



## Briefing paper on torture and ill-treatment in Kazakhstan for EU-Kazakhstan Human Rights Dialogue, November 2015

### INTRODUCTION

The authorities of Kazakhstan have implemented some significant positive steps in recent years in the area of torture prevention and eradication, but we are concerned that torture and other forms of ill-treatment are continuing and impunity is still the norm. **We would like to call on the EU acknowledge these positive steps, but not to stop emphasizing the need for further reform on the backdrop of recent reforms.** These are the **key positive steps** made by Kazakhstan in recent years:

- Kazakhstan's **National Preventive Mechanism (NPM)** was established under the Ombudsman's office in 2013 and **started visiting detention facilities** across the country in **March 2014**. In May 2015 it issued its first Consolidated Report.
- When Kazakhstan's new Criminal Code came into force in **January 2015**, the country **abolished the statute of limitations** applicable to the offence of torture and **excluded torturers from prisoners amnesties**.
- **Legal safeguards pertaining to detainees in pre-trial detention were strengthened** in the new Criminal Procedure Code (CPC) that also came into force in **January 2015**.

This **briefing** that was jointly prepared by the NGO Coalition against Torture in Kazakhstan and International Partnership for Human Rights highlights our main concerns in the following areas:

- 1) implementation of **fundamental legal safeguards**,
- 2) **investigations** into allegations of torture and other ill-treatment,
- 3) implementation of the **Istanbul Protocol (medical)**,
- 4) implementation of **UN treaty body decisions on individual cases**,
- 5) the **National Preventive Mechanism**.

Key Concluding Observations of the Committee against Torture and our own recommendations are included at the end of each thematic chapter. In those cases where Kazakhstan accepted a recommendation in the course of the October 2014 Universal Periodic Review, that coincides with one of our priority recommendations, a reference to this is included in the section on recommendations.



In the **annex** to this briefing you find **two individual case** that illustrate some of the concerns mentioned in the thematic chapters of the briefing. We **urge the EU to raise these cases** during the upcoming Human Rights Dialogue on 27 November with Kazakhstan authorities.

Since **January 2015**, the NGO Coalition against Torture in Kazakhstan has **registered 67 new cases** of men, women and children who allege to have been subjected to torture and other ill-treatment. In its **November 2014 Concluding Observations** the **Committee against Torture** pointed out that **less than two per cent of torture complaints led to prosecutions** and we believe that the situation remains largely unchanged.

Kazakhstan ratified/accepted the following torture-related UN treaties and procedures:

- **Convention against Torture** (August 1998)
- Individual complaints procedure under the Convention against Torture, **Art. 22** (February 2008)
- **Inquiry procedure** under the Convention against Torture (August 1998)
- **ICCPR** (January 2006)
- **Optional Protocol to the ICCPR** (June 2009)

## 1) FUNDAMENTAL LEGAL SAFEGUARDS

The **new Criminal-Procedure Code (CPC)** of Kazakhstan that came into force in January 2015 **significantly strengthened legal safeguards** in pre-trial detention including by clarifying that detainees must have access to key safeguards as soon as they are deprived of liberty. For example, it stipulates that **family members should promptly be notified** and detainees should have **access to legal counsel immediately after they are deprived of liberty**.

In practice, however, detainees usually only have access to legal safeguards when the detention record is filled in, i.e. after they are entered into a police detention facility. As a result, detainees are often held incommunicado in the time period from the arrest until they are entered into a police detention facility.

In order to protect detainees from torture and ill-treatment in the early stages of detention the **NGO Coalition against Torture in Kazakhstan** has urged the authorities to equip police with miniature video cameras and voice recorders and oblige them to wear them at all times when on duty. They should record all interactions with civilians, especially during apprehensions and transportation of detainees to police stations. The authorities recently introduced a programme requiring traffic police to wear miniature video cameras with voice recorders at all times while on duty to record interactions with drivers. We believe that the authorities should build on this programme and broaden it so that it can become an effective tool against torture and ill-treatment of detainees. We are also concerned that there are a number of **remaining shortcomings in the new legislation** that should be addressed to further strengthen legal safeguards. For example, Article 131, part 1 of the CPC obliges police “upon detention” to orally inform detainees of their rights. We believe this safeguard should be strengthened by **additionally handing out an information sheet detailing the detainees’ rights**.

