

2022 Index on Torture

Kyrgyzstan

Kyrgyzstan has made a commitment to combat torture and ill-treatment. The Kyrgyz Republic has initiated reforms of its criminal and criminal procedural legislation; however, the measures undertaken have proven ineffective in practice. As in previous years, the lack of independent and effective mechanisms of State response to the facts of torture and ill-treatment – from the procedures for receiving torture complaints to conducting impartial and thorough investigations into such complaints and bringing the perpetrators to justice – remains a significant concern raised by human rights defenders, lawyers, and experts. The problem of impunity for perpetrators of torture persists without a satisfactory resolution.

Despite the Kyrgyz Republic's 20 years of participation in the UN Convention against Torture, the definition of torture in the Criminal Code does not align with Article 1 of the Convention and the practice of torture continues to persist.

Key issues

The use of torture and ill-treatment:

Torture and ill-treatment typically occur during the first hours following arrest, as well as throughout the investigation and court proceedings. According to Kyrgyzstan's National Centre for Preventing Torture, 7,267 people were held in temporary detention facilities (IVS) supervised by the Ministry of Interior in 2021 and 7,841 in 2022, while the pre-trial detention facilities (SIZO) supervised by the Penitentiary Service of the Ministry of Justice held 1,711 people in 2021 and 1,545 in 2022.

A survey of all detention facilities (both IVS and SIZO) conducted by Article 9 and the National Centre for Preventing Torture at the end of 2022 confirmed the magnitude of the problem. In particular, 20.6% of respondents reported having been subjected to torture and ill-treatment, **i. e. one in five detainees reported torture**. The survey findings also indicate that in the majority of cases, torture is perpetrated by police officers with the intention of coercing confessions (81.6%). The reported methods of torture include a range of actions, such as physical assault through hitting and kicking, suffocation using a cellophane bag, infliction of electric shocks, psychological coercion, dousing with cold water, and rape using a police baton.

Formal complaints of torture

Each year, between 150 to 200 people file formal complaints with the Prosecutor's Office and the State Committee for National Security (SCNS), alleging torture, but only a limited number of cases result in investigations. In 2022, a total of 178 complaints alleging torture and other cruel, inhuman or degrading treatment and punishment were registered in the Automatic System of the Unified Register of Crimes and Misdemeanours (Unified Register); of them, in 149 cases a pre-investigation verification resulted in a refusal to initiate criminal proceedings; in 10 cases, a pre-investigation verification is ongoing, and criminal proceedings were initiated into 19 complaints. As a result of the criminal investigations, 3 cases were dropped, 3 suspended, 1 was joined with another criminal case, 10 were sent to courts for consideration on the merits, and investigation is ongoing in the remaining 2 cases.

The National Centre for Preventing Torture receives between 40 and 130 reports alleging torture each year. In 2022, they received 82 such reports.

In 90% of cases, the authorities have refused to initiate criminal proceedings, despite extensive evidence, such as photographs documenting visible signs of torture, comprehensive medical reports prepared in accordance with the guidelines outlined in the Istanbul Protocol, and testimonies from witnesses.

Complaints alleging torture are typically filed by persons under investigation and in custody. At nearly every stage of the complaint process, obstacles arise which impede the progression of torture complaints towards court proceedings. Moreover, criminal investigators are legally exempt from liability for incomplete verification of a complaint. Another significant issue is the prolonged consideration of torture complaints, resulting in the appointment of forensic medical examinations long

after the visible traces of injuries have vanished, leading to termination of cases. The "verification – refusal to prosecute – cancellation of the refusal – new verification" cycle can continue for a long time, causing the loss of essential evidence.

Independence of the investigation

Verification and investigation into complaints of torture are conducted by the same authority that oversees the main proceedings and brings charges against the alleged torture victim. This conflict of interest undermines the possibility of genuine adversarial proceedings between the parties involved.

The Criminal Procedure Code does not establish a specific time limit for the extension of court proceedings. In practice, courts often prolong the judicial investigation for various reasons, leading to excessively lengthy trials. The court's decision to extend the judicial investigation is not subject to appeal.

In addition to refusals to investigate torture allegations, the situation is further complicated by the fact that the majority of cases result in either acquittal or exemption from criminal liability for the perpetrators.

According to the Supreme Court of the Kyrgyz Republic, between 2016 and 2022, courts only considered two criminal cases against seven officials, all of whom were subsequently acquitted.

The low effectiveness of the State's torture response mechanism can be attributed to the absence of an independent body specifically designated to investigate torture cases, the inadequacy of legal remedies, and the lack of autonomy in the investigation process. The latter is reflected in biases and preconceptions among investigators. For instance, if torture is committed against suspects accused of terrorism or extremism, it can have an impact on the attitude of law enforcement officers investigating the alleged torture.

The new Criminal Procedure Code, which came into effect on 1 December 2021 introduced the concept of pre-investigative verification as a new stage in the pre-trial proceedings. This new stage encompasses the period between the registration of a report of torture and the decision of whether to initiate – or refuse to initiate – a criminal case. Before 2021, any report alleging a crime was automatically registered, and it was considered that a criminal case had been initiated.

The timeframe of ten days has been allocated for the pre-investigative verification stage, and in exceptional cases, this period can be extended up to 30 days. It is important to note that the investigation is conducted only after the initiation of a criminal case, except in cases where urgent investigative actions are necessary (Article 161 of the KR Criminal Procedure Code).

Since the introduction of this new provision, a significant number of reports alleging torture have not progressed beyond the stage of pre-investigative verification, as the authorities often refuse to initiate criminal proceedings, primarily citing the findings from a forensic medical examination (FME). The majority of initial FME findings tend to be unfounded, since they often assert that the injuries do not correspond to the actual circumstances in which the alleged torture took place, without providing any justification for this opinion.

While the initial FME is carried out, the deadline for the pre-investigative verification can expire, and the authorities refuse to initiate criminal proceedings, citing the FME opinion. Additional examinations or those conducted by a board of experts, which are permitted under the criminal procedural law, are not usually appointed. They can only be appointed by the investigator within the framework of an initiated criminal case.

Most torture victims are themselves suspects in criminal proceedings. In practice, the investigation of cases against the torture victims is often carried out by the same law enforcement officials who are allegedly involved in perpetrating the torture. These officials can easily manipulate the investigation to emphasize aggravating circumstances, resulting in tougher charges against the victim. This concern causes the victims who are deprived of proper procedural safeguards to withdraw their complaints against these officials.