



Criminal responsibility for the use of torture some of countries CIS

Karimov Khurshid Akramovich

Independent Researcher, Tashkent State Law University, Uzbekistan

Abstract

In this article comparative analyzed responsibility for the use of torture in national, foreign and international legal standards and given a proposal for the improve of the legal basis responsibility for the use of torture.

Keywords: use of torture, inhuman treatment, cruelty, degrading punishment

Introduction

Human rights - is the supreme value. Initially among the ideas about human rights any views on personal rights. Namely, such rights as the right to life, liberty and security of person, to protection against encroachments on honor and dignity. It should be noted that "the killing of a slave is not regarded as a crime in ancient Rome, for the servant, according to the ancient Roman laws was the thing, so the deprivation of his life was considered civil law tort" ^[1]. This, in turn, is a proof that at that time no idea of equality of individual rights. Development of ideas of human rights served as enshrined in international legal norms inviolability of individual rights and freedoms. In particular, the Universal Declaration of Human Rights Article 1 states that All human beings are born free and equal in dignity and rights, in Article 3 - Everyone has the right to life, liberty and security of person, Article 5 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Naturally, when it comes to human rights, the importance of acquiring the right to personal integrity and his defense. Namely, everyone has the right to protection from various attacks. One of the types of attacks on the personal integrity of torture are, by their very nature are a danger to society. That is why in the international legal standards, and national law torture is prohibited and recognized as crimes.

In particular, adopted in 1950 by the European Convention on Human Rights, 19 December 1966 International Covenant on Civil and Political Rights, in 1975, the Declaration for the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, May 26, 1995 CIS Convention on Human Rights and Fundamental Freedoms, 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also secured the torture ban. As a result of the development of ideas about human rights in international law are reflected in the national legislation of States.

It should be noted that the Constitution of the Republic of Uzbekistan, recognizing the priority of the universally recognized norms of international law, article 26 specifies that no one shall be subjected to torture, violence or other cruel or degrading treatment. In addition, Uzbekistan has ratified a number of international legal instruments relating to this area. In particular, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

also secured the torture ban, adopted on 10 December 1984, Uzbekistan joined Aug. 31, 1995. Article 1 of this Convention, torture defined as follows: "any act by which act by which severe pain or suffering, whether physical or mental, to obtain from him or a third person information or a confession, punishing him for an act he or a third person or the commission of which they are suspected, and or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in an official capacity or at the instigation of or with the consent or acquiescence".

Note that, on the basis of the social danger of torture in article 235 of the Criminal Code against torture and other cruel, inhuman or degrading treatment or punishment defined as a crime. According to the Art. 235 of the Criminal Code of the Republic of Uzbekistan, torture and other cruel, inhuman or degrading treatment or punishment is considered as a criminal offense. According to this article "torture and other cruel, inhuman or degrading treatment or punishment, that is illegal mental or physical pressure on a suspect, accused, witness, victim or other participant of the criminal process or convicted person and their close relatives by means of threats, blows, beatings, torturing, inflicting suffering or other unlawful acts committed by the inquirer, investigator, prosecutor or another officer of the law enforcement agency in order to get from them any information or confessions of a crime, their unwarranted punishment for committed crime, or compelling them to commit any action". "In the case where the torture occurred with application of violence dangerous to life or health, or with threat of such violence; for any motive, based on ethnic, racial, religious or social discrimination; a group of persons; repeatedly; against a minor or a woman known by the perpetrator to be pregnant, which is aggravated liability arises under Part 2 of Article 235. However, if the perpetrator acts resulted in serious bodily harm or other grave consequences - by part 3 of article 235 of the Criminal Code of the Republic of Uzbekistan. Whoever is guilty of an offense under Part 3 of Article 235 of the Criminal Code, the penalty of imprisonment from five to eight years with deprivation of certain rights?

It is necessary to note that in light of the reforms in the legal system of the country carried out a massive work on strengthening the rule of law and human rights. The great

attention is paid to the changes in legal thinking and legal culture of the members of law enforcement agencies, so that each of them respected the rule of law and human rights guaranteed by international law, the Constitution of our republic and national legislation¹.

