

2022. Notebooks

Update on Events in the Prohibition of Torture Index Countries

January - September 2022

Kazakhstan

(prepared by the Kazakhstan International Bureau for Human Rights and Rule of Law and the Kazakhstani NGO Coalition against Torture)

On 2 January 2022, peaceful protests against an abrupt rise in fuel prices started in Kazakhstan's Mangistau region. In the days that followed, protests spread to other regions, with thousands of people demanding extensive social and political reforms. Under circumstances that remain unclear, the originally peaceful protests became violent and were suppressed by security services that used excessive and lethal force, killing more than 200 people – among them peaceful protesters, activists and uninvolved bystanders, including children – and injuring thousands.

More than 10,000 people, many of whom were not involved in any violence or wrongdoings but were exercising their right to peaceful protest, got arrested during the intensive security operation. Those arrested included journalists and human rights defenders. In some cases, detainees were reportedly held in unofficial places of detention, not allowed to inform family of their whereabouts, and denied access to legal assistance. There were also disturbing reports of torture and ill-treatment of detainees. Adding to concerns about the government's response to the events was the extensive use of anti-terrorist rhetoric by officials and the president's controversial "shoot without warning" order to the security forces.

The early 2022 saw massive and gross human rights violations. Faced with an extraordinary situation, the authorities prioritized the objective of suppressing the unrest over the obligation to respect human rights.

Human rights defenders documented a range of violations, such as arbitrary killings and torture by State agents or on behalf of the State; politically-motivated arrests and detentions and harassment of detainees' family members; severe restrictions of the freedom of expression and freedom of the press, including violence or threats of violence against journalists; disruptions to internet access; substantial interference with the right to peaceful assembly and association; serious and unfounded restrictions on political participation; corruption in the government; and significant restrictions of the freedom of association.¹

The reported torture and ill-treatment were unprecedented in Kazakhstan in terms of extent and cruelty. Having failed to enforce the prohibition of torture and ill-treatment, the government also failed to conduct a thorough and timely investigation into the incidents brought to its attention. In particular, human rights defenders documented massive non-compliance with effective investigation standards and procedural guarantees, such as:

- delayed registration of complaints alleging torture;
- delayed start and lack of progress in torture investigations;
- discontinuation of criminal proceedings into incidents of torture;
- failure to ensure safety for torture victims;
- failure to conduct medical examinations or to conduct them properly and in a timely manner;
- poor quality of state-guaranteed legal aid.

While torture could be used indiscriminately against anyone, including minors, there was one group deliberately targeted by torture and ill-treatment: foreign nationals.

A worrying new trend is pressure on torture victims to discourage complaints. Those who reported torture have faced charges for "spreading false information" or, more rarely, for "false denunciation." The authorities have also posted warnings of criminal liability in social media to stop victims from complaining or to manipulate them into withdrawing earlier complaints.

¹ <https://kz.usembassy.gov/ru/2021-country-reports-on-human-rights-practices-kazakhstan/>

This trend can undermine the right to complain about torture.

Addressing the Parliament on 14 March 2022, the Prosecutor General of Kazakhstan said that his agency had received 301 reports of alleged torture, ill-treatment, and the use of “illegal methods of investigation,” and 243 criminal cases had been opened into the complaints.

As of 17 May 2022, the Kazakhstani NGO Coalition against Torture received 164 reports of torture and other ill-treatment from the following parts of the country (in descending order): Taldykorgan - 44, Almaty - 41, East Kazakhstan region - 18, Taraz - 13, Kyzylorda - 11, Atyrau - 9, Shymkent - 7, West Kazakhstan region - 6, Pavlodar - 6, Aktope - 4, Kostanay - 3, Karaganda - 1, North Kazakhstan region - 1.

In 11 complaints, the victims of torture or ill-treatment were women, and in 153 the victims were men, of whom 13 were minors under 18.

At the moment, some of the cases are at the pre-trial investigation stage, and two have been sent to court.

The authorities were forced to respond to mass reports of torture in at least 12 cities by adopting a series of measures to prevent and counter torture and ill-treatment. To date:

1. A systemic approach to investigating torture-related crimes has been introduced. The Prosecutor General's Office was assigned exclusive jurisdiction to investigate torture cases. (This measure was announced by President Tokayev in his address to the people of Kazakhstan). Previously, such cases had been handled by different agencies to avoid conflicts of interest.

