



United States Mission to the OSCE

Session 4 **Rule of Law I, including:** **Democratic Lawmaking;** **Independence of the Judiciary;** **Right to a Fair Trial**

As prepared for delivery by Ambassador Avis Bohlen
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While I hesitate to rank the session topics in any order of importance, it's hard to overstate how critical the rule of law is to ensuring the effective implementation of other OSCE commitments and to providing redress when necessary. Indeed, how we speak about and understand the state of human rights and fundamental freedoms in the world can never be far removed from the concept and – we hope – the reality of an independent and fair judiciary interpreting and enforcing the laws of a genuinely representative legislature. Sadly, such democratic essentials are still lacking in too many of the participating States, and frequently the courts become tools of government persecution. To be sure, there have been improvements over the past year in some OSCE states, and while we also understand that no state's judicial system is perfect, in too many cases the chasm between the commitments on paper and the reality on the ground is troubling.

Moderator, in Russia, the posthumous prosecution of Sergei Magnitsky is one of the most visible examples of what former President Dmitry Medvedev decried as "legal nihilism." We are also concerned by the problematic trials and disproportionate sentences against the female punk group Pussy Riot and the jailing of Taisiya Osipova on questionable drug charges, as well as the legal harassment visited on many of those who have sought to express publicly their disapproval of the government, including Garry Kasparov, Alexey Navalny, and Boris Nemtsov. We reiterate our concerns regarding the second trial, verdict, and sentence of former Yukos executives Mikhail Khodorkovsky and Platon Lebedev, as well as that of Alexey Kurtsyn.

In Kazakhstan, we are concerned about the fairness of the justice system, where arrests appear to have targeted opposition activists. For example, in the case against Vladimir Kozlov, the prosecution has relied on professed "expert

witnesses” who attacked Mr. Kozlov's character, but failed to produce concrete evidentiary links between Mr. Kozlov’s support for striking oil workers and the violence that occurred in Zhanaozen last December. In the aftermath of violence in Zhanaozen, trials have been further marred by credible allegations of torture in detention and forced confessions resulting from beatings by prison officials and threats to defendants’ families. These allegations are consistent with reports of widespread police abuse during the crackdown following the December 16 events.

We appreciate Tajikistan’s information about the May visit of the UN Special Rapporteur on Torture, but we continue to be concerned about reports of routine abuse and torture during interrogation and detention in Tajikistan. Defendants' allegations of torture by Tajik security forces, which include methods such as electric shock, boiling water, suffocation, beatings, rape and threats of rape, have rarely been investigated.

We remain deeply concerned about the poor conduct of trials in Kyrgyzstan as well as continuing police abuse, including forced confessions, in the wake of the June 2010 violence in the southern part of the country. Arrests and trials in connection with the violence were not conducted in a fair and objective manner, and the recommendations of both internal and external commissions of inquiry have not been implemented. As many as 91 percent of those prosecuted have been ethnic Uzbeks, despite the fact that ethnic Uzbeks were also the overwhelming majority of the victims. Prosecution efforts have been based on confessions reportedly extracted under torture, and defendants’ allegations of torture have rarely been investigated or have been dismissed. Moreover, defendants and their lawyers have been physically attacked during the trials, often in the courtroom in front of judges and police, with little effort by authorities to intervene.

In this regard, we express continued concern about the conviction of Azimjon Askarov, and we ask Kyrgyzstan authorities to re-examine his case on the grounds of credible evidence of torture. A doctor specializing in treating victims of torture who examined Mr. Askarov earlier this year concluded that the physical injuries to Askarov’s head, eyes, back, and lungs were consistent with torture, and that he needed immediate treatment. To our knowledge, almost a year later, he still has not received treatment or a new and fair trial, and we ask Kyrgyzstan authorities to reexamine his case on the grounds of credible evidence of torture. Mr. Askarov’s situation is not unique; dozens of cases have been documented in which ethnic Uzbeks convicted of crimes related to the June violence did not receive trials that would be considered fair and impartial. We fear there may be many more similar cases in which access to justice has been denied.

We remain deeply troubled about the justice system in Uzbekistan. Although some reforms have been made, these have either been undercut by poor implementation or negated by new government policies. The UN special *rapporteur* on torture reported in 2003 that torture in Uzbekistan's criminal justice system was both "systematic" and "widespread." Since then, the country has largely been closed to international and independent monitoring. Although the Uzbekistan government did implement a major UN recommendation in 2008 by introducing the right of habeas corpus and the right of access to counsel, these are not always effectively implemented. The independence of lawyers was severely undercut in 2009 by the restructuring of the legal profession, which abolished independent bar associations, subordinated their replacements to the government, and required all lawyers to re-take a bar examination every three years. Lastly, we remain concerned about a number of judicial cases in Uzbekistan that raise serious issues about the government's adherence to its OSCE commitments on the rule of law and procedural due process, including the cases of Muhammad Bekjanov, Akzam Turgunov, Elena Bondar and Dilmurad Saiid. We call on the government to provide each of these individuals, and all those whose cases we have raised in the past, access to fair and transparent legal proceedings and to investigate all alleged irregularities.

