

Freedom from torture

Kazakhstan | Kyrgyzstan | Tajikistan

Issue 7, October 2016

Obtaining compensation for moral harm sustained through torture: Progress and Challenges

This newsletter features interviews with six lawyers and psychologists from Central Asia, the Russian Federation and Ukraine about their experiences in assisting victims of torture and their families to obtain compensation.



Kyuri Idrisov (Psychiatrist, Chechnya, Russian Federation), **Svetlana Chernikova** (Psychologist, Kazakhstan), **Gulchekhra Kholmatova** (Lawyer, Tajikistan), **Elizaveta Akhmedova** (Lawyer, Kazakhstan) and **Sardorbek Abdukhalilov** (Lawyer, Kyrgyzstan) discuss why compensation is a crucial element in the struggle against torture; what they regard as the main achievements attained so far; and what the Central Asian governments should do to build on these precedents and achievements.

Elena Volochay (psychologist, Ukraine), who has worked on cases involving compensation for torture since 1995, shares her observations and experience and gives recommendations to lawyers and psychologists in Central Asia on how to build on existing achievements and work toward achieving fair and adequate compensation for all victims of torture.

The interviews were conducted by Anne Sunder-Plassmann and Rachel Bugler of International Partnership for Human Rights (IPHR) on behalf of the NGO partners jointly engaged in the EU-funded project “Action for Freedom from Torture in Kazakhstan and Tajikistan”.

The newsletter concludes with descriptions of two cases from Kazakhstan. The first is Nikolay Sinyavin, who was subjected to torture by police in the Karaganda region of Kazakhstan. **Elizaveta Akhmedova** and **Svetlana Chernikova** worked for two years to secure compensation for him and on 17 March 2016 Karaganda Regional Court awarded him 1 000 000 tenge (approx. 2 600 EUR) for moral damages. The second is Ivan Rozhnov, a 21-year-old

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When we are successful, then the world becomes a little better. It's not only a struggle for a sum of money but it's about justice.

Elena Volochay
Psychologist and expert on compensation for torture victims, Ukraine

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who was tortured by police officials in Yasnokov in North-Kazakhstan region. In early 2013 Ivan Rozhnov was awarded and paid state compensation for the torture he had suffered at the hands of law enforcement officials. However, in December 2013 a court overturned the compensation ruling and instructed him to pay back the money.

Over the past ten years the Central Asian Anti-Torture Coalitions have pushed for progress in facilitating access to reparation for victims of torture and their families. Thanks to these efforts, six victims or their bereaved families have received compensation payments for moral damages sustained through torture in both Tajikistan and in Kazakhstan. Although the amounts of compensation that the courts ordered the authorities to pay have not been adequate, these are nevertheless important regional precedents.

While in Kyrgyzstan the courts have also ruled in favour of compensating victims in several cases, to date none of the victims has actually received payment. In Kyrgyzstan – contrary to the country’s obligations under international human rights law – domestic legislation does not require the state, but the perpetrators, to provide compensation for torture.

Coalition members have also provided hundreds of victims with rehabilitation services in recent years, such as medical and psychological support. In not one of the Central Asian states does domestic legislation provide for measures of reparation such as satisfaction and guarantees of non-repetition.

Practitioners from Central Asia and Chechnya (Russian Federation) interviewed

IPHR: Can you describe some of the longer term side effects which victims of torture might experience? What about their family members?

Kyuri Idrisov (Psychiatric doctor and professor of psychiatry at the State University of Chechnya, RF): Victims of torture experience a range of long term problems which affect their lives and those of their families. The loss of the feeling of security, feelings of guilt or that their future prospects have been destroyed, feelings of isolation. They can become less adaptable, and experience depression, irritability and aggression, as well as the need for revenge. These feelings can cause the social links between the victim and those close to him or her to be broken, and this can lead the victim of torture to withdraw into isolation and self-destructive behaviour.

Svetlana Chernikova (Psychologist, Crisis Centre – Branch of the Kostanay Regional Psychiatric Hospital, Kazakhstan): A torture survivor will never be the same person that he or she was before this experience – he or she will change, despite going

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The Committee emphasizes the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress.

General Comment No. 3 of the Committee against Torture on the implementation of Article 14 of the Convention



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A torture survivor will never be the same person that he or she was before this experience – he or she will change, despite going through rehabilitation.

