

THE CASE OF ELENA SEMENOVA:

Kazakhstan's authorities are persecuting a human rights
advocate for disseminating information about torture



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1. INTRODUCTION

In July 2018 in Strasbourg, to Europarliament deputies, Elena Semenova recounted facts of mass torture in places of confinement in Kazakhstan. Upon her return to the motherland, a criminal case was initiated against the human rights advocate for “spreading knowingly false information”. Besides that, penal colony employees submitted civil claims against Semenova. She was not let out into the EU for conducting human rights meetings. In response to queries with respect to Semenova’s case, Kazakhstan’s authorities furnished Europarliament deputies with untruthful information.

After Semenova’s case had received international publicity, the criminal prosecution of her was terminated, but the human rights advocate continues as before to be subjected to judicial prosecutions and threats of being prohibited from conducting civic activity.

Elena Semenova is the leader of the Public Observer Commission for the Prevention of Torture (Pavlodar Oblast) and head of the civic organisation “Relatives against torture”. She is engaged in monitoring the conditions of detention in Kazakhstani places of confinement and publicises identified violations. The Coalition of NGOs of Kazakhstan Against Torture underscores that thanks to Semenova, dozens of confirmed facts of torture in the prisons of Kazakhstan have become known.

Representing the interests of the injured parties, Semenova has on many occasions appealed to law-enforcement bodies; however, she ran up against a wall of being ignored. What is more, the chiefs of the Committee of the Criminal-Execution [*Penal — Trans.*] System (KUIS) often would not give the human rights advocate access to colonies and SIZOs [*investigative isolators (pre-trial detention prisons) — Trans.*], as well as initiating legal actions against her.¹

In the words of Elena Semenova, in Kazakhstan only 1% of complaints of torture go to trial. Even in the presence of obvious bodily injuries on the prisoners, cases of torture get closed down in connection with “the absence of the event of a crime”. In particular, that was the case with the political prisoner Iskander Yerimbetov.² In the event of the violent death of a prisoner, some complaints do go to trial. However, as Semenova underscores, even in such cases, “witnesses” are often found who refute the facts of torture, and the culprits remain unpunished.

Kazakhstan’s authorities have reported that in 2015–2018, Semenova submitted 21 complaints of torture in Pavlodar Oblast; however, the KUIS “did not corroborate” a single fact of the application of torture. The human rights advocate notes that the reason for her visit to the Europarliament was the need to raise, at the international level, the problem of torture in Kazakhstan and of impunity for its application.

2. CRIMINAL PROSECUTION FOR APPEARING IN THE EUROPEAN PARLIAMENT

On 3–5 July 2018, Elena Semenova visited Strasbourg, where she conducted a series of meetings with Europarliament deputies and recounted the multitudinous facts of torture of prisoners in Kazakhstan, including about beatings, rapes and murders. Semenova underscored that she was voicing information obtained directly from prisoners and their relatives.

On the premises of the Europarliament, Semenova recorded a video interview, where she recounted the results of the meetings, as well as expressing the opinion that mass torture in peacetime and complete impunity for these actions are a crime against humanity and genocide on the part of the law-

¹ <https://www.notorture.kz/zajavlenie-v-svjazi-s-ugolovnym-presledovaniem-pravozaschitnika-eleny-semenovoj/>

² <https://ru.odfoundation.eu/a/9028,delo-iskandera-erimbetova-sudebnyy-process-nad-zalozhnikom-kazahstanskogo-rezhima>

enforcement bodies. This interview was published on Facebook.³

After returning to Kazakhstan, on 12 July 2018 a criminal case was initiated against the human rights advocate on a charge of “spreading knowingly false information” (pt. 2 art. 274 CC RK [*Criminal Code of the Republic of Kazakhstan — Trans.*]), which prescribes a maximum punishment in the form of 3 years of deprivation of liberty.

