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Working Session 5: Rule of Law II, including the avoidance of arbitrary arrest, detention or exile, and the prevention of torture, the exchange of views on the abolition of the death penalty, the protection of human rights and the fight against terrorism

Torture and ill-treatment of detainees, suspects, accused and defendants in the Tajik security forces are still one of the most important ways of extracting confessions.

Although there is a good legal framework for fighting torture in the country, only a few people have been convicted under this article, but the real state of things testifies to the lack of efforts and desires of law enforcement bodies to combat this medieval method of investigation and trial.

Partly this is due to the fact that the level of corruption, nepotism, and parochialism in the security forces is very high, as well as the fact that not only the leaders of the lower organizational structures but also the heads of the Departments and Ministries are not interested in the objective investigation and punishment of the perpetrators. The publication of real statistics of cases of torture and ill-treatment in their governing structures can greatly impair their reputation, both in the face of the public and the President himself.

In view of the low professional training of investigators, investigators and experts, the use of torture is the main "effective" method of disclosing both real and custom crimes.

Torture is used in all stages of the criminal process and in all law enforcement agencies: the State Committee for National Security, the Ministry of Internal Affairs, the Agency for Drug Control, the Agency for State Financial Control and Fight against Corruption, and also in the structures of the Public Prosecutor's Office of Tajikistan. The leader among these state structures on the use of torture to citizens is the Ministry of Internal Affairs, especially the employees of the Office for Combating Organized Crime. Although torture is also used after the conviction of a person, but mostly they are used in the stage of inquiry and preliminary investigation.

Persons at risk of being subjected to torture and ill-treatment are mostly suspected or accused under Article 104 of the Criminal Code (murder); persons who are prosecuted for crimes against sexual freedom or sexual inviolability; persons suspected of crimes of a terrorist nature; for crimes related to illicit trafficking in narcotic drugs; under article 244 of the Criminal Code (theft); as well as persons suspected, accused or convicted of crimes directed against the fundamentals of the constitutional order and the security of the state (Article 305-313 of the Criminal Code of the Republic of Tajikistan).

But not only this is the main factor in the use of torture. Another, equally important, is which opposition party belongs to or sympathizes with a person, whether he criticized the actions of the government or individual civil servants before, defends or demands the observance of his constitutional rights during arrest or detention.

According to the research conducted by the Coalition of Civil Society Against Torture and Impunity in Tajikistan in 2017, the most common types of torture are beatings, rape, threats of rape, leaving in cold water for one to two days, standing for hours in naked cells or corridors, on

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the head of gas mask, cauterization of the body with cigarettes. And also sticking the mouth with scotch tape, turning the hands behind your back and tying the legs and hands with a belt, beating with the binding of the legs and hands, passing current through the fingernails and in the inguinal part of the body. Headaches, water pouring, beatings on the kidneys and abdomen, beatings through putting the book to the stomach and to the head (the crown), beatings on the face, beating with rubber truncheons, boots and so on. There is no definite and definitive list of types of torture used by law enforcement agencies in Tajikistan, it all depends on the imagination of the persons tortured.

I worked as a lawyer in Tajikistan and in my professional activities I have repeatedly faced similar cases. And also, being detained and accused of divulging state secrets, while in the detention center of the Ministry of Internal Affairs and in the Ministry of Justice detention center, witnessed the use of torture, he heard the stories of those who were tortured, who and where they were tortured and how.

With me in one cell was a 19-year-old boy, Abdurakhimov Darves, accused of committing a murder. According to his stories, he and his accomplices immediately confessed after the detention. But the employees of the Criminal Investigation Department of the Ministry of Internal Affairs of Firdavsi district of Dushanbe city tortured them for more than 10 days, beat them, forced them to stand in cold water for hours on end, and repeated the same "greeting" to security guards for hours. All this was done to ensure that they took the blame for another unsolved murder. Unable to withstand such torture and torture, they confessed and in this imperfect act. A month later, already in the SIZO, they were again tortured with electric shock, beaten and humiliated in every way. They were already willing to admit and in the third murder committed. After a long two-day torture, they became aware that they were being punished for giving false confessions, since the true killer was caught, and he had already confessed to the deed.

I witnessed how the employees of the operative part of the SIZO summoned one or several of our cellmates every day, and they came back after a while, overworked and exhausted. The suspect in the acquisition of 1 gram of drugs, Turkov Fazliddin, was so cruelly tortured that the skin and muscles of the left forearm were burnt. When one of our cellmates complained about his health condition, the SIZO doctor instead of providing medical assistance beat him with his feet and a massive iron key. There are a lot of such examples, and they occur everywhere in the structures of law enforcement agencies of Tajikistan.

The main reason for the use of torture and inhuman treatment, in our opinion, is not only the desire to quickly uncover crimes and obtain additional information about crimes committed or suspected, suspicious persons, etc., but also a high degree of secrecy, unreasonable secrecy in the work of law enforcement bodies.

A person, from the moment of actual detention, has the right to an attorney, but, often, until confessions are obtained from the detainee, lawyers are not allowed to defend them. Appealing evidence obtained with the use of torture, due to the dependence of the court, is ineffective. Such complaints by courts are recognized as an attempt to evade the suspect from criminal liability. There is no practice of due and independent medical examination of detainees. For the sake of creating the appearance of the fight against torture, the authorities are arrested only by a small part of the direct executors, but the leaders, the heads of the divisions, aware and encouraging the use of torture, are not held to account.

In order for such shameful and criminal practice of disclosing crimes to cease, it is necessary to resolutely demand that Tajikistan, as an OSCE member, unswervingly fulfill its obligations in the sphere of human rights protection and fight against torture, not create artificial interference in the work of a lawyer, without the participation of a lawyer, investigative actions, judges should not be taken as proof of evidence given at an early stage of the investigation conducted without the participation of a lawyer. Each statement about the use of torture should be investigated

objectively and immediately, and the responsible persons should be brought in regardless of their positions. To open access of the public and mass-media to litigations. Only joint efforts of the state and the public, as well as guaranteeing the independence of the media, can really change the situation of torture in Tajikistan.

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