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PROBLEMS OF IMPLEMENTING GUARANTEES OF PROTECTION OF SUSPECTS AND PREVENTING TORTURE IN CRIMINAL PROCEEDINGS

Abstract. The article examines the systemic factors contributing to the use of torture and other forms of cruel, inhuman, or degrading treatment in the activities of law enforcement agencies in the Republic of Kazakhstan. It analyzes national legislation, law enforcement practices, and international standards, including the 1984 United Nations Convention against Torture and its Optional Protocol. Special attention is given to the impact of the system of planned crime detection rates, the dependence of investigations on confessions, the conditions of detention, and the insufficient implementation of procedural guarantees for suspects. The study examines foreign approaches (Germany, France, the United Kingdom, and the United States) aimed at ensuring transparency, independence of investigations, and judicial control. The study formulates proposals for improving legislation, strengthening criminal liability for torture, expanding the powers of prosecutorial oversight, and strengthening institutional guarantees for the protection of human rights.

Keywords: torture; abuse; human rights; criminal proceedings; procedural guarantees; suspect; law enforcement agencies; responsibility.

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КҮДІКТІЛЕРДІ ҚОРҒАУ КЕПІЛДІКТЕРІН ІСКЕ АСЫРУ ЖӘНЕ ҚЫЛМЫСТЫҚ ПРОЦЕСТЕ АЗАПТАУДЫҢ АЛДЫН АЛУ МӘСЕЛЕЛЕРІ

Аннотация. Мақалада Қазақстан Республикасы құқық қорғау органдарының қызметінде азаптауды және қатыгездік, адамгершілікке жатпайтын немесе ар-намысты қорлайтын қарым-қатынастың өзге де нысандарын қолдануға ықпал ететін жүйелік факторлар қарастырылады. БҰҰ-ның 1984 жылғы азаптауға қарсы конвенциясын және оған Факультативтік хаттаманы қоса алғанда, ұлттық заңнамаға, құқық қолдану практикасына және халықаралық стандарттарға талдау жүргізілді. Қылмыстарды ашудың жоспарлы көрсеткіштері жүйесінің ықпалына, тергеудің мойындау айғақтарына тәуелділігіне, қамауда ұстау жағдайларына және күдіктілердің процестік кепілдіктерінің жеткіліксіз іске асырылуына ерекше назар аударылды. Тергеулер мен сот бақылауының ашықтығын, тәуелсіздігін қамтамасыз етуге бағытталған шетелдік тәсілдер (Германия, Франция, Ұлыбритания, АҚШ) зерттелуде. Заңнаманы жетілдіру, азаптау үшін қылмыстық жауаптылықты күшейту, прокурорлық қадағалау өкілеттіктерін кеңейту және қорғаудың институционалдық кепілдіктерін нығайту жөнінде ұсыныстар тұжырымдалған.

Түйінді сөздер: азаптау; қатыгездік; адам құқықтары; қылмыстық сот өндірісі; қылмыстық кепілдіктер; күдікті; құқық қорғау органдары; жауаптылық.



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ПРОБЛЕМЫ РЕАЛИЗАЦИИ ГАРАНТИЙ ЗАЩИТЫ ПОДОЗРЕВАЕМЫХ И ПРЕДУПРЕЖДЕНИЯ ПЫТОК В УГОЛОВНОМ ПРОЦЕССЕ

Аннотация. В статье рассматриваются системные факторы, способствующие применению пыток и иных форм жестокого, бесчеловечного или унижающего достоинство обращения в деятельности правоохранительных органов Республики Казахстан. Проведен анализ национального законодательства, правоприменительной практики и международных стандартов, включая Конвенцию ООН против пыток 1984 года и Факультативный протокол к ней. Особое внимание уделено влиянию системы плановых показателей раскрываемости преступлений, зависимости следствия от признательных показаний, условиям содержания под стражей и недостаточной реализации процессуальных гарантий подозреваемых. Исследуются зарубежные подходы (Германия, Франция, Великобритания, США), направленные на обеспечение прозрачности, независимости расследований и судебного контроля. Сформулированы предложения по совершенствованию законодательства, усилению уголовной ответственности за пытки, расширению полномочий прокурорского надзора и укреплению институциональных гарантий защиты прав человека.

