European Instrument for Democracy and Human Rights

European Union – Kazakhstan Civil Society Seminar on Human Rights

Judicial System and Places of Detention: Towards the European Standards

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Final Report

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EXECUTIVE SUMMARY

In 2008, in line with its 'Strategy for a New Partnership' with Central Asia, the European Union agreed with the Republic of Kazakhstan to establish an annual human rights dialogue, and its first round was held on 15 October 2008 in Astana. An agreement was also reached that prior to the second round of the official dialogue a civil society human rights seminar will be held in Kazakhstan, and as planned, the European Commission organized it on 29-30 of June 2009 in Almaty. The Seminar was well attended by 95 persons, comprised of 65 civil society participants and 30 observers, including representatives of six various state agencies and the judiciary of the Republic of Kazakhstan. The number of attendees by far exceeded the original estimates of the organizers and was indicative of the general interest in the Seminar from the side of the Kazakhstani civil society as well as representatives of diplomatic representations and international organizations present in Kazakhstan. Regrettably, the Ministry of Foreign Affairs withdrew from its co-organizer's role at the last moment.

The topics discussed during the Seminar related to the law on administrative responsibility in Kazakhstan, the judicial system, conditions of detention and the use of alternatives to imprisonment. During a lively and constructive discussion, participants addressed international standards, European best practice, national laws and their practical application. The Seminar provided an opportunity for an exchange of views between European and Kazakhstani civil society representatives, academics and state officials. Introductory speeches of the European and Kazakhstani civil society experts stimulated 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. All European participants commended Kazakhstani experts on their constructive approach and impressive competence in the human rights issues.

The Seminar resulted in elaboration of detailed recommendations to the Government of the Republic of Kazakhstan on legislative and practical changes needed in order to ensure full compliance with international and national standards relating to the topics of the Seminar. Given that elaborated recommendations were meant to enhance the official human rights dialogue of the European Union with the Republic of Kazakhstan, civil society experts expressed hopes that the European Commission, Embassies of the European Union member states and relevant international organizations would assist the Government of Kazakhstan in following up to the proposed recommendations, with active involvement of civil society and independent legal experts.

The event proved to be a timely and useful exercise for the civil society as they used it as a platform to voice appeals to relevant state authorities with regard to ongoing legislative initiatives, including elaboration of the Concept Note on Legal Policy for 2010-2020. In view of the crucial importance of the Concept Note in mapping out direction of future legal developments in the country, the civil society experts urged responsible state officials, when elaborating, adopting and implementing this document, to take into account suggestions of independent legal experts and engage civil society in shaping up and executing the planned reforms.

The Seminar participants acknowledged importance of the human dimension (human rights) in the strategic partnership between the EU and Kazakhstan, in particular the role of NGOs in the human rights dialogue, and highlighted the added value of the European Union as an influential mediator that can take views of civil society into account and raise with state

authorities the issues of legal policy-making and legal policy execution in Kazakhstan. Bringing attention of international community to several individual cases marred with grave violations of human rights norms was also seen as an added value of the Seminar.

For the future events, participants suggested to ensure wider representation of state authorities at the highest level as possible in order to obtain concrete outcomes and results from the exchange of views with civil society.

The event facilitated networking between national and foreign experts and useful contacts were established promising future fruitful cooperation. Presence of experts from the CIS region was appreciated, and a recommendation was made prior to inviting foreign experts to future EU events, to consult with local civil society representatives on what kind of expertise could be a valuable contribution to the human rights promotion and could be used in their ongoing work. It was also suggested to decrease the number of the European Union experts, and to channel preserved funds towards small-scale NGO initiatives aimed at following up on the elaborated recommendations.

On the organizational side, for future events, participants strongly recommended to rely on a credible local NGO as a local implementing partner. The use of Kazakhstani civil society experts as moderators was also encouraged.

SUMMARY OF RECOMMENDATIONS OF CIVIL SOCIETY REPRESENTATIVES FROM KAZAKHSTAN AND EUROPE

Throughout the Seminar, participants urged national authorities of the Republic of Kazakhstan to ensure full compliance with international human rights standards and to fulfil all recommendations of UN treaty bodies and special procedures addressed to Kazakhstan, including through a set up of an inter-agency mechanism tasked to provide for meaningful follow up to the UN recommendations. The Parliament of Kazakhstan was encouraged to ratify all outstanding key UN human rights. Full abolition of the death penalty and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was also called for.

As part of the recommendations, importance of upholding the principles of inclusiveness, transparency and accountability of the legislative process was stressed, and in this regard relevant support of international community was urged for. A recommendation was also made to introduce changes to the Law on Normative Legal Acts with the view of institutionalizing involvement of civil society in the law-drafting process.

Building closer cooperation with the Council of Europe and its bodies, such as the Venice Commission, as well as accession to the Council of Europe conventions open for signature to non-member states was also called for by the participants.

During the Plenary Session I on Legislative Regulation of the Administrative Responsibility participants recommended:

- to segregate a concept of administrative responsibility and administrative justice in line with international standards and best practices, i.e. focusing exclusively on responsibility of public administration vis-à-vis the individuals in the draft Administrative Procedure Code that should be elaborated in a consultation with civil society and independent legal experts;
- review the content of the Code on Administrative Offences by segregating offences committed vis-à-vis the state into relevant branches of law, i.e. those subject to the authority of relevant administrative bodies and those subject to the judicial review, if they constitute minor criminal offences entailing light and non-custodial punishments that do not result in the criminal record;
- to ensure that state response to unlawful conduct of persons is regulated exclusively by criminal procedure norms that offer a full range of procedural safeguards and introduce relevant due process guarantees in the Code on Administrative Offences, as needed, should this codified law be retained;
- to abolish the so called administrative arrest and detention, and ensure that police detention is exercised as short-term limitation of personal liberty only in case of existence of reasonable suspicion of commission of offences punishable under criminal law, whereby all due process guarantees are afforded;
- to urge the Parliament of the Republic of Kazakhstan to take into account comments of independent experts and civil society when considering a draft law "On Introducing Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues Regulating Grounds and the Procedure of Detention of Citizens" during upcoming autumn 2009 parliamentary hearings.

During the Workshop I on the Judicial System participants of the Seminar formulated the following recommendations. In order to ensure full institutional and functional independence of judges, participants recommended:

- to establish magistrate courts with judges elected through public participation and tasked to exercise judicial oversight over measures that infringe upon human rights and liberties, and ensure a separation of duties between their dutie and judges reviewing the merits of criminal cases;
- to ensure transparent and competition-based procedures of selecting and appointing judges and presidents in courts of all levels, and to increase remuneration and improve material conditions for judges;
- to revise disciplinary procedures for judges with the view of bringing them in line with international standards, including by abolishing such contentious institutuions as judicial boards that are currently tasked to carry out such disciplinary proceedings;
- 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 review a possibility of creating a Constitutional Court authorized to conduct direct review of individual complaints.

In order to ensure full compliance with the fair trial guarantees, participants recommended:

- to ensure strict adherence to the principles of adversary procedure, throughout all stages of criminal proceedings by judges, prosecutors, law-enforcement officials and defence lawyers, in particular by upholding 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, as well as by excluding legal norms and practices whereby a judge retains inquisitorial powers and breaches his/her adjudicatory neutrality, and to abolish the use of direct witness/defendant confrontation at the pre-trial stage;
- to ensure that all invasions into 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 pretrial investigation;
- to refrain from carrying out trials in absentia and the use of anonymous witnesses, until criminal procedure norms are not brought in line with applicable international standards;
- to ensure unimpeded access of defence lawyers of one's choice to case materials and their clients as foreseen by international law, in particular in cases that involve classified information and state secrets, and to retain in the national law a legal norm that allows relatives and representatives of NGOs to serve as legal counsel to the accused;
- to carry out video and audio recording of trials in order to guarantee the veracity of trial records, and to 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 elaborate an effective legal mechanism allowing for prompt execution of court decisions;
- to analyse compliance of private bailiffs system with international standards and elaborate in detail their functions, authority and remuneration before introducing it in practice, and to foresee responsibility of state and private bailiffs for unlawful actions and excessive use of their powers during enforcement of court decisions, in particular those in the interest of a state.

In order to respect the prohibition of torture and other forms ill-treatment, participants recommended:

- to ensure adequate response of judges, prosecutors and defence 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 elaborate new rules in civil procedure 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, within the strictly defined timeframes.

In order to improve the system of jury trials in Kazakhstan, participants recommended:

- to amend relevant legal provisions with the aim of lowering the dominance of professional judges, increasing the role of jurors during trial proceedings and reaching the verdict, expanding the list of crimes that can be tried with participation of jurors, including crimes of medium gravity and certain types of civil cases;
- to amend legal rules and improve practice governing the system and procedures of forming the lists of potential jurors and following selection of the actual jurors, in order to respect the principles of impartiality and randomness, and make both of these procedures transparent, objective, accessible to public monitoring and respectful of constitutionally protected rights of candidates for jurors;
- to raise public awareness about importance of a duty to serve as a juror and procedural rules relating to the jury trials through information campaigns organized by local executive bodies and courts, to limit the scope of legal grounds excluding the civil duty to serve as a juror and to foresee equitable remuneration to candidates for jurors and to increase remuneration for the actual jurors through state funds;
- to continue public monitoring of jury trials and educational projects aimed at elevating importance of jury trials in Kazakhstan.

During the Workshop II on Conditions of Detention participants stressed the importance of public monitoring of all places of deprivation of liberty without any restrictions and recommended the following to the Government of the Republic of Kazakhstan:

- to maintain a dialogue with civil society and independent experts in the elaboration of a draft of a comprehensive law "On public monitoring in the Republic of Kazakhstan" that should foresee legal grounds of the organization and procedures of carrying out public monitoring in the Republic of Kazakhstan, including the procedure of establishing and functioning of the National Preventive Mechanism (NPM) compliant with the UN Optional Protocol to the Convention against Torture (OPCAT) provisions, Paris Principles, Recommendations of the UN CAT from November 2008 and Recommendations of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment from May 2009;
- in a short-term perspective, to consider existing system of Public Monitoring Commissions as a ground for the NPM and to afford them with the competence to conduct unannounced visits, monitor all places of deprivation of liberty and detention and have access to all related documentation, without any exception, by amending provisions of the Government Resolution on the Establishment of Public Oversight Commission from 16 September 2005 and also introducing these powers into a draft law "On Introducing

Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues Regulating Grounds and the Procedure of Detention of Citizens" to be adopted in autumn 2009;
- to reduce detention in temporary detention facilities (IVSs) to 48 hours, and to transfer pre-trial detention centers from the jurisdiction of the National Security Council to the Ministry of Justice; as well as other specialised detention facilities from the Ministry of Interior either to the Ministry of Education and Science of the Ministry of Health, depending on the profile of each facility, and to ensure that confinement in any detention facility is carried out only on the basis of a judicial decision and in compliance with relevant due process guarantees;
- to implement with support of international community capacity building projects for NGOs on conducting monitoring of all places of deprivation of liberty;
- to establish an inter-agency working group under the Ministry of Justice with participation of civil society experts in order to elaborate steps aimed at implementation of the Recommendations of the UN CAT from 2008 and the Special Rapporteur on torture from 2009, plus to conduct a public awareness raising campaign about the content and significance of these recommendations.

In order to set up an effective complaint mechanism against detention conditions and ill-treatment, participants recommended to:
- to ensure that such a mechanism is independent, transparent, accessible and accountable within and outside the penitentiary system;
- to authorize medical staff to initiate ex-officio complaints 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 ensure that prisoners victims of torture and ill-treatment receive adequate reparation, including compensation and rehabilitation.

With regard to improvement of prison conditions, including for life-term prisoners, participants recommended to the authorities of the Republic of Kazakhstan:
- to ensure compliance with provisions of the UN Standard Minimum Rules for the Treatment of Prisoners and abolish the use of solitary confinement. Exclude the use of collective punishments vis-à-vis inmates for their alleged misconduct;
- to guaranteed that prison staff are trained professionals, respected by the society and that their working conditions comply with international standards;
- to accommodate prisoners with special needs, deliver independent psychological services, educational and employment opportunities in the places of deprivation of liberty in order to foster rehabilitation and facilitate future reintegration in the society upon the release;
- 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 the higher judicial instances;
- to carry out detailed impact analysis and public discussion of the previously carried out humanization reform and programmes aimed at modernizing places of deprivation of liberty;
- to ensure that life-term and other long-term prisoners are treated in conformity with international standards, and that life-term prisoners are afforded with a right to be considered for an early release, equally to all other prisoners.

During the Plenary Session II on Developing and Applying in Practice Alternatives to Imprisonment, participants called upon the Government of the Republic of Kazakhstan:

- to expand the list and the practical 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.), including by imposing a duty on judges to consider such alternatives in each and every case reviewed by them;
- to develop the juvenile justice institutes and improve programmes of reintegration of juvenile delinquents and former adult inmates in the society;
- to create modern probation and develop independent organizations for mediation services; to introduce restorative justice principles into national law and practice, including by improving legislative framework regulating conciliation of parties, and to preserve the institute of reconciliation of parties before trial;
- to avoid using repressive police methods when carrying out crime prevention programmes in the country but ensure the use of social workers when addressing crime prevention goals.

BACKGROUND AND GENERAL INFORMATION ON THE SEMINAR

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 Kazakhstan agreed to establish an annual human rights dialogue. On 15 October 2008, the first session of the dialogue took place in Astana. 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 the reforms of the judicial system, freedom of association and assembly, the freedom of expression and the media, freedom of thought and religion, and the rights of women and children. Furthermore, both sides agreed to hold dedicated human rights seminars between civil society representatives from Kazakhstan and the European Union.

3. The first European Union-Kazakhstan Civil Society Human Rights Seminar[1] was held in Almaty on 29-30th of June 2009 and was attended by 95 persons: 65 civil society participants and 30 observers. From the Republic of Kazakhstan there were 44 civil society participants from 14 NGOs, academia, Bar Associations, newspapers, as well as independent consultants and legal experts, and 21 European civil society representatives from 14 European countries, including Russia and Ukraine, that comprised academics, judges, lawyers and international NGO representatives. Among 30 observers, on the European side there were representatives of five EU member States – including the EU Czech Presidency, representatives of the European Commission (Relex, EuropeAid, and the Delegation of the European Commission to the Republic of Kazakhstan), and a representative of the Venice Commission of the Council of Europe. On the Kazakhstani side, observers included state officials from the Constitutional Council, the Ministry of Justice, the Ministry of Foreign Affairs, the Supreme Court, the Almaty city court and the Specialized Administrative Court of Ust-Kamenogorsk City, the Office of the Prosecutor General of the Republic of Kazakhstan, and a representative of the Ombudsman's office[2]. Six representatives of international organisations also attended the seminar as observers.

4. The aim of the civil society seminar was to contribute to the human rights dialogue through open discussions that was meant to enrich the official dialogue of the European Union with the government of the Republic of Kazakhstan. The civil society Seminar provided an

[1] The European Union-Kazakhstan 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.

[2] Civil society representatives from Kazakhstan expressed regrets that the Seminar was attended by a limited number of state officials. Wider representation of relevant national authorities would have ensured even better outcomes of the Seminar and would have guaranteed the exchange of views of a more meaningful nature.

opportunity for an exchange between European and Kazakhstani civil society representatives, academics and state officials on human rights topics and on how to enhance the compliance with human rights obligations that Kazakhstan is bound by.