The new constitutional reforms strengthened the role of the Ombudsman (Commissioner for Human Rights in the Republic of Kazakhstan). The Ombudsman's status is stipulated in the Constitution and further detailed in the constitutional Law on the Commissioner for Human Rights. The powers thereby granted to the Ombudsman enhance their ability to defend human rights effectively and thoroughly.

Strengthening the Ombudsman's role is likely to further the advancement of the National Preventive Mechanism. Kazakhstan has implemented the Ombudsman Plus model, which means that the NPM is coordinated by the Ombudsman in cooperation with civil society organizations. A Steering Committee involving NGO representatives has been established to assist and advise the Ombudsman. The SC selects NPM participants, forms regional groups and appoints their heads, and schedules visits to closed institutions.

2. The Ministry of Internal Affairs and the Prosecutor General's Office have initiated legislative amendments to further specify the limits and grounds for the use of physical force and riot control equipment by law enforcement agents;

3. The methods of investigation into allegations of torture are being updated. The prosecutor's office has been working to further improve the previously developed torture investigation methodology based on the Istanbul Protocol. To date, a protocol for primary documentation of injuries has been drafted and will soon be piloted in four cities.

4. The Ministry of Internal Affairs has developed proposals for alternative methods of filing torture complaints. Terminals have been installed in places of deprivation of liberty making it possible for inmates to file complaints bypassing the prison staff. As of this writing, 243 such terminals have been installed. This technology is protected from interference by prison staff and ensures confidentiality.²

On 29 December 2021, Kazakhstan abolished the death penalty by adopting the Law on Amending Certain Legislative Acts of the Republic of Kazakhstan with Regard to the Abolition of the Death Penalty.

An unprecedented number of cases involving torture and brutality

As reported by the Prosecutor General's Office, 243 criminal cases into allegations of torture, including six deaths in custody, were pending in Kazakhstan as of 14 March 2022.³

² <https://legalacts.egov.kz/npa/view?id=13129380>

³ <https://ria.ru/20220223/kazakhstan-1774500370.html>

According to materials available to the Kazakhstani NGO Coalition against Torture, there were 44 complaints from the Almaty region alone. Victims have reported torture with a hot iron and having their teeth pulled out with pliers. Some of the victims were minors.

From the testimony of Dauren Aitov: *"After beating me and applying a hot iron to my body, the police officers carried me out of the room to the 4th-floor corridor and dropped me to the floor, unconscious. I lay there for about two days, unable to get up, drink water or go to the toilet; it was as if time stopped for me. I could see faces flashing before me like in a fog and felt blows and kicks to my body. I had many thoughts running through my mind, in particular these two: 'how can one treat living people this way?' and 'I wish I would die right now'."*

Prompt registration of torture reports

Kazakhstan's Criminal Procedure Code (CPC RK) requires that all reports of crimes should be registered in the Unified Register of Pretrial Investigations (ERDR). Once a report is entered in the register, an investigation must begin. But in violation of the CPC requirement of immediate registration of ill-treatment reports, many complaints are first entered in the Book of Information Records (KUI) without registering them in ERDR. As a result, the actual investigation of such incidents gets postponed and effectively replaced by a pre-investigation inquiry, despite its abolition in 2014 with the enactment of the current Criminal Procedure Code.

The loophole making it possible is Article 181(5) of the CPC that allows the authority in charge of pre-trial proceedings three days after a complaint (in this case, alleging torture) is entered in KUI – ostensibly to collect more information to determine whether the act shows signs of a crime but effectively to decide whether to register it in ERDR and to launch an investigation.

Delayed start and lack of progress in torture report investigations

The current procedure for verification of reports alleging torture makes it possible to delay – or refuse to open – an investigation.

According to the CPC, local Departments of the Anti-Corruption Agency (Anti-Corruption Service) have investigative jurisdiction over the crimes of torture and ill-treatment. In some regions, such investigations are supervised by the Special Prosecutorial Service of the Prosecutor General's Office as part of the Interdepartmental Investigative Task Force (MSOG) set up after the January 2022 protests. MSOG includes Anti-Corruption Service and Special Prosecutorial Service investigators but tends to focus on high-profile cases only, leaving the rest to be investigated by the Anti-Corruption Service as part of their normal routine.

The Special Prosecutorial Service is a subdivision of the Prosecutor General's Office tasked with investigating high-priority cases, which include acts of torture and ill-treatment.

