**Questionnaire on deprivation of liberty of women and girls**

Submitted by the Open Dialogue Foundation

**I. Justice system**

1. *What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.*

In the case of Kazakhstan, many women who engage in actions of political opposition, civic activism or human rights actions, become a target of authorities, facing accusations and often being subjected to detention or arrested as a result. In particular, freedom of expression is hardly existent in the country and women who dare to speak about politically sensitive issues on social media or messaging apps are accused of violating the criminal code. Among the most used articles are Articles 174, 274, 378 of the Criminal Code. Below are some examples of such cases.

A very relevant case is that of **Elena Semenova**, a well-known human rights defender inside Kazakhstan and abroad, who was recently charged with the **accusation of "spreading false information" under Article 274 of the Criminal Code of Kazakhstan**. In early July 2018, Semenova took part in [a number of meetings](https://www.facebook.com/lyudmyla.kozlovska/posts/10212272741556145) with the Members of the European Parliament in Strasbourg, where she described the facts of mass brutal torture of prisoners in Kazakhstan. On 20 July, 2018, in Pavlodar, three police officers detained Semenova at her home based on statements that she had previously made to MEPs. Moreover, on 7 October 2018, when trying to go to Europe to attend the Parliamentary Assembly of the Council of Europe, Semenova was not allowed to fly out.

The information that Semenova brought to the attention of MEPs concerned the condition of detentions of prisoners in Pavlodar, Kazakhstan. Semenova has collected many complaints by inmates, regarding several forms of ill-treatment and torture in the places of detention including cases of beatings, rape, acts of humiliation and denial of medical treatment, which she has vocally reported abroad, calling for concrete actions towards ending such practices. Semenova underscored that she had voiced information received directly from prisoners and their relatives. In retaliation for her human rights activity, she has been charged, detained, interrogated, had her computer, phone and materials she used for her work seized. Such materials include the statements of prisoners about the torture. The seizure took place without Semenova being present. She fears that the results of examination of the seized items could be falsified.

Her case shows the Kazakhstani authorities’ continuous attempts to silence dissenting voices and to discourage human rights activities in the country, especially when related to politically sensitive issues. Semenova remains subjected to the risk of facing imprisonment.

(Full statement: https://en.odfoundation.eu/a/8747,human-rights-defender-elena-semenova-detained-in-kazakhstan-after-her-visit-to-the-european-parliament)

**Ardak Ashim** is a blogger and civil activist. Her case had resonance abroad, given the brutal punishment she was subjected to in retaliation for her public posts on social networks, critical towards authorities. Ashim was subjected to punitive psychiatric treatment after being initially accused of **“inciting social discord” under Article 174 of the Criminal Code of Kazakhstan and then of “insult of a state official, with the use of mass media” under Article 378 of the Criminal Code**. She was sentenced to a psychiatric facility in blatant violations of the law and of her human and civil rights, only for exercising freedom of expression online. For more than a month, Ardak Ashim was forcibly kept in a psychiatric hospital. During her stay, Ashim complained about her poor state of health, which, in her opinion, was the result of the adding of psychotropic drugs to her food aimed at making her “deranged”. In May 2018, under the pressure of the international community, the authorities released Ashim from the psychiatric hospital. Yet, she was given compulsory outpatient treatment by a psychiatrist. She had to flee the country in order to avoid renewed forced hospitalization. She now continues her engagement and is active in public campaigns to protect civil activists and political prisoners. We believe that such cases and brutal practices should be monitored closely and publicly condemned in order to prevent any chance that they occur again in the future.

**IV. Migration and crisis situations**

1. *What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes*?

Often, women fleeing non-democratic countries, may encounter several difficulties in obtaining asylum. The case of Zhanara Akhmetova shows how authorities of non democratic countries can attempt to interfere with the migration system of other countries. Akhmetova, a Kazakhstani opposition activist, journalist and blogger who has lived in Ukraine since March 2017, where she applied for political asylum, was detained for a month in a pre-detention centre in Kyiv, on the basis of an extradition request issued by Kazakhstan. On 21 October 2017, she was detained in her apartment by two unidentified man: Akhmetova described the incident as an attempted kidnapping, orchestrated by the Kazakhstani special services. Kazakhstan put the name of Zhanara Akhmetova on the wanted list on the basis of a court judgement which had already become effective; according to her counsels, it was illegal. The Migration Service of Ukraine had previously refused to grant refugee status to Akhmetova, a decision of which she had not been informed, thus being unable to file an appeal. Immediately after that, she was detained with gross violations of Ukrainian legislation. The facts presented at the trial raise suspicion of cooperation between Ukrainian and Kazakhstani special services for the purpose of extraditing Akhmetova. After a month of detention, in November 2017, the court released her from custody, which was only made possible due to the efforts of human rights organisations, MPs, counsels and the intervention of representatives of the international community. Akhmetova is striving to challenge and has achieved a review of the decision of the Migration Service to deny her asylum in court. Moreover, Akhmetova has reported to being shadowed by Kazakhstani secret services in Ukraine. (More info available in the statements: <https://en.odfoundation.eu/a/8451,the-case-of-zhanara-akhmetova-ukraine-once-again-helps-the-authoritarian-regime-to-get-an-opposition-journalist>;

