

Index on Torture. Main Developments in 2023

Kyrgyzstan

Torture is widespread in the Kyrgyz Republic. According to the National Center for the Prevention of Torture, an unselected survey conducted in late 2022 of persons held in temporary detention facilities of the internal affairs (IVS) and pre-trial detention centers (SIZO) of the Penitentiary Service (SIN) revealed that 20.6% of respondents reported experiencing torture and ill-treatment at some stage of criminal proceedings. An analysis of cases showed that in the majority of instances, torture was used to extract confessions (81.6%). The reported methods of torture include punching and kicking, strangulation with a plastic bag, electric shocks, dousing with cold water, and various forms of psychological violence.

Despite the massive scale of reports alleging torture-related crimes, only a small proportion of victims (between 150 and 200 individuals per year) file official complaints with the Prosecutor's Office and the State Committee for National Security (GKNB), and just a fraction of complaints are investigated.

In 2023, 126 reports alleging incidents of torture and other cruel, inhuman, or degrading treatment and punishment were recorded in the Unified Register of Crimes and Misconduct (URCM) automated system. In 2022, 178 reports were filed; following pre-investigation reviews, authorities declined to initiate criminal proceedings in 149 cases. Ten cases are still under pre-investigation, while criminal proceedings were initiated for 19 reports; of these, 3 cases were dismissed after a criminal investigation, 3 were suspended, 1 was merged with another criminal case, 10 were sent to court for trial on the merits, and 2 investigations are ongoing.

According to a survey conducted by Kyrgyzstan's National Center for the Prevention of Torture and the organization ARTICLE 9, one in five detainees reported unjustified use of physical force against them. The number of torture victims in the internal affairs bodies alone could potentially be as high as 1,500.

As evident from the above statistics (178 reports), only a small percentage of individuals allegedly subjected to torture file official complaints, and the State conducts investigations in just 10% of the reported cases. An analysis of legislation and practice has revealed obstacles at each stage that prevent torture complaints from progressing to the stage of judicial proceedings; solutions have been proposed to address these issues and improve the current process.

Issues with National Legislation on Torture Investigation

Article 7 of the International Covenant on Civil and Political Rights (ICCPR), binding on Kyrgyzstan, establishes an absolute prohibition on torture and ill-treatment.

The Constitution of the Kyrgyz Republic guarantees an absolute prohibition on the use of torture and inhuman treatment against anyone (Article 56: No one may be subjected to torture and other inhuman, cruel or degrading treatment or punishment). Additionally, Article 143 of the Criminal Code of the Kyrgyz Republic establishes criminal liability for the use of torture.

The provisions of the laws of the Kyrgyz Republic that regulate criminal proceedings are enforceable only if they are included in the Criminal Procedure Code (CPC) of the Kyrgyz Republic.¹

However, Article 1, Paragraph 1, and Article 2, Paragraph 1 of the Criminal Procedure Code indicate that the Constitution has direct effect. Meanwhile, Paragraph 2 of Article 1 notes that the CPC is based, in part, on international norms and treaties, but does not specify their direct applicability. Article

¹ Article 1 of the Criminal Procedure Code of the Kyrgyz Republic

1, Paragraph 3 excludes the possibility of enforcing legal provisions that regulate criminal procedure unless they are incorporated into the CPC of the Kyrgyz Republic.

Article 2, Paragraph 2 of the CPC includes a provision stating that "Criminal proceedings within the territory of the Kyrgyz Republic, regardless of where the crime is committed, are conducted in accordance with this Code, unless international treaties of the Kyrgyz Republic establish different rules regarding the application of this Code in terms of space." However, this provision only pertains to the territorial application of the Code, specifically addressing aspects of criminal prosecution against foreigners, stateless persons, and representatives of international organizations and diplomatic services. This part is confirmed by Article 4 of the CPC.

It can therefore be concluded that international human rights treaties, principles, and norms cannot be directly enforced in criminal proceedings unless they are explicitly incorporated into the CPC at the time the case is being considered.

Law Enforcement Practice

According to the Prosecutor General's Office, in the first half of 2023, 95 complaints alleging torture were registered in the URCM. After pre-investigation reviews of 78 cases, three were merged with other proceedings, and criminal cases were initiated for 14 complaints, representing 13% of the total. Based on findings from criminal investigation, two cases were merged with other criminal cases, and proceedings in two cases were suspended by the end of the review period. Investigations were ongoing in six cases, four cases were sent to court for trial, and in one case, a perpetrator was found guilty and sentenced to a fine under Article 338 of the Criminal Code, "Abuse of Power."

