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Reviewing the Legislation of the Republic of Tajikistan for Compliance with International Standards regarding Prevention of Torture and Cruel Treatment

Dushanbe, 2025

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List of Abbreviations:

CivC – Civil Code

SNSC – State National Security Committee

MDRJ MOJ – Main Directorate of Reformatory Justice of the Ministry of Justice

MOI – Ministry of Interior

ICCPR – International Covenant on Civil and Political Rights

MES – Ministry of Education and Science

MOJ – Ministry of Justice

MOHSPP – Ministry of Health and Social Protection of Population

L&R– Laws and Regulations

NPM – National Preventive Mechanism

UN – United Nations

RT – Republic of Tajikistan

CrimC – Criminal Code

CrimPC – Criminal Procedure Code

OPCAT – Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

Republic of Tajikistan has acceded to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on July 21, 1994 that has come into effect for the Republic of Tajikistan on February 10, 1995. International Covenant on Civil and Political Rights adopted in 1966 has come into force for the Republic of Tajikistan in April 1999. Since then, RT has assumed obligation to prevent torture and cruel treatment.

This review is presented as a table for visual reference and comparison of articles of the Convention against Torture and ICCPR with laws and regulations of RT. Also, the review included the recommendations of the Committee against Torture and the Human Rights Council. These are recommendations, the implementation of which will bring the legislation of RT into compliance with international standards.

| International Treaties: UN Convention against Torture; International Covenant on Civil and Political Rights | Legislation of Tajikistan (Constitution, Criminal Code, Criminal Procedure Code, Civil Code, etc.) | National Human Rights Protection Strategy for 2030 | Recommendations of the UN Committees | Universal Periodic Review |
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| <i><u>Prohibition on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u></i> | | | | |
| Convention against Torture Article 1 For the purposes of this Convention, “Torture” is defined as <u>any action,</u> <u>intentionally exposing</u> any person to <u>strong pain or suffering,</u> physical or moral, in order to <u>obtain information or</u> <u>confession from them or a third party,</u> <u>punish them or a third party for action</u> <u>that they committed or are suspected of,</u> as well as intimidate or force them or a <u>third party, or for any reason based on</u> <u>any form of discrimination,</u> when such pain or suffering are inflicted by | Constitution of RT Article 18 Personal immunity is guaranteed by the state. <u>No one can be put to torture, cruel</u> <u>and inhuman treatment.</u> Coercive human medical and scientific experimentation is prohibited. Criminal Procedure Code of RT Part 2 Article 10 No one from among participants of criminal proceedings <u>can be put to violence, torture</u> <u>and other cruel, inhuman or degrading</u> <u>treatment.</u> | This issue is not covered in the document | This issue is not covered in the document | This issue is not covered in the document |

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| <p><u>government official or any person in official capacity</u>, or at their instigation, or with their tacit knowledge and acceptance. This definition does not include pain and suffering, which are triggered by lawful sanctions, inherent in or occasionally caused by them.</p> <p>Article 16 Each Participating State shall prevent, in any territory of their jurisdiction, other acts of cruel, inhuman or degrading treatment or punishment that do not fall under the definition of torture provided in Article 1, <u>when such acts are committed by government official or any person in official capacity, or at their instigation, or with their tacit knowledge and acceptance</u></p> <p>ICCPR Article 7 <u>No one can be put to torture or cruel, inhuman or degrading treatment or punishment.</u> In particular, no one, without their free consent, can be subjected to medical or scientific experiments.</p> | <p>Law of RT PT “On the Procedure and Conditions of Custodial Detention of Suspects, Accused Persons and Defendants” Paragraph 2 Article 3 Custodial detention of a suspect, accused person and defendant <u>for physical cruelty, torture, and inflicting physical and moral damage is not allowed.</u></p> <p>Code for the Execution of Punishment under Criminal Law Paragraph 2 Article 10 It is expressly <u>prohibited to put the accused person to torture or cruel, inhuman or degrading treatment</u>, carry out medical or any other scientific experiments on them, even with their consent, which may pose a risk to their life and health</p> <p>Criminal Code of RT Part 1 Article 143(1). Torture <u>Intentional infliction of physical and/or moral suffering caused by interrogating officer or investigator, or any other official, or at their instigation, or, with their tacit knowledge or acceptance, by other person in order to obtain from a tortured person or a third person information or confessions, or punish them for action committed by them or a third party or action they are suspected of, as well as intimidate or coerce them or a third party, or for other reason based on any form of discrimination</u></p> | | | |
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Review and Recommendations:

Prohibition of torture in the international law is not only a common law standard, which has binding force upon all the states, but also jus cogens (mandatory standard of international law), which take precedence over other contradicting standards¹. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment is fixed in several international legal instruments: Universal Declaration of Human Rights adopted in 1948 (Article 5); ICCPR adopted in 1966 (Article 7); Convention against Torture adopted in 1984. Prohibition of torture and cruel treatment is also fixed in the laws and regulations of RT.

Based on the definition provided in the Convention against Torture, one may distinguish the following elements, which while put together, constitute the notion “torture”²:

- Intentional action that inflicts a strong physical or mental pain and suffering;
- Indirect or direct participation of an official or a person in official capacity;
- Specific aim: obtain information; obtain confession; punishment, intimidation, coercion, or other reason based on any form of discrimination.

Definition of “torture” in the legislation of Tajikistan meets the international definition fixed in the UN Convention against Torture. Moreover, it is worth noting that the conventional notion implies inflicting pain and suffering, and the national legislation does not clarify that suffering should be strong. I. e., the legislation of Tajikistan envisages wider application of this notion, as it is implied that torture should not necessarily bring about “strong” suffering. This provision will, in no way, contradict the Convention against Torture. As, according to Paragraph 2 Article 1 of the Convention against Torture, national legislation may contain wider definition of torture. For example, Inter-American Convention on the Prevention of Torture and Punishment (1985) does not also require that pain or suffering should be “strong”, and this will not contradict the Convention against Torture³.

Constitution of RT and other laws and regulations prohibit not only torture, but also cruel and inhuman treatment. Therefore, one of recommendations is to **include the notion “cruel treatment” in criminal legislation of Tajikistan and introduce punishment under criminal law for this action**. Definition “cruel treatment” should correspond to the conventional definition. So, in the comments to the Convention against Torture written by Manfred Novac, Moritz Birk, Julian Monina, they propose the following definition of cruel, inhuman or degrading treatment or punishment: “...may be defined as inflicting strong pain or suffering, whether it be physical or mental, at instigation or with tacit acknowledgement or acceptance of public official or other person in official capacity. Such behavior may be both, intentional and neglectful, with or without specific aim. It does not require a special situation of apprehension or direct control of victim by perpetrator that is illustrative only for torture⁴”. This definition of cruel treatment may be taken as basis and included in legislation of Tajikistan, namely in Article 143 (1) of the Criminal Code of RT. We also believe that the **legislation should use the wording “cruel, inhuman or degrading treatment or punishment”**, as it is fixed in international legal instruments, to which Tajikistan is a party.

Inadmissibility of Torture Justification

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| Convention against Torture Article 2 2. <u>Neither exceptional circumstances</u> , whatever they could be, whether it be state of war or threat of war, internal | Law of RT “On the Civil Service” Article 33. Attitude of civil servants to execution of illegal orders 1. Civil servants should act within the limits of their powers and within the range of their | This issue is not covered in the document | This issue is not covered in the document | This issue is not covered in the document |
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¹ General Comment № 2 on implementation of Article 2 of the Convention against Torture, Committee against Torture, 2008; Comment to the UN Convention against Torture and Optional Protocol, second edition, under the editorship of M. Novac, M. Birk, G. Monina, 2019, paragraph 57, page. 91; Prevention of Torture: Operational Guidelines for Human Rights Institutions (joint publication of Asia-Pacific Forum and Association for the Prevention of Torture) [English] (2010); Elimination of Torture Incentives: Baseline Study and Practical Guidelines for OSCE Region, 2020.

² Prevention of Torture: Operational Guidelines for Human Rights Institutions (joint publication of Asia-Pacific Forum and Association for the Prevention of Torture) [English] (2010)

³ Ibidem

⁴ Comment to the UN Convention against Torture and Optional Protocol, second edition, under the editorship of M. Novac, M. Birk, G. Monina, 2019, paragraph 6, page 443

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| political instability or any other emergency, <u>can excuse torture</u> . 3. <u>Order of higher supervisor or higher-level public authority cannot excuse torture</u> . | official duties. 2. In the event of any doubt, as to legitimacy of an order to be executed, civil servant must promptly approach their immediate supervisor in a written form. If immediate supervisor or higher official confirms the legitimacy of an order delivered, civil servant must execute it, provided that it would not entail administrative or criminal liability. In this case, the responsibility for any implications related to execution of an illegal order will rest with official who has confirmed it. | | | |
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Review and Recommendations:

Apart from prohibition of torture, there is also an obligation in the international law for inadmissibility of torture justification under any circumstances, whether it is war, fight against terrorism, civil war, coup and seizure of power, emergency situation, mass meetings and riots, political instability, and other circumstances. Legislation of RT does not fix a provision on inadmissibility of torture justification. Perhaps, legislator deems it sufficient to introduce prohibition of torture, but, international law standards and obligations assumed by Tajikistan highlight the importance of introducing such provision in legal and regulatory framework. **It is recommended to include provisions on inadmissibility of torture justification in the laws and regulations of Tajikistan** that read as follows: Neither exceptional circumstance can excuse torture, including emergency situation, war, political instability, order of higher supervisor.

The Law on Civil Service spells out that civil servant, in the event of any doubt in relation to legitimacy of an order delivered, must approach higher supervisor and, after having order confirmed by higher supervisor, they shall execute order, except for cases when order has implications of administrative or criminal liability. **We recommend adding to Article 33 of this Law a provision stating that order cannot excuse torture, and that executor and official who has delivered that order shall be held criminally liable.**

Moreover, in the Criminal Code of RT, there are articles that specify circumstances, upon occurrence of which hurting the interests protected by CC of RT is not criminal offense: justifiable defense (Art. 40), infliction of damage when apprehending a person who committed an offence (Art. 41), urgent necessity (Art. 42), physical or moral coercion (Art. 43), reasonable/substantiated risk (Art. 44); execution of order (Art. 45). These articles do not specify that their provisions do not apply to torture, as neither circumstance can excuse torture. **We recommend introducing a provision in CC of RT stating that the provision of Chapter 8 of CC of RT “Circumstances that Exclude the Criminal Character of Actions” shall not apply to persons suspected according to Article 143(1).**

Obligation Not to Extradite Persons, Who are at Risk of Torture or Cruel Treatment, to Foreign State

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| Convention against Torture Article 3 1. Neither Participating State <u>shall have the right to expel, engage in refoulement («refouler») or extradite any person to other state, if there are serious concerns with respect to potentially putting them</u> | Criminal Procedure Code of RT Sub-Paragraph 2 Part 1 Article 511. Person Extradition Denial 1. Extradition of person is not allowed in the following cases, if: | This issue is not covered in the document | Participating State should: a) refrain from removal, deportation, refoulement or extradition of any person who, in case of returning, would be at risk for torture; b) ensure that all persons | This issue is not covered in the document |
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| <u>at risk for torture</u> 2. To define the existence of such grounds, competent authorities shall take into account all relevant circumstances, including, where appropriate, the existence of established practice of gross, glaring and massive human rights violation in a given State. | 2) it is reasonable to presume that a person requested for extradition may be put at risk for torture in the requesting country, or that their health, life or freedom may be at risk on the basis of race, religion, nationality, citizenship, affiliation with a certain social group or political beliefs, unless authorized by international treaties of the Republic of Tajikistan | | subject to removal, deportation, refoulement or extradition shall have an opportunity to request for efficient and impartial consideration through independent grievance mechanism of their complaints about a risk of torture, and that decisions of such authority would have a suspensory effect ⁵ ; | |
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Review and Recommendations:

In general, criminal legislation of the Republic of Tajikistan prescribes the prohibition of person extradition, if it is reasonable to presume that they may be subjected to torture or cruel treatment. At first glance, provisions of Article 3 of the Convention against Torture are fulfilled. But, the wording “unless authorized by international treaties of the Republic of Tajikistan” provides for possibility of person extradition, if it is envisaged by international treaties of Tajikistan. It is worth noting that in the Comments to the UN Convention against Torture it is indicated that provision on person non-extradition is a standard of common international law⁶, and is of an absolute nature⁷. I. e., in this prohibition, there are no and may not be any exceptions, and the **wording “unless authorized by international treaties of the Republic of Tajikistan” must be excluded from Article 511 of the Criminal Procedure Code of RT**. In their comments, Committee against Torture highlights the importance of fulfilling this obligation, and refraining from extradition of a person to requesting country, if they are at risk for torture.

