
МЕМЛЕКЕТ ЖӘНЕ ҚҰҚЫҚ ТЕОРИЯСЫ МЕН ТАРИХЫ ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА THEORY AND HISTORY OF STATE AND LAW

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Human rights to protection from torture and other cruel, inhuman or degrading treatment or punishment

The article examines issues of legal regulation of the human right implementation to protection from torture and other forms of treatment and punishment that may be cruel, inhuman and degrading to human dignity. This right is considered as a domestic and international law complex institution. The research purpose is to analyze the legal institution of “Human rights to protection from torture and other cruel, inhuman or degrading treatment or punishment”, to identify problems of legal regulation and to develop ways to improve national legislation. The research is carried out using general scientific and special legal methods, using analysis and generalization of theoretical provisions and legal norms and the practice of their implementation. Based on the comparative legal method, the main trends in the development of this institution nowadays are identified. The legal institution features analysis and its connection to legal acts and international standards is carried out. The main result of the research is proposals for improving criminal law norms. The main research conclusion is the need to improve legal measures aimed at harmonizing national legislation in the area of protection from torture and cruel prevention, inhuman or degrading treatment and punishment with international standards in this area.

Keywords: Kazakhstan, human rights, torture, cruel treatment, punishment, dignity, legislation, legal norms, international standards.

Introduction

The research relevance lies in the fact that for the effective implementation of the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment, a system of legal institutions is needed that complement each other through interaction. This right is ensured by international standards, domestic legislation, law enforcement agencies, the judicial system, and through monitoring by civil society institutions.

The human right to protection from torture can be considered as an interdisciplinary legal institution that includes international, constitutional, criminal law, administrative law, and organizational legal norms. At the same time, the big problem is not only the legislative consolidation of this legal institution, but also the procedure for implementing this right in practice. The actual situation in the realization sphere of this right is reflected in the annual consolidated reports of the national preventive mechanism participants of the Republic of Kazakhstan based on the preventive visits results. By the end of 2024, 489 mandated institutions were covered by participants of the national preventive mechanism, including 33 special visits. These visits were carried out in response to reports of torture and cruel and inhuman treatment and punishment in closed

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institutions. In 2024, the institutions visited included 11 correctional institutions, 13 pre-trial detention facilities, 6 temporary detention facilities, 1 special reception facility, and 2 special services centers. Based on the results of special visits, materials concerning violations facts that contribute to the conditions creation for torture and factors of cruel and degrading treatment and punishment were sent, depending on the complaints, to the prosecutor's office and authorized bodies. Over the past three years, there has been a decrease in the number of complaints about torture 2022 — 447, 2023 — 165, 2024 — 111, while there has been an increase in the number of people convicted of torture 2022 — 17, 2023 — 47, 2024 — 30 [1].

The research purpose is to examine the legal norms governing human rights to protection from torture and other cruel, inhuman, or degrading treatment or punishment.

The main research objectives are to analyze and summarize the following provisions:

- Research of legal norms for the definition of the interdisciplinary legal institution of “the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment”.
- Conducting a comparative legal institution analysis with international standards and scientific approaches in the human rights field to protection from torture.
- Proposals development for improving national legislation in the human rights area to protection from torture and other cruel, inhuman or degrading treatment or punishment.

Currently, it is necessary to highlight conflicts in legal theory, methodology and law enforcement practice. Legal theory and international standards enshrine the absolute human right to protection from torture and inhuman or degrading treatment or punishment. Public interest, the right of others, the actions of victim—no matter how dangerous or cruel—cannot justify the torture. At the same time, the legal culture of society partially determines law enforcement practices aimed at justifying torture and cruel treatment by the prevailing circumstances. In certain cases, torture and ill-treatment are considered as part of the punishment for the crimes committed, as well as a necessity to obtain important information during investigations.

As a gap in research and theoretical schools, it is necessary to highlight insufficient number of studies devoted to distinguishing torture and cruel treatment from other types of offenses directed against the individual. For example, there is a lack of clarity in the difference between torture and the following criminal offenses, such as torture, intentional cause of serious, moderate, or minor bodily harm and other crimes related to violence.