However, in most cases, torture complaints are first handled by the police – more specifically, by the local police departments' Internal Security Divisions – that can either forward a complaint to ERDR to be investigated by the Anti-Corruption Service or conduct an internal inquiry into the reported incident and stop at that. The decision depends on whether or not the Internal Security Division finds the incident to show signs of a criminal offence, in this case torture (Article 146 of the Criminal Code of Kazakhstan). Thus, whether or not a torture complaint is registered in ERDR (and properly investigated) often remains at the discretion of the police (police internal security divisions being part of the Ministry of Internal Affairs), even where the alleged perpetrators are police officers themselves.

In a case reported in **Kostanay** and monitored by the Coalition, the local police are currently in charge of investigating both a man's involvement in the January protests and his complaint of torture at the hands of police officers (the latter is investigated by the respective Internal Security Division).

Although the Special Prosecutorial Service and the Anti-Corruption Service were set up specifically to ensure independent investigation, the principle of independence is not consistently observed in practice. That said, according to the Coalition, the Special Prosecutorial Service had been particularly effective in investigating torture cases and taking them to court in the years preceding the January events.

Discontinuation of criminal proceedings into incidents of torture

The Coalition has forwarded all torture and ill-treatment complaints brought to its attention to the relevant investigative authorities according to jurisdiction. To date, some investigations have been suspended, discontinued or never opened for reasons such as “absence of corpus delicti” or “lack of evidence” in Pavlodar (one case), Almaty (one case), West Kazakhstan region (one case), and Kostanay region (two cases). All decisions to discontinue investigations have been appealed.

The case of Aslan Dzhamaliev from Uralsk is one of those in which the investigation was discontinued.

On the night of 4 to 5 January, Aslan was arrested by three police officers who twisted his arms and pushed him into a police wagon, no reasons given. Inside the wagon, three other uniformed policemen punched, kicked and beat Aslan with truncheons on the head, legs and other parts of the body, while yelling "you are about to die," swearing and insulting the man. Still inside the wagon, they made Aslan stand facing the side wall and searched him, taking away his mobile phone. No records were drawn up. While beating Aslan, the policemen blamed him for their low pay and high loan debt and threatened, "once we get to the department, you will regret being born." Upon arrival at the Police Department of Uralsk, other policemen escorted Aslan to a second-floor office that was equipped, according to Aslan, with CCTV cameras, and forced the man to sign some unidentified papers, saying that he "won't come out of here until he signs them." Then they let Aslan go and returned his mobile phone after erasing the phone memory. On the same day, January 5th, Aslan went to a trauma clinic and had his injuries documented, which included "contusion to the soft tissues of the head, subcutaneous hematomas of the right parietal region, contusion to the cervical spine," and others. A lawyer provided to Aslan by the Coalition reported the incident to the regional prosecutor's office that forwarded the report to the local Anti-Corruption Service. The case was registered under Criminal Code article 146, part 2, "Torture." However, three months later, on April 6th, Aslan received a text message stating that the criminal case opened into his torture complaint was dismissed "due to the absence of corpus delicti." Aslan's lawyer was not given a copy of the decision to dismiss the case and was not allowed, under various pretexts, to see the case file. The Coalition continues to seek justice for Aslan Dzhamaliev⁴.

Dzhamaliev's case illustrates persistent problems not only with independence of the investigation but also with victims' access to the proceedings.

Failure to ensure safety for torture victims

The Coalition is not aware of any measures being applied anywhere in the country to ensure torture victims' safety. The reason usually given is that neither victims nor their lawyers are requesting such measures.

In a number of cases, people charged with various offences in connection with the January protests (e.g. in Almaty) had their pre-trial detention replaced by a non-custodial measure. It is unlikely, however, that the objective was to ensure the victims' safety, because investigations into their torture complaints were opened later when they had already been released to a non-custodial setting.

In one torture case in Atyrau, the investigator encouraged the victim to request safety measures, but the victim refused because he did not need such measures at that time, according to his lawyer.

In Taraz, despite torture complaints filed by a suspect in a case related to the January protests, the alleged perpetrator of torture continues to be in charge of the case investigation. In addition to being a blatant violation of the principle of independence, this situation causes the victim to re-experience the trauma every time he has to face his torturer during the proceedings. Moreover, the victim is still held at a pretrial detention facility which is supervised by the Ministry of Internal Affairs.

