she is the head of Public Foundation “Center for Researches of democratic processes”, which makes a significant contribution to the development of gender equality policies and legislation in the Kyrgyz Republic.

**Bogatyr SAPARBAYEV (Kyrgyzstan)**

Mr. Saparbayev is a Legal Expert of the UN Office on Drugs and Crime, Program Office for Central Asia. He provides expert support to UNODC projects related to the penitentiary system of the Kyrgyz Republic. He regularly provides consultations on national legislation related to crime prevention, criminal justice and reform of the penal system. He is a member of the Working Group on the development of the Criminal and Criminal Procedure Code and the Criminal Executive Code, and the Code of Offences. He has more than 30 years of working experience in the penitentiary system of Kyrgyzstan. Mr. Saparbaev was honored with several state awards of the Kyrgyz Republic, departmental awards of the Ministry of Internal Affairs, Ministry of Justice and the State Penitentiary Service of the Kyrgyz Republic.

**Jan HAUKAAS (Norway)**

Mr. Haukaas has served as a Special Adviser to the Director of the OSCE/ODIHR since 2012, and from 2015 also as the Director’s Representative in Vienna, seconded by the Norwegian Government. Mr Haukaas previously served as the Senior Political Officer with the OSCE Mission to Montenegro (2007-2009) and as the Chief Executive Officer to the Head of the OSCE Mission to Bosnia and Herzegovina (2010-2011). From 2004 to 2006, Mr Haukaas was Head of the European Union Monitoring Mission in Montenegro. Mr Haukaas studied at the Department of Comparative Politics, University of Bergen, and for several years (1998-2004) worked on several international research and educational projects at the same Department, including the co-ordination of a master course on international election observation.

**Vera TKACHENKO (Kazakhstan)**

In May 2015, Vera Tkachenko assumed her duties as International Programme Manager of Sub-Programme 2 “Criminal Justice, Crime Prevention and Integrity” of the Programme for Central Asia 2015-2019 that represents the overarching strategic framework under which United Nations Office on Drugs and Crime (UNODC) provides technical assistance within the Central Asian States. From 2010 to 2015 she served as UNODC International Project Manager leading criminal justice project in the Kyrgyz Republic aimed at strengthening the rule of law through enhanced multi-agency coordination and policy development on criminal justice, crime prevention and penal reform. From January to August 2015 Ms Tkachenko served as Officer-in-Charge of UNODC Programme Office in Tajikistan. From 2008 to June 2010 she led the work of a non-political, independent research institute Legal Policy Research Centre (LPRC) based in Almaty that promotes legal reforms through research and pro-active engagement with policy makers in countries of Central Asia. From 2001 to 2006 she served as a Regional Director of Penal Reform International (PRI) for Central Asia. From 1999 to 2000 she worked on implementation of human dimension projects of the OSCE Centre in Kazakhstan. In 2006-2007, as a Chevening Scholar, Ms Tkachenko has received the degree of Master of Science in Criminal Justice Policy in the London School of Economics and Political Science. In 2007 she was a fellow at Stanford Summer Programme on Democracy, Development and Rule of Law. She also has bachelor degree in Law.

**Robert ALLEN (United Kingdom)**

Rob Allen works on prison reform in the UK and internationally and he is also an independent researcher and consultant and co-founder of Justice and Prisons. From 2005-2010, Rob was Director of the International Centre for Prison Studies at King’s College London and since 2011 he has been an associate of Penal Reform International. Prior to joining ICPS in March 2005, he ran Rethinking Crime and Punishment, an initiative on to change public attitudes to prison and alternatives in the UK. Earlier in his career, Rob was director of research

and development at UK charity NACRO. He was a member of the Youth Justice Board for England and Wales from 1998 to 2006 and a specialist adviser to the UK Parliament's Justice Committee. He has written widely on youth and criminal justice. Rob has undertaken prison reform work in more than 30 countries, in Europe, Africa, Asia and Latin America. His areas of expertise include alternatives to imprisonment; juvenile justice; human rights in prisons; private prisons; health care and rehabilitation in prisons.

