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European Instrument for Democracy and Human Rights

European Union – Tajikistan
Civil Society Seminar on Human Rights

The Right to a Fair Trial and the Independence of the Judiciary

Report
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EXECUTIVE SUMMARY

In 2008, in line with its 'Strategy for a New Partnership' with Central Asia, the European Union (the EU) agreed with the Republic of Tajikistan to establish an annual human rights dialogue, and its first round was held in Dushanbe in 2008. An agreement was also reached to hold a civil society human rights seminar prior to the second round of the official dialogue. The planned Seminar was organized by the European Commission (the EC) in Dushanbe on 10-11 July 2009, with the support of the Ministry of Foreign Affairs and the Presidential Administration of the Republic of Tajikistan. The Seminar[1] was well attended by seventy participants, representing more than thirteen NGOs, academics and professional lawyers' associations from Tajikistan, fourteen experts from twelve European countries, including Russia and Ukraine, representatives of diplomatic missions and international organizations present in Dushanbe, and eight representatives of different government authorities of the Republic of Tajikistan.

The topics discussed during the Seminar related to the fair trial rights and independence of the judiciary. During a lively and constructive discussion, participants addressed international standards, European best practice, national laws and their practical application. Introductory speeches of the European and Tajik participants encouraged rich debates and numerous interventions from the floor. Moreover, all present state officials made valuable and comprehensive interventions that informed the debates on the current stance of national authorities. In particular, remarks of the recently appointed Ombudsman of the Republic of Tajikistan were of great interest to the participants. The Ombudsman invited the Tajik civil society and international donors to assist his office in its first steps aimed at fulfilment of the assigned tasks.

The Seminar resulted in elaboration of detailed recommendations to the Government of the Republic of Tajikistan on legislative and practical changes needed in order to ensure full compliance with international and national standards relating to the topics of the Seminar. The civil society representatives expressed hopes that the EC, Embassies of the European Union member states and relevant international organizations would assist the Government of Tajikistan in following up the proposed recommendations, and recommended the Delegation of the EC to Tajikistan to establish an expert group comprised of independent legal and civil society experts to monitor practical implementation of these recommendations.

Generally, the Seminar participants acknowledged importance of the human dimension (human rights) in the strategic partnership between the EU and Tajikistan, in particular, the role of NGOs in the human rights dialogue, and highlighted the added value of the EU as an influential mediator that can lobby for inclusion of the civil society views into governmental policy-making and policy execution. The event was viewed by all the participants as a timely and useful exercise as it offered a platform to express opinions on ongoing legislative initiatives, including elaboration of the Criminal Procedure Code (the CPC) and drafting of a new programme on judicial and legal reform that will determine future legal developments in the country.

The Seminar facilitated networking between national and foreign experts, and useful contacts were established promising future fruitful cooperation. Presence of experts from the CIS region was deemed useful, and a recommendation was made to consult, prior to inviting experts to future EU

[1] The European Union-Tajikistan Civil Society Seminar on Human Rights was funded by the European Commission. Opinions, conclusions and recommendations contained herein do not necessarily represent the views of the European Commission.

events, with local civil society representatives on the experts' profile sought by them. It was also suggested to decrease the number of the EU experts and to channel preserved funds towards small-scale NGO initiatives aimed at following up on the elaborated recommendations. Finally, the civil society participants suggested having equally high-level representation of officials during future events, in order to ensure achievement of concrete results from the exchange of views with the civil society.

SUMMARY OF RECOMMENDATIONS OF CIVIL SOCIETY REPRESENTATIVES FROM EUROPE AND TAJIKISTAN

Throughout the Seminar, participants urged national authorities of the Republic of Tajikistan to ensure full compliance with international human rights standards and to fulfil all recommendations and issued decisions of the UN treaty bodies and special procedures addressed to Tajikistan, including through setting-up an effective national implementation mechanism under the jurisdiction of the existing Government Commission of the Republic of Tajikistan on Implementation of International Human Rights Obligations. This mechanism should include the Ombudsman, independent national legal experts and civil society representatives and should be tasked to review judicial decisions and law-enforcement practices that were subject of the UN decisions, to propose changes to law and practice, as well as to determine relevant compensation to the victims of human rights violations from the allocated state funds.

Creation of the Ombudsman institution was welcomed, and the civil society and international organizations were encouraged to assist the Ombudsman in the fulfilment of his mandate, while he was urged to lobby with relevant state authorities for implementation of international human rights law. Participants recommended ensuring provision of the human rights education to the general public and continuous human rights training for relevant professionals, including on direct application of international and constitutional standards by judges, prosecutors and defense lawyers. Participants stressed the importance of upholding the principles of inclusiveness, transparency and accountability of the legislative process, and urged for relevant support of international community in order to institutionalize involvement of civil society in the law-drafting process through the introduction of changes into national legislation.

The participants encouraged the Government, during the elaboration of a new programme on judicial and legal reform, to ensure an open and inclusive procedure with consideration given to the views of civil society and legal professionals, and make the reform of the Tajik Bar (Advokatura) a part of this programme, that would aim at creating a unified, self-regulating, independent, and professional Bar association of defense lawyers. Participants also recommended adopting a law on free legal aid and developing an access to justice scheme for the country, with mandatory state budget allocations and cooperation of the Government with NGOs. Continuation of the criminal law humanization policy through, in particular, mitigating punishments set forth by the Criminal Code and ensuring protection of the victims' rights was also encouraged.

In order to ensure full institutional and functional independence of judges, the participants recommended:

- to adhere to the UN Basic Principles on the Independence of the Judiciary and review the composition and powers of the Council of Justice in order to ensure its independence from the executive power and strengthen its role in facilitating the judiciary functions;
- to increase the minimum age requirement for judges, introduce security of the judicial tenure until the age of retirement, competition-based appointment procedure for judges and presidents of all courts, and ensure adequate remuneration and material conditions for judges;
- to launch public discussions in order to assess possibilities for introducing elected judges in the lowest courts who could be tasked to sanction pre-trial restraint measures and special investigative measures which infringe upon fundamental rights and freedoms of an individual;
- to ensure that the new CPC provisions, aimed at introducing the judicial control over law-enforcement actions that invade the constitutionally protected rights and freedoms, foresee the

separation of duties between judges reviewing the merits of criminal cases and judges responsible for authorizing operative-detective and coercive pre-trial measures;

- to revise disciplinary procedures for judges with the view of bringing them in line with international standards and to ensure that hierarchal structure of the national judicial system does not allow for the unlawful interference of higher courts with the decision-making of lower courts;
- to ensure that the Constitutional Court demonstrates its leadership in enforcing human rights guarantees contained in national and international law, more actively uses its discretionary power to initiate the review of constitutionality of contentious legal provisions, has expanded power to review individual complaints from all individuals, and not only from those who were subjects of application of contentious legal norms, and is also vested with the power to review decisions and acts of local authorities that infringe upon human rights and freedoms. Moreover, the Constitutional Court should be provided with information technologies, skilled staff members and sufficient resources, and defense attorneys and general public should be informed of the individual complaint procedure, and jurisprudence of the Court should be made widely available in the country.

The participants welcomed elaboration of the new Criminal Procedure Code (CPC) and urged responsible state officials and members of the Parliament to ensure that submitted comments of independent legal and civil society experts are reflected in the final draft CPC. In order to ensure full compliance with the fair trial guarantees, participants recommended:

- to ensure strict adherence to the principles of adversary procedure and equality of arms throughout all stages of criminal proceedings by judges, prosecutors, law-enforcement officials, and defense lawyers. In this regard, the public prosecutor's office should be stripped of its oversight powers vis-à-vis courts and legality of the judicial decisions; the rules of orality, immediacy and the right of the defendant to confront and cross-examine the witnesses and challenge all evidence adduced by the prosecution should be upheld, and evidence collected by the defense with the use of independent forensic experts should be admitted. Moreover, legal norms and practices whereby a judge retains inquisitorial powers and breaches his/her adjudicatory neutrality during the trial should be abolished;
- to ensure that all infringements upon constitutionally protected rights and freedoms are subject to *a priori* and *a posteriori* judicial control and review, and due process guarantees are strictly adhered to during detective-investigative measures and pre-trial investigation;
- in order to fully comply with the principle of *habeas corpus*, to elaborate a clear mechanism of judicial review of legality and reasonableness of the arrest and detention, decrease a lengthy pre-trial detention period currently determined by the prosecutor's office, and ensure that any prolongation of the pre-trial detention is authorized by a judge and allows for periodic judicial review of the legality and reasonableness of the continued detention;
- as foreseen by the international law and the principle of equality of arms, to ensure unimpeded access of defense lawyers of one's choice to case materials and their clients from the moment of actual apprehension/detention and spell out a clear exclusionary rule allowing to declare inadmissible all evidence gained with violations of due process guarantees, i.e. testimonies given by an accused in absence of the legal counsel;
- to introduce video and audio recording of trials in order to guarantee the veracity of trial records, and respect the principle of public and open trial, in particular, by ensuring free public access to court buildings, hearings and documentation, including by displaying up-to-date schedules of trials, uploading judicial decision on-line and abolishing internal court regulations that obstruct access of public to courts;
- to review the existing institution of people's assessors and develop an effective model of lay participation in criminal trials that is no more characterized by obsolete and bureaucratic approach of selecting lay participants and guarantees their random selection and impartiality.

The participants urged the Government of Tajikistan to ratify the UN Optional Protocol to the Convention against Torture (OPCAT), and prior to the establishment of the National Preventive Mechanism (NPM) in line with the OPCAT requirements, in order to respond to and prevent torture in the country, they recommended:

- to introduce a separate Criminal Code article against torture, and ensure adequate response of judges, prosecutors and defense lawyers to allegations of torture or other forms of ill-treatment made before, during or after the trial, through the prompt, effective, comprehensive and impartial criminal investigation carried out by an independent agency, with the burden of proof resting with responsible state authorities; and to carry out such investigation even in the absence of a formal complaint from a victim, if there are reasonable grounds to believe that torture or other form of ill-treatment has occurred vis-à-vis a detained person;
- to set up an effective complaint mechanism against detention conditions and ill-treatment, and authorize medical staff to initiate ex-officio investigation in line with the Manual on Effective Investigation and Documentation on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol (1999), and to guarantee access of detained persons and inmates to independent medical examination;
- to introduce and apply civil procedure rules regulating the payment of compensation to the victims of torture and other forms of ill-treatment, as well as the victims of other types of unlawful actions of the law-enforcement authorities, and to establish a state fund for torture victims;
- to implement, with the support of international community, capacity building projects for NGOs on conducting monitoring of all places of deprivation of liberty, and allow for public monitoring of places of detention;
- to promote in-country discussions on the OPCAT and importance of public monitoring of places of detention in the prevention of torture, as well as respective duties of the state and civil society in elaborating a country model of the NPM compliant with the OPCAT criteria.

With regard to improvement of prison conditions, including for life-term prisoners, and the use of alternatives to imprisonment, participants recommended to the authorities of the Republic of Tajikistan:

- to ensure compliance with provisions of the UN Standard Minimum Rules for the Treatment of Prisoners, renovate the available and construct new places of deprivation of liberty, and guarantee that prison staff receive adequate training and that their working conditions comply with international standards;
- to set out a transparent procedure and clear criteria of considering inmates for release on parole that should be carried out only by courts, with a possibility of an appeal;
- to ensure that life-term and other long-term prisoners are treated in conformity with international standards, and they are afforded with a right to be considered for an early release, equally to all other prisoners;
- to expand the list and the use of non-custodial alternative punishments, such as community service, fine and warning, in compliance with the UN Standards Minimum Rule for non-custodial measures (Tokyo Rules), as well as the use of alternative pre-trial measures of restraint (such as bail, promise not to leave the country, guarantee of a third party, etc.);
- to introduce juvenile justice in line with the Beijing Rules, and programmes of reintegration of juvenile delinquents and former adult inmates in the society;
- to create modern probation and mediation services and introduce restorative justice principles into national law and practice, including by improving legislative framework regulating conciliation of parties.

BACKGROUND

1. In 2007, the European Union adopted a 'Strategy for a New Partnership' with Central Asia, aimed at developing further co-operation with the Central Asian region. One of the main objectives of this initiative is the promotion of human rights, rule of law, good governance and democratization in Central Asia through enhanced exchanges in civil society. To this end, the European Commission is organising a series of annual seminars on a variety of human rights issues, bringing together officials, non-governmental organizations and other civil society representatives. These seminars provide an opportunity to discuss international standards and best practices on human rights, and invite civil society to give their perspective on the current situation and challenges in the countries of the region, with a view to developing recommendations for governments.

