IN COOPERATION WITH THE OSCE FIELD OPERATIONS IN CENTRAL ASIA

Eighth Expert Forum on Criminal Justice for Central Asia

CONFERENCE REPORT

Office for Democratic Institutions
and Human Rights (ODIHR)

24-25 November 2021
Tashkent, Uzbekistan

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Introduction

The Expert Forum on Criminal Justice for Central Asia serves as a platform for knowledge and experience exchange among criminal justice stakeholders, promoting informed dialogue aimed at criminal justice reforms and policy development. The Forum has been organized by the Office for Democratic Institutions and Human Rights (ODIHR) since 2008 within the framework of its rule of law programme, in partnership with the United Nations Office for Drugs and Crime (UNODC) and the UN Office of the High Commissioner for Human Rights (OHCHR). The first Forum took place in Zerenda, Kazakhstan, in 2008, followed by a forum in Issyk-Kul, Kyrgyzstan (2009), in Dushanbe, Tajikistan (2010),[1] in Almaty, Kazakhstan (2012),[2] in Bishkek, Kyrgyzstan (2014),[3] in Tashkent, Uzbekistan (2016) [4] and in Bishkek, Kyrgyzstan (2018).[5]

Photo: Participants of the Eighth Expert Forum on Criminal Justice for Central Asia, 24-25 November 2021, Tashkent, Uzbekistan

On 24 and 25 November 2021, the Eighth Expert Forum on Criminal Justice in Central Asia was held in Tashkent, Uzbekistan. The Eighth Forum had originally been scheduled to take place in November 2020 but was postponed until 2021 due to the COVID-19 pandemic. A two-day online expert meeting "Criminal Justice in Central Asia: Recent Developments, Challenges and Impact of COVID-19 Pandemic" held on 25 and 26 November 2020 served as a bridge between the in-person forums of 2018 and 2021.[6]

1 Third Expert Forum on Criminal Justice for Central Asia Final Report, 17-18 June 2010, available at: https://www.osce.org/odihr/81134?download=true.

2 Fourth Expert Forum on Criminal Justice for Central Asia: Final Report, 29-31 October 2012, available at: https://www.osce.org/odihr/99506.

3 Fifth Expert Forum on Criminal Justice for Central Asia Final Report, 24-25 November 2014, available at: https://www.osce.org/odihr/147611.

4 Sixth Expert Forum on Criminal Justice for Central Asia Final Report, 16-18 November 2016, available at: https://www.osce.org/odihr/332676.

5 Seventh Expert Forum on Criminal Justice for Central Asia Final Report, 27-29 November 2018, available at: https://www.osce.org/odihr/448924.

6 UNODC, "OSCE/ODIHR, UNODC and OHCHR Conduct Online Criminal Justice Dialogue in Central Asia" available at: https://www.unodc.org/centralasia/en/news/osce-odihr--unodc-and-ohchr-conduct-online-criminal-justice-dialogue-in-central-asia.html

The Eighth Expert Forum brought together 78 experts and stakeholders (49 men, 29 women) in person and 22 participants (9 men, 13 women) online. Participants, including members of the judiciary and prosecution, lawyers, policy-makers, academics and civil society representatives from Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, and Uzbekistan, gathered to discuss recent reforms, trends and challenges to criminal justice systems across Central Asia. The impact of the COVID-19 pandemic was a cross-cutting issue throughout discussions. While the pandemic has presented unique and unprecedented challenges to criminal justice systems the world over, Central Asian states have continued to make efforts to strengthen human rights protection in their criminal justice systems.

The Forum centred on three key areas: pre-trial investigations, with working groups dedicated to due process and the right to security of the person and effective investigations; fair trials, with working groups on the independence of legal professionals and the judicial system; and penitentiary reform, with working groups on alternatives to imprisonment and human rights in prison. Side events were held on fair-trial standards during health emergencies; women and justice; and lessons learned and good practices from OSCE trial monitoring. Forum organizers sought to mainstream a gender perspective into all deliberations, including by inviting participants and expert speakers with a specific attention to ensuring that all expert panels included both men and women. All speakers were asked to take into consideration gender aspects in their presentations. Organizers encouraged participants capable of contributing to the achievement of gender equality to take active participation in the discussions during plenary sessions and working groups. Overall, gender issues were reflected on the agenda through an integrated perspective. At the same time, to facilitate discussion on equal representation of women in criminal justice institutions, ODIHR made sure to include a gender-specific intervention in the Forum's agenda. Thus, ODIHR specifically engaged with stakeholders on gender issues by organizing dedicated discussion platforms, such as a side event on Women and Justice. In this regard, ODIHR is committed to promoting discussion of gender issues and bringing it into a greater focus during the next Forums.

Photo: High-level panel delivering welcome remarks: Ms. Kateryna Ryabiko, First Deputy Director, OSCE Office for Democratic Institutions and Human Rights (ODIHR) (online)

Opening remarks were made by Ms. Kateryna Ryabiko, First Deputy Director, ODIHR; Mr. Ghenadie Barba, Chief of the Rule of Law Unit, ODIHR; Mr. Kozimdjan Kamilov, Chairperson, Supreme Court of the Republic of Uzbekistan; Mr. Nariman Umarov, Chairperson, Committee on Judicial and Legal Issues and Anti-Corruption, Oliy Mazhilis of the Republic of Uzbekistan; Ms. Valerie Lebaux, Head of the Justice Section, UNODC; Ambassador Pierre von Arx, OSCE Project Co-ordinator in Uzbekistan; and Mr. Ryszard Komenda, Regional Representative of OHCHR Central Asia.[7]

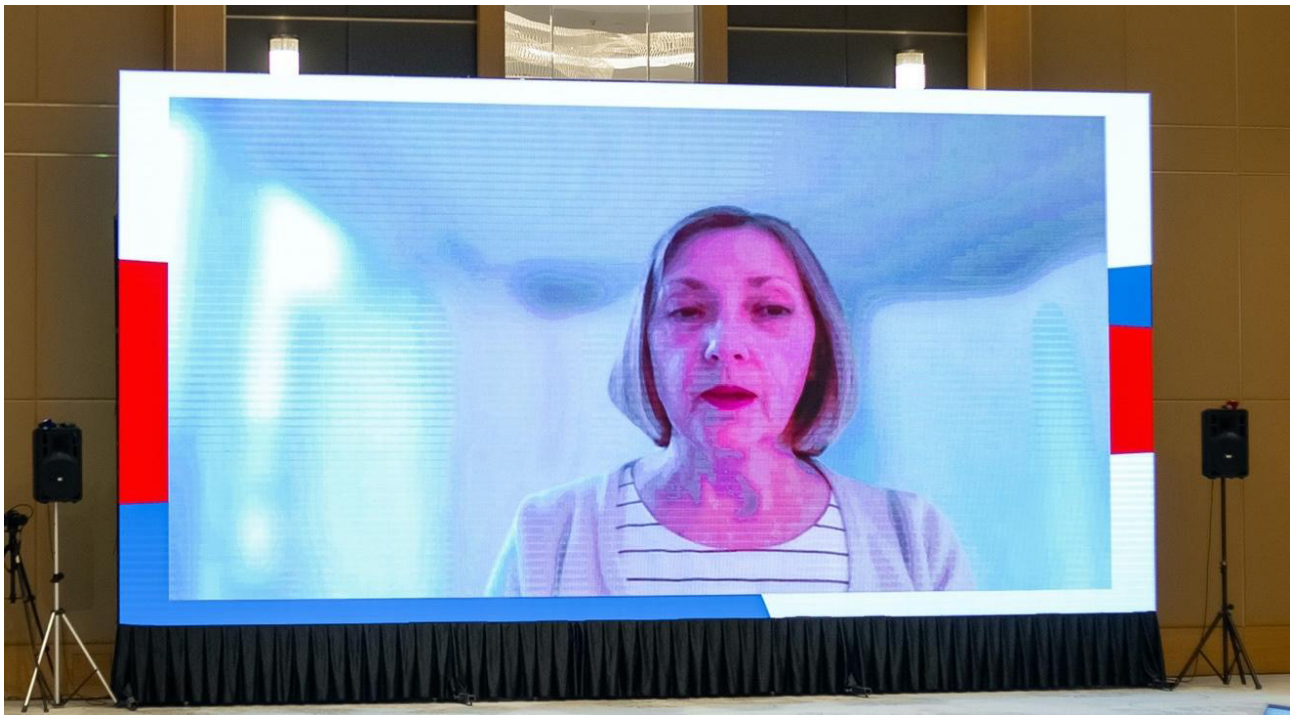

Photo: High-level panel delivering welcome remarks: Ms. Valerie Lebaux, Head of the Justice Section, UN Office on Drugs and Crime (UNODC) (video statement)

All speakers remarked on the significant progress made by Central Asian states since the Seventh Expert Forum in bringing their criminal justice systems in line with international standards. An overview was given of global developments in the field, including protest movements against inequality in justice systems and a growing recognition of the need for alternatives to detention. Participants demonstrated a shared commitment by Central Asian and other OSCE participating States to enforce the values of equality, justice and the rule of law. From the outset, the Forum was recognized as the central regional platform for knowledge exchange, co-operation and sharing of good practice.

Criminal justice experts with a variety of backgrounds from Australia, Croatia, Estonia, North Macedonia, Poland, Portugal, Sweden, the United Kingdom and Ukraine offered input and analysis based on experiences beyond Central Asia.

7 Remarks on behalf of Mr. Ryszard Komenda were delivered by Mr. Bakai Albanov, Advisor at OHCHR Regional Office for Central Asia.

The Forum took place in a hybrid format, with both online and in-person participation. While the majority of participants attended in person,[8] those who were unable to attend physically could engage in sessions via the Zoom platform. The hybrid format allowed for fruitful discussions which would otherwise have been limited by restrictions imposed as a result of the COVID-19 pandemic.

Photo: Plenary Room, Eighth Expert Forum on Criminal Justice for Central Asia, 24-25 November 2021, Tashkent, Uzbekistan

ODIHR extends its gratitude to the authorities of Uzbekistan, and in particular the Supreme Court of Uzbekistan, which hosted the Eighth Expert Forum, and to ODIHR's counterparts in the region, in particular the OSCE Project Co-ordinator in Uzbekistan, other OSCE field operations, and the UNODC and OHCHR for providing support and partnership in the development and execution of the Forum.

8 Full precautionary measures were taken to ensure a safe environment during the Forum. This included obligatory rapid antigen COVID-19 testing before attendance at the Forum. Participants were provided with face masks and hand sanitizers throughout the event.

Main conclusions and recommendations

Pre-trial Investigations

Plenary Session

- States must establish clear regulations regarding remote pre-trial investigations, where these become necessary, including steps taken to minimize the risk of infection during a public health crisis.
- Court authorities must ensure that appropriate pauses are incorporated into online hearings to allow defence lawyers to familiarize themselves with all relevant materials.
- States must grant detainees confidential access to their lawyers, whether in-person or offline. The number and duration of meetings should not be limited beyond the standards enshrined in law.
- Strict protections should be in place to ensure that prison authorities do not isolate detainees as punishment under the guise of having an alleged infection with the coronavirus.
- Prison authorities must ensure that pre-trial detainees are housed separately from convicted prisoners to ensure the protection of rights and to shield detainees and prisoners from the increased risk of infection.

Due process and the right to security of the person

Working Group 1

- While there is no specific model that constitutes best practice in the provision of legal aid, states must guarantee the independence and effectiveness of legal aid services.
- States must ensure that socially vulnerable and marginalized groups in society are able to access legal aid.
- States should establish automated systems or official registers for the appointment of legal aid lawyers. Law enforcement officers must not play a role in selecting legal aid lawyers.
- While the principle of independence of legal professions must be respected, states must intervene when government-appointed lawyers are not acting in the best interests of their client. When they are made aware of such situations, states must provide a new lawyer or ensure that the existing lawyer fulfils their obligations.
- The opportunity to appeal an investigative judge's decision at the pre-trial stage is one safeguard to the right to fair trial.
- During a public health emergency, states should introduce specific regulations aimed at promoting the use of alternative measures to pre-trial detention.

Effective investigations

Working Group 2

- States should ensure that their legislation forbids confessions as the sole evidence of guilt. The legislation should also outline clear procedures for the judicial exclusion of evidence obtained through torture and the initiation of torture investigations.
- States should abandon and refrain from the use of coercive interrogation techniques and start implementing investigative interviewing approaches based on the Mendez Principles.

- Law enforcement bodies should introduce more qualitative performance indicators, based on citizens' feedback and their trust in these bodies, as well as on following the pre-trial investigation standards.
- Development of step-by-step torture investigation algorithms, or checklists for documenting torture, and related training is necessary for the effective investigation of such acts.
- Digitalization of criminal proceedings speeds up the investigation and minimizes the risk of loss or falsification of case files.

Independence of the legal profession

Working Group 3

- States must actively create an environment where the independence of the legal profession is upheld. They must therefore react promptly to any attempts to interfere with independence.
- States must actively investigate crimes against lawyers to fulfil their positive obligations to protect the independence of legal activity.
- States should ensure that legislation imposes administrative and/or criminal liability for unlawful interference with legal activity, and that there are no obstacles to enforcing such legislation.
- States must implement objective remuneration and case allocation systems in the context of legal aid work, to ensure the full independence of state-appointed lawyers from the government.
- Core mandates of any self-governing body of lawyers to uphold the safety and independence of lawyers should include: the protection of individual lawyers from harassment and intimidation; regulation of admission to the profession and exclusion of unscrupulous individuals from it; as well as the promotion of advanced training.