Ключевые слова: пытки; жестокое обращение; права человека; уголовное судопроизводство; процессуальные гарантии; подозреваемый; правоохранительные органы; ответственность.

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Introduction. The use of torture and other cruel, inhuman, or degrading treatment or punishment remains one of the most pressing issues in the modern system of human rights protection. Despite international prohibitions and the commitments undertaken by states, torture continues to be reported across numerous countries, indicating a discrepancy between formal legal regulation and actual law enforcement practice [1, 11 p.].

In the context of the strengthening of the rule of law and the declared priority of human rights and freedoms, it is particularly important to analyze the effectiveness of national mechanisms for combating torture. The relevance of this study is determined by the need to comprehensively examine the factors contributing to the persistence of cases of abuse, as well as to develop proposals aimed at preventing and eliminating them.

This article analyzes the national legislation of the Republic of Kazakhstan in the field of ensuring the rights of suspects and countering torture, taking into account the state's international obligations and the practice of their implementation. Special attention is paid

to the problems of implementing procedural guarantees for suspects, the role of a lawyer in the early stages of pre-trial investigation, and the issues of improving criminal and criminal procedure legislation.

A special emphasis is placed on studying foreign experience (Germany, France, the United Kingdom, the United States, etc.), where legal mechanisms for protecting suspects and independent judicial control are effective means of preventing torture. The use of these approaches allows us to assess the extent to which the domestic legal system complies with international standards and to identify areas for further improvement.

The purpose of the study is to identify the key problems of national legislation and law enforcement practices that contribute to the use of torture, as well as to develop practical recommendations for improving the effectiveness of the human rights and freedoms protection system in the Republic of Kazakhstan.

Materials and methods. The study employed general scientific and specific legal methods of inquiry: formal-legal, comparative-legal, systemic, and analytical. The empirical basis



consisted of the provisions of the Constitution of the Republic of Kazakhstan, the Criminal and Criminal Procedure Codes, regulatory decisions of the Supreme Court, as well as international treaties, including the 1984 UN Convention against Torture and the Optional Protocol to it. The comparative legal method allowed for the comparison of national legislation with the legal systems of Germany, France, the United Kingdom, and the United States, providing a comprehensive approach to assessing the effectiveness of existing guarantees for protecting suspects from torture and other forms of ill-treatment.

Results, discussion. An analysis of national legislation and law enforcement practices reveals a number of systemic factors that contribute to the persistence of torture and other forms of ill-treatment in law enforcement agencies. These factors include a focus on quantitative indicators of crime detection, which puts pressure on officers; has a mutually reinforcing effect on the overall effectiveness of anti-torture efforts; the practice of prolonged detention in conditions that amount to inhumane treatment; and a lack of procedural safeguards for suspects and lenient criminal penalties for torture. Each of these factors has a mutually reinforcing effect on the overall effectiveness of anti-torture efforts and requires a comprehensive approach to reforming legislation, the evaluation system for law enforcement agencies, and the mechanisms for prosecutorial and judicial oversight.

1. The existing system of evaluating the activities of law enforcement agencies, which is focused on quantitative indicators (the number of crimes solved, criminal cases submitted to the court, and convictions), creates the preconditions for human rights violations and the use of torture. Failure to meet targets often leads to disciplinary actions, lower performance ratings, and the risk of dismissal, which encourages employees to achieve the necessary results at any cost.

On February 9, 2015, the Prosecutor General issued Order No. 29, and on February 5, 2015, the Acting Minister of Internal Affairs issued Order No. 90, which approved the Methodology

for Calculating Crime Detection Rates aimed at improving statistical observation and optimizing the system of criteria for evaluating the activities of internal affairs bodies. According to the document, the detection rates of serious and particularly serious crimes should not serve as a basis for holding employees accountable. However, in practice, low performance is often criticized by management, which cascades to lower-level departments, pressuring employees and distorting the objectives of law enforcement.

