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In Prague on 2 March 2016

STATEMENT OF THE DIRECTOR OF THE INSTITUTE ON THE REVISED FINAL REPORT OF THE COMMISSION NO. 10

This statement comments on the Revised Final Report that was updated by the Commission No. 10 upon the statement from the director on the original Final Report.

First and foremost, the Institute appreciates the thoughtful revision and welcomes the changes the Commission made in the Revised Final Report following the objections I raised on behalf of the Institute (see Annex I.). The same holds true for the explanations the Commission provided in the attached Comments to the Reassessment (see Annex II.).

The most significant objection in my original statement concerned some of the general rules pertaining to the evaluation process. As I mentioned earlier, some of these rules might have had impact on the exactitude of the Commission's conclusions. In particular, under these rules, the Commission was not provided with a detailed rating of each individual publication output that the Institute had submitted for evaluation. The Commission was provided only with an anonymized rating of all outputs published by each assessed team and with an anonymized rating of all outputs published by the Institute as a whole. The Commission was, therefore, unable to assess the outputs in detail. On the one hand, this assessment was the subject of the first phase, however, on the other hand, the absence of such information a priori and during the on-site visit, reduced the ability of the Commission to get fully acquainted with the full range of the existing research as well as to assess its quality and content. This problem was apparently perceived by the Commission itself as is apparent from the Revised Final Report (see e. g. p. 3, 9 or 14). Moreover, as a statutory representative of the Institute, I was facing a similar problem. I was supposed to comment on the conclusions of the evaluation without being able to learn about the individual de-anonymized evaluation of the

results of the first phase. The major problem consisted in the absence of data on how each particular output had been evaluated in the first phase.

On the whole, my comments are meant to provide feedback for the Czech Academy of Sciences. I am of the opinion that, in the future, relying on non-targeted (anonymous) results from the first phase of the evaluation, is best avoided.

As far as the Reassessment is concerned, I would like to stress out that the Commission accepted 7 out of 9 objections that I rose on behalf of the Institute, and amended the Revised Final Report accordingly. The two objections, that the Commission did not fully accept, concern a) a more proactive presentation of our research findings in European law and b) a deeper cooperation with CERGE-EI and Institute of Sociology. The Institute appreciates these two suggestions. However, I need to add that the Commission could not fully familiarize itself with our research lines as the rules of the evaluation process did not allow for providing the Commission with the content of the respective research lines. Moreover, the Institute has actively and consistently cooperated with the Institute of Sociology under the program Strategy AV21 and has been also actively trying to commence cooperation with CERGE-EI and, despite not being able to set up joint research lines until now, we hope to cooperate in the future.

As far as the Revised Final Report is concerned as a whole, I would like to express my appreciation for how, in the revised version, the report provides an accurate portrait of the research community of the Institute of State and Law. I also appreciate that the majority of conclusions commends the research activities of the Institute. The Revised Final Report provides a very useful feedback on the direction the Institute should take in the next 5 years and as such is in line with the on-going conceptual, organizational, and personal changes at the Institute.

I therefore welcome the overall conclusions of the Report as well as the recommendations of the Commission. In my reading, the Revised Final Report evaluates the Institute in a positive manner, embraces our new research trends and highlights the importance and potential of the Institute. I believe that the Report's conclusions will effectively contribute to the future development of our Institute as well as of the legal science as such.

List of Annexes:

Annex I. – Statement of the Director of the Institute on the Final Report of the Commission No. 10 of 22 January 2016

Annex II. – Comments to the Reassessment of the Commission No. 10 of 23 February 2016

JUDr. Ján Matejka, Ph.D.
Director

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In Prague on 22 January 2016
Ref. No.: ÚSP/23/2016

STATEMENT FROM THE DIRECTOR OF THE INSTITUTE ON THE FINAL REPORT OF THE COMMISSION NO. 10

I. GENERAL OBSERVATIONS ON THE FINAL REPORT

In essence, the Final report provides a relatively accurate picture of the situation at the Institute of State and Law. The majority of conclusions positively reflect on Institute's activities, propose specific solutions, or offer suggestions, while some other conclusions reveal relatively general and universal critical assessments. The report also clearly confirms the correctness of the on-going conceptual, organizational, and personnel changes at the Institute. In this sense, the Final report provides an appropriate feedback on the running activities of the Institute and can be agreed with in most of its crucial points.