The authors' point of view in reviewing the literature and other sources is the statement of insufficient theoretical development of the “torture” concept and the “cruel, inhuman or degrading treatment or punishment” concept. It seems that the legal norms enshrined in international standards and national legislation require theoretical development. Detailed development of these concepts is necessary for their correct implementation in law enforcement practice. Currently, various relationships arise between people, which are conditioned by different approaches to understanding the essence and implementation of their rights, which do not always correspond to legal norms. In some closed social groups, relationships may arise that can be characterized as a “criminal subculture”, which is, as a rule, a determining condition for the presence of torture and cruel treatment and punishment.

Methods and materials

To achieve objectivity, completeness and comprehensiveness of the research results, a set of general scientific and specialized methods of cognition was used, based on the systemic approach to the problems of improving legislation in the area under research.

The methodological basis of the study is a scientifically based approach to the research of the interdisciplinary legal institute “The human right to protection from torture and other cruel, inhuman or degrading treatment or punishment”. General scientific and specific scientific methods were used in the research. The study of legal norms defining this interdisciplinary legal institution was conducted through analysis and the legal norms generalization. Using the comparative legal method, a comparison of scientific legal approaches to the similar implementation of legal norms in different countries was carried out. Through analysis and generalization, a research was carried out on the procedure for implementing the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment. On the basis of the legal hermeneutics, new approaches to the legal terminology formation in the area of defining the concept of “torture” and the concept of “cruel, inhuman or degrading treatment or punishment” were defined. Based on observation, analysis and generalization, shortcomings in legal regulation in the area of protection from torture and cruel treatment and punishment were identified.

Results

As a research result, the following provisions were identified through the author's observation. The author's observation was carried out during the activities as a participant in the national preventive mechanism for the Karaganda region in the period 2023–2025. The national preventive mechanism in Kazakhstan was established in 2013 based on the obligations arising from the Optional Protocol to the Convention Against Torture. This mechanism is a system aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment. During the author's observation, shortcomings in legal regulation and the practice of applying these norms were identified. As a participant in the national preventive mechanism, in 2023–2025, visits were made to detention places, temporary detention facilities, special reception centers, reception and distribution centers, institutions providing special social services, divisions of the mental health center, children's institutions and other closed institutions. These are closed institutions; they are mandated institutions for the national preventive mechanism, in which the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment is most likely to be violated.

The torture concept and cruel treatment or punishment includes a wide range of actions and inactions, which, depending on each specific situation, can be qualified differently. Moreover, the torture concept does not include lawful actions of officials and persons acting in an official capacity that may be considered cruel, inhuman or degrading treatment, torture, as well as physical and/or mental suffering. At the same time, the definition of “legal actions” is understood in practice broadly and ambiguously. This is due to the fact that not all aspects of social relations in closed institutions and institutions where people with restricted freedom of movement are kept are sufficiently regulated. Many relationships in such institutions are based on moral and ethical standards, as well as business customs.

During the research, the following results were obtained, corresponding to the stated goal and objectives:

1) The analysis of legal norms defining the interdisciplinary legal institution of “the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment” allows us to state the formation of this interdisciplinary legal institution in the domestic legal system. This is due to existence of the established legal relations, which are based on legal norms of various law branches. First of all, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be included in the normative framework. This convention defines “torture” as any intentional act that causes severe pain or physical or mental suffering motivated by specific purposes, such as obtaining information or a confession, unlawful punishment for any action, intimidating or coercing a person for reasons based on discrimination of any kind. In this case, the determining factor is the subject — a government official, another person acting in an official capacity or at their instigation, or with their knowledge or tacit consent [2]. An important source that enshrines the human right to protection from torture, violence, and cruel or degrading treatment or punishment is the Constitution of the Republic of Kazakhstan [3]. Based on constitutional norms, the Criminal Code establishes liability for cruel, inhuman or degrading treatment and torture. In Article 146 of the Criminal Code of the Republic of Kazakhstan, responsibility for cruel, inhuman or degrading treatment and torture is divided into two parts. The first part of Article 146 provides for liability for cruel, inhuman or degrading treatment, and the second part of Article 146 provides for liability for torture [4]. An important legal act regulating the procedure for implementing the human right to protection from torture is the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan “On the application of the norms of criminal and criminal procedural legislation on respect for personal freedom issues and the human dignity inviolability, counteraction to torture, violence, other cruel or degrading forms of treatment and punishment”. This resolution establishes the qualifying features that distinguish torture and cruel, inhuman or degrading treatment from other illegal actions directed against life, health, freedom, and violating constitutional human rights [5]. Thus, in our opinion, an interdisciplinary legal institution “The human right to protection from torture and other cruel, inhuman or degrading treatment or punishment” was formed. This is a group of legal norms that are objectively isolated within the system of national law, which relate to different branches of law, but regulate similar social relations. By its nature, it is an interdisciplinary institution that combines the norms of international, constitutional, criminal, penal law and other branches of law and legal institutions. Moreover, this institution is divided into two sub-institutions: “torture” and “cruel, inhuman or degrading treatment or punishment”. This is due to the difference between these concepts. Based on the international convention norms, torture includes acts that cause severe pain or physical and mental suffering, which are carried out for a specific purpose, by an official or a person in an official capacity or at their insti-