According to Igor Rogov, Chairman of the Human Rights Commission under the President of the Republic of Kazakhstan, who spoke on November 8, 2024 at the presentation of the Consolidated Report on the results of visits by members of the National Preventive Mechanism in 2023, Germany, the United Kingdom, and the United States do not use crime detection rates to evaluate police performance. Instead, they rely on public trust to assess the effectiveness of police operations¹. In Kazakhstan, the risk of disciplinary liability for similar situations often encourages employees to seek confessions by any means, including illegal ones [2].

The results of sociological surveys conducted by the National Center for Human Rights among prisoners confirm this trend: in 45% of cases, torture was used to obtain confessions and improve crime detection rates. Among the surveyed police officers, 20.2% justified the use of torture by the need to meet performance targets, while 14.3% believed that without it, criminals would be able to escape punishment. The reasons include weak departmental control (23.8%), low professional level (26%), and unfavorable psychological state of employees (16.4%). Most acts of torture occur in the early stages of an investigation, during detention (35.3%), interrogations (17.6%), and in temporary detention centers (10.3%)².

To reduce the dependence of police performance on statistical indicators, it is necessary to reform the system for evaluating the activities of internal affairs bodies. The introduction of disciplinary mechanisms for the heads of units where torture has been identified,

¹ Консолидированный доклад участников национального превентивного механизма Республики Казахстан по итогам превентивных посещений, выполненных в 2023 году [Electronic resource] – Access mode: <https://www.gov.kz/memleket/entities/ombudsman/documents/details/763455> (Access date: 20.09.2025).

² In the same place.



similar to anti-corruption legislation, as well as the temporary suspension of the assignment of special and military ranks until the completion of rehabilitative investigations, will help to shift priorities towards respect for human rights and strengthening internal control.

International practice demonstrates the effectiveness of alternative assessment models. Since the mid-2000s, the activities of the internal affairs bodies in Belarus have been assessed based on sociological surveys of the population³, and in Moldova, the planned indicators were completely abolished in 2015. In the United States, it is prohibited by law to set quantitative plans for arrests and subpoenas [6]. An example is the practice in Belgium, where prosecutors are evaluated based on their level of training, communication skills, and overall performance, and quantitative indicators are used only for workload analysis and do not influence career decisions. This approach helps to reduce the formalization of law enforcement, strengthens public trust in the justice system, and creates conditions for sustainable human rights compliance.

2. According to paragraph 9) of part 3 of Article 77 of the Constitution of the Republic of Kazakhstan, “no one can be convicted solely on the basis of their own confessions”. However, in national law enforcement practice, confessions remain a key element of the evidence base, which creates a risk of violating the rights of suspects. The greatest risk of torture occurs during the initial stages of detention, when pre-trial investigators seek to obtain confessions as a quick way to establish guilt. Justice systems that are overly dependent on confessions actually encourage officers to obtain them by any means necessary, including the use of torture and psychological pressure.

Confessions are one of the main motives for the use of torture and are explicitly mentioned in the definition of torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CTT)⁴. In foreign legal systems, the permissibility of

confessions is directly linked to the observance of procedural guarantees. For example, in the Federal Republic of Germany, courts prioritize the strict adherence to the suspect's right to remain silent and to legal assistance. Violation of these rights, including failure to notify the witness of their right to refuse to testify, results in the inadmissibility of such evidence.

Section 13 of the Criminal Procedure Code of the Republic of Kazakhstan provides for a simplified procedure for handling cases in which a procedural agreement in the form of a plea bargain has been reached. According to the Criminal Code of the Republic of Kazakhstan, such individuals may be granted benefits, such as a sentence below the lowest limit of the article's sanction or the application of a suspended sentence. However, the excessive reliance of the justice system on confessions increases the risk of torture, as the absence of a full trial undermines the process's guarantees for verifying the admissibility of evidence and excluding illegally obtained evidence [3, 65 p.].

