



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the second periodic report of Kazakhstan

Addendum

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

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* The present document is being issued without formal editing.



Paragraph 24 of the concluding observations of the Human Rights Committee

1. The Human Rights Committee made the following recommendation: “The State party should take robust measures to eradicate torture and ill-treatment and to effectively investigate, prosecute and punish such acts” (concluding observations, para. 24).
2. The Constitution and the legislation in force in Kazakhstan prohibit the use of torture, violence and other cruel or degrading forms of treatment and punishment.
3. The many reforms carried out by Kazakhstan in recent years are based on a principle of zero-tolerance of torture; all measures taken by Kazakhstan are aimed at instilling this principle in society.

Kazakhstan has implemented major reforms of criminal law and criminal procedure law.

4. During investigations, it is prohibited to use torture, violence, threats or other unlawful measures and cruel treatment, as well as to endanger the life or health of those involved (Code of Criminal Procedure, art. 197). Any evidence obtained through torture, violence, threats, deception or ill-treatment is recognized as inadmissible (Code of Criminal Procedure, art. 112, para. 1, subpara. 1).
5. The new criminal procedure law creates an effective mechanism for submitting complaints and allegations of torture and for their appropriate, thorough and comprehensive consideration during pretrial investigations.
6. Complaints submitted to procurators regarding the use of torture, violence, threats or violations of the right to defence are considered within three days (Code of Criminal Procedure, art. 105, para. 2).
7. In cases where suspects submit allegations of torture or other unlawful acts committed against them, or if signs of violence are visible on their persons, the investigating judge is obliged to instruct the supervising procurator to conduct an immediate investigation (Code of Criminal Procedure, art. 56, para. 5).
8. Preliminary investigations of criminal offences under article 146 of the Criminal Code (on torture) are conducted by internal affairs agencies or anti-corruption services; the pretrial investigations must not be conducted against a person from the staff of the investigating body (Code of Criminal Procedure, art. 187, para. 4).
9. If the investigation of a criminal offence of torture is impeded by bias or bureaucratic obstacles involving the criminal prosecution body, the pretrial investigation is entrusted to a special procurator (Order No. 48 of the Procurator General, of 27 March 2015, approving the instructions on the organization of pretrial investigations within procuratorial agencies).
10. Harsher penalties have been introduced for torture.
11. The use of torture has been classified as a serious offence, with a maximum penalty of up to 12 years’ deprivation of liberty and the confiscation of property. Exemption from criminal liability after expiry of the statute of limitations and amnesties are not permitted for persons who have committed torture.
12. In order to implement the provisions of the Convention against Torture and the International Covenant on Civil and Political Rights, and to introduce institutional reforms in the area of rule of law, the Office of the Procurator General has launched a project entitled “A society without torture”.
13. The concept is based on improving legislation, increasing the effectiveness of torture-prevention institutions and bringing laws and practices into line with international standards and obligations under ratified treaties and conventions.
14. The planned measures fall into three main categories: prevention of torture, investigation into such acts and rehabilitation of victims. The measures fully take into consideration the recommendations contained in paragraph 24 of the Human Rights Committee’s concluding observations on the second periodic report of Kazakhstan.

15. Moreover, the plan specifically sets out measures to apply in practice the principles of the Istanbul Protocol, which brings together the full gamut of worldwide experience in effectively investigating torture, independent of national procedural specificities.
16. It also contains proposals on how to prevent torture, cruel treatment and punishment in criminal correctional facilities and how to ensure transparency in their work.
17. The plan also includes measures to amend the civil legislation and to change its enforcement so as to ensure the effective rehabilitation of victims of torture based on the principles of State accountability and a guarantee of full compensation.
18. The planned measures are currently under discussion by the relevant State and law enforcement agencies. The implementation period is two years.
19. The project and the planned measures were presented at the fourth Prison Forum, in January 2017.
20. The project partners and organizers of the Forum were the European Union representative office in Kazakhstan, the European Union project entitled "Enhancing criminal justice" and the Programme Office in Astana of the Organization for Security and Cooperation in Europe (OSCE).
21. These and other measures to eliminate torture are being implemented and are consistent with the recommendations issued by the Committee against Torture following the presentation of the third periodic report on measures undertaken by Kazakhstan to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
22. As the Ministry of Internal Affairs is responsible for implementing the Convention against Torture, it has developed a plan in support of the recommendations of the Committee. Pursuant to Resolution No. 3036-5 of the Assistant to the President (Secretary of the Security Council) of 9 December 2016, implementation has been assigned to authorized agencies, with a view to submission of the next periodic report of Kazakhstan, scheduled for presentation in November 2018.
23. Furthermore, the Office of the Procurator General is working on a project to combat torture. As part of the project, work is being carried out to assess the current situation in Kazakhstan.
24. Following the ratification of the Convention against Torture in 1998 and its Optional Protocol in 2008, to meet its international obligations, the Government has taken measures to implement these instruments in domestic law.
25. Such measures include defining torture as a crime and devoting a separate article to torture in the criminal legislation. Mechanisms for the arrest and transfer of suspects have been improved. The "Miranda Rule", which ensures that a person's rights are explained when he or she is arrested, and access to legal counsel and medical assistance have been incorporated into the Code of Criminal Procedure.
26. Simplified pretrial proceedings and plea bargains have been introduced, thus considerably streamlining procedures and reducing the risk of torture.
27. Detention conditions at criminal corrections facilities have improved. The prison population is steadily decreasing (over the past three years there has been a 30 per cent reduction, from 49,000 to 31,000 inmates).
28. For the first time, a public monitoring institution has been introduced, the national preventive mechanism. Its participants enjoy unimpeded access for the inspection of any closed facility.
29. Notwithstanding such efforts, every year approximately 700 allegations of unlawful methods of inquiry and violence at correctional facilities are registered in Kazakhstan. This amounts to two complaints a day.
30. Over the past five years, 158 officials have been convicted of torture.

