

Briefing ahead of the EU-Kazakhstan Human Rights Dialogue (26 November 2020)

This briefing was prepared jointly by the Kazakhstan NGO Coalition against Torture¹ and International Partnership for Human Rights (IPHR).

It focuses on key concerns regarding torture and other forms of ill-treatment and concludes with a set of recommendations the NGOs have identified as particularly pressing. The document includes four cases that we urge you to raise with your Kazakhstani counterparts.

Torture and other forms of ill-treatment

From January to September 2020, the Coalition against Torture received 200 complaints from people alleging to have been subjected to torture, cruel, degrading treatment and punishment. This briefing highlights some of the reasons why torture is continuing in Kazakhstan and concludes with a list of key recommendations which the authorities of Kazakhstan should implement as a matter of urgency.

FAILURE TO INVESTIGATE ALLEGATIONS OF TORTURE EFFECTIVELY AND IMPARTIALLY

The Kazakhstani authorities have taken important steps towards investigating allegations of torture – including the creation of Special Prosecutor units under the Prosecutor General’s Office, which are tasked with investigating reports of torture and started functioning in 2015. However, the Ministry of Internal Affairs continues to be legally entitled to conduct investigations of torture and other ill-treatment and the majority of reports of torture continue to be investigated by agents of this Ministry, i.e. by the same body whose officers are typically implicated in the complaint. As a result, many cases are not investigated effectively, impunity persists and victims of torture are unable to obtain justice and are regularly denied compensation for the injustices they have suffered.

KIBHR and Coalition lawyers regularly send complaints, inquiries and appeals on behalf of alleged victims of torture, demanding that each case be investigated by Special Prosecutors, that the safety of those who lodged complaints is ensured and that the perpetrators are brought to justice in a trial which meets international standards of fairness.

¹ The Kazakhstan NGO Coalition Against Torture monitors the right to freedom from torture, cruel degrading treatment and punishment, prohibition of discrimination, the right to freedom of peaceful assembly and arbitrary detention in Kazakhstan. The monitoring covers reports in national and foreign media, as well as of individual complaints from victims, including those posted on the website of the Kazakh International Bureau for Human Rights (KIBHR): <https://online.bureau.kz>, which provides advice to victims of human rights violations.

CASE EXAMPLES: POLICE INVESTIGATORS FAILED TO CONDUCT EFFECTIVE INVESTIGATIONS

The case of Vladimir Filin

On 21 April 2018 employees of the detention centre ZhD-158/4 in the town of Taras in Zhambyl region allegedly beat Vladimir Filin. After he lodged a complaint, a criminal case was opened for “torture” (Article 146 of the Criminal Code) on 30 April 2018, but later the case was re-qualified to the lesser crime of “abuse of office” (Art. 362). Investigators of the local police department, who were tasked with the investigation, closed the case several times, most recently on 24 July 2020. Since then the case has not been reopened. At Filin’s insistence the Prosecutor’s Office of Zhambyl region repeatedly reopened the case but to date no effectively investigation has taken place. For example, the investigator asked Filin to identify the perpetrators among several men, but then broke up the confrontation before Filin had seen all potential suspects. Subsequently, he closed the investigation stating that Filin had not identified the perpetrator during the confrontation. The investigator also failed to take into account Filin’s traumatized mental state. The investigator also ignored the May 2018 report of Kazakhstan’s National Preventive Mechanism (NPM) which stated that Filin and a number of other prisoners had been subjected to torture and other forms of ill-treatment.

Case of Kiril Petrykin

On 10 April 2020 Kiril Petrykin, who worked on setting up wind mills before his detention, was allegedly subjected to torture and ill-treatment by an employee of Taraz detention centre 158/2 in Southern Kazakhstan. Petrykin slit his wrists in protest and was hospitalized. According to Petrykin, a criminal case was opened under incitement to suicide (Article 105 of the Criminal Code). The investigating authorities, an agency of the Ministry of Internal Affairs, requalified the crime as “torture” (Article 146) following repeated complaints by the Coalition against Torture but subsequently closed it for alleged lack of evidence. The Coalition believes that the investigation was not conducted thoroughly and effectively. For example, the Coalition lawyer requested to see the video recording of the place where Petrykin alleged to have been abused to verify his allegations but was told by the administration of the detention facility that the video recording had not been kept.

