KYRGYZ REPUBLIC

Prohibition of torture and ill-treatment. Developments in 2019-2020

1. Regulations

Article 22 of the Constitution of the Kyrgyz Republic (KR) sets out the obligation to prevent and suppress torture. Kyrgyzstan ratified the UN Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment in 1997.

Also in 1997, Article 305-1 criminalising torture was added to the Criminal Code chapter on Malfeasance. There is a separate article on "torment" (Article 111 of the 1997 Criminal Code) in the chapter on Crimes against Life and Health, in which the use of torture is an aggravating circumstance. The existence of two parallel provisions enabled the investigating authorities to prosecute torture under the more lenient article on aggravated torment rather than classifying it as an official crime of torture which carried stricter sanctions.

As a result of a reform of criminal and criminal procedural legislation in 2017, the provision on torture was moved to article 143 in the chapter on Crimes against the Person, while the chapter on Malfeasance was removed from the Criminal Code, so there is no longer a separate chapter in the Code on offences committed by officials. As before, torture is considered a serious crime:

> "*Inflicting physical or mental suffering on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official.*"

The new article criminalising torture carries the following sanctions:

- imprisonment for terms of five to seven and a half years;
- same, plus a prohibition of up to three years to hold certain positions or occupations;
- same, plus a fine of 1,400 to 1,800 calculated units (140,000 to 180,000 soms).

The same crime with aggravating circumstances leads to harsher penalties, with a maximum of ten years in prison and fines of up to 220,000 soms.

Related to the article on torture in the new Code is Article 321 (Abuse of Authority) carrying sanctions of up to two and a half years in prison, or up to five years in prison for offences involving the use of weapons or special devices or causing grievous harm. As can be seen from the milder sanctions, "abuse of authority" is considered a less serious crime than "torture."

A review of criminal cases initiated into complaints of torture over the two years since the criminal law reform reveals that criminals cases were registered under the article on torture only when the victim was a criminal suspect/accused, while all other torture complaints are registered as abuse of authority.

There have been no cases in Kyrgyzstan's law enforcement practice of torture perpetrators' immediate supervisors being prosecuted as accomplices, even though, according to Article 43 of the Criminal Code, persons who facilitate, instigate or aid a crime are punishable as accomplices, alongside the perpetrator.

Criminal Procedure Reform in 2017–2019

The country's criminal procedural legislation was also reformed in 2017. In particular, new concepts were introduced such as the investigating judge, deposition (sworn out-of-court testimony),

suspect notification, pre-trial proceedings, and others.

The reform also strengthened the position of torture victims: now their defenders can request the investigator to appoint certain expert examinations (Article 175 of the 2017 Criminal Procedure Code).

In addition to this, witness or victim testimony taken out of court can be deposited with the investigating judge and thus added to the evidence base in the case. Deposition is possible either where the act of taking victim or witness testimony cannot be postponed for objective reasons or in order to ensure their safety (Article 5(7) of the 2017 Criminal Procedure Code).

These provisions allow the victim's defenders to influence the course of proceedings by appealing to the investigating judge, should the case investigator or the prosecutor refuse to take certain investigative steps.

A suspect must be notified if sufficient evidence is available to suspect their involvement in a criminal offence. This means that **once a crime report has been filed and a criminal investigation launched, the suspect must be immediately notified**; this requirement was absent from the pre-reform CPC. Before a suspect is formally notified, he or she cannot face any legal consequences, such as arrest, in relation to the alleged offence (Article 233 of the 2017 CPC).

On 1 January 2019, the concept of pre-trial proceedings was introduced, and their duration was set at two months following the suspect's notification. Criminal cases are now initiated automatically once a report is entered in the Unified Registry of Crimes and Misdemeanours (URCM; Article 148 of the CPC). The legally established deadline for entering a crime report in the Registry is 24 hours after its receipt.

According to the Temporary Regulations on the Unified Registry of Crimes and Misdemeanours, the duty officer and the assistant duty officer must enter information on reported incidents in the logbook, and then, based on a prosecutor's decision, this information must be entered in the URCM within 24 hours.

If a torture complaint is registered, a criminal case initiated into the complaint will be investigated by the State Committee for National Security (SCNS) (Article 153(2) of the CPC). If the alleged torture perpetrators fall under the category of military personnel, which includes the national security forces, their cases are investigated by the Military Prosecutor's Office of the KR (Article 153(3) of the CPC).

