



United States Mission to the OSCE

Session 9: Rule of Law II Legislative Transparency, Independence of the Judiciary, Fair Trial

As prepared for delivery by Frank Gaffney
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Mr. Moderator,

An independent and robust judiciary is a critical safeguard against an overweening executive. Its corollary is the right to a fair trial, which represents the individual's hope for justice and redress of grievances, builds trust in government institutions and binds citizens and state together. Jointly, they are fundamental building blocks of a democratic system.

A number of participating States labor under the legacy of Soviet totalitarianism, exhibiting little, if any, judicial independence or respect for the right to a fair trial.

Thus, it is with serious concern that we have observed the trials in Uzbekistan in the eighteen months since Andijon. The OSCE and many human rights groups concur that these trials did not meet international standards.

In neighboring Tajikistan, the trial of Mahmudruzi Iskanderov also drew serious criticism. The process was flawed, and his conviction has seriously weakened the opposition Democratic Party. In this light, we commend the decision by a Moscow City Court in August not to extradite former Tajik trade minister Khabibulo Nasrulloev to Dushanbe on charges that seem politically-motivated.

The trial of ten individuals charged with murdering Altynbek Sarsenbaiuly last February is an important indicator of progress in Kazakhstan. The decision to hold the trial in a remote location, however, raises questions about the government's desire to foster access. While we welcome the opening of the court proceedings to the public and the press, it is essential that conduct of trials meet international standards and not be dictated from above. On August 29, opposition groups called the Sarsenbaiuly trial "a legal farce." The court sentenced all ten defendants to long prison terms.

In Azerbaijan, the trial of Ruslan Bashirli and two other leaders of the Azerbaijani opposition youth group Yeni Fikir was not, according to observers, conducted according to international norms. The United States is paying close attention to the appeals process. In addition, the United States has been following the case of individuals arrested in October 2005 on charges of attempting to stage a coup d'etat. It is disturbing that, a year later, evidence that these men were involved in illegal and anti-state activities has yet to be presented to a court or to the Azerbaijani public. Meanwhile, they, and all other prisoners, must be afforded needed medical care and the opportunity to see their families and attorneys.

As for Turkmenistan, the record of the last 15 years has given us no reason to harbor serious hopes for a fair trial for anyone accused of misconduct. Authorities often deny the right to a fair trial, and there are few independent lawyers available to represent defendants. There is no jury system. At times defendants are not allowed to confront or question witnesses against them, defendants and their attorneys are often denied access to government evidence against them, and defendants frequently do not enjoy a presumption of innocence. Even when due process rights are observed, the authority of the government prosecutor far exceeds that of the defense attorney, and it is very difficult for the defendant to receive a fair trial.

Turning to Moldova, Mr. Moderator, the United States wishes to express its continued concern about the case of former Minister of Defense Valeriu Pasat. He was sentenced to ten years in a labor camp by a secret tribunal in Chisinau for malfeasance in connection with the sale of 21 military aircraft to the United States. The U.S. delegation is deeply concerned that his trial was not conducted in a transparent manner and urges the Moldovan government to ensure that the appeals process meets international standards. The Moldovan government's recent decision to charge Mr. Pasat with weapons smuggling – in connection with his failure to declare pistols he received as gifts – raises further questions about political interference in the judiciary.

According to sources in the Russian legal community, defense lawyers have at times become the targets of official harassment. Professional associations at both the local and federal levels have reported police efforts to intimidate attorneys who are too assiduous in defending their clients. One method allegedly used is to call in the defense counsel for questioning, which then by Russian law disqualifies them from acting as an attorney in the case. Some defense attorneys have suffered physical assaults and threats.

Mr. Moderator, independent judiciaries and fair trials are important attributes of modern democratic states that respect the rights of their people. It is important that OSCE members abide by the spirit and letter of their commitments and obligations in this regard.