The civil society seminar on human rights:

- allowed academics and members of civil society through a constructive discussion to feed the agenda of and enhance the official dialogue with their views;
- provided a forum for the European and Kazakhstani 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 Kazakhstan.

5. Agenda of this first European Union-Kazakhstan Civil Society Human Rights Seminar focused on the four following topics (see Agenda of the Seminar in Annex 1):

1. Legislative regulation of the administrative responsibility
2. Judicial System
3. Conditions of Detention
4. Developing and Applying in Practice Alternatives to Imprisonment: the European Experience and Outstanding Priorities for the Republic of Kazakhstan.

In relation to each topic, participants were invited to draw discussions 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. While the first and the fourth topics were addressed in joint plenary sessions, in order to address the other two topics participants split into two parallel workshops, where they examined the following sub-topics:

Working group 1 on Judicial System:

- Session I: Independence of the Judiciary and status of judges
- Session II: Efficiency of Courts
- Session III: Jury trials: practical implementation
- Session IV: Implementation of Courts decisions

Workshop 2 on Conditions of Detention:

- Session I: Legal framework for protection and promotion of prisoners' rights. International Cooperation and bringing national laws and practice in line with international standards
- Session II: Establishing of a National Preventive Mechanism under the UN Optional Protocol to the Convention Against Torture and civil society access to all places of detention
- Session III: From death penalty to fixed sentences: improvement of the conditions of detention for long-term sentenced detainees
- Session IV: Humanisation of detention conditions and effectiveness of complaint mechanisms against detention conditions and ill-treatment

7. During the second day of the Seminar, a side event took place where the Kazakhstani think tank "Legal Policy Research Center" (the LPRC) presented recommendations of independent national and foreign legal experts on the Concept Note on Legal Policy for 2010-2020 that was being developed by national authorities in Kazakhstan. Given the crucial importance of the Concept Note in mapping out direction of future legal developments in the country, invited experts and the LPRC representative expressed their hopes that responsible state officials, when elaborating and adopting this document, will take into account views and proposals of civil society.

8. The present Report[3] 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 relevant officials of the European Union and the Republic of Kazakhstan, in particular during the forthcoming second round of the official European Union-Kazakhstan human rights dialogue scheduled to take place in Astana during the second half of 2009.

9. Annexes to the Report include introductory remarks of those speakers who presented them in writing to the organizers. The Annexes also contain other documents relating to the Seminar, including agenda, concept note and modalities, list of attendance and list of documents distributed to participants electronically and in hard copy.

10. All participants received electronic (saved on the USB device) and printed materials on the Seminar's topics. These materials included a variety of documents on international and European human rights standards, official UN documents with the focus on Kazakhstan and of general background nature, OSCE reports and commitments, NGOs analytical papers and background reports, academic articles and draft laws pertinent to the Seminar's discussion. A display table for NGO materials was actively used by a number of NGOs who used this opportunity to disseminate their analytical reports and background information.[4] Simultaneous interpretation was provided in Russian and English.

[3] The Report was prepared by the seminar's moderators: Sara Guillet and Natalya Seitmuratova, with the help of two note-takers: Saniya Ler and Véronique Planes-Boissac.

[4] Publications distributed by the Legal Policy Research Center and the Charter for Human Rights were of extreme use and interest to the participants of the Seminar.

OPENING SESSION

On behalf of the Presidency of the European Union, **H.E. Ambassador Bedřich Kopecký** from the Embassy of the Czech Republic in the Republic of Kazakhstan, recalled that in 2008 the European Union and the Republic of Kazakhstan agreed to establish an annual human rights dialogue and that the first session of the dialogue took place in Astana on 15 October 2008. He also stressed that the EU was in a unique position to promote human rights and that mutual trust was a decisive factor. He insisted on the fact that the necessary condition for the improvement of human rights protection in all countries was to have an open dialogue between governments and civil society.

On behalf of the European Commission, **H.E. Ambassador Norbert Jousten**, Head of the Delegation of the European Commission to the Republic of Kazakhstan, welcomed all participants. He recalled the good work undertaken during the six month European Union's presidency for the promotion of human rights in the framework of the EU Strategy for a New Partnership with Central Asia. He reminded that the present Civil Society Seminar on Human Rights was the follow-up to the first human rights dialogue which took place with official authorities in October 2008 and that the two issues addressed in the framework of this seminar had been considered as particularly relevant for further work. H.E. Ambassador Jousten recalled that this seminar was an opportunity to exchange views between EU and Kazakhstani civil society representatives and academics, with the presence of state officials and other observers. He stressed the important aim of developing recommendations for the government of Kazakhstan which will be forwarded to the second human rights dialogue due to take place in Brussels later in 2009.

PLENARY SESSION I: LEGISLATIVE REGULATION OF THE ADMINISTRATIVE RESPONSIBILITY

The first plenary session focused on key directions of reforming legislation on administrative responsibility in the Republic of Kazakhstan, discussed fair trial guarantees that should be enshrined in the Code on Administrative Offences for procedural actions that result in limitations of fundamental rights and freedoms of an individual, a need to institute judicial oversight over legality and reasons for any type of arrest and detention carried out under the Code on Administrative Offences, importance of compliance with international standards in relation to those detained under the Code on Administrative Offences and, finally, the issue of establishing the administrative justice institutions.

There were four introductory speakers during in this plenary session: **Professor Alan Page,** Dean of the School of Law from the United Kingdom, **Professor Leonid Golovko** from the Faculty of Law of Moscow State University, **Mr. Olexandr Banchuk**, Director of Criminal and Administrative Justice Projects in the Centre of Political and Legal Reforms in Ukraine and **Ms. Zhemis Turmagambetova**, Executive Director of the Public Foundation "Charter for Human Rights" from Kazakhstan.

Professor Leonid Golovko introduced the concept of administrative responsibility by explaining the fundamental difference in understanding of the notion of *administrative responsibility* that exists in Europe and in the territory of former Soviet states. He stated that whereas in the classic European legal doctrine, administrative responsibility means the

responsibility of the state before an individual, in the post-Soviet doctrine, administrative responsibility is an opposite concept since it was developed on the basis of the notion of the responsibility of an individual before the state for committing "minor offences". Such "minor offences" were formally decriminalized and brought into the sphere of the Law on Administrative Offences in order to create a de-jure lower rate of criminal offences committed in the Soviet Union, with the aim of convincing the Western society that the Soviet regime was flourishing and criminality was successfully tackled.

Professor Golovko elaborated on the consequences of this fundamentally different approach which led to the emergence of a kind of parallel "criminal law", a law of so-called administrative offences, which did not include the fully-fledge set of basic human rights guarantees available under criminal procedure law of the post-Soviet countries. He stressed the fact that this approach continues to have negative consequences for the development of Kazakhstani legal system as it impedes the development of a true administrative justice and enables the parallel criminal law to grow without ensuring the respect of human rights to the full extent.

The speaker provided in further detail the notions of administrative detention and administrative arrest provided for in the Kazakhstani Code on Administrative Offences which represent direct outcomes of this deformed understanding of administrative responsibility and which provide a lower threshold of human rights guarantees than afforded to criminal suspects. This distorted concepts result in a situation that persons that are being arrested or detained for less severe misconduct can suffer greater negative consequences and be stripped of procedural safeguards that are naturally guaranteed to those arrested and detained for Criminal Law offences.

In conclusion, Professor Golovko suggested important steps to be taken in the development of both the concept of administrative responsibility and the concept of criminal responsibility in order to overcome the described conceptual distortions in Kazakhstani legal system and recommended to move towards greater harmonization of the law on administrative offences with applicable international human rights standards, in line with the existing understanding in the European countries.

Professor Alan Page noted that according to his understanding, the notion of *administrative responsibility* corresponded to another category of responsibility as opposed to criminal and civil responsibility. It relates to the responsibility of the government and of the administration and, basically, to the concept of the rule of law. In relation to the understanding of this notion that exists in the post-Soviet countries, Professor Page emphasized the importance of strict adherence to relevant international standards, in particular those pertaining to physical integrity of an individual, as provided for in Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the European Convention of Human Rights (ECHR). He highlighted the basic wisdom that due process guarantees afforded by these Articles were applicable in the administrative offences context as much as in the criminal context.

Professor Page further referred to general comments of UN treaty bodies in order to explain what sufficient guarantees should exist in the legal system of Kazakhstan in relation to limitations of physical integrity of an individual. He said that in order to be lawful, any limitation of fundamental rights and freedoms should not be only prescribed by law, but the law itself should be public, precise and predictable in order to exclude any arbitrariness in its application.

He added that the law must not be disregarded with impunity and the separation of powers must ensure that national courts undertake effective checks on its application. He also mentioned the importance of the standards the state administration applies vis-a-vis its own actions and the crucial role that external checks can have in order to prevent any abuse of power. In conclusion, Professor Page stressed that genuine, classical understanding of administrative responsibility implied not only the government's accountability before the law, but also the government's duty to create conditions whereby existing laws are effectively implemented and respected by all those vested with power to interpret, apply and enforce them.

Mr. Olexandr Banchuk offered brief historical background about the development of administrative justice in the Western European countries and in the Soviet Union countries that adopted a distorted concept of this notion in its current legal systems. He continued by analyzing selected provisions of the Code on Administrative Offences of the Republic of Kazakhstan and their compliance with existing safeguards contained in the national Constitution, as well as in the European standards, namely the European Convention on Human Rights and various Recommendations of the Committee of Ministers of the Council of Europe.

Mr. Banchuk stressed the importance of the following principles: inviolability of property and one's residence as the integral parts of the right to privacy, presumption of innocence, freedom not to testify against oneself and due process safeguards available to any individual whose rights are being infringed upon by the state. He highlighted a need to ensure compliance with these principles when addressing the so called "administrative offences" in the Republic of Kazakhstan.

He mentioned that one of the ways to fulfil such compliance would be to reform the content of the existing Code on Administrative Offences by reshuffling the type of offences contained therein in order to segregate those that could constitute minor criminal offences investigation of which should fall under Criminal Procedure Code and be subject to judicial oversight, and those that fall under the notion of administrative delicts that could be dealt with by relevant authorities and punishable maximum by a limited fine. Moreover, minor criminal offences should be punishable by alternative punishments, not associated with the deprivation of liberty, and should not entail public record of criminal conviction in order not to lead to the same legal effects as the commission of serious criminal crimes would normally entail.

Finally, he suggested creating a pure system of administrative justice that would be governed by the Code on Administrative Procedure and would resemble the classical system existing in Europe that implies responsibility of the state before an individual or of a state official vis-a-vis an individual for his/her actions committed while exercising his authority.

Ms. Zhemis Turmagambetova started off with reminding all participants of the ongoing work on the Code of Administrative Procedure in Kazakhstan and expressed her hopes that innovative approaches recommended by the European experts will be taken into account by the law-drafters.

She then expressed her concerns about the draft law "On Introducing Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues Regulating Grounds and the Procedure of Detention of Citizens"[5] (hereinafter referred to as the draft Law

[5] Please see the Analytical paper to the Draft Law "On introducing changes and additions to certain legal acts of

on Detention) that has been recently sent to the Parliament. She referred to several legal comments by civil society experts in Kazakhstan that heavily criticize this draft law for its breach of fundamental rights and freedoms as guaranteed by the Constitution and international standards. She criticized the abusive practice of using administrative detention in Kazakhstan as the means to intimidate the apprehended and the detained persons; its abusive use as an early-warning tool to prevent possible crimes and the means to exercise police control over the individuals.

She gave examples of cases where people held in detention centres were deprived of their basic rights, in absence of the judicial authorization (the procedure of detention foresees a sanction of a prosecutor authorizing the detention for the period up to 30 days),were unaware of their rights to appeal against such arbitrary detention. The speaker also criticized the legal provisions that allow for administrative detention up to 30 days to be imposed by a court decision which comes into force immediately after its pronouncement and the person is put into detention instantly after the court hearing, which results in a right to appeal this judicial decision at a higher instance court within 15 days after its pronouncement being effectively made void and a right not to be deprived of liberty while waiting for the appeal decision being neglected.

The speaker referred to the abundance of such places of detention, for example detention facilities for homeless and facilities for detaining foreigners and citizens of Kazakhstan without a permanent place of residence. She also expressed her concerns about initial police detention for the first three hours that is often abused by the police.

Finally, Ms. Zhemis Turmagambetova stressed the fact that these practices where in conflict with the Constitution of Kazakhstan, the ICCPR and the European human rights standards. She insisted on the need for projects which would help bringing Kazakhstan closer to the European standards, even though Kazakhstan is not party to the Council of Europe.

During the discussion, several participants expressed similar concerns, as voiced by Ms. Turmagambetova, regarding the draft Law on Detention. The European experts noted that in Europe detention is regulated by the rules of the Criminal Procedure Code. Moreover, the experts stated that the draft Law on Detention refers to emerging social problems and a need to address these through specially designed control and oversight measures, which would in fact constitute a repressive social control of the state over the individuals. The only positive aspect of the discussed draft Law stressed by the experts was a plan to introduce public monitoring of certain places of detention.

It was further discussed that having been drafted by the Ministry of Interior, the draft Law on Detention was never offered for public comments and this prevented civil society representatives from being involved in the process of this legislative initiative.

In addition, it was regretted that the Majlis did not take into account any comments of foreign and national experts with regard to the draft Law on Detention, but at the same time, it was commended that the Senate did not pass this draft Law before the Parliamentary summer recess. It was therefore hoped that the civil society will be able to present its consolidated comments for the Senate's consideration before it would resume its hearings in autumn.

In relation to the reform of the Code on Administrative Offences, one participant noted that it had to be done cautiously, and possibly, by moving relevant minor offences (administrative

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Kazakhstan related to grounds and procedures of detention of citizens in Kazakhstan" produced by the Public Foundation "Charter for Human Rights" and updated of 15 June 2009.

delicts) to Customs Code, Tax Code and Ecological Code, depending on the type of offences, provided that penalties imposed by relevant state authorities can be appealed in court.

A remark was made that in the past decriminalization of criminal legislation in Kazakhstan resulted in a more repressive law on administrative offences, which was a counter-productive result of the decriminalization policy. Furthermore, it was added that the Code on Administrative Offences contains less favourable procedural rules than the Code on Criminal Procedure, for instance, it does not foresee the reconciliation of parties; and when reviewing an issue of guilt in the administrative offence, national courts cannot take into account any mitigating/aggravating circumstances and reduce or change sanctions foreseen by the Code on Administrative Offences.

It was stressed one more time that the procedure of administrative arrest violates fair trial rights, including access to free legal aid. It was explained that an administratively arrested person does not get a copy of the arrest protocol, is not informed of the reasons for his/her arrest, and in case of foreign citizens, administrative trials do not offer interpretation of proceedings into a language known by the person on trial. Furthermore, conditions of detention of those under administrative arrest or detention fall short of international standards and access to defence lawyers is not guaranteed. Opening such places of detention to public monitoring and transferring them to the Ministry of Justice or other relevant Ministries was urgently recommended, unitl the final decision is adopted to abolish them as such.

