

Review Conference 2010, Warsaw, 30 September - 08 October 2010**Social Fund “Center of Law and Development”**

An event occurred last week that has seemingly become another “fly in the ointment” for the Republic of Kazakhstan – the country currently holding the Chairmanship of the OSCE. A solemn ceremony was held in Oslo awarding in absentia the Sakharov Prize to Yevgeny Zhovtis, a human rights defender from Kazakhstan, who is at the present time serving a sentence in an open prison.

The Sakharov Prize for Freedom of Thought was established by the Norwegian Helsinki Committee in 1980. It was created to support those who are persecuted or imprisoned for their opinions, beliefs and conscience. The list of persons who have been awarded this prize now includes a representative of the country currently chairing the OSCE – the head of the Kazakhstan International Bureau for Human Rights and Rule of Law.

Such a “reward” is a blow to the country’s image, there is no doubt about it. After all, human rights and freedoms are among the key priorities in the OSCE’s third “basket”. What is more, this is a blow to the image of the Organization as well. It would appear that in entrusting the Chairmanship to a Central Asian country with a democracy still in its infancy “Europe’s watchdog” has lost the scent. This is clearly what some analysts are thinking when they publicly ask: How was the OSCE Chairmanship given to a country where people are put into prison for their ideological beliefs? And why did Kazakhstan begin criminal proceedings against Yevgeny Zhovtis on the eve of the OSCE Chairmanship, at a time when all eyes in the international community were fixed on the country?

But only a few apologists for democracy take into account the fact that there is a very simple explanation: any “canonization” of Zhovtis is a contrived process. He did not end up in an open prison for seditious speeches or opposition activities. It is all much simpler and, at the same time, more complicated.

It’s much simpler because the fact is that the well-known Kazakh human rights defender was behind the wheel of a car that knocked down and killed a pedestrian. He was convicted of this crime in accordance with the laws of Kazakhstan.

The issue is more complicated because in this situation the Norwegian Helsinki Committee looks foolish, artificially politicizing the situation and in so doing discrediting the very idea of awarding a freedom prize in Sakharov's name.

This story has more than a touch of bias about it if one considers that hundreds of other Kazakh citizens in exactly the same situation as Yevgeny Zhovtis have been convicted and are serving their prison sentences without provoking any outlandish euphoria. They, however, are not awarded prizes. What is more, for some "strange coincidence" no one comes to their defence.

There is quite a banal explanation for this selectivity. Zhovtis is a well-known figure in Europe's top political circles. And, all things considered, this epic tale confirms a popular aphorism – people's ability to lay down laws makes democracy possible, and people's tendency to dodge laws makes democracy indispensable. There was a trend towards an active "democratic lobby" both during the court hearings of the case against this Kazakh human rights defender and now when justice in Kazakhstan is coming under massive pressure from the outside.

By the way, the form of punishment imposed on Yevgeny Zhovtis by the court is not so tough when one considers the laws in force in Kazakhstan. He is serving his sentence not in a regular prison but in a settlement colony (open prison), where convicts are not under the watchful eye of guards but simply supervised by the administration and are able to move freely within the colony and can leave the premises without supervision if they have permission to do so.

Perhaps from the standpoint of European legislation, persons like Zhovtis pose no danger to society and therefore, in all likelihood, it would be logical to impose a punishment that did not entail restriction of liberty. But this is matter for the domestic legislation of Kazakhstan, and it should be mentioned that this legislation is undergoing a process of active transformation. Recently President Nazarbayev initiated a large-scale reform of the law-enforcement system. This reform focused on the liberalization of criminal legislation and decriminalization of crimes that pose little danger to society, as well as the improvement and simplification of legal proceedings so as to protect human rights and the legitimate interests of the citizens of Kazakhstan. Of course, those who wish to accelerate the process of democratic reforms as much as possible are right in wanting to do so. But in this particular instance, it is a case of more haste less speed.

"Twenty years is not a long time in which to build a democracy" American Congressman Alcee Hastings, Co-Chairman of the Helsinki Commission, said with reference to Kazakhstan, adding that democracy is still being built in the United States.

Of course, by no means all Western experts are criticizing Kazakhstan and its OSCE Chairmanship. It was also in Oslo, during the 19th annual session of the OSCE Parliamentary Assembly in July of this year, that the President of the Parliamentary

Assembly João Soares declared that “Kazakhstan’s Chairmanship of the Organization is marked with an exceptional dynamism”.

A positive assessment was also heard two weeks later during the informal meeting of the foreign ministers of the OSCE participating States in Almaty. As the French Foreign Minister Bernard Kouchner noted “Kazakhstan’s active involvement in the OSCE is a great piece of luck for the entire Organization”.

There is an explanation for this kind of reaction: a Central Asian republic has managed to do what no other Chairmanship succeeded in doing in the past 11 years, namely getting the heads of the OSCE States to agree to gather around a single negotiating table. I might mention that the last time this happened was in Istanbul in 1999.

In other words, Astana has set a new milestone in the history of the OSCE, having made dialogue between the countries to the east and the west of Vienna possible. And what is most important is that this idea enjoys the confidence of the international community. How else can one explain the fact that all 56 participating States of the OSCE adopted this unprecedented decision to hold a summit. As we know, the consensus method is the only possible way of adopting decisions in our Organization, and the fact that Kazakhstan was able to launch this mechanism speaks for itself.