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Briefing paper for Donald Tusk, President of the European Council, and Jean-Claude Juncker, President of the European Commission, ahead of their meeting with President Nursultan Nazarbaev of Kazakhstan on 30 March 2016

Torture, ill-treatment and impunity in Kazakhstan: Key concerns and recommendations (March 2016)

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. In 2015, the NGO Coalition against Torture in Kazakhstan registered over 70 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.

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

In those cases where investigations were opened in recent years they have not been conducted effectively in the large majority of cases, thus perpetuating a vicious circle of torture and impunity. 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 a vested interest in achieving a high crime solution rate. 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.

National Preventive Mechanism

The establishment within the Ombudsman's Office of the National Preventive Mechanism (NPM), which started visiting detention facilities in March 2014, is a step in the right direction. However, we are concerned that the Ombudsman's Office does not fulfil the requirement of independence as outlined in the Paris Principles and that there has been undue interference in the NPM's work. NPM members should have the powers to decide on the visits they wish to carry out and to publish reports immediately after the visits.

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 recent years the Committee against Torture and the Human Rights Committee found Kazakhstan guilty of breaching its international obligation to prevent or not to permit torture in seven cases of torture victims. So far, Kazakhstan has partly implemented the treaty bodies' recommendations in only two of these cases. One of them is the case of Rasim Bayramov that is described in more detail below. The victims were awarded compensation for moral harm suffered through torture, but the payments were not adequate and the perpetrators have not been brought to justice. There is no mechanism in place, neither in domestic law nor in practice, that would allow for their effective implementation.

The sad case of Rasim Bayramov, who died in February 2016, demonstrates the urgent necessity to set 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. In 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 the corridor by his hair, and threatened him with sexual violence 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 forced him into signing a confession. Although Rasim 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. Rasim Bayramov turned to the UN Committee against Torture in May 2011 with the support of the Kostanay branch of 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 torture allegations 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 a small compensation for moral damages suffered as a result of torture. The authorities did not conduct an effective investigation into the torture allegations and the Prosecutor General's Office informed him in August 2015 that his case had been closed for "lack of evidence of a crime". The last few months of his life Rasim Bayramov was in a state of depression (as diagnosed by a psychiatrist who conducted an examination based on the standards of the Istanbul Protocol), suffering from his experience of abuse and feeling helpless in the face of continuing injustice. He died of pneumonia, which had developed in the context of the tuberculosis that he had developed when serving his prison sentence that had been handed down in an unfair trial, ignoring his allegations of torture.

Recommendations

- 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.
- Ensure that the Ombudsman's Office functions in full adherence to the Paris Principles and authorize the National Preventive Mechanism to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis.
- Establish a mechanism to promptly and fully implement all decisions by United Nations treaty bodies on individual cases.

For further information, refer to: Briefing paper on torture and ill-treatment in Kazakhstan for EU-Kazakhstan Human Rights Dialogue, November 2015: <http://iphronline.org/wp-content/uploads/2015/11/Briefing-on-torture-for-EU-Kazakhstan-Human-Rights-Dialogue-November-2015.pdf>