gation or with their tacit consent. It is these characteristics that distinguish the concept of “torture” from other offenses against human rights.

2) In the course of conducting a comparative legal analysis of the interdisciplinary legal institute with international standards and scientific approaches in the field of human rights to protection from torture, two main approaches were identified.

The first approach is an absolute ban on torture. Torture is defined as a serious crime that has no justification—neither peacetime nor wartime circumstances, nor orders from superiors, can serve as grounds for its use. Most countries in the world are parties to the Convention Against Torture. Based on the information contained in the Report of the Committee against torture, as of 10 May, 2024, there are 174 states parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All States parties, in accordance with Article 19 of the Convention, submit initial and periodic reports. At its seventy-seventh session, the Committee considered the reports of Spain, New Zealand, Romania and Switzerland. At its seventy-eighth session, it considered the reports of Burundi, Costa Rica, Denmark, Egypt, Kiribati and Slovenia. At its seventy-ninth session, it considered the reports of Austria, Azerbaijan, Finland, Honduras, Liechtenstein and North Macedonia. At the time of submission of the report, there were 28 States parties with overdue initial reports and 49 States parties with overdue periodic reports. The Committee notes that some States parties have failed to implement decisions taken on complaints [6]. In addition to the submission of initial and periodic reports, the prohibition of torture is also ensured by the possibility of lodging a complaint under Article 22 of the Convention against Torture. Persons who claim to have been victims of torture may lodge a complaint with the Committee against torture for consideration. In this case, the determining condition is the recognition by the state party to the Convention of the competence of the Committee against torture to consider these complaints. Currently, there are 71 states party to this Convention, including the Republic of Kazakhstan. As of 10 May, 2024, the Committee had registered 1,211 complaints since 1989 against 45 States parties. Of these, 406 complaints were discontinued and 145 were declared inadmissible. The Committee took final decisions on the merits in respect of 495 complaints, finding violations of the Convention in 206 of them. Some 164 complaints are pending [6]. The complete prohibition of torture is ensured by a set of measures, such as recognition by all states of the absolute unacceptability of torture and accession to the Convention against torture. Submission of initial and periodic reports by states parties to the Convention against torture, information analysis presented in these reports and recommendations development to eliminate conditions that contribute to the torture emergence. An important mechanism at the international level is the consideration of complaints about torture of citizens of the states parties to the Convention. At the national level, protection from torture is ensured, first of all, by the norms of constitutional law, criminal, criminal-executive law and other legal norms. Also, protection from torture is ensured by the law enforcement and judicial systems, as well as by civil society institutions, which primarily include the national preventive mechanism and public monitoring commissions.

