

REPORT

3rd Twinning of Lawyers
16 October 2021



Over 200 registrations,
90 active participants at the peak,
28 countries from 4 continents,
32 speakers, 2 parts, 3 panels
and 4 hours spent together.



Online participation and
interpretation allowed attendees
from various countries to
get together despite of distance
and pandemic restrictions.



Concentration on practical
knowledge and personal experience
of moderators and speakers gave
useful tools for interested parties
such as legal practitioners, mediators
and academics.



Participants from Eastern Partnership
countries were the main target of the
project, however colleagues from Central
and Western Europe, Central Asia, North
America and Pacific region were also
present.

**We put on an exceptional event
with participation of lawyers, mediators,
and further stakeholders
from Eastern Partnership countries
and other jurisdictions.**

**We gathered
to learn from
each other
and to be together**

This event was organised in the framework of the
Partnership for Good Governance II, funded by the
European Union and the Council of Europe and
implemented by the Council of Europe.

Funded
by the European Union
and the Council of Europe



Implemented
by the Council of Europe



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Foreword

2021 REPORT

Dear Colleagues,
Dear Friends,

We wish to express our gratitude for your engagement and participation in the third Twinning of Lawyers held on October 16, 2021. Together we organised and conducted an exceptional event with top speakers and participants from so many countries – an achievement to remember. But above all we are delighted to gather lawyers from Caucasus and other Eastern Partnership Countries as well as from other regions such as Central Asia, Pacific or Central and Western Europe. Twinning of Lawyers is an excellent tool not only to share knowledge and experience related directly to the legal profession, but also to share common values and goals stated in the Statute of the Council of Europe as well as in the European Convention on Human Rights. Promotion of those values is one of the main goals of the European Association of Lawyers and Chamber of Advocates of Armenia. We do hope to organise the 4th Twinning of Lawyers in a traditional form of a meeting in person in 2022 and welcome all of you to join us!

Your Twinning Team



Lilja Gretarsdottir
Head
Cooperation Programmes
Division
Council of Europe



Maria Ślęzak
President
European Association
of Lawyers
AEA-EAL



Simon Babayan
Chairman
Chamber of Advocates
of the Republic
of Armenia

Introduction

The idea of the Twinning came to me after long-lasting cooperation of my home Gdańsk Bar of Attorneys-at-Law with lawyers from partnering cities: Erlangen in Germany, Bilbao in Spain, Rennes in France, Leuven in Belgium, Exeter in the United Kingdom and Verona in Italy. In the framework of the cooperation, every year one of the partnering cities organizes a conference with an accompanying program. The main rule is that lawyers from the hosting city welcome colleagues at their homes and take care of guests during their visit in the given country. Basing on these experience I have decided to promote this idea towards our members, colleagues and friends from Eastern countries believing that such form of cooperation is the best way to build mutual trust, professional connections, and personal friendship.

and Uzbekistan on one hand and lawyers from partnering countries like Spain, Germany and the United Kingdom. Success of the project was proved by declaration on organizing similar events by representatives of several participating Bars. One of main results of this event was signing the **Memorandum of Understanding** on cooperation and organization the Twinning of Lawyers on yearly basis by the Gdańsk Bar of Attorneys at Law, Odessa Bar Council, Republican Collegium of Advocates of Azerbaijan, Republican Collegium of Advocates of Belarus, Georgian Bar Association, Kaliningrad Bar Association, Republican Collegium of Advocates of Kazakhstan, Republican Collegium of Advocates of Uzbekistan and Moldovan Young Lawyers Association (MYLA). **Second Twinning of Lawyers** was organized on September 12,



There is no better way to build mutual understanding and trust than to meet, to make activities together, to find common solutions

Basing on these experiences and acting jointly with Gdańsk, the AEA-EAL decided to enhance this tested idea to the East. The first “Eastern” **Twinning of Lawyers** took place on July 4-7 2019 and consisted of a seminar on **European and non-European regulations and practices on data protection**, common activities performed by the whole group like sightseeing, guided tours and main dinner as well as individual time spent by guests with hosting lawyers and their families. It has to be underlined that the number of participants exceeded our expectations. Apart from lawyers from Belarus, Moldova, Ukraine and Russia, we welcomed colleagues from Azerbaijan, Georgia, Kazakhstan

