

INFORMATION BULLETIN

Istanbul Protocol: From theory to practice

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INFORMATION NEWSLETTER

**Istanbul Protocol:
from theory to practice**

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PREAMBLE

Dear reader, we are pleased to offer you the first publication of information bulletin edited under the project: "Strengthening the Human Rights to Enable the Citizens of the Republic of Tajikistan Realize Their Rights" with the support of the Ministry of Foreign Affairs of Finland and the United Nations Development Program.

Republic of Tajikistan made significant steps toward prevention of torture and ill-treatment, which was mentioned in the speech of the Special Rapporteur on torture.

It is worth mentioning that the Ministry of Health and Social Protection of the population of the Republic of Tajikistan contributed to improvement of the procedure of medical examination and forensic medical examination of the torture victims. These activities have been implemented in cooperation with Public organization "Human Rights Center" based on the Plan of the Government of the Republic of Tajikistan on implementation of the recommendations of the Committee against torture and Special Rapporteur on torture approved on 15 August 2015.

This bulletin has been prepared by PO "Human Rights Center" is aimed at providing information about a number of responsible people, involved in the investigation of the cases of torture and other ill-treatment and enabled to document those cases based on the recommendations of Istanbul Protocol.

You can find information on the results of the activity, including information about the trainings delivered for the physicians, judges, prosecutors and lawyers.

We hope that the issues raised in this bulletin will have a positive impact on the investigation and documentation of cases of torture by medical personnel. We believe that this bulletin is intended for all stakeholders to discuss issues and progress with regard to effective investigative mechanisms in the case of torture and other forms of ill-treatment, a good guidance and useful archive.

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Juan Méndez – UN Special Rapporteur on torture and other forms of cruel, inhuman and degrading treatment.

“... Struggle against torture, cruel, inhuman or degrading treatment and punishment is considered one of the common international rights, the holder of the status of JSA COGEN – the standard of mandatory legal rule, which is widespread in all countries of the world. This standard requires the states both to refrain from using torture and other forms of ill-treatment and to eliminate these factors and prevent them in future. The states have an obligation to guarantee prevention of torture and other ill-treatment...”

Tremendous work had been done in the Central Asia to fight against torture and punishment, but still more actions need to be taken to make less difference between politics and truth, legislative and practical activities, as well as, if necessary, the perpetrators should be held accountable.

I can say with confidence that these recommendations will be taken seriously by the government and implemented gradually.

As a Special Rapporteur, I also visited the Republic of Tajikistan. Here I would also like to express my gratitude towards the Government of the Republic of Tajikistan for the invitation and I should say that I was very encouraged by the reforms in normative legal base of the country, which prohibits the use of torture and other ill-treatment. But one thing that caused my concern was what is happening in practice, especially the pressure of detainees. At the end of this trip, I published a number of recommendations and called on the Government of the Republic of Tajikistan to comply with the provisions of the laws, to observe the Convention on the Elimination of Torture and Other Crimes. I visited the Republic of Tajikistan for the second time and I found that all my recommendations were adopted and the National Plan was developed and approved for the implementation of my recommendations. However, as I mentioned, a gap still exists between the politics and the truth which needs to be filled.

I am also concerned about the information I have obtained during my first visit regarding intimidation and mental torture of detained people.

The readiness of such countries as Tajikistan and Kyrgyzstan to proceed with negotiations and cooperate with the Special Rapporteur and other UN mechanisms is a bright example for other countries of Central Asia and the region. This cooperation inspires hope that documentation, investigation and prohibition of the torture will be undertaken properly.

Effective cooperation with representatives of public and international organizations, as well as today's conference on the Istanbul Protocol is very important for support of the Government in meeting its obligations and eliminating the gaps between international standards and practice”.

Speech at the conference "Application of the Istanbul Protocol: Introduction of Regional Experience in International Standards for Effective Investigation and Documentation of Torture" September 21-22, Bishkek, Kyrgyzstan

I. History of the "Istanbul Protocol"

Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment and punishment (hereinafter referred to as the Istanbul Protocol) has been developed by 75 analysts in the field of law enforcement, health and human rights, representatives of 40 organizations and institutions from 15 countries around the world.

The main idea of training and preparation of this manual is the result of collective labor of the court physicians, intern doctors, psychologists, lawyers and attorneys from Germany, Denmark, Israel, India, Costa Rica, the Netherlands, the United Kingdom, the United States of America and Turkey. Seriousness of the effectiveness of the investigation and documentation of torture and other cruel and inhuman treatment or human disgrace, types of treatment and punishment have been included as attachments to the General Assembly Resolution 55/89 (dated December 4, 2000) and Resolution 2000/43 of the Commission on Human Rights (dated April 20, 2000).

Istanbul Protocol is a useful manual for health professionals and lawyers to ensure joint cooperation in the field of documenting the evidence of torture. The main requirements of the Istanbul Protocol are comprehensive and accurate documentation of the investigation. Thorough investigation when evidencing the fact of torture – joint participation and coordination between physicians, psychologists, lawyers and others will enable to study the most complex, multi-factored cases and to highlight the fair facts of the matter. Partial and careful documentation of the cases of torture will enable to coordinate the data and make complete appraisal, which will ensure the proper assessment of the situation.

The experts involved in investigation of the cases of torture and ill-treatment should always adhere to the highest ethical standards in their activities, and confession should be taken prior to holding of each diagnostics and investigation. The diagnosis must conform to established standards of medical practice. For example, to carry out transparent examination, it should be held behind closed doors, under the supervision of diagnostician, without the present of the representative of the security service or other official government representative.