Judicial systems

Working Group 4

- States should ensure that where judicial councils are established, at least half of their composition consists of judges selected by their peers.
- States should guarantee proper financing of their judicial systems, as it is crucial for their independence and effective functioning.
- Presidents of courts should not have excessive powers over careers of other judges or disciplinary proceedings against them.
- Legislation should ensure that disciplinary procedures against judges do not infringe the principle of judicial independence.

Institutional issues

Plenary Session

- Despite the pandemic, cases related to unlawful detention, domestic violence, human trafficking, or involving minors should always be prioritized for case-processing by the courts.
- Judges should have a final say in deciding which cases are suitable for trial at a distance and which are not.
- The prosecution service should be independent and not receive any instructions from the executive or legislative powers concerning individual cases. States should not merge the positions of the Prosecutor General and the Minister of Justice.

- The recruitment of prosecutors, as well as their promotion, should be fair and equitable, based on objective criteria, and prevent any form of discrimination or political influence.
- Prosecutorial councils, with the majority of members being prosecutors elected by their peers, serve as a strong guarantee of ensuring democratic legitimacy and independence of the service.

Alternative measures to imprisonment

Working Group 5

- States should make sure that national legislation provides for a wide range of non-custodial sanctions (including the possibility to combine them). Non-custodial options not only facilitate rehabilitation and reintegration of offenders but are considerably less expensive and reduce prison overcrowding.
- When deciding on the use of monitoring of offenders and the method of monitoring, law enforcement bodies and courts should ensure that the imposed restrictions are necessary and proportionate to the goal to be achieved and that the individual circumstances of the person monitored are taken into account.
- Integrating monitoring into the criminal justice system requires the support structure in place to make it work effectively. Although it is more cost-effective than imprisonment, it still requires adequate financial and human resources. Therefore, States should consider allocating sufficient funds for the equipment needs and capacity-building of staff.

Human rights in prison

Working Group 6

- Any restrictions on the access of detainees to their families and lawyers must be necessary and proportionate, and subject to regular review. If in-person meetings are not possible due to the epidemiological situation, facilities for online calls and telephone calls should be made available.
- Detainees and members of national preventive mechanisms (NPMs) and other bodies who conduct inspection visits should be provided with protections required during public health emergencies. Employees of institutions should be fully aware of updated regulations.
- The duties of NPM members should correspond to the recommendations set out in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- States must ensure that the confidentiality of NPM interviews with detainees and employees of institutions is protected in legislation. NPM members must also be required by law to keep the personal data of complainants private.
- Governmental bodies at which an NPM's recommendations are aimed must be required by law to respond to and discuss the recommendations. Governmental involvement in the elaboration and implementation of recommendations increases the likelihood of compliance.
- A Central Asian network of NPMs should be created to facilitate exchange of experiences and address regional challenges to human rights in prison through co-operation.

Fair trial standards during health emergencies

Side event A

- States must include justice system actors within exemptions from strict travel restrictions and other limitations on freedom of movement, including limitations on travel, use of personal transport and curfews.
- States should make maximum use of less restrictive public health measures, such as mask mandates and social distancing requirements, in seeking to uphold the right to a public hearing. Court authorities should conduct risk assessments on a case-by-case basis, since the physical characteristics of courtrooms and places of detention, as well as the number of trial participants, may vary.
- States must adopt clear regulations regarding the conduct of online trials. This should include a set of factors justifying removal of persons from online calls and responses to instances of poor connection quality.
- States must limit those who are able to access audio and video recordings of online trials. If this cannot be guaranteed, and in especially sensitive cases, in-person hearings should be held to avoid breaches of confidentiality.
- If the emergency continues for an extended period of time, specific software should be developed to facilitate online or hybrid hearings. States should prioritize the installation of new software in courts and places of detention.

Women and justice

Side event B

- States must recognize the role of associations of women judges as an effective tool in supporting women in the justice sector, promoting gender parity in justice systems and creating global support networks for women.
- Co-operation with other types of national associations, such as associations of women lawyers and civil society organizations, helps both to further the positive impacts of associations and to respond to challenges faced by associations.
- International networks of women judges promote gender equality at a global level and can seek to address threats faced by women judges, as shown by the response of the International Association of Women Judges (IAWJ) in assisting women judges in Afghanistan.
- Statistical analysis of gender representation in the judiciary should include an assessment of the representation of women in leadership roles.

Lessons learned and good practices from OSCE trial monitoring

Side event C

- Trial monitoring may help to identify weaknesses and strengths of a justice system and generate a roadmap of recommendations for its further improvement.
- Trial monitoring helps to increase transparency of and public confidence in the judiciary via objective coverage of the work of courts.
- Monitoring is a useful tool to facilitate judges' professional development by providing them with court users' feedback.
- The presence of monitors at hearings improves the professional preparation and behaviour of justice actors.

Introductory session: Reflection on criminal justice reforms in Central Asia

To follow up on the previous Forum, Ms. Nazgul Yergaliyeva, an independent criminal justice expert, provided a short overview of the previous recommendations and commented on their implementation by Central Asian states.[9]

Ms. Yergaliyeva noted that due to economic growth, all states in the region have enjoyed notable socioeconomic progress, which has led to the overall reduction of crime rates. However, challenges remain when it comes to the rights of suspects and people accused of crimes; prevention of torture or ill-treatment; and access to legal aid at the early stage of an investigation. Evaluation methodologies used by justice system actors continue to focus on the number of suspects, their confessions and conviction rates, which can foster prosecutorial bias and coercive interrogation practices. Several Central Asian states therefore considered implementing the practice of investigative interviewing of suspects and witnesses.

Pre-trial detention continued to be a dominant preventive measure used in the region, though positive developments in certain countries were noticeable. For example, in Kazakhstan, detention rates were reduced due to legislative changes limiting the range of available penalties and excluding imprisonment for certain offenses. Consequently, pre-trial detention became inapplicable at the pre-trial stage of investigation of such offenses. Nevertheless, where detention was allowed by law, it was applied in the majority of cases.

Discussing institutional issues in Central Asian states, Ms. Yergaliyeva mentioned the attempts at institutional transformation of the prosecution service of Kazakhstan. Recently, the service tried to rethink its mission and implement change management, aiming to become a more client-oriented institution. Though this initiative was paused, it made a positive impact on ongoing judicial and police reforms, where similar practices were implemented.

The independence of bar associations and legal aid providers continued to be a problem in many countries, and negative tendencies in this regard were noticeable. Access to these providers' services, their quality and promptness continued to be on the reform agenda of the states.

Lastly, it was mentioned that associations of women judges, such as the one in Kyrgyzstan, demonstrated themselves as effective means to promote gender equality in the justice systems of the region. Thus, their establishment was strongly recommended to participating States that do not yet have one.

9 Main conclusions and recommendations of the Seventh Expert Forum on Criminal Justice for Central Asia are available at: https://www.osce.org/files/f/documents/0/5/448924_0.pdf, p.7.

Country presentations

Kazakhstan

Mr. Yerden Aripov, judge of the Supreme Court of the Republic of Kazakhstan, underlined that the recent criminal justice reforms in Kazakhstan were conducted in line with the concept of legal policy development of the Republic of Kazakhstan for 2010-2020.[10] In particular, a substantial number of legislative changes were introduced by the Law "On making amendments and additions to certain legislative acts of the Republic of Kazakhstan on modernizing the procedural basis of law enforcement activities."[11]

This Law reduced the maximum period of detention (without a court decision) from 72 to 48 hours (or 24 hours for juveniles). A 72-hour detention period is allowed only on exceptional occasions specified by law.

The Law also enlarged the powers of investigative judges. Namely, authority to order 18 investigative measures was transferred to them from prosecutors, including the authorization of covert investigative measures, compulsive medical examination, or collection of biological samples. The decision on whether bail, as a preventive measure, might be alternatively applied instead of pre-trial detention, is now solely made by investigative judges or another type of judge. Previously, a prosecutor was also involved in decisions on this issue.

Defence attorneys were granted the right to file motions before investigative judges, including motions to conduct analysis or certain investigative measures (except covert ones). This right also extends to situations where investigative bodies groundlessly refused to conduct such measures or have not decided on them within three days of the motion filing date.

A new form of abbreviated criminal proceedings—a summary proceeding [приказное производство]—was introduced, allowing for expedient investigation of misdemeanours and minor crimes within short periods of time. In such proceedings, no court hearings are conducted, and, mostly, fines are used as the only penalties.

Moreover, the Law "On making amendments and additions to certain legislative acts of the Republic of Kazakhstan regarding strengthening of citizens' rights in the criminal procedure and combating corruption"[12] was adopted in December 2020. The Law, in particular, stiffened the penalties for bribery-related crimes and forbade paroles and substitution of punishment with a milder one for those convicted of corruption-related offenses. It also allowed for the prosecutor to authorize key procedural decisions using electronic communication.

Lastly, Mr. Aripov announced that the Parliament currently is considering the draft law "On making amendments and additions to certain legislative acts of the Republic of Kazakhstan regarding the introduction

10 Decree of the President of the Republic of Kazakhstan № 858, "On the concept of legal policy development of the Republic of Kazakhstan for 2010-2020" of 24.08.2009, available at: https://adilet.zan.kz/rus/docs/U090000858_.

11 Law of the Republic of Kazakhstan № 118-VI ЗРК, "On making amendments and additions to certain legislative acts of the Republic of Kazakhstan on modernizing the procedural basis of law enforcement activities" of 21.12.2017, available at: https://adilet.zan.kz/rus/docs/Z1700000118.

12 Law of the Republic of Kazakhstan № 384-VI ЗРК, "On making amendments and additions to certain legislative acts of the Republic of Kazakhstan regarding strengthening of citizens' rights in the criminal procedure and combating corruption" of 19.12.2020, available at: https://adilet.zan.kz/rus/docs/Z2000000384.

of a three-tier model with the division of powers and responsibilities between law enforcement bodies, prosecutor's offices, and courts."[13] It aims to clearly delimit the roles and functions of those bodies in criminal proceedings.

Kyrgyzstan

Mr. Kynatbek Smanaliev, Deputy Minister of Justice of the Kyrgyz Republic, informed the participants that in 2021, Kyrgyzstan adopted amendments to its Criminal Code,[14] Criminal Procedure Code,[15] and Code on Violations,[16] as well as implemented substantial changes[17] to the Penal Code, Law on Probation and other laws. The new Codes took effect on December 1, 2021.

Kyrgyzstan decided to abolish its Code on Misdemeanours, recategorizing the latter either as minor crimes (transferring them to the Criminal Code) or as violations (transferring them to the Code on Violations). The new Criminal Code also softened the penalties for several types of crimes. Penalties such as fines and imprisonment are now clearly defined, while previously those were prescribed in categories.[18] Moreover, fines cannot be applied as additional penalties anymore. The new Code also envisages the application of probation supervision of individuals who commit grave crimes and suspension of punishment for people convicted who have minor children.

Photo: Mr. Kynatbek Smanaliev, Deputy Minister of Justice, Kyrgyz Republic

As a result of the amended criminal procedural legislation, Kyrgyzstan reinstated the previously eliminated stage of preliminary verification of criminal complaints and the inspector's related decisions on whether to initiate criminal proceedings or refuse to do so.

Following Constitutional amendments and changes to the Criminal Procedural Code, prosecutors were given powers to conduct criminal investigations. Thus, investigative jurisdiction was redistributed between prosecutors and other law enforcement agencies. Since December 1, 2021, prosecutors were granted authority to investigate allegations of torture, while earlier the state security law enforcement agency had exclusive

13 Draft Law of the Republic of Kazakhstan, "On making amendments and additions to certain legislative acts of the Republic of Kazakhstan regarding the introduction of a three-tier model with the division of powers and responsibilities between the law enforcement bodies, prosecutor's offices, and courts," submitted to the Parliament by the Decree of Government of the Republic of Kazakhstan of 05.10.2021 № 706, available at: https://adilet.zan.kz/rus/docs/P2100000706.

14 Criminal Code of the Kyrgyz Republic of 28.10.2021, available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112309?cl=ru-ru.

15 Criminal Procedural Code of the Kyrgyz Republic of 28.10.2021, available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112308?cl=ru-ru.

16 Code of the Kyrgyz Republic on violations of 28.10.2021, available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112306?cl=ru-ru.

17 Law of the Kyrgyz Republic, "On making effective the Criminal Code of the Kyrgyz Republic, Criminal Procedural Code of the Kyrgyz Republic, Code of the Kyrgyz Republic on violations, and amending certain legislative acts of the Kyrgyz Republic" of 28.10.2021, available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112305?cl=ru-ru.

