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Regional conference on Networks of Networks of Judicial and Legal Training Institutions (Bishkek, Kyrgyz Republic, 22-23.06.2016)

Communiqué

Recognizing the friendly relations existing between the countries of Central Asia and the Member States of the European Union and considering the importance of legal training for the advancement and further development of the rule of law and democracy, remarking the differences in organization of legal training in different countries of Central Asia, the participants have at the end of fruitful discussions approved the present communiqué including resolutions related to the main topics addressed during the regional conference:

I - Modernization of professional legal training

1.1. **Scientific background.** Lack of scientific background seems to be one of the main drawbacks of certain of the existing systems of professional training in the CA. Some training centers are established by courts and law-enforcement agencies, and fulfil mainly practical assignments that are on the agenda of these institutions. Combining training and research would help allocating sufficient financial, administrative and human resources to organize well-balanced and scientifically elaborated programs, taking account not only the practice of courts and agencies, but also the recent achievements of legal science at national and international levels. Such united programs can be an important step in securing coherence of legal practice in different sectors and agencies, and also congruence with the world best standards.

1.2. **Responsibility.** The duty of legal professionals to follow training courses shall be backed by the respective liability (it does not necessarily need to be severe) for incompliance with this duty. Codes professional ethics or statutory enactments should include certain mechanisms that would induce legal professionals to get trained timely. It can be the question not only of sanctioning but also of awarding/promoting of those who comply.

1.3. **More autonomy.** Choice of program of training shall involve judge/law officer him/herself and not only his/her superiors. A sound degree of completion is needed between trainers who will be thereby motivated to propose to legal professionals actual and interesting programs to which these professionals could

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subscribe themselves through the intermediary of their institutions. Supreme courts and law-enforcement agencies would have to receive from concerned judges/officers the relevant information (wish lists) about the subjects or issues they professionally are interested in, and about courses/trainers they would like to follow. These wish lists shall not be absolute imperatives, and concrete choice of disciplines and programs shall be based also on the opinion of legal community and on the strategic perspectives of governments.

1.4. **Choice of courses.** Legal professionals shall have the right to choose independently the courses they wish to follow. It is especially relevant for advocates and notaries who are more flexible in this respect. In this case, exact and comprehensible criteria of congruence shall be introduced that allow considering such independently chosen courses (also, possibly, abroad) as equivalent to the centrally organized training courses.

1.5. **Regulation.** In certain countries, the system of legal training is weakly and inconclusively regulated. Legal training for some professions is regulated by laws, for some other professions — by orders, circulars and by other byelaws. It is advisory to adopt comprehensive legal regulations that set out clear requirements and criteria for legal training, rules and sanctions for their violation. It shall be a part of statutory law and not merely instructions, and shall fix coherent rules for all legal professionals, with respect to the specificity of their offices and functions.

1.6. **Avoiding disproportionality.** The legal obligations and the correlating sanctions to follow legal training are disproportionate for advocates and for other legal professionals. There seems to be no compelling reason why judges and other legal professionals are not subject to similar requirements in the terms of periodicity and liability for incompliance.

1.7. **Upgrading training schemes.** Professional legal training in the region remains mostly the corporative matter for each legal profession. This can be ameliorated by inviting legal professionals from other groups as trainers. This will contribute to better understanding between representatives of different legal professions, and ensure more efficient cooperation. One of the possible solutions is also that legal community can also organize common courses that will address the issues relevant for judges, advocates and procurators at the same time.

