



MEMORIAL - EHRAC
BULLETIN:

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE
EHRAC

International Human Rights Advocacy

Russian law amended to include a definition of “Torture”

Olga Shepeleva
Expert of the "Demos" Research Center
for Civic Society

On December 8, 2003 the President of the Russian Federation (RF) signed the Federal Law “On the Introduction of Changes and Amendments to the Criminal Code of the Russian Federation”. The new law not only significantly changed the content of a number of articles of the Criminal Code but it also affects the very concept of crime, guilt and punishment, bringing it into line with the recent trend towards the mitigation of repressive policy in the area of criminal justice. What we have now is in fact a new Criminal Code.

In addition to broadening the limits of selfdefence, revising the notion of repeated crime, abandoning the confiscation of property punishment, reducing the minimum term of imprisonment, limiting the legal grounds for juvenile imprisonment, and making a number of other changes, the new law has introduced into the Criminal Code a definition of “torture”.

Article 117 of the Code (ill-treatment) was amended with the following paragraph:

«For the purposes of this Article and other Articles of the Code, torture shall be defined as infliction of physical and moral suffering aimed at coercing an individual into giving evidence or committing other acts against his will, as a punishment and for other purposes.»

Changes were made also to Article 302 of the Code (coercion into giving evidence). The new wording of the article reads as follows:

«Coercion of a suspect, defendant, victim, and witness into giving evidence, or coercion of an expert into giving an opinion under threat, blackmail or other illegal means on the side of the investigator or the person conducting the

investigation, as well as with the knowledge or acquiescence of the investigator or the person conducting the investigation.”

Until the introduction of these changes, Russian law lacked a definition of “torture”, even though torture is explicitly prohibited by the Constitution of the RF (Article 21), the Criminal Procedure Code (Article 9) and the Penal Code (Article 12), as well as by a number of legal acts (for example, Article 5 of the Law “On Police” and Article 4 of the Law “On the Confinement of Suspects and Defendants”).

International obligations undertaken by the RF under the Convention Against Torture, the European Convention on Human Rights and the International Covenant on Civil and Political Rights, make the issue of the criminalization of torture rather important. Article 4 of the Convention Against Torture requires the member states to the Convention to consider as a criminal offence torture as such, attempts to apply torture and complicity in torture. Article 1 of the Convention gives a comprehensive definition of what shall constitute the crime of torture.

The absence of special provisions in the Russian criminal law that would classify torture as a crime did not in fact prevent criminal prosecution of the officials who had resorted to this illegal practice. As a rule the infliction of torture was classified as an abuse of power (Article 286 of the Criminal Code) or coercion to give evidence (Article 302 of the Criminal Code).

However, the lack of an adequate definition of torture in the criminal law did not allow the law enforcement bodies fully to recognize its social danger and its characteristics as a criminal act, which undoubtedly had a negative impact on the effectiveness of the fight against this offence.

The new wording of Article 117 has undoubtedly strengthened the protection of an individual against torture by private parties. Yet, it has failed to provide a definition of torture that would be in line with the definition given in the UN Convention Against Torture and other international documents. However, according to the international treaties signed by the Russian Federation, it is the involvement of an official in the torture that is the key characteristic distinguishing this grave violation of human rights from other kinds of physical abuse against an individual.

However it is possible that criminal prosecution of torture, committed by officials will be conducted not according to Article 117, but instead according to articles 302 and 286, as had been the case before the introduction of changes to the Criminal Code.

Article 302 in its previous wording was very close to the definition of torture and cruel and degrading treatment given in the corresponding

international agreements of the RF, but nevertheless contained a number of serious limitations. Firstly, Article 302 was of limited use since it viewed as an actor only officials ranking as investigators, while in practice torture has been widely used by operatives of the law enforcement agencies. Secondly, Article 302 established a punishment for the employment of torture against a particular kind of individual and for a particular purpose (coercing a suspect, defendant, victim or witness into giving evidence or an expert into delivering an opinion). The use of torture and cruel treatment against people who do not have a procedural status for the purposes of getting information about a crime or its details, as well as the employment of torture for the purposes other than those given in Article 302, did not fall under its scope.

In its new wording, Article 302 expanded the category of subjects who could be prosecuted under Article 302 by adding to the previous definition the following clause: "as well as other individuals with the knowledge or acquiescence of the investigator or the person conducting the investigation". However, it leaves open the following questions: Who could be prosecuted for the offence – the immediate torturer, the investigator, with whose knowledge or acquiescence the torture was used, or both? What are the practical ways of furnishing proof that the investigator did in fact know about the employment of torture by "a third party"? And, finally, how shall we classify torture employed by an official without the knowledge and consent of the investigator or the person conducting the investigation, torture which is not related to obtaining evidence or expert opinion, as well as those incidents of torture that are employed by officials irrespective of a criminal investigation?

It might happen that such cases would be prosecuted, as in the past, under Article 286: "Acts of officials committed explicitly outside of their authority and resulting in a substantial violation of the rights and legal interest of individuals or organizations or legally protected interests of the society or state." On the one hand, the extremely general wording of this article allows for the prosecution of those acts of torture and cruel and degrading treatment, which go beyond the regulation of Article 302. On the other hand, Article 286 does not give the law enforcement bodies clear instructions for the prosecution of torture. Besides, the application of Article 286 would not allow for adequate registration and evaluation of torture committed by officials.

Some practical ways will obviously be found to resolve the questions remaining after the introduction of changes to the Criminal Code. The

future of the fight against torture depends on the interpretation of the aforementioned changes, which, in turn, will be determined by the presence of political will on the side of the Russian authorities. ■