

Kazakhstan Coalition Against Torture: Analysis and Recommendations

September 28, 2009

Briefing submitted in advance of the October 21-22, 2009 EU-Kazakhstan Human Rights Dialogue by the Charter for Human Rights, the Committee on the Rule of Law and Human Rights Reform Monitoring, the Kazakhstan International Bureau for Human Rights and the Rule of Law, Legal Policy Research Center, MediaNet, the Sauygu Public Foundation (“Coalition”), and the Open Society Justice Initiative.

This briefing contains: A) Summary of the issue and Recommendations; B) a brief overview describing the situation in Kazakhstan with regard to the main deficiencies namely: insufficient safeguards against torture, lack of effective investigation into allegations of torture, and failure to punish perpetrators of torture; C) detailed description of 5 urgent cases which we hope will be raised by the EU directly with the Government of Kazakhstan. These accounts of people tortured in Kazakhstan illustrate the human cost of the failure to prevent torture, the ways in which the current system enables impunity for torturers to persist, and the urgent need for reform.

A: SUMMARY AND RECOMMENDATIONS

The Kazakhstan Coalition against Torture (KCAT) welcomes the Swedish Presidency’s special attention to the issue of torture and the opportunity for civil society consultations in advance of the October 21-22, 2009 EU-Kazakhstan Human Rights Dialogue.

The human rights dialogue is taking place at a uniquely opportune moment to address the problem of torture in Kazakhstan and the pressing need for implementation of specific reforms to prevent and punish torture.

During his recent visit to Kazakhstan, the UN Human Rights Council Special Rapporteur on Torture and other forms of Cruel, Inhuman, and Degrading Treatment or Punishment, Manfred Nowak, reported receiving “many credible allegations of beatings with hands and fists, plastic bottles filled with sand, police truncheons; of kicking, asphyxiation through plastic bags and gas masks used to obtain confessions from suspects.” Nowak concluded that, “the use of torture and ill-treatment certainly goes beyond isolated instances.”

The UN Committee against Torture has also concluded that torture in Kazakhstan is a persistent problem. In its 2008 concluding observations to the Government’s report, the Committee said the Government of Kazakhstan should establish a “zero tolerance” policy toward torture and should publicly and unequivocally condemn torture in all its forms and manifestations.

Three Priority Recommendations for Torture Reform

The Kazakhstan Coalition against Torture supports the conclusions of the UN Committee against Torture issued in 2008. As a matter of priority we urge you to raise the need for the Government of Kazakhstan to implement the following **three** critical reforms to stop torture and ensure that torturers are held accountable:

- 1) Recognize in law and respect in practice the right of everyone, regardless of his/her procedural status to be informed, at the moment of arrest (*i.e. apprehension*):¹, in a language that he/she understands:
 - (a) of the reason for his/her arrest;
 - (b) in writing of his/her rights and procedural safeguards including: (i) the right to remain silent, (ii) the right to consult a lawyer of his/her choice and in private from the very outset of police custody or to be provided with a lawyer free of charge, if the person cannot afford one; (iii) the right immediately to inform his/her relatives of the arrest; and
 - (c) about the implications of waiving these rights.
- 2) Establish an effective and independent mechanism for investigating complaints of torture in compliance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- 3) Ensure punishment for acts of torture that corresponds to their gravity and the responsibility of the respective perpetrator(s).

B: OVERVIEW OF SITUATION IN KAZAKHSTAN

In this section we provide a brief overview describing insufficient safeguards against torture, lack of effective investigation into allegations of torture and failure to punish perpetrators of torture in Kazakhstan.

1) Insufficient safeguards against torture

a. Lack of safeguards at arrest:

The law in Kazakhstan requires that police officers write an arrest report within three hours of apprehending a person and that they inform the person of his or her rights at the time the arrest report is issued. In practice, however, police officers often fail to complete

¹ The term “arrest” is used here as established by international legal practice and is equivalent to the term “apprehension” as used in Kazakhstan. It is important to underscore that all English language references to “safeguards at arrest” should be taken to mean “safeguards at apprehension,” as recognized by the Kazakh legal system. These safeguards should be applied immediately at the moment of a person’s factual deprivation of liberty.

