



# NEW NORMS — OLD PRACTICES

Crew Against Torture is analyzing what has changed in law enforcement over the two years since the anti-torture amendments to the Criminal Code came into effect, and what the actual situation is in Russia regarding convictions for physical violence.

18+

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ПРОИЗВЕДЕН, РАСПРОСТРАНЕН И (ИЛИ)  
НАПРАВЛЕН ИНОСТРАННЫМ АГЕНТОМ  
«КОМАНДА ПРОТИВ ПЫТОК»  
ЛИБО КАСАЕТСЯ ДЕЯТЕЛЬНОСТИ  
ИНОСТРАННОГО АГЕНТА  
«КОМАНДА ПРОТИВ ПЫТОК»

18+

## What this is about

A little more than two years have passed since the inclusion of the new torture offenses in the Criminal Code of the Russian Federation. The new addition was preceded by two major media scandals involving FSIN<sup>1</sup> officers – in 2018, **footage** of abuse of Yevgeny Makarov, an inmate of a colony in the Yaroslavl region, **appeared** in the web; three more years later, the Internet was rocked by **videos** of torture from a Saratov prison hospital. As a result of the resonance the problem of violence in the law enforcement system was brought to the attention of politicians, and new anti-torture offenses were included in the Criminal Code of the Russian Federation. In July 2022, the articles "Exceeding official powers" (Article 286 of the Criminal Code) and "Coercion to testify" (Article 302 of the Criminal Code) **were supplemented** by two parts each, specifically punishing civil servants for the use of torture.

It would seem that this reform has completed the long road to criminalizing coercive violence, which has been a very sensitive problem for Russia for many years. Now, violent attacks on the life and integrity of those in the power of the state – be they detainees, convicts or military personnel – **can now, in theory, involve sentences of up to 15 years in prison**. The same punishment, for example, is provided in Russia for unaggravated murder or sexualized crimes against minors.

Lawyers specializing in law enforcement abuse greeted the 2022 amendments with rather restrained optimism. On the one hand, the reform to criminalize torture has been implemented in a truncated form, leaving many loopholes for perpetrators to continue avoiding proportionate criminal responsibility. For example, **torture was not singled out in a separate article**, as it was demanded by human rights activists and **international organizations**, did not become an independent corpus delicti, but only supplemented the old norms. The article on abuse of power underwent the most significant changes — it is the very article under which those who definitely can be called torturers have been prosecuted for years: new sections on torture and a clarification note defining it were added to this article. But this definition itself, even after reform, has room for improvement.

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<sup>1</sup> FSIN — Federal Penitentiary Service of Russian Federation (Russian: *Федеральная служба исполнения наказаний*, Federalnaya Sluzhba Ispolneniya Nakazaniy).

### **What is torture in international law and why does Russian definition is not its equivalent**

In **international** human rights **law**, six elements must coincide simultaneously to define torture: perpetrator — (1) representative of the states, who (2) alone or through a third person (3) acts or omits to (4) willfully (5) inflict severe pain or suffering to someone (6) in order to intimidate, punish and/or obtain confession. Five components of this formula out of six were transferred to the Criminal Code of the Russian Federation. The Russian legislator ignored the fact that torture can be committed in person or through third parties. If the violence is committed at the request or instigation of an authority figure, it must also be considered torture<sup>1</sup>.

Another problem with the Russian definition of torture is a too narrow interpretation of the "representative of the state." International law assumes that torture can be committed by anyone with the state's authority or right to violence: security personnel, teachers, doctors, Cossacks, etc. The Russian Criminal Code, on the other hand, treats the representative of the state in an overly literal sense – Article 286, under which the torturers are prosecuted, is not designed for anyone except officials, military and law enforcement officers, who commit violence exclusively with their own hands. If, for example, a prison warden forces one prisoner to torture another, it is not torture in the eyes of Russian Criminal Code.

**In this text, we refer to the international legal definition of the word "torture", unless otherwise noted.**

On the other hand, any direct criminalization of such acts is already a **breakthrough**, because for many years the Criminal Code lacked any clear concept of "torture committed by agents of the state"<sup>2</sup> and human rights defenders had nothing to appeal to when

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<sup>1</sup> Since 2003, delegation as a way of committing a crime is mentioned only in the article on coercion to testify (Article 302 of the Criminal Code of the Russian Federation) – however, it refers not to torture, but to the objective side of such coercion. In other words, a law enforcement officer who coerces a person to testify – not necessarily with the use of violence – can be held liable, while one who uses violence indirectly cannot be formally prosecuted, since the relevant remark is not included in the note to Article 286 of the Criminal Code of the Russian Federation, which discloses the definition of torture.