Svetlana Chernikova
Psychologist, Crisis Centre – Branch of the Kostanay Regional Psychiatric Hospital, Kazakhstan

through rehabilitation. Often long years of post-traumatic stress disorder cause sleeplessness, lack of appetite, depression perhaps, or generally feeling blue. They can experience difficulties relating to others and with social adaptation. Torture victims can find it difficult to trust the world again, to believe in justice and fairness, kindness. They often become isolated. Relatives of victims of torture can also experience sleeplessness, lack of appetite and become nervous, irritable or withdrawn. They are interdependent on their family member who is a victim of torture. The chance of successful rehabilitation depends largely on the individual personality, the resources and the support available from experts and family members.

IPHR: Why is it important for victims of torture and their families to receive compensation for moral damages caused by torture?

Kyuri Idrisov (Psychiatrist, Chechnya): Compensation is not only a question of material resources although this aspect is important. To a great extent, compensation is a symbol of the restitution of justice which is of great importance in the reintegration of a victim of torture into society.

Svetlana Chernikova (Psychologist, Kazakhstan): Compensation is important primarily to the torture victim as a confirmation of justice being done. In some cases symbolic compensation has literally brought a person back to life – as it serves as a sign that he or she did not struggle for justice in vain, that justice exists, that the victim is not worthless, that truth exists in the world!

Elizaveta Akhmetova (Lawyer with the Karaganda Regional Collegiate of Advocates, Kazakhstan): Moral harm often causes more harm to the victim than physical damage. While one cannot make up for this kind of harm, one can at least somewhat compensate a person for it. In the absence of a better way to restore his or her sense of wellbeing, the way that is used is financial compensation. Moral harm, which is something immaterial, cannot be valued in monetary terms in the same way as material harm can. Compensating the victim for moral harm provides him or her with possibilities to experience positive emotions that are proportionate to the physical or psychological suffering he or she has gone through.

Being compensated for damages is not only a right, but it also provides the possibility of rehabilitation after trauma, the possibility to regain trust in legal mechanisms, and, eventually, in the State. From the point of view of the State this is not of minor importance since ensuring justice and the supremacy of the law is one of the main obligations of the State vis a vis its citizens. Finally, this leads to reduced tension in society and increases the trust in those in power.

Gulchekhra Kholmatova (Lawyer of the NGO Bureau for Human Rights and Rule of Law, Tajikistan): Awarding compensation can provide victims of torture with official recognition of what they suffered, and the



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Elizaveta Akhmetova
Lawyer with the
Karaganda Regional
Collegiate of Advocates,
Kazakhstan



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In my experience victims of torture were mainly men between 28 and 35 years old who were often the main earner for their families. Underage children and elderly parents, in the case of a death through torture, are left without any means of material support. Financial compensation can solve their financial problems.

Gulchechra Kholmatova of the Bureau for Human Rights and Rule of Law in Tajikistan

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The obligation of States parties to provide the means for “as full rehabilitation as possible” refers to the need to restore and repair the harm suffered by the victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture. The obligation does not refer to the available resources of States parties and may not be postponed.

General Comment No. 3 of the Committee against Torture on the implementation of Article 14 of the Convention

recognition of them as victims of torture helps them to recover their dignity, self-esteem and feelings of self-confidence, trust in others and belief in justice. They can see those guilty of torture as vulnerable defendants when brought to justice and witness them having to answer for their past actions. As a result, the feelings of powerlessness and helplessness frequently experienced by victims of torture diminish. Compensation, like other measures of redress, can be seen as a sign of overall humanity – recognition by officials and society of the harm caused and conviction of those found guilty helps the victim to realize that all past secrets will become known and that the truth will always come out.

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IPHR: What kind of support do victims and families need while they appeal for compensation and go through the process of lodging a complaint about torture? Do they get this currently in Central Asia?

Sardorbek Abdukhalilov (Lawyer of the human rights NGO «Justice», Kyrgyzstan): I think that the victims and their families need support from rehabilitation clinics and centres. In Kyrgyzstan such a rehabilitation centre is run by the NGO «Voice of Freedom», which provides psychological and psychiatric support to victims of torture.

Gulchechra Kholmatova (Lawyer, Tajikistan): After having gone through the different court instances victims of torture and their relatives are often afraid of an additional criminal process being instigated against them. They need support from rehabilitation centres. In Tajikistan there are no such centres yet as they require significant financial support. But last year the NGO “Legal Initiative”, a member of the NGO Coalition against Torture in Tajikistan began to implement programmes for the rehabilitation of victims of torture and ill-treatment. The services provided include medical, social and psychological support as well as legal assistance.

IPHR: Is there one case which particularly stands out in your memory?

