



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Concluding observations on the third periodic report of
Kazakhstan**

Addendum

**Additional information received from Kazakhstan on follow-
up to the concluding observations***

[Date received: 21 December 2016]

* The present document is being issued without formal editing.



Information from Kazakhstan on the implementation of recommendations 8, 10, 13 and 15 of the United Nations Committee against Torture

Recommendation 8

The Committee considers that initial steps have been taken towards the implementation of its recommendations but remains concerned at the continued lack of effective investigations, including the absence of mandatory medical examinations. It would therefore appreciate receiving information on any further steps taken by the Government to implement this recommendation.

1. Article 14 (Security of person) of the Code of Criminal Procedure of Kazakhstan stipulates that no one involved in criminal proceedings may be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. In accordance with article 271 (Mandatory forensic examination) of the Code, forensic examinations are to be carried out without fail in all criminal cases in which there is a need to ascertain the nature and severity of harm caused to health. Criminal cases involving torture fall into this category.
3. The Centre for Forensic Sciences of the Ministry of Justice and its regional branches conduct examinations whenever there is evidence of bodily harm that might be classified by investigative bodies that intervene thereafter as torture.
4. Seminars on documentation of torture are regularly conducted for experts at the Centre and its branch offices with a view to improving the quality of the accounts of bodily harm suffered by persons who have been subjected to torture.
5. Procedures for forensic examinations during investigations into allegations of torture have been developed for the purpose of familiarizing experts with the Istanbul Protocol. The procedures are currently awaiting approval for inclusion in the register of procedures of the Ministry of Justice.
6. Training seminars on the standards contained in the Istanbul Protocol attended by non-governmental organizations and interested public authorities are held periodically, which has helped in fulfilling the following objectives:
 - Adoption of urgent measures to protect victims, including the provision of necessary medical assistance
 - Immediate performance of forensic and psychological and psychiatric examinations with the option of bringing in independent experts
 - Carrying out of urgent investigative action within the first 72 hours of an alleged incident (interviewing of witnesses, crime scene investigations, seizure of physical evidence, interrogation of suspects if indicated in the complaint brought by an aggrieved party)
 - Carrying out of a thorough interview of the aggrieved party according to the procedures for interviewing victims of torture
 - Carrying out of a thorough interrogation of suspects
7. We also wish to note that there are other mechanisms for responding effectively to similar crimes under criminal procedural law.
8. For example, article 101 (Procedure for handling complaints from detained or imprisoned persons) of the Code provides that the administrations of places of detention are required to transmit without delay or censorship any complaint of torture or other cruel, inhuman or degrading treatment made by an arrested or detained person to the procurator's office.
9. Under article 187 (Investigative jurisdiction) of the Code, the internal affairs agencies and anti-corruption service are among the public authorities with the power to

conduct pretrial investigations into allegations of torture of persons, except where the alleged perpetrator is an official of the agency conducting the investigation.

10. In accordance with the regulations on the organization of pretrial investigations by procuratorial authorities (pursuant to order No. 48 of the Procurator General of 27 March 2015), criminal offences, including torture, committed by law enforcement officers are to be investigated by the procuratorial agencies.

11. If there is bias or red tape during investigations by criminal prosecution authorities into cases of torture involving other law enforcement law enforcement agencies, at the request of the procurator's office, further pretrial proceedings are to be carried out by a special procurator.

12. Moreover, during consideration by the judicial authorities of similar criminal cases, judges must without fail abide by Supreme Court regulatory decision No. 7 of 28 December 2009 on the application of the rules of criminal law and criminal procedure law concerning respect for personal freedoms and the inviolability of human dignity and the prevention of torture, violence and other cruel and degrading forms of treatment or punishment.

13. Under paragraphs 14 and 15 of the above-mentioned regulatory decision, the following is to be considered evidence of torture inflicted on a person and is treated by the court as a criminal case: statements made by the person concerning an act of physical or psychological torture against him or her; a medical examination of the person conducted during verification of information of the use of torture; analysis of the consequences that have arisen, records of interviews with persons involved in the criminal proceedings.