The second approach is the moral and, in some cases, legal justification of torture under certain conditions. This is associated with ensuring public safety, protecting the common good, and obtaining information to prevent more serious criminal acts. As an example can be found in the position of the United States and some other countries when after September 11, 2001 the need to adhere to international norms prohibiting torture was questioned. In March 2008, the US President vetoed a law banning certain types of psychological torture, citing the extraordinary circumstances of the fight against terrorism. The Prime Minister of Italy, justifying torture against terrorists, stated that it is impossible to influence people who are at the level of medieval concepts of good and evil with the help of civilized measures [7; 28]. At the same time, from a scholarly perspective, the harmfulness of such discussions is noted, since they to one degree or another legitimize torture as a possible tool for obtaining information in emergency cases related to the terrorist threat [8]. Thus, torture and other cruel, inhuman or degrading forms of treatment and punishment can be morally justified by part of society and part of the professional law enforcement community.

As a result of a comparative analysis of legal institutions with international standards and scientific approaches in the human rights field to protection from torture, it is necessary to state that the Republic of Kazakhstan have formed legal institutions that provide for an absolute ban on torture. The country has sufficiently effective law enforcement and judicial bodies capable of holding those responsible for such crimes accountable, as well as restoring the violated victim rights. There are also civil society institutions capable of identifying facts of torture and cruel, inhuman or degrading treatment or punishment. At the same time, there is a need to specify legal norms in this area, as well as improve law enforcement practices in collecting factual data on torture and conducting investigations.

3) Considering the need to improve national legislation in the human rights area on protection from torture and other cruel, inhuman or degrading treatment or punishment, it should be noted that the Criminal Code establishes liability for cruel, inhuman or degrading treatment and torture [4]. In Article 146 of the Criminal Code of the Republic of Kazakhstan, liability for cruel, inhuman or degrading treatment and torture is divided into two parts. The first part of Article 146 provides for liability for cruel, inhuman or degrading treatment, and the second part of Article 146 provides for liability for torture. At the same time, part three of Article 146 provides for the qualifying features of both types of crimes [4]. This approach equates the liability under Parts 1 and 2 of Article 146, which appears incorrect because of the different social harm of the acts described in these parts. It is proposed to separate out from Part 3 of Article 146 the responsibility for cruel, inhuman or degrading treatment or punishment. This study's suggested formulation of Part 3 of Article 146 as follows: "Acts provided for in Part 1 of this Article, committed: 1) by a group of persons or a group of persons by prior conspiracy; 2) repeatedly; 3) causing moderate bodily harm; 4) against a woman who is known to the perpetrator to be pregnant, or a minor, — shall be punishable by a fine of up to five thousand monthly calculation indices, or correctional labor in the same amount, or restriction of liberty for a term of up to six years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years". The liability for torture in Part 3 of Article 146 shall be designated as Part 4 of Article 146 and the first sentence of Part 4 shall be worded as follows: "Acts provided for in Part 2 of this Article, committed...". Further, the proposed Part 4 of Article 146 will preserve the current version of the text of Part 3 of Article 146. Original Part 4 of Article 146 will be renumbered as Part 5 of Article 146 of the Criminal Code.

The Convention against torture defines torture as "the intentional infliction of severe pain or physical or mental suffering". It is proposed to formulate Part 2 of Article 146 of the Criminal Code as follows: "Torture, that is, the intentional infliction of severe pain and (or) mental, moral suffering". This will bring the provisions of the Criminal Code of the Republic of Kazakhstan into line with the provisions of the Convention against torture.

The novelty of the achieved results is in the generalization and systematization of legal norms regulating human rights for protection from torture, as well as the human right to protection from cruel, inhuman or degrading treatment and punishment. These groups of legal norms are proposed to be combined into an interdisciplinary institution, which consists of two legal sub-institutions: "the right to protection from torture" and "the right to protection from cruel, inhuman or degrading treatment and punishment". Such an approach is new and is due to the need to comply with international standards and scientific approaches that try to distinguish between these two sub-institutions of law, while simultaneously combining them into a single interdisciplinary legal institution. A new result is also the proposals for improving the criminal law norms, which are due to the systemic structure of this interdisciplinary institution.

Discussion

Modern research in the human rights field on protection from torture and other cruel, inhuman or degrading treatment or punishment, as a rule, cover some phenomenon aspect under consideration. It seems important to consider the legal norms totality and legal relations arising on their basis as an interdisciplinary legal institution. This allows us to consider the problem of protecting a person from torture and cruel, inhuman or degrading treatment in the system, combining theoretical and practical aspects of these crimes prevention, their prevention, punishment for them and violated rights restoration.