2. In 2008, the European Union and the Republic of Tajikistan agreed to establish an annual human rights dialogue. In 2008, the first session of the dialogue took place in Dushanbe. Both sides confirmed the importance of having an open, constructive, and result-oriented human rights dialogue. A number of specific problems with regard to the human rights situation were discussed, including reforms of the judicial system, freedom of association and assembly, freedom of expression and the media, freedom of thought and religion, conditions of detention and torture, the right to health and education and women and children rights. Furthermore, both sides agreed to hold in Dushanbe human rights seminars between civil society representatives from Tajikistan and the European Union.

3. The first European Union-Tajikistan Civil Society Human Rights Seminar was held in Dushanbe on 10-11 July 2009 and was attended by seventy participants, including representatives of more than thirteen NGOs, academics and professional lawyers' associations from Tajikistan, fourteen European experts from twelve European countries, including Russia and Ukraine, representatives of diplomatic missions and international organizations present in Dushanbe, and eight representatives of different government authorities of the Republic of Tajikistan.

4. The aim of the Civil Society Seminar was to contribute to the human rights dialogue through an open discussion that was meant to enrich the official dialogue of the European Union with the Government of the Republic of Tajikistan. The Civil Society Seminar provided an opportunity for an exchange between European and Tajik civil society representatives, academics and state officials on human rights topics and on how to enhance the compliance with human rights obligations that Tajikistan is bound by.

The Seminar:

- allowed academics and members of civil society to feed the agenda of the official dialogue with their views through a non-confrontational discussion;
- provided a forum for the European and Tajik academic and NGO communities to have an open and professional discussion at the expert level in order to formulate recommendations for future reforms based on the identified best practices and applicable international standards;
- offered to academics and civil society representatives the expert analysis on the areas where the use of international human rights standards and the European best practices could be further promoted in Tajikistan.

5. Agenda of this first European Union-Tajikistan Civil Society Human Rights Seminar focused on the right to a fair trial and the independence of the judiciary (see Agenda of the Seminar in Annex 1) and was subdivided into six working sessions, each devoted to a number of topics of relevance to the general theme.

Under each working session participants were invited to draw a discussion on three strands: examination of international standards, examination of current national law and practice, and examples of best practice and possible alternatives to the existing practices.

6. The present Report[2] summarizes the gist of introductory remarks and ensuing discussions among the participants of the Seminar. It also provides recommendations that were elaborated by civil society participants and presented for further consideration by the relevant officials of the European Union and the Republic of Tajikistan, in particular during the forthcoming second round of the official European Union-Tajikistan human rights dialogue scheduled to take place in Dushanbe in autumn of 2009.

7. Annexes to the Report contain introductory remarks presented by speakers in writing to the organizers, and other documents relating to the Seminar, including the agenda, the concept note and modalities, the list of attendance and the list of documents distributed to participants electronically and in a hard copy.

8. All participants received electronic (saved on the USB device) and printed materials on the Seminar's topics. These materials are comprised of a variety of documents on international and European human rights standards, official UN documents with the focus on Tajikistan and of general background nature, OSCE reports and commitments, NGOs analytical papers and background reports, academic articles pertinent to the Seminar's discussion, as well as background material from the similar civil society seminar organized by the European Commission in Almaty on 29-30 June 2009. Simultaneous interpretation was provided into Russian, Tajik and English.

DAY 1

OPENING SESSION

Welcoming speeches were delivered by **Mr. Yusuf Salimov**, Head of the Department for Constitutional Guarantees of Citizens' Rights of the Executive Apparatus of the President of the Republic of Tajikistan, **H.E. Ambassador Henry Zipper de Fabiani** from the Embassy of France to the Republic of Tajikistan, on behalf of the European Union's Presidency, **Ms. Charlotte Adriaen**, Chargé d'affaires a.i. of Delegation of the European Commission to Tajikistan and **Mr. Zarif Alizoda**, Human Rights Commissioner in the Republic of Tajikistan (hereinafter referred to as the Ombudsman).

Mr. Yusuf Salimov after welcoming the New Partnership of EU with Central Asia, explained the background of the judicial reform in Tajikistan that began in 1991 under the guidance of the President. Starting from 1993 till 2000, Tajikistan ratified a number of international human rights treaties and on 4 March 2002 established a Commission on Implementation of International Human Rights Treaties as a permanent state inter-agency body. Mr. Salimov reminded that on 23 June 2007 the Presidential Decree was signed on the State Programme on the Judicial and Legal Reform that introduced a set of measures for improving the judicial independence and its role in protecting human rights.

[2] The Report was prepared by the seminar's moderators: Nigina Bakhrieva and Natalya Seitmuratova.

He then continued by summarizing achievements of Tajikistan, such as giving priority to international law, creating the Council of Justice, transferring penitentiary and court bailiffs to the Ministry of Justice, introducing a death penalty moratorium. One outstanding challenge of these days is adopting a new Criminal Procedure Code (CPC) that exists in its 1961 version which is not in line with the Constitution of Tajikistan. In relation to the CPC reform, Mr. Salimov stressed the importance of the judicial independence, equality of arms between defense attorneys and prosecutors and adversarial criminal procedure where judges have a role of neutral adjudicators.

He briefly described the existing judicial system and courts, mentioned recent introduction of new court chambers on family and administrative matters and emphasized the crucial role of judicial control over criminal proceedings, especially over arrest and deprivation of liberty. He stressed the importance of due process, in particular, a need to ensure immediate registration of all detained persons and access of defense lawyers and doctors to all persons in detention. Moreover, significance of the Council of Justice in supporting independence of the judiciary and judges' appointments was mentioned as a way to exclude corruption and nepotism.

Mr. Salimov voiced a set of recommendations for future reforms, including a suggestion to consider a life-long tenure of judges, ensuring that interference with the work of courts should be punishable by law, creating material and financial conditions for courts, and introducing immunity for judges that could be lifted only in exceptional cases of commission of criminal offence by a decision of a reinforced self-governed body representing judicial community. Mr. Salimov referred to the Conferences of Judges that receive information from Qualification Collegiums regarding imposed disciplinary sanctions on judges and suggested that this Conference of Judges should be given a right to overturn the applied sanctions. In conclusion, a reference was made to the last address of the President to the Parliament and creation of a working group on elaborating a new concept of the judicial and legal reform.

H.E. Ambassador Henry Zipper de Fabiani described the content of the New Strategy for Central Asia that covers a wide range of fields in external relations of the EU, including a legal dimension that focuses, among other issues, on the development of a new business culture in the region. He reminded participants that the next step in the human rights dialogue with Tajikistan is a second round of governmental talks scheduled for September 2009, and also referred to the November 2008 first ever meeting between Ministers of Justice from the EU and Central Asian states in Brussels. Moreover, Ambassador Zipper de Fabiani announced that in September 2009 five experts from Tajikistan will be brought to a seminar in Tashkent, where experts from Central Asia will meet and discuss further methods of cooperation with the EU.

Finally, he explained that a broader scope behind these series of meetings and seminars was EU decision to give support to the Central Asian region in establishing good governance and respect to human rights. He said that decades were needed in Europe in order to establish the rule of law and normally active involvement of citizens was required in order to make this process a success. He wished all participants to have a meaningful debate.

Mrs. Charlotte Adriaen welcomed all participants on behalf of the Delegation of the European Commission to Tajikistan and emphasized again that recommendations of the Seminar would be fed into the next round of the dialogue with the Government of Tajikistan. She underlined that important themes featured on the Seminar's agenda had been proposed by the Government itself, and this fact was a demonstration of the Government's readiness to accept the views of the civil society. She thanked the Presidential Administration and the Government of Tajikistan for their support in organizing the event.

Mrs. Adriaen added that recommendations of the Seminar would also reflected in the European Instrument for Democracy and Human Rights (EIDHR) and other programmatic activities funded by the EC. She recalled that 39 projects had been funded by the EIDHR so far, amounting to 2 million EURO. They focused on the judicial reform, prevention of torture, training of people's assessors, establishment of the NGO coalition, support to the establishment of the association of people's assessors and building capacity of NGOs in human rights monitoring and reporting. All previous EIDHR projects were implemented in close partnership with local NGOs, and thus contributed to the local capacity-building. She also mentioned that 900,000 EURO worth call for proposals would be soon made in Tajikistan and, generally, the European Union (EU) remained one of the key donors in Tajikistan in the sphere of legal and human rights reform.

Mrs. Adriaen said that in cooperation with other donors, such as the German Embassy, USAID, OSCE, SIDA and other agencies, the European Union aimed at increasing effectiveness of the human rights sector, and in order to avoid duplication and optimize the use of available resources, EC willingly participated in donor coordination meetings. She concluded that the EU support to the human rights promotion in Tajikistan would continue and would ensure meaningful follow-up to the Seminar's recommendations.

Mr. Zarif Alizoda, a newly appointed Ombudsman, mentioned the process of establishment of his office and the President's support given to him in the recent Annual Address to the Parliament. He referred to the work of an inter-agency working group that elaborated the Law on the Ombudsman that was signed in August 2008. The Law took into account the expert input of international community and, according to the Ombudsman, was a better piece of legislation than similar laws in the neighbouring countries. Provisions of the Ombudsman Law allow individuals to receive support of the Ombudsman and for the Ombudsman to establish cooperation with other state authorities in promoting human rights. Mr. Alizoda stressed that the Law authorized him to react to the judicial decisions (a right that is not foreseen in the Ombudsman laws of other Central Asian states) and, in this respect, a procedure for receiving and having meaningful follow-up to individual complaints had been elaborated by him, having taken into account experience of other countries.

He explained that, in order to implement the tasks assigned to him by the Law, an action plan had been adopted, and the first step for him now was to review the Ombudsman's tasks assigned by the Law, to define the structure of the secretariat and to identify sources of financial support. Mr. Alizoda described that his secretariat would have 30 persons, divided into two departments, one dealing with political and another one with economic, social and cultural rights. All staff members would be guided by international human rights standards and would focus on a specific area of human rights. He also stressed that the Law provided for his independent status, equal to the member of the Parliament, with sufficient remuneration of 2,000 Somani for each member of the Secretariat, who would be hired soon on a competitive basis. He hoped that civil society experts would consider applying for the Secretariat's positions. The Ombudsman added that technical set-up and financial basis for his work were being worked on.

In conclusion, the Ombudsman mentioned that during meetings with the United Nations and NGOs, he had identified future areas of cooperation and expressed his readiness to work closely with all relevant international organizations and civil society. He also invited NGOs to submit project proposals that could be jointly implemented.

Mrs. Adriaen thanked the Ombudsman and gave the floor to the Seminar's moderators who briefly explained modalities of the discussion and opened the first working session.

WORKING SESSION I: INDEPENDENCE OF JUDGES AND DEFENSE ATTORNEYS

The working session focused on two major blocks of issues. One block was devoted to the legal framework and practical challenges in ensuring independence of judges, selection/appointment procedures for judges, judicial tenure, promotion, and remuneration as means to ensure independence and necessary safeguards against arbitrary dismissal of judges, case assignment procedures, complaint mechanisms for judicial misconduct, review, and investigation of complaints and, finally, the role of the judicial self-government in ensuring integrity, as well as the status and the role of the Council of Justice in the Republic of Tajikistan. The second block of discussion covered the issues pertaining to the legal profession reform in Tajikistan, including independence of the legal profession and autonomy of associations of defense attorneys and access to justice and government support to the free legal aid schemes.

Introductory remarks were made by three speakers: **Mr. Harold Whelehan,** Senior Counsel from the Republic of Ireland, **Mrs. Mahira Usmanova**, Defense Attorney and Chair of the Sugd Collegium of Advocates in the Republic of Tajikistan and **Mr. Alisher Majitov**, Defense Attorney from the Tajikistan Collegium of Advocates "Sipar".

Mr. Harold Whelehan started with explaining the background of the legal reform in Ireland after gaining its independence in 1920 and the civil war that lasted for 8 years. He commended the 1994 Constitution of Tajikistan as a modern document and welcomed commitment of the government to human rights and their promotion. He said that problems with effective implementation of human rights arose when proliferation of rules and laws took place and law-enforcement authorities were tasked to enforce these laws. The challenge is how well the laws are drafted, presented to the community and how educated the community is and capable of understanding these laws.