18 Previously, fines of a criminal character in Kyrgyzstan were divided into six categories, where the first category was the lowest fine, and the sixth, the harshest. See Article 68 of the previous revision of the Criminal Code of the Republic Kyrgyzstan of 02.02.2017, available at: http://cbd.minjust.gov.kg/act/view/ru-ru/111527.

jurisdiction over such cases. Co-operation agreements in criminal proceedings were removed from the Code, leaving only plea bargains and reconciliation agreements as available procedural deals.

Amendments to the Penal Code increased the number of meetings and parcels allowed to imprisoned individuals. In addition, people convicted for terrorism-related crimes are allowed, subject to proper behaviour, to undergo their punishments in relaxed security conditions.

Finally, Mr. Smanaliev informed Forum participants that it has been two years since the probation service was established in Kyrgyzstan as a body of civil nature under the supervision of the Ministry of Justice. He noted that the service proved itself to be effective and expressed the desire to further develop its capacity.

Mongolia

Mr. Sukhbold Sukhee, Director of the Department of International Law and Treaty of the Ministry of Foreign Affairs of Mongolia, informed participants of the Expert Forum that on 25 May 2020, amendments to the Constitution of Mongolia went into effect. Following these amendments, the Law on Judiciary (Courts) was adopted in 2021.[19] The Constitutional amendments were related to the functioning of several judicial bodies. First, the composition of the Judicial General Council of Mongolia, a body advising on the selection and removal of judges, was clarified. The amendments provided that the Council would consist of 10 members with a non-renewable four-year term. Second, the amendments established a new disciplinary body, the Judicial Disciplinary Committee, tasked with suspending judges and imposing disciplinary sanctions on them.

Mr. Sukhee mentioned that Mongolia actively works on implementing multilateral international treaties and monitoring the progress achieved. However, insufficient co-ordination between government authorities, the absence of a unified database on the implementation of treaties, as well as the lack of a mechanism to involve NGOs in the reporting process continue to pose challenges. Finally, he mentioned that Mongolia is one of the leading countries in the group of states advocating for the adoption of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes.[20]

Tajikistan

Mr. Abdumanon Dodozoda, judge of the Supreme Court of the Republic of Tajikistan, briefed the participants on the key reforms in the country's criminal justice sphere since Tajikistan gained independence. In particular, the use of the death penalty was suspended in 2004 and life imprisonment became applicable instead. Moreover, libel and verbal assault were decriminalized. Additional measures were taken to humanize criminal legislation. Namely, if a person who committed an economic crime compensates all the damages before the court verdict is delivered in the respective proceedings, imprisonment may not be used as a penalty against him/her.

19 Baljmaa T., "Revised Law on Courts aims to ensure a fair judicial system," MONTSAME, 18.01.2021, available at: https://montsame.mn/en/read/250385.

20 Draft International Convention in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes (version 20/03/2020), available at: https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/MLA-Initiative-Draft-Convention-English.pdf.

Certain reforms were introduced to speed up proceedings in relatively simple cases. Namely, if a person committed a minor crime or a crime of medium gravity and confessed his/her guilt, a simplified consideration of such a case will be conducted, subject to there being no objections from the other parties to the proceedings and making sure that the confession is not forced.

Lastly, Mr. Dodozoda announced that Tajikistan is currently developing a new edition of its Criminal Code, aimed to further humanize the criminal legislation and assure compliance with the provisions of international treaties. It is expected that the new Code will soften the imprisonment terms for certain crimes, will decriminalize certain offenses, and revise the range of available criminal penalties.

Photo: Justice Abdumanon Dodozoda, Judge of the Supreme Court, Republic of Tajikistan

Uzbekistan

Mr. Dzhakhangir Dzhurayev, judge of the Supreme Court of the Republic of Uzbekistan, informed the Forum participants that over the last few years, Uzbekistan has significantly liberalized its criminal legislation. This process included, among other things, decriminalization of certain categories of offenses and enlargement of the range of available criminal punishments. Consequently, the incarceration rates were reduced, as judges started to resort to new, non-custodial punishments, such as limitation of freedom[21] and obligatory community service.[22] Referral of a criminal case for additional investigation was abolished. The courts were authorized to apply alternative preventive measures, should pre-trial detention or house arrest not be applied.[23]

The recent legislative changes entailed transferring the consideration of administrative violations cases from administrative to criminal courts and introducing preliminary hearings. Limitations were placed on the ability

Photo: High-level panel delivering welcome remarks (from left to right): Mr. Nariman Umarov, Chairperson, Committee on Judicial and Legal Issues and Anti-Corruption, Oliy Mazhilis of the Republic of Uzbekistan; Mr. Kozimdjan Kamilov, Chairperson, Supreme Court of the Republic of Uzbekistan

21 The Law of the Republic of Uzbekistan № ЗРУ-389, "On making amendments and additions to certain legislative acts of the Republic of Uzbekistan" of 10.08.2015, available at: https://lex.uz/ru/docs/2717327.

22 The Law of the Republic of Uzbekistan № ЗРУ-389, "On making amendments and additions to certain legislative acts of the Republic of Uzbekistan in connection with taking additional steps to secure the reliable protection of rights and freedoms of citizens" of 10.08.2015, available at: https://lex.uz/docs/3146369.

23 Decree of the President of the Republic of Uzbekistan № УП-4850, "On measures to further reform of the judicial-legal system, strengthening the guarantees of proper protection of rights and freedoms of citizens" of 21.10.2016, available at: https://lex.uz/docs/3050494.

of prosecutors to initiate their own participation in civil and economic cases initiated by other plaintiffs.[24] Moreover, the legislation introduced plea bargains, reconciliation procedures, and deposition of evidence.[25]

Mr. Dzhurayev also described how significant attention in Uzbekistan is dedicated to the use of modern information technologies in the functioning of courts. Namely, the country has developed an electronic system, called E-XSUD,[26] which keeps information on the physical location of all the courts, the date and time of all scheduled court hearings, and provides access to all adopted court decisions. Additional technological advancements include the introduction of automated distribution of cases in all courts, free of charge SMS notification of participants regarding the time and place of their court hearings, audio recording of hearings, and videoconferencing systems to facilitate remote participation in hearings.

Plenary session: Pre-trial Investigations

Main conclusions and recommendations

- States must establish clear regulations regarding remote pre-trial investigations, where these become necessary, including steps taken to minimize the risk of infection during a public health crisis.
- Court authorities must ensure that appropriate pauses are incorporated into online hearings to allow defence lawyers to familiarize themselves with all relevant materials.[27]
- States must grant detainees confidential access to their lawyers, whether in-person or offline.[28] The number and duration of meetings should not be limited beyond the standards enshrined in law
- Strict protections should be in place to ensure that prison authorities do not isolate detainees as punishment under the guise of having an alleged infection with the coronavirus.
- Prison authorities must ensure that pre-trial detainees are housed separately from convicted prisoners[29] to ensure the protection of rights and to shield detainees and prisoners from the increased risk of infection.

24 Decree of the President of the Republic of Uzbekistan № УП-6034, "On additional measures to further improve the functioning of courts and on increasing the efficiency of justice" of 24.07.2020, available at: https://lex.uz/ru/docs/4910841.

25 Decree of the President of the Republic of Uzbekistan № УП-6041, "On additional measures to strengthen the rights and freedoms of a person in judicial-investigative activities" of 10.08.2020, available at: https://lex.uz/docs/4939472.

26 See the database at: https://public.sud.uz/.

27 See Principle 21, UN Basic Principles on the Role of Lawyers, 7 September 1990, available at: https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx; "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients."

28 Recommendation 4.6 of ODIHR's Fair Trial Rights and Public Health Emergencies, available at: https://www.osce.org/odihr/487471.

29 Rule 11(b), Revised UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted unanimously by the UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015, available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

Summary of discussions

Plenary Session 1 focused on various aspects of pre-trial investigations. In the light of disruptions caused by the COVID-19 pandemic, discussions centred on ensuring the right to effective legal representation in the context of restricted access to lawyers. Against this background, the session also highlighted particular difficulties faced by detainees at the pre-trial stage during a public health emergency.

The most significant obstacle to conducting investigative actions that was identified by participants was the closure of temporary detention facilities, remand units and places of detention where individuals who were serving existing sentences were housed. This impeded detainees' access lawyers. The option for online meetings or telephone calls with lawyers was later established in response to COVID-19 lockdowns, though the practice was far from uniform both across the region and within states. When lawyers were eventually able to visit their clients again, they were required to undergo various steps, such as making appointments well in advance and filing relevant applications.

Although law enforcement agencies, including prosecution offices and the courts, did not always remain closed, officers on duty often did not allow people (including lawyers) into the building if they did not arrive by summons of an investigator or prosecutor. Lawyers were thus unable to access these institutions of their own volition. Citizens were similarly often unable to enter prosecution offices and courts without prior summons. Although telephone hotlines were set up, they were frequently congested. The process of signing up to attend online hearings created difficulties for those who were unable to easily use the new technologies.

Many individuals had difficulties using newly introduced technological pre-trial investigations' systems. These included elderly persons, persons with disabilities, and those who were not fluent in the language used by the justice system. These and other vulnerable groups were unable to act as equal participants in the pre-trial investigation, or to access the relevant support online. In addition, remote areas in some countries in the region do not have access to the internet, which is required to make use of the new technologies. The use of "e-justice" was, therefore, seen not only as an opportunity, but also as creating significant risks for human rights, in particular the right to a fair trial and access to a fair defence and legal aid.

Participants reported further practical difficulties in engaging with online judicial platforms. For example, some systems required the use of electronic signatures that could only be obtained through visits to specific centres that had closed their in-person operations as a result of the pandemic. Many people, therefore, faced barriers in submitting their claims to the supervisory authorities and investigative courts. Investigative courts, where appeals against illegal actions and/or inactions of pre-trial investigative bodies could be filed, did not accept in-person complaints.

In the first months after states of emergency were declared, movement was significantly limited. However, the lack of clear rules on restrictions on freedom of movement created difficulties for citizens. In the context of pre-trial investigations, individuals who had been summoned for questioning faced the dilemma of either breaking the law by attending and facing administrative liability, or breaking the law by failing to appear before the investigator.

Guarantees of lawyer-client confidentiality were often undermined, with employees of detention facilities remaining within hearing distance of rooms where accused people consulted with their lawyers, either offline or online. Moreover, such meetings were sometimes recorded by prison officials, contrary to the UN Basic

Principles on the Role of Lawyers.[30] Detainees, thus, often could not share information with their lawyers, report the illegal acts of law enforcement operatives (including acts of torture), prepare for investigative actions in a criminal case, or discuss their legal position. Some Forum participants also reported that lawyers' files were inspected upon their arrival at detention centres, in violation of the guarantees of confidentiality.

Participants debated whether, in the context of a public health crisis, legislation requiring lawyers to carry out legal instructions should be amended to allow lawyers to refuse to conduct acts where their health may be at risk. At present, in some Central Asian countries, lawyers may be disciplined and face losing their license if they fail to comply with pre-trial investigative steps without legal justification, which at present does not include health exceptions. Since a fair trial depends on the quality of pre-trial investigations, participants agreed that an appropriate balance must be struck to protect the rights of lawyers and detainees and take into account public health considerations.

Working Group 1: Due process and the right to security of the person

Main conclusions and recommendations

- While there is no specific model that constitutes best practice in the provision of legal aid, states must guarantee the independence and effectiveness of legal aid services.
- States must ensure that socially vulnerable and marginalized groups in society are able to access legal aid.
- States should establish automated systems or official registers for the appointment of legal aid lawyers. Law enforcement officers must not play a role in selecting legal aid lawyers.
- While the principle of independence of legal professions must be respected, states must intervene when it is clear that government-appointed lawyers are not acting in the best interests of their client. When they are made aware of such situations, states must provide a new lawyer or ensure that the existing lawyer fulfils their obligations.
- The opportunity to appeal an investigative judge's decision at the pre-trial stage is one of the safeguards to the right to fair trial.
- During a public health emergency, states should introduce specific regulations aimed at promoting the use of alternative measures to pre-trial detention.[31]

Summary of discussions

Legal assistance is a cornerstone of due process and the right to security of the person. Respect for the right to a fair trial begins from the point at which an individual comes into contact with the legal system and requires effective legal representation. Working Group 1, therefore, focused on due process and the right to security of the person, highlighting alternatives to pre-trial detention during criminal proceedings, oversight of pre-trial activities, in particular, the work of investigative judges, and access to quality legal aid during pre-trial investigations.

30 Principle 8, UN Basic Principles on the Role of Lawyers, op. cit., note 27.

31 Recommendation 6.3 of Fair Trial Rights and Public Health Emergencies, op. cit., note 28.

Discussions centred on the provision of legal aid and the particular challenges created by the COVID-19 pandemic. Although the legislation of some Central Asian states strictly demands the guarantees of legal aid even during a public emergency, this was not always ensured in practice during the COVID-19 pandemic. In particular, participants reported facing difficulties in gaining access to their clients at the pre-trial stage.[32] Even before the pandemic, a decrease in the number of lawyers in certain states due to issues such as registration and qualification for the profession posed additional challenges.