2020, together with the Odessa Bar Council and supported financially and organizationally by the Council of Europe. Due to Covid-19 pandemic the meeting had a form of online conference devoted to **eLawyering and eLaw Firm**. Being forced to organize the Twinning as online event, we did our best to preserve its networking spirit of mutual understanding, support and trust. Following those two successful editions, the **Third Twinning** was organized on October 16, 2021 together with the Chamber of Advocates of Armenia and the Council of Europe as co-organizers.

Maria Ślęzak

Program/Agenda

10.00 – 10.20

Welcoming addresses

- **Maria Ślęzak**, AEA-EAL President
- **Lilja Gretarsdottir**, Head of Co-operation Programmes Division, Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards of the Council of Europe
- **Simon Babayan**, Chairman of the Chamber of Advocates of Armenia

10.20 – 12.15

Session I: Challenges of workload in Court Proceedings and ADR forms

Moderator: Professor **Irakli Kandashvili** (Georgia – AEA-EAL)

Speakers: **Carmen Pérez Andújar** (Spain), **Armen Asatryan** (Armenia), **Zaza Khatishvili** (Georgia), **Gulsina Kozhyarova** (Kyrgyzstan), **Ivan Kuznetsov** (Russia), **Vladimir Palamarcu** (Moldova), **Luliza Romanadze** (Ukraine), **Esteban Rozenwajn** (Belgium), **Paolo Sguotti** (Italy), **Sergei Sizintsev** (Kazakhstan), **Djamshid Turdaliev** (Uzbekistan), **Hanna Woźniak** (Poland)

Session II: ADR as raising tool for access to justice. Advantages and ethical challenges

Moderator: **Iain Mitchell QC** (United Kingdom – AEA-EAL)

Speakers: Professor Dr **Lorena Bachmaier** (Council of Europe expert), Dr **Remigijus Jokubauskas** (Council of Europe expert), Dr **Hayk Hovhannisyan** (Armenia)

Session III: Regulatory standards of ADR

Moderator: **Olivier d'Ursel** (Belgium) – AEA-EAL

Speakers: Dr **Remigijus Jokubauskas** (Council of Europe expert), **Panagiotis Perakis** (VicePresident of the Council of Bars and Law Societies of Europe CCBE), **Mary Walker OAM** (Co-Chair of the Mediation Committee of the International Bar Association (IBA), **Anna Wyrzykowska** (President of the International Association of Young Lawyers AIJA), **Shyam Divan** (Vice-President of the Law Association for Asia and the Pacific (LawAsia))