The speaker stressed that equality before the law was the cornerstone of any human rights protection system and the state, with its resources and powers, had a task of balancing these powers vis-à-vis rights and freedoms of an individual when delivering justice. He reminded that every accused person must be informed of his rights and the judicial control over detention should be ensured, the judges should have appropriate training and should be properly resourced and financed in order to properly fulfil their human rights protection tasks. In conclusion, Mr. Whelehan stressed that cooperation between all branches of the government, implementation of international standards into national laws and independent judicial system were required in order to guarantee that an individual is capable of having effective recourse to his/her rights.

In her presentation on the reform of the legal profession as a guarantee of the civil right to professional legal representation, **Mrs. Mahira Usmanova** expressed a belief that it was the right time to review the place and role of defense lawyers in the legal system of the Republic of Tajikistan.

She described the current system with two categories of defense lawyers: defense attorneys and licensed attorneys who functioned on the basis of a license issued by the Ministry of Justice. This division foreseen by the Law on Advokatura brought incoherence into the composition of the legal profession in Tajikistan. There are currently official Bar Associations of Defense Attorneys/Collegiums as well as autonomous associations of the licensed attorneys in Tajikistan, with their various rules on membership and qualification exams. The Collegium of Defense Attorneys establishes internal rules on qualification exams and membership criteria, whereas the

licensed attorneys pass their test before the Qualification Commission under the Ministry of Justice, are licensed through the same Ministry and do not have any code of conduct. Defense attorneys of the Collegium are obliged to provide free legal aid, whereas the licensed attorneys are not. Moreover, lawyers without any licenses often represent clients on the basis of powers of attorney, even if they lack adequate skills and expertise.

The speaker stressed that many of government authorities in Tajikistan were confused about existing incoherent system within the legal profession and were not clear where to report possible misconduct of a defense lawyer or flawed legal assistance. The speaker is convinced that there is a need to create a unified system of defense lawyers with a synchronized and systematized structure of the Bar, authorized to oversee the work of defense lawyers and introduce unified education, membership, disciplinary and ethical rules.

Mrs. Usmanova suggested that such a unified association of lawyers should be created anew – existing structures are already corrupt and therefore unreliable. She said that such a body should only have representative functions, with local associations of defense lawyers being accountable to the Republican central body, while still retaining the required level of independence and self-governance.

Finally, the speaker referred to the UN Basic Principles on the Independence of Lawyers and recommendations of the UN Special Rapporteur on the Independence of Judges and Lawyers after his trip to Tajikistan in 2007, and voiced several concrete recommendations, such as to exclude a category of licensed attorneys from the Law on Advokatura (the Bar) and to unify the legal profession in Tajikistan, as well to establish a strong and reliable system of free legal aid in the country.

Mr. Alisher Majitov mentioned his status of a member of the working group that was elaborating ideas on reforming the legal profession in the Republic of Tajikistan and focused his presentation on the procedure for challenging judges presiding over trials. He stressed the importance of a procedure of challenging a judge during trial proceedings, as an important fair trial safeguard that allows for all participants of the trial to be challenged and excluded from the proceedings if there are grounds for reasonable suspicion about their impartiality. He explained that Tajik laws provided exhaustive grounds for challenging a judge in the proceedings or demanding his self-recusal. In practice, there are situations where the same judge reviews a challenge against himself/herself. The speaker said that this procedure could not ensure impartiality and could cast doubt on the fairness of the whole trial.

Mr. Majitov explained that the described problem was further exacerbated by the fact that a first instance court's decision, including a decision on a challenge against the judge, that could be appealed only after the first instance court's final decision came into force. The speaker criticized the existing legal rules on appealing judicial decisions dismissing challenges against the judge, and expressed an opinion that such rules violated an individual right to a legal remedy and appeal stipulated by international standards. An appeal must be reviewed promptly, fully and effectively (formal review of an appeal is not sufficient). The speaker concluded with a recommendation to develop a procedure whereby a refusal to satisfy a challenge against a judge could be appealed to a chairman of the same court first, and then to a higher judicial instance.

During the discussion, while addressing the legal profession reform, participants agreed there was an urgent need in unifying the legal profession, as the existing division of defense lawyers obstructed their self-government and independence. Participants recalled that, in 2004, with the support of international organizations, a working group was established in order to unite defense lawyers and

draft new legislation on the legal profession. Unfortunately, at that time, the Republican Collegium of Defense Attorneys, as the most powerful association of lawyers in the country, hindered the reform as it did not agree with the presented reform concept. It was said that many people in Tajikistan were dissatisfied with the work of licensed attorneys who were driven by commercial interest and were not legally obligated to provide free legal aid.

It was noted that access to the legal profession was not marred with corruption, but it was less attractive to become a defense attorney than a prosecutor, and therefore the number of existing defense attorneys was not sufficient for the country, especially for its remote districts (e.g., Gorno-Badakhshan Autonomous Region with 2 – 5 lawyers per 200,000 people), plus services of defense attorneys were not affordable by the majority of the population. It was therefore noted that it should be a state's duty to ensure access to free legal aid throughout the country, and the best practices of other countries should be studied to find out the best solution for Tajikistan.

Practicing defense attorneys agreed that the reform was needed, and highlighted that during the transition period existing lawyers should be provided with guarantees for their practice. It was said that the future Bar association should be vested with full independence and should have a unified structure and integrity, plus free legal aid schemes should be put in place in consultation with the Bar association. Members of the existing working group elaborating a draft law on the Bar association added that it would be important to stipulate in the new law free access to the legal profession and ensure that practicing defense attorneys, academics and experts from the relevant state authorities are included as members of qualification commissions responsible for admitting new members to the Bar.

Participants recalled during the discussion that the initial judicial and legal reform was finalized in 2007 with adoption of key legislative acts, and that a new working group was established in 2009 to develop further steps for the judicial and legal reform, and it should also include the reform of the Bar.

With regard to the independence of judges, **the discussion** focused on such issues as independence of the judiciary from the executive branch of power and status and functions of the Council of Justice.

The Supreme Court judge noted that when speaking about the independence of the judiciary and human rights protection there was a need to focus also on civil and administrative law, as well as equality of arms during judicial proceedings relating to these branches of law.

In relation to the Council of Justice participants noted that its current administrative functions ran counter to the legal provisions and therefore should be reviewed and expanded. A suggestion was made to transfer powers of qualification and examination commissions to the Association of Judges of Tajikistan in order to ensure impartial selection and independence of judges. The Russian expert stressed the importance of an independent autonomous and self-governed association of judges and its role in adopting and enforcing judicial code of conduct, disciplinary measures and other judicial self-governance matters. He referred to the existing Council of Justice and Qualification Commissions in Tajikistan and suggested to consider their unification into one body. In relation to the Council of Justice, he said that it might be rational to ensure that its membership foresees the majority of judges as a means to attain its independence from the executive branch of power.

The moderator summed up the discussion and suggested some recommendations.

WORKING SESSION II: EQUALITY OF ARMS DURING ALL STAGES OF CRIMINAL PROCEEDINGS AND PRE-TRIAL RIGHTS

The working session focused on issues relating to the prohibition of arbitrary arrest and a need to expand the practice of applying alternatives to pre-trial detention, the introduction of *habeas corpus* guarantee in the Republic of Tajikistan, the rights of prosecutors and defense attorneys at the pre-trial stage and a principle of equality of arms in law and practice, importance of an independent forensic service and its role in ensuring fair trial guarantees and equality of arms at the pre-trial stage, as well as the right to defense and free legal aid.

Introductory speeches were made by **Mr. Harold Whelehan**, Senior Counsel from the Republic of Ireland, **Mr. Manuchehr Kudratov**, PhD candidate from the Institute for East European Law in Germany, **Mr. Azam Badriddinov,** Defense Attorney in the International Legal Firm "Contract" from Tajikistan and **Mrs. Madina Usmanova,** Chair of the Legal Aid Center, Bureau on Human Rights and Rule of Law (BHR) of Tajikistan.

Mr. Harold Whelehan stressed that there was disproportionate power of the State on one side and the accused on the other side, and said that this made it necessary to take great care to ensure that the person accused by the State was fairly treated and enabled to defend himself in every way. The speaker reiterated the key principles that should be strictly adhered to, including an accused' right to be informed of the charge which has been made against him in a way that he understands; be informed of his right to represent himself or be represented by a competent lawyer of equal competence to the one retained by the State; if he cannot afford a lawyer, he should be assigned a competent legal representative from an independent legal profession who will be capable of representing him against the police authority; and be informed of his right to be brought promptly before a judicial authority where he can challenge the legality of his detention.

Mr. Whelehan mentioned that a prosecuting authority should be independent and separate from the police force and it should always evaluate the evidence assembled by the police and decide whether there would be justification for bringing a case before the Court. He stressed importance of the presumption of innocence for the fairness and transparency of the legal process. It was also noted that the State must ensure that the law-enforcement officers receive appropriate training and supervision, the law-enforcement agencies are properly resourced and financed, that codes of conduct exist and are enforced to inform, guide and underwrite best practice in the conduct of investigations and prosecutions, a complaints procedure exists for prisoners as suspects who feel they have a grievance or complaint and confessions cannot be obtained by illegal means, such as torture, oppression, deprivation of food or sleep or personal isolation. The role of judges, prosecuting authorities and lawyers in ensuring and safeguarding these rights is essential and indispensable.

In conclusion, the speaker reminded the participants that in order for justice to be done, and for justice to be seen to be done, an individual should be guided and supported by a professional trained lawyer who is independent and capable of testing both the evidence and the procedures which have been used in the prosecution of his client and ensure that both the evidence and procedures are subjected to proper judicial scrutiny in the course of the trial.

Mr. Manuchehr Kudratov spoke about importance of the habeas corpus guarantee in an adversarial criminal procedure. Based on the comparative review of the draft CPC and international standards on habeas corpus guarantee, the speaker concluded that although the draft CPC contained key elements of this human rights principle, some gaps nevertheless remained. For example, the draft CPC

transfers the authority to sanction arrests to courts as required by international standards, but, in practical terms, implementation of the habeas corpus in Tajikistan may encounter obstacles, such as existence of only one judge in first instance courts in many parts of the country.

As a way to resolve this problem, the speaker referred to the German system that has special judges authorized to oversee only pre-trial investigation and sanction limitations of fundamental rights and freedoms of an individual. Moreover, the draft CPC does not require courts to verify the lawfulness and reasons of the initial detention, and this may result in having merely a formal habeas corpus procedure in Tajikistan. Another concern regarding the draft CPC is the overly lengthy (72 hours) time period within which a detained person must be brought before a judge – European best practice suggests 48 hours instead.

Finally, Mr. Kudratov added that the draft CPC lacks clear provisions on juvenile delinquents, i.e. provisions regulating arrests of minors, and also suggested that the CPC may need to be reviewed with regard to its style to ensure that its text corresponds to the principles of brevity, certainty, and predictability.

Mr. Azam Badriddinov discussed equality of arms during pre-trial proceedings, and the way this principle is applied during collection and preservation of evidence during the investigation. He pointed to the legal shortcoming that gives a lawyer only a right to appeal to the investigating body with a request to add certain evidence to the case file – the law does not guarantee that this request will be satisfied by the police and therefore a defense lawyer is fully dependant on the investigator's will.

Another breach of the equality of arms highlighted by the speaker refers to the procedure for having a meeting between a defense lawyer and his client during pre-trial investigation, whereby a lawyer is obliged to receive a written confirmation from an investigator in order to gain access to the pre-trial detention facility. This rule results in lawyer's total dependence on the investigator's discretion and obstructs his free communication with his client.

Mrs. Madina Usmanova addressed the problem of access to free legal aid in Tajikistan. She made a detailed review, including analysis of the relevant national laws and implementation practices. She stressed that access to legal aid appeared to be a pressing concern for the country as more than 50% of the population was below the poverty line and therefore could not afford legal representation when needed. Currently, there is no government policy targeting this problem, and although existing laws provide for the right to free legal aid, the practical application of these norms is not regulated and, therefore, the laws remain unimplemented. Defense attorneys that are members of the existing Collegiums (Bar associations) are the ones that should be used as state-appointed defense counsels and must be paid by the state, plus criteria should be developed on who and when can qualify for free legal aid.

Currently, the state budget does not have allocations to cover free legal aid costs, and lawyers are paid from reserve budgetary funds of local executive authorities. Plus, there is a significant government's debt to the Collegiums for the rendered free legal aid services. Furthermore, unlike in criminal proceedings, where access to free legal aid is at least legally guaranteed, even if not duly implemented, in civil and administrative law proceedings a right to free legal aid is not foreseen. Free legal representation in these cases is provided by NGOs, with the use of donor funds that are insufficient.

