1. Kazakhstan at the helm of the OSCE in 2010 amidst concerns about human rights

For the first time in the history of the OSCE, a former Soviet republic has taken the lead in the OSCE. Kazakhstan has become Chairman-in-Office of the organization in 2010 amidst concerns whether the country is up to the task in, in particular, the area of the human dimension. The country takes over this task, while its best-known human rights defender, Evgeny Zhovtis, has been put in prison for four years for his involvement in a tragic and fatal traffic accident. After an initial sentencing on the 4th of September by an Almaty court in a controversial procedure, the verdict was upheld in appeal on the 20th of October, brushing aside all complaints about serious procedural flaws. This led to a wave of criticism both within civil society in Kazakhstan and in the international community, both calling on the authorities to review the case.

On the 21st of October the Director of OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), Janez Lenarcic, expressed his dismay about the conduct of the appeals hearing and demanded a fair trial for Zhovtis. ‘We are dismayed by the appeal court’s reported failure to appropriately address the apparent violations of due process that occurred during the initial trial’, Lenarcic said. Following the first-instance verdict, ODIHR conveyed its concerns to the Kazakh authorities about reports of numerous procedural irregularities. The same concern was expressed by all EU member states at a meeting of the OSCE Permanent Council in Vienna. This seems not to have had any impact on the Kazakh authorities. Observers of the appeals hearing again reported interference with the defendant's right to a fair trial, including the rejection of the defense's technical expertise on the essential matter of whether Zhovtis could have avoided the accident. ‘The conduct of the appeals hearing regrettably confirmed our concerns about the fairness of the proceedings in this case’, Lenarcic said. He reiterated that while Zhovtis should not be entitled to any special treatment, it is the responsibility of the Kazakh authorities to ensure full respect for his right to a fair trial as enshrined in OSCE commitments and international human rights law.

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Even though the mother of the victim in the traffic accident had forgiven Mr Zhovtis and requested the court to discontinue the proceedings, the appeals court upheld the verdict. Since this type of ‘crime’ is considered to be only a ‘minor’ issue under Kazakh legislation, it is impossible to submit the case to the Kazakh Supreme Court. Only a ‘review’ on procedural grounds is possible which ultimately did not lead to any results, as the supervisory college of the Almaty regional court on the 10th of December did not find any grounds to open review proceedings. It’s a sad coincidence that the 10th of December is also the international human rights day. The EU immediately expressed its profound concerns again in the PC on the 17th of December, but since previous protests didn’t achieve any results, one may wonder whether Zhovtis will be released before his 4 year term has expired.

Although many observers suspect a political hand behind this case against a well-known critic of the Kazakh authorities in the area of human rights, it is sad to say that a case like this actually may reflect the day-to-day reality in the Kazakh criminal justice system as well. Procedural guarantees for the protection of the rights of the defendant are very often trampled upon, as also clearly shown in the Zhovtis-case. So, from this perspective alone, Mr. Zhovtis is also the victim of an inefficient and politicized criminal justice system which needs serious overhaul. Since his conviction, weekly demonstrations in Almaty have taken place, demanding his release. Police have harassed several of its participants, giving them high fines for ‘unlicensed demonstrations’. If the verdict won’t be reviewed properly, the Zhovtis-case will undoubtedly continue to haunt Kazakhstan over the year of its chairmanship, affecting its credibility in the human dimension sphere. It also demonstrates the urgent need for Kazakhstan to reform its judicial system so as to comply with its international obligations, including the numerous OSCE commitments on the human dimension. Zhovtis is the Director of the Kazakhstan International Bureau for Human Rights and Rule of Law and was a frequent visitor of OSCE meetings on human dimension issues.

The Zhovtis-case led to heated debates at the annual Human Dimension Implementation Meeting in Warsaw, which this year took place from 28 September to 9 October and which brought together hundreds of governmental delegates, civil society representatives and experts. Many NGOs raised serious concerns about the — in their view — deteriorating human rights situation in Kazakhstan. They referred in particular to issues such as a law restricting internet use, repressive legislation on religion, court cases against opposition newspapers, and the detention of participants in peaceful protests. Apart from Zhovtis, they also referred to other cases such as the imprisonment of newspaper editor Ramazan Yesergepov. Yesergepov, editor of the independent weekly Alma-Ata Info, received a three-year prison sentence on August 8 on a criminal charge of ‘gathering information containing state secrets’. He had been exposing lawlessness among Kazakhstan’s intelligence officials which obviously was not appreciated by the authorities. This atmosphere amounts to ‘a chilling environment in which media outlets and journalists are faced with the constant threat of lawsuits and