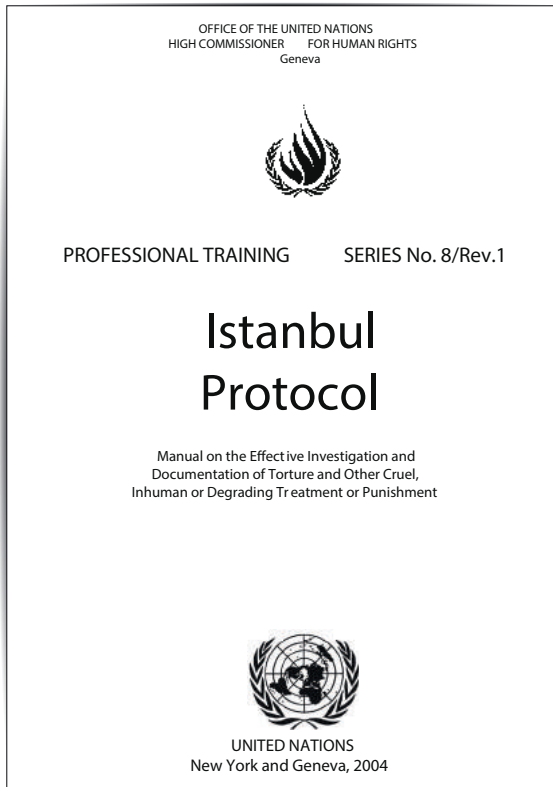
Istanbul Protocol suggests its strategy for carrying out investigations and the principles of medical assessment (psychiatric assessment, the consequences of the physical effects of torture) to the investigative, judicial and medical institutions.

To learn more about Istanbul Protocol, please, click here:

(<http://www.ohchr.org/Documents/Publications/training8Rev1ru.pdf>).

This Manual is aimed at providing the government with a practical tool for settling one of the issues in the field of protecting a human from torture – the solution of the problem of correct and effective documentation.

Documentation will enable to disclose, approve and submit the facts of torture and cruel treatment. This method allows the courts to pass fair sentences, and enables to make the person answerable for the misdeed and impose relevant punishment. The methods of documentation given herein can also be used in other situations. In particular, in the course of the investigation and monitoring in the field of human rights; evaluating the circumstances, when a person seeks political asylum; protection of the person who “confessed to crime” under pressure and torture; when evaluating the requirements to provide assistance to the victims of torture, etc.



In relation to the assessment of the real situation of persons who confirmed their being under torture or ill-treatment, when investigating the case of possible use of torture and the submission of the results of such evaluation and judicial investigation or any investigation held by any authority, Istanbul Protocol serves as an international guiding standard, since this document contains the efficient principles of investigation and documentation of torture and other abuse, or types of disgrace and punishment.

These principles are an abbreviated version of the minimal standards that should be efficiently applied by the government when documenting the facts of torture.

The guiding principles included in this Manual are not given as a mandatory instruction,

i.e. they represent the minimum basic standards mentioned above, which should be applied with account of existing opportunities.

Following the suggestion of the United Nations Special Rapporteur on torture during 56th session, UN General Assembly and the UN Commission on Human Rights in Resolution (No. 55/89 dated December 4, 2000) have resolutely stated that consider the Principles of Istanbul Protocol to be a beneficial tool in the fight against torture.

Istanbul Protocol, Manual on the effective investigation and documentation of torture and other forms of cruel, inhuman and degrading treatment // UNO-2004, p.2

II. Istanbul Protocol in Tajikistan: the history of introducing the standards of this document

2012

Public Organization “Human Rights Center” in partnership with the Commissioner for Human Rights based on the Memorandum on Cooperation with the support of the Open Society Institute - Assistance Foundation in Tajikistan has conducted monitoring in the country's health institutions to study the legislative experience and effective documentation of the cases of torture and other kinds of human disgrace and punishment. The main document, which served as a guide for effective evaluation of the circumstances was the Istanbul Protocol.

In the process of monitoring, doctors and forensic pathologists in Dushanbe city, Khatlon and Sughd regions have been interviewed; in addition, the national legislation has also undergone analysis.

Monitoring has been conducted in the following institutions of Dushanbe city, Khatlon and Sughd regions:

- * Republican Forensic Center of the Ministry of Public Health and Social Protection of the Population RT, Forensic Centers of Khatlon and Sughd regions and their district and inter-district departments;
- * First-aid centers under the hospitals and health centers;
- * City clinical hospitals of emergency;
- * Health centers and family health centers.
- * In October, International diagnosticians “Physicians – Followers of Human Rights” (co-authors of Istanbul Protocol) jointly with forensic diagnosticians of RCFME and Public organization “Human Rights Center”, based on the results of the monitoring survey, have developed an action plan on the implementation of the Istanbul Protocol standards on effective investigation and documentation of torture and ill-treatment in Tajikistan.

(To obtain complete information on the results of monitoring, please, visit the website of PO “Human Rights Center” www.hrc.tj).

In 2012, as a result of monitoring of the medical institutions and analysis of the national legislation, a number of problems relating medical certification of detained persons and similar issues have been revealed, which you can find in the updates section of this bulletin.

2013

* Upon the Decree of the Minister of Public Health and Social Protection of Population RT dated December 2, 2013, No. 719, Working Group has been established with the purpose of implementing the Action Plan on combating torture, improvement of internal situation, management and the forms of medical/psychological evaluations and medical examinations according to principles of the Istanbul Protocol. The Working Group was composed of the representatives of the Ministry of Public Health and Social Protection of the Population of RT, forensic medical experts and the lawyer of Public Organization "Human Rights Center".

In this regard, the activities of Working Group under the Ministry of Public Health and Social Protection of the Population of RT were aimed at applying the standards of the Istanbul Protocol in the internal documents, as well as increasing the capacity of medical professionals and other specialists on the Istanbul Protocol standards.

2014

* In November 1, 2014 a set of normative-legal acts of forensic medical evaluation and prescriptive procedure for organizing and conducting the forensic medical examination in RT have been approved by the Order No. 918 of the Minister of Public Health and Social Protection of the Population of RT and the following documents have been prepared on their basis:

1. Statement of forensic medical investigation (examination).
Guidelines for legalization (Sample No.170/ya);
2. Expert opinion. Guidelines for legalization (sample No. 170/ya);
3. Protocol on medical examination of detainees. Guidelines for legalization.
(Medical documents processing has lasted from 2013 to 2014)

2015

* Working Group under the Ministry of Public Health and Social Protection of the Population of RT has actively cooperated with the Legal aid group "Civil Coalition against Torture and Other Ill-treatment" on specific issues, taking into account the advices of lawyers, as well as the involvement of experts and specialists of the group for an expert opinion. Group members have joined the monitoring group to monitor the places of deprivation of liberty, to participate in the monitoring of closed institutions under Ombudsman.