#### **Ashita MITTAL (India)**

Ms Ashita Mittal is the Regional Representative, United Nations Office for Drugs and Crime, Regional Office for Central Asia, based in Tashkent. She has been working with the United Nations Office on Drugs and Crime (UNODC) since 1995. She served as the Deputy Representative for the UNODC Country Office in Afghanistan, from 2009 to 2014 and prior to that served as the Deputy Representative, UNODC Regional Office for South Asia covering Bangladesh, Bhutan, India, Maldives, Nepal and Sri Lanka. Prior to this, she served with the World Food Programme in India, engaging on food security. She worked extensively with civil society on drug use prevention, treatment and rehabilitation and was well recognized for her pioneering work in the field. Her work was nuanced with health, gender, sustainable development perspectives. She brings with her over 28 years of development experience, especially her work on counter narcotics and crime. She has published articles and contributed to research and development of knowledge products in the sector. She brings a wealth of experience on Programme management of technical cooperation programmes on narcotics and other transnational organized crime, at both country and regional level on policy, advocacy, programming, quality assurance of technical assistance programmes, capacity development, with governments, international organizations and civil society.

#### **Nathalie TRAN (France)**

Nathalie Tran is a Rule of Law Officer at the OSCE Office for Democratic Institutions and Human Rights since 2012 and oversees the criminal justice reform and war crimes justice programmatic activities. From 2009 to 2012 she was a Rule of Law Officer at the OSCE Mission to Skopje and worked on the reform of the criminal procedure, access to justice for marginalized communities and judicial independence. Ms Tran briefly worked in the Co-Prosecutors' team in the Extraordinary Chambers in the Courts of Cambodia in 2007 before joining various law firms in Paris as a legal trainee in 2008. In 2005-2006, she worked at the Organization of American States in the Unit on Combating Human Trafficking. Ms Tran is a licensed French attorney since 2008 and obtained a master's degree in public international law from Université Paris Nanterre in 2006 and an LL.M. in international protection of human rights from American University- Washington College of Law in 2005.

#### **Dmitriy NURUMOV (Kazakhstan)**

Mr. Nurumov is a Legal Programme Consultant of the International Commission of Jurists. In 2015-2016, Dmitriy Nurumov served as Special Adviser on Ukraine for the OSCE High Commissioner on National Minorities (HCNM). In 2011, he joined OSCE/HCNM as Legal Adviser. In 2014, he was promoted to the position of Senior Adviser. Prior to that, he worked at the ODIHR Rule of Law Unit as Rule of Law Programme Coordinator in Central Asia and managed a trial-monitoring project in Armenia. Before joining the OSCE/ODIHR, Dmitriy Nurumov was a Legal Expert for the OSCE Centre in Almaty from 2001 to 2003. In the past, he also worked for the International Organization for Migration (IOM) and for a local NGO in Kazakhstan. In 2000, he defended a PhD in International Public Law at Moscow State Institute of International Relations (MGIMO). He has written and edited publications on criminal procedure, human rights, and constitutional law.

#### **Umida TUKHTASHEVA (Uzbekistan)**

Professor Umida Tukhtasheva holds a PhD degree in Law from Tashkent State University of Law where she currently leads the Criminal Procedure Chair. She is also an expert of the Committee for Legislation and Judicial

and Legal Issues of the Legislative Chamber of the Oliy Mazhlis of Uzbekistan. Ms Tukhtasheva participated in the development of the draft law “On Introduction of Changes and Additions to Selected Legislative Acts of the Republic of Uzbekistan in connection with Further Reformation of Judicial and Legal System” (2012), drafted analytical papers including on habeas corpus issues and information technologies in civil courts. Ms Tukhtasheva has experience in various criminal justice projects including delivering training to members of the judiciary on administration of justice, the right to a fair trial and children in conflict with the law. She is also a member of the Expert Group dealing with the implementation of Chapter III of the Programme of Complex Measures on Further Reformation of Judicial and Legal System, Strengthening the Guarantees of Solid Protection of Human Rights and Freedoms adopted in 2016. Ms Tukhtasheva authored and co-authored numerous publications, manuals and articles on criminal procedure law, the activity of judicial and law-enforcement bodies, the Bar, judicial and legal reforms in Uzbekistan.

