

Briefing paper for EU-Kazakhstan Human Rights Dialogue, November 2016: Key concerns and recommendations on torture and ill-treatment in Kazakhstan, October 2016

In recent years the authorities of Kazakhstan have implemented some significant positive steps in the area of torture prevention and eradication, but we are concerned that torture and other forms of ill-treatment are continuing and that impunity is still the norm. From **January to September 2016 the NGO Coalition against Torture in Kazakhstan registered 115 new cases** of men, women and children who allege having been subjected to torture or ill-treatment. This figure reflects only the **tip of the iceberg** since many victims and their relatives refrain from lodging complaints for fear of reprisals or because they have no hope to attain justice. **Impunity is the norm.** In its Concluding Observations issued to Kazakhstan in November 2014, the United Nations (UN) **Committee against Torture pointed out that less than two percent of torture complaints led to prosecutions** and in August 2016 the UN Human Rights Committee also expressed concern about the “very low rate of effective prosecution“.

This briefing highlights two concerns that the NGO Coalition has identified as particularly pressing. In the annex you find the case of a victim of torture that we urge you to raise with the Kazakhstani delegation.

Failure to effectively investigate allegations of torture and other ill-treatment

The new **Criminal Procedure Code (CPC)** that came into force in January 2015 **stipulates that reporting a crime – of torture or other – should trigger an immediate investigation**, not just a preliminary check. Based on extensive monitoring and work on individual cases, the NGO Coalition against Torture in Kazakhstan concluded that investigations continue to be ineffective despite the introduction of positive legislative changes pertaining to the procedure of reporting crimes and investigations. In practice cases are only forwarded for investigation once they are registered in the Unified Register of Pre-Trial Investigations and we are **aware of many cases involving allegations of torture and ill-treatment where law enforcement duty officers have refused to record complaints** in the Register. Officers often use a provision contained in the CPC that allows law enforcers to subject the information contained in crime reports to preliminary checks if it lacks clarity and detail, which is often the case with statements of torture. The problem lies with the fact that the crime report is routinely referred for this preliminary checking to the same body whose staff are implicated in the complaint of torture. In practice, such checks are highly superficial consisting typically of interviews only with the alleged perpetrators. Bodily injuries, if documented, are usually ascribed to accidents or natural causes. As a result, the allegations are frequently found to be unsubstantiated and hence not meriting full investigation. The NGO Coalition is also aware of cases where duty officers maintained that they could not register the complaint because the complainant had not filled in the form properly.

In line with the above, in its Concluding Observations issued to Kazakhstan in August 2016 the Human Rights Committee

expressed concern, amongst other issues, about the “reported high number of torture and the high number of claims of torture dismissed at threshold due to the allegedly excessive evidentiary standard required to pursue an investigation under the new Criminal Procedure Code” and the “reported unduly prolonged duration of investigations into allegations of torture and/or ill-treatment”.

While many victims of torture refrain from lodging complaints for fear of reprisals and/or because of lack of faith in the justice system, incarcerated victims are especially vulnerable to retaliation for complaining about torture. There is no mechanism of transferring such victims to institutions other than those that are under the authority of the Ministry of Internal Affairs. In Kazakhstan the prison system, places of police and pre-trial detention are all under the authority of the Ministry of Internal Affairs.

When a criminal case is opened into an allegation of torture or other ill-treatment the investigation is supervised by Special Prosecutor Units (SPU) which operate under the Prosecutor General. There have been several cases where SPUs conducted investigations effectively, but **in most cases investigations have not been conducted promptly, thoroughly, impartially and independently**, as required by international human rights law. While SPUs lead investigations, in many cases investigative activities are actually carried out by the Criminal or Financial Police. Even in cases where the Coalition is aware of strong evidence that torture took place, investigations have been terminated for “lack of evidence of a crime”. Other investigations into torture allegations have been suspended indefinitely because the police claim not to be able to establish the identity of the perpetrator/s. Torture victims considering lodging a complaint also have to be mindful that they may be subjected to penalties of three to seven years’ imprisonment for falsely reporting a crime. According to the Prosecutor General’s Office of Kazakhstan, criminal proceedings are sometimes initiated against the complainant when an investigation into torture allegations is terminated for “lack of evidence of a crime”. Reportedly, such proceedings were recently initiated in 97 such cases and false crime reporting has been confirmed in ten of them.

The numerous problems associated with investigations into reports of torture stem from the lack of effectiveness of the existing investigation mechanism coupled with the prejudiced attitude of investigatory and regulatory agencies towards complaints by suspects, accused or individuals who are kept in custodial institutions. At the heart of the problem lies the **authorities’ reluctance to expose the law enforcement system to public criticism and their fear that doing so would increase public distrust of law enforcement agencies even further.**