Coffee break

Program/Agenda

12.25 – 14.00

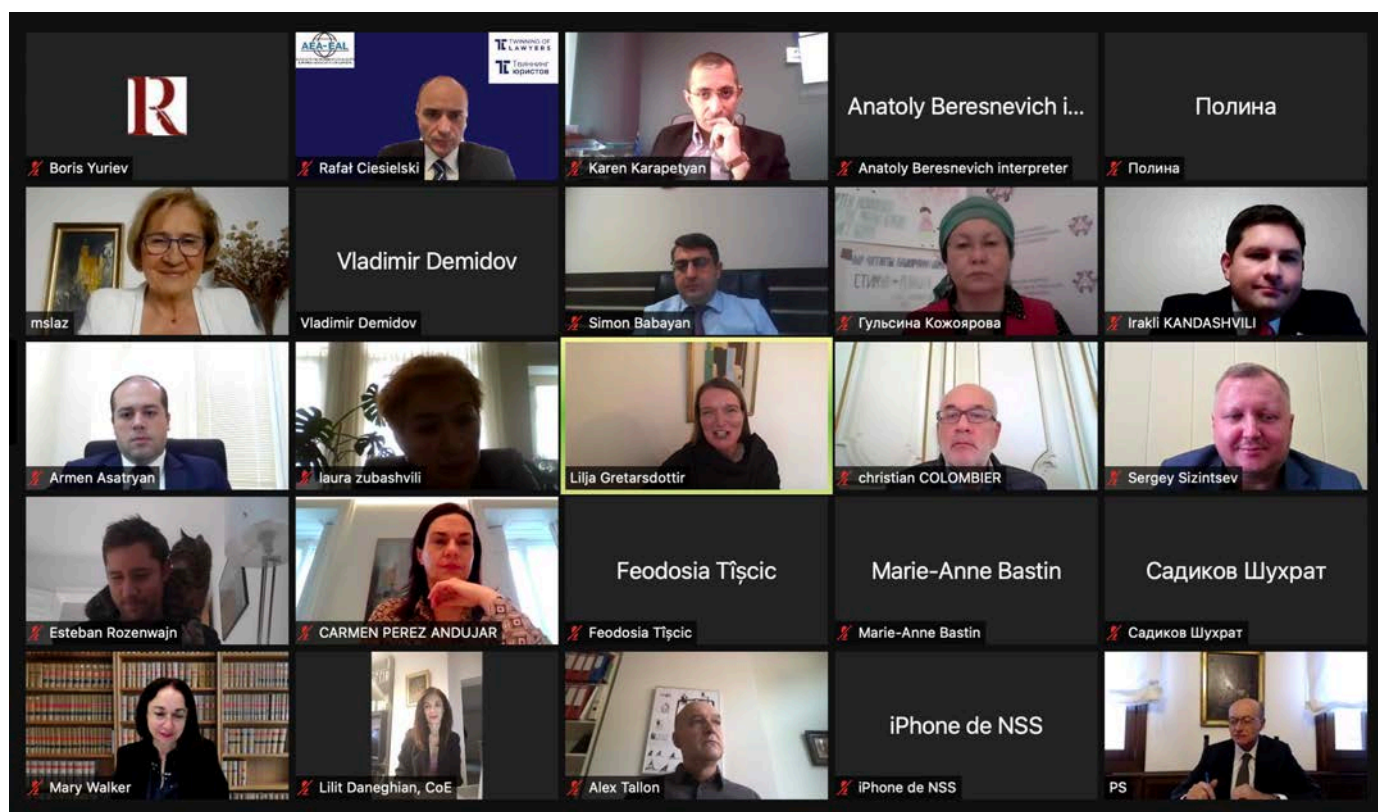
Thirty-Five Years Together: AEA-EAL and its Eastern Dimension

Moderator: Juan Núñez Ferrer (AEA-EAL Past President, member of the Board of Directors, Spain)

Speakers: Gian-Andrea Chiavegatti (AEA-EAL Past President, Italy) **Konrad Meingast** (AEA-EAL Past President, Austria), **Clemens van Nispen** (AEA-EAL Past President, The Netherlands), **Anthony Sling-sby** (AEA-EAL Past President, UK), **Monique Stengel** (AEA-EAL immediate Past President, member of the Board of Directors, France)

Networking session

Moderator: Maria Ślęzak (AEA-EAL President)