### **Irina LETOVA (Kyrgyzstan)**

Ms Letova is a legal expert of UNDP Project. In December, 2007, she was elected as a deputy of Zhogorku Kenesh of Kyrgyz Republic as a member of the political party «Ak zhol». Before being elected, in 2007 worked at the Presidential Administration as an expert on legal policy, organizational work, and policy of public administrator, and at Executive Office as expert on legal expertise. Before that, in 2006, Ms Letova worked at National Agency of the Kyrgyz Republic on Corruption Prevention as Chief of Legislation Database, and prior to that, from 2000 to 2006. She as well worked at the Supreme Court of the Kyrgyz Republic since 2000 until 2006, in the beginning as a Senior Consultation of the Court Practice Generalization, since 2002 – as Chief of Criminal Cases Consultants Unit, since 2003 – as Chief of Criminal and Administrative Cases Consultants Unit. Ms Letova has graduated from law faculty of International Slavic Institute in 2000.

## C. GLOSSARY

<b>Primary terms</b>		<b>Основные термины</b>	
<b>Arrest</b> – the act of apprehending a person for the alleged commission of an offence or by the action of an authority		<b>Задержание</b> – акт задержания лица по подозрению в совершении какого-либо правонарушения или по решению какого-либо органа (в основном по уголовному подозрению, обвинению)	
<b>Detention</b>		<b>Содержание под стражей</b> – любое действие, направленное на лишение свободы человека, в том числе, но не исключительно, до доставления к судье в рамках процедуры <i>habeas corpus</i>	
<b>Detainee</b> – person deprived of liberty except as result of conviction for an offence		<b>Задержанный</b> – любое лицо, лишенное свободы не в результате осуждения за совершение правонарушения	
<b>Preventive/Administrative Detention</b>		<b>Превентивное/административное задержание</b> – может быть и не по уголовному обвинению	
<b>Preventive measures/Measures of restraint</b>		<b>Меры пресечения</b>	
<b>Detention on remand/Pre-trial detention</b> – usually, after court’s approval on the preventive measure		<b>Арест</b> – как мера пресечения/предварительное заключение – как правило после судебного решения о выборе меры пресечения	
<b>Alternative preventive measures/alternative measures of restraint</b>		<b>Альтернативные аресту (заключению под стражу) меры пресечения</b>	
<b>Deprivation of liberty as general criminal sanction</b>		<b>Лишение свободы в уголовном порядке</b> (в том числе, из контекста может быть тюремным заключением, отбыванием наказания в колонии, арестом на короткий срок и т. д.)	
<b>Imprisonment as specific criminal sanction</b>		<b>Тюремное заключение</b>	
<b>Imprisonment (as administrative sanction)</b>		<b>Административный арест</b>	
<b>Crimes</b> (roughly correspond to felonies in Common Law)	Minor crimes Medium-gravity crimes Grave crimes Especially grave crimes	<b>Преступления</b>	Преступления небольшой тяжести Преступления средней тяжести Тяжкие преступления Особо тяжкие преступления
<b>Criminal infraction</b> – also referred to as Criminal delict/Délict pénal (FR)/roughly corresponds to misdemeanours in common law tradition		<b>Уголовный проступок</b>	
<b>Contraventions</b> – also referred to as Administrative offences/Minor offences		<b>Нарушения/Административные деликты</b>	

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).