<sup>2</sup> In international law, agents of a state refer to representatives of that state with various powers of authority, direction and control, including persons to whom, inter alia, the right to violence may be delegated (e.g., military, police or

defending victims. And the very introduction of anti-torture corpus delicti already indicates that **to some extent the state** has agreed to recognize the problem of force arbitrariness. In addition, researchers and human rights defenders finally have a separate line in judicial statistics that can be used to track sentencing trends for ill-treatment and torture.

## Article 286 of the Criminal Code of the Russian Federation. Exceeding official authority

How new part are treated – in official **stats**

		Convicted in basic / in additional qualification <sup>1</sup> , persons.			
		2022	2023	First half of 2024	
Part 3 <sup>2</sup>					
a) with the use or threat of violence		392 / 34	377 / 45	155 / 18	
b) with the use of weapons or special means		104 / 17	88 / 25	52 / 10	
c) causing grave consequences		84 / 16	84 / 30	34 / 14	
NEW NORMS	d) in privity	1 / 0	10 / 0	20 / 7	
	e) in relation to a minor		2 / 0	2 / 0	
	f) out of self-interest or other personal interest		44 / 11	47 / 18	
	Part 4				
	With torture		0 / 0	7 / 0	0 / 0
	Part 5				
With the use of torture resulting in the victim's death or serious harm to his/her health by negligence		0 / 0	1 / 0	0 / 0	

## Two years after the reform, we decided to check the place of torture in official reports.

Enough time seems to have passed to appreciate the first results of the amendments. Official court statistics for the entire period of existence of the new articles says that only

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medical personnel). Previously, until 2022, the Criminal Code of the Russian Federation mentioned torture only in the section on crimes against the person and covered torture in the broadest sense of the word: in fact, it appeared in the text of the law as a particularly sophisticated type of torture, which can be used equally by law enforcers and any other person. We may say that earlier the concept of torture was used in the Criminal Code of the Russian Federation in the everyday, rather than legal sense

<sup>1</sup> Report on the number of convicted persons under all corpus delicti of the Criminal Code of the Russian Federation and other persons in respect of whom judicial acts in criminal cases have been issued (Form 10-a of the Judicial Department under the Supreme Court of the Russian Federation).

<sup>2</sup> One crime may be qualified under several paragraphs of one part of the article of the Criminal Code of the Russian Federation, for example, if the convicted person used both violence and means of restraint at the same time. This means that the sum of the addition of the points may be greater than the actual number of people convicted under a particular part.

eight people were convicted by the first instance for the updated "torture" crimes (parts 4 and 5 of Article 286 of the Criminal Code). The convicts were between 25 and 49 years old at the time of their sentences. Six of them served in the military and only two were law enforcement officers. There were no women among the defendants.

**Do these figures mean that torture in Russia does not exist or has become less after the amendments?** Not at all. The statistics do not actually reflect the full extent of cases for which the first instance has already issued verdicts. As early as the end of 2023, journalists **found** four times more cases related to the new anti-torture provisions through open sources, with 58 individuals being implicated — among them, 32 employees of the Ministry of Internal Affairs. Yes, and we are actually seeing a significantly higher number of trials and convictions. Not a single conviction has been handed down under the updated article on coercion to testify (Article 302 of the Criminal Code of the Russian Federation) (as in the past decade – the last convicted persons appear in the statistics for the distant 2013). Verdicts under Part 3 of Article 286 of the Criminal Code of the Russian Federation, which punishes the use of violence, continue to be delivered reliably — their number has not changed significantly. It seems that state agents **continue to use violence, but law enforcers and courts do not consider it torture.**

All of this means that judicial statistics are not suitable for analyzing the practice of the new torture provisions — **other methods and approaches are needed to understand the problem and assess the effectiveness of the reform.** In order to understand how torturers are judged two years after the amendments, we did a little research.

## What data we used

With the help of a **parser**, which aggregates information from the websites of Russian courts, we received an upload of information on all criminal cases, in the "List of articles" column which contained parts 3, 4 or 5 of article 286 of the Criminal Code of the Russian Federation. By excluding cases submitted to Russian courts before July 25, 2022 (the date when the anti-torture amendments came into effect), we obtained a dataset of 1,374 records published in the Justice state information system (GAS "Justice"). Of that number, we were **only able to analyze 326 convictions** – exactly the number of final decisions describing targeted forceful violence that trial courts have published since 2022. We counted torture mentions of both the main and supplementary lineups. Next, we examined all the sentences we received by hand, breaking down each text into a list of indicators we needed to analyze. Our upload is current as of the end of June 2024.