During the discussion, participant focused on procedures to appeal against unlawful and arbitrary

arrest or detention. According to the Seminar participants, the current laws fail to provide an efficient mechanism for appealing against action or inaction of state officials. Some participants noted that often lawyers did not effectively use available legal remedies and did not invoke correct legal norms. For instance, the existing CPC contains provisions to appeal against pre-trial measures of restraint, i.e. detention, however, there is no statistics showing whether these provisions are used by lawyers. European experts said that if no appeal on substance was allowed for by the law, it was always possible to appeal to the court against procedural shortcomings in the actions or inactions of state officials.

Participants noted that equality of arms during appointment of forensic examination was also a matter of concern in Tajikistan. While an investigator may order any forensic examination, a lawyer may only request to do so, and this rule breaches the principle of equality of arms during pre-trial investigation and trial proceedings. Under the law, bodies authorized to provide forensic services are restricted to government agencies under authority of the Ministry of Justice or Ministry of Health, and there is no independent forensic service in Tajikistan. An expert from Ukraine suggested using independent forensic experts in the proceedings as witnesses or specialists, giving them a procedural status allowed for by the existing law. It was said that it was the task of lawyers to build new practices and invigorate judges and courts.

Defense attorneys further highlighted the existing legal shortcoming that allows judges continue the prosecution even when a prosecutor drops the case. This practice was considered to be in violation of the equality of arms principle and was distorting the judge's role of an impartial adjudicator. Participants also noted with concern a wide-spread practice of imposition by judges of imprisonment terms longer than those requested in the indictments by prosecutors. This showed that judges in Tajikistan still retained inquisitorial system mentality and were keen on the use of repressive punishments.

Participants expressed concerns about the low rate of applicable alternative punishments and the use of pre-trial detention as the exclusive measure of restraint, even when indicted crimes are punishable by a maximum term of one-year of imprisonment. Finally, it was noted that pre-trial detention was not regulated by the CPC provisions, but by a secondary legislative act that was not accessible to the public. It was agreed that this flawed situation should be urgently remedied, hopefully, by including respective provisions into the new CPC.

The problem of rendering free legal aid was actively discussed. It was stated that the government lacks an efficient mechanism to pay state-appointed lawyers for their services. According to the participants, as of 2007 the government's debt to defense attorneys amounted to around 4 million of Tajik Somani and it is unlikely that it will be paid off in the near future. Participants said that nowadays the burden of rendering free legal aid lied mainly with NGOs and independent lawyers in Tajikistan. Since more than 50% of the Tajik population lives beyond the poverty line, it is impossible to expect that lawyers can attend to all these needs without the government's support. All participants, therefore, agreed that the state should urgently elaborate a free legal aid scheme for the country and should reform the legal profession in order to oblige all practicing defense attorneys to render free legal aid at the state's expense.

An EU expert noted that free legal aid should not be construed narrowly and legal information and legal training also constitute legal aid. In order to empower people and encourage them to use legal services, they should be informed of their rights.

WORKING SESSION III: PREVENTION OF TORTURE DURING PRE-TRIAL STAGES

The working session was devoted to the following issues: allegations of torture and complaint mechanisms and effective prevention and investigation of such allegations at the pre-trial stage, access of the accused to the outside world and access to the accused in detention by lawyers and family, detention conditions in police cells and pre-trial detention centers, importance of public monitoring of places of pre-trial detention, including police cells, in prevention of torture: existing legal regulation for civil society groups and ICRC access and finally, the signature and ratification of the UN Optional Protocol to the Convention against Torture (OPCAT): future creation of the National Preventive Mechanism

Introductory speeches were presented by **Mrs. Monika Platek**, Professor of Law from Warsaw University, **Mr. Poul Hauch Fenger** from the Danish Section of the International Commission of Jurists, **Mr. Sergey Romanov** from the Bureau on Human Rights and Rule of Law (BHR) from Tajikistan and **Mrs. Tatyana Hatyuhina**, a licensed lawyer from the Human Rights Center of Tajikistan.

The moderator opened the floor by saying that prevention of torture was a topical issue for the country and referred to the recent event where concluding observations of the UN Committee against Torture (UN CAT) of 2006 and a possibility of the OPCAT ratification were discussed.

Mrs. Monika Platek began her presentation with recalling that in 2002 – 2004, foreign experts and NGOs could visit places of detention and she regretted that nowadays it was much harder to gain such access. She reminded participants that the limited access to places of detention could not be justified by the fact that these were closed institutions, since existing international standards foresee public monitoring of all places of detention in order to ensure accountability and torture prevention.

The speaker talked about conditions of work of staff members of the places of detention and importance of adequate level of their training. She stressed that staff members of places of detention were usually also interested in being scrutinized through public monitoring in order to demonstrate that they perform their duties in line with international standards. She said that international organizations should support the Government of Tajikistan in its decision-making to ratify the UN OPCAT, and also suggested to support street law programmes in the Tajik universities since these programmes make major contribution to raising public awareness about human rights protection. Mrs. Platek also mentioned that training of trainers approach was an effective way to ensure the roll-over effect in spreading human rights awareness among the wider public. In conclusion, she suggested that legal education in the universities should be reviewed in order to adopt more practical approach to human rights mainstreaming.

Mr. Poul Hauch Fenger talked about fundamental rights that every detainee should enjoy, and referred to the key concerns of the UN Human Rights Committee expressed in its Concluding Observations issued after consideration of the initial report of the Republic of Tajikistan on implementation of the International Covenant on Civil and Political Rights (ICCPR). He said that transparency of detention institutions should be guaranteed and they must be open to independent monitoring. Capacity strengthening of persons who work with those deprived of their liberty was an important direction of the human rights promotion.

In relation to torture prevention, the speaker referred to the ICCPR provisions that reinforced the non-derogable right to freedom from torture and the General Comment of the UN Human Rights Committee on States of Emergency that reaffirmed that the freedom from torture could not be limited even during the times of emergency. He also stressed the importance of effective legal framework for the prevention of torture that foresaw a right to consult with an independent lawyer and a right to challenge legality of detention in front of the judge.

In relation to the role of the Bar Association in torture prevention, Mr. Hauch Fenger suggested that it could lobby for ratification of the OPCAT, point out lacunas in the legislation and comment on relevant draft laws. He said that Bar Association could provide training to civil society organizations on legal standards and other important issues relating to human rights monitoring. In summary, he reminded participants of the importance of practical use of the Istanbul Protocol offering guidance on how to document the facts of torture and what role medical staff could have in torture prevention.

Mr. Serghei Romanov focused his presentation on public monitoring of closed institutions. He believed that the problem of getting access to closed institutions was very urgent for the country and referred to his previous work as a human rights activist in the NGO anti-torture coalition in Tajikistan. He recalled that starting from 2003 human rights NGOs in Tajikistan attempted to conduct monitoring of the right to access to the outside world by detainees of closed institutions and the results of such monitoring were reflected in the alternative NGO reports to the UN Human Rights Committee and the Committee against Torture.

He regretted that these days NGOs were not consistent in their lobbying efforts with the government to gain access to the places of detention, and the majority of NGOs had abandoned their previous activities in the sphere of monitoring of places of detention. Moreover, the speaker mentioned that the ICRC representatives confirmed that since five years monitoring of places of detention had not been carried out in Tajikistan, and, in this regard, the newly negotiated memorandum with the government on resuming monitoring of places of detention was warmly welcomed by the Tajik civil society.

The speaker explained that currently there were some NGOs and international organizations that provided humanitarian aid in closed institutions, but their access depended on the discretion of competent government authorities, and no monitoring of detention conditions was feasible. Mr. Romanov stressed that OHCHR, the ICRC and NGOs should be given unrestricted access to places of detention and should conduct regular monitoring. This was particularly important in light of the second periodic report of Tajikistan to the UN CAT that will be reviewed in 2010.

Mr. Romanov added that there was also a problem with meetings of detainees with lawyers and relatives being regularly obstructed by the investigative or penitentiary authorities and torture being used in pre-trial detention centers, police cells as well as military detention facilities. The speaker voiced civil society's conviction that the country should urgently ratify the Optional Protocol to the UN Convention against Torture (OPCAT) and establish a national preventive mechanism (the NPM). The Ombudsman should play an important role in lobbying for prompt ratification and should be also involved in establishing of the NPM. Mr. Romanov added that once the OPCAT is ratified, civil society's skills and knowledge on monitoring places of detention will have to be revived, with assistance from donor organizations.

In her written presentation, **Mrs. Tatiana Hatyuhina** addressed prevention of torture and other forms of ill-treatment referring to the results of the NGO Coalition against Torture which has been operating in Tajikistan since 2007. In particular, Mrs. Hatyuhina stressed a lack of definition of

torture in the Criminal Code in full compliance with the Article 1 of the UN CAT, and absence of statistical data on prosecution of torture that makes it impossible to establish how many officials have been punished for the acts of torture. She discussed the scope, forms and methods of torture and reluctance of state authorities to keep records on facts of torture and conduct effective and impartial investigation. Mrs. Hatyuhina emphasized importance of access of the detained persons to lawyers during first hours of detention and during their pre-trial detention and said that incommunicado detention was one of the major factors contributing to the use of torture and the atmosphere of impunity for the acts of torture.

During the discussion, the Ombudsman said that cooperation with NGOs in monitoring detention facilities was an important objective he was committed to and agreed with all participants that the OPCAT ratification was needed. The EU experts said that even before the OPCAT is ratified, the Ombudsman should have a right for unannounced visits of places of detention.

With regard to torture prevention, defense attorneys described their difficulties in proving the facts of torture during trials when all signs of ill-treatment were already gone and forensic examination could not therefore establish the veracity of torture allegations. Since confessions are still used as primary evidence and results of forensic expertise conducted by the defense are not considered as evidence, the use of torture rarely entails criminal punishment and is often covered up by the detention facilities officials.

Representative of the General Prosecutor's office argued that there were sufficient criminal provisions on abuse of power or exceeding professional duties that could be used for prosecuting torture and a separate article was not needed in the Criminal Code. His position was refuted by the EU and civil society experts who referred to recommendations of the UN Human Rights Committee and the Committee against Torture requiring introduction of a separate article punishing torture.

The Ukrainian expert said that an article on torture should place the burden of proof on the state officials and they should be held accountable if torture occurred in places of detention. She said that in courts, lawyers should invoke the ICCPR and CAT provisions since international law can be directly applied, and added that with public access to places of detention it will be easier to document facts of torture. The EU experts reminded all participants that inhuman detention conditions could also constitute cruel treatment and torture, and that Tajik NGOs could start their strategic litigation from finding failures in upholding minimum standards in the detention facilities. The EU experts suggested that when brining cases to court, Tajik defense attorneys could argue that if injuries were sustained in detention and there was no effective investigation, than it would mean that the government did not comply with its procedural duty to investigate possible facts of torture.

Several defense attorneys gave a detailed account of a failure to ensure the right to legal representation, in breach of Article 14 of the ICCPR and Article 14 of the CPC. It was noted that the CPC did not foresee an explicit right of an arrested person to meet with a lawyer, and that such meetings were allowed only after a written notification of an investigator was received by the officials of the pre-trial detention facility. In order to obtain this written notification, lawyers have to send motions to the investigator every two days and appeal to the prosecutor's office, if the motions remain unanswered. Although there is a legal provision requiring response of the prosecutor within three days, in practice it takes up to a week to get any feedback, and no disciplinary responsibility is foreseen for the procrastination caused by investigators and prosecutors. After three days, defense attorneys can, hypothetically, appeal to the higher prosecutor, but their appeals are automatically dismissed with the justification that a response of a lower prosecutor is missing in a case file.

A reference was made to the importance of legal education and raising public awareness in order to sensitize them to the unacceptability of torture. A crucial role of medical staff, doctors and defense attorneys in documenting torture was also highlighted. All participants agreed that NGOs and professional groups involved in the human rights protection should systematically strengthen their knowledge and skills in using international human rights standards.

The Seminar moderator concluded that limited technical and material conditions were one of the reasons why documenting torture was often ineffective, but this was not an excuse for not prosecuting the facts of torture, since the burden of proof always remained with the State.

DAY 2

WORKING SESSION IV: FAIR TRIAL GUARANTEES DURING TRIAL

The following issues were addressed during this session: a right to trial within reasonable time, compliance with fair trial guarantees relating to the right to the presumption of innocence, an interpreter, free legal aid during trial, public pronouncement of a judgment, role of a judge in ensuring equality of arms between prosecution and defense during trial, jury trials as effective means in ensuring equality of arms and fairness of the proceedings, role of the court in investigating allegations of ill-treatment of participants of the criminal proceedings during pre-trial stages, exclusion during trial proceedings of evidence obtained through torture or the use of other illegal methods, as well as direct application of international treaties by courts, practice of taking into account jurisprudence of relevant UN treaty bodies when deciding on cases and, finally, public access to court hearings, court information and documents and fair trial and role of the media.