<https://en.odfoundation.eu/a/8727,kazakhstan-s-special-services-are-shadowing-activists-in-ukraine>)

**Ana Ursachi**, a lawyer and human rights defender, has been obliged to live in exile in order to escape the politically motivated persecution initiated against her in Moldova.

As a lawyer, Ursachi participates in high-profile cases, in particular, she defends the interests of the opponents of oligarch Vladimir Plahotniuc. Ursachi became the target of a widespread smear campaign by state television and mass media - specifically the media owned by Moldovan oligarch Plahotniuc - and criminal cases were opened against her. Ursachi was labelled as ‘the devil's advocate’ and media alleged that she had been “involved in a murder committed 20 years before”. In October 2016, General Prosecutor Office resumed the criminal case in order to “establish the extent to which Ms Ursachi was involved in the crime”. However, in the case of Ursachi, the 15-year statute of limitations had expired in 2012. On 20 March 2017, the authorities of Moldova initiated one more criminal case against Ursachi under Article 327 of the Criminal Code (‘abuse of power’). She was accused of illegal activities in the provision of legal advice.

Moreover, according to Ursachi, an Interpol ‘red notice’ was issued in her name, which means that she can be detained at any time at the request of Moldova.

Representatives of the international community have repeatedly stated that the criminal prosecution of Ana Ursachi is connected with her professional activities. In particular, human rights organisations Amnesty International, the International Observatory of Endangered Lawyers, Destination Justice, the German Ambassador to Moldova, the Head of the OSCE Parliamentary Committee on Democracy and Human Rights Ignacio Sanchez Amor, the Head of the EU Delegation to Moldova Pirkka Tapiola issued statements in defence of Ursachi.

(Letter from Chair of OSCE third committee to Kazakhstan and Moldovan authorities:

<http://en.odfoundation.eu/a/8579,the-chair-of-the-osce-pa-general-committee-on-democracy-human-rights-and-humanitarian-questions-addresses-the-authorities-of-kazakhstan-and-moldova>; ODF on the case of Ana Ursachi:

<https://en.odfoundation.eu/a/7992,moldova-prosecution-of-counsel-ana-ursachi>)

The case of Kazakhstani citizen Botagoz Jardemalie is another striking example of how authoritarian states misuse international mechanisms of police cooperation, in this case INTERPOL, to limit the freedom of movement of their own citizens. Botagoz Jardemalie is a lawyer and human rights defender, who received political asylum in Belgium and is forced to live abroad, since her return to Kazakhstan could put her life in danger. Jardemalie provided legal advice to opposition politician Mukhtar Ablyazov and other persons persecuted in Kazakhstan for political reasons.

In 2013, Kazakhstan brought charges against her within the framework of Ablyazov's case. In October 2013, the Belgian authorities granted Jardemalie political asylum. Interpol removed Jardemalie (in 2016) and Ablyazov (in 2017) from the wanted list due to the political nature of the charges. The statement published by the International Observatory for Lawyers well explains the risks Jardemalie was subjected to when she fled the country: “*The safety of Jardemalie has been threatened even in Belgium, where she was subjected to surveillance and was targeted in a kidnapping plot ultimately foiled by the Belgian police. At Kazakhstan’s request, in 2013, INTERPOL published a Red Notice targeting Jardemalie for arrest on a fabricated criminal case, however this Red Notice was later cancelled for non-compliance with INTERPOL’s rules against political abuses of the Organization.*”

Unable to attain Jardemalie directly, the authorities of Kazakhstan decided to target her brother, Iskander Yerimbetov, a businessman who has been detained and subjected to severe mistreatment and torture while in detention. Since November 2017 he has remained in jail on fabricated accusations of “money laundering”, “embezzlement of funds” and “fraud”. Yerimbetov said that during his stay in prison, employees of the special services tortured him, demanding that he persuade his sister to return to Kazakhstan and give false testimony against Ablyazov.