Of the available number of published texts, only **16 sentences** were handed down mentioning the "torture" **part 4 of article 286 of the Criminal Code** (abuse of power with the use of torture). That's already twice as many as the court statistics show. One of the verdicts was acquittal, in seven cases the courts requalified the offense to a lesser charge, and the remaining verdicts were guilty — five of them were issued to different persons involved in a single "torture" case in the city of Novocherkassk.

With reference to **part 5 of article 286 of the Criminal Code of the Russian Federation** (torture resulting in serious harm to health or death by negligence), as of the end of June 2024, 10 sentences had been handed down by Russian courts. Of these, only two have been published. In one case the courts reclassified the corpus delicti as less serious. Another published verdict contained references to parts 4 and 5 of Article 286 of the Criminal Code of the Russian Federation, but even in this case the courts found that no torture had occurred. In both cases, the defendants were eventually convicted for abuse of power with the use of violence (under Part 3 of Article 286 of the Criminal Code of the Russian Federation), excluding the word "torture" from the qualification. As a result, in our collection there was not a single text of the decision punishing the convicted person under the most severe of the recently introduced anti-torture norms. The remaining three hundred and more sentences were passed **with the qualification under Part 3 of Article 286 of the Criminal Code of the Russian Federation** – abuse of power with the use of violence and/or special means; however, it was impossible to know the exact time of the crime – before or

after the amendments: due to depersonalization of sentences, dates are removed from the texts of decisions along with names.

Despite the limitations of the array, we can speak about its representativeness – the findings, which could be correlated with statistical data and materials provided by human rights defenders (for example, on the profession of a torturer or the types and amounts of punishment), turned out to be uncontroversial.

**However, it should be noted that reliable analysis of torture in Russia is severely hampered**

The high latency of torture, the limited data of human rights defenders who have information only on cases that come to their attention, the problems of qualifying torture under other articles of the Criminal Code, and the peculiarities of many years of statistical compilation without singling out torture separately – all this reduces research opportunities and often implies only probabilistic conclusions.

For example, the statistics on Article 286 of the Criminal Code of the Russian Federation does not reflect the problem of exclusively coercive violence – Part 3 of this norm can be used to try people for budget fraud, theft of state property, falsification of documents and fabrication of evidence, provocation and even bribery. Torture and violence can only be singled out by reading each individual sentence (much of which is not published). Another problem is the masking of torture by other articles of the Criminal Code of the Russian Federation, such as negligence and even ordinary harm to health. Analysis of such practice is possible only through contextual search of the texts of decisions.

The sentences handed down by Russian courts are often written in formal language and contain very restrained descriptions of the violent impact, making it difficult to reconstruct a picture of what happened. It is not always enough to search for convictions using the words "torture" or "violence" – courts may describe crimes without using such words.

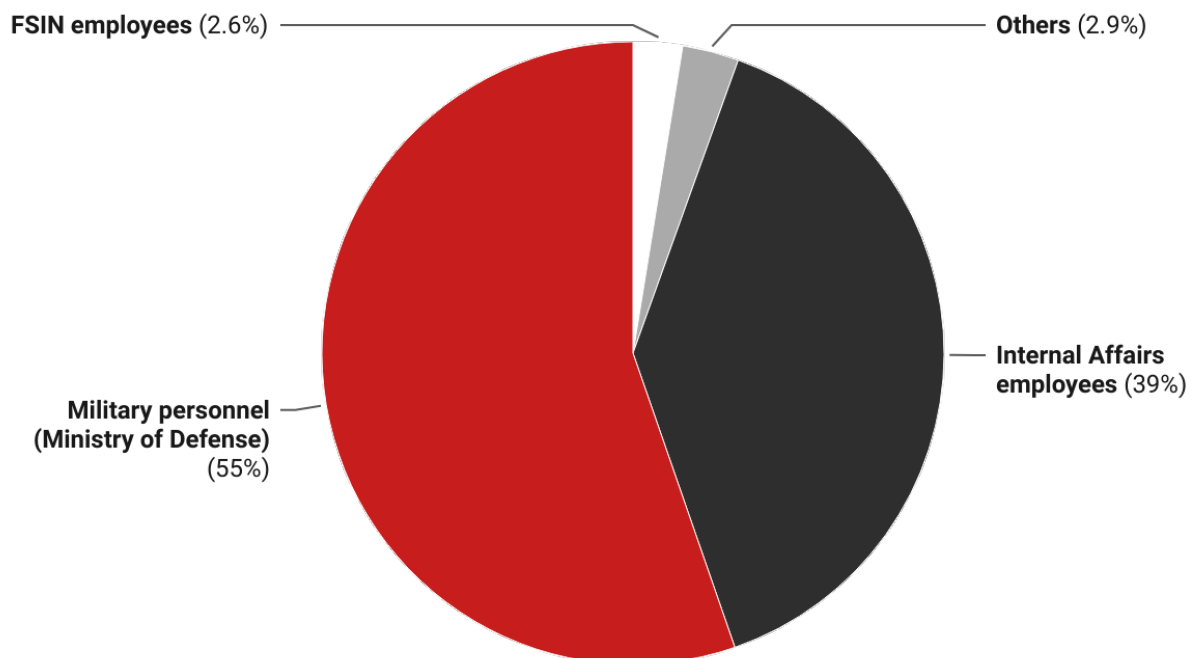
We examined the sentences we received, highlighting criteria such as the number of victims, the means of torture, the injuries inflicted, the qualification of the offense and the punishment imposed. Based on this, we drew subsequent conclusions. **The summaries below are given for all three parts (3, 4 and 5) of Article 286 of the Criminal Code of the Russian Federation** – it will help to understand what torture looks like in Russia after the 2022 reform.



