

Research Article

ADDRESSING HUMAN RIGHTS VIOLATIONS IN THE CRIMINAL JUSTICE SYSTEM OF KAZAKHSTAN: THE ROLE OF THE PROSECUTOR'S OFFICE AND A CALL FOR LEGISLATIVE REFORMS

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ABSTRACT

Background: Human rights violations within the criminal justice system represent a pervasive problem. International human rights agreements and national laws clearly assert the absolute protection of human rights. However, despite these strong legal principles, human rights violations frequently occur within the criminal justice system. This article examines the problem of human rights violations in the criminal justice system of Kazakhstan and the role of the prosecutor's office in protecting human rights.

Methods: This study utilised documentary analysis and secondary data analysis methodologies to conduct a detailed examination of legal acts, international agreements, and policy documents. It specifically reviewed documents including the Universal Declaration of Human Rights (UDHR), the Constitutional Law "On the Prosecutor's Office", the Concept of Legal Policy of the Republic of Kazakhstan up to 2030, and human rights reports from international bodies such as Amnesty International, Human Rights Watch, and Freedom House. The study also analysed reports from the Ministry of Justice and the Commissioner for Human Rights of the Republic of Kazakhstan.

Results and conclusions: By analysing international human rights treaties, national legislation, and reports from leading human rights organisations, the study exposes significant discrepancies between legal mandates and actual practices. Despite Kazakhstan's formal commitment to international human rights standards, it reveals systemic issues, including instances of human rights abuses in criminal justice. The study highlights the critical role of the prosecutor's office in human rights protection while also pointing out the

challenges in effectively fulfilling these responsibilities. The findings stress the importance of legislative reforms for enhancing the protection of human rights in criminal justice. The study is particularly relevant for policymakers, human rights advocates, and scholars interested in the intersection of law enforcement and human rights protections, offering insights that could guide future improvements in criminal justice practices.

1 INTRODUCTION

The protection of human rights within the criminal justice system is one of the pillars of a just and equitable society. It reflects the concepts of justice and the rule of law and guarantees that everyone, regardless of status, is treated justly and without discrimination. International human rights treaties, along with domestic legal frameworks, unequivocally proclaim the inviolability of human rights. Despite these ideals encapsulated within legal frameworks, there is often a troubling prevalence of human rights violations in the criminal justice system.¹ These violations range from minor procedural inconsistencies to more serious abuses of human rights, undermining the fundamental values of justice and equality. The disparity between the theoretical commitment to human rights and their practical application highlights systemic flaws that require rigorous scrutiny and comprehensive reforms.

Kazakhstan has ratified various international human rights treaties and conventions, thereby affirming its commitment to the protection and promotion of fundamental human rights and freedoms.² In Kazakhstan, law enforcement agencies, including the prosecutor's office, play an important role in ensuring the protection of human rights in criminal justice. The role of the prosecutor is the most significant as their responsibilities

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- 1 Albin Dearing and Holly Huxtable, 'Doing Justice for Victims of Violent Crime in the European Union - Reflections on Findings from a Research Project Conducted by the European Union Agency for Fundamental Rights' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 39, doi:10.1080/01924036.2020.1762233; Lars Holmberg and others, 'Victims' Rights: Serving Victims or the Criminal Justice System? An Empirical Study on Victims of Violent Crime and Their Experiences with the Danish Police' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 89, doi:10.1080/01924036.2020.1719525; Brandon Perkins, 'Cruel, Inhuman or Degrading Treatment or Punishment in Australia's Criminal Justice System: Does Human Rights Legislation Provide Accountability?' (2023) 29(2) *Australian Journal of Human Rights* 277, doi:10.1080/1323238X.2023.2296023; Mykhailo Ryazanov, Hanna Chuvakova and Suliko Piliuk, 'Legal Anomalies within Human Rights Implementation in Court: Ukrainian Heritage and Perspectives' (2021) 4(4) *Access to Justice in Eastern Europe* 90, doi:10.33327/AJEE-18-4.4-n000086.
 - 2 Paul Chaney, 'Exploring Civil Society Perspectives on the Situation of Human Rights Defenders in the Commonwealth of Independent States' (2023) 42(2) *Central Asian Survey* 293, doi:10.1080/02634937.2022.2113034.

extend beyond monitoring criminal cases; they are also actively involved in protecting human rights in criminal justice.³

However, the Human Rights report by the US Embassy highlights that human rights violations are prevalent in criminal justice in Kazakhstan.⁴ Incidents of abuse occur in police cells, pretrial detention centres, and prisons. Mistreatment is particularly frequent in pretrial facilities, including interrogation spaces, and authorities sometimes use pretrial detention as a tool to physically assault and mistreat detainees to coerce confessions. Moreover, local prosecutor's offices, responsible for investigating complaints of abuse and torture during criminal justice, occasionally use bureaucratic loopholes to avoid conducting thorough investigations.

This underscores the importance of examining the role of the prosecutor in ensuring human rights in the criminal justice of Kazakhstan. Delving into the prosecutor's responsibilities provides a better understanding of how they play a crucial role in building a rights-respecting criminal justice system. However, there is a notable research gap in the existing literature regarding the specific actions and effectiveness of the prosecutor's office in this context. This study aims to bridge this research gap and examine the prosecutor's role in ensuring human rights in the criminal justice of Kazakhstan.

The significance of this study lies in its potential to contribute to the broader discourse on human rights protections in Kazakhstan, offering insights that may inform future reforms. The study is guided by the following research questions: What is the state of human rights in Kazakhstan's criminal justice system? What is the role of the prosecutor's office in protecting human rights within Kazakhstan's criminal justice system?

2 UNDERSTANDING HUMAN RIGHTS VIOLATIONS WITHIN THE CRIMINAL JUSTICE SYSTEM

Human rights violations can happen at different stages of the criminal justice process, from the moment of arrest to the moment of sentencing. Some key aspects and principles related to protecting human rights within the criminal justice system include the presumption of innocence, legal representation, right to privacy, right to a fair trial, protection against torture and inhuman treatment, and protection against arbitrary arrest and detention, as outlined by principal international human rights conventions.

3 Takehiko Yamamura, Hiroshi Kinoshita and Shigeru Hishida, 'The Role of the Public Prosecutor with Treatment of Suspects Involving Suspended Prosecution Disposition in Accordance with the Crime Investigation Policy of Police in Japan' (2011) 13(4) *International Journal of Police Science and Management* 348, doi:10.1350/ijps.2011.13.4.230.

4 Bureau of Democracy, Human Rights, and Labor, '2022 Country Reports on Human Rights Practices: Kazakhstan' (*US Department of State*, 20 March 2023) <<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/kazakhstan/>> accessed 20 April 2024.

The discourse on integrating international human rights standards into the criminal justice system underscores the necessity of enhancing protections for both victims and the accused amidst widespread observations of human rights violations and the imperative for procedural justice and fair treatment by authorities.⁵ De la Vega posits that international human rights frameworks and treaties afford a greater level of protection for human rights within the criminal justice system as compared to domestic legal provisions.⁶ Meanwhile, van Hall et al. highlight the critical importance of ensuring procedural justice and fair treatment by various authoritative entities in the criminal justice system.⁷

Nevertheless, empirical observations frequently indicate that human rights violations within the criminal justice system, encompassing the rights of both the accused and the victims, are prevalent.⁸ For instance, Dearing and Huxtable emphasise a discrepancy between the rights of victims, as specified in the European Convention on Human Rights and the EU Charter of Fundamental Rights, and how they are recognised and implemented in several European countries.⁹ They revealed that many victims experienced a lack of recognition as holders of these rights, demonstrating the importance of practical acknowledgement from authorities. Moreover, they found that it is common for victims to feel marginalised and instrumentalised, particularly when their participation rights conflict with the fundamental rationale of criminal proceedings that focus on the offender's state punishment.

Similarly, Mergaerts' findings highlight the complexity of addressing suspect vulnerability in criminal proceedings in Belgium and stress the importance of knowledge, training, and clear legal provisions to safeguard and defend the human rights of vulnerable suspects.¹⁰ Meanwhile, Holm argues that Sweden only refers to international law in a few bills when conceptualising rights for crime victims in legislation.¹¹ Holder et al. state that it is

5 Marcin Dziurda, Agnieszka Gołąb and Tadeusz Zembrzuski, 'European Convention of Human Rights and Fundamental Freedoms: Impact on Polish Law Development' (2021) 4(1) *Access to Justice in Eastern Europe* 23, doi:10.33327/AJEE-18-4.1-a000045.

6 Connie de la Vega, 'Using International Human Rights Standards to Effect Criminal Justice Reform in the United States' (2015) 41(2) *Human Rights* 13.