Article 131, part 2 of the CPC provides for medical examinations following a written request by the detainee.

Introducing routine medical examinations by independent doctors promptly after apprehension would provide a **stronger safeguard** against torture or other ill-treatment.

With regard to other countries the Human Rights Committee, the Committee against Torture and the UN Special Rapporteur on torture have pointed out that detainees **should be brought before a judge no later than 48 hours** after they are deprived of liberty. **Under the CPC of Kazakhstan remand hearings take place within 72 hours.** We are also concerned that the new **CPC does not fully clarify how judges should treat evidence that was obtained in violation of legal safeguards** pertaining to pre-trial detention.

#### Recommendations to the government of Kazakhstan:

- Ensure that officials register the exact date, time and place of detention of all persons deprived of their liberty, and particularly that the time of de facto apprehension is accurately recorded to ensure that the first unrecorded hours of unacknowledged detention between the arrest and delivery to a police station cannot be used by law enforcement officials to obtain confessions by means of torture. (CAT Concluding Observation, Paragraph 12(a))
- **Equip police with miniature video cameras and voice recorders and oblige them to wear them at all times when on duty to record all interactions with civilians, especially during apprehensions and transportation of detainees to police stations.**
- Ensure that information sheets detailing detainees' rights are handed out to all detainees immediately upon deprivation of liberty.
- Introduce routine medical examinations by independent doctors promptly after apprehension.
- Amend the Criminal-Procedure Code to ensure that detainees are brought before a judge no later than 48 hours after they are deprived of liberty, as opposed to 72 hours in the current Code.
- Clarify in the legislation how judges should treat evidence that was obtained in violation of legal safeguards pertaining to pre-trial detention.

## 2) INVESTIGATIONS INTO ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT

In Kazakhstan, **in most cases no effective investigations** are conducted into allegations of torture and other forms of ill-treatment, thus perpetuating a vicious circle of torture and impunity. (refer to the case of Alexander Albrandt in the annex).

The NGO Coalition against Torture in Kazakhstan is aware of **cases in recent years where perpetrators of torture** or other law enforcement officers **threatened victims with further violence** or other reprisals when they wanted to lodge complaints about torture or other forms of ill-treatment. **Many decided not to complain** out of fear for their own or their family's safety or they withdrew their complaints at a later stage.

**Judges at remand hearings typically do not ask detainees how they were treated in custody.** Even when injuries **are clearly visible** or when detainees make allegations of torture or ill-treatment during remand hearings, **judges usually do not request an investigation** into the allegations. **Prosecutors almost never open investigations into torture** or other ill-treatment **as part of their supervisory function** over the criminal investigation process. As a

result, investigations are usually only instigated when victims, lawyers, local and international human rights organizations or media exert pressure on the authorities.

In those cases where investigations have been opened in recent years they have not been conducted effectively in the large majority of cases. Typically, investigators failed to engage in gathering evidence to study the circumstances of the alleged torture from all perspectives, such as interviewing witnesses and medical personnel or ordering a forensic medical examination; they did not interview the victims and they did not carry out confrontations of police and victims. Instead, investigators often relied on statements obtained from the alleged perpetrators and their colleagues.

There are structural problems in the criminal justice system of Kazakhstan that stand in the way of prompt, thorough, impartial and independent investigations as required by international human rights law.

The examination of torture allegations is in many cases conducted by the internal security service of the Ministry of Internal Affairs or other law enforcement agencies whose employees are themselves implicated in the complaint. In those cases where complaints are submitted to prosecutors' offices they are often forwarded to the internal security services of law enforcement agencies for them to conduct the investigation. The internal security services usually dismiss the allegations as unfounded and, as a result, criminal cases are opened only in a small number of cases.

When investigations are led by prosecutors they are also often not conducted effectively. Prosecutors, like the police, have an interest in reducing and resolving crime. In order to achieve this goal prosecutors may be inclined to overlook human rights violations committed by police, such as torture. Prosecutors and policemen from the same regions frequently have close professional and sometimes even personal links, which often poses an obstacle to thorough and impartial investigations into violations committed by police. In addition, domestic legislation permits prosecutors to order police to undertake investigative activities and gather evidence for them. In those cases where torture or other ill-treatment are revealed during court hearings prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

#### Recommendations to the government of Kazakhstan:

- Conduct effective criminal investigations into all allegations of torture and provide investigators with adequate resources to carry out their mandate (CAT Concluding Observation, Paragraph 7(c)).
- Establish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons (CAT Concluding Observation, Paragraph 8(a)). In October 2014 Kazakhstan accepted the recommendation made by Germany and

Montenegro to establish an independent investigation mechanism.