arrest reports within the designated three hour limit. It is during this period (after the arrest is made and before the report is completed) that the use of torture is most common.

b. Use of other than officially recognized places of custody and lack of effective registration:

Police sometimes detain people in locations other than official places of custody, including criminal investigation department offices at police stations and in police vehicles and fail to register the fact of the person's detention. The practice of holding people in unregistered and unacknowledged custody usually occurs prior to police officers' completion of an arrest report, i.e. during the first hours following a person's arrest. Again, it is during this period of unacknowledged custody that police most commonly use torture to obtain a confession or other statement from a detainee.

c. Lack of safeguards during interrogation:

In many cases, official interrogations are preceded by informal questioning, during which potential suspects who have been summoned to report to police under pretext of being sought for routine questioning or questioning as a witness are subjected to physical or psychological pressure often amounting to torture as part of police officers' attempts to coerce them to make a confession. Because police have not officially recognized these people as suspects or detainees, they are not entitled to the same procedural rights guaranteed to suspects and accused persons by the criminal procedure code of Kazakhstan, including the right to choose not to testify.² As a result, these unofficial detainees are at particular risk of torture. Authorities often use statements made by people in the context of such unofficial interrogations as if they were voluntary statements of guilt and cite them as the basis for instituting criminal proceedings against the subject of the inquiry.

2. Lack of effective investigation of torture complaints and legal remedies for victims of torture.

a. Lack of prompt and effective investigation of torture complaints:

In contravention of well-established international human rights norms, allegations of torture by Kazakhstan law enforcement rarely prompt an effective and thorough investigation capable of leading to identification and punishment of the perpetrators.

² In cases when a person is assigned the status of a witness, he/she has the narrowly defined legal right "not to testify against himself/herself". It is believed, however, that an attempt to use this right might intensify the pressure on the person being questioned by police. For this reason witnesses in criminal cases are not known to claim their right of silence and are particularly vulnerable to torture. Notably, it is a witness's right by law to have a lawyer, but to secure one would be his/her own responsibility. A witness cannot request to be provided a state-appointed lawyer and cannot refuse to testify without a lawyer. This situation further aggravates the risk of torture for people designated as witnesses. Unlike witnesses or suspects, persons summoned to police stations for "just a conversation" (i.e. routine questioning) are outside of the protection of the criminal procedure law. Without formal status as a witness or suspect, these people are not recognized as having procedural rights at all and are therefore at increased risk of being tortured.

Kazakhstan's complaints mechanism for victims of torture does not provide those who have suffered abuse genuine access to justice.

Reports of torture during a criminal inquiry or investigation may be reviewed either as complaints about the actions of law enforcement officers or as statements (writs) regarding a crime. In practice, reports about torture in police custody are generally reviewed as complaints and are examined by Internal Security Departments of the Ministry of Internal Affairs. These investigations are confidential and closed to scrutiny by the victim or members of the public. The claimant is not informed about the course of the investigation, does not have a legal right of access to the investigation materials, and does not have the right to petition for a medical examination, to summon witnesses, or to provide additional evidence relevant to the case. Invariably, the internal investigation by the police ends with a rejection of the victim's claims and decision to decline to open a criminal case. The result is that, even when a victim is courageous enough to stand up and lodge a complaint, torture in Kazakhstan is committed with impunity.

The dominating role of the prosecutor (procurator) throughout the investigation and trial contributes to the lack of effective investigation. UN Committee Against Torture has noted the procurator's dual responsibility for prosecution and oversight of the proper conduct of investigations and failure to initiate and conduct prompt, impartial and effective investigations into allegations of torture and ill-treatment.

b. Lack of remedies for victims of torture

In Kazakhstan, victims of torture, unlike the victims of certain other types of police misconduct, are not entitled to damage compensation that can be recovered through civil remedies. Torture, as defined in the UN Convention against Torture, is not among the types of police misconduct recognized under Kazakhstan law as obligating compensation from the state compensation funds.

3. Lack of appropriate sanctions for perpetrators of torture

The UN Committee against Torture has expressed concern that the sentences for those convicted under part 1 of the "Torture" article of the Republic of Kazakhstan Criminal Code are not commensurate with the gravity of the offence of torture as required by international law.³ The lack of appropriate sanctions specified in domestic legislation compounds the problem of impunity for perpetrators of torture.