As a result of the reforms on the further improvement of legal mechanisms of ensuring human rights and freedom there have been made number changes and amendments to the various legislative acts. In particular, in connection with the adoption of the Law "On introducing changes and amendments to some legislative acts in connection with the improvement of institution of the Bar" from December 31, 2008 were made some changes and additions to the Criminal Code, Code of Criminal Procedure, Code of Administrative Responsibility and the Law "On Advocacy".

According to Art. 49 of the Code of Criminal Procedure of Uzbekistan "the defender is allowed to participate in any stage of criminal proceeding, and under the detention of a person – since the actual limitation of his freedom of movement".

Moreover, Art.18 of the Code of Criminal Execution of the Republic of Uzbekistan stipulates that when dealing with complaints, as well as checking on their own violations of human rights, freedoms and legal interests of citizens Commissioner of the Oliy Majlis for Human Rights (Ombudsman) has the right to visit institutions on the execution of punishments.

In accordance with Art. 40 Criminal Executive Code Republic of Uzbekistan, on the judgments can receive and send letters without limitation of their number. Correspondence of convicted persons shall be censored, with the exception of correspondence with the Commissioner of the Oliy Majlis for Human Rights (Ombudsman).

In accordance with Art. 8 Law of the Republic of Uzbekistan "On the internal affairs "employee of the internal affairs is forbidden to resort to torture, violence or other cruel or degrading treatment. Body Interior employee is obliged to stop the action, which the citizen is intentionally inflicted pain, whether physical or mental suffering.

In accordance with Art. 7 Law of the Republic of Uzbekistan "About operatively-search activity" no one shall be subjected to torture, violence or other cruel or humiliating or degrading treatment.

In the criminal law of foreign countries also reflected the norms regarding the responsibility for the use of torture.

In particular, in accordance with Part 1 of Article 394 of the Criminal Code of the Republic of Belarus to the coercion of a suspect, accused, victim or witness to testify or an expert to give a conclusion by means of threats, blackmail or commit other illegal acts the person conducting the inquiry, preliminary investigation or carrying out Justice applied a penalty of deprivation of the right to occupy certain positions or engage in certain activities, or restriction of freedom for up to three years, or imprisonment for the same period, with disqualification to hold certain positions or engage in certain activities or without deprivation. In accordance with Part 2 of the said article is forced to testify or imprisonment with violence or bullying shall be punished by imprisonment for a term of two to seven years with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation. The same actions connected with the use of torture, based on Part 3 of Article 394 shall be punished by

imprisonment for a term of three to ten years with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

Article 146 of the Criminal Code of the Republic of Kazakhstan called "Torture". Intentional infliction of physical and (or) mental suffering, an investigator, a person conducting an investigation, or any other official or other person with their instigation or with their consent or acquiescence, in order to obtain from the tortured or another person information or a confession, or to punish him for an act he or a person or in the commission of which he is suspected, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, in accordance with part 1 of article 146 shall be punished by a fine not exceeding five thousand monthly calculation indices, or correctional labor for the same amount, or restriction of freedom for up to five years, or imprisonment for the same period, with disqualification to hold certain positions or engage in certain activities for up to three years. The same acts committed by a group of persons or group of persons by prior conspiracy; repeatedly; the infliction of moderate bodily harm; against a woman known by the perpetrator to be pregnant, or minor, in accordance with part 2 of the article shall be punished by imprisonment for a term of three to seven years with deprivation of the right to occupy certain positions or engage in certain activities for up to three years. The above acts, entailed the infliction of grievous bodily harm or negligence death of the victim, in accordance with part 3 of article 146 of the Criminal Code of the Republic of Kazakhstan shall be punished by imprisonment for a term of five to twelve years with the deprivation of the right to occupy certain positions or engage in certain activities for up to three years^[1].