Participants provided numerous examples when the Code on Administrative Offences was used by national and local authorities as a repressive tool and a convenient way to restrict fundamental freedoms, for instance, against participants of peaceful protests, religious gatherings or any other type of peaceful assembly.

By broadening the understanding and the scope of justice, administrative detention, so widely used these days, could be replaced with a fine or community service.

Several participants expressed their encouragement for Kazakhstan to join the Council of Europe what would constitute a consistent move towards the officially declared priorities and inspiration to respect the European values, as has been outlined in the governmental programme and plan of action "The Path to Europe". In relation to this process of rapprochement with Europe, the experience of Ukraine and Russia was considered as particularly valuable.

With regard to international human rights obligations, many participants expressed their recommendation to the government to strictly comply with its existing United Nations treaty obligations. In addition to a need to join still non-ratified UN human rights treaties and optional protocols, as well as make declarations under relevant articles allowing for individual and inter-state complaints, all participants highlighted importance of meaningful follow up to concluding observations and recommendations of the UN treaty and charter-based bodies, as well as timely reporting on the implementation of the ratified documents.

In this respect, participants noted that Kazakhstan was yet to report under Article 40 of the International Covenant on Civil and Political Rights, and the delay in reporting was due to the lack of political will to submit a timely report. Representative of the OSCE Center in Astana added that on 12 June 2009 a state report on implementation of the ICCPR was approved by the Resolution of the Government of Kazakhstan (No 892)[6] and would be shortly sent to the UN Human Rights Committee (UN HRC) for its consideration. It was welcomed that civil society

[6] Available at www.zakon.kz.

had already prepared its alternative report to the UN HRC and it will assist the Committee when the state report is examined. It was explained that the alternative report was shared with the government during several meetings held with the Ministry of Foreign Affairs during 2006-2007.

At the end of the discussion, the moderator made closing remarks and suggested some draft recommendations.

WORKSHOP I: JUDICIAL SYSTEM

SESSION 1: INDEPENDENCE OF THE JUDICIARY AND STATUS OF JUDGES

The working session was devoted to the legislative framework and practical challenges in ensuring independence of judges, separation of powers and check and balances, selection and appointment of judges: existing procedures and safeguards to ensure selection of the most qualified candidates for the judicial profession, judicial tenure, promotion, and remuneration as means to ensure independence, case assignment procedures – practices that foster greater independence and public confidence in justice administration, impartiality of judges and procedure of recusal or challenge of a judge, complaint mechanisms for judicial misconduct, review, and investigation of complaints and the role of the judicial self-government in ensuring integrity.

Introductory remarks were made by three speakers: **Professor Tania Groppi** from Research Centre for European and Comparative Public Law, Department of Economic Law, University of Siena in Italy, **Mr. Lucian Mihai,** Member of the Venice Commission of the Council of Europe on behalf of Romania and **Mr. Daniyar Kanafin,** Defense Attorney, Member of the Presidium of the Almaty City Collegium of Advocates from Kazakhstan.

Professor Tania Groppi stated that independence of the judiciary as a core element of liberal democracy is related to the principles of separation of powers and rule of law and can be subdivided into two notions: autonomy of individual judges and autonomy of the judiciary as an institution. She also referred to the *functional and institutional independence of judges and* security of tenure of judges as an important safeguard of the independence of the judiciary. The speaker stressed how important it was to protect judges from *internal interference* which can take place if organizational arrangements and the system of distributing caseload between judges do not protect judges from illegitimate pressure. *External interference* coming from any source outside the judiciary, including mass media, NGOs, state authorities, was also seen by the speaker as a serious threat to the independence of judges.

As a means to protect judicial independence, Professor Groppi offered an example of the *judicial councils* elected by judges and capable of protecting the judicial independence and ensuring *immunity of the judges.* In conclusion, the speaker highlighted the crucial role that Constitutional Courts and the Constitutions can play in preserving independence of the judiciary from the executive branch of power.

Mr. Lucian Mihai spoke about the Venice Commission's activities relating to the independence of the judiciary and related Venice Commission's opinions that have been produced during the last 20 years. He brought attention of the audience to the Report on the

Judiciary Appointments[7] produced in 2007 where various models of judicial appointment used in Europe were described – such models varied from appointment by the executive to the election by the legislature.

The speaker reminded all the participants that, in ideal, judicial independence should be enshrined in national Constitutions, and appointment procedure, remuneration issues, establishment of consultative judicial bodies should be set out in national legislation and implemented by the judicial councils or other forms of the judicial self-government that are transparent, inclusive and accountable. Promotion of judges should be based on their merit and professional conduct, and parliamentary hearings where budgets for the judiciary are approved should include judges as the stakeholders. Mr. Mihai also stressed the importance of protecting judges from illegal external interference by means of affording them with professional immunity from state prosecution, except for cases where there is evidence that a crime of bribe-taking or another serious offense was committed by a judge.

Mr. Daniyar Kanafin's introductory remarks focused on the election and appointment procedures for judges as the crucial factors in ensuring independence of the judiciary. He gave examples from the Kazakhstani law, whereby national judges of the lower instance courts are directly appointed by the President of the country and judges of the Supreme Court are elected by the Senate – an upper chamber of the national Parliament - from the list of candidates proposed by the President. He was not sure if this procedure guaranteed the optimal degree of the judicial independence and wondered if there was a way to ensure greater public involvement in the appointment procedure for judges. The speaker noted that currently civil society and the public at large do not have any possibility to influence or participate in the process of selecting/electing judges. The only existing way for the public to contribute to the administration of justice is through the jury trials system that has been introduced in the country in 2007.

Mr. Kanafin stressed an extremely low rate of acquittals in the country (less than 1%) and highlighted a need for further liberalization of the judicial system. The expert tabled a proposal of introducing "*magistrates"* who could be elected through public vote and could be vested with powers to exercise judicial control over pre-trial investigation, including the right to sanction pre-trial measures of restraint that may limit fundamental freedoms of an individual. He also suggested decentralizing the appointment procedure for judges by establishing regional electoral colleges – "*boards of electors"* comprised of acting judges and representatives of local communities. Such "boards of electors" could be tasked with forming lists of potential candidates for judges. Furthermore, he suggested for the court's presidents to be elected through a secret vote by acting judges – members of the same court, for a secure fixed-term and tasked exclusively with managerial, representative and administrative functions.

During the discussion, participants highlighted a heavy workload of judges, insufficient funding and administrative support that judges receive in the country, as well as imperfections and lack of fairness in the appointment, appraisal and disciplinary procedures for judges, especially when Disciplinary Collegiums and Judicial Jury are involved. It was agreed that all these factors negatively influenced public perception about judicial independence and impartiality of the judges.

[7] Report on Judicial Appointments adopted by the Sub-Commission on the Judiciary on 14 March 2007 available at http://www.venice.coe.int/docs/2007/CDL-JD(2007)001rev-e.asp.

In response to the voiced proposal to introduce the system of election of judges, many participants made critical remarks, referring to problematic experience of common law countries where it is often hard to establish clear criteria and accountability for the elected judges, as well as prevent elected judges from representing political stance of their electorate at the detriment of the judicial independence and impartiality.

Participants favoring the new idea clarified that only the lower level judges that could be called "the magistrates", would be elected, while the rest of judges would be appointed through the existing procedure, possibly with the improved process of pre-selecting candidates for a judicial post. The newly created magistrates could be vested with powers to hear small-profile civil law suits, not exceeding a certain monetary threshold, plus would exercise judicial control over application of pre-trial restraint measures that limit fundamental rights of an individual. It was suggested that any candidate for a magistrate would be required to pass a professional examination in order to take part in the elections.

The emphasis was also made on an urgent need for drastic political and educational measures that should aim at restoring public trust in the administration of justice and reinforcing independence of the judiciary. Increasing the rate of former defense attorneys becoming judges may partially contribute to the improvement of the judiciary's image, currently seen as repressive machinery against the individuals.

One of the journalists, focused his intervention exclusively on an individual case of an editor-in-chief of the newspaper "Alma-Ata", Mr. Ramazan Yessirgepov, in order to illustrate his point about problems with fairness of justice and trial proceedings in Kazakhstan.[8] Having expressed concerns about the fate of Mr. Yessirgepov and the unfairness of pre-trial investigation and several judicial decisions against Mr. Yessirgepov and his newspaper, the participant recommended to the government of Kazakhstan to speed up the process of depositing its ratification documents with the UN Legal Office in New York in order to ensure prompt entry into force of the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) that would make it possible for all those under the jurisdiction of Kazakhstan to send individual complaints to the UN Human Rights Committee in Geneva. A suggestion was also made to introduce a Constitutional Court in the Republic of Kazakhstan that would replace the limited authority of the existing Constitution Council in the country.

Some participants expressed their concerns about the effectiveness of an electronic system of distributing the caseload among judges that has been installed in national courts some years ago following repeated recommendations of international organizations – in practice, it appears that distribution of cases is still decided by the president of the court, and it is also regrettable that judicial statistics is maintained internally by the same judges who have direct interest in the results of such statistical analysis. It was noted that probably around 30% of judicial decisions could be challenged on the grounds of procedural inconsistencies committed by judges.

[8] Mr. Yessirgepov is being charged with disclosure of classified information that he has allegedly printed in his newspaper. Despite active public outcry and criticism of human rights defenders in the country, the National State Security Committee denied a right of Mr. Yessirgepov to use a defense attorney of his choice, and after refusing the services of a state-appointed lawyer, Mr. Yessirgepov turned out to be without any legal representation in a criminal case that may entail serious punishment. This lack of effective legal defense is compounded by the fact that the trial of Mr. Yessirgepov is held in chamber (behind the closed doors), so the wider public and relatives are unaware of the course of the proceedings.

Another participant proposed introducing a mechanism of public oversight of judicial decisions – creating a website where judge's performance could be monitored by members of the public and on-line feedback could be provided on the judge's conduct. Existing problems with the Senate's non-alternative selection procedure for the Supreme Court's judges was also highlighted during the discussion. It was said that this procedure usually involves only one candidate who is automatically voted for, without any debate or analysis by members of the Senate.

The European expert supported idea of the introductory speaker that presidents of courts should be elected by judges who are members of the same court, and that sustainable secretariats should be created in every national court in order to effectively deal with issues of remuneration, training and professional advancement of judges.

Several participants expressed their concerns about the role and far-reaching functions of disciplinary commissions (collegiums) that initiate proceedings against judges on the grounds not provided for by the Constitution of Kazakhstan, and recommended an urgent revision of the status and authority of such disciplinary commissions in order to exclude abusive situations where a judge's tenure can be unlawfully terminated. It was explained that in case of disciplinary sanctions imposed by the Disciplinary Collegiums, an appeal can only be submitted to the higher Disciplinary Collegium, but not the court. A right to a judicial appeal should be foreseen by the law.

In Kazakhstan, together with the Commission on Judicial Ethics, the Union of Judges reviews ethical conduct of judges in case of complaints received from the public. Such authority given to an NGO is inadmissible and can be construed as interference with the judicial independence. A recommendation was voiced to reform the work of the Judicial Jury that was created to deal with professional appraisal of judges. This authority of the Judicial Jury is incompatible with the international standards.

One civil society representative referred to the concluding observations of the UN Committee against Torture[9] on Kazakhstan's country report reviewed in 2008. The speaker encouraged national authorities to specify in their next reporting to the UN that the Presidential Administration and the Prosecutor's office were bodies of the executive branch of power in the country.

One of the present state officials agreed with the statement that there was a general lack of public trust and respect to the judicial system. It was explained that often law enforcement bodies express their discontent with courts when acquitting verdicts are adopted, and that often judges are forced to assume a lead role in examining trial participants as a result of negligent approach of defense attorneys to their duties in court. Thus, it was concluded that not all problems originate from within the judicial system, and that all those who interact with the judiciary should also exercise due care in order not to undermine the judicial independence.

Representative of the Venice Commission's Secretariat briefly described the mandate and methodology of its work. With 57 member States the Commission aims at providing advice through legal opinions, technical assistance and seminars on constitutional reforms

[9] Please see the CAT/C/KAZ/CO/2 of 12 December 2008.

and legislative changes that aim at bringing national laws in line with international standards. Despite the observer status of Kazakhstan since several years, there is not much engagement with the country, and contacts with national NGOs could help in enhancing Venice Commission's existing cooperation with Kazakhstan, notably by ensuring that official requests for legal opinions on legislative drafts are sent to the Venice Commission.

SESSION 2: EFFICIENCY OF COURTS

The working session was meant to encompass the following issues: the trial within reasonable time, accelerated court proceedings and plea bargaining, judicial oversight of surveillance and investigative measures, compliance with fair trial guarantees relating to the right to an interpreter, free legal aid during trial, public pronouncement of a judgment, trials in absentia, the use of anonymous witnesses and their testimonies during trial, recent changes in the organization of the judicial system of the Republic of Kazakhstan, the 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, direct application of international treaties by Courts, practice of taking into account jurisprudence of relevant UN treaty bodies when deciding on cases, public access to court hearings, court information and documents and finally, material conditions of courts conducive to proper administration of justice.

Unfortunately, due the shortage of time not all issues were covered during the discussion. This fact was regretted by the participants, who believed that all points of the agenda were of extreme importance and due to the ongoing legal reform in the country, should be reviewed during future public discussions.

Introductory remarks were made by **Mr. Ignazio Patrone**, Deputy General Prosecutor of the Italian Supreme Court, **Mr. Jiri Kopal,** Chair of the League or Human Rights in Czech Republic and Deputy Secretary General of the International Federation for Human Rights (FIDH) based in France, as well as **Mr. Alexander Rozentsvaig,** Defense Attorney and Member of the Presidium of the Almaty City Collegium of Advocates.

Mr. Ignazio Patrone opened the session by emphasizing that efficiency of courts was the matter of quality of the judicial decisions. He stated that the concept of quality of justice combines a wide range of multi-dimensional factors which cannot all be measured with the same tools. He noted that justice can never be 100% reliable because in practice one can always witness a lack of *genuine* independence of judges from political and/or corporate pressure or certain bias of courts when examining issues concerning gender inequality, gender identity or sexual orientation, as well as cases where linguistic or religious minorities are involved.

When discussing the ways of enhancing the courts' efficiency, the speaker highlighted the crucial role of public prosecution service in monitoring the observance of human rights by pre-trial investigation bodies[10], importance of ensuring access to justice and legal aid for all members of the society, a need to guarantee trials within reasonable time, provide for adequate material conditions of courts that would be conducive to proper administration of justice, as well as an imperative requirement to have public access to court hearings, court

[10] Please see the Recommendation Rec(2000)19 of the CoE on the Role of Public Prosecution in the Criminal Justice System.

information and documents as the means to carry out public scrutiny of the administration of justice.

Mr. Jiri Kopal in his speech 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.

