

Overview of the situation with the prohibition of torture in Kazakhstan, 2019-2020

1. Law

The Criminal Code of Kazakhstan adopted in 2014 contains Article 146 "Torture" defining torture as an intentional official crime. The definition also indicates that this crime pursues a service-related objective. Thus, according to this article, torture is always used for a purpose related to a service objective. The article criminalises both direct and indirect acts where torture is perpetrated with the official's tacit consent, acquiescence, or endorsement. Non-custodial punishments are allowed under this article if torture has caused only minor damage to health, while the maximum punishment is up to 12 years in prison, if torture has resulted in serious injuries or death.

"Deliberate acts by which physical and/or mental suffering is inflicted, when committed by a criminal investigator, inquiry officer, or other public official, or by another person at their instigation or with their knowledge or tacit consent, for such purposes as obtaining information or confession from the victim or another person, or punishing them for an act they or another person have committed or are suspected of having committed, or intimidating or coercing the victim or a third person, or for any purpose based on discrimination of any nature" (Article 146 of the Criminal Code of Kazakhstan).

Kazakhstan's legislation sets barriers against "cancelling" punishment for torture. In Article 68, part 4(1), the Criminal Code prohibits lifting criminal sanctions for reasons such as active repentance or reconciliation of the parties. Torture perpetrators whose guilt has been established cannot be amnestied or pardoned (Article 78, part 3).

However, alongside the above safeguards, Article 146, part 1, permits non-custodial sanctions for torture, in contravention of the Convention against Torture that requires criminal penalties for torture to be commensurate with the gravity of the crime. Addressing the nation on 1 September 2020, President Tokayev said that combating torture was a priority objective for the country. Pursuant to the presidential statement, the Prosecutor General's Office initiated amendments to the Criminal Code, but this process has not yet been completed.

One of the institutional barriers to effective investigation of torture is the fact that the medical service in prisons remains subordinate to the Ministry of Interior rather than the Ministry of Health. On a positive side, the criminal procedure reform implemented in recent years has introduced the position of investigating judge with a mandate of monitoring the quality of investigations. In particular, the investigating judge can order certain investigative actions or expert examinations to be performed if these are requested by the torture victim's attorney but denied by the case investigator; the investigating judge can also accept depositions from victims and witnesses, consider complaints against the investigator's actions, etc.

Applied properly, the institution of investigative judge can serve as an effective instrument for improving the quality of torture investigations and for protecting torture victims' interests.

The investigating judge can also oversee the initiation of a criminal investigation. For example, if a convicted person files a complaint with a district court and the complaint is satisfied, it must be forwarded to a prosecutor for investigation, according to Article 482, part 4, of the Criminal Procedure Code (CPC).

Article 56, part 5, of the CPC stipulates: "If a suspect reports having been subjected to torture or other illegal treatment or has traces of violence on his body, the investigating judge must instruct the supervising prosecutor to check these facts immediately."

Unfortunately, no judicial oversight mechanism is available for investigations initiated through an investigating judge.

A check can be commenced even in the absence of a victim's complaint. The investigation itself is carried out by prosecutors (Article 193, part 1, para 12-1, of the Criminal Procedure Code). Several years ago, the Prosecutor General's Office implemented a pilot project "Towards a Society without Torture" which included the

appointment of special prosecutors¹ to investigate torture cases. But today, with rare exceptions, special prosecutors do not investigate torture cases. The Anti-Corruption Service² conducts pre-trial proceedings in cases against Ministry of Interior employees, while Ministry of Interior officers investigate cases against other public officials.

Article 187, part 4, of the CPC stipulates: "Preliminary investigation of criminal offenses under Article 146 (torture - Ed.) of the Criminal Code of the Republic of Kazakhstan shall be carried out by the internal affairs bodies or by the anti-corruption service having initiated a pre-trial investigation against a person who is not an employee of this body."

