



Commissioner for Human Rights  
in the Republic of Kazakhstan



European Union

# ANALYSIS OF LEGISLATION AND COMPLAINTS ON TORTURE AND VIOLENCE AGAINST CHILDREN IN THE CONTEXT OF JUVENILE JUSTICE



## **Analysis of legislation and complaints on torture and violence against children in the context of juvenile justice, Astana, Kazakhstan, 2013**

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# ANALYSIS OF EXISTING LAWS AND PROCEDURES TO PREVENT AND IDENTIFY TORTURE AND ILL-TREATMENT, AND TO RENDER PROTECTION, ASSISTANCE AND COMPENSATION TO VICTIMS

## I. General legal framework

Torture is prohibited in the Republic of Kazakhstan at constitutional level. Article 17 (2) of the Constitution states: «No one shall be subject to torture, violence or other treatment that is cruel or humiliating to human dignity.» The Republic of Kazakhstan is a party to both the Convention against Torture<sup>1</sup> and its Optional Protocol<sup>2</sup>. In accordance with the Constitution of the Republic of Kazakhstan: “International treaties ratified by the Republic of Kazakhstan shall have priority over its laws and be directly implemented except in cases where the application of an international treaty shall require the promulgation of a law.»<sup>3</sup> Finally, the Law of the Republic of Kazakhstan on the Rights of the Child provides for children receiving: «protection from physical and (or) mental abuse, cruel, inhuman or degrading treatment».<sup>4</sup>

The current Criminal Code (CC) of the Republic of Kazakhstan provides for criminal liability for torture defined as: «Deliberate infliction of physical and (or) mental suffering committed by an investigator, those carrying out interrogation, or any official person, at their instigation or with the implied consent of another person or with their knowledge, for the purpose of receiving information or confession from the tortured person or third party, or of punishing for an act committed or suspected, as well as intimidating or coercing the person or third party for any discriminatory reason.»<sup>5</sup> It should be noted that the definition of torture under the legislation of the

<sup>1</sup> Accession on 26 August 1998

<sup>2</sup> Ratification on 22 October 2008

<sup>3</sup> Constitution of Kazakhstan, Article 4 (3)

<sup>4</sup> RK Law ‘On the Rights of the Child in the Republic of Kazakhstan’, Art. 10 (2) («The State shall ensure the personal integrity of the child, protecting him or her from physical and (or) mental abuse, cruel, inhuman or degrading treatment, sexual assault, involvement in crime and anti-social activities and other activities that infringe the rights and freedoms of man and citizens of the Republic of Kazakhstan.»)

<sup>5</sup> RK Criminal Code, Art. 141-1 (1) («Deliberate infliction of physical and (or) mental suffering, committed by an investigator, those carrying out interrogation, or any official person, at their instigation or with the implied consent of another person or with their knowledge, for the purpose of receiving information or confession from the tortured person or a third party or of punishing for an act committed or suspected, as well as intimidating or coercing the person or third party for any discriminatory reason, shall be punishable by a fine of 200 to 500 monthly calculation indices or deprivation of the right to hold certain positions for up to three years or restraint of liberty for up to five years or imprisonment for the same term.»)

Republic of Kazakhstan repeats almost word for word that used in the Convention against Torture. The use of torture against a minor is considered as an aggravating circumstance.<sup>6</sup>

In addition to torture, criminal legislation defines the act of torment as: «The infliction of physical or mental suffering by systematic beatings or other violent acts, unless it entails the consequences stipulated in Articles 103 and 104 of the Criminal Code.»<sup>7</sup> This relates to torture causing serious or moderate injury or harm to health. The main difference between torture and torment lies in the personality of the perpetrator (an official in the case of torture) and their motive. We recommend that the definition of torture be expanded to include any person acting in an official capacity, such as staff working at special schools or within the juvenile justice system; at present, Kazakh legislation may not define their actions as torture.

The RK Criminal Code singles out as a specific crime: «Failure to execute or the improper execution of obligations associated with raising an underage child [...] by an educator or any employee of a educational, pedagogic, medical or other institution obligated to carry out supervision of minors, where this is combined with cruel treatment of a minor.»<sup>8</sup>

Finally, in accordance with the RK CC, illegal placement in a psychiatric hospital is criminally liable<sup>9</sup>; this has relevance in the fight against torture, since such an act may be used for punitive purposes. Use of one's official position in this context is an aggravating circumstance.<sup>10</sup>

The Republic of Kazakhstan Criminal Procedure Code (CPC) notes the inadmissibility of evidence obtained: «through violence, threat, deceit or any other illegal act».<sup>11</sup>

The inadmissibility of using violence to obtain evidence is supported by the Law 'On Operative Investigative Activity'; when gathering evidence, this directly prohibits the use of: «violence, threats, [...],

<sup>6</sup> Ibidem, Art.141-1(2).

<sup>7</sup> Ibidem, Art. 107.

<sup>8</sup> Ibidem, Art. 137 (“Failure to execute or improper execution of obligations associated with the raising of an underage child by his or her parent, or another person to whom these obligations are delegated, as well as by a pedagogue or another employee of a given educational, pedagogic, medical or other institution obligated to carry out supervision of underage children, where this is combined with cruel treatment of a minor, shall be punishable by a fine of 50 to 100 monthly calculation indices or community service of 100 to 200 hours or correctional works for up to two years or restriction of freedom for up to two years with loss of the right to hold certain positions or engage in certain activities for up to three years.”)

<sup>9</sup> Ibidem, Art. 127.

<sup>10</sup> Ibidem, Art.127 (2).

<sup>11</sup> RK Criminal Procedure Code, Art. 116(1) (“Evidence will be found inadmissible if received through violation of the requirements of this Code: deprivation or restriction of the rights of those participating in the procedure, as guaranteed by the law, or violation of other rules of criminal procedure in the course of investigation or court trial, which may affect the reliability of information received, in particular:

- 1) evidence obtained through use of violence, threat, deceit and any other illegal act;
- 2) evidence obtained through misguidance or failure to explain fully or correctly the rights of the person participating in the criminal procedure;
- 3) evidence obtained through the participation of a person who has no right to be involved in a given criminal case;
- 4) evidence obtained through the participation of a person who is subject to recusal (through prejudice or conflict of interest);
- 5) evidence obtained through material violation of the proper procedure;
- 6) evidence obtained from an unknown or unestablished source during the court trial; or
- 7) evidence which contradicts contemporary scientific knowledge.”)

blackmail or any illegal action restricting the rights, freedoms or legitimate interests of citizens or officials».<sup>12</sup> However, no clear mechanism of action or responsibility is defined for cases of violation.

The Criminal Executive Code (CEC) of the Republic of Kazakhstan proclaims as fundamental the principles of: «the rule of law, equality of all before the law, humanity, democracy and transparency, differentiation and individualization of correction, combining punishment with correctional treatment».<sup>13</sup> While the CEC does not explicitly mention the concept of torture, it prohibits: «cruel or inhuman, degrading treatment».<sup>14</sup> It also states that coercive measures, if used, should be performed within the law.<sup>15</sup>

In addition, the CEC contains provisions to guarantee prisoners serving sentences the right to personal security.<sup>16</sup> These provisions are included not implicitly to combat torture but to protect convicts from attack by other prisoners; by implication, they also serve as an additional barrier of protection against torture, since pressure may be placed on convicts by officials indirectly, through other convicts.

The CEC also provides for judicial review of complaints from convicts regarding the actions of the administration of correctional institutions or bodies executing sentences by judicial order: «in cases envisaged by the legislation of the Republic of Kazakhstan».<sup>17</sup>

In addition, the RK Law 'On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society' prohibits the: "infliction of physical or mental suffering on those suspected or accused of committing crimes, who are kept in custody".<sup>18</sup>

To summarize, the legislation of Kazakhstan has a significant number of regulations aiming to guarantee freedom from torture. However, their effectiveness is governed not so much by rules of declarative character as by particular mechanisms stipulated in the laws of Kazakhstan, as discussed below.

<sup>12</sup> RK Law 'On Operational Investigative Activity', Art. 15 ("The following shall be prohibited when carrying out operative-investigative activities: [...]

- the use of violence, threats, blackmail or other unlawful activities which restrict the rights, freedoms or legitimate interests of citizens or official persons.")

<sup>13</sup> RK Criminal Executive Code, Art. 6 ("Criminal executive legislation is based on the principles of the rule of law and order, the equality of all before the law, humanity, democracy and transparency, differentiation and individualization of correction, combining punishment with correctional treatment.")

<sup>14</sup> Ibidem, Art.10 (9) ("Imprisoned persons are entitled to courteous treatment by staff. They should not be subjected to cruel or degrading treatment. Coercive measures may not be applied to the convicted except as provided by law.")

<sup>15</sup> Ibidem.

<sup>16</sup> Ibidem, Art.11 ("1. In case of any threat of crime against a convicted person by convicts or other persons, he/ she is entitled to apply to any official of the institution executing the penalty of detention in the disciplinary cell for imprisonment, with the request for transfer to a safe place, out of reach of threat. In this case, the official shall take immediate steps to transfer the convicted person to a safe place.

2. The Head of the institution shall decide on the transfer of the convicted person to a safe place, other measures to eliminate the possibility of committing a crime against the person convicted, and he/ she shall decide on the place of further serving sentence by the convict.")

<sup>17</sup> Ibidem, Art. 18.

