HUMAN RIGHTS PROTECTION IN KAZAKHSTAN'S PENITENTIARY SYSTEM: TRAFFIC-LAW ENFORCEMENT AS A COMPARATIVE PERSPECTIVE

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ABSTRACT

This article examines human rights protection in Kazakhstan's penitentiary system, using traffic-law enforcement as a secondary comparative field of state coercion. Its purpose is to assess whether the existing legal and institutional framework provides effective safeguards for persons deprived of liberty and to identify the main obstacles to implementing formally recognized rights. The study applies a qualitative doctrinal and documentary approach based on Kazakhstan's legislation, international human rights instruments, monitoring reports, and academic publications available through December 2025. The materials were analyzed according to legality, proportionality, human dignity, procedural safeguards, access to remedies, independent oversight, transparency, and institutional accountability. The findings indicate that Kazakhstan has established extensive legal guarantees concerning protection from ill-treatment, healthcare, legal assistance, communication, complaints, and external monitoring. Their practical effect, however, is limited by broad administrative discretion, ineffective complaint procedures, restricted access to independent legal and medical assistance, and insufficient follow-up to recommendations of the National Preventive Mechanism. Traffic-law enforcement involves less intensive restrictions, but its routine and large-scale character also creates risks of formalized decision-making and inadequate procedural safeguards. The article contributes an asymmetrical comparative perspective that distinguishes institutional weaknesses common to different forms of state coercion from risks arising specifically from prolonged custodial dependence. It concludes that reform should prioritize enforceable monitoring procedures, reasoned disciplinary decisions, confidential access to independent

professionals, and effective external review.

Keywords: human rights; persons deprived of liberty; penitentiary system.

PROTEÇÃO DOS DIREITOS HUMANOS NO SISTEMA PENITENCIÁRIO DO CAZAQUISTÃO: A APLICAÇÃO DAS LEIS DE TRÂNSITO SOB UMA PERSPECTIVA COMPARATIVA

RESUMO

Este artigo examina a proteção dos direitos humanos no sistema penitenciário do Cazaquistão, utilizando a aplicação das leis de trânsito como um campo comparativo secundário de coerção estatal. Seu objetivo é avaliar se a estrutura legal e institucional existente oferece salvaguardas eficazes para pessoas privadas de liberdade e identificar os principais obstáculos à implementação dos direitos formalmente reconhecidos. O estudo aplica uma abordagem doutrinária e documental qualitativa baseada na legislação do Cazaquistão, em instrumentos internacionais de direitos humanos, em relatórios de monitoramento e em publicações acadêmicas disponíveis até dezembro de 2025. Os materiais foram analisados segundo os critérios de legalidade, proporcionalidade, dignidade humana, garantias processuais, acesso a recursos, supervisão independente, transparência e responsabilidade institucional. Os resultados indicam que o Cazaquistão estabeleceu amplas garantias legais relativas à proteção contra maus-tratos, saúde, assistência jurídica, comunicação, reclamações e monitoramento externo. Seu efeito prático, no entanto, é limitado pela ampla discricionariedade administrativa, por procedimentos de reclamação ineficazes, pelo acesso restrito à assistência jurídica e médica independente e pelo acompanhamento insuficiente das recomendações do Mecanismo Nacional de Prevenção. A aplicação das leis de trânsito envolve restrições menos intensivas, mas seu caráter rotineiro e em larga escala também cria riscos de tomada de decisão formalizada e salvaguardas processuais inadequadas. Este artigo contribui com uma perspectiva comparativa assimétrica que distingue as fragilidades institucionais comuns a diferentes formas de coerção estatal dos riscos decorrentes especificamente da dependência prolongada da custódia. Conclui que a reforma deve priorizar procedimentos de monitoramento aplicáveis, decisões disciplinares fundamentadas, acesso confidencial a profissionais independentes e revisão externa eficaz.

Palavras-chave: direitos humanos; pessoas privadas de liberdade; sistema penitenciário.

1 INTRODUCTION

The protection of human rights in situations involving state coercion is one of the principal indicators of the effectiveness of the rule of law. Although states may lawfully restrict certain rights for the purposes of criminal justice, public safety, and the protection of others, such restrictions must comply with the principles of legality, necessity, proportionality, human dignity, and effective judicial protection (Bantekas; Oette, 2020; Nowak, 2012). These requirements are particularly important when individuals are placed in a position of direct

institutional dependence and have limited opportunities to protect their rights independently.