## Meet the torturer

"Classic" torture in sentences – regardless of which part of Article 286 of the Criminal Code of the Russian Federation we are talking about – is most often applied according to the same pattern. Physical violence in most cases is attributed to military personnel – at least half of those convicted in our sample served in the Ministry of Defense and committed violence against their subordinates. A smaller share of the convicted are police officers, and only in a few cases do the defendants include employees of the FSIN (Federal Penitentiary Service), the National Guard, and the FSB (Federal Security Service). In the analysis of the dataset, one can also find rare instances, such as when customs officers or employees of specialized boarding schools are recognized as guilty of using violence.

### Military personnel are most often involved in "torture" cases



At the same time, our data does not prove that there is no torture in places of detention – due to the closed nature of FSIN institutions, human rights defenders rarely learn about the violence used against the population of pretrial detention centers, colonies, and prisons. This is facilitated by the extreme daily proximity of the guards and the prison population, the peculiarities of everyday life, and prison censorship: it is extremely difficult to send a report

of torture to the outside world without being noticed and without suffering any consequences for your "courage". It is no coincidence that the most high-profile cases of violence in prisons were brought to light thanks to leaks from FSIN employees themselves, rather than through statements from the victims. Convictions of prison officers are truly rare, **but we have no reason to believe that this is a torture-free field.**

The age of the convicted persons and their professional experience are often impossible to ascertain due to the depersonalization of sentences, dates of birth and other significant time intervals are removed from the text. Human rights activists **note** that three-quarters of those convicted are under the age of 35 at the time of the offense. We also found no published verdicts involving women: physical violence is a male prerogative.

**Almost 65% of torture cases are committed alone.** There are 1.06 victims per torturer

In most of the sentences we analyzed, the torturer acts alone. This figure is explained, among other things, by the fact that the majority of decisions are made in relation to the military – patterns of violence in the army are not characterized by variability: a commander, dissatisfied with the behavior of a subordinate, can slap or teach him alone, without needing the help of colleagues (but there are exceptions, of course). But in the Ministry of Internal Affairs, complicity is more common: a patrolman or an operative does not often use violence when left alone. At the same time, we assessed the act as committed in complicity even if the colleagues were not convicted – if it was clear from the background of the decision that there were several active or passive defendants, then the case according to our classification fell into the category of committed in complicity.

**In 72% of cases the persons involved** plead guilty in full or in part – in the latter case the defendants tend to agree with the fact of violence, but challenge the qualification in favor of a less serious corpus delicti (for example, from torture to simple use of violence). Analysis of the sentences does not allow us to draw a conclusion about the most "torturing" region of the country. The published sentences are evenly dispersed throughout Russia.

## How is torture most commonly carried out

The pattern of torture itself is not varied: as a rule, we are talking about spontaneous violent actions used in a situation when an enforcer or military man decides to "neutralize" his opponent, to demonstrate his superiority or to punish him for something. The torturer's resources are limited: they use physical force, employ special tools or improvised objects, and the torture usually takes place during working hours. That said, violence is built into the normal routine of the torturer: he uses it for work, to speed up the solving of cases, or to bring order here and now.

