

Index on Torture. Main Developments in 2023

Kazakhstan

The key issues in enforcing the prohibition of torture are conditioned by the quality of investigations into reports of torture and the protection of victims, including their access to legal assistance:

- failure to immediately register reports of torture;
- delays in initiating investigations and excessively long investigations into torture reports;
- terminations of criminal proceedings with allegations of torture;
- failure to ensure safety measures for victims;
- failure to conduct forensic examinations;
- inadequate legal aid.

As of this writing, Kazakh NGO Coalition Against Torture has collected accurate data on the number of torture victims: there are 283 individuals, of which 165 complained of torture and 118 of ill-treatment. 19 of them are women and 264 are men. There are grounds to believe that the real numbers are higher. The data published in the Ombudsman's 2023 annual report differ: the Ombudsman reviewed 150 reports of torture and other cruel, inhuman, or degrading treatment and punishment. 148 criminal investigations into torture allegations have been initiated to date.

To date, the following legislative initiatives have been adopted to counteract torture and ill-treatment:

- Since January 1, 2023, as a result of amendments to Article 193(12)(1) of the Criminal Procedure Code, investigation of torture has been assigned to the exclusive competence of Special Prosecutors.
- As of this writing, the Senate of the Parliament of the Republic of Kazakhstan submitted to the President for signing a draft law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving Law Enforcement Activities and Further Humanization of Criminal Legislation." This draft introduces two new provisions:
 - it criminalizes cruel, inhuman, and degrading treatment: this separate crime is included in the article of the Penal Code prohibiting torture;
 - it introduces a new status of a perpetrator: "individuals acting in an official capacity." According to the drafters, this combination will allow prosecuting those who cause pain or suffering in educational, medical, and social institutions and organizations. According to the available version of the bill, "individuals acting in an official capacity" are understood to be employees of such institutions who have authority and/or administrative powers over individuals detained, treated, trained, or educated there on a permanent, temporary, or periodic basis.

On March 9, 2023, the Senate of the Parliament adopted amendments to Article 146 of the Penal Code "Cruel, Inhuman, or Degrading Treatment, Torture," according to which "physical and mental suffering caused by the lawful actions of individuals acting in an official capacity or other persons" will not be recognized as torture.

This means that in Kazakhstan, the definition of torture differs from that of the Convention, as the exclusion clause refers to "lawful actions" rather than "lawful sanctions." The Committee Against Torture

(CAT) noted in its [recommendations](#) (para. 10) that such exclusion clauses should not extend to “lawful actions.” The CAT’s view is that the exclusion concerns lawful sanctions, such as detention, rather than lawful actions. However, in the Article 146 of the Penal Code, the exclusion clause refers to “lawful actions” and covers not only officials but also “individuals acting in an official capacity.” National human rights groups are concerned that such a broad category risks exempting a large number of individuals from responsibility for an extremely wide range of actions.

In terms of jurisdiction, crimes under Part 1 of Article 146, “cruel treatment,” will be investigated by the police in the format of inquiry (minor severity), while crimes under Part 2 of Article 146, “torture,” fall under the exclusive jurisdiction of the prosecutor’s office. Aggravated crimes under Parts 3 and 4 of Article 146, not qualified as torture, will be investigated by the police, as required by Article 187 of the Criminal Procedure Code.

On one hand, the reforms distinguish between cases of torture and cruel treatment, filling a legislative gap where cruel treatment was not previously criminalized. On the other hand, cases of cruel, inhuman, or degrading treatment or punishment will be investigated by Kazakh police authorities, which are often the ones perpetrating such crimes in the first place.