Kazakhstan’s authorities assured Europarliament deputy Jaromír Štětina that *“the investigation in no way has anything to do with Semenova’s declarations in the Europarliament, and was opened on the basis of the spreading of knowingly false information on the Internet”*. However, the given assertion is manipulative and false; after all, the subject matter of the inquest was the video appeal where Semenova is recounting about the results of the meetings that had been conducted from the premises of the Europarliament. For this reason, the criminal case was initiated based on the fact of the utterances that Semenova had voiced to the deputies.

The investigation had reckoned as “false” the human rights advocate’s declarations about impunity for the application of torture, about genocide on the part of the law-enforcement bodies, and about the inability of the Kazakhstani government to correct the situation with the torture. Likewise, officials had reckoned as “false” the information about torture in SIZO No. 16 and colony AK-159/1 of Karagandy Oblast.

On 20 July 2018, Elena Semenova was detained and delivered to the police.⁴ In Semenova’s words, in the first half of the day, the interrogation took place without a lawyer. At the interrogation, investigator N.A. Belispayev said that Semenova’s appearances had “caused political harm to the country” and were “destructive”. The investigator was asking Semenova who had “authorised” her “to speak in the name of Kazakhstan”. The human rights advocate underscored that she was speaking in the name of the victims of torture who had turned to her for help.

Investigators asked Semenova with whom of the Eurodeputies she had communicated and what she had been saying to them. Besides that, the investigation expressed an interest in whether the human rights advocate was in contact with the Open Dialogue Foundation and its President Lyudmyla Kozlovska, and what the aim of these contacts was.

On the evening of 20 July 2018, police searched Semenova’s house and seized a computer and a telephone, as well as documents, including statements by prisoners about torture. The sanction for the search was issued by judge Ruslan Mukatayev.

On 31 July 2018, Ministry of Justice experts Sholpan Azhimayeva and Kamila Bayetova drew the conclusion that “there is a negative assessment of the socio-political situation in the Republic of Kazakhstan” in Elena Semenova’s utterances.

Investigators asserted that, in the course of the inquest, they had obtained the testimonials of 48 prisoners at SIZO No. 16 and colony AK 159/9 in Karagandy Oblast, who declared that they “do not have complaints” and that Semenova had “spoken untruth about torture”. Inasmuch as the prisoners are in the position of being under the control of the administration of the prisons, there are serious grounds to consider that they had given the testimony under pressure.

Likewise, in the capacity of evidence, the investigation cited the position of representatives of the KUIS, who “refute” the facts of torture and had demanded that a criminal case be initiated against Semenova.

³ <https://www.facebook.com/ong.pr/posts/1766887273402038>

⁴ <https://www.facebook.com/igor.kolov/posts/1979483295435149>

On 9 August 2018, the human rights advocate Bakhytzhan Toregozhina was being summoned for interrogation with respect to this case. Toregozhina reported that the investigator had been asking with whom Semenova was in contact and “who was financing her”.

The situation with the criminal prosecution of Elena Semenova received international publicity. The human rights organisation Front Line Defenders came out in her defence.⁵ The actions of the authorities in relation to Semenova were condemned by European parliament deputy Mady Delvaux.⁶ Deputy of the National Assembly of France, Sébastien Nadot, called upon the Minister of European and Foreign Affairs to intervene in the case and defend Semenova. Thirty-one PACE delegates⁷ and the Committee of the European Parliament for Foreign Affairs⁸ expressed their support to Elena Semenova.

On 28 December 2018, after broad publicity and the intervention of representatives of international organisations, the investigation terminated the criminal inquest in relation to Semenova due to the absence of the elements of a crime. Noted in the court decision is the fact of Elena Semenova’s meetings with prisoners within the framework of monitoring, as well as the gathering of information on torture from convicts and their relatives. In such a manner, Kazakhstan’s authorities factually admitted that the grounds for the prosecution of Semenova had been her human rights activity.

In so doing, earlier in a letter to Eurodeputy Štětina, as well as to the UN and the European Commission, Kazakhstan’s authorities had been furnishing the opposite information, noting that the prosecutions of Semenova “does not have anything to do” with her human rights activity. It is important to note that disinformation and the spreading of untruthful information has become an integral part of Astana’s official declarations in the event of politically motivated cases.