7 Matthias van Hall and others, 'Procedural Justice and Legitimacy of the Law in the Criminal Justice System: A Longitudinal Study among Dutch Detainees' (2024) 30(2) *Psychology, Crime and Law* 101, doi:10.1080/1068316X.2022.2065274.

8 Hildur Fjóra Antonsdóttir, "'A Witness in My Own Case": Victim-Survivors' Views on the Criminal Justice Process in Iceland' (2018) 26 *Feminist Legal Studies* 307, doi:10.1007/s10691-018-9386-z; Dearing and Huxtable (n 1); Holmberg and others (n 1); Lore Mergaerts, "'Defence Lawyers' Views on and Identification of Suspect Vulnerability in Criminal Proceedings' (2022) 29(3) *International Journal of the Legal Profession* 281, doi:10.1080/09695958.2021.1982719; Mattia Pinto, 'Awakening the Leviathan through Human Rights Law – How Human Rights Bodies Trigger the Application of Criminal Law' (2018) 34(2) *Utrecht Journal of International and European Law* 161, doi:10.5334/ujiel.462.

9 Dearing and Huxtable (n 1).

10 Mergaerts (n 8).

11 Fanny Holm, 'Successful Human Rights Implementation? Victims of Crime and the Swedish Example' (2022) 40(4) *Nordic Journal of Human Rights* 529, doi:10.1080/18918131.2022.2147319.

important to acknowledge that both victims and offenders have human rights and the distinct status of victims in criminal justice processes.¹² By highlighting the parallel interests between these two groups, this understanding challenges the notion that state entities only have duties towards offenders. In this regard, Dearing and Huxtable stress the need for a new conceptualisation of criminal justice, basing it on principles of dignity and human rights.¹³ This entails acknowledging the direct breach of victims' rights and dignity, holding offenders accountable, and restoring the normative order that safeguards the dignity and rights of all individuals.

Identifying factors contributing to human rights violations in criminal justice is essential. According to Uddin, three primary factors that are largely responsible for human rights violations in police practices in Bangladesh include corruption, a culture of impunity, and the militarisation of policing.¹⁴ The author argues that developing a human rights movement is an effective approach to increasing awareness, combating corruption and impunity, and exerting public pressure on the state to protect human rights. The study emphasises the significance of partnerships between civil society, legal professionals, academics, media, human rights defenders, victims, and politicians in promoting this movement. Meanwhile, Efrat and Tomasina established a connection between human rights violations in international extraditions and the political and economic interests of the countries.¹⁵ Their study shows that, despite rhetorical commitments to human rights, political and economic interests can sometimes outweigh human rights concerns in extradition decisions, particularly when dealing with powerful states like China. These studies collectively highlight the urgent need for collaboration to promote awareness, fight injustice, and enhance human rights protection in criminal justice.

A significant body of research focuses on the challenges within the criminal justice system that hinder the effective protection of human rights. Perkins highlights a considerable challenge in proving violations of the right not to be subjected to cruel, inhuman, or degrading treatment or punishment (CIDTP) in Australian jurisdiction.¹⁶ This is partly due to the court's narrow interpretation and the high threshold for proving such a breach, often requiring evidence of intent or severe impact. Moreover, the author argues that despite the strong protections against CIDTP in international law, these standards are not fully realised or reflected in the Australian criminal justice system's practices. The author

12 Robyn Holder, Tyrone Kirchengast and Paul Cassell, "Transforming Crime Victims" Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1, doi:10.1080/01924036.2020.1857278.

13 Dearing and Huxtable (n 1).

14 Md Kamal Uddin, 'Human Rights Abuses and Criminal Justice in Policing Practices in Bangladesh' [2022] *Criminology and Criminal Justice* doi:10.1177/17488958221120915.

15 Asif Efrat and Marcello Tomasina, 'Value-Free Extradition? Human Rights and the Dilemma of Surrendering Wanted Persons to China' (2018) 17(5) *Journal of Human Rights* 605, doi:10.1080/14754835.2018.1533454.

16 Perkins (n 1).

argues that the High Court of Australia views international and comparative human rights jurisprudence as “imperfect analogues” with limited applicability, emphasising the need to prioritise the literal meaning and legislative intent of domestic statutes when interpreting human rights in Australia.

Similarly, Daly et al. stress several challenges within the criminal justice systems of Ireland, the Netherlands, and Italy that hinder the effective protection of human rights.¹⁷ Despite legal protections for the right to silence, all three jurisdictions allow adverse inferences from a suspect's silence under certain conditions. This practice can cause a breach of the right to silence and the presumption of innocence, causing suspects to speak without comprehending their rights or the consequences of their statements.

Grenfell et al. discuss the problem of ensuring the human right to daily access to fresh air in Australian prisons and identify a diverse set of challenges, from legislative inadequacies and lack of enforcement to discrepancies in applying international human rights standards.¹⁸ Overall, these challenges emphasise the need for a more unified and enforceable approach to human rights protection within the criminal justice system, particularly regarding the treatment of individuals deprived of their liberty.

In the criminal justice system, the prosecutor is a key figure with state authority to oversee procedural activities. Their active participation is essential for maintaining legal standards in law enforcement activities and ensuring the rights of all parties involved in criminal proceedings are respected.¹⁹ The role and status of a prosecutorial organ differ significantly depending on its location within the executive branch (USA, Mexico, Uruguay), within the judiciary (Italy, Colombia, Costa Rica), or it can be an autonomous institution (Chile, Guatemala, Switzerland).²⁰

In Singapore, the Public Prosecutor must act independently and impartially as a minister of justice, advising the government on legal matters, controlling criminal prosecutions, and assisting in sentencing to ensure justice while avoiding political influence and maintaining public confidence in the criminal justice system. However, the Public Prosecutor's

17 Yvonne Daly and others, ‘Human Rights Protections in Drawing Inferences from Criminal Suspects’ Silence’ (2021) 21(3) *Human Rights Law Review* 696, doi:10.1093/hrlr/ngab006.

18 Laura Grenfell, Anita Mackay and Meribah Rose, ‘A Human Right to Daily Access to Fresh Air beyond Prisons in Australia?’ (2023) 29(2) *Australian Journal of Human Rights* 259, doi:10.1080/1323238X.2023.2254538.

19 Kumaralingam Amirthalingam, ‘The Public Prosecutor and Sentencing: Drug Trafficking and the Death Penalty in Singapore’ (2018) 18(1) *Oxford University Commonwealth Law Journal* 46, doi: 10.1080/14729342.2018.1471835; Yamamura, Kinoshita and Hishida (n 3).

20 Verónica Michel, ‘The Role of Prosecutorial Independence and Prosecutorial Accountability in Domestic Human Rights Trials’ (2017) 16(2) *Journal of Human Rights* 193, doi:10.1080/14754835.2015.1113864; Gwladys Gilliéron, *Public Prosecutors in the United States and Europe: A Comparative Analysis with Special Focus on Switzerland, France, and Germany* (Springer International 2014) doi:10.1007/978-3-319-04504-7.

discretionary power to issue certificates of substantive assistance in drug trafficking cases, which significantly influences whether a convict faces the death penalty or life imprisonment, raises constitutional concerns regarding the separation of powers.²¹

In Chile, the role of the prosecutor, deeply embedded within the judiciary, was pivotal in managing human rights cases. Their independence and the introduction of private prosecution rights were crucial in overcoming political and legal obstacles in bringing state agents to trial. This judicial framework, particularly after the democratic transition and judicial reforms, significantly increased the successful prosecution of human rights violations.²² Thus, a comparative analysis of various jurisdictions indicates that the prosecutor plays a critical role in shaping the criminal justice process and ensuring fair and impartial application of justice, regardless of the country's legal system.

3 METHODOLOGIES

This study employed documentary and secondary data analysis methodologies to critically examine legal acts, international conventions, and policy documents. Specifically, it analysed documents such as the Universal Declaration of Human Rights (UDHR), the Constitutional Law "On the Prosecutor's Office", the Concept of Legal Policy of the Republic of Kazakhstan until 2030, and human rights reports from international organisations such as Amnesty International, Human Rights Watch, and Freedom House. Additionally, reports from the Ministry of Justice and the Commissioner for Human Rights of the Republic of Kazakhstan were analysed.

Documentary analysis was utilised to examine current legislation, procedural guidelines, and any relevant documents that outline human rights in the criminal justice system.²³ This approach provided insights into the formal structures and regulatory frameworks that govern the prosecutor's role in protecting human rights. Secondary data analysis drew upon existing statistical data and reports related to Kazakhstan's criminal justice, human rights, and legal practices, facilitating a deeper understanding of current practices and trends.²⁴

The findings from documentary analysis and secondary data analysis were synthesised to create a comprehensive understanding of the prosecutor's role in protecting human rights in Kazakhstan's criminal justice system. Triangulation of the data from diverse sources enhanced the reliability and robustness of the study.