- Ensure that such an independent body is also empowered to receive and act on complaints of alleged torture and ill-treatment by law enforcement officials, including complaints of sexual violence; ensure that persons deprived of their liberty are able to transmit confidential complaints to such bodies; and ensure that this body is able to protect effectively complainants from reprisal (CAT Concluding Observation, Paragraph 8(b)).

### 3) IMPLEMENTATION OF THE ISTANBUL PROTOCOL (MEDICAL EXAMINATIONS)

Kazakhstan lags behind its neighbouring countries of Kyrgyzstan and Tajikistan when it comes to the implementation of the Istanbul Protocol. Although state forensic experts in Kazakhstan have participated in trainings on the Istanbul Protocol, the authorities have yet to oblige medical personnel to abide by its standards. In 2014, the Ministries of Health of Kyrgyzstan and Tajikistan obliged medical personnel – when conducting examinations of detainees -- to document torture and other ill-treatment in line with principles contained in the UN's Istanbul Protocol.

Recommendation to the government of Kazakhstan:

- Kazakhstan should immediately start implementing the Istanbul Protocol. The Ministry of Health should make it obligatory for all medical personnel of that Ministry to follow the standards of the Istanbul Protocol when examining detainees and documenting the findings.

### 4) 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. However, the country has not implemented the decisions on individual cases by the Committee against Torture and the Human Rights Committee. There is no unified mechanism in place, neither in domestic law nor in practice, that would allow for their effective implementation.

At a recent meeting of government representatives and human rights groups in the framework of the “Platform for Dialogue on the Human Dimension” under the auspices of the Foreign Ministry of Kazakhstan, Foreign Ministry representatives supported a recommendation brought forward by the Kazakhstan International Bureau for Human Rights (KIBHR) to set up a mechanism tasked with implementing UN treaty body decisions on individual cases. However, the timeframe for setting up this mechanism and its exact competencies have yet to be clarified.

By the summer of 2015, the Committee against Torture and the Human Rights Committee ruled on a total of eight individual complaints involving allegations of torture and ill-treatment that had been submitted by the NGO Coalition against Torture in Kazakhstan. In seven of these cases Kazakhstan was found guilty of breaching its international obligation to prevent or not to permit torture.

So far, Kazakhstan has partly implemented the treaty bodies' recommendations in only two cases. Torture victims

Alexander Gerasimov and Rasim Bayramov were awarded compensation for the harm suffered through torture. However, the compensation payments were not adequate and no effective investigations have been conducted. The perpetrators have not been found and have not been brought to justice.

In two other cases Kazakhstan forcibly returned Arshidin Israil and Khairullo Tursunov to China and Uzbekistan respectively, although the UN had called on Kazakhstan not to do so, referring to the risk of them being subjected to torture in their home countries.

In its November 2013 decision on the case of Oleg Evloev, the Committee against Torture urged Kazakhstan to conduct an effective investigation with the aim of identifying the perpetrators and to provide the victim with adequate reparation, including compensation and full rehabilitation. However, the authorities failed to conduct such an investigation and the State has not provided Oleg Evloev with measures of rehabilitation and compensation for moral damages.

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

Recommendations to the government of Kazakhstan:

- Note that at a recent meeting of government representatives and human rights groups in the framework of the “Platform for Dialogue on the Human Dimension” under the auspices of the Ministry of Foreign Affairs, Foreign Ministry officials expressed the Ministry’s willingness to establish a unified mechanism to implement all decisions issued by UN treaty bodies under their respective individual complaints procedures. Urge that such a mechanism be set up as a matter of priority. This would be in line with Paragraph 22(b) of the Committee against Torture’s November 2014 **Concluding Observations**, which stipulates that Kazakhstan should “(e)nsure comprehensive follow-up and institutionalize the implementation of decisions on individual communications adopted by the UN treaty bodies under treaties to which it is a party.”
- Promptly and fully implement all decisions by UN treaty bodies on individual cases (e.g. the cases of Alexander Gerasimov, Rasim Bayramov and Oleg Evloev).
- Amend domestic legislation to allow Kazakhstani courts to reconsider criminal cases based on UN treaty bodies’ decisions on individual cases, including those that the courts had already closed. Subsequently, effective investigations should be opened to identify the perpetrators; they should be brought to justice; and the State should provide adequate reparation to the victims of torture, in line with Kazakhstan treaty body obligations.
- Ensure that victims of torture or their family members are consulted and informed throughout the implementation process pertaining to their case.

