



United States Mission to the OSCE

Session 4: Rule of Law I

*Legislative transparency
Independence of the judiciary
Right to a fair trial*

As prepared for delivery by Ambassador Ian Kelly
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Citizens cannot trust their legal systems, a fundamental component of a democratic state, unless they believe that police and judicial officials will act in accordance with the law. They must also have faith in their right to a fair trial when charged with a crime, and not fear that their fate will be decided by a phone call from a senior official or a bribe to the judge.

Sadly, in too many participating States, such basic conditions necessary to a just legal system remain functionally absent or are deformed.

In Russia, the tragic deaths in custody of Sergei Magnitsky and Vera Trifonova are solemn reminders of the human cost of a deficient criminal justice system in which prison conditions remain extremely harsh and potentially life threatening. In the case of Mr. Magnitsky, a tax attorney imprisoned and denied any contact, either in person or by phone, with his wife and two young sons, a wide net of law enforcement officers, prosecutors, judges, a convicted murderer, and even private attorneys have been publicly, but not formally, accused of corruption. Withering publicity and international outrage have thus far been powerless to pierce the atmosphere of impunity that surrounds corrupt officials and stifles the rule of law in this tragic case in which no one yet has been brought to justice. Ms. Trifonova's death in the same facility where Mr. Magnitsky died only months before is further proof that important lessons were not learned and that prisoners do not have access to adequate healthcare.

I would also like to note the case of one of my own countrymen, Arkadi Gontmakher, who is currently facing trial in the remote region of Kamchatka on charges of overfishing. Mr. Gontmakher has now spent over three years in custody. Further, the ongoing second trial against former Yukos executives Mikhail Khodorkovsky and Platon Lebedev continues to evoke serious concerns about the right to a fair trial and the independence of the judiciary. Specifically, the lack of credible charges, intimidation of witnesses, violations of due process and procedural norms, falsification or withholding of documents, denial of attorney-client privilege, and illegal detention are most troubling.

In Uzbekistan, the government currently holds in prison at least fourteen human rights defenders. They are: Solijon Abdurakhmanov, Azam Formonov, Nosim Isakov, Gaibullo Jalilov, Alisher Karamatov, Jamshid Karimov, Norboi Kholjigitov, Rasul Khudainasarov, Ganihon Mamatkhanov, Farkhat Mukhtarov, Habibulla Okpulatov, Maxim Popov, Yuldash

Rasulov, Dilmurod Saidov, and Akzam Turgunov. Many other civil society activists, including independent journalists and political dissidents, are likewise serving sentences on politically motivated charges, such as Yusuf Jumaev, a poet and political dissident sentenced to five years in a penal colony after calling for President Islam Karimov's resignation in the run-up to the December 2007 presidential elections. According to his family, Jumaev continues to suffer ill-treatment in prison, including regular beatings by prison guards, and is in very poor health.

We are concerned that Kazakhstani human rights activist Evgeny Zhovtis remains in prison following flawed investigative and judicial proceedings. Evidence was not allowed to be presented, and witnesses were not allowed to testify, thereby endangering his right to receive a fair trial. Similarly, Ramazon Yesergepov, editor of the independent weekly newspaper *Alma-Ata Info*, remains in jail following a flawed trial procedure.

Due process and independent judiciary remains problematic in Belarus. The United States is concerned about the procedural flaws and apparent political motivations in the trial and conviction in Minsk on May 6 of Mikalay Autukhovich and two colleagues on charges related to illegal weapons possession.

The U.S. delegation regrets the necessity to raise once more the issue of the two imprisoned blogger-activists in Azerbaijan, Emin Milli and Adnan Hadjizade. Their case, which featured implausible charges and a trial marred by many violations of due process, has drawn international criticism. When Secretary Clinton was in Baku in early July, she raised the case. We do so again in the hope that Baku will see how much damage the prosecution of these two young men has inflicted upon Azerbaijan's reputation.

In Armenia, roughly a dozen people who were detained in the protests after the 2008 Presidential elections remain in prison without trial. In addition, a number of deaths of individuals while in police custody have not yet been investigated, and endemic corruption throughout the Government of Armenia and the courts raise doubts about the effectiveness of the courts and law enforcement in Armenia.

My delegation again urges the authorities of Turkmenistan to provide information about those individuals arrested after the events of November 2002. Their trials fell far short of OSCE norms. No information about their fate or wellbeing has been released even though Turkmenistan's own domestic law allows individuals to see their family members after five years. We urge Ashgabat to release all information about these individuals to the families.

In all participating States, ensuring rule of law and an independent judiciary is an ongoing process that entails dedication to principles whose practice separates democracies from tyrannies. The United States is ready and willing to cooperate with all OSCE participating States in this worthy endeavor.

Thank you, Moderator.