

2022 Index on Torture

Kazakhstan

The following were the most serious human rights concerns in 2022, according to human rights defenders:

- illegal or arbitrary killings by or on behalf of the State;
- acts of torture by or on behalf of the State;
- arbitrary arrests and detentions;
- politically motivated persecution and an increase in the number of political prisoners;
- challenges to the independence of the judiciary;
- harassment of family members of alleged offenders;
- serious restrictions on the freedom of speech and freedom of the press, including violence or threats of violence against journalists;
- restrictions of internet access;
- significant interference with the right to freedom of peaceful assembly and association;
- serious and unjustified restrictions on political participation;
- serious corruption in the government; and
- significant restrictions on the freedom of association for workers.

The situation regarding the enforcement of the prohibition of torture has worsened. During and after the events of January 2022, when mass peaceful protests were suppressed with excessive and lethal force and escalated into riots, the issue of torture took on a new dimension.

At the time of preparation of this review, the exact number of persons subjected to torture and ill-treatment in the context of the January 2022 events remains unknown. Based on their monitoring, human rights groups believe that the majority of individuals who were arrested by police or other State agents during the crackdown on the protests and riots were subjected to ill-treatment, and hundreds were subjected to torture. As of December 2022, the Kazakhstani NGO Coalition against Torture had registered 190 complaints alleging torture and other ill-treatment related to the post-January arrests and detention that occurred throughout the country; of these complaints, 178 were filed by men, 12 by women, and 13 by minors. However, there are reasons to believe that the actual numbers are much higher. The Coalition [submitted](#) 56 cases to the UN Special Rapporteur on Torture. The authorities [presented their response](#) to the Special Rapporteur on 18 March 2022, and the discussion of cases outlined in their response has been ongoing at the time of preparation of this report.¹

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

- implementation of a systemic approach to investigating torture-related crimes; the responsibility of investigating such cases is assigned to the Prosecutor General's Office (President K.-J. Tokayev, Message to the People of Kazakhstan);

¹ The Government's response indicates that according to their data, 256 criminal cases into torture and abuse of power were registered as of March 2022, and 9 officials (including 8 employees of the National Security Service and one policeman) were taken into custody. The authorities also claimed that all victims of torture were provided with high-quality legal and medical assistance. However, victims in criminal proceedings into torture cases do not have access to free guaranteed legal aid from the State. Furthermore, a significant number of torture victims are foreign nationals who are not covered by provisions for legal aid or by any other form of free-of-charge assistance.

- granting constitutional status to the Commissioner for Human Rights (Ombudsman) in the Republic of Kazakhstan, thereby strengthening the NPM (a regulatory policy advisory document to the draft Constitutional Law of the Republic of Kazakhstan "On the Commissioner for Human Rights in the Republic of Kazakhstan" (MoJ RK));

- further measures to improve national legislation regarding the limits and grounds for the use of physical force and riot control devices; development of proposals on the methodology to be used in investigating cases of torture in accordance with the Istanbul Protocol; development of proposals on alternative means of filing complaints to prevent detention facility staff from restricting access to the complaint procedure and to ensure complete confidentiality of complaints; involvement of civilian specialists in delivering human rights education in educational establishments run by the law enforcement agencies (Decree of the President of the Republic of Kazakhstan "On amendments and additions to the Decree of the President of the Republic of Kazakhstan of 9 June 2021 No. 597 'On further measures to be taken by the Republic of Kazakhstan in the field of human rights'").

- Abolition of the death penalty (the Law of 29 December 2021 "On amendments and additions to certain legislative acts of the Republic of Kazakhstan concerning abolition of the death penalty").