For information

14. In 2015, 19 law enforcement officers were convicted in 9 cases of torture before the courts, 16 of whom were sentenced to deprivation of liberty for various terms.

15. In the first half of 2016, 6 officers were convicted in 4 criminal cases, 5 of whom were sentenced to deprivation of liberty and 1 who received a suspended sentence.

16. Thus, there are sufficient mechanisms under national law to carry out effective investigations of cases of torture and ensure that mandatory medical examinations are performed.

Recommendation 10

The Committee remains concerned at the fact that pretrial detention facilities and penal institutions are still under the authority of the Ministry of Internal Affairs.

17. In accordance with the Act of 18 January 2012 amending certain legislative acts on the penal enforcement system of Kazakhstan, the functions and authority of the Ministry of Justice in respect of the penal enforcement system were transferred to the Ministry of Internal Affairs with a view to removing functions from the Ministry of Justice that do not properly belong to it.

18. The Ministry of Internal Affairs is a State body which fulfils other non-police-related functions in addition to its policing functions (repression, prevention and detection of crimes), such as:

- Delivery of public services in the area of citizenship, migration and processing of identity documents
- Emergency response, provision of disaster relief in the event of fires and inspections of fire safety equipment to ensure that it is in good working order
- Exercise of State control of the circulation of civilian and service weapons
- Control of the circulation of medicines containing narcotic substances and granting of authorization for their purchase

19. It should be noted that, within the Ministry of Internal Affairs, the penal enforcement system is separate from the criminal prosecution agencies and has maintained its autonomy as a separate entity in the form of a committee. The committee is a separate

legal entity, with autonomous funding. Its local agencies and offices report to the committee.

20. It is mandatory for all law enforcement officers, without exception, to visit institutions of the penal correction system, including officials of the Ministry of Internal Affairs. The committee ensures that this requirement is complied with in accordance with the Act of 30 March 1999 on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities.

21. The organization and management functions of the Ministry of Internal Affairs in respect of the penal enforcement system committee thus do not infringe the rights of persons serving court-imposed sentences.

22. Furthermore, criminal law reform has resulted in the reduction of the number of people facing criminal prosecution. In addition, the Penal Enforcement Code has gone through fundamental reform, with priority being given to respect for the rights of convicted persons. These and other measures have significantly reduced the number of persons serving criminal sentences in penal institutions, whose numbers over the past five years have fallen by 30 per cent (from 52,338 to 37,319).

23. The reduction of the prison population has made it possible to shut down institutions that did not comply with international standards.

24. Moreover, it has paved the way for improving conditions of detention in correctional facilities, including infrastructure and amenities.

25. Nutritional standards and diets have been improved, with the number of dishes offered increasing from 15 to 26, and due account has been taken of the food's calorific value. Foods such as butter, dairy products, cheese, sour cream, sausage, eggs, fruits, dried fruit, citrus and juices have been added to the menu.

26. Medical care has been improved, including the procurement of modern equipment to provide for professional medical assistance.

27. Standards for the supply of women's toiletries and hygiene items required for keeping clean and healthy have been improved.

28. The expected useful life of bedding for suspected and accused persons has been shortened and the outfits of convicted prisoners have been completely redesigned and their quality improved (cotton quilted jackets and trousers have been replaced with thermal lined ones, knitted caps are issued instead of caps with ear flaps and T-shirts and summer clothing are also provided for). Women's uniforms have been tailored in a more modern style.

29. Standard living space per convict has been increased, from 2.5 m² to 3.5 m² for men and up to fourfold for women, and in hospitals and young offenders' institutions to 5 m² and 6.5 m², respectively.

30. With a view to achieving a gradual transition to single-cell detention of convicted persons, work is being done to build new institutions of deprivation of liberty that meet all international standards (eight institutions have been built, and the construction of similar institutions is under way in Karagandy and Shymkent).