Article 166¹ of the Criminal Code of Moldova called torture, inhuman or degrading treatment. Intentional infliction of pain or physical or mental suffering amounting to inhuman or degrading treatment, public or a person who actually performs the functions of a public institution or any other person acting in an official capacity or with the consent or acquiescence of such persons, causing attraction responsible for part 1 of article 166¹ of the Criminal Code of Moldova, shall be punished with imprisonment from 2 to 6 years or a fine of 800 to 1000 conventional units with the deprivation in both cases the right to occupy certain positions or engage in certain activities for a period of 3 to 5 years. The same actions committed in the presence of aggravating circumstances, such as: in respect of a minor or a pregnant woman or with known or obvious helpless condition caused by advanced age, illness, physical or mental disabilities or any other kind of factors; against two or more persons; two or more persons; with the use of weapons, special weapons or other items, designed for the purpose; official or person of political appointees; caused by negligence the infliction of serious or moderate bodily injury or other serious or moderate bodily injury; on imprudence entailed death of a person or a suicide, be punished by imprisonment for the term from 3 to 8 years, or a fine of 800 to 1000 conventional units with the deprivation in both cases the right to occupy certain positions or engage in certain activities for a term of 5 to 10 years.

In Part 3 of Art. 166¹ the Criminal Code of Moldova is given the following definition of torture in line with that under torture means any intentional act of inflicting any person

severe pain or physical or mental suffering for the purpose of obtaining from him or a third person information or a confession, punishing him for an act, committed by him or a third person or the commission of which he is suspected, intimidating or coercing him or a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or a person who actually performs the functions of a public institution or any other person acting in an official capacity or with the consent or acquiescence of such persons, which is punishable by imprisonment for a term of 6 to 10 years, with disqualification to hold certain positions or to practice from 8 to 12 years in certain activities for a period of the same actions committed in the presence of aggravating circumstances, such as: in respect of a minor or a pregnant woman or with known or obvious helpless condition caused by advanced age, illness, physical or mental disabilities or any other kind of factors; against two or more persons; two or more persons; with the use of weapons, special weapons or other items, designed for the purpose; official or person of political appointees; caused by negligence the infliction of serious or moderate bodily injury or other serious or moderate bodily injury; on imprudence entailed death of a person or a suicide, be punished by imprisonment for a term of 8 to 15 years, with disqualification to hold certain positions or engage in certain activities for a period of 10 to 15 years.

According to article 293 of the Criminal Code, under the coercion of suspects, accused, victim or witness to give evidence during interrogation, as well as an expert to give a conclusion by means of threats, blackmail, humiliation or other unlawful acts on the part of the prosecutor, investigator or person conducting inquiry, or at the instigation of the penalty of imprisonment for up to three years. The same actions connected with the use of torture in accordance with Part 2 of Article 193 of the Criminal Code of the Azerbaijan Republic shall be punished by imprisonment for a term of five to ten years.

Article 127 of the Criminal Code of Ukraine is called "Torture". Torture, that is, intentional infliction of severe physical pain or physical or mental suffering by beatings, torture, or other acts of violence in order to force the victim or another person to commit acts that are contrary to their will, including obtaining from him or another person information or a confession or to punish him or any other person for acts committed by him or by a person or in the commission of which he or another person is suspected, as well as to intimidate or discriminate against him or other persons shall be punished by imprisonment for a term of two to five years.

The same actions committed repeatedly or on preliminary arrangement by group of persons, or on the grounds of racial, ethnic or religious intolerance, shall be punished by imprisonment for a term of five to ten years.

In accordance with Article 302 of the Criminal Code of the Russian Federation suspected abuse, accused, victim or witness to testify or an expert or specialist to give an opinion or testimony by use of threats, blackmail or other illegal actions on the part of the investigator or person conducting the inquiry, as well as other a person with the consent or acquiescence of the investigator or person conducting the inquiry, shall be punished by restriction of freedom for up to three years, or community service for up to three years, or imprisonment for the same term. The same act, coupled with

violence, bullying or torture, shall be punished by imprisonment for a term of two to eight years.

Thus, we note that as a result of the analysis it was found that in all of these states are defined in torture as a criminal offense which carries a statutory responsibility.

In conclusion, it is necessary to stress that the norms and provision of current national legislation meet the universally accepted norms and standards of international law. And the improvement of national legislation against torture and other cruel, inhuman or degrading treatment or punishment is one of the main conditions of the protection of human rights and freedoms.

References

1. Criminal law of Russia. A common part. Textbook. 2 nd ed., Corrected. and ext. (Edited by V. Revin, Doctor of Law, Professor, Honored Worker of Science of the Russian Federation). - "Yustitsinform"2010. With 47.
2. <http://online.zakon.kz>.