In Taldykorgan, officers of the Anti-Corruption Service were telling victims that safety measures would involve placing them with their families in a rented apartment under close supervision similar to house arrest for two months, which their families probably would not like. After this explanation, many victims refused to avail themselves of safety measures. For reference: Article 23 of the Law on State Protection of Participants in Criminal

⁴ <https://www.notorture.kz/inform-spravka-17-maya-2022/>

Proceedings states that "safety measures must not interfere with housing, labour, pension and other rights of the protected and other persons."

Failure to conduct expert examinations

In a number of cases, the authorities failed to conduct a forensic medical examination or failed to conduct it promptly or thoroughly. Until recently, the Coalition was not aware of any forensic psychological and psychiatric examinations conducted.

Failures to conduct – promptly or at all – forensic medical examinations in registered torture cases have been reported, *inter alia*, in the East Kazakhstan region in respect of Ivan Kichkin (aged 40, a Russian national), Alexey Kolmagorov (aged 22), and others.

According to Kichkin, on 11 January 2022, the day following his arrest, he was beaten by officers of Ust-Kamenogorsk Police Department. In addition to beating him with truncheons, punching and kicking him in various parts of the body, the officers tortured him with an electric shocker and put a plastic bag over his head three times, causing him to lose consciousness. The officers, who were drunk, threatened to kill Kichkin, placed a firearm to his head and fired blank shots.

According to Kolmagorov, he was arrested on January 7th near Republic Square in Ust-Kamenogorsk. The police confiscated his phone and personal belongings and took the man, without giving any reasons for his arrest, to the Dynamo sports complex, where they held him for 90 minutes, beating him all the while. Kolmagorov lost three front teeth and sustained an extensive hematoma to his head as a result of the beating. He lost consciousness several times during the ordeal. After beating the victim at the Dynamo sports complex, the officers took him to the Ust-Kamenogorsk Police Department, then to IVS (temporary police detention facility), and later to SIZO, where he was detained on charges of rioting (article 272(2) of the Criminal Code). Later, Kolmagorov's custody was replaced by house arrest and a written undertaking not to leave the city.

Despite the victims' plausible accounts of the events and visible injuries, no forensic medical examinations were conducted in either case. Such forensic examinations, in addition to revealing the nature and mechanism of the injuries, could have helped verify the victims' versions of the events.

Poor quality of state-guaranteed legal aid

Many suspects arrested in connection with the January protests had lawyers appointed to them free of charge under the State-Guaranteed Legal Aid programme. There have been numerous complaints alleging state-appointed lawyers' poor performance in representing their clients in the proceedings and refusals to respond to complaints about torture. Reports from a number of cities, including Almaty and Shymkent, among others, indicate that lawyers by appointment often fail to provide qualified assistance.

Such was the situation in the case of Kadyrzhan Abiza, a minor under 18, who was subjected to torture. The young man had been unaware of being assigned a free lawyer until his cellmates pointed out his lawyer to him. Abiza shouted to his (juvenile criminal defence) lawyer about having been beaten and experiencing extreme fear. The lawyer only replied that he was aware of the matter, and left. The minor's complaint was ignored, causing him to suffer from helplessness and continuous fear. According to the office of the Commissioner for Children's Rights, Abiza later expressed suicidal intentions. The state-appointed lawyer never provided Abiza the required legal assistance in terms of protecting the minor from torture.

Problems faced by foreigners and minors

The authorities President Tokayev's statement "the terrorist gangs are essentially international and have been in serious training abroad" as a call to action. As a result, foreign nationals in Kazakhstan came under close scrutiny. According to a number of cases documented by the Coalition, some foreigners were tortured.

Kyrgyz musician Vikram Ruzakhunov was arrested in Kazakhstan and charged with participating in a riot. He was tortured while in custody in Almaty. Ruzakhunov was shown on Kazakh state television, presented as a foreign "fighter" and forced to "confess" having been paid 200 dollars to come to Kazakhstan to participate in the protests.

But the police who orchestrated the show were too zealous for their own good. Viewers from Kyrgyzstan recognized Ruzakhunov, thus exposing the falsification and the use of prohibited methods by police in Kazakhstan.

"Although I had told the [television] journalists that no one would believe [my 'confession'] and that I had a job in Kyrgyzstan, they refused to listen to me. I am actually thankful to the person who selected me out of the hundreds other arbitrarily detained innocent people and made me memorize the script and recite it on camera. According to the doctors, I did not have much longer left to live, because my left lung had been punctured by the broken ribs, and a couple of blows more would have been enough to damage the heart," the musician said.