* In February, experts from the Ministry of Public Health and Social Protection of the Population of RT and Public Organization "Human Rights Center" have developed the training module "The Features of conducting medical examinations, medical and forensic medical and psychological evaluations with respect to the persons who have undergone torture and other ill-treatment and effective documentation of the facts of torture according to standards of Istanbul Protocol". The Module was developed with the support of the UN High Commissioner on Human Rights and was delivered to the medical staff and family group monitoring who work in the places of deprivation of freedom under the Human Rights Commissioner for conducting trainings.

* Public Organization “Human Rights Center” in cooperation with the Republican Center of Forensic medical examination of the Ministry of Public Health and Social Protection of the Population of RT have delivered 6 three-day trainings for the clinicians and monitoring group of deprived places under the Commissioner for Human Rights. In total, 138 people from all over the country, including 130 medical professionals, 5 representatives of the Commissioner on Human Rights and 3 representatives of public organizations attended this training. Trainings were conducted with the support of the Open Society Institute - Assistance Foundation in Tajikistan, the United Nations Development Program, the Office of the High Commissioner for Human Rights and German Embassy in Dushanbe.



The results of the training sessions held in 2015 for medical personnel (of the hospitals and places of confinement) and monitoring group of the places of confinement under the Commissioner for Human Rights.

* In 2016 round-table conference was held for the preparation of training sessions for medical staff and monitoring group of the places of confinement under the Commissioner for Human Rights, in cooperation with the Working Group at the Ministry of Health and Social Protection of the Republic of Tajikistan and MHSP MJ RT. During the round-table discussion the challenges and accomplishments have been reviewed relating medical documentation of the convicts.



Round table for the preparation of training sessions for medical staff and monitoring group of the places of confinement under the Commissioner for Human Rights, in cooperation with the Working Group at the Ministry of Health and Social Protection of the Republic of Tajikistan and MHSP MJ RT in 2016

2016

* Ganiev F., expert of MHSPP RT, candidate of medical sciences, Head of Forensic medical examination center of Sughd region with the support of the Open Society Institute – Assistance Foundation Tajikistan studied a training program on forensic medical examination of the Law Faculty at the National University of Tajikistan and developed two training programs.

Ten theoretical training lessons have been developed with the introduction of the Istanbul Protocol standards, and topics on forensic medical examination have been given to the morphology department of Medical Faculty at the National University of Tajikistan. According to the new program students of the Law Faculty of the University are taught in this chair.

Theoretical classes (lectures) have been published in the form of educational materials with a total number of 160 pieces, 120 pieces in Tajik and 40 pieces in Russian.

* Public Organization “Human Rights Center” in partnership with the Training Center of the judges under the Supreme Court of RT with the support of the Open Society Institute - Assistance Foundation Tajikistan delivered four 3-day trainings to 57 judges, 11 judges-probationers and one training for lawyers on the issues of torture and other ill-treatment evidence documentation in accordance with the standards of the Istanbul Protocol.



The results of the training sessions held in 2016 for the judges on the issues of documentation of torture and other ill-treatment pursuant to the standards of Istanbul Protocol.

III. Updates

2012

The conclusion of monitoring of the medical institutions and analysis of national legislation, which was conducted with the Commissioner for Human Rights, particularly highlights the following cases:

1. Legislation of RT for the investigation, documentation, registration of torture and other ill-treatment and punishment, does not presume specific procedures and rules. In this respect, in the course of the mentioned monitoring common standards and procedures of documentation, registration of injuries from torture and carrying out forensic medical evaluation have been studied. Monitoring proved that clinicians draw up the documents of forensic medical examination of injuries resulting from torture like documentation of other injuries, and this contradicts with the requirements of the Istanbul Protocol. Based on the above-mentioned, we suggest the following recommendations:

- To develop the procedures or unified processes and rules for forensic medical evaluation and to conduct medical examination of the alleged victims of torture and other ill-treatment;

- To develop the system of training of medical personnel and professional development courses on the role of clinicians in the fight against torture, registration, documentation of torture and other ill-treatment and other aspects of the work according to the principles and rules to be applied by the management on the effective investigation and documentation of torture and other ill-treatment, in accordance with the Istanbul Protocol.

- To carry out regular trainings of the experts and forensic pathologists, based on criteria established by the Istanbul Protocol.

- To develop and carry out such courses and seminars for the medical staff as well, since according to the representatives of law enforcement agencies, medical assistants will also be involved for medical examination in the temporary isolation wards and investigative isolation wards.

2. The legislation states that the consent of the detainee and the defendant is not required for conducting of forensic medical evaluation. There is no rule that presumes obtaining of the consent for the medical examination. According to the practice, not all physicians consider it necessary to take into account obtaining the consent of the person, who was brought by the law enforcement authorities to conduct forensic medical expertise. This evidence is a violation of the standards established by the Istanbul Protocol, according to which medical experts must in all cases obtain the conscious consent of a person prior to carrying out any type of medical examination. In this regard, we suggest the following recommendations:

- To make amendments in the procedure of conducting forensic medical examination and to oblige clinicians to obtain consent of the person subject to examination for all types of examination; in addition, it is important to oblige an investigator mentioned in Article 210 to obtain conscious consent for assigning of medical examination;

- To apply mandatory medical examination of the detainee, suspected in first-aid centers, ambulances and other medical institutions, both within these institutions and in the case of inviting their experts to the Internal Affairs Department, temporary isolation wards and investigative wards, as per the requirements of the Istanbul Protocol.

3. Legislation allow the investigator to be present during the forensic medical examination. In practice, law enforcement officers are present even at the time of sending the detainee to the medical institutions for conducting forensic medical examination. This action contradicts the requirements of the Istanbul Protocol, which states: *medical examination for the purpose of the examination should be conducted behind closed doors, under the supervision of medical expert and without participation of security service officers*. Thus, we suggest the following recommendations:

- The make amendments in the internal regulations “On procedural grounds of forensic medical examination in RT” and to apply forensic medical examination without the presence of the investigator;

- To train the police officers on their presence at the time of examination of detainees in medical institutions.