Gulchechra Kholmatova (Lawyer, Tajikistan): I particularly remember the first case of compensation for moral damages that I worked on. It was also the first compensation case for a victim of torture in our country. The case was that of Safarali Sangov, who died a few hours after being taken into detention at the Sino Department of Internal Affairs in Dushanbe. Multiple wounds and injuries had been inflicted on his body not long before he died. The criminal case ended when an amnesty was given to the suspects who, to this day, have never been brought to justice for their actions. The application of the law “On Amnesty” entails an admission

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Sardorbek Abdukhalilov
Lawyer of the human rights NGO «Justice», Kyrgyzstan



For more information about the case of Safarali Sangov, see the photo-history compiled by the Coalition against Torture in Tajikistan:

<http://www.notorture.tj.org/en/photo/photohistory-victim-torture-safarali-sangov>

of guilt by those amnestied and this served as grounds for our application for compensation. I decided to submit a complaint for compensation for moral and material harm on behalf of Safarali Sangov's widow against the Ministry of Finance of Tajikistan. I put the documents together and prepared the evidence and proof for the court with our conclusions about the admission of guilt by the officials who had been amnestied. During the court hearing the evidence we had gathered was supported by witness testimony. The witnesses gave evidence about the plaintiff's moral suffering and how it had affected her life. As a result of the clear and professionally set out position we managed to win compensation -- even though it was not sufficient -- for Safarali Sangov's widow which was transferred to her account.

Svetlana Chernikova (Psychologist, Kazakhstan): I especially remember the case of Nikolay Sinyavin from the city of Karaganda. He was tortured by police officers because two plastic toy cars had gone missing. They beat him, forced him to drink a bottle of vodka, pulled his fingernails out, forced a car key underneath his toenail, hit his head on a chair and raped him with a police truncheon. The injuries inflicted upon Nikolay Sinyavin left him with a brain injury and caused the onset of epilepsy. The police officers were extremely cruel, their aim was not to find the culprit as much as to satisfy their need to express their aggression and hatred. In court the lawyer asked for 3 million tenge as compensation to which the prosecutor replied "Sinyavin has already experienced life in detention – he's used to torture now". The prosecutor asked for 200 000 tenge. In the end the court ruled to award 1 million tenge as compensation.

Kyuri Idrisov (Psychiatrist, Chechnya): I remember the case of a mother, whose son was taken away from home by fighters in 2002 and who has not heard from him since. She raised his two children and all the while expected him to return. She appealed to all the authorities, but didn't receive any support. She experienced a range of psychological symptoms, to the point where she often imagined hearing her son's footsteps outside the window and ran out to meet him. The family applied to the European Court for Human Rights in Strasbourg. Last year, i.e. 13 years later, the court considered the case and ruled in favour of the applicant. The family received a significant sum from Russia in compensation, and this had a positive effect. The family felt that justice had been done. They held a wake, thus accepting the loss of their son and saying farewell to him.

IPHR: What have been the most significant successes in your country in terms of achieving compensation in your view?

Gulchekhra Kholmatova (Lawyer, Tajikistan): One of the most positive developments in Tajikistan is that judges have begun to accept legal suits for moral and material harm, that they are beginning to review the substance of such claims and some decisions have been made in favour of torture victims. This means that the

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Kyuri Idrisov
Psychiatric doctor and professor of psychiatry at the State University of Chechnya, RF

For further information on the case of Nikolay Sinyavin, refer to the last chapter of this newsletter

State is acknowledging that harm has been caused in some cases as a result of torture. There are also cases where compensation has been paid, although the sums involved cannot be called fair or adequate. Also legal practice has developed and the quality of complaints has significantly improved.

Sardorbek Abdukhalilov (Lawyer, Kyrgyzstan): From my point of view one of the main success stories in the struggle for compensation in Kyrgyzstan has been the decision by Pervomay District Court in Bishkek on the civil suit of Kaidakhan Dzhumabayeva to the Finance Ministry of Kyrgyzstan. She had argued for a compensation of 3 759 425 Kyrgyz Som. Dzhumabayeva turned to the court following a decision by the UN Human Rights Committee. The Committee had found that Kyrgyzstan had violated the rights of her brother Tashkentbay Dzhumabayev under Articles 6 and 7 of the ICCPR. Pervomay District Court ruled that Kaidakhan Dzhumabayeva should be granted a compensation of 500 000 Som. This sum was reduced by the court of second instance to 250 000 Som. Although the sum was reduced this is still an important precedent, but I have to add that unfortunately Dzhumabayeva has not yet received the money!