The European Court of Human Rights has repeatedly emphasized that a waiver of trial is only permissible if the accused freely and knowingly agrees, and that plea agreements are subject to effective judicial review. A similar approach is reflected in the position of the UN Human Rights Committee, which states that such agreements are only legitimate if the individual has a real alternative; the absence of a choice is considered a violation of the principles of fair trial.

An important factor that increases the dependence of the investigation on confessions is the lack of modern investigative tools. An effective and legitimate investigation requires access to alternative methods of proof, such as DNA analysis, digital data, video recording, and forensic research. In the absence of these tools, investigators are forced to rely on confessions as the primary source of evidence, which increases the risk of illegal methods.

International practice confirms that a sustainable reduction in the use of torture is

³ Об оценке эффективности деятельности органов внутренних дел при осуществлении ведомственного контроля // Национальный правовой интернет-портал Республики Беларусь. 12.02.2020 [Electronic resource] – Access mode: <https://etalonline.by/document/?regnum=u02003069b> (Access date: 25.11.2025).

⁴ Конвенция против пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания: принята резолюцией 39/46 Генеральной Ассамблеи от 10 дек. 1984 г. [Electronic resource] – Access mode: https://www.un.org/ru/documents/decl_conv/conventions/torture.shtml (Access date: 05.10.2025).



achieved not so much by tightening sanctions as by institutional and technological measures. The experience of England and Wales is particularly illustrative, where, following a series of judicial errors caused by confessions obtained under duress, the Police and Criminal Evidence Act of 1984 (PACE) was passed. This act keeps the recording of interrogations, provides detainees with the right to legal representation, and limited the duration of detention. The law has become a key tool for preventing torture and has ensured transparency in pre-trial procedures.

The UN and international human rights mechanisms emphasize the importance of mandatory audio and video recording of interrogations, stating that evidence obtained without recording should not be recognized by the court⁵. This recording not only protects suspects but also protects police officers from false accusations, increasing public trust in the law enforcement system.

Thus, effective protection of a suspect's rights can only be achieved through a combination of legal and procedural guarantees, as well as the provision of technical investigative tools, professional training for investigators, and the institutional readiness of the state to use modern and legitimate methods of proof.

3. Pre-trial detention should be considered exclusively as an extreme measure of procedural coercion, applied only in cases where other preventive measures are unable to achieve the goals of criminal proceedings. The abuse of this measure is largely due to a political and legal culture that prioritizes a "hard approach" to crime over the presumption of innocence, as well as an institutional imbalance between the prosecution and defense sides in terms of access to information, time, and resources. The practice of the courts formally granting the prosecutor's office and the investigation authorities' requests for detention without analyzing the specific circumstances of the case also plays a significant role.

Prisoners in pre-trial detention facilities are particularly vulnerable to torture and other forms of ill-treatment. Limited contact with the outside world and lack of access to lawyers, civil society

representatives, and independent experts create conditions conducive to the concealment of violations. The proximity of the detainee to those involved in the investigation reduces the likelihood of complaints about torture or coercion. Even if the measure itself is legal, its prolonged use and inadequate conditions of detention may be considered as cruel or degrading treatment under Article 7 of the International Covenant on Civil and Political Rights.

This situation is exacerbated by the poor condition of the institutions' infrastructure, which directly affects the conditions of detention and the level of respect for prisoners' rights. Most of the buildings were constructed in the 19th and 20th centuries and do not meet modern sanitary, hygienic, and engineering requirements.

Overcrowding, dilapidated infrastructure, and insufficient funding make the detention system particularly vulnerable to human rights violations. With detention facilities operating at capacity, ensuring security and proper management becomes challenging, increasing the risk of violence and inhumane treatment.

In order to address these issues, it is advisable to include the construction of new-type multidisciplinary correctional facilities in each region as part of a comprehensive reform of the penal system. These facilities should comply with international standards for the treatment of prisoners (particularly the Nelson Mandela Rules) and provide for the differentiated placement of individuals based on the category of crime, stage of the trial, and mode of detention. Implementing these measures will enhance the humanization of preventive measures, minimize the risk of torture, and strengthen the personal security of suspects and accused individuals.