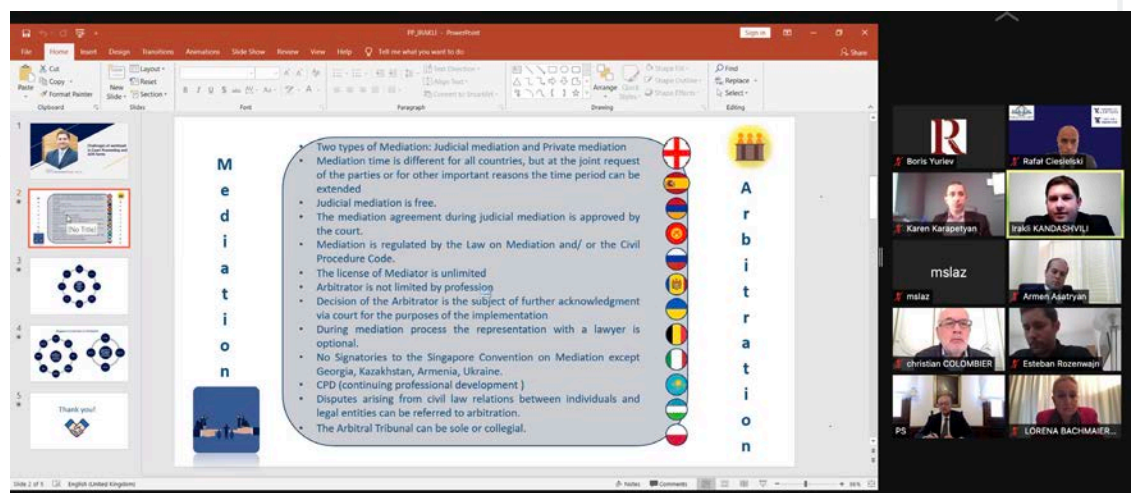
3rd Twinning of Lawyers

The first part of the Twinning was a seminar on “Dispute resolution mechanism: reducing the **burden in courts and improving access to justice**”. During this part speakers and participants discussed in three sessions issues connected with introduction, development, and further enhancement of Alternative Dispute Resolution (ADR) tools for the benefit of citizens and justice. The first session of the conference was devoted to “**Challenges of workload in Court Proceeding and ADR forms**”, which

was moderated by the Chair of the AEA-EAL Mediation Committee Professor Irakli Kandashvili. The moderator noted that Alternative Dispute Resolution mechanisms are

effective tools in the hands of citizens to execute own rights and regulate dispute based on own sole decisions avoiding prolonged and expensive court litigation procedures, therefore these mechanisms should become more and more known for the disputants who will only benefit from usage of such mechanisms. On the other hand, Alternative Dispute Resolution mechanisms create easier access to justice for the disputants who want to apply to

court proceedings as Alternative mechanisms of dispute resolution decreases the court workload and makes the court more effective as well mediation is a ground for the qualitative judiciary. At the same time it should be stated that usage of such tools for lawyers is the guarantee for them to become more effective in execution of their functions. **The speakers in the first session were from 12 countries** and presented various topics in mediation and



arbitration, including such topics as:

- forms of ADR,
- who conducts the ADR procedures,
- time spending for the whole process,
- costs and fees,
- types of agreements,
- who and how one can become a mediator/ arbitrator - only lawyers or anyone interested,
- legal regulations/ requirements including

Common grounds for ADR mechanisms were built in participating countries, however there are diversity in regulation and ADR role in justice