31. Now that the penal correction system has been placed under the authority of the Ministry of Internal Affairs and other measures have been taken, crime in penal institutions has fallen by 50 per cent, malicious acts by 48 per cent, acts of self-harm and protests by 30 per cent and incidents involving the use of restraints by 40 per cent (from 38 to 24) and, over the past two years, by more than a factor of six (from 155 to 24 such incidents).

Recommendation 13

The Committee notes that the reports of the national preventive mechanism are published and are not subject to approval by the President and that legislative measures are being developed to expand the mandate of the national preventive mechanism as it pertains to the institutions visited. The Committee would appreciate receiving information on the progress made on this issue.

32. The Office of the Human Rights Commissioner (Ombudsman) and its legal status are defined in Presidential Decree No. 947 of 19 September 2002 on the establishment of that Office.

33. The Office of the Ombudsman carries out its work independently and is not subordinate to any body of the legislative, judicial or executive branches of power, nor is it a member of or related to their agencies.

34. Furthermore, the Office has begun work towards amending the law with a view to expanding the range of places that may be visited by members of the national preventive mechanism.

35. A bill is currently being drafted which is aimed at broadening the mandate of the national preventive mechanism by including in the list of places to be visited care institutions for persons with disabilities, including children, with neuropsychiatric disorders or musculoskeletal disorders, homes for older persons, children's homes and special boarding care centres. A working group has been set up to discuss the bill proposal that includes representatives on non-governmental organizations and government agencies.

36. At the moment, in order to ensure respect for human rights, in accordance with national legislation, members of the national preventive mechanism have the right to freely choose and visit the following:

- Penal enforcement institutions (correctional facilities, temporary detention centres, including those of the National Security Committee, military detention barracks and military detention units)
- Compulsory treatment facilities (specialized tuberculosis centres, compulsory drug rehabilitation centres and psychiatric institutions providing compulsory medical care)
- Special temporary detention facilities and institutions (temporary detention facilities, special holding centres, holding and processing centres and police stations)
- Rehabilitation centres for young people, special educational establishments and educational establishments with a special custodial regime (special custodial centres for young people)

37. To date, two consolidated reports on the work of the national preventive mechanism in Kazakhstan have been made public. On the whole, the response of government agencies to the assessment of the situation in the institutions and the recommendations to improve conditions that are conducive to what is deemed to be cruel or degrading treatment shows the effectiveness of the work of the national preventive mechanism and the public sector's readiness to collaborate in a constructive way with members of the mechanism on preventing torture and cruel or degrading treatment and ensuring that it will not be tolerated.

38. The authorities are taking steps to implement the recommendations and address the shortcomings identified in the reports in the work of institutions and facilities falling within the jurisdiction of the national preventive mechanism.

39. Neither the consolidated annual report, nor any of the other reports on the activities of the national preventive mechanism are reviewed or subject to approval prior to their publication.

Recommendation 15

The Committee appreciates the detailed information provided by the State party with regard to the reform of the justice system and believes that significant legislative measures have been taken to give effect to its recommendations. However, the Committee would appreciate receiving updated information on the practical changes made in this area.

40. The Committee's recommendation concerning structural reform of the system of administration of justice with a view to ensuring equality of arms and a balance in practice between the respective roles of the procurator and the defence counsel in judicial proceedings is being implemented with success.

41. For example, three codes, namely the Criminal Code, the Code of Criminal Procedure and the Penal Enforcement Code, which are interconnected and came into force in 2015, contain new concepts and promote balance between the prosecution and the defence.

42. Among the substantial progressive developments in Kazakh law aimed at upholding the principles of criminal procedure and international standards of justice is the entry into force of the new Code of Criminal Procedure on 1 January 2015, along with the introduction of amendments to the Code in October 2015, which provided for State measures to ensure a balance between the prosecution and the defence in courts through the gradual transfer to the investigating judge of the power to authorize all investigative actions that limit constitutionally protected human and citizen's rights.