<sup>18</sup> RK Law 'On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society', Art. 4 («Detention shall be in accordance with the principles of the rule of law and order, presumption of innocence, equality of all citizens before the law, humanity, respect for the honour and dignity of a person and international law. It should not be accompanied by actions intended to cause physical or mental suffering to persons suspected or accused of committing crimes, who are kept in custody.»)

## II. Standards regarding the use of force and other related issues

The use of firearms, special means and physical force by law enforcement officers in Kazakhstan is regulated by the Law of the Republic of Kazakhstan ‘On the Law Enforcement Service’.<sup>19</sup> While the Act prohibits the use of special tools and techniques against minors<sup>20</sup>, the law makes an exception for cases whereby they: “commit an attack threatening the lives or health of others, a group attack or armed resistance”.<sup>21</sup> Similarly, firearms cannot be applied against minors: “except in cases of armed attack, armed resistance, hostage taking or hijacking of vehicles, including aircraft, or group attack”.<sup>22</sup> In the event of the use of firearms, law enforcement agencies are responsible for providing emergency medical care to victims.<sup>23</sup>

‘On the Law Enforcement Service’ provides no specific restrictions on the use of physical force unconnected with the use of special tools or techniques with regard to juveniles. Its wording contains certain restrictive expressions, such as ‘at real risk’ or ‘if necessary’, yet it does not expressly define reasonable force. This fails to meet international standards, as mentioned in ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officers’.<sup>24</sup> It is strongly recommended that this be remedied by introducing relevant regulations explicitly requiring commensuration of force used against threat. In particular, it is recommended that the Law include a rule permitting the use of force only if non-violent means prove ineffective.<sup>25</sup> Also, it is strongly recommended that general restrictions be provided on the use of force against minors and the mechanism of responsibility for violating these restrictions.

The use of force against persons in temporary isolation from society (including temporary detention facilities, detention centres, special reception centres and remand houses) is regulated by the RK Law ‘On Procedures and Conditions of Detention of Persons in Special

<sup>19</sup> RK Law ‘On the Law Enforcement Service’, Chapter 9.

<sup>20</sup> According to the legislation of the Republic of Kazakhstan, minors (unlike juveniles) are persons under 14.

<sup>21</sup> RK Law ‘On Law Enforcement Service’, Art. 62(2) (“It is forbidden to use special tools/means and techniques against women, persons with visible signs of disability and minors, unless they commit an attack threatening the lives or health of others, a group attack or armed resistance.”)

<sup>22</sup> Ibidem, Art.63(2) (“It is forbidden to use firearms with regard to women and minors, except in cases of their committing armed attack, armed resistance, hostage taking or hijacking of vehicles, including aircraft, or group attack.”)

<sup>23</sup> Ibidem, Art.63(3) (“In any case of the use of weapons, a law enforcement officer shall take the necessary measures to ensure the safety of other citizens, as well as emergency medical assistance to victims, and report the use of weapons to his/ her immediate supervisor.”)

<sup>24</sup> These Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990. See, in particular, paragraph 5 («Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.»)

<sup>25</sup> ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officers’, Paragraph 4 (“Law enforcement officers, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force or firearms. They may use force or firearms only if other means remain ineffective or without any promise of achieving the intended result.”)

Institutions of Temporary Isolation from Society’. This allows the use of physical force, special means, gas or firearms: “only in cases stipulated by legislation”.<sup>26</sup> However, like the RK Law ‘On the Law Enforcement Service’, it contains no explicit requirement for proportionality.

‘Basic Principles on the Use of Force’ forbids force to be used against those kept in custody or detention: “except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened”.<sup>27</sup> Similarly, firearms should not be used: “except in self-defense or in the defense of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person who is in custody or detention and is presenting the danger referred to in principle 9”.<sup>28</sup> In this regard, it is recommended that amendments be made to the RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, to limit the use of force in special institutions, in accordance with ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officers’.

The RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’ prohibits the use of firearms against minors: “except in cases of their committing armed attack, armed resistance, hostage taking, hijacking of vehicles, including an aircraft, or group attack”.<sup>29</sup> Recommendations relating to the RK Law ‘On the Law Enforcement Service’ - such as the need for proportional use of force and general restrictions on the use of force against minors - also apply to the RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions’. It is also recommended that consistency be generated across both laws by defining such terms as ‘use of force’, ‘special means’ and ‘weapons’.

The use of force in temporary detention facilities is also regulated at the level of subordinate legislation, by an Order issued by the Minister for Internal Affairs of Kazakhstan ‘On Approval of Instructions on Organization of the Line of Duty, Ensuring the Protection of Suspects and Accused Persons Kept in Temporary Detention Facilities’. It should

<sup>26</sup> RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, Art. 42.

<sup>27</sup> ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officers’, Paragraph 15 (“Law enforcement officers, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”)

<sup>28</sup> Ibidem, Paragraph 16 (“Law enforcement officers, in their relations with persons in custody or detention, shall not use firearms, except in self-defense or in the defense of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.”)

<sup>29</sup> RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, Art.45(2) (“It is prohibited to use weapons against women and minors, except in cases of their committing armed attack, armed resistance, hostage taking, hijacking of vehicles, including aircraft, or group attack.”)



be noted that the wording of the Order positively differs from the wording of the respective regulations of the legislation in that the Order, providing for a requirement of proportionality of force to be applied.<sup>30</sup> The Order of the Minister for Internal Affairs prohibits: “battle-like fighting techniques against [...] minors [...], unless they commit an attack threatening the lives or health of others, group attack or armed resistance”.<sup>31</sup> Despite these positive differences, it should be noted that it is desirable to stipulate provisions regarding the use of force, special means and weapons at legislative level, rather than at subordinate legislation level. In this connection, it is recommended to exclude the main provisions relating to the use of force, such as the requirement of proportionality, from the text of the Order, with the introduction of references to the relevant legislative provisions in the text.

Reporting on incidents of the use of force applies only to incidents involving the use of firearms by law enforcement officers; such cases must be reported to the immediate supervisor.<sup>32</sup> In addition, relevant staff members have an obligation to immediately inform the prosecutor of all incidents of the use of both weapons and special means, which cause death or other serious consequences.<sup>33</sup> However, the legislation of Kazakhstan does not require reporting of incidents whereby force is used against minors. It is highly recommended that the law of the Republic of Kazakhstan provide a single mechanism of reporting on incidents of the use of force, special means or weapons: this should include notification of the relevant official, as well as the parents or guardians of the minor involved - especially where bodily injury is sustained.<sup>34</sup>

Apart from the general prohibition of the use of weapons, combat fighting techniques or special means against minors, the legislation of Kazakhstan lacks regulations governing specific use of handcuffs and special means on minors; minors are subject to the same rules as adults in this sphere. It is recommended that the use of handcuffs and other means of restraint as a measure of punishment for minors be prohibited (preferably in law). It is also recommended that protocols be adopted at the level of subordinate legislation regarding the use of

<sup>30</sup> Order issued by the RK Minister for Internal Affairs ‘On Approval of Instructions on Organization of the Line of Duty, Ensuring the Protection of Suspects and Accused Persons Kept in Temporary Detention Facilities’, Paragraph 124 (“In the application of physical force by law enforcement officers, they should show restraint. Their actions should be strictly in proportion to their task, as well as to the impending danger, and minimize the possibility of damage to the health of the opposing person.”)

<sup>31</sup> Ibidem, Paragraph 129.

<sup>32</sup> RK Law ‘On the Law Enforcement Service’, Art. 63(3) (“In all cases of use of weapons by law enforcement officers, they are required [...] to report to their immediate supervisor the use of weapons.”)

<sup>33</sup> RK Law ‘On Law Enforcement Service’, Art. 63(4) (“Every case of the use of weapons or special means, by which death of people or any other grave consequences are caused, should be immediately reported to the prosecutor.”); The RK Law ‘On Procedures and Conditions of Detention of People in Special Institutions of Temporary Isolation from Society’, Art.45 (3) (“Every case of the use of weapons or special means, by which death of people or any other grave consequences are caused, should be immediately reported to the prosecutor.”)

<sup>34</sup> ‘Basic Principles on the Use of Force and Firearms by Law Enforcement Officers’, Paragraph 5 (“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...] d) ensure that relatives or close friends of the injured or affected person are notified as soon as possible.”)

<sup>35</sup> ABA Criminal Justice Standards on Treatment of Prisoners, Standard 23-5.9, ‘Use of Restraint Mechanisms and Techniques’ (“(a) Correctional authorities should not use restraint mechanisms such as handcuffs, leg irons, straitjackets, restraint chairs or spit-masks as a form of punishment or retaliation. Subject to the remainder of this Standard, restraints should not be used except to control a prisoner who presents an immediate risk of self-injury or injury to others, to prevent serious property damage, for health care purposes, or when necessary as a security precaution during transfer or transport. (b) When restraints are necessary, correctional authorities should use the least restrictive forms of restraints appropriate and should use these only as long as the need exists, not for a pre-determined period of time. Policies relating to restraints should take account of the special needs of prisoners who have physical or mental disabilities, and of prisoners

coercive means, including handcuffs, by law enforcement authorities and the criminal executive system, applying a graded scale from the least to the most restrictive. These protocols should limit the use of coercive means against minors. To view international good practice, refer to the norm-making bodies of the ABA Criminal Justice Standards on Treatment of Prisoners.<sup>35</sup>

Regarding juvenile suspects and accused held in punishment cells or solitary confinement, incarceration and solitary confinement may be applied to minors to penalize: «failure to fulfill set obligations» (Art. 37 of the RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’). Minors may be held in this way for up to seven days (adults up to 15 days).<sup>36</sup> Despite Art. 39 containing an intentionally exhaustive list of violations for which the suspect or the accused may be placed in a punishment cell or solitary confinement<sup>37</sup>, the phrase “for failure to fulfill set obligations” in Art. 37 creates a risk of ambiguous interpretation, perhaps seeing the list as non-exhaustive. Such vagaries are ill-advised. Moreover, no additional security procedures are mentioned.