The penitentiary system represents the most intensive and prolonged form of such dependence. Persons deprived of liberty remain holders of fundamental rights, except for those restrictions that inevitably result from lawful detention. Accordingly, prison authorities bear a heightened responsibility to protect prisoners from torture and ill-treatment, provide adequate medical care, ensure access to legal assistance and complaint mechanisms, maintain contact with the outside world, and create conditions for education, work, and social reintegration. International standards therefore require not only the formal recognition of prisoners' rights but also effective safeguards against abuse, independent monitoring, and accountability for violations (Nowak, 2012; Organization for Security and co-Operation in Europe, 2021).

Kazakhstan has introduced a broad normative and institutional framework governing the execution of criminal sentences. National legislation proclaims the principles of legality, humanism, differentiation, and respect for human dignity, while the establishment of the National Preventive Mechanism has expanded the participation of civil society in monitoring places of detention. Penitentiary reforms have also emphasized resocialization, institutional openness, and the gradual approximation of national practice to international standards (Azhibaev, 2020; United Nations Development Programme, 2021; Zhanozakova *et al*., 2024).

Nevertheless, monitoring reports and academic studies indicate a persistent gap between formally established guarantees and their practical implementation. The most serious concerns relate to the use of disciplinary powers, allegations of torture and ill-treatment, restricted access to lawyers and independent medical care, ineffective complaint mechanisms, poor detention conditions, and the limited implementation of recommendations issued by oversight institutions (Organization for Security and co-Operation in Europe, 2021; United States Department Of State, 2024; Zhanozakova *et al*., 2024). These problems are especially significant because prisoners depend almost entirely on the administration for access to healthcare, communication, employment, education, and protection from unlawful treatment. Even relatively narrow gaps in regulation or oversight may therefore produce serious and long-lasting consequences.

Existing research on Kazakhstan generally examines individual aspects of the penitentiary system, including legislative reform, the rights of convicted persons, detention conditions, the prevention of torture, and the effectiveness of the National Preventive Mechanism (Azhibaev, 2020; United Nations Development Programme, 2021; Zhanozakova *et al*., 2024). However, less attention has been paid to the broader institutional question of how the intensity of state coercion, administrative discretion, procedural safeguards, transparency,

and external oversight interact in determining the actual level of human rights protection. A legal framework may formally correspond to international standards while institutional practices, organizational culture, and weak accountability mechanisms substantially reduce its practical effectiveness.

The field of traffic-law enforcement is included in this study as a secondary comparative area. Unlike imprisonment, traffic sanctions generally involve short-term and less intensive restrictions. Nevertheless, their widespread and routine application creates risks of formalized decision-making, selective enforcement, insufficient consideration of individual circumstances, and incomplete procedural safeguards (Ajigulova, 2016; Rakhimov, 2021). Road safety also concerns the protection of life and health and requires the state to combine effective prevention with lawful, proportionate, and non-arbitrary enforcement (Global Road Safety Partnership, 2023b). The comparison is therefore deliberately asymmetrical: the penitentiary system constitutes the principal field of analysis, while traffic-law enforcement is used as a contrasting example of routine state coercion.

This comparison makes it possible to distinguish between problems that are specific to places of detention and broader institutional weaknesses that may arise in different areas of law enforcement. In prisons, the principal risks result from prolonged isolation, dependence on the administration, restricted external communication, and difficulties in obtaining effective remedies. In traffic-law enforcement, the risks are associated primarily with the mass character and routinization of administrative procedures. Despite these differences, both areas raise questions concerning legality, proportionality, procedural fairness, transparency, independent oversight, and accountability.

Against this background, the central research question is as follows: to what extent does the legal and institutional framework of Kazakhstan ensure the effective protection of human rights in the penitentiary system, and what additional insights can be obtained by comparing it with the less intensive but widespread coercive practices of traffic-law enforcement? The study proceeds from the assumption that the principal weakness lies not in the absence of formal legal guarantees but in the mechanisms of their implementation, including administrative discretion, limited transparency, insufficiently effective complaints procedures, and weak institutional accountability.

Accordingly, the purpose of this article is to assess the legal guarantees and practical challenges of human rights protection in Kazakhstan's penitentiary system and, as a secondary comparative objective, to examine selected problems arising in traffic-law enforcement. The

study analyzes international and national standards governing restrictions on individual rights, evaluates the legal status and protection of convicted persons, identifies the principal gaps between legislation and practice, and compares the oversight and accountability mechanisms operating in the two areas.

