

Report

The Constitution of Kyrgyzstan proclaimed the rule of law (Article 1).

The Constitution establishes basic human rights and freedoms (Section 2).

The Constitution guarantees a ban on the use of torture and other inhuman, cruel or degrading treatment or punishment (Article 20).

Despite such guarantees in the Constitution and steps taken by the state to eradicate torture, allegations of torture and ill-treatment are not becoming less. At the same time, new legal barriers emerge among victims of torture, lawyers representing victims of torture

Qualifications and problems of legislation

The definition of torture in the legislation of the Kyrgyz Republic still does not fully correspond to the definition of torture in Article 1 of the Convention. Torture in the Criminal Code means "deliberate infliction of physical or mental suffering on a person". Such a sign as causing "severe pain" is not included in the crime.

In connection with this, the qualification of physical suffering, given by the Plenum of the Supreme Court of the Kyrgyz Republic on March 25, 2016, raises concern and alarm. In the opinion of the Plenum of the Supreme Court "Under physical suffering, the victim should be understood as such a pain that deprives the person of the opportunity to act of his own free will in accordance with his own desires, intentions, interests, or significantly limits his will."

The law does not penalize such a crime against the person as "cruel treatment", which, unlike torture, may not reach the level of cruelty that could be characterized by torture.

As a result, many applications, which are in fact evidence of cruel and inhuman treatment, are not considered. Thus, by ratifying the Convention against Torture, recognizing Article 1 of the Convention, which turns off ill-treatment, it does not criminalize all offenses, which allows to evade responsibility.

Unregistered detention

In all cases where torture occurs, illegal actions in relation to the detainee are committed during the initial detention. This detention is not fixed anywhere, operational staff call it operational work. The Code of Criminal Procedure establishes that operational staff are not procedural persons. But, nevertheless, the operational staff detain a person, receive written explanations from the detainees - in fact, at this time, there is a physical and psychological impact on a person in order to obtain confessions against themselves or others. At this time, the detainee has no procedural status and accordingly, there is no access to a lawyer. Unlawful detention, detention of a person occurs in the offices of operational staff and other unauthorized places. There were facts when the detainees were held in the office of the investigator or operational staff for 1-2 days. Complaints to the prosecutor's office and the courts about unregistered detention are not considered and are not investigated.

Access to qualified legal assistance

The main problem still remains the problem of physical access of a lawyer to a victim of torture. For example, many police stations are equipped with armored doors with electronic locks, or duty officers do not allow an attorney without falsified approvals from the management of the police department.

The lawyer brought by the investigator within the framework of the government program often does

not work in the interests of his client. Sometimes the police can use unauthorized methods in the presence of a lawyer, to which the lawyer does not respond. In essence, this is complicity in the commission of torture by a lawyer, or concealment of a crime by a lawyer, when a client talks about torture, and the lawyer persuades or frightens that it will be bad for him if he claims torture.

Quality of medical and psychological examinations on allegations of torture

Despite the active introduction of a practical guide for medical personnel to document torture traces based on the principles of the Stambul Protocol, doctors are reluctant to use forms of documenting violence, torture and ill-treatment. So, in one case, when two inmates were beaten in the SIZO-25 by the staff of the institution, the expert refused to document the traces of violence on the form of documenting approved by the Ministry of Health, saying that it was not torture, torture occurs only in the police.

In the event that examinations are carried out on the forms of documentation established by the state, the quality of the examinations leaves much to be desired. Doctors do not fully appraise the expertise, the conclusions are scientifically not substantiated and unreasonable.

Access of lawyer and victim of torture to the materials of verification

When an application for torture is received by the prosecutor's office, the prosecutor's office, according to the criminal procedure code, must decide within 3 days or 10 days if necessary to initiate or refuse to initiate criminal proceedings. It should be noted that the procedural deadlines were often not observed by the supervisory authority.

During the verification of the application, the prosecutor's office receives an explanatory note from the applicant and the alleged suspects about the circumstances of the case, appoints examinations in relation to the applicant - medical, psycho-psychiatric. And until the results of the examinations are ready, the statement of torture is not considered.

At the pre-investigation stage in cases of torture, the lawyer's ability to access the audit materials is limited by procedural norms.

Law enforcement authorities do not allow the applicant and the lawyer to check the materials even after the verification is completed. This circumstance makes it difficult to prepare a qualitative complaint on the refusal to initiate criminal proceedings.

The situation of women in criminal justice

The places of detention and staff are not prepared for temporary stay and supervision of women. Legislation does not include a gender-sensitive approach to women in the criminal justice system.

A woman in criminal justice is already vulnerable to being a woman, and even more vulnerable are women who are pregnant, patients are a common illness, refugees, without a place of residence, drug users, HIV +, sex workers, women with mental illnesses. The vulnerability of these categories of women is reflected in the fact that in closed institutions they have limited access to adequate medical care and adequate treatment.

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