Juvenile convicts may be placed in disciplinary facilities for up to seven days, while being allowed out for classes.<sup>38</sup> However, placing a juvenile in a punishment cell, solitary confinement or disciplinary isolation ward is in sharp contrast with provisions of international instruments: namely the United Nations’ ‘Rules for the Protection of Juveniles Deprived of their Liberty’<sup>39</sup>. It is strongly recommended that amendments be made to the Criminal Executive Code of the Republic of Kazakhstan and the RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions’, prohibiting minors being placed in punishment cells, solitary confinement or disciplinary isolation wards.

The RK CEC provides an opportunity for convicted persons: «to submit oral and written suggestions, allegations and complaints to the administration of the institution or body carrying out the sentence, the higher authorities, institutions and agencies executing punishment, to the courts, the prosecutor’s office and other state bodies

who are under the age of eighteen or are geriatric, as well as the limitations specified in Standard 23-6.9 for pregnant prisoners or those who have recently given birth. Correctional authorities should take care to prevent injury to restrained prisoners, and should not restrain a prisoner in any manner that causes unnecessary physical pain or extreme discomfort, or that restricts the prisoner’s blood circulation or obstructs the prisoner’s breathing or airways. Correctional authorities should not hog-tie prisoners or restrain them in a fetal or prone position.”)

<sup>36</sup> RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, Art. 37 (“For failure to fulfill set obligations, the following penalties may apply to suspects and accused persons:

- 1) punitive reprimand;
- 2) placement in a punishment cell or solitary confinement for up to 15 days, and juvenile suspects and accused persons - for up to seven days.”)

<sup>37</sup> Ibidem, Art. 39 (“Suspects and accused persons may be placed in a solitary cell or a punishment cell for the following:

- 1) oppression or humiliation of other suspects or accused persons;
- 2) disobeying legal demands from detention officers or other persons, or for insulting them;
- 3) repeated violation of the rules of isolation;
- 4) storage, production or consumption of alcoholic beverages;
- 5) storage, production or use of other objects, substances or prohibited foods;
- 6) gambling; and / or
- 7) disorderly conduct.”)

<sup>38</sup> RK Criminal Executive Code, Art. 132 (“For violation of the established order of punishment for convicted persons, the following sanctions may be used alongside those specified in Article 111 of this Code: forfeiture of the right to watch films for one month and placement in disciplinary facilities for up to seven days with removal for classes.”)

<sup>39</sup> United Nations’ ‘Rules for the Protection of Juveniles Deprived of their Liberty’, adopted by General Assembly Resolution 45/113 on 14 December 1990, Rule 67 (“All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.”)

and public associations, as well as to international organizations for the protection of human rights and freedoms”.<sup>40</sup> The law prohibits censorship or expurgation of prisoners’ complaints.<sup>41</sup>

Allegations of torture and ill-treatment under the legislation of the Republic of Kazakhstan are subject to prosecutor or judicial review.<sup>42</sup> However, the jurisdiction of such claims is not clearly defined, creating uncertainty regarding when an application should be considered by the court and when by the prosecution office. Moreover, the prosecution office, as the body supporting accusation, cannot be considered absolutely impartial in obtaining evidence; for these reasons, its objectivity in preventing torture is doubtful. It is recommended that the judicial system’s power to review such complaints of ill-treatment, and to ensure judicial control over detention in custody and compliance with procedural guarantees (for example, access to a defense lawyer) be clearly outlined and, where necessary, strengthened. It is strongly recommended that legislation on the establishment of the National Preventive Mechanism in the Republic of Kazakhstan (as an additional independent monitoring body) be adopted speedily.

The instruction of the Prosecutor General of Kazakhstan requires that prosecutors verify allegations of torture during interrogation and investigation, and act to prevent such torture, by reviewing reports of torture or other illegal methods of ill-treatment of persons involved in criminal proceedings and kept in specialized institutions.<sup>43</sup> The prosecution office is also obliged to meet weekly with all those taken out for investigation and examination activities.<sup>44</sup>

The status of minors placed in special educational institutions (educational organizations with special detention regime) is regulated by an Order of the RK Minister for Education and Science ‘On Approval of the Regulation on Educational Institutions with Special Detention Regime’. According to the Order, minors placed in an institution of this type may only receive the following measures: warning, reprimand, discussion at a general meeting and extraordinary duty.<sup>45</sup> The Order explicitly prohibits the use of other penalties. However, the Order

<sup>40</sup> Ibidem, Art. 10(2) (“Convicted persons have the right to make oral and written proposals, applications and complaints to the administration of the institution or body carrying out the sentence, the higher authorities, institutions and agencies executing punishment, to the courts, the prosecutor’s office, other state bodies and public associations, as well as to international organizations for the protection of human rights and freedoms.”)

<sup>41</sup> Ibidem, Art. 13(3) (“Convicts’ proposals, applications and complaints with regard to being held in a disciplinary cell, imprisonment or capital punishment, addressed to the authorities responsible for control and supervision over the institutions and bodies carrying out punishment, shall not be censored and shall be forwarded to the proper organization no later than within one day (except weekends and holidays)”); The RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, Art. 20(2) (“Proposals, applications and complaints addressed to the prosecutor and the court shall not be subject to censorship, but immediately sealed and sent to the addressee.”)

<sup>42</sup> RK Criminal Correctional Code, Art.18(2) (“In cases stipulated by the legislation of the Republic of Kazakhstan, the court shall review complaints from convicts and other persons against actions of the administration of institutions and agencies carrying out punishments.”); The RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, Art.38 (5) (“Suspects and accused persons have the right to make an appeal against the penalty to a higher officer, prosecutor or court.”)

<sup>43</sup> The instruction of the RK Prosecutor General on the audit of reports/ allegations of torture and other illegal methods of ill-treatment of persons involved in criminal proceedings and kept in special institutions, and prevention thereof, Paragraph 3 (“Prosecution authorities control consideration of information on the use of torture and other illegal methods of conducting interrogation and investigation related to abuse.”)

<sup>44</sup> Ibidem, Paragraph 27 (“A weekly confidential meeting is to be conducted for all suspects and accused persons kept in custody, accused and convicted, and the newly admitted to institutions of the Penal Enforcement System (hereinafter referred to as the PES), who are taken out at the direction of the investigator, preliminary investigation body, prosecutor or court, for investigative and operational actions, forensic and other examinations and events.”)

provides no method for inmates to submit complaints of ill-treatment so it is recommended that the National Preventive Mechanism cover all closed institutions - including special schools.

Where acute psychiatric symptoms are observed, regulation may vary depending on the type of institution. The Order of the RK Acting Minister for Justice 'On Approval of Instructions on the Organization of Protection and Supervision over Persons held in Detention Centres'<sup>46</sup> contains prescriptions in cases where the mental condition of a person held in custody causes well-founded fear in terms of self-harm, suicide or attacking others.<sup>47</sup> For instance, the Order on Approval of Instructions prescribes placement of those showing acute psychiatric symptoms in solitary confinement under surveillance, but for no more than four hours.

For placement in the cell, only the reasoned decision of the detention facility head is required, rather than that of a doctor. For periods exceeding four hours, a medical worker's approval is required but this need not be a doctor (a medical assistant is adequate). Moreover, the Order on Approval of the Instruction does not regulate the provision of health care, paying more attention to prevention of the risk of self-harm or suicide.

Acts regulating the order of stay in other establishments that provide temporary isolation from society do not consider the issue of acute psychiatric conditions at all. While the Order of the RK Minister for Education and Science 'On Approval of the Regulation on Educational Institutions with Special Detention Regime' explains in detail how to use medical records and requires the inclusion of a medical note by a neuro-psychiatrist, this does not specify particular actions for dealing with those displaying acute psychiatric symptoms.

It is recommended that subordinate legislation protocols be adopted, detailing clearly how to treat anyone in custody showing acute psychiatric symptoms, with the obligatory participation of a doctor at all stages of decision making. It is also highly recommended that the social and psychological support services in the criminal executive system of the Republic of Kazakhstan be developed and strengthened.

<sup>45</sup> Order of the RK Minister for Education and Science 'On Approval of the Regulation on Educational Institutions with Special Detention Regime', Paragraph 46 ("For violation of the regime and rules of conduct with regard to minors, the following sanctions may be applied:

- 1) warning;
- 2) oral reprimand or reprimand issued as an order of the director of the educational organization with a special regime of detention before the formation of inmates;
- 3) discussion at a general meeting of minors, group or class, or the teachers' council of the educational organization with a special regime of detention; and
- 4) extraordinary duty of cleaning the rooms or grounds of the education organization with a special regime of detention (except for public spaces) in their free time and during non-study time before going to bed (no more than one hour). Application of penalties not covered by these Regulations is prohibited.")

<sup>46</sup> This instruction was approved by the Order of the Minister for Justice before transfer of the Penal Enforcement System/ correctional system (PES) back to the Ministry of Internal Affairs. In connection with the transfer of the PES one should expect adoption of a new MIA instruction in the near future.