Criminalization of Torture

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| Convention against Torture Article 4 1. Each Participating State ensures that <u>all acts of torture would be considered in accordance with their criminal legislation</u> . The same is the case for attempt to subject to torture, and actions of any person that is complicity or participation in a crime. 2. Each Participating State establishes <u>respective punishments for such crimes</u> | Criminal Code of RT Article 143(1). Torture 1) Intentional infliction of physical and/or moral suffering caused by interrogating officer or investigator, or any other official, or at their instigation, or, with their tacit knowledge or acceptance, by other person in order to obtain from a tortured person or a third person information or confessions, or punish them for action committed by | This issue is not covered in the document | The Committee repeats its recommendation (see CAT/C/TJK/CO/2, paragraph 9) for Participating State to take <u>urgent measures to control impunity for torture and cruel treatment</u> , including through direct public statements of high-rank public officials on | This issue is not covered in the document |
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⁵ Closing remarks to the third periodic report of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 30

⁶ Comments to the UN Convention against Torture and Optional Protocol, second edition, under the editorship of M. Novac, M. Birk, G. Monina, 2019, paragraph 1, page 99

⁷ Ibidem, paragraph 3, page 100

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| <p><u>considering their severity.</u></p> | <p>them or a third party or action they are suspected of, as well as intimidate or coerce them or a third party, or for other reason based on any form of discrimination</p> <p>- is punished up to <u>five – eight year’s imprisonment</u>, with deprivation of right to hold certain positions or be engaged in certain activities up to five years.</p> <p>2) The same action, if it is committed:</p> <p>a) repeatedly;</p> <p>b) by a group of persons in collusion;</p> <p>c) against a woman, with perpetrator consciously knowing that she is pregnant, or knowingly against a minor, or disabled person;</p> <p>d) with inflicting moderately severe injury,</p> <p>- is punished up to <u>eight – twelve year’s imprisonment</u>, with deprivation of right to hold certain positions or be engaged in certain activities up to five – ten years.</p> <p>3) Actions stipulated by the first and second parts of this article, if they:</p> <p>a) are committed inflicting severe injury;</p> <p>b) resulted by inadvertency in death of the affected person or other grave consequences,</p> | | <p>inadmissibility of torture and legal prosecution of any person who commits acts of torture, is implicated in torture, or approves torture, including persons holding policy-making positions⁸.</p> <p>Participating State should take measures to ensure that, as it is prescribed in General Comment №2 (2007) adopted by the Committee regarding the implementation of Article 2, <u>established in the legislation measures of punishment for torture would reflect the severity of crime; torture-related crimes would not be subject to the statute of limitation; and that those found guilty in practicing torture might not be entitled to amnesty based on Amnesty Law.</u> Participating State should also take measures to disallow officials, in line with Criminal Procedure Code, to stop investigation of torture allegations on grounds that a perpetrator has expressed remorse and come to terms with victim. Besides, Participating State should take measures to</p> | |
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⁸ Closing remarks to the third periodic report of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 8

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| | - is punished up to <u>twelve – fifteen year's imprisonment</u> , with deprivation of right to hold certain positions or be engaged in certain activities up to ten – fifteen years. | | bring the charges against persons found guilty in committing acts, which are tantamount to torture or cruel treatment, in accordance with Paragraph 1 of Article 143 of the Criminal Code of RT, and not only charges for committing other crimes providing for milder maximum sentence and statute of limitation, and giving the right to amnesty ⁹ . | |
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Review and Recommendations:

One of the positive changes in the legislation of RT is changing of punishment under criminal law from a lesser to a far greater degree. In 2019, the Criminal Code of RT has been amended, with penalty replaced by imprisonment for up to 5 – 8 years¹⁰, and for aggravated crimes it provides for punishment from 8 to 12 years, and from 12 to 15 years. According to Article 18 of the Criminal Code of RT, such category of crimes will refer to grievous and extremely grievous crimes. In general, in this part, criminal legislation of RT complies with standards of the Convention against Torture and international law requirements.

On the other hand, law enforcement practice has gaps and problems. Not all complaints about torture reach a trial, and often criminal cases are initiated under articles – “Abuse of Office” (Article 391 of CC of RT), “Exceeding Official Powers” (Article 316 of CC of RT) or “Negligence” (Article 322 of CC of RT), where punishment is milder than provided for in Article 143(1) of CC of RT.

According to statistics provided by the General Prosecutor’s Office, in 2018, there have been registered 48, in 2019 — 14, in 2020 — 10, and in 2021 — 13 complaints about torture¹¹. As to 5 confirmed facts, prosecution agencies have initiated 5 criminal cases, with three cases sent to court, against 5 persons who have been imprisoned¹².

For the period from January 1 to December 31, 2020, organizations – members of Legal Assistance Group and organizations-members of the Coalition have had documented 37 applications regarding torture and cruel treatment, of which 9 – with regard to women, and 2 – minors¹³.

According to information of the Supreme Court, in 2018, courts considered 1 criminal case under the Article “Torture”, against 2 people, in 2019 годы – 2 such criminal cases were considered against 4 people, in 2020 годы – not a single case under this article, and in 2021 – 1 criminal case against 3 people¹⁴. For the period from 2013 to 2018, under the Article 143 (1) of the Criminal Code of the Republic of Tajikistan, the republican courts considered five cases against six persons who were imprisoned¹⁵.

⁹ Ibidem, paragraph 14

¹⁰ <https://fergana.agency/news/111716/>

¹¹ Fourth periodic report presented by Tajikistan in accordance with Article 19 of the Convention and subject to presentation in 2022, CAT/C/TJK/4, Committee against Torture, 2022, paragraph 154

¹² Ibidem

¹³ <https://notorture.tj.org/activities/gpp-v-2020-godu-dokumentirovano-37-obrashcheniy-po-voprosu-pytok-i-zhestokogo>

¹⁴ <https://notorture.tj.org/news/pytki-redkoe-yavlenie-ili-zhertvy-boyatsya-presledovaniya>

¹⁵ Information received from Tajikistan in relation to subsequent measures in the light of final remarks to its third periodic report, CAT/C/TJK/FCO/3, Committee against Torture, 2021, paragraph 10

For 2016-2020, prosecution authorities received **103** (2016 – 10, 2017 – 21, 2018 – 48, 2019 – 14, 2020 – 10) **applications on torture**, among which, for **9 facts** criminal cases were initiated¹⁶. From this statistics, we see that only 8% of complaints reach a trial.

Based on the abovementioned statistics, one can see that prosecution agencies and the Coalition against Torture receive many complaints about torture, but, only small share of them reach a trial under the Article 143 (1) of CC of RT. This practice is the violation of the UN Convention against Torture and other international law standards, therefore, **investigative agencies, courts should consider all acts of torture according to the requirements of criminal legislation of RT and international law, and should not leave such cases unpunished. All acts of torture should be considered and investigated under the Article “Torture”, without requalification under other adjacent articles, where punishment is milder.** Moreover, Committee against Torture, in their general comments, has been numerously highlighting the necessity to control impunity for torture and cruel treatment, so that those found responsible would receive punishment proportionate to the severity of a crime. Committee against Torture emphasizes that facts of torture should be properly qualified, with those found responsible punished under the Article “Torture” (143 (1) CC of RT), and not for adjacent crimes, where punishment is milder, with possible application of amnesty law and statute of limitation.

CC of RT enumerates articles not subject to the statute of limitation¹⁷, among which there is no crime “Torture”. This provision violates the requirements of international law, as prohibition of torture is of an absolute nature. **We recommend amending Part 6 of Article 75 of CC of RT that shall read as follows:** “6) As for persons who committed crimes specified by Parts 2) and 3) of Article 138, Parts 2) - 4) of Article 139, Articles 141 - 142 and Parts 2) and 3) of Article 142(1), *Article 143 (1)* of this Code or committed a crime against peace and human security, statute of limitation is not applicable”. Committee against Torture also recommended that crime “torture” should not be subject to the statute of limitation.

In international law, prohibition of torture is of an absolute nature, and under no circumstances justification of torture is admissible. In practice of many countries, no release on parole is applicable in relation of persons convicted for torture, for example, in the Republic of Kazakhstan. In RT, release on parole is applicable in relation to persons convicted for torture¹⁸. Consequently, we **recommend amending Part 7 of Article 76 of CC of RT that shall read as follows:** “7) Conditional early release from punishment is not applicable for:

- a) person with sentence of life imprisonment or sentence of death, replaced by imprisonment under the free pardon procedure;
- b) special dangerous recidivist;
- c) head for crime, participants of organized group or criminal community (criminal organization);
- d) person convicted for crimes specified by Parts 2) and 3) of Article 138, Parts 2) - 4) of Article 139, Articles 141 - 142 and Parts 2) and 3) of Article 142(1), *Article 143 (1)* of this Code or for crimes against peace and human security”.

Committee against Torture also recommended to RT to deprive those found responsible for torture of the right to amnesty. In the Law of Amnesty, as of 07.09.2021, it is noted that provisions of this Law do not apply to persons convicted under the Article 143 (1) of CC of RT. In this case, we deem it appropriate to introduce changes in CC of RT in order to fulfill recommendations of the Committee. **We recommend amending Article 82 of CC of RT, with indication that provisions of this article do not apply to those convicted under the Article 143 (1) of CC of RT.**

Universal Jurisdiction in Acts of Torture and Cruel Treatment

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| Convention against Torture Article 5 | Criminal Code of RT Article 14. Action of criminal law on persons who committed crimes in the | This issue is not covered in the document | This issue is not covered in the document | This issue is not covered in the document |
| 1. Each Participating State is taking | | | | |

¹⁶ Human Rights Council, Working Group for universal periodic review, thirty-nine session, November 1–12, 2021, National Report, A/HRC/WG.6/39/TJK/1, paragraph 41

