

OSCE HOLDS CONFERENCE IN ASTANA ON TOLERANCE AND NON-DISCRIMINATION

- **KAZAKHSTAN'S PRESIDENT OPENS WITH CALL FOR MORE TOLERANCE**
- **LEADING HUMAN RIGHTS ACTIVIST ZHOVTIS "UNABLE TO ATTEND" DUE TO CONTINUED IMPRISONMENT IN REMOTE PENAL COLONY**
- **KAZAKHSTANI NGOs BRIEF DELEGATES ON HUMAN RIGHTS CONCERNS**

ASTANA, KAZAKHSTAN



THE PALACE OF PEACE AND RECONCILIATION

Site of the OSCE High-Level Tolerance Conference

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Summary

On June 28 and 29th, Kazakhstan, the OSCE Chair-in-Office for 2010, hosted a “High Level Conference on Tolerance and Nondiscrimination” in Astana, preceded by a one-day civil society forum. At the opening session, President Nursultan Nazarbayev called for 1) the establishment of an OSCE centre on tolerance and non-discrimination and 2) an OSCE High Commissioner on Inter-Ethnic and Interreligious Tolerance. Kazakhstan Foreign Minister and Chair-in-Office Saudabayev concluded the meeting with a statement that he dubbed the “Astana Declaration.”



President Nazarbayev

More than 600 people registered to attend the conference. A large number of countries were represented by their bilateral Embassies in Astana and/or by their representatives to the OSCE from Vienna. There were no reports of NGOs having difficulties registering or gaining access to the meeting site.

OSCE officials participating included Janez Lenarcic, Director of the OSCE Office for Democratic Institutions and Human Rights; Knut Vollebaek, OSCE High Commissioner on National Minorities; and Dunja Mijatovic, the OSCE Representative on Freedom of the Media. The three Personal Representatives appointed by the Chair-in-Office tasked with dealing with these issues all attended and participated: Rabbi Andrew Baker, Personal Representative of the Chair-in-Office on Combating Anti-Semitism; Senator Adil Akhmetov, Personal Representative of the Chair-in-Office on Combating Intolerance and Discrimination against Muslims; and MEP Mario Mauro, Personal Representative on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of other Religions.

Predictably, concerns about Kazakhstan’s human rights performance bracketed the meeting (discussed below). While the continuing crisis in Kyrgyzstan was alluded to in some statements in Astana, the crisis there was (and continues to be) addressed separately by the OSCE Permanent Council in Vienna.

U.S. Delegation and U.S. Activities

U.S. Ambassador to Kazakhstan Richard Hoagland served as head of the U.S. delegation. Other members of the delegation included the Department of State Special Representative for Monitoring and Combating Anti-Semitism Hannah Rosenthal and the Special Representative to Muslim Communities Farah Pandith. The delegation also included Kareem Shora, Senior Policy Advisor for the Office for Civil Rights and Civil Liberties in the Department of Homeland Security. Martin Raffel, Executive Director, Jewish Council for Public Affairs, and Bishop John Bryson Chane of the Episcopal Diocese of Washington, participated as Public Members. (Public members are non-governmental representatives who bring valuable expertise to the U.S. delegation during an OSCE meeting and, after the meeting, are able to increase public knowledge and understanding of the Helsinki Process.)

Members of the delegation delivered statements and participated in each of the sessions, focusing on a number of issues, including the need for a greater focus on combating intolerance towards Lesbian, Gay, Bisexual, and Transgender (LGBT) persons and concerns regarding recent laws that discriminate against Muslims, including bans on face veils and minarets. The need to build the capacity of participating States to combat racial and ethnic prejudice in light of an increase in violence against non-white persons and migrants in the OSCE region was also raised. To address this issue specifically, the United States called for the OSCE to hold one of next year's three Supplementary Human Dimension Meetings on racism and xenophobia.

In an effort to underscore the need for broad collective efforts to combat hatred, the U.S. Special Envoy on monitoring and combating anti-Semitism spoke at the conference about the need to end discrimination and intolerance against Muslims, while the Special Representative to Muslim Communities addressed the problem of anti-Semitism.

The U.S. statements from the meeting can be found on the website for the U.S. Mission to the OSCE: < <http://osce.usmission.gov/>>. The text of the U.S. statement about the meeting made to the OSCE Permanent Council on July 1 is attached to this report.