31. Since 2008, the United Nations has found that Kazakhstan has violated the provisions of the Convention against Torture in 10 cases.

Paragraph 54 of the concluding observations of the Human Rights Committee

32. The main principles governing the establishment and activity of political parties are enshrined in the International Covenant on Civil and Political Rights.

33. In accordance with article 22 of the Covenant, everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests.

34. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The article does not prevent the imposition of lawful restrictions on members of the armed forces or the police in their exercise of this right.

35. Nothing in the article authorizes States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

36. In accordance with article 23 of the Constitution, citizens of Kazakhstan have the right to freedom of association.

It is the constitutional right of every citizen to form and participate in political parties.

37. State registration of political parties is regulated by a procedure established by the Political Parties Act of 15 July 2002.

38. Pursuant to OSCE recommendations, to reduce the number of members required to form a political party, a law amending the Political Parties Act was adopted on 6 February 2009. It reduced the required number of party members from 50,000 to 40,000 and also reduced the numbers of party members required per region from 700 to 600.

39. The OSCE recommendations on this issue have been fully taken into consideration in domestic law.

40. One of the main tasks of political parties is to express the political will of broad sectors of society, not of separate individuals, and to represent those sectors' interests in representative and executive government bodies at the central and local levels, with participation in such bodies. The requirements for State registration of political parties under the Political Parties Act thus comply with international standards.

41. With regard to the provision of financial assistance to national trade unions by international organizations, article 5 (4) of the Constitution prohibits the direct funding of trade unions, i.e., payment for coverage of their payroll, equipment, purchase or rental of cars or provision of office premises, etc.

42. However, this does not prevent trade unions from holding events together with international bodies such as the International Labour Organization, the International Trade Union Confederation or the Friedrich Ebert Foundation) aimed at skill enhancement and the training of trade union staff, funded by both the trade unions and the international bodies. Such events have included workshops on gender and youth policy, organizing, collective bargaining and the settlement of labour disputes.

43. Over the past three years alone (2013-2016), 35 international workshops have been held by the Federation of Trade Unions of Kazakhstan in cooperation with the International Labour Organization and the International Trade Union Confederation.

44. Moreover, with respect to the right of voluntary associations to affiliate with international organizations, the Federation of Trade Unions of Kazakhstan was accepted in São Paulo as a fully-fledged member organization within the International Trade Union Confederation.

45. For information, the sectoral trade unions for employees in the fields of education, health care, the metals industry, the oil and gas sector and rail transport are members of the corresponding sectoral international federations.

46. The information above attests to the fact that the law in Kazakhstan does not prohibit the cooperation of national trade unions with foreign trade unions and also with international federations, in accordance with their statutory purposes and objectives. This is fully in line with the Convention on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), ratified by Kazakhstan on 30 December 1999.

47. In 2015, Kazakhstan adopted an Act amending several laws pertaining to the activity of non-governmental organizations (NGOs). The Act introduced new forms of State assistance to NGOs, including voluntary associations, by means of NGO grants and awards. The provision of such grants has enabled NGOs, including voluntary associations, to undertake their own projects, to resolve issues related to the development of the social sector and additionally to allocate a share of resources for institutional development. The grants are awarded in accordance with regulations that are adapted for NGOs and are separate from the legislation on public procurement.

48. The grants are issued and their use is monitored by an operating body specializing in the funding of NGOs through the use of grants.

49. The main aim of creating an independent entity to garner funding and issue grants to NGOs is to keep the procedure for transferring funds to NGOs separate from the entities allocating the funds, namely the State and private sponsors. The use of an operating body has made it possible to have greater transparency in the NGO funding process, as NGO applications are considered directly by an independent expert commission.

50. In accordance with its founding document, the operating body includes the following:

- (1) A management body: A board of directors composed of civil society representatives, rotating on a regular basis;
- (2) An executive body: the executive board; and
- (3) An auditing body monitoring the financial and economic activity of the operating body: the internal audit service.

51. NGO awards will be issued on behalf of the Government to organizations that have implemented successful projects in the social sphere. The awards will be granted to candidates based on public proposals and a public assessment of their activities.

52. The NGO awards are to be spent on the organizations' statutory goals, institutional development, the development of their employees' qualifications or the improvement of their material resources.

53. The new legislation on the allocation of funds to voluntary associations is thus not being used as a means of control over or undue interference in the activity of such associations, or as a means of limiting their possibility to raise funds. It has in fact created new forms of assistance for such associations by disbursing grants and awards which are conducive to their institutional development.