21 Amirthalingam (n 19).

22 Michel (n 20).

23 Philip Matthew Stinson, 'Document Analysis' in JC Barnes and David R Forde (eds), *The Encyclopedia of Research Methods in Criminology and Criminal Justice* (John Wiley & Sons 2021) ch 79, 392.

24 Megan Bookstaver, 'Secondary Data Analysis' in JC Barnes and David R Forde (eds), *The Encyclopedia of Research Methods in Criminology and Criminal Justice* (John Wiley & Sons 2021) ch 107, 531.

4 THE INTERNATIONAL DIMENSION OF HUMAN RIGHTS IN CRIMINAL JUSTICE

International legal instruments outline the foundational principles of human rights in criminal justice. These standards guide countries to ensure justice and respect for human rights. The principal international human rights documents relevant to protection in criminal justice include the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention Against Torture (UNCAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Rome Statute of the International Criminal Court (ICC), United Nations Rules for the Protection of Juveniles Deprived of their Liberty and United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

The UDHR, adopted by the United Nations General Assembly in 1948, outlines the fundamental rights and freedoms to which every individual is entitled.²⁵ Among its various provisions, Articles 7, 9, 10, and 11 specifically address the rights related to criminal justice, ensuring equality, fairness, and justice for all under the law. Article 11 of the UDHR embodies two essential principles of criminal law – the presumption of innocence and the principle of legality:

Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

The ICCPR, adopted by the United Nations General Assembly in 1966, expands on the civil and political rights and freedoms listed in the UDHR.²⁶ The ICCPR prohibits any discrimination and slavery, torture, cruel, inhuman, degrading treatment or punishment. Article 9 of the ICCPR establishes several key principles aimed at safeguarding individuals against arbitrary arrest and detention and that due process is followed in the administration of justice:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be

25 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 20 April 2024.

26 International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXI) A) <[https://undocs.org/en/A/RES/2200\(XXI\)](https://undocs.org/en/A/RES/2200(XXI))> accessed 20 April 2024.

entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

The UNCAT aims to strengthen the fight against torture and other cruel, inhuman or degrading treatment or punishment. The UNCAT delineates a clear definition of torture in Article 1, emphasising the intentional infliction of severe pain or suffering for specific purposes, such as obtaining information or confessions, punishment, intimidation, or for reasons based on discrimination, when such acts are conducted or sanctioned by public officials.²⁷

United Nations Standard Minimum Rules for the Treatment of Prisoners set minimum standards for the treatment of prisoners, which include provisions on housing, healthcare, disciplinary measures, and access to the outside world.²⁸ Rule 1 of the Nelson Mandela Rules defines a high standard for prison treatment, highlighting the importance of human dignity and the prohibition of torture and ill-treatment:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

These international instruments provide a foundation for countries to design and reform their criminal justice systems in a way that upholds, defends, and respects human rights. A number of UN committees and entities oversee the observance of these standards and offer advice and recommendations to governments regarding the implementation of their responsibilities.

27 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en> accessed 20 April 2024.

28 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015 UNGA Res 70/175) <<https://www.refworld.org/legal/resolution/unga/2016/en/119111>> accessed 20 April 2024.

5 COMMITMENT TO ENHANCING HUMAN RIGHTS IN NATIONAL LEGAL FRAMEWORKS OF KAZAKHSTAN

A strong commitment to enhancing human rights in the criminal justice system of Kazakhstan is reflected in national legislation, policy documents and the country's adherence to international human rights conventions and declarations. Kazakhstan has ratified important human rights conventions and declarations such as the UDHR, the ICCPR, and the CEDAW. The "UN Sustainable Development Cooperation Framework for 2021-2025", signed on 12 August 2020 between the UN and Kazakhstan, stresses that "by 2025, all people in Kazakhstan are protected and enjoy full realisation of human rights and gender equality and a life free from discrimination, violence, and threats, and equally participate in decision-making".²⁹ Additionally, the EU-funded projects adopt a proactive approach to advancing human rights in Kazakhstan.³⁰

National legislation and policy documents also stress the importance of human rights in the country's criminal justice system. The Constitution and current legislation of Kazakhstan recognise and guarantee human rights and freedoms. The Constitution of Kazakhstan has a section that outlines the respect for human and civil rights and freedoms.³¹ The Concept of Legal Policy (hereafter: the Concept) of the Republic of Kazakhstan until 2030³² focuses on ensuring human rights in criminal procedural activities as the main development direction of national law and highlights Kazakhstan's aspiration to approach the level of ensuring the observance of human rights and its legitimate interests in OECD countries. It involves the phased implementation of a three-tier model of criminal proceedings with a delineation of powers between pre-trial investigation bodies, the prosecutor's office, and the court. This model introduces a structured approach aimed at simplifying and reducing the forms of criminal proceedings. The Concept stresses the importance of strengthening government policies on human rights protection, a commitment further evidenced by the adoption of the Human Rights Priority Action Plan (hereafter: the Plan) by the government on 11 June 2021, aimed at enhancing human rights in Kazakhstan.³³

29 United Nations, *Sustainable Development Cooperation Framework Country Kazakhstan, Year 2021-2025* (UN 12 August 2020) 24 <<https://kazakhstan.un.org/en/89567-un-sustainable-development-cooperation-framework-2021-2025>> accessed 20 April 2024.

30 Chiara Pierobon, 'EU's Support to Civil Society in Kazakhstan: A Pilot Evaluation of the Social Capital Generated' (2019) 25(2) *Evaluation* 207, doi:10.1177/1356389018796023.

31 Constitution of the Republic of Kazakhstan of 30 August 1995 (amended 17 September 2022) art 1, para 1 <https://adilet.zan.kz/eng/docs/K950001000_> accessed 20 April 2024.

32 Decree of the President of the Republic of Kazakhstan no 674 of 15 October 2021 'On approval of the Concept of legal policy of the Republic of Kazakhstan until 2030' <<https://adilet.zan.kz/kaz/docs/U2100000674>> accessed 20 April 2024.

33 Resolution of the Government of the Republic of Kazakhstan no 405 of 11 June 2021 'On approval of the Plan of Priority Measures in the Field of Human Rights' <<https://adilet.zan.kz/kaz/docs/P2100000405>> accessed 20 April 2024.

According to the Plan, priority measures in ensuring human rights include improving mechanisms of interaction with UN treaty bodies and special procedures of the UN Human Rights Council, ensuring the rights of victims of human trafficking, eliminating discrimination against women, human rights in criminal justice, and the prevention of torture and cruel treatment. To improve the effectiveness of implementing human rights, it is essential to create and gradually implement national indicators to assess compliance with human rights.³⁴ This systematic approach will offer a structured and measurable framework to evaluate how well the government upholds and protects human rights. Establishing clear and quantifiable indicators allows policymakers to monitor progress, identify areas for improvement, and ensure accountability in pursuit of a society that respects human rights.

A significant transformation in criminal procedure legislation was marked by the enactment of the new Criminal,³⁵ Criminal Procedure,³⁶ and Criminal Executive Codes³⁷ on 1 January 2015. The main goals of this legal reform include protecting the rights of suspects, accused individuals, victims, and witnesses in criminal proceedings. The legislation is designed to fully implement the principle of equality between all parties involved, leading to a more efficient and effective legal process. Specifically, Articles 67 and 135 of the Code of Criminal Procedure guarantee detainees the right to inform their families and have access to a defender. Article 274 outlines the rights of the suspect, accused, victim, witness, defence lawyer and representative of the victim when ordering and conducting an examination. Meanwhile, Article 10 of the Criminal Executive Code of Kazakhstan identifies a wide range of entitlements for convicted persons to ensure their dignity, safety, and well-being while serving their sentences.

In a referendum on 5 June 2022, important constitutional amendments were approved, marking the most substantial change since the adoption of the Constitution in 1995. Key changes include citizens' newfound ability to appeal cases directly to the Constitutional Court alongside the Prosecutor General and the Commissioner for Human Rights.³⁸ This move signifies a crucial step towards enhancing the legal empowerment of citizens and strengthening the mechanisms for protecting human rights in Kazakhstan.

34 Gauthier de Beco, 'Human Rights Indicators for Assessing State Compliance with International Human Rights' (2008) 77(1-2) *Nordic Journal of International Law* 23, doi:10.1163/090273508X290681; Nicole Stremmlau, 'Developing Bottom-up Indicators for Human Rights' (2019) 23(8) *International Journal of Human Rights* 1378, doi:10.1080/13642987.2019.1642198.