The established standards for documenting torture have been made part of the domestic law, and the National Guidelines on the Effective Investigation and Documentation of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment have been adopted and approved by the Ministry of Health Order No. 680 of 7 December 2015, based on the Istanbul Protocol.

2. Statistics

Between 2003 and the 2017, there were only four guilty verdicts under the pre-reform Article 305-1 on torture.

According to a response received from the General Prosecutor's Office (No.10/3-66r-20 of 18 February 2020), not a single case under the new Article 143 went before court in 2019.

However, seven cases under the old 1997 Criminal Code Article 305-1 on torture were considered by courts in 2019; these criminal cases against 26 defendants had been initiated before the reform. The trial outcomes were as follows:

- 24 persons were acquitted,
    - including 22 due to an absence of corpus delicti and
    - two for lack of evidence; and
- two defendants were found guilty and sentenced to 8 years in prison each.

The latter two verdicts were appealed. The Chui Regional Court reclassified them under Article 305(1) of the Criminal Code and found the defendants guilty of abuse of authority but released from punishment due to expiration of the statute of limitations.

Thus, none of the 26 persons charged with torture was punished in 2019 (according to the 2019 Annual Report of the National Centre for Torture Prevention).[1]

So far, no one in Kyrgyzstan has faced criminal charges for facilitating, instigating or aiding torture; all defendants in the torture cases were the actual perpetrators.

According to the Main Investigation Department of the National Security Service, they investigated 145 cases under Article 143 (torture) of the Criminal Code in 2019, of which 70 cases (48 %) were discontinued, 74 cases were at the stage of pre-trial proceedings, and one case was pending before a court at the time of the report.[2] Thus, only a negligeable number of torture cases reach court, and even fewer result in convictions. We believe that the main reason for poor criminal justice performance in such cases is the lack of an independent investigating body tasked with investigating torture.

3. Recent Cases of Torture in 2019–2020

Based on the documented torture cases, we can find no deterrents to the use of torture in Kyrgyzstan today. Thus, torture is commonly used as punishment for behaviour that the police find objectionable, even though such behaviour does not break any laws.

> *On 2 May 2020, at approximately 6:00 pm, Mamirzhan Tashmatov was subjected to ill-treatment and torture by officers of the Karasuu District Police Department in the Osh region for recording a video of a police officer being rude to an elderly woman. Tashmatov was detained and delivered to the Karasuu Police Department. The police officers brutally assaulted, humiliated and insulted the detainee on the way and continued beating him on the police premises, hitting Tashmatov on the back, legs, head and chest. At approximately 8 pm, they drove the victim to the neighbourhood where he lived and left him at the end of a street. At 11 pm Tashmatov presented at the Karasuu territorial hospital; the police arrived at the hospital just a couple of minutes later and threatened the victim with reprisals to discourage him from complaining. Tashmatov filed a complaint; the criminal case was registered as abuse of authority (Article 321), rather than torture. As of this writing, the case is at the pre-trial investigation stage.*

While the authorities usually respond in a timely manner to deaths of detainees in police custody and take steps to ensure effective investigation of such incidents, this standard of investigation does not necessarily apply to all cases of torture.

> *Muhammed Kynybek uulu was detained in the city of Kyzyl-Kiya, Batken region, after 8 pm on 15 October 2020. Police officers drove his car to an impound lot and delivered the man to the Osh regional police department. It is not known what exactly happened on the police premises. According to the logbook, the detainee's body was taken to the morgue at 01.35 am on 16 October. The body had multiple bruises on the wrists, shins and feet; his hands may have been tied. A forensic examination by a board of experts was appointed. As of this writing, five staff members (head of department and four operational officers) have been removed from their positions, and one has faced disciplinary punishment for failure to properly discharge his service responsibilities. A criminal case was initiated under Article 143 (torture) of the 2017 Criminal Code. The National Security Service is in charge of the pre-trial investigation. To date, six operational police officers are in custody facing charges.*

---

[1] http://precedentinfo.kg/t/2020/04/26/dela-o-pytkah-uzhasnyj-konets-ili-uzhas-bez-kontsa/

[2] Annual Report of the National Centre for Torture Prevention in the Kyrgyz Republic, 2019, p 34.

