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THE COMBAT AGAINST THE TORTURE IN KAZAKHSTAN: TRENDS, CHALLENGES AND PROSPECTS

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Abstract. This paper describes the rising global challenge of torture and its application to Kazakhstani penitentiary system. In doing so, author presents the institutional and legal frameworks for combating the torture practices in Kazakhstan. Also, the tendencies of the investigation processes are described as well as the relationships between the law-enforcement bodies are outlined. On top of that the influence and involvement of the civil society organizations on handling the torture practices are indicated. Last, but not least author proposes the possible policy recommendations for solving and minimizing the torture related practices within Kazakhstani penitentiary system.

Key words: *Torture, Penitentiary system, Law-enforcement institutions, Civil society, Channels of reporting.*

**ҚАЗАҚСТАНДАҒЫ АЗАПТАУ МӘСЕЛЕСІНЕ ҚАРСЫ КҮРЕС: ҮРДІСТЕР,
СЫН-ҚАТЕРЛЕР МЕН ПЕРСПЕКТИВАЛАР**

Слямжар Ахметжаров

Андатпа. Бұл мақалада азаптаудың өсіп келе жатқан жаһандық проблемасы және оны Қазақстанның пенитенциарлық жүйесінде қолдану сипатталады. Автор Қазақстандағы

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азаптау практикасына қарсы күрестің институционалдық және құқықтық негіздерін ұсынады. Сондай-ақ тергеу процестерінің үрдістері сипатталады, құқық қорғау органдары арасындағы қарым-қатынастар белгіленеді. Бұдан басқа, азаматтық қоғам ұйымдарының азаптау практикасына қарсы күреске ықпалы мен қатысуы көрсетіледі. Соңғы, бірақ ең маңыздысы автор Қазақстанның пенитенциарлық жүйесінде азаптауларды қолдану практикасын шешу және азайту жөніндегі ықтимал саяси ұсынымдарды ұсынады.

Түйін сөздер: *азаптау, пенитенциарлық жүйе, құқық қорғау органдары, азаматтық қоғам*

БОРЬБА С ПЫТКАМИ В КАЗАХСТАНЕ: ТЕНДЕНЦИИ, ВЫЗОВЫ И ПЕРСПЕКТИВЫ

Слямжар Ахметжаров

Аннотация. В данной статье описывается растущая глобальная проблема пыток. При этом автор описывает институциональные и правовые основы борьбы с практикой пыток в Казахстане. Кроме того, описываются тенденции развития следственных процессов, а также взаимоотношения между правоохранительными органами. Также, указывается влияние и участие организаций гражданского общества в борьбе с практикой пыток. И последнее, автор предлагает возможные политические рекомендации по решению и минимизации практики применения пыток в пенитенциарной системе Казахстана.

Ключевые слова: *пытки, пенитенциарная система, правоохранительные органы, гражданское общество, каналы отчетности*

Introduction

Individuals who have been imprisoned for committing crimes are vulnerable in front of the law enforcement officials [1][2]. As widely recognized police and prison system agents have the physical or psychological impact over the detainees [3]. Informal methods of influence are executed in order to get confession from captives, who supposedly committed crimes or to establish total obedience among inmates [4].

According to various international reports the presence of torture in detention units and in prisons can be well traced in the wealthy states as well as in developing countries. According to the General Prosecution office, annually in Kazakhstan about 700 cases of unlawful methods of inquiry and violence toward detainees and prisoners are registered. However, during the last five years only 140 law

enforcement officials have been sentenced for torture allegations. More strikingly, in last ten years only 2% of registered torture allegations have reached the court trials [5].

The purpose of this paper is to evaluate existing challenges in the penitentiary system as well as provide recommendations for reduction of torture practices against the prisoners in Kazakhstan.

Methodology

The data sources have been triangulated through the content analysis of the international and domestic reports on the torture practices. In particular, the Amnesty International reports provided the opportunity to study the international perspective on the torture practices in Kazakhstan and wider region. While, the reports from the Kazakhstani General Prosecution office enabled to investigate the

domestic strategies in combatting the torture cases.

This paper is useful from the practitioners' perspective, as it provides the policy outcomes matrix. Such an approach is widely used in the public policy domain by the experts. In this paper, each policy alternative has been investigated in terms of the number of characteristics. Consequently, the best policy option is suggested for implementation.

Institutional and legal framework of tackling the torture

Kazakhstan has ratified in 1998 the United Nation Convention against torture & inhuman methods of treatment and punishment; in 2006 the International pact on civil and political rights. According to these documents Kazakhstan is obliged to prohibit any use of torture, effectively investigate any claims regarding torture and cruel methods of treatment, as well as bring perpetrators to the court for violations of human liberties. These obligations are also reflected in the Constitution of the Kazakhstan (Article 17) and the Criminal Code (Article 146). So, Kazakhstan is operating within the concrete legislative framework that prohibits the use of torture.