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 spell out the procedure by which the duty of state authorities to investigate allegations of torture could be fulfilled, and suggested to include into the final recommendations from the Seminar all points contained in the paper of the Open Society Institute Justice Initiative that was distributed to the participants of the Seminar.[11]

As a last speaker, **Mr. Alexander Rozentsvaig** focused primarily on several examples from his legal practice in order to illustrate whether national courts in Kazakhstan comply with their duty to protect human rights. He noted that in theory, the judiciary should be accessible to lawyers and the society at large, and that unfortunately, in reality one can often witness the closed nature of national courts and the wide-spread practice of denial of justice. He referred to a situation when all appeal hearings in one court can be scheduled for the same time of the same day for all plaintiffs and defendants – thus resulting in chaos in waiting rooms where people are forced sometimes to spend all day long in order to be called for the hearing that concerns them. At the same time, due to a shortage of judges, judges are forced to review cases in a speedy manner that leads to poor quality of their decisions, marred with procedural and substantive shortcomings that can be easily challenged at the higher instance court.

During the discussion, participants raised the contentious nature of some legal provisions and practice in Kazakhstan, namely: the denial of lawyers' access to their clients and case materials, if classified information is featured in the case; the use by prosecutors of incriminating evidence given by anonymous witnesses without the defence being able to cross-examine such witnesses during trial proceedings, as well as increasing cases of trials in absentia as a result of which defendants are convicted to long-term imprisonment terms.

[11] Please see "TORTURE IN KAZAKHSTAN" briefing paper on measures to be undertaken by Kazakhstan. Agreed by Kazakhstan International Bureau for Human Rights and Rule of Law; Charter for Human Rights; MediaNet; Legal Policy Research Center; Penal Reform International; Freedom House-Kazakhstan and the Open Society Justice Initiative.

With regard to trials in absentia, all participants agreed on a need for Kazakhstani responsible authorities to get familiar with related international and European standards, and suspend the use of trials in absentia in Kazakhstan until the times when national laws are brought in line with human rights requirements. Currently, the Code of Criminal Procedure in Kazakhstan lacks specific provisions regulating trials in absentia and therefore the defendant's rights are open for abuse. In relation to the use of evidence form anonymous source, the European participants quoted several European Court's of Human Rights decisions where inadmissibility of such evidence was recognized by the Court, if the defense' rights for cross-examination were not strictly adhered to.

Several participants spoke about a need of establishing an independent body for torture investigation in Kazakhstan. It was said that there was no one-fit-all model for such bodies, so in theory, Kazakhstani authorities could even assign the prosecutor's office with such tasks, but the question would remain if, with its oversight functions, the prosecutor's office is going to satisfy the requirements of independence and impartiality. Moreover, it would imply returning to the prosecutors their investigative functions, something that already existed during Soviet times and was reformed as part of democratic reforms following the independence of Kazakhstan. Regardless of which body is tasked to investigate allegations of torture, courts should always comply with their duty to react to the allegations of torture and have separate trials for torture cases, unrelated to the principal case during which the allegation was made.

Participants reminded of the courts' duty to dismiss any evidence that might have been obtained under coercion, and of a need to strictly adhere to the rule that the burden of proof in the ill-treatment case is always laid with the prosecution, and not the alleged victim.

Civil society representatives expressed their general disapproval with the poor record of the Kazakhstani judicial system in protecting and directly applying international and constitutional human rights standards, including fair trial guarantees. A reference was made to the decreasing willingness of judges to appeal to the Constitutional Council regarding constitutionality of legal provisions, and the increasing practice of trials held behind the closed doors. Participants were also concerned with the lack of public access to the Supreme Court's decisions, in particular those prohibiting activities of terrorist organizations on the territory of Kazakhstan.

It was suggested to institutionalize the practice of regular meetings of judges with civil society, including defense attorneys, mass media and NGOs, in order to promote judicial accountability, transparency and inclusion of the public views in the decision-making process aimed at improving the functioning of the Kazakhstani judicial system. Importance of access to free legal aid in civil and administrative law cases was also highlighted by the participants, and full implementation of provisions contained in the existing Concept on Free Legal Aid in Kazakhstan, and expansion of free legal aid to all branches of law was recommended.

SESSION 3: JURY TRIALS: PRACTICAL IMPLEMENTATION AND FOLLOW UP

The agenda focused exclusively on jury trials in Kazakhstan, in particular the matters relating to the results of jury trials monitoring in the Republic of Kazakhstan, legal regulation and practical implementation of the compilation of lists of potential jurors, selection of jurors and

related practical challenges, specificities of the criminal proceedings during jury trials and any other issues pertaining to the improvement of jury trials in the Republic of Kazakhstan.

There were two introductory speakers: **Mr. Fernando Piernavieja Niembro**, President of the Council's of Bars and Law Societies of Europe (CCBE) Access to Justice Committee, member of the Human Rights and Criminal Law Committee and teacher of the Criminal Procedure Law at the Master on Advocacy of Malaga's University and Bar Association in Spain, and **Ms. Tatyana Zinovich,** a former Project Coordinator of the OSCE/ODIHR Project on Jury Trials Monitoring in the Republic of Kazakhstan that was implemented in 2007-2008 in Kazakhstan.

Mr. Fernando Piernavieja Niembro spoke about challenges that jury trials face in Spain, which include, among others, the problem of securing public interest in being involved in the administration of justice, as well as vulnerability of members of the jury before the public opinion that is conveyed through the mass media. He stressed the lead role of a professional judge, who chairs the jury, in giving clear and adequate instructions to the lay members of the jury on what is expected from them – to decide whether all facts alleged by the prosecution have been proven to them during the trial. In conclusion, Mr. Piernavieja Niembro recommended expanding the list of crimes subject to the jury trials, as he believed public participation in the administration of justice, if increased, can ensure better compliance with fair trial guarantees.

Ms. Tatyana Zinovich summarized results of the OSCE/ODIHR jury trials monitoring project, welcomed positive reaction of the Supreme Court of Kazakhstan to the monitoring report and its readiness to take up some of the recommendations onboard. In particular, as was confirmed later in the discussion by the Supreme Court's representative, the following recommendations of the report will be implemented in the near future: the list of crimes tried by the jury will be expanded; and defendants will be allowed to express their wish to be tried by the jury at any stage of criminal proceedings (not only during pre-trial stage as it has been stipulated before).

The speaker reiterated how important it was to adhere to the principle of random selection of jurors in order to guarantee effectiveness of the jury trials. She insisted that in order to respect this principle in practical terms, the government and the judicial bodies should aim at improving procedures for short-listing future members of the jury, procedures for registering candidates for jurors by the local executive authorities and ensuring openness of the selection procedures in order to make them accessible to the public oversight.

With regard to procedural elements of the jury trials, Ms. Zinovich suggested to equip all court rooms used for jury trials in a way that would uphold the equality of arms principle, and to ensure that jurors are allowed to be present when decisions are made regarding admissibility of evidence, as the jurors exposure to the allegations of ill-treatment may play an important role in the outcome of the trial. Finally, in order to prepare the public to their potential role of jurors, it was recommended to require responsible state authorities to raise public awareness about the essence and procedures of jury trials.

During the discussion, participants shared their experience and concerns about the efficiency and necessity of jury trials in Kazakhstan. The Supreme Court's representative, Mr. Abdrashit Zhukenov, was convinced that jury trials had positive influence on fairness of the trials in the country and he provided statistics that showed increased number of acquittals – 10% - as a result of jury trials. He described to the participants the content of an existing

legislative draft that will be adopted by the Parliament before January 2010 and proposals contained therein, which plan to decrease the number of professional judges present on the jury from two to one and to increase the number of lay jurors up to ten, as well as to expand the number of crimes subject to jury trials.

Mr. Zhukenov agreed that in practical terms it was hard to secure layman participation in jury trials, since labor laws were hardly implemented in practice, and private employers were not ready to sustain expenses related to people's participation in trials as jurors. In conclusion, he mentioned that the Supreme Court had approached the Prime Minister with a request to improve the procedure of compiling the lists of potential jurors in order to eliminate existing flaws and shortcomings committed by the local executive bodies.

Defense lawyers and academics spoke about the poor quality of the lists of potential jurors, advantages of the jury trials, including creation of more incentives for defense attorneys to be better prepared for trials and positive outcomes of such better defense - higher rate of acquittals, as well as enhanced and more thorough prosecutorial oversight over pre-trial investigation stages and procedural requirements during trials when the jury is involved.

With regard to the existing model of jury trials in Kazakhstan, participants recapped the debates that took place prior to the adoption of relevant legal provisions. It was reminded to the participants that the model of a jury trial used in Kazakhstan is a combination of the continental and the common law models, and it therefore leads to a number of contradictions of administrative nature, procedural nature and those relating to the compilation of the list of potential jurors.

It was noted that the Law on Jury Trials should be reviewed in the future in order to incorporate social and financial incentives for jurors and candidates for jurors. Finally, a need to guarantee real independence of lay jurors from the professional judge's influence in the deliberation room when reaching the verdict still remains a challenge, and therefore should be discussed during future public debates. Meanwhile, in order to promote the practice and general awareness of jury trials and their advantages, it was suggested to all responsible national authorities to embark on a systematic and well-tailored public campaign, drawing upon assistance of international organizations. It was stated by the OSCE/ODIHR representative that the implemented jury trials monitoring project proved extremely useful and would continue if funding were made available.

In conclusion, the introductory speaker, Ms. Tatiana Zinovich, referred to the need to expand the rights of both, the prosecution and the defense, during trial proceedings to address jurors directly with questions. Her proposal was supported by other participants with a small variation that the questions could be passed on to jurors through a presiding judge.

SESSION 4: IMPLEMENTATION OF COURT DECISIONS

This final working session mainly related to the civil law suits and suits against the state, where issues of implementation of court decisions arise, in particular such as timeframe and effectiveness of such implementation, sufficient funding for court bailiffs, legal remedies in case of delays in implementation of court decisions and implementation of court decisions through a private bailiffs as being discussed in Kazakhstan.

Mr. Anton Burkov, a well-known Russian human rights activist and the PhD candidate from Cambridge University in the United Kingdom, and by **Mr. Salimzhan Mussin,** Defense Attorney and Member of the Presidium of the Almaty City Collegium of Advocates introduced the topics of the discussion.

Mr. Anton Burkov described problems with non-implementation of court decisions against the state and related decisions of the European Court of Human Rights against Russia finding violations of the right to a fair trial (as it concerns the implementation of court decisions) and effective remedy as a result of non-implementation by state authorities of national court decisions that ordered the payment of compensation to individuals whose rights were violated by the state.

He explained that in Russia the national law dictates court bailiffs to present court decisions against the state to the Ministry of Finance responsible for their implementation. The European Court ordered the Government of the Russian Federation to change the procedure of implementation of court decisions against the state in order to fulfill obligations under Article 6 of the Convention guaranteeing the right to a fair trial.

Mr. Salimzhan Mussin briefed about a new draft law on private bailiffs in Kazakhstan and existing flawed enforcement mechanisms for implementation of court decisions that result in enormous amount of court orders remaining unimplemented for years. The speaker recommended to increase the numbers of court bailiffs; to raise wages of court bailiffs and increase financial incentives for prompt enforcement of decisions, to expand the rights of the parties to the enforcement proceedings in order to make them more effective, to reintroduce the earlier abolished legal provisions in the Law "On Enforcement Proceedings and the Status of Court Bailiffs" that entitled court bailiffs to withhold a certain percentage of the execution amount as a fee for executing court orders, and finally, to create a centralised database of individuals and legal entities in order to simplify and improve the execution procedures.

During the discussion, Olexandr Banchuk talked about the Ukrainian experience with its 50% rate of non-execution of court decisions in the administrative cases and in civil law suits due to the lack of state funds available for the execution procedures. He mentioned the existence of laws introducing indefinite moratorium on execution of court decisions against private corporations with government's stake in them and how this moratorium was recognised by the European Court of Human Rights to be violating the ECHR provisions.

In support of the idea of private bailiffs, the expert expressed a sentiment that introducing competitiveness would guarantee the increase in the rate of executed court decisions. At the same time he cautioned against giving the private bailiffs any additional tasks, such as investigation and forcible execution of decisions against the individuals, as this may open the room for abuse and excessive use of authority. Powers of the private bailiffs should be limited by law and strictly adhered to in practice – and should not go beyond simple delivery of court execution orders, requesting as well as monitoring their implementation.

Several participants supported idea of private bailiffs and suggested to task them with execution of court decisions in the sphere of civil and commercial law, and leaving it with the state bailiffs to enforce decisions against the state. State officials acknowledged

existing criticism of the state bailiffs' performance, but could not agree with all of the negative remarks. They referred to recent efforts of the state to improve the work of state bailiffs and reminded all participants of the existing timeframe for execution of court decisions: following 10-15 days until the decision comes into force, 30 days are given for voluntary execution of the court decision and mandatory enforcement can be embarked on only after the lapse of these 30 days.

Some participants expressed doubts as to the law's clarity on the procedure and grounds for suspending forcible implementation of court decisions in favour of the state. With wide-spread forcible evictions violating the right to adequate housing of many individuals in Kazakhstan, the practice showed that often it is impossible to suspend the execution procedure, even though the court decision is still being appealed. Even though the law states that the court decision can be suspended by the decision of the Supreme Court or the General Prosecutor's office representative, in practice these bodies rarely issue interim measures of putting forcible executions of court decisions on hold.

Civil society representatives mentioned a national law provision that instructs state authorities not to implement court decisions against the state, unless all appeal stages have been exhausted. This discriminatory approach in law and practice to court decisions against the state was criticized by the participants and it was recommended to amend the existing procedure.

The European expert, Professor Alan Page, noted that usually state's compliance with decisions against its own interest is characterized with arbitrary and discretionary approach and therefore it is a major challenge to ensure timely and full execution of such decisions against the state. The speaker, Mr. Burkov, agreed with this statement and explained that this arbitrary approach of the state was the reason why in Russia it was the European Court of Human Rights that eventually played a role of a court bailiff for decisions against the state.

He added that this long process resulted in the Supreme Court's legislative proposal aimed to remedy the situation, and currently, it remains to be seen whether the situation will improve in the future and whether the federal budget will include a separate budget line to cover payments under court decisions against the state. Mr. Burkov also expressed his concerns over the use of private bailiffs, who may be driven exclusively by entrepreneurial interests and thus will not offer effective assistance to the vulnerable groups of the population, who will not be able to offer lucrative court decisions for implementation.

The workshop was closed by the moderator who summarized the recommendations and suggested participants to send additional recommendations in a written format.

WORKSHOP II: CONDITIONS OF DETENTION

SESSION 1: LEGAL FRAMEWORK FOR PROTECTION AND PROMOTION OF PRISONERS' RIGHTS: INTERNATIONAL COOPERATION AND BRINGING NATIONAL LAWS AND PRACTICE IN LINE WITH INTERNATIONAL STANDARDS

Introductory remarks were made by two speakers: **Baroness Doctor Vivien Stern** (Senior Research Fellow, International Centre for Prison Studies, King's College, University of London, UK) and **Ms. Zhemis Turmagambetova** (Executive Director, Public Foundation "Charter for Human Rights", Kazakhstan).

Baroness Doctor Vivien Stern recalled that the whole process of taking away the liberty of a person, from the moment of the arrest till the moment of release, must be done in a humane and ethical way. This is the underlying principle of all decisions and all laws about penitentiary system, as recalled under Article 10 of the ICCPR. Treating a prisoner with humanity means that each prisoner is a fellow human being whose life is precious, that the human dignity of every imprisoned person has to be respected and that if this person is ill treated, he/she must be able to complain about it.