<sup>47</sup> The Order of the RK Acting Minister for Justice 'On Approval of Instructions on the Organization of Protection and Supervision over Persons held in Detention Centres', Paragraph 178 ("In order to calm the tumult of a person in a state of delirium tremens or reactive psychosis, trying to injure himself/herself or to commit suicide, or to attack other suspects or accused persons, the staff of the detention facility or any other person, such a person shall be placed in solitary confinement on the reasoned decision of the head of the detention facility. Before placing suspects or accused persons in solitary confinement, the following objects should be removed: any item that may be used for self-harm, suicide or attack on guards and other persons; and outerwear (coat, jacket and hat/ cap). The suspect or the accused shall be conveyed to the cell by three controllers. Persons placed in solitary confinement shall be continuously monitored. For this purpose, a guard post shall be arranged. The suspect or the accused may be kept in the cell until sedation, but no more than four hours. If, during this time, a riot has not stopped or has resumed, then the person may be held for a period specified by a doctor or medical assistant). Removal from the single cell is to occur at the instruction of the head of the detention facility, as agreed with the doctor or medical assistant. Placement orders for solitary confinement must specify: the cause, the name of the doctor or medical assistant approving its use, the duration of stay, and other relevant information.")

### III. Guarantees of protection from ill-treatment during detention and interrogation

The Criminal Procedure Code (CPC) of Kazakhstan provides for a number of procedural guarantees to protect minors from abuse while held as suspects or accused. In cases of detention, the law requires immediate notification of the minor's parents or other legal representatives and, in their absence, close relatives.<sup>48</sup> However, the law does not stipulate a specific time frame for such notice and does not specify which official shall be responsible. Nor are sanctions defined for failure to fulfill this requirement. It is strongly recommended that the RK CPC be supplemented with provisions to address this oversight.

In accordance with the CPC: «For cases of crimes committed by juveniles, their legal representatives should be involved in the manner provided by this Code.»<sup>49</sup> The presence of parents or other legal representatives is required at the preliminary investigation; where they are absent, representatives of guardianship authorities must attend.<sup>50</sup> However, the legal representative: «may be removed from participation in the case if there is reason to believe that his/her actions are detrimental to the interests of the minor or aim to prevent an objective and unbiased investigation of the case».<sup>51</sup> The problem here is that only a fairly reasoned decision by the investigator is required for the removal of the legal representative from the case. It is recommended that authority for such removal be delegated to the court's jurisdiction, creating a guarantee of replacement of any removed legal representative by another or by the guardianship authority. A source of good practice for the court's role where conflict

<sup>48</sup> The RK Criminal Procedure Code, Art. 491(5) (“The parents of a minor or other legal representatives, and in their absence - close relatives, shall be immediately informed of detention, arrest or extension of the period of detention.”)

<sup>49</sup> Ibidem, Art. 79.

<sup>50</sup> Ibidem, Art. 487(1) (“In the presence of a juvenile suspect or accused person's parents or other legal representatives, their involvement in the case shall be compulsory. In their absence, participation of the tutorship and guardianship authority representative shall be compulsory.”)

<sup>51</sup> Ibidem, Art. 487(5) (“The legal representative may be removed from a case if there is reason to believe that his/ her actions are detrimental to the interests of a minor or are aimed at preventing an objective and unbiased investigation of the case. The investigator shall make a reasoned decision on this issue. Another legal representative of the minor should be allowed to participate in the case.”)

<sup>52</sup> Law of Republic of Serbia, ‘On Juvenile Criminal Offenders and Criminal Protection of Juveniles, Article 65 (“The Juvenile Judge alone decides on the manner of conducting particular actions, having regard for the provisions of this Act and the Criminal Procedure Code to a degree ensuring the rights of the accused to defense, the rights of the injured party and collecting of evidence required for deliberation. Questioning of the juvenile during preparatory proceedings must be attended by the Juvenile Public Prosecutor, juvenile defense counsel and the juvenile's parent, adoptive parent or guardian. If necessary, these persons shall attend other actions during preparatory proceedings. The Juvenile Judge may order the juvenile to retreat when particular actions are undertaken and may exclude attendance of parents, adoptive parents or guardians if such a decision is in the interest of the juvenile. Questioning of the juvenile, when appropriate, shall be conducted with the assistance of a psychologist, pedagogue or other professional. The Juvenile Judge may allow attendance of the guardianship authority representative in preparatory proceedings. If such a person is in attendance, he or she may put motions and direct questions to the person questioned.”)

<sup>53</sup> The RK Criminal Procedure Code, Art. 158(5) (“Minors under 14 shall not be forcibly detained and nor shall persons who have not reached 18 years, unless their legitimate representatives are notified.”)

<sup>54</sup> Ibidem, Art. 158(4) (“Forcible detention may not be performed at night.”)

<sup>55</sup> Ibidem, Art. 484(1) (“A juvenile suspect or accused person shall be summoned to the investigator or to the court through his/ her parents or other legal representatives or, in their absence, through the guardianship authorities.”)

of interests arises between the minor and his/ her legal representative is the Law of the Republic of Serbia 'On Juvenile Criminal Offenders and Criminal Protection of Juveniles'.<sup>52</sup>

Juvenile suspects or accused juveniles cannot be brought to the police without notifying their legal representatives, while underage (i.e. under 14 years) witnesses may not be brought to the police at all.<sup>53</sup> At the same time, no juvenile may be brought to the police at night.<sup>54</sup>

Summoning the juvenile suspect or accused juvenile to the investigator or the court must be performed through his/ her parents or other legal representatives or, in their absence, through the guardianship authorities.<sup>55</sup> However, an exception is made for juveniles in special institutions or in detention, in which case the summons should be conducted through the administration of the detention facility.<sup>56</sup> The CPC does not directly indicate whether the parents shall be informed of the fact of such a minor's forcible summons. At the same time, the CPC provides for a legal representative of a minor to be present during questioning.<sup>57</sup>

The CPC also requires participation of a defense counsel in cases of criminal offenses allegedly committed by juveniles.<sup>58</sup> At the same time: "A defense counsel is allowed from the moment of first questioning of a minor suspected or accused and, in cases of detention or arrest, until indictment - from the moment of detention or arrest."<sup>59</sup> If the minor does not have a defense counsel, the State is obliged to provide one.<sup>60</sup> Minors may not refuse defense counsel.<sup>61</sup>

In cases of legal proceedings involving a juvenile suspect or accused juvenile under the age of 16, the participation of a pedagogue or psychologist is obligatory.<sup>62</sup> This requirement also applies to proceedings involving juveniles over 16 years old, but with signs of mental retardation. For other minors over the age of 16, the decision on inviting a pedagogue or psychologist is made by the investigator at his/ her own discretion.<sup>63</sup> Information obtained during the

<sup>56</sup> Ibidem, Art. 484(2) ("A juvenile kept in a special institution or in custody - through the administration of the place of his/ her detention.")

<sup>57</sup> Ibidem, Art. 485(1) ("The interrogation of a minor suspect or accused person shall be performed in accordance with Articles 216 and 217 of this Code, in the presence of a defense counsel, a legal representative and, if necessary, a psychologist or a pedagogue. The defense counsel may ask the person being interrogated questions and, after questioning, read the protocol and make comments on the correctness and completeness of the evidence records.")

<sup>58</sup> Ibidem, Art. 71(1) ("Participation of defense in proceedings on criminal cases shall be obligatory in the following cases: [...] 2) where the suspect, the accused, defendant, convicted or acquitted person has not reached the age of majority."); Art. 486(1) ("The presence of a defense counsel in criminal cases involving minors is mandatory in accordance with Paragraph 2, Part 1, Article 71 of this Code.")

<sup>59</sup> Ibidem, Art. 486(2) ("In cases of juvenile crime, a defense counsel is allowed from the moment of the first interrogation of a minor suspected or accused and, in cases of detention or arrest, until indictment - from the moment of his/ her detention or arrest.")

<sup>60</sup> Ibidem, Art. 486(3) ("If a minor suspected or accused or their legal representatives have not concluded an agreement with a lawyer, then the investigator, the prosecutor or the court should ensure the participation of a defense counsel in the case.")

<sup>61</sup> Ibidem, Art. 73(2) ("In cases envisaged by paragraphs 2) [...] Part 1, Article 71 of this Code, the accused's refusal of defense shall not be accepted by the body that leads the criminal procedure.")

<sup>62</sup> Ibidem, Art. 488(1) ("In the course of a legal proceeding involving a juvenile under the age of sixteen years suspected or accused, or over that age, but with characteristics of retardation in mental development, a pedagogue or a psychologist shall be mandatory.")

<sup>63</sup> Ibidem, Art. 488(2) ("In cases involving minors who have reached the age of 16, a pedagogue or a psychologist is allowed to participate in the case at the discretion of the investigator or the court or at the request of the defense counsel or legal representative.")