Conclusions

³ The term of punishment provided for under the article on "Torture" is a fine of 200–500 times the value of the monthly computed index (approximately \$9 in 2009) or the sum of a person's salary for two to five months or any other income of the convicted person, or revocation of the right to hold certain positions, or custodial restraint for up to five years or imprisonment for the same term. It also provides for the opportunity to opt for reconciliation of the parties. If torture was committed by a group of people, or repeatedly caused "second-degree" harm to a person's health, or was used against a pregnant woman or adolescent, it can be punished with a term of up to seven years in prison. A person can be sentenced to up to 10 years in prison if the torture resulted in the victim's death or severe harm to the health of the victim.

Lack of effective investigation, a lack of political will to hold perpetrators accountable, and the absence of safeguards to protect detainees from torture are the three primary roadblocks standing in the way of progress in addressing torture in Kazakhstan. To put a stop to torture, the implementation of key reforms is urgently needed. We respectfully request that you raise these issues in the context of the upcoming EU-Kazakhstan Human Rights Dialogue.

URGENT CASES LIST

The following cases require urgent attention to provide for justice and safety for the victims of torture. In all of these cases the state has failed to punish the perpetrators of the torture documented and has not afforded redress to the victims. We hope that the EU will include the following individual cases in the list to be transmitted to the Government of Kazakhstan. We call on the EU to press the Government of Kazakhstan to take specific steps as a matter of urgency to provide effective remedy to the victims of the egregious human rights violations described below.

I. Failure to Investigate Complaints of Torture. Conviction based on a Confession Extracted through Torture.

Oleg I. Evloyev: Evloyev, a 28-year-old male, was detained on October 29, 2008 in Nesterovskaya, Ingushetia, Russian Federation, on charges of murder of a woman and her three minor children in Astana, Kazakhstan. After his detention, Evloyev was placed in a pre-trial detention facility in Grozny, Chechnya, Russian Federation. On December 9, 2008, Evloyev was brought to Astana by a charter plane. According to Evloyev, Kazakh police beat him on the plane and afterwards continuously in order to force him to provide a confession of guilt.

On the day of his arrival in Astana, authorities took Evloyev out with them for investigatory activities without providing him with warm clothes while the temperature outside was below 10 degrees Celsius. These activities were videotaped, but that tape has since disappeared, according to police.

Astana police held Mr. Evloyev incommunicado, denying him access to his relatives or the attorney of his choice. During the period December 9, 2008 to February 17, 2009, Astana city police subjected Evloyev to repeated torture. Officers asphyxiated Mr. Evloyev with a gas mask and forced him to stand continuously in a small room that Mr. Evloyev has referred to as a “tall glass,” in which one is unable to sit down and can only stand. The officers deprived Mr. Evloyev of sleep for up to two or three days in a row, denied him drinking water and food, denied him access to the toilet, denied him parcels from his parents, and did not allow him to meet with his relatives or the attorney of his choice.

In two transcripts of his interrogations, dated December 10, 2008 and December 16, 2008, it is documented that Evloyev complained of torture and stated that he had been forced to make a confession. According to the minutes of the interrogation of December 16, 2008, Evloyev stated that he “didn’t kill anyone, didn’t take any gold, was forced to testify under physical and psychological pressure.” “I have signs of beating on my body, and they were registered during the medical examination. Everyone is against me. I refuse to testify until the trial. I was not provided any food. I was not allowed to sleep. I was forced to stand in a space as small as half a square meter. I was not allowed to use toilet for several days. I insist on my very first statements, which I gave in Grozny. Since the very first day [in Kazakhstan], I have been ill-treated and tortured,” he stated.

On June 16, 2009, a jury found Mr. Evloyev guilty and sentenced him to life in prison. His allegations of torture were disregarded as being unsubstantiated. No criminal investigation of Mr. Evloyev's allegations was conducted; only an internal police investigation. It is not known what this investigation comprised of, as this process is not transparent and no public record was produced. The case is currently awaiting a hearing on appeal.

