

**OSCE / ODIHR: 2010 Human Dimension Seminar on Strengthening the Judicial Independence and Public Access to Justice, Warsaw 17-19 May 2010**

**Working Group IV: Public Access to Justice**

**A statement by Sukhrobjon Ismoilov, a representative of the Expert Working Group of Uzbekistani civil society activists**

Dear Moderator, Ladies and Gentlemen,

Being a representative of the Uzbekistani civil society I thought it would be unfair not to make an intervention at this high-level international forum. Yesterday and the day before yesterday we have listened to different, mostly mutually supportive, and sometimes opposing opinions on the issues of the ways of composition of the national judicial councils, the process of selection of judges, and ways of holding judges accountable. I have also attended the side events where different perspectives on the above mentioned issues have been voiced again. And I have got an impression that for countries like Uzbekistan, and this would be also true for the OSCE chairing country Kazakhstan, and as well as for others in the Central Asia region, it is way too early to speak about strong and independent national judiciaries. I am saying so because listening to how the Kazakhstani official delegation was trying to refute the statements made by the representatives of the civil society both at plenary sessions and side events I remembered how in March this year at the UN Human Rights Committee the Uzbek official delegation was putting the same efforts to refute the statements and testimonies of the civil society groups from Uzbekistan.

The wish of the governments of Uzbekistan or Kazakhstan to see themselves among the democratic, human rights friendly nations of the world faster is understandable but such wish should behold them of artificially refuting the problems in the judiciary system which persist in reality and which are waiting for their solution. I would like to point out two general trends here: first, after a series of continuous international criticism and pressure those governments were fast in joining to and introducing the main procedures and international standards on independent judiciary and due process of law at the level of national legislations which yet demonstrate serious shortcomings and are not in full compliance with international standards; and second, when pointed out to separate individual cases of violations and shortcomings indicating that the system is far beyond the perfect, those governments tend to argue that these are just separate cases and because of the lack of understanding from the side of separate government officials, and otherwise in general the system is fully compliant with international standards. Those governments forget that in principle the judiciary system should guarantee independence, fairness and impartiality to everybody, and it is better to openly discuss the existing shortcomings of the system and seek better solutions rather than trying to hide them away.

Ladies and Gentlemen, these were just my observations on the past two days which I wanted to share with you. Now let me address briefly the situation with public access to trials in Uzbekistan.

In terms of public access to trials and presence of independent observers I would like to draw your attention to two issues: first, unlawful and closed trials related to prolongation of prison terms for religious and political prisoners; and second, exclusion of the representatives of the NGOs and human rights groups, so called "public defenders" from investigation and trials on criminal cases in Uzbekistan.

The government of Uzbekistan regularly brings numerous religious prisoners before the courts in order to prolong their prison terms. Why numerous? Because we don't know the exact number of persons imprisoned for their religious belief or / and practice in Uzbekistan. The penitentiary system in this country remains out of reach and closed for independent observers and visitors. Some independent voices say the number of religious prisoners makes up from 6.000 up to 8.000 inmates. There are at least 20 political prisoners (different types of civil society activists – independent journalists, human rights activists, NGO activists, and members of the political democratic opposition).

The way the government handles the cases of prolongation of prison terms for religious and political prisoners can not be called a fair, public and open process. Several problems come up here.

First, using closed trials the government resorts to prolongation of prison terms for religious prisoners unlawfully and without any legal justification because it wants religious opposition and other critics remain in prison for an uncertain period of time.

Second, criminal cases which bring to prolongation of prison terms for inmates are opened under art. 221 of the Criminal Code of Uzbekistan (Disobedience to lawful requirements of the prison administration). In practice most of those cases are trumped up by the prison administration. The main prosecuting testimonies in those criminal cases are built on the testimonies of the prison staff and those groups of the inmates who cooperate with the prison administration.

Third, trials related to prolongation of prison terms take place in prison premises which makes access of independent legal counsel to defendants very hard, and access of relatives, independent observers and press impossible.

Fourth, such trials are carried out during a very short period of time. A judge can hear the case and pass a decision roughly on average in 20-30 minutes.

Fifth, all sentences are made to the detriment of prisoners against whom criminal cases are opened. Once a prisoner is brought to the court under art. 221 of the Criminal Code he / she will definitely be imprisoned to additional years in prison.

All places of detention, including pre-trial custodies have remained out of reach for independent observers from NGOs, human rights groups and international experts. Religious prisoners continued to be considered as one of the most underrepresented groups of prisoners in Uzbekistan. The restricted number of defense attorneys and human rights activists who used to represent the interests of the religious prisoners while their criminal case was still under investigation or trial dropped their cases once the person was convicted and sent to prison. In most cases relatives and family members who do not have a special legal training and thus can not protect their interests effectively were the only ones to represent the interest of the religious prisoners.

Relatives of the religious prisoners have continued to report on torture and similar ill-treatment against their family members. According to relatives, the majority of religious prisoners continued being sentenced to additional prison terms namely just before their main prison term was expected to finish. Regular amnesty acts of the government haven't covered this group of prisoners.

The approach of law enforcement agencies on fighting religious extremism have remained the same which means if the authorities find out "one extremist" in the family that means the other

members of the family are also immediately perceived as potential extremists. On the other hand after arrest of one of the family members in a traditional Uzbek society the local community tends to avoid contacts or ties with families of religious prisoners thus isolating them from the rest of the local community. A religious prisoner among close relatives undermines a career in the state agency or organization. Relatives of religious prisoners are constantly monitored by the law enforcement agencies.

Because of the lack of access to prisons it is difficult to tell the real number of religious prisoners in prisons of Uzbekistan. It is also difficult to tell whether the number arrests and imprisonment based on religious issues are growing or falling. However, regular publications in the national mass media indicate that the authorities are not going to change their policies of persecution on religious motives – this is an issue of maintaining a power and a secular state for the Uzbek authorities. We think that in the long-term this brings to a fundamental problem for Uzbekistan. The authorities are maintaining inadequate policy against non-traditional religious groups. An unjustified and brutal state policy against Muslims backfires as a result: society doesn't believe in the state policy of combating religious extremism and terrorism. This can result in the growth of radicalization in the nearest future.

The second problem to which I would like to draw your attention is exclusion of the representatives of the NGOs and human rights groups, so called “public defenders” from investigation and trials on criminal cases in Uzbekistan. In September 2008 the government adopted a notorious decree on further strengthening reforms of the national bar association. Under this decree and with a formal justification of improving the quality of legal services for the population the government decided to deprive the representatives of the NGOs and human rights groups from the right to attend investigations and trials on criminal cases in the capacity of so called “public defenders”. The main argument of the government was public defenders do not have a legal training to defend the rights of persons standing before the investigation and trials on criminal cases.

Thank you for your attention.

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Warsaw, Poland

*Expert Working Group (EWG) is a non-governmental noncommercial group of experts from the Uzbek human rights NGOs, lawyers, journalists medical professionals and others who aim at monitoring and research on the issues of public interest, public policy and rights; raising public awareness on the current legal reforms and their mechanisms of implementation in Uzbekistan; and assisting in establishing of the local expert community and independent policy institutions and free debates and discussions among the society.*

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