4. Despite the procedural guarantees provided by law, police officers often disregard them, believing that the use of physical and psychological pressure is the most effective way to obtain confessions. In practice, the right of suspects to defense, including the involvement of a lawyer from the moment of detention, is often restricted due to the pre-trial investigation bodies' focus on achieving quick results and meeting formal targets. Most reported cases

⁵ Доклад Специального докладчика сэра Найджела Родли по вопросам гражданских и политических прав, включая вопросы пыток и задержаний (E/CN.4/2002/76), Нью-Йорк, 2001 [Electronic resource] – Access mode: <https://docs.un.org/ru/E/CN.4/2002/76> (Access date: 27.11.2025).



of torture occur during the period between actual detention and placement in a temporary detention center, when access to a defense attorney and prosecutorial oversight is limited.

The mandatory participation of a defense attorney is of particular importance. According to Article 67 of the Criminal Procedure Code of the Republic of Kazakhstan, the participation of a lawyer is mandatory in cases where a person is facing a sentence of more than ten years in prison or life imprisonment. However, according to Article 11 of the Criminal Code of the Republic of Kazakhstan, serious crimes include offenses punishable by five to twelve years in prison. As a result, in cases where the sentence does not exceed ten years, the participation of a lawyer is not mandatory, which is exploited by investigators in practice to isolate suspects from qualified legal assistance. In order to strengthen the legal guarantees for suspects, it seems appropriate to lower the specified threshold to five years, extending the mandatory participation of a lawyer to all serious and particularly serious crimes.

The international experience of developed legal systems (the United Kingdom, France, Germany, the United States, the Netherlands, and Sweden) demonstrates that effective protection of a suspect is provided from the moment of detention. In these countries, interrogations are recorded on audio and video, the presence of a lawyer is mandatory, and any evidence obtained without the participation of a defense attorney is considered inadmissible. This practice eliminates the possibility of pressure and falsification of evidence, strengthening public trust in the justice system.

An important additional guarantee in domestic law is the normative resolution of the Supreme Court of the Republic of Kazakhstan dated December 28, 2009, No. 7, "On the Application of Criminal and Criminal Procedure Legislation on the Observance of Personal Freedom and Human Dignity, the Prevention of Torture, Violence, and Other Cruel or Degrading Treatment or Punishment". This act requires the prosecutor to immediately register complaints of torture in the Unified Register of Pre-Trial

Investigations and transfer the criminal case to the appropriate investigative authority.

A significant preventive mechanism is also the reduction of the time interval between the actual detention and the procedural decision to register it. It is reasonable to propose reducing this period from three to one hour, as this is the stage where most acts of torture and other forms of ill-treatment occur. Strengthening the institution of a defence lawyer, the supervision of a prosecutor, and the procedural recording of the actions of officials will significantly increase the level of legal guarantees for suspects and reduce the risks of arbitrariness at the pre-trial stage.

5. The absolute nature of the prohibition of torture implies the establishment of strict and unavoidable sanctions in national legislation. However, the current version of Article 146 of the Criminal Code of the Republic of Kazakhstan retains mild types of punishment, such as fines, correctional labor, and restrictions on freedom, as well as the possibility of conditional sentencing (Article 63 of the Criminal Code of the Republic of Kazakhstan) and exemption from criminal liability (Article 55 of the Criminal Code of the Republic of Kazakhstan). We believe that such a disposition may indicate a lack of state determination to combat torture and does not correspond to the severity of these crimes, which are classified as particularly serious human rights violations under international law.

International practice demonstrates the opposite approach: conditional sentences and exemptions from liability for torture are completely excluded. In the Federal Republic of Germany, only Absprachen are allowed, which are agreements within the framework of strictly regulated procedures that do not exempt the perpetrator from criminal liability. In France, similar deals are limited to the public interest and the rights of victims. In the United States and the United Kingdom, the court is obliged to reject any agreements that undermine public trust in the justice system and violate the principle of the inevitability of punishment. Thus, international standards stipulate that crimes related to torture are not subject to mitigation, and any form of



compromise between the prosecution and the defense is unacceptable⁶.