U.S.-sponsored Side Event



During the conference, the two U.S. Special Representatives organized a side event entitled “The ART Initiative (Acceptance, Respect, Tolerance).” The goal of the ART Initiative was to present successful and easily adaptable innovative approaches to combating intolerance and discrimination by involving interfaith, inter-ethnic youth and young adults. The event highlighted the best practices of several international NGOs from Bosnia and Herzegovina, Georgia, Russia, Ukraine,

the United Kingdom, and the United States that are involved in promoting respect and mutual understanding, particularly among young people with the goal that similar initiatives could be duplicated in other participating States.

Kareem Shora from the Department of Homeland Security also participated in a side event on Islamophobia organized by the European Muslim Initiative for Social Cohesion and the Organization of the Islamic Conference. This event was held in the wake of increased discrimination and intolerance against Muslims (such the efforts to ban minarets, face veils and other forms of dress worn by some Muslim women) – and relatively limited meaningful efforts to counter this phenomenon. Accordingly, some speakers at that event reiterated a call for ODIHR to seek a working definition for intolerance and discrimination against Muslims (an issue raised at the Helsinki Commission’s hearing with the three Personal Representatives in 2009) and for the OSCE to hold a Supplemental Human Dimension Meeting on this topic in 2011.

Conference Issues

In 2003, in the wake of a growing tide of anti-Semitism and at the urging of the Helsinki Commission and the OSCE Parliamentary Assembly, the OSCE participating States organized two special, ad hoc conferences in Vienna: one focused on anti-Semitism, and one focused on combating racism, discrimination and xenophobia in general. Other meetings on these subjects followed, including a meeting on anti-Semitism in Berlin in April 2004. For many, the Berlin meeting was a high water mark of the OSCE’s meetings focused on combating intolerance. First, it was truly “high level” in its participation. The United States, for example, was represented by Secretary of State Colin Powell, former New York City Mayor Ed Koch, and Helsinki Commis-

sioners Benjamin L. Cardin, Alcee L. Hastings (also representing the OSCE Parliamentary Assembly), and Christopher H. Smith. It also resulted in a Chairman's Declaration drafted on the basis of meaningful consultations with participating States that was hailed as an important statement of principle.

Some NGOs had hoped that the OSCE would hold a high level conference on anti-Semitism/intolerance issues on an "every other year" cycle, with working level meetings in "off" years. In June 2007, the Spanish chairmanship convened a High-Level Conference on Combating Discrimination and Promoting Mutual Respect and Understanding which Romania stepped forward to host in Bucharest. According to an "every-other-year" rotation, some had looked to the Greeks to organize such a meeting during their OSCE chairmanship. However, given the enormous amount of time, energy, and resources required to host special, ad hoc events, the Greek Chair declined to host a meeting in 2009.

Kazakhstan's willingness to host a meeting in 2010 was seen by some as a constructive way of maintaining the OSCE participating States' focus on these issues. For the Kazakhstan Chairmanship, hosting a meeting on tolerance-related issues also offered an opportunity to showcase Kazakhstan's relative success domestically in promoting inter-faith and inter-ethnic relations.

Unfortunately, on net, the Astana meeting did little to advance the OSCE's work on the subjects of anti-Semitism, racism, xenophobia, and other forms of intolerance. The location was an inconvenient choice for many of the NGOs focused on this subject. Governments were poorly represented – because they were preoccupied by the preparations for the looming "informal" ministerial in Almaty (July 16-17), or by the crisis in Kyrgyzstan, or because of the time and expense of getting to Astana, or because of their indifference towards the subject of the conference. Additionally, the late adoption of the final agenda on June 10 made it difficult for civil society members to prepare for and attend the conference.

Although there was some sense of an improved dialogue between groups focused on discrimination against Muslims and those focused on anti-Semitism, the uneven participation of NGOs made it hard to view this as a particular breakthrough. Some issues, including the murders and other attacks against Roma and migrants, received noticeably short shrift. Few NGOs working on combating racism made the trek to Astana, despite the uptick in violence (perhaps fueled by the economic crisis) towards migrants and other ethnic minorities.

Over all, the meeting illustrated (again) that it is extremely difficult to do justice to all of the issues at once that have come to be lumped under the “tolerance and non-discrimination” OSCE rubric. (Some other OSCE meetings on tolerance issues, such as the 2005 Cordoba conference, have had so many participants that it was impossible to accommodate all of them on the speakers list.)