Baroness Doctor Vivien Stern then stressed the importance of a ruling from the Constitutional Council of Kazakhstan which declared in 2008 that the law making self mutilation by prisoners a criminal offence should be amended. This shows that it is important to balance the power of the penitentiary system with the rights of prisoners. She also recalled that the prison administration itself should work within this ethical framework and that the penitentiary personnel should be properly paid, professional and respected by society. In addition, oversight from society should be encouraged. The signature of the OPCAT by Kazakhstan is very important in this regard even if a lot of things still need to be done in this country as well as in all other countries.

Ms. Zhemis Turmagambetova insisted on the worsening of the situation in Kazakhstan in recent years while important progress was achieved in the past which created hopes and expectations among civil society. However, there has been a recent drastic increase of prison population. No alternative for deprivation of liberty has been established and not all convicts have a right to petition for pre-term release. Ms. Zhemis Turmagambetova stressed the fact that conditions of detention have worsened, in particular in certain parts of the country where facilities do not meet minimum standards. With the transfer of competence to the Ministry of Justice, there were hopes of improvement but nothing has happened so far. There is an important margin of progress also in the field of relations with the outside world.

The moderator launched the discussion and recalled the existing set of important recommendations adopted by the Committee against Torture and by the UN Special Rapporteur on Torture and other forms of cruel, inhuman, degrading treatment or punishment. She encouraged participants to identify gaps and to develop focused additional recommendations.

During the discussion, many representatives of civil society stressed the deterioration of the situation compared to some years ago and the absence of consultation of civil society in drafting legislation. One participant described the procedure for early conditional release (case reviewed at three stages: local administration; Prosecutor office; Court) and stressed the

lack of details on these conditions which are the subject of different interpretations by judges. Another participant raised concerns about the treatment of journalists. Several participants stressed the fact that conditions for early release should not depend only on the position of the prison administration. One participant observed that while the rehabilitation and preparation for civil life should start in prison, people were not well trained for that. Another participant criticized the fact that meeting with relatives during pre-trial investigation was only possible after a ruling from the Court in spite of the clear regulations given by the Supreme Court. Other issues such as overcrowding, non separation between pre-trial detainees and convicted detainees, labour of prisoners, prison riots and prison management were discussed.

At the end of the discussion, the moderator made closing remarks and suggested some draft recommendations.

SESSION 2: ESTABLISHING OF A NATIONAL PREVENTIVE MECHANISM (NPM) UNDER THE UN OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (UN OPCAT) AND CIVIL SOCIETY'S ACCESS TO ALL PLACES OF DETENTION

Introductory remarks were made by three speakers: **Mr. Zbigniew Lasocik** (International Commission of Jurists, Polish Section, Member of the UN SPT under OPCAT, Poland), **Ms. Anara Ibrayeva** (Director of Astana Branch, Kazakhstani International Bureau for Human Rights and Rule of Law, Kazakhstan) and **Ms. Svetlana Kovlyagina** (Chair of the Public Oversight Commission in Pavlodar Region, Chair of Public Foundation "Human Rights Monitoring Commission", Kazakhstan).

Mr. Zbigniew Lasocik presented the mechanism of NPM according to the OPCAT requirements. He insisted on the purpose to prevent torture i.e. to stop torture which is taking place and to reduce the risk of torture taking place. He described the three main features of the NPM (credibility; independence and transparency) and insisted on the fact that this institution must operate according to the law adopted by the Parliament. He also stressed that the NPM can visit all places of detention, can make recommendations on practice which government is obliged to take into account and can submit proposals on legislation. To that end, the NPM must have access to all places of detentions and be able to make unannounced visits, to all information on population and conditions and to all information on treatment. It must be able to make interviews and contact with SPT. Mr. Zbigniew Lasocik also presented the safeguards which have to be incorporated in the mechanism (no sanctions against any person cooperating with NPM, confidentiality of the information, no publication of personal data without consent of the affected individual, state obligation to publish reports).

Ms. Anara Ibraeva recalled the obligations of the Republic of Kazakhstan under the UN Convention against torture and other cruel, inhuman or degrading treatment and punishment (ratified on 29 June 1998) and under the OPCAT (ratified on 26 June 2008) and the recommendations made by the UN Committee against torture in November 2008. She expressed serious doubt about the will and capacity of Kazakhstan to introduce the NPM before 21 November 2009.

She recalled that several hundred facilities falling under the competences of different ministries would have to be monitored under the visiting system.

Even though some forms of monitoring are already in place in the framework of the Public Monitoring Commissions (PMC) and of the Ombudsman Office, the legal framework and the practical operation of both mechanisms need to be improved.

Ms. Anara Ibraeva recalled that the participants of the international conference on the prevention of torture in the Republic of Kazakhstan held in February 2009 in Astana considered that the most appropriate model of NPM for Kazakhstan would be the "Ombudsman Plus" model. However she stressed that none of the recommendations made at this Conference materialized and that they therefore should be reiterated.

Finally, Ms. Anara Ibraeva recommended discussing urgently the issue of the establishment of a new model of NPM or of the development of new grounds for the operation of the existing Public Monitoring Commissions.

Ms. Svetlana Kovlyagina stressed the progress accomplished since ten years in the field of monitoring of places of detention. She insisted on the need to put in place a real preventive mechanism beyond the Ombudsman system. She recalled that the Ombudsman system had to be strengthened and brought into compliance with the Paris Principles. She addressed the main concerns raised by NGOs involved in human rights monitoring in several fields including the right to health protection and medical examination, the right to complain for police action and abuse by the penitentiary personnel, the improvement of the mechanism for sending complaints, the investigation of allegations of ill-treatment, the right to communicate with relatives and the outside world in the pre-trial detention facilities, the right to qualified legal assistance, the right to unplanned visits and confidential interviews of inmates for Public Oversight Commissions.

During the discussion, some participants recalled the seminar initiated by the international NGO "Penal Reform International" and NGO partners on NPM which took place two days before the Seminar, where a study of existing public monitoring mechanisms in the country was presented. This study clearly determined that all functional schemes of public monitoring do not satisfy the OPCAT requirements, and development of the NPM requires further dialogue between civil society and national authorities in order to elaborate the OPCAT compliant model of the NPM suitable for Kazakhstan.

The representative of the Ombudsman Office recognized that the establishment of the NPM was lagging behind and declared that a Concept Note on Legal Policy for 2010-2020 and a National plan on human rights observance for 2010-2012 were currently developed. The participants stressed that establishment of the NPM requires the adoption of a Law on Public Monitoring and the provision of funds in a state and local budgets. NGOs must have an important role in the establishment and functioning of the future NPM.

One participant raised the question whether the NPM would be coordinated by the Ombudsman Office, by a governmental body or by an independent body. The existing Working Group on Prevention of Torture or the National Human Rights Center under the Ombudsman cannot be considered for a future role of a coordination body for the NPM, and moreover, it cannot play a role of the NPM, as its composition falls short of the OPCAT requirements having many representatives of national authorities as its members.

One model being discussed in the country suggests having Public Oversight Commissions working together with future regional representatives of the Ombudsman. This model will not live up to the OPCAT requirements, firstly, because the Law on the Ombudsman would need to be first adopted by the Parliament, its regional representatives selected and become operational, and secondly, it would remain to be seen if these regional representatives will have necessary institutional and financial independence as required by the OPCAT.

Another model that has been discussed is having Public Oversight Commissions reinforced by the Law, with their functions and authority brought in line with the OPCAT criteria and them serving as several NPMs. By creating a coordinating committee these Commissions could write a consolidated report for further presentation to the relevant national authority. It would need to be further explored whether it would be a Parliament, or a newly established Coordination Committee under the Ombudsman that would be a recipient of the NPMs report. The crucial issue will still be what follow up takes place after the NPMs report is presented.

Finally, with regard to the current situation, participants noted the insufficient means provided to existing Public Oversight Commissions for their activities. It was recalled that if no NPM was established by the end of 2009 Kazakhstan would be in breach of international law.

At the end of the discussion, the moderator made closing remarks and suggested some draft recommendations.

SESSION 3: FROM DEATH PENALTY TO FIXED SENTENCES: IMPROVEMENT OF THE DETENTION'S CONDITIONS FOR LONG-TERM SENTENCED DETAINEES

Introductory remarks were made by three speakers: **Dr. Carmen Thiele** (Faculty of Law, Europa-Universitaet Viadrina Frankfurt (Oder), Germany), **Dr. Georgi Bankov** (Coordinator "Closed institutions programme", Bulgarian Helsinki Committee, Bulgaria "Monitoring and evaluating of detention conditions") and **Ms. Anastasiya Knaus** (Deputy Director of Kostanai Branch Office, «Kazakhstani International Bureau of Human Rights and Rule of Law», Chair of the Public Oversight Commission on Monitoring Human Rights in Penitentiary Institutions of Kostanai Region, Kazakhstan).

Dr. Carmen Thiele recalled the existing norms at international level (UN treaties and documents) and at European level (mainly Council of Europe) regarding three main aspects: conditions of detention of long-term sentenced detainees; conditional release and prospects for ratification of UN second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. Her presentation of the conditions of detention of long-term sentenced detainees encompassed the issue of security and safety in prison, the issue of counteracting the damaging effects of life and other long-term sentences and the issue of reintegration of this category of prisoners into society. She stressed in particular the importance of maintaining family ties and communication with the outside world and of granting various forms of prison leave, if necessary under escort. Finally, she stressed the fact that States like Kazakhstan, aiming to achieve European standards, have to consider the abolition of the death penalty and that important steps towards a complete abolition had already been taken by Kazakhstan in this regard (reduction of the scope of death penalty and moratorium on

executions).

Dr. Georgi Bankov expressed a practical standpoint on monitoring aspects stemming from his experience in Bulgaria. His NGO has undertaken a systematic monitoring of correctional institutions since 1996 on the basis of an agreement with the Ministry of Justice allowing surprise access during working hours. He insisted on the importance to have an adequate methodology and proper criteria. This monitoring brought both qualitative and quantitative changes. He insisted on the most important aspects of the conditions of detention that have to be monitored: communication with the outside world, confidentiality of correspondence, unimpeded communication with monitoring bodies, reporting about violence to competent bodies, integration of the medical service within the national health system.

Ms. Anastasiya Knaus recalled that the introduction of the moratorium on death penalty and life sentence has generated many questions with regard to safety of those imprisoned for life, conditions of their imprisonment, possible parole, etc. She indicated that the current Criminal Code of the RK provided for significantly longer maximum terms of imprisonment compared to the earlier Criminal Code of 1959. Now, the maximum imprisonment sentence is 25 years (maximum 30 years for cumulative sentence). According to Ms. Anastasiya Knaus, this does not take into account international and European standards, recommendations made by researchers nor additional expenses in terms of facilities and staff.

She described the conditions of detention of persons initially sentenced to death penalty (changed to life sentence) and persons sentenced to life imprisonment who are currently held in the high security colony UK 161/3 in Kostanaj oblast. While recognizing that the situation had improved regarding the opportunity to have access to newspapers, radio and TV as well as regarding walk and sport, she raised important concerns in different areas: prohibition from lying down during the day; prohibition from opening and closing ventilation window without permission; right to long visits by relatives only after having served 10 years in high security conditions; restrictions on telephone conversations; inadequate medical assistance in particular for TB-positive detainees; inadequate sewage system; no opportunity to work.

During the discussion, the obstacles linked to the huge size of the country were raised regarding the right of unannounced visits. One participant recalled that Kazakhstan was not bound by the European Prison Rules. Other participants insisted on the fact that European standards and rules had to be seen as universal standards and as strong political commitments equalling to legal commitments. Hopes were expressed that further developments in legislation recently introduced by Parliament would enable Kazakhstan to join the UN second Optional Protocol to the ICCPR. One participant recalled the requirements for early conditional release and the fact that the decision was eventually made by the Court. Recommendations were expressed in the field of NGO access to prisons, training of prison staff and improvement of their reputation. Some concerns were expressed regarding the conditions of detention of people with disabilities, solitary confinement, and the work of psychologists. One participant insisted on the fact that reforms of conditions in prisons should be part of a general reform of the entire criminal policy of the State. Criminal legislation should be humanized and more alternatives to deprivation of liberty should be developed. One participant stressed the fact that Kazakhstan should officially claim a zero tolerance policy towards torture. One participant described the regulatory framework relating to long sentenced prisoners and the dire conditions of some facilities due to insufficient funding.

At the end of the discussion, the moderator made closing remarks and suggested some draft recommendations.

SESSION 4: HUMANIZATION OF DETENTION CONDITIONS AND EFFECTIVENESS OF COMPLAINT MECHANISMS AGAINST DETENTION CONDITIONS AND ILL-TREATMENT

Introductory remarks were made by three speakers: **Mr. Nikhil Roy** (Programme Development Director, Penal Reform International (PRI), UK), **Mr. Kuat Rakhimberdin** (Dean of the Law Faculty, East-Kazakhstan State University, Kazakhstan) and **Ms. Tatiana Chernobil** (Associate Legal Officer, Open Society Justice Initiative, Kazakhstan).

Mr. Nikhil Roy made a presentation on the role of Prevention and Monitoring/Complaints Mechanisms in the improvement of conditions of detention on the basis of PRI's mandate and experience whose focus is the reduction of the use of imprisonment throughout the world and the use of constructive non-custodial sanctions. He insisted on the wider use of alternative punishments, such as community service; the implementation of measures for early release; the setting-up of a specialized system of juvenile justice and the improvement of programmes of reintegration. He also recalled the requirements of the OPCAT regarding the establishment of a NPM and gave the example of a good practice in the UK regarding the complaint procedure.

Mr. Kuat Rakhimberdin recalled the repressive nature of the criminal and correctional system of Kazakhstan and the very inhuman conditions of detention over many decades of the 20th century. He insisted on the significant changes which the penitentiary system of Kazakhstan has undergone over the last decade in order to extend the rights of arrested and convicted persons and to make the conditions of detention more humane. Yet there are still many violations of the rights of arrested and convicted persons in Kazakhstani penitentiary facilities. Mr. Kuat Rakhimberdin gave indicators of unsolved issues such as the overcrowding, the non-effectiveness of funds spent for new facilities, the increasing suicide rate, the high rate of crimes behind bars, the spreading of diseases (tuberculosis, HIV). He stressed the fact that the governmental criminal policy was still very punitive and not yet aimed at introducing measures of punishment alternative to incarceration. He concluded by saying that despite the establishment of 15 Public Oversight Commissions in the regions and in the cities of Astana and Almaty, there were a lot of unsolved issues regarding this mechanism and that Kazakhstan still had to fulfil its obligation to create a NPM under the OPCAT.

Ms. Tatiana Chernobil gave some examples of treatment inflicted by the staff for the purpose of punishing a person for disciplinary violations which amounted to torture. However, complaints submitted on behalf of the victims to the Commissioner for Human Rights and the prosecutor did not receive any response. She stressed the fact that complaints of inmates against torture did rarely result in full-fledged criminal investigation. Inmates themselves do not see any point to complain, since their complaints are not further investigated and they find it very difficult to prove guilt in such cases. In addition, some medical workers in the facilities are indifferent and unwilling to act. Ms. Tatiana Chernobil therefore concluded, as the UN Special Rapporteur on Torture did after his visit in May 2009, that there was *de facto* no effective complaint mechanism in place in Kazakhstan. She made several concrete recommendations in this regard.