43. The introduction of the person of the investigating judge to criminal proceedings together with the corresponding powers vested in the judge is an important and effective legal mechanism for strengthening the rule of law and the principles of criminal procedure at the pretrial stage of proceedings. The investigating judge's powers involve authorizing investigative actions that restrict the constitutional rights of citizens, consideration of complaints regarding actions and decisions by the criminal prosecution bodies and safeguarding the powers of lawyers and other mechanisms of judicial control at the pretrial stage of criminal proceedings. The exercise of those powers has a very positive impact on the entire stage of pretrial criminal proceedings, maintains discipline among criminal prosecution bodies, enhances the role and strengthens the efforts of lawyers to protect the right to protection of the law and facilitates criminal proceedings at their early stages.

44. In accordance with the criminal procedural law in force, the investigative judge has the exclusive authority to approve a number of basic investigative actions that restrict the constitutional rights of citizens, including: detention; house arrest; attachment; involuntary confinement to a medical establishment of a person not remanded in custody for a forensic psychiatric examination and/or medical examination; exhumation of human remains; declaration of an international search warrant for a suspected or accused person; on-site visits; search; seizure; and bodily search.

45. The investigating judge has the right to be informed of all the case files of the pretrial investigation, to demand additional information on the matter in question, to require the participants in the proceedings to attend a court hearing and obtain from them the necessary information on the criminal case.

46. An important new development in criminal procedural law aimed at ensuring equality of arms is the power vested in the investigating judge to hear petitions from defence lawyers for the following: information, documents or items of relevance to a criminal case to be disclosed and included in the record; an expert opinion to be rendered if the criminal prosecution authority has wrongly refused to grant such a petition or has failed to take a decision within three days; and a witness who has previously been questioned to be summoned before the authority in charge of the criminal proceedings in cases in which it is difficult to ensure that person's appearance for testimony.

47. Recent developments in the law have conferred on investigating judges more responsibility, particularly those involving the transfer of judicial control of all actions and decisions of the bodies handling the pretrial proceedings, including covert investigations affecting citizens' constitutional rights.

48. In reviewing the case files of the criminal proceedings, the investigating judge makes use of his or her powers to restore any violated right of one of the interested parties and to prevent the possibility of unreasonable disruption or restriction of the rights of the other.

For information:

49. According to statistical data for the first half of 2016, 29,523 petitions and representations were submitted to investigating judges according to the procedure established under article 55 of the Code of Criminal Procedure (with the exception of cases involving complaints against the actions or omissions or decisions of the procurator's office

or bodies handling the criminal prosecution, which is three times more than the number of petitions over the same period in 2015 (10,011 files)).

50. Among the total number of petitions heard, 28,301, or 97 per cent, were granted, as opposed to 9,317 in 2015.

51. It is worth noting that 14,239 petitions and representations were filed under the new system, and 13,922 were granted.

52. Furthermore, in the first half of 2016, investigative judges reviewed 690 complaints against the decisions or actions of the procurator's office and bodies conducting pretrial investigations and initial inquiries and granted one fifth of them (151 or 21.9 per cent).

53. The setting up of an investigating judge has proved to be relevant and effective and is meant to increase society's trust in the judicial system.

54. Under the new Code of Criminal Procedure, restrictions on the use of remand in custody as a preventive measure have been imposed; more scope has been provided for bail, house arrest and the use of electronic monitoring devices for suspected persons; victims and witnesses may provide out-of-court testimony; the practice of conducting additional investigations and sending cases back for retrial in the court of first instance has been abolished; a number of mechanisms for simplifying pretrial proceedings and criminal proceedings have been established; provisions concerning procedural agreements and reconciliation through mediation have been introduced; and red tape involving unnecessary procedural documents and unwieldy procedures has been cut through.

55. Article 70 of the new Code of Criminal Procedure extends the mandate of defence counsel in criminal cases, granting counsel the right to present evidence and other material relevant to the case.