Elizaveta Akhmetova (Lawyer, Kazakhstan): In Kazakhstan, to date, the most striking cases are the victims of torture, Alexander Gerasimov and Rasim Bayramov, whose rights to compensation were recognized by Kostanay City Court in November 2013 and December 2014 respectively. The UN Committee against Torture decided that the two men should receive full and adequate reparation, including compensation and rehabilitation after they submitted individual complaints to the Committee. These rulings by Kostanay City Court are important milestones in the fight for remedies to victims of torture in Kazakhstan. Another positive example of compensation for non-pecuniary damages to a victim of torture is the case of Nikolay Sinyavin. I represented his interests in the criminal proceedings against the police officers responsible and also in the civil case for the recovery of moral damages from the Department of Internal Affairs (DIA) of Karaganda region. The amount of compensation awarded by the court for moral harm certainly leaves much to be desired, but nevertheless it was a victory, and one which we'd worked for two years.

IPHR: In your view, what are the main obstacles to fair and adequate compensation for victims of torture that the authorities should address?

Sardorbek Abdukhalilov (Lawyer, Kyrgyzstan): The civil legislation in Kyrgyzstan limits victims' ability to sue officials for their actions or their failure to take action. In the case of torture filing a suit is only possible when the illegal actions have been established in the context of a criminal case and only if a guilty verdict is pronounced. When you take into account the level of impunity and the number of guilty verdicts in Kyrgyzstan you can imagine that there are no strong precedents of dealing with cases involving compensation for moral harm sustained through

For further information on the case of Nikolay Sinyavin, refer to the last chapter of this newsletter

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A civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding.

General Comment No. 3 of the Committee against Torture on the implementation of Article 14 of the Convention

torture.

Elizaveta Akhmetova (Lawyer, Kazakhstan):

In Kazakhstan we have the same problem - the victim of torture cannot receive compensation without a formal criminal investigation into the allegations of torture being carried out and the perpetrators being brought to justice in court. I believe that the authorities should provide clear provisions in national legislation governing the right of victims of torture to redress, including fair and adequate compensation and rehabilitation for any damage caused as a result of torture, regardless of whether the perpetrators of such acts have been brought to justice.

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A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term „victim“ also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.

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The State should also remember that when deciding about reparative measures for victims of torture or ill-treatment one has to take into account the specifics and circumstances of each case, and the compensation payment should be adapted to the individual needs of the victim and commensurate with the gravity of the crime committed.

It is also important that the State facilitates access to long-term rehabilitation programmes for all victims of torture or ill-treatment, without discrimination and fully respecting their right to confidentiality. The authorities can provide these services themselves or they can provide financial support to private or non-governmental programmes. In any case it is extremely important that those who have experienced torture can trust those rehabilitation measures that are offered.

I'd also like to mention that in March 2015 the Prosecutor General's office of Kazakhstan suggested establishing a "compensation fund for victims" which would cover state compensation to groups of victims including victims of torture. The draft provides for sums of compensation of approximately 185 US dollars for victims of torture, and is the same for everyone regardless of the individual circumstances of the case and the moral harm caused. It was suggested that the fund could be set up using the court fines levied on persons who have committed criminal offenses, the proceeds from the sale of confiscated property obtained by criminal means, collateral converted to state revenue, etc. Such funds exist in over 20 countries in Europe and the US.

Gulchekhira Kholmatova (Lawyer, Tajikistan): Victims of torture who win compensation claims for moral and physical harm still find it very difficult to actually receive the compensation payments. The difficulties are exacerbated by the lack of a clear state mechanism for the implementation of court decisions in practice. The statutory procedure for obtaining compensation from the state budget requires the claimant to ensure that judicial decisions are implemented. This can often mean that those responsible for recovering the compensation, the victims of torture, are not able to receive the sums instructed by judges within a reasonable period of time.

Secondly there is no separate budget line in the ministerial budget for compensation payments which

means that victims of torture have to spend months pestering ministries and official bodies in order to receive the payments which the court assigned to them. The State should review ministerial budget lines and provide a separate one for compensation payments.

Thirdly, I would suggest that during preliminary investigations in these criminal cases all family members, and not only one person, are given the status of party to the case as all family members experience stress, nervous breakdown and pain due to the injury or loss of son, father or husband.

Interview with Elena Volochay on working with victims of torture and compensation

Elena Volochay, human rights defender and psychologist from Ukraine, has extensive experience on cases involving the compensation of moral damages sustained through torture. She was one of the experts at the “Training on compensation of moral harm suffered through torture” that was held in the framework of the anti-torture project in Almaty in February 2016. Elena is currently working on a manual on compensation commissioned by the NGO Coalitions against Torture in Kazakhstan, Kyrgyzstan and Tajikistan. It is intended as a tool for lawyers and experts involved in compensation cases.

IPHR: Can you briefly describe yourself, your professional background and the nature of your work in Ukraine?