The Open Dialogue Foundation thanks the deputies of the European Parliament, the delegates of the PACE, the representatives of the UN, and the representatives of the parliaments of the member-countries of the European Union for the vigorous reaction to the persecution of Elena Semenova. Only thanks to international pressure did it prove possible to achieve the termination of the criminal prosecution of the human rights advocate.

3. LITIGATION IN A DUBIOUS ADMINISTRATIVE CASE DID NOT ALLOW THE HUMAN RIGHTS ADVOCATE TO MEET WITH EUROPARLIAMENT DEPUTIES

On 15 September 2018, the police detained Elena Semenova in connection with a civil claim about supposed “calls for an illegal rally”.⁹ The plaintiff Ivan Davydov reported that she had posted a video recording with a call to come out to a rally on her Facebook page. The human rights advocate denied this and called the claim a planned provocation.

On 17 September 2018, she was detained anew with respect to this case. On the next day, the court closed down the administrative proceedings, citing the absence of the appropriate materials in the case file. This indicates the possible untruthfulness of the plaintiff’s testimony; however, the court and the prosecutor’s office did not give this a legal assessment.

⁵ https://www.frontlinedefenders.org/sites/default/files/urgent_appeal_kazakhstan_-_detention_and_charges_against_elena_semenova.pdf

⁶ <https://ru.odfoundation.eu/a/8754,deputat-evroparlamentamadi-delvo-prizyvaet-vlasti-kazahstana-prekratit-politicheskoe-presledovanie-eleny-semenovoy>

⁷ <http://semantic.pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnVveG1sL1hSZWYvWDJlLURXLWV4dHluYXNwP2ZpbGVpZD0yNTE3NiZsYW5nPUVO&xsl=aHR0cDovL3NlbnVudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPT1MTc2>

⁸ [http://www.europarl.europa.eu/cmsdata/153280/5-draft%20press%20statement%20KAZ%20\(1\).pdf](http://www.europarl.europa.eu/cmsdata/153280/5-draft%20press%20statement%20KAZ%20(1).pdf)

⁹ <https://www.facebook.com/igor.kolov/posts/2068383603211784>

Because of the detention and the court trials, Semenova was not able to attend a meeting with a Europarliament delegation, which on those days was in Kazakhstan. There are grounds to deem that the authorities had used this case as a tool for not admitting Semenova into this meeting.

4. PROHIBITION ON EXITING KAZAKHSTAN

After the initiation of the criminal case on 20 July 2018, investigators forced Semenova to give a signed pledge not to leave the confines of the country. The interrogation took place in the absence of a lawyer, and they did not issue her a copy of the document.

In so doing, on 13 August 2018, in a letter to European Parliament deputy Jaromír Štětina, Kazakhstan's authorities reported that in relation to Semenova there are "no pre-trial restrictive measures" and she "is continuing her activity without any restrictions on her movement". Contrary to this assurance, on 8 October 2018 in Almaty's airport, they did not permit Elena Semenova to fly out to Strasbourg for a meeting with members of the PACE.¹⁰

The border service cited a decision by the Department of Internal Affairs of Karagandy Oblast on prohibiting Semenova from exiting Kazakhstan. However, the corresponding decision on prohibition was adopted on 9 October 2018 – this is spoken about in a decision of the court of the city of Karagandy adopted later. In such a manner, it is unknown on what grounds they did not let Semenova out of Kazakhstan on 8 October 2018.

Semenova turned to a court to get the prohibition on exiting Kazakhstan lifted. On 22 November 2018, the court of the city of Karagandy dismissed her claim, having cited that "at the present time the given restriction on exit beyond the confines of the Republic of Kazakhstan is lifted". In so doing, the court did not say when specifically the prohibition had been lifted. This may bear witness that the law enforcement organs, supposedly, had "back-dated" the adopting of the given decision, reacting thereby to the international community's critique.