- Since 1 January 2023, pursuant to amendments to Article 193, p. 12-1, of the CPC, the function of investigating torture cases has been assigned to the exclusive competence of Special Prosecutors. At the time of submitting this review, the Senate of the Republic of Kazakhstan has approved and forwarded for signature to the President a draft law titled "On amendments and additions to some legislative acts of the Republic of Kazakhstan on improving the law enforcement and on further humanisation of criminal legislation" that includes amendments to the Criminal Code article that prohibits torture. The proposed amendments will explicitly prohibit cruel, inhuman, and degrading treatment, which, according to the drafters, will enable the prosecution of "persons acting in an official capacity" for causing pain or suffering in various settings such as educational, medical, and social institutions and organisations. According to the available version of the draft law, the term "person acting in an official capacity" will encompass employees of these institutions who hold authority and/or administrative powers over individuals who are detained, undergoing treatment, studying, or being raised there on a permanent, temporary, or periodic basis.

- On 9 March 2023, the Senate of the Parliament approved amendments to Article 146 "Torture" of the Criminal Code, whereby "physical and mental suffering caused as a result of lawful actions of persons acting in an official capacity or other persons" will not be classified as torture. This means that the legal definition of torture in Kazakhstan is not consistent with that of the Convention, because it excludes a significant number of persons. The problem lies in the reservation made in Article 146 of the Criminal Code, according to which "physical and mental suffering caused as a result of lawful actions of persons acting in an official capacity or other persons" will not be recognized as torture. The CPT noted in its Concluding Observations (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FKAZ%2FCO%2F4&Lang=ru) that such reservations should not apply to (a) "lawful actions." According to the Committee, the reservation should concern "lawful sanctions" rather than "lawful actions". However, Article 146 of the Criminal Code also extends the reservation not only to officials but to "persons acting in an official capacity". National human rights groups are concerned that such a broad definition may exempt of a wide range of individuals from accountability for a wide range of actions.

- Investigative jurisdiction: according to Article 146 of the Criminal Code, cases of ill-treatment under Part 1 which are considered of minor gravity will be investigated through inquiries by internal affairs bodies. Cases of torture under Part 2 of Article 146 lie within the exclusive jurisdiction of the

Prosecutor's Office. Offences involving aggravating circumstances as outlined in Parts 3 and 4 of Article 146, unless classified as torture, will be investigated by the internal affairs bodies. This is required by Article 187 of the Criminal Procedure Code:

Investigative jurisdiction

2. In cases of criminal offenses provided for in Articles ..., 146 (parts three and four in cases of cruel, inhuman or degrading treatment which does not involve torture) of the Criminal Code of the Republic of Kazakhstan, preliminary investigation is carried out by investigators of the internal affairs bodies.

On one hand, the reformed provisions make a distinction between acts of torture and ill-treatment and address the previous gap in the law where ill-treatment was not criminalized. However, on the other hand, cases of cruel, inhuman, and degrading treatment or punishment in Kazakhstan will be investigated by the police who are often involved in using such illegal treatment themselves.

The key challenges in ensuring the prohibition of torture in practice

For the first time in the Republic of Kazakhstan, an unprecedented number of cases of torture and cruelty has been reported.

In his speech about the January events, Berik Asylov, the Prosecutor General of the Republic of Kazakhstan, reported that 329 criminal cases of torture had been initiated, of which 34 cases against law enforcement and other uniformed forces were under the jurisdiction of special prosecutors. On the same day, the head of the Anti-Corruption Agency Olzhas Bektenov mentioned another figure, stating that his Agency had investigated 432 cases initiated into complaints against unlawful actions by law enforcement officers in the context of the January events. Bektenov also said that 347 cases had been terminated due to alleged absence of *corpus delicti*. He argued that allegations of torture were, "in most cases, filed in order to avoid criminal liability for [alleged victims'] own illegal actions." However, the Coalition registered 190 reports of torture during the January events alone, and we are confident that these figures do not reflect the actual situation.

- **Prompt registration of torture reports**

Contrary to the CPC requirement to promptly register all reports of criminal offences, including torture, numerous incidents that meet the criteria for the crime of torture (Article 146 of the Criminal Code), which are reported in mass media, shared through social networks or through direct oral or written statements, are initially recorded in the Book of Information Records (KUI) without being registered in the Unified Register of Pretrial Investigations (ERDR). As a result, the actual investigation of such incidents gets postponed and effectively replaced by pre-investigative verification, although the latter was repealed in 2014 with the enactment of the current Criminal Procedure Code.