35 Code of the Republic of Kazakhstan no 226-V of 3 July 2014 'Penal Code of the Republic of Kazakhstan' <<https://adilet.zan.kz/eng/docs/K1400000226>> accessed 20 April 2024.

36 Code of the Republic of Kazakhstan no 231 of 4 July 2014 'Criminal Procedure Code of the Republic of Kazakhstan' <<https://adilet.zan.kz/eng/docs/K1400000231>> accessed 20 April 2024.

37 Code of the Republic of Kazakhstan no 234-V of 5 July 2014 'Penal Execution Code of the Republic of Kazakhstan' <<https://adilet.zan.kz/eng/docs/K1400000234>> accessed 20 April 2024.

38 Ministry of Justice of the Republic of Kazakhstan, *Annual Review of the Human Rights Situation in the Republic of Kazakhstan* (Ministry of Justice 2022) 6 <<https://www.gov.kz/memleket/entities/adilet/documents/details/344082?lang=en>> accessed 20 April 2024.

On 5 November 2022, the Constitutional law “On the Prosecutor’s Office” was enacted, introducing several changes directly focused on enhancing the protection of human rights.³⁹ The Constitutional Law establishes three forms of higher supervision: conducting inspections, analysing the state of legality, and assessing acts that have entered into force. These provisions fortify the protection of human rights by the prosecutor's office, empowering it to challenge illegal legal acts and seek their overturn in the courts of general jurisdiction. A notable change in the Constitutional law is the provision for collaboration with the Commissioner for Human Rights, who also holds constitutional status. This is a major advance towards a more comprehensive and rights-centered legal system. Bringing together key institutions and addressing human rights challenges collectively reinforces the commitment to fairness, justice, and the protection of human rights within the legal framework.

As part of the implementation of the Concept, there has been a gradual shift to a new three-tier model of the criminal process that clearly outlines areas of responsibility between the investigative body, the prosecutor's office, and the court. This new system will guarantee the fairness of the criminal process and the protection of human rights, eliminating any potential bias from specific departments. Additionally, it will enable an effective system of checks and balances.⁴⁰

A key priority is enhancing digitalisation and fostering transparency in the law enforcement sector. According to the General Prosecutor's Office, in 2022, 90.8% of criminal cases, which totalled 205,270 out of 226,030 cases, were investigated in electronic format. Furthermore, 8.1 million electronic protocols and orders were compiled, accounting for 88% of the total volume of administrative materials.⁴¹ These figures demonstrate the nation's dedication to utilising digital tools to achieve a more efficient, accountable, and transparent legal framework.

Complementing this technological advancement, the introduction of judicial authorisation has marked a significant step towards strengthening the protection of human rights and eliminating ongoing violations by law enforcement agencies. Following amendments to the legislation, the arrest and detention of suspects now require prior authorisation from a court. This process complies with the provisions of the ICCPR, which Kazakhstan has ratified.

Judicial authorisation in Kazakhstan was established based on examining global practices and legal instruments concerning human rights and freedoms, as outlined in UN resolutions. The judge initiates the proceedings by detailing the petition under

39 Constitutional Law of the Republic of Kazakhstan no 155-VII LRK of 5 November 2022 ‘On the Prosecutor’s Office’ accessed 20 April 2024.

40 Ministry of Justice of the Republic of Kazakhstan (n 38) 17.

41 Anti-Corruption Agency of the Republic of Kazakhstan, *National Anti-Corruption Report 2022* (Anti-Corruption Service 14 July 2023) 31 <<https://www.gov.kz/memleket/entities/anticorruption/documents/details/494573?lang=en>> accessed 20 April 2024.

consideration and explaining the rights and obligations of those present during the court hearing. Subsequently, the prosecutor presents the case for choosing arrest as a preventive measure for the accused or suspect, allowing all parties present at the hearing to be heard. The court hearing involves both the suspect and their lawyer, as well as the victim and their representative. The court's decision-making process is highly transparent, with decisions made openly, ensuring a clear and transparent resolution of issues.

To summarise, Kazakhstan's extensive legal reforms, constitutional amendments, and commitment to international human rights standards demonstrate a steadfast determination to construct a rule-of-law-based legal system, promote transparency and accountability, and protect human rights within the criminal justice framework.

6 HUMAN RIGHTS VIOLATIONS IN THE CRIMINAL JUSTICE OF KAZAKHSTAN

The findings show that instances of human rights abuses are common in the criminal justice of Kazakhstan. The Concept points to the ongoing challenges in protecting human rights, ensuring quality criminal prosecution, and administering justice by the courts. It highlights that law enforcement agencies currently prioritise departmental indicators, such as detectability and referral to court, above adherence to human rights principles. Moreover, the US Embassy revealed that investigative and prosecutorial practices prioritised confessions of guilt over evidence when building criminal cases against defendants.⁴² It is common for courts to disregard allegations from defendants that officials obtained confessions by using torture or duress.

Independent observers consistently assess the condition of human rights within Kazakhstan's criminal justice system as falling short of international standards.⁴³ Analysis of the reports on human rights in Kazakhstan shows that the number of detentions and arrests has significantly increased. Conversely, preventive measures that do not involve deprivation of liberty, such as personal guarantees, bail, and house arrest, have become virtually unused and are seldom applied, except for a written undertaking not to leave the place and maintain proper behaviour. Common issues have included arbitrary arrest and

42 Bureau of Democracy, Human Rights, and Labor (n 4).

43 Amnesty International, *The State of the World's Human Rights, April 2024* (Amnesty International Ltd 2024) 223-5 <<https://www.amnesty.org/en/documents/poi10/7200/2024/en/>> accessed 20 April 2024; Michiel S de Vries and Iwona Sobis, 'Reluctant Reforms: The Case of Kazakhstan' (2014) 14(2) *Public Organization Review* 139, doi:10.1007/s11115-012-0210-y; Joshua Foust, 'Security and Human Rights in Central Asia' (2012) 19(1) *The Brown Journal of World Affairs* 45; Freedom House, 'Kazakhstan: Freedom in the World 2023 Country Report' (*Freedom House*, 2024) <<https://freedomhouse.org/country/kazakhstan/freedom-world/2023>> accessed 20 April 2024; Katharina Hoffmann, 'The EU in Central Asia: Successful Good Governance Promotion?' (2010) 31(1) *Third World Quarterly* 87, doi:10.1080/01436590903557397; Human Rights Watch, 'World Report 2024: Kazakhstan: Events of 2023' (*Human Rights Watch*, 2024) <<https://www.hrw.org/world-report/2024/country-chapters/kazakhstan>> accessed 20 April 2024.

detention, torture and ill-treatment, unfair trials, and poor prison conditions.⁴⁴ Consequently, there is an increase in human rights violations year by year. According to the Report on the activities of the Commissioner for Human Rights in the Republic of Kazakhstan, in 2021, the Commissioner for Human Rights received 1,855 appeals. Compared to 2020, the total number of complaints increased by 55% (Figure 1).⁴⁵

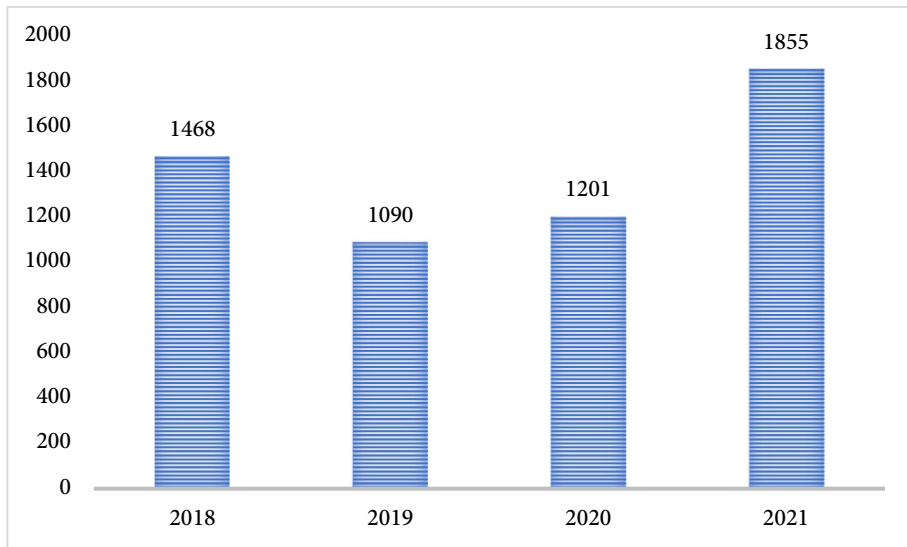


Figure 1. Total number of complaints received by the Commissioner for Human Rights from 2018 to 2021

Complaints of human rights violations received by the Commissioner for Human Rights in 2019-2021 indicate that most complaints are related to the criminal justice system (Figure 2).⁴⁶ The data show that complaints against law enforcement agencies, disagreement with court decisions, and prisoners' rights comprised most complaints compared to other human rights violations and consistently increased over the three years. Moreover, the report highlights that compared to 2020, there has been a sharp increase in complaints against the actions of law enforcement agencies (by 217%), appeals of disagreement with court decisions (by 263%), and appeals on issues of the penal system (by 288%) in 2021.