Immediately after they had let Semenova out to the EU, on the night of 9 October 2018 unknown persons threw two bottles with an incendiary mixture into her house in Pavlodar, singeing one of the windows of the house.¹¹ At the time, Semenova was in another city. The police have still not found the culprits. The human rights advocate considers the given incident an attempt to intimidate her.

5. PENAL COLONY EMPLOYEES HAVE SUBMITTED CIVIL CLAIMS AGAINST THE HUMAN RIGHTS ADVOCATE

Earlier, in February 2018, Semenova had reported on Facebook about facts of torture in colony OV-156-15 of the city of Semey. According to Semenova's words, the prisoners had reported that employees of the colony had forced them to renounce testimony about torture, and one of the employees by the name of Sungat had given an order to strangle a prisoner.¹²

On 3 October 2018, employees of this colony, Sungat Abrayev and Zhanibek Zhangaliyev, filed lawsuits against Semenova regarding defence of honour, dignity and business reputation.¹³ Sungat Abrayev

¹⁰ <https://rus.azattyq.org/a/29531806.html>

¹¹ <https://www.facebook.com/groups/171507630234175/permalink/251131932271744/>

¹² <https://www.facebook.com/ong.pr/posts/1598767236880710>

¹³ <https://rus.azattyq.org/a/delo-protiv-veleny-semenovoy/29552271.html>

declared that Semenova had supposedly disseminated false information about him, and that he had not been giving an order to strangle a prisoner. Zhanibek Zhangaliyev noted that the information about how he had received an order to strangle a prisoner was false.

It is noteworthy that Semenova had not indicated the surnames of colony employees at all; however, Sungat Abrayev and Zhanibek Zhangaliyev for some reason “recognised themselves” in this post. Sungat Abrayev reported to the court that even though his surname is indeed not mentioned, “the publication indirectly touches upon him, because he is an employee of the given institution”.

Abrayev and Zhangaliyev declared that Semenova “has the intention of undermining the normal activity of the institution” with her actions, and demanded apologies from her, while Abrayev was additionally demanding compensation of 500 000 tenge (around 1175 euros) from her.

On 7 November 2018, the Pavlodar Court dismissed Zhanigaliyev’s claim. After this, on 18 November 2018, Abrayev withdrew his claim.

On 12 December 2018, Abrayev re-opened the claim against Semenova. In the words of the human rights advocate, the plaintiff is prepared to drop the complaint against her in the event of a public apology to him.

6. PHYSICAL FORCE WAS APPLIED TO SEMENOVA IN A POLICE STATION WHILE SHE WAS CARRYING OUT HER HUMAN RIGHTS ACTIVITY

On 14 January 2019, Elena Semenova and her defence client arrived at a police station of the city of Pavlodar. In the investigator’s office, a conflict took place between her and a policeman in connection with the fact that they wanted to conduct an interrogation of her defence client without her presence.¹⁴ Chief of the operative section Akhmet Tsechoyev began insulting Semenova, after which he ordered employees of the police to remove the human rights advocate from the office. As a result, policemen applied brute physical force on Semenova. The policemen kicked her about the legs, and tripped Semenova over; they “dragged [her] from wall to wall”, tried to push [her] down a staircase and were shooting this on a camera.

The names of two of the police employees who participated in the beating of Semenova are known: Akhmet Yusupovich Tsechoyev, chief of the operative section of the police administration of the city of Pavlodar, and operative employee A. Kilanov. On 16 January 2019, after wide publicity on social networks based on the fact of the incident, a criminal case was initiated into the police employees exceeding their authority.

7. CONCLUSIONS AND RECOMMENDATIONS

The application of torture in the prisons of Kazakhstan is a widely prevalent phenomenon. The authorities are ignoring information about torture from human rights advocates, preferring to use the official information of KUIS officials. This information oftentimes does not conform to reality. What is more, the victims of torture are afraid to report breaches of the law, because this may threaten their life. Prison employees demand prisoners withdraw their complaints, assessing declarations about torture as an “intention to undermine the normal activity” of the institutions.