There is no stage of instituting criminal proceedings in Kazakhstan, but there is a so-called pre-trial investigation stage. The pre-trial stage begins immediately after a crime report (whether oral or written) is registered in the Unified Register of Pre-trial Investigations. Additionally, the prosecutor's office keeps track of all crime reports, including those concerning torture, in its Information Records Book. All crime reports are entered in the Information Records Book, while the Unified Register contains only those reports which triggered pre-trial investigations. It is worth noting that the criminal procedure law allows not to institute an investigation if a crime report does not contain any signs that a crime has taken place.

Information is entered in the Unified Register by the authority having received the corresponding torture report. The same information is entered in the statistical and supervisory records system maintained by the prosecutor's office.

Kazakhstan's law requires that a reported crime be registered immediately, and an investigation launched promptly after such registration. Later on, the investigation can be handed over to another public authority. So the Unified Register is a shared database which the investigating authorities compile by adding content and the prosecutor's office oversees.

The existence of the Unified Register and the requirement to register torture reports establish guarantees for timely initiation of investigations. Whether or not an investigation will be commenced is thus not entirely at the discretion of the authority tasked with the investigation.

This creates a legal framework capable of supporting effective investigation if properly implemented. Torture reports are entered in the Unified Register irrespective of the investigator's decision. An investigation is launched automatically and overseen by the prosecutor's office and the investigating judge. No conflict of interest is possible since the law does not permit investigation of torture reports by the authority whose officials are suspected perpetrators.

However, the country does not have an independent, autonomous body tasked with torture investigations. For this reason, most experts advise that special prosecutors should have exclusive competence to investigate torture reports. However, this recommendation is difficult to implement, because the number of special prosecutors (2 to 5 persons per each of the country's 17 regions) is insufficient to cover all torture investigations.

2. Statistics

- Torture cases

No data is publicly available on the number of torture reports registered in the Information Records Book maintained by the prosecutor's office, as only data from the Unified Register of Pre-trial Investigations gets published. So it is not possible to estimate what proportion of all reported torture incidents is entered in the Unified Register and gets investigated.

- Conviction and sentencing of law enforcement officers

¹ Regulations on the Service of Special Prosecutors, approved by a Presidential Order in 2019. "The Service consists of 1) Department for Criminal Investigations of special importance, including its representative office in Almaty; 2) Office for Investigations of Official Crimes Committed by Law Enforcement Officers; 3) Office for Supervision and Methodology."

² [The Anti-corruption service](#) consists of operational and investigative subdivisions of the authority mandated to combat corruption and perform other activities aimed to prevent, detect, suppress, disclose, and investigate corruption (Article 1, part 1, para 12-2 of the Law of Kazakhstan on the Law Enforcement Service).

The electronic database of judicial acts ("judicial section") contains seven relevant court verdicts³ (of which one is a decision to send the case back to the prosecutor).

In response to an enquiry from the Kadir-Kasiet NGO, the Supreme Court of Kazakhstan provided the following information:

"According to statistics in the Turelik Information System for 2019, courts considered six cases under Article 146 of the Criminal Code (torture) and convicted 24 persons, of whom 21 were sentenced to deprivation of liberty and two were sentenced to restriction of liberty. One person was convicted but not sentenced due to his death. No acquittals were issued during the specified period."

There have been two cases in the past four years in which appeal courts overturned torture convictions. In one case, the victim complained to the Supreme Court which reinstated the conviction of four police officers.

Another indicator of the torture response mechanism's performance is the statistics showing the ratio between the number of investigations initiated and the number of cases which made it to court. In 2019, a total of 1,475 torture reports were entered in the Unified Register, 239 cases (including those initiated in previous years) were under investigation, 136 cases were sent to court, and 3,286 investigations (including those began in previous years) were terminated.

3. Cases of torture reported in 2019-2020

In 2019 in Pavlodar, 15 persons were sentenced to custodial terms; alongside correctional personnel, they included inmates who abused other inmates at the instigation or with the acquiescence of the prison officials. All convicted persons were charged in a multi-episode case which involved systematic beatings and torture of prisoners at Correctional Colony AP-162/3. There were 29 victims in the case, prisoners who had suffered beatings and ill-treatment at various times. Two prisoners had died from the torture. The convicted officials included K. S. Kaliev, Head of the Penitentiary Department in Pavlodar Region.