56. If the criminal prosecution agency rejects a petition submitted by a lawyer concerning the ordering of an expert opinion during the investigation or does not take a decision on such a request, the lawyer has the right to submit a reasoned application to the investigating judge.

57. One of the fundamental changes in the proceedings was a reduction in the number of judicial levels of review with the transition from five degrees of jurisdiction to three.

58. This system of legal proceedings fully meets international standards, expedites the entry into force of judicial decisions and limits the scope for delaying tactics in the process.

59. Moreover, the role of the courts at the district and provincial levels has been enhanced significantly.

60. Since early 2016, by way of cassation, the Supreme Court has considered cases on application involving decisions of the courts of first instance that have entered into force after they have been reviewed in a court of appeal or pursuant to a protest lodged by the procurator. Appellate court decisions may also be reviewed by way of cassation.

61. The law establishes limits on the kinds of cases that fall within the jurisdiction of the Supreme Court. However, on the grounds specified in article 485 (1) of the Code of Criminal Procedure, criminal court decisions may be considered by the President of the Supreme Court regardless the restrictions under a protest lodged by the Procurator General.

For information:

62. In the first half of 2016, 4,371 petitions for a review of lower criminal court decisions were filed and 4,574 petitions in total are in progress if the petitions still pending (203) are taken into account.

63. The number of petitions filed in the first half of 2016 more than doubled, with an increase of 52.1 per cent, compared with the same period in 2015 (2,092 petitions).

64. In addition, in the same reporting period, two petitions for the review of death sentences were submitted (as were two in the first half of 2015), and they were immediately referred to the court of cassation. In the first half of 2016, six petitions for a review of court decisions involving deprivation of liberty for life, including two petitions still pending,

were being considered (as were six petitions in the first half of 2015, including three still pending).

65. Of the above-mentioned numbers (excluding petitions referred to a court of cassation), a total of 3,190 petitions were considered, or 2.7 times the figures for 2015 (with 1,115 petitions referred for consideration in the first half of 2015).

66. The new criminal legislation also deals with the establishment of trial by jury.

67. For example, before the amendments to the law were adopted in accordance with article 631 (1) of the Code of Criminal Procedure, courts with juries considered cases involving offences for which criminal law stipulated the death penalty or deprivation of liberty for life, with the exception of 12 elements of particularly serious crime.

68. The new version of article 631 (1) of the Code specifies four additional elements of particularly serious crime covered under articles 125 (3), 128 (4), 132 (5) and 135 (4) for cases that may be heard in a trial by jury, as follows:

- Article 125 (3) (Kidnapping committed by a criminal gang either for the purpose of exploitation or causing by negligence the death of the victim or other serious consequences)
- Article 128 (4) (Trafficking in persons committed by a criminal gang causing by negligence the death of the victim or other serious consequences)
- Article 132 (5) (Enticement of a minor to engage in criminal activities by a criminal group)
- Article 135 (4) (Trafficking in minors committed by a criminal gang causing by negligence the death of the victim or other serious consequences)

69. Taking into account the cases still pending as of the start of the current year (7 cases in total involving 17 people), in the first half of 2016, there were 30 cases against 47 persons brought to trial with the involvement of a jury (and 23 criminal cases against 30 persons in the reporting period, including 15 for offences under art. 99 of the Criminal Code, 5 under art. 121 and 3 under art. 120).

70. During the same period in 2015, taking into account cases still pending (10), 24 cases against 35 persons were brought before the courts (with 14 cases against 25 persons filed).

71. In the first half of 2016, a total of 25 cases against 42 persons were considered (and in the first half of 2015, 18 cases against 27 persons), including 21 criminal cases against 38 persons for which convictions were obtained.

72. A review of the implementation of the new provisions in the area of criminal law indicates that there is now no imbalance of power between procurators and lawyers. They have equal opportunities to implement their statutory powers.

73. The institutional reforms are aimed at strengthening the independence of the judiciary, which will lead to improvements in the rule of law.