Based on a sociological survey conducted by the DEMOSCOPE Express Public Opinion Monitoring Bureau on the topic "Torture in Kazakhstan against suspects and prisoners", the main causes and conditions of torture can be identified. A total of 1,560 people living in Almaty and Astana, as well as in all regional centers, were surveyed. 34 % of Kazakhstanis believe that the main reason for torture is impunity; 25 % — low professional qualifications of employees; 18 % — legal illiteracy of law enforcement officers; 15 % — psychological instability of employees; 8 % — insufficient security and social protection of law enforcement officers. At the same time, the respondents noted that the most important guarantees for protection from torture are notification of relatives and lawyer participation in all procedural actions — 31 %; interrogations video recording and other procedural actions — 19 %; punishment inevitability of the guilty — 17 %; ensuring security guarantees in detention places — 17 %; conducting an impartial investigation — 16 %. With regard to the punishment provided for by the Criminal Code, 61 % consider it adequate, 33 % — insufficient, 7 % — excessive [9]. Based on this survey, the most important reasons and conditions for torture should be

highlighted. These are impunity, low qualifications and legal illiteracy of employees. Accordingly, in scientific and theoretical research, these factors must be taken into account first and foremost.

Scientific studies examine various crime aspects of “torture” and “cruel, inhuman or degrading treatment or punishment”. E.V. Mitskaya, A.M. Kosmagambetova, R.A. Alshurazova examine the new version of Criminal Code Article 146 of the Republic of Kazakhstan and its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In their study, these authors state that the criminal legislation contains sufficient provisions to hold accountable persons who commit violent crimes. It should be agreed with the authors that the understanding of torture in the new version as a less serious act (in case of causing minor harm to health) does not correspond to the understanding of torture in the UN Convention [10]. N.N. Turetsky in her study, which is devoted to the use of comprehensive measures in the fight against torture in Kazakhstan, emphasizes the positive changes that have occurred in this area. He notes that the positive role in the fight against torture is played by the activities of the national preventive mechanism, the exclusive prosecutor’s office jurisdiction in torture cases, the “blind spots” elimination through video surveillance, and the medical care in penal institutions has been completely transferred to the civilian health care jurisdiction [11]. In our opinion, the author correctly notes the problem of the shortage of highly qualified personnel: “some employees compensate for the lack of professionalism and experience by using forceful influence methods” [11]. The author proposes comprehensive measures, among which the following measures should be highlighted: the “corporate solidarity” elimination, which leads to the evidence destruction and pressure on victims, the national legislation improvement, and the human resources increase [11]. G.K. Shushikova, E.S. Kemali, M.G. Azhibayev, in their research, consider the combating torture issues in Kazakhstan [12]. In addition to scientific research, publications in the media are of interest on the problems of torture. These articles reveal the main problems in this area that lawyers and human rights defenders face. Based on the analysis results the national preventive mechanism, current issues are raised on the prevention of torture and cruel, inhuman and degrading treatment or punishment [13]. Of interest is the publication “Establishment and Purpose of national preventive mechanisms”, prepared by the Association for the Prevention of torture in 2006 [14]. This publication considers various issues related to the activities of the Human Rights Commissioner and touches upon the organizing the activities issues of the national preventive mechanism and other human rights organizations and institutions. It is necessary to highlight the article by A.B. Saparali “National preventive mechanism for the Prevention of torture in Kazakhstan: Comparative Legal Analysis”. This article examines the history and formation patterns and development of this institution. A conclusion is made about human rights institution optimality for the torture prevention [15]. Problems discussion in the developing process in the National preventive mechanism as the main institution for the prevention of torture was carried out at various information platforms. For example, holding seminars on the practical implementation of the national preventive mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment [16]. The result of these discussions and scientific research was the development of the draft law “On the national preventive mechanism in the Republic of Kazakhstan”, which was presented in April 2024 by experts of the Coalition of Non-Governmental Organizations of Kazakhstan against torture, participants in the national preventive mechanism. The presented draft law defines the legal status and organization of the activities of this mechanism [17]. This draft law is currently of an initiative nature; it has not been submitted to the Majilis and is being discussed at various information platforms by representatives of non-governmental organizations. Issues related to the implementation of human rights in the context of the national law and human rights mechanisms development, including the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment, were considered in the publications of A.B. Ashirbekova, O. Anayurt [18; 6–14], V.S. Isabekova, Ya. Zalesny [19; 25–31]. These publications provide human rights protection mechanisms analysis in different countries and the Republic of Kazakhstan. Current issues of the organization and national preventive mechanism activities for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are considered in the article by A.V. Turlayev, A.B. Sopykhanova [20; 77–86].