**The main reason for violence is punishment.**

And one in five seeks to justify torture by the victim's own behavior

**For police officers**, the reason for violence in the vast majority of cases is the misconduct or immoral behavior of detainees, as described in their verdicts<sup>1</sup>. Law enforcement officers may take out their frustration on civilians for excessively asserting their rights, requesting to be taken to the restroom, or displaying inappropriate behavior while intoxicated. Justification of torture by the behavior of detainees and spontaneous reaction of law enforcers to their actions is one of the most frequent theses in the testimonies of defendants. Less often, courts reflect in their decisions the most common reason for torture – the desire to obtain information, meet performance targets and solve the case as soon as possible. As a rule, this is masked behind language about "misunderstood interests of the service", but, interestingly, is not explicitly named as the purpose of the crime.

**Military personnel** on the other hand, tend to use violence to establish order, enforce discipline, and as a form of punishment: soldiers are often punished by their superiors for poorly washed dishes, leaving their place of service, drinking alcohol, using drugs, and other "misdemeanors." Soldiers are punished for violating daily routines, not performing tasks well, in the opinion of the command, and even for **discussing** the progress of a special military

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<sup>1</sup> At the same time, in the sentences analyzed, the court very rarely agrees with the statements of law enforcers and military officers: in less than 10% of the sentences, "unlawfulness or immorality of the victim's behavior, which was the reason for the crime" (paragraph "h" of part 1 of article 61 of the Criminal Code of the Russian Federation) appears as a mitigating circumstance for the torturer.

operation. There are also unusual cases – for example, when servicemen "get" slaps from the command for **poorly polished assault rifles** or **ignorance of characteristics of helmets**.

In this case, torture is a means to demonstrate superiority, to reward and admonish others: the public use of violence serves to admonish coworkers. Some defendants end up in the dock for various episodes of violence that did not occur simultaneously: at different times, they use the same methods to discipline different subordinates.

## Why do they torture in Russia

Punishment and/or demonstration of superiority

50%

Reaction to the behavior/action committed by the victim

20%

Personal dislike

17%

Careerism or performance improvement, desire for testimony

6%

Mercenary motives

4%

Tolerance or intentional ignorance of violence for personal gain

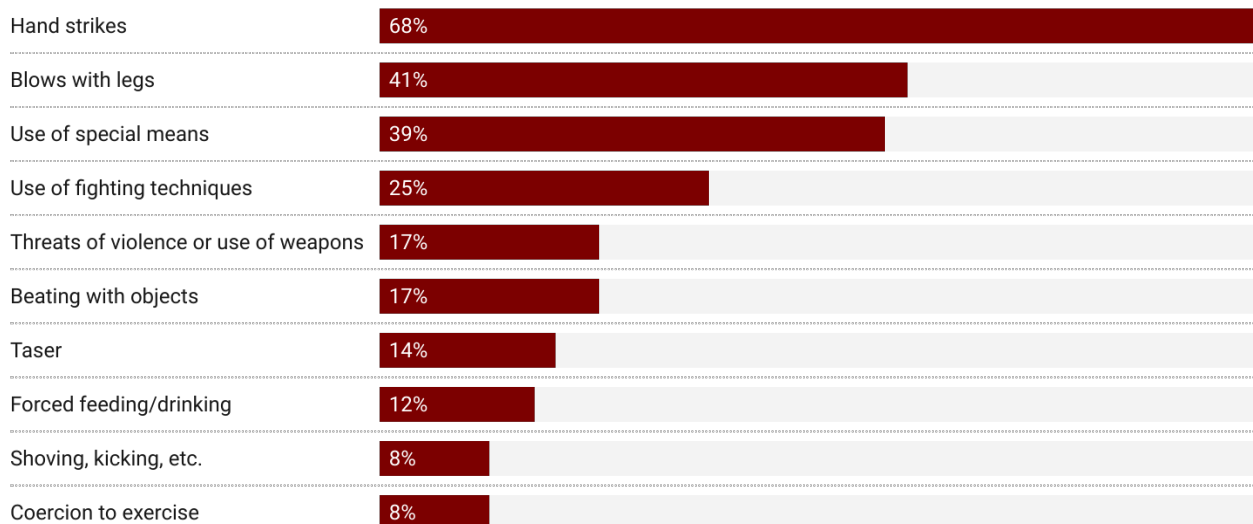
1%

Retaliatory violence

1%

In the "Anatomy of Decay" study, the Crew Against Torture analyzed over 300 cases on which Russian human rights defenders have worked over the past 25 years and in which they concluded that the victims' right to life or freedom from torture had been violated. We have found that hand-to-hand methods remain the most popular with torturers for many years, significantly outperforming other, more inventive methods of influence. The proportion of cases in which law enforcement officers use beatings varied between 63% and 72% from 1998 to 2020. This means that torture is a maximum contact crime, using fists, fighting and other physical practices to influence the victim. An analysis of the sentences we downloaded from the courts' websites comes as close as possible to this figure.