REQUEST TO THE GOVERNMENT OF KAZAKHSTAN: (1) Conduct a thorough and full-scale investigation of Mr. Evloyev's complaint of torture during pre-trial investigation; (2) If his allegations prove true, (a) exclude all evidence obtained through torture from Mr. Evloyev's case file for the appeal process; (b) punish the perpetrators and instigators of such treatment; and c) provide fair compensation and rehabilitation services to Mr. Evloyev.

Dmitry N. Tyan: A 36-year-old male who is married with four children. On October 22, 2008, at around 5 pm, Dmitry Tyan arrived in the Astana City Department of Internal Affairs, Astana, pursuant to a summons to appear as a witness. He remained at the city police department until 10 pm, when officers transferred him to the Almatinsky District Department of Internal Affairs, Astana. Officers forced Mr. Tyan to strip to his underwear and stretch his legs wide apart. The officers beat him with water-filled plastic bottles in the kidney area and other parts of his body. The officers intimidated Mr. Tyan and threatened him with death, saying that, unless he confessed to having murdered the wife of his private employer and her three children, he would not live to attend the trial, or that he would "commit suicide." This treatment continued until 2 o'clock in the morning, at which point the police released Mr. Tyan from custody.

On the morning of October 23, 2008, Mr. Tyan and his wife went to the National Security Committee (KNB) offices to file a complaint against the police officers who had tortured him the night before. Immediately upon exiting the KNB building, Mr. Tyan was taken into custody by police who had apparently been waiting for him outside. He was brought to the Astana City Department of Internal Affairs, where officers interrogated him, supposedly as a witness and therefore without access to an attorney. Officers there again beat Mr. Tyan, according to his allegations.

On October 24, 2008, Mr. Tyan was declared a suspect in the above-mentioned murder case and was placed in police custody. On October 28, 2008, the Astana City Court ordered that he be placed in pre-trial detention for a period of ten months. On the same day, under suspicious circumstances, Mr. Tyan signed a "voluntary" self-incriminating statement. Several days later he withdrew this statement, saying that he had been tricked by the investigators and forced into signing it. On November 3, 2008, Dmitry Tyan and one other man (Oleg Evloyev) were charged with the 1st-degree premeditated murder.

Despite the court order that Mr. Tyan be placed in a pre-trial detention facility, under the jurisdiction of the Ministry of Justice, authorities continued to hold Mr. Tyan in police custody under the Ministry of Internal Affairs. His lawyers were not allowed access to

him on the pretext of his having a state-appointed lawyer. Mr. Tyan has also been denied a proper medical examination.

As of this writing, authorities have failed to investigate complaints of torture made by Mr. Tyan and his family.

On June 16, 2009, a jury found Mr. Tyan guilty and sentenced him to 25 years in prison. The case is currently awaiting hearing on appeal.

REQUEST TO THE GOVERNMENT OF KAZAKHSTAN: (1) Conduct a thorough and full-scale investigation of Mr. Tyan's complaint of torture during pre-trial investigation; (2) If his allegations prove true, a) exclude all evidence obtained through torture from Mr. Tyan's case file for the appeal process; b) punish the perpetrators and instigators of such treatment; and c) provide fair compensation and rehabilitation services to Mr. Tyan.

II. Failure to Investigate a Complaint of Torture. Impunity for Perpetrators. Denial of Access to Compensation.

Denis Polienko: A 19-year-old male, married with one son. Police detained Mr. Polienko at 9 am on November 21, 2006 at his work in Schuchinsk district in Akmola province. Officers brought him to the local police department, but did not register his detention. Officers did not allow Mr. Polienko to call his family to notify them of his detention and did not provide him with an attorney. During 36 hours of unacknowledged, incommunicado detention, officers tortured Denis Polienko in order to extract a guilty confession from him in connection with the robbery and murder of one of his neighbors. Two officers beat Mr. Polienko, subjected him to asphyxiation with a plastic bag, threatened to sodomize him, and threatened to harm members of his family. According to statements made by Mr. Polienko, unable to stand the torture he finally agreed to the officers' demands and wrote a "voluntary confession."

On November 23, 2006, Denis Polienko was "officially" detained and transferred to a pre-trial detention center. His allegations of torture by police officers were disregarded as unsubstantiated.

