

Onet: Court overrules expulsion of President of the Open Dialogue Foundation from Poland

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The Regional Administrative Court has considered the documents substantiating the decision on Lyudmyla Kozlovska's expulsion from Poland as "overgeneralised" and demanded her case be reconsidered by the Office for Foreigners. "I have been fighting against post-soviet regimes and I have noticed that similar tactics are being pursued by the Polish government. Luckily, the Polish courts are still independent," said Kozlovska in reply to the judgment.

- The court has considered the documents substantiating the expulsion of Lyudmyla Kozlovska from the European Union as "insufficient" for requiring that her personal data be entered into the Schengen Information System (SIS) in order to prohibit her entry into the EU.
- As a result of decisions taken by other EU Member States, the Head of the Open Dialogue Foundation has been allowed to move freely across Europe. Nevertheless, she still needs to wait until her case is reconsidered by the Office for Foreigners to be eventually allowed to return to Poland.
- "The court has divulged the invalidity of arguments quoted by politicians of the Law and Justice Party who claimed that the Polish services had compelling evidence against Lyudmyla," said Bartosz Kramek, Kozlovska's husband.

The Ukrainian President of the Open Dialogue Foundation, Lyudmyla Kozlovska, was expelled from the territory of the European Union on 14 August 2018, after Poland entered an alert into the Schengen Information System (SIS). The alert was entered by the Head of the Office for Foreigners based on a confidential opinion of the Internal Security Agency. Kozlovska was expelled from Poland on the basis of certain laws governing protection of national defence and security, or public safety and order.

Both Lyudmyla Kozlovska and her husband, Bartosz Kramek, the Head of the ODF Board, argued from the very beginning against the substantiation of this decision presented by the Office for Foreigners, and claimed that the real reason why Kozlovska had been expelled from Poland was the fact that Kramek had participated in civic protests and published an article on Facebook entitled "The state must be stopped. Let's switch off the government".

"This was just Mr Mariusz Kaminski's [i.e. Minister Coordinator of Special Services'] personal revenge on my husband, Bartosz Kramek. The Internal Security Agency's report is confidential, because they just have nothing specific against us," Kozlovska reported to Onet.

What is the substantiation?

On Friday, the ODF was served with a judgment issued by the Regional Administrative Court in Warsaw at a closed trial on 16 April that reversed the Office for Foreigners' decision on entering Kozlovska's personal data in the SIS and requested the office reconsider her case.

When analysing the matter, the court took into consideration a document issued by the Internal Security Agency which substantiated the Office for Foreigners' decision on having Kozlovska's personal data entered into the SIS. In the substantiation of its judgment, the Court stated, among others, that: "The court has resolved that there exist no grounds for claiming that based on the content of this document it might be assumed that there existed reasons for making such entries into the register and the SIS. In the court's view, the information presented in the document is too general (...)."

In the subsequent sections of the substantiation of its judgment, the court expressed its opinion that no information contained in the analysed documentation demonstrates that Kozlovska poses any threat to national security.

The court did remark, however, that it cannot be entirely ruled that there existed some reasons for entering Kozlovska's personal data into the SIS. Nevertheless, in such a case, the documents being used to substantiate the decision are insufficient, and the case should be reconsidered by the Office for Foreigners.

Kozlovska: the amount of propaganda circulating about me is just unbelievable

We asked Jakub Dudziak, the spokesman for the Office for Foreigners, to comment on the decision of the court. It turned out that despite the fact that the judgment was delivered to the ODF's address on Friday, nobody at the Office for Foreigners had been familiarised with it until Tuesday evening. "Perhaps it was delivered to the Reception Desk, but it had to be registered first, and only then transferred to the relevant department," said the spokesman.

We also asked the Internal Security Agency, which had issued the secret opinion that was the basis for Kozlovska's expulsion from Poland, to comment on the issue. Stanisław Żaryn, the spokesman for the Minister Coordinator of Secret Services requested we give him some time to examine the issue. Then he texted us: "For the time being, we will not comment upon the RCA's judgment."

However, Kozlovska and her husband, Bartosz Kramek, turned to be much more willing to offer their comments. "To me, it's just like *déjà vu*," said Kozlovska to Onet. "I have been fighting against post-soviet regimes on a daily basis and now I can see the same methods being pursued by the Polish government. The amount of propaganda circulating about me is just unbelievable. Yet I am very happy that the Polish courts are still independent. In fact, we have been protesting against their politicisation."

Bartosz Kramek believes that the decision to expel his wife from Poland was politically motivated. "This judgment is a landmark victory that demonstrates that from the very beginning, the politicisation of this case has been plain as day. The court divulged the invalidity of arguments quoted by politicians of the Law and Justice Party who claimed that the Polish services had compelling evidence against Lyudmyla. However, this is not the end of our battle for my wife's return to Poland. The case may still be processed for a long time by the Polish administrative authorities and courts. But we are quite satisfied. As a matter of fact, this is not the first failure of the Polish government in its dispute against the ODF, the small NGO that it is. Let me remind you that the Minister of Foreign Affairs has twice attempted to introduce controllers into the Foundation, and for two years, the ODF was subjected to a tax audit, which despite its repeated extension, has not demonstrated any irregularities," says Mr Kramek.

A Belgian residence card

Lyudmyla Kozlovska is currently staying in Brussels. Less than one month after her expulsion from Poland and the European Union she was invited to the German Bundestag, and then, two weeks afterwards, to Brussels and other EU Member States. Today, from the district office in Brussels, where she currently lives, she picked up her Belgian residence card authorising her to a five-year stay and travel across the entire Schengen area. Nevertheless, she will not be allowed to return to Poland for as long as her data remains recorded in the national register of undesirable persons.

The judgment of the Regional Administrative Court is not final. The Office for Foreigners may appeal against it with the RAC within 30 days. If no appeal is filed, the Office for Foreigners will need to reconsider the case and either delete Kozlovska's personal data from the SIS, or provide more compelling substantiation for its prohibition.

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