¹⁷ Criminal Code of RT, as of May 21, 1998, №574, Part 6 Article 75

¹⁸ Ibidem, Article 76

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| <p>measures that may be required to establish their jurisdiction in relation to crimes specified in Article 4, in the following cases:</p> <p>a) when crimes are committed in the territory of their jurisdiction, or on shipboard or on board aircraft registered in the given State;</p> <p>b) when alleged criminal is citizen of the given State;</p> <p>c) when a victim is citizen of the given State, and if the given State consider it expedient.</p> <p>2. Each Participating State in a similar manner is taking measures that may be required to establish their jurisdiction in relation to such crimes in cases, when an alleged criminal is in any territory of their jurisdiction, and State does not extradite them pursuant to Article 8 to any of States mentioned in Paragraph 1 of this Article.</p> <p>3. This Convention does not exclude exercising any criminal jurisdiction in accordance with domestic legislation.</p> <p>Article 6</p> <p>1. Having been convinced after review of their available information, with the circumstances so warrant, any Participating State, in the territory of which there is a person accused of committing any crime specified in Article 4, shall take them into custody or</p> | <p>territory of the Republic of Tajikistan</p> <p>1) Perpetrator of a crime committed in the territory of the Republic of Tajikistan shall be held liable according to this Code, unless otherwise provided for by international legal instruments recognized by Tajikistan.</p> <p>2) One should recognize an action as crime committed in the territory of the Republic of Tajikistan, which:</p> <p>a) Has been initiated or has been continued, or has been ceased in the territory of the Republic of Tajikistan;</p> <p>b) Has been committed outside the Republic of Tajikistan, with the occurrence of its criminal result in their territory;</p> <p>c) Has been committed in the territory of the Republic of Tajikistan, with the occurrence of its criminal result outside their territory;</p> <p>d) Has been committed with involvement of persons carrying out criminal activity in the territory of other state.</p> <p>3) Perpetrator of a crime committed on board a ship or aircraft in a regular manner traveling in open water or air space, outside the Republic of Tajikistan, flying the flag of or with aircraft markings of the Republic of Tajikistan, shall be held criminally liable according to this Code, unless otherwise provided for by international legal instruments recognized by Tajikistan.</p> <p>Perpetrator of a crime committed on board</p> | | | |
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| <p>take other legal measures ensuring their presence. Taking into custody and other such legal measures are carried out in accordance with legislation of the given State, but may last only for a time required to take criminal procedure actions or extradition actions.</p> <p>2. Such State shall immediately launch a preliminary fact-finding enquiry.</p> <p>3. Any person, being held in custody based on Paragraph 1 of this Article, shall be assisted in immediate building rapport with the closest relevant representative of State, they are citizens of the latter, or, if they are stateless persons, with representative of State where they usually reside.</p> <p>4. When State, in accordance with this Article, takes any person into custody, it shall immediately notify States mentioned in Paragraph 1 of Article 5 on the fact of them being held in custody and on circumstances that warranted detention of them. State launching a preliminary fact-finding enquiry, which is specified in Paragraph 2 of this Article, shall immediately inform the abovementioned States on the evidence obtained, and indicates, whether it is on the point of exercising its jurisdiction.</p> <p>Article 7</p> <p>1. Participating State, in the territory of which jurisdiction there is found a person suspected of committing any crime specified in Article 4, in cases</p> | <p>a military ship or military aircraft of the Republic of Tajikistan, irrespective of their whereabouts, shall also be held criminally liable according to this Code.</p> <p>4) Issue of criminal liability of diplomatic representatives of foreign states and other citizens, who enjoy immunities, in the event of committing crimes by these persons in the territory of the Republic of Tajikistan, shall be settled on the basis of international law standards.</p> <p>Article 15. Action of criminal law on persons who committed crimes outside the Republic of Tajikistan</p> <p>1) Citizen of the Republic of Tajikistan, as well as a stateless person permanently residing in the country, for a crime committed in the territory of a foreign state, shall be held criminally liable according to this Code, if an action committed by them is considered as crime by state where such action has been committed, and, if they have not been convicted for given crime in a foreign state. When convicting these persons, punishment should not exceed maximum sanction limit, as prescribed by the law of a foreign state, in the territory of which a crime has been committed.</p> <p>2) Foreign citizens and stateless persons not permanently residing in the Republic of Tajikistan shall be held liable according to this Code for crimes committed outside the country in the following cases:</p> <p>a) If they have committed an offence</p> | | | |
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| <p>provided for in Article 5, if such State does not extradite a criminal, it shall hand over such case to their competent authorities for legal prosecution.</p> <p>2. These authorities make decision in the same manner as with any ordinary serious crime in accordance with legislation of the given State. In cases specified in Paragraph 2 of Article 5, requirements applicable to evidence necessary for legal prosecution and conviction are in no circumstance less strict than those applicable in cases specified in Paragraph 1 of Article 5.</p> <p>3. Any person, in respect of whom there is ongoing judicial examination related to any of crimes specified in Article 4, shall enjoy guaranteed fair treatment at all stages of examination.</p> <p>Article 8</p> <p>1. Crimes specified in Article 4 are considered to be included, as crimes entailing extradition, in any extradition agreement existing between Participating States. Participating States shall include such crimes as those entailing extradition in any extradition agreement concluded between them.</p> <p>2. If Participating State, which makes extradition conditional on the existence of extradition agreement, receives an extradition request from other Participating State, with which it does not have an extradition agreement, it may consider this Convention in relation</p> | <p>prescribed by international law standards, recognized by the Republic of Tajikistan or inter-state agreements and treaties;</p> <p>b) If they have committed a grievous or extremely grievous crime against citizen of Tajikistan or interests of the Republic of Tajikistan.</p> <p><u>3) These rules shall be applicable, if foreign citizens and stateless persons not permanently residing in the Republic of Tajikistan have not been convicted in other state.</u></p> <p>4) Citizen of the Republic of Tajikistan, as well as a stateless person permanently residing the Republic of Tajikistan, for a crime committed in the territory of a foreign state, shall also be held criminally liable according to this Code in case when, under specific articles of Special Part of this Code, criminal liability is prescribed namely for committing a crime in the territory of a foreign state. In this case, provisions specified by Part 1 (except for conviction) of this Article shall be disregarded.</p> <p>5) Conviction and other criminal and legal consequences of a crime committed by person in the territory of a foreign state should not be regarded when qualifying the action of that person and assigning punishment for a crime committed by that person in the territory of the Republic of Tajikistan, unless otherwise provided for by international legal instruments recognized by Tajikistan.</p> | | | |
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| <p>to such crimes as a legal ground for extradition. Extradition is carried out in accordance with other conditions provided for by legislation of State that has been requested for extradition.</p> <p>3. Participating States, which do not make extradition conditional on the existence of a relevant agreement, shall consider in their relationships such crimes as crimes entailing extradition in accordance with conditions provided for by legislation of State that has been requested for extradition.</p> <p>4. Such crimes, for the purposes of extradition between Participating States, shall be considered, as if they have been committed not only in the locus delicti, but also in the territory of states, which are obliged to establish their jurisdiction in accordance with Paragraph 1 of Article 5.</p> <p>Article 9</p> <p>1. Participating States shall provide each other with maximum possible assistance in connection with criminal proceedings taken in respect to any crimes specified in Article 4, including provision of all evidence available with them that are required for judicial examination.</p> <p>3. Participating States are fulfilling their obligations according to Paragraph 1 of this Article, under articles of any agreements on mutual legal assistance that may be concluded between them.</p> | <p>Article 16. Extradition of perpetrators of crimes</p> <p>1) Citizen of the Republic of Tajikistan, perpetrator of a crime committed in the territory of another state, shall not be extradited to that state, unless otherwise provided for by bilateral agreements.</p> <p>2) Foreign citizens and stateless persons, perpetrators of a crime committed outside the Republic of Tajikistan, and staying in the country's territory, may be extradited to a foreign state to be held criminally liable or to serve sentence in accordance with international treaty.</p> | | | |
| <p><u>Review and Recommendations:</u></p> | | | | |

Article 5 stipulates for Participating States to establish, in a comprehensive manner, their jurisdiction with respect to torture, in order to avoid shelters for persons who commit torture. In addition to territorial and flag principle, active and passive citizenship principle set out in Article 5(1), for the first time in human rights treaty, Article 5(2) establishes the obligation of Participating States to establish universal jurisdiction in all cases when a suspect (for acts of torture) is present in any territory under their jurisdiction¹⁹. Provisions of Articles 6–9 are closely linked with Article 5, and then define various steps that must be taken by States to bring to justice those suspected of committing acts of torture.

In one of their resolutions, the UN General Assembly called upon states-participants of the Convention against Torture to “fulfill their obligations to legally prosecute or extradite those charged with committing acts of torture, irrespective of where such acts have been committed, if an alleged criminal is in any territory under their jurisdiction”²⁰. Beside, with regard to “Suleiman Gengeng and others against Senegal” case, Committee against Torture stressed that in accordance with Paragraph 2 of Article 5 of the Convention against Torture states are obliged to take all necessary measures to establish jurisdiction with respect to crimes containing acts of torture, attempted acts of torture, as well as any kind of involvement or participation in torture, when an alleged criminal is in any territory under their jurisdiction, with them not extraditing that person to other state²¹.

In essence, provisions of Article 15 of CC of RT stipulate conditions when foreigners and stateless persons may held liable for crimes committed in the territory of a foreign state, while provisions of this Article may be considered as a universal jurisdiction that corresponds to provisions of the UN Convention against Torture.

Prevention of Torture and Cruel Treatment through Education and Training

Convention against Torture

Article 10

1. Each Participating State shall ensure full integration of training materials and information on prohibition of torture with law-enforcement, civil or military health staff training programs, and those for public officials and other persons who may deal with custodial detention and interrogation of persons under any form of arrest, apprehension or imprisonment, or their treatment.

2. Each Participating State shall include this prohibition into rules or instructions related to duties and functions of any such official persons.

Law of RT “On the Civil Service”

Article 19. Training of Civil Servants

1. Training of civil servants is conducted in secondary and high vocational education institutions, and includes vocational training, retraining, professional development, and probation.

2. Vocational training, retraining, professional development of civil servants is conducted based on public contract, as well as needs of public agencies of the Republic of Tajikistan.

3. Public contract for vocational training, retraining and professional development of civil servants of the Republic of Tajikistan is defined by the Government of the Republic of Tajikistan upon the recommendation of authorized public agency regarding the civil service.

Plan of Actions 2023-2025 National Human Rights Protection Strategy of the Republic of Tajikistan for the period up to 2038 Paragraphs 4, 11, 17, 27, 29, 31, 33, 34, 44, 52

4. Systematic training in the field of human rights and mechanisms for fulfilling international human rights obligations for responsible persons in ministries and departments in charge of human rights issues.

11. Implementation of permanent education and

Participating State should prescribe the mandatory nature of preparation to issues related to provisions of the Convention and absolute prohibition of torture for law-enforcement officers, prison staff, judges, prosecutors, judicial officers, lawyers, and servicemen. In addition, law-enforcement officers should be trained in investigative methods not attended by coercion, provisions of the Code of conduct of law-enforcement officers, and Basic Principles governing the use of force and firearms by law

This issue is not covered in the document

¹⁹ Comments to the UN Convention against Torture and Optional Protocol, second edition, under the editorship of M. Novac, M. Birk, G. Monina, 2019, paragraph 1, page 195

²⁰ Torture and other cruel, inhuman or degrading treatment or punishment, Resolution of General Assembly, A/RES/70/146, December 17, 2015, paragraph 19

²¹ Suleiman Gengeng and others against Senegal, Public Notice №181/2001, CAT/C/36/D/181/2001, Committee against Torture, 2006, paragraph 9.5

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| | <p>Article 20. Assessment of Civil Servants</p> <p>1. Assessment of an administrative civil servant (except for civil servants holding political positions and higher-category administrative positions) is conducted with the aim to define service competence and provide for career development.</p> <p>2. Procedures and terms of assessment of administrative civil servants are defined by Regulations approved by the President of the Republic of Tajikistan.</p> <p>Resolution of the Government of RT, as of April 5, 2005, № 137</p> <p>Regulations for service career of enlisted and command personnel of MOI agencies</p> <p>8. For the purposes of manning internal affairs agencies with highly qualified specialists, Ministry of Interior of the Republic of Tajikistan has been conducting professional training of law enforcement officials, which includes special initial training, special combat and physical training, including regular checks for suitability to actions in the environment of using physical force, special facilities and firearms, specialist training in education institutions, raising of qualification and retraining.</p> <p>Professional personnel for internal affairs agencies are trained in vocational education institutions of MOI RT system, which are established, re-organized and abolished</p> | <p>information activities for staff of Human Rights Ombudsman Office, community liaison offices and local offices regarding human rights and defenses of public interests.</p> <p>17. Conducting systematic qualification upgrading courses for judges, prosecution agency officers, law-enforcement officers, penitentiary system staff, lawyers on issues of the right to life, full, comprehensive and fair investigation of all cases of deprivation of life, including issues of the use of force and firearms</p> <p>27. Conducting training and retraining courses for investigative agency officers regarding observation of human rights in criminal justice system</p> <p>29. Conducting trainings for representatives of prosecution agencies, MOJ, MDRJ of MOJ, MOHSPP, law-enforcement bodies to improve knowledge and</p> | <p>enforcement officials. Participating State should develop methodologies to assess the impact of such training programs and adapt them according to requirements for professional training of the abovementioned public officials²².</p> <p>Participating State should take decisive measures to eradicate torture and unlawful treatment, including through:</p> <p>a) provision of proper training of all law-enforcement officers and security services regarding prevention of torture and ensuring humane treatment of detainees²³;</p> | |
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²² Closing remarks to the third periodic review of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 32

²³ Closing remarks to the third periodic review of Tajikistan, CCPR/C/TJK/CO/3, Committee against Torture, 2019, paragraph 32a

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| | <p>according to decisions of the Government of the Republic of Tajikistan.</p> | <p>skills in the rights of persons deprived of freedom, OPCAT, and efficient torture prevention mechanisms in custodial detention facilities</p> <p>31. Continuous professional development of Human Rights Ombudsman Office's employees</p> <p>33. Introduction of education programs in higher medical education institutions in compliance with Istanbul Protocol standards (by educational subjects and post-diploma training of medical professionals)</p> <p>34. Conducting training courses for health workers directly dealing with medical certification (examination) of detained (apprehended) persons</p> <p>44. Conducting education courses on main human rights safeguards during arrest (apprehension) and custodial detention for law-enforcement officers, prosecution agency officers and lawyers</p> <p>52. Conducting continuous</p> | | |
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| | | education activities on human rights for officers of penitentiary institutions | | |
| <p><u>Review and Recommendations:</u></p> <p>One of significant measures applied by governments, for the purposes to prevent torture and cruel treatment, is to include human rights protection standards and principles into programs for training of public officials dealing with arrest, interrogation or custodial detention²⁴. Training programs should include information and training materials related to prohibition of not only torture, but also of cruel treatment²⁵. In addition, the significance of this point was highlighted by the Human Rights Committee²⁶, Committee against Torture²⁷, UN General Assembly²⁸ and Human Rights Council²⁹.</p> <p>A training program for police (militia) officers and other law enforcement officers should include information on the necessity to report on known cases of torture and cruel treatment to higher or other competent national authority³⁰. Public officials dealing with law enforcement activities should also be aware of measures alternative to the use of force and firearms, importance of proportionate use of force, as well as the observance of human rights during investigations and interrogations³¹. In addition, in the process of training of law enforcement officers, it should be clearly explained their obligation not to obey to orders on the use of torture or cruel treatment³².</p> <p>National Plan of Actions (NPA) of RT spells out the issues of training, retraining, professional development and probation of civil servants, including internal affairs agencies, but, there are no specific requirements to include human rights courses into training that would cover prevention of torture and cruel treatment. It is worth noting that open sources do not have the content of training courses, initial training, retraining and professional development, therefore, this issue remains pending and unclear, whether how training courses cover the topic of prevention of torture and cruel treatment.</p> <p>It is worth noting that Plan of Actions for 2021-2025, on implementation of Strategy of the Republic of Tajikistan for reforming the system of executing punishment under</p> | | | | |

