

2022 Index on Torture

Russia

Early in 2022, a bill to criminalize torture was introduced, marking a certain progress in the country's declared move towards incorporating the international standards on torture. However, as 2022 came to a close, this forward-looking step was overshadowed by a continuous stream of reports concerning the torture of individuals apprehended during anti-war rallies, the country's withdrawal from the Council of Europe and departure from the jurisdiction of the European Court of Human Rights, enforced disappearances of Ukrainians in territories controlled by Russian forces, and incommunicado detentions.

Criminalization of torture

In 2022, a law was adopted in Russia criminalizing torture as an official crime. Prior to that, torture had been qualified as a form of ill-treatment ("torment") prohibited by article 117 of the Criminal Code. For many years, the Russian authorities had referred to the existence of the legal prohibition against torture (i.e. "torment") as the key argument to justify their reluctance to criminalize torture as an official crime. In doing so, they deliberately disregarded the reality that the existing provision lacked a mechanism for holding accountable police officers, prison guards, or any other agent of the State.

Punishment for torture was then based on article 286 of the Criminal Code. The same article has since been amended by adding part 4 to criminalize the use of torture.

What has been achieved?

Torture has been criminalized, but there is still no separate article on "torture" in the Criminal Code. The approach whereby torture is classified as "abuse of authority" remains, except that a new section has been added, namely "abuse of authority involving the use of torture."

Why is this not an improvement?

The crime of torture cannot be conceived as resulting from abuse of authority. For any authority to be abused, such authority must exist in the first place. However, no official has – nor is it even possible for them to have (by virtue of the Constitution, even after the recent amendments) – the authority to use torture. The Russian legislators have thus invented an absurd legal construct by implying that torture – which they had set out to prohibit – is something that officials are authorized to apply.

As for the crime of cruel and degrading treatment, the legislators have disregarded it altogether. Had they introduced a separate article on "torture," it could have comprised a provision on ill-treatment.

An essential and integral element of the crime of torture is instigation, consent or acquiescence on the part of a public official. Apparently, the Russian legislators dismissed these notions as too abstract and thus optional. However, the definition of torture enshrined in international law is closely linked to all forms of encouraging or authorizing torture. Had there been a separate article on "torture," it could have included the offence of instigation or acquiescence.

Alongside the added offence of "abuse of authority involving torture," the pre-existing one of "abuse of authority involving violence" has been preserved in the Criminal Code. As a result, criminal investigators will have the discretion to charge perpetrators under either "abuse of authority involving violence" or "abuse of authority involving torture." The new provision has given rise to professional ambiguity and a potential for intentional or unintentional bargaining, given that the penalty for "abuse of authority involving torture" is higher than the other one.

The statute of limitations does not normally apply to torture. However, this is not the case in Russia. Since abuse of authority is an offence with a statute of limitations and torture is a variation of this offence, the statute of limitations also applies to torture. This constitutes yet another breach of the international standards for treating acts of torture as criminal offences.

According to published data from the Judicial Department, Russian courts did not consider a single criminal case under the new provision in 2022. This is understandable, given that the amendment was adopted in July 2022, and even if any criminal proceedings have since been initiated under the revised statute, it's unlikely that the case would have been investigated and brought to court within six months.

However, the prevailing trend has been for investigators to stick to the old approach and initiate proceedings under the section on abuse of authority involving violence, rather than opting for the new one on torture. Only when successfully challenged in court do they agree to reclassify the charges to align with the more precise definition of the offence as outlined in the new provision.

For instance, the Crew Against Torture (CAT) has been successful in getting the criminal proceedings opened into an incident of torture to be reclassified from article 286, part 3 (abuse of authority involving violence) to article 286, part 4 (abuse of authority involving torture). In December 2022, police officer Alexander Gutov administered multiple electric shocks to Alexander Sharfutov as punishment for the latter's request to bring a blanket to the detention cell. The incident was captured by the CCTV system installed at the police department. Initially, criminal proceedings were opened under article 286-3 of the Criminal Code (abuse of authority involving violence). However, the CAT's lawyers challenged the charges in court demanding that the offence be reclassified under article 286-4. The first-instance court sided with the CAT's lawyers, but the prosecutor and the opposing party's attorney lodged an appeal. The Court of Appeal eventually sent the case back to the prosecutor, and the charges against the policeman were reclassified to reflect a more serious offence under article 286-4 (abuse of authority involving torture).