4. The Law of RT “On the procedure and conditions of custody of the suspects, defendants and convicts” determines the procedure of conducting a medical examination at the time when suspects, accused and defendant are examined by medical staff, as well as internal routine of custody. In this regard, we recommend the following:

- The Law of RT “On the procedure and conditions of custody of the suspects, defendants and convicts” should legally determine and arrange the regulations on assignment (the purpose) of medical examination by medical professionals in custody, given the fact that such regulations will serve for prevention of torture, not as a standard internal document of custody.

5. It is voluntary for the witness and the victim to undergo medical evaluation and they can reject it, however the suspect and the defendant shall be forced to undergo medical evaluation. As we mentioned above, this procedure violates the requirements of Istanbul Protocol on obtaining the consent of the person to undergo any type of examination. In this respect, we suggest the following recommendation:

- In order to take into account the fact that the medical evaluation is carried out with the consent of the suspect and the accused, this amendment should be included to Article 210 of the CPC RT.

6. Although the CPC RT has shown the possibility of conducting forensic evaluation in non-governmental agencies and other expert institutions, however there is no law in RT which regulates these institutions. Thus, no independent expert institutions are available in RT. With respect to the standards on the investigation of torture, all people who apply for subjection to torture, should have the right to a medical examination, including in independent medical institutions. Regarding this point, we offer the following recommendation:

- To regulate the issues on the establishment of independent expert institutions and the possibility of examination by independent medical institutions.

7. Review of the experience in forensic medical examination showed that there is no common standard documentation in the forensic medical institutions. In addition, the form and content of the medical expert opinion do not always fully correspond to the principles established by the Istanbul Protocol. In this regard, we offer the following recommendation:

- to review internal regulations on forensic medical evaluation, and to partly regulate the process of forensic medical evaluation, including determination of possible forms of examination and review of content of expert opinion thoroughly and partly.

8. Examination of bandaging (fraction) sites proved that law enforcement offices failed to observe the procedure relating medical examination of detained persons. In this context, we recommend:

- to develop the rules about conducting medical examination of people detained by law enforcement officers by medical institutions.

(To learn more about all conclusions and recommendations, please, visit website www.hrc.tj).

The years 2013-2014

MOH and SPP RT in cooperation with public organization “Human Rights Center” supported by the Open Society Institute - Assistance Foundation in Tajikistan have analyzed the legislative standards of the Republic of Tajikistan relating forensic medical examination and other standards for conducting medical evaluation and provided specific recommendations for making relevant amendments and addendums to the acting normative acts. With regard to the above-stated, when carrying out the analysis of national legislation of RT in accordance with international standards, Istanbul Protocol was used as etalon for comparison of treatment and opportunities to conduct effective forensic examination of the victims of torture.

The analysis was aimed at identifying the urgent problems and barriers to the implementation of the Istanbul Protocol standards in the production of forensic medical and psychiatric examination, medical examination at the moment of actual arrest and in the course of criminal investigation, etc., namely:

Medical examination: Legislation of RT mentions about conducting medical examinations in several documents (laws and instructions), including in the case of bringing a detainee to the criminal investigation agency (Detention Guidelines), in the event of deterioration in health status or the presence of physical injury (the Law of RT “On the procedure and conditions of custody of the suspect, defendant and convict”).

Istanbul Protocol and other international regulations recognize medical examination (examination) relating physical injury, not as an independent procedure, but as a part of the event within the medical evaluation. In this context, the following recommendations is suggested:

- To make amendments to CPC RT (Article 186), the Law of RT “On the procedure and conditions of custody of the suspect, defendant and convict” (Articles 16 and 24 (3)), the Law of RT “On the State Forensic Examination” and to apply a unified procedure for conducting medical examinations, in accordance with paragraphs 83 and 124-126 of the Istanbul Protocol;

- To ensure conducting of medical examination by a doctor, not an investigator; i.e. to make amendment to the Article 186 of the CPC RT and the Article 24 of the Law of RT “On the procedure and conditions of custody of the suspect, defendant and convict”, as mentioned above;

- to regulate the procedure for conducting medical examinations and procedures for documenting the results of the medical examination;

- To take into account the rights of the person under examination (for access to a copy of the results of the medical examination, the right to appeal, etc.);

- to study internal manuals/regulations of **temporary custodies, investigatory isolation wards** on the part of medical documentation;

- To exclude the expression from the part 3 of Article 24 of the Law of RT “On the procedure and conditions of custody of the suspect, defendant and convict” relating the right of the head of secure institution in addressing the issues that interfere with medical examinations in other medical institutions.

Conducting of medical examination upon the request of individuals prior to commencement of prosecution:

The production procedure on criminal cases in the Republic of Tajikistan are determined by CPC RT, the basis of which is Constitution of RT. Examination is conducted based on the application of a citizen or a legal entity (attorney’s recommendation). According to Article 21 of the Law of RT “On the State Forensic Examination”, expert opinion on the examination conducted through proceeding cannot serve as a solution, since this basis is not included in the CPC RT standards. There is a risk that such expert opinion will not be taken into account by investigation and court in future.

The standards of the Istanbul Protocol contain the grounds for medical examination on the basis of the direct request of the victim or his/her representative, which are recognized by the Government of RT.

- to supplement the Article 186 of the CPC RT with the following edition: “Medical examination with the recommendation of the individual or legal entity prior to the start of criminal proceedings”.

The full mandatory evaluation on the cases related to torture and other ill-treatment:

National legislation, including the CPC RT does not consider it mandatory to carry out the procedures of assigning and conducting of medical evaluation in cases of moral harassment, which according to Article 1 of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment is regarded as one of the types of torture.

When the sanity is doubtful when giving evidence that is significant to the case in point, it is mandatory to conduct mental-psychological (psychiatric) examination of the victim. However, moral harassment, mental disorder concerned with the use of torture cannot be rehabilitated within a judicial proceeding as per CPC RT. Therefore, the following recommendation is suggested:

- In order to provide the opportunity to conduct a comprehensive forensic medical evaluation and psychological examination of alleged victim of torture, Article 209 of the CPC RT states that: "Assigning and carrying out of mandatory evaluation" should be completed by the following expression: moral harassment, mental disorder concerned with the use of torture (postsurgical stress-induced injury – PSII).