²⁴ Prevention of Torture: Operational guidelines for national human rights institutions (joint publication of Asia-Pacific Forum and Association for Prevention of Torture) [English0] (2010)

²⁵ Convention against Torture, Article 16, paragraph 1

²⁶ General Comment № 20 to Article 7 of the International Covenant on Civil and Political Rights, Human Rights Committee, 1992, paragraph 10

²⁷ General Comments № 2 on implementation of Article 2 of the Convention against Torture, 2008, paragraph 25

²⁸ Torture and other cruel, inhuman or degrading treatment or punishment, Resolution of General Assembly A/RES/70/146, December 17, 2015, paragraph 10; Torture and other cruel, inhuman or degrading treatment or punishment – Resolution of General Assembly A/RES/68/156, December 18, 2013, paragraph 9

²⁹ Torture and other cruel, inhuman or degrading treatment or punishment: functions and duties of police and other law-enforcements officers – Resolution of the Human Rights Council A/HRC/46/L.27, March 15, 2021, paragraph 24; Torture and other cruel, inhuman or degrading treatment or punishment: mandate of Special Rapporteur, Resolution of the Human Rights Council A/HRC/16/L.12/Rev.1, March 21, 2011, paragraph 24

³⁰ Torture and other cruel, inhuman or degrading treatment or punishment: functions and duties of police and other law-enforcements officers – Resolution of the Human Rights Council A/HRC/46/L.27, March 15, 2021, paragraph 24; Decision № 7/20. Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, OSCE Council of Ministers, 2020, paragraph 10

³¹ Torture and other cruel, inhuman or degrading treatment or punishment: mandate of Special Rapporteur, Resolution of the Human Rights Council A/HRC/16/L.12/Rev.1, March 21, 2011, paragraph 25; Decision № 7/20. Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, OSCE Council of Ministers, 2020, paragraph 10

³² Prevention of Torture: Operational guidelines for national human rights institutions (joint publication of Asia-Pacific Forum and Association for Prevention of Torture) [English0] (2010)

criminal law for the period up to 2030, points out the following moments related to training of MDRJ staff and health personnel:

- Professional development of all health personnel of penitentiary institutions in education institutions of the Ministry of health and social protection of population³³;
- Implementation of a set of measures for upgrading qualification of penitentiary facility staff. High-qualification specialist training using the capacities of the Academy of MOI of the Republic of Tajikistan, Institute for advanced training of law enforcement officers, personnel of justice agencies and legal services, agencies, institutions and organizations of the Ministry of Justice of the Republic of Tajikistan, Tajik National University, and other specialized education institutions of foreign countries³⁴.

Nevertheless, this document does not also highlight that such qualification upgrading courses should include issues of human rights, prevention of torture and cruel treatment.

In 2012, RT adopted a State human rights education program for 2013-2020 that envisaged teaching (learning) of human rights in education system, training and retraining courses for teachers, judges, civil servants, law enforcement officers, and servicemen at all levels. Also, in 2021, there was adopted a similar program “Education program in the field of human rights for 2022-2026”. Also, issues of training in human rights for representatives of prosecution, MOJ, MDRJ of MJ, MOHSPP, and law enforcement agencies were spelled out in the Plan of Actions for 2023-2025 of National human rights protection strategy of the Republic of Tajikistan for the period up to 2038. Adoption of these documents and programs is a positive change, and, in the long run, they should have an impact on prevention of torture, but, it is worth noting that **such training should not be of a temporary nature, fragmentary and unconnected, but should be included in mandatory training, retraining and qualification upgrading courses for public officials to provide sustainability and systemic nature of such knowledge.**

Next recommendation is to complement laws and regulations with a provision prescribing mandatory integration of human rights courses, including information on prevention of torture and cruel treatment, with courses of training, retraining and qualification upgrading for public officials dealing with arrest, investigative interviewing or custodial detention. Adoption of practical measures to improve the knowledge of law enforcement officials, judges, health personnel, prosecutors related to the requirements of the Convention. Also, develop efficient programs for training of the mentioned groups, with engagement of civil society experts dealing with torture counteraction issues.

Moreover, Committee against Torture and Human Rights Committee, in their recommendations, pointed out that **training** of law enforcement officers, prison personnel, judges, prosecutors, judicial officers, lawyers and servicemen regarding prevention of torture and cruel treatment should be **binding, and should be properly conducted.**

Along with training in human rights, Committee against Torture emphasized that law enforcement bodies should be trained in investigative methods not attended by coercion. Next recommendation: **training of representatives of law enforcement bodies in new investigative interviewing and investigation methods.**

Prevention of Torture and Cruel Treatment during Arrest, Interrogation and Custodial Detention

Convention against Torture Article 11

Each Participating State shall regularly consider rules, instructions, methods and practices of investigative interviewing, as well as custodial detention and treatment conditions, for persons under various forms of apprehension, arrest or imprisonment in any territory under their

Criminal Procedure Code of RT Article 94. Suspect Arrest Procedure

1. When arresting a person on suspicion of committing a crime, authorized officer of prosecuting agency or other competent person, at the place of actual arrest, is obliged to verbally state to them, for committing what crime they are arrested,

**Plan of Actions 2023-2025
National Human Rights
Protection Strategy of the
Republic of Tajikistan for
the period of up to 2038
Paragraphs 23, 42**
23. Further improvement of the legislation of the Republic of Tajikistan

Establish an official centralized accounting system for thorough and prompt registration of arrest, including, as minimum, indication of: (a) time of arrest; (b) grounds for arrest; (c) full names of police officers who made an

³³ Annex to Resolution of the Government of the Republic of Tajikistan, as of February 25, 2021, №24 Plan of Actions for 2021-2025 on implementation of the Strategy of the Republic of Tajikistan for reforming the system of executing punishment under criminal law for the period up to 2030, paragraph 19

³⁴ Ibidem, paragraph 80

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| <p>jurisdiction in order to prevent any cases of torture.</p> <p>ICCPR Article 9</p> <p>1. Each person has the right to freedom and personal inviolability. No one can be arbitrarily arrested or taken into custody. No one can be deprived of freedom, not otherwise than on the grounds and as per procedure established by law.</p> <p>2. <u>Each detainee shall be informed on reasons of their arrest, while being arrested, and be immediately informed of any charges brought against them.</u></p> <p>3. <u>Each person apprehended or arrested on a criminal charge shall be promptly brought to judge or other public official who has statutory right to exercise judicial power,</u> and they have the right to judicial examination during reasonable time or the right to release. Custodial detention of persons waiting for judicial examination should not be a common rule, but, release may be conditional upon ensuring their presence at the trial, their appearance in court at any stage of judicial examination and, when necessary, appearance for execution of sentence.</p> <p>4. Each person, who is deprived of</p> | <p><u>explain the right to make a call or inform a lawyer, or close relative, have a defense lawyer, withhold evidence,</u> as well as advise them that their evidence may be admissible against them with regard to criminal case.</p> <p>2. After having delivered an arrested person to prosecuting agency, investigative body official, interrogating officer, investigator, during three hours, draw up a protocol of detention on suspicion of committing a crime. <u>When drawing up this protocol, a suspect shall be explained about all their rights prescribed by Article 46 of this Code, which is evidenced by entry made in protocol of detention.</u> The latter contains the following information:</p> <ul style="list-style-type: none"> - date, place and time of drawing up a protocol, its sequential number; - full name, occupation and rank of prosecuting agency officers, public officials and other persons who participated in detention operation; - full name, address of arrest witnesses, interpreter and other persons, in case of their participation in arrest operation, as well as other identity information; - grounds and arguments for arrest, place and time of actual arrest, bringing a person to prosecuting agency (indicating date, | <p>regarding prevention of torture and cruel treatment according to requirements of the Convention against torture and other cruel, inhuman or degrading treatment or punishment.</p> <p>42. <u>Development of an official, single register where in a mandatory manner there should be registered the time of arrest, grounds for arrest, full names of persons who made an arrest, place of arrest, and any other transfers, full names of persons in charge of places of detention</u></p> | <p>arrest; d) places of custodial detention, and any other places where detainees have been further delivered; and e) full names of officers in charge of their places of detention. Officers found responsible for non-observance of requirements to registration of such information should be brought to responsibility³⁵;</p> <p>14. Having welcomed the efforts made in the present time by Participating State to improve detention conditions in prisons and preliminary detention cells, at the same time, the Committee expresses concern over: a) lack of hot-water supply; poor air conditioning; absence of the possibility to put clothes out to dry that brings about respiratory infections and diseases; lack of body hygiene items; and poor nutrition and inadequate medical service provision³⁶;</p> <p>Participating State should:</p> <p>a) Take effective measures to ensure practical provision</p> | |
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³⁵ Closing remarks to the second periodic report of Tajikistan adopted by the Committee at their 49th session (October 29 октября – November 23, 2012), CAT/C/TJK/CO/2, Committee against Torture, 2013, paragraph 8a