2 MATERIALS AND METHODS

This study employed a qualitative literature research design. The comparison was asymmetrical: Kazakhstan's penitentiary system constituted the principal field of analysis, while traffic-law enforcement was examined as a secondary contrasting area of routine state coercion. The analysis covered the legal and documentary materials available through December 2025.

First, doctrinal legal analysis was applied to the Constitution of the Republic of Kazakhstan as in force during the study period, the Criminal Code, the Penal Execution Code, and the Code of Administrative Offences. These instruments were examined to identify the legal status and rights of convicted persons, the powers and duties of penitentiary authorities, disciplinary and complaint procedures, oversight mechanisms, and the rules governing liability and procedural safeguards in traffic-related cases (Constitution of The Republic of Kazakhstan, 1995; Code of The Republic of Kazakhstan on Administrative Offences n. 235-V, 2014; Criminal Code of The Republic of Kazakhstan n. 226-V, 2014; Penal Execution Code of The Republic of Kazakhstan n. 234-V, 2014).

Second, the national framework was compared with the principal international standards governing restrictions on human rights and the treatment of persons deprived of liberty, including the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against torture, and the United Nations Standard Minimum Rules for the Treatment of Prisoners – the Nelson Mandela Rules (United Nations, 1966, 2002, 2015; Nowak, 2012). The comparison focused on legality, necessity, proportionality, human dignity, access to healthcare and legal assistance, effective remedies, and independent monitoring.

Third, qualitative documentary analysis was conducted using monitoring reports, analytical materials, and academic studies addressing prison conditions, torture prevention, the National Preventive Mechanism, prisoners' rights, and road safety in Kazakhstan (Ajigulova, 2016; Azhibaev, 2020; Organization for Security and Co-Operation in Europe, 2021; United Nations Development Programme, 2021; Global Road Safety Partnership, 2023a, 2023b;

United States Department Of State, 2024; Zhanozakova *et al*., 2024; Asian Transport Observatory, 2025). These materials were treated as sources of secondary evidence concerning the implementation of formal guarantees; no original interviews, surveys, or statistical data were collected.

The materials were analyzed according to six criteria: legality and proportionality of state coercion; protection of human dignity; procedural safeguards; access to complaints and remedies; independence of external oversight; and transparency and accountability of public authorities. The comparison with traffic-law enforcement was used to distinguish problems specific to custodial institutions from broader institutional weaknesses affecting the exercise of state coercion.

3 RESULTS

3.1 Legal guarantees and preventive oversight

International human rights law allows states to restrict certain rights in connection with lawful imprisonment, but each restriction must have a legal basis and remain necessary and proportionate to its purpose. Deprivation of liberty does not remove the other fundamental rights of a prisoner. Respect for dignity, protection from torture and ill-treatment, access to medical care and legal assistance, contact with the outside world, the right to complain, and independent inspection of detention facilities therefore remain applicable throughout imprisonment (United Nations, 1966, 2002, 2015; Nowak, 2012).

These requirements are reflected in Kazakhstan's legislation, at least at the normative level. The Constitution of the Republic of Kazakhstan guarantees the right to life, personal liberty and security, the inviolability of the person and access to justice. The provisions of the Penal Execution Code are aimed at the development of the guarantees of convicted persons established by the Constitution and cover their rights, the duties of the prison administrations and the principles of the execution of their sentences (Republic Of Kazakhstan, 1995; Criminal Code of The Republic Of Kazakhstan n. 226-V, 2014). Several rules of the national framework were consistent with the Nelson Mandela Rules, including on humane treatment, medical care, contacts with persons close to the inmate and provision of pre-release services (United Nations, 2015; Zhanozakova et al., 2024).

External monitoring of closed institutions occurs mainly through the National

Preventive Mechanism (NPM) created by the Optional Protocol to the Convention against Torture (OPCAT), which is headed by the Human Rights Commissioner and includes representatives of civil society and independent experts. Their members may visit prisons, pre-trial detention facilities and any other place of detention where people are not free to leave, on both a scheduled and ad hoc basis (Organization for Security and Co-Operation in Europe, 2021; United Nations Development Programme, 2021). The introduction of the NPM made conditions in closed institutions more visible and provided an additional channel for recording complaints and communicating recommendations to the competent authorities.