Two years after his detention, in November 2008, a court in Schuchinsk acquitted Mr. Polienko on the charges against him due to the lack of evidence of his guilt. The court found Mr. Polienko's detention to be illegal. The court issued a separate judicial opinion regarding Mr. Polienko's allegations of torture and requested they be investigated. However, when the case was appealed by the prosecutor's office, the appeals court in Kokshetau, which otherwise upheld the lower court's decision, altered the torture-related judicial opinion by removing from it the names of the police officers whom Mr. Polienko had accused of torture.

As of October 2009, Mr. Polienko's allegations of torture still have not been investigated. Since his acquittal, Mr. Polienko has attempted to file a civil lawsuit for damage compensation for his illegal detention, but courts have repeatedly rejected his lawsuit

citing Mr. Polienko's failure to name a respondent. The Kokshetau court failed to inform Mr. Polienko of the proper party to name as the responding party in a claim and Mr. Polienko states he does not know whom he should be filing his lawsuit against.

REQUEST TO THE GOVERNMENT OF KAZAKHSTAN: (1) Conduct a thorough and full-scale investigation of Mr. Polienko's complaint of torture during his incommunicado detention in police custody; (2) If these allegations prove true, punish the perpetrators and instigators of such treatment; and (3) without delay provide for compensation for Mr. Polienko for his illegal detention and torture.

Alexander Gerasimov: A 37-year-old male, married with two children, ages ten and three, and two stepsons, ages 19 and 21.

On March 27, 2007, Mr. Gerasimov learned from his wife that his elder stepson had been taken to the police station without any explanation. Together with his wife they went to the police station in Kostanay city. Upon learning that he was the stepfather of the detained young man; the police took Mr. Gerasimov upstairs and locked him in one of the office rooms on the third floor, without explanation and without registering the fact of his detention.

After half an hour, officers initiated interrogation of Mr. Gerasimov and accused him of murder of an elderly woman. Mr. Gerasimov denied the accusations, but officers continued to pressure him to confess. One officer beat Mr. Gerasimov, administering heavy blows in the kidney area. The officers threatened Mr. Gerasimov with sexual violence. They placed Mr. Gerasimov on his knees, and one of the officers unzipped his pants. The officers then placed him on the floor and put a plastic bag over his head, while four officers stood on his body. An officer then forced his right knee into Mr. Gerasimov's back, along Mr. Gerasimov's spine, and began to pull the plastic bag backwards, asphyxiating him. Mr. Gerasimov's head and neck were pulled back and he has stated that he felt as if his spine would crack. He began to suffocate and lose consciousness. When this happened, an officer stopped pulling on the bag, and Mr. Gerasimov was able to breathe a little. As soon as Mr. Gerasimov revived, however, the officer again pressed his knee into Mr. Gerasimov's back and pulled the bag backwards, again suffocating Mr. Gerasimov. This process was repeated multiple times. Every time the officer released the bag, he shouted: "Confess and that's it! We know that you killed the grandma!" At some moment Mr. Gerasimov's ear and nose started bleeding and he lost consciousness. The interrogation and abuse lasted until around 11 pm and then Mr. Gerasimov was taken to another room.

Mr. Gerasimov spent the night in the one of the police rooms with two police officers. In the morning he was taken to the investigator, who continued to interrogate him regarding the murder. Mr. Gerasimov never confessed to the murder. After an official from the Department of Internal Affairs called police, in response to a complaint by Mr. Gerasimov's wife regarding the illegal detention of her husband and two sons, Mr. Gerasimov was released from custody.

Mr. Gerasimov arrived home and then called an ambulance because of a severe headache. He was admitted to a psychiatric hospital where he underwent a treatment in the

neurological unit.⁴ Mr. Gerasimov remained in the hospital for 13 days. Later, in August 2007, Mr. Gerasimov underwent a psychological examination and was diagnosed with Post-Traumatic Stress Disorder (PTSD) and was treated as an in-patient for almost a month.

Mr. Gerasimov and his relatives complained in writing to numerous government agencies about the police torture and mistreatment of him. Authorities have failed to undertake a thorough and complete investigation of his allegations. Instead, Mr. Gerasimov's complaints have been met with further persecution of Mr. Gerasimov and his family members. Mr. Gerasimov received visits and phone calls from police officers who attempted to intimidate him to withdraw the complaints. Mr. Gerasimov has nonetheless continued to seek effective investigation of his case. After filing several complaints, in June 2008 he received reply from the Prosecutor General's Office stating that it had "insufficient evidence" to act on Mr. Gerasimov's complaint.