Introductory speeches were delivered by **Mr. Jiri Kopal,** Chair of the League or Human Rights from Czech Republic and Deputy Secretary General of the International Federation for Human Rights (FIDH) based in France, **Mr. Vincent Asselineau**, Member of the Board of the European Criminal Bar Association and Vice-President of the International Criminal Bar, **Ms. Nodira Abdullaeva**, Head of the Analytical Center of the Human Rights Center of the Republic of Tajikistan and **Mr. Farhod Habibov** from the Public Association "Initiative of Rural Development" of Tajikistan.

In his speech, **Mr. Jiri Kopal** focused on the importance of implementation of decisions of international courts and quasi-judicial bodies by national courts and difficulties arising when direct implementation of international standards is warranted. He stressed the undeniable role of the judiciary in promoting the implementation of international human rights standards by national authorities and in bringing national law and practice in line with such international obligations. As an example, he referred to the direct justiciability of economic, social and cultural rights and recognition by the United Nations Committee on Economic, Social and Cultural Rights of the direct applicability of international standards in this sphere in national legal systems. He also noted that the existing inter-agency commission in Tajikistan should elaborate a mechanism for implementing decisions and recommendations of the UN treaty bodies and special procedures.

The speaker continued by stressing the role of courts in investigating allegations of ill-treatment as prescribed by existing international human rights standards. He quoted the Council of Europe's Committee on the Prevention of Torture (CoE CPT) that stated that "*even in the absence of a formal complaint, such authorities should be under a legal obligation to undertake an investigation whenever they receive credible information, from any source, that ill-treatment of persons deprived*

of their liberty may have occurred. In this connection, the legal framework for accountability will be strengthened if public officials (police officers, prison directors, etc.) are formally required to notify the relevant authorities immediately whenever they become aware of any information indicative of ill-treatment." Equally, he advised to refer in national practice to general comments of the UN Committee against Torture that clearly spelled out the procedure by which the duty of state authorities to investigate allegations of torture and exclude tainted evidence could be fulfilled.

Mr. Vincent Asseleneau spoke about several fundamental fair trial rights, such as a right to be tried within reasonable time, a right to be presumed innocent, a right to a public hearing and a public judgment and a right to an interpreter. He noted that free legal aid should be made available not only in criminal, but also administrative, military and civil cases and that there should be an effective mechanism for filing a complaint against a judge in case of his/her misconduct, including when a judge violates a presumption of innocence and is not impartial during the trial.

In her presentation, **Mrs. Nodira Abdullaeva** addressed the issues of public access to trials, court information and court documents. Her presentation was based on the results of criminal trials monitoring project implemented by the Human Rights Center since 2005. She presented an overview of such problems as limited public access to court hearings and court buildings, especially in the regions, where guards blocked access to court buildings and were authorized to check IDs of everybody wishing to enter the court. She noted that almost all court buildings in Tajikistan were not equipped for persons with special needs, and also expressed concern about an internal regulation on management of paperwork by courts that explicitly limited access to court documentation by members of the public.

The speaker explained that despite some improvements since 2005, many courts and judges have still required NGO monitors to present written authorizations from the Council of Justice in order to attend the court hearings, and public access to court documents have still remained a problem. She noted that trials were usually held in the judge's offices due to the shortage of court rooms, a limited number of judges and their heavy case load. This flawed practice detrimentally affects several fair trial guarantees, including a right of a defense attorney to communicate freely and confidentially with the accused and a right to a public hearing.

Mrs. Abdullaeva concluded her presentation with giving several recommendations, mainly referring to a need to ensure free access of the public to court buildings and court rooms, a need to make court information transparent and make trial schedules and issued decisions publicly accessible, including by creating court websites.

Mr. Farhod Habibov talked about the role of people's assessors in ensuring equality of arms during the trial. His presentation was based on the study 'People's Involvement in Fighting against Torture' implemented by the NGO "Rural Development Initiative" with the EC funding. He described the history of creation of the public assessors institution, the process of their nomination by local executive authorities and final appointment by the President for the term equal to the tenure of judges.

Mr. Habibov said that the implemented project demonstrated an urgent need to reform the institution of people's assessors. He identified problems with its current functioning included poor awareness of laws and legal procedures among people's assessors, difficulties in ensuring their impartiality and non-existence of procedures for excluding assessors whose impartiality is questioned by the trial participants, a lack of training programmes for them and their general passiveness and formal presence during trial proceedings and adoption of verdicts. The speaker recommended exploring

ways to ensure that layman participation in the administration of justice in Tajikistan would be in line with international standards.

During the discussion, the Seminar participants raised the problem of getting access to court materials, including impossibility for defense attorneys to get copies of verdicts immediately after the trial. In order to comply with the deadline for filing an appeal, defense attorneys have to submit preliminary appeals and replace them with fully substantiated appeals only after obtaining copies of verdicts through their clients, often three days or more after the verdict has been pronounced. Furthermore, it was said that difficulties with getting access to court buildings and a rule that only a presiding judge could attach a procedural document to a case file complicated the work of defense attorneys.

All participants noted with concern a low rate of acquittals and punishment imposed by courts being often more severe than those requested for by the prosecutors. A suggestion was made that existing practice of evaluating judge's performance based on the rate of acquitting verdicts has to be abandoned. Participants agreed that speedy trials and plea bargaining should be approached with caution in Tajikistan as they may lead to a number of fair trial violations.

Furthermore, defense attorneys addressed the issue of judge's impartiality and questioned whether a rule allowing judges to review a case file before the trial was a violation of equality of arms and the presumption of innocence. They also noted that it should be prosecutors, but not judges, who read out indictments during trials in order to respect the rules of an adversarial criminal procedure. Problems with discrimination of vulnerable groups during criminal proceedings in Tajikistan were raised by some NGOs, with a particular reference to persons seeking asylum, refugees, disadvantaged members of the society, as well as religious, national and other minorities.

With regard to trials with participation of people's assessors, participants talked about a lack of decent remuneration and security guarantees, overall dominance of professional judges and problems in ensuring random selection and impartiality of the assessors. It was not clear from the discussion what is the role and purpose of the Association of People's Assessors and whether it can have positive influence on the status and functions of the assessors, including their impartiality.

It was noted that, in light of the next stage of the legal-judicial reform in Tajikistan, a possibility of introducing jury trials has been reviewed and opinion polls conducted. Currently, there is no uniform public opinion about the utility and feasibility of jury trials in the country. Even if the reform is implemented, it could face a lot of challenges, such as close family links, public reluctance to serve as jurors, and low public awareness about laws and administration of justice. Participants agreed that best practices of other countries should be studied when choosing the model suitable for Tajikistan, and that any type of layman participation in trials should not be accompanied with bureaucratic obstacles and should guarantee random selection of jurors based on clear criteria and transparent procedure in order to ensure their objectivity and impartiality. Generally, everybody agreed that jury trials usually resulted in the increased rate of acquittals in the post-Soviet states, i.e. Russia and Kazakhstan.

The role of the media in covering ongoing trials was also addressed by the EU and national experts. National experts noted reluctance of judges to provide comments on issued decisions and mentioned a practice whereby journalists or NGOs were referred to the Council of Justice as a body that could provide information on the resolved criminal cases. Absence of professional press service or officers in national courts was seen as an obstacle in establishing trustworthy relationship between the media and the judiciary in Tajikistan. A recommendation was voiced to hire press secretaries in courts and

to introduce a course on communication skills with mass media into the judicial academy's curriculum.

With reference to the ECHR standards on freedom of expression and right to information, the EU experts said that the media should not be disproportionately and unreasonably limited in its reporting on trials and verdicts, and the journalists' code of conduct should provide guidance on when sensitive, classified and private information could be disclosed to the public. The media should be free to express opinions, but should not be allowed to publish information that is fabricated. In case of defamation or libel, a journalist or a media outlet can be condemned if the mistake was made knowingly and with the intention to insult. The EU experts highlighted that a reporter's critical opinion about the judge could not automatically constitute defamation, and expressed concerns about the use of defamation and libel laws in Tajikistan against critical and outspoken journalists. A reference was made to the Council of Europe Document No.52 containing information on new threats to the independence of the judiciary that could be posed by the mass media.

In relation to audio and video recording in a court room, it was said that in Tajikistan a permission of a presiding judge was needed, even though this was not a legal requirement. Defense attorneys agreed that audio and video recording could help in keeping credible minutes on trials and could simplify appeal writing, so institutionalizing of audio and video recording was highly recommended. Defense attorneys also suggested verification of the trial minutes on a daily basis in order to exclude discrepancies and ensure consistency in the minutes kept by court secretaries and records maintained by the defense attorneys.

In conclusion, all NGOs were encouraged to raise public and the mass media interest in monitoring court hearings and the administration of justice.

WORKING SESSION V: POST-TRIAL RIGHTS, CONDITIONS OF DETENTION AND PUBLIC MONITORING OF PLACES OF DETENTION

The working session was devoted to the following issues: a right to public pronouncement of a judgment and access to a verdict and right to appeal, free legal aid during post-trial stages, a right to send an individual complaint to the UN treaty bodies and follow up to the decisions of these bodies at the national level, alternative punishments and relating legal regulation, application by courts and practical implementation, a need for a probation and mediation service in Tajikistan, societal benefits and comparative advantages of alternatives to imprisonment, humanization of detention conditions, including for long-term detainees, decrease of sentences and release on parole: legal guarantees and practical implementation, as well as possibilities of redress in case of complaints of ill-treatment in detention and the status of the body authorized to investigate torture complaints.

Introductory speeches were made by four speakers: Mrs. Olena Volochai, Board Member of the Public Organization "For Professional Assistance", independent expert on compensation of moral damages in criminal, civil and administrative cases from Ukraine, **Mrs. Monika Platek**, Professor of Law from Warsaw University, **Mr. Zafar Akhmedov,** Director of the Branch Office in Khujand of the Bureau on Human Rights and Rule of Law of Tajikistan and Mr. Takdirsho Sharipov, Head of the Criminal Law and Forensic Expertise Department of the Faculty at the Tajik National University.

Mrs. Olena Volochai described her work in different countries, including Ukraine, Belarus, and Russia and stressed the importance of the humanization of law and enforcing the right to compensation for state's action or inaction when damage has been caused to an individual. She

focused on a right to appeal that should be genuine and foreseen for every criminal code's article, as a means to safeguard an individual against unlawful treatment in detention or in case of a violation of his physical integrity as a result of the arbitrary detention. She stressed the importance of adequate training for responsible government officials, human conditions of detention, complaint mechanisms in case of ill-treatment in detention and effective disciplinary or criminal sanctions against state officials who breach a prohibition on torture and inhuman treatment. Judicial errors should be subject to compensation, as guaranteed by international standards, and such compensation should be easily and promptly obtainable.

Mrs. Monika Platek gave an overview of relevant international and European standards on conditions of detention. She reminded participants that deprivation of liberty should be always seen as an exceptional measure of punishment and effective legal remedies should be always guaranteed to all those kept in detention. She spoke about the rights of victims of crime and importance to have restorative justice in the society. With regard to other alternatives to criminal prosecution, the speaker mentioned mediation, community service and other forms of alternative dispute resolution and highlighted their societal benefits. If deprivation of liberty has to be used, Mrs. Platek said that in order for it to serve the rehabilitation purpose, penitentiaries had to be adequately staffed and equipped in a way that would allow an inmate to keep contact with the outside world and undergo the rehabilitation.

Mr. Takdirsho Sharipov during his presentation gave an overview of the situation at the places of detention in Tajikistan. In particular, he stressed the urgent need to reform criminal law with the aim of its humanization. In general, he said it was difficult for academics to obtain statistical data about conviction rates and types of applicable punishments, since all court-related information was inaccessible and non-transparent.

Based on the available data, he quoted that existing conviction rate entailed 56.7% of imprisonment terms, even though the Criminal Code's Article 71 offers alternatives to the deprivation of liberty. Unfortunately, in practice there is no mechanism for implementing alternative punishments and that is why the judges are reluctant to use them. He welcomed the establishment of a working group that would be tasked to develop a programme for humanization of the criminal law and penitentiary system and also expressed hopes that the death penalty would be fully abolished in the near future.

Mr. Zafar Akhmedov reminded participants that Tajikistan was a party to almost all UN human rights treaties, but it still had to make declarations under several of the ratified treaties in order to allow for individual complaints to be sent to relevant UN treaty bodies.