Statistics

No disaggregated statistics are available on the number of torture-related complaints, investigations, and sentences for officials. The Russian authorities have not established mechanisms for monitoring the reported incidents of torture and for tracking relevant complaints and criminal cases – or, at least, such information is not publicly available, nor is it known whether any pertinent internal records exist. The Investigative Committee and the prosecutor's offices respond in a formalistic manner to inquiries, either stating that no separate records of this nature are maintained or suggesting a search of their websites, although no relevant information is available there.

The number of perpetrators convicted on charges of torture can only be estimated indirectly by examining the published data on the number of convictions under article 286-3 of the Criminal Code. While the statistics under the newer article 286-4 could potentially reflect the situation with convictions for torture more precisely, pertinent data remains unavailable as this provision was introduced only in mid-2022.

Experts of the Public Verdict Foundation have manually searched the websites of district courts in each Russian region for relevant information and analyzed the data. The following are their key findings:

A significant part of torture cases in Russia are group crimes. Probationary rather than custodial sentences for torture are prevalent, and acquittals are disproportionately frequent at 6%, which is 18 times Russia's average acquittal rate of 0.33%.

In 2022, Russian courts ruled on 257 cases which involved 397 individuals. There were 198 convictions and 11 acquittals; 22 cases were sent back to the prosecutor, 16 cases were dropped, and 12 cases were referred to other courts according to jurisdiction.

Only 82 texts of the guilty verdict statements have been posted, further indicating the limited availability and poor quality of published data. In cases where courts issue custodial sentences rather than probation, the typical prison term is around 4 years. The most severe sentence has been 11 years in prison.

Withdrawal from the Council of Europe and from the jurisdiction of the European Court of Human Rights

In 2022, Russia was expelled from the Council of Europe. This translates into an automatic cessation of Russia's obligations under the European Convention on Human Rights (as well as several other conventions binding on Council of Europe members). The departure from the Council of Europe has deprived individuals of the possibility to apply to the European Court of Human Rights (ECtHR) concerning violations for which the Russian Federation is responsible.

All judgments which have been adopted or will have been adopted in respect of violations which occurred before the stop date (16 September 2022) must be executed. But in practice, Russia has not only stopped executing the Court's judgements but also refuses to pay the awarded compensations.

Thus, the Russian authorities stated that they would not implement any of the judgments issued by the Court after 15 March 2022 (including those concerning violations which occurred before 15 March 2022).

After 15 March 2022, the Court issued 13 judgments in cases represented by the Crew Against Torture, of which nine concern incidents of torture. In none of them have the applicants been able to receive the awarded compensation of non-pecuniary damage.

In cases represented by the Public Verdict Foundation, 38 judgments have been issued (from 2022 to the present), in which the Court found violations of the rights to freedom of assembly, freedom of expression, and the prohibition of torture and ill-treatment. In every instance, the Court awarded just satisfaction, yet none of these awards have been paid.

Furthermore, the Court's judgments can no longer be invoked as a basis for reviewing the decisions of domestic courts. The clauses stipulating that the Court's judgments could cause domestic judicial decisions to be annulled and the cases reviewed in light of new or recently uncovered evidence have been removed from the Russian procedural codes.

Enforced disappearances

The Public Verdict Foundation has been receiving reports from relatives of Ukrainian citizens captured by the Russian military and forcibly transferred to the territory of the Russian Federation. These civilians were taken either from the streets or from their homes in settlements controlled by the Russian army. In some cases, people indicate the location where their captured relatives are reportedly held, according to former captives who have been exchanged and returned to Ukraine. As a rule, before the spring of 2023, prisoners were held in pretrial detention facilities or penal colonies in Russian regions bordering Ukraine. However, in recent months, many have been transported deeper into the territories of Russian regions away from the border. These facilities deny lawyers access to these detainees, and relatives' attempts to contact them have been unsuccessful. Numerous requests filed by lawyers with government agencies such as the Ministry of Defense, the Federal Penitentiary Service, the military police, and the Prosecutor General's Office, to establish the location and to allow visits to detainees either remain unanswered or receive standard replies that the agency does not have any information about the individual's whereabouts.