The case of Azimjan Askarov

Azimjan Askarov was the founder of the human rights organisation Vozdukh ("Air"). He conducted independent investigations into cases of torture and ill-treatment in police custody and inadequate conditions of detention. Persecuted by the authorities, Askarov was given a life sentence on 15 September 2010 on trumped-up charges of inciting riots and being complicit in the murder of a police officer. Askarov was arrested on 16 June 2010 in the aftermath of violent clashes between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan, in which more than 400 people were killed. Askarov was tortured in SIZO, but the Prosecutor General refused to investigate a complaint about Askarov's torture, and this refusal was subsequently upheld by the domestic courts, including the Supreme Court.

On 31 March 2016, the UN Human Rights Committee considered a complaint brought on behalf of Askarov and found Kyrgyzstan in violation of its obligations under the International Covenant on Civil and Political Rights. The UN HRC established that Askarov had been arbitrarily arrested, tortured, and denied a fair trial, while the Kyrgyz authorities failed to conduct an effective investigation into these circumstances. On 12 July 2016, the Supreme Court of the Kyrgyz Republic overturned the verdict against Askarov and sent the case to the Chui Regional Court for a fresh trial. But on 24 January 2017, the new trial upheld the previous verdict with only minor changes. Subsequent appeals did not result in a fair trial and Askarov's acquittal. There was no solid evidence in Askarov's case to prove his guilt beyond a reasonable doubt. In particular, Askarov was accused of inciting unrest, but there was no evidence in the case file to prove his use of violence or firearms, involvement in ethnic riots or arson attacks, armed resistance, or other acts incriminated to him. The charge of complicity in the murder of a policeman was based exclusively on the statements of police officers who had been mentioned in Askarov's human rights investigations, but the court rejected the statements of Askarov's family and neighbours confirming Askarov's alibi.

On 25 July 2020, Askarov died in prison, having been denied timely medical assistance.

The day before his death, he had been transferred from Penal Colony no. 19 in the village of Zhany-Zher to Penal Colony no. 47. Askarov was 69 years old; his state of health had worsened significantly prior to his death. While Askarov's lawyer Vakhitov demanded that the ailing human rights defender should be hospitalised, the authorities only agreed to transfer Askarov to Penal Colony no. 47 which was described as better equipped to provide medical assistance, being the base of the Central Hospital of the State Penitentiary Service.

During the last week of his life, Askarov was in serious condition, unable to walk or eat independently, and was given glucose injections. Despite appeals from his lawyer, the State Penitentiary Service continued to deny that the human rights defender had health problems. Bir Duino Kyrgyzstan, a human rights group, offered to arrange for a private ambulance to transfer Askarov to Penal Colony no. 47, but the authorities refused and transported the prisoner in a prison vehicle on 24 June. Askarov died on the next day.

Currently, an investigator of the State Penitentiary Service is conducting a pre-trial investigation into Azimjan Askarov's death. The investigator required Askarov's lawyers to sign a non-disclosure undertaking, although the case does not involve any state or military secrets.

4. Protection and Safety of Torture Victims. Rehabilitation

No rehabilitation programmes/services for torture victims are offered by the State in Kyrgyzstan; victims can only receive such services from human rights organisations. In particular, Voice of Freedom offers a rehabilitation programme for torture survivors.

Many torture victims refuse to file complaints with the law enforcement authorities and report torture incidents, because they are afraid of reprisals and concerned about their own safety and that of their families and loved ones.

Kyrgyzstan's domestic legislation provides for protection of crime victims in Article 79(1) of the Criminal Procedure Code. The body in charge of the criminal investigation is responsible for ensuring the safety of victims.

In some cases, victims are granted protection, but it is usually unclear what protective measures are undertaken as part of such programmes and how effective they are.

> *Thus, in the case of Abdirakhmanovs and Toychiev, the investigator granted the request to ensure the torture victims' safety, but the investigator's decision did not specify what protective measures were put in place.*
>
> *In the case of Mamirzhan Tashmatov, the investigator refused at first to take steps to ensure the safety of the torture victim and his family. The refusal was successfully appealed in court, and the investigator was obliged to order protective measures. While a formal decision has been issued, the victim does not know what specific measures have been taken to ensure his safety.*

The amounts of compensation awarded by courts are not commensurate with the suffering experienced by torture survivors.