During the discussion, participants suggested some recommendations on various issues: access of prisoners to independent health professionals and right to do an independent medical examination, compensation of damage inflicted to prisoners, improvement of the complaint mechanism, and coordination of the work on creationg of the juvenile justice.

At the end of the discussion, the moderator made closing remarks and suggested some draft recommendations.

PLENARY SESSION II: DEVELOPING AND APPLYING IN PRACTICE ALTERNATIVES TO IMPRISONMENT: THE EUROPEAN EXPERIENCE AND OUTSTANDING PRIORITIES FOR THE REPUBLIC OF KAZAKHSTAN

Introductory remarks were made by three speakers: **Baroness Doctor Vivien Stern,** Senior Research Fellow from the International Centre for Prison Studies in King's College of the University of London, **Ms. Vera Tkachenko,** Director of the Legal Policy Research Centre from Kazakhstan, and **Professor Galina Sudakova,** Director of the Baltic Training Center, Professor at St. Petersburg's State Institute of Social Work, Kazakh Academy of Labour and Social Relations.

Baroness Doctor Vivien Stern declared that she found Kazakhstan's civil society movement very organized, mature, effective and dedicated. She then introduced her presentation about alternatives to imprisonment by asking the fundamental question whether the introduction of alternatives to prison enhanced and protected human rights. On the basis of the European experience, she answered that it was sometimes the case and sometimes not. It could damage human rights if it was just used as a means to make business. However using prison less and using alternatives to prison more (in particular in pre-trial detention) is a progress, as for example in Finland. She also stressed that the best alternatives to detention were models that provide integration, in cooperation with the local administration as in Scotland. She concluded that alternatives to imprisonment were good criminal policy and social policy.

Ms. Vera Tkachenko reminded of Kazakhstani prison heritage received since the Soviet times and high prison population rates. She regrettably noted that recent statistics of prison population is rather high in spite of introduction of alternatives to imprisonment in the new Criminal Code of the Republic of Kazakhstan back in 1998.

Such alternative measures as penalty, correctional work, deprivation of the right to carry out certain type of activity/occupy a certain position, and community service have been provided in the law but not implemented in practice due to a lack of detailed and clear procedures for their enforcement. The speaker further elaborated on non-existence of the probation service in Kazakhstan which was a major hindrance to establishing a functioning system of alternatives to imprisonment, including conditional sentence of deprivation of liberty, as well as early release on parole.

She explained that currently, the so called penal executive inspections of the Ministry of Justice of Kazakhstan partially assume the functions of the probation service, but they lack technical, financial and human resources in order to fulfil all functions of the probation service vis-a-vis all those on probation. In conclusion, she recommended to the government to address the issue of alternatives to imprisonment in a consistent and coherent manner and urgently establish a well-functioning system that could use the available range of alternative punishments as well as introduce new types of alternatives that have not yet been explored in Kazakhstan.

Ms. Galina Sudakova in her presentation referred to a possible use of family reunions for those serving their imprisonment term in order to retain family ties and make it easier to reintegrate into the family and society upon the release. She believed that in Kazakhstan an old approach of police response to crime prevention is counter-productive and will not yield any results. She recommended transferring existing Centers for temporary isolation and adaptation of minors

from the Ministry of Interior to the jurisdiction of the Ministry of Justice or Education in order to ensure social approach to the prevention of crime among minors.

Ms. Sudakova stressed that effectiveness of the social approach to crime prevention can be further enhanced through closer ties of social workers with classical human rights NGOs, who are often the first points of contact for persons in conflict with the law. She recommended setting up a database with the lists of all social workers that could be invited to cooperate with NGOs.

During the discussion, in response to Ms. Sudakova's proposal to merge efforts of human rights NGOs and social workers, civil society representatives from Kazakhstan noted that national laws on penitentiaries and other detention facilities should stipulate that Public Oversight Commissions existing in Kazakhstan jointly with human rights NGOs and social workers should synergize their efforts when working with the penitentiary institutions.

With reference to the Ministry's of Interior initiative to conduct mandatory testing of school and university students for the use of drugs, the Russian speaker noted that mandatory and forcible testing of children by the Ministry of Interior in order to prevent the drug use at schools is counter-productive and will not be successful in terms of its preventive effect.

It was stated by one participant that frequent incidents of aggression and violence taking place in the centres of temporary isolation and adaptation of minors and other social institutions for children can be explained by the absence of an adequate number of professional staff in these institutions. Legislative rules, for instance, internal regulations issued by relevant executive bodies for such type of institutions, do not allow for any demonstration of children's independence, expression of their will and self-government, so children are forced to express their dissatisfaction with such repressive approaches through the only available means – aggression and violent protest.

Another participant added that these centers of temporary isolation and adaptation of minors are regulated by internal instructions issued by the Ministry of Interior and moreover, are staffed with police officers who are not trained to work with children of various age from three to 18 years old. In practice, homeless and abandoned children are kept together with children in conflict with the law – and their detention conditions fall under the same regime. Therefore, one of the first recommendations to the government would be to transfer these isolation centers to the Ministry of Education and ensure that children suspected of being in conflict with the law and those who have been already tried are kept separately from each other and also from those minors who are not suspected of committing any offence.

A note was made on a need for further reform of national law in order to fully implement juvenile justice principles contained in the Concept on Juvenile Justice recently adopted in Kazakhstan, and ensure lenient and alternative punishments for juvenile offenders, including exclusion of a repeated offence as an aggravating circumstance if it is committed by a child, younger than 18 years old.

The Russian expert, Mr. Leonid Golovko, recommended promptly introducing mediation and elements of restorative justice procedures in practice of Kazakhstan. This proposal was supported by Kazakhtani experts who stated that in theory, mediation in criminal proceedings can be introduced through the reconciliation procedure provided for in the Criminal Code of Kazakhstan. It was noted that unfortunately, it is unlikely that this legal possibility will be used

in practice, since it is currently undermined by the provision of the Code of Criminal Procedure that allows investigators and prosecutors in certain cases to use their discretionary authority and send criminal cases to court, even though the affected parties might have already reached reconciliation among themselves. Thus, it was concluded by the participants, that in order to raise public awareness about restorative justice, promote its wider use and educate relevant professionals about its advantages and benefits, a range of public information campaigns and discussions among lawyers, psychologists and law enforcement personnel would be needed in Kazakhstan.

In order to promote application of the alternatives to imprisonment by judges, human rights lawyers suggested introducing a procedural requirement that would oblige judges to provide reasoning in their decisions dismissing the application of alternative punishments or restraint measures. As far as the reintegration of the released persons back in the society is concerned, it was suggested that civil society organizations could carry out monitoring of this process and could provide valuable recommendations on its improvement.

In conclusion it was noted that often judges are wary of applying the alternative punishments out of fear of being accused of bribery or corruption. While tackling this phenomenon, continuous humanization of the criminal law in Kazakhstan was recommended that should lead to reducing the punitive nature of applicable sanctions and excluding deprivation of liberty as a sanction for a range of less serious crimes.

CLOSING SESSION

H.E. Ambassador Norbert Jousten, Head of the Delegation of the European Commission to the Republic of Kazakhstan, thanked all the participants for their active contribution. The wealth of recommendations developed by civil society organizations showed that the seminar was interesting and useful and responded to the expectations. The recommendations will be considered with interest by the European Commission and used in the next formal Dialogue with the authorities of Kazakhstan. He stressed the fact that strengthening the independence of the judiciary was one of the priorities of the EC Delegation in its work in Kazakhstan.

The moderators thanked all participants for their active participation in the discussions and in elaboration of the recommendations. Participants were invited to submit their further proposals to the reviewed draft recommendations in writing during the next few days.

In conclusion, the moderators explained that the Final Report on the Seminar would be made public and would contain a full list of the proposed recommendations. These recommendations would be discussed with national authorities during future meetings in the framework of the official human rights dialogue of the European Union with Kazakhstan. Moreover, there were future civil society seminars envisaged that would offer additional opportunities to share civil society's views on the existing legal and human rights situation in Kazakhstan with relevant European Union and national authorities' representatives.

FULL SET OF RECOMMENDATIONS OF CIVIL SOCIETY REPRESENTATIVES FROM EUROPE AND KAZAKHSTAN

The first EU-Kazakhstan Seminar on human rights that gathered civil society representatives was held in Almaty on June 29-30, 2009. Following these two days of discussions on different issues related to administrative liability, judicial system, confinement conditions in detention facilities, as well as the development and practical application of various alternatives to imprisonment, civil society representatives from Kazakhstan and Europe adopted a number of recommendations. These recommendations will be presented to officials from the EU and the Republic of Kazakhstan for their further consideration during the second round of the official dialogue on human rights, scheduled for autumn 2009.

Many of these recommendations were presented to seminar participants in writing before or after the workshop. The recommendations have been laid out in this document by the organizers without any significant editing or abridgements, even if they were not discussed fully during the seminar due to limited time for discussions.

Civil society representatives from the Republic of Kazakhstan and Europe who took part in the seminar and drafted these recommendations will hereinafter be referred to as "seminar participants."

General recommendations:

1. The seminar participants recognized the importance of human dimension (human rights) in the strategic partnership between the EU and the Republic of Kazakhstan, as well as the role of non-governmental organizations in this partnership, particularly in conducting a human rights dialogue, and urged the EU to ensure the implementation of the EU Guidelines on Human Rights Defenders;
2. The seminar participants urged officials in the EU and Kazakhstan to make sure they take into consideration the recommendations of various UN treaty bodies and Special Rapporteurs when conducting an official dialogue, and particularly the recommendations provided to Kazakhstan by the UN Committee against Torture (2008)[12], Special Rapporteur on the independence of judges and lawyers (2005)[13], and Special Rapporteur on Torture (2009)[14]. They also stressed the importance of adopting a procedure for implementing these conclusions and comments in Kazakhstan's legislative and law enforcement practice;
3. The seminar participants based their recommendations on international and European law, human rights, and case law of the UN committees, European Court of Human Rights and Recommendations of the Committee of Ministers in the Council of Europe related to the seminar[15];
4. Among other things, references were made to legally binding provisions of the International Covenant on Civil and Political Rights (ICCPR), UN Convention against

[12]UN Document CAT/C/KAZ/CO/2, 12 December 2008. For more information, see documents from the 41st session of the UN Committee Against Torture.
[13] UN Document E/CN.4/2005/60/Add.2, 11 January 2005.
[14] Report to be published in 2009. See press release by the Special Rapporteur after his visit to the Republic of Kazakhstan.
[15] In particular, Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules and comments to them, and Recommendation (2003) 22 2 on conditional release (parole).

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Optional Protocol to the UN Convention against Torture, which were ratified by the Republic of Kazakhstan, and also the Standard Minimum Rules for the Treatment of Prisoners;

5. The seminar participants recommended that the Republic of Kazakhstan abolish the death penalty, ratify the second Optional Protocol to the ICCPR aimed at abolishing capital punishment, and finalize its accession to the first Optional Protocol to the ICCPR this year by lodging ratification instruments to the UN depositary in New York, so that citizens whose rights were violated by the Republic of Kazakhstan could submit their individual complaints to the UN Human Rights Committee;
6. The seminar participants emphasized the need to take into account the existing difficulties in implementing gender equality, and acknowledged the importance of adopting special procedural rules for vulnerable groups that require special protection (people with disabilities, asylum-seekers, refugees, victims of torture, minors, etc);
7. The seminar participants agreed that Kazakhstan should consider and use all possible ways of developing closer ties with the Council of Europe, including the ratification of those instruments which have been made open for signing by third countries, including through ratification of the European Convention for the Prevention of Torture, and by broadening ties with the Venice Commission. This can be done, for example, by submitting requests to analyze daft laws and current laws of the Republic of Kazakhstan by experts, and through establishing contacts with other bodies in the Council of Europe, for instance, when conducting training courses for judges with demonstrating the experience of Europeans countries and participating in different events and forums;
8. In the mid-term perspective, the seminar participants recommended that the issue of joining the Council of Europe and acceding to the European Convention on Human Rights be considered in order to allow for individual complaints to be submitted to the European Court of Human Rights;
9. The seminar participants stressed the importance of education on human rights and recommended to conduct regular continuing education courses for public officials on international law, human rights, and the rights of refugees, as well as workshops for judges, prosecutors and defense lawyers for them to acquire international and European standards of human rights protection;
10. Civil society representatives stressed the importance of conducting a dialogue between civil society and government institutions, and put forward the idea of expanding the participation of civil society in legislative activities by strengthening appropriate procedures in the Law of the Republic of Kazakhstan "On Regulatory and Legal Frameworks," and also by avoiding cases when laws are developed based a non-transparent procedure by one-sided agencies lobbying their corporate interests;
11. In the short-term perspective, the seminar participants urged the Government of the Republic of Kazakhstan to publish a Concept on Legal Reform for the Republic of Kazakhstan for 2010-2020 in order to discuss it publicly before it is formally adopted;
12. To follow the **prohibition of torture** effectively, the seminar participants recommended all relevant government institutions in Kazakhstan to do the following:

- to denounce the use of torture and other forms of inhuman treatment, and to ensure that no confession obtained through the use of torture and other forms of inhuman treatment be used in courts as evidence, other than the evidence against those charged with the use of torture;
- it is important to ensure the unavoidability of punishment for torture and to provide for hefty imprisonment sentences for this crime, which will be an efficient constraining factor for law enforcement bodies not to use it;

- since there is always a danger that rights can be violated if people don't know about them, detainees should be informed immediately of why they were arrested and what charges were brought against them. Also, they should have a secured right to access a defense lawyer of their choosing immediately and regularly, as well as their family members and an independent medical worker. It should be ensured that all individuals who arrive at detention facilities or detainees in the police detention facilities should be informed in writing about the rules for treating detained persons, duties of detained persons, rules for accessing information and submitting complaints in accordance with international law;
- it should be ensured that all complaints on cases of torture, cruel treatment or punishment used against anyone detained or under arrest and deprived of freedom are investigated quickly, impartially and comprehensively, which should also be done if there is no formal complaint, but there are enough grounds to believe that torture and inhuman treatment was applied. Any investigation should include interviewing victims of torture and witnesses, and collecting all factual evidence, and if these allegations are found to be true, all those guilty should be brought to justice;
- the prosecutor's office, in their turn, should inspect any allegations of torture made both during trial or pretrial proceedings and outside a criminal case investigation;
- it should be considered that internal inspection and interrogation of persons against who a complain is filed are not an appropriate and effective response to allegations of torture;
- it is necessary to create a mechanism whereby complaints on torture or cruel treatment by convicts or detainees could be submitted unrestrictedly and considered effectively and in due time. This mechanism should provide for the right to lodge an individual complaint to external bodies that should be obliged to consider them immediately, as required by European and international norms (Standard Minimum Rules for the Treatment of Prisoners and European Prison Rules). Any response to a complaint should be motivated and detailed, and in case there is a need, it should allow for a well grounded appeal;
- to establish a mandatory procedure whereby detainees become familiar with all documents (decisions) that touch upon their rights and interests, including the way they can be appealed, and confirm it by their signature; to make sure convicts can, if they request so, receive copies of all necessary documents from their personal files; and to develop control mechanisms over the registration and submission of complaints and petitions by convicts to supervisory bodies;
- when conducting investigations on acts of disobedience, it is important that inspection commissions include representatives of public oversight commissions as the monitors, i.e. civil society representatives, who would be independent from the Penal System Committee Board (UKUIS) and Ministry of Justice;
- to transfer medical workers in prisons to the Ministry of Health, and in case there are allegations of torture or ruthless treatment among convicts and cases of torture and its consequences are investigated and documented, it is importance to ensure practical application of the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, commonly known as the Istanbul Protocol as of 1999; medical workers should be made obliged to conduct proper medical examinations;
- in the near future, to consider the establishment of a fully equipped, independent, accessible and transparent body for investigating all cases when the prohibition of torture and other forms of cruel treatment is disregarded by any public official, which is required, *inter alia*, by the Convention against Torture.