The blurring of the lines between issues of freedom of religion or belief and “(in-)tolerance” issues has probably been detrimental to both. In particular, many of the concerns raised regarding religious freedom often stemmed from acts of discrimination and not hate crimes. Moreover, many of the former, especially those regarding minority faiths, related to discriminatory acts by state actors (e.g., discriminatory provisions for the registration of religious groups, government role in refusing visas for coreligionists, fostering intolerance through state-controlled media or state publications such as textbooks) as opposed to the role frequently played by non-state actors in hate crimes or fomenting intolerance. Finally, the titles of the three Personal Representatives (in one case a particularly awkward compromise) has started to unhelpfully influence the way in which ODIHR organizes its work and even the way in which some OSCE participating States characterize these issues. In particular, the agenda description of the third session tracked the cumbersome title of MEP Mario Mauro, Personal Representative on “Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of other Religions.” This everything-but-the-kitchen-sink session was attended by those focused on racism, xenophobia, Christians, nontraditional religions, migrants, Romani peoples, national minorities, LGBT groups, and others that have concerns that cannot be defined as anti-Semitism or intolerance and discrimination against Muslims. The lumping of these issues together is confusing at times for participants and detracts from focusing on targeted solutions.

It remains to be seen whether this conference will serve as a placeholder for more meaningful work on tolerance and non-discrimination issues by the participating States. If other OSCE meetings on this subject are to be held, more attention should be paid to the planning stages, including the timely adoption of an agenda and ensuring space at the venue for side-events and bilateral meetings. Moreover, there needs to be a greater focus on the implementation of already agreed upon commitments in conjunction with the discussion of other tolerance issues.

Kazakhstan's Human Rights Performance Raised during Conference

Kazakhstan's OSCE Chairmanship has been controversial since Astana's bid for the leadership position began in 2003 because of that country's restrictions on many fundamental freedoms and weak democratic institutions. As a consequence, those issues cast a shadow over the conference.

In Madrid in November 2007, then-Foreign Minister Marat Tazhin outlined specific reforms Kazakhstan was prepared to make in a number of key areas to bring the country into line with commitments President Nazarbayev had accepted when his country joined the OSCE:

- Amend the Law on the Media, taking into consideration OSCE's recommendations; withdraw draft laws that would increase liabilities for defamation in the media; instead, consider reduction of criminal liability for defamation; support the development of self-regulation mechanisms of the media (as opposed to government regulation); and liberalize registration procedures for media outlets, in consultations among authorities, journalists, and the OSCE.
- Reform the Law on Elections; liberalize registration requirements for political parties; implement ODIHR's recommendations on the functioning of political parties and on media coverage of elections.
- Continue the process of enlarging the prerogatives of local representative bodies within the overall system of government.

Kazakhstan is widely perceived by human rights organizations as having made insignificant or only token gestures in implementing the reforms envisioned at Madrid and, in some ways, actually backsliding. A news bulletin (Special Issue No. 25, June 1, 2010) released by the Embassy of the Republic of Kazakhstan to the United States actually documents the limited progress on reform.

Moreover, Kazakhstan has a one-party parliament with every seat held by *Nur Otan*, a party led by President Nazarbayev. President Nazarbayev, who has already served as President since first winning his seat in an uncontested election in April 1991, was the subject of renewed controversy on the eve of the conference because of a hastily adopted law "On the Leader of the Nation." That law grants him and members of his family blanket immunity from prosecution and protection of their assets for life. The Head of the OSCE Centre in Astana, Alexandre Keltchewsky, also noted that the law has raised concern in some capitals of the OSCE because of a provision which imposes a ban on "negative" media coverage of the president. Keltchewsky noted that, "this norm does not conform to the basic provisions of the freedom of speech."

Also on the eve of the conference, Yermek Narymbaev, the leader of the Almaty-based *Arman* (Dream) opposition movement was sentenced to four years in jail on charges stemming from holding an “unsanctioned demonstration,” journalist Sergei Duvanov and rights activist Andrei Sviridov were fined for protesting the “Leader of the Nation” law, and journalist Yekaterina Belyaeva was detained for attempting to hold an “unsanctioned” protest against that law.