Nevertheless, in some parts the Final report contains certain contradictory and inaccurate statements whose context has to be clarified. Although my further comments on the Final report may sound critical, my objections are not meant to suggest the Final report lacks relevance. The objections pertain both to some of the rules, which apply to the evaluation process as a whole as well as to some of the recommendations and suggestions contained in the Final report. These objections will be separately summarized below.

II. AS FOR THE RULES OF THE EVALUATION PROCESS

As a statutory representative of the Institute, I feel obliged to object to several rules that apply to the on-going evaluation. The way the current procedure had been devised may eventually have a negative impact on the transparency and objectivity of the evaluation process itself.

First and foremost, during its on-site visit at the Institute, the Commission stated that its members were not provided with a detailed rating of the publication outputs the Institute had submitted for purposes of the evaluation process. As me and my colleagues came to understand, the Commission's members did not possess a complete list of the outputs produced by the Institute in the evaluated period either.

Under these circumstances, the Commission was unable to assess the Institute's outputs in detail (see pp. 9, 14, and 17 of the Final report). The assessment of the outputs submitted by the Institute was supposed to take place during the first phase of the evaluation

process. However, absence of detailed information on the identity and ranking of the Institute's outputs a priori reduced not only the possibility for the Commission to get fully acquainted with the full range of research and quality of research conclusions but also to evaluate questions of authorship with respect to the Institute's outputs (see infra). In other words, when evaluating the scope and quality of research, the Commission had to rely primarily on oral information provided by the director and heads of three evaluated research teams during the on-site visit, i.e. information which was by definition relatively selective.

As a statutory representative of the Institute, I am facing a similar problem at present. I am supposed to comment on the Final report and evaluation process without having access to individual de-anonymised evaluation of the results of the first phase (these are still inaccessible). In this respect, the very anonymization of publications' reviewers is not perceived as problematic. The major problem, however, lies in an absence of individual results illustrating how each particular output was evaluated. Such lack of transparency severely limits my opportunity to comment on both the Final report as well as the evaluation process as a whole. I suggest that in the future relying on non-targeted (anonymous) results from the first phase of evaluation should be avoided, mainly because such results lack transparency and are generally inadequate.

III. AS FOR THE RECOMMENDATIONS AND RELATED SUGGESTIONS OF THE COMMISSION

The Final report provides a number of recommendations and suggestions. Some Commission's proposals are more of a debatable nature as they only indicate possible future directions rather than suggest particular solutions and are sometimes based on partial knowledge or inadequate suppositions. In many cases these solutions are questionable or not suitable given the nature and the orientation of the Institute. Therefore, I would like to put my reflections on the report into perspective.

- i) As mentioned above, the Commission itself has repeatedly stated (see pp. 9, 14, and 17) that its members were not provided with the evaluation of particular publication outputs submitted for the evaluation by the Institute and, therefore, the Commission was not able to assess the outputs in detail. Consequently, this reduced the possibility for the Commission to become familiar with the full range of research that takes place at the Institute as well as to assess the quality of research conclusions and the overall productivity in various segments of the Institute's research.

In this regard, it is necessary to reject the Commission's findings questioning the very authorship of some of the outputs, both of publications by the Institute as a whole or by the evaluated teams (see pp. 4, 9, 14, and 18). In this respect, the Commission refers to Article 3 (3) lit e) of the Basic Principles of Evaluation of the Research and Professional Activity of the Institutes of the Czech Academy of Sciences (CAS) for the period 2010-2014. The provision states that *“For the evaluation purposes a research team may include only a worker who was in employment at an institute in any part of the period between 1 January 2010 to 31 December 2014, while neither Agreement to Perform Work nor Agreement to Complete a Job are considered as employment.”* The findings of the Commission are probably based on the observation that the Institute presented several results, which were published jointly with researchers from outside the Institute (or researchers who were not members of the evaluated teams). However, a description of every such result stated in a clear and

transparent manner that this result was achieved in cooperation with another team (researcher outside the evaluated team) or it specified the degree of contribution of the evaluated team on the presented result. Such an approach should be considered as compliant with the Basic Principles of Evaluation of the Research and Professional Activity of the Institutes of the Czech Academy of Sciences (CAS) for the period 2010-2014 (see for instance Article 4(4) lit a)) and certainly cannot lead to questioning authorship of the Institute or of an evaluated team.