Photo: on the right Ms Tamila Rakhmattulaeva, Defence lawyer, Uzbekistan

Regarding the quality of legal aid, participants highlighted that, pursuant to international standards, the legal profession must be independent (see the findings of Working Group 3 on the independence of legal professions). States, thus, cannot always bear responsibility for the quality of legal services. However, participants agreed that the state should intervene when it becomes clear that a government-appointed lawyer is not acting in the defendant's best interests.[33]

Participants discussed various possible models of legal aid systems. For example, a separate regulator could be created under the competence of the Ministry of Justice. Alternatively, legal aid could be administered by a body that is fully independent from the government. Legal aid schemes may involve public or private lawyers, pro bono schemes or legal aid clinics.[34] Bar associations can play a role in developing legal aid systems and have done so in some Central Asian states. Ultimately, it was agreed that there is no single best practice in legal aid systems, as long as the fundamental principles of independence and effectiveness are upheld.[35] The UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes[36] was highlighted as a useful tool to apply across varying models.

Participants recognized that a positive aspect of post-Soviet systems is that legal aid is generally guaranteed in all cases. A shortcoming is that the provision of legal assistance depends on the investigator or the party conducting the investigation. Participants agreed that it is necessary to ensure independence from investigative organs in accordance with international standards, in particular, in the assignment of legal aid

32 ICJ, Central Asia, "ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic" 30 July 2020, available at: https://www.icj.org/wp-content/uploads/2020/07/Central-Asia-Statement-COVID-19-Advocacy-2020-ENG.pdf. Rule 61 of the Nelson Mandela Rules guarantees access of detainees to legal assistance, including effective legal aid.

33 See European Court of Human Rights, Artico v. Italy, App no. 6694/74, 13 May 1980, para 33: "Mere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfil his obligations." See also Butovenko v. Ukraine, 19 July 2011, CCPR/C/102/D/1412/2005, para 7.8, where the Committee noted the author's claim that his government-assigned lawyer was taking part in the proceedings only "pro forma."

34 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems do not endorse any specific model, para. 10, available at: https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf.

35 Ibid. This reflects the international position, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems does not endorse any specific model, see para 10.

36 UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices, available at: https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf.

lawyers.[37] To this end, the introduction of registers of legal aid lawyers in certain states has removed the ability of law enforcement officers to appoint lawyers who may be less active in the legal defence of their clients (so-called "pocket lawyers"). Registers of legal aid lawyers have, in this way, helped tackle the issue of "pocket lawyers", which was raised at the previous Criminal Justice Forum.[38] Legal aid lawyers should be assigned through an automated allocation or rotation system. Participants noted that the administration of such systems by the legal profession can help to guarantee independence from government organs (see also Working Group 3 on the independence of legal professions).

Working Group 1 also reflected on the system of investigative judges, which has not been established in all Central Asian states. In countries without investigative judges, investigative oversights are raised and challenged during the general course of criminal proceedings, after being flagged either with the court or prosecutor. Participants noted the important role of both parties to proceedings in actively raising any investigative irregularities before the relevant bodies. To this end, in accordance with legislative changes introduced in Uzbekistan in 2021,[39] parties to a case can now participate in preliminary hearings that assign criminal cases to court. Because of the previously limited ability of parties to participate in this stage of proceedings, judges had been required to make decisions, such as on the termination or suspension of a case, with limited information available to them. All participants subsequently had to be summoned to a general court session to resolve these matters. The new law aims to improve upon the previous system.[40]

In countries where they have been introduced, investigative judges are generally considered to have played an important role in advancing human rights guarantees at the pre-trial stage, although some issues remain. The possibility of appealing against a decision of an investigative judge was cited as an important safeguard in this respect. In some countries, investigative judges are often recruited from former employees of investigative and prosecution organs in order to ensure their expertise and familiarity with pre-trial investigative issues, but there can be drawbacks to this approach.

Countries that have introduced the system of investigative judges have reported varying results regarding the use of alternative measures. It was reported that in Kyrgyzstan, the use of alternative measures did not increase significantly as a result of the introduction of investigative judges in 2019. In around 90 per cent of cases, investigative judges generally approved the requests of prosecutors to hold suspects on remand. Participants from Kazakhstan, in contrast, reported that the use of alternative measures, in particular bail and house arrest, had increased with the introduction of investigative judges.

Generally, in Central Asia, no specific regulations were introduced to promote the use of alternative measures to pre-trial detention; this was left to the discretion of individual judges. Judges participating in the Expert Forum reported imposing an increased number of alternative measures during the pandemic, because of concerns of infection in pre-trial detention centres. However, participants agreed that leaving decisions on alternative measures largely to the discretion of individual judges did not effectively encourage the increased use of such measures during the pandemic.

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37 In accordance with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, "[t]he State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider", see para 16 op. cit., note 35.

38 Seventh Expert Forum on Criminal Justice for Central Asia Final Report, op. cit. note 5, p. 33.

39 "Law amending Criminal and Criminal Procedure Codes of the Republic of Uzbekistan and to the Administrative Offenses Code of the Republic of Uzbekistan", 12.02.2021 г. № ЗРУ-673, available at: https://lex.uz/ru/docs/5286350.

40 The Legislative Chamber Oliy Majlis of the Republic of Uzbekistan, "What problems will be solved by the institute of preliminary hearing?" [Какие проблемы будут решены институтом предварительного слушания?] available at: https://parliament.gov.uz/ru/events/chamber/32876/.

Working Group 2: Effective investigations

Main conclusions and recommendations

- States should ensure that their legislation forbids confessions as the sole evidence of guilt. The legislation should also outline clear procedures for the judicial exclusion of evidence obtained through torture and the initiation of torture investigations.
- States should abandon and refrain from the use of coercive interrogation techniques and start implementing investigative interviewing approaches based on the Mendez Principles.
- Law enforcement bodies should introduce more qualitative performance indicators, based on citizens' feedback and their trust in these bodies, as well as on following the pre-trial investigation standards.
- Development of step-by-step torture investigation algorithms, or checklists for documenting torture, and related training is necessary for the effective investigation of such acts.
- Digitalization of criminal proceedings speeds up the investigation and minimizes the risk of loss or falsification of the case files.

Summary of discussions

Participants in Working Group 2 discussed the findings of an ODIHR and Fair Trials research paper,[41] which explores institutional incentives for torture and ill-treatment in the OSCE region and suggests policy and practical recommendations on how to effectively counter those and investigate incidents.

Discussing legislative safeguards, participants noted that it is crucial to forbid a confession from being the sole evidence of guilt. In addition, legislation should outline a clear procedure for the judicial exclusion of evidence obtained by torture[42] and grant judges the authority to initiate investigations of torture allegations. It was also advised to criminalize complicity in torture,[43] as well as the failure to register criminal reports regarding torture.

Participants were also reminded of the recent decision of the OSCE Ministerial Council[44] where the participating States pledged to abandon and refrain from the use of interrogation techniques that constitute torture and other cruel, inhuman or degrading treatment or punishment. It was noted that such practices not only contradict human rights standards but are also ineffective, often leading to false confessions and inadmissible evidence. In this regard, speakers called for the adoption of investigative interviewing methods

41 Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, OSCE/ODIHR, Fair Trials, 2020, available at: https://www.osce.org/files/f/documents/2/a/467172.pdf.

42 "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made", Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15, available at: https://www.ohchr.org/en/professionalinterest/pages/cat.aspx.

43 The Ministerial Council, "Calls on the participating States to: [...] 8. Make all acts of torture, attempts to commit torture, and acts of complicity or participation in torture offences under domestic criminal law." Para. 8 of Decision 7/20, "Prevention and eradication of torture and other cruel, inhuman, or degrading treatment or punishment", adopted by the OSCE Ministerial Council on 4.12.2020, Tirana, available at: https://www.osce.org/files/f/documents/8/2/479762.pdf.

44 The Ministerial Council, "Calls on the participating States to: [...]5. Abandon and refrain from the use of interrogation techniques that constitute torture and other cruel, inhuman or degrading treatment or punishment, including to obtain information or a confession." Para 5 of Decision 7/20, ibid.

based on the Mendez Principles,[45] which were developed using the latest scientific findings, ensuring more efficient gathering of accurate evidence and preventing miscarriages of justice that may result from "traditional" methods. However, long-term training and allocation of law enforcement resources are crucial to properly implement this approach. Video and audio recordings of interviews and the introduction of custody records systems[46] were also mentioned as effective practical precautions both against torture and false allegations of such acts.

Much attention in the discussions was dedicated to the performance indicators of law enforcement agencies. Where those are tied to numbers of arrests or convictions, this remains among the strongest ill-treatment incentives. Overall, such indicators should be more qualitative and less quantitative. Implementation of a feedback system in law enforcement work (such as that which exists for the police in Kazakhstan) was recommended, envisaging that citizens can provide their feedback on and evaluate the quality of police services upon each contact. These results can be used as operational indicators, while the level of citizens' trust in the police might be a strategic indicator. One of the speakers also suggested developing standards of pre-trial investigation[47] and evaluating the justice actors against them.

It was agreed that effective and prompt investigation of torture provides the most powerful deterrence effect. In this respect, the development of step-by-step investigation algorithms and related training is necessary. Sme participants also suggested the introduction of specializations related to torture for investigators and prosecutors. Obligatory provision of medical and psychological-psychiatric expertise and having the ability to deposit evidence (to avoid re-traumatization of the victims and witnesses) were mentioned as helpful legal instruments for the success of criminal cases in court.

Another important aspect that facilitates effective criminal investigations is the digitalization of criminal proceedings. Participants discussed the example of Kazakhstan, where currently 80 per cent of all the case files in active criminal investigations are digitized. The authorization of key procedural decisions by the prosecutor (for example, qualification of a crime, notice of suspicion, misdemeanour protocol) is also granted digitally. Online submission of case files for expertise is currently being piloted. This has helped to speed up investigations, eliminating the need to physically transfer the case materials between the criminal justice actors, also minimizing the risk of their loss or falsification.

45 Principles on Effective Interviewing for Investigations and Information Gathering, May 2021, adopted in May 2021 with the support of Anti-Torture Initiative, the Association for the Prevention of Torture, and the Norwegian Centre for Human Rights, available at: https://interviewingprinciples.com/.

46 See, for example, "Introduction of Custody Records Took the Human Rights Protection In Detention to a Whole New Level" Ruslan Goryachenko, 21 April 2020, available at: https://www.irf.ua/en/vprovadzhennya-custody-records-vyvelo-systemu-zabezpechennya-prav-zatrymanyh-u-derzhavi-na-novyj-riven-ruslan-goryachenko/.

47 See, for example, "Standards of Pre-trial Investigation: A Practical Guide", available at: https://justtalk.com.ua/post/standarti-dosudovogo-rozsliduvannya-praktichnij-posibnik.

Working Group 3: Independence of the legal profession

Main conclusions and recommendations

- States must actively create an environment where the independence of the legal profession is upheld. They must therefore react promptly to any attempts to interfere with independence.
- States must actively investigate crimes against lawyers to fulfil their positive obligations to protect the independence of legal activity.
- States should ensure that legislation imposes administrative and/or criminal liability for unlawful interference with legal activity, and that there are no obstacles to enforcing such legislation.
- States must implement objective remuneration and case allocation systems in the context of legal aid work, to ensure the full independence of state-appointed lawyers from the government.
- Core mandates of any self-governing body of lawyers to uphold the safety and independence of lawyers should include: the protection of individual lawyers from harassment and intimidation; regulation of admission to the profession and exclusion of unscrupulous individuals from it; as well as the promotion of advanced training.

Summary of discussions

An independent legal profession is the foundation for upholding the rule of law and human rights. A democratic state based on the rule of law requires guarantees for the independent functioning of the legal profession. These rights and guarantees are not only bestowed for the personal protection of lawyers, but for all individuals that lawyers represent. Working Group 3, therefore, considered the role of professional self-governed associations of lawyers in ensuring the independence of legal professionals, discussed access to the profession of defence lawyers, including licensing and certification, and considered the selection, quality and accountability of state-appointed lawyers.

Photo: Ms. Yuliia Lisova, Attorney, Ukraine

The effective right to defence hinges on independence. Lawyers must be legally protected, be given sufficient powers and guarantees, including the rights to confidentiality, professional and personal safety, and have organizational guarantees for the independence of bar associations.

Lawyers must not only be independent from governments and their own interests (ensuring that they always act in the client's best interests), but also from the client. This includes not being identified with their client or their client's cause.[48] Participants cited examples of members of the government criticizing lawyers

48 Principle 18, UN Basic Principles on the Role of Lawyers, op. cit., note 27.

for defending certain clients of whom the government did not approve. When governments fail to react appropriately to these or other similar threats, they fall short of their international commitments.[49]

Other guarantees of independence include lawyer-client privilege, self-governing bodies, special procedures that allow for access to the profession and disciplinary actions, and the freedom of expression of lawyers (including the new challenges of making statements on social media, and how this can be dealt with). In some states in the region, lawyer-client privilege is limited in matters concerning national security. However, maintaining the confidentiality of all communications and consultations is key to ensuring the effective discharge of a lawyer's duties.[50]

Self-governance has an important role to play in upholding the safety and independence of lawyers.[51] However, participants were alert to the risks that such bodies could become additional tools for limiting the freedoms of lawyers and exerting pressure. For example, one lawyer speaking at the Forum mentioned a controversial ethical rule that was recently introduced in one country that forbids public criticism of self-governing bodies by lawyers. The legal community criticized this attack on freedom of expression and limitation of independence. Nonetheless, lawyers have already begun to be more careful about how they express their concerns in order not to violate this rule, showing how quickly such measures can have a negative impact.