³⁶ Ibidem, paragraph 14a and b

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| <p>freedom as a result of arrest or being taken in custody, has the right to judicial examination, for court to determine without delay whether their arrest is legal and have caused them to be released, if arrest is illegal.</p> <p>5. Every person, who was victim of illegal arrest or custodial detention, has the right to enforceable compensation.</p> | <p>hours and minutes);</p> <ul style="list-style-type: none"> - information on explanation of rights to a suspect, arrest witnesses and other persons participating in arrest operation; - suspect's personal search results; - date and time of notification of any adult family members or close relative of arrested person, and their whereabouts, way of notification (who and how notified, if by phone – telephone number is indicated), full name of a person who has been notified of the arrest of person and their place of arrest. <p>3. Protocol of arrest is announced to arrested person and signed by a public official who has drawn it up, by suspect and defense lawyer (if participated), and by other persons who have participated in given operation.</p> <p>4. When being placed in temporary holding facility, to <u>define general health status and presence of any bodily injuries, the accused shall be subject to medical examination by health professional</u>. The accused or their defense lawyer has the right to require medical examination to be conducted by independent physician or forensic medical examiner. Conclusion of medical examination shall be attached to protocol of arrest.</p> <p>5. After having delivered of arrested person to prosecuting agency, explanation of their rights, drawing up a protocol of arrest, and medical examination, arrested person shall</p> | | <p>of basic legal safeguards to all detained persons, including minors since the time of their custodial restraint in accordance with international standards, including guarantees mentioned in paragraphs 13 and 14 of General Comment №2 of the Committee (2007) on implementation of Article 2. In particular, PS should ensure that detainees would have the following guarantees:</p> <ul style="list-style-type: none"> i) right to obtain information on accusation brought against them, and on their rights, in verbal and written form, in the language they understand, and to sign a document confirming that they understood the information provided to them; ii) right to registration of all custodial detention periods, immediately after apprehension or arrest, in the custodial register, including persons exposed to administrative arrest, and persons invited in unofficial capacity to police stations for “conversation” or as witnesses, and who were then taken into custody, without official status, until | |
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| | <p>be immediately placed in temporary holding facility.</p> <p>6. Investigative agency, interrogating officer or investigator are obliged to inform in a written form the concerned prosecutor on the arrest during 12 hours since the time of actual arrest of person.</p> <p>Article 95. Arrest of the accused to bring the charge</p> <p>1. If the accused is in other locality or if their whereabouts are unknown, prosecuting agency is entitled to issue a decree on the arrest of the accused. The decree should be executed by investigative agency.</p> <p>2. Prosecuting agency that has issued decree on the arrest should be immediately notified of execution of the decree.</p> <p>3. Detention on the grounds prescribed by Part 1 of this Article cannot last in excess of 72 hours since the time of actual arrest.</p> <p>4. Charges may be brought against a detained person within the specified time, if before expiry of 72 hours since the time of arrest they have been discharged from custody applying measure of restraint not attended by custodial detention, or without applying measure of restraint against them.</p> <p>Article 199. General rules of investigative interviewing</p> <p>1. Before interviewing, investigator should clarify an interviewee's personality data.</p> | | <p>they have been charged, as well as listed in the central register for those deprived of freedom; right to proper drawing up all protocols of arrest to prevent any cases of unregistered arrest; as well to providing access to arrested person register for their lawyers and relatives;</p> <p>iii) right to have immediate access to lawyer since the time of custodial restraint and, when necessary, to legal assistance, including at the time of first interrogation;</p> <p>iv) right to medical examination in confidence by independent physician, during 24 hours since the arrival at custodial detention facility, and the right to require to have and get through independent medical examination at any time. Participating State should practically ensure the independence of physicians and other health personnel dealing with detainees, ensure that they properly document all signs of torture and reports on torture or cruel treatment, immediately provide medical examination result copies to relevant authorities for further</p> | |
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| | <p>Interviewee provides evidence in native language or in language they can speak.</p> <p>2. Person summoned for questioning shall be informed, in what capacity, with regard to what criminal case they would be questioned, with explanation of their rights and duties prescribed by this Code, as evidenced by entry made in a protocol. Persons called in for questioning as witnesses or affected parties shall be warned of criminal liability for failure to give evidence or evading from giving evidence, as well as for perjury.</p> <p>3. Questioning begins with an interviewee citing circumstances of the matter in hand known to them. In an interviewee tells about circumstances expressly impertinent to the matter in hand, they should be warned against.</p> <p>4. Upon completion of a free narrative account, an interviewee may be asked questions to clarify and supplement evidence. Asking leading questions is not allowed.</p> <p>5. If evidence relate to digital data or other information, which are difficult to bear in memory, an interviewee is entitled to use documents and records, which, upon initiative of investigator and with consent of interviewee, or on application of interviewee, may be attached to the case.</p> <p>6. In the course of investigative</p> | | <p>investigation, and provide them to concerned detainee or their lawyers;</p> <p>v) right to notification of family member or any other person at the discretion of the detainee immediately after their arrest, and not after they have appeared before a judge;</p> <p>b) immediately bring the arrested person to a judge, as required by international standards, and reduce the 72-hours period of detention at police station before filing accusation³⁷.</p> <p>Participating State should:</p> <p>a) intensify efforts to bring their custodial detention conditions into compliance with international standards, such as Standard Minimum Rules for the Treatment of Prisoners of the United Nations (Nelson Mandela Rules), particularly by means of creating proper material and hygienic conditions, including sufficient natural and artificial illumination; adequate sewerage systems and sanitary installations, including WCs and shower rooms; heated prison cells;</p> | |
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³⁷ Closing remarks to the third periodic report of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 18

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| | <p>interviewing, investigator can present physical evidence and documents to interviewee, and, upon completion of a free narrative account, announce evidence contained in criminal case file, reproduce audio and video records or motion-picture footage, and require to have them commented.</p> <p>7. Uninterrupted questioning should not exceed 4 hours, and its total daily duration should be within 8 hours.</p> <p>Article 201. Application of audio and video recording in investigative interviewing</p> <p>1. By the decision of investigator, in interviewing the accused person, suspect, witness, or affected person, audio and video recording may be applied. Audio and video recording may be also applied at the request of the accused person, suspect, witness, or affected person.</p> <p>2. Investigator makes a decision on audio and video recording and notifies an interviewee to that end before interviewing.</p> <p>3. Audio and video materials should reflect information specified in Parts 3 and 4 of Article 172 of this Code, and the whole process of investigative interviewing. It is not allowed to make audio and video recording of a part of interview, as well as repeat evidence, which have been provided during the same interview, specifically for</p> | | <p>sufficient air conditioning; proper quality and quantity of foodstuffs, bedding items, blankets and personal hygiene kits; health care; fresh air and exercise possibilities; and visits of family members;</p> <p>b) improve material conditions and increase the number of qualified prison personnel in woman colonies in accordance with requirements of the UN rules concerning the treatment of female prisoners and measures of punishment for female perpetrators not attended by deprivation of freedom (Bangkok Rules)³⁸;</p> | |
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³⁸ Ibidem, paragraph 34

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| | <p>recording.</p> <p>4. Upon completion of audio- and video-assisted investigative interviewing, records are fully reproduced to an interviewee. After completion of record viewing or listening, interviewee is asked to clarify, whether they have something to add or refine what they have said, and whether they validate the records. Adds to audio and video evidence made by interviewee are also entered into audio and video materials. Audio and video records are ended with a statement of interviewee validating these materials.</p> <p>5. Evidence obtained in the course of investigative interviewing by means of audio and video recording equipment are entered into a protocol of interrogation in accordance with rules of this Code. Protocol of interrogation should also contain:</p> <ul style="list-style-type: none"> - entry made on application of audio and video recording equipment, and notification of interviewee to that end; - information on technical facilities and conditions of audio and video recording; - statement of an interviewee concerning the application of audio and video recording of investigative interview; - validation of audio and video recording protocol by interviewee and investigator. <p>6. Audio and video recording materials are</p> | | | |
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| | stored in personal data file and sealed up upon completion of preliminary investigation. | | | |
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Review and Recommendations:

Article 11 of the Convention against Torture establishes the obligation of Participating States to systematically consider rules, instructions, methods and practices related to investigative interviewing, conditions of custodial detention and treatment of persons in whatever form apprehended, arrested, or imprisoned in the territory under their jurisdiction, in order to prevent any cases of torture. According to comment of the Human Rights Committee, fulfilling this obligation is also part of measures required to provide protection against actions prohibited by Article 7 of the International Covenant on Civil and Political Rights, namely torture and cruel treatment³⁹.

By fulfilling this obligation, States should seek to have the current rules, instructions, methods and practices in their territory compliant with international standards. So, in their closing remarks to reports of state-participants of the Convention against Torture, Committee against Torture keeps on emphasizing that custodial detention conditions should comply with Nelson Mandela Rules⁴⁰. Yet, another document containing basic rules that States must be guided by is Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment⁴¹.

Within this scope in RT, positive point is adoption of the Strategy for reforming the system of executing punishment under criminal law of the Republic of Tajikistan for the period of up to 2030; under implementation of this strategy, there has been adopted Plan of Actions for 2021-2025. It is worth noting that this plan pays special attention to the rights of convicted and detained persons, medical provision of custodial institutions and improvement of custodial detention conditions. In their comments, the Committee has been many times highlighted the improvement of detention conditions of detainees, therefore, the adopted Strategy for reforming the system of executing punishment under criminal law until 2030 should be one of the important measures towards carrying out of this recommendation and compliance with the requirements of the Convention against Torture.

Most often, torture occur during the first hours of detention, interrogation at police stations⁴², therefore, special attention should be paid to ensuring guarantees and rights of detained persons in order to prevent torture. It is important to introduce an effective system of monitoring actions carried out during detention and interrogation of suspects. Committee against Torture emphasizes the importance of establishing a single system of arrest registration, the creation of which is also mentioned in the National Strategy for up to 2038, and this step should help in prevention of torture during the first hours of detention.

One of the constraining factors is application of video recording during interrogation and reduction in detention period in general. **For which reason, it is recommended to introduce changes in the Criminal Procedure Code of RT, as concerns the following articles:**

- **Part 3 Article 95 – reduce detention period from 72 hours to 48 hours;**
- **Part 2 Article 201 – exclude «Investigator makes a decision on audio and video recording...», and use the following wording «if a prejudicial inquiry body has available technical means allowing to make audio and video recording of interrogation, audio and video recording during interrogation is mandatory».**
- **It is necessary to introduce mechanisms legislatively and practically providing efficient investigation of each case concerning the death of a person deprived of freedom, or consideration of complaint about torture and other forms of cruel treatment, including:**
 - 1. counteracting the protraction of cases;**
 - 2. provision of unbiased nature of initiated criminal cases, including through procedures that prevent from multiple transfer of cases to investigator, with order on institution of criminal proceedings being annulled;**
 - 3. introduction of an independent mechanism for supervision over legal proceedings;**

³⁹ General Comment № 20 to Article 7 of International Covenant on Civil and Political Rights, Human Rights Committee, 1992, paragraph 11

⁴⁰ Closing remarks to the third periodic report of Tajikistan, Committee against Torture, CAT/C/TJK/CO/3, May 14, 2018., paragraph 34a; Closing remarks to the second periodic report of Brazil, Committee against Torture, CAT/C/BRA/CO/2, May 9, 2023, paragraph 22a; Closing remarks to the sixth periodic report of Latvia, Committee against Torture, CAT/C/LVA/CO/6, December 5, 2019, paragraph 15a

⁴¹ Conclusions and recommendations of the Committee against Torture: Monaco, CAT/C/CR/32/1, May 2004, paragraph 5e

⁴² https://longreads.cabar.asia/torture_tj

4. thorough and timely provision of information to victims and their legal representatives on the status of case consideration, current legal proceedings, and giving them an opportunity to familiarize themselves with materials in the case;
5. taking measures to protect victims, witnesses and other persons reporting on torture, as well as providing prosecution of law enforcement officers and judicial body officers exerting unlawful pressure on participants of judicial proceedings;
6. establish an efficient, independent, accessible mechanism for investigation of all complaints concerning the facts of torture.

Consideration and Investigation of the Acts of Torture and Cruel Treatment

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| <p>Convention against Torture Article 12</p> <p>Each Participating State shall ensure that their <u>competent authorities would make prompt and impartial investigation</u>, when there are reasonable grounds to presume that torture was committed in any territory being under their jurisdiction.</p> | <p>Criminal and Procedure Code of RT</p> <p>Parts 1 and 2 of Article 161. Preliminary investigative jurisdiction</p> <p>1. Preliminary investigation of criminal cases is made by agencies specified in Part 1 of Article 159.</p> <p>2. With regard to criminal cases provided for by Articles 104-109, 121-124, 127-130, 130(1), Parts 2 and 3 of Article 131, Articles 132, 133, 137, 137(1), 138, <u>141-164</u>, 168-170, 172-178, 183, 185-188, 190, 191, 198, 199, 207-211, 217, 220-229, 231, 233, 236, Part 1, Part 2 paragraphs «a», «b», «c» of Article 245, 246, 251, 257, 258, 261, 263, 274, 276, Parts 2 and 3 of Article 286, Articles 287-291, 295-297, 298-304, as well as Articles 314-317, 322, 323, if these actions are not of corruption nature, Articles 328-332, 334(1), 338, 343-365, 368-393, 398-405 of the Criminal Code of the Republic of Tajikistan, <u>preliminary investigation is made by prosecution agency investigators</u>.</p> | <p>Plan of Actions 2023-2025 National Human Rights Protection Strategy of the Republic of Tajikistan for the period of up to 2038 Paragraphs 25, 26, 32, 43</p> <p>25. Development of legal and institutional standards of mechanism for efficient response and investigation of criminal cases related to torture and other forms of cruel treatment.</p> <p>26. Taking measures for introduction of efficient mechanism for response and investigation of criminal cases related to torture and cruel treatment – provision of mechanism with necessary technical and human resources.</p> <p>32. Development of legislative and law</p> | <p>Committee urgently calls upon Participating States: a) <u>promptly, efficiently and impartially</u> investigate all cases and allegations concerning practice of torture and cruel treatment⁴³;</p> <p>Participating State should: a) establish a separate investigative mechanism or unit that have capacity to make efficient criminal investigation and conduct legal prosecution regarding allegations of torture and cruel treatment on the part of public officials, and operate independently from agencies accused of committing a crime, and from agencies responsible for legal prosecution of a person who has reported on the facts of torture; b)</p> | <p>Nevertheless, reports that torture and other forms of illegal treatment are still common practice in Tajikistan. Due to the lack of <u>independent investigative bodies, often related complaints are considered inefficiently</u>. tells that there are no mechanisms that would ensure making prompt, thorough, impartial and independent investigations. tells that although it is the <u>General Prosecutor Office's task</u> to conduct the investigation of cases initiated <u>according to Article 143.1, often it is police that carries out investigative actions</u>⁴⁶.</p> |
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⁴³ Closing remarks to the second periodic report of Tajikistan adopted by the Committee at their 49th session (October 29 – November 23, 2012), CAT/C/TJK/CO/2, Committee against Torture, 2013, paragraph 9a

⁴⁶ Human Rights Council, Working Group for universal periodic review, 39th session, November 1–12, 2021, A/HRC/WG.6/39/TJK/3, paragraph 24

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| | | <p>enforcement mechanisms for medical examination of detained persons in accordance with Istanbul Protocol standards that should include medical examination of detained persons to be made only by healthcare system and private physicians, procedures for submission of medical examination and /or forensic ME protocols to prosecution agencies, if psychological and physical violence marks have been detected, and submission of copies of ME results to torture victims and their lawyers</p> <p>43. Development of instructions and rules regarding efficient response and fact-finding inquiry related to violation of the rights of detained persons and those taken into custody</p> | <p>promptly, efficiently and impartially investigate all cases and facts of torture and cruel treatment, hold liable persons found guilty and inform population on the results of such investigations⁴⁴.</p> <p>Participating State should take decisive measures to eradicate torture and unlawful treatment, including through:</p> <p>c) ensuring that all allegations concerning torture and other forms of unlawful treatment are promptly and <u>thoroughly investigated by independent and impartial authority</u>, to prosecute those found guilty and, in case of conviction, apply proportionate punishment⁴⁵.</p> | |
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Review and Recommendations:

According to Paragraph 1 of Article 4 of the Convention against Torture, all acts of torture, attempted torture, as well as other actions constituting complicity or participation in torture, should be considered in accordance with criminal legislation of government-participant of the Convention.