On 25 March 2022, at about 6:30 pm, seven Russian servicemen armed with machine guns and wearing white armbands broke into the house of a woman named Victoria in the village of Stary Bykiv, Chernihiv region of Ukraine (5 Lugovaya street). Besides Victoria, her mother, father and a female neighbor with her mother were in Victoria's home at that time. The servicemen found combat boots in the house and began threatening Victoria with a gun, pushing her around, and yelling at her. The Russian soldiers demanded that Victoria tell them the whereabouts of her husband, although the woman was not married. The soldiers took away her mobile phone and found photos of Russian military vehicles there. Then they drove her away to an unknown destination. On the next day, 26 March 2022, other Russian servicemen came to Victoria's house. They took away all personal documents and money they could find, turned everything over in the house, and checked the basement and the attic. Later, four Ukrainian soldiers released from Russian captivity as part of an exchange on 9 and 10 April, reported having seen Victoria in SIZO No. 1 (pretrial detention facility) in the Russian city of Kursk. Victoria's relatives have not received any official information as to her whereabouts. Russian lawyers have made repeated attempts to visit Victoria. In particular the human rights lawyer Irina Biryukova of the Public Verdict Foundation made an attempt to visit Viktoria in SIZO No. 1 in Kursk. But although Victoria was reportedly held at that SIZO and the lawyer had obtained a visiting order to see her, the chief of the detention facility,

presumably after consulting with security agents, refused to give the lawyer access to the detainee, alleging that "there was no such person among the suspects and accused detained at the SIZO." On 29 September 2022, Victoria Andrusha was liberated as part of a prisoner exchange.

Before his forcible disappearance, a man named Vasily resided together with his wife in the urban-type settlement of Dymer in Vyshgorod district of Kyiv region. On 6 March 2022, Vasily's wife told his sister on the phone that Vasily had left home on 5 March and never came back. Before leaving, Vasily told his wife that he had information about a planned shelling of residential quarters and wanted to warn other people in the community. Some four to seven days after Vasily's disappearance, a local woman who knew him found his broken phone and bicycle in Lenin Street, Dymer, near a road turn to the village of Glebovka, Vyshgorod district, Kyiv region. On 1 or 2 April 2022, Vasily's sister got a phone call from a woman who introduced herself as the wife of a Ukrainian serviceman released from Russia in a prisoner exchange. According to the woman, her husband had been Vasily's cellmate in a "prison in Bryansk." Vasily's sister wrote to him using the FSIN Pismo (Federal Penitentiary Service Letter) system for sending emails to prisoners. At first, she got a response saying that her letter had been censored and handed over to the addressee, but then she received another message stating "No such person" – it was handwritten on a standard form used by prisoners to answer emails received through the system; such forms contain automatically generated names of the prisoner and the person to whom they are responding. In April 2023, during a personal visit to the Bryansk Military Prosecutor's Office, lawyer Biryukova submitted a request for a meeting with Vasily. There was no response. In June 2023, the lawyer filed a complaint with the Main Directorate of the Military Prosecutor's Office about the inaction of the Bryansk Military Prosecutor's Office personnel and once again requested a meeting with the prisoner. No response has been received at the time of preparation of this report.

This means that Ukrainian civilians forcibly brought to Russia are held incommunicado: they are not granted access to a lawyer nor allowed to contact relatives.

This practice poses a serious risk of torture and contravenes the OSCE Decision no. 7/20 "Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" approved by consensus of all participating states on 4 December 2020 in Tirana. This OSCE Decision reminds that "all participating States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment." Para 7 of the Decision says, "Respect the safeguards concerning the liberty, security and dignity of the person and ensure that prolonged incommunicado detention and secret places of detention and interrogation are abolished, with the understanding that such detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment."

*We note that incommunicado detention of prisoners, whether civilians or those who have ceased to take part in hostilities, is contrary to the Third and Fourth Geneva Conventions.

Failure to investigate torture of individuals arrested during anti-war protests

In Russia, many instances of torture and ill-treatment reported by human rights organizations take place in circumstances where the victim is in isolation and without outside contact. This makes survivors of torture or ill-treatment particularly vulnerable, in particular in formal proceedings where they confront their perpetrators who often have full control over the evidence of torture.

Beatings of protesters are more "visible" cases of torture and ill-treatment. Police used indiscriminate force during the anti-war protests in February and March 2022. The extent of cruelty and humiliation and the demonstrative nature of police violence were unprecedented. Brutally beaten and injured protesters were either denied medical assistance or it was provided with a long delay.

On 24 February 2022, prominent social scientist Grigory Yudin was arrested during an anti-war protest in Moscow and severely beaten in a police van. According to eyewitnesses, officers were beating him inside the van with the lights off until he lost consciousness and then

left him lying unconscious on the floor of the van during transportation to the police station. There, the police searched his belongings and found his ID. Yudin had a seizure while at the police station, but for a long time, the officers refused to allow him to be seen by a doctor - <https://polit.ru/news/2022/02/25/police/> As Yudin felt worse, the police eventually had to call an ambulance. Yudin was hospitalized at the Sklifosovsky Institute for Emergency Medicine.

