

On the urgency of establishing a panel on experts on torture prevention within the ODIHR¹

The prohibition against torture is absolute and non-derogable. All OSCE participating States have ratified the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, the problem of torture and ill-treatment persists as one of the most pressing challenges in the OSCE region.

Over the past decade, a series of steps have been implemented within the OSCE framework to prioritise the prohibition of torture in the OSCE region and to develop effective mechanisms for preventing torture and ill-treatment. Switzerland and Serbia provided the impetus for this by choosing torture prevention as one of the thematic priorities during their respective OSCE Chairmanships in 2014 and 2015.

In 2014, the Civic Solidarity Platform (CSP)² with support from the Swiss OSCE Chairmanship organised and held four regional workshops to discuss the issues of torture and ill-treatment. These events resulted in detailed and comprehensive recommendations adopted at the OSCE Parallel Civil Society Conference and addressed to the participants of the OSCE Ministerial Council Meeting in Basel on December 4-5, 2014.³

In the autumn of 2015, the position of OSCE/ODIHR Advisor on Torture Prevention was established. Over the years, the Advisor's office has conducted substantial and vital work, such as examining the root causes of ongoing torture practices in the OSCE region, promoting civil oversight mechanisms for monitoring closed institutions, advocating for the introduction and expansion of state-funded rehabilitation programs for torture victims, and calling for the implementation of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the "Nelson Mandela Rules."

Since 2015, the Civil Solidarity Platform has operated a Working Group on the Fight Against Torture⁴ with the aim of monitoring the situation with the prohibition of torture in the OSCE region, providing relevant recommendations, and advocating for their practical implementation by both OSCE institutions and OSCE participating States. In particular, this Working Group has developed the Prohibition of Torture Index (Index on Torture) which serves as a unique and universal tool for measuring countries' implementation of the prohibition of torture. The Index measurements have been conducted annually since 2019.⁵

In December 2020, the OSCE Ministerial Council meeting in Tirana adopted Decision No. 7/20 "Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment" (hereinafter, Decision No. 7/20).⁶ This decision marks a historic and pivotal moment for the OSCE's efforts to enforce the prohibition of torture over the past decade. It took six years of advocacy by the Civic Solidarity

¹ Prepared by the CSP Working group on Fight Against Torture

² <https://www.civicsolidarity.org/>

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https://www.civicsolidarity.org/sites/default/files/civil_society_recommendations_to_the_mcm_in_basel_december_2014_final.pdf

⁴ <https://www.civicsolidarity.org/member/1431/working-group-fight-against-torture>

⁵ See the results of the 2022 Index on Torture measurement at <https://civicsolidarity.org/article/1915/civic-solidarity-platforms-working-group-fight-against-torture-presents-its-fourth>

⁶ <https://www.osce.org/files/f/documents/3/d/473199.pdf>

Platform and dedicated efforts by the office of the ODIHR Advisor on Torture Prevention to achieve an agreement on the wording of this decision, enabling its adoption by consensus. This document reaffirmed all the commitments previously made within the OSCE regarding the prohibition of torture and introduced several new ones. Specifically, these extended obligations include preventing enforced disappearances and prolonged incommunicado detention. Furthermore, Decision No. 7/20 stresses the importance of adopting “an integrated and victim-centred approach encompassing prevention, access to justice, accountability, redress and the enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”

A year following the adoption of Decision No. 7/20, the Civic Solidarity Platform's Working Group on the Fight against Torture reviewed OSCE countries' compliance with the prohibition of torture.⁷ The conclusions are disappointing. None of the OSCE participating States has been implementing its commitments under Decision No. 7/20 in full. To varying degrees across OSCE countries, challenges persist in areas such as criminalisation of torture in national legislation, accessibility and adequacy of statistical data, guarantees regarding the inadmissibility of evidence obtained by means of torture, fundamental legal safeguards for persons deprived of their liberty, conditions of detention, and compliance with the standards of effective investigation. Decision No. 7/20 proclaims a victim-centred approach to efforts aimed at preventing and eradicating torture. This includes, among other things, the right to redress, the availability of compensation, and rehabilitation programmes. Regrettably, victim compensation and rehabilitation are clearly not provided at the appropriate level in the OSCE region, concerning both the countries to the east and west of Vienna. Even in countries where the domestic legislation provides for redress, no—or very limited—specific information is available on actual measures taken in terms of compensations awarded or reparation programmes in place, including rehabilitation programmes and support for NGOs which provide such programmes.