Self-governing bodies of lawyers should not be purely decorative, or be an additional tool of coercion of lawyers. Rather, they should be a tool for lawyers—to defend individual lawyers from harassment and intimidation, to defend the independence of legal institutions, to regulate admission to the profession and exclude unscrupulous individuals from it, as well as a tool for advanced training and status. A defense lawyer suggested that the procedure for obtaining the status of a lawyer must be determined by the legal profession itself. Compulsory suspension and termination of professional status should be possible only by a decision of the legal profession on the basis of a limited number of justifications.

Across Central Asia, governments (through Ministries of Justice) tend to be involved in regulating access to the legal profession, including through removal of licenses to practise and disciplinary proceedings. In this respect, in Kazakhstan, a new law, "On the activities of lawyers and legal assistance" was introduced in 2018, which replaced a 1997 law ("Law on the activities of lawyers").[52] Participants raised concerns that the current law reduces the role of the bar association to participating in professional disciplinary commissions, which in accordance with the Law now also include representatives of the public who are selected by the Ministry of Justice.[53] Participants from other jurisdictions shared their experiences of systems that have moved away from this, towards entrusting disciplinary and admission decisions to self-governing bodies, which was recognized as a positive step.

Participants discussed measures that can protect the independence of lawyers in the context of legal aid work which is funded by the government. It was agreed that accurate accounting and fair remuneration processes should be in place to ensure full independence of legal activities. Payment for legal aid work should cover travel

49 Ibid., Principles 16 and 17.

50 Ibid., Principle 22.

51 Ibid., Principle 24.

52 Law of the Republic of Kazakhstan, "On the activities of lawyers and legal assistance" of 5 July 2018, available at: https://online.zakon.kz/Document/?doc_id=33024087.

53 ICJ, "Kazakhstan: ICJ deplores new law restricting independence of lawyers" (11 July 2018) available at: https://www.icj.org/kazakhstan-icj-deplores-new-law-restricting-independence-of-lawyers/.

times, waiting times, and time needed for familiarization with case materials. Fees and expenses paid should be subject to an independent audit.

Some administrative and criminal law provisions are in place across the region to establish liability where individuals interfere with or obstruct the activities of lawyers, for instance by refusing to provide necessary documentation or to respond to requests for information. However, participants highlighted that these measures are seldom used.

Working Group 4: Judicial systems

Main conclusions and recommendations

- States should ensure that where judicial councils are established, at least half of their composition consists of judges selected by their peers.
- States should guarantee proper financing of their judicial systems, as it is crucial for their independence and effective functioning.
- Presidents of courts should not have excessive powers over careers of other judges or disciplinary proceedings against them.
- Legislation should ensure that disciplinary procedures against judges do not infringe the principle of judicial independence.

Summary of discussions

During Working Group 4, participants discussed recent judicial reforms in the region, as well as ongoing problems they face in implementing them. Overall, states continue their attempts to strengthen the independence of the judiciary, both external (from the other governmental branches) and internal (from judicial governance bodies and courts' presidents).

Photo: Working group 4 "Judicial System"

A speaker from Mongolia briefed the group on national reforms aimed to reduce the influence of the President. Earlier, the General Judicial Council, a body responsible for the selection of judges in Mongolia, consisted of five members appointed by the President. Following the constitutional reform of 2019, it now consists of ten members, five of whom are appointed by the judicial assembly, and the other five by the parliament. This was done to comply with the international standard, according to which not less than half the members of the judicial councils should

be judges chosen by their peers.[54] Also, earlier the President was in charge of appointing the chairpersons of all the courts, but since 2021 s/he only appoints the Chairperson of the Supreme Court, while chairpersons of the other courts are elected by the judges themselves.[55]

Photo: Justice Battseren Bataa, Judge, Mongolia

Another crucial aspect of external independence is having stable and sufficient financing.[56] To that end, Mongolia prohibited the reduction of funds allocated for the judiciary in comparison with the previous year, while Kazakhstan introduced a fixed budget percentage of the expenses for the judiciary: 6.5 per cent of the total expenses of state bodies.

Discussing the internal dimension of judicial independence, a speaker from Kazakhstan mentioned that since 2019 the powers of the courts' presidents were weakened.[57] Earlier, the Judicial Jury, a body in Kazakhstan in charge of judicial careers and disciplinary proceedings, was subordinated to the Chairperson of the Supreme Court. The careers of judges were also dependent on the Reserve Commission, established upon the submission of this Chairperson. The appointment of the presidents of the regional court collegiums was made upon the submission of the Chairperson of the Supreme Court.

As a result of the reform, the Judicial Jury was transferred to the subordination of the High Judicial Council. The latter also received the functions to deal with the reserve candidate judges. The state also introduced competitive selection of chairpersons of the regional court collegiums and reduced their influence over the disciplinary proceedings against judges. At the same time, a prohibition was introduced against being appointed as a court president in the courts of the same level for more than two terms, to ensure rotation.[58] Lastly, the self-governance of judges was strengthened, allowing for local court judges to participate in the selection of the members of judicial governance bodies.

Aiming to level up professionalism of the judicial corps and eradicate corruption, Kazakhstan also reformed the procedure for selecting judges. It abolished oral exams and introduced case-based practical tasks, essays and

54 "27. Not less than half the members of such councils [for the judiciary] should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary," Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies), available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805afb78.

55 "16. The selection of court chairpersons should be transparent. Vacancies for the post of court chairpersons shall be published. … A good option is to have the judges of the particular court elect the court chairperson." Para 16, Kyiv Recommendations, op. cit., note 90.

56 Recommendation 4, "Courts must be resourced to a level which enables them to discharge their obligation to provide an effective and efficient system for the delivery of justice. Each State should therefore allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights and to enable judges and court staff to work efficiently." ENCJ Report - Funding of the Judiciary 2015-2016, adopted by the General Assembly 3rd June 2016, available at: https://www.encj.eu/images/stories/pdf/workinggroups/encj_2015_2016_report_funding_judiciary_adopted_ga.pdf.

57 "11. The role of court chairpersons should be strictly limited in the following sense: they may only assume judicial functions which are equivalent to those exercised by other members of the court. Court chairpersons must not interfere with the adjudication by other judges and shall not be involved in judicial selection," Para 11, Kyiv Recommendations, op. cit., note 90.

58 "15. Court chairpersons should be appointed for a limited number of years with the option of only one renewal. In case of executive appointment, the term should be short without possibility of renewal." Para 15, Kyiv Recommendations, op. cit., note 90.

interviews with the candidates. Consequently, fewer candidates successfully undergo this procedure. Judicial vacancies on the Supreme Court and the regional courts became open for representatives of non-judicial professions to attract more candidates.

Reflecting on the disciplinary liability of judges and how it may impact judicial independence, a speaker from Kyrgyzstan shared his concerns regarding national legislation there. For example, the national disciplinary body has the right to demand explanations from judges on the merits of complaints. However, this contradicts the principal of judicial independence, which holds that decisions should always be made independent of colleagues' influence. Also, the legislation allows for recalling a disciplinary complaint against a judge by the claimant and does not prohibit disciplinary audits of judges during pending cases. This creates opportunities for potential misuse and intrusion into the work of judges.

Plenary session: Institutional issues

Main conclusions and recommendations

- Despite the pandemic, cases related to unlawful detention, domestic violence, human trafficking, or involving minors should always be prioritized for case-processing by the courts.
- Judges should have a final say in deciding which cases are suitable for trial at a distance and which are not.
- The prosecution service should be independent and not receive any instructions from the executive or legislative powers concerning individual cases. States should not merge the positions of the Prosecutor General and the Minister of Justice.
- The recruitment of prosecutors, as well as their promotion, should be fair and equitable, based on objective criteria, and prevent any form of discrimination or political influence.
- Prosecutorial councils with the majority of members being prosecutors elected by their peers serve as a strong guarantee of ensuring democratic legitimacy and independence of the service.

Summary of discussions

The discussions during Plenary Session 3 centered around the challenges faced by the judiciary in light of the pandemic and the importance of prosecutorial independence in safeguarding judicial independence. The latter was tied to the disturbing tendencies in some participating States where politicians use the prosecution to attack judges opposing the ruling party's goals.

Photo: Justice Duro Sessa, President of the European Association of Judges, Justice of Supreme Court of Republic of Croatia (online)

A judge from Croatia noted that the pandemic has put courts in a tough position. On the one hand, they should protect public health (including of their staff) by limiting social contacts where possible. On the other hand, they should continue their work to protect the rights of citizens, including the right to a fair trial. European countries have approached this situation differently. Some introduced rules on how the

courts should operate and which cases should be prioritized, while others left it to judicial discretion. In that regard, it was stressed that cases related to unlawful detention, domestic violence, human trafficking, or involving minors should always be in the focus of the courts. Where trials at a distance might be an option, the respective rules of procedure should be introduced, however, judges should have a final say in deciding which cases are suitable to be heard online and which are not.

There are examples of prosecution services being used to attack judicial independence or threaten judges. [59] A growing number of politically motivated investigations are carried out against those regarded as opponents of the government. This is facilitated by an unprecedented level of the expansion of powers and politicization of the service. Thus, an independent prosecution service plays a vital role in securing the independence of the judiciary from political actors.

An expert from Portugal briefed participants on the global and European reference documents regarding the standards of prosecutorial independence[60] and their main provisions. It was stressed that the prosecution service should be independent and not receive any instructions from the executive and legislative powers concerning individual cases. The legislature may only provide general guidelines regarding the criminal policy of a state. The system of appointment of the Prosecutor General must guarantee his/her non-politicization. The respective mandate should not coincide with the legislature's, be temporary or renewable. The practice of merging the positions of the Prosecutor General and the Minister of Justice was condemned, as this entails a high level of political influence over this position.

When it comes to internal independence, it is important that prosecutors carry out their duties without the need to obtain prior approval from their superiors, nor need confirmation of their actions. The recruitment of prosecutors, as well as their promotion, should be fair and equitable, based on objective criteria, and prevent any form of discrimination or political influence.

Lastly, it was mentioned that prosecutorial councils with the majority of members being prosecutors elected by their peers serve as a strong guarantee of ensuring the democratic legitimacy and independence of the prosecution service. Their creation might dilute the powers of the Prosecutor General (and/or other high-ranking prosecutors who usually hold career-related or disciplinary powers), reducing the risk of their disproportionate influence and potential abuse of power.[61]

59 See, for example, "Malicious Prosecution by the Polish Public Prosecutor's Office," Martin Mycielski, Bartosz Kramek, Open Dialogue, 16 August 2021, available at: https://en.odfoundation.eu/a/37608,malicious-prosecution-by-the-polish-public-prosecutors-office/.

60 See, for example, the "Guidelines on the Role of Prosecutors", approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, August 27th to September 7th, 1990), available at: https://www.ohchr.org/en/professionalinterest/pages/roleofprosecutors.aspx, and the "Standards of professional responsibility and statement of the essential duties and rights of prosecutors," adopted by the International Association of Prosecutors on April 23rd, 1999, available at: https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/English.pdf.aspx.

61 "The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific," OECD, 2020, p. 27, available at: https://www.oecd.org/corruption/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf.

Working Group 5: Alternative measures to imprisonment

Main conclusions and recommendations

- States should make sure that the national legislation provides for a wide range of non-custodial sanctions (including the possibility to combine those). Non-custodial options not only facilitate rehabilitation and reintegration of offenders but are considerably less expensive and reduce prison overcrowding.
- When deciding on the use of monitoring of offenders and the method of monitoring, law enforcement bodies and courts should ensure that the imposed restrictions are necessary and proportionate to the goal to be achieved and that the individual circumstances of the person monitored are taken into account.
- Integrating monitoring into the criminal justice system requires the support structure in place to make it work effectively. Although it is more cost-effective than imprisonment, it still requires adequate financial and human resources. Therefore, States should consider allocating sufficient funds for the equipment needs and capacity-building of staff.

Summary of discussions

Imprisonment might not always be an effective penalty, and, therefore, states should introduce a sufficient range of non-custodial sanctions (including combinations of them).[62] These sanctions not only facilitate the rehabilitation and reintegration of offenders but are considerably more cost-effective and reduce prison overcrowding. In this regard, participants in Working Group 5 discussed which alternative sanctions could be used instead of imprisonment.

An expert from Sweden shared the national experience of such possible sanctions.[63] There they may include community service,[64] intensive supervision with electronic monitoring (alternative to a maximum of six months of imprisonment), a conditional sentence and probation. The latter two might be combined with community service or fines. Probation can also be combined with special treatment or behavioural change programmes.[65]

Specific attention was dedicated to different types of electronic monitoring methods. A speaker from the United Kingdom underlined that the application of monitoring should correspond with the goals of rehabilitation. As an alternative to custody, it helps to avoid the negative impact of imprisonment and maintains community.

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62 "Incarceration should be used as a last resort, taking into account the nature and gravity of the offence, the risk the offender poses to the public and the offender's social reintegration needs. Crime prevention and alternatives to incarceration are key to avoiding the overreliance on, and inappropriate use of, incarceration." United Nations System Common Position on Incarceration, April 2021, available at: https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf.