During an anti-war protest in St. Petersburg in February 2022, a protester sustained a serious eye injury during arrest, when a contact lens got stuck in his eye. The police refused to call an ambulance - <https://ovdinfo.org/articles/2022/02/25/net-voyneitogi-akcii-protiv-voyny-s-ukrainoy-24-fevralya>

During the same protest, police officers dragged a woman headlong over the asphalt. Despite her serious injuries, they refused to call her an ambulance -<https://t.me/ovdinfo/4326>

A passer-by who was not a protester was arrested and brought to a police station. He sustained injuries during arrest, but the police refused to call an ambulance - <https://v.24liveblog.com/iframe/?id=2993733386761572443#n2993982851379391142>

No information is available concerning any investigations into the incidents of ill-treatment of individuals arrested during antiwar protests or the incidents of disproportionate and arbitrary use of force against protesters. Neither the authorities nor the victims have referred to any ongoing investigations, let alone any relevant judgments made by domestic courts or punishments meted out to perpetrators.

Certain victims, who wished to remain anonymous, informed the Public Verdict Foundation that they had been threatened with criminal prosecution on fabricated charges if they were to lodge complaints and persist in demanding investigations. They were thus forced to forego the opportunity for a fair trial and a chance to defend themselves.

It is worth noting that disproportionate use of force by police or Rosgvardiya officers is an offense subject to public prosecution. This means that an investigation could be – and should have been – launched irrespective of any formal complaint from the victim. A vast collection of video footage depicting the beatings of protesters is publicly accessible, making it improbable that the investigating authorities could have overlooked them.

The lack of a public response from the investigating authorities regarding the excessive use of force does not indicate their incapacity to carry out a thorough investigation. Instead, it reflects a deliberate unwillingness to impose criminal penalties for official crimes perpetrated against anti-war protesters.

Women arrested during anti-war protests were subjected to sexualized humiliation and abuse. Such practices had not been documented by Russian human rights defenders before.

Strip searches of women and non-binary people at police stations were reported in several Russian cities after peaceful protests.

In St. Petersburg, two women arrested during an anti-war protest were forced to undress. “They told me to take off my underwear, to squat several times, and to spread my buttocks,” said one of the arrested women to her defenders. <https://t.me/ovdinfo/13897>

In Nizhny Novgorod, several persons arrested during a protest were detained at a police station overnight, forced to strip down and to squat naked. <https://ovdinfo.org/stories/2022/03/17/zastavlyali-razdevatsya-i-prisesdat-kakobrashchalis-s-zaderzhannymi>

A female protester detained at Brateevo Police Department in Moscow was forced to strip and was hit several times with a plastic water bottle. The officer who hit her said, “Putin is on our side. You are enemies of the people... I can <kill> you and get away with it.” <https://novayagazeta.ru/articles/2022/03/07/putin-na-na-nasheistorone-18>

Imitation of punishment for torture

Punishment meted out by a court to a torture perpetrator can be canceled or mitigated at the stage of its execution. This can be done through existing procedures for rewarding well-behaved prisoners.

The prison authorities can request a court to mitigate a prisoner's sentence by replacing it with a non-custodial penalty, with reference to the said convict's exemplary behavior while in prison. Torture victims are in a particularly vulnerable position in such situations. They are effectively denied access to the proceedings: in practice, courts do not notify the victims either of a scheduled hearing on the matter or of the decision to mitigate the perpetrator's sentence.

Marina Ruzaeva survived hours of torture at a police station in Ussolie-Sibirskoe. After six years of ineffective investigation, the case was finally sent to court that found the police officers guilty and sentenced them to custodial penalties (three and a half and four years in prison). Three months after being admitted to a penal colony, two convicted perpetrators were effectively relieved from their custodial sentences. Having considered a request to replace the remaining unserved part of their sentences with non-custodial sanctions, a court mitigated the punishment, sentencing the perpetrators to correctional labor which involved their release from the penal colony. Marina Ruzaeva, who had received numerous, well-documented, threats, and had her family's possessions destroyed during the investigation and trial, was excluded from the proceedings, and her opinion was not considered by the court.

Criminalization of torture is undermined when torture perpetrators are relieved of court-imposed penalties which are fair and commensurate to the gravity of this crime.

Institutional violence

The manner in which certain institutions – in particular, residential care facilities for children with intellectual disabilities as well as penitentiary establishments – are structured and function is conducive to excessive violence. In certain instances, ill-treatment is part of the established regulations, while in others, it emerges as a result of habitual patterns of treating patients or residents.

Institutional violence constitutes a structured and institutionally endorsed system that perpetuates a continuous cycle of ill-treatment.