## 5) NATIONAL PREVENTIVE MECHANISM

The establishment of the National Preventive Mechanism (NPM) is a step in the right direction. It was set up under the Ombudsman's office in 2013 and started visiting detention facilities across the country in March 2014. Its first Consolidated Report was issued in May 2015.

We are concerned, however, that the NPM's current monitoring **mandate does not cover all places of deprivation of liberty**. For example, the monitoring group has **no access to orphanages, nursing homes for the elderly and disabled, military barracks, and it is not permitted to inspect offices of police departments**. In many cases the NPM is required to **announce its visits to the NPM coordinating authority, the Human Rights Ombudsman**. The NGO Coalition against Torture is concerned that the **Ombudsman's office in Kazakhstan does not fulfill the requirement of independence as outlined in the Paris Principles**, considering that the Ombudsman is a **state employee appointed to the office by Presidential decree**. When NPM members receive torture allegations and urgently want to visit a specific detainee, the **visit has to be approved by the Ombudsman's office**. This procedure has caused significant delays and in some cases staff of the Ombudsman's office have refused to approve requests for visits claiming that evidence of torture was needed to be in writing and signed by the alleged victim to justify an urgent visit and that "a mere suspicion" that somebody had been tortured was not sufficient.

Recommendations to the government of Kazakhstan:

- The mandate of the National Preventive Mechanism should be broadened to include monitoring of all places of deprivation of liberty, such as offices of police departments and of the National Security Service, orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes and military barracks, and examining the conditions and treatment of children in penitentiary and non-penitentiary institutions. Measures should be taken to improve the ability of the mechanism to carry out urgent and unannounced visits to places of detention upon its request. The State party should consider authorizing the mechanism to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis and to ensure that the mechanism's members and the public can assess whether their recommendations have been acted upon. The annual and other reports of the mechanism should not be subject to review and approval by the President before publication. (CAT Concluding Observation, Paragraph 13).
- The State party should ensure the independence of the Office of the Human Rights Commissioner (Ombudsman) by establishing it through a constitutional or legal text, and should broaden its mandate to enable it to function effectively in all parts of the country in its expanded role as both the national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and as the national preventive mechanism in compliance with the Optional Protocol to the Convention. (CAT Concluding Observation, Paragraph 13)

## ANNEX: CASE EXAMPLES

### No effective investigation into Iskander Tyugelbaev's allegations of abuse in prison colony

In spring 2015 guards of the prison colony OV 156/18 in Eastern Kazakhstan reportedly **beat Iskander Tyugelbaev so severely while conducting a routine search and seizure operation that he sustained concussion, fell into a coma and required a perforation of his skull**. The NGO Coalition against Torture in Kazakhstan is aware of many cases in recent years where prisoners are subjected to physical abuse and humiliation by prison guards and prisoners loyal to the prison administration in the course of routine search and seizure operations. After the surgery Iskander Tyugelbaev came to, but **since then he has had difficulties moving and has been unable to speak**, so he communicates with his lawyer only in writing. Iskander Tyugulbaev submitted a complaint to the authorities about the abuse and a **case was opened for "exceeding official authority"**. Thanks to his lawyer's efforts – to protect him from reprisals by prison guards during the investigation – Iskander was not transferred back to the prison colony after the surgery, but to an investigation isolation facility. However, the authorities **subsequently closed the case for "lack of evidence of a crime"** and **Iskander was returned to prison colony OV 156/18**. Later he was transferred to the prison hospital for further medical treatment. In September 2015, while being transferred back to the prison colony, he **lost consciousness** on the way and was returned to the hospital.

#### Recommendations:

- Express concern that the criminal investigation into allegations that the prisoner Iskander Tyugelbaev was subjected to physical abuse during a routine search and seizure operation in prison colony OV 156/18 in Eastern Kazakhstan was closed for "lack of evidence of a crime". To our knowledge no effective investigation was conducted into the allegations.
- Urge the authorities to promptly open a thorough, impartial and independent investigation into the allegations and bring anyone reasonably suspected of being responsible to justice.
- Ensure that Iskander Tyugelbaev receives adequate medical treatment.