- ii) On p. 6 of the Final report, the Commission proposes to separate provision of legal expertise (policy advisory reports) from the basic research, to set clear rules for drafting policy advisory reports, and to ensure transparency of these rules. It should be, however, noted that, since 2010, the process of drafting of policy advisory reports has been subject to strict and comprehensive rules contained in the Institute's Rules of Procedure as amended (*Organizační řád*; see, in particular, its Article XIII). These rules pertain both to procedural and substantive requirements all the policy advisory reports issued by the Institute shall meet. It shall be reminded that it is the director of the Institute who decides on drafting any expert opinion or policy advisory report upon the prior affirmative recommendation of the heads of the Institute's research departments. All expert opinions or policy advisory reports must impartially cover legal questions of general interest and not to prejudge decisions in particular cases. Provision of legal expertise is, thus, not only clearly regulated and but also separated from basic research in terms of organization as well as labour law. The respective rules are published on the website of the Institute which, in my view, guarantees transparency of the whole procedure.
- iii) In another comment, the Commission seems to criticize the Institute's engagement in teaching at universities and raises a question to what extent this engagement contributes to transferring research conclusions to teaching curricula (see p. 4). It shall be clarified that, in the evaluated period, Institution's researchers performed teaching not only in Bachelor's and Master's degree programmes but primarily through accredited doctoral study programs. Obligation to perform this type of teaching is clearly set out both in the Institute's Statute (*Statut*) as well as in relevant agreements between the Czech Academy of Sciences and universities. The teaching is directly related to scientific research and, indeed, aims at transferring results of the research to students of law faculties. Moreover, teaching serves to provide useful feedback to researchers themselves.

At the same time, the Final report suggests that more university students shall be integrated into the Institute's research (see pp. 4, 9, 15, and 18). In this regard, the Commission was obviously not fully aware of the fact that, under the Czech law in force, institutes of the Czech Academy of Sciences cannot offer undergraduate or graduate studies by themselves. Involvement of students in research is, therefore, dependant on the existence of joint accredited programs with universities. According to the current legislation (Act No. 111/1999 of the Collection of Laws, on Higher Education), institutes of the Czech Academy of Sciences are not allowed to offer doctoral courses individually and are required to do so only in cooperation with universities. The Institute is, therefore, in this respect significantly restricted. The manner of engaging students, the scope of their integration, funding and methods of teaching are then governed by the terms and conditions applicable at particular university.

- iv) The Commission has repeatedly stated that the Institute provides substantial support for legislative action, public policy and related decision-making. At the same time, the Commission states that all evaluated teams play a crucial role in recodification processes (see pp. 2 and 13). Even though this was obviously meant in a positive way, the Institute cannot automatically identify with this statement. Evidently, such activity is carried out by other institutions. The Institute does not play a direct role in these processes. Institute's outputs are purely of a scientific or popular science character, not of a legislative character.

However, in order to provide a complete depiction of the situation, I must still mention that several researchers of the Institute serve on the Legislative Council of the Czech Government and its committees, advisory bodies of ministries and other central authorities of the Executive, and one researcher is a member of the International Law Commission of the United Nations. In these roles, the Institute's researchers directly transfer research results into legislative and administrative practices and may influence public decision-making. It shall be stressed that this type of advisory activities represents a basic type of applied results that can be encountered in law. This kind of transmitting the results of the research is presupposed in the Institute's Statute (*Statut*) as well as in the legislation on public research bodies as in force.

- v) The Commission repeatedly argues that the Institute has not devoted sufficient attention to the issues of European law and Europeanisation of national law. Since the Commission states elsewhere that it was not provided with the complete overview of Institute's outputs (see pp. 9, 14, and 17), the question remains on what grounds the conclusion has been made. Both in the evaluated period and at present, attention has been regularly paid both to EU law and the Council of Europe/ECHR law, which is a must as the two bodies of law form an integral part of the Czech legal order. Unlike the law schools, however, due to personal limitations (compared to departments of European law at most of the law schools), research at the Institute focuses either on those areas of European law which are not normally dealt with in-depth at the Czech law schools (e. g. EU state aid law, European private law or proceedings before the ECJ) or on horizontal impacts European law has on varying branches of internal law (e. g. the ECHR impact on health law or EU law impact on IT law, data protection or environmental law). I have to add that the Final report is surprisingly silent on the Institute's research in public international law whose importance in the globalised world does not cease to grow (e. g. role and evolution of the international judiciary).
- vi) Furthermore, the Commission suggests establishing a more regular and deeper cooperation with the Economics Institute of the Czech Academy of Sciences and also the Institute of Sociology of the Czech Academy of Sciences (see p. 3). I would like to stress that the Institute of Law and State has already been cooperating with the Institute of Sociology of the CAS. Currently, the degree of cooperation has been enhanced through introduction of joint research projects. By way of example, within the framework of Strategy AV21 scheme, two projects have been implemented ("Global conflicts and local context: the cultural and social challenges" and "Natural threats"). The Institute of State and Law has expressed its interest in cooperating with the Economics Institute of the CAS. However, for the time being, the institutes have not been able to identify common research interests and synergies that would match their respective research priorities. In this regard, the Commission suggests