1.8. **Transparency in professional legal training.** Lack of transparency is one of the focal points where local governments would have to interfere in order to make the information about training publicly available. Thus, civil societies in the corresponding countries would have opportunities to start public debates about training programs in general and about particular issues, which might be wanting or be unnecessary on the curriculums of these programs. There are no compelling reasons why this information should be kept away from public debates. On the contrary, shortcomings in training programs for judges and other officers in certain fields might help maintaining outdated court/legal practice, and therefore might constitute a concern for civil society and an obstacle to further modernization of the regional legal systems. Training programs are financed either from state budget or from budgets of the corresponding associations (bar or notary associations), so that members of these associations or, correspondingly, taxpayers will have the legitimate interest to control these expenditures. Legislative amendments or additional regulations shall be introduced to guarantee transparency of the information about organization of professional training. In its turn, such transparency will become a prerequisite for public debates, at least

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within the respective legal communities, about reasonableness and expediency of modernization of these programs. It can be expected that different groups of lawyers would insist on different strategies of modernization: human-rights lawyers, corporate lawyers, of-councils, defense advocates and other strata of the lawyers' community will likely have diverging proposals that should be balanced in the view of the available resources and political goals.

1.9. Revise the system of control of acquired knowledge. Emphasis should be placed on verifying the ability to independently work on practical examples. Verification of knowledge is not the search for the "right" answer or the "right" solution to the problem, but it is the evaluation of a candidate's ability to build an argument in the search for a solution.

II - Modernization of curriculae of law schools

2.1 **Reading and writing skills.** One of the deficiencies of the traditional approach to legal education is that it does not imply the necessity to train reading and writing skills. The regional law schools shall have to pay more attention to teaching such writing skills as planning and structuring of written assignments, composition and critical deconstruction of texts, briefing of court cases, drafting opinions. These skills are a necessary prerequisite to normal legal education, and if students do not possess these skills, they will be unlikely to gain proper knowledge of the law.

2.2 **Introductory courses.** Students do not have good introductory courses into jurisprudence. The subject of *Theory of Law and of State* as it is taught at the most of law schools does not perform the task of teaching the essentials of legal thinking to law students. This might potentially lead inability of students to follow the programs where the center of gravity is laid on their individual work. The regional law schools shall reconsider the way the legal theory is taught, transferring the best world experience. Legal theory (or another introductory discipline that replaces it) shall not be a science of definitions but a discipline that helps students to master legal thinking.

2.3 **Practice of law.** Practical internship (*praktika*) remains on the curriculums of the regional law schools, but it mostly serves as a formality. Regional law schools shall think about more efficient control of skills and knowledge that need to be acquired during internship. It is advisory to introduce tests on practical skills (e.g., case assignments, writing a brief or decision), and to create more effective incentives both for mentors and students to be serious about internship and further employment (e.g., privileging the graduates who successfully accomplished internship in competition for relevant job positions or in passing qualification tests, at least in public sector).

2.4 **Case study and other practical assignments.** In the recent years, the regional law schools began paying more attention to practical assignments, case studies, role-play, and moot courts. However, students are not taught the technique of distinguishing, balancing, multifactor tests, and other important skills that are required for case law analysis and mastering legal decision-making. This situation could be ameliorated through methodological recommendations elaborated by training centers where leading experts (scholars or practitioners, or both) could make selection of exemplary cases and propose guidelines on how to analyze these cases, to explain the principal findings thereof, and to connect these

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guidelines with the theoretical education. These recommendations in the form of handouts or factsheets can be distributed between law schools and to be helpful at practical trainings. Simultaneous professional training of trainers and professors at best Western law schools shall also come to the agenda.

2.5 **Teaching methods.** In the region legal education gravitates mostly around legal texts and their interpretation. Teachers perceive the law as an autonomous field that exists mainly in the doctrine and in the normative texts. The regional law schools shall follow the best examples from the contemporary Western legal education which is focused on training students' skills in working with texts, revealing different interpretations and balancing them, arguing and reasoning opinions, writing briefs and other procedural documents. The law schools shall allow graduate-level students and master students to study the entire court cases, following the German experience where students (at the *Referendariat* level) are asked at exams to analyze real court cases and to write opinions thereupon. Also, legal education should develop the ability to identify the most important issues, distinguishing them from the less significant issues that can be left aside whereas focus should be placed on the main problem. As concerns judicial training, emphasis should be placed on the development of skills to justify decisions in simple language understandable to persons who do not have legal training.