Recognizing the importance of following strictly Article 9 of the ICCPR and considering General Comment 8 of the UN Human Rights Committee to Article 9 of the ICCPR, the

seminar participants urged the Parliament of the Republic of Kazakhstan to closely review the position of civil society and independent experts while discussing the draft law "On Amending Some Legislative Acts of the Republic of Kazakhstan on Strengthening Grounds and Procedure for Detention of Citizens." They also believe that:

- in order to fully implement the *habeas corpus* principle in the law and in practice, a clear mechanism should be envisaged for courts to consider legal grounds for and justification of arrest;
- it is important to follow the recommendation of the UN Committee against Torture in Item 26 of their conclusions to the second report by the Republic of Kazakhstan on implementation of the UN Convention against Torture and to reform the procuracy, particularly by amending Article 16 (2) of Kazakhstan's Constitution in order to limit the dominating role of a prosecutor in the country's legal system;
- confining individuals in reception centers for up to 30 days as ordered by a prosecutor for the purpose of personal identification and inspection as to whether or not a particular individual is suspected of a crime violates the right to freedom and security of person; therefore, such practice of social control should be fully abolished as contradictory to international human rights standards. Some of the functions of such reception centers should be transferred to the social services.;
- it is required to bring certain regulations of the national legislation in line with international standards, dealing with the placement and confinement of persons in special social facilities, such as Centres for Temporary Isolation, Adaptation and Rehabilitation for Minors (CTIARMs), medical sobering-up stations, as well as specialized medical and prevention facilities, to allow for mandatory judicial control over the placement and detention of persons in such facilities, and to make them accessible for an independent public monitoring;
- it is necessary to strengthen the work of organizations implementing the state sanitary and epidemiological control in reception centres belonging to the Ministry of the Interior together with the Ministry of Health of the Republic of Kazakhstan;
- all appropriate steps should be made to transfer pretrial detention facilities (SIZO) from the jurisdiction of the National Security Committee to the Ministry of Justice; to remove CTIARMs from under the jurisdiction of the Interior Ministry and transfer them to the Ministry of Education and Science of the Republic of Kazakhstan;
- a legal basis should be developed and specific steps should be made to ensure the protection of human rights and fundamental freedoms among persons undergoing treatment in specialized medical and prevention facilities within the framework of regulating the work of social institutions, rather than penal facilities;
- if asylum-seekers are placed in detention facilities (temporary detention, prisons, detention at border crossing points), it is important that their right to refugee status identification and *non-refoulement* be respected.

PLENARY SESSION I: LEGISLATIVE REGULATION OF ADMINISTRATIVE RESPONSIBILITY

While discussing administrative responsibility, the seminar participants reached a conclusion that in order to overcome the conceptual deformations in Kazakhstan's legal system that remain from the Soviet epoch it is imperative that the following be done:

- understanding the concept of administrative responsibility exclusively as a responsibility of public administration in front of private citizens, which should be reflected in the new Administrative Procedure Code (APC), and developing administrative justice institutions;

- introducing the notion of administrative and delictual law where administrative misdemeanors (offenses or delicts) will be related only to the violation of administrative law, be the prerogative of administrative bodies and be punished based exclusively on the administrative (extrajudicial) procedure through the use of a limited number of administrative penalties, such as a warning, fine and short-term restriction of the special right. This should be done in full compliance with the principle of equality of arms and adversarial trial, which will enable the defense counsel to attract experts and witnesses independently;
- separating and leaving the other part of offenses under the jurisdiction of courts, provided that they are re-classified as criminal offenses (punishable by courts), removed from the administrative legislation and made part of criminal regulation; liability for such punishable offenses will not include deprivation of freedom, conviction will not count toward criminal history, and there will be a clear legal prohibition on the use of pre-trial detention in such categories of cases;
- in the short-term perspective, developing all types of coercive response by the state to any illegal acts regardless of their terminological classification (administrative offenses or criminal offenses), and exclusively within the realm of criminal law, taking into account, first and foremost, a full package of criminal and criminal procedure safeguards;
- making sure that any deprivation of freedom is envisaged exclusively by the Criminal Code as punishment for acts which are considered by the state as criminal offenses; therefore, it is imperative that administrative arrest and other types of short-term deprivation of freedom be dropped out as punishment (penalty) in the Code on Administrative Offenses (CAO);
- envisaging the norms of police detention exclusively in the criminal procedure legislation; if there is a need to do so, differentiating detention mechanisms in criminal procedure law depending on the severity and danger of a particular crime, including from the viewpoint of time in custody (within limits envisioned by Article 16 of Kazakhstan's Constitution);
- thus, to abandon the notion of *administrative arrest* and allow for detention as a short-term deprivation of freedom by the police only in cases of acts recognized by the state as *criminal offences*.

The seminar participants concluded that broadening judicial control in criminal proceedings may lead to a situation when the administrative and delictual procedure will be some sort of a loophole for possible abuses on the part of government bodies that will start collecting evidence in criminal cases using administrative norms which are not properly controlled by the judiciary. In this regard, it is required to revise the procedures ensuring the respect of fundamental human rights and freedoms in the Code on Administrative Offenses or, taking into account all previous recommendations, in the new provisions of relevant laws, including the following:

- *right not to testify against yourself* should be guaranteed by: 1) a prohibition to use testimony obtained from individuals forcedly during previous administrative proceedings as evidence in a criminal case; 2) allowing administrative bodies to access documents or material evidence only based on a person's voluntary consent, court decision or, in some exceptional cases, in order to save someone's life or property;
- *security of housing* should include any housing and private property of either physical or legal entities, which can be accessed by the state only with the consent of the owner, following a judicial decision or in case of emergency;
- *inviolability of property* implies that any restriction of property rights or deprivation of property, even if is temporary and a court appeal is possible, should be reviewed by the

court within the shortest time period possible (24 or 48 hours) in order to prove that the measures taken were legal and well grounded;

- *presumption of innocence*, envisaged in Article 12 of the Code on Administrative Offenses, implies that persons are recognized as "offenders" or "violators" (Articles 21, 619, 627-2, 638) who are "held responsible," and not "those who committed an administrative offense" (Sections 4, 4-1 of Article 635, Section 2 of Article 638, Section 1 of Article 639) from the moment an administrative offense report is produced.

WORKING GROUP I: JUDICIAL SYSTEM

While discussing issues related of the judicial system and fair trial during the working session, the seminar participants acknowledged the importance of the judiciary in ensuring the respect of human rights and enforcing the laws in practice. They also stressed the leading role of judges not only in applying international and national norms, but also in interpreting them through the prism of human rights.

To ensure the independence of judges while administering justice and to comply with the principle of a fair trial, the participants developed the following recommendations:

- to envisage the establishment of the High Judicial Council in the law that will include wide civil society participation;
- to develop and to strengthen legislatively transparent procedures and clear criteria for appointing and selecting candidates for the position of judges and chairpersons of courts on a competitive basis, including judges of the Supreme Court;
- to ensure openness and democratic principles in selecting and appointing judges, the public should be involved in this process, and in order to develop the judicial system even further, the issue of establishing justice of the peace should be considered;
- to bring disciplinary liability of judges in line with international standards and to abolish the Judicial Jury;
- to suppress non-procedural relations (including consultations on specific cases, various inspections of judges by higher-level courts, etc) between higher-level and lower-level courts and chairpersons of courts;
- to abolish inter-plenary and operational meetings, since they contradict the Constitutional Law of the Republic of Kazakhstan "On Judicial System and Status of Judges";
- to provide proper working conditions for judges, their workload should be analyzed, and based on these conclusions, a standard workload should be developed, also increasing the number of judges in order to comply with this standard workload;
- to create appropriate working conditions for judges, including proper legal and administrative support, which would enable judges to shuffle off secondary duties that distract them from administering justice;
- to strengthen legislatively the division of functions related to judicial control and adjudicating on the merits by differentiating judges into those adjudicating on the merits and those implementing judicial control (through introduction of magistrate courts);
- to deprive the Chair of the Supreme Court of the right to discretionary review on appeal;
- to establish a Constitutional Court in the Republic of Kazakhstan that would have the authority to review individual complaints.

To bring the national legislation in line with **international standards on fair trial**, and particularly on the **principle of equality of arms between the prosecution and the defense counsel**, the participants recommended that the following be done:

- to make amendments in criminal procedure law aimed at increasing the rights of lawyers in criminal proceedings;
- to ensure access to cases for lawyers chosen by the suspect or the accused without any justified restrictions related to security clearance, and to develop a transparent mechanism of accessing state secrets;
- to keep the norms allowing close relatives of the suspect/defendant and representatives of public associations to provide counsel in the legislation;
- to abandon default judgments with regard to criminal cases and the use of secret witnesses until Kazakhstan's legislation is brought in line with international standards;
- to ensure an effective control, *a priori* and *a posteriori*, over the actions and decisions of those who conduct a pretrial investigation;
- to set the goal of integrating all legislation on special investigation means in criminal law, thus making it follow common regulations and judicial control.

The following should be done to **ensure openness of trial proceedings**:
- to provide all those interested with unimpeded access to all open trial proceedings, including those with the participation of jurors, and to cancel the restricting agency regulations on public access to courtrooms;
- to inform the parties about the time and venue of trial hearings, all relevant schedules should contain comprehensive and credible information about the hearing, should be updated regularly and located in easily accessible places for everyone to see;
- to develop a practice of videotaping trial hearings if requested by the parties, and to allow for open publication of all judicial decisions.

The following steps should be made in order to ensure the **right of every person to face jury trial** and to improve the legal and practical aspects related to the existing jury trial model:
- to remove vagueness that exists in several provisions of the Law "On Jurors" and to improve the compilation of lists, it is crucial to consider a more detailed legal regulation of the procedure for compiling lists of juror candidates and to improve the legislative regulation of the procedure for selecting juror candidates, ensuring that both parties are present during this time; to use reliable technical instruments that guarantee that jurors are selected randomly; and to ensure the accountability of public officials for violating this procedure and time period allocated for compiling lists of juror candidates;
- to envisage a unified, simple and open procedure (with civil society being able to control it from outside) of selecting candidates randomly from the list who live in a particular administrative and territorial unit by developing one single software for all local executive bodies;
- the law should specify a body in the *akimat* structure that would be responsible for compiling such lists and strengthen the duty of *akimat* staff members to verify voters' lists, and in case there is a need to do so, other databases should be used in order to compile a more comprehensive list of citizens living in a particular region (town of oblast subordinance);
- to envisage specific numerical benchmarks in the Law "On Jurors" so that the population of all regions in a particular oblast (or a town of republican subordinance) could be represented proportionally in common lists;
- to improve the legal mechanism for verifying whether or not candidates meet the requirements of the Law, having ensured due efficiency and confidentiality, and to conduct such verification only upon completing random sampling, and also through sending an initial list to authorized bodies (clinics, prosecutor's offices, etc) so that they could exclude those are registered with these bodies and facilities; to give government bodies, organizations and

citizens more time in order to verify whether or not particular citizens meet the requirements for jurors which are spelled out in Article 10 of this Law;

- to develop a clearer legislative procedure for citizens to receive information on being selected as jurors and procedure for free public access to local executive bodies and obtaining information on the rights granted to them by law;
- to develop a legislative procedure and method on notifying juror candidates and summoning them to court in order to participate in the selection procedure; to avoid cases when juror candidates fail to appear, it is crucial to strengthen a public awareness campaign in order to tell more about the duties, meaning and work procedure of jury trials, avoiding a broader interpretation of the law exempting from carrying out the duties of a juror;
- since litigants do not actively exercise their right interview juror candidates by means of questions proposed in writing by the prosecutor, victim, defendant and defense lawyer and read out loud by the judge, it is necessary to consider possible legislative amendments allowing litigants to question juror candidates personally in order to find out whether or not they can be impartial;
- to provide the defendant with the right to file a motion requesting that his/her case be heard by the jury after being told about this right not only by an investigator at the end of investigation, but also by court during a preliminary hearing at the presence of a defense lawyer;
- to start implementing in practice the legislative plan on changing the existing jury trial model and reducing the number of professional judges from two to one;
- to ensure the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment and to abide by the rule of law, presumption of innocence and witness immunity, it is crucial to solve the issue of removing any factual data from the case files that is inadmissible as evidence in the presence of the jury;
- during the trial investigation, the chairperson should, on a mandatory basis, explain all those who are interviewed that it is not admissible to tell in front of the jury about the defendant's past criminal history, or his/her addiction to alcohol or drugs;
- for the jury to study all facts of the case, measures should be taken to exclude unjustified limitations of the jury in obtaining information about the victim's personality or defendant's personality that do not cause any bias against him/her from trial proceedings, and to oblige the chairperson to motivate his/her refusal to read out the questions that the jury posed to litigants;
- since the law divides any dispute into two parts that face various tasks, litigants should have a chance to speak up in their statements regarding each other's position fully;
- to formulate questions for the jury after the trial hearing and before reading the verdict in such a way that would make them comprehensible for people who do not have any legal background and reflect the facts of the case;
- in order to create the best conditions for ensuring the equality of arms and adversarial trial, and to increase the edifying impact of criminal proceedings and solemnity of justice administration, regulatory acts should contain common requirements for the setting inside courtrooms with the jury, and there should be no advantages for any of the parties vis-à-vis the jury; there should be no other conditions that may impact the outcome of the case except for those envisaged by criminal procedure law.