Apart from legislative framework, the combat against torture is conducted by different institutional bodies. The Department of Special Prosecutors under the General Prosecution Office has the authority to investigate any cases, where the use of torture has been reported. Also, civic society institutions such as Coalition Against Torture and National Prevention Mechanism are involved in monitoring the prisons.

However, despite the existence of sophisticated legal and institutional base, investigations of torture claims are not commensurate with international standards, thus the impartial justice is weakened [6]. As a result, the use of torture by the law enforcement agents remain mainly uncontrolled and unpunished. In the next section, the key elements of existing challenges in the penitentiary system would be presented.

Absence of safe channel reporting

One of the huge obstacles that prevent individuals from reporting the torture is the absence of safe channel for filling a complaint [7]. All complaints are expected to be registered by the department of internal security, which means that the protests of individuals pass through the staff of the detainee unit or prison. For that reason, in many cases individuals are afraid of reporting the torture practices due to a high risk of being exposed and consequently punished by the administration. For the similar sense, those who file a complaint are often times withdraw their allegations. Therefore, criminal cases are terminated at their initial stage, since torture victims revoke their appeals. Consequently, extremely low proportion of torture cases reaches the court trial.

Ineffectiveness of investigation process

One of the key obstacles, which prevent the fair investigation process for the victims of torture, is the corporate solidarity among law enforcement officials accompanied by their desire to avoid conflict with colleagues [8]. As illustration in Kazakhstan, the detainee units and prisons, where the cases of tortures take place are managed by the Ministry of Interior Affairs. While, torture investigations are conducted by the Agency for civil service and anti-corruption, the Department of Special Prosecutors of General Prosecution office, the National Security Committee. On broader terms, all these institutional bodies represent the Kazakhstani law-enforcement system. It follows that they mainly rely on one another in investigating the crimes and collecting the necessary evidence or information. Consequently, law enforcement officials are not interested in deteriorating the established working relationships. Thus, most of the time police officers avoid punishment for imposing the physical as well as psychological abuse on inmates and detainees.

Another reason, which accounts for the ineffective investigation process of torture allegations is related to the assumption that individuals fabricate torture claims in order to

avoid the punishment for committed crimes [9]. According to the survey conducted by Amnesty International the majority of judges, prosecutors and police investigators believe that allegations of cruel treatment indicated by defendants during the trial processes are not credible [10]. Consequently, subjective reasoning of law enforcement officials put the victims of the torture at a disadvantage from the very early stages of investigation process. What is more, the belief that defendants provide false claims, discourage law enforcement officials from collection and registration of statements regarding the torture practices.

The limitation of inspection by civil society organizations

Another barrier for detection of physical and psychological harassment in places of detention is due to limited capacity of civil society groups [11]. All the NGOs in Kazakhstan have the opportunity to participate in the Coalition Against Torture (CAT) – civil association that has the authority to visit and monitor prisoners and detainees. However, the members of CAT are obliged to send the preliminary notification to the law enforcement officials in order to visit places of detention. Consequently, CAT is not able to conduct the objective evaluation of the situation within penitentiary system. Even when the members of the CAT get the access to detainees and prisoners, they conduct the interviews under the supervision of investigators.

In order to address the issue of torture the Kazakhstani government in 2013 introduced the National Prevention Mechanism (NPM). This institution has been established for prevention and detection the facts of torture and other cruel, inhuman forms of conduct in regard to persons held under the custody or in jail. Nevertheless, as evidence suggests NPM is facing difficulties in achieving its objectives. This is because NPM does not authorized to monitor some legal offices. For instance, inspection groups of NPM are prohibited from investigating cabinets of police officers, where the often times the interrogation process

occurs. Another factor that contributes to the inefficiency of NPM, is that this institution falls under the jurisdiction of Ombudsman, who is appointed by the President. This in turn, casts doubt on independence of NPM.

Policy analysis and recommendations

The torture issue within the Kazakhstani penitentiary system could be addressed through different policy alternatives. The starting policy is to maintain the existing legal and institutional infrastructure related to the penitentiary system. Indeed, the current state of affairs should not be neglected in making the policy decision.

The second alternative policy is related to the development and modifications of current government strategy in tackling the torture practices. Primarily, the greater independence should be given for the Coalition Against Torture (CAT) and National Prevention Mechanism (NPM). Specifically, NPM has to be moved out from the jurisdiction of Ombudsman office. CAT and NPM should be given the authority to monitor and examine the prisons at any time period without the need of preliminary notifications. Apart from that, there should be stimulation of the greater society involvement into the inspection of prisons. For that purpose, the public councils under the local police units should be given the authority to visit and monitor prisons in order detect and report the torture practices.

The third policy alternative is about transferring the prisons into the private sector. Nowadays, many developed nations in the world are inclined toward the essence of new public management, which implies market-based approach in constructing the policies. One of the vivid features of the new public management is contracting out the government services. In this sense, the prisons are not the exclusion. Australia, France and United States are already using private prisons. The introduction of private prisons in Kazakhstan would separate two groups of the torture issue. In other words, the prisoners and police officers would not intersect, thus long-standing practice

of torture is expected to be abolished through this method.

