

2022. Notebooks

Update on Events in the Prohibition of Torture Index Countries

Kyrgyzstan

(prepared by Human Rights Movement Bir Duino and Voice of Freedom, Kyrgyzstan)

The following text highlights some of the major problems with ensuring the prohibition of torture and ill-treatment in Kyrgyzstan, but the account below is far from exhaustive. These long-standing issues persist in 2022.

A lack of independent and effective mechanisms for accepting complaints and conducting thorough and impartial investigations of alleged torture; impunity of torture perpetrators

Despite the January 2019 reform of the Criminal Code of Kyrgyzstan and criminalization of torture in national legislation, available evidence suggests that torture investigations remain ineffective, even though torture falls within the category of serious crimes. In Kyrgyzstan, torture was criminalized by article 305-1 of the Criminal Code before January 2019, then by article 143 between January 2019 and December 2021, and since December 2021, the new article 137 on torture is in effect.

According to official data from the Kyrgyz Republic's State Committee for National Security, in 2020, **74 criminal investigations opened under Article 143 were in progress, and 112** were terminated: 107 due to the absence of corpus delicti, 4 due to the absence of the crime event, and in one case, a previous decision to drop the investigation was still effective. In 2021, of the 43 complaints registered in the Unified Register, pre-trial proceedings into 17 complaints were terminated due to absence of corpus delicti, five complaints were dropped at the verification stage, and two complaints were left without consideration for non-compliance with formalities. One case opened under article 305 (later to become article 143) into alleged torture was brought to the Supreme Court.

In 2022, according to the Prosecutor General's Office, two complaints alleging torture were registered in the Unified Register. Kyrgyzstan's National Center for Preventing Torture received 34 complaints alleging torture and ill-treatment, of which 8 complaints concerned the conditions of detention.

Only one criminal case was sent to court, resulting in a guilty verdict under article 143 of the Criminal Code. No guilty verdicts have been issued so far under the new article 137 on torture.

Criminal procedural reform

A new Criminal Procedure Code (CPC) came into force in Kyrgyzstan on 1 December 2021. The new CPC set strict timelines for criminal investigation. Under the former CPC, investigation was considered started only after formal charges were brought. In practice, proceedings could be pending with the investigating authority for years without bringing charges.

By the new CPC, a criminal case must be instituted within 10 days of the date when a potential cause for prosecution is registered. (The new Code also regulates what can be considered a potential cause for prosecution: a victim's complaint, a report from a public servant, and others). The authorities are allowed ten days for verification, but this deadline can be extended by the prosecutor for up to 20 days (article 153(3) of the CPC). Following a verification, the authorities must decide whether to open a criminal case. If they decide to open a case, the new CPC sets a two-month deadline for investigation, which may be extended to four and/or six months in difficult cases. The Deputy Prosecutor General can further extend the investigation of particularly complex cases to nine months, and in exceptional cases, the Prosecutor General can extend the investigation to the entire period of the statute of limitations. Thus, the total duration of most investigations to which exceptions do not apply must not exceed two months and ten days, a timeline for particularly difficult cases can be up to nine months and 20 days, and the maximum possible duration equals the statute of limitations for the investigated offense.

With the adoption of the new CPC, the authorities closed most pending torture cases, because the newly established timelines for their investigation had been exceeded.

Note that investigation also includes the verification stage which can never exceed 20 days. If a criminal investigation is not initiated within the period allowed for verification, the case must be closed. But if a criminal investigation into alleged torture is opened, it can technically go on indefinitely, since this crime has no statute of limitations.

Some cases were terminated for reasons such as absence of corpus delicti or suspended due to a failure to identify the culprit.

Between January and September 2021, the prosecutorial authorities, the Ministry of Internal Affairs (MIA), and the State Committee for National Security of the Kyrgyz Republic registered a total of 63 reports alleging torture, of which 12 were dropped at the pre-trial stage and 41 are currently being investigated. These cases are based on complaints from two minors (boys), five women and 47 men alleging torture at the hands of MIA officers, and one complaint from a man alleging torture by officers of the State Committee for National Security. No reports or complaints alleging death from torture were registered during this period. Based on verification of these complaints, 12 acts of prosecutorial response were issued, and 20 law enforcement officers were disciplined.

Failure to initiate and/or conduct effective investigations

Under the new procedural code, pre-trial proceedings consist of pre-investigation verification and investigation per se (article 144 of the CPC).