Elena Volochay: I initially studied biology and chemistry. Then I studied psychology and then the international human rights system. In 1995 I became involved in a court case dealing with a murder in Ukraine as a psychological specialist. The defendant was a girl who had been subjected to an attack. Thanks to the psychological examination it was possible to explain the specifics of her behavior and her personality to the court, and how this affected her reaction to the attack. The court reduced the sentence from 11 years to two years and eight months. It was this case that made me understand what an important role forensic examination can play in the justice system and in people’s lives. At that time the investigative authorities and the courts appointed renowned experts to provide forensic examinations, which increased the independence and professionalism and positively influenced the emergence of an independent forensic practice.

In 1996 I went to the United States together with a group of Ukrainian judges and officials for a study tour. We observed several court hearings in the state of Vermont. Some of the American organizers of the programme overheard a conversation between two Ukrainian officials who suspected that one of the jury trials was staged especially to trick the Ukrainian guests. The American organizers and the court officials felt truly offended by

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Gulchekhra Kholmatova
Lawyer, Tajikistan

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What we usually only see in American movies – the controversial aspects of court hearings – happens also in real life.

Elena Volochay
Psychologist, Ukraine

these suspicions. As for me, I came to the following conclusion: what we usually only see in American movies – the controversial aspects of court hearings – actually does happen in real life. Attending court hearings in the US helped me a lot with my subsequent court cases in Ukraine. Since then I stopped being afraid and I understood very clearly that the fight in court is about justice.

In 1996, for the first time, I participated in a court case about compensation for torture. I was doing my PhD at the Academy of Sciences in Ukraine and had a lot of experience in conducting psychological diagnoses, scientific investigations and consultations. It was almost the first compensation case in Ukraine and the judge awarded quite a high amount of money. This positive verdict was possible because we were able to make the judge feel the victim's pain and suffering, we managed to "touch" him as a person. Later I was involved in several submissions of cases involving compensation payments to the European Court.

IPHR: When and how did you become involved in the anti-torture project in Central Asia?

Elena Volochay: I have worked in Kyrgyzstan since 2004, in Tajikistan since 2005, in Kazakhstan a little later. The first contacts had to do with fair trial issues and monitoring of places of detention. In 2006 I ran training workshops on compensation in Khujand and in Dushanbe with the American Bar Association's Rule of Law Initiative (ABA CEELI). One of the participants was a Supreme Court Judge who later elaborated teaching materials for judges and used them at the Centre for Further Qualification. Later I also ran trainings for lawyers in Kyrgyzstan (since 2007), and for judges, lawyers and human rights defenders in Kazakhstan (since 2013). In the last two or three years, together with colleagues, I have also run trainings aimed at increasing the psychological safety of human rights work for members of the NGO Coalition against Torture in Tajikistan and for human rights defenders and journalists in Kazakhstan. I have worked closely with lawyers from all Central Asian countries, who were working on torture cases, in particular those involving compensation.

IPHR: Does the situation in Ukraine in terms of compensation for torture cases differ from that in Central Asia? How?

Elena Volochay: Although generally the justice system in Ukraine is in a chaotic state right now, judges in Ukraine tend to ask forensic experts a lot of questions and they attend many trainings. In Ukraine judges normally work in this capacity all their lives whereas in Tajikistan, for example, many leave the judicial system after a while, which means that expertise cannot be retained as well and it can have negative implications on their independence. In Ukraine I immediately know when the judge was previously a lawyer or has a law enforcement background. It's like two different worlds. I saw judges in Georgia who did not feel superior to the

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Elena Volochay

people. They said they were there to solve problems, not to be above everybody else. In Ukraine many judges feel superior to other people and often see themselves as serving the government rather than an independent judiciary. In Central Asia, for some reason, the judges also often appear to be on the side of the prosecutors, not on the side of justice. Broad generalizations aren't helpful in this area, but the low level of trust that people have in the justice systems is a clear signal that systemic change is necessary.

Ukrainian judges have a lot of experience of reviewing compensation cases. Back in 1995 the Supreme Court dealt with questions relating to the compensation of moral harm and summarized the judicial practice in a Regulation of the Supreme Court Plenary. The amounts granted by judges in Ukraine tend to be much higher than in Central Asia, which has a lot to do with our ability in Ukraine to build on European Court practice. In Central Asia judges often do not understand why the state should carry any responsibility and award compensation.

In Kyrgyzstan many lawyers have been trained on compensation, but unfortunately this has not yet translated into successful court cases.

IPHR: What do you recommend Central Asian lawyers and human rights defenders that could help them make progress on compensation cases?

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Lawyers and other human rights defenders face many obstacles in Central Asia. There have been some very good expert examinations that were presented to the courts but recently the courts have cut the sums that were awarded even further.