<sup>64</sup> Ibidem, Art. 116(1) ("Evidence must be recognized as inadmissible if received through violation of the requirements of this Code, through deprivation or

questioning of a minor without the presence of a defense counsel cannot be presented as evidence in court, having been obtained with a significant breach of procedural actions.<sup>64</sup>

RK Law allows for choosing detention or custody as a preventive measure with regard to a minor: «only in exceptional cases, when a grave crime or especially grave crime is committed»<sup>65</sup> It is not necessary to justify this choice, showing that alternative measures will be ineffective. As is clear from the provisions of Art. 491, 132 and 150<sup>66</sup>, when selecting a preventive measure (and to some extent, detention), the emphasis is made not on the risk that the defendant will commit a new crime, obstruct the course of justice or flee from the court, but on the gravity of the indictment, which is in contradiction with the principle of the presumption of innocence. In this connection, it is strongly recommended to revise legislation regarding detention and custody as a preventive measure, to ensure its application only in cases where a detailed risk assessment shows that alternative measures will have no effect. Also, it is strongly recommended to remove the severity of indictments from the list of conditions under which detention and taking into custody may be applied, and to focus solely on factors such as risk to the public, the real risk of obstructing the course of justice or risk of the accused fleeing from the court.

Minors and adults may be detained for up to 72 hours.<sup>67</sup> After this time, a preventive measure in the form of detention will not be elected against the detainee, who must be released. The protocol of detention must be issued within three hours from the moment of detention, and within 12 hours the prosecutor must be informed of that detention.<sup>68</sup> Breach of these requirements is punishable under Art. 346 of the RK Criminal Code.<sup>69</sup>

restriction of the rights of participants of the procedure as guaranteed by the law or by violation of other rules of criminal procedure in the course of investigation or court trial of the case which have affected or may have affected the reliability of evidence obtained, in particular: [...] 5) with material violation of the procedure for the performance of procedural acts.”)

<sup>65</sup> Ibidem, Art. 491(3) (“Arrest as a preventive measure and detention may be applied to a minor under circumstances specified in Articles 132 and 150 of this Code, in exceptional cases, when a grave crime or especially grave crime is committed.”)

<sup>66</sup> Ibidem, Art. 132 (“2. The body which performs criminal prosecution shall have the right to detain a person suspected of committing a crime for which punishment may be in the form of deprivation of freedom when one of the following preconditions exist:

- 1) the person is caught in the commission of a crime or directly after its commission;
- 2) eye-witnesses, in particular victims, directly point at a given person as a person who has committed a crime or detain that person in accordance with the procedures provided by Article 133 of this Code;
- 3) when a person has on his / her clothes or in his / her home, or on his / her person obvious traces of a crime;
- 4) when materials obtained in accordance with the law of operative and investigative activities in respect of the person provide evidence of committing or preparing to commit a grave or especially grave crime;
- 5) When other information is available that raises suspicion that a person has committed a crime, he or she may be detained only if that person attempts to disappear or has no permanent place of residence or the identity of the suspect is not established.”); Art. 150(1) (“1. Detention as a measure of suppression shall only apply with the sanction of the court and only where a defendant is suspected of committing crimes for which the law specifies a punishment of deprivation of freedom for a period of at least five years. In exceptional cases, this measure of suppression may be applied to those accused or suspected of crimes for which the law specifies a punishment of deprivation of freedom for a period of at least five years, if:
  - 1) he / she has no permanent place of residence in the territory of the Republic of Kazakhstan;
  - 2) his / her identity is not established;
  - 3) he / she has violated a measure of suppression applied earlier;
  - 4) he / she has attempted to hide away or elude the bodies of criminal prosecution or the court;

## IV. Legal standards with regard to children deprived of liberty

Provisions relating to primary medical examination of persons arriving at a temporary isolation centre are detailed in subordinate legislation: namely, the internal regulations of institutions. People of all ages entering an investigatory isolation facility undergo examination: “on the day of their arrival, but no later than within one day”.<sup>70</sup> Convicts arriving in prison are subject to immediate examination by a medical professional to identify, inter alia, bodily injuries. In the event of finding such injuries, they should be immediately reported to the supervising prosecutor in writing.<sup>71</sup>

Pupils of special institutions within the juvenile delinquency prevention system showing signs of personal injury must immediately undergo medical examination by medical officers, who must inform the local guardianship authorities or parents, or those in loco parentis, of the results of such examinations.<sup>72</sup> However, procedures for investigating injuries caused by abuse are not provided for in this case. The Order of the Minister for Education and Science of Kazakhstan ‘On Approval of the Regulation on Educational Institutions with Particular Treatment’ does not provide for such a procedure either. Although this Order mentions the primary medical examination as grounds for a doctor’s decision to place a minor in such an institution,<sup>73</sup> a medical officer’s duty to identify signs of physical abuse are not directly stipulated.

In view of the above, it is recommended that procedures of compulsory primary medical examination for persons arriving at closed institutions of any type be clearly stipulated, alongside procedures for emergency medical examination in the event of receiving bodily injury, with the possibility of examination by an independent doctor.

5) he /she is accused or suspected of committing a crime as part of an organized group or criminal community (criminal organization);

6) he / she has previously been convicted for a grave crime or especially grave crime.”)

<sup>67</sup> Ibidem, Art. 13(2) (“Within seventy-two hours of detention, a preventive measure in the form of arrest shall be elected against the suspect in the manner prescribed by this Code, or he/ she must be released.”)

<sup>68</sup> Ibidem, Art. 134(1) (“Within a period of no longer than three hours from the moment of detention, the detective or interrogating officer shall compile a protocol in which they shall indicate the reasons and motives for detention, as well as the place and time of detention (hour and minutes), the results of any personal search, as well as the time the protocol were compiled. The protocol shall be read to the detained person and the rights of the suspect shall be explained, as provided by Article 68 of this Code: in particular the right to a defense counsel and to testify in his / her presence, which shall be noted in the protocol. The protocol of detention shall be signed by the person who has compiled it and by the detainee. The interrogating officer or the detective shall be obliged to notify the procurator in writing of the detention within twelve hours from the moment of compiling the protocol of detention.”)

<sup>69</sup> The RK Criminal Code, Art. 346 (“1. Deliberate illegal detention of a person shall be punished by restriction of freedom for a period of up to two years or by imprisonment for the same period, with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a period of up to three years. 2. Deliberate illegal placing under arrest or keeping under custody shall be punished by imprisonment for a period of up to four years. 3. Acts stipulated by the first or second part of this Article which entail grave consequences shall be punished by imprisonment for a period of 3 to 8 years.”)

<sup>70</sup> The Order of the Acting Minister for Justice of the Republic of Kazakhstan ‘On the Rules of Internal Regulations of Investigatory Isolation Facilities of the Criminal Executive System Committee under the Ministry of Justice in the Republic of Kazakhstan’, Paragraph 15 («On the day of their arrival, and no later than one day, persons put into prison shall undergo initial medical examination and sanitization. The results of the medical examination shall be entered upon the patient’s medical record.»)

<sup>71</sup> Annex 4 to the Order of the RK Minister for Internal Affairs, ‘Internal Regulations of Correctional Facilities’, Paragraph 7 («A medical worker shall perform an external examination of each convict, to identify their injuries and signs of skin disease or infectious disease. The supervising prosecutor shall be immediately informed of the detection of injuries in writing.»)



Corporal punishment and psychological violence against children in the Republic of Kazakhstan is universally prohibited, including at educational institutions<sup>74</sup>, institutions of the crime prevention system<sup>75</sup>, on investigatory wards and at temporary detention facilities<sup>76</sup>, as well as at institutions of the criminal punishment execution system<sup>77</sup>.

As already mentioned, placement in a punishment cell or solitary confinement may apply to juveniles suspected or accused, for up to seven days, in punishment: “for failure to fulfill set obligations”.<sup>78</sup> Specific reasons for placement in a punishment cell or solitary confinement include the oppression or humiliation of other suspects or defendants, disobeying legal demands from detention staff or other persons, or insulting such staff and persons, frequent violations of isolation rules, and the storage, production or consumption of alcoholic beverages or other prohibited objects, substances or foods, as well as gambling and disorderly conduct.<sup>79</sup> Juvenile offenders may be placed in disciplinary facilities for up to seven days, with removal for classes.<sup>80</sup> This approach is inadmissible in light of international standards and should be revised (see Recommendation 8).

According to RK CPC, any participant may complain about the actions of the investigator, interrogating officer or prosecutor.<sup>81</sup> The complaint may be filed at any time during the entire process of interrogation, preliminary investigation or trial.<sup>82</sup> Complaints about actions of investigators, interrogating officers or prosecutors are submitted to a prosecutor, who must review them within seven days.<sup>83</sup> The procedure of direct appeal to the court is not provided for, so it is recommended that the RK CPC be amended, stipulating the procedure of direct appeal to the court regarding actions made by investigators, interrogating officers or prosecutors.

Pleasingly, juveniles detained in institutions of the crime prevention system have priority access to free legal aid<sup>84</sup> - as guaranteed by the state.

<sup>72</sup> The RK Law ‘On Preventing Juvenile Delinquency, Child Neglect and Abandonment’, Art. 22-6(4) (“On observing a minor’s injury, immediate examination shall be conducted by medical professionals of specialized agencies or organizations. The results of the medical examination shall be duly recorded and reported to the victim, to the local guardianship authority and to his/ her parents or those substituting them. At the decision of the chief of the specialized agencies or organizations or the authority, the examination shall be carried out by the staff of medical institutions.”)

<sup>73</sup> The Order of the Minister for Education and Science of Kazakhstan ‘On Approval of the Regulation on Educational Institutions with Special Detention Regime’, Appendix 1, Paragraph 11 («A doctor’s decision to place a minor in an educational organization with a special regime of detention shall be made on the basis of medical examination and study of the documents listed in paragraphs 9, 10 and 11.»)

<sup>74</sup> The RK Law ‘On Education’, Art. 28(4) (“The educational process is carried out on the basis of mutual respect for the human dignity of pupils, students and teachers. The use of physical, moral or mental violence against students or pupils is prohibited.”)