establishing joint seminars with the Economics Institute of the CAS. Although such solution may seem feasible at the first sight, from our perspective it would require changes in the Institute's personnel structure and recruitment of specialists in the field of Law & Economics. However, given the existing budgetary constraints, such solution cannot be achieved in a short or medium term.

- vii) As for the comments on the extent of international outputs and cooperation, the Final report gives an overwhelming preference to publications in English and to cooperation with English-speaking countries. Given the era of globalisation, English is no doubt the main language of communication and the English-speaking countries play substantial role in research. However, as regularly noticed by researchers from the very Anglo-American environment, to underestimate other cultural environments and the corresponding cooperation would be a major mistake. Therefore, the Institute and our researchers have aimed at establishing cooperation with researchers from the French and German-speaking countries. Moreover, one needs to keep in mind that the Institute has traditionally carried out research projects within the context of Central Europe. This cooperation is the most natural, given the nature of the problems dealt with in Czech law as well as geopolitical and historical similarities. Our ambition is, thus, to serve as a place, which shall connect excellent Central European legal research with legal cultures and research from other parts of Europe and the world.
- viii) Recommendation of the Commission towards publishing research papers in the Journal of Medical Law and Bioethics only in English does not seem to be substantiated as it challenges the very concept of the journal. Since its onset, the Journal of Medical Law and Bioethics has been designed as a journal focused on the Czech audience with a view of reaching excellence in this area on the national level. Publishing papers in other language would presumably discourage both the readers as well as the potential authors (see p. 7). The Institute provides a separate platform for publications in English in a journal with a more general focus – The Lawyer Quarterly.

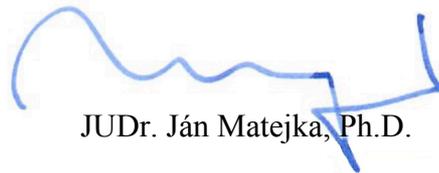
IV. CONCLUSION

The primary mission of the Institute has been, since its adoption, to carry out basic research with a focus on legal problems relevant to the Czech Republic and to create and disseminate knowledge within the local academic community and, thus, to enhance the quality of life and foster the development of the Czech legal culture. This mission also stems from the founding values of the Czech Academy of Sciences.

The Institute is endowed with interdisciplinary resources, faculty expertise and a record of over half a century of research and scholarship. Interdisciplinary inquiry into law provides immense prospects for understanding of complex domains as well as conflicts, regulations, and interventions to which the law has been subjected in the globalized world. Moreover, such research and scholarship can illuminate longstanding national debates as to the relative importance of interacting legal disciplines in patterns of European scholarship. Respecting the disciplinary particularity of the national legal culture, the Institute will use appropriate methods of research in examining topics which are relevant to its goal - integrating the long tradition of Czech legal scholarship with international research into law and supplementing doctrinal legal thinking with systematic inclusion of social science and the

humanities. The Institute aims to maintain this leadership by developing and nurturing a community of interdisciplinary scholarship within and beyond the local academic discourse. It aspires to excellence and engagement with the challenges and opportunities of the globalized legal culture in Europe.

In conclusion, I acknowledge the overall findings of the Final report as, in general, the report provides relatively accurate picture of the situation at the Institute. Furthermore, in most of the aspects the report evaluates the Institute in a positive manner and in some cases it offers solutions and sensible guidance on addressing some of the shortcomings (for instance internationalization). In many ways the report confirms the correctness and necessity of the recent and on-going conceptual, organizational, and personnel changes. In several particulars, however, the report seems tendentious. Therefore, I considered necessary to comment on these individual parts in the manner and form stated above. I sincerely hope that in the above-mentioned points the Final report shall be interpreted in the light of explanations provided in this Statement.