Additional re-examination: Article 220 of the CPC RT presumes conducting of additional re-examination in the event of incomprehensibility/ambiguity of expert opinion or in case of groundlessness of the expert opinion. In practice, there are a number of cases when disagreement on one party serves as a ground for re-examination. This situation cannot be justified, since in mutual competition there always comes to one party's disagreement and expert opinion will turn to be useless. Therefore, by supplementing the article assigning re-examination will be left without justification. In this regard, the following recommendation is suggested:

- to complete the Article 220 of the CPC RT as follows: "The decision on groundless and doubtful re-examination must be justified, rather than relying upon unjustified disagreement of one of the parties.

To exclude the presence of law enforcement agencies when conducting medical evaluation of the detainee: Legislation allows the investigator to be present during the forensic medical evaluation. Article 39 of the Law of RT "On the Forensic Evaluation" states: "When conducting forensic evaluation of individuals, the persons whose presence is entitled by procedural legislation of the Republic of Tajikistan can be present. Other participants of the trial shall be entitled for the presence, provided they obtain the permission of the authorities or the person who appointed state forensic evaluation and the person under evaluation or his legal representative".

However, as per the paragraphs 83 and 124-126 of the Istanbul Protocol examination carried out for the purpose of diagnosis should be conducted behind closed doors, under the supervision of medical experts, and without the participation of law enforcement agencies. During the medical examination access to a lawyer should be available. Therefore, the following recommendations are made:

- to make amendment in the Criminal Procedure Code of RT and the practice of conducting forensic medical evaluation, so that the presence of investigator and other law enforcement personnel is limited (prohibited) when conducting forensic medical evaluation of torture victim. It would be appropriate to make changes to the standards of forensic medical examination when reviewing the application of torture.

The dates of conducting medical examination and forensic medical evaluation: To detect and record physical injury, the timely appointment of a medical examination and forensic medical evaluation is of great significance. CPC RT and the Law of RT “On the State Forensic Evaluation” deems necessary to carry out medical evaluation in order to determine the nature and gravity of the physical injury. However, the examination period is not indicated in national legislation.

Paragraph 104 of the Istanbul Protocol determines that medical examination, regardless of the term torture should be carried out mandatorily, however if it is confirmed that torture was in place during the last six weeks, then medical examination is mandatory, until the visible signs of torture disappear. In this regard, we consider it reasonable to suggest the following recommendation:

- In the context of ensuring timely forensic medical evaluation of alleged victim of torture to amend the second part of Article 209 of the CPC RT in the following edition: “In order to detect the signs of torture, regardless of the terms of the use of torture, the medical examination shall be conducted, and in case the fact of torture is confirmed within the last six weeks, such examination should be conducted mandatorily, till the visible signs of torture disappear; To make addendums in the Article 19 of the Law of RT “On the State Forensic Evaluation” in the following edition: “In the event of alleged evidence of torture and ill-treatment, including sexual abuse, forensic pathologist shall conduct medical evaluation with the aim of physical injury registration, within 24 hours after receiving the request”.

Obtaining consent of the person under examination for undergoing forensic medical evaluation and examination: Legislation of RT states that when conducting forensic medical evaluation, the consent of the detainee or defendant is not necessary. In the Republic of Tajikistan in accordance with paragraph 2 of Article 210 of the CPC the examination of the victim and the witnesses is conducted only with the way they had given a written voluntary consent. But the consent of the detainee, suspect, defendant, etc. is not taken.

Paragraph 64 of the Istanbul Protocol states that the medical examination is conducted to gather evidence of the facts in the course of any investigation, and therefore getting the consent of the person under examination is needed, who should know how the medical data acquired is used, kept and made accessible to them. Therefore, we suggest the following recommendation:

- To amend Article 32 of the Law of RT “On the State Forensic Evaluation” in respect of obtaining consent of the person under examination for holding examination in accordance with paragraphs 64, 83 and 165 of Istanbul Protocol, and for the purpose of holding forensic examination to entitle the expert to get the consent of the person under examination.

Access of the convict to the results of medical evaluation and examination, to the persons under examination, their representatives and attorneys: International normative acts underline the privacy of convict’s forensic medical examination, considers it binding to provide the person under examination, his/her agent and attorney access to this document.

In accordance with paragraph 84 of the Istanbul Protocol, forensic medical examination should keep the results of the examination confidential and the data is accessible only to the person under examination or his/her designated representative. The Law of RT “On the State Forensic Evaluation” prohibits legal experts to provide the results of state forensic examination to the third person, except for the person or agency which ordered this examination (item 2 Article 18). In view of the above, we suggest the following recommendation:

- Part 2 of Article 18 of the Law RT “On the State Forensic Evaluation” and paragraph 6 of Part 1, Article 15 should be matched with paragraphs 84 and 126 of the Istanbul Protocol, at the same time it is important to enable the management of expert institutions to submit the copy of expert opinion to the person under examination, his/her agent or lawyer and to the public prosecutor’s office.

The content of the expert's conclusion: The content of the expert’s opinion is determined by article 217 of the Criminal Procedure Code RT. The items which need to be include in the expert opinion are clearly stated in legislation. But in practice, there is a necessity to make addendums in expert opinion in due course, e.g., indicating not only the date of expert opinion, but also the time, form of statement or opinion. Such cases are available in other sectors as well. Taking this into account, we suggest the following recommendation:

- In this article, the following phrase: “... at least must” should be included, since the nature and the form of the experts’ conclusion are approved by the branch ministries and may contain a plenty of information, instead of the content of this article.

Liability for clinicians deliberately giving false information: impartiality and objectivity of clinicians and medical professionals in conducting medical evaluations and examinations are considered as one of the most important points, to determine the criminal liability for deliberately unlawful and summary data. Articles 351-352 of the Criminal Code RT envisages that a clinician and a medical professional who deliberately gives false conclusion or evades making conclusion shall be called to criminal account. However, the Criminal Code does not anticipate criminal liability with regard to the doctors, who make medical examinations in the frame of criminal cases. In this respect, we suggest the following recommendation:

- For the purposes of criminal liability for deliberately providing false information or documents, in relation to doctors, the article 351 of the Criminal Code of the Republic of Tajikistan is completed by an attachment: clinicians involved in the process of collecting evidence of physical injury, examination or interview (consultation) will be considered as specialists.

We should mention that the Working Group under the MOH and SPP RT has carried out several events to address and resolve the problems determined when analyzing the legislation and practice. You can learn the results in the paragraph above or find more detailed information in the reports section of the website www.hrc.tj.

