



Report to the President of the OSCE PA
Visit to Yevgeny Zhovtis, Human Rights Defender in Kazakhstan by
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Democracy and Humanitarian Questions

At the beginning of May, as the Rapporteur on Human Dimension issues, I was pleased to be asked by the President of the OSCE PA, João Soares, to pay a visit to Mr. Yevgeny Zhovtis, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law. With the support of the OSCE PA International Secretariat and the OSCE field presence in Kazakhstan, a visit was requested of the authorities of Kazakhstan. I was pleased that the Kazakh authorities were open to facilitating my visit to Mr. Zhovtis in his penal colony in Ust-Kamenogorsk. While human rights defenders and other officials have previously visited Mr. Zhovtis, I understand that I am the first parliamentarian to see Mr. Zhovtis since his imprisonment.

Background

Mr. Zhovtis, the most prominent human rights defender in Kazakhstan, has been working on human rights issues in Kazakhstan for many years. He has worked, on occasion, with the government but also has been one of the harsher and most serious critics of human rights and of political and constitutional developments in the country. Mr. Zhovtis is widely considered a leading human rights activist in the country, and has testified in US Congressional hearings and other leading forums on human rights. He founded the Kazakhstan International Bureau for Human Rights and Rule of Law, is a member of the OSCE Panel of Experts on Freedom of Religion or Belief, and is one of the authors of the country's National Human Rights Action Plan 2009-2012.

On 3 September 2009 Mr. Zhovtis was sentenced to four years in a prison colony following a fatal traffic accident; an incident that to most independent observers would not normally result in criminal prosecution. Domestic legal experts and international observers at the trial reported numerous procedural violations, and raised serious questions about restrictions that prevented him from mounting a defence. Civil society and opposition political parties in Kazakhstan have also raised concerns about the sentencing.

After the fatal traffic accident, Mr. Zhovtis extended an apology to the victim's family and paid a significant sum of money in damages, US \$15,000, as a traditional 'obligation.' The victim's mother subsequently accepted his apology.

The visit

On 10 May 2010 the OSCE Parliamentary Assembly requested Kazakh authorities for a meeting with Mr. Zhovtis, which was granted early in the morning on 13 May, 2010 on a short notice for the same day.

I reached the prison colony in Ust-Kamenogorsk at around 4.00 pm on 13 May, and was allowed to enter the facility after registration. In the trip to Ust-Kamenogorsk I was accompanied by a field officer from the OSCE Centre in Astana.

Firstly, it should be noted that Mr. Zhovtis was in good condition, considering the circumstances in which he finds himself. The prison colony itself, located on the outskirts of the city of Ust-Kamenogorsk, is a minimum security detention facility within which Mr. Zhovtis has relative freedom of movement, but unlike some other detainees, he is not permitted to leave the facility unless he receives a special permit. Concerns have been raised as to the fairness of his treatment, as he is only assigned to jobs within the detention facility, whereas others are permitted to work outside on a kind of work-release programme. It should be noted that the Organization that Mr. Zhovtis leads has an office in Ust-Kamenogorsk but he is not allowed to work there. We met and spoke for about one and a half hours in the presence of a guard and of a woman, supposedly a lawyer or clerk, that took notes about our discussion.

In meeting with Mr. Zhovtis, our conversation focused primarily on the original trial and sentencing last year, and subsequent legal proceedings. I was disappointed to hear about a number of procedural violations, including the fact that the statements and testimonies of the mother of the victim of the car accident, who had pardoned Mr. Zhovtis, was not taken into consideration by the court, in clear violation of Kazakh legislation, and also that an independent expert's analysis on the dynamics of the car accident – which proved that Mr. Zhovtis was not in a position to avoid the car accident – was dismissed by the courts.

Mr. Zhovtis also expressed his disappointment at the Supreme Court of Kazakhstan's rejection of his lawyer's most recent appeal, through which it refused to recognize the lack of fairness in his trial and legal proceedings. He told me also that in the Supreme Court's decision regarding his lawyer's appeal, it also addressed issues that he might have raised in a subsequent personal appeal. This pre-empted any need for subsequent appeal, and so he had decided not to resort to such an appeal, and was instead working to table an individual complaint before the UN Human Rights Committee in Geneva, an institution that monitors the implementation of the 1966 UN Convention on Civil and Political Rights by the Member States, of which Kazakhstan is one.

I was also told by Mr. Zhovtis that he sees his case as a 'litmus test' for Kazakh institutions, and for the future of the rule of law and of democracy in his country. Being a lawyer and Professor of Constitutional Law, Mr. Zhovtis made a very analytical and balanced evaluation of the Constitutional developments of Kazakhstan since the demise of the Soviet Union. He clearly saw his case as the result of a judicial system that can easily fail to grant the right to a fair trial in Kazakhstan.

Having studied law myself, and being a politician, I can say that his analysis was well grounded, based on serious studies and preparation on how the rule of law and democratic institution are supposed to function. His arguments and constructive criticism, both on his personal case and on the general status of Kazakh institutions, are not motivated by a political agenda but by the belief that without respect for the rule of law, all legal, political and judicial institutions fail to implement their mandate and to respect international obligations, which legally or politically bound them.

Conclusions

My conversation with Mr. Zhovtis confirmed my understanding of the case as having been procedurally flawed. Unfortunately, I have to conclude that the institutions involved in his trial failed to deliver a fair and proportionate judgment.

He was not granted sufficient ability to mount his defence. Yevgeny Zhovtis does not dispute the details of the car crash, and has apologised to the family of the victim of the tragic accident. However, he states clearly – as does the independent expert analysis – that there is nothing that he could have done to prevent the collision, not having violated any traffic laws. As a result, he is understandably unwilling to admit any criminal responsibility in regards to the case.

It is my conviction that it is now up to the Kazakh institutions to urgently find a just conclusion to this case. Mr. Zhovtis has already been subjected for too long to a penalty he does not deserve.

As all other countries that have been the Chair of the OSCE, the Kazakh Government has a special political responsibility to make sure that OSCE commitments in the field of the Human Dimension (Democracy, Human Rights, Humanitarian Questions) are respected in the OSCE area, and especially in its territory; this case raises serious questions about the respect of the individual right to a fair trial in Kazakhstan.

As a post-script, I unfortunately also have to note that a short press release that I issued immediately following my visit was refused publication on the OSCE website by the Kazakh authorities. I was pleased with the openness that the Kazakh government had demonstrated in facilitating my visit, but their action to stop publication of a press release on the issue is of serious concern for all, and goes against what I understand to be standard procedures within the OSCE.

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