

Briefing ahead of the EU-Kazakhstan Human Rights Dialogue

(2ND AND 3RD DECEMBER 2021)

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, provides some case examples and concludes with a set of recommendations on issues and individual cases that the NGOs have identified as particularly pressing.

Torture and other forms of ill-treatment

Torture and ill-treatment continue to be widespread in Kazakhstan. Many allegations are not investigated effectively and impunity persists. Victims of torture are typically unable to obtain justice and are regularly denied compensation and other forms of reparations for the injustices they have suffered.

From January to September 2021, the Coalition against Torture received 178 complaints from people alleging to have been subjected to torture or other ill-treatment. According to official statistics, the Prosecutor General's Office registers about 600-700 such complaints every year, but only two per cent of them reach court.

STRENGTHEN EFFECTIVE INVESTIGATIONS INTO TORTURE ALLEGATIONS

Domestic legislation stipulates that all cases with sufficient evidence to warrant an investigation must be logged in the Unified Register of Pre-Trial Investigations. After a case is registered there, it is referred to the agency that is charged with conducting the investigation.

Domestic legislation contains regulations instructing dedicated Special Prosecutor Units across the country to carry out investigations into allegations of torture (under Article 146) as a matter of priority. However, at the same time, Article 187.4 of the Criminal Procedure Code of Kazakhstan provides that investigations into such cases should be carried out by internal affairs bodies or the Anti-Corruption Service *"against a person who is not an employee of this body."* **The authors of this briefing are concerned about the lack of clarity in the law and its impact on the effectiveness of investigations.** In practice, according to KIBHR's monitoring, cases involving allegations of torture are usually investigated by Special Prosecutors or the Anti-Corruption Service.

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.

Cases involving other forms of ill-treatment and that are opened under other articles of the Criminal Code such as “abuse of authority or duty” can be forwarded for investigation to prosecutors’ offices, the Anti-Corruption Service or agencies of the Ministry of Internal Affairs, although employees of the latter are typically themselves implicated in the complaint.

The current system of investigation of allegations of torture and other forms of ill-treatment is not effective and is responsible for the small number of successful prosecutions. In the large majority of cases, allegations are not investigated promptly and evidence of abuse is often not visible by the time the investigation starts. Another problem is the involvement of agents of the Ministry of Internal Affairs in investigating cases, because this body clearly lacks independence.

For example, **Nurbol Omarov** quit his job as a police officer in May 2021 following a protracted conflict at work. A criminal case was subsequently opened against him in connection with allegations of kidnapping and murder and he was detained pending trial. Nurbol Omarov maintains his innocence and claims that his former colleagues initiated the criminal case against him to retaliate for quitting the job and for not giving in to his superior’s demands regarding their conflict at work.

Upon admission to the pre-trial detention facility UK 161/1 in the town of Kostanay, Nurbol Omarov was put in a cell with three persons with previous criminal records, although domestic legislation prohibits police officers or former officers from being held with previously convicted prisoners. Reportedly, his cell mates beat Omarov. In addition, on at least on two occasions police officers came to the detention facility and also subjected him to beatings, reportedly in order to ensure that he would not talk to anyone about the reprisals he faced from his former colleagues.

On 21 June 2021, his sister Nazgul Omarova visited him and noticed that her brother was injured. When Nurbol Omarov was returned to the cell his cell mates reportedly attacked him again, trying to strangle him with a sheet, and beating him, in reprisal for him having told his sister about having being beaten. Subsequently, police officers reportedly took him to another cell and threatened him with reprisals if he lodged a complaint.

However, Omarov nevertheless lodged a complaint about the abuse in detention. On 22 June 2021 an investigation was opened into “torture” (Art. 146 of the Criminal Code), which is currently being conducted by Kostanay Anti-Corruption Service, although none of the alleged perpetrators have yet been charged.

CASE OF TORTURE OF A CHILD IN DETENTION

Late at night on 7 January 2021, Yevgeniya Kazantseva, a successful businesswoman, was killed in her home in the city of Almaty.

According to the lawyer, Kazantseva’s 15-year-old son Mikhail witnessed the murder and was following the perpetrator down the street when a police patrol car picked him up in the early hours of 8 January and detained him. Police found the boy without a coat or shoes, when temperatures were around -18 degrees C. Police officers reportedly forced him to stand and move around, although he could barely hold up his head.

When he was first questioned during the night, without his father and lawyer present, scared, in shock and in great pain from frostbite on his fingers and toes, he confessed to killing his mother. He has since consistently denied committing the murder.

At the police station Mikhail reportedly did not receive adequate first aid, and an ambulance was not called for several hours. His father, who learned about Mikhail's detention only five hours after the arrest, reports that the police officer responsible for taking Mikhail's fingerprints unbound his hands despite the frostbite and pressed forcefully on the blisters resulting from the frostbite, which burst, causing him severe pain. The father carried Mikhail up and down the stairs in the police station because Mikhail was unable to walk.