An analysis of 10 cases conducted by the human rights movement Bir Duino Kyrgyzstan reveals that no criminal cases were initiated, despite the availability of qualified legal assistance, evidence, and court decisions overturning illegal refusals to prosecute. No appropriate steps were taken, such as interviewing witnesses or collecting and preserving medical evidence. Moreover, the deadlines for pre-investigation reviews were artificially extended. Additionally, the process of appealing a refusal to initiate criminal proceedings into alleged torture can drag on for years: a judge may overrule the refusal as illegal and unfounded, only for the investigator to issue yet another refusal to initiate criminal proceedings. A review of alleged torture cases reveals that investigators repeatedly refused to initiate criminal proceedings or dismissed the cases pending the introduction of the new CPC, which effectively amounted to the same refusal to investigate and prosecute. The analysis of these cases provides strong grounds to believe that these refusals were unfounded. The lack of merit in the refusals to initiate criminal proceedings is confirmed by court decisions that have overturned these refusals and sent the cases back for further review. However, despite their refusals to prosecute being overturned, investigators are never held accountable for unjustified refusals to initiate criminal proceedings.

It is also important to note the accompanying measures that investigators must take to ensure the safety of victims during the investigation and to prevent any pressure on them by the alleged perpetrators of torture.

In all ten cases that were examined, not a single law enforcement officer was suspended from duty during the pre-investigation review. The reason is that none of the complaints was registered after the introduction of the new criminal legislation. However, in cases registered before the introduction of the 2023 amendments to the CPC, the pre-trial proceedings failed to identify suspects, and no charges were brought during the investigation. This attitude of the investigators allows alleged perpetrators of torture among law enforcement officers to use their official position to exert pressure on the victims. It is important to note that during pre-trial proceedings in an initiated criminal case, the victim is involved in more than 50% of the investigative actions. These include forensic medical examinations, forensic psychological evaluations, comprehensive forensic psychological and psychiatric assessments, interrogations, confrontations, crime scene inspections, on-site testimony, and more. It should also be

noted that during pre-trial proceedings, the prosecutor or investigator sends a request for an internal inquiry to the institution whose officers were named as perpetrators in the original complaint. In such situations, the victim of torture is forced to face the officers who tortured them, causing the victim to repeatedly experience stress, pressure, and a sense of helplessness in seeking justice. The established practices of the prosecutor's office and investigative bodies contradict the CPC of the Kyrgyz Republic.

The case of Muhamajon ugli Murojon

Mukhamadjon ugli Murodjon was tortured for six hours after being taken to the Uzgen District Police Department on 7 March 2016. The police demanded that he confess to a murder. They placed handcuffs with chains on his hands and feet, stretched them in opposite directions, and beat him with a baton. They threatened to rape his wife and mother if he did not confess. The chronology of the case is presented below, clearly showing that there has been no effective investigation of the torture report at the national level for six years.

(In all the cases presented below, efforts to bring the torture perpetrators to justice only began after the cases were brought to the attention of human rights defenders. This explains the time gap between the occurrence of the torture and the initiation of legal proceedings. The investigating authorities did not take proactive measures in response to torture.)

Chronology of the case:

- On 8 March 2016, forensic medical examination report No. 153 confirmed the evidence of torture;
- On 29 April 2016, the Osh Regional Bureau conducted another forensic medical examination, which did not find evidence of torture;
- On 10 August 2016, a district court convicted Muhamajon ugli Murojon;
- On 17 December 2019, the victim's attorney filed a complaint regarding the use of torture with the prosecutor's office;
- On 19 December 2019, the Osh Regional Prosecutor's Office forwarded the case file to the State Security Committee for the city of Osh and Osh region;
- On 19 March 2020, an investigator at the State Security Committee issued a decision to terminate the pre-trial proceedings;
- On 13 December 2021, an investigator at the State Security Committee refused to initiate pre-trial proceedings;
- On 20 December 2021, the victim's attorney filed a complaint with the Osh City Court challenging the decision of the State Security Committee investigator;
- On 29 December 2021, the investigating judge at the Osh City Court dismissed the attorney's complaint without consideration;
- On 31 December 2021, the attorney filed a private complaint with the Osh Regional Court;
- On 25 May 2021, the Supreme Court granted the attorney's complaint;
- On 20 December 2021, the complaint was forwarded to the Osh City Court;
- On 29 December 2021, the Osh City Court terminated the proceedings in the case;
- On 31 December 2021, the attorney filed a complaint with the Judicial Board of the Osh Regional Court;
- On 1 February 2022, the Osh Regional Court denied the attorney's complaint;
- On 7 February 2022, a cassation appeal was filed with the Judicial Board for Criminal Cases of the Supreme Court;
- On 25 May 2022, the Supreme Court granted the attorney's complaint;
- On 2 August 2022, the investigating judge at the Osh City Court issued a ruling rejecting the lawyer's complaint;
- On 8 August 2022, the attorney filed a private complaint with the Osh Regional Court;