In accordance with Article 6 of the Convention against Torture, government-participant of the Convention, having proved that the circumstances so warrant, should take into custody a person accused of committing crimes specified in Article 4 of the Convention, or ensure their presence by means of other legal measures compliant with legislation of given state, as well as immediately make a preliminary fact-finding inquiry.

In accordance with Article 12 of the Convention against Torture, if there are reasonable grounds to presume that in the territory under jurisdiction of state the act of torture

⁴⁴ Closing remarks to the third periodic report of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph. 10a and b

⁴⁵ Closing remarks to the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, Human Rights Committee, 2019, paragraph 32c

was committed, competent authorities of concerned state should make a prompt and impartial investigation.

Committee against Torture, in General Comment №2, stated that timely and impartial consideration of complaints about torture or cruel treatment is a basic warranty applicable to all persons deprived of freedom⁴⁷.

In General Comment №20, Human Rights Committee defined that immediate and impartial consideration of complaints by competent authorities of state is mandatory component of fulfilling obligation established by Article 7 in combination with Paragraph 3 of Article 2 of the International Covenant on Civil and Political Rights⁴⁸.

International legal standards establish a set of requirements imposed on procedures for investigation of torture and cruel treatment cases. Firstly, each allegation of torture and cruel treatment should be considered immediately⁴⁹. Secondly, investigation should be made by competent independent government agency. Thirdly, it should be prompt, impartial, thorough, efficient and transparent.

Undelayed initiation and due expedition play important role in investigation. In their decisions, Committee against Torture has been many times emphasizing that efficient response in investigation is essential for two reasons. Firstly, it allows to ensuring termination of committing unlawful actions against victim. Secondly, physical marks that remained on the body after torture and, especially, cruel treatment, may quickly disappear⁵⁰. In this connection, investigation should start immediately, on the spot, during several hours or days following the appearance of information on potential torture or cruel treatment⁵¹. In addition, period of investigation should also be limited, and comply with due expedition and without delay principle⁵².

In accordance with Article 161 of the Criminal Procedure Code of RT, preliminary investigation with regard to torture cases (Article 143 (1) Of CC of RT) is made by prosecutor. Also, in Article 88 of the CPC of RT, there is following wording «...with torture or cruel treatment, interrogating officer, investigator, prosecutor, court, judge, within the limits of their competence, take measures on appropriate liability of persons who let such actions to happen». As is seen from the contents of the articles, there is no indication, whether acts of torture and cruel treatment should be investigated immediately. **Consequently, we suggest making the following amendments:**

- Part 2 of Article 161 of CPC of RT – add a provision that «preliminary investigation with regard to torture cases provided for in Article 143 (1) of CC of RT should start immediately».

- Part 3 of Article 88 of CPC of RT – enter the following change «...with torture or cruel treatment, interrogating officer, investigator, prosecutor, court, judge, within the limits of their competence, immediately submit a statement of torture to higher-level prosecutor».

In their comments, Human Rights Committee, Committee against Torture also recommend that facts of torture should be investigated promptly, efficiently, impartially by representatives of independent authority. Human Rights Council also notes that even if investigations of torture are made by prosecution agencies, often they are inefficient, and investigative actions are carried out by internal affairs bodies that prevents from impartial and efficient investigation.

Plan of the National Strategy for up to 2038 sets forth the following activities: Development of instructions and rules regarding efficient response and investigation of violation of the rights of persons arrested and taken into custody. **We recommend including in these instructions a provision stating that investigation of the facts of torture and cruel treatment should be started immediately, made promptly and transparently. Investigation is made by prosecution agencies, without engagement of investigators**

⁴⁷ General Comments № 2 on implementation of Article 2 of the Convention against Torture, Committee against Torture, 2008, paragraph 13

⁴⁸ General Comment № 20 to Article 7 of the International Covenant on Civil and Political Rights, Human Rights Committee, 1992, paragraph 14

⁴⁹ Nelson Mandela Rules, Rule 57, paragraph 3; Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 33, paragraph 4

⁵⁰ Blanco Abad against Spain, Statement № 59/1996, Committee against Torture, May 14, 1998, paragraph 8.2; N. Z. against Kazakhstan, Statement № 495/2012, Committee against Torture, January 19, 2015, paragraph 13.2

⁵¹ Report of the UN Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39/Add.5, February 5, 2010, paragraph 137

⁵² Interim report of the Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/69/387, September 23, 2014, paragraph 24;

Prevention of Torture: Reference book for OSCE personnel on the ground, Office for Democratic Institutions and Human Rights, 2009, page 50

from internal affairs bodies, to ensure impartiality and independence principle.

Not all complaints about torture and cruel treatment would reach judicial examination, and there are many reasons that stand behind. Lack of evidentiary basis, independent forensic medical examiners, refusal of victims from further appeal because of disappointment, stress, pressure, lack of financial and time resources, lack of legal knowledge, mutual cover-up among some law enforcement bodies in some districts, and a host of other things⁵³.

Lodging a Complaint about Torture or Cruel Treatment

Convention against Torture Article 13

Each Participating State shall provide to any person, who claims to have been subjected to torture in any territory under the jurisdiction of that State, the right to lodge a complaint to competent authorities of that State, and to their prompt and impartial consideration of such complaint. Measures shall be taken to provide protection of complainant and witnesses from any forms of ill-treatment or intimidation due to their complaint or any testimony given.

**Law of RT on the procedures and terms of custodial detention of suspects, the accused and defendants
Parts 2, 4 and 7 of Article 21. Filing proposals, statements and complaints**
2. Proposals, statements and complaints filed to prosecutor's office, court, Human Rights Ombudsman in the Republic of Tajikistan or other authorities, which are entitled to monitor places of custodial detention of suspects, the accused and defendants, shall not be subject to censorship, and shall be sent to addressee in a sealed envelope, not later than on the working day next to the day when a proposal, statement or complaint has been filed.
4. As to proposals, statements and complaints containing information that hinders the ascertainment of the truth with regard to case or facilitates the commission of crime, concealed, ciphered information comprising the state and other secrets protected by law, there shall be applied a procedure established by Part 3 of Article 20 of this Law.
7. It is not allowed to prosecute in any form suspects, the accused and defendants for

**Plan of Actions 2023-2025
National Human Rights
Protection Strategy of the
Republic of Tajikistan for
the period of up to 2038
Paragraphs 28, 30**
28. Examining the issue of ratification of Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and taking measures for establishing National Preventive Mechanism

30. Building capacity of a detention facility monitoring group under HR Ombudsman Office by training in the rights of detainees and facility monitoring, and developing a procedure for monitoring group visits to detention centers

Having welcomed the efforts exerted nowadays by Participating State to improve custodial detention conditions in prisons and temporary holding facilities, at the same time, the Committee expresses concern about: c) there is still no systematic and independent survey of custodial detention conditions by national or international supervisory agencies, including the International Committee of the Red Cross (ICRC). Noting that Ombudsman is entitled to visit detention centers, at the same time, the Committee expresses concern on grounds that outcomes of visits are not made known to public; d) lack of grievance mechanisms for detainees. Despite the information provided by participating

emphasizes that many victims and their relatives do not file complaints because of mistrust towards criminal justice system and fearing persecution on the part of law enforcement bodies⁵⁷

⁵³ https://longreads.cabar.asia/torture_tj

⁵⁷ Human Rights Council, Working Group for universal periodic review, 39th session, November 1–12, 2021, A/HRC/WG.6/39/TJK/3, paragraph 24

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| | <p><u>filing their proposals, statements or complaints about violation of their rights and legally protected interests. Public officials of custodial detention facilities found guilty of conducting such prosecution shall be brought to responsibility in accordance with legislation of the Republic of Tajikistan.</u></p> <p>Code of execution of punishment under criminal law Paragraphs 3, 4 Article 16</p> <p>3. <u>Convicted persons have the right to file proposals, statements and complaints to administration of institution or agency executing punishment, their superior authorities, court, prosecution agencies, Human Rights Ombudsman Office in the Republic of Tajikistan, Child Rights Ombudsman Office in the Republic of Tajikistan, other state authorities and local governments, public associations, as well as international human rights bodies.</u></p> <p>4. Convicted persons are entitled to give explanations and maintain correspondence, as well as file proposals, statements and complaints, as specified in Part 3 of this Article, in native language or in any other language they speak, when necessary, have the services of an interpreter. Convicted persons receive replies in the language of application, and if not possible to do so, response will be given in the state language of the Republic of Tajikistan. Translation of replies to the language of application is provided by institution or agency executing</p> | | <p>government saying that complaints about torture or cruel treatment may be filed in sealed envelopes, such complaints reportedly fail to reach competent authorities, and detainees often do not have pens and paper⁵⁴;</p> <p>Participating State should:</p> <p>a) ensure that a monitoring group could visit all detention centers, including pretrial detention facilities being in the jurisdiction of the State National Security Committee, Agency for State Financial Control and Organized Crime Prevention, and the Drug Control Agency under the President of the Republic of Tajikistan;</p> <p>b) ensure that a monitoring group would have an opportunity to regularly visit all detention centers in participating state, including psychiatric and psycho-neurological institutions, and that during visits members of Group could be accompanied by medical experts, including psychiatrists;</p> <p>c) ensure that members of a</p> | |
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⁵⁴ Closing remarks to the second periodic report of Tajikistan adopted by the Committee at their 49th session (October 29 – November 23, 2012), CAT/C/TJK/CO/2, Committee against Torture, 2013, paragraph 14c and d

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| | <p>punishment.</p> <p>Article 27(1). Audit of activities of institutions executing punishment regarding human rights when considering complaints or upon the initiative of the Human Rights Ombudsman Office in the Republic of Tajikistan and Child Rights Ombudsman Office in the Republic of Tajikistan</p> <p>1. Human Rights Ombudsman Office in the Republic of Tajikistan, when checking complaints upon own initiative or when receiving information on massive and serious violations of human and citizen rights and freedoms, or in cases when violation of human rights have far-reaching social implications, may audit the activities of institutions executing punishment under criminal law regarding human rights, independently or in collaboration with public officials of authorized government agencies.</p> <p>2. Human Rights Ombudsman Office in the Republic of Tajikistan has the right to communicate vis-à-vis with convicted persons.</p> <p>3. Correspondence between the Human Rights Ombudsman Office in the Republic of Tajikistan and convicted persons shall not be censored.</p> | | <p>monitoring group would have an opportunity to communicate vis-à-vis with any detainee, in any detention center they visit;</p> <p>d) allow nongovernmental organizations to visit all detention centers independently from a monitoring group;</p> <p>e) provide access for the International Committee of the Red Cross to detention centers in participating state;</p> <p>f) ratify Optional Protocol to the Convention against Torture and establish National Preventive Mechanism in accordance with Optional Protocol⁵⁵</p> <p>Participating State should provide for all persons, including those taken in custody, access to a grievance mechanism, whereby they could transfer confidential messages about torture or cruel treatment to Ombudsman or other independent investigative agency that is beyond the reach of the management of detention facilities where they are kept⁵⁶.</p> | |
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⁵⁵ Closing remarks to the third periodic report of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 28