The following is a description of just one episode of torture:

Convicted inmate B. Abdykarimov was brought to the prison's medical unit by M. Akhmetov, officer on duty, assistant to the head of the colony. Abdykarimov refused hospitalisation due to a conflict with another inmate. Abdykarimov took a pair of scissors and put them to his neck, then to his stomach, thereby expressing his refusal to stay in the medical unit. The inmate was then taken to the office of S. Kaliev, deputy head of AP-162/3, where another inmate acting as "assistant" to the prison administration first verbally abused and humiliated Abdykarimov and then, upon Kaliev's instructions, together with two other "activist" inmates, led Abdykarimov to the drying room and beat him there. The beatings were repeated over time, causing Abdykarimov to use a stool to break a window in the medical unit's ward and stab himself in the neck with a glass fragment. Abdykarimov died of the injury on his way to hospital.

It is worth noting that the NGO Coalition against Torture had hired several lawyers at the complaint stage, but their efforts to defend the inmates at that stage had been unsuccessful.

Mitigation of punishment for torture

While amicable settlement is prohibited in torture cases, the current law allows plea bargains (procedural agreements with the prosecutor). A plea bargain usually leads to mitigated punishment, often resulting in a non-custodial alternative to incarceration. According to human rights defenders, plea bargaining is not uncommon in torture cases.

Murat Ryzhanov, former head of the operational department of Correctional Colony AK-159/6 in Dolinka, Karaganda Region, was convicted for torture in late February 2020 and sentenced to two and a half years of restriction of liberty. He pleaded guilty and entered into a plea bargain. The court considered mitigated circumstances such as the defendant being a parent of underaged children and having no prior criminal record. The penalty also included 100 hours of compulsory labour annually and demotion from the Major of Justice rank. The court also banned Ryzhanov

³ It is known from mass media reports that five guilty verdicts have been handed down against police officers and penitentiary personnel in the cities of Taraz, Kapshagai, Pavlodar, Aktobe, and Shakhtinsk.

from holding positions in the law enforcement for three years. For security reasons, 14 prisoners were transferred from that colony to another facility.⁴⁵

Lack of proper investigation

Despite the legislative changes and the introduction of new instruments for monitoring the quality of torture investigations, the challenge of improving their effectiveness remains. Torture investigations sometimes end in failure even in cases of death in custody.

One such case is that of the civic activist Dulat Agadil who died overnight in a pre-trial facility. He was apprehended in his own home and delivered to the Nur-Sultan pre-trial detention centre on 25 February 2020. According to reports, a court had changed his preventive measure from a written pledge not to leave to pre-trial detention. He died in custody seven hours later. The prosecutor's office dropped the investigation. A public outcry forced the authorities to hold a press conference involving experts who confirmed that no traces of violent death had been found on the detainee's body. However, the quality of this investigation was not adequate to remove reasonable doubt as to the causes of the activist's death.

Where a large number of people are killed in a violent incident, the law enforcement authorities are under pressure to solve the crime promptly, often causing them to put human rights on the back burner. This is a widespread and longstanding challenge for the law enforcement.

A village of Dungan people – a Chinese-speaking minority, descendants of the Chinese Islamic Huizu ethnicity – in Kordai District of Kazakhstan's Zhambyl Region was rioted by a mob, with 11 people killed in the mass brawl. According to complaints from the Dungans, law enforcement agents tortured some of them during the investigation in February, forcing confessions of crimes which the Dungans did not commit. According to reports from the victims, torturers put plastic bags on their heads, choked them and beat them with batons. Interrogations involving torture were conducted in the presence of five to eight investigators. On 29 April 2020, the NGO Coalition Against Torture requested the Prosecutor General to investigate the torture reports.⁶

Victim access to the investigation

Torture survivors are often denied access to information about the progress of the investigation and any procedural decisions taken. Even where such information is provided, it is often incomplete.

In August 2020, human rights defenders, once again, demanded that the authorities implement the UN Human Rights Committee's ruling in the case of Zhaslan Suleimenov, but were unable to access the required information.