3rd Twinning of Lawyers

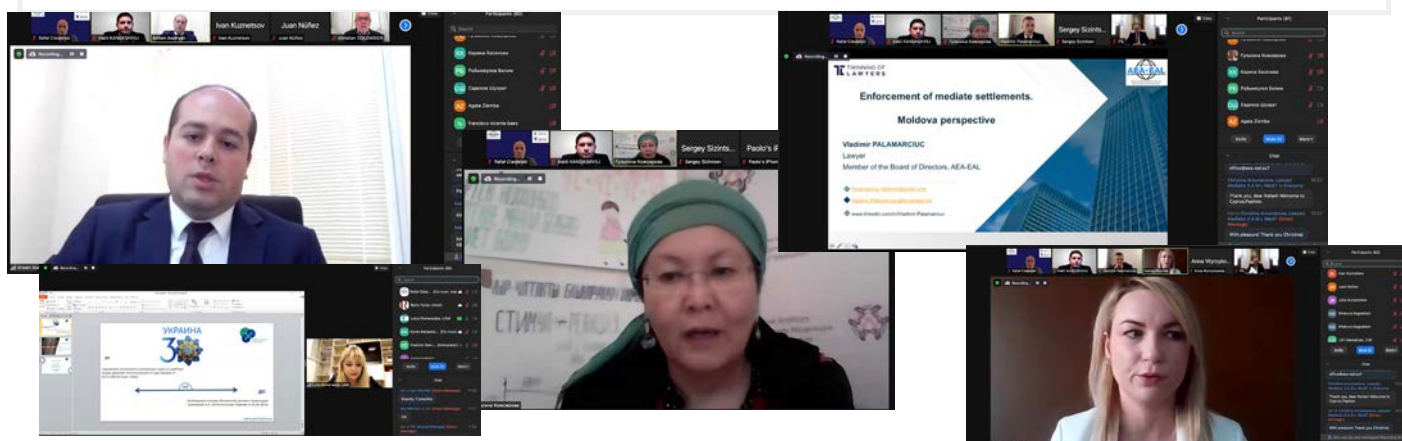


- issue of professional ethics,
- does the court confirm mediation agreements?
 - what are the prerequisites if the court confirms, what are the standards for such an agreement?
 - the validity of mediator's license (unlimited period or should it be renewed after a certain time?),
 - representation of parties of mediation by the lawyer,
 - statistics on use of mediation,
 - continue professional training (mandatory vs voluntary),
 - keeping records/ registry
 - influence of ADR on reducing courts' workload.

After the speakers' presentations, it was revealed that there are many similarities between their jurisdictions. Half of the countries presented at the conference have two types of mediation: judicial mediation and private mediation. Judicial

mediation – the mediation that is initiated after a claim has been filed with the court, in accordance with the procedure established by the law, if the court refers the case to a mediator; private mediation – the mediation that is initiated by the parties on the basis of a mediation agreement, without referring the case to a mediator by the court; In Russia there is no such thing as judicial mediation or extra-judicial mediation. The court may propose to settle the issue peacefully and contact a mediator. Each speaker focused on the timing of the mediation in their countries. As it appeared mediation time is different for all countries, but at the joint request of the parties or for other important reasons the time can be extended, for example:

- **Poland:** When referring parties to mediation, the court sets its duration for up to three months. At the joint request of the parties or for other important reasons, the time limit may be extended if it favors an amicable settlement of the case. The dura-



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tion of mediation is not included in the duration of the court proceedings.

- **Russia:** Mediation time is 60 days and can be extended, but not more than 180 days. The term of mediation is determined by agreement of the parties. If the dispute has reached the court, the judge may propose to start the mediation procedure and postpone the hearing for a certain period. As a rule - no more than one month.
- **Georgia:** The period of a judicial mediation shall be 45 days, but at least two meetings. The period may be extended for the same time by agreement between the parties. The maximum limit for private mediation is not directly provided by law, but it can be indirectly inferred that it can last for as long as 2 years. Furthermore, mediation usually lasts shorter than litigation in court. Nonetheless, the duration of each mediation is fully dependent upon the complexity of an individual case and level of private involvement.

The Moderator was talking also about the “**Singapore Convention on Mediation**” (four Twinning countries: Georgia, Kazakhstan, Ukraine, and Armenia are the signatories to the Convention). Most of the countries represented at the conference have the Law on Mediation. In Ukraine there is no Law on Mediation yet. On 15 July 2020, the Ukrainian Parliament passed on the first reading Draft Law “On Mediation”, which introduces a new dispute settlement mechanism (mediation) at the legislative level. The Draft Law allows mediation to be con-

ducted in the form of voluntary out-of-court dispute settlement, in which the parties negotiate in the presence of a mediator. All the speakers mentioned that the use of ADR tools becomes more and more important each year and the interest in such mechanisms is growing very dynamically. So, the interest and use of ADR will be significantly reducing the workload of the courts.

The second session on “**ADR as raising tool for access to justice. Advantages and ethical challenges**” was moderated by **Iain Mitchell QC**, member of the AEA-EAL Mediation Committee. The first speaker, **Prof. Dr. Dr.h.c. Lorena Bachmaier Winter**, expert of the Council of Europe, told that we should look at mediation not only as a means of reducing pressure on courts, but also as being desirable in itself. Mediated settlements are often better than litigated outcomes. Mediation may be used in criminal law (e.g. restorative justice) but this does not reduce pressure on courts, unlike mediation in civil cases. Judges should encourage mediation, but it needs to be voluntary, not mandatory, though it may be acceptable to visit penalties, for example, in costs, on parties who fail to undertake ADR before raising court proceedings. **Dr. Remigijus Jokubauskas**, second expert from the Council of Europe, noted that confidentiality is critical to the success of mediation, but rules tend to differ in jurisdictions on the questions of: 1. **What information is confidential?** 2. **Are there exceptions to confidentiality?** 3. **Who is responsible for maintaining confidential-**