<sup>75</sup> RK Law ‘On Prevention of Juvenile Delinquency, Child Neglect and Abandonment’, Art. 23 (“Bodies and agencies of the system of preventing crime or neglect of minors, within their jurisdiction, must ensure that the rights and legitimate interests of minors are respected, protecting them against all forms of discrimination, physical or mental violence, injury, abuse, sexual and other exploitation.”)

<sup>76</sup> The RK Law ‘On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society’, Art. 4 (“Placement in specialized institutions is carried out in accordance with the rule of law, presumption of innocence, equality of citizens before the law, humanity and respect for the honour and dignity of a person, as well as international law, and should not be accompanied by actions intended to cause physical or mental suffering to persons suspected or accused of crimes who are kept in special institutions.”)

<sup>77</sup> The RK Criminal Correctional Code, Art. 10(9) (“Persons imprisoned are entitled to courteous treatment by staff. They should not be subjected to cruel or degrading treatment. Coercive measures may not be applied to convicted persons except as provided by law.”)

<sup>78</sup> See Footnote 36.

<sup>79</sup> See Footnote 37.

In the Republic of Kazakhstan there is a system of monitoring conditions in closed institutions that are part of the internal affairs system (including temporary detention facilities, investigatory wards and correctional facilities) - by civil society organizations. Theoretically, institutions of the education and health system can be visited, yet are not included in the scope of organized, systematic monitoring. Monitoring is carried out by public observation commissions (POC) operating at regional level, which are entitled to free access to closed institutions during the working day.<sup>85</sup> POC members may listen to complaints and make applications to relevant authorities but they are forbidden from meeting with inmates of closed institutions out of earshot of staff.<sup>86</sup>

Regarding the independent monitoring of closed institutions, a package of modifications and amendments to existing legislation are currently being developed in Kazakhstan, on the establishment of a National Preventive Mechanism.<sup>87</sup> This draft bill aims to create legal grounds for funding visits to closed institutions from the state budget and for holding officials liable for obstructing the work of the National Preventive Mechanism. As already noted, it is urgently recommended that this law be adopted as soon as possible.

<sup>80</sup> See Footnote 38.

<sup>81</sup> The RK Criminal Procedure Code, Art. 103(1) (“Decisions and acts of the interrogating officer, the body of interrogation, detective, procurator, court and judge may be challenged in accordance with procedure defined by this Code by the participants of the procedure and also by citizens or organizations when procedural acts infringe their interests.”)

<sup>82</sup> Ibidem, Art. 105 (“Complaints concerning acts or decisions by the interrogation officer, the body of interrogation, detective, procurator, judge or court may be filed within the term of the entire procedure of interrogation, preliminary interrogation or court trial. Complaints concerning decisions to refuse to institute a criminal case or termination of a criminal case or concerning sentences passed by first or appellate instance courts must be filed within the period established by this Code.”)

<sup>83</sup> Ibidem, Art. 108 (“Complaints concerning acts or decisions by the interrogating officer, the body of interrogation or detective are to be filed with the procurator supervising compliance with the law during preliminary investigation and interrogation. Complaints concerning the acts or decisions of the procurator are to be submitted to the higher prosecutor. Any official receiving a complaint concerning his / her own acts or decisions must immediately direct the complaint (with explanation) to the relevant prosecutor. If an official believes that a complaint is substantiated then he may terminate the act being challenged or abolish the challenged decision, communicating with the prosecutor.”)

2. The prosecutor must review complaints within three days of receipt. Complaints about violations of the law during arrest, search, seizure of person or property, charges, suspension, use of torture, violence or threats or violations of the right to protection are to be reviewed within five days of receipt. In exceptional cases, when review of a complaint requires additional materials or other measures, a period of up to 15 days is permitted, notifying the complainant accordingly.

3. After considering a complaint, a decision may be adopted to the full or partial satisfaction of the complainant, with abolition or amendment of a challenged decision; a complaint may be denied if an earlier decision's amendment causes the status of the complainant to be compromised or that of the person in whose interest it was filed.

4. A person who files a complaint must be notified of the decision adopted in accordance with the complaint and concerning further procedure for the challenge. Refusal to satisfy the complaint must be explained.”)

## V. Criminalization of torture and ill-treatment

As already noted, the Criminal Code of the Republic of Kazakhstan provides for criminal liability for torture.<sup>88</sup> This crime is punishable: “by a fine of 200 to 500 monthly calculation indices (MCIs) or deprivation of the right to hold certain positions for up to three years, or restraint of liberty for up to five years, or imprisonment for the same term”.<sup>89</sup> The use of torture against a minor is considered to be an aggravating circumstance<sup>90</sup> and is punishable: “by imprisonment for up to seven years with deprivation of the right to occupy certain positions or engage in certain activities for up to three years”.<sup>91</sup>

Besides torture, criminal legislation provides for liability for torment<sup>92</sup>: “punishable by a fine of 50 to 100 MCIs or restriction of freedom for up to two years, or correctional labour for up to two years, or imprisonment for the same term”.<sup>93</sup> The main difference between torture and torment lies in the personality of the author of the crime (an official in case of torture) and the motives for committing the crime. As already noted, the legal prohibition of torture is relevant in the context of fighting ill-treatment in the juvenile justice system, as, for example, actions of staff at a special school may not fully meet the definition of torture under the laws of Kazakhstan. Tormenting of a minor is also an aggravating circumstance and is punishable by: “restriction of liberty for up to five years, or imprisonment for 3 to 7 years”.<sup>94</sup>

The RK Criminal Code also criminalizes: “any failure to perform or improper performance of responsibilities for the upbringing of a minor [...] by a pedagogue or other employee of the school, educational, medical or other institution obliged to supervise the minor, if the act is connected with abuse of the minor”.<sup>95</sup> This crime is punishable: «by

<sup>84</sup> The RK Law ‘On State-Guaranteed Legal Aid’, Art. 8 (2) («State-guaranteed legal aid provided for in subparagraphs 2) and 3) of paragraph 1, Article 6 of this Law, shall be granted to the following individuals [...] 7) juveniles in institutions of the system of prevention of child neglect and juvenile delinquency.»)

<sup>85</sup> The Order of the RK Minister for Internal Affairs ‘On the Rules of Visits to Special Institutions in the Internal Affairs System by Public Observation Commissions’, Part 2, Paragraph 9 («Visiting special facilities shall be carried out on working days only from 9.00 AM to 05.00 PM, except during lunch (from 01.00 PM to 02.30 PM). «)

<sup>86</sup> Ibidem, Paragraph 6 (“POC members can talk with people placed in a special institution, with the consent of the person, receiving petitions or complaints, and may submit applications to the administration of a special institution or to the prosecuting authorities on issues of protection of rights and legitimate interests, under the condition that employees of the special institution are able to see them and hear at all times.”)

<sup>87</sup> The RK Draft Law ‘On Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on the Establishment of a National Preventive Mechanism to Prevent Torture and other Cruel, Inhuman or Degrading Treatment or Punishment’.

<sup>88</sup> See Footnote 5.

<sup>89</sup> The RK Criminal Code, Art. 141-1.

<sup>90</sup> See Footnote 6.

<sup>91</sup> The RK Criminal Code, Art. 141-1.

<sup>92</sup> See Footnote 7.

<sup>93</sup> The RK Criminal Code, Art.107.

<sup>94</sup> Ibidem.

<sup>95</sup> See Footnote 8.

a fine of 50 to 100 MCIs or engagement in community service for 100 to 200 hours, or correctional labour for up to two years, or restraint of liberty for up to two years with or without deprivation of the right to hold certain positions or engage in certain activities for up to three years”<sup>96</sup>.

Finally, in accordance with the RK Criminal Code, illegal placement in a psychiatric hospital<sup>97</sup> incurs criminally liability; this is relevant in the fight against torture, since such placement can be used for punitive purposes. Illegal placement in a psychiatric hospital is punishable with: “restriction of freedom for up to three years or imprisonment for the same term”<sup>98</sup>. It should be noted that abuse of office in this manner is an aggravating circumstance<sup>99</sup> punishable by: “imprisonment for 3 to 7 years with or without deprivation of the right to occupy certain positions or engage in certain activities for up to three years”<sup>100</sup>.

Complaints of torture and ill-treatment under the law of the Republic of Kazakhstan are subject to prosecutor or judicial review.<sup>101</sup> However, as noted above, the jurisdiction of such complaints is not clearly defined, which creates uncertainty in terms of determining who should review a complaint: the court or the prosecutor’s office. It seems unwise to grant prosecutors the authority to process complaints when they play such a primary role in supporting public prosecution; the court should be more neutral.

The RK Prosecutor General’s instruction regarding the verification of complaints on torture and other illegal methods of ill-treatment of those involved in criminal proceedings and kept in specialized institutions, and the prevention of such acts, requires that prosecutors verify any allegations of torture during interrogation and investigation.<sup>102</sup> In addition, the prosecutor’s office is obliged to conduct weekly meetings with everyone taken out for investigatory actions and examinations.<sup>103</sup>

<sup>96</sup> The RK Criminal Code, Art. 137.

<sup>97</sup> See Footnote 9.

<sup>98</sup> The RK Criminal Code, Art. 127.

<sup>99</sup> See Footnote 10.

<sup>100</sup> Ibidem.

<sup>101</sup> See Footnote 42.

<sup>102</sup> See Footnote 43.