**Beatings are the most common method.** On the other hand, sophisticated torture is not so common in sentences



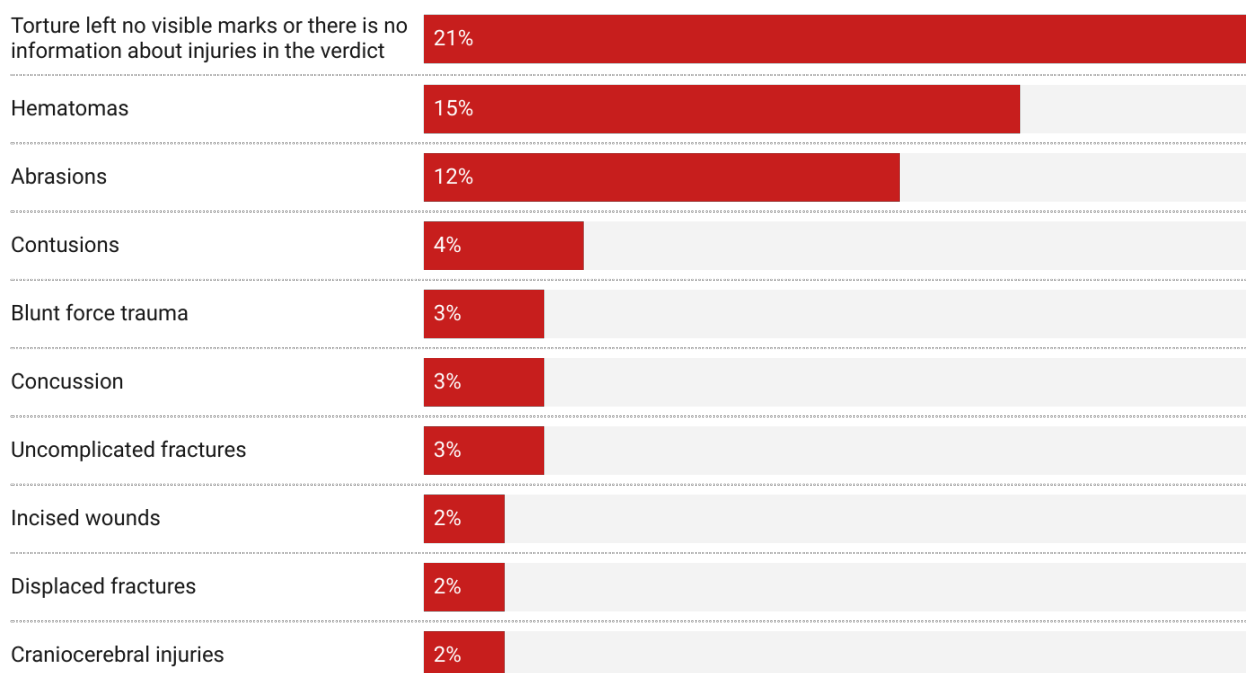
On average, an enforcer uses about three different types of actions per episode of torture, such as hitting, kicking and threatening at the same time. At the same time, sophisticated methods of violence are found in the general mass of sentences much less frequently – but still from time to time we find in court decisions the practice of banning to go to the toilet, tying to radiators, threats of sexualized violence against victims. But all this bullying falls far short of a simple and uncomplicated beating that doesn't last longer than a few minutes. Prolonged torture, stretching over hours and days, is more the exception to the rule.

The main points of exposure are the head, face and extremities of the victims. In about 80% of cases, the parts of the body above the breasts are the first to suffer. If law enforcers manage to throw victims to the floor after a fight, the most common injuries are to the legs and torso – and it is very rare to conclude from the verdicts whether the torturer was aiming at a particular body part or whether he was punching and kicking "at random".

## About the consequences

Most often, the beatings described in the texts of court decisions **do not result in any significant injuries**, and cases of recording of serious harm to health are quite rare. Often, the victim is either left with no visible traces of exposure at all, or the data about them are erased or not reflected in the verdict. In cases where we know the nature of the injuries reliably from the text of the decision, the most common are contusions, abrasions, and hematomas. Fractures, brain injuries, concussions and other similar outcomes occur in no more than 6% of victims, according to published verdicts.