2.6 **Learning competitiveness.** Graduates from some of the regional law schools are not prepared to making a CV, writing a cover letter, or taking part in a job interview, let alone elaborating a steady life-plan, articulating interests, self-assessing the relative career advantages and disadvantages in competition. This results in a rather sporadic employment (except the specialized law schools such as police academies), in the situation of absence of a normal job market where neither graduates with law degree nor potential employers can find, respectively, the employment and employees that fit the best their interests and expectations. Teaching these basic skills of competition to law students could contribute to building better job markets and, indirectly, to secure a better allocation of human resources in the respective legal systems. Even a short course of professional orientation for graduate-level students with practical training in writing CV or in job applications could become an effective remedy.

2.7 **Transnational law.** The regional legal education is based on statist understanding of law as of something that is commanded or approved by the state. Most of the legal education is therefore focused on teaching the national legal systems. This impedes the graduates from getting a wider perspective on law; they do not obtain the necessary knowledge for working at international and interregional law firms, for getting employed into transnational companies and international organizations. For lawyers engaged in transnational companies or companies that are active in several countries, soft law is becoming not less important as state law. That is why it is advisable either to enlarge the existing disciplines or to introduce new disciplines dealing with the transnational and non-state legal regulation. This policy can be reasonably selective and be limited to teaching law at the main universities in capital cities, in commercial and industrial hubs with significant presence of foreign investors.

2.8 **Lack of comparativism.** Legal education in the CA countries is mostly focused on the national law, with little attention paid to international law and almost no attention to comparative law in the sense of making comparisons with the neighbor countries or other legal systems in order to find solutions to practical

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legal problems. Comparative law remains on curriculums of the leading law schools, but is taught rather as a general introduction to legal geography of the world. It is recommended to introduce more comparative aspects into particular legal disciplines, showing to students how similar functions are performed not only in the national legal system, but also in other systems. Also the discipline of *Comparative Law* shall be more comprehensive, shall include mastering and practicing the methods of comparison and of transplantation.

2.9 **More attention to alternative dispute resolution.** It is the resolution of disputes through state courts that is still basically taught within the main procedural disciplines (civil procedure, commercial procedure, administrative procedure) in the regional law schools. Not much place, if any at all, both in educational programs and in textbooks on commercial and civil procedure is devoted to arbitration and other forms of ARD. Law schools shall consider extending the existing courses in legal procedures for letting more ADR in these courses, or teaching ADR (e.g., arbitration procedures or mediation) as independent courses. Also graduates may appreciate to be trained in practical skills of negotiating, staging ad-hoc dispute resolution and decision-making, which could be a separate course for graduate-level students.

2.10 **Structuring the law.** The curriculums of the main law schools in the region are based on the traditional way of systematization/differentiation of law. Different "branches" (*otrasli*) and institutes are singled out following the conventionally accepted difference between subject matter (*predmet*) of branches and of the major methods putatively applied within these branches. The regional law schools shall be more flexible about including or excluding disciplines from national standards and law schools' curriculums without being trapped into scholastic debates about scholarly divisions between branches of law, allowing here for more practical wisdom. This practical wisdom might lead to reconsideration of the limits of certain courses, to their pragmatic regrouping, without being bound by the borderlines of the branches.

2.11 **Technique of interpretation.** Now, only a minor part of the discipline of "Theory of state and law" deals with this issue that is evidently insufficient insofar as interpretation is one of the central activities for lawyers. A few of law schools include in their curriculums a short elective course of "Legal technique". Nonetheless, there exists a large amount of legal scholarship on different techniques and rules of interpretation; interpretation is the main issue for practicing lawyers. Along with revision of the existing major courses, it is advisable to introduce special courses dealing with different techniques of interpretation, and to treat this topic more in details.