The speaker referred to the lack of practice among judges to apply international law in national courts, even though the Article 10 of the Constitution of Tajikistan explicitly states that international law prevails and therefore can be applied directly. He also mentioned that not all judges were informed of human rights treaties ratified by Tajikistan and they were even reluctant to refer to the constitutional provisions when reasoning their decisions. In this regard, the speaker highlighted recent changes to the Constitutional Law on the Constitutional Court that have allowed judges to address the Constitutional Court regarding constitutionality of provisions contained in national laws.

Mr. Akhmedov then mentioned that since 2002, since ratification of the ICCPR and its First Optional Protocol, more than 30 individual communications had been sent by NGOs with regard to Tajikistan and 18 of these had been already reviewed. These 18 decisions of the UN Human Rights Committee pertain to a variety of the ICCPR protected rights, in particular a right to a fair trial, a right to life and

freedom from torture. The UN HRC found violations in all these cases and instructed the Government of Tajikistan to pay compensation to the identified victims.

Unfortunately, none of these 18 decisions have been implemented at the national level, firstly, because there is no functioning implementation mechanism, and secondly, there is no allocated budget from which compensation can be paid out. Mr. Akhmedov stressed that one of the key challenges for the existing state inter-agency commission, possibly with input from the Ombudsman, was to elaborate a mechanism and ensure meaningful follow-up to the UN treaty bodies' decisions and recommendations. This mechanism should foresee a review of court decisions that became subjects of individual complaints.

During the discussion, representative of the Constitutional Court agreed with a need to humanize criminal and penitentiary laws and extend the use of alternative punishments. With regard to the death penalty moratorium being in force since 2004, participants referred to the life-term imprisonment used as an alternative to the death penalty and nine persons sentenced to life during the first six months of 2009, stressing a need to ratify the Second Optional Protocol to the ICCPR and fully abolish the death penalty.

With regard to the competence of the Government Commission of the Republic of Tajikistan on Implementation of International Human Rights Obligations, all participants expressed their hopes that in the near future it would elaborate a mechanism for effective implementation of the UN decisions.

The Ombudsman talked about his plans to monitor places of detention and his intention to have several members of his Secretariat assigned to conduct such activities. Humanization of punishments was mentioned as yet another challenge ahead of him, and, in this regard, he referred to a working group that has been instructed by the President to review punishments for economic crimes and replace them with simple fines. The Ombudsman also agreed on the task to reduce the number of imprisoned persons, given that places of detention in Tajikistan, built back in 1930s, were in dire need of renovation and modernization.

Participants recalled that it was a state's duty to react to allegations of ill-treatment in penitentiary institutions and the failure to conduct full, impartial and effective investigation should be responded to by international donors through suspension of technical assistance and other financial incentives, plus extradition requests issued by such a state should be reviewed with extreme caution. A duty to establish an independent, impartial body capable to investigate allegations of torture in an effective, prompt and comprehensive manner was also mentioned by the participants as a crucial one for Tajikistan. Internal investigation conducted by the police or penitentiary authorities, as well as the role of prosecutors in reacting to the allegations of torture were questioned by the participants with regard to their effectiveness and objectivity, and creation of a different mechanism was called for.

In relation to public pronouncement of the verdict, participants mentioned abusive use of state secrets laws when holding closed trials. NGOs referred to the cases when no legitimate grounds existed for having trials in chamber, and called for elimination of such negative practices. A reference was made to a previous decision of the UN HRC that found a violation of a right to a public trial when de-jure open hearings were held at the pre-trial detention facility (SIZO) and therefore were de-facto of a closed nature with a hampered access to the public.

WORKING SESSION VI: LEGAL AND INSTITUTIONAL FRAMEWORK FOR PROTECTION AND PROMOTION OF HUMAN RIGHTS

During this last working session participants talked about constitutional justice and exercise of the right to send individual complaints to the Constitutional Court of the Republic of Tajikistan, the role of the Human Rights Commissioner in protecting and promoting human rights, ongoing legal reform and process of introducing amendments to the Constitution and Criminal Procedure Code of the Republic of Tajikistan, including ways to ensure legislative transparency and accountability, areas of legal reform in need of international assistance and prospects of decriminalizing or lightening punishments for certain types of crimes, i.e. cases of defamation or libel.

Introductory speeches were delivered by Mr. Markus González Beilfuss, Professor of Constitutional Law at Barcelona University and Legal Adviser of the Spanish Constitutional Court, **Mr. Leonid Golovko,** Professor of Department of Criminal Procedure, Justice and Prosecutorial Oversight at the Law Faculty of Moscow State University, **Mr. Aziz Dinorshoev,** Associate Professor of the Human Rights and Comparative Law at the Law Faculty of Tajik National University, and **Mr. Zulfikor Zamonov,** Defense Attorney from the Republic of Tajikistan

Mr. Markus González Beilfuss talked about the role of Constitutional Courts in protecting and promoting human rights in countries in transition. He said that Constitutional Courts were better placed to ensure separation of powers and defend human rights values enshrined in the newly adopted Constitutions. Interpretation of the human rights, contained in national laws, constitutes an important task of the Constitutional Court in Spain and he gave examples of several benchmark decisions of the Spanish Constitutional Court, including, a case where a violation was found when the mass media was excluded from hearings of one of the lower courts, or torture allegations were not investigated by a lower court's judge. The speaker referred to several other significant decisions of the Constitutional Court, for instance, when photographing of protestors by security forces was found to be a violation of the right to freedom of assembly and was deemed to be a disproportionate measure for ensuring public order and safety, or when it was confirmed that the mass media can reveal details from the private lives of public figures if this information is aimed at protecting and advancing democracy in the country.

Mr. González Beilfuss stressed the importance of selecting the best judges to serve as members of the Constitutional Court and focused on the means of ensuring their independence, such as long tenure, election by the Parliament, impossibility to be re-elected, and financial independence. He also highlighted the importance of the high-quality secretarial and legal support and referred to the Spanish Constitutional Court that has 50 legal assistants and advisers working with 12 members of the Court. More effective the work of the Constitutional Court is, more complaints it will receive and this is the best way to assess its performance.

Mr. Leonid Golovko devoted his presentation to the CPC reform. He welcomed introduction of the judicial control over arrest and suggested to expand it also to other forms of limitations of fundamental rights and freedoms of an individual, including the right to privacy. This approach would reflect the classical model of dividing functions between courts, the police and the prosecutors. He stressed that according to this classical model, the police should be allowed only to restrict fundamental freedoms in a technical manner for an extremely short period of time (several hours), the prosecutors should serve as filters between the police and courts and should be in charge of legal formalization of the police materials, and only the court should be in a position to impose pre-trial measures of restraint and limit rights and freedoms of an individual.

The speaker stressed that functional and institutional characteristics of the police, prosecutors and courts should be reformed in order to abandon the old Soviet approach. This reform should result in authorizing only courts to sanction all special investigative measures, which are currently sanctioned either by the police itself or by the prosecutors. So, judicial control over procedural actions of all law-enforcement authorities should be expanded, and the Law on Operative-Investigative Activities should reflect this accordingly. As investigation measures are a part of the criminal proceedings, it would be advisable to incorporate the law governing special investigative measures into the Criminal Procedure Code in order to subject these measures to the uniform CPC rules.

When justifying his position, Mr. Golovko referred to the Recommendation of the Committee of Ministers of the Council of Europe that states that judicial control should be introduced over all actions of state officials, investigative measures and complaints against state officials. In addition to *a priori* judicial control, the judicial control *a posteriori* over actions of the police should be introduced into the CPC and this will be the only way to limit excessive police authority currently existing in Tajikistan and many other post-Soviet states.

Mr. Aziz Dinorshoev gave an overview of the constitutional justice in the country and expressed an opinion that the Constitutional Court's role was to systematize national laws and interpret the meaning of human rights guarantees contained therein. He mentioned that the Constitutional Court of Tajikistan had carried out its functions without much visibility for the first 15 years of its existence. In 2008, the Constitutional Law 'On the Constitutional Court of the Republic of Tajikistan' was amended, and the powers and authority of the Constitutional Court were reinforced. For instance, the list of parties who may apply to the Constitutional Court was expanded to include individuals as eligible applicants, in addition to the President, the Parliament, the Ombudsman, judges and legal entities.

The speaker explained that, unfortunately, individuals could argue unconstitutionality only of those laws or legal provisions that have been applied in relation to them personally, and this was a major difference with the rights of other possible applicants who could complain with regard to any legal provision that they might deem unconstitutional. Moreover, individuals who are not based on the territory of Tajikistan cannot appeal to the Constitutional Court, and admissibility and reasonableness tests foreseen by the rules are also rather rigid.

Mr. Dinorshoev noted with regret that statistics demonstrated that the number of individual complaints to the Constitutional Court remained very small due to the low public awareness about the new powers of the Court and general public passiveness in relation to the human rights protection. It was noted by the speaker that even defense attorneys rarely used a right of an individual complaint to the Constitutional Court. He saw a need in changing this attitude and promoting the use of all legal remedies available in the country for the human rights promotion and protection. He also regretted that decisions of the local executive bodies rarely became subjects of complaints, even though these legal acts frequently unlawfully infringe upon human rights enshrined in the national Constitution.

In conclusion, Mr. Dinorshoev recommended to conduct a public awareness campaign to raise the profile of the Constitutional Court and to encourage people to use their right to an individual complaint.

Mr. Zulfikor Zamonov devoted his presentation to the reform of criminal justice, transparency and accountability of the law-making process and, in particular, the process of elaborating a new

Criminal Procedure Code that is currently underway. He explained that drafting of a new CPC started back in 1999. Three drafts have been prepared since then, but none of them was made available to the public, despite a right to access to information contained in national laws. As a result, draft versions of the Code were not subjected to public scrutiny, and attempts of independent legal experts from civil society or academia to get access to the latest draft were equally unsuccessful.

The speaker noted that the existing draft CPC was prepared in February 2009. NGOs and legal practitioners, including foreign experts supported by the American Bar Association, had an opportunity to review, comment and give their recommendations with regard to this latest draft. International experts noted overall progressive nature of the draft CPC, but nevertheless a number of recommendations was made on ways how to bring some of its provisions in line with international standards.

In order to make experts' feedback known to all responsible state authorities, the civil society representatives suggested to organizing a round table discussion before the final draft of the CPC is reviewed and adopted by the Parliament. Participants stated that international organizations should support NGOs in this initiative and should encourage the government to respect the principles of inclusiveness, transparency and accountability of the legislative process, in particular, in relation to such an important legal act as the CPC that has significant role in the protection of fundamental human rights and liberties.

During the discussion, the main focus was made on the judicial and legal reform programme that is currently under elaboration in Tajikistan. The Ombudsman, as one of members of the existing working group tasked to elaborate this new programme, noted that the previous programme adopted in 2007 has been almost completed. Adoption of the new CPC planned for autumn 2009 and establishment of specialized court chambers on administrative and family cases are the only issues yet to be resolved under the previous programme. The new programme will aim at elaborating a new Code of Administrative Procedure and the government intends to consult with civil society during this legislative initiative.

Mr. Alizoda mentioned that the CPC drafting process included consultations with judges, the Council of Justice, members of the Parliament and the civil society. He added that topics discussed during the EU Seminar also related in large to the CPC draft. He stressed that it was a difficult decision for the government to embark on the CPC reform and it has proven to be a major challenge to ensure that relevant international standards are duly incorporated in the draft CPC. He reminded all participants that as of 1 January 2010 sanctioning of arrest would be transferred to courts and that the existing draft CPC generally corresponded to the existing realities of Tajikistan.

Mr. Alizoda noted that adoption of the Law on Operative-Investigative Activities was a positive development in itself, as it codified numerous secondary legislative acts and instructions, some of which were previously not even publicly available. He expressed his caution against proposal of the Russian expert to codify this Law into the CPC.

NGO representatives appealed to the Ombudsman with a request to ensure that the final draft CPC would guarantee an accused a right to legal counsel from the moment of actual apprehension/detention and declare inadmissible all testimonies given by an accused in absence of the legal counsel. NGOs reminded state officials that any shortcomings of the new CPC would have to be reflected in the second periodic report to the UN CAT.

With regard to the Constitutional Court, participants recalled several benchmark decisions of the Court, in particular, the 2001 ruling stating that the Supreme Court's decisions issued at first instance should be appealable to the Presidium of the Supreme Court. A hope was expressed that in the future the Constitutional Court would demonstrate its leadership in enforcing human rights guarantees contained in national and international law. It was also noted that the Constitutional Court should more actively use his discretionary power to initiate the review of constitutionality of contentious legal provisions.