Kazakhstan Issues Raised During Conference

On the day of the Civil Society Forum, the OSCE Centre in Kazakhstan organized an event focusing on Kazakhstan. The NGO panel addressed several issues.

First, the panel raised the case of Evgenii Zhovtis – Kazakhstan’s leading human rights defender who remains in a remote penal colony.

Zhovtis, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law and a member of the OSCE Office for Democratic Institutions and Human Rights’ panel of experts on freedom of assembly, was involved in a tragic car accident in which a pedestrian was killed. On Sept. 3, 2009, he was convicted of vehicular manslaughter and sentenced to four years in prison. The Director of the OSCE Office for Democratic Institutions and Human Rights, Janez Lenarcic, expressed concern about apparent violations of due process that occurred during the initial trial, and which have not been remedied on appeal. Matteo Mecacci, Rapporteur of the OSCE PA’s General Committee on Human Rights and Humanitarian Questions, met with Zhovtis in May and observed, “Mr. Zhovtis was in good condition but disappointed in the Supreme Court’s refusal to recognize the lack of fairness in the legal proceedings. Unfortunately, I have to conclude that institutions can fail to deliver a fair and proportionate judgment in a situation that to independent observers does not entail criminal responsibility.” Indeed, the way in which this case was and continues to be handled by the authorities has elevated Zhovtis’ status to an international cause célèbre, and appears to have made him a pawn in a larger game: as long as Zhovtis remains in prison, he remains a central focus of the discussion of Kazakhstan’s human rights record. As such, his continued imprisonment is a convenient if cynical diversion for Kazakhstani authorities from a discussion of other persistent human rights problems.

Regarding Zhovtis, the NGO panel asserted that the conditions of his incarceration are not as the government represents them to be; that he is unable to leave the penal colony (unlike others there); that Zhovtis is under complete and total surveillance at all times; and that his treatment by the authorities shows that this is a political case.

On the theme of the conference – *tolerance and non-discrimination* – panelists noted:

- that Kazakhstan still lacks effective anti-discrimination legislation that would include meaningful remedies;
- that missionary visas are only granted for 180 days, and cannot be prolonged. Such a visa requires a letter of invitation from a registered group – but this catch-22 effectively prevents a group from disseminating information on an unregistered religion.
- Some school materials portray some religious groups as “cults” and threats to national stability, fomenting intolerance toward them.

Kazakhstan, one speaker concluded, is in violation of every single part of paragraph 16 of the OSCE Vienna Concluding Document on the rights of individuals to profess and practice religion or belief.

Regarding *freedom of expression*, members of the panel referred to Kazakhstan’s restrictive law on the Internet passed last year, and noted that several blogs and websites continue to be blocked by the government. The panel also noted that 51% of the mass media receives funds from the state which impedes their independence. The panelists also urged that defamation should be decriminalized (a long standing recommendation of the OSCE Representative on Freedom of the Media).

On *rule of law issues*, it was suggested that the rights of lawyers are diminishing as administrative measures against them are increasing. Particular concern was expressed regarding the establishment of a disciplinary commission within the Ministry of Justice tasked with examining the adequacy of legal representation (i.e., whether lawyers are fulfilling their professional responsibilities). This could result in the Ministry of Justice withdrawing lawyers’ licenses, although the oversight of lawyers’ professional standards should be the purview of bar associations. It was also suggested that financial police have opened investigations against lawyers for alleged improprieties in an effort to obtain confidential information.

Finally, regarding *political pluralism*, one panelist suggested there might be the space for some parties to get registered now – but not *Alga*. *Alga*, he said, is a real opposition party and will not be registered for the near term. (*Alga* has had an application for formal registration as a political party with the Ministry of Justice since 2006.)

In addition to this event organized by the OSCE Centre in Astana, several Kazakhstani NGOs raised concerns related to Kazakhstan during the conference – especially the inability of some minority faiths to practice freely. (Along these lines, the 2009 Department of State’s International Religious Freedom Report on Kazakhstan notes that “. . . local and regional officials attempted on occasion to limit or control several groups’ practice of religion, especially minority religious communities such as evangelical Christians, Jehovah’s Witnesses, Scientologists, and Muslims not affiliated with the SAMK.”) Conducting missionary activity in Kazakhstan without being registered is illegal, and foreigners who do so are subject to immediate deportation. In 2009, Kazakhstan attempted to introduce a restrictive religion law that would have imposed additional burdensome registration requirements for all religious groups by reducing the number of religious communities permitted to operate in Kazakhstan, increasing the penalties for



members of unregistered communities, and mandating expert analyses of all religious literature prior to its publication. Unregistered religious communities could not teach their religion, own property, or rent public space for religious activities. Although on February 11, 2009 Kazakhstan’s constitutional council ruled that the proposed amendments were inconsistent with the country’s constitution, there is concern that a similar draft law will be introduced in January 2011, after Kazakhstan’s OSCE Chairmanship has ended.