2.12 **Customary law.** Legal illiteracy of large parts of the population, considerable geographic distances and lack of satisfactory transport communication between cities and town where courts are present and rural areas, as well as respect for traditions and customs lead people, especially in remote and rural areas, to avoid state courts and their law, solving disputes through mediators, aldermen, and other authoritative persons. Regional law schools need to take into their consideration the fact of growing sway of such traditional courts, and to reserve some place to these semi-legal practices in their curriculums. It can be judicious to introduce such courses where students would be acquainted with the existing practices of settling controversies in traditional courts and other unofficial mediatory agencies. Even if students will not become mediators or never will take

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part in such traditional tribunals, nonetheless they will have the knowledge of this important part of legal reality of their country, and will probably need this knowledge in state courts and in other agencies enforcing official law where the issues of traditional law or ADR come to surface.

2.13 **Applying ethics in law.** Along with more attention to soft legal regulation in customary or transnational law, law schools could admit more legal pluralism about so called “ethical codes” that set out mandatory conditions and propose recommendations for exercise of certain professions such as advocate, judge, notary, doctors, etc. Such course could expressly be focused not so much on learning provisions of different codes (which is the case when a course of “Professional ethics” is included into some regional law curriculums), but rather on analyzing of disciplinary practice of different agencies, with possible modeling of disciplinary actions and moot courts.

2.14 **Courses on terrorism.** Owing to the growing instability related to instability in Central Asia, it is recommended to propose courses on terrorism and extremism, including cyber-terrorism and cyber-crime for lawyers, judges and prosecutors.

2.15 **Up-to-date teaching materials.** Commentaries and textbooks and the publication of court rulings are of great importance for the development of law. Support should therefore be provided for the production of national teaching materials. Teaching materials and legal texts from the Member States of the European Union should also be translated into the respective state languages of Central Asian countries and/or Russian.

2.16 **Provision of adequate funding for legal training**. Sufficient funding to enable proper implementation of training programs throughout the year should be grated to professional training centers. This would contribute to strengthening their independence.

III – Networks of legal training institutions in Central Asia

3.1 **Exchange of experience among legal training centers.** The legal training centres of Central Asia should share their experience and growing expertise with relevant institutions in other Central Asian countries. This can be done through seminars, conferences or reciprocal visits. The establishment of video-connections between legal training centers of the Central Asian (and other) countries would enable specialists to share experience and deliver lectures.

3.2 **International cooperation.** Greater cooperation between Central Asian legal training centres and relevant training institutions in the European Union.

3.3 **Networking**. A network should be established to enable legal professionals in Central Asian countries, possibly related to existing regional institutions such as the League of Lawyers of Central Asia, to share experience on thematic and professional issues. In every country a contact point should be appointed by 1 December 2016 to coordinate such exchanges, which should be supported also by international organizations.

3.4 **Central Asian legal information platform.** A web site or a journal should be created to promote dialogue and information-sharing between the region’s legal professionals. A periodic report could be prepared by the judicial and legal institutions of Central Asia and/or their training centers which would enable judges and other legal professionals to receive further training. A joint research

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documentation center should be created at Central Asian level.

3.5 **National and international conferences and seminars**. Such events should be organized on a regular basis for judges, public prosecutors, practicing lawyers and other legal professionals, dealing with different aspects of the work of practicing lawyers, judges and public prosecutors (e.g. function in the justice system, creation where appropriate of independent associations, requirements for appointment, training contents and funding issues),

3.6 **Cooperation between judges, public prosecutors and practicing lawyers.** Existing inter-professional cooperation should be further intensified. All three groups should consult and cooperate closely on proposed legislation or matters of common concern with regard to training.

3.7 **Greater cooperation between universities and professional judicial/legal institutions.** This would make legal training more practice-oriented. It should be formalized through the conclusion of cooperation agreements, including between Central Asian universities/professional training centers on the one hand and European universities/professional training centers. These agreements should provide for the organization of internships or work placement.

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