Pre-investigation verification is a stage of pre-trial proceedings which starts once a potential cause for prosecution is registered in the Unified Register of Crimes and continues until a decision is made either to initiate a criminal case or to drop the proceedings. This decision must be made within 10 days of the date a report alleging torture is accepted and registered by the Prosecutor's Office or the State Committee for National Security. This deadline can be extended by a prosecutor for up to 20 days in total (article 153(3) of the CPC).

Torture investigations are conducted by investigators at prosecutor's offices and the State Committee for National Security (article 159 (5) of the CPC). According to article 147 (1) of the CPC, these bodies must accept a report alleging torture, register it in their logbook, conduct a pre-investigation verification, and enter the case in the Unified Register if the facts are confirmed.

During a pre-investigation verification, the investigator and/or the prosecutor in charge can inspect the scene and the corpse, interrogate witnesses, appoint expert examinations, obtain samples for comparative analysis, require documents and material items, and order operational-search measures to be conducted (article 152 (1) of the CPC). But in practice, pre-investigation verifications are usually limited to questioning the victim and conducting a forensic medical examination.

Most refusals to initiate criminal cases are based on reports from forensic medical examinations performed at the verification stage which state that the person's injuries were sustained at a different time than the alleged offense.

Notably, all forensic medical and psychological/psychiatric examinations are performed at state institutions. Independent forensic experts are few and virtually none of them practice in the provinces.

Where a panel-based, comprehensive or additional forensic examination could potentially clarify or

invalidate the initial findings, it often cannot be ordered due to expiration of the timeline for verification – which, we remind, cannot exceed 20 days. The new CPC does not allow for suspending the deadline for pre-investigation verification in alleged torture cases.

As a result, no new examinations are appointed to challenge the initial forensic report, no full-fledged investigations are opened, and cases are dropped.

Ironically, by requiring all reports alleging criminal offenses to be registered in the Unified Register and by establishing strict procedural deadlines and safeguards, the new CPC fails to ensure effective investigation but leads instead to imitation of investigation by replacing it with pre-investigation verification.

Equality of the parties is not guaranteed in practice in the Kyrgyz Republic, because the defense attorney does not have the same possibility as the investigator and the prosecutor to determine evidence-

Criminal investigation of the death of human rights activist Azimzhan Askarov

Article 12 of the Convention against Torture stipulates, "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." Azimzhan Askarov died in Penal Colony No. 47 on 25 July 2020, after being held for more than 10 days in Penal Colony No. 19 without access to adequate medical assistance despite having bilateral pneumonia. An investigator at the State Penitentiary Service tasked with investigating Askarov's death delayed the proceedings for almost a year and dropped the case on 7 June 2021 with reference to an absence of corpus delicti.

The human rights movement "Bir Duino Kyrgyzstan" and defense attorneys challenged in court both the decision to drop the case and the fact that Askarov's death in the penitentiary was investigated by the State Penitentiary Service. On 23 August 2021, the Sverdlovsk District Court satisfied the complaint and quashed the investigator's decision as unlawful and unfounded. The Prosecutor General's Office granted the attorneys' request to transfer the investigation to the State Committee for National Security, which is currently delaying the investigation in every possible way. After the case was transferred to the State Committee for National Security, the attorneys filed a series of requests for investigative actions, which the investigator has so far failed to undertake. The attorneys brought the investigator's inaction to the attention of an investigating judge. A series of court rulings found the investigator's inaction unlawful five times in one year, but these rulings have been ignored to this day. Lacking effective domestic remedies, the attorneys are currently preparing a complaint to the UN HRC.

Compliance with the Istanbul Protocol and guarantees of timely access to a qualified and independent forensic expert.

Having reviewed several torture cases, Bir Duino Kyrgyzstan concludes that instead of clarifying the facts, medical examinations tend to unnecessarily complicate cases, creating doubts and ambiguity. Eventually, this ambiguity makes it easier for the authorities to drop criminal proceedings based on forensic medical reports. Forensic experts fail to fill out in full the required documentation forms of the Istanbul Protocol. As a result, some aspects of sustained injuries remain unexamined, which can lead investigators to inaccurate conclusions.

Forensic medical reports are not always illustrated with photos, charts, or diagrams (for which templates are provided in the Istanbul Protocol documentation guidelines) to specify the victim's injuries caused by alleged torture and ill-treatment. In some cases, reports deliberately focus on other, uninjured parts of the victim's body, thus diverting attention from the damage and distorting the evidence. Forensic experts also tend to ignore the opinions of external medical specialists and findings from specific diagnostic studies that could prove the ill-treatment.