> *On 15 October 2016, Maksatbek uulu Samarbek filed a torture complaint with the prosecutor's office of the Aksy district, Jalal-Abad region. During the following year, the applicant made numerous attempts to get the authorities to investigate, but they failed to institute criminal proceedings into his complaint. Then Sardor Abdukhalilov, a lawyer with the human rights NGO "Spravedlivost" who represented the victim, filed a claim for one million soms (about 10,000 euro) as compensation for the ineffective investigation. On 29 October 2019, the Aksy District Court in the Jalalabad region awarded 50,000 soms (about 500 euro) to Maksatbek uulu Samarbek.*
>
> *In 2017, the Supreme Court awarded 200,000 soms (about 2,000 euro) in compensation to the family of Tashtanbek Moidunov who died of torture at the Bazar-Korgon precinct in 2004. According to the Voice of Liberty Foundation, police officer Mantybaev, convicted of negligence, paid 30 thousand soms (about 300 euro) to the family of the deceased man. The other defendant in the case fled the country. The UN Human Rights Committee found Kyrgyzstan responsible for the death and ordered the country to pay a compensation to the family. Kaidakhan Dzhumabayeva, the victim's sister, claimed 100 thousand euro in non-pecuniary damages. The Supreme Court awarded 200,000 soms (about 2,000 euro)*[3].
>
> *In 2019, Sardor Abdukhalilov, a lawyer with the "Spravedlivost" human rights NGO in Jalal-Abad, filed a claim with the Pervomaisky District Court of Bishkek seeking compensation for the ineffective investigation into the death of Rakhmonberdi Enazarov in IVS (temporary holding facility). The court partially satisfied the claim and awarded 300,000 (about 3,000 euro) to be paid by the State. All higher courts, including the Supreme Court, upheld this decision.*[4]

5. Key Factors Inhibiting the Implementation of the Prohibition of Torture

Since the entry into force of the new criminal and criminal procedural legislation in 2019, there have hardly been any incidents of untimely registration of crimes, because now a failure to comply with

---

[3] https://24.kg/obschestvo/49261_vkyirgyizstane_sud_obyazal_vyiplatit_kompensatsiyu_seme_umershego_otpyitok/
[4] https://kaktus.media/doc/423925_semia_ymershego_ot_pytok_v_ivs_myjchiny_polychit_kompensaciu_300_tys._somov.html

the requirement of automatic registration of a crime report in the Unified Register is considered a separate and serious offence (“deliberate concealment of a crime”) under Article 348 of the Criminal Code. While before the reform, refusals to initiate criminal proceedings against law enforcement officers suspected of torture were a major barrier to protecting torture victims, today this issue has been partially resolved.

Not so much time has elapsed since the start of the reform, but some of the problems which undermine the effectiveness of the new mechanism of criminalising torture and bringing perpetrators to justice are already obvious.

Under the new criminal legislation, pre-trial proceedings must be completed within two months of the suspect notification. However, in practice, despite timely registration of crime reports in the Unified Register, proceedings may be pending indefinitely when the investigating body fails to notify the suspects. As a result, efforts to get justice for torture victims can be frustrated due to untimely and ineffective investigation, with long delays in the proceedings.

> *On 9 February 2017, police officers broke into the house of Abdisobir Abdirakhmanov and conducted a search of the premises without a warrant, assisted by armed and masked soldiers. The officers used physical force against the people who were in the house and eventually delivered Abdigani Abdirakhmanov, Nurmakhammad Toychiev and Abdilnosir Abdirakhmanov to the Osh Police Department, where the officers tortured and arbitrarily detained them for more than eight hours, forced them to write explanatory notes dictated by the police and expropriated their pocket money. On 18 August 2017, the Osh prosecutor's office instituted a criminal case under Article 305(2)(3) of the Criminal Code for abuse of office involving violence; however, the criminal proceedings were initiated into the incident, rather than against specific suspects. Under the new criminal procedural legislation effective since 2019, the investigating authority is not bound by any time frame before suspects in the case are notified. Thus, the national security agency has been investigating this case for more than three years and counting, yet no charges have been brought against anyone, although the allegations of torture, in addition to the victims' testimony, have been confirmed by expert evidence from medical, psychological and psychiatric forensic examinations.*

The new article on torture does not cover cases resulting in death, while the articles on murder (Article 130) and on infliction of grievous harm resulting in death (Article 138(3)) do not include the qualifying circumstance of torture. Apparently, the law enforcement authorities will have to build the case for prosecution in such situations by "combining" the different criminal law provisions on torture and on murder.