3.2 Implementation gaps in the penitentiary system

Formal recognition of prisoners' rights has not removed the difficulties associated with their practical enforcement. Academic studies and monitoring reports point to broad administrative discretion in disciplinary proceedings, unclear grounds for some sanctions, limited transparency when prisoners are transferred to stricter conditions, and complaint procedures that do not always provide an effective remedy (Azhibaev, 2020; Zhanozakova *et al.*, 2024). In a closed institution, where prisoners depend on the administration for most aspects of daily life, these shortcomings can turn disciplinary authority into a means of informal pressure.

The consolidated report of Kazakhstan's NPM describes allegations of ill-treatment, threats, and intimidation, including pressure placed on prisoners who intended to submit complaints or had already done so (Organization for Security and Co-Operation in Europe, 2021). The reviewed materials also mention delays in obtaining access to lawyers and independent medical specialists, particularly during the initial period of detention or placement in a correctional institution. Other reports refer to difficulties in investigating alleged abuse and holding responsible officials accountable. Such problems reduce confidence in complaints procedures and weaken the deterrent effect of the legal prohibition of ill-treatment (United States Department of State, 2024; Zhanozakova *et al*., 2024).

Healthcare provides one of the clearest examples of how prisoners' dependence on the institution affects the practical exercise of their rights. Healthcare illustrates the practical consequences of institutional dependence. The reviewed materials report delays in diagnosis and treatment, shortages of specialists, difficulties in transfer to civilian medical facilities, and limited access to independent medical assessment (Zhanozakova et al., 2024).

The NPM has made these problems more visible, but visibility alone has not ensured their correction. Monitoring reports contain recommendations that recur in subsequent reporting periods, while the procedure for registering official responses, verifying implementation, and informing the public about the measures taken remains underdeveloped (Organization for Security and Co-Operation in Europe, 2021; United Nations Development Programme, 2021). The difficulty therefore lies not only in detecting violations, but also in ensuring that monitoring findings produce a documented and verifiable response from the responsible authorities.

3.3 Traffic-law enforcement as a secondary comparative area

Traffic-law enforcement was included as a secondary point of comparison rather than as an equivalent field of analysis. The Criminal Code and the Code of Administrative Offences establish liability for traffic violations and for conduct resulting in serious injury or death. Automated recording systems and preventive measures have also become increasingly important in the everyday enforcement of traffic rules (Code of The Republic off Kazakhstan on Administrative Offences n. 235-V, 2014; Penal Execution Code of The Republic of Kazakhstan n. 234-V, 2014; Asian Transport Observatory, 2025). In this area, the state exercises coercive powers while also fulfilling its obligation to protect the life and health of road users (Global Road Safety Partnership, 2023a, 2023b).

3.4 Comparative findings

Restrictions imposed in traffic cases are normally shorter and less severe than those connected with imprisonment. Their significance lies instead in the scale and frequency of enforcement: large numbers of citizens encounter administrative procedures, automated decisions, and police control in everyday life. The two areas nevertheless display several comparable institutional difficulties, including formalistic decision-making, limited transparency, weak external scrutiny, and uncertainty about the accountability of officials (Ajigulova, 2016; Organization for Security and Co-Operation in Europe, 2021; Rakhimov, 2021; Zhanozakova *et al*., 2024).

Taken together, the reviewed materials show that Kazakhstan has established a substantial body of legal guarantees, but the mechanisms used to enforce those guarantees

remain uneven. This problem is most serious in penitentiary institutions because prisoners experience prolonged restrictions and depend on the administration for healthcare, communication, safety, and access to remedies. Traffic-law enforcement offers a useful contrast, but the differences between the two fields do not allow oversight mechanisms to be transferred mechanically from one to the other. The comparison instead underlines the need for stronger follow-up procedures, more transparent institutional decision-making, and effective external control in places of detention.

4 DISCUSSION

The analysis shows that the main difficulty in protecting prisoners' rights in Kazakhstan is not the absence of legal guarantees, but the conditions under which those guarantees are applied. The Constitution, the Penal Execution Code, and the mechanisms established under the Optional Protocol to the Convention against Torture provide a substantial normative basis for protecting dignity, health, legal assistance, communication, and access to complaints. Nevertheless, the documentary materials indicate that these guarantees do not always produce effective protection in practice (Organization for Security and Co-Operation in Europe, 2021; United Nations Development Programme, 2021; Zhanozakova *et al*., 2024).