In the course of reviewing and analyzing the research results in these publications, one can conclude that there is a need for further research into issues in the human rights to protection area from torture and other cruel, inhuman or degrading treatment or punishment.

The issues are considered in this research are relevant and have scientific novelty. Assessing the results of the research as new, it is necessary to note their practical significance and scientific validity. At the same time, it is necessary to explain individual results of the research. Strengthening criminal liability proposed by some authors, provided for in Part 2 of Article 146 of the Criminal Code, seems premature. This is due to the

fact that the majority of respondents expressed an opinion on the adequacy of the punishment provided at present [9]. The proposal to introduce into the criminal legislation in Article 146 Part 2 the element of torture "severe pain" is based on the torture definition in the International Convention on torture, as well as with the aim of distinguishing this composition from other, similar violent crimes. It seems that when defining severe pain, in the process of documenting the torture consequences, the norms of the Istanbul Protocol should be used [21]. This international act, which is recommended, contains practical recommendations for documenting the torture and cruel treatment consequences.

The main research result is the advancement of a scientific concept that generalizes all legal norms on torture and cruel, inhuman, degrading treatment and punishment. This group of legal norms is proposed to be considered as an interdisciplinary legal institution, which is divided into two sub-institutions. This approach is due to the structure of legal norms in the International Convention on torture, other international standards, in domestic criminal law, as well as the subject of legal regulation, which is reflected in scientific research by various authors and law enforcement practice.

The reliability of the research results is confirmed by the analysis, generalization and systematization of legal norms, international standards, scientific publications and other information from official sources and independent information platforms. The reliability of the results is also due to the author's observation during the practical powers implementation of the national preventive mechanism participant the in the Karaganda region.

Conclusion

Based on the conducted research, it is possible to systematize all approaches to the problems consideration in the human rights sphere to protection from torture and other cruel, inhuman or degrading treatment and punishment. Based on the systematization of the results, they should be presented in brief.

1) In our opinion, an interdisciplinary legal institution, "The Human Right to Protection from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", has been formed. This is a group of legal norms that have objectively become isolated within the system of national law, which relate to different branches of law but regulate similar social relations. This institution is divided into two sub-institutions: "torture" and "cruel, inhuman or degrading treatment or punishment".

2) In the comparative legal analysis course of the interdisciplinary legal institute with international standards, scientific approaches in the sphere of human rights to protection from torture, two main approaches were identified. The first approach is an absolute ban on torture. The second approach is a moral, and in some cases, legal justification of torture under certain conditions. This is associated with ensuring public safety, the common good, obtaining information in order to prevent more serious criminal acts. In Kazakhstan, legal institutions have been formed providing for an absolute ban on torture. At the same time, the need for concretization of legal norms in this area, as well as improvement of law enforcement practices in collecting factual data on torture and conducting investigations was identified.

3) It is proposed to devote Part 3 of Article 146 of the Criminal Code of the Republic of Kazakhstan to responsibility for cruel, inhuman or degrading treatment and punishment. To set out this responsibility as follows: "shall be punished by a fine of up to five thousand monthly calculation indices, or correctional labor in the same amount, or restriction of liberty for up to six years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for up to three years". It is proposed to establish responsibility for torture in Part 4 of Article 146, and accordingly rename the existing Part 4 of Article 146 to Part 5 of Article 146 of the Criminal Code.

4) It is proposed to formulate Part 2 of Article 146 of the Criminal Code as follows: "Torture, i.e. intentional infliction of severe pain and (or) mental, moral suffering". This will bring the norms of the Criminal Code of the Republic of Kazakhstan into line with the provisions of the Convention against torture.