<sup>103</sup> See Footnote 44.

## VI. Compensation for damage

Current legislation does not hold the State responsible for compensating victims of torture or ill-treatment, or their families, in the event of their death or disablement, or damage to property. The only mechanism for obtaining such compensation is civil action initiated directly against the accused.<sup>104</sup> This approach is not conducive to the effective rehabilitation of victims of torture, so it is recommended that legislation stipulate a mechanism of state compensation for those recognized by the courts as victims of torture.

Criminal prosecution for torture, as well as for torment, non-performance or improper performance of duties in raising a minor, and for illegal placement in a psychiatric hospital, is performed only by public prosecution: the prosecutor initiates criminal proceedings regardless of the wishes of the victim. The procedural competence of a minor in initiating a legal action is not important. Moreover, according to the RK CPC, the victim's incapacity gives the prosecutor the right to: "institute a proceeding in a case of private accusation and when there is no complaint from the victim, if the act involves the interests of a person who is in a helpless or dependent condition or, for other reasons, is incapable of independently exercising his or her rights".<sup>105</sup>

<sup>104</sup> The RK Criminal Procedure Code, Art.162(1) ("The following shall be considered within criminal procedure: civil lawsuits by physical persons or legal entities concerning restoration of moral or property damage caused directly by crime or a publicly dangerous act of an insane person; compensation for costs associated with burial; costs for medical treatment of the victim; costs of insurance indemnification, benefits or pensions; costs incurred in participating in interrogation, preliminary investigation or court proceedings; and costs associated with representation.")

<sup>105</sup> The RK Criminal Procedure Code, Art. 33(2) ("The prosecutor shall have the right to institute a proceeding in a case of private accusation and when there is no complaint from the victim, if the act involves the interests of a person who is in a helpless or dependent condition or, for other reasons, is incapable of independently exercising his or her rights.")

## RECOMMENDATIONS

1. It is recommended that the definition of torture be expanded to include not only an official as the author of the crime, but anyone acting in an official capacity.
2. It is recommended that the RK Law 'On Operational Investigative Activity' be amended to include a mechanism of responsibility for using violence during operational search activities.
3. It is recommended that the RK Laws 'On the Law Enforcement Service' and 'On Procedures and Conditions of Detention of Persons in Special Institutions' urgently include explicit requirements regarding the use of proportional force relative to threat. In particular, force should only be permitted where non-violent means prove ineffective. It is strongly recommended that restrictions be placed on the use of force upon those known to be young, including a mechanism of responsibility for violating these restrictions. It is also recommended that consistency and compliance of provision of one law with the other be ensured regarding use of force, special means and weapons.
4. It is recommended that the RK Law 'On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society' be amended to limit the use of force in special institutions in accordance with the 'Basic Principles on Using Force and Firearms by Law Enforcement Officers'.
5. It is desirable that norms on the use of force, special means and weapons be upheld as legislative acts rather than within subordinate legislation. In this regard, it is recommended that the main norms in the Order issued by the RK Minister for Internal Affairs 'On Approval of Instructions on Organization of the Line of Duty, Ensuring the Protection of Suspects and Accused Persons Kept in Temporary Detention Facilities' (such as the requirement for proportional use of force) be replaced by references to relevant legislative provisions.
6. It is highly recommended that the legislation of the Republic of Kazakhstan provide a single mechanism of reporting incidents of the use of force, special means and weapons, including a requirement that the relevant official concerned notify the parents or guardians of any minor against whom force is applied, especially if bodily injury is caused.
7. It is recommended that handcuffs and other means of restraint be prohibited as a measure of punishment (preferably adopted within the law). It is also recommended that protocols be adopted within subordinate legislation regarding the use of coercive means by law enforcement authorities and the criminal executive system, including the use of handcuffs, providing a graded scale from the least to the most restrictive. These protocols should aim to limit the use of coercive means against minors.
8. It is strongly recommended that amendments be made to the Criminal Executive Code of the Republic of Kazakhstan and the RK Law 'On Procedures and Conditions of Detention of Persons in Special Institutions', prohibiting the placement of juveniles in punishment cells, solitary confinement or disciplinary isolation wards.

9. It is recommended that the powers of the judicial system to review complaints of ill-treatment in closed institutions be clearly outlined and, where necessary, strengthened, to ensure judicial control over detention in custody and compliance with procedural guarantees (for example, access to a defense lawyer). It is strongly recommended that legislation to establish the National Preventive Mechanism in the Republic of Kazakhstan, as an additional independent monitoring body, be adopted promptly. It is also recommended that the National Preventive Mechanism include all closed institutions, including special schools, in the scope of its competence.
10. It is recommended that action protocols be adopted within the subordinate legislation of relevant agencies to cover situations whereby a person held in a custodial institution shows acute psychiatric symptoms; it should be obligatory for a doctor to participate at all stages of decision making. In addition, it is highly recommended that the social and psychological support services in the criminal executive system of the Republic of Kazakhstan be further developed and strengthened.
11. It is strongly recommended that the RK Criminal Procedure Code include rules establishing the time frame for notifying parents or other legal representatives of a minor about his/ her detention, the identity of the official responsible for making such notification and sanctions for failure to fulfill this requirement.
12. It is recommended that the procedure for removing a legal representative from a case be amended, delegating this decision to the court's jurisdiction and creating a guarantee of replacement of any removed legal representative by another or by the guardianship authority.
13. It is strongly recommended that legislation regarding detention and custody as a preventive measure be revised, to ensure application only in cases where a detailed risk assessment has indicated that alternative measures are likely to prove ineffective. Also, it is strongly recommended that the severity of indictments be removed from the list of conditions under which detention and taking into custody may be applied, focusing solely on factors such as risk to the public, the real risk of obstructing the course of justice, or risk that the accused will flee the court.
14. It is recommended that the procedure of compulsory primary medical examination for persons arriving at closed institutions of any type be stipulated, alongside the procedure of emergency medical examination in the event of receiving a bodily injury, with the possibility of examination by an independent doctor.
15. It is recommended that the RK CPC be amended, stipulating the procedure of direct appeal to the court against actions made by an investigator, interrogating officer or prosecutor.
16. It is recommended that the mechanism of state compensation for persons recognized by the courts as victims of torture be stipulated in law.

# ANALYSIS OF CASES OF TORTURE AND VIOLENCE AGAINST CHILDREN IN KAZAKHSTAN FROM 2010-2012

In 2011, Article 141-1, entitled ‘Torture’, was introduced into the Criminal Code of the Republic of Kazakhstan through the Law ‘On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Further Humanization of Criminal Legislation and Enhancing the Guarantees of Rule of Law in Criminal Procedure’ dated January 18, 2011.

Based on this updated legislation, cases of torture and other cruel or degrading treatment of citizens began being registered in the Legal Statistics and Special Records of Authorities.

As a result, in 2012, 602 cases of torture were registered.<sup>106</sup> The number of initiated criminal cases regarding registered claims increased from 13 in 2010 and 15 in 2011 to 27 criminal cases in 2012.

According to data from the Prosecutor General’s Office, only one complaint of child torture was registered in 2011, with nine complaints in 2012.

Most of the complaints registered in 2012 concerning torture of children involved the use of psychological or physical pressure by officers of internal affairs bodies, with the aim of obtaining confession. Processing of complaints resulted in four refusals to initiate a criminal case, due to absence of an element of the crime (according to Paragraph 2, Part 1 of Article 37 of the Code of Criminal Procedure of the Republic of Kazakhstan) while five complaints were submitted to competent investigation authorities.

*The sister of a child (L) made an appeal regarding juvenile torture, stating that the chief of the criminal police unit under the Department of Internal Affairs of the city of Saran, Karaganda Region (K) and a senior criminal officer from the Department of Internal Affairs (A) exceeded*

*their authority by using a rubber truncheon against the juvenile, with the aim of obtaining a confession regarding the stealing of a cell phone. The City Prosecutor’s Office initiated criminal proceedings against these officials under Paragraphs a and d, Part 2 of the Article 141-1, ‘Torture’, of the Criminal Code of Republic of Kazakhstan.*

*Saran city court found K and A guilty of committing a crime under the above-mentioned article; K was sentenced to 3 years and 6 months of incarceration at a correctional colony while A was sentenced to 2 years and 6 months.*

The Commissioner for Human Rights also regularly receives complaints on torture, violence and other cruel or degrading treatment or punishment. In 2010, he received 40 such complaints, rising to 80 in 2011 and 52 in 2012. The majority related to illegal actions by law enforcement officers towards suspects of crimes detained at police stations and temporary detention facilities. Complaints are received from detention centres and correctional custody facilities yet only a minor number of cases are found in favour of the applicants: just three in 2010, one in 2011 and two in 2012.

Two complaints on violence and torture against juveniles were addressed to the Commissioner on Human Rights in 2012. One was addressed to the Commissioner by a juvenile (P) regarding his illegal arrest by police officers and the use of physical and psychological violence against him during his detention at AK-159/1 (an

<sup>106</sup> ‘Report on Activities of the Commissioner for Human Rights in the Republic of Kazakhstan for 2012’, page 31 (link to the report: [http://www.ombudsman.kz/purchase/files/otchet\\_2012\\_ru.pdf](http://www.ombudsman.kz/purchase/files/otchet_2012_ru.pdf)).



investigatory isolation ward) in order to obtain confession to home burglary and car theft. Following investigation, it was found that the criminal proceedings against the police officers had been refused due to absence of the element of the crime (Article 37, part 1, paragraph 2 of Part 1 of the Code of Criminal Procedure of RK).