- In November 1, 2014, upon the Order No. 918 of the Minister of Public Health and Social Protection of the population RT medical documents have been approved, which legalize the procedure of documentation relating the cases of torture.

IV. INTERVIEWS

with representatives of foreign and local public organizations operating for implementation of the standards of Istanbul protocol in Tajikistan



Sanja Bojanic – Deputy Country Director of the United Nations Development Program



- What is the role of your organization in combating torture?

The United Nations General Assembly passed the Convention Against Torture over 30 years ago, back in 1984. Since then, more than 160 countries have signed the Convention. Tajikistan acceded to the Convention soon after independence, in 1995. All the signatories agree to formally ban and prohibit torture and other forms of cruel and degrading treatment, and also to enforce this prohibition. The United Nations monitors compliance with this Convention, in part through the Universal Periodic Review mechanism, by which a country's laws and actions are reviewed by the United Nations every five years. The United Nations Office of High Commissioner for Human Rights (UNOHCHR) also may report on compliance, and also has a special Rapporteur on Torture who can conduct investigations. This Rapporteur, Mr. Juan Mendez, visited Tajikistan in 2012 and 2015, and his visits had a number of interesting consequences.

Beyond the Convention, the UN also supports the Istanbul Protocol. This is a manual and set of guidelines for the documentation of torture and its consequences. The Protocol was not originally created by the United Nations, but the UN formally adopted it and now supports it. UNOHCHR publishes it in manual form, and you can also find it on their website. All around the world, UNDP and UNOHCHR provide trainings on the Istanbul Protocol and provide support to governments and organizations that want to implement it. This has also been happening here in Tajikistan, where our Rule of Law and Access to Justice Programme has been providing this support.

There's also another United Nations treaty called OPCAT, the Optional Protocol Against Torture. OPCAT establishes a system of inspections for places of detention and other closed institutions, along with a national preventive mechanism that is created by the country. Tajikistan has not signed OPCAT yet, but is seriously considering it. Some inspections do already take place, for instance at prisons, but the process has not been formalized yet. We have been encouraging the Government to sign OPCAT. It's a slow process, in part because there are concerns about cost and the ability to comply. We're continuing to engage on this.

By the way, by resolution of the United Nations General Assembly, every 26 June is the International Day in Support of Victims of Torture. Our office here commemorates every year.



What are some positive moments in the field of prevention of torture?

Tajikistan formally criminalized all forms of torture several years ago. Soon after that, the Government of Tajikistan invited the Special Rapporteur on Torture, Mr. Juan Mendez, to come and visit and investigate. Mr. Mendez visited Tajikistan in 2012 and expressed his approval of many of the advances and reforms that had been made, including the adoption of a National Action Plan on torture. That took place in August 2013, and it was a direct result of the Rapporteur's recommendations. So, I would definitely point to that as a positive moment.

I would note the formation of the Anti-Torture Coalition that same year, which is a group of interested NGOs with support from donors that operates with the consent of the government. The Coalition has been active for several years now. It regularly conducts visits to closed and semi-closed institutions, and also provides public information and training. The Coalition operates in parallel with the Monitoring Group for Places of Detention, which was created in August 2013 – another consequence of the Rapporteur's visit.

It's not exactly a single "moment", but in general the Ombudsman's Office has become much stronger on this issue over the last few years. They have conducted several investigations, and they are quite responsive to complaints or allegations of torture. Of course their resources are limited, but subject to that they have really become a good partner on this issue.

I would also mention the opening of Tajikistan's first forensic DNA lab, with UNDP support, in late 2015. The DNA laboratory has a broad mandate to help law enforcement, but it's also specifically charged with investigating allegations of torture consistent with the Istanbul Protocol.



What are some problems of legislation and law-enforcement practice that you see? What needs to be done additionally?

On paper the legislation is fairly complete. There are some gaps. For instance, there is a requirement of a medical examination following an allegation of torture, but no time is fixed for conducting it. But these are relatively minor.

However, back in 2014, the UN Rapporteur noted that more needed to be done to bridge the gap between policies and reality. This is still true. Combatting torture includes public education, training – of lawyers and judges, of guards and administrators and doctors in prisons and hospitals, and even within the military. The Istanbul Protocol needs to become part of general training for many of these groups. All of this takes time and resources. Then there is work to be done in detection, identification, and investigation.

In terms of implementation, access to closed and semi-closed institutions is still an issue. Certain visits are permitted while others are not. Joining OPCAT could help this by formalizing the process.

Also, there are some gaps at the institutional level. For instance, at the moment there's no system for rehabilitation of victims of torture. There's no system of compensation, or even guidelines for it. There's not yet a national preventive mechanism, so there's no formal system for responding to allegations of torture and ill-treatment. The Ombudsman's Office can partially fill this gap but, as noted above, their resources are limited. The DNA lab is a good first step forward, but we really need an independent forensics institute.



What do you see as the role of the state here?

- From our point of view, the state has been generally supportive. I mentioned earlier that Tajikistan has not yet signed OPCAT. Our impression is that the government really wants to, but is sincerely concerned about compliance. That's positive – we'd rather work with counterparts who are worried about compliance than with those who simply sign anything and then ignore the obligations.

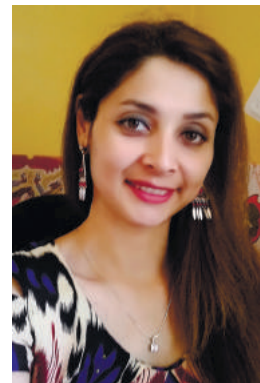
There are still many reports of detainees in closed institutions – prisons, for instance – suffering cruel treatment or torture. However, the government has formally committed to ending these practices, and we have seen them commit resources and attention to the problem. The process can be slow, but movement has been in a positive direction. Without addressing the general issue of human rights here, I can say that in this particular area Tajikistan has made real progress.

Parvina Navruzova-

lawyer of PO "Human Rights Center", a member of the Working Group under MH and SPP RT on "Analysis of the actual state of medical and forensic examination and perspective of development in the country"



- What is the role of the Ministry of Health and Social Protection of the Republic of Tajikistan in implementing the standards of Istanbul Protocol in the country?