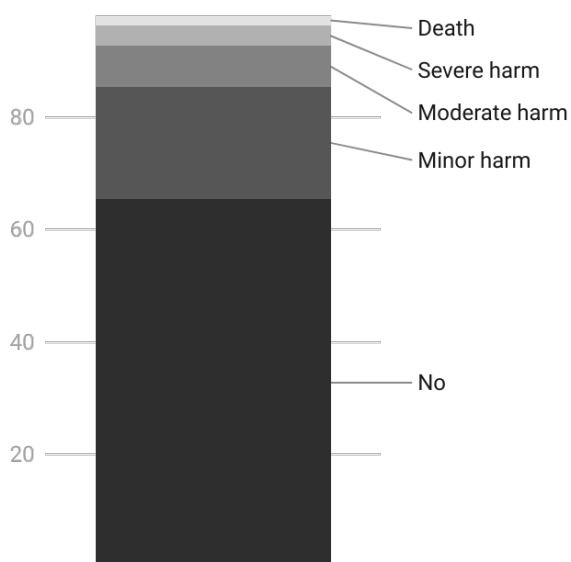
### Violence by force does not always leave behind traces and has consequences



At the same time, the description of injuries, and even more so the degree of severity of the harm caused to the health of the victims, should be discussed with great caution, mainly because in most cases the fixation of harm does not occur immediately, which leads to the loss of physical traces, and the quality of medical examinations does not always allow for reliable documentation of injuries.

Also, as the Crew against Torture's observation reveals, it is not uncommon for a forensic medical examination report not to reflect the severity of the injury, and this may be due to bureaucratic reasons, among others.

It also happens that the quality of primary medical documents and outpatient records does not allow experts to record the harm caused to the health of the victim. For example, a person is treated for three weeks (the period required to establish serious harm to health) for the consequences of a conditional craniocerebral injury, takes a sick leave, and is seen by a neurologist all this time — but due to poor filling out of cards and certificates by doctors, in which the injuries are described incorrectly or uninformatively, or, for example, the absence of some documents, the expert cannot take into account the diagnosis because it is not confirmed by documents. There is no malice in the expert's actions, but he/she is bound by the quality of the original documents in the forensic examination.



It is worth noting that torture is not often fatal. Among the sentences studied, such cases are isolated. For example, in the Kursk region, there was an **incident** where an intoxicated commander, having drunk about two bottles of vodka, became dissatisfied with the soldiers' refusal to go to the Special Military Operation (SMO) and began shooting indiscriminately at the formation and fleeing servicemen.

As a result, one of the young men was killed and another suffered moderate injuries in the form of a gunshot wound to the thigh. Sentence was issued in summer 2023.

## Reform (so far) has not (yet) changed practices

Traditionally, courts qualify the use of force under paragraph "a" of Part 3 of Article 286 of the Criminal Code of the Russian Federation (abuse of power with the use of violence). However, in our dataset, there were cases where even when beatings or other physical abuse were mentioned in the text of the verdict, the corresponding qualifying feature (use of violence) was completely absent (1, 2). Hence, it can be assumed that sometimes courts are generally quite loyal to violence and do not always assess it as a meaningful element of legal evaluation.

It is still quite difficult to assess and describe the objective side of torture qualified under the new parts 4 and 5 of Article 286 of the Criminal Code of the Russian Federation due to the small number of convictions, including those published. This does not mean that torture in Russia is an isolated incident. First, it is important to remember that the track of investigation of a "torture" case is quite long – years can pass from the event to the case going to court and the final judgment. In other words, some instances of violence that, under the current version of the Criminal Code of the Russian Federation, could be classified as torture may not have yet reached the stage of judicial proceedings; currently, courts are primarily dealing with cases that are classified under the version of the Criminal Code prior to 2022<sup>1</sup>.

However, from the portion of verdicts we were able to find – both those mentioning the new torture provisions and those describing events that most likely occurred after the new articles were introduced in the Criminal Code of the Russian Federation<sup>2</sup> – it becomes evident that there is a problem with the refusal of investigators and courts to directly label

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<sup>1</sup> Russia has a rule that a person can be tried only under the version of the Criminal Code that was in force at the time of the crime (with the exception of cases of decriminalization of norms or mitigation of prescribed liability). The new anti-torture corpus delicti went into effect on July 25, 2022 – meaning that events prior to that date, even if they fall within the concept of torture, cannot qualify as such.