In addition, the Commissioner's Office initiated a review of the article 'Adult torture of a minor' (Akmolinskije Vesti newspaper, № 28, dated July 12, 2012). This detailed a 15-year-old (V) being illegally arrested by the police in the Akmola Region and being subject to physical and psychological violence, with the aim of extracting a confession regarding the murder and robbery of a 74-year-old woman. The article states that the police violated procedural norms in conducting a forensic medical examination of the minor and used intimidation and threats against him and his mother, holding him in the detention centre for four months. A criminal case was initiated against the police officers under article 141-1, part 2, wherein V. was recognized as a victim. The case was reviewed by the Prosecutor General's Office of the Republic of Kazakhstan and the Department for Economic Activity and Corruption in the Akmola Region, but was terminated due to failure to identify the person accused of the crime (article 50, part 1, paragraph 1 of the Code of Criminal Procedure of RK).

Monitoring visits of penitentiary institutions by public observation commissions (POC) also confirm staff torture and cruel treatment of prisoners. As stated in POC reports on the results of monitoring penitentiary institutions and activities to prevent torture and other cruel, inhuman or degrading treatment or punishment in Kazakhstan in 2012, during such visits, prisoners make complaints about physical violence, moral and psychological pressure from staff at these institutions.<sup>107</sup>

Since 2008, under the Commissioner for Human Rights in the Republic of Kazakhstan, a Working Group has been reviewing cases of torture and other cruel and degrading treatment and punishment. Its purpose is to assist Government agencies in developing legislative and other

measures, and to help implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to this Convention, while monitoring Kazakhstan's implementation of its obligations under these international documents. The Working Group comprises representatives of the Prosecutor General's Office, the National Security Committee, the ministries for Internal Affairs, Health, Defense, Education, Labour and Social Welfare, the Supreme Court, and of national and international human rights organizations. Members conduct regular visits to facilities within the following systems: the criminal and procedural system, departments of internal affairs, health, education, labour and social welfare, and military units, to identify and prevent torture and violence. Three facilities were visited in 2010, 29 in 2011 and 11 in 2012.

Alongside its review of complaints from citizens and monitoring of penitentiary institutions, over the last three years, the Ombudsman's Office in Kazakhstan has worked with UNICEF in Kazakhstan to systematically study violence against children. The results show that, within state-run residential institutions, 9% of children in institutions for orphans and children without parental care have been exposed to physical violence from personnel; 7.1% of children in orphanages have reported the same, as have 11.6% in specialized schools for children with deviant behaviour. Respectively, 35.1%, 26.8% and 41.1% of children at these types of institutions have reported witnessing harsh verbal abuse and psychological or physical violence against other children, by personnel. In institutions for children with disabilities, 45% of personnel have reported having witnessed psychological abuse, while 30.3% have reported witnessing physical violence against children from their colleagues.<sup>108</sup>

<sup>107</sup> The collection of POC reports prepared by Penal Reform International in Central Asia in 2012.

<sup>108</sup> Report on Violence Against Children in State-Run Residential Institutions in Kazakhstan: an Assessment' prepared by Dr. Robin Haarr, in co-operation with the Ombudsman's Office in Kazakhstan and UNICEF in Kazakhstan.

In addition, cases of violence against children in general education institutions (schools) reveal that, of 4207 children surveyed, 66.2% have been exposed to violence among children in school: 63.6% have witnessed violence, 44.7% have reported being victims and 24.2% have admitted being perpetrators. Moreover, 13% of children have reported physical abuse by teachers and 16% have noted cases of psychological violence.

Of 402 children interviewed, 23% have admitted to being victims of physical violence: 20% of this group have reported extortion among children in school, alongside 27% having reported corporal punishment by teachers, to discipline children.<sup>109</sup>

In order to assess the vulnerability of children to violence in urban areas, in 2011, a study was conducted across seven cities of Kazakhstan to ascertain children's vulnerabilities to risky behaviour, sexual exploitation and trafficking, as well as their access to child protection systems and support services for trafficking victims. The study showed that, despite measures taken by the Government, children remain vulnerable, especially in urban areas, as they are exposed to more risks. Within this study, 103 victims of trafficking were identified: 68.9% were victims of trafficking for sexual exploitation and 31.1% for labour exploitation. The majority of victims of trafficking for sexual exploitation became so as minors (15 to 17 years old).

Many of the victims who had appealed to law enforcement officers for assistance were dissatisfied with the police response and mentioned illegal activities: 22.3% of the 103 victims of trafficking reported police accepting financial bribes from traffickers/exploiters in exchange for concealing the facts; 43% were dissatisfied by their relationship with the police and/or how the police responded to their problems. Among socially vulnerable children, 74.1% had experienced contact with the police and only 16.1% of these were satisfied with how the police had responded to their problems; 37% were very dissatisfied with how the police had reacted to their problems. Of the total number of socially vulnerable children interviewed, 34% had experienced contact with

lawyers and courts and, of these, 30% were discontented with how the court had reacted to their situation.

Based on the results of these studies, recommendations were developed to propose solutions to problems at legislative and local levels, having been compiled from round table discussions involving members of the Parliament of Kazakhstan and Government agencies, as well as non-governmental and international organizations, representatives of educational institutions and the media.

The Ministry for Education and Science of the Republic of Kazakhstan has been working on methods of preventing abuse and violence against children. In particular, to prevent violence in schools, an inter-sectoral action plan to prevent juvenile delinquency (2012-2013) is being implemented, alongside a regional programme on crime prevention (2013-2015). These include the launching of family health centres and social and psychological support centres, and an information campaign on child rights. Harsher punishments for sexual offences against minors are now fixed in legislation.

To further improve legislative measures on preventing torture and violence against children, in 2012, the Ombudsman's Office and UNICEF carried out a review of the laws on torture, cruel treatment and violence against children. In analyzing national legislation on torture and violence against children in the context of juvenile justice, they studied gaps in existing laws and regulations regarding the prevention and identification of cases of torture and violence. Protection, assistance and compensation for victims were analyzed.<sup>110</sup> Among identified deficiencies of the legislation, inter alia, it is

<sup>109</sup> 'Assessment of Violence against Children in Schools in Kazakhstan', prepared by Dr. Robin Haarr, in co-operation with the Ombudsman's Office in Kazakhstan and UNICEF in Kazakhstan.

<sup>110</sup> 'Torture and Violence Against Children in the Context of Juvenile Justice', Urumova I., 2012.

necessary to highlight the lack of a clear mechanism of action and responsibility in cases of violence being used to obtain confession and the lack of legislative norms governing the use of special restrictive means against juveniles. Analysis of legislation on violence against children has included a review of regulatory acts on violence and their compliance with international standards and agreements, to which Kazakhstan holds membership.<sup>111</sup> Findings have included: a lack of training for law enforcement officers on how to work with child victims or witnesses of crime and offenses; no clear mechanism for filing complaints on abuse in educational institutions with a special regime of detention; and no legal obligation for education or health care workers to report alleged cases of violence against children.

Recommendations on improving these and other gaps and bringing legislation in line with international standards have been addressed to the relevant authorities.

In addition, new drafts of criminal, procedural and penal codes are being discussed and developed in Kazakhstan.

On June 26, 2008 Kazakhstan ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The purpose of this Protocol is to establish a mechanism of regular visits to places of incarceration and institutions executing punishment, helping prevent torture and violence.

Under this Protocol, Kazakhstan has drafted a law to establish a National Preventive Mechanism, which is currently being reviewed by the Majilis. The existing Draft Law will allow the Ombudsman's Office, Public Monitoring Commissions and public human rights associations free access, and without prior notice, to monitor penal institutions, institutions for compulsory treatment, special institutions for temporary isolation from society, special organizations and institutions for juveniles (centres for adaptation of minors, special educational organizations and educational organizations with a special regime of

confinement). The National Preventive Mechanism's work will be coordinated by the Commissioner for Human Rights in Kazakhstan.

The National Preventive Mechanism will develop recommendations on how best to improve living conditions at such institutions and how to prevent torture and other actions of a violent or coercive nature, as well as ways of improving national legislation.

However, it should be noted that the Draft Law is limited to special organizations of education for children with deviant behavior and centres for adaptation of minors. Currently, the inclusion of educational institutions for orphans and children without parental care is being considered. It also seems necessary to expand the list to cover children's institutions in the health and social protection systems.

In order to strengthen independent monitoring of children's rights, in 2011, the Ombudsman's Office and UNICEF in Kazakhstan launched the development of tools to help monitor the implementation of child rights in institutions in Kazakhstan, including at penitentiary and alternative care institutions. Following consultations with experts and non-governmental organizations, in 2013, a 'Toolbox for Monitoring Children's Institutions in Kazakhstan' was completed and tested. Primarily intended for non-governmental organizations, it summarizes international standards on the rights of children in institutions, alongside existing national mechanisms and practical guidance on monitoring.

Consultations with children on child-friendly justice and children's access to the Ombudsman's Office, as well as analysis of the consequences of torture on minors, were not possible to carry out as the main focus for activities in 2011-2012; rather, the focus was on how best to improve monitoring of institutions and prevention of violence against children.

<sup>111</sup> 'Review of Legislation of the Republic of Kazakhstan on Violence Against Children', Urumova I., 2012.



# THE CONVENTION ON THE RIGHTS OF THE CHILD

## Article 19.1

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

## Article 37 (a)

States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.