This discrepancy is particularly serious in penitentiary institutions because imprisonment creates prolonged dependence on the administration. Prisoners cannot independently choose a healthcare provider, arrange contact with relatives, change their living conditions, or avoid disciplinary authority. Their ability to report abuse also depends on access to lawyers, confidential communication, and complaint procedures. Administrative discretion that may appear limited in an ordinary public institution therefore carries much greater consequences in a closed setting. Unclear disciplinary grounds, delays in reviewing complaints, and restricted external access can directly affect personal safety and the possibility of obtaining a remedy (Azhibaev, 2020; United States Department of State, 2024; Zhanozakova *et al*., 2024).

The findings also clarify the role of the National Preventive Mechanism. Its establishment increased the presence of civil society in closed institutions and made information about detention conditions more accessible. Scheduled and unannounced visits allow participants to record complaints, inspect facilities, and communicate recommendations to public authorities. The remaining problem concerns what happens after a visit. When similar recommendations recur and official responses are not accompanied by clear deadlines, public

reporting, or independent verification, monitoring risks becoming descriptive rather than corrective (Organization for Security and Co-Operation in Europe, 2021; United Nations Development Programme, 2021).

For this reason, strengthening the NPM does not necessarily require expanding its formal mandate. Greater practical value could be achieved by introducing a transparent follow-up procedure. Responsible authorities should identify the measures taken in response to each recommendation, explain refusals or delays, and publish information that does not disclose personal or security-sensitive data. Repeated non-compliance should also be subject to review by an institution outside the penitentiary administration. Such measures would preserve the preventive nature of the NPM while making its findings more consequential.

The comparison with traffic-law enforcement provides a useful contrast but does not place the two fields on the same level. Traffic sanctions are normally shorter and less intrusive than imprisonment. The principal risk in this sphere results from the frequency and routine character of enforcement. Automated decisions, standardized procedures, and large numbers of administrative cases may encourage formal treatment of individual circumstances and weaken procedural safeguards (Ajigulova, 2016; Rakhimov, 2021). In prisons, by contrast, the central concern is the concentration of authority over almost every aspect of a person's life.

Certain institutional principles are nevertheless relevant to both areas. Decisions restricting rights should have a clear legal basis, be open to review, and contain sufficient reasons to allow an affected person to challenge them. Authorities should also maintain accessible records and disclose information about enforcement practices. These principles may improve accountability in both penitentiary and traffic-law enforcement, although the mechanisms used in one area cannot simply be transferred to the other.

The comparison therefore supports an asymmetrical conclusion. Formalism, insufficient transparency, and weak accountability may appear in different areas of state coercion, but their consequences are most severe where a person is isolated and dependent on the institution. The penitentiary system consequently requires stronger external control, more reliable complaints procedures, confidential access to legal and medical assistance, and documented follow-up to monitoring recommendations.

The study is limited by its reliance on legislation, monitoring reports, analytical materials, and published research. It does not include interviews with prisoners, prison personnel, lawyers, NPM participants, or road users, nor does it examine a representative body of judicial and administrative cases. Further research should assess how complaints and

disciplinary decisions are handled in practice, examine the implementation of NPM recommendations over several reporting periods, and compare Kazakhstan's oversight arrangements with those of other countries in the region.

5 CONCLSUSION

Kazakhstan's penitentiary legislation provides a broad set of guarantees consistent with international human rights standards, including protection of dignity, access to healthcare and legal assistance, communication with the outside world, and the right to challenge decisions of prison authorities. Their practical implementation, however, remains uneven. Administrative discretion, ineffective complaint procedures, restricted access to independent specialists, and weak accountability mechanisms continue to limit the actual protection available to persons deprived of liberty.

The National Preventive Mechanism has increased the openness of closed institutions and improved the documentation of systemic problems. Its effectiveness is nevertheless reduced when recommendations are repeatedly issued without clear implementation deadlines, public reporting, or independent verification. A formal monitoring procedure cannot provide adequate protection unless the responsible authorities are required to adopt and document corrective measures.

Traffic-law enforcement reveals similar risks of formalism and insufficient procedural safeguards, although the nature of coercion differs substantially. Traffic sanctions are generally limited in duration, whereas imprisonment places individuals in prolonged institutional dependence. The comparison therefore confirms that prisoners require a higher level of external oversight and procedural protection.

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