- **Delayed start and lack of progress in torture investigations**

The current procedure for responding to reports of torture significantly delays the initiation of investigations. Under the CPC's alternative jurisdiction provisions, the local Departments of the Anti-Corruption Agency (Anti-Corruption Service) have been investigating torture cases, and in some instances, such investigators have been carried out by Special Prosecutors of the Prosecutor General's Office within the framework of the Interdepartmental Investigative Task Force (MSOG).

However, in most cases, torture complaints are first handled by the police – more specifically, by the local police departments' Internal Security Divisions (ISD) that can either forward the complaint to the

ERDR to be registered and investigated by the relevant Department of the Anti-Corruption Agency according to the CPC-prescribed jurisdiction – or conduct their own internal inquiry into the reported incident and stop at that. The decision depends on whether or not the police find the incident to contain signs of a criminal offence, in this case torture. Thus, whether or not a torture complaint gets registered in the ERDR often remains at the discretion of the internal affairs bodies (the ISDs of police departments), even where the reported perpetrators are police officers themselves.

The Coalition monitored a torture investigation in **Kostanay**, where the same police force was investigating both the case against the victim who was charged in connection with the January protests and this victim's complaint of torture at the hands of police officers. The alleged torture was investigated by the ISD of this police department.

- **Discontinuation of criminal proceedings into incidents of torture**

Based on the Coalition's monitoring findings, even where complaints were accepted and registered by the anti-corruption service, many of them were initially forwarded for verification to the Internal Security Divisions of local police departments. These ISDs typically found no indications of the use of torture, resulting in the cases being dismissed before they could even be opened. Referring a victim's statement to the police for verification is made possible by the following CPC provision: "*In the absence of sufficient evidence of a criminal offence, statements and reports which require review and verification by the authorised bodies to establish the signs of a criminal offence shall be referred, within three days, without registering them in the Unified Register of Pretrial Investigation, for review by the relevant authorised body*" (Article 181, Part 5, of the Criminal Procedure Code). On 7 November 2022, the Commissioner for Human Rights reported that "approximately 80% of cases involving allegations of illegal investigation methods are terminated before they can proceed to court."²

As of the end of December 2022, investigations into 104 out of 190 complaints of torture registered by the Coalition in connection with the January events and forwarded to the authorities were terminated, citing reasons such as insufficient evidence of a crime or the absence of plausible theories. Based on the monitoring findings reported by the Kazakhstan International Bureau for Human Rights and Rule of Law and the Coalition, investigations which were terminated included: 33 (out of 33) cases in Taraz; 31 (out of 46) in Almaty; 11 (out of 11) in Kyzylorda (where the suspects accepted plea bargains); six cases each in Shymkent, Ekibastuz and Uralsk; five cases in Aktobe; three cases in Kostanay; and one case each in Ust-Kamenogorsk, Semey, and Karaganda.

- **Failure to ensure safety of 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 the victims nor their lawyers have requested 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 after they had 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 a 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

² <https://www.currenttime.tv/a/vashi-pokazaniya-goloslovyne-nichem-ne-dokazyvayutsya-v-kazahstane-zakryty-80-del-o-pytkah-silovikami-uchastnikov-yanvarskih-sobytiy-/32115778.html>

investigation. This situation causes the victim to re-experience the trauma every time he must face the investigator during the proceedings. Moreover, the victim is still held in a pretrial detention facility, which, as we recall, are supervised in Kazakhstan by the Ministry of Internal Affairs. In Taldykorgan, officers of the Anti-Corruption Service were telling victims that safety measures would involve placing them together 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 the proposed safety measure.

Moreover, the State failed to take measures to detain the suspects of torture, allowing them to be present in the courtroom, sitting on the same bench as the victims of torture and their relatives.

- **Failure to conduct forensic examinations**

In a number of cases, the authorities failed to conduct an official forensic medical examination (FME) or failed to conduct it promptly or properly. The Coalition is not aware of any forensic psychological and psychiatric examinations (FPPE) having been conducted. It should be noted that Kazakhstan has not yet developed a system for documenting the use of psychological torture, and forensic medical experts tend to focus more on documenting bodily injuries. Unfortunately, assessments for the presence or absence of post-traumatic syndrome in connection with psychological torture are rare.