Cases against minors have been and continue to be investigated without the involvement of juvenile inspectors, psychologists and pedagogues, in violation of the juvenile justice principles.

As noted above, some state-appointed lawyers in cases involving minors ignored their clients' complaints of torture, health concerns or requests for assistance. According to some minors interviewed by human rights defenders, the only time they saw their lawyers was during the hearing on the preventive measures pending trial.

Juveniles cannot, by law, act in proceedings on their own but must be represented by a lawyer or legal guardian/parent. Therefore, many detained minors were unable to make a formal complaint about torture until they were visited by a prosecutor, human rights defenders or parent. The Coalition has found that in most cases, complaints of torture made by minors to their lawyer (if they met) or to an investigator were ignored.

Right to file a complaint about torture

In the context of massive torture reports, the Coalition is particularly concerned about eleven criminal cases opened against people allegedly for sharing "fake information about the use of unlawful methods of investigation against them." One such case was brought to court in mid-April. Other potential complainants are likely to perceive this practice as a warning or a threat.

People reporting ill-treatment have faced charges under Criminal Code article 274, "dissemination of knowingly false information," or less often, under article 419 "false denunciation."

Following the January protests, numerous photos and videos were posted in social media documenting incidents of police violence and brutality. There were reports about "fear rooms" in the now-infamous Dynamo Stadium in Atyrau, where detainees were said to be tortured by local police. Witnesses and victims described the ordeal in detail, and some identified the police officers and their victims by name.

On January 25th, a spokesman for the Department of Internal Affairs in the Atyrau region said, "work is underway to identify the individual who is spreading false information." They further said that by false information, they meant reports about "gross violations committed in the course of service by police officers in the Atyrau region." By stating this, the authorities effectively warned people that those who dare to report violations would face criminal charges. Later, on April 19th, a spokesperson of the Prosecutor General's Office said that 11 criminal cases had been opened "for spreading fakes, including allegations about suspects being subjected to unlawful methods of investigation," and one such case had been sent to court by that time. No further details about the said cases are known.

Prisoners' right to file a complaint is not adequately protected. Although recently, electronic terminals for filing complaints and requests have been installed at institutions, some of these terminals are in need of repair. Such terminals are often located next to administrative offices, and prisoners do not have free access to them. Confidentiality of complaints cannot be guaranteed when CCTV cameras nearby make it possible for the administration to observe prisoners using the terminal or when terminals are installed in busy areas in full view of other inmates and officials. Another obstacle to filing complaints is the terminal's complex interface which can be difficult to use for someone with limited computer skills.

For over a decade, the Coalition has urged the authorities to address major systemic problems, in particular by making the penitentiary system independent from the Ministry of Internal Affairs. Kazakhstan has yet to implement this recommendation made both by the domestic human rights defenders and the UN treaty bodies.

While the state has made important steps towards ensuring proper investigation of torture and ill-treatment, e.g. by establishing Special Prosecutors tasked with investigating all reports of torture, the Coalition is concerned that despite the existence of such investigative bodies, the practice of allowing torture complaints to be investigated by those who are affiliated with the alleged perpetrator persists. The following are key recommendations from the Coalition in this respect:

- abolish article 181(5) of the Criminal Procedure Code allowing preliminary verification of torture reports and require that every report should be entered in the Unified Register and an investigation launched immediately. Supervision over proper registration of all complaints must also be strengthened, including by
 - setting up an independent, accountable to the Parliament on a regular (annual) basis, mechanism for investigating all reports of torture and cruel, inhuman or degrading treatment or punishment. We also recommend that such a mechanism should include an Advisory Council involving, among others, lawyers and experts from the Kazakhstani NGO Coalition against Torture. This advisory body could examine problem areas in torture investigation (not limited to prevention), make recommendations on amending the legislation, and maintain contacts with relevant experts in other countries.

Other recommendations include:

- Video recording required at the time of arrest
- Registration of detainee transfer from the place of arrest to the official place of detention
- Other guarantees of protection against torture
- Implementation of the Istanbul Protocol standards, including in primary healthcare facilities

The UN Human Rights Committee expressed concerns over the quality of torture report investigations in Kazakhstan, but the Committee's recommendations were only partly implemented in August 2018. Kazakhstan's CPC now requires a medical assessment of detainees upon arrest and at admission to a detention facility, and the medical examination report must be attached to the record of arrest. It is worth noting that during the January events, some medical personnel of detention facilities failed to document the evidence of beatings, injuries and other similar findings in detainee records.