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ity and 4. **How is confidentiality maintained?**

Dr. Hayk Hovhannisyán, representing the Chamber of Advocates of the Republic of Armenia told that the conduct of mediation gives rise to ethical challenges for lawyers. Lawyers have dual roles as they may either act as advocates for the parties or as neutral mediators. Lawyers should be aware of the differing requirements of the respective roles, they should be fully trained for each role and have an ethical responsibility to act competently. When acting as a lawyer for a party, there is an ethical requirement to take reasonable steps to try to settle and to consider properly any offers coming from the other side. There are also ethical challenges for mediators – for example: when one of the parties is a former client; or where there is a conflict of interest. Also,

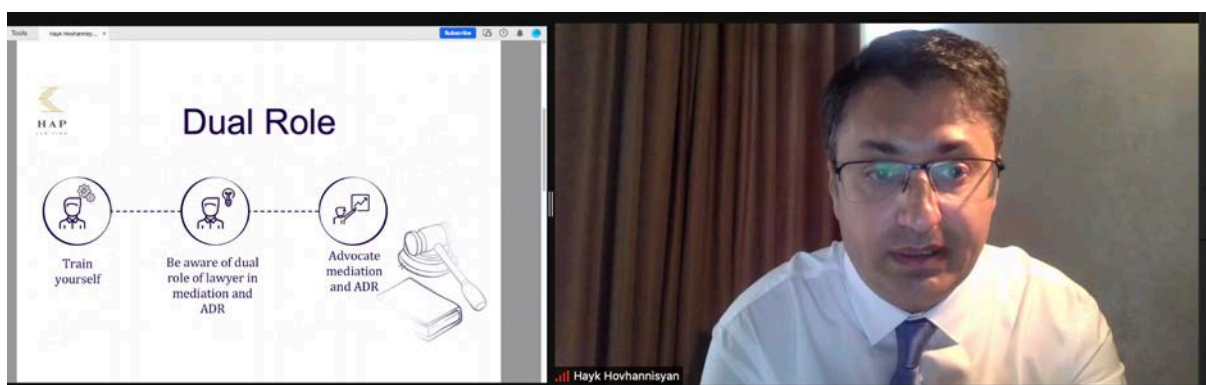
that mediation is not only a means of reducing pressure on courts but a valuable good in itself. To be effective, it should be voluntary and the maintenance of confidentiality is of the utmost importance. It is only in exceptional circumstances, which should be clearly spelled out in law, that confidentiality might be abrogated. The conduct of mediation brings ethical challenges not only to the lawyers acting for the parties, but to the mediators themselves. Ultimately, everyone should work together to address these ethical challenges. Fittingly, the Session ended with a contribution in the chat from Afghanistan pointing out that traditional ADR requires men of wisdom. Perhaps as we address ethical challenges, we should bear in mind the value of wisdom.

The third session on “**Regulatory standards on**

Mediation may be used in criminal cases but does not reduce pressure on courts, unlike the mediation in civil cases.

if it becomes apparent to the mediator that there is fraud or other impropriety occurring, should he stop the mediation, and/or report the fraud or violation? It is suggested that all actors should work together to consider these ethical problems. **Iain Mitchell QC** concluded

ADR” was chaired by **Olivier d’Ursel**, member of the AEA-EAL Board of Directors. Four speakers delivered speeches: **Anna Wyrzykowska** (Poland – AIJA President) expressed the opinion that technology changes the dispute resolution. Digitalization makes mediation faster,



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cost efficient and allows a better accessibility to justice because it reduces the distances.