Generally, forensic medical examinations are not performed thoroughly. Based on the amount and detail of the Istanbul Protocol documentation forms, filling them out should take considerable time. But our review of BDK clients' case files reveals that most such examinations are very brief, e. g. M. Tashmatov's examination lasted 20 minutes, I. Usmanov's – 30 minutes, and Sh. Shamatov's – 20 minutes. This indicates superficial assessment and documentation of torture traces.

Measures to ensure victim safety during proceedings

Only in two of the eight cases supported by BDK did the investigators agree to ensure victim safety. While the investigators issued decisions to apply safety measures, they did not specify what measures were taken.

Not a single law enforcement officer in cases supported by BDK was suspended during the pre-trial proceedings (including both the verification and the investigation stages). This omission makes it possible for torture perpetrators to put pressure on their victims. In addition to endangering the victim and hindering their participation in the proceedings, it undermines the quality of investigation.

Lack of gender-sensitive prison management practices and measures to prevent abuse and gender-based violence against women in detention

Women are not only vulnerable to torture and ill-treatment but have specific needs that usually remain unaddressed in places of detention. Indeed, the very fact of being in detention can exacerbate such needs. These problems were described in the [Alternative Report](#) prepared by the ARTICLE 9 Association for Protection of Human Rights in the Criminal Proceedings and submitted to the UN Committee against Torture as part of its review of the third periodic report of the Kyrgyz Republic on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

During their detention and transfer between locations, female prisoners are usually supervised by male guards, a situation leading to harassment, violence and abuse but ignored by the government of Kyrgyzstan. There are no female guards in MIA temporary detention facilities, where women can de facto be detained for periods ranging from 48 hours to one year – although by law, temporary detention cannot exceed ten days. According to a study conducted jointly by the Kyrgyz Republic Akyikatchy (Ombudsman) and the Voice of Freedom Foundation, in 2020, all women detainees interviewed at 11 temporary detention facilities in the Chui and Issyk-Kul regions and in Bishkek reported being escorted and supervised during transportation by male officers only.

A monitoring survey reveals a shortage of female officers in all four pre-trial detention centers of the State Penitentiary Service where women can de facto be held for longer than a year. According to findings from a 2020 [survey](#) in three pre-trial detention centers in Bishkek, Jalal-Abad and Naryn, and from the ongoing monitoring of the four pre-trial detention facilities for women in Bishkek, Jalal-Abad, Karakol, and the village of Voznesenovka, most interviewed female detainees report having been escorted and guarded almost exclusively by men. In addition to this, the interviewed women report multiple incidents of sexual harassment, body searches, and being observed by male officers while changing clothes, using the toilet or showering – all of which are forms of gender-based and sexualized abuse.

Inhuman detention conditions for women

The Kyrgyz Republic fails to ensure proper detention conditions for women, especially pregnant women, mothers detained with their children, and women with disabilities and other health conditions. Monitoring conducted by the Kyrgyz National Center for the Prevention of Torture jointly with the Voice of Freedom Foundation in 2021 reveals that:

- pre-trial detention facilities fail to comply with the floor area per person standards;
- female detainees have access to a limited range of personal hygiene items such as soap and toilet paper; feminine hygiene pads are only provided in the Jalal-Abad pre-trial detention center that receives them from donors and charities;
- none of the pre-trial detention centers have hot water supply to the cells;
- female detainees have problems with washing clothes; mothers are not supplied with diapers and other items they need to care for their babies;
- food is of poor quality; some pre-trial facilities fail to supply pregnant detainees with the supplementary nutrition prescribed by law.

The monitoring revealed an acute shortage of qualified medical personnel, in particular female physicians, inadequate training of healthcare workers at detention facilities, and substandard healthcare. Poor interaction between prison healthcare and civilian health authorities remains a challenge. Pre-trial detention facilities fail to ensure proper pregnancy management and preparation to childbirth for pregnant detainees, who are not supplied with medicines, vitamins, bandages, and anti-varicose treatment. Many women admitted to closed facilities need professional counseling, especially in the first days or weeks of their detention. According to all interviewed female detainees with a history of domestic violence, they were not provided with any psychological assistance.

By law, the children of women held in custody must be followed and regularly examined by a range of medical specialists. According to interviewed women, especially new mothers, who are detained with their children, pediatrician visits are extremely rare, most child health complaints are ignored, and the children are not receiving all required vaccinations.