Elena Volochay

Elena Volochay: Lawyers and other human rights defenders face many obstacles in Central Asia. There have been some very good expert examinations that were presented to the courts but recently the courts have cut the sums that were awarded even further. In Kazakhstan, for example, there are many well-educated lawyers and judges, but since corruption is common in our countries there is little belief that one can achieve something with an honest fight in court.

Understandably, lawyers become disheartened. However, the main thing is to learn to be persistent, to defend and argue one's position convincingly. The main "approach" is to have courage of your convictions. Don't be afraid of authority. I believe that we have to find ways to help the judge understand the case, to understand what effect the torture had on this person's life. You have to address the judge on an intellectual level, to force him or her to think. This has worked in Moldova and Ukraine. In 2007 I conducted training for judges and lawyers. The other trainers were Supreme Court judges. At that training the judges said "influence us! Bring your arguments and argue in court!" This is advice worth taking to heart.

I once worked on a civil case. A girl had been injured by a fallen tree with serious consequences for the rest of her life. The father sued the local authority responsible for the territory around the house because citizens had repeatedly urged it to do something about the tree. The court of first instance granted a low amount of compensation, but upon appeal the court increased the

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The main thing is to learn to be more persistent, to defend and argue one's position convincingly. The main "approach" is to have courage of your convictions.

Elena Volochay

amount. After the appeal the father talked to the judge, who told him: “Two years ago I worked on a case where a child died. The family of the deceased child asked for compensation of 1 000 000 Ukrainian Grivnya, but since I wasn’t presented with any good arguments and wasn’t able to grant more than 50 000 Grivnya. But this case has always haunted me. Had I been presented with good arguments like in your case, I would have given them 1 000 000 or even more.” This shows the importance of putting up a convincing defence.

IPHR: Many lawyers in Central Asia would like to have a chart or a formula that they can refer to when arguing for a certain amount of compensation. What is your opinion?

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States parties should ensure that their domestic laws provide that a victim who has suffered violence or trauma should benefit from adequate care and protection to avoid his or her re-traumatisation in the course of legal and administrative procedures designed to provide justice and reparation.

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Elena Volochay: I think scales and formulas are dangerous because in the end people may receive almost nothing. For example, inflation can modify the amounts or judges can say they have to reduce the amounts because the state has no money. But I am not totally opposed to scales. The main thing is that the person has a choice in which way he wants to obtain justice.

One can have a mixed system like in the United Kingdom. There, one can turn to the court for compensation; the court examines all evidence and awards a compensation – for example, it can be 800 000 pounds sterling – or one can choose an alternative route which avoids court involvement although one still has to present evidence. Under this procedure the amounts are specified. They go up to 250 000 pounds sterling, with medical harm up to 500 000 pounds sterling which is the maximum.

I am convinced that the individual approach to every case plays a decisive role in our countries. You have to look at what the incident means to the victim, how the torture has turned this person’s life upside down. A scale or formula does not communicate any of that. We should not settle for the bare minimum, we should concentrate on working with the judges. You have to show the judge how much energy and time it will take to get the victim out of his hole of suffering. If the judge believes that the person is really suffering then the amount of compensation will fall into place by itself. It is important for the judge to understand that adequate compensation is an important element of the struggle against impunity.

We have to remember not to look at compensation in a narrow way, we shouldn’t let ourselves be pushed into a corner. It’s not only about calculating moral harm. We have a whole tool box at our disposal. General Comment No. 3 of the CAT talks about restitution, compensation, satisfaction, guarantees of non-repetition, a whole range of further aspects of reparation. You have to appeal inadequate rulings on compensation and demonstrate that you don’t see that the sums on restitution and non-repetition are reflected in the sum that was awarded to the victim.

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States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate in relation to gravity of the violations committed against them.

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You have to look at what the incident means to the victim, how the torture has turned this person’s life upside down. A scale or formula does not communicate any of that.

Elena Volochay

IPHR: Can you outline some of the longer term consequences of torture which victims might experience?

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It's extremely hard to cope with an experience like torture because there's no way you can make sense of it. You can't try to calm yourself by saying "it had to be that way".

Elena Volochay

Elena Volochay: They can be catastrophic and dramatic. It's purely evil. It's extremely hard to cope with an experience like torture because there's no way you can make sense of it. You can't try to calm yourself by saying "it had to be that way", because torture can't be explained, there's no rationale for it. I know a young man, who was a student. His friends said he was like the life and soul of their group. He was funny, clever, creative everybody loved him. On the day when Ukraine's independence was announced police detained him on the main square. They immediately started rough handling him. The officers were very cynical. They hit him on the head with Ukraine's Criminal Code, a heavy book, saying "there you have it, the law that you keep talking about!" Then the officers lined up like a conveyer belt. They beat him, did the "parrot" with him, which means that they twisted his shoulder. His shoulder nerve was injured. He didn't eat and he didn't sleep. He wasn't allowed to go to the toilet, he was dirty and not allowed to call home; they kept him like this for three days. After the beatings he was lying on the cold floor, unconscious. When I examined him, his personality had changed. His thinking had become slow, he started forgetting things. His social life totally changed. He also deteriorated physically. He became grey and pale. His friends said: "He is a different person, he's not the one we knew." Now he lives with his mother. His mother has also suffered a lot, the two are very close. He gave up his former life for nothing. And he blames himself and wonders "Maybe I did something wrong?"