A handwritten signature in blue ink, consisting of a series of loops and a final vertical stroke, positioned above the printed name.

JUDr. Ján Matejka, Ph.D.

Director

Evaluation of the Research and Professional Activity of the Institutes of the Czech Academy of Sciences (CAS) for the period 2010–2014 – Phase II

Comments to the Reassessment

Commission:	No. 10 - Social sciences
Institute:	Institute of State and Law of the CAS, v. v. i.

The Commission welcomes the opportunity to comment on the Evaluation by the Evaluated institutes and the possibility for a reassessment by the Commission.

Following notes have been added to the evaluation by the evaluated institute:

1. The response is opened by a general remark on the evaluation process: *„absence of detailed information on the identity and ranking of the Institute’s outputs a priori reduced not only the possibility for the Commission to get fully acquainted with the full range of research and quality of research conclusions but also to evaluate questions of authorship with respect to the Institute’s outputs.“*

The view of the Institute is shared by the Commission but no changes in the final report are deemed necessary.

2. The Institutes rejects the Commission's findings questioning the very authorship of some of the outputs, both of publications by the Institute as a whole or by the evaluated teams

The Commission accepts the comment.

3. According to the Statement of the Institute the *“Commission proposes to separate provision of legal expertise (policy advisory reports) from the basic research, to set clear rules for drafting policy advisory reports, and to ensure transparency of these rules. It should be, however, noted that, since 2010, the process of drafting of policy advisory reports has been subject to strict and comprehensive rules contained in the Institute's Rules of Procedure as amended.”*

The Commission welcomes the explanation and the final report has been respectively amended. Any possible bias of the policy reports drafters and the following of the procedural rules are to be monitored by the Institute.

4. From the Institute's point of view, *"Commission seems to criticize the Institute's engagement in teaching at universities and raises a question to what extent this engagement contributes to transferring research conclusions to teaching curricula"*

The Commission did not intend to criticize the involvement of team members in the teaching process. A demanding involvement in teaching process was however deemed as a threat to the sustainability of the research team. The high load of teaching activities is always a threat to a research institute. In order to avoid misunderstanding, the wording of the final report sections "weaknesses and threats" has been changed to underline the perils of a possible massive engagement in teaching process.

5. The Institute defends its position within the basic legal research area: *"The Commission has repeatedly stated that the Institute provides substantial support for legislative action, public policy and related decision-making. At the same time, the Commission states that all evaluated teams play a crucial role in recodification processes (see pp. 2 and 13). Even though this was obviously meant in a positive way, the Institute cannot automatically identify with this statement. Evidently, such activity is carried out by other institutions. The Institute does not play a direct role in these processes. Institute's outputs are purely of a scientific or popular science character, not of a legislative character."*

The Commission's report does not contravene with the Institute's statement. The achievements of research team members within legislative activities are exceptional, while bearing in mind that the legislative activities are policy questions and the drafting of legal regulation is not the primary task of a research institute.

6. The Institute dismisses the claim that the Institute has not devoted sufficient attention to the issues of European law and Europeanisation of national law.

The Commission welcomes the chosen path of the Institute but it keeps its position that a focus on Europeanisation should be active (aiming at the European audience) not only passive (transfer of European law into the national law).

7. Regarding the Commission suggests establishing a more regular and deeper cooperation with the Economics Institute of the Czech Academy of Sciences and also the Institute of Sociology of the Czech Academy of Sciences. The Institute points out that a cooperation with the Institute of Sociology is running while they have not been able to identify common research interests with the EI.

The Commission welcomes the cooperation with the Institute of Sociology but still see a possibility of cooperation with CERGE-EI on both methodological and substantive level. The report was not amended.

8. According to the evaluated institute, the final report gives an overwhelming preference to publications in English and to cooperation with English-speaking countries.

The Commission acknowledges the aim of the Institute to publish its papers also in other foreign languages (also those other world languages who are field-relevant, i.e. German for private law or constitutional law or French for European law). The report has been respectively changed.

9. Recommendation of the Commission towards publishing research papers in the Journal of Medical Law and Bioethics only in English does not seem to be substantiated as it challenges the very concept of the journal.

The Commission accepts the position of the Institute but still welcomes the openness of the Journal towards English speaking authors (basing on its webpage with Manuscript Submission Guidelines in English). The report has been amended.

Date: 23.2.2016

Signature: 

Commission Chair: doc. JUDr., PhD., LL.M. Kristian Csach