44 Amnesty International (n 43) ; Bureau of Democracy, Human Rights, and Labor (n 4); Freedom House (n 43); Human Rights Watch (n 43).

45 Commissioner for Human Rights in the Republic of Kazakhstan, 'Report of the Commissioner for Human Rights in the Republic of Kazakhstan for 2021' (*Human Rights in the Republic of Kazakhstan*, 01 March 2022) <<https://www.gov.kz/memleket/entities/ombudsman/documents/details/298052?lang=en>> accessed 20 April 2024.

46 *ibid.*

The consistent increase in complaints over the three years, coupled with sharp spikes in 2021, suggests that challenges within the criminal justice system are not only prevalent but may be escalating. This observation is supported by the US Embassy, which revealed several concerning issues related to the treatment of individuals within the criminal justice system in Kazakhstan.⁴⁷ Despite the separation of men and women, pretrial detainees and convicted prisoners, there have been cases where youth have been held with adults while moving between temporary detention centres, pretrial detention, and prisons. Human rights observers pointed out that transportation to penal colonies was considered inhumane, and the segregation of men and women was not consistently maintained during the process. Despite routine checks led by the prosecutor on unlawful detention of individuals in office premises under suspicion of committing crimes, instances of unlawful detention persist.

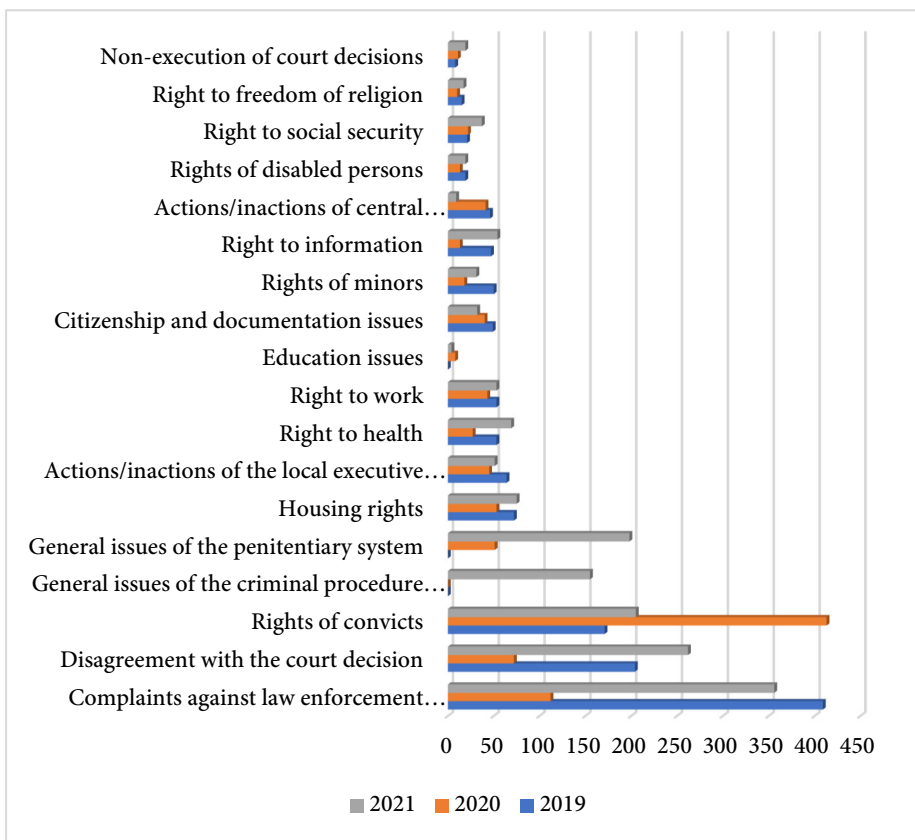


Figure 2. Contents of complaints received by the Commissioner for Human Rights in 2019-2021

47 Bureau of Democracy, Human Rights, and Labor (n 4).

The analysis of complaints against the actions of law enforcement agencies received by the Commissioner for Human Rights reveals several recurring actions by law enforcement agencies. As Figure 3 indicates, the complaints related to inappropriate pre-trial investigations (37.6%) followed by pressure, torture and forced confession (18.9%).⁴⁸

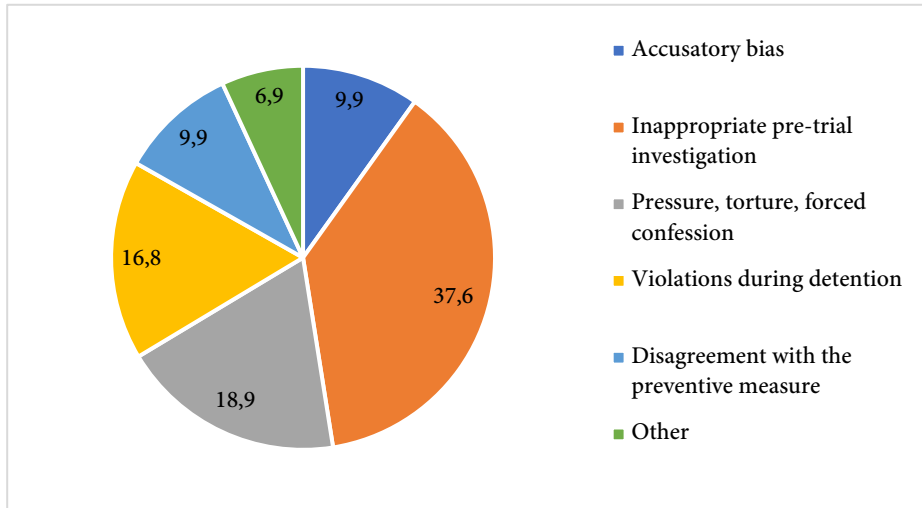


Figure 3. Contents of complaints against the actions of law enforcement agencies

The Report stresses concerns about delays in the investigation process, unjustified case closures, the inaction of police officers to complaints, and other issues. In most cases, authorities either conducted investigations against officials or terminated such investigations because there was no evidence of a criminal offence. However, in some cases, citizens' violated rights to access justice due to the inappropriate conduct of pre-trial investigations were partially restored. This raises serious concerns about the treatment of suspects during pre-trial investigations, potentially pointing to human rights violations and unethical practices by law enforcement agencies. The data suggest that there may be systemic issues or shortcomings in the pre-trial investigative procedures, which could lead to human rights violations and undermine the integrity of the criminal justice system. Addressing these concerns is important for ensuring a fair criminal process, upholding human rights standards, and fostering public trust in law enforcement and the broader justice system.

As Figure 2 illustrates, complaints about the rights of prisoners stand out as a major issue. This category represents a substantial and persistent problem in the criminal justice system, highlighting the difficulties faced by prisoners. According to the Report, in 2021,

⁴⁸ Commissioner for Human Rights in the Republic of Kazakhstan (n 45).

the Commissioner for Human Rights received 205 complaints concerning the violations of the rights and freedoms of prisoners within the penal system. The majority of complaints were concerning the use of torture, cruel treatment and pressure, unjustified placement in disciplinary isolation, unlawful reprimands, unsatisfactory living conditions, and incidents that led to suicide (Figure 4).⁴⁹