Zhaslan Suleimenov, a person with disabilities and a wheelchair user, had served 8 years in prison on a terrorism conviction; the UN Human Rights Committee ruled in his favour (no. 2146/2012 of 2017) on his communication alleging torture and inhuman treatment. But domestic courts denied compensation and discontinued the investigation into Suleimenov's reports of torture.

In particular, the response from the Prosecutor General's Office (no. 2-16-20-06349 of 22 April 2020) to Suleimenov's complaint alleging torture does not provide any relevant information for drawing up a reasoned appeal.

Here is what the prosecutorial response says: *"According to Article 102 of the Criminal Procedure Code, complaints against a decision to terminate a criminal case at the pre-trial stage can be filed within one year of the decision or its approval by the prosecutor. In this case, more than three years have passed since the date of the procedural decision. No deficiencies were found in how your previous complaint (dated 22 December 2017) was handled."*

⁴ <https://kokshetau.asia/proisshestviya-mobile/45533-nachalnik-operativnogo-otdela-kolonii-ak-159-6-v-dolinke-karagandinskoj-oblasti-arestovan>, 14.09.2019.

⁵ <https://newtimes.kz/proisshestviya/107722-sotrudnik-kolonii-izbival-osuzhdennykh-i-ugrozhal-im-nasiliem-v-karagandinskoj-oblasti>, 31.03.2020.

⁶ <https://mediazona.ca/news/2020/06/03/pytki-kordai>, 03.06.2020.

Moreover, the investigating authorities often hinder access to case files.

Suleimenov's attorney R. Nurmasheva asked the prosecutor's office of Atyrau to grant her access to the case file but was denied. She complained to an investigating judge who ordered the prosecutor's office on 23 October 2020 to act as required by law. It was only after the investigating judge's intervention that access was granted.

Cases of death in places of deprivation of liberty (IVS, SIZO, prisons, colonies, police departments)

The administrations of places of custody often fail to prevent both violent deaths and those caused by a lack of timely medical assistance or complete disregard of detainee health needs.

Thus, Ruslan Shakhgireev, aged 29 and father of three, died on 20 April 2019 in Correctional Colony OV-156/15 in Semey. Shakhgireev suffered multiple chronic conditions but was seen by a medical professional only after losing the use of his legs.⁷ According to Elena Semyonova, Chair of the Public Monitoring Commission for Pavlodar Region, while the prison authorities alleged that Shakhgireev had died of natural causes due to serious illness, in fact they had caused his death by failing to provide the medical assistance he needed.

Investigations into the deaths – violent or otherwise – of persons in custody often fail to raise the issue of liability of the facility's administration. In February 2020, Mr Merekenov, while serving his sentence in Correctional Colony AK 159/5 in Karaganda Region, died from a severe beating and subsequent lack of urgent medical assistance.

The brawl was caused by a conflict over tea mugs which arose in the colony's dining hall. Two other inmates assaulted Merekenov, hitting him mainly on the head and neck. The colony administration ignored Merkenov's request for medical assistance; instead, despite his injuries, he was taken to the operational department and questioned about the circumstances of his beating. The inmate died two hours later from respiratory tract edema causing oxygen deficiency. A court in Karaganda Region sentenced the two inmates to custodial terms under Article 106, part 3, of the Criminal Code for "inflicting grievous bodily harm," but failed to address the liability of the colony personnel who had failed to call a doctor to attend to the injured man; the judge also failed to adopt a separate ruling in respect of the colony administration.⁸

In 2019, Andrei Kondratenko was found hanged in maximum-security Correctional Colony OV-156/2 DUIS, East Kazakhstan Region. The deceased man's family refuse to believe the finding of the investigation that it was suicide. According to the deceased man's sister, he was first drowned and then hanged.⁹ It is noteworthy that the administrations of penal facilities often refer to inmate suicides as an argument supposedly relieving them of liability.

But if anything, suicides in closed facilities raise questions as to the prison authorities' ability to ensure effective security and protect the right to life.