> *On 15 October 2020, at approximately 8 pm, Kanybek uulu Mukhamed was detained by officers of the Osh regional police department on suspicion of complicity in a robbery. He was tortured and died from related injuries on the night of October 15 to 16. A criminal case was registered under the article on torture. The case is being investigated by the national security agency. Six police officers have been detained on suspicion of committing the crime. A pre-trial investigation is in progress. It is not yet known under which article the final charges will be brought: it appears likely that a murder charge will be added to the torture charge.*

Judicial review over compliance with individual rights and freedoms during pre-trial proceedings is the responsibility of the investigating judge (Article 30(2) of the Criminal Procedure Code). The defence can complain to the investigating judge about decisions, actions and inaction of investigators and prosecutors (article 132 of the 2017 CPC).

However, any decisions made by the investigating judge on such complaints can only be challenged to a second instance court: cassation is not available. Article 430(3) of the CPC does not provide for an option of asking the Supreme Court to initiate a cassation review into the legality and validity of a decision taken by the investigating judge.

> *Valerian Vakhitov, lawyer with Bir Duino-Kyrgyzstan, filed a petition with the Supreme Court's Constitutional Chamber asking the Court to find Article 430(3) of the CPC incompatible with the Constitution of the Kyrgyz Republic. The Constitutional Chamber accepted the petition for consideration on 3 September 2020.*

Effective investigation of torture is largely impeded by the widespread practice of using unfounded and incompetent expert opinions and by a lack of provisions in place to ensure the safety of witnesses and survivors.

A review of forensic medical, psychological and psychiatric expert opinions reveals that many of them, instead of clarifying the circumstances of the case before them, create further confusion and doubts. Indeed, investigators have used such expert opinions to justify decisions to drop criminal cases.

By inserting just one sentence, a forensic expert can undermine the validity of evidence in a torture case, e. g. by stating in their opinion that the time when certain injuries were sustained does not match the timing indicated by the complainant. Such expert statements do not usually offer any motive or explanation of the discrepancy. For example, according to the expert opinion in the case of Usmanov, the time his bruising occurred did not "correspond to the period specified in the circumstances of the case"; however, the expert did not provide any details or explanations of the inconsistency, although the expert examination was carried out on the next day of the violent incident.

By Kyrgyz law, forensic experts must be governed in their practice by the Practical Guide on Effective Documentation of Violence, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kyrgyz Republic. But in practice, experts do not always make proper use of the forms, templates and methods of examination prescribed by the Guide, thus their documentation does not necessarily meet the standards set in the Guide.

> *In the case of Sharabidin Shamatov, the appeals filed by his lawyer mentioned specific marks on the victim's little toes from electric wires which the perpetrators had attached to torture him with electric shocks. Shamatov himself, when interrogated by the investigator, also pointed out the marks on his little toes. However, the appointed experts examined Shamatov's big toes—instead of little toes—and, unsurprisingly, found no traces of torture on the victim's big toes. The duration of a victim interview and examination is considered an indirect but significant indicator of the investigation's thoroughness and completeness. According to the Istanbul Protocol, "A two- to-four-hour interview may be insufficient to conduct an evaluation for physical or psychological evidence of torture." In Shamatov's case, the evaluation took only 20 minutes.*

It is required that the applicant or his/her lawyer should submit in writing a list of questions which they want the expert to answer, specify what exactly should be examined and provide the names of experts qualified to perform such an evaluation. The investigator cannot refuse to appoint an expert examination (Article 172(7) of the CPC), except if the questions asked are manifestly irrelevant to the criminal case or to the subject matter of the expert examination. Should the investigator refuse to appoint an expert examination, a party to the proceedings can challenge the refusal before the investigating judge.

In practice, the authorities often fail to inform torture survivors in a timely manner of procedural decisions taken in their case, e. g. that the case has been dropped—or when they do, they often fail to provide any details other than the fact that the case has been closed. In most cases, evidence presented

on behalf of torture victims is left without a legal assessment. Courts refuse to consider complaints based on such evidence.

The current judicial practice does not support adequate and fair punishment for torture and ill-treatment. When alleged perpetrators go on trial, they are often acquitted or receive suspended sentences, while custodial sentences are very rare.

> *In October 2018, the Osh city court sentenced six police officers to 12 to 14 years in prison for torturing minors in the city of Kyzyl-Kiya, Batken region. However, a second instance court acquitted them on appeal. The acquittal was challenged to the Supreme Court. The Supreme Court overturned the verdict and sent the case back to the second instance court for a fresh trial. In August 2020, the court sentenced each of the perpetrators to eight years of suspended sentence, thereby effectively releasing them from punishment. The victims' lawyer Tair Asanov has filed a complaint with the Supreme Court, but there is no final decision in the case yet.*