Given these facts, the case of Yerimbetov and Jardemalie is widely perceived as being politically motivated and the detention of Yerimbetov is considered to be a form of retaliation for the activity of Jardemalie. Moreover, considering the risk of torture she would be exposed to if she would go back to her home country and her refugee status which would make her a target of political prosecution, Kazakhstani authorities are keeping in prison her brother to unlawfully convince her to return.

**International associations of lawyers, such as the International Observatory for Lawyers in Danger and the Council of Bars and Law Societies of Europe (CCBE), have spoken in defence of Jardemalie:**

* Statement by Observatory for Lawyers in Danger:

<http://www.protect-lawyers.com/oiad-content/uploads/2018/05/17-05-2018-appeal-iol-jardemalie-case-en.pdf>

* Letter sent by the CCBE:

<https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Kazakhstan_-_Kazakhstan/2018/EN_HRL_20180423_Kazakhstan_Concerns-over-lawyer-Botagoz-Jardemalie.pdf>).

**Inquiry by UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment:**

* <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23596.>

The case of **Lyudmyla Kozlovska**, the President of the Open Dialogue Foundation, an NGO that monitors the situation of human rights and civil liberties in former Soviet countries such as Moldova, Kazakhstan, Russia and Ukraine, represents a recent worrying example of the dangers and increasing limits the activity of civil society can encounter. Kozlovska was banned from the Schengen Area as a consequence of Poland’s decision to include her name in the Schengen Information System as 'a threat to the national security for Poland'. The inclusion of Lyudmyla Kozlovska into the register of undesirable persons is unfounded and does not reflect the actual state of affairs or the provisions of law. Lyudmyla Kozlovska is not subject to any criminal proceedings, nor has she committed any crime or misdemeanour which could result in such far-reaching actions being taken.

It is fundamental to note that the targeting of Kozlovska is a form of reprisal due to the civic activity of her husband, Bartosz Kramek, who had been calling through a Facebook post for various civil disobedience actions in Poland in the light of the dismantling the rule of law in the country in summer 2017. Moreover, such entry ban has not been justified by an official explanation, but just by the suspected irregularities concerning the Foundation headed by Kozlovska. Supposedly authorities of Poland consider that she can be a threat for public safety and order.

The use of Schengen Information System for political purpose by Poland and deportation of Lyudmyla Kozlovska caused a wave of indignation among representatives of international civil society, Members of the European Parliament, famous politicians and civic activists.

Thanks to the invitations issued by many EU politicians and MEPs, the Schengen ban was overcome with short-term visas which allowed Kozlovska to take part in a conference at the Bundestag in Germany, to address the European Parliament in Brussels, the Parliamentary Assembly of the Council of Europe in Strasbourg and to meet with other political supporters in London. However, the entry ban remains valid and a long-term solution needs to be envisaged by competent authorities.

More information at these sources:

**The description and chronology of the expulsion-related events (basic legal aspects):**

* <https://en.odfoundation.eu/a/8770,information-on-the-inclusion-of-lyudmyla-kozlovska-in-the-sis-database-by-poland>
* <https://en.odfoundation.eu/a/8764,poland-uses-sis-to-prevent-president-of-the-open-dialog-foundation-from-entering-the-schengen-area>

**The petition supported by President Lech Wałęsa (and many other prominent public figures, including MEPs and various politicians, whose involvement we discussed, signed at the end of the text):**

<https://www.change.org/p/politicians-and-governments-of-eu-member-states-bringherback-to-the-eu> (currently signed by over 30 000 people)

**Polish ombudsman (Rzecznik Praw Obywatelskich):**

[https://www.rpo.gov.pl/pl/content/rpo-podjal-sprawę-wydalenia-ludmily-kozlowskiej](https://www.rpo.gov.pl/pl/content/rpo-podjal-spraw%C4%99-wydalenia-ludmily-kozlowskiej) (in Polish, EN translation attached)

**Statement of the Polish Helsinki Foundation for Human Rights:**

<http://www.hfhr.pl/en/hfhr-issues-statement-in-case-of-detained-head-of-open-dialogue-foundation/>   
(full English translation attached)  
  
**The complaint sent by the Polish Helsinki Foundation for Human Rights to the European Commission,** demanding action on the Polish law violating the EU migration and asylum regulations and mentioning Lyudmyla's case - attached

**Marcin Święcicki, Polish MP renowned for its support actions for Ukraine:**

<https://en.odfoundation.eu/a/8802,marcin-swiecicki-member-of-the-polish-sejm-issued-a-parliamentary-question-concerning-the-removal-of-lyudmyla-kozlovska-from-the-territory-of-the-eu-to-the-polish-prime-minister>