Moreover, participants agreed that courts of normal jurisdiction should be equally responsible for upholding human rights and Article 10 of the national Constitution should be regularly invoked by the judges. In conclusion, the EU expert said that in order for the Constitutional Court to function properly, it should be provided with information technologies, skilled staff members and sufficient resources. Plus defense attorneys and general public should be informed of the individual complaint procedure, and jurisprudence of the Court should be made widely available in the country.

CLOSING SESSION

During the closing, **Mrs. Adriaen** said that the Seminar was a success and welcomed the richness of elaborated recommendations. She explained that the final report on the Seminar would be shared with all participants, including all international donors and Embassies present in Tajikistan, as well as national authorities by the end of summer 2009, and that a second round of an official human rights dialogue was scheduled for 22-23 September 2009.

Mrs. Adriaen expressed her hopes that recommendations of the Seminar would be considered by international organizations and Embassies represented in the country, and would also followed up by the civil society organizations through their projects. She also hoped for the government's positive reaction to the recommendations and its readiness to work together with the EU on their implementation aimed at positive reforms.

Finally, Mrs. Adriaen referred to the new EIDHR instrument and encouraged NGOs to submit project proposals on topics relating to the Seminar recommendations. She reminded to the participants that this Seminar was not a one-off event, and that it would be an annual initiative, with different agenda each time. In this regard, she welcomed suggestions of the Government on topics for future seminars, in particular the one due to take place in Brussels in 2010. In conclusion, she thanked authorities for taking active part in the event and wished, in particular, to Mr. Alizoda good luck in his new job as the Ombudsman.

Mr. Alizoda, the Ombudsman of Tajikistan, said that he personally appreciated the Seminar. He stressed that the Government is undertaking measures to improve the country situation, and he hopes that the future programme on legal-judicial reform will contain key directions for future reforms and the Seminar recommendations may be used as a source of inspiration. Therefore, he suggested presenting the Seminar recommendations to all relevant national authorities and working work on following them up in close cooperation with the Tajik civil society and the EU institutions.

The moderators thanked everybody for their contributions to the discussion and closed the Seminar.

RECOMMENDATIONS OF CIVIL SOCIETY REPRESENTATIVES FROM EUROPE AND TAJIKISTAN

PREAMBLE

The first civil society Seminar on human rights "European Union – Tajikistan" was held in Dushanbe on 10–11 July 2009. The Seminar brought together seventy participants, including representatives of more than thirteen NGOs, academics and professional lawyers' associations of Tajikistan, fourteen European experts from twelve European countries, including Russia and Ukraine, representatives of diplomatic missions and international organizations present in Dushanbe, and eight representatives of different government authorities of the Republic of Tajikistan.

Based on two-day discussions of different issues relating to the right to a fair trial and independence of the judiciary, the civil society representatives of the Republic of Tajikistan and the European countries elaborated numerous recommendations detailed below for further consideration by the relevant officials of the European Union and the Republic of Tajikistan during the second round of the official human rights dialogue planned for autumn 2009.

For the purposes of this document, the term "Seminar participants" hereinafter will imply representatives of the civil society of Tajikistan and Europe who took part in the Seminar and elaborated these recommendations.

The Seminar participants have acknowledged importance of the human dimension (human rights) in the strategic partnership between the European Union and Tajikistan, as well as the role of NGOs in such partnership, in particular, in the human rights dialogue. In this connection, the Seminar participants recommended the Delegation of the European Commission to Tajikistan to establish an expert group comprised of independent legal and civil society experts to monitor practical implementation of these recommendations.

Fulfillment of international human rights obligations:

The seminar participants encouraged representatives of the European Union and government authorities of the Republic of Tajikistan during the official human rights dialogue to take into account recommendations of various UN treaty bodies and special procedures issued in relation to Tajikistan.

Whereas Tajikistan, being a party to the First Optional Protocol to the International Covenant on Civil and Political Rights, has undertaken to fulfill decisions of the Human Rights Committee on individual communications lodged by persons under jurisdiction of Tajikistan; and

Whereas the UN Human Rights Committee has issued 18 decisions in relation to Tajikistan since 2004, however none of such decisions has been implemented by Tajikistan at the national level, the Seminar participants suggested the following recommendations:

1. The Government of the Republic of Tajikistan should fully implement its obligations under the international human rights treaties ratified by Tajikistan, in particular, the International Covenant on Civil and Political Rights and the First Optional Protocol thereto, in line with principle pacta sunt servanda, i.e. a duty to fulfill contractual obligations in good faith.

2. An effective national mechanism tasked to implement decisions of the UN treaty bodies should be established and it should include:
a) a procedure to review national court decisions in force in the light of decisions adopted by the UN Human Rights Committees in order to respect the right to an effective domestic remedy;
b) a procedure to develop amendments and additions to national laws and implementation practices that caused human rights violations recognized by the UN treaty bodies; and
c) allocation of a separate item in the national budget to pay off compensation to individuals recognized by the UN treaty bodies as victims of the human rights violations.
3. In order to develop the recommended mechanism to implement decisions and recommendations of the UN treaty bodies and special procedures, an ad hoc expert working group should be established as part of the Government Commission of the Republic of Tajikistan on Implementation of International Human Rights Obligations. Such expert working group should consist of representatives of various ministries and state agencies, RT Human Rights Commissioner/Ombudsman, independent national legal experts, and civil society representatives. The draft mechanism should be reviewed by international expert community prior to approval by the competent authorities of the Republic of Tajikistan.

Transparency of the legislative process and raising public awareness about human rights and their application:

1. In order to implement the international principle of transparent and accountable legislative process, all government authorities of the Republic of Tajikistan should strictly abide by this principle in their practice, in particular, by involving civil society experts from the earliest stages of the legislative process.
2. The Criminal Procedure Code (CPC) should be adopted as soon as practically possible with due consideration of the comments and proposals presented by independent experts and consulted on with the civil society.
3. The Parliamentary Working Group tasked to review the CPC should foresee continuation of the public discussion and should hold Parliamentary hearings on the final draft of the CPC to ensure the maximum involvement of the interested experts in the finalization of this legal instrument as it plays a crucial role in the protection and promotion of human rights and fundamental freedoms.
4. In order to bring the national legal system in line with international standards and enhance the role of courts, public prosecutor's office and the Bar (Advokatura) in comprehensive protection of human rights and fundamental freedoms, the Republic of Tajikistan should continue pursuing the judicial and legal reform and the policy of humanization of the criminal law in the Republic of Tajikistan through, in particular, mitigating punishments set forth by the Criminal Code and ensuring that the victims' rights are properly respected.
5. Thus, in particular, every effort should be taken to guarantee that the current reform would ensure complete independence and impartiality of the judiciary as outlined in the UN Basic Principles on the Independence of the Judiciary.
6. The principles of openness and accountability should underlie the process of developing the new programme for the judicial and legal reform. To this effect, public discussions should be held to ensure that civil society is involved in this process as much as possible.
7. Furthermore, at the preparatory stage of the judicial and legal reform programme, mechanisms for cooperation between professional associations of defense lawyers and competent government authorities should also be established to allow these parties to share their views and provide defense lawyers with a possibility to present their recommendations with regard to the judicial and legal reform. Moreover, practicing defense lawyers should represent at least 50% of all members of the working group tasked to elaborate a reform concept of the Bar (Advokatura).

8. Training seminars and advanced training programmes for judges, public prosecutors and defense lawyers, including such issues as direct application of international law in national courts should also be held.
9. A possibility to arrange for the exchange of experience between representatives of the legal profession and their western colleagues during study tours and thematic seminars financed by international organizations should be considered.
10. Awareness of the importance of human rights inside educational institutions should be raised. To this effect, a compulsory educational programme in international human rights law and application of such law at the national level, in particular, by national courts, should be included to curricula of all legal professions, including judges studying in the Judicial Training Center of the Council of Justice.
11. The Judicial Training Center should take into account the best practice of similar institutions in Europe. The training programme should cover all areas which judges may face in their day-to-day practice and should equip judges with good theoretical background and practical skills. Such schools should be established for public prosecutors, defense lawyers and other representatives of the legal profession.
12. The defense lawyers should acquire skills in strategic litigation in order to form case law at the national level and obtain decisions of the UN treaty bodies in the future.
13. The public image of the Bar (Advokatura) among law students should be strengthened, and the university programmes should include training programmes for future defense lawyers.
14. The long-term programme 'The State System of Human Rights Education in the Republic of Tajikistan' adopted on 12 June 2001 by the Government of the Republic of Tajikistan aimed at raising public legal awareness should be fully implemented, and required budgetary funds should be allocated for such implementation. In order to respect the right to defense and legal assistance, legal assistance should not be limited only to rendering free legal aid, but should also involve raising public awareness about the law and free public dissemination of information about rights and freedoms. These tasks should be carried out by the Government with obligatory involvement of local self-government bodies and the civil society engagement.
15. Legal aid agencies and defense lawyers associations providing free legal aid should also perform educational functions to increase public awareness of human rights.

Judicial and legal reform and independence of judges and the judiciary:

1. The formation principles, composition and working methods of the Council of Justice should be improved to enhance its independence and strengthen its role in facilitating the judiciary functions. This authority should not be a part of the executive branch and should report to the judiciary. Its authority among the judicial community and its role in appointing and promoting judges should also be enhanced. Representatives of the judiciary should become members of the Council of Justice, and clear eligibility criteria for judges should also be developed.
2. The minimum eligible age for a judge should be revised and increased, and the appointment procedure and tenure should also be revised in line with the international standards. Furthermore, security of the judicial tenure until the age of retirement, competition-based appointment procedure and regular retraining programmes to enhance competency of practicing judges should also be considered.
3. Public discussions should also focus on the election of judges for the lowest court which could be tasked to sanction pre-trial restraint measures and special investigative measures which infringe upon fundamental rights and freedoms of an individual.
4. The National Budget and relevant legislation should foresee equitable remuneration for judges which would be adequate to their functions and nature of their powers and should also provide for good work conditions, legal and administrative support to relieve judges from secondary functions that destract them from administration of justice.

5. Every judge should be assisted by legal advisers and should have access to electronic legal database, all available decisions of superior courts and international standards in order to fulfill his/her duties efficiently.
6. Conditions should be created to ensure integrity and immunity of judges when they perform their official functions.
7. Any unofficial relations (including consultations on pending cases with and various unauthorized checks by the higher instance courts, etc.) between lower and higher instance courts and presidents of such courts, linked to the hierarchical structure of the judiciary, should be eliminated in practice. To ensure impartiality of judges, an automatic computer-based case distribution system should be in place to promote impartiality of the judiciary.
8. Conditions should be created as soon as possible to increase the number of judges to decrease their workload.
9. Legal and practical mechanisms should be elaborated in order to exclude the mass media pressure on judges that could through its publications affect the outcome of trials by shaping the public opinion which may, in turn, affect the judge's opinion during the trial.
10. The role of the Constitutional Court of the Republic of Tajikistan in interpreting national laws related to human rights protection and creating case law which may promote human rights throughout the country should be enhanced.
11. The authority and the role of the Constitutional Court should be enhanced by appointing the best representatives of the legal profession to act as judges and other officials of the Constitutional Court; proper financial and institutional independence should be afforded and public awareness raising campaigns about the right to submit individual complaints to the Constitutional Court should also be implemented.
12. Powers of the Constitutional Court should be reviewed with a view to extend them by amending the law allowing for submission of individual complaints only by those persons who were subject to application of contentious legal norms, plus individuals should be allowed to appeal to the Constitutional Court against decisions and acts of local authorities that infringe upon human rights and freedoms.
13. Article 10 of the Constitution of the Republic of Tajikistan providing for direct application of international treaties by national courts should be invoked in practice.

Independence of the legal profession and reforming of the Bar (Advokatura):

1. The Advokatura should be reformed as part of the judicial and legal reform in order to enhance the role and authority of defense lawyers in the Republic of Tajikistan.
2. The concept on the reform of the Advokatura should provide for a transitional period sufficiently long to guarantee the rights of practicing defense lawyers and ensure that procedures creating conditions for the promotion of the public interest during protection of human rights are preserved.
3. The concept of the reform of the Advokatura should include a set of norms concerning fundamental guarantees of independence and immunity, professional freedoms and social protection of lawyers.
4. A unified, self-regulating, independent and professional Bar association of defense lawyers should be established. The establishment, main goals and objectives of the Bar association should be governed by the Law on Advokatura. Gaining a defense lawyer status should be dependant on the membership in the Bar association.
5. Uniform qualification requirements and criteria for obtaining and losing the defense lawyer status, operational procedures for the qualification and disciplinary commissions self-governed by the community of defense lawyers should also developed in the near future.
6. The category of licensed defense attorneys should be abolished in the Law 'On Advokatura' in order to exclude this type of defense attorneys from the legal practice of the Republic of Tajikistan.