Rule of law continues to suffer serious setbacks in Ukraine, illustrated by the politically motivated prosecutions of former Prime Minister Yuliya Tymoshenko and former Interior Minister Yuri Lutsenko, along with other selective prosecutions of senior members of Tymoshenko's Government. Since Tymoshenko's imprisonment last year, Ukraine's Prosecutor General has opened additional questionable, politically motivated cases against her. These selective prosecutions, and the broader rule of law deficit, call into question the independence of the Ukrainian judiciary. Particularly in view of Ukraine's upcoming 2013 Chairmanship of the OSCE, we again strongly urge the Government of Ukraine to free Tymoshenko and Lutsenko and to allow their unrestricted participation in the conduct of public affairs, including the elections this October.

We also have rule of law concerns in the South Caucasus region. For example, we share the dismay of all Georgians at the terrible acts of abuse in Georgian prisons reflected in the video images last week. We urge the government to conduct its investigation in a thorough and transparent manner and bring to justice as soon as possible to all those responsible.

In Hungary, changes to “cardinal” and other laws have effectively eroded the independence of key governmental institutions and scaled back the checks and balances that are crucial to a democracy and the protection of civil liberties. A succession of laws regarding the media and the judiciary gave rise to concerns that the new laws could weaken the country’s democratic institutions. We recognize that Hungary, after consulting with the Venice Commission and others, has modified some laws to strengthen checks and balances. Real concerns remain, but we encourage Hungary to continue to review key reforms through ongoing discussions between the government and international partners and Hungarian civil society.

In Romania, our good friend and strong ally, the rule of law and the constitutional order saw serious challenges as the government attempted to remove the President through a process whose rules kept changing as it went along. There were serious allegations of widespread voter fraud and attempts to coerce the country's constitutional system of checks and balances. We were pleased to see the government ultimately uphold its commitment to respect the rulings of the Court, and we are hopeful Romania will emerge from this crisis with a renewed dedication to preserving the strength and independence of its democratic institutions.

Serbia has undertaken many reforms in the past decade, which my delegation welcomes, but justice in Serbia remains vulnerable to political whim and the lack of political will. We saw earlier this year, for example, the politically-motivated arrests and detentions of Kosovo police officers, a Kosovo Albanian trade union activist, and several ethnic Albanians from southern Kosovo, including an employee of the OSCE Mission serving in southern Serbia. In one case, the Interior Minister made clear that the arrest was a response to developments in Kosovo and, I would add, in the context of an election campaign. In addition, Serbia has yet to deal effectively with the summary execution in 1999 of some of the egregious crimes committed during the Milosevic era. In July 1999, for example, three American citizens – the brothers Ylli, Agron, and Mehmet Bytyqi from New York – were detained by Serbian police for illegal entry while escorting a Romani neighbor to safety out of Kosovo. While in police custody, they were summarily executed and buried in a mass grave. There has not been a proper accounting for this crime, and those who are ultimately responsible remain free. There has also been no accountability for the murder of editor Slavko Curuvija, who was gunned down on the streets of Belgrade in April 1999, likely because he exposed the criminality of the Milosevic regime.

Although Slovak law provides for an independent judiciary, in practice problems with corruption, official intimidation of judges, inefficiency, and a lack of integrity and accountability continued to undermine judicial independence in Slovakia. In some cases, judges have said that they were subject to pressure aimed at influencing their decisions, as well as to intimidation through disciplinary actions. As noted in our annual Human Rights reports for the last several years, abuse of power by judicial figures and a lack of checks and balances exist within the judicial system. We urge the Government of Slovakia, while respecting fully the principle of independence of the judiciary, to take the necessary measures to foster accountability and reforms that could address these serious shortcomings.

Finally, we welcome OMiK's work to strengthen rule of law institutions has been critical to laying the foundation for and a more transparent and equitable judicial system and developing the capacity of the Kosovo Police to protect minorities and to better investigate criminal offenses. Still much work remains in the area of rule of law, particularly in tackling corruption and fighting organized crime rings, both of which will be necessary for Kosovo to progress on its Euro-Atlantic integration path. We note the collaboration between EULEX and the Kosovo police in investigating the recent double murder of a Kosovo Serb couple and remain confident in their investigative capacity and professionalism. We are encouraged by the Government of Kosovo's outreach to minority community crime victims and call for continued follow through to improve investigations, arrests, and convictions. The United States also remains concerned with the security situation in northern Kosovo that continues to inhibit law enforcement efforts by Kosovo Police and international personnel. We condemn attacks by Kosovo Serb hardliners on EULEX and KFOR, which block freedom of movement and threaten stability and security in the region.

Thank you.