

Torture Prevention and Eradication: A Year after the MC Decision 7/20 in Tirana

Torture and cruel or inhuman treatment continues to be one of the main human rights problems in the OSCE region. Torture prevention has been among the priority issues for the Civic Solidarity Platform. Since the adoption of our 2013 Kiev Declaration, which contains the CSP position on combating torture and a call for necessary measures to improve the situation, we have elaborated our recommendations and have presented them to the OSCE every year on the eve of the annual OSCE Ministerial Council. Starting in 2015, the CSP has conducted several expert events on torture prevention in the OSCE area where we always raise the need for prioritizing this issue on the OSCE agenda and call for the development of a strategy for uprooting torture in the region and adoption of an expanded commitment on torture prevention. We were very happy that finally, much-awaited Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment was adopted by the OSCE 2020 Ministerial Council in Tirana on December 4, 2020. We are very glad to see that the majority of the CSP recommendations on torture prevention were included in this document.

We believe that the adoption of this Decision demonstrates the high attention of the OSCE participating States to the problem of torture and ill-treatment in the region and their desire to take necessary measures to eradicate these criminal practices. Throughout 2021, various OSCE structures have repeatedly discussed the next steps needed to be taken to effectively implement the provisions of Decision 7/20. However, as of today, we do not know what will be the “roadmap” for the implementation of the Decision.

At the same time, the year 2021 has proved that violence continues to be widely used by law enforcement agencies both to obtain necessary information and to intimidate, punish and force persons under the control of the security forces to become obedient. The main systemic problems that stimulate the use of torture and ill-treatment are still pertinent for many OSCE countries.

This primarily concerns the failure to comply with international standards for investigating reports of torture and ill-treatment. Problems begin from the moment victims file complaints about torture. In particular, in Russia and Ukraine, experts noted cases when complaints are considered not as a report of a crime but as a citizen's petition, which leads not only to the untimely initiation of criminal proceedings and the loss of evidence, including the belated recording of traces of bodily injuries, but also denies access to effective remedies against torture and negates the right to lodge a complaint. Experts stressed the problems of the independence of the investigation. These include both institutional and practical problems in the law enforcement that do not meet the standards of independence of the investigation in a number of states, in particular in Armenia, Belarus, Kazakhstan, Kyrgyzstan, Poland, Russia and Ukraine. Victims of torture and ill-treatment, in particular in Russia and Ukraine, face difficulties in accessing the investigation materials; they get delayed information about the procedural decisions on their complaints, which hinders the effective guarantees of protection and sometimes makes it impossible. Moreover, victims face pressure, are often prosecuted for false denunciation, and held accountable for the use of force against the law enforcement officers. Those victims already in prison are subjected to unjustified disciplinary punishment and violence and are threatened with physical harm; attempts are made to destroy their property. This is especially noted by rights defenders from Armenia, Belarus and Russia.

In cases of torture and ill-treatment that have gone to the court trial stage, human rights activists also note disproportionately light sentences for the perpetrators, in most cases limited to suspended sentences. Cases initiated against the law enforcement officials are rare despite the existence of relevant articles in national criminal codes and despite the OSCE commitment, reaffirmed in Decision 7/20 by all the OSCE participating States, to prosecute officials in charge of any place of detention or other place of

deprivation of liberty in which torture or ill-treatment was committed (paragraph 15 of Decision 7/20). This problem is noted in particular by human rights activists from Kyrgyzstan and Russia.

The OSCE commitments to prevent torture also speak of the inadmissibility of using evidence obtained under torture. Despite the fact that in most countries the relevant rules are spelled out in national legislation, the quality of judicial control remains extremely low, in particular in Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia and Ukraine.

Particular attention in Decision 7/20 is paid to ensuring that OSCE participating States provide rehabilitation services and other support measures to the victims of torture and ill-treatment, as well as their close relatives and children. With extremely rare exceptions, like Armenia and Georgia, there are no state programs for rehabilitation of victims of torture and ill-treatment in the OSCE region.

This year has demonstrated that the problem of the use of illegal, unjustified and disproportionate force and violence by law enforcement officials against participants in peaceful protest actions continues to remain topical. This problem is encountered in particular in Armenia, Azerbaijan, Georgia, Russia, and Belarus. As a rule, such cases remain without due assessment by the leadership of the countries, do not go through investigation, and the perpetrators are not brought to justice.