Other categories of independent legal profession should be governed by the law on the entrepreneurial activity.

7. A professional Law society of the Republic of Tajikistan should be established in the future, and such association should set minimal educational and professional training requirements for future lawyers and eligibility criteria for being admitted to the legal practice. Such association should develop a Code of Lawyer's Ethics with due consideration of the European principles and rules and should ensure that such Code is abided by the legal profession through disciplinary measures. Such professional association may contribute to the development of the legal framework and legal policy in the Republic of Tajikistan through efficient liaison with government authorities.

Equality of arms at all stages of criminal proceeding and the right to free legal aid:

1. The laws and law-enforcement practice should be changed to guarantee that the fundamental principles of fair trial such as the principle of equality of arms and adversarial proceeding are strictly abided by.
2. Powers and authority of the prosecutor's office should be brought in compliance with international standards to strengthen independence of the judiciary and ensure equality of arms during court proceedings both *de jure* and *de facto*. In particular, the public prosecutor's office should be stripped of its oversight powers vis-à-vis courts and legality of the judicial decisions.
3. Reform of the public prosecutor's office also requires expansion of the judicial control over measures that restrict fundamental human rights in the new CPC, in the Constitutional Law 'On the Public Prosecutor's Office', and, particularly, in the existing Law 'On Operative-Investigative Activities', by transferring powers to authorize detention, search and other special investigative measures restricting fundamental human rights and freedoms to the judiciary. To this effect, staff, organizational, financial, and technical issues relating to the functioning of the judiciary should be reviewed in order to accommodate all necessary changes.
4. In order to fully comply with the principle of *habeas corpus*, the laws and practice should foresee a clear mechanism allowing courts to review legality and reasonableness of the arrest and detention.
5. Reforms are also required to decrease a lengthy pre-trial detention period, which is currently determined by the prosecutor's office, and any prolongation of the pre-trial detention should be made subject to the judicial control. Periodic judicial review of the legality and reasonableness of the detention should be foreseen by the law.
6. Legal and practical mechanisms of applying alternatives to pre-trial detention vis-à-vis suspects and the accused should be elaborated.
7. The draft CPC should provide for a right of appeal against actions and decisions of officials involved in pre-trial criminal proceedings, as part of *a posteriori* judicial control.
8. Incorporation of the Law on Special Investigative Measures into the CPC should be considered as a high priority in order to guarantee that these measures are governed by the same rules of criminal procedure which are contained in the CPC.
9. The right of any person, irrespectively of his/her procedural status, to be informed of his/her rights and procedural safeguards under national and international human rights law should be recognized.
10. The existing requirement for a lawyer to receive an authorization from an investigative authority in order to gain access to a defendant should be abolished, since it breaches the principle of equality of arms, a right of a detained person to legal defense and makes defense lawyers unjustifiably dependant on the discretion of the law-enforcement authorities.
11. An independent legal counsel should be guaranteed from the moment of actual detention, regardless of the *de jure* status of the arrested/detained person, plus defense lawyers should be

guaranteed unhampered access to all case files and should be provided with an effective possibility to present evidence during trials.

12. A legal provision should be introduced to provide that a detained person's waiver of the right to legal counsel can only be made in presence of the independent defense lawyer who has explained to the detained person all consequences of such a waiver.

13. Every effort should be taken to ensure full investigation of every alleged obstruction by the law-enforcement authorities of the right of a detained person to legal counsel, and imposition of due sanctions against those officials who were found guilty should be also guaranteed. This right should equally apply to those who require free legal aid.

14. In order to ensure equality of arms and adversarial nature of criminal proceedings during pre-trial stage, relevant laws, including the Law 'On Advokatura', should be amended in order to give defense lawyers independent authority to gather their own evidentiary base, appoint and conduct forensic examinations with involvement of independent experts (without a need to file motions with investigative or inquiry authorities or courts).

15. Specialists of various qualifications, who may facilitate the establishment of material circumstances in a criminal case that may be decisive in determining the liability, should be involved in criminal proceeding as independent experts. Such specialists cannot be only those that are licensed and work for the state forensic service.

16. Special mechanism for rendering free legal aid to persons who are unable to afford legal representation should be established. To this end, a special law on free legal aid in the country should be developed and adopted.

17. The State Budget should provide for funds to cover free legal aid services.

18. Today, free legal aid is mainly provided by NGOs at the expense of the donor community. The Government should provide for mechanisms of cooperation with NGOs in rendering free legal aid services.

19. In order to ensure that remote districts of Tajikistan have access to justice, representative offices of professional association of defense lawyers, in cooperation with the Government, should adopt measures to mitigate shortage of lawyers in such districts. Public discussions should be held to identify the possible ways to deliver legal services to all districts throughout the Republic of Tajikistan.

Prevention of torture and other forms of ill treatment and punishment:

1. The Government of the Republic of Tajikistan should make a declaration in the near future to recognize the competence of the UN Committee against Torture under Article 22 of the UN Convention against Torture to accept and examine individual complaints, and the Optional Protocol to the UN Convention against Torture should be ratified.

2. The Criminal Code of the Republic of Tajikistan should be amended to include an article on the crime of torture in full compliance with Article 1 of the UN Convention against Torture. Such article should fully reflect subjects, objects, goals and types of unlawful conduct and should provide for punishment based on the severity of the committed acts.

3. The Government should ensure that the punishment for torture is inevitable and should provide for long-term imprisonment for this crime. Therefore, such punishment would be an efficient constraint for law-enforcement agencies against using torture.

4. In order for the prohibition of torture to be effectively upheld and for the failure to react to allegations of torture and the use of evidence obtained in violation of the law, including the evidence obtained under duress, to be duly prosecuted under the CPC, a judge and a public prosecutor should promptly respond to any allegation of torture made during trial by any trial participant.

5. Effective legal, administrative and judicial measures, including establishment of an independent body, should be taken to ensure that all allegations of torture and ill-treatment

committed by public officials are subject to investigation, and the parties found guilty appear before the court and are punished.

6. Any complaints of torture made prior to, during, or after the trial should be investigated regardless of the outcome of the main criminal case. There should be a clear, independent, transparent and prompt procedure for consideration and verification of complaints of torture. Internal investigation and questioning of alleged torturers do not constitute effective and sufficient response to the allegations of ill-treatment.

7. The Manual on Effective Investigation and Documentation on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol (1999), should be implemented in practice during investigation and documentation of facts of torture and its consequences. The Istanbul Protocol is intended to serve as a set of international guidelines for the examination of persons who allege torture, for investigating cases of alleged torture, and for reporting such findings to the judiciary and law-enforcement bodies.

8. Legal (legislative) guarantees and practical mechanisms should be available to persons who allege torture to protect them from illegal pressure, threats or violence from bodies they claim against. For safety reasons, a complainant should not be under control of bodies which are subject to investigation on whether illegal methods and cruel treatment have been used against the complainant.

9. The burden of proof should lie with authorized government agencies, in particular, the public prosecutor's office rather than with a person who alleges torture, and the law should also ensure witness protection as required by the international standards.

10. Conditions should be created to ensure the right to compensation for damages incurred as a result of torture to all victims of torture through the use of civil suits and creation of the government compensation fund to pay off damages to the victims of torture.

Right to a fair trial, public participation in the administration of justice and monitoring of courts:

1. The criminal law should provide for mechanisms and institutions of restorative justice and mediation as alternatives to criminal prosecution. Comprehensive measures should be elaborated in order to implement the system of alternative punishments within the communities (e.g. community service and home arrest).

2. The work on establishing the system of juvenile justice should be continued in line with the Beijing Rules that provide the states with detailed guidance on the administration of juvenile justice.

3. To ensure layman active involvement in trials, such institution as people's assessors should be reviewed and practical measures should be taken to abolish an obsolete and very bureaucratic approach to the selection of people's assessors.

4. Public discussion on introduction of jury trials and adoption by the government of legislative and practical measures aimed at ensuring random selection of members of the jury in a transparent and objective procedure should be organized and a model of the jury acceptable for the Republic of Tajikistan should be determined.

5. Rules of criminal procedure which undermine the principle of immediacy and adversarial nature of criminal proceedings as well as the principle of presumption of innocence should be improved. To this effect, the rules allowing judges to review the case files submitted by the public prosecutor before the trial and the judge's role in reading out testimonies of those witnesses who do not attend the trial should be abolished.

6. In order to promote the adversarial nature of criminal proceedings, the Government should ensure that judges do not perform functions which are untypical for them, such as questioning of parties to the trial and the obligation to continue court hearings even when a prosecutor decides not to support the indictment any longer.

7. The Government should bring the law-enforcement practice in line with the national laws

and international standards which provide for effective right of appeal foreseeing full review of cases on appeal.

8. Separate rooms should be available in court buildings for lawyers to prepare for trials and review case files.

9. The procedural rules should be revised to ensure that defense lawyers have direct access to the judicial decisions immediately after their pronouncement.

10. The ways to provide for compulsory audio recording of trials should be considered to ensure that trial records are as accurate as possible.

11. The right of defense lawyers and the mass media to audio-record court hearings should be guaranteed in practice, and the laws should not require them to seek permission of a presiding judge as this violates the principle of the public trial.

12. Public monitoring of courts and court buildings should be continued to promote strict observance of the principle of public trials, and awareness campaigns should be implemented to raise public interest in monitoring the administration of justice.

13. Direct public access to court buildings, court hearings and court documentation should be granted as set forth by the law.

14. A website should be developed for courts to promote transparency of court decisions.

15. Efficient mechanisms for cooperation and information exchange between courts and the mass media should be in place to allow the mass media to objectively present information on the work of courts and trial proceedings.

Conditions of detention in the detention facilities and public monitoring of places of detention:

1. The procedure to record the time of actual detention (e.g. by allowing a detained person to call his/her family at the moment or immediately after actual detention) and to keep a list of all persons who are forcibly delivered or who have voluntarily arrived at the police station should be established.

2. A uniform and clear procedure of informing all those detained of their rights should be established and a nation-wide educational programme aimed at training all police officers on this new procedure should be launched.

3. Efforts should be taken to ensure that detained persons have access to a lawyer, a doctor, and their family immediately after their actual detention, and legal counsel and independent medical examination are provided upon the detained person’s request and not only upon permission of a state official.

4. Efforts should be taken to keep a list of detained persons in every detention facility including their family names, time and date of notifications to lawyers, doctors and families as well as findings of independent medical examination. Such information should be equally available at least to the detained person and his/her defense lawyers.

5. Establishment of a medical service which would be independent from the Ministry of Interior and the Ministry of Justice should be considered in order to provide medical examination of the detained persons upon their detention and release both on a regular basis and upon their request, or in cooperation with the competent independent body in charge of forensic and medical examination.

6. All detained persons should be provided with food and detention conditions as set forth by the international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners.

7. Judicial oversight, which would be independent from the prosecutorial control, over pre-trial detention conditions, including custody in detention facilities of the Ministry of Security, should be in place, and all complaints and cases of death in detention facilities should be promptly investigated in an impartial and comprehensive manner.

8. A complainant (or his/her close family member) should always be involved in the investigation

to the extent necessary to protect his/her lawful interests.

9. Even when no formal complaint is made, competent authorities and officials should be bound by law to conduct investigation every time they receive reliable information from any source that a detainee might have become a victim of ill-treatment.

10. Accountability of agencies responsible for detention may be enhanced when they are required to promptly notify the public prosecutor's office and other agencies authorized to investigate cruel treatment of all allegations of cruel treatment received from the detained persons.

11. Every effort should be taken, including legal framework development and training for civil society supported by the competent government and international institutions, to establish the system and provide for independent monitoring of penitentiary and detention facilities (public monitoring) by representatives of national non-governmental organizations and international institutions.

12. Along with the establishment of independent public monitoring, the Tajik government authorities should consider prompt ratification of the UN Optional Protocol to the Convention against Torture which obliges member states to establish independent national preventive mechanisms, i.e. imposes a duty on member states to provide for an institutional mechanism for public monitoring of all existing and possible places of detention.

13. For the purposes of prompt ratification of this international treaty, public awareness campaigns and public discussions should be held in cooperation with competent government authorities and international experts in order to examine treaty provisions and possible models of national preventive mechanisms that should mandatorily foresee civil society participation.