⁵⁶ Ibidem, paragraph 36

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| | <p>4. Child Rights Ombudsman Office in the Republic of Tajikistan, for the purposes of protection of child's rights and best interests, takes advantage of rights and opportunities established by this Article.</p> <p>Part 1 Article 29. Visits to institutions executing punishment</p> <p>1. Without express permission to visit institutions executing punishment, in the performance of duties, those entitled are:</p> <p>a) President of the Republic of Tajikistan, Prime-Minister of the Republic of Tajikistan, members of Majlisi Oli, deputies of Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan, Human Rights Ombudsman Office in the Republic of Tajikistan, Child Rights Ombudsman Office in the Republic of Tajikistan, and judges.</p> <p>Article 20. Right of personal security of convicted persons</p> <p>1. Convicted persons have the right of personal security.</p> <p>2. In case of threat to life, health or risk of committing any crime against convicted person on the part of other persons, they have the right to file application to any public official of institution, which executes punishment in terms of placing in various detention facilities, disciplinary barracks, requesting to ensure their security and transfer them to premises where such threat does not exist. In this case, public official is</p> | | | |
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| | <p>obliged to take immediate measures to ensure personal security of the applicant convicted person.</p> <p>3. Head of institution, either upon the application of a convicted person or upon own initiative, makes a decision to transfer convicted person to safe place or takes other measures eliminating the danger of committing a crime against convicted person, or considers the possibility of placing convicted person in other correctional facility in the manner prescribed by law.</p> <p>4. Public officials who failed to take necessary measures aimed at provision of security of convicted persons are brought to responsibility in accordance with legislation of the Republic of Tajikistan.</p> <p>Criminal Procedure Code of RT Article 119(1). Procedure for referral of complaint of arrested person or person held in custody</p> <p>1. Administration of a detention facility is obliged to immediately submit the complaints of arrested persons or persons held in custody addressed to it to body, which conducts criminal proceedings.</p> <p>2. Administration of a detention facility is <u>obliged to immediately submit the complaints of arrested persons or persons held in custody, about torture and other cruel, inhuman or degrading treatment or punishment</u>, as well as about actions and decisions of interrogating officer, investigator, within up to three days, to prosecutor or court, and complaints about</p> | | | |
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| | actions and decisions of prosecutor – to higher-level prosecutor or court. Other complaints should be submitted within the specified term to person or agency engaged in particular criminal investigation, after they have been filed to administration of a detention facility. | | | |
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Review and Recommendations:

Article 13 of the Convention against Torture establishes the obligation of Participating States to provide to any person, who claimed to have been subjected to torture in any territory under the jurisdiction of that State, the right to file a complaint to competent authorities of that State. According to Paragraph 1 of Article 16 of the Convention, this obligation is applicable not only to cases of torture, but also to situations when person is subjected to cruel treatment.

In General Comment № 20, Human Rights Committee noted that national legislation should confirm the right to file a complaint about treatment forbidden according to Article 7 of the International Covenant on Civil and Political Rights that is including practice of torture or cruel treatment⁵⁸.

According to international legal standards, the right to file a complaint should be conferred not only to a person who suffered torture or cruel treatment, but also to any person who became aware of it. So, Nelson Mandela Rules, Paragraph 4, Rule 56 tells that when neither a detainee nor their lawyer have an opportunity to realize the right to file a complaint, this can be done by one of a detainee's family members or any other person who is familiar with circumstances of the case. Similar provision is contained in Paragraph 2 of Principle 33 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

Apart from providing the right to file a complaint, States should provide guarantees that a complainant, as well as their relatives and witnesses would not be put to pressure, prosecuted, punished in whatever way or exposed to any form of negative impact because of filing a complaint or giving testimony, including intimidation and cruel treatment⁵⁹. A person, who has suffered torture or cruel treatment, should be made aware that in the event of filing a complaint their security will be guaranteed by state.

States should provide dismissal from office, as concerns the officers potentially involved in practice of torture or cruel treatment, that would give them control or power, direct or indirect, against complainants, witnesses, their families, and persons who conduct inquiry/investigation⁶⁰, as well as take other measures preventing those officers from participation in conducted investigation, having any contacts with the injured or aggrieved person, witnesses or family of the injured or aggrieved person⁶¹. In particular, such measure may include immediate transfer of victim to other institution or suspension of officer against whom a complaint has been filed.

One of the main requirements imposed in relation to the process of filing a complaint about torture and cruel treatment is its accessibility. Procedures for filing a complaint should be simple and clear to absolutely everyone. In addition, there should be given a possibility to file a complaint in confidence⁶², in order to minimize fear of ensuing of harmful consequences in connection with filing a complaint.

⁵⁸ General Comment № 20 to Article 7 of the International Covenant on Civil and Political Rights, Human Rights Committee, 1992, paragraph 14

⁵⁹ Convention against Torture, Article 13; Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – Resolution of the General Assembly A/RES/70/146, paragraph 28; Nelson Mandela Rules, Rule 57, paragraph 2; Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 33, paragraph 4; Decision № 7/20. Prevention and Eradication of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, OSCE, 2020, paragraph 14; Principles of effective investigation and documenting of torture and other cruel, inhuman or degrading treatment or punishment, adopted by resolution of the UN Economic and Social Council 55/89 as of December 4, 2000, paragraph 3, sub-paragraph b

⁶⁰ Principles of effective investigation and documenting of torture and other cruel, inhuman or degrading treatment or punishment, adopted by resolution of the UN Economic and Social Council 55/89 as of December 4, 2000, paragraph 3, sub-paragraph b

⁶¹ Nelson Mandela Rules, Rule 71, paragraph 3

⁶² Nelson Mandela Rules, Rule 57, paragraph 2; Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 33, paragraph 3; Elimination of Torture Incentives: Baseline Study and Practical Guidelines for OSCE Region, 2020, paragraph 84

According to laws and regulations of RT, suspects, the accused and defendants have the right to lodge a complaint about torture through administration of a detention facility. Criminal Procedure Code of RT states that such complaints should be filed immediately, but, there are no any provisions stating that such complaints should not be censored. As complaints are filed through administration of detention facilities, the question arises as to what extent the confidentiality principle is observed. Such provision contradicts the international law standards.

Law of RT on the procedures and terms of custodial detention of suspects, the accused and defendants also provides for the right to lodge a complaint that may be addressed to prosecutor, court, HR Ombudsman Office and other government agencies. Such complaints should not be subjected to censorship, should be addressed in a sealed envelope, and on the next day after a complaint has been filed.

Code of execution of punishment under criminal law also provides for the right of convicted persons to file a complaint through administration of institutions, but, there are no any provisions concerning confidentiality period.

Human Rights Ombudsman Office has the right to visit detention centers. It is worth noting that for effective counteraction and control of torture it is necessary to establish an independent body to monitor custodial institutions, such as National Preventive Mechanism with conferred right of unhindered access to all closed and semi-closed institutions under the jurisdiction of MOI, MOJ, MOHSPP, MES, SNSC, and other departments. Committee against Torture has recommended the ratification of Optional Protocol to the Convention against Torture and establishing National Preventive Mechanism.

In connection with the right of torture victims to file a complaint, there are following recommendations:

- Bring the provisions of CPC of RT, Code of execution of punishment under criminal law, and the Law of RT on the procedures and terms of custodial detention in compliance with international law standards, in particular, state that complaints about torture and cruel treatment should be immediately addressed to prosecutor or HR Ombudsman Office, should not be uncovered, censored, with provision of confidential submission of a complaint;

- Provide conditions to suspects, the accused and defendants making the procedures for lodging a complaint simple and clear. For example, access to paper, pen, availability of a complaint box that cannot be uncovered by administration of a detention facility, but, only by prosecutors;

- Supplement Article 20 of the Code of execution of punishment under criminal law with a provision stating that if there are reasonable grounds to presume practice of torture or cruel treatment, then head of institution should immediately transfer the alleged victim to other institution or suspend from office the officer against whom a respective complaint has been filed.

- Establish effective safeguards for complainants and witnesses to protect them from persecution.

Right of Torture and Cruel Treatment Victims to Damages and Compensation

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| Convention Against Torture Article 14 1. Each Participating State shall enable, in their legal system, torture victim to receive compensation and have enforceable right to fair and adequate compensation, including convalescent facilities for possibly best rehabilitation. In the event of victim's death as a result of torture, the right to compensation shall be conferred to their dependants. | Criminal Code of RT Article 126. Civil claims in a criminal case 1. In a criminal case, there are considered civil claims of physical and legal persons, as well as prosecutor and specialized corruption control bodies for compensation of damage inflicted directly by a crime. 2. Claimant, while making a claim in a | Plan of Actions 2023-2025 National Human Rights Protection Strategy of the Republic of Tajikistan for the period of up to 2038 Paragraph 35 35. Developing Resolution of the Plenum of Supreme Court of RT regarding compensation of pecuniary and non-pecuniary damage inflicted by crimes related | Participating State should: a) By developing a detailed rehabilitation program, enable torture victims to receive compensation for inflicted damage and rehabilitation, as well as have actionable right to fair and adequate compensation, including convalescent facilities for possibly best rehabilitation. Committee | |
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| <p>2. Nothing in this article is intended to affect any right of victim or other persons to compensation that may exist according to national legislation.</p> | <p>criminal case, shall be exempted from state duty.</p> <p>3. The jurisdiction of a civil claim arising from a criminal case shall be defined by the jurisdiction of a criminal case, in which it has been made.</p> <p>4. Foundation proof of a civil claim made in a criminal case shall be furnished according to rules established by this Code.</p> <p>5. If procedural relationship arising from a civil claim is not governed by this Code, then civil procedural law regulations shall apply.</p> <p>Article 127. Making a civil claim</p> <p>1. Person who has suffered damage from a crime or an action of mentally defected person banned by the Criminal Code, or their representative are entitled to make a civil claim since the time of initiation of a criminal case, but, prior to initiating judicial examination. Rejection of a claim made in the course of civil law proceedings will deprive the claimant of the right to make the same claim again in a criminal case.</p> <p>2. A civil claim may be made both, in a written and verbal form. Verbal claim shall be entered into a protocol as per procedure provided for by Part 2 of Article 141 of this Code.</p> <p>3. Failure to identify a person subject to</p> | <p>to torture and other cruel, inhuman or degrading treatment or punishment</p> | <p>draws attention of Participating State to their General Comment № 3 (2012) on implementation of Article 14 of the Convention, in which the Committee explains the content and scope of obligations of Participating States on provision of full compensation to torture victims and recommends introduction of relevant changes into domestic legislation;</p> <p>b) Enable, under program, provision of affordable and <u>timely specialized rehabilitation services of appropriate quality</u> according to General Comment № 3, and avoid having access to them conditional upon necessity to file a complaint about administrative or criminal infraction;</p> <p>c) Assign a country-level leading specialized coordinating institution, to implement a rehabilitation program and present a transparent budget enough to maintain the operation of program as a specialized service⁶³.</p> | |
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⁶³ Closing remarks to the third periodic report of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 42

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| | <p>indictment should not preclude from making a civil claim in a criminal case.</p> <p>4. Person who has failed to make a civil claim in criminal proceedings, as well as person whose claim has left suit without consideration, shall be entitled to make a civil claim in the course of civil law proceedings.</p> <p>5. For the purposes of defense of State interests, prosecutor shall be entitled to make a civil claim in criminal proceedings.</p> <p>Civil Code of RT Article 1189. General grounds for liability for damage</p> <p>1. Damage inflicted by wrongful acts (omission) to person or property of physical person, legal person, state, local authorities and local governments of towns and villages shall be compensated to the full extent by wrongdoer.</p> <p>2. Law may lay obligation to indemnify against damage on person who is not harm-doer or wrongdoer.</p> <p>3. In accordance with law or agreement, there may be imposed higher liability of harm-doer or higher extent of compensation.</p> <p>4. Person who has inflicted damage may be exempted from compensation of damage, if they manage to prove that damage has been</p> | | <p>Participating State should take decisive measures to eradicate torture and unlawful treatment, including by:</p> <p>c) enabling victims and, as appropriate, their families to receive full indemnification, including rehabilitation and adequate compensation⁶⁴.</p> | |
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⁶⁴ Closing remarks to the third periodic report of Tajikistan, CCPR/C/TJK/CO/3, Human Rights Committee, 2019, paragraph 32c

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| | <p>inflicted through no fault of them.</p> <p>5. Law may also consider compensation of damage with absence of harm-doer's fault.</p> <p>6. Damage inflicted by lawful actions shall be indemnified against to the extent permitted by applicable law.</p> <p>Article 1196. Liability for damage inflicted by unlawful actions of investigative, preliminary investigation, prosecution and judicial agencies</p> <p>1. Damage inflicted to physical person as a result of unlawful conviction, prosecution, unlawful custodial restraint or recognizance not to leave, torture, unlawful punishment, harming the business reputation of, and giving offence to, unlawful imposing administrative penalties in terms of arrest or correctional labor, or disqualification of physical person, as well as damage inflicted due to unlawful suspension of business license or that of legal person, shall be compensated to the full extent by State, regardless of culpability of public officials of investigative, preliminary investigation, prosecution and judicial agencies.</p> <p>2. Damage inflicted to physical or legal person as a result of other unlawful actions of investigative, preliminary investigation, prosecution and judicial agencies shall be compensated under standard arrangements, unless otherwise required by law (Article 1194 of this Code).</p> <p>3. Damage inflicted as a result of unlawful</p> | | | |
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| | performance of a judicial act shall be compensated, if the fault of judge is ascertained by court verdict that has taken effect. | | | |
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Review and Recommendations:

According to Part 1 of Article 14 of the Convention against Torture, each Participating State should enable torture victim to receive compensation and have enforceable right to fair and adequate compensation, including convalescent facilities for possibly best rehabilitation. In General Comment № 3 on implementation of Article 14 by Participating States (hereinafter – General Comment № 3), as well as with regard to disposition of case ‘Dzemail and others against Yugoslavia’, Committee against Torture emphasized that the obligation established under this article is also applicable to victims of cruel treatment⁶⁵.