Panagiotis Perakis (Greece – CCBE Vice-President) said that it is crucial to raise the awareness of the parties about the existing ADR possibilities for their case as well as to ensure proper training for lawyers on ADR processes. Dr **Remigijus Jokubauskas** (Lithuania – CoE expert) informed that the Council of Europe (CoE) and the European Commission for the Efficiency of Justice (CEPEJ) prepare soft law documents aiming to increase efficiency of mediation and also ensure that the guarantees of the right to a fair trial are respected. **Shyam Divan** (India – vice President of LawAsia) told that a time limit helps arbitration and mediation. Enforcement efficiency helps arbitration and mediation. India developed proceedings to help enforcement of international awards. **Mary Walker OAM** (Australia – Co-Chair of the IBA Mediation Committee): as mediation becomes institutionalised and part of professional codes, the best way to regulate mediation that has already a legal framework for mediators, is the soft law that maintains the needed flexibility of ADR. In Australia, such a flexibility is reached by guidelines such as the Law Council of Australia Guidelines for mediation. Liability should be limited by a scheme approved under the Professional Standards Legislation.

All three sessions took much longer than expected, but the number of important topics and questions from conference participants proved such extension was necessary and valuable. The outcome of work of all mod-

erators and speakers recommendations are presented on the next page of the Report. The second part of the Twinning was initiated by the **roundtable of Past Presidents** of the European Association of Lawyers (AEA-EAL) chaired by **Juan Núñez Ferrer** from Spain. The Roundtable marked the 35th Anniversary of the Association and focused on the Eastern Dimension of the AEA-EAL. Past Presidents: **Gian-Andrea Chiavegatti** (Italy), **Konrad Meingast** (Austria), **Anthony Slingsby** (UK) and **Monique Stengel** (France) were talking on first contacts with Eastern lawyers and Bars after the fall of the iron curtain, described developments of actions conducted together with the Bar Associations from the Czech Republic, Hungary, Poland and Slovenia, and were speaking on further steps towards colleagues from the Eastern Partnership countries and Central Asia initiated by the current President **Maria Ślęzak**, which resulted with initiative of the Twinning of Lawyers. The gathered Presidents also commemorated **Jean-Pierre van Cutsem** - the Founding Father of the AEA-EAL, its Past President and long-lasting member of the Board of Directors, who actively participated in the Association's works till his last days in May this year.

The final part of the Twinning were conducted by **Maria Ślęzak** and included presentations of participants and some representatives of Bars present on the event – **Bilim Raimkulov**, Chairman of the Republican Collegium of Advocates of Kirgystan and **Sukhurat Sadikov**, First Deputy Chairman of the Republican Collegium of Advocates of Uzbekistan.



Recommendations

General recommendations

1. ADR tools should be subject to soft law such as guidelines, recommendations, or exchange of good practices to preserve their flexibility and usability.
2. Mediation and other ADR mechanisms should remain voluntary; however, judges may be obliged to inform parties on the possibility of mediation or to set the initial mediation meeting.
3. States, international organizations, and Bars should work on developing standards/rules on enforcement of domestic, cross-border and foreign settlements
4. Time limits for ADR proceedings should be set in national legislation and/ or in soft law to encourage parties to reach the agreement in a reasonable period.

deal with the situations of possible conflict of interests (e.g., when a current or former client of a mediator is a party of mediation).

10. Following rules for confidentiality are recommended:

- a. Mediation and other ADR proceedings should remain confidential unless parties agree otherwise
- b. Exceptions to protection of confidential information should be established by law. Exceptions often relate to protection of public interests.
- c. Both the mediator and the parties are responsible for the protection of confidential information.
- d. The mediator shall take care of the protection of confidential information.

State authorities, bar associations and organizations of lawyers should closely cooperate to promote the wide use of ADR within justice systems

Training

5. Bars, law societies and organizations of lawyers should approach academics to include the mediation teaching at law faculties of the Universities.
6. Mediation should be mandatorily integrated in CLE (continuing legal education) programs of Bar Associations and Law Societies.
7. Mediation should be mandatorily integrated in Bar Exams.
8. Mandatory CPD (continuing professional development) courses should be introduced and established in each jurisdiction to ensure quality of mediation.

Ethical issues

9. Some rules should be developed to

Technology

11. All jurisdictions should establish and develop ODR (online dispute resolution) mechanisms to provide better access to resolution mechanisms for citizens.

12. Legal provisions and soft law should encourage the development and use of IT technologies in ADR proceedings.

Promotion

13. States and Bars should cooperate on promoting ADR tools within the justice systems.

14. Information on soft law documents and toolbox prepared by the Council of Europe should be part of legal training as well as in campaigns raising awareness on mediation.