While discussing the issue of **enforcing judicial decisions**, the seminar participants made the following conclusions:

- the number of court enforcement officers should be increased, since sometimes there are cases when one court enforcement officer has up to 500 judicial decisions to enforce, and their salary should be increased as well;

- rights of parties in enforcement proceedings and their representatives (particularly defense lawyers) should be increased, so that they could participate in the enforcement procedure more effectively;
- court enforcement officers should be brought to administrative and criminal liability for violating the law, abusing and exceeding their power, which should be envisaged by the legislation; also, the law should provide for appropriate budget financing to pay out compensation in case state court enforcement officers do not exercise their duties properly;
- to envisage a legislative possibility of suspending the enforcement of a judicial decision for the benefit of the state until all judicial instances are exhausted;
- similarly, it is critical to remove the provision contained in the Instructions of the Court Administration Committee under the Supreme Court saying that judicial decisions against the state should not be enforced until all judicial instances are exhausted;
- in order to attract highly qualified staff to work as court enforcement officers, the job should be made more prestigious by working with beginning lawyers and students and increasing their awareness;
- it is recommended to consider the benefits of returning to the old provision of the Law "On Enforcement Proceedings and Status of Court Enforcement Officers" on the enforcement sanction, some of which, as remuneration, was vested in court enforcement officers;
- since on June 17, 2009 the Mazhilis of the Republic of Kazakhstan adopted draft laws "On Enforcement Proceedings and Status of Court Enforcement Officers" and " On Amending Some Legislative Acts of the Republic of Kazakhstan on Enforcement Proceedings" unanimously at the second reading, which suggest that private court enforcement officers be introduced along with those representing the state, it is critical to hold public debates as soon as possible on whether or not introduction of such a aystem of private court bailiffs may undermine the respect of human rights and freedoms, the Senate of the Republic of Kazakhstan should be advised to request legal examination by human rights experts as to whether the norms of the draft laws are in line with Kazakhstan international obligations, particularly the right to privacy and inviolability of private property;
- it is mandatory to establish a state control mechanism over the activities of private court enforcement officers, which should be done by an authorized body directly and through control units that will be established by private enforcement officers themselves;
- to guarantee that property rights of the parties to enforcement proceedings are respected, there should be a two-tier mandatory insurance system of professional accountability (private and general insurance) for private court enforcement officers;
- there should be a mechanism in place whereby the work of private court enforcement officers will be paid by debtors based on enforcement action rates clearly defined by the government; in case the enforcement document is actually executed, the services should be reimbursed as interests on the amount recovered, with a regulated upper limit.

WORKING GROUP II: CONDITIONS OF DETENTION

During their discussion, the seminar participants stressed the importance of providing NGOs with an unimpeded opportunity to conduct independent public monitoring in detention facilities and, the need to implement projects on strengthening the skills and enriching the knowledge of NGOs on how to conduct monitoring, and the expediency of holding a continuous dialogue with local and state bodies about improving confinement conditions in detention facilities.

The participants came up with the following recommendations as regards the improvement of **detention conditions**:

- to follow scrupulously the Standard Minimum Rules for the Treatment of Prisoners in all detention facilities;
- to make amendments in the Correctional Code (CC) to remove restrictions on the number of parcels and packages, and to allow convicts to meet not only with their close relatives, but also with other people, which will enable them to stay in touch with the rest of the world;
- Correctional System Committee (CSC) should increase its financing on updating medical equipment; it is also critical to bring the level of dental health service in line with civil health care;
- to review and to increase the standard amount of personal hygiene items and items for washing clothes among convicts; to consider the possibility of building yards which are better fit for walking in pretrial detention facilities, penitentiary centres, punishment cells and cell-type rooms, which will enable convicts engage in physical exercises;
- to abolish mandatory HIV and tuberculosis testing, and respectivley to introduce amendments in Article 180-1 of the Correctional Code, "Release of persons sick with tuberculosis at its contagious stage posing a threat to others from correctional facilities," and Section 1, Article 5 of Kazakhstan's Law "On HIV infection and AIDS prevention and treatment" as of October 5, 1994 transfer them.

Since the law on **release on parole (RP)** has been amended, the participants suggested that the following steps be made:

- to allocate more finances on postal expenses to agencies related to notifying victims; Ministry of Justice and local justice departments should develop a state programme aimed at increasing legal awareness about RP among convicts and staff members of correctional facilities;
- the Supreme Court should provide a clear formal explanation of legal consequences after all civil claims have been redeemed;
- at the legislative level, it is critical to solve the issue of removing the prosecutor's right to refuse submitting motions from the administration of correctional facilities to the court on granting RP to a convict;
- in order to reduce the number of cases when convicts are denied RP because they didn't redeem the penalty, those convicts who have to cover the penalty as ordered by the court should be informed of the need to send a written request to the administration of their facility on employment opportunities so that they could redeem the penalty. The presence of such a request letter in a convict's file should be viewed by the court and the prosecutor as the need to take measures on redeeming the penalty;
- to consider that any denial of RP on the basis of insufficient guarantees with regard to exercising social rights contradicts Articles 1.5, 9.4 of the Tokyo Rules (on the possibility of release on parole at the earliest stages of detention);
- Correctional System Committee should provide convicts with the right to humane treatment due to disease - granting RP due to disease should be expanded.

As far as **education in detention facilities** is concerned, the participants pointed out that a low education level among convicts can be one of those factors that causes their initial criminal conduct, and it may also affect them negatively after they are released. Therefore, the seminar participants suggested the following steps:

- schools in correctional facilities should have grades, if they already do not exist, that correspond to the educational level of convicts, and before signing them up for a

particular grade, their knowledge should be tested, for which purpose special commissions should be created in correctional facilities that will include the staff of municipal and regional education departments;
- to envisage a legislative mechanism for receiving distance learning, secondary and higher education by minors and other persons serving their sentence in detention facilities (pretrial detention facilities, correctional facilities, homes for the disabled, etc);
- Ministry of Education should solve the issue of providing schools in correctional facilities with textbooks and other study materials as it is done in civic education facilities;

During the discussion on **labour activities and remuneration for labour** in detention facilities, the participants concluded that due to the market economy it is difficult to provide all persons serving their sentence in correctional facilities with regular work. This task can be solved only with the help of the state, which should be interested in engaging all convicts in some type of work, since it may be beneficial for them and society in general. Immediately after they are released, they would have some money to live on, and also certain skills which are in demand in the market. Therefore, the seminar participants suggested the following steps:
- to organize labour activities for convicts, it is crucial to place appropriate state orders with enterprises located in correctional facilities;
- Minister of Justice and the Correctional System Committee should take measures on increasing the number of jobs for convicts, which will result in penalties that will be redeemed on time, and the respect of the right to RP;
- in order to boost the productivity and improve working conditions of convicts, it is critical to create production and engineering units that would report to the hear of a particular correctional facilities, dismissing all branches of the republican state enterprise "Enbek" due to their ineffectiveness;
- Correctional System Committee should hire twice as many people for maintaining and working in correctional facilities, which will help avoid the discrimination of convicts from a prison subculture known as the castaways and engaging them in dirty and difficult tasks; work done by convicts should be paid, automated as much as possible and not humiliating human dignity;
- in order to avoid various violations related to labour remuneration of convicts, each of them should have a personal bank account, and their wages should wired directly to these bank accounts; convicts engaged in labour activities should receive a document containing information about all accrued payments and the money deducted from their wages.

Discussing the need for **establishing the national preventive mechanism (NPM) within the Optional Protocol to the Convention against Torture (OPCAT) and providing access for public monitoring in detention facilities**, the seminar participants expressed their concern about the possibility of not creating the NPM within one year after ratifying the OPCAT, and also recommended:
- to design a draft law "On Public Monitoring in the Republic of Kazakhstan" that should envisage legal grounds for and the procedure of conducting public monitoring in Kazakhstan, including the procedure for establishing the NPM and its functioning;
- no matter what NMP model is preferred, it should be in line with the OPCAT requirements, i.e. the principle of independence, transparency, legitimacy, and allowing to visit all detention facilities without any exceptions; it should also comply with the Paris Principles requirements and recommendations of the UN Committee against Torture (2008) and Special Rapporteur on Torture (2009);

- before adopting the Law "On Public Monitoring in the Republic of Kazakhstan" and establishing the NPM, it is critical to broaden the authority of the existing public observation commissions (POCs) by introducing appropriate amendments in the Resolution of the Government endorsing the "Regulations on the establishment of oblast (cities of republican subordinance, capital city) POCs" as of September 16, 2005 and also amending the draft law "On Amending Some Legislative Acts of the Republic of Kazakhstan on Strengthening Grounds and Procedure for Detention of Citizens." This will help strengthen public monitoring and the right of POCs to visit all detention facilities freely without any exceptions (including special reception centres, temporary detention facilities, specialized facilities which are part of the Department on Specialized Institutions and Convoy, etc) at any time, including night-time, without any prior coordination with the administration, with the right to hold private conversations with those placed in confinement facilities. These amendments will also help develop additional experience for appointing an effective NPM;
- to bring the law regulating the activities of the Human Rights Commissioner in line with the Paris Principles.

The seminar participants proposed the following practical steps:
- to continue discussing various NPM models taking into account all opinions from Kazakhstan's civil society on the NPM model and the way its activities should be organized;
- while discussing and selecting the NPM model, it is critical to consider the existing POC system as a possible platform for establishing the NPM;
- in order to comply with the recommendations of the UN Committee against Torture and Special Rapporteur on Torture, an interagency working group should be established guided by the Ministry of Justice that will include human rights NGOs and independent experts, and a broad information campaign on increasing awareness about these recommendations should be launched;
- for Public Oversight Comissions to carry out pilot projects on monitoring closed facilities belonging to the Ministry of Education, Ministry of Health, Ministry of Labour and Social Protection, Ministry of Defense and other facilities belonging to local executive bodies;
- for the General Prosecutor's Office to conduct an inventory of all detention facilities, and to bring their jurisdiction in line with their functional profile;
- to allow civil society access all documents and regulations with regard to detention facilities.

While discussing the issue of **improving detention conditions for long-term convicts**, the participants designed the following recommendations:
- to consider the possibility of reducing the maximum time in prison which is currently set at 30 years;
- to consider the possibility of reducing the term after which life prisoners can be granted release on parole, and also the possibility of granting release on parole and a transfer to settlement colonies to those convicts whose sentence was changed from the death penalty to life imprisonment;
- to cancel unjustified restrictions of the right to telephone calls among those sentenced to life imprisonment, as well as persons placed in special-regime prisons;
- to review punishment regulations for those sentenced to life imprisonment with the possibility of abolishing their placement in cells, providing them with the right to be kept in a group, and allowing them to be transferred to settlement colonies taking into account security requirements and the level of their personal changes;

- to consider the possibility of establishing a local unit for life prisoners in specialized correctional and medical institutions;
- to improve incarceration conditions for those sentenced to life imprisonment and the death penalty in terms of sanitary norms.

While discussing the issues of **humanizing confinement conditions** in detention facilities and prisons, the participants recommended the following:

- Correctional System Committee should review its personnel policy to solve the issue of vacancies;
- to consider the need to enhance the prestige of doctors working in correctional facilities by increasing their salary and providing them with a social package, for this purpose - to solve the issue of integrating civil and prison health care systems;
- to reform the curriculum of the Pavlodar Law College of the Correctional System Committee of the Republic of Kazakhstan in line with international requirements;
- it is important to create common continuous education and re-training programmes for personnel of penitentiary facilities dealing with social prevention and psychological and sociological activities among convicts; in particular, there should be finances in the budget to train and retrain psychologists and legal consultants, including through exchange of experience with foreign counterparts;
- to develop and to integrate projects aimed at enhancing the image of prison personnel dealing with social prevention and psychological and sociological activities among convicts in order to attract young experts;
- to develop and to integrate informational and educational projects designed to increase public awareness about human rights activities of NGOs and social work in penitentiary facilities, taking into account the resources of specialized university departments;
- to increase interagency coordination with regard to programmes on social work with convicts in penitentiary facilities;
- in order to increase awareness of professional workers about the benefits of social works, it is critical to develop and issue a manual called “Penitentiary Social Work”;
- to remove the norm in the Correctional Code whereby foreign nationals should serve their sentence in a specialized institution;
- to ensure practical implementation of the norm in the Correctional Code allowing convicts to serve their sentence at the place of residence or at the place of conviction in order to preserve social ties;
- in order to increase the re-integration of convicts and to minimize the risk of family ties being broken, it is crucial to consider the possibility of providing some categories of convicts with vacation time.

PLENARY SESSION II: DEVELOPING AND APPLYING IN PRACTICE ALTERNATIVES TO IMPRISONMENT: THE EUROPEAN EXPERIENCE AND OUTSTANDING PRIORITIES FOR THE REPUBLIC OF KAZAKHSTAN

During their discussion, the participant developed the following recommendations:

- to consider the possibility of increasing the variety of alternative punishment not related to deprivation of freedom and using them more broadly in order to reduce the number of convicts in prisons;
- in particular, to make amendments in criminal procedure law of the Republic of Kazakhstan obliging courts to consider, in each specific case, the possibility of alternative

punishment, other than deprivation of freedom, taking into account extenuating circumstances, as well as other alternatives other than restrictions of personal freedoms and security of person;

- to increase alternatives to criminal proceedings by establishing a contemporary probation service in Kazakhstan, and by improving legislation on reconciliation of parties and restorative justice (mediation services); in this regard, the participants believe it is unacceptable to introduce a legislative prohibition on using reconciliation procedures during pretrial investigation;
- given the fact that developing a draft law "On Crime Prevention" is an important element of humanizing Kazakhstan's criminal policies, i.e. abandoning the idea of applying only repressive measures in order to minimize the consequences of criminal conduct in society, the participants urges those drafting the law to reflect contemporary views on crimes and their causes, as well as crime prevention methods that may be acceptable in a democratic state abiding by human rights and freedoms;
- in particular, the seminar participants deem it necessary to clarify the definition of "crime prevention," since the existing draft law contains vague notions, such as *antisocial orientation*, whose legal meaning is difficult to formulate in the law. Moreover, this allows to interpret crime prevention not only as actions aimed at preventing crimes, but also as control over a broader ranger of public relations;
- in order to prevent crimes effectively, the participants urged those who drafted the law not to carry out police activities, through establishing a prevention registration system. Therefore, the participants believe that transferring the major authority to control social rehabilitation and other "preventive" activities to law enforcement bodies, which is proposed in the draft law, is unacceptable;
- the participants think it is important to provide for social measures in the draft law that would help overcome the vulnerability of various social groups from the viewpoint of their possible involvement in criminal activities, and to exclude individual responses with regard to certain persons from socially vulnerable groups which restrict the rights;
- crime prevention should be aimed at changing beliefs and stereotypes on offenses, offenders and victims of crimes;
- the participants believe it is critical to integrate the victimological aspects of crime prevention and interests of potential victims of crime in the definition of *preventive actions*;
- the participants would like to draw the attention of those who drafted the law to the fact that coercive "treatment" is illegal from the viewpoint of the law, since it violates the right to security of person and is an arbitrary interference with a person's personal and family life;
- the participants believe it is critical to study the possibilities of prevention works by social services, expansion of their authority and areas of application;
- it is recommended to review the legislation on juvenile delinquents and to ensure full-fledged practical implementation of the Juvenile Justice Concept all over Kazakhstan; in order to do this, repressive measures should be abandoned in trying to prevent deviant behaviour and juvenile delinquency (curfew for children and adolescents, mandatory drug testing, raising the legal drinking age to 21, etc);
- the seminar participants would like to point out that establishing a social services network of all property types providing social services to the target group which has been traditionally supervised by the probation service in European countries may logically fit the legal scope of the Law "On Social Services";

- it is recommended to analyze the experience of the *third sector* in terms of working with this target group, and to consider the possibility of developing this experience even further and promoting social partnership of all institutions dealing with *crime prevention*;
- socially oriented organizations and human rights organizations working in the area of de-institutionalization should carry out projects on improving the monitoring of how methodologies are applied which are aimed at changing the organizational design of *closed* facilities (introducing case-work, case-management, family-centered services and visiting services, interagency teams), and also projects aimed at applied research to understand the problems of convicts, rehabilitation management, social marketing of rehabilitation programmes and criminal justice for minors, and integrating the results of contemporary research in the practical activities of experts.