63 For more information about The Swedish Prison and Probation Service, see: https://www.kriminalvarden.se/swedish-prison-and-probation-service/sanctions/.

64 For example, bbetween 40 and 240 hours of unpaid work instead of imprisonment of up to one year.

65 The court can decide that a person who is sentenced to probation must observe conditions that may relate to medical care, treatment for alcoholism or other care or treatment in or outside a hospital or other similar establishment. In that case, it may also be prescribed that he provides blood, urine and breath samples in order to monitor that he is not under the influence of dependency producing substances. More information about probation measures and alternative sanctions in the EU, Sweden, available at: https://www.euprobationproject.eu/national_detail.php?c=SE.

Though it cannot prevent any potential wrongdoings, monitoring provides early warning and evidence of misbehaviour and increases public safety (especially of victims). Monitoring also has an added value as a habit-breaker, preventing people from getting into an environment where the risk of reoffending is high. It may also facilitate compliance with the other supervision requirements, such as visiting a workplace according to a given schedule.

There are three main types of electronic monitoring, each of them requiring wearing some tags: location tracking (radiofrequency, GPS tracking, might include voice verification), behaviour monitoring (remote alcohol monitoring), and proximity monitors (often used in domestic violence cases). The first one is the simplest, mainly used in cases of house arrest. GPS monitoring might be active (when a person is monitored in real-time), passive (historical information about movement is collected), or hybrid (with alerts or exclusion or inclusion zones). The downside of the latter is that the battery life of a tag is very short (usually not more than 24 hours) and requires two hours of charging daily. When deciding on the use of monitoring and its type, it should be ensured that the imposed restrictions are necessary and proportionate to the goal to be achieved and that the individual circumstances of the monitored person are taken into account.[66]

Integrating monitoring into the criminal justice system requires the support structure in place to make it work effectively (establishing communication channels with the monitored persons, developing rules and algorithms for typical situations, non-compliance policies and reaction mechanisms, etc.). While establishing and keeping this structure is cheaper than imprisonment, it still requires sufficient financial and human resources.

Working Group 6: Human rights in prison

Main conclusions and recommendations

- Any restrictions on the access of detainees to their families and lawyers must be necessary and proportionate, and subject to regular review. If in-person meetings are not possible due to the epidemiological situation, facilities for online calls and telephone calls should be made available.[67]
- Detainees and members of NPMs and other bodies who conduct inspection visits should be provided with protections required during public health emergencies.[68] Employees of institutions should be fully aware of updated regulations.

66 "4. The type and modalities of execution of electronic monitoring shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances of the suspect or offender and shall be regularly reviewed." Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies), available at: https://pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282014%29+4+on+electronic+monitoring.pdf/c9756d5b-be0e-4c72-b085-745c9199bef4.

67 See OSCE/ODIHR and APT, Guidance: Monitoring Places of Detention through the COVID-19 Pandemic, available at: https://www.osce.org/files/f/documents/7/5/453543.pdf, section B.1 on the right to contact with the outside world, pp. 23-4, in accordance with which contact between persons deprived of liberty and family members or loved ones "should be facilitated and encouraged, and be frequent and free."

68 Ibid., section C.e on Acquiring hand sanitiser and adequate personal protective equipment (PPE), p. 16.

- The duties of NPM members should correspond to the recommendations set out in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[69]
- States must ensure that the confidentiality of NPM interviews with detainees and employees of institutions is protected in legislation. NPM members must also be required by law to keep the personal data of complainants private.
- Governmental bodies at which an NPM's recommendations are aimed must be required by law to respond to and discuss the recommendations. Governmental involvement in the elaboration and implementation of recommendations increases the likelihood of compliance.
- A Central Asian network of NPMs should be created in order to exchange experiences and address regional challenges to human rights in prison through co-operation.

Summary of discussions

Central Asian states have recorded a positive tendency in reducing their prison populations over the past 10 years.[70] Nonetheless, some concerns relating to prison populations remain, with the COVID-19 pandemic highlighting the need for an urgent response. Participants in Working Group 6 emphasized the need to identify the factors that led to the decrease in the prison population. The Working Group reflected on global and regional trends in prison management and prisoner rehabilitation, the risk-need-responsivity model in prisons, and developments in penal legislation and prison staff training, including introduction of e-learning. A key focus of the Working Group was on the monitoring of places of detention, which gained particular importance (as well as significant challenges) during the public health crisis. Moreover, participants discussed the importance of exchanging experiences and addressing regional challenges to human rights in prison through co-operation and establishing a Central Asian network of NPMs.

NPMs act as an effective and independent mechanism in monitoring compliance with human rights in prisons.[71] As such, participants agreed that clear conditions for candidacy of an NPM are necessary, including outlining those who cannot become members, for instance, government employees and employees of law enforcement agencies. In order to avoid conflicts of interest, new NPM members should be elected annually.

NPMs were identified as a key tool in helping to resolve not only practical challenges, but also problems relating specifically to legislation. All unenforced NPM recommendations in the region are mainly connected to the following issues: an absence of an effective mechanism for responding to complaints; absence of immediate and effective recording of instances of torture and/or other ill-treatment; and a lack of access to specialized social and health care services that people in penitentiaries and social institutions are entitled to. With regard to NPM visits, participants agreed that the confidentiality of NPM interviews with detainees and employees of institutions should be protected in legislation, including any personal data of complainants.

The COVID-19 pandemic affected the work of all governmental and non-governmental organizations, including NPMs and other inspection bodies. This had a fundamental impact on the human rights of detainees since they are wholly dependent on the staff of the institutions where they are held. NPMs

69 UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), 9 January 2003, A/RES/57/199, available at: https://www.ohchr.org/Documents/ProfessionalInterest/cat-one.pdf.

70 See data at "World Prison Brief: Asia," available at: https://www.prisonstudies.org/map/asia.

71 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic," Principle 10, available at: https://rm.coe.int/16809cfa4b.

Photo: Ms. Dinara Sayakova, Deputy Director of National Preventive Mechanism, Kyrgyz Republic

therefore should not cease to conduct preventive visits during a pandemic, but rather adapt their approach.[72] For example, in order to keep vulnerable groups safe, in Kyrgyzstan, NPM members over the age of 55 and those with underlying conditions stopped conducting visits, while members who continued to visit institutions underwent regular PCR testing. The Deputy Director of the Kyrgyz NPM explained that they invited epidemiological experts to develop special instructions to keep detainees and NPM members safe.[73]

The activity of the Kyrgyz NPM, including visits to institutions, had initially been forced to stop during the public health emergency because temporary administrative bodies did not issue appropriate passes allowing NPM members an exemption from curfew. The NPM sought assistance from the UN Committee against Torture for support with this problem, which helped to regulate the situation. The monitoring guidance developed by the Association for the Prevention of Torture (APT) and OSCE/ODIHR[74] was also cited by the Working Group as a key tool in supporting NPMs in conducting preventive visits during a public health crisis.

Within the context of the public health crisis, a lack of personal protective equipment (PPE) and testing created further barriers to NPM members accessing places of detention. The prison service issued two departmental orders (which are still in force) regarding access of detainees to lawyers, employees of the ombudsperson office and NPM members, permitting visits to institutions of the state penitentiary service only with a negative PCR test result and suitable PPE. At the same time, participants of the Forum stressed that any restrictions on the access of detainees to their families and lawyers must be necessary and proportionate, and subject to regular review. If in-person meetings were not possible due to the epidemiological situation, facilities for online calls and telephone calls should be made available.

A former head of the NPM in Ukraine commented that NPM recommendations must be directed at addressing the reasons for the violation, not its consequences—for example, rather than urging that the number of pre-trial detainees be reduced, recommendations must address the lack of use of alternative measures.

The Commissioner for Human Rights of Kazakhstan accepted that the aim of NPMs was not 100 per cent compliance with their recommendations, but rather, an effective dialogue with executive bodies. The challenge is to persuade governments that the given recommendation is effective, necessary and that its fulfilment will lead to an improvement in the situation. While some recommendations may seem easily implemented, the executive point of view will differ from that of the NPM, most often because the state will need to consider how the recommendation will impact budgetary constraints. Governments may also believe some recommendations require a rethinking of state policy on a particular issue, and that this therefore goes

72 As urged by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Protocol for national preventive mechanisms undertaking onsite visits during the coronavirus disease (COVID-19) pandemic, CAT/OP/11, para. 2, available at: https://undocs.org/CAT/OP/11.

73 In line with the Guidance: Monitoring Places of Detention through the COVID-19 Pandemic, op. cit., note 67, section C.b on "Seeking the advice and expertise of medical professionals," p. 16.

74 Guidance: Monitoring Places of Detention through the COVID-19 Pandemic, op. cit., note 67.

beyond the scope of the NPM's activity. As such, a compulsory mechanism for the government to respond to and discuss an NPM's recommendations was identified as the most effective strategy in promoting the implementation of recommendations.

A positive development identified during the session was the broadened mandate of NPMs in the region. For example, since 2019, the mandate of the Kazakh NPM has extended to social care and children's institutions. As a result, the NPM has recognized the need to add specialists to the NPM's membership to expand the knowledge base and experience of the NPM and is currently formulating a plan in this respect.

The Commissioner for Human Rights of Kazakhstan noted that the level of implementation of the NPM's recommendations improved between 2019 and 2020. This shows an improved recognition by the government of the NPM's role in ensuring compliance with human rights in places of detention and other institutions where vulnerable individuals are held.

Since 2019, the NPM has also worked on a project analysing medical provision in the law enforcement system. As a result, the President transferred the medical mandate from the Ministry of Justice to the Ministry of Health. As well as improving access to medical treatment, this allows civil medical workers—who are independent from the penitentiary system—to record any signs of torture and ill-treatment.

At the end of 2020, the President of Kazakhstan ordered continual video surveillance of places of detention. Participants considered this is a good practice to improve human rights protection in places of detention and which should therefore be extended to other institutions monitored by NPMs, such as social care and children's institutions.

Side event A: Fair trial standards during health emergencies

Main conclusions and recommendations

- States must include justice system actors within exemptions from strict travel restrictions and other limitations on freedom of movement, including limitations on travel, use of personal transport and curfews.[75]
- States should make maximum use of less restrictive public health measures, such as mask mandates and social distancing requirements, in seeking to uphold the right to a public hearing. Court authorities should conduct risk assessments on a case-by-case basis, since the physical characteristics of courtrooms and places of detention, as well as the number of trial participants, may vary.
- States must adopt clear regulations regarding the conduct of online trials. This should include a set of factors justifying removal of persons from online calls and responses to instances of poor connection quality.[76]

75 Recommendation 1.2., ODIHR, Fair Trial Rights and Public Health Emergencies, op. cit., note 28.

76 Ibid., Recommendation 4.3.

- States must limit those who are able to access audio and video recordings of online trials. If this cannot be guaranteed, and in especially sensitive cases, in-person hearings should be held to avoid breaches of confidentiality.
- If the emergency continues for an extended period of time, specific software should be developed to facilitate online or hybrid hearings.[77] States should prioritize the installation of new software in courts and places of detention.

Summary of discussions

The judicial system is responsible for upholding human rights and must therefore continue functioning to the fullest extent possible during health emergencies.[78] Any restrictions should respond directly and specifically to concrete challenges posed by the public health crisis. The side event used ODIHR's policy brief on fair trial rights and public health emergencies[79] as a basis for identifying recommendations specific to the Central Asian region.

During the side event, participants discussed challenges to fair trial standards arising from public health emergencies, including the COVID-19 pandemic. A restriction that was introduced in several states in the region was the requirement for individuals to apply for special authorization to use any form of transportation. Although restrictions on freedom of movement were a justifiable response to the public health crisis, lawyers were not generally included in the list of professions exempt from this requirement, thereby hampering their ability to visit courts and their clients.

Communication channels were not always clearly established from the outset of the pandemic.[80] Strands of information appeared variously on government websites, via SMS or on social media channels such as Telegram but were not unified. Lawyers reported learning of new rules from court staff rather than from government sources. Others reported being turned away from courts or places of detention despite official online sources declaring them open. A further challenge was the vague phrasing of certain emergency regulations, which created additional confusion and lack of clarity.

Lawyers reported that the advice they received regarding court closures varied based on the type of request made. For instance, when seeking to file a claim in person, one participant had been informed that the court was closed despite information to the contrary appearing online. This created the risk that a lack of clarity or foreseeability of the emergency rules could be used to obscure illegitimate reasons for rejecting requests made by lawyers. The same inconsistency was reported in respect of places of detention, some of which displayed notices on buildings while others offered no information at all regarding their restrictions, resulting in inconsistent decisions made on a case-by-case basis.

Where lawyers were not granted in-person access to detainees, consultations occasionally took place during online hearings and were thus audible to other parties to the trial.[81] This clearly undermines the right to

77 Ibid., Recommendation 4.10.

78 Ibid., Recommendation 1.2.

79 Ibid.

80 Ibid., Recommendation 2.11.

81 Ibid., Recommendation 6.1, "If the physical presence of a lawyer in proximity to the detained person is not possible, there should be a confidential and unobserved line of communication between them."

confidential communication between individuals and their legal representatives.[82] Although there were some positive examples in the region of detainees being provided with the physical facilities necessary to consult with their lawyers in private, states should guarantee that this protection is extended to the context of online hearings.[83] Appropriate technological tools are vital in this respect.