It worth considering separately each policy in terms of selected criteria's (Table 1).

Table 1. Policy analysis matrix

Criteria	Alternative 1	Alternative 2	Alternative 3
	Maintain the Status quo	Development of existing government policy	The transfer of penitentiary system to private sector
Equity	Low	High	High
Reputational costs	High	None	None
Political feasibility	High	High	Low
Effectiveness	Low	Moderate	Moderate
Degree of uncertainty	None	Moderate	High

Evaluation of status quo alternative according to the criteria's allowing us next inferences. To begin with, keeping current practices unchanged provides little justice and fairness for prisoners. Since, as evidence suggests presently inmates are deprived from their rights for safe environment and fair treatment. Next, maintaining the status quo implies high reputational costs. This is because the continuing tendency of torture practices in custodies deteriorates the image of Kazakhstan in the international arena. In terms of political feasibility, carrying existing conditions is highly acceptable for decision-makers, since it does not set any obstacles for government policies. Going further, by promoting status quo alternative we expect the preservation of current torture practices at the same level, since current government policies toward the combating the torture proved to be ineffective. Lastly, the politics of zero intervention into the how things stand in the penitentiary system provides the clear vision for policy makers in the short and medium run about the outcomes of this approach.

Evaluating the second alternative policy in terms of identified criterions provides the next results. Firstly, it ensures the fairness and promotes the justice in regard to those who are in jail. This is because, implementing the better modified policies with the greater inclusion of civic society are expected to make the attitude of police officers toward convicts more tolerant. Secondly, the modernization of government

policy in penitentiary system is going to have a positive effect on the political image of the Kazakhstan in the views of international audience. Next, government of Kazakhstan is pursuing the goal of entering the league of 30 most developed nations in the world. For that purpose, it tries to introduce more progressive strategies almost in all spheres including the human rights. Thus, developing the policies of combating the torture will certainly be on the agenda of the state. So, modernization policy in penitentiary system will be politically acceptable. Moving further, development of current policy strategy in tackling torture practices is expected to provide the moderate level of effectiveness. Similarly, there is a moderate level of certainty about the outcomes of this approach, positive expectations from policy implementations are accompanied by the possibility of passive society involvement into the prison inspections.

Putting third alternative policy into the analysis matrix provides the next outcomes. Firstly, from the equity perspective it will intuitively imply the greater level of fairness and justice toward the prisoners. Since, inmates are expected to be completely moved out from the long-standing influence of police officers. Secondly, introduction of this policy would not have reputational damage on the Kazakhstan, instead it will demonstrate the international audience the new methods of optimization of the penitentiary system. In terms of political feasibility this policy is

expected to have very little support among decision-makers. Since, historically prisons in Kazakhstan have been under the public domain and probably will remain so for some period. As for effectiveness criteria, the literature provides the mixed evidence on the use of torture in private prisons. On the one hand, scholars suggest that employees of private prisons are less inclined toward the bullying of inmates and imposing on them the physical abuse. On the other side, studies indicate that there is a little difference between the attitudes of staff in private and public prisons toward the convicts. In both types of prisons, the similar level of torture usage can be traced. So, the level of effectiveness could be classified as moderate. Lastly, few countries in the world are practicing the private prison system. So, in the Kazakhstani context the transfer of penitentiary system to private sector is associated with high level of uncertainty regarding the outcomes of that policy.

On balance, the second alternative policy about the development of existing government policies in tackling the torture is recommended for implementation. This is due to the fact that the provision of opportunities for the society to openly monitor the prisons would be the most effective method of reduction of torture practices within the Kazakhstani penitentiary system.

Conclusion

The combat against the torture practices in the Kazakhstani penitentiary system is on the government agenda. In the forthcoming period the strategy to decrease the torture practices in

Kazakhstan will most likely continue on the two tracks.

First track is associated with the introduction of legislative norms, which are addressed to discourage law enforcement agents to be engaged in the torture practices. For instance, the General Prosecution Office in Kazakhstan has recently informed about the plans to transfer the torture action into the category of severe crimes. This initiative will certainly increase the costs for individuals, who use the torture as the instrument of power. Introduction of other relevant legislative norms will enable to strengthen the punishment for the torture crimes. Second track is associated with the collaboration with the civil society in order to establish the public oversight over the penitentiary system. The regular monitoring of penitentiary system by the civil society will help to determine the torture practices and apply the legal punishment for law breakers.

This study contributes to the broader discussion of the torture practices in the transitional economy countries. It worth mentioning that most of the problems discussed in the paper can be found in other post-Soviet states. There is a room for the further research on this topic. The possible dimension of the future studies can be associated with the using the ethnographic methods in order to collect the data. The in-depth interviews with the employees of the penitentiary system as well prisoners will provide the opportunity to collect the first-hand data on the torture cases and elaborate the effective policies to diminish the torture practices in Kazakhstan.

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