Residential care facilities

Cruel and degrading treatment practices are commonly employed as a means of control within residential facilities. In particular, binding is a method of restraint used in psychiatry. Patients or residents in institutions can be affixed to their beds with cloth straps to prevent self-inflicted harm or aggressive behavior. However, the use of such restraints is subject to strict regulation. The primary guideline stipulates that an individual thus restrained must be under constant medical supervision, and the determination to employ restraints can solely be authorized by a healthcare expert and recorded in the journal for documenting the use of restraints. The duration of restraint must not be long and should be limited to the shortest possible period required for the individual to calm down.

In late October, reports emerged indicating that the personnel at the Buturlinovskiy residential care facility for children with intellectual disabilities was applying restraints in an inappropriate manner https://bloknot-voronezh.ru/news/foto-umstvenno-otstalykh-detey-privyazannykh-k-kro-1540002?sphrase_id=5757045. Photographs from the institution show children being restrained in uncomfortable positions, such as affixed to a bed in a crucifixion-like manner or tethered by the neck to an outdoor bench. It appears that in certain instances, the restraints are used as punishment for disobedience, while in others, they are employed for the staff's convenience, e.g. a girl tethered by the neck to a bench while on a walk or a boy seated on the floor and tied to the bed's headboard.

None of the photographs show a form of restraint that would be deemed acceptable, even though it may appear somewhat unsettling, when a child is secured to a specially designed bed and their condition is under constant supervision of a doctor who remains present at the bedside.

Arbitrary and excessive use of restraints is prohibited as cruel and degrading treatment.

The case of the Buturlinovskiy residential care facility illustrates a complete disregard of the residents' right to human dignity and freedom from torture.

Penitentiary institutions

The Russian Penitentiary Code permits placing a prisoner in a punishment cell for up to 15 days, a penalty that does not necessitate court authorization. A punishment cell (SHIZO) is a confinement space where a prisoner is typically subjected to complete isolation. Additionally, they are restricted from working, having visitors, reading and maintaining correspondence, and subjected to shorter exercise periods and reduced food rations. During the day, the bed is secured to the wall, and the prisoner is permitted only to sit and not lie down. This form of punishment entails strict confinement to a small space and total deprivation of any type of activity or human contact.

The decision to impose this penalty rests with the head of the penitentiary colony or their deputy who follow a legally prescribed procedure that is rudimentary and lacks even quasi-judicial safeguards. Moreover, the prison administration is free to extend an inmate's period in SHIZO, effectively imposing a regime of strict isolation which is not authorized by a court.

Subjecting an individual to prolonged strict isolation constitutes cruel treatment in and of itself.

In Russia, the practice of placement in SHIZO is widespread and can be applied to any inmate. This practice is enabled by the current legislation, such as the Penitentiary Code, and by the internal regulations in penitentiary facilities, which means that this form of treatment is institutionally incorporated into the operation of the Russian penitentiary.

Opinions and attitudes of the public

At the end of 2022, the Public Verdict Foundation and the Crew Against Torture conducted the fourth round of the public opinion survey "What Do You Think of Violence and Torture?" This survey designed by the PVF aims to analyze public attitudes towards violence and torture in Russia. It was first held in 2017 and then repeated periodically using the same questionnaire to make the results comparable over time.

According to the 2022 survey, 13.5% of respondents believe that torture and ill-treatment must be totally prohibited. Anti-torture sentiments appear to be on the rise in Russian society, as only 8% of respondents supported an outright ban on torture at the time of the first survey in 2017.

One in ten respondents has personally experienced police violence, while 37% have witnessed such incidents. Public support for the idea that police officers can engage in minor infractions as long as it helps solve crimes has decreased by half, now standing at 11%.

The greatest acceptance for the use of force is observed in respect of a hypothetical scenario involving a psychotic patient in a mental health facility: 64% of respondents agree that in the absence of qualified nurses, the staff should be permitted to seek assistance from other patients in restraining an individual exhibiting dangerous violence.

A total of 18% of respondents find it acceptable for individuals apprehended during protests with a potential of escalating into riots to be detained in overcrowded cells without access to basic amenities.

The overall sample of completed questionnaires reached 20,924, with 20,879 of them being incorporated into the final analysis. Rather than posing direct questions about torture, the survey prompted respondents to share their views on whether officials should be permitted or obligated to carry out certain actions in particular situations.

The willingness to accept arbitrary use of force tends to be greater when individuals perceive themselves as vulnerable should the hypothetical scenario become a reality and affect them personally.

People tend to endorse the use of violence when they believe that employing force can establish control over a situation and minimize risks to their own well-being. This attitude is difficult to overcome, fear being a powerful physiological motivator.