- As was mentioned before, Istanbul Protocol serves as a guide for documentation of the facts of torture and other ill-treatment, which is an important part of medical and forensic examination. Taking into account the fact the victims of torture or other forms of ill-treatment first apply to the doctors of other fields of medicine, there is a necessity to deliver trainings for both forensic experts and those physicians who have direct contact with the victims of torture (traumatologists, surgeons, neurosurgeons, first medical aid doctors, etc.) about the standards of Istanbul Protocol.

According to the objectives under the Universal Periodic Review (second round) of Republic Tajikistan for the years 2013-2015, MH and SPP RT held a set of educational activities to improve the qualification of forensic medical experts and the specialists of the sphere of health protection as a whole.

We should highlight here the positive aspects of the process of implementing the standards of Istanbul Protocol in the country. Pursuant to the Order No. 719 of the Minister of Public Health and Social Protection of Population of the Republic of Tajikistan dated December 2, 2013, to implement the Action Plan of fight against torture, the Working Group for improvement of internal by-laws, regulations and forms has been established to carry out forensic medical/psychological examination based on the standards of Istanbul Protocol. The Working Group was composed of the representatives of the Ministry of Public Health and Social Protection of Population of the Republic of Tajikistan, forensic pathologists and lawyers from the public organization “Human Rights Center”.

The activities of the Working Group under the MH SPP RT were aimed at including the requirements of Istanbul Protocol in the internal documents, advancing the tendencies and potential of physicians and other specialists of the field to perform their work under the standards of Istanbul Protocol.

In November 1, 2014 pursuant to the Order No. 918 of the Minister of Public Health and Social Protection of Population of the Republic of Tajikistan a set of normative legal acts and the procedure of organizing and conducting the forensic medical examination have been approved and the following documents have been compiled on their basis:

1. Statement of forensic medical examination for the forensic pathologists.
Instructions for documentation (Form 171/u)
2. Expert opinion Instructions for documentation (Form 171/u)
3. Protocol of detainees’ medical examination for traumatologists, doctor’s assistants, gynecologists and proctologists.

We should note that processing of the documents mentioned above covered the period from 2013 to 2014. In addition, a set of training sessions have been delivered within this period to review the issues of medical evaluation and forensic medical and psychological examination of torture victims and effective documentation which meets the requirements of international standards – Istanbul Protocol. These training sessions were attended by the judges, legal investigators, physicians, the representatives Commissioner for human rights and public organizations from all regions of the country.

In 2016 we have analyzed training programs on legal medicine of law faculty at the National University of Tajikistan, and as a result those programed have been processed based on the requirements of international standards. Furthermore, in the framework of new training material a theoretical course on legal medicine have been designed for the students of law faculties at higher schools, which contain the standards of Istanbul Protocol. Currently, the students of the law faculty at the National University of Tajikistan are taught according to the new training program.

In September 2016 for the first time in the Republic of Tajikistan to enhance the forensic medical service under the Forensic Medical Center of Sughd region, with support of Public Health Department of Sughd region and partial support of United Nations Development Program in Tajikistan molecular genetic forensic laboratory was established to take human DNA tests for identification of personality. Practical activities of the laboratory started in December 2016 and 9 identification examinations have been made and 5 of them were aimed at solving the complex process of legal proceedings.

High provability potential of this method will increase the significance of forensic medical examination.

The significance of molecular genetic laboratory is evident, since the methods of reliable investigations are being applied in the current phase of development of forensic medical science and their perception differs from the previously applied methods of identifying physical evidences and relation degree. We can state that biological methods use before are outdated, although they are still significant when settling the problems relating the activities of investigating authorities. This was due to the requirement of investigating authorities of the country to apply qualified investigation methods to provide the arguments for giving proofs of forensic medical opinion.

Establishment of forensic medical service equipped with powerful machinery and highly qualified personnel will promote to carry out transparent investigation and to identify law violations like family violence, murder, suicide, bodily sufferings, like battering, torment and other ill-treatment.

For instance, medical genetic examination in the country will enable to identify or exclude the facts of assaulting separate parts of the body of individuals (potential defendant) found in crime scene (blood, hair, soft tissues, under the finger-nails), based on almost 100 % violation and other ill-treatment that will be decreased.

It is noteworthy that the laboratory was opened under supervision of Ganiev Furqat, candidate of medical sciences, Director of Forensic Medical Center of Sughd region and several forensic medical examinations have been made in this field.

At the same time, the Working Group plans to include a number of other measures, such as analyzing and objective assessment of the state of public health services in the Republic of Tajikistan, analyzing and developing non-state (independent) facilities, processing and implementing the standards of Istanbul Protocol in the curricula of higher education institutions of the country and many other activities.



*What challenges do you face when putting the laws into practice?
And what else should be done?*

- In the course of its work the Working group under MH and SPP RT analyzed the legal and regulatory issues of forensic medical examination and suggested some amendments and addendums to the existing normative legal acts. We should mention here that due to the effective activities and timely recommendations these amendments to the normative legal acts, which regulate the activity of medical forensic service and the procedure of medical certification".

Conclusions, recommendations and more information are available at www.hrc.tj.



*Gulchehra Rahmonova,
Manager of the Public Foundation
“Legal Initiative”*



- What is the role of your organization in the fight against torture, as well as in implementation of the Istanbul Protocol?

- Public Foundation “Legal Initiative” has been one of the members of the Coalition against Torture in Tajikistan since its establishment. The Fund operates in two directions, one of which is justification of torture victims and members of their families, and the second is development of the reform of the judicial system with regard to children. In the framework of the Coalition, the organization works on rehabilitation of the victims of torture and members of their families. In addition, the Rehabilitation Group was formed, which provides complementary social, medical and psychological assistance to the victims of torture. Parvina Navruzova from public organization “Human Rights Center” is involved in Rehabilitation Group, who works in the direction of the Istanbul Protocol, and gives useful recommendations to the Group. The process of implementing the standards of the Istanbul Protocol has already started in the rehabilitation system, according to which the specialists attend trainings, and learn how to process the internal documentation. In perspective the group intends to work closely with this document, so that its requirements render thorough assistance to the victims of torture.



- What positive circumstances occurred in respect of prevention, rehabilitation of the victims of torture?