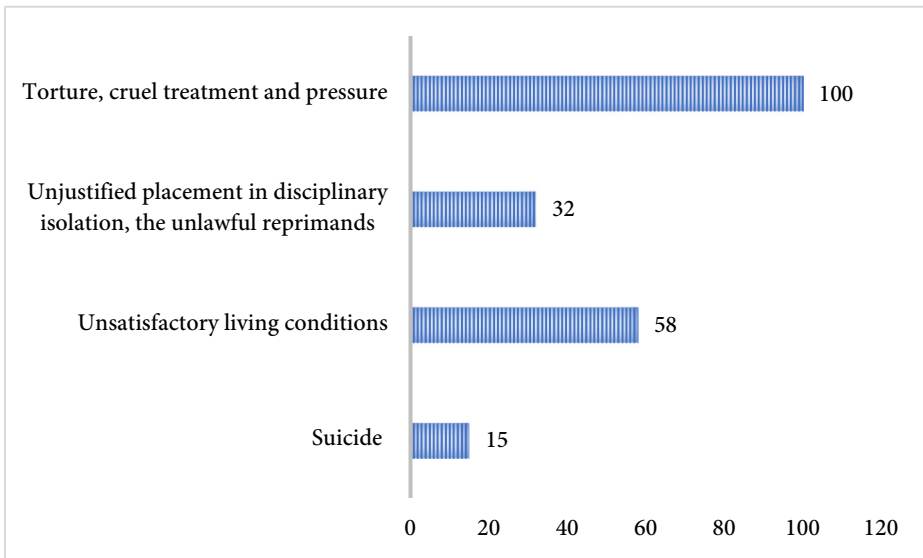


Figure 4. Contents of complaints on the rights of prisoners

These practices not only violate international human rights standards but also undermine the fundamental principles of rehabilitation and justice that should underpin the penal system. Addressing these issues requires comprehensive reforms at both policy and practice levels. These could include creating independent monitoring bodies with the authority to inspect prisons, adopting a broader approach to prison oversight, training prison staff on human rights and the ethical treatment of prisoners, emphasising rehabilitation over punishment, and collaborating with international human rights organisations.⁵⁰

It is worth recognising that the presented statistics may not provide a complete picture of human rights violations, as a significant number of people choose to remain silent and

49 *ibid.*

50 Alice Jill Edwards, 'Justice Starts at Home: A Call for Stepped-up Nationally-Led Investigations into Torture' (2023) 41(3) *Netherlands Quarterly of Human Rights* 123, doi:10.1177/09240519231195389; Róisín Mulgrew, 'Prisoner Lives Cut Short: The Need to Address Structural, Societal and Environmental Factors to Reduce Preventable Prisoner Deaths' (2023) 23(2) *Human Rights Law Review* ngad006, doi:10.1093/hrlr/ngad006.

avoid reporting their complaints to the proper authorities. This brings attention to an important aspect of the human rights landscape – the widespread problem of underreporting. While the data presented is a sign of substantial concerns and violations, it likely represents only a small portion of the actual human rights abuses that occur.

The Freedom House report highlights that the use of excessive force by police during arrests is a common practice, and torture is widely used to obtain confessions.⁵¹ Similarly, the human rights report of the US Embassy stresses that the increase in arrests can be explained by the fact that the suspects are coerced into confessing during prolonged detention in police department premises and pre-trial detention centres.⁵² In fact, suspected individuals are particularly at risk of violating their rights and freedoms during criminal investigations.⁵³ The Freedom House report reveals serious concerns regarding the rule of law, human rights, and judicial fairness within Kazakhstan’s law enforcement system.⁵⁴ It revealed challenges such as arbitrary arrests, limited access to legal representation, an imbalance in the authorisation of legal actions, prolonged pretrial detentions, and politically motivated legal proceedings. Moreover, Chaney found that the Commonwealth of Independent States, including Kazakhstan, is witnessing a significant trend of shrinking civil space, where human rights defenders are facing significant obstacles in their work.⁵⁵

The repression affecting civil society actors involves a variety of rights pathologies, such as threats, violence, and even murder. While the government of Kazakhstan is committed to democratic reforms and the protection of human rights in the criminal justice system, there are significant concerns and criticisms about the actual implementation of these reforms in the country.⁵⁶ These findings stress the need to strengthen mechanisms for protecting human rights in the criminal justice system of Kazakhstan and the importance of reinforcing the prosecutor's role in monitoring and ensuring the effective implementation of human rights in criminal justice.

51 Freedom House (n 43).

52 Bureau of Democracy, Human Rights, and Labor (n 4).

53 Mergaerts (n 8).

54 Freedom House (n 43).

55 Chaney (n 2).

56 de Vries and Sobis (n 43); Daniel C O’Neill and Christopher B Primiano, ‘Kazakhstan’s Quest for Status: A Secondary State’s Strategy to Shape Its International Image’ (2023) 15(1) *Journal of Eurasian Studies* 81, doi:10.1177/18793665231173000.

7 THE ROLE OF THE PROSECUTOR'S OFFICE IN PROTECTING HUMAN RIGHTS IN THE CRIMINAL JUSTICE SYSTEM OF KAZAKHSTAN

The prosecutor, as a key participant in the criminal justice system, possesses state powers for supervising procedural activities. Their active involvement is crucial for ensuring the legality of law enforcement activities and respecting the rights of parties involved in criminal proceedings.⁵⁷ According to the current criminal legislation of Kazakhstan, prosecutors are responsible for monitoring the enforcement of the law in criminal investigations, law enforcement actions, and civil cases.

Adopting the Constitutional law “On the Prosecutor’s Office” on 5 November 2022 marked a significant shift in the emphasis of prosecutorial supervision in criminal proceedings. According to Article 29 of the Law, the prosecutor's office collaborates extensively with state, local representative and executive bodies, local government entities, institutions, their officials, quasi-public sector entities, and other organisations, regardless of their ownership structure, to protect and restore violated human and civil rights and freedoms. Furthermore, the prosecutor's office is actively involved with the Commissioner for Human Rights in the Republic of Kazakhstan, offering support. Additionally, the prosecutor's office extends its collaborations beyond national borders. Through criminal legal cooperation frameworks, it cooperates with the competent authorities of foreign states and international organisations. By adopting a multifaceted approach, the prosecutor's office demonstrates its commitment to upholding justice, protecting rights, and fostering collaboration at both domestic and international levels. The law has brought about a notable shift in the priorities of the prosecutor's office, with a clear emphasis on its role in human rights, highlighting its crucial and positive impact.

From 31 December 2020, the prosecutor began approving key procedural decisions by investigative bodies at the initial stage. This approach underscores the prosecutor's central role in the Kazakhstan criminal justice system. According to the National Report on anti-corruption for 2022 by the Anti-Corruption Agency of the Republic of Kazakhstan, over two years, the prosecutor's office reviewed more than 840,000 decisions (2021 – 419,808, 2022 – 422,217). Furthermore, more than 81,000 illegal procedural decisions that affected the rights of suspects and victims were halted (2021 – 53,270, 2022 – 28,180).⁵⁸ These figures highlight the significant role of the prosecutor's office in scrutinising and reviewing decisions within the criminal justice system.

Moreover, a study conducted by the Bureau of National Statistics of Kazakhstan in October-November 2022 assessed public trust in law enforcement agencies, highlighting a significant level of confidence in the prosecutor's office. According to Figure 5,⁵⁹ which breaks down

57 Yamamura, Kinoshita and Hishida (n 3).

58 Anti-Corruption Agency of the Republic of Kazakhstan (n 41) 6.

59 Bureau of National Statistics Agency for Strategic Planning and Reforms of the Republic of Kazakhstan <<https://stat.gov.kz/en/>> accessed 20 April 2024.

public perceptions of various law enforcement agencies in Kazakhstan, 44% of respondents expressed full confidence in the prosecutor's office, and 31.6% indicated partial trust. Conversely, only 3.4% partially disagreed, and 1.7% completely disagreed with the statement about trusting the prosecutor's office. Furthermore, 19.4% of respondents mentioned having no previous encounters with the prosecutor's office. These findings demonstrate a predominant trust in the prosecutor's office over other law enforcement agencies, underscoring its perceived importance and credibility within Kazakhstan's legal system and criminal justice framework.

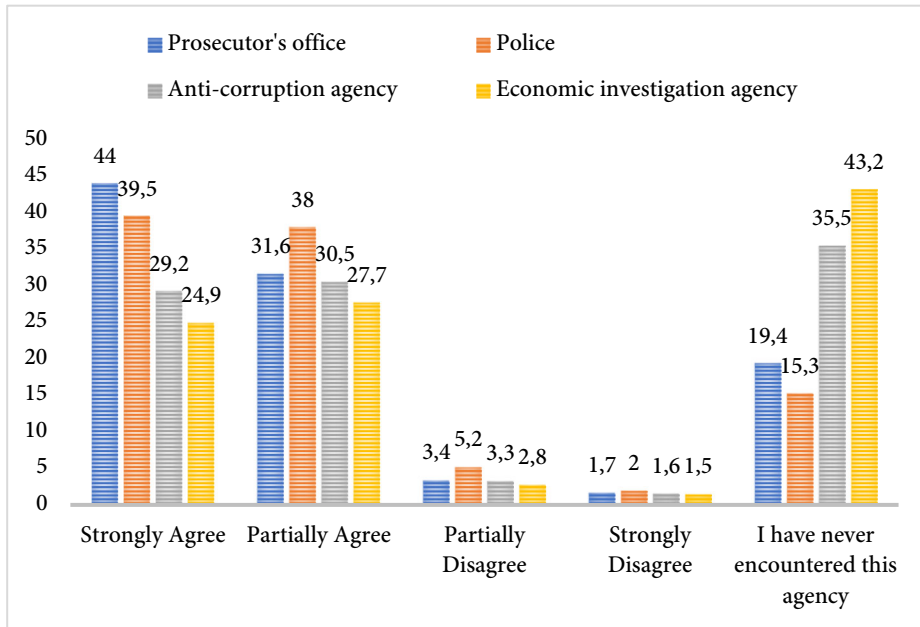


Figure 5. Level of trust in law enforcement agencies (in percentages)

Kazakhstan's current phase of societal evolution is marked by a notable trend towards adopting global community practices to protect human rights through the establishment of state legal institutions. In this evolving landscape, the prosecutor's office plays a pivotal role in safeguarding human rights and freedoms, serving both as a guarantor and a vigilant overseer to ensure that prosecutorial supervision over human rights remains robust and unyielding.