Speakers

Moderators



Prof. Irakli Kandashvili
(Georgia)
I Session



Iain Mitchell QC
(United Kingdom)
II Session

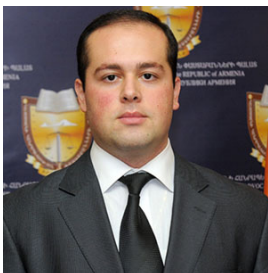


Juan Núñez Ferrer
(Spain)
AEA-EAL Past Presidents
Roundtable



Olivier d'Ursel
(Belgium)
III Session

Speakers



Armen Asatryan
1st Deputy Chairman
Chamber of Advocates
of Republic of Armenia



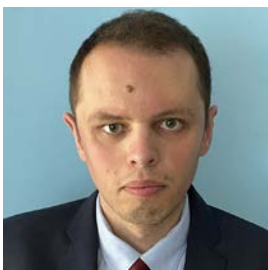
Prof. Lorena Bachmaier
(Spain)
expert
Council of Europe



Gian Andrea Chiavegatti
(Italy)
AEA-EAL
Past President



Dr Hayk Hovhannisyan
Chamber of Advocates
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Dr Remigijus Jokubauskas
(Lithuania)
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Council of Europe



Zaza Khatiaashvili
Past President
Georgian Bar Association



Gulsina Kozhyarova
(Kyrgyzstan)
Association of Mediators

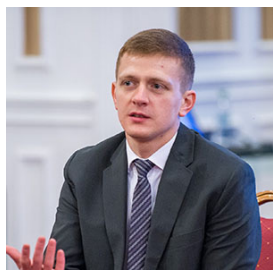


Ivan Kuznietsov
(Russia)
Kaliningrad Bar
Association

Speakers



Konrad Meingast
(Austria)
AEA-EAL
Past President



Vladimir Palamariuc
(Moldova)
Moldovan Young Lawyers
Association (MYLA)



Panagiotis Perakis
Vice-President
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Societies of Europe CCBE



Carmen Pérez Andújar
General Council
of Spanish Bars



Luiza Romanadze
(Ukraine)
Academy of Mediation



Esteban Rozenwajn
(Belgium)
Brussels Bar Association
(French and German)



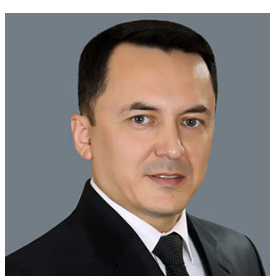
Paolo Sguotti
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Sergei Sizintsev
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Monique Stengel
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Djamshid Turdaliev
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Republican Collegium
of Advocates



Mary Walker OAM
(Australia)
Co-Chair
IBA Mediation Committee



Anna Wyrzykowska
(Poland)
President of the Interna-
tional Association
of Young Lawyers (AIJA)



Hanna Woźniak
(Poland)
Gdańsk Bar
of Attorneys-at-Law

Participants



Over 200 registrations, up to 90 participants online at the peak, gathered together colleagues from:

Eastern Partnership Countries:

- Armenia
- Georgia
- Moldova
- Ukraine

Further Countries of the Commonwealth of Independent States:

- Kazakhstan
- Kyrgyzstan
- Russia
- Uzbekistan

Other European Countries:

- Austria
- Belgium
- Cyprus

- Denmark
- France
- Germany
- Italy
- Latvia
- Lithuania
- Poland
- Romania
- Spain
- Turkey
- United Kingdom

Other Countries:

- Afghanistan
- Australia
- China
- India
- Iran
- Tunisia
- United States

Organizers



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EUROPEAN ASSOCIATION OF LAWYERS

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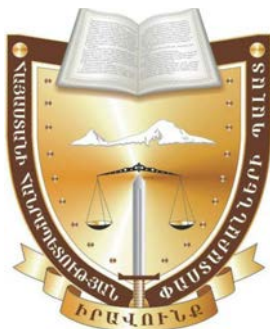
COUNCIL OF EUROPE



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