Lawyers reported being removed from online hearings for reasons that were not clear. In some cases, poor connection quality led to misunderstandings or gaps in evidence. It was not always possible to determine whether connectivity issues were genuine or used as an excuse to hamper proceedings. It was ultimately accepted that improved IT solutions are not a panacea—online trials will continue to be inappropriate for certain kinds of cases, regardless of the level of technological improvement. This relates to cases which by their very nature require an assessment of witness behaviour or physical evidence, or where the need for privacy and confidentiality is heightened.

In general, Central Asian states prioritized cases concerning detention as urgent and, as far as possible, trials for such cases were held in person.[84] Nonetheless, a lack of detailed rules meant that the reasons for transferring certain cases to an online or hybrid format were not always clear. Participants agreed that cases involving detention should continue to be prioritized. States should also consider whether other categories of cases, such as those related to sexual offences and challenges against emergency measures, should be prioritized.

Participants also suggested that states should prioritize sexual offence cases for in-person hearings. Since it cannot be guaranteed that other parties to the trial are not recording evidence on their own devices for later dissemination, complainants and witnesses may be prevented from giving evidence in full. Although audio and video recording of online trials is important to ensure an accurate record of proceedings, participants also queried whether recording witness evidence in sexual offence cases was appropriate. It was ultimately felt that, for the purposes of proper record keeping, such trials should be recorded, but with added guarantees, such as limiting the number of trial participants and clarifying the sanctions for unauthorized sharing of trial recordings.

Side event B: Women and justice

Main conclusions and recommendations

- States must recognize the role of associations of women judges as an effective tool in supporting women in the justice sector, promoting gender parity in justice systems and creating global support networks for women.
- Co-operation with other types of national associations, such as associations of women lawyers and civil society organizations, helps both to further the positive impacts of associations and to respond to challenges faced by associations.
- International networks of women judges promote gender equality at a global level and can seek to address threats faced by women judges, as shown by the response of the International Association of Women Judges (IAWJ) in assisting women judges in Afghanistan.
- Statistical analysis of gender representation in the judiciary should include an assessment of the representation of women in leadership roles.

82 Ibid., Recommendation 4.6.

83 Ibid., Recommendation 6.1.

84 Ibid., Recommendations 3.2. and 6.1.

Summary of discussions

This session built on discussions of the women and justice breakfast held at the 2018 Expert Forum in Bishkek, Kyrgyzstan. At that session, it was agreed that the inception of more associations of women judges in Central Asia should be actively promoted.[85] Since then, ODIHR hosted a webinar in April 2021 aimed at exploring best practices in setting up such associations and their main advantages.[86] Participants noted the usefulness of international platforms for discussing the creation of associations of women judges. In addition to the Kyrgyz Association of Women Judges (CAGHS), other Central Asian states are moving towards such associations; some have set up chapters of women judges within general associations of judges. The practice of international associations of women judges, and in particular those in the region, are vital for offering guidance and best practice in taking the next steps.

The side event at the Eighth Expert Forum was organized within the framework of ODIHR's CHANGE project, which works to create equal gender representation.[87]

Participants agreed that associations of women judges provide solidarity and opportunities for women to share experiences and to have strength in numbers to advocate for more women to be appointed to the judiciary. Issues such as gender-based violence that affect women and girls, in particular, can be advocated for from a position of strength.

As well as joining as individual members of the International Association of Women Judges (IAWJ), women judges should consider forming national associations of women judges. This is strongly promoted by OSCE/ODIHR, which in 2021 published a comparative study on women judges' associations across the OSCE region[88] aimed at offering guidance and highlighting best practice in creating associations.

Photo: Justice Sanobar Mamadaliyeva, Judge of the Supreme Court, Republic of Uzbekistan

Photo: Justice Ainura Satarova, Judge, Kyrgyz Association of Women Judges

85 Seventh Expert Forum on Criminal Justice for Central Asia Final Report, 27-29 November 2018, pp. 29-31, available at: https://www.osce.org/odihr/448924.

86 See OSCE Office for Democratic Institutions and Human Rights, "Associations of Women Judges in Central Asia—Gender, Diversity and Justice", event information available at: https://www.osce.org/odihr/482894.

87 The CHANGE project (Capitalizing on Human Dimension Mandate to Advance Gender Equality) integrates the most important approaches across ODIHR's mandate to address the obstacles to equal gender representation. The aim of the project is to challenge gender norms, to promote positions of social and political influence for women, and to improve the representation of women in the justice sector in co-operation with ODIHR's partners. Also see further publications at OSCE Office for Democratic Institutions and Human Rights, "Gender equality", available at: https://www.osce.org/odihr/gender-equality.

88 ODIHR, "Comparative study on women judges' associations across the OSCE region", available at: https://www.osce.org/odihr/487633.

The IAWJ's involvement in assisting women judges in Afghanistan since August 2021 offers a stark illustration of the importance of associations of women judges.[89] The IAWJ was able to evacuate almost 100 women judges and their families from Afghanistan with the assistance of humanitarian organizations.

The Kyiv Recommendations on Judicial Independence in Eastern Europe, the South Caucasus and Central Asia[90] suggest that the composition of the judiciary should reflect the composition of the population as a whole. However, ODIHR's study on gender, diversity and justice confirmed that women, persons with disabilities and minorities continue to experience barriers to access to justice, as well as to equal representation and effective participation in the justice system.[91] Even in areas where gender-balanced representation among justice system actors is attained, gender-based barriers to career advancement persist. As a consequence, women are not proportionally represented in senior management positions, even in participating States where they have equal or slightly higher representation in the justice sector overall. ODIHR is, therefore, supporting the development of gender-sensitive policies for selection, appointment and promotion of judges.

Reflecting these general patterns within the OSCE region, even in Central Asian states that have a gender-balanced judiciary, women may be under-represented in leadership roles. For example, chairpersons of courts are often exclusively men. Statistical analysis of gender representation in the judiciary should therefore note the representation of women in leadership roles, as well as in judicial positions in general.

International standards highlight the need to ensure gender equality during selection and appointment procedures, access to training and specialization in the profession.[92] Representatives of Central Asian states reaffirmed their commitment to the goal of gender balance in all judicial and executive bodies, and to ensuring that judges are properly qualified, trained and selected on a non-discriminatory basis. The ODIHR study on gender, diversity and justice[93] was cited as a useful tool that offers practical recommendations for participating States in reaching these goals. Participants noted that justice systems that reflect the population inspire a greater level of trust in citizens, an important goal that states across the OSCE region must strive for.

Women in the region may be hesitant to pursue careers in the judiciary because of prevailing ideas that, if they have children, they should be the primary caregivers. Societal attitudes that pose obstacles to equal representation within judicial systems must therefore be addressed. Outreach programmes by the judiciary involving women judges sharing their experiences can help to target stereotyped views of women and encourage women to apply for judicial positions.

In order to promote the benefits of associations of women judges to the broader public, associations can engage a wide range of actors in their training activities, such as colleges, law schools and women's shelters. Media coverage can also be helpful. It is important to maintain an association's website as people will generally turn first to an Internet search for information on an association.

89 International Association of Women Judges, "Official IAWJ Statement on the Current Situation in Afghanistan", available at: https://www.iawj.org/content.aspx?page_id=5&club_id=882224&item_id=67819.

90 ODIHR and Max Planck Minerva Research Group on Judicial Independence, "Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia", June 2010, para. 24, [Kyiv Recommendations] available at: http://www.osce.org/odihr/KyivRec?download=true.

91 ODIHR, Gender, Diversity and Justice: Overview and Recommendations, May 2019, available at: http://www.osce.org/odihr/419840.

92 See, for example, Recommendation Rec (2003) 3 adopted by the Committee of Ministers of the Council of Europe on 12 March 2003 and explanatory memorandum, available at: https://rm.coe.int/1680519084.

93 Gender, Diversity and Justice: Overview and Recommendations, op. cit., note 91.

Some women judges may be hesitant to join associations, not wishing to be seen as separating themselves from their male colleagues. In this respect, associations of women judges can highlight that equal gender representation in justice systems is not a goal that serves only women, but one that improves the work of justice systems in general, to the benefit not only of judges but societies as a whole.

Participants also focused on the role of associations of women judges as constructive partners for state authorities. Associations of women judges can share their expertise with relevant stakeholders by making suggestions to legislators considering legal reforms that concern the rights of women and girls. Associations can also develop and offer training to judges in responding to particular issues in the courtroom, including in co-operation with other organizations. A representative from CAGHS explained that the Association co-operates actively with its partners. Between 2016 and 2021, CAGHS signed Memoranda of Co-operation with the Ministry of Education, the Ministry of Justice, the State Service for Intellectual Property, the Ministry of Labor and Social Development, the National Mediation Centre and the NGO Association "Lawyers of Kyrgyzstan", among others.

Side event C:
Lessons learned and good practices from OSCE trial monitoring

Main conclusions and recommendations

- Trial monitoring may help to identify weaknesses and strengths of a justice system and generate a roadmap of recommendations for its further improvement.
- Trial monitoring helps to increase the transparency of and public confidence in the judiciary via objective coverage of the work of courts.
- Monitoring is a useful tool to facilitate judges' professional development by providing them with court users' feedback.
- The presence of monitors at hearings improves the professional preparation and behaviour of justice actors.

Photo: Side Event "Lessons Learned and Good Practices from OSCE Trial Monitoring", organized by the Supreme Court of the Republic of Uzbekistan and the OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Summary of discussions

Trial monitoring is a powerful tool for promoting domestic and international guarantees of fair trial rights and is accepted by participating States as a confidence-building measure.[94] Depending on its scope and goals, it has proved to be valuable for achieving different purposes.[95] Participants of the side event, therefore, discussed the benefits of different types of monitoring and how they impact national judicial systems.

Systemic trial monitoring helps to identify weaknesses and strengths of a justice system and can generate a roadmap of recommendations for its further improvement. Thematic monitoring may provide insights about the judicial application of recently adopted laws (for example, new procedural codes), while ad hoc monitoring serves as an element of public scrutiny in the consideration of specific high-profile or politically sensitive cases.

Discussing the direct impact of monitoring, participants mentioned cases where conclusions from monitoring were endorsed in governmental action plans (Bosnia and Herzegovina[96]) and taken into account in revisions of Criminal Procedural Codes (Kazakhstan[97]) and other judicial guidance documents (Moldova[98]).

Furthermore, trial monitoring helps to increase the transparency of and public confidence in the judiciary. It provides objective coverage of the work of courts, while politicians or media may sometimes transmit a biased point of view or withhold certain important information regarding proceedings. Judges are provided with a direct opportunity to demonstrate proper administration of justice to the monitors.

Monitoring is also a useful tool to provide fact-based feedback, both critical and positive, from court users to judges. A judge whose hearings had been monitored noted that feedback from monitors was helpful for his professional improvement, as it could point out shortcomings in the administration of justice, increase knowledge of international fair trial standards, and foster the implementation of new positive practices. A good practice of providing positive feedback to judges from Poland was mentioned, where, after the annual round of trial monitoring, an NGO awards judges "for actions that reduce the distance between the courts and the public outside the courtroom".[99]

Lastly, one of the speakers mentioned that the presence of monitors results in an interesting psychological effect on judges and other justice actors. Demonstration of interest in their work raises their attention and encourages them to perform better. Participants agreed that in monitored hearings prosecutors and attorneys prepare much better and are less keen to act improperly.

Thus, ODIHR called on the participating States to actively use this instrument and declared its readiness to provide support in its application.

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94 "The participating States, …, decide to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before the courts as provided for in national legislation and international law," paragraph 12 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen 1990), available at: https://www.osce.org/odihr/elections/14304.

95 See, ODIHR's Trial Monitoring: A Reference Manual for Practitioners, rrevised edition 2012, available at: https://www.osce.org/odihr/94216.

96 See, "Trial Monitoring of Corruption Cases in Bosnia and Herzegovina: Second Assessment," OSCE Mission to Bosnia and Herzegovina, April 2019, available at: https://www.osce.org/mission-to-bosnia-and-herzegovina/417527.

97 See, "Report on results of trial monitoring in the Republic of Kazakhstan, 2005-2006," OSCE/ODIHR, OSCE Centre in Astana, February 2007, available at: https://www.osce.org/astana/24153.

98 See, "Trial Monitoring Programme for the Republic of Moldova: Final Report," OSCE/ODIHR, 2009, available at: https://www.osce.org/moldova/70945.

99 Learn more about Courtwatch's Citizen Judge of the Year award, here: https://courtwatch.pl/obszary-dzialania/obywatelski-sedzia-roku/.

Annexes

1. Annotated agenda

AGENDA

Eighth Expert Forum on Criminal Justice for Central Asia

24-25 November 2021

Tashkent, Uzbekistan

Please note that time in agenda is Uzbekistan Standard Time (GMT+5).

For those connecting online: please register in advance for participation in the Forum; upon registration, you will receive a confirmation email containing information on how to enter the Forum.