The obligation of States to provide compensation to victims of torture and cruel treatment is applicable to absolutely all victims, regardless their citizenship, citizenship of a perpetrator liable for practice of torture and cruel treatment, as well as territory of any State where torture or cruel treatment have been practiced, therefore, it is recommended that States provide means of civil legal defense even to those who have been subjected to torture or cruel treatment outside their territory⁶⁶.

In opinion of the Committee against Torture, the obligation of States to provide compensation to victims of torture and cruel treatment consists of procedural and substantive limbs. Procedural limb also involves establishing independent judicial agencies with competence to award damages to victims of torture and cruel treatment⁶⁷. Apart from establishing such agencies, States should also enable victims of torture and cruel treatment to have equal access to mechanisms provided to these agencies, as well as an opportunity to initiate a process for receiving compensation without fear of ensuing of harmful consequences thereto related⁶⁸.

Substantive limb is that States shall enable victims of torture and cruel treatment to receive full and effective compensation, including convalescent and other facilities for possibly best rehabilitation⁶⁹.

According to provisions of the Civil Code of RT, torture victims have the right to receive compensation of damage resulting from torture, regardless of culpability of public officials of investigative, preliminary investigation, prosecution and judicial agencies. But, it is worth noting that legislation of RT provides only for pecuniary compensation, there are no any programs for rehabilitation of torture victims, as required by international law.

As State is responsible to enable all victims of torture and cruel treatment to receive compensation, when there are reasonable grounds to presume the occurrence of such unlawful actions, even with the absence of complaints on the part of a victim, they should start a procedure for provision of necessary compensation⁷⁰.

As concerns the legislation of RT, injured or aggrieved person (victim) can count on compensation only after being recognized as injured or aggrieved person and making a compensation claim to authorized agency. These requirements create difficulties for victims of torture, and are not unconditional, as required by international law. Since the time of event (torture or cruel treatment) till the time of recognizing a person as the injured or aggrieved one and their recourse to a court, a lot of time may elapse, and all these procedures

⁶⁵ General Comment № 3: Implementation of Article 14 by Participating States, Committee against Torture, CAT /C/GC/3, 2012, paragraph 1; Dzemail and others against Yugoslavia, Adjudication of Complaint № 161/2000, CAT/C/29/D/161/2000, Committee against Torture, November 21, 2002, paragraph 9.6

⁶⁶ General Comment № 3 (2012): Implementation of Article 14 by Participating States, Committee against Torture, CAT /C/GC/3, 2012, paragraph 22; Interim report of Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/70/303, August 7, 2015, paragraph 56; Conclusions and recommendations of the Committee against Torture to the fourth and fifth periodic reports of Canada, CAT/C/CR/34/CAN, May 2005, paragraph 5, sub-paragraph f

⁶⁷ General Comment № 3 (2012): Implementation of Article 14 by Participating States, Committee against Torture, CAT /C/GC/3, 2012, paragraph 5; Report of Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novac, implementation of Resolution 60/251 of the General Assembly, as of March 15, 2006, titled “Human Rights Council”, A/HRC/4/33, January 15, 2007, paragraph 63

⁶⁸ Report of the UN Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39/Add.5, February 5, 2010, paragraph 171

⁶⁹ General Comment № 3 (2012): Implementation of Article 14 by Participating States, Committee against Torture, CAT /C/GC/3, 2012, paragraph 5

⁷⁰ Basic principles and guidelines concerning the right to legal protection and compensation of damage to victims of blatant violations of international human rights standards and grave violations of international humanitarian law, Resolution 60/147 of the General Assembly, as December 16, 2005, paragraph 16

may further complicate a situation and protract sufferings of victim of torture and cruel treatment. Legislation of RT does not provide for specific mechanisms for provision of rehabilitation services to persons – survivors of torture, and/or their family members.

Recommendations concerning the compensation of damage to victims of torture:

- Establish at the state level a system enabling victims of torture and cruel treatment to receive full indemnification, including rehabilitation and adequate compensation;
- Simplify a procedure for making a compensation claim, without having recognized a person as injured or aggrieved one, and regardless of criminal proceedings.

Inadmissibility in Evidence of Information Obtained under Torture

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| <p>Convention against Torture Article 15</p> <p>Each Participating State should ensure that any statement, which is proved as being obtained under torture, would not be used as evidence in the course of any judicial examination, except for cases when it is used against a person accused of committing act of torture, as evidence that this statement has been made.</p> | <p>Criminal Procedure Code of RT Parts 1, 2 and 3 of Article 88(1). Inadmissible Evidence</p> <p>1. Evidence shall be considered as inadmissible, if they have been obtained in breach of requirements of this Code, by impairment of legally guaranteed rights of parties to the criminal process, violation of evidence collection order or other criminal process rules in pretrial investigation or in criminal trial, if they have or could have affected the consistency of actual data obtained, including through:</p> <p>- torture, cruel treatment, coercive actions, intimidation, deception or other unlawful actions;</p> <p>2. Inadmissibility in evidence, as well as restriction in the use of evidentiary material in the criminal process, shall be established by interrogating officer, investigator, prosecutor, court, and judge on their own initiative or on application of parties. Actual data on subjecting a suspect, the accused or defendant to torture or cruel</p> | <p>This issue is not covered in the document</p> | <p>Committee recommends to Participating State to:</p> <p>a) review the cases, for which defendants alleged that confessionary statements presented in evidence of their guilt had been obtained under torture or other forms of cruel treatment;</p> <p>b) take measures to induce judges to halt the judicial process in cases when defendant make such statements, and announce confessionary statements inadmissible in evidence of guilt in cases when it is ascertained that they were obtained under torture;</p> <p>c) order prosecutors to take appropriate measures in cases when criminal defendants allege to have been subjected to torture in the course of judicial proceedings, and initiate</p> | <p>note that courts do not practice the law according to which confessions obtained under torture are inadmissible in evidence of guilt⁷³</p> |
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| | <p>treatment shall be checked and assessed in terms of admissibility of their statements as evidence, regardless of the existence of their statement or lawyer's application.</p> <p>3. Interrogating officer, investigator, prosecutor, court, and judge, while considering the issue of inadmissibility in evidence, are obliged, in each case, to clarify, what was the essence of violation, and make a well-founded decision. Having recognized the evidentiary material inadmissible due to subjecting to torture or cruel treatment, interrogating officer, investigator, prosecutor, court, and judge, within the limits of their competence, shall take measures to hold liable those who let things happen.</p> | | <p>inquiry into allegations of torture⁷¹.</p> <p>Participating State should take decisive measures to eradicate torture and unlawful treatment, including through:</p> <p>b) effective enforcement of the ban – by law enforcement officers, prosecutors and judges – on the use of evidence obtained under torture⁷²;</p> | |
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Review and Recommendations:

One of the main goals of subjecting to torture and cruel treatment is to obtain confessionary or other statements from interviewee⁷⁴. Therefore, international law binds the states to ensure that any statement made under torture or as a result of cruel treatment could not be used as evidence at law in the course of judicial proceedings.⁷⁵ This obligation is international custom that underscores its significance⁷⁶. In addition, Committee against Torture has defined that this obligation is among obligations the departure from which is not tolerated under any circumstances⁷⁷. The only exception when a statement obtained under torture may be accepted as evidence are cases when such statement is used against a person charged with torture⁷⁸.

⁷³ Human Rights Council, Working Group for universal periodic review, 39th session, November 1–12, 2021, A/HRC/WG.6/39/TJK/3, paragraph 24

⁷¹ Closing remarks to the third periodic review of Tajikistan, CAT/C/TJK/CO/3, Committee against Torture, 2018, paragraph 26

⁷² Closing remarks to the third periodic review of Tajikistan, CCPR/C/TJK/CO/3, Human Rights Committee, 2019, paragraph 32b

⁷⁴ Report of the UN Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39/Add.5, February 5, 2010, paragraph 93; Elimination of Torture Incentives: Baseline Study and Practical Guidelines for OSCE Region, 2020, page 5

⁷⁵ Convention against Torture, Article 15; General Comment № 20, paragraph 12; Declaration on the protection of all persons from torture and other cruel, inhuman or degrading treatment or punishment, Article 12; Adjudication № 7/20. Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, OSCE Council of Ministers, 2020, paragraph 8; Istanbul Protocol, paragraph 10, sub-paragraph g

⁷⁶ Report of the UN Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, A/HRC/25/60, April 10, 2014, paragraph 17; Interim report of Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/70/303, August 7, 2015, paragraph 52

⁷⁷ General Comments № 2, paragraph 6

⁷⁸ Convention against Torture, Article 15; Declaration on the protection of all persons from torture and other cruel, inhuman or degrading treatment or punishment, Article 12; Adjudication № 7/20. Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment, OSCE Council of Ministers, 2020, paragraph 8; Istanbul Protocol, paragraph 10, sub-paragraph g

In their decisions, Committee against Torture has emphasized that States are obliged to prove that statements obtained as evidence have not been made as a result of torture⁷⁹, which also refers to statements of third persons, as well as to cases where a statement has been made under torture outside the territory of State⁸⁰. In addition, State should establish a mechanism allowing persons to challenge any evidence, in respect of which one has reasonable grounds to presume that they have been provided as a result of torture⁸¹.

In case if a person states that they have made confessionary statements as a result of psychological or physical coercion, the burden of proving otherwise lies on prosecution (State), and not on that person⁸².

In general, legislation of RT complies with the requirements of the Committee against Torture in terms of inadmissibility in evidence of information obtained under torture, because such provision is legislatively provided for. But, in practice and according to statistics, one can see that in many criminal cases this requirement of the Criminal Procedure Code of RT is not met.

Torture and other forms of cruel treatment are still common in Tajikistan. In their report, Amnesty International informs that torture has been practiced by various defense and law enforcement agencies as a means to secure false confessions and discredit other persons⁸³.

⁷⁹ P. E. against France, Committee against Torture, Adjudication № 193/2001, CAT/C/29/D/193/2001, November 21, 2002, paragraph 6.3; G. K. against Switzerland, Committee against Torture, Adjudication № 219/2002, May 7, 2003, paragraph 6.10

⁸⁰ Yusri Ktiti against Morocco, Adjudication № 419/2010, CAT/C/46/D/419/2010, Committee against Torture, May 26, 2011, paragraph 8.8; Interim report of Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/70/303, August 7, 2015, paragraph 53

⁸¹ Conclusions and recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies, CAT/C/CR/33/3, November 2004, paragraph 5, sub-paragraph d

⁸² Nalaratnam Singarasa against Sri Lanka, Adjudication № 1033/2001, CCPR/C/81/D/1033/2001 (2004), Human Rights Committee, July 21, 2004, paragraph 7.4; Sultanova and Ruzmetov against Uzbekistan, Adjudication № 915/2000, Human Rights Committee, March 30, 2006, paragraph 7.3; Interim report of Special Rapporteur regarding torture and other cruel, inhuman or degrading treatment or punishment, A/69/387, September 23, 2014, paragraph 26

⁸³ Situation with human rights in the world, April 2024, Amnesty International, page 182