**A very important legal comment by dr. Evelien Brouwer, Amsterdam Centre for Migration and Refugee Law:**

<https://verfassungsblog.de/schengen-entry-bans-for-political-reasons-the-case-of-lyudmyla-kozlovska/>

**Euractiv (French edition) - Varsovie fait expulser une militante des droits de l’Homme:**

<https://www.euractiv.fr/section/politique/news/polands-deportation-of-human-rights-activist-the-back-story/>

**Dziennik Gazeta Prawna - interview with former Minister of Foreign Afffairs of Poland, Witold Waszczykowski:** *Fundacja miała ambicje sięgające daleko poza granice Polski (The Foundation had ambitions reaching far beyond Poland):*<http://wiadomosci.dziennik.pl/opinie/artykuly/580758,niemcy-potega-waszczykowski-rosja-merkel-putin.html>

Waszczykowski admitted that the real reason for the expulsion was that the "government got scared" after Lyudmyla Kozlovska’ husband Facebook post on civil disobedience. He also admitted to personally disliking the Open Dialog Foundation and believing that Lyudmyla was behind it, as he, as an MP, had been receiving too many emails from her asking for help with various human right cases in Kazakhstan. As, according to him, the Open Dialog Foundation was "getting in touch with MEPs and other organisations in Brussels", so he thought we were too efficient and could use our contacts and skills against the Polish government. Therefore, they decided to initiate the fiscal and customs control and finally expel Lyudmyla as a countermeasure.

Letter of Mr Guy Verhofstadt and Sophie Int'Veld on behalf of the ALDE group at the European Parliament:

<https://www.sophieintveld.eu/letter-to-the-commission-on-the-use-of-the-sis-in-the-case-of-ms-kozlovska/>

Guy Verhofstadt: *The Schengen visa ban on Lyudmyla Kozlovska must be withdrawn:*  
<https://twitter.com/guyverhofstadt/status/1030390217902051329>   
  
Guy Verhofstadt: *Lyuda Kozlovska is a true fighter for an open, tolerant and just European society*  
<https://twitter.com/guyverhofstadt/status/1044951137143705601>

Washington Post: The Polish Government Expels a Critic and Sets an Ominous precedent for the European Union:

<https://www.washingtonpost.com/news/democracy-post/wp/2018/08/17/the-polish-government-expels-a-critic-and-sets-an-ominous-precedent-for-the-european-union>

Statement of Ukrainian human rights organisations:

<https://helsinki.org.ua/appeals/zvernennya-ukrajinskyh-pravozahysnyh-orhanizatsij-z-pryvodu-vnesennya-kerivnytsi-fundatsiji-vidkrytyj-dialoh-do-schengen-information-system-sis/> (English translation attached)

Lyuda Kozlovska addresses ALDE in the Parliament on the state of the civil liberties in Poland:  
https://www.aldeparty.eu/news/lyuda-kozlovska-addresses-alde-parliament

Additionally, this is **the Information on previous attacks on ODF and disputes with the Polish authorities** (before the entry ban and expulsion - 2017-2018):   
<https://en.odfoundation.eu/a/8482,unprecedented-attacks-on-the-open-dialog-foundation-in-poland>  
  
PACE (Parliamentary Assembly of the Council of Europe) reactions regarding the state of the civil liberties in Poland and the case of persecution of the Open Dialog Foundation run by Lyudmyla Kozlovska:

* Strasbourg: Members of PACE concerned about the rule of law, media freedom and independence of NGOs in Poland:   
  <http://en.odfoundation.eu/a/8548,strasbourg-members-of-pace-concerned-about-the-rule-of-law-media-freedom-and-independence-of-ngos-in-poland>
* Civil liberties in Poland, Ukraine and the Republic of Moldova must be preserved (motion for resolution): <http://en.odfoundation.eu/a/8550,members-of-the-pace-launch-a-motion-for-resolution-on-the-preservation-of-civil-liberties-in-poland-moldova-and-ukraine>
* Petra De Sutter (a Belgian MP): The rule of law and freedom of civil society in Poland is in danger: <http://www.petradesutter.eu/2018/01/23/poland-is-in-danger/>
* The ODF addresses the EP and PACE on human and civil rights in Kazakhstan, Moldova and Poland: <http://en.odfoundation.eu/a/8442,the-odf-addresses-the-ep-and-pace-on-human-and-civil-rights-in-kazakhstan-moldova-and-poland>
* Poland: unprecedented attacks on the rule of law and civil society organisations must be stopped (written declaration):

<http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24220&Lang=EN>