Implementation of UN treaty body decisions on individual cases

Kazakhstan accepted the individual complaints procedures provided under Article 22 of the Convention against Torture and the Optional Protocol to the International Covenant on Civil and Political Rights in 2008 and 2009 respectively. In the case of Mumin Nasirov, Kazakhstan diligently implemented the Committee against Torture’s request not to extradite Nasirov to Uzbekistan, where he would have been at risk of torture. However, **in five** other cases Kazakhstan returned a total of 31 people to countries such as China, Russia, Kyrgyzstan and Uzbekistan in recent years where they were believed to be at risk of torture, ignoring the Committees’ request – by way of interim measures – to halt the extraditions. The **Committee against Torture and the Human Rights Committee both found Kazakhstan guilty of breaching its international obligations to prevent or not to permit torture or cruel, inhuman or degrading treatment in nine cases** of out of a total of 12 admitted cases that involved allegations of such treatment or that highlighted the risk of torture such as in the five extradition cases mentioned above. In two cases Kazakhstan has taken steps to partly implement the treaty bodies’ recommendations: Alexander Gerasimov and Rasim Bayramov were awarded compensation for moral harm suffered through torture, however the payments

were inadequate and the perpetrators have still not been brought to justice. The case of Rasim Bayramov, who died of complications resulting from tuberculosis he contracted in prison after an unfair trial marred by torture allegations, is described in the annex and clearly demonstrates the urgency of setting up a mechanism to promptly and effectively implement all decisions issued under the individual complaints procedures of UN treaty bodies in relation to cases from Kazakhstan. (For further information on the implementation of treaty body decisions in Kazakhstan, refer to the submission to the EU-Kazakhstan Human Rights Dialogue on the protection of fundamental rights by KIBHR and IPHR.)

Currently six further complaints involving allegations of torture and ill-treatment submitted by the NGO Coalition against Torture in Kazakhstan are pending with the Committee against Torture and the Human Rights Committee.

Recommendations

The Kazakhstani authorities should be requested to take the following steps:

- Establish a publicly accountable and transparent mechanism within the Prosecutor General's Office to oversee the investigation of allegations of torture and ill-treatment.
- Ensure that the Special Prosecutor Units lead the investigation of **all** cases involving allegations of torture and other forms of ill-treatment and carry out all investigatory activities without any involvement of law enforcement agencies.
- Establish a mechanism to promptly and fully implement all decisions by United Nations treaty bodies on individual cases and ensure that compensations awarded to torture victims for moral damages are fair and adequate.

For further information, refer to the March 2016 Amnesty International report: *Dead End Justice: Impunity for Torture in Kazakhstan*: <https://www.amnesty.org/en/documents/eur57/3345/2016/en/>

Annex: cases

Kazakhstan: Urgently implement the decision of the UN Committee against Torture on Rasim Bayramov's case

In February 2016 Rasim Bayramov, aged 33, tragically died of complications resulting from an illness he contracted in prison. He had been fighting to prove his innocence for almost eight years. In May 2014 the UN Committee against Torture ruled that his treatment at the hands of police amounted to torture and that the authorities of Kazakhstan should provide appropriate remedies. However, the perpetrators continue to walk free and justice remains as elusive as ever.

In July 2008 police officers of the city of Rudny in the northern Kostanay region detained Rasim Bayramov and allegedly kicked and beat him all over his body, pushed him off a chair, dragged him along a corridor by his hair, and threatened him with sexual abuse if he did not confess to having stolen some money and three bottles of beer from a local store. They deprived him of sleep at night and gave him nothing to eat or drink for over two days. Eventually, they reportedly forced him into signing a confession. Although Bayramov and his mother repeatedly complained about torture and procedural violations to local police and prosecution authorities, no effective investigation was opened into the allegations.

Bayramov turned to the Committee against Torture in May 2011, with the support of the Kostanay branch of the Kazakhstan International Bureau for Human Rights and Rule of Law and the Open Society Justice Initiative. In May 2014 the Committee ruled that his treatment at the hands of police amounted to torture, that Bayramov should receive reparation and that an effective investigation be conducted into the allegations of torture in order to bring to justice those responsible for abusing him.

Thanks to this decision, a court in Kazakhstan ruled in December 2014 that he be given the equivalent of around EUR 260 for moral damages suffered as a result of torture, an amount that was neither fair nor adequate.

After the decision of the Committee against Torture the authorities conducted investigative activities into the allegations of torture, but the investigation was not effective. The case was closed several times due to “lack of evidence of a crime“ and because “no element of crime in the actions“ of the police had been established. The investigations did not, for example, address the conclusions of a psychiatric examination that had been conducted in line with the standards of the Istanbul Protocol. The examination found that Bayramov's allegations fully corresponded with and were supported by the psychological evidence found during the examination.

Most recently, on 6 October 2016, following the lawyer's petition to a court in Kostanay, the court annulled an earlier decision by the prosecutor's office to close the investigation and stated that “the Special Prosecutor has again not taken into account all the circumstances that the petitioner has raised in the complaint. No additional pre-trial investigation was conducted and the decision to close the criminal case was made without procedural grounds given that the fact of torture and the elements of the crime (time, place, method) had already been established.“ The second instance court turned down a protest by the prosecutor's office against this decision.

In July 2016 the prosecutor's office turned down the lawyer's request to recognize Bayramov's mother as a party in the case making it impossible for the family to pursue the case and continue fighting for justice.

Recommendations for action to the authorities of Kazakhstan:

- Ensure that prosecutors of the SPU do not only lead the investigation, but carry out all investigative activities themselves, in an thorough, impartial and independent manner (rather than instructing law enforcement officers to conduct parts of the investigation);



Torture victim Rasim Bayramov died of complications he contracted in prison in February 2016. Those who tortured him in 2008 have still not been brought to justice. © Anastasia Miller

- ensure that the perpetrators are brought to justice;
- issue an official apology to the family for the torture of Rasim Bayramov by officers of Rudny police in 2008.
- ensure that Rasim Bayramov's mother is recognized as a party in the case (as a victim).