¹⁴ <https://www.facebook.com/ong.pr/posts/2034258029998293>

Elena Semenova's case is yet another example of how persons who criticise the inaction of the authorities and are achieving inquests into facts of the violation of human rights are themselves subjected to illegal persecutions. Elena Semenova was subjected to restriction of the right to freedom of speech, freedom of movement and free distribution of information. Pressure is being exerted on her with the aim of restricting her human rights activity. Instead of adopting measures to eliminate the violations in correctional institutions that have been made public by Semenova, Kazakhstan's authorities are persecuting the human rights advocate without cause. Only thanks to the intervention of the international community did Elena Semenova manage to avoid criminal punishment for disseminating information about torture. Unfortunately, Semenova's persecution continues in the form of the civil claims by employees of the prisons.

The UN's special rapporteurs, representatives of the EU and the OSCE have for several years been calling on Kazakhstan's authorities to decriminalise the articles [of the *Criminal Code — Trans.*] for "spreading knowingly false information"; however, the authorities are ignoring the calls. The Enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan prescribes respect for human rights and freedoms. In exerting wrongful pressure on the human rights advocate, Kazakhstan's authorities are violating art. 235 of the given Agreement.¹⁵

Public actions are a component of any human rights advocate's activity. By her actions, Elena Semenova is carrying out the UN's Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, which was ratified by Kazakhstan. The state should not impede the lawful activity of a human rights advocate who is unmasking torture in places of deprivation of liberty. On the contrary, to avoid reputational risks, it is imperative for Kazakhstan to pay heed to human rights advocates and react in an appropriate manner to the information received from them. Human rights advocates should not be subjected to criminal and administrative prosecution just because their conclusions do not coincide with the conclusions of state organs.

Recommendations

For Kazakhstan's authorities:

- To cease judicial prosecutions of the human rights advocate Elena Semenova for her activity defending the rights of prisoners and disseminating information about torture.
- To not allow the initiation of new criminal and administrative cases for Elena Semenova's legal human rights activity.
- To not impede the free movement and activity of the human rights advocate.
- To ensure the safety of human rights advocates. To conduct a thorough inquest into the arson attempt on Elena Semenova's house in the city of Pavlodar.
- To observe the rights of prisoners in accordance with the Minimum Standard Rules for the Treatment of Prisoners, confirmed by the first UN Congress on the Prevention of Crime and the Treatment of Offenders.
- To conduct a thorough inquest into facts of torture of prisoners, to ensure the liability of all those guilty of the application of torture, and to adopt all the necessary measures for preventing new cases of torture.

¹⁵ https://cdn3-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/87HSSDA0XPXhgZRT7eCYzedMhLS1dCk_rhbSITZ3bHY/mtime:1485323715/sites/eeas/files/enhanced_partnership_and_cooperation_agreement_3.pdf

- To pay heed to the conclusions of independent observers and human rights advocates about the observance of human rights in places of deprivation of liberty as an alternative to the official declarations of representatives of the KUIS.

For the international community:

- To continue to react vigorously to the pressure of the authorities on Elena Semenova and the restriction of her rights, to express a public position relative to the persecution of the human rights advocate, and to demand of Kazakhstan's authorities the cessation of such actions.
- Within the framework of dialogue with Kazakhstan's authorities, to include in each negotiation process questions of the necessity of observing human rights as a condition for the development of investment cooperation and programmes to support reforms.
- To publicly condemn incidents of not carrying out international human rights treaties ratified by Kazakhstan, including the International Covenant on Civil and Political Rights and the UN's Convention against Torture.
- Within the framework of the Enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan, to conduct a check of the conditions of detention of prisoners in the prisons and detention facilities of Kazakhstan with the participation of the diplomatic representations of the EU member-countries, as well as representatives of the OSCE office in Astana and international human rights advocates.
- To promote the protection of the rights of representatives of Kazakhstani civil society being persecuted for human rights activity by way of public support and meetings with diplomatic representatives of the EU member-countries, as well as representatives of the OSCE office in Astana.