When Mikhail was taken to the Temporary Detention Facility on the evening of 8 January 2021, the medical officer reportedly told his father and the police officers present that the detention centre could not provide the necessary medical treatment, but police officers initially refused to take him to hospital and instead held him in the Temporary Detention Facility. Mikhail was later taken to hospital by ambulance. His father was not allowed to visit him in the hospital. The boy was kept chained to a bed for up to 20 hours a day and he was only unchained when he needed to eat or use the toilet.

After he was discharged from hospital, Mikhail was placed in pre-trial detention facility LA-155/18 in Almaty, where he received no further medical assistance, although doctors at the hospital had recommended further treatment. He was held in a cell with adults, who smoked constantly. After complaints were filed against the failure of employees of the pre-trial detention centre to provide him with medical assistance, officials coerced Mikhail to write a statement saying that he had no complaints against them.

On 3 April 2021, when Mikhail's detention order was renewed again, a commission of doctors ruled that he should be transferred to the Republican Psychiatric Hospital and kept under intensive supervision. Reportedly, this decision was not made based on a thorough review of the patient's medical history. Upon admission to the psychiatric hospital on 7 May 2021, Mikhail was examined by a doctor who was not qualified to work with children. The current attending physician also does not have the necessary qualifications to work with children. Despite this, Mikhail has been prescribed psychotropic drugs which he continues to be given on a daily basis, although he has no psychiatric diagnosis.

Despite Mikhail's lawyer lodging several complaints about the abuse of his client in detention and the failure to provide prompt and appropriate medical treatment, on 30 April 2021 the Anti-Corruption service issued a decision to terminate the investigation into allegations of ill-treatment.

The Coalition against Torture arranged for two independent doctors to visit the psychiatric facility on 7 June 2021, who concluded that Mikhail had suffered psychological torture and cruel treatment during the police investigation. When the independent doctors and his father visited him, Mikhail refused to talk to them, and was reluctant to be overheard by others. However, when his father spoke to him in English Mikhail answered him in English, asking him to stop writing complaints.

Mikhail was tried for murder (Article 99 of the Criminal Code) at Almaty Specialized Inter-Regional Criminal Court between 12 July to 13 October 2021. He was found guilty and sentenced to eight years' imprisonment. There are serious concerns about the lack of fair trial - the judge was not specialized in juvenile justice; no psychologist or teacher attended. Mikhail's father attended, but Mikhail himself was not present. His stepfather, named as a victim of the crime, did not say anything in defence of the boy. The judge failed to order an investigation into allegations that police officers had abused Mikhail, that

he was denied adequate medical assistance and that Mikhail was held in chains and handcuffs in the hospital, as though he were a dangerous repeat offender, and did not give him enough time to recover after his stay in hospital before returning him to a pre-trial detention centre, where the cold conditions exacerbated his poor state of health.

Mikhail is currently serving his sentence at the Republican Psychiatric Hospital under intensive supervision.

TRANSFER MEDICAL PERSONNEL TO THE MINISTRY OF HEALTH

Members of the Coalition against Torture involved in monitoring detention facilities often receive complaints about ineffective and untimely medical care. There is also a pattern of cases when medical personnel fail to record prisoners' injuries and health complaints.

These problems are due in part to the fact that medical personnel working inside the penal system are not independent because they are employees of the Ministry of Internal Affairs which runs the penal system. The authors of this document are also concerned that domestic legislation does not obligate medical doctors to adhere to the standards of the Istanbul Protocol, a United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, when examining victims of torture or other forms of ill-treatment and recording their findings.

The Deputy Minister of the Interior stated at a public hearing of the draft law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving the Activities of Internal Affairs Bodies", that the medical service will be gradually transferred from the jurisdiction of the Ministry of Internal Affairs to the Ministry of Health in 2022.

IMPROVE PRISON CONDITIONS OF THOSE IMPRISONED ON "EXTREMISM" AND "TERRORISM"-RELATED CHARGES

The court verdicts of persons imprisoned for "extremism" and "terrorism"-related crimes specify whether the convicted person has to serve his/her sentence in a medium, high or top security facility. However, in practice convicted persons are often sent to so-called mixed security institutions based on decisions taken by the Ministry of Internal Affairs and the prison service. These mixed security institutions are situated in sections or wings of local pre-trial detention centres. The Criminal Code does not contain references to "mixed security institutions", therefore courts cannot send or transfer convicts there.

The authors of this document are concerned about the placement of convicted prisoners in mixed security wings of pre-trial facilities because they lack adequate conditions for those serving long prison sentences and because the conditions differ from the prison regime that was established in the court verdict. For example, unlike prisons, these facilities:

- have no premises for short and long-term family visits;
- have no budget for the provision of medical assistance and therefore prisoners serving long sentences do not have access to dental or other specialist medical treatment;
- only have small cells that are designed for two or three people.