REQUEST TO THE GOVERNMENT OF KAZAKHSTAN: (1) Conduct a thorough and full-scale investigation of Mr. Gerasimov's complaint of torture in police custody; (2) If these allegations prove true, punish the perpetrators and instigators of such treatment; and (3) provide fair compensation and rehabilitation services to Mr. Gerasimov.

III. Continuous Failure to Investigate Complaints of Torture/Ill-Treatment by the Kazakhstan National Security Committee.

Zhaslan E. Suleimenov: A 33-year-old male from Astana who was injured in 1996 and is now a disabled paraplegic. Prior to 1996, Mr. Suleimenov studied at the Leo Gumiliov Eurasian National University in Astana.

On January 5, 2009, Zhaslan Suleimenov set off by train with a childhood friend and five other men to seek medical treatment in Pyatigorsk, Russian Federation. Approximately two days into the trip, on or around January 7, 2009, the young men were ordered off the train, by authorities they assumed to be agents of the Federal Security Service of the Russian Federation (FSB), apparently acting at the request of the Kazakhstan National Security Committee (KNB). The reason for the security service action was allegedly suspicion of terrorism. Suleimenov and the others were transported to Nalchik, Russian Federation, where they stayed until being deported to Astana, Kazakhstan on February 7, 2009.

Russian and Kazakh authorities failed to inform the family of Zhaslan Suleimenov of his whereabouts, the reasons for his detention, or his state of health.

Mr. Suleimenov was charged with setting up and leading a terrorist group. From February 10, 2009 until the time of this writing, authorities have continued to hold Zhaslan Suleimenov in investigatory prison number ETs 166/1, under the jurisdiction of the Ministry of Justice of Kazakhstan in Astana. According to persons close to Mr.

⁴ Mr. Gerasimov was diagnosed with a "major closed craniocerebral trauma," a "cerebral contusion," "contusions to the right kidney, the lumbar region, and the soft tissue of the head," and a "contused wound to the right superciliary arch" (his right eyebrow).

Suleimenov, authorities have held him for more than two consecutive months in a disciplinary cell in the prison, in building No. 5, which is officially closed for repair and not authorized for use.

Requests by Mr. Suleimenov's relatives for a change of his custodial arrest to home detention were rejected, citing that "ETs 166/1 prison has a medical department specifically designed for looking after the pre-trial detainees in need of constant care." However, according to Mr. Suleimenov's relatives, he is in critical condition: he has developed bedsores and is having urological and other health problems.

Mr. Suleimenov's relatives have alleged that he was subjected to physical and psychological pressure amounting to torture during the investigation to force him to incriminate himself. Law enforcement authorities allegedly beat Mr. Suleimenov on his legs and other parts of his body, handcuffed him and suffocated him, denied him food, water and hygienic care. Officers also subjected him to psychological torture by allegedly threatening to harm Mr. Suleimenov's mother and younger brother.

During the investigation, Mr. Suleimenov had five state-appointed lawyers, who despite the legal requirement to provide defense free of charge, allegedly asked Suleimenov's family to pay them and resigned after they learned that the family is not in a position to do so. Mr. Suleimenov has since been provided a court-appointed lawyer.

Authorities have denied the relatives of Mr. Suleimenov meetings with him. During the entire time in state custody, Mr. Suleimenov has been allowed only two visits by relatives.

The trial against the Mr. Suleimenov continues as of this writing. His complaints of torture are not being investigated.

REQUEST TO THE GOVERNMENT OF KAZAKHSTAN: (1) Conduct an independent medical examination of Mr. Suleimenov; (2) Conduct a thorough and full-scale investigation of complaints by Mr. Suleimenov regarding torture during pre-trial investigation and while in state custody; 3) If these allegations prove true, a) punish the perpetrators and instigators of such treatment; b) exclude from Mr. Suleimenov's case file all evidence that was gathered under torture; and c) provide fair compensation and rehabilitation services for Mr. Suleimenov.