

FACTSHEET – UPR 2023 – Russian Federation 4th CYCLE UNIVERSAL PERIODIC REVIEW

The Public Verdict Foundation is a Russian human rights organization that opposes torture, ill-treatment, and other gross violations of human rights. The Foundation has been operating in Russia since 2004, providing direct legal assistance to survivors of torture and ill-treatment. The Foundation's analytics are based on findings from its own research and on reviews of relevant criminal case files.

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

Based on the outcomes of previous UPR cycles, Russia received the recommendations to ensure effective (thorough, prompt, and impartial) investigation of all reports of torture and ill-treatment originating from places of deprivation of liberty (penal colonies, pre-trial detention centers, and temporary detention centers). Russia agreed with and accepted these recommendations.

The Public Verdict Foundation had not participated in the national consultations preceding the current UPR cycle. The Foundation is not aware of such consultations having been conducted. Indeed, none of the human rights organizations working in the country were invited to such consultations. It is highly likely that no national consultations were conducted.

Changes and Key Issues

What has changed?

In 2022, Russia criminalized torture as an official crime. Currently, the Criminal Code includes an offence that specifically enables prosecution for acts of torture (Article 286, part 4, of the Russian Criminal Code). However, rather than being defined under a dedicated separate article, this offence is included as a section within the existing article on "abuse of authority" in the Criminal Code.

Based on its consideration of Russia's reports, the UN Committee Against Torture has urged Russia to criminalize torture as an independent offence. After 20 years, this recommendation has been only partially implemented: torture is now criminalized, though not as an independent offence as recommended (no dedicated article). Furthermore, its criminalization does not adhere to the principles outlined in Article 1 of the UN Convention against Torture:

- there is a statute of limitations for torture
- acts such as condoning torture, tacit consent to torture, and incitement to torture are not included in the scope of criminalization
- there is no dedicated article on "torture" in the Criminal Code. In Russian legislation, torture is categorized as a form of abuse of authority. The underlying logic suggests that exercising official authority can somehow lead to an act of torture. This logic is flawed because it is not possible to inadvertently engage in torture while legitimately exercising one's authority under the law. Torture involves intentional and premeditated infliction of extreme suffering, rather than legitimate authority which can be exceeded to lead to torture.

This flawed approach to criminalizing torture creates obstacles to conducting effective investigations. In Russian legislation at present, two offences are defined, namely:

- abuse of authority involving the use of violence (Article 286, part 3, of the Criminal Code)
- abuse of authority involving torture (Article 286, part 4, of the Criminal Code)

Criminal investigators responsible for conducting effective investigations must determine the appropriate criminal offence by choosing between the two options which can be difficult to tell apart. This situation might lead them to refrain from applying the new provision and is conducive to manipulation.

What has remained unchanged?

- Persistent practice of torture

The practice of torture in places of isolation continues. The influx of appeals and complaints to human rights organizations is not decreasing. This indicates the ongoing and persistent occurrence of torture and ill-treatment.

- Lack of published data on torture

Official data regarding the number of torture complaints, initiated criminal cases, investigated instances, and convictions are not available. Separate records are maintained by law enforcement agencies, but these data are not published. (Starting from 2015, the Investigative Committee has maintained records of torture complaints originating from places of isolation. The most recent data was disclosed by the Investigative Committee in 2018, but currently, this information is not made available even upon request from the media).

It follows from Russia's most recent periodic report submitted to the UN Committee against Torture in December 2022 that in 2021, a total of 575 people were convicted of abuse of authority, with aggravating circumstances, under Article 286, part 3, of the Criminal Code (in 2020, there were 503 convictions, and in 2019, there were 626).

A review of data published on the websites of Russian courts (conducted as part of a study by the Public Verdict Foundation) reveals the following:

In 2022, Russian courts ruled on 257 cases which involved 397 individual defendants. There were 198 convictions and 11 acquittals; 22 cases were sent back to the prosecutor, 16 cases were dropped, and 12 cases were referred to other courts according to jurisdiction.

The typical punishment was approximately 4 years in prison.

These data are indirect and reflect the courts' practice in cases of abuse of authority; however, they do not provide disaggregated information. Based on these data, it is impossible to discern which government agencies' officials engaged in the abuse of authority and what portion of these "abuse of authority" cases specifically involved torture.

The absence of detailed statistics prevents government agencies from conducting effective monitoring, assessing changes in the prevalence of torture, identifying potential victims, understanding the common circumstances leading to torture incidents, and promptly designing measures to counteract and prevent such acts.

- Lack of access to evidence of torture

In 2022, the Prosecutor's Office raised the problem of ill-treatment of prisoners and requested to be given access to video records made at penitentiary facilities in real time. The Prosecutor General's Office proposed connecting prosecutors to CCTV systems at penal colonies and pre-trial detention centers as a means to ensure swift response to cases of ill-treatment. A relevant bill was anticipated to be introduced in the summer of 2022, but this did not happen.

Preserving the evidence of torture is a key challenge for the investigation. The proposal put forward by the Prosecutor's Office, if implemented, could have served as a measure to obtain and preserve such evidence. However, as of now, the problem remains, and the **potential perpetrators of torture and ill-treatment of prisoners maintain a virtual monopoly over access to all evidence of torture and all its witnesses.**

- Documentation of torture

Medical professionals working in penal colonies could disrupt the monopoly that colony administrations hold over evidence of torture. Yet despite the fact that these medical professionals are no longer under the direct authority of the heads of penitentiary facilities due to the reform of the penitentiary medical service, they are still affiliated with the Federal Penitentiary Service and lack independence. They still fulfill dual roles as both prison officers and medical professionals. (The Public Verdict Foundation has worked on a case where a medical doctor witnessed the torture of a prisoner).

As long as the medical service in prisons remains a structural subdivision under the command of the Federal Penitentiary Service, this will not only adversely affect the quality of healthcare (despite the legal guarantee of the same healthcare standards for prisoners as in the wider community), but also undermine the goal of identifying and documenting injuries and other evidence of ill-treatment and torture.

- Institutional torture

The Russian Penitentiary Code permits placing a prisoner in a punishment cell for up to 15 days. A punishment cell (SHIZO) is a confinement space where a prisoner is typically subjected to complete isolation.

The decision to impose this penalty rests with the head of the penitentiary colony or their deputy. The legally prescribed procedure of appointing the penalty is excluded from any judicial review. The prison administration is free to extend an inmate's term in SHIZO, effectively imposing a regime of strict isolation, which is not authorized by a court, for an indefinite period.

Subjecting an individual to prolonged strict isolation constitutes cruel treatment in and of itself.

In Russia, the practice of placement in SHIZO is widespread and can be applied to any inmate, anywhere. This practice is enabled by the current legislation and institutionally incorporated into the operation of the Russian penitentiary system.

Recommendations

The definition of torture in article 286 of the Criminal Code should be aligned with the provisions of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture must be criminalized as a distinct offence within a dedicated article on "torture" in the Criminal Code.

The government should institute a systematic monitoring process of both the occurrence of torture and the efficacy of the state's torture response mechanism. The relevant data should be made publicly available and posted on the websites of government departments.

The prosecutor's offices should be given access to CCTV systems in penitentiary facilities.

The country should sign, ratify and implement into national legislation the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002 edition)

The medical service reform within the Federal Penitentiary Service should continue, leading to a complete transfer of prison healthcare responsibilities to the Ministry of Health.

Any in-prison punishment which involves strict solitary confinement in a locked cell for more than one day must be subject to a judicial procedure.