### No effective investigation into allegations that police tortured Alexander Albrandt

On **23 August 2014**, 51-year old Alexander Albrandt was detained by two police officers in plainclothes as he was returning from a friend in the village of Kushmurun. Police said they detained him for being drunk in a public place. He told the Kostanay branch of KIBHR that the men subsequently took him to **an office at the local police station, where they and one or two other policemen beat him**. Then, two police officers took him to Auliekol Central Hospital to establish his alcohol intake. In the presence of the officers **medical personnel recorded injuries to his head and chest and Alexander Albrandt complained that the injuries resulted from police beatings**. When leaving the hospital **one of the policemen beat him again, in retaliation for complaining about the beatings**. He hit him on his back and grabbed his throat until Alexander Albrandt felt he was suffocating. The officer shouted at Alexander Albrandt, whose ancestors immigrated to Kazakhstan centuries ago: **"You fascist, be off to your Germany!"** Alexander Albrandt reported that a policeman **"threw me on the ground, pushed his knee on my throat (...) and the other fanned some kind of gas in my face, then they (lit it and) burnt my face. I wasn't able to breathe."** The officers dragged Alexander Albrandt to their car and one threatened: **"We'll take you outside the**

village, dump you there and then we'll go home." Full of fear, Alexander Albrandt, who was handcuffed, unsuccessfully tried to escape from the car as they were driving. To punish him for his attempt to escape, the officers stopped the car, dragged him out and **beat and kicked him all over his body** as he was lying on the ground. He **lost consciousness several times** and eventually found himself in the temporary police detention facility (IVS) of the village of Auliekol late that night. He told KIBHR: "I regained consciousness when I was already in the IVS. I was handed over to the duty officer. (He) told the policemen they should check my pockets, which were bulging. The policemen explained they put cow dung on my groin to humiliate me." The next morning Alexander Albrandt requested that a medical examination be conducted and to file a complaint about the police violence with a prosecutor. However, IVS staff did not act on his requests and he was only able to file a complaint about torture late that night during an interrogation. On 25 August, Alexander Albrandt was taken to court, where he learnt that he was accused of having destroyed a car window with an empty beer bottle. Although he insists he is innocent he offered to pay for the damage in order to be released from custody. A **forensic medical examination** conducted on 29 August in the city of Kostanay **recorded bruises on his right ear, his face, his arms, torso and left thigh and abrasions at the back of his head and his left knee joint.**

There are allegations that, in order to evade criminal responsibility, **police falsified evidence and put pressure on at least two men to provide false witness statements.** Police reportedly falsified and submitted to Auliekol district court a letter in Alexander Albrandt's name stating that another person, not police officers, had caused Alexander Albrandt's injuries. However, the court refused to act on the letter. Additionally, a man informed the Prosecutor's Office that police forced him into giving false evidence against Alexander Albrandt.

In the case of Alexander Albrandt **criminal proceedings were opened** against the alleged perpetrators on 19 September 2014 **for "exceeding official authority"** (Article 308 of the Criminal Code of Kazakhstan that was in force at the time), but police **closed the case** on 31 December for **"lack of evidence of a crime"**. In February 2015, Kostanay regional Prosecutor's Office **reopened** the case and sent it to the Internal Security Department of the Ministry of Internal Affairs in Kostanay region for investigation. However, the investigation was **closed** two weeks later. When Alexander Albrandt's lawyer lodged a complaint, the Prosecutor's Office revoked the earlier decision to close the criminal case and **sent the case for further investigation to the Anti-Corruption Agency**, but this Agency **also closed the case for "lack of evidence of a crime"**.

#### Recommendations:

- Raise concern that the authorities have not conducted an effective investigation into allegations that Alexander Albrandt was subjected to torture by police of Kushmurun village.
- Promptly open a thorough, impartial and independent investigations into the allegations raised by Alexander Albrandt and remove the alleged perpetrators from any position where they could repeat the alleged crimes, pending the outcome of the proceedings.
- Open an investigation into allegations that in the case of Alexander Albrandt police fabricated evidence to evade responsibility for their crimes and, should these allegations be confirmed, bring those responsible to justice.