Recommendations

To the OSCE participating States

1. Develop national Roadmaps or Action Plans for the implementation of the main provisions of the OSCE Ministerial Council Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment adopted by the OSCE 2020 Ministerial Council. A mandatory part of national action plans should be the reform of clear presentation of statistics on documented cases of torture and ill-treatment (Open Data on the Prevention of Torture).
2. Develop and approve protocols with the working title "Open Data for Torture Prevention". Open information should include statistical data on documented cases of torture and ill-treatment, including the number of cases of torture, the number of applications filed with the investigating authorities, the number of criminal cases initiated, the number of victims of torture, the number of those prosecuted with distribution by departmental affiliation, the number of cases of false denunciation against those who filed a complaint about torture, and other primary statistical data.
3. Bring in full compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the scope and content of the articles of the Criminal Code criminalizing torture and the criminal sanctions for acts subject to torture and ill-treatment.
4. Develop and approve protocols for the investigation of cases of torture and ill-treatment, which should include a system of interrelated investigative actions that ensure the promptness of the investigation, access to the main sources of evidence of torture and their preservation, as well as strict compliance with the basic standards of effective investigation – namely, the timeliness of the investigation, the thoroughness of the investigation, the independence of the investigation and exclusion of conflicts of interest, and the access of torture victims to the investigation. Protocols should include appropriate measures in relation to cases of intentional damage, liquidation, falsification, fabrication of evidence of torture, in particular, video archives accumulated in closed institutions (police, penitentiary institutions, boarding schools, centres for migrants, etc.).
5. Carry out reforms of medical services in the police and penitentiary institutions to ensure in practice their full independence, excluding their departmental affiliation with law enforcement agencies.

Develop mandatory protocols for recording evidence of torture and ill-treatment and use them in the practice of medical services in accordance with the Istanbul Protocol.

6. Develop programmes for the rehabilitation of torture survivors and reserve funds from the state budget for their implementation, as well as conduct subsidized assistance programs to support rehabilitation programs for non-state providers.
7. Sign and ratify the Optional Protocol to the Convention against Torture. Those OSCE participating States that have not yet ratified OPCAT and have not established National Preventive Mechanism should do so as soon as possible. OSCE participating States should strengthen their National Preventive Mechanisms by providing a firm legal basis guaranteeing their independence and their engagement in effective monitoring.
8. Develop (or amend) training programs for law enforcement officials. Such programs should be based on practical modules on relevant human rights standards, including the principles of proportionality in human rights interference, as well as include a practical training component aimed at acquiring skills and competencies to minimize harm when using physical force and special equipment.

To OSCE institutions, in particular, the OSCE/ODIHR

9. For many countries, the OSCE's actions in the human dimension acquire key importance as for these countries the OSCE is the only inter-governmental organisation where states interact with human rights monitoring mechanisms. Implementation of the 7/20 Framework Decision requires the development of practical and focused action plans.
10. Consider assisting participating States in the execution of judgments and decisions of international bodies in respect of participating States in cases involving torture and other ill-treatment by law enforcement officials.
11. Develop a Roadmap or an Action Plan for the implementation of the main provisions of the OSCE Ministerial Council Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment.
12. Develop a model protocol setting the standards for the disclosure of statistical data on cases of torture and ill-treatment documented by state bodies.
13. Develop a model protocol with guidelines for effective torture investigation and preservation of evidence.
14. Resume the work of the OSCE/ODIHR expert panel on torture prevention that was in place in 1998-2003. The panel would have a vital mandate of monitoring the implementation of the new expanded commitment on torture prevention by OSCE participating States, provide guidance and support to the OSCE and participating States in much needed reform efforts, and assist the OSCE/ODIHR in developing model guidelines and protocols.

To OSCE Chairpersonship

15. Provide support to the OSCE/ODIHR in the development of an OSCE Roadmap or an Action Plan on the implementation of the MC Decision 7/20.
16. Encourage participating States to develop realistic national action plans on the implementation of the MC Decision 7/20.
17. Provide support to the OSCE/ODIHR in restoring the OSCE/ODIHR expert panel on torture prevention and taking practical steps to set up its work.