Similar cases of uninvestigated detainee deaths were reported in SIZOs in Pavlodar Region¹⁰ and the cities of Nur-Sultan and Karaganda,¹¹ in correctional colonies in Zhambyl Region,¹² in an IVS in Almaty,¹³ in a police department in Makanch, Urdzhar Region,¹⁴ and in other facilities.

Right to file a complaint about torture

⁷ <https://rus.azattyq.org/a/kazakhstan-semey-smert-zaklyuchennogo/29913814.html>, 03.05.2019.

⁸ <https://litr.kz/osuzhdennyye-do-smerti-izbili-zaklyuchennogo-v-karagandinskoj-oblasti/>, 04.02.2020.

⁹ <https://factum.kz/2019/89263/>, 20.06.2019.

¹⁰ <https://tengrinews.kz/events/zagadochnuyu-smert-v-sizo-rassleduyut-v-pavlodare-380188/>, 27.09.2019.

¹¹ <https://www.zakon.kz/4998045-arestovannogo-nashli-mertvym-v.html>, 07.12.2019.

¹² <https://www.ktk.kz/ru/newsfeed/article/2019/08/21/128157/>, 21.08.2019.

¹³ <http://www.matritca.kz/news/72363-ordayday-atyysa-atsyan-azamat-almatyday-amau-izolyatorynda-aytys-boldy.html>, 29.04.2020.

¹⁴ <https://www.zakon.kz/5044633-smert-zaderzhannogo-v-otdelenii-uvoleny.html>, 20.10.2020.

According to human rights defenders, they do not receive complaints from prisoners in the mail. Instead, they learn about such complaints – which are in fact numerous – indirectly from the Public Monitoring Commissions, from the National Prevention Mechanism, and from prisoners' families and lawyers. The tendency for complaints to come through via indirect channels makes it obvious that written complaints never leave the correctional colonies and pre-trial detention centres. The most common method for cases of torture to become public have been video reports from the facilities made by Elena Semyonova, a member of the Public Monitoring Commission in Pavlodar Region and Head of the NGO "We Are Against Torture".

Since March 2020, a total of 13 lawsuits have been filed against Semyonova by prisons and detention facilities in Kazakhstan for her reporting of torture. In most of the cases, courts found for the plaintiffs.

In previous years, a detainee or prisoner could face criminal libel ("knowingly false denunciation") charges for reporting torture. No such incidents have been reported in the last year.

4. Rehabilitation and compensation

No rehabilitation programs for torture survivors are either envisioned or provided in practice.

Kazakhstan's authorities have not implemented the Human Rights Committee's and the Committee against Torture's observations in respect of Kazakhstan (16 of the 38 effective decisions as of late 2020 finding violations of rights and freedoms specifically mention torture). Compensation was paid only in the first two cases.

According to Kazakhstan's legislation, each criminal sentence includes a mandatory contribution "to the Victim Compensation Fund in the amount of 20 MCI, or 48,100 tenge, to be paid by each convicted individual." The existence of this fund, however, does not guarantee that compensations awarded by domestic courts are proportionate to the severity of human rights violations.

In practice, one's entitlement to compensation depends on whether the guilt of specific public officials has been proven. Although the Criminal Procedure Code makes it possible to consider a civil claim for compensation alongside criminal charges of torture within the same criminal proceedings, this rarely happens in practice, and claimants are usually told to seek compensation in civil proceedings. This is often written in the verdict: "The compensation claims made by the victims A.E. Suliev, T.E. Nepeskulyeva, Widergold, and M.G. Shakirova are left without consideration, while recognizing the said persons' right to make a claim in civil proceedings." The same wording can be found in the verdict issued by Stepnogorsk City Court in Akmola Region against D. Abetov, Head of IVS, in the case of Dmitry Rakishev's death in 2012.

To restore one's rights, a person needs to go through two stages: criminal proceedings first and, once completed, civil proceedings. This process is often too cumbersome and exhausting for a torture survivor.

According to official information posted on the website of the Committee on Legal Statistics and Special Accounts of the Prosecutor General's Office, no compensations were awarded to victims of torture in 2019–2020.