Poster on display next to Secretariat station at the High Level Conference on Tolerance – it disparages the Evangelic New Life Church for “Pseudo-Religious Activity”

Separately, the Netherlands hosted a side event on religious liberties in Kazakhstan and Kyrgyzstan. The panel of Kazakhstani and international NGOs was introduced with the tongue-in-cheek observation that Evgenii Zhovitis, had been invited to participate as a member of the panel but was “unable to attend.”

Related articles by Helsinki Commission staff available at <www.csce.gov>:

- *Racism and Xenophobia: The Role of Governments in Addressing Continuing Challenges*, by Mischa Thompson and Alex Johnson, July 17, 2008 (report on the Supplementary Human Dimension Meeting on “The Role of National Institutions against Discrimination in Combating Racism and Xenophobia with Special Focus on Persons belonging to National Minorities and Migrants,” May 29-30 2008).
- *Italian Fingerprinting Targeting Romani Communities Triggers Protests; OSCE Pledges Fact-Finding -- OSCE Holds Meeting on “Sustainable Policies for Roma and Sinti Integration,”* by Erika B. Schlager, July 15, 2008 (report on the Supplementary Human Dimension Meeting on “Sustainable Policies for Roma and Sinti Integration,” July 10-11, 2008).
- *Sustaining the Fight: Combating Anti-Semitism and Other Forms of Intolerance within the OSCE*, by Mischa Thompson, Erika Schlager, and Ron McNamara, August 13, 2007 (report on the Conference on Combating Discrimination and Promoting Mutual Respect and Understanding, held in Bucharest, Romania, June 8-9, 2007).
- *Continuing the Fight: Combating Intolerance and Discrimination against Muslims*, by Mischa Thompson, December 3, 2007 (report on the Conference on Intolerance and Discrimination against Muslims, held in Cordoba, Spain, October 9-10, 2007).

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**United States Mission to the OSCE
Statement on High-Level Conference on Tolerance and Discrimination in Astana
As delivered by Ambassador Ian Kelly
to the Permanent Council, Vienna
July 1, 2010**

We would like to thank the Government of Kazakhstan for hosting the High-Level Conference on Tolerance and Non-Discrimination in Astana and ODIHR for assisting. We are also grateful that the OSCE Centre was able to facilitate a dialogue between OSCE participating States and Kazakhstani non-governmental representatives on these issues.

The conference was particularly timely since the events in Kyrgyzstan sharply illustrate that we ignore questions on inter-ethnic relations, bias-motivated violence, tolerance and non-discrimination at our own peril.

We welcomed the opportunity of the conference to reiterate our concern that specific laws, such as banning head coverings and other forms of religious attire, as well as the building of mosques and minarets, often constitute restrictions on religious expression, can be discriminatory, and can marginalize members of minority groups.

We also welcomed the opportunity to express our deep concern about the escalation of violent attacks against Romani individuals, sometimes terrorizing whole communities, as well as a recent spike in anti-Semitism.

Mr. Chairman, it is essential that all participating States recommit to combating all forms of intolerance. To this end, we were pleased that so many participating States and NGOs at the conference called for respect for diversity and protection of human rights of all individuals, including

lesbian, gay, bisexual and transgender persons. We were therefore surprised - and disappointed - that there was no reference to this issue in the Chairman-in-Office's document called the "Astana Declaration."

We reiterate the conviction of the United States that fundamental freedoms and human rights – particularly freedom of religion, freedom of assembly, freedom of association, and freedom of expression – are essential elements to combat all forms of intolerance, and that these fundamental freedoms are not yet fully respected in the OSCE region. Protecting individual rights and ensuring space for civil society must remain a singular priority for all participating States.

Thank you, Mr. Chairman.