<sup>2</sup> In the text of the decisions, in the vast majority of cases, the dates of the offense have been blurred out. We can assume the approximate range of time in which the events described in the decision took place, by circumstantial indications – by the wording of the Criminal Code of the Russian Federation, if it is indicated in the verdict, by the date of receipt of the case in court, by dates that have not been removed from the decision, etc.



the violence applied as torture, even when all the signs are present, and to classify the actions under the new provisions. **In 95% of the verdicts we studied, judges either simply refer to the general rules of law establishing the prohibition of torture (and this is the only presence of "torture" in the decisions), or when mentioning violence, do not put the word in the verdict at all.** The system lacks the language to talk about torture and the will to call violence by its true name.

The wording of the law itself is probably to blame, providing loopholes for enforcement. The new version of Article 302 (coercion to give testimony), effective since 2022, introduces a typology of methods of influence — **violence, torment, and actual torture**. How they differ from each other remains unclear. The higher courts have also yet to formulate any clear guidelines on how to distinguish violence from torture – and this allows the courts to hand down very different sentences that are difficult to compare. If there is an opportunity to call beatings, coerced testimony, or other deliberately inflicted suffering simply "violence," law enforcement officials are eager to take advantage of it. **What they may mean by torture in reality is not shown even by analyzing the texts of published decisions.** As a rule, they do not contain full and meaningful motivations.

For example, five verdicts under the new anti-torture provision (Part 4 of Article 286 of the Criminal Code of the Russian Federation), published on court websites, relate to a single case: in February 2023, five commanders tortured six servicemen over the course of four days as punishment for drug use<sup>1</sup>. They were beaten with hands, feet, and batons, handcuffed to a turnstile, subjected to electric shock, forced to drink soapy solution, and eat cigarettes. At the same time, the sentences do not describe the soldiers' injuries. Having entered into pre-trial cooperation agreements, all five defendants pleaded guilty and finally heard guilty verdicts, having been pardoned by the victims beforehand.

Torture in the legal sense was also applied in one **case** from Yakutia: in this case, a police officer beat the victim, including strikes to the head, and between blows he said, "I will smash your balls," aimed at his groin, and threatened to urinate on him. At the same time, the victim himself, who was chained to the stairs, was not allowed to go to the toilet and was deprived of sleep. Judging from the description of the story in the text of the verdict, the torture lasted for quite a long period of time.

Another ex-police officer received a **sentence** under the "torture" part of Article 286 of the Criminal Code of the Russian Federation for beating up a detainee – being in a state of alcoholic intoxication, he spent an hour beating a confession of illegal arms trafficking out of the latter. **It is likely that, in the cases described, the judges distinguished between ordinary violence and torture on the basis of severity, duration and repetition of force.**

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<sup>1</sup> A separate decision was made for each of them — [1](#), [2](#), [3](#), [4](#) and [5](#).

But this is not a universal or widespread rule. In similar cases, the courts (including in the same regions) did not follow the same logic and continued to prosecute defendants under the familiar point "a" of Part 3 of Article 286 of the Criminal Code of the Russian Federation, referring to the incident as "ordinary" violence.

This is exactly what the court did in one **case of torture** by the police. It decided to reclassify the case from Part 4 (torture) to Part 3 (violence) of Article 286 of the Criminal Code of the Russian Federation, arguing as follows: "Compared to "ordinary" violence, torture causes "severe pain", "physical suffering". Torture causes suffering, which can be evidenced by both the intensity of the violence used against the victim and its duration. The mere infliction of blows on the victim's body was intended to suppress his will but cannot show [the defendant's] intent to inflict specifically particular physical suffering." The case concerned a police officer who decided to solve a drug crime by, among other things, beating a man on whom no drugs were found, and then holding a gun to him and threatening to put the muzzle of an automatic rifle into his anus. The court in the same decision writes verbatim about the suffering experienced by the victim, but still continues to insist that there was no torture.

A similar example can be found in the acquittal under the same Part 4 of Article 286 of the Criminal Code of the Russian Federation — here, the court also attempted to superficially discuss torture rather than simply restating its definition from the law. However, in the end it still concluded that there was not only no torture in the actions of the enforcer, but also no violence of any kind. In the Kursk region, a police officer who took an intoxicated passenger off a train used force against him. The court considered the actions of the enforcer lawful and referred to the rule of necessary defense, because the latter feared an attack on himself and attempts to seize his service weapon. "[The victim,] in carrying out his plan, <...> deliberately struck his head at least twice against the concourse structures in order to sustain bodily injuries, for which he could later accuse the police officers," the court writes in the **verdict**. – In this case, there can be no question of torture."

Another reclassification, not accompanied by substantive justification, occurred **in case** about the above-mentioned ignorance of the characteristics of the helmet: "In the court session, the