Case of Karim Babaev

Karim Babaev, who used to work in a café before his detention, was subjected to ill-treatment in the pre-trial detention centre of the city of Almaty. He alleged that on several days between 14 to 25 June 2020 officials of the detention facility beat him severely on his face, chest and abdomen. Babaev slit his wrists in protest and was hospitalized. He lodged a complaint and a criminal case was opened for “torture” (Article 146). Babaev believes that he was targeted in relation to a criminal case from 2017 in which one of the former employees of the pre-trial detention center was convicted, but the investigator leading the proceedings decided to re-qualify the criminal case as “abuse of power” (Article 362), on the grounds that the perpetrators had no motif for punishing the victim. The case has not been investigated by Special Prosecutors, but first by the Anti-Corruption Service of Almaty, then by police investigators.

FAILURE TO INVESTIGATE REPORTS OF MASS BEATINGS IN PRISON FACILITY

The Coalition against Torture is also concerned about reports of mass beatings of prisoners in correctional facility 170/3 in the north-western town of Oral in January 2020 and that the perpetrators have not been brought to justice.

On 23 January personnel of military unit 5517 reportedly beat prisoners harshly while conducting a search. The Ombudsperson's Office received over 100 written complaints from prisoners and NPM members recorded interviews and photographed prisoners' injuries. There was a public outcry and the incident was widely covered in the media.

The head of the NPM group in the region of West-Kazakhstan sent evidence of the mass beatings to the Office of the Prosecutor General, the Prosecutor's office of the West-Kazakhstan region, and the National Center for Human Rights. The Military Prosecutor's Office opened 26 criminal cases for "torture" (under Article 146 of the Criminal Code) but subsequently closed them all for alleged lack of evidence of a crime. Many prisoners who reported beatings said they did not participate in any investigative activities nor were they aware of any.

FAILURE TO ENSURE MEDICAL STAFF RECORD INJURIES CAUSED BY TORTURE OR ILL-TREATMENT

An additional obstacle to proving torture and ill-treatment and bringing perpetrators to justice is that the medical service in pre-trial detention facilities, prisons and semi-closed facilities is not independent.

For example, the medical services in pre-trial detention facilities and prisons are subordinate to the Ministry of Internal Affairs, which also runs these institutions and whose employees typically feature as alleged perpetrators in complaints about torture and other forms of ill-treatment. Since independent medical experts do not have access to places of detention, detainees and prisoners only have access to health workers who are employees of the Ministry of Internal Affairs.

The NGO Coalition against Torture has documented many cases in recent years of medical professionals, police investigators and officers of the Anti-Corruption Service concealing or not acting promptly to allegations of torture and ill-treatment. However, to our knowledge none of them has been prosecuted for their failure to take appropriate action.

We are also more broadly concerned at the failure to ensure detainees' and prisoners' access to essential medical care and specialized doctors. This issue was raised by the UN Committee against Torture and the Human Rights Committee in their concluding observations on Kazakhstan's implementation of its international human rights obligations, in 2014 and 2016 respectively. Since then no significant improvements have been made. There are also frequent examples that when a defendant's health deteriorates in the courtroom, an ambulance is not called immediately, but after the hearing ends.

CLOSURE OF CRIMINAL CASES IN RELATION TO VICTIMS WHO SUSTAINED MINOR INJURIES

Monitoring conducted by KIBHR and the Coalition against Torture shows that many cases which were initially opened for "torture" (Article 146) are typically closed when involving only minor bodily injuries. Cases of minor bodily harm are usually investigated by the Internal Security Service of the Police Department.

The NGO monitoring also found that Special Prosecutors often pass on investigations into allegations of torture to the Anti-Corruption Service for investigation, a Service that lacks independence. When prisoners file complaints about harsh prison conditions investigators typically fail to acknowledge that such conditions can amount to ill-treatment.

There is no effective mechanism to remedy cases when detainees allege that police used excessive force during the arrest as the supervisory authority allows the use of force when a citizen resists the arrest and does not define the appropriate level of force in relation to the circumstances.

Key recommendations to the authorities of Kazakhstan

- Amend domestic legislation to ensure that only Special Prosecutors under the Prosecutor General's Office are tasked with investigating allegations of torture and that they carry out all investigative activities in relation to these cases.
- Conduct prompt, thorough, impartial and independent investigations into all allegations of torture and other forms of ill-treatment and bring the perpetrators to justice in fair proceedings.
- Transfer responsibility for the penitentiary system from the Ministry of Internal Affairs to the Ministry of Justice.
- Transfer the medical services in detention facilities, the penitentiary system and semi-closed institutions from the Ministry of Internal Affairs to the Ministry of Health.
- Raise the cases of Vladimir Filin, Kiril Petrykin, Karim Babaev and the allegations of mass beatings of prisoners in January 2020 and urge the authorities to ensure that Special Prosecutors conduct effective investigations into these cases.