The research has practical value, since the results of the research are aimed at improving the legal norms of criminal legislation on torture and cruel, inhuman or degrading treatment or punishment.

The scientific value of the research lies in the research of the theoretical aspects of the human right to protection from torture and other cruel, inhuman or degrading treatment or punishment.

The results of the conducted research can be used in subsequent scientific research devoted to the problems of protecting human rights, and can also be used in law-making activities in the field of improving criminal law norms.

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А.В. Турлаев, Н.С. Ахметова

Азаптаулардан және басқа да қатыгез, адамгершілікке жатпайтын немесе ар-намысты қорлайтын іс-әрекеттер мен жазалау түрлерінен қорғаудағы адам құқықтары

Мақалада адамның азаптаудан және басқа да қатігез, адамгершілікке жат немесе қадір-қасиетін қорлайтын іс-әрекеттер мен жазалау түрлерінен қорғану құқығын жүзеге асыруға байланысты құқықтық регламенттеудің өзекті мәселелері қарастырылады. Бұл құқық ұлттық және халықаралық құқықтың кешенді институты ретінде зерттеледі. Зерттеудің мақсаты — «азаптаулардан және басқа да қатыгез, адамгершілікке жатпайтын немесе ар-намысты қорлайтын іс-әрекеттер мен жазалау түрлерінен қорғаудағы адам құқықтары» құқықтық институтына талдау жасау, құқықтық регламенттеу мәселелерін анықтау және ұлттық заңнаманы жетілдіру жолдарын әзірлеу. Зерттеу жалпы ғылыми және арнайы-құқықтық әдістер арқылы жүзеге асырылады, теориялық қағидалар мен құқықтық нормаларға, сондай-ақ олардың іске асырылу тәжірибесіне талдау жасалып, қорытындыланады. Бұл құқықтық институттың ерекшеліктері, оның құқықтық актілер мен халықаралық стандарттарда бекітілуіне талдау жүргізілді. Зерттеудің негізгі нәтижесі қылмыстық-құқықтық нормаларды жетілдіру бойынша ұсыныстар беру. Зерттеудің негізгі қорытындысы — азаптаулардан және басқа да қатыгез, адамгершілікке жатпайтын немесе ар-намысты қорлайтын іс-әрекеттер мен жазалау түрлерінің алдын алу саласындағы ұлттық заңнаманы осы саладағы халықаралық стандарттармен үйлестіруге бағытталған құқықтық шараларды жетілдіру қажеттігі туралы тұжырым.

Кілт сөздер: Қазақстан, адам құқықтары, азаптау, қатігез қарым-қатынас, жаза, қадір-қасиет, заңнама, құқықтық нормалар, халықаралық стандарттар.

А.В. Турлаев, Н.С. Ахметова

Права человека на защиту от пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания

В статье рассматриваются проблемные вопросы правовой регламентации осуществления права человека на защиту от пыток и других видов обращения и наказания, которые могут быть жестокими, бесчеловечными и унижать человеческое достоинство. Это право рассматривается как комплексный институт отечественного и международного права. Цель исследования — осуществление анализа правового института «Права человека на защиту от пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания», выявление проблем правовой регламентации и выработка путей совершенствования национального законодательства. Исследование осуществляется посредством общенаучных и специально-правовых методов, используется анализ и обобщение теоретических положений и правовых норм и практика их реализации. На основе сравнительно-правового метода выявляются основные тенденции развития этого института в настоящее время. Проведен анализ особенностей этого правового института, его закрепление в правовых актах и международных стандартах. Основным результатом исследования являются предложения по совершенствованию уголовно-правовых норм. Основным выводом исследования является положение о необходимости совершенствования правовых мер, направленных на гармонизацию национального законодательства в сфере защиты от пыток и предупреждения жестоких, бесчеловечных или унижающих человеческое достоинство видов обращения и наказания с международными стандартами в этой сфере.

Ключевые слова: Казахстан, права человека, пытки, жестокое обращение, наказание, достоинство, законодательство, правовые нормы, международные стандарты.

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