According to the Ministry of Justice of the Republic of Kazakhstan, the introduction of the Public Sector information portal for process participants and the digitalisation of criminal proceedings have significantly reduced the risk of falsifying electronic criminal case

materials.⁶⁰ This innovation allows supervising prosecutors to monitor investigations remotely and address violations promptly.

However, it is critical to clearly delineate the role and functions of the prosecutor's office within public authorities, define the boundaries of prosecutorial competence, and clarify the methods and forms used in executing its duties. Ensuring vigilant oversight of human rights and freedoms within the criminal justice system remains paramount.⁶¹ Therefore, it is imperative that mechanisms are established and strengthened to ensure that prosecutors adhere to ethical standards and legal obligations. This includes not only the rigorous enforcement of existing laws but also the ongoing evaluation and enhancement of legal frameworks to better safeguard against such violations.

Prosecutors, despite their duty to uphold the rule of law and protect human rights during criminal proceedings, sometimes contravene these principles. Several studies found that prosecutors often committed offences such as concealing evidence that proves a suspect's innocence and falsifying investigation results to support a guilty verdict during judicial proceedings⁶². This behaviour is particularly concerning in many countries, including Kazakhstan, where the prosecutor's office holds a dual function: supervising the legality of investigations and acting as the state prosecutor. The combination of these roles can result in conflicts of interest, exacerbating the risk of abuse and highlighting the need for structural reforms to ensure greater accountability and transparency in the judiciary process.⁶³ Additionally, the effectiveness of these prosecutorial organs is significantly influenced by the political environment. Prosecutorial organs that are independent of political pressures and have robust accountability mechanisms, such as private prosecution rights and judicial review, are more likely to initiate prosecutions against state agents for human rights violations, even in politically resistant environments.⁶⁴

The reported human rights violations serve as a stark reminder of the necessity for continual improvement in the legislation concerning the prosecutor's office's role in the criminal justice system, ensuring it acts as a pillar of justice and protector of human rights. The future development of the prosecutor's office in Kazakhstan should involve significant modifications to current legislation aimed at strengthening the role and expanding the legal status of the prosecutor. Key initiatives should include the prevention

60 Ministry of Justice of the Republic of Kazakhstan (n 38).

61 Raimo Lahti and John Martyn Chamberlain, 'Towards a More Efficient, Fair and Humane Criminal Justice System: Developments of Criminal Policy and Criminal Sanctions during the Last 50 Years in Finland' (2017) 3(1) *Cogent Social Sciences* doi:10.1080/23311886.2017.1303910; Uddin (n 14).

62 Katherine Polzer, Johnny Nhan and John Polzer, 'Prosecuting the Prosecutor: The Makings of the Michael Morton Act' (2014) 51(4) *Social Science Journal* 652, doi:10.1016/j.soscij.2014.05.007; Sergiy O Ivanytsky and others, 'Criminal Judicial Actions of the Defence Lawyer and Prosecutor: Problems of the US Legal System' (2024) 36(3) *Public Integrity* 337, doi:10.1080/10999922.2023.2225337.

63 Gilliéron (n 20).

64 Michel (n 20).

of torture and inhumane treatment of suspects in custody, the establishment of effective mechanisms to hold law enforcement accountable for misconduct, and the provision of ongoing training in human rights principles for law enforcement agencies and legal professionals. Implementing these structural adjustments necessitates a collaborative effort among policymakers, law enforcement agencies, human rights advocates, and the broader community.

8 CONCLUSIONS

This study aimed to examine the role of the prosecutor's office in protecting human rights in Kazakhstan's criminal justice. Although Kazakhstan is dedicated to enhancing human rights within its legal frameworks, the findings underscore challenges and concerns, demanding further endeavours to fortify mechanisms for protecting human rights and reinforcing the prosecutor's role in protecting them. Despite the robust framework provided by the Constitution and current legislation for recognising and guaranteeing human rights and freedoms, the implementation and enforcement of these rights remain inconsistent.

In particular, the US Embassy and Freedom House reports underscore the pressing need for Kazakhstan to address human rights concerns within its criminal justice. The study uncovers instances of human rights violations in the criminal justice system, including the prioritisation of departmental indicators over human rights principles, resulting in an increase in detentions and arrests. Concerns raised in external reports include the treatment of detainees, transportation conditions, and the persistence of unlawful detentions despite routine checks.

The study also reveals that the prosecutor's office in Kazakhstan is important in maintaining law and order and protecting human rights. Recent reforms, such as constitutional amendments and the Constitutional Law "On the Prosecutor's Office", reflect efforts to adapt to evolving legal needs and enhance the office's effectiveness. The prosecutor's office is now a key body in the protection of human rights, as evidenced by its monitoring role and initiatives to prevent abuses by other law enforcement agencies. Recent developments, including the institution of judicial authorisation and collaboration with the Commissioner for Human Rights, underscore a commitment to transparency, accountability, and respect for constitutional principles.

However, the prosecutor's office must continue to evolve in response to changing legal frameworks and societal demands, employing further legislative adjustments and institutional enhancements. The study's findings may have wider implications for reforming criminal justice in Kazakhstan, potentially guiding policymakers, legal practitioners, and stakeholders in implementing reforms and improving criminal justice's overall effectiveness and fairness. By pinpointing strengths and areas for improvement in

the prosecutor's role, the study offers valuable insights for policy discussions and reforms aimed at enhancing human rights protections in the criminal justice framework.

First, acknowledging the pivotal role of prosecutors, the study suggests the need for ongoing training and professional development programs. These initiatives can improve prosecutors' capacity to fulfil their constitutional obligations by enhancing their understanding of human rights principles, ethical conduct, and best practices. Second, the study highlights the implications of increased collaboration with international human rights organisations and bodies. Exchanges of knowledge, experiences, and best practices can help Kazakhstan align its criminal justice system with international human rights norms.

REFERENCES

1. Amirthalingam K, 'The Public Prosecutor and Sentencing: Drug Trafficking and the Death Penalty in Singapore' (2018) 18(1) Oxford University Commonwealth Law Journal 46, doi: 10.1080/14729342.2018.1471835.
2. Antonsdóttir HF, "'A Witness in My Own Case": Victim-Survivors' Views on the Criminal Justice Process in Iceland' (2018) 26 Feminist Legal Studies 307, doi:10.1007/s10691-018-9386-z.
3. Beco G de, 'Human Rights Indicators for Assessing State Compliance with International Human Rights' (2008) 77(1-2) Nordic Journal of International Law 23, doi:10.1163/090273508X290681.
4. Bookstaver M, 'Secondary Data Analysis' in JC Barnes and David R Forde (eds), *The Encyclopedia of Research Methods in Criminology and Criminal Justice* (John Wiley & Sons 2021) ch 107, 531.
5. Chaney P, 'Exploring Civil Society Perspectives on the Situation of Human Rights Defenders in the Commonwealth of Independent States' (2023) 42(2) Central Asian Survey 293, doi:10.1080/02634937.2022.2113034.
6. Daly Y and others, 'Human Rights Protections in Drawing Inferences from Criminal Suspects' Silence' (2021) 21(3) Human Rights Law Review 696, doi:10.1093/hrlr/ngab006.
7. Dearing A and Huxtable H, 'Doing Justice for Victims of Violent Crime in the European Union - Reflections on Findings from a Research Project Conducted by the European Union Agency for Fundamental Rights' (2021) 45(1) International Journal of Comparative and Applied Criminal Justice 39, doi:10.1080/01924036.2020.1762233.
8. Dziurda M, Gołąb A and Zembruski T, 'European Convention of Human Rights and Fundamental Freedoms: Impact on Polish Law Development' (2021) 4(1) Access to Justice in Eastern Europe 23, doi:10.33327/AJEE-18-4.1-a000045.