A serious problem in domestic practice is the qualification of torture under related offenses, such as coercion to testify or abuse of official authority. This leads to unjustified mitigation of liability and distortion of statistics. Additionally, Article 146 of the Criminal Code of the Republic of Kazakhstan does not provide for qualifying features that reflect the severity of the consequences, such as “causing a person to commit suicide” or “committing torture against multiple victims”. There is also no provision for the imposition of a lifetime ban on holding positions in law enforcement agencies, despite the fact that the maximum additional sentence currently stands at only three years.

Meanwhile, in a number of post-Soviet countries (Georgia, Azerbaijan, Uzbekistan, Kyrgyzstan, Russia, and Moldova), the ban on further holding positions related to the exercise of authority is mandatory and applies for a long period of time, and in some cases, for life. This approach helps to prevent the possibility of repeated abuse of official positions and enhances the preventive function of criminal law.

In this regard, it seems reasonable to tighten the sanctions under Article 146 of the Criminal Code of the Republic of Kazakhstan, introduce qualifying features that reflect the severity of the consequences of the act, and establish a lifetime ban on working in law enforcement and penitentiary agencies for individuals found guilty of torture. These measures will ensure that the national legal system complies with international standards and the principle of the inevitability of punishment, as enshrined in the United Nations Convention against Torture.

Conclusion. The analysis demonstrates that the persistence of torture and other forms of ill-treatment in the Republic of Kazakhstan is systemic and is caused by both institutional and regulatory factors. Despite the existence of a well-developed legal framework and the ratification of international treaties, there are still prerequisites that contribute to the violation of the rights of suspects and accused during the pre-trial stage of the criminal process.

The key reasons include:

- the existence of performance indicators that encourage law enforcement agencies to achieve statistical results at any cost;
- the dependence of the justice system on confessions and the focus on formal confirmation of guilt, which creates a risk of torture for “ensuring the detection of crimes”;
- the abuse of detention as a preventive measure in unsatisfactory conditions of pre-trial detention centers;
- the lack of procedural guarantees and the absence of mandatory participation of a defense attorney for a number of categories of serious crimes;
- the leniency of the sanctions under Article 146 of the Criminal Code of the Republic of Kazakhstan and the possibility of conditional conviction or release from liability for torture.

Addressing these factors requires a comprehensive approach that combines legal, institutional, and organizational-technical measures. In order to improve the anti-torture system, it is advisable to:

- abolish the system of formal performance indicators, replacing it with an assessment of the effectiveness of law enforcement agencies based on the level of public trust and the quality of crime investigations;
- ensure the mandatory participation of a lawyer in all cases of serious and particularly serious crimes, starting from the moment of detention, and reduce the period between actual detention and its procedural formalization from three to one hour;
- introduce mandatory audio and video recording of all interrogations, and provide for the inadmissibility of evidence obtained without recording or in the absence of a defense attorney in court;
- to reform the system of execution of punishments with ensuring proper conditions of detention in accordance with international standards;
- to toughen criminal liability for torture, excluding the possibility of conditional conviction and deals with the investigation, as well as establishing a lifetime ban on working in law enforcement and penitentiary bodies for those

⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 24 January 2008 [Electronic resource] – Access mode: https://atlas-of-torture.org/en/entity/ztlatx3ed7bo6cjbpijc92j4i?file=15350032034674drm4fj0jcxkf3cyetv8daq0k9.pdf&utm_source=chatgpt.com&page=1 (Access date: 10.12.2025).



convicted under Article 146 of the Criminal Code of the Republic of Kazakhstan;

- to establish personal responsibility of law enforcement agency heads for the facts of torture in their subordinate units, in line with anti-corruption legislation;

- to develop a separate law on countering torture, which would include all elements of the state system, from prevention and monitoring

to investigation, protection of victims and compensation for damages.

Implementing these measures will strengthen the rule of law, enhance public confidence in law enforcement, and ensure the practical realization of the constitutional principle of the inadmissibility of torture as one of the fundamental standards for the protection of human rights.

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