Day one, 24 November 2021

07.15–09.00	**Registration of participants** *(check-in procedures considering COVID-19 measures)*

09.00–10.00 *Venue:*	**Opening session / welcoming remarks (high-level panel)** *Ballroom (plenary room)*
Moderator:	**Mr. Ghenadie Barba**, Chief of Rule of Law Unit, ODIHR *(online)*
Speakers:	**Ms. Kateryna Ryabiko**, First Deputy Director, OSCE Office for Democratic Institutions and Human Rights (ODIHR) *(online)*
	Mr. Kozimdjan Kamilov, Chairperson, Supreme Court of the Republic of Uzbekistan
	Mr. Nariman Umarov, Chairperson, Committee on Judicial and Legal Issues and Anti-Corruption, Oliy Mazhilis of the Republic of Uzbekistan
	Ms. Valerie Lebaux, Head of the Justice Section, UN Office on Drugs and Crime (UNODC) *(video statement)*
	Ambassador Pierre von Arx, OSCE Project Co-ordinator in Uzbekistan
	Mr. Ryszard Komenda, Regional Representative of the UN Office of the High Commissioner for Human Rights for Central Asia (OHCHR) *(online)*

Representatives of the institutions involved in the organization of the Eighth Expert Forum will open the conference with welcoming remarks, recognize the contributions of those who made the event possible and outline the objectives of the conference.

10.00–11.50	**Introductory Session** **Reflection on criminal justice reforms in Central Asia**
Venue:	*Ballroom (plenary room)*
Moderator:	**Mr. Ghenadie Barba**, Chief of Rule of Law Unit, ODIHR *(online)*
	"ODHIR overview of the Seventh Expert Forum on Criminal Justice in Central Asia"
Panelists:	Ms. Nazgul Yergaliyeva, Criminal justice and judicial reform expert, ODIHR *(online)*
	Justice Yerden Aripov, Judge of the Supreme Court, Republic of Kazakhstan
	Mr. Kynatbek Smanaliev, Deputy Minister of Justice, Kyrgyz Republic
	Mr. Sukhbold Sukhee, Director, Department of International Law & Treaty, Ministry of Foreign Affairs of Mongolia
	Justice Abdumanon Dodozoda, Judge of the Supreme Court, Republic of Tajikistan
	Justice Dzhakhangir Dzhurayev, Judge of the Supreme Court, Republic of Uzbekistan

Representatives of Central Asia countries will give presentation on the recent developments in criminal justice system in their country. These presentations should cover both developments and challenges in administration of justice, what has worked well and what did not. Panelists will be given 15 minutes to present the criminal justice developments in their country.

11.50–12.30	**Group photo and Coffee break**

12.30–13.30	**Plenary Session 1: Pre-trial Investigations**
Venue:	*Ballroom (plenary room)*
Moderator:	**Mr. Bunyodbek Bahrombekov**, Senior Prosecutor, Office for Ensuring the Powers of the Prosecutor in Criminal Proceedings of the General Prosecutor's Office, Republic of Uzbekistan
Panelists:	Ms. Anna Giudice, Crime Prevention and Criminal Justice Officer, Justice Section, UN Office on Drugs and Crime *(online)*
	Mr. Ulugbek Avilov, Head of the department of the Investigative Department under the Ministry of Interior of the Republic of Uzbekistan
	Ms. Aiman Umarova, Defense lawyer, Kazakhstan

- Rights of suspects and defendants during arrest and in the pre-trial phase.
- Non-custodial measures at administration of justice.
- Analysis of the access to justice during COVID-19 pandemic.

13.30–14.30	**Lunch**

14.30–16.00	**Parallel Working Group Sessions 1 and 2 (Pre-trial Investigations)**
Venue:	**Working group 1: Due process and right to security of the person** *Ballroom (plenary room)*
Moderator:	**Mr. Aslan Kulbaev,** Lawyer, Associate professor of the Kyrgyz National University
Panelists:	Mr. Temur Shakirov, Senior Legal Adviser, International Commission of Jurist (ICJ) *(online)* Mr. Saidbek Nuritdinov, Head of the Union of Advocates of Tajikistan Justice Kumushbek Zhoomartov, Judge of the Supreme Court of the Kyrgyz Republic
• Alternatives to pre-trial detention during criminal proceedings • Oversight of pre-trial activities (work of investigative judges) • Access to a quality legal aid during pre-trial investigations	
Venue:	**Working group 2: Effective investigations** *Bukhara Room*
Moderator:	**Mr. Bunyodbek Bahrombekov**, Senior Prosecutor, Office for Ensuring the Powers of the Prosecutor in Criminal Proceedings of the General Prosecutor's Office, Republic of Uzbekistan
Panelists:	Mr. Yuriy Byelousov, Head of Department, Counteraction to human rights violations in law enforcement and penitentiary spheres, General Prosecutor's Office, Ukraine Ms. Laura Jaffrey, Adviser on Torture Prevention, ODIHR *(online)* Mr. Arman Dessyupov, Senior investigator on especially important cases at Investigatory Department of Ministry of Interior, Kazakhstan
• Law enforcement reform and further improvement of investigation • Police reform—the concept of intelligence led policing • Effective interviewing for investigations and information gathering • Issues related to confession-based criminal justice systems	

16.00–16.30	**Coffee break**

16.30–17.30	**Plenary session 1: Pre-trial Investigations (continuation)**
Venue:	*Ballroom (plenary room)*
Moderator:	**Ms. Viktoria Shmarkovskaya**, Defense lawyer, Uzbekistan

- Presentations from Working groups 1 and 2
- Discussion, Q&A

17.30–18.30	**Side events**
Venue:	**A) Fair Trial Standards during Health Emergencies** *Ballroom (plenary room)*
Moderator:	**Ms. Karine Simonsen**, Rule of Law Officer, ODIHR
Panelists:	Mr. Kanstantsin Dzehtsiarou, Professor in Human Rights Law, University of Liverpool, UK *(online)*
	Ms. Sabina Garahan, ODIHR Consultant, University of Essex, UK
	Justice Yerden Aripov, Judge of the Supreme Court, Republic of Kazakhstan

19.00–21.00	**Reception**

Day two, 25 November 2021

08.00-9.20	**Side events**
Venue:	**B) Women and Justice** *Ballroom (plenary room)*
Moderator:	**Ms. Sabina Garahan,** ODIHR Consultant, University of Essex, UK
Panelists:	Ms. Katerina Ryabiko, First Deputy Director, OSCE Office for Democracy Institutions and Human Rights (ODIHR)
	Justice Sanobar Mamadaliyeva, Judge of the Supreme Court, Republic of Uzbekistan
	Justice Ainura Satarova, Judge, Kyrgyz Association of Women Judges
	Ms. Robyn Tupman, Regional Director, International Association of Women Judges
	Ms. Khalida Azhigulova, Academic and supporter of women in justice in Kazakhstan *(online)*
	Ms. Aneta Arnaudovska, Senior Anti-Corruption Adviser RAI Secretariat and former judge from North Macedonia

	C) Lessons Learned and Good Practices from OSCE Trial Monitoring
Venue:	*Bukhara Room*
Moderator:	**Ms. Karine Simonsen**, Rule of Law Officer, ODIHR
Panelists:	**Justice Dzhakhangir Dzhurayev**, Judge of the Supreme Court, Republic of Uzbekistan
	Mr. Ghenadie Barba, Chief of Rule of Law Unit, ODIHR
	Ms. Katica Artukovic, Judge from the Cantonal Court in Siroki Brijeg, Bosnia and Herzegovina *(online)*
	Mr. Mykola Glotov, Judge from the High Anticorruption Court of Ukraine *(online)*
	Mr. Bartosz Pilitowski, Head of Court Watch Polska Foundation, Poland *(online)*
	Mr. Kakhramondzhon Sanginov, Project Officer/Team Leader in OSCE Mission in Kosovo *(online)*
	Ms. Zulfiya Turumbekova, Executive Director of the Kyrgyz Association of Women Judges *(online)*

9.30–11.00	**Parallel Working Group Sessions 3 and 4 (Fair Trials)**
	Working group 3: Independence of Legal Professions
Venue:	*Ballroom (plenary room)*
Moderator:	**Mr. Alim Ernazarov,** Chairperson, Chamber of Advocates of Uzbekistan
Panelists:	**Ms. Yuliia Lisova**, Attorney, Ukraine
	Mr. Sergey Sizintsev, Defense lawyer, Kazakhstan
	Mr. Shamil Asyanov, Director, Legal Problems Research Centre
• Principles of work of professional self-governed associations of lawyers	
• Access to the profession of a defense lawyer—licensing and certification	
• Selection, quality and accountability of state-appointed lawyers	
	Working group 4: Judicial System
Venue:	*Bukhara Room*
Moderator:	**Justice Sanobar Mamadaliyeva**, Judge of the Supreme Court, Republic of Uzbekistan
Panelists:	**Ms. Nazgul Yergaliyeva**, Criminal justice and judicial reform expert, ODIHR *(online)*
	Mr. Aslan Kulbaev, Lawyer, Associate professor of the Kyrgyz National University
	Justice Battseren Bataa, Judge, Mongolia

- Judicial independence in Central Asia
- Judicial integrity and ethics—the state of play in Central Asia and current trends, including in relation to recruitment procedures for judges
- Sentencing policies in criminal justice system in Central Asia
- Technology solutions and online hearings

11.00–11.40	**Plenary session 2: Fair Trials**
Venue:	*Ballroom (plenary room)*

Moderator: **Mr. Ikram Muslimov**, Deputy Chairperson, Supreme Court of the Republic of Uzbekistan

- Presentations from Working Groups 3 and 4
- Discussion, Q&A

11.40–12.00	**Coffee break**

12.00–13.30	**Plenary session 3: Institutional issues in Criminal Justice Systems**
Venue:	*Ballroom (plenary room)*

Moderator: **Ms. Karine Simonsen**, Rule of Law Officer, ODIHR

Panelists: **Justice Duro Sessa**, President of the European Association of Judges, Justice of Supreme Court of Republic of Croatia *(online)*

Ms. Kairi Kaldoja, Chief prosecutor for the Southern District Prosecutor's Office, Estonia *(online)*

Mr. Filipe Marques, President of MEDEL (Magistrats Européens pour la Démocratie et les Libertés), Portugal *(online)*

- Courts in the condition of pandemic and right to a fair trial
- Status of information management in the criminal justice system in Central Asia—challenges and prospects
- Classification of crimes—the concept of misdemeanours and related practices
- Development of legislation governing the prosecutor's office—issues and experiences

13.30–14.30	**Lunch**

14.30–16.00	**Parallel Working Group Sessions 5 and 6 (Penitentiary reform)**
Venue:	**Working group 5: Alternative measures to imprisonment** *Ballroom (plenary room)*
Moderator:	**Mr. Kynatbek Smanaliev**, Deputy Minister of Justice, Kyrgyz Republic
Panelists:	**Mr. Ryskeldi Esenbekov**, Key Specialist, Department for Prison, Probation and Forensics Policy, Ministry of Justice, Kyrgyz Republic **Mr. Kuat Rakhimberdin**, UNODC Regional Expert *(online)* **Ms. Cecilia Algelius**, Expert, Swedish Prison and Probation Service *(online)* **Dr. Anthea Hucklesby**, Head of School of Social Policy, University of Birmingham *(online)*
• Development of probation services as an alternative to imprisonment • Core principles of probation services (international good practices) • Post release supervision of former prisoners, including violent extremist prisoners • The use of Electronic Monitoring system as part of alternatives to imprisonment	
Venue:	**Working group 6: Human rights in prison** *Bukhara Room*
Moderator:	**Mr. Batyr Saparbaev**, UNODC Regional Prison Expert
Panelists:	**Ms. Eva-Lena Hjalmarsson**, Expert, Swedish Prison and Probation Service *(online)* **Mr. Nurlan Beikenov,** Head of the Kostanay Academy under the Ministry of Interior of the Republic of Kazakhstan **Ms. Elvira Azimova,** Commissioner for Human Rights of Kazakhstan **Ms. Dinara Sayakova**, Deputy Director of National Preventive Mechanism, Kyrgyz Republic
• Global and regional trends in prison management and prisoner rehabilitation • The risk-need-responsivity model in prisons • Monitoring of places of detention during COVID-19 • Developments in penal legislation and prison staff training, including introduction of e-learning	

16.00–16.30	**Coffee break**

16.30–17.30	**Plenary session 4: Penitentiary reform**
Venue:	*Ballroom (plenary room)*
Moderator:	**Ms. Madina Sarieva**, International Programme Coordinator, UNODC POKAZ
Speaker:	**Ms. Karin Andersson**, Corrections Adviser, Justice Section, UNODC *(online)*

- Presentations from Working groups 5 and 6
- Discussion, Q&A

17.30–18.30	**Closing session: Concluding remarks**
Venue:	*Ballroom (plenary room)*
Speakers:	**Mr. Ikram Muslimov**, Deputy Chairperson, Supreme Court of the Republic of Uzbekistan
	Mr. Ghenadie Barba, Chief of Rule of Law Unit, ODIHR *(online)*

2. About OSCE/ODIHR

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

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

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

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

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

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

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

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

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