I think people who went through torture never fully overcome this experience, no matter what you do to support them.

IPHR: What does your work on compensation for torture victims mean to you personally?

Elena Volochay: The fight for compensation made me into a different person. When we are successful, then the world becomes a little better. It's not only a struggle for a sum of money but it's about justice. My colleague and husband say without compensating the victim there is no justice.



Nikolay Sinyavin

Two cases from Kazakhstan illustrate the challenges faced in obtaining compensation for moral and physical harm

The case of Nikolay Sinyavin

On 25 August 2014 three police officers of the Nurinsk district branch of the Department of Internal Affairs in Karaganda region of Kazakhstan arrested Nikolay Sinyavin. He was suspected of theft, and during the

interrogation the police officers beat him repeatedly, poured vodka into his mouth, threatened to rape him with a rubber truncheon, and subjected him to physical and psychological pressure in order to get him to confess. He was eventually taken home late on 25 August and he lost consciousness several times during the night. Nikolay Sinyavin's mother lodged a complaint with the Prosecutor's office against the policemen responsible.

A forensic medical examination carried out on 26 August 2014 found that Nikolay Sinyavin had suffered injuries to the left parietal area of the brain, the left temporal region, left eye and neck. The nail of the ring finger of his left hand had been removed. He had bruises and marks on his arms, legs and face.

On 22 July 2015 Nurinsk District Court found the three police officers guilty under Article 141.1 part 2.a of the Criminal Code, and specifically of torturing Nikolay Sinyavin and intentionally causing him physical and mental suffering with the aim of obtaining a confession. The court sentenced them to three years' imprisonment, a decision which was upheld at appeal (by Karaganda Regional Court).

On 19 November 2015 expert psychologist Svetlana Chernikova examined Nikolay Sinyavin and concluded that he was suffering from high levels of anxiety, stress, insomnia and depression and that he suffered from flashbacks and fears related to the arrest, torture and ill-treatment. A deterioration of physical health after the torture and ill-treatment was also noted including frequent headaches, sudden collapses, the onset of epilepsy, increased back pain. The expertise concluded that Nikolay Sinyavin was suffering from post-traumatic stress disorder, and that his psychological state of health was evidence of the fact that he had suffered torture and other ill-treatment including sexual humiliation, and recommended that he seek expert medical treatment including psychiatric treatment. Following the psychologist's assessment Nikolay Sinyavin's defense lawyer applied for 3 million tenge for non-pecuniary damages.

The Ministry of Finance argued that the costs should be met by the Department of the Internal Affairs of Karaganda region, as it was their officers who were found guilty of the crimes of torture. The Karaganda Department of the Interior argued that by law, the state Ministry of Finance was responsible for paying compensation in full in the case of unlawful conviction, prosecution, detention etc. In Kazakhstan the Civil Code does not provide rules governing damages to victims of torture, and therefore it was unclear which official body should be the defendant in this case.

On 17 March 2016 Kazybekbi District Court Number 2 of Karaganda ruled that the DIA should pay compensation to Nikolay for the moral harm he suffered during torture. The decision was appealed by Sinyavin's lawyers and the police authorities but on 23 June 2015 a court of higher instance ruled to leave the ruling unchanged. In its

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Nikolay Sinyavin was suffering feelings of humiliation, anger, depression, anger, shame, frustration, inferiority which were exacerbated by the fact he lived in a small village where everyone knew about what had happened to him. He was less able to maintain social contacts in his personal life and was uncertain about himself and the future; less able to communicate; and more fearful for his life and the lives of loved ones.

**Svetlana Chernikova,
expert psychologist**

conclusions, the Court made reference to Article 17 of the Constitution of Kazakhstan and international human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture, the Istanbul Protocol as well as the UN General Assembly resolution 39/46 from 1984 which provides for the right of compensation for victims of torture. The judge referred to the 2014 law “On Ministry of Internal Affairs bodies of the Republic of Kazakhstan” as well as the 1994 Law “On Investigations” which stipulate that law enforcement bodies are responsible for respecting human rights in the carrying out of their duties, as well as to the Supreme Court Regulatory Resolution of 27 November 2015 “On the application of the law by the courts for compensation for moral damage” which provides guidance on compensation for damages caused by the unlawful actions of law enforcement bodies, including mental or physical suffering. In addition, it referred to the conclusions of expert psychologist Svetlana Chernikova after her assessment of the moral and physical suffering experienced by Nikolay Sinyavin as a result of being tortured and ill-treated.