Over the past two years, the situation with commitments under Decision No. 7/20 has further deteriorated.

In 2022-2023, Crude Accountability,⁸ in cooperation with members of the Turkmenistan Working Group⁹ and the CSP Working Group on the Fight Against Torture, initiated a project to research the issue of enforced disappearances in the region of the Organisation for Security and Cooperation in Europe (OSCE). Reviews on the Balkans,¹⁰ Belarus,¹¹ Chechnya,¹² Nagorno-Karabakh,¹³ Tajikistan,¹⁴ Turkmenistan,¹⁵ and Ukraine¹⁶ draw attention to the ongoing horrors of enforced disappearances in the context of conflict and repression. The Balkans, Chechnya, Nagorno-Karabakh, and Ukraine provide examples of enforced

⁷ <https://civicsolidarity.org/article/1861/review-current-assessment-compliance-prohibition-torture-osce-countries>

⁸ <https://crudeaccountability.org/>

⁹ <https://www.civicsolidarity.org/member/1469/working-group-turkmenistan>

¹⁰ <https://crudeaccountability.org/wp-content/uploads/Enforced-disappearances-in-the-Balkans.pdf>

¹¹ <https://crudeaccountability.org/wp-content/uploads/Enforced-Disappearances-Belarus.pdf>

¹² https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_Chechnya.pdf

¹³ https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_during_the_Nagorno-Karabakh_Conflict.pdf

¹⁴ https://crudeaccountability.org/wp-content/uploads/Enforced_Disappearances_Tajikistan.pdf

¹⁵ <https://crudeaccountability.org/wp-content/uploads/Enforced-disappearances-in-Turkmenistan.pdf>

¹⁶ <https://crudeaccountability.org/wp-content/uploads/Enforced-disappearances-and-torture-in-Ukraine.pdf>

disappearances in conflict zones—both as a tool of regimes and armies, and as a product of war. Belarus, Tajikistan, and Turkmenistan are examples of regimes that use enforced disappearance as a tool of repression, even in peacetime. However, the use of enforced disappearances in all seven regions is one that is related to repression, as our policy papers demonstrate.

The practice not only tortures the main victim by placing them in isolation, but also torments the family members of the victim who do not know the status of their loved one, while simultaneously facing the possibility of the same fate happening to them at any moment. This practice is a form of terror, designed to envelop the nation in a sea of fear. Enforced disappearances are often the tool of repressive regimes to silence opposition, but also happen in conflict zones with the capture of soldiers and civilians alike by the armies, governments, and other armed parties involved in the conflict. Serving the same purpose of terrorising and intimidating the population at large as well as the individuals who have disappeared, it is a brutal and hideous show of force. Enforced disappearances are also used as a tool against minority groups—most often in repressive regimes—and we have examples of this in the policy papers documenting enforced disappearances in the OSCE region, including in Chechnya, where LGBTQI people are terrorised and disappeared by the regime.

The OSCE region is currently witnessing the consequences of unchecked political repression and human rights abuses in the Balkans, Belarus, Chechnya, Nagorno Karabakh, Tajikistan, Turkmenistan, and Ukraine. In Russia, the Putin regime has spent over two decades consolidating state power, repressing the Russian people, tearing down existing human rights protections, and eliminating opponents who stand for these rights. This has paved the road for Russian expansionism, and for war crimes and atrocities, both at home and abroad. Meanwhile, the Russian people are starved of any voice or political power to alter the situation. Russia is just one example of political repression carried out at home. Its actions in Chechnya and Ukraine point to the scope and breadth of the regime's brutality. But similar cases can be found in Belarus under the Lukashenko regime, historic and current repression in Tajikistan, the Niyazov and Berdymukhamedov regimes in Turkmenistan, and the bloody conflict in Nagorno-Karabakh. We also have important lessons to learn from the Balkans, where unresolved cases of enforced disappearances continue to the present day.