- On March 17, 2023, the above-mentioned amendments to Article 146 of the Penal Code of the Republic of Kazakhstan were included in Law No. 212-VII ZRK. Additionally, Article 63(6) of the Penal Code was supplemented with the word “torture,” which disallows the imposition of a suspended sentence for the crime of torture.
- Implementation of a systemic approach to investigating torture-related crimes and assigning the functions of investigating torture cases to the General Prosecutor’s Office (Address to the People of Kazakhstan by President Kassym-Jomart Tokayev). Following the address, amendments were made to Article 187 of the Criminal Procedure Code regarding investigative jurisdiction.
- In January 2023, the transfer of medical support for penal institutions, staffing, and material and technical means to the Ministry of Health from the Ministry of Internal Affairs began. Previously, health care in penal colonies was managed by the Penal System Committee of the Ministry of Internal Affairs.
- To align with international standards and improve the prisoners’ conditions, work is underway to transition from barrack-type accommodation to cell-type housing. This was stated at a meeting of the Presidential Human Rights Commission, as well as by the ministers of justice and internal affairs in their reports.
- Following the President’s directive, comprehensive video surveillance will be installed in penal institutions by the end of 2024, eliminating all blind spots.
- Since January 30, 2023, the Comprehensive Plan of Measures to Combat Torture for 2023–2024 has been implemented (Order No. 94).
- On December 8, 2023, the President adopted, in an executive order, the Action Plan on Human Rights and the Rule of Law. The plan includes several measures aimed at combating domestic violence, protecting citizens in the criminal justice system, preventing torture and ill-treatment, and strengthening gender equality (41 action items are planned for 2024–2025: 26 action items for 2024, 5 action items for 2025, and 10 action items for 2024–2025).

Key Issues in Ensuring the Prohibition of Torture in Practice

- **Failure to immediately register reports of torture**

According to the established procedure, law enforcement agencies receiving a report of torture must act as follows:

“The investigative team and the prosecutor, upon receiving a report of torture, immediately proceed to the scene, where they interview the alleged victim of torture, conduct an examination and seizure of physical evidence, and identify individuals involved in the alleged acts of torture. The incident must be registered in the Unified Register of Pre-Trial Investigations (URPTI), and a forensic medical examination must be appointed to identify bodily injuries.”

However, as evidenced by the Coalition’s experience, even when reports are registered by the Anti-Corruption Service (Agency of the Republic of Kazakhstan for Combating Corruption, or Anti-Corruption Service, is a body directly subordinate and accountable to the President), initial complaints of torture are often forwarded for review to the internal security units of local police departments. These units frequently conclude that there are no signs of the crime of torture and subsequently close the case.

This forwarding of torture reports to the police is in accordance with the Criminal Procedure Code, which allows for “complaints and reports that require audits and inspections by authorized bodies for the purposes of establishing circumstances suggesting a criminal offense having been committed to be sent to such bodies for their consideration without registration in the URPTI within three days, provided there are no sufficient data suggesting a criminal offense” (Article 181(5) of the Criminal Procedure Code).

This means that when reports of torture are sent over to the police, these reports are not registered in the URPTI (which affects the publicly available statistics on torture reports) and are not treated as reports of crimes, thereby eliminating the need for an investigation.

This established practice, although formally in accordance with the criminal procedure legislation, contradicts the authorities’ claims in their fourth periodic report to the UN Committee Against Torture, where they stated that “in accordance with the Criminal Procedure Code of the Republic of Kazakhstan, **each report of torture is registered in the URPTI**, and a pre-trial investigation and detention of suspects are conducted.”

Paragraph 11 of the Ruling of the Supreme Court of the Republic of Kazakhstan states that “the prosecutor checks a report of torture, violence, or other cruel or degrading treatment in accordance with the requirements and deadlines established by Article 105 of the Criminal Procedure Code. Upon establishing sufficient data on the use of torture, violence, or other cruel treatment, **the prosecutor registers the complaint in the URPTI** and sends the criminal case according to jurisdiction for pre-trial investigation.” In other words, contrary to what the authorities reported to international bodies, the immediate registration of all reports of torture does not actually occur.

- **Delays in initiating investigations and excessively long investigations into torture reports**

In most cases, the initial review of torture and cruel treatment reports is conducted by a pre-trial investigation authority. This can be either the prosecutor’s office or the police, specifically the Internal Security Units (ISU) of local police departments. Given the exclusive jurisdiction to investigate torture cases assigned to the prosecutor’s office, the proper classification of the crime becomes crucial: the difference between “cruel treatment” and “torture” lies in the perpetrator’s motive. However, it is not

possible to determine the motive at the initial classification stage. Consequently, there is every reason to believe that reports of torture will always be registered as reports of cruel treatment, and only in precedent-setting cases that cause significant public outcry will complaints be classified as containing elements of torture.

The prosecutor's office, in its turn, provides the classification of the crime, but a proper pre-trial investigation is not conducted.