The court referred to the Supreme Court Regulatory Resolution’s stipulation that the amount of compensation determined by the court should be calculated according to the principles of reasonableness and fairness given an assessment of the circumstances of the case including violations of moral rights; mental and physical suffering (deprivation of liberty, bodily injury, loss of close relative, loss or limitation of ability to work).

The court set the amount of non-pecuniary damage to be recovered from the defendant, the DIA of Karaganda region, in favor of the plaintiff at 1 million tenge, clarifying that the findings of the forensic medical examination showed Nikolay Sinyavin had been caused physical suffering by multiple injuries to the brain, spinal column etc. leading him to be certified as disabled. The court additionally awarded 100 000 tenge to Nikolay Sinyavin to cover legal costs.

However, since Nikolay Sinyavin has received the compensation, the police have reopened the criminal investigation against him for theft with violence. This crime (Article 178.2 CC) is punishable from between three to seven years imprisonment. The Prosecutor’s office has returned the case for further investigation and so it has not yet come to court. Elizaveta Akhmetova is still Nikolay Sinyavin’s legal representative. She is concerned about the multiple procedural violations, and not least the fact that Nikolay Sinyavin was beaten by police officers in order to force him to confess.

The case of Ivan Rozhnov

One of the most shocking torture compensation cases that KIBHR worked on was that of Ivan Rozhnov, a 21-year old laboratory assistant at a village school in North-Kazakhstan region. On 28 January 2012, school guards suspected that Ivan had stolen a notebook computer and



Ivan Rozhnov

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The victim reacted with panic, anxiety, a narrowing of the field of consciousness (loss of sense of time). As a consequence of such a state, Rozhnov could not correctly assess the situation and lost his self-control, and the time for fear of persecution on the part of any member of the government, decided to hide away.

Conclusion of forensic psychiatric examination in April 2012 on the acute stress reaction which led Ivan Rozhnov to flee

detained him at the school. Police officers came to the school and questioned him for over seven hours trying to get him to confess to the theft. When he did not, they took him to the local police station in Yasnokov. Ivan Rozhnov reported that despite the freezing temperatures, he was not allowed to take his coat with him. At the police station, police officers beat Ivan and forced him to confess to the theft. The police held Ivan Rozhnov overnight in the gym of the police station. During transit the next day Ivan escaped and spent over 48 hours wandering in a forest at temperatures of 40 degrees below zero. In a hopeless state of panic Ivan Rozhnov proclaimed his innocence by writing in his own blood on a farm building: “I did not take it” (the laptop computer). On the evening of 31 January 2012 he got to a train station and was taken to hospital with severe frostbite. On 7 February he underwent an operation to amputate both his legs beneath the knees.

The public outcry that followed led to two police officers being charged with “exceeding official responsibility”, and they were convicted and ordered to pay compensation to the victim.

On 28 May 2013 the Appeals Collegiate on Criminal Affairs of North-Kazakhstan Region overturned the first instance decision, ruling that the police officers could not have foreseen that Ivan would run off into the forest in freezing conditions. The Appeals Collegiate ruled that the Department of Internal Affairs, rather than the police officers, should pay the compensation. In 2013 the Department of Internal Affairs paid compensation and Ivan spent the funds on his medical treatment.

However, on 30 December 2013, the Appeals Collegiate on Criminal Affairs of North-Kazakhstan Region ruled that it should be the convicted police officers, not the DIA, that should pay compensation. The court reclassified the charges to Article 141 of the Criminal Code which punishes torture. Ivan Rozhnov was informed by court order that, due to the change of defendant in the civil lawsuit, he had to return the compensation he had received from the DIA. Today, Ivan receives an allowance and works as a caretaker on a part-time basis. Out of his monthly wage of approximately 50 dollars, some 25 dollars is withheld at source in order to pay back the compensation. The Coalition against Torture is now planning to start litigation for compensation.

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Ivan's beliefs and values were destroyed, the basic values that are core to his personality: a belief in justice, human decency, honesty and trust. He developed a fear of life, of the world and a distrust of people. He began avoiding social contact. These forced changes can be irreversible and they require compensation.

**Svetlana Chernikova
expert psychologist on
case of Ivan Rozhnov**

***We welcome your ideas,
comments and feedback.
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