9. Edwards AJ, 'Justice Starts at Home: A Call for Stepped-up Nationally-Led Investigations into Torture' (2023) 41(3) *Netherlands Quarterly of Human Rights* 123, doi:10.1177/09240519231195389.
10. Efrat A and Tomasina M, 'Value-Free Extradition? Human Rights and the Dilemma of Surrendering Wanted Persons to China' (2018) 17(5) *Journal of Human Rights* 605, doi:10.1080/14754835.2018.1533454.
11. Foust J, 'Security and Human Rights in Central Asia' (2012) 19(1) *The Brown Journal of World Affairs* 45.
12. Gilliéron G, *Public Prosecutors in the United States and Europe: A Comparative Analysis with Special Focus on Switzerland, France, and Germany* (Springer International 2014) doi:10.1007/978-3-319-04504-7.
13. Grenfell L, Mackay A and Rose M, 'A Human Right to Daily Access to Fresh Air beyond Prisons in Australia?' (2023) 29(2) *Australian Journal of Human Rights* 259, doi:10.1080/1323238X.2023.2254538.
14. Hall M van and others, 'Procedural Justice and Legitimacy of the Law in the Criminal Justice System: A Longitudinal Study among Dutch Detainees' (2024) 30(2) *Psychology, Crime and Law* 101, doi:10.1080/1068316X.2022.2065274.
15. Hoffmann K, 'The EU in Central Asia: Successful Good Governance Promotion?' (2010) 31(1) *Third World Quarterly* 87, doi:10.1080/01436590903557397.
16. Holder R, Kirchengast T and Cassell P, "'Transforming Crime Victims" Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1, doi:10.1080/01924036.2020.1857278.
17. Holm F, 'Successful Human Rights Implementation? Victims of Crime and the Swedish Example' (2022) 40(4) *Nordic Journal of Human Rights* 529, doi:10.1080/18918131.2022.2147319.
18. Holmberg L and others, 'Victims' Rights: Serving Victims or the Criminal Justice System? An Empirical Study on Victims of Violent Crime and Their Experiences with the Danish Police' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 89, doi:10.1080/01924036.2020.1719525.
19. Ivanytskyy SO and others, 'Criminal Judicial Actions of the Defence Lawyer and Prosecutor: Problems of the US Legal System' (2024) 36(3) *Public Integrity* 337, doi:10.1080/10999922.2023.2225337.
20. Lahti R and Chamberlain JM, 'Towards a More Efficient, Fair and Humane Criminal Justice System: Developments of Criminal Policy and Criminal Sanctions during the Last 50 Years in Finland' (2017) 3(1) *Cogent Social Sciences* doi:10.1080/23311886.2017.1303910.
21. Mergaerts L, "'Defence Lawyers" Views on and Identification of Suspect Vulnerability in Criminal Proceedings' (2022) 29(3) *International Journal of the Legal Profession* 281, doi:10.1080/09695958.2021.1982719.

22. Michel V, 'The Role of Prosecutorial Independence and Prosecutorial Accountability in Domestic Human Rights Trials' (2017) 16(2) *Journal of Human Rights* 193, doi:10.1080/14754835.2015.1113864.
23. Mulgrew R, 'Prisoner Lives Cut Short: The Need to Address Structural, Societal and Environmental Factors to Reduce Preventable Prisoner Deaths' (2023) 23(2) *Human Rights Law Review* ngad006, doi:10.1093/hrlr/ngad006.
24. O'Neill DC and Primiano CB, 'Kazakhstan's Quest for Status: A Secondary State's Strategy to Shape Its International Image' (2023) 15(1) *Journal of Eurasian Studies* 81, doi:10.1177/18793665231173000.
25. Perkins B, 'Cruel, Inhuman or Degrading Treatment or Punishment in Australia's Criminal Justice System: Does Human Rights Legislation Provide Accountability?' (2023) 29(2) *Australian Journal of Human Rights* 277, doi:10.1080/1323238X.2023.2296023.
26. Pierobon C, 'EU's Support to Civil Society in Kazakhstan: A Pilot Evaluation of the Social Capital Generated' (2019) 25(2) *Evaluation* 207, doi:10.1177/1356389018796023.
27. Pinto M, 'Awakening the Leviathan through Human Rights Law – How Human Rights Bodies Trigger the Application of Criminal Law' (2018) 34(2) *Utrecht Journal of International and European Law* 161, doi:10.5334/ujiel.462.
28. Polzer K, Nhan J and Polzer J, 'Prosecuting the Prosecutor: The Makings of the Michael Morton Act' (2014) 51(4) *Social Science Journal* 652, doi:10.1016/j.soscij.2014.05.007.
29. Ryazanov M, Chuvakova H and Piliuk S, 'Legal Anomalies within Human Rights Implementation in Court: Ukrainian Heritage and Perspectives' (2021) 4(4) *Access to Justice in Eastern Europe* 90, doi:10.33327/AJEE-18-4-4-n000086.
30. Stinson PM, 'Document Analysis' in JC Barnes and David R Forde (eds), *The Encyclopedia of Research Methods in Criminology and Criminal Justice* (John Wiley & Sons 2021) ch 79, 392.
31. Stremlau N, 'Developing Bottom-up Indicators for Human Rights' (2019) 23(8) *International Journal of Human Rights* 1378, doi:10.1080/13642987.2019.1642198.
32. Uddin MK, 'Human Rights Abuses and Criminal Justice in Policing Practices in Bangladesh' [2022] *Criminology and Criminal Justice* doi:10.1177/17488958221120915.
33. Vega C de la, 'Using International Human Rights Standards to Effect Criminal Justice Reform in the United States' (2015) 41(2) *Human Rights* 13.
34. Vries MS de and Sobis I, 'Reluctant Reforms: The Case of Kazakhstan' (2014) 14(2) *Public Organization Review* 139, doi:10.1007/s11115-012-0210-y.
35. Yamamura T, Kinoshita H and Hishida S, 'The Role of the Public Prosecutor with Treatment of Suspects Involving Suspended Prosecution Disposition in Accordance with the Crime Investigation Policy of Police in Japan' (2011) 13(4) *International Journal of Police Science and Management* 348, doi:10.1350/ijps.2011.13.4.230.

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Keywords: *human rights, criminal justice, prosecutor, legislative reforms, Kazakhstan.*

RIGHTS AND PERMISSIONS

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

БОРІТЬБА З ПОРУШЕННЯМИ ПРАВ ЛЮДИНИ В СИСТЕМІ КРИМІНАЛЬНОГО СУДОЧИНСТВА КАЗАХСТАНУ: РОЛЬ ПРОКУРАТУРИ ТА ЗАКЛИК ДО ЗАКОНОДАВЧИХ РЕФОРМ

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АНОТАЦІЯ

Вступ. *Порушення прав людини в системі кримінального судочинства є поширеною проблемою. Міжнародні договори у галузі прав людини та національне законодавство гарантують абсолютний захист прав людини. Однак, незважаючи на ці стійкі правові принципи, порушення прав людини часто відбуваються в системі кримінального судочинства. У статті розглядається проблема порушення прав людини в системі кримінального судочинства Казахстану та роль прокуратури у захисті прав людини.*

Методи. *У цьому дослідженні використовувалися методології аналізу документів й аналізу вторинних даних для детального вивчення нормативно-правових актів, міжнародних угод і програмних документів. Зокрема, були розглянуті такі документи, як Загальна декларація прав людини (ЗДПЛ), Конституційний закон «Про прокуратуру», Концепції правової політики Республіки Казахстан до 2030 року, а також доповіді про права людини міжнародних організацій, таких Amnesty International, Human Rights Watch і Freedom House. У дослідженні також проаналізовано звіти Міністерства юстиції та Уповноваженого з прав людини Республіки Казахстан.*

Результати та висновки. *Здійснивши аналіз міжнародних договорів з прав людини, національного законодавства та звітів провідних правозахисних організацій, у своєму дослідженні автори виявили значні розбіжності між юридично визначеними нормами та реальною практикою. Незважаючи на офіційне визнання Казахстаном міжнародних стандартів прав людини, у статті було розкрито системні проблеми, зокрема випадки порушення прав людини в кримінальному судочинстві. У дослідженні наголошено на важливій ролі прокуратури у захисті прав людини, а також зазначено проблеми, пов'язані з ефективним виконанням цих обов'язків. У висновках було підкреслено важливість законодавчих реформ для посилення захисту прав людини в кримінальному судочинстві. Дослідження є особливо актуальним для політиків, правозахисників і науковців, які цікавляться питанням перетину правоохоронної діяльності та захисту прав людини. Запропоновані ідеї можуть стати орієнтиром для подальшого вдосконалення практики кримінального судочинства.*

Ключові слова: *права людини, кримінальне судочинство, прокурор, законодавчі реформи, Казахстан.*