In June 2017 **Nariman Seytjanov** was sentenced to five years' imprisonment for inciting ethnic or religious hatred (Art. 174, part 1 of the Criminal Code) by Kokshetau City Court in the northern Akmola Region of Kazakhstan. After the trial he was transferred to a medium security facility, in line with the court verdict. But in January 2018 he was sent to a pre-trial facility in the city of Kyzylorda in the southern Kyzylorda Region, although the decision of the court to place him in a medium security facility was still valid. For the remaining time of his imprisonment – he was released in September 2021 – the prison conditions did not correspond to those associated with a medium security facility. Because he was detained in this facility he was unable to receive visits from his family; he was not allowed to receive parcels, he had no access to medical treatment and was held in a small cell.

In addition, often when conflicts arise between prisoners, they are transferred to facilities with stricter prison regimes (as per Article 428 of the Criminal Code). These decisions are made by employees of the Interior Ministry without any judicial oversight.

PROTECT FEMALE PRISONERS FROM SEXUAL AND OTHER ABUSE

Women detainees and prisoners are particularly vulnerable to sexual abuse and other forms of ill-treatment.

Women's prisons are supervised by both female and male officials and female prisoners are at risk of abuse from prison administration staff and fellow female prisoners who work as voluntary assistants for the prison administration.

According to domestic legislation, the crime of rape involves penetration with the use of force. This definition is not in line with international standards that focus on the lack of consent. The KIBHR is aware of many cases when women prisoners have been afraid to put up resistance to rape, fearing reprisals.

Upon a woman's arrival at the institution, prison administration staff often treat women in a degrading manner which can include placing them in disciplinary isolation and strict conditions of detention.

Nazgul Djanova was pregnant when she arrived in prison colony LA 155/4 in Almaty region on 11 February 2020. On 4 June 2020, she gave birth to a son who died six days later in the Central Regional Hospital in the Ili district of the Almaty region. On the same day Nazgul was returned to the prison colony to continue serving her sentence. On 21 July 2020, despite her depressed state after losing her child, she was placed in a disciplinary isolation ward for five days. Subsequently, she was held in strict conditions of detention for six months. While she was in disciplinary isolation Nazgul reports that a member of the prison staff threatened her and raped her. A criminal case was opened under Article 146 of the Criminal Code (Torture) and Article 120 (Rape), but investigators are reportedly considering dropping the charge of "torture". Three medical examinations have been carried out and the prison official has been named as a suspect. At the time of writing the investigation is ongoing.

Suggested key recommendations

- Kazakhstan should set up a fully independent mechanism to receive and investigate complaints about torture and other forms of ill-treatment.
- In the meantime, Kazakhstan should amend Article 187.4 of the Criminal Procedure Code to the effect that only Special Prosecutor units are authorized to lead and carry out all investigative activities into allegations of torture (Article 146) and all other forms of ill-treatment.
- Express concern that persons imprisoned for “extremism” and “terrorism”-related crimes often serve their sentences in so-called mixed security institutions whose prison conditions do not correspond to the conditions of the type of facility -- medium, high or top security facility -- the court verdict determined for them. As a result, prisoners serving long terms of imprisonment are often deprived of services and rights they are entitled to as per the verdict such as family visits, food parcels or medical treatment.
- Express concern at frequent reports about ineffective and untimely medical care in detention facilities and the frequent failure of medical personnel to record prisoners’ injuries and health complaints. In this context, welcome the authorities’ intention to transfer the medical service from the jurisdiction of the Ministry of Internal Affairs to the Ministry of Health in 2022 and urge the authorities to ensure that the medical service will be able to work independently and effectively including by instructing doctors by law to examine and document findings that relate to torture and other forms of ill-treatment in line with the standards of the Istanbul Protocol.
- The authorities of Kazakhstan should declare and strictly adhere to a zero-tolerance policy on torture and implement all recommendations aimed at ending torture that were issued to Kazakhstan by the UN Committee against Torture, the UN Human Rights Committee, the Special Rapporteur on torture, and under the Universal Periodic Review. Also implement all rulings issued under the individual complaint procedure of the UN Human Rights Committee.
- Ensure effective investigations into the allegations of ill-treatment made by former police officer Nurbol Omarov and into the allegations of “torture” and “rape” made by Nazgul Djapanova
- Raise concern at allegations that Mikhail Kazantsev, aged 15, was sentenced to eight years’ of deprivation of liberty for killing his mother, although there are strong indications that he is innocent; that the trial did not meet international fair trial standards; and urge the authorities to ensure that credible allegations of him being denied prompt and appropriate medical treatment and subjected to psychological torture in detention are investigated effectively and the perpetrators are brought to justice.