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, Alexey Kolmagorov, aged 22, and others.

On January 11, the day following his arrest, Kichkin, a Russian national, 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.

Alexey Kolmagorov was arrested on January 7th near Republic Square in Ust-Kamenogorsk, and his phone and personal belongings were immediately confiscated. Kolmagorov was escorted to the Dynamo sports complex in Ust-Kamenogorsk, without being informed of any reasons for his arrest. Kolmagorov was illegally held there for 90 minutes, while the police were continuously beating him. As a result of the beating, Kolmagorov lost three front teeth and sustained an extensive hematoma to his head. He lost consciousness several times and was sick during the ordeal. Then the victim was taken to the Ust-Kamenogorsk Police Department, then to the city IVS, and later to SIZO, where he was detained on charges of rioting under article 272, Part 2, of the Criminal Code. Later, Kolmagorov's custody was replaced by house arrest and a written undertaking not to leave the city.

- **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. It should be noted that there have been numerous complaints about the inadequate performance of state-appointed lawyers in criminal proceedings, who often fail to effectively represent their clients and address their complaints of torture. According to reports from several cities, such as Almaty, Shymkent, Kyzylorda, and others, lawyers by appointment often fail to provide qualified professional assistance.

Victims and their relatives have often been unable to file an official complaint regarding a lawyer's inaction or poor performance, as the lawyers failed to properly identify themselves during the investigative proceedings.

- **Problems faced by certain categories of individuals, foreigners, and minors.**

The authorities interpreted the statement made by the Head of State regarding "international terrorist gangs" as a call to take action, resulting in increased scrutiny of foreign nationals residing in Kazakhstan. According to cases documented by the Coalition, some foreigners, including Kyrgyz nationals Ruzakhunov and Sydykov, and others, were detained and tortured.

When arresting nationals of neighbouring countries, the authorities demonstrated a biased and discriminatory attitude.

Cases involving juvenile suspects have been and continue to be investigated without the involvement of juvenile inspectors, psychologists and pedagogues, in violation of the juvenile justice principles. Some lawyers appointed by the investigators as part of the guaranteed (free) legal aid in cases involving minors have disregarded their clients' complaints of torture, health concerns, and 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.

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

- **Criminal cases for "spreading fakes"**

In the context of massive reports of torture, 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 suspects." These criminal cases can potentially create a chilling effect for other victims of torture who may perceive them as a warning or threat designed to discourage them from coming forward and filing complaints. One such case was brought to court in mid-April.

For over fifteen years, the Coalition has been raising concerns regarding significant systemic issues; in particular, in 2004, the Coalition argued that the penitentiary system, including SIZO and IVS, must be independent from the Ministry of Internal Affairs. Had the government implemented the recommendations put forth by both domestic human rights defenders and the UN treaty bodies, the occurrence of torture during the January 2022 protests may have been less massive.

Zero tolerance for crime starts with zero tolerance for official crime. The prohibition of torture has the highest degree of protection; it is absolute and not subject to derogation. Since 2008, Kazakhstan has declared a policy of zero tolerance for torture and ill-treatment at the highest level. Today, it is crucial to deliver this message to every law enforcement officer, prosecutorial worker, and employee of closed facilities across all sectors, including those under the supervision of the Ministry of Health, Ministry of Labour, Ministry of Defence, and the Committee of National Security.

Human rights defenders and the wider society express deep regret over the country's lack of substantial progress in improving its law enforcement practices, a matter that has become especially

apparent following the widespread use of torture in January 2022 and the State's failure to investigate the majority of reported torture cases.

Although the State has implemented significant measures to enhance the investigation of torture, such as the establishment of the Special Prosecutorial Service within the Prosecutor General's Office to handle torture-related reports, the Coalition remains concerned that the majority of torture investigations are still carried out by officials who are effectively dependent on the alleged perpetrators.