It is known, however, that on 18 March 2020, Dmitry Rakishev's sister was awarded 1 million tenge (US\$ 2,500) by Esilsky District Court in Nur-Sultan. Nothing is said in the district court's ruling about the decision of the Committee against Torture in Rakishev's case, but the award is based on the domestic court's 2012 verdict by which the torture perpetrators were convicted for "negligence."

Compensations for non-pecuniary damage were also awarded in the case of mass beatings and torture in the Pavlodar colony. Each convicted offender had to pay 500,000 tenge awarded to the victims, each of whom received 1,500,000 tenge (about 3,000 Euro).

5. Key Issues

Just four cases were instituted in 2019 under the article criminalising torture. In many other cases, the perpetrators were charged under other articles of the Criminal Code. Therefore, the actual number of investigated torture cases remains unknown, and the perpetrators of torture are not held fully responsible for their actions.

The case of Dmitry Rakishev offers a striking example. He died in the IVS of Stepnogorsk Police Department ten days after his arrest. Rakishev had shown up at the police department voluntarily, as part of his supervision obligations under parole, but was detained on suspicion of theft. The day before his death, the police took Rakishev to a hospital to be seen by doctors, but they were not allowed to properly document all his injuries. The doctors insisted that Rakishev must be hospitalised, but the police did not allow this. Subsequently, the head of the police department was convicted of "negligence" but immediately amnestied and released in the courtroom. No one was adequately punished for Rakishev's death. The UN Committee against Torture considered Rakishev's case and found torture, according to its Decision no. 661/2015 adopted in 2017. The Committee's decision did not prompt the Kazakh authorities to initiate an investigation and bring to justice both the responsible police officers and the medical doctors who failed to provide the required medical assistance and insist on hospitalisation.

The quality of investigations remains unsatisfactory, although the country has instruments in place to make investigations more effective. The key problems with investigation persist: from promptness and thoroughness of evidence collection to appointment and execution of forensic examinations to evidence assessment.

Timeliness and quality of forensic examinations are critical to effective torture investigation. However, the available statistics reveal that in Akmola Region alone, no examinations were appointed in any of the 100 terminated investigations into torture reports.

The Istanbul Protocol is partially implemented in national legislation. While the State is trying to show progress with the Istanbul Protocol implementation, and pursuant guidelines for forensic examinations have been adopted and approved by the Academic Council of the Ministry of Justice, these guidelines have not been integrated into practice.

In particular, no standard forms have been adopted to be used by medical professionals to document evidence of torture, nor any protocols for mandatory medical examination of any person reporting torture. Furthermore, the Istanbul Protocol requires psychologists to be involved in the documentation and collection of evidence. In Kazakhstan, this standard of investigation is not observed. One of the obstacles is that the country has only about 15 trained (but not always sufficiently qualified) psychologists, but they are not always allowed to conduct expert examination or assessment of torture victims. This problem has been mentioned even by officials conducting pre-trial checks.

Moreover, psychologists do not have the status of experts. The Ministry of Justice register of experts does not include psychologists, so they can only be involved in torture investigations in the status of specialists – but even these cases are extremely rare.

In addition to identifying and collecting evidence, a psychologist enables the torture survivor to participate in the investigation. Today, in the absence of psychological support for victims, most torture investigations are terminated because victims wait too long to report torture or suffer from secondary victimisation and refuse to pursue the case.

But the main problem making torture investigations ineffective, according to national experts,

is the absence of an independent investigating body. This prevents the emergence of professional standards of torture investigation or a community of practice including highly qualified investigators, prosecutors, and judges.

No officials have been prosecuted for inciting prisoners to violence against a cellmate, nor any officials who had been aware of torture but failed to report or interfere, or even tacitly approved of it. The only case was that of the Pavlodar colony where the prison administration was held liable and punished. It is also worth noting that the medical workers employed by the Ministry of Interior's Penitentiary System are normally aware of all cases of ill-treatment or illegal punishment, but they are never held accountable for non-interference, being subordinate to the prison administration.