

CSP Working Group on the Fight Against Torture

Brief Overview of Key Trends in Enforcing Prohibition of Torture (Russia, Kazakhstan, Armenia, Moldova, Austria)

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This brief overview outlines the design of government agencies mandated to respond to incidents of torture and counter torture. Each country has an obligation to create conditions for eliminating torture and ill-treatment in practice. Creating such conditions involves both the development and adoption of appropriate legislation and taking comprehensive steps to prevent torture. This task is enormous in its scope and requires continuous government attention. Where preventive mechanisms fail and allow torture to occur, states must ensure effective investigation of every reported incident and provide needed assistance and support to the victims.

This overview focuses mainly on assessing compliance with effective investigation standards rather than on preventive mechanisms. In all five countries featured here, problems have been reported with promptness and expediency of torture investigations, thoroughness of investigative actions (such as identifying and questioning witnesses, documenting injuries, examining the crime scene, collecting and preserving evidence, etc.) and with ensuring independence of the investigation and victims' access to investigation. These key standards have not yet become part of a sustainable practice of the government institutions designed to respond to torture.

How effective state mechanisms are in terms of responding to torture incidents depends on whether a system is in place to monitor and assess the situation with the enforcement of the ban on torture. Even in countries where dedicated government departments for combating torture have been set up (Moldova), these departments do not have the objective of continuously monitoring the situation and making corrective interventions based on the results of such monitoring to improve government performance in responding to torture. In Russia, the official monitoring mechanism--a system of civic monitoring commissions--operates in isolation and does not have a significant impact on improving the state's policy of countering torture.

To be really effective, a state's monitoring mechanism should have at its heart a transparent process of reporting and documenting information, including statistics. This process of reporting and documentation cannot be implemented unless torture is recognized and prosecuted as a separate type of official crime. In recent years, Kazakhstan and Armenia have criminalized torture by including the Torture Convention's definition in their domestic legislation. However, the old penal code articles broadly criminalizing abuse of official position remain effective. This makes it possible to document reported and investigated incidents of torture either as "torture"

or as "abuse of power." Rather than establish a foundation for transparent government oversight, this situation leaves enough room for manipulative interpretations by hiding a diverse range of state agents' criminal conduct under the "abuse of power" umbrella. It must be noted that both in Kazakhstan and

Armenia, the old penal code article dating back to the Soviet codes on abuse of power, as well as the new article on torture, can still be applied in torture investigations.

Generally, the scope and quality of criminalizing torture in national legislation can serve as a test of the state's recognition of the importance of this problem and willingness to address it.

To initiate the state's response mechanism, torture must be reported by filing a complaint or otherwise notifying the relevant authorities. Increasingly high risks involved in trying to exercise one's right to complain has recently been a trend shared by all five countries.

In Russia, Kazakhstan, Armenia and Austria, victims of torture can have their complaint used against them to bring "false accusation" charges against the applicant. These risks can multiply in combination with low-quality investigation often leading to cases against officials being dropped or suspended. Human rights defenders have documented several cases in which torture complaints were used as material for launching investigations into "false accusations."

The practice of prosecuting citizens for allegedly false accusations when they complain about torture denies even a possibility of the victim's good-faith mistake. If an investigation fails to confirm torture—which often means that the evidence is weak or incomplete—this is not a sufficient reason to allege criminal intention of complaining individuals. Moreover, this practice can discourage citizens from reporting torture to investigating authorities and thus increase the latency of this crime, although reporting every incident of torture is essential given its extremely harmful consequences for society.

In addition to using criminal repression against complaining individuals, the authorities often use illegal methods such as threats, pressure and physical violence. In this situation, prisoners are particularly vulnerable.

This brief is a joint initiative of the [Civic Solidarity Platform's Working Group on the Fights Against Torture](#). The Brief is prepared by the Public Verdict Foundation based on the reports provided by human rights organisation in each country – Public Verdict Foundation (Russia), "Protection of Rights without Borders" (Armenia), Promo Lex (Moldova), Ludwig Boltzmann Institute for Human Rights (Austria), Public Association "Dignity" (Kazakhstan).