



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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## COMMUNIQUE DE PRESSE – COMUNICADO DE PRENSA

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### **Kazakhstan: ICJ questions fairness of appeal hearing in case of Human Rights Defender Evgeniy Zhovtis**

The International Commission of Jurists (ICJ) today expressed its concern at deficiencies in the appeal process in which the conviction of the prominent Kazakh human rights defender Evgeniy Zhovtis, was upheld this week. ICJ Commissioner Karinna Moskalenko, observed the appeal hearing on 20 October on behalf of the ICJ, to assess its compliance with international fair trial standards.

Evgeniy Zhovtis, head of the Kazakhstan International Bureau for Human Rights and the Rule of Law, was convicted in September of negligent manslaughter, following a car accident in which a man was killed. Questions were raised regarding the fairness of the trial at first instance, which have not been put to rest by the appeal process.

The ICJ pointed to a number of deficiencies in the appeal hearing which, taken together, mean that the hearing fails to meet international fair trial standards, including those binding on Kazakhstan under Article 14 of the *International Covenant on Civil and Political Rights (ICCPR)*. It is of particular concern that Mr Zhovtis was not permitted to attend the hearing. Furthermore, the authorities actively tried to prevent the mother of the victim of the car accident from reaching the court, where she intended to testify to her reconciliation with Mr Zhovtis. Although some international observers and members of the public were able to attend the hearing, the police prevented many members of the public from entering the courtroom. In the course of the hearing, defence motions were repeatedly rejected or "left open" and subsequently not granted, suggesting a violation of the principle of equality of arms protected by Article 14 ICCPR.

The ICJ is also concerned that the appeal court did not give a full reasoned judgment in the case, but only stated summarily the operative part of the verdict. If full reasons for the decision are not provided by the court within a reasonable period, the right to a reasoned decision under Article 14 ICCPR will be violated.

The ICJ is concerned that Mr Zhovtis continues to be held in a closed prison, despite the fact that his sentence stipulates detention in an open facility. This change in status appears to contravene the sentence of the court of first instance. The reasons and legal basis for any change in the conditions of Evgeniy Zhovtis' detention should be clearly disclosed.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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## **Background**

On 3 September 2009, the court of the first instance, Balkhash district court of Almaty oblast, found Evgeniy Zhovtis guilty of committing a crime under article 296(2) of the Criminal Code of the Republic of Kazakhstan (violation by a person driving a car of the traffic rules causing by negligence death of a person). The Court sentenced him to four years of imprisonment in an open prison for persons who committed crimes by negligence, with deprivation of the right to drive for three years.

After the judgment was announced, Evgeniy Zhovtis was taken into custody in the courtroom. Since then he has been held in a detention facility in Taldykorgan.

On 20 October 2009, an appellate hearing in Almaty oblast court took place.

The position of the defence was that the conviction should be quashed on a number of grounds:

1) Art. 67 of the Criminal Procedure Code of the Republic of Kazakhstan (CPC) obliges the preliminary investigation and the court to dismiss the case in all cases when three conditions are present:

- a) *the act is classified as a crime of little gravity;*
- b) *conciliation with the victim has taken place; and*
- c) *the defendant has taken steps to provide reparation for the harm inflicted.*

In this case, the defence argued that all the above conditions are met.

2) The defence argued that the actions of Evgeniy Zhovtis do not contain *corpus delicti* since he did not break the traffic rules. The death of the victim was caused by the gross negligence of the victim himself and a violation of traffic rules. The investigation established the fact of the victim's presence on the roadway. However, the first instance court failed to give a legal assessment of the victim's behaviour.

The position of the State Prosecution was that the sentence should remain unchanged.

The Almaty regional court of three professional judges decided to leave the sentence Balkhash district court of Almaty region of 3 September 2009 unchanged.

The ICJ's observation of the appeal hearing was carried out by ICJ Commissioner Karinna Moskalenko, in co-operation with the observer of the World Movement for Democracy, Yuri Dzhibladsze.

The full report of the ICJ trial observation will be issued shortly.

*For further information, please contact the ICJ on + 41 22 9793800.*