In the last two years we have also been witnessing an increase in the practices of torture and ill-treatment of human rights defenders and civic activists during conflict situations, including armed conflict, as well as civil unrest and mass protests brutally suppressed by the authorities using weapons, including lethal action. The CSP Working Group on the Fight Against Torture has prepared a review that covers the situation in Belarus, Russia, Kyrgyzstan, Tajikistan and Uzbekistan, outlines documented cases of torture and ill-treatment of human rights defenders and civic activists, and assesses the effectiveness of the public authorities' response to these incidents.¹⁷ The common issue in all the situations described in the review is the lack of a proper response by the State to acts of violence, torture, and ill-treatment. This clearly violates one of the key obligations under Decision No. 7/20 to "ensure that all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there are reasonable grounds to believe that such an act has been committed, are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities and ensure that

¹⁷ https://civicsolidarity.org/sites/default/files/shdmii_2023_review_by_csp_wg_against_torture_fin_eng.pdf

complainants and witnesses are protected against ill-treatment and intimidation as a consequence of their complaint or evidence given."¹⁸

The above convincingly illustrates that the situation with the implementation of Decision No. 7/20 in the OSCE region is critical. The standard, business-as-usual measures of monitoring, reviews, and calling for steps to be taken are clearly insufficient.

The CSP Working Group on the Fight Against Torture has emphasised at various OSCE venues that "an obligation can only be effective if it is implemented in concrete practical steps" and has called upon the OSCE and participating States to develop actions plans or roadmaps aimed at ensuring the implementation of commitments under Decision No. 7/20.

It is important to note that despite the fact that many of the obligations of Decision No. 7/20 are contained in other international human rights instruments, for many countries, the OSCE's actions in the framework of the human dimension acquire key importance, since it is one of the few international intergovernmental institutions with human rights monitoring mechanisms in place.

This is precisely why we deem it highly important at this moment to reinstate the ODIHR Advisory Panel on the Prevention of Torture, which functioned from 1998 to 2003, and to infuse its work with new substance. The panel would have a vital mandate of monitoring the implementation of the new expanded commitments on torture prevention by OSCE participating States and provide guidance and support to OSCE and participating States in their essential reform efforts.

Decision No. 7/20 comprises six sets of commitments that require further elaboration into specific action plans for both OSCE institutions and participating States:

- Legal and procedural safeguards;
- Domestic law (criminalisation, prohibition to use information obtained through torture);
- Cooperation with international institutions;
- Standards of effective investigation;
- Enforced disappearances and incommunicado detention;
- Integrated and victim-centred approach.

The Advisory Panel on the Prevention of Torture, by bringing together experts, including both theorists and practitioners in each of the mentioned areas, could serve as a key institution in terms of formulating action plans, protocols, and guidance to support compliance with the above sets of commitments outlined in Decision No. 7/20. Of particular importance is the development of action plans and guidance for the new expanded commitments, specifically, those related to enforced disappearances and incommunicado detention, alongside an integrated victim-centred approach.

We see an essential role for this panel of experts in the following areas:

- continuous monitoring and assessment of the situation in the OSCE participating States in terms of compliance with their commitments under Decision No. 7/20;
- formulating recommendations for essential reforms aimed at achieving more comprehensive compliance with these commitments by the States;

¹⁸ paragraph 14 of Decision No. 7/20

- providing expert input to ODIHR, in the form of written comments and peer review on ODIHR legislative reviews and other legal assistance for OSCE participating States;
- keeping abreast of information about important developments and major trends relating to international and national standards and practices on the implementation of Decision No. 7/20, and regularly sharing related information with ODIHR with a view to recommending possible further ODIHR engagement.

The reinstatement of the Advisory Panel on the Prevention of Torture will serve as a demonstration of the OSCE's commitment to compliance with the obligations outlined in Decision No. 7/20 and will also ensure that matters related to torture, ill-treatment, and enforced disappearances remain high on the OSCE agenda.

The mode of operation of the Advisory Panel on the Prevention of Torture could be based on the same principles as that of other thematic panels of experts within the ODIHR. We at the Civic Solidarity Platform are ready to contribute in every possible way to the establishment and operation of this panel of experts.