- Before the Coalition paid more attention to providing of legal assistance, but starting from 2015, from the moment of establishing the Group for the rehabilitation of torture victims, it started providing of medical, social and psychological assistance to them. In practice, the victims who have experienced pain and torture, first of all, need the help of physician, psychologist and social worker. The assistance cannot be limited by legal aid only, since to achieve better results complementary assistance should be rendered. If the victim applies to the Coalition for help, he/she can receive comprehensive support and assistance free of charge.

For example, in 2016, 27 survivors passed rehabilitation, 12 of them were women and 15 were men. 10 survivors have directly suffered from torture, 17 of them are family members of the torture survivors. 4 victims are minors. Besides, the victims of torture have undergone initial medical evaluation and medical treatment: 16 survivors have undergone outpatient treatment; 8 survivors have been treated in hospital; 2 did not need medical help; 1 of them got medical assistance. Based on the recommendations of health professionals 7 victims have undergone treatment in resorts and 16 torture victims have been rendered psychological assistance.

- Urgent issues in the legislative and legal experience in the course of investigation of the cases of torture and justification of torture (suggestions and recommendations).

- One of the country's legislative problems and unresolved issue is lack of torture victims' justification system. This refers not only to the victims of torture, but to all types of victims (of family violence, trafficking, violence against children, etc.). Legislation does not contain the clauses relating rehabilitation implying comprehensive support of the victims of torture and guarantee of access to all types of rehabilitation services. Rehabilitation Group intends to analyze its activity in 2018, and to prepare a report, which will reflect the urgent problems in legislation and those existing in practice, to develop respective recommendations.



- *What other actions should be performed in this direction?*

- I think, the working group under the MOH and the HIA RT has been taking a number of necessary actions in this direction. Working plan had been approved, according to which the Istanbul Protocol will be introduced step by step in the health care system. At the same time, prior to the appeal to the government we – the Rehabilitation Group need to develop the precise mechanism of torture victims' justification. It is crucial to develop the rules, procedures and the mechanism of internal documentation. Moreover, great efforts will need to be made to prepare new cadres and to increase the capacity of the existing personnel. Development of the instructions on rehabilitation is very important for all professionals operating in this field (physicians, psychologists and social workers).



*Zebo Qosimova,
lawyer PO "Human Rights Center"*



- *What difficulties do the lawyers face when working with the victims of torture?*

- Victim of torture is a person (victims of torture are a group of people) who suffer physical, mental torment, undergo economic sufferings, as well as violation of their constitutional rights when tortured. In addition, relatives and friends of these persons are also victims, if they are physically, mentally tortured and have morally and economically suffered.

In other words, physical and psychological effects of torture can last many years and affect not only the victims of torture, but also members of their families. Even in the course of years the victims of torture have severe mental disorders in giving information about the perpetrators, even in secret.

Republic of Tajikistan has built appropriate legal grounds for combating torture and other cruel, inhuman and degrading treatment or punishment. Prohibition of torture was enshrined in the Constitution of RT; the Criminal Code of RT also prohibits the use of torture and subjecting the human to sufferings. Criminal Procedure Code of RT also prohibits the use of violent torture towards the trial participants.

Furthermore, in June 25, 2012 Resolution No. 1 of the Plenum of the Supreme Court of the Republic of Tajikistan "On the implementation of the norms of criminal legislation and criminal procedure relating the fight against torture" has been passed. Resolution of the Plenum has clarified all the issues relating the investigation and review of this group of cases. One of the features of this legislation is interpreting of the review of complaints of torture in the course of investigation and judicial proceedings, sinful deeds of the guilty.

However, the guarantees presumed by the country's legislation, are not implemented in many cases. One of the forms of violation of human rights and freedoms in the activities of law enforcement agencies is the use of torture, other forms of inhuman and degrading treatment of the person. For example: CPC RT states that the suspect person can immediately use the lawyer's services from the moment of arrest, and to communicate privately with a lawyer, including prior to interrogation.

But in practice, in some cases during the initial interrogations the suspect/detainee is questioned without a lawyer and is pushed to submit the application for refusal of the lawyer's services. Besides, relatives of detainees are mainly involved in finding a lawyer and therefore prompt notification of relatives of detainees is also an important safeguard against torture.

In practice, every person despite the gender, career, nationality, age or social status may be possible victim of torture.



- What actions, in your opinion, need to be taken in this regard?

- Pursuant to the clause 94 of the CPC RT, when placing the suspect in isolation ward to determine the overall health and availability of injuries by medical staff the suspect undergoes medical evaluation. The suspect or his/her lawyer has the right to require conducting medical evaluation by an independent clinician or forensic pathologist. Conclusion of the medical evaluation will be enclosed to the arrest protocol. After the detainee is brought to criminal prosecution office, given information about his rights, the protocol of the arrest is compiled and medical evaluation is undertaken, following which the detainee is immediately placed in temporary isolation ward.

In practice, there are some cases when the detainee is brought to the militia department or to the temporary isolation ward, medical evaluations are not sometimes undertaken owing to the lack of medical station there. In some cases, investigators and law enforcement officers invite clinicians from the hospital or emergency doctors to conduct

medical evaluation of the detainee, but hospital and emergency clinicians have poor knowledge of how to document this process. Therefore, the study of health professionals for documentation and proper completion of medical evaluation needs to be organized thoroughly. Furthermore, the Ministry of Internal Affairs, Prosecutor's Office, the Ministry of Health and Social Protection should strengthen the implementation of the legislative requirements on compulsory medical evaluations in the regions. The activities of law enforcement officers – militiamen should be taken under strict control for their respect of recommendations given by physicians after medical evaluation and it is important to ensure proper development of the mechanisms for such control.

Actually, it is difficult to implement these actions, but I hope they will be resolved in the near future.

INFORMATION BULLETIN


Istanbul Protocol: From theory to practice

The bulletin is published with the financial support of the Ministry of Foreign Affairs of Finland and the United Nations Development Program. Donors may disagree with the opinions, conclusions and suggestions contained in this bulletin.

Dear reader, this is the first issue of the Bulletin on the implementation of the Istanbul Protocol from 2012 to the beginning of the year 2016. In the next issue you will learn about other activities and achievements in this field.



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