- On 25 August 2022, the Osh Regional Court denied the attorney's complaint;
- On 30 August 2022, the attorney filed a complaint with the Supreme Court;
- On 19 October 2022, the Supreme Court denied the complaint;
- On 31 December 2022, an application was filed and registered with the UN Human Rights Committee, and communications are currently underway.

The case of Muzaffar Zoidazimov

On 26 August 2022, at 9 p.m., law enforcement officers apprehended Muzaffar Zoidazimov near his home on suspicion of assault and took him to the Osh Department of Internal Affairs. At the police department, he was taken to an office on the second floor, where several officers began beating him, demanding a confession and information about the identity of his accomplices. The torture continued until 5 a.m. the following morning. He was then taken to the Nariman Police Department, where the investigator interrogated him until 11 a.m. Afterward, the victim was transferred to the Karasu District Police Department and brought to the gym, where he was tortured again until the evening. After receiving his testimony, the police transferred him to the IVS of the Karasu District Police Department, where he was held for more than 20 days before being transferred to SIZO-5 in Osh.

Chronology of the case:

- On 17 May 2023, the victim's complaint was filed with the prosecutor's office;
- On 23 May 2023, the victim's attorney requested the prosecutor's office to provide information on the decision made regarding the victim's complaint;
- On 31 May 2023, the prosecutor's office responded that they had not received any complaints from Mr Zoidazimov;
- On 13 June 2023, a crime report concerning the victim's torture was filed with the prosecutor's office;
- On 16 June 2023, a forensic medical examination report was issued that did not find evidence of torture;
- On 23 June 2023, the prosecutor's office confirmed that the torture complaint had been registered in the URCM system;
- On 26 June 2023, the prosecutor's office announced an extension of the pre-investigation review period;
- On 14 July 2023, the prosecutor's office issued a decision not to initiate criminal proceedings.
- A complaint is being prepared for submission to the UN Human Rights Committee.

The case of Zukhur Zukhurov

Zukhur Zukhurov was apprehended by police on 19 October 2021 in the Leilek district, beaten and taken to the Leilek District Department of Internal Affairs. In the Department of Internal Affairs office, physical force continued to be used on the victim to obtain a confession. Officers tried to force Zukhur to sign documents written in Kyrgyz, but he responded that he did not understand Kyrgyz and requested an interpreter or an attorney. The request was denied.

Chronology of the case:

- On 8 November 2021, a forensic medical examination report was issued, classifying the injuries as minor harm to health;
- On 23 November 2022, a request was filed with the Batken Regional Prosecutor's Office to take action against the police officers of the Leilek District Department of Internal Affairs;
- On 28 November 2022, a request was filed with the Regional Prosecutor's Office to ensure a thorough and impartial investigation by the Leilek District Prosecutor's Office;

- On 23 December 2022, the Leilek District Prosecutor's Office concluded that there was no evidence of torture and declined to initiate criminal proceedings;
- On 28 December 2022, a clinical interview with Mr Zukhurov was conducted;
- On 10 February 2023, the Leilek District Prosecutor's Office refused to open a criminal case;
- On 15 February 2023, a request was filed with the Leilek District Prosecutor's Office to hold the perpetrators criminally accountable and to initiate a criminal case;
- On 27 February 2023, the prosecutor's office refused to initiate a criminal case;
- On 9 March 2023, a complaint was filed with the Leilek District Court, seeking to overturn the decision of the prosecutor's office as illegal;
- On 4 May 2023, the court dismissed the complaint;
- On 13 May 2023, an appeal was filed with the Batken Regional Court, requesting to overturn the district court's decision.
- A complaint has been filed and registered with the UN Human Rights Committee, and communications are underway.