Furthermore, the Criminal Procedure Code does not provide for a pre-trial investigation if the report is classified under Part 1 of Article 146 of the Criminal Code — as cruel treatment, which falls under the jurisdiction of the police and is investigated in the form of inquiry (Article 191 of the Criminal Procedure Code). This is a so-called protocol-based, essentially simplified form of investigation. Its use directly contradicts international standards, as

any reports of both torture and cruel treatment require effective investigation rather than simplified checks.

Also, without conducting an investigation, it is impossible to establish the motive, and therefore, perpetrators of torture may escape responsibility because their motive was not and could not be determined within the framework of a simplified investigation.

- **Terminations of criminal proceedings with allegations of torture**

The Coalition notes that cases based on reports of torture are often terminated either on the grounds of “lack of the act [that can be qualified as] a criminal offense” (Article 35(1) of the Criminal Procedure Code) or “lack of the elements of a criminal offense in the act committed” (Article 35(2) of the Criminal Procedure Code). This occurs both when the lack of the act or elements of the criminal offense in the act is proven and when their existence is not proven, provided that all possibilities for collecting additional evidence have been exhausted.

Lawyers engage in strategic litigation to appeal the decisions of pre-trial investigation authorities before specialized inter-district courts as well as before international bodies (the Coalition has submitted a communication to the UN Committee Against Torture).

Attorneys representing survivors of torture note the reluctance of officials overseeing the investigation of torture cases to accept the victims' testimonies as sufficient evidence of torture. This poses a significant obstacle to achieving justice.

According to international law (Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; treaty bodies' case law), the burden of proof in cases of torture allegations should be on the alleged perpetrator and not on the victim. Thus, the victim is not required to remember the names of the individuals who tortured them. If a victim of alleged torture provides sufficient evidence indicating that torture occurred, it is the state party's obligation to prove that it did not happen.

The high rate of terminations of criminal proceedings by investigating agencies in cases of torture and cruel treatment reports indicates that the Kazakh authorities, despite committing to a zero-tolerance policy towards torture, do not ensure effective investigations. This includes their failure to establish an independent investigation body, resulting in the discontinuation of torture cases and only a small fraction of cases reaching the courts.

- **Failure to ensure safety measures for victims of torture**

As shown by the Coalition's monitoring of cases related to freedom from torture and ill-treatment, convicts and pre-trial detainees who report torture or cruel treatment and request safety measures often cannot be transferred to other secure facilities, as all institutions within the penal and detention system fall

under the jurisdiction of the Ministry of Internal Affairs (MIA). The only alternatives are the detention centers of the National Security Committee and the guardhouses of the Ministry of Defense. Torture victims have reported that government officials who inflicted torture on them had unhindered access to them while they were in MIA detention facilities.

- **Failure to conduct forensic examinations**

The Coalition notes that the speed and modalities of official forensic medical examinations (FME) did not change in 2023, with their quality and approaches remaining unsatisfactory. The Coalition is aware of cases where forensic psychological/psychiatric examinations (FPPE) were conducted; however, the approaches used by experts are outdated, and the standards of the Istanbul Protocol are not fully applied. It is important to note that Kazakhstan lacks a system for documenting the use of psychological torture, with forensic medical experts more often focusing on recording physical injuries. Unfortunately, there are very few investigations into the presence or absence of post-traumatic stress syndrome in connection with psychological torture experienced.

- **Inadequate legal aid**

According to the Constitution of the Republic of Kazakhstan, every person has the right to receive adequate legal assistance during civil, administrative, and criminal proceedings in accordance with established provisions. On this basis, citizens of Kazakhstan are provided with state-guaranteed (free) legal assistance.

State-guaranteed legal assistance (SGLA) is legal aid provided to individuals and legal entities entitled to receive it, as established by the Law of the Republic of Kazakhstan “On Legal Practice and Legal Assistance” and other laws of the Republic of Kazakhstan, on a free-of-charge basis.

Victims of torture seek help from private lawyers because they are not entitled to state-subsidized legal assistance.

For many years, despite reforms implemented by the Ministry of Justice, recipients of legal assistance have remained dissatisfied with the quality of services provided. The Coalition’s experience shows that there is a negative trend of former law enforcement officers and judges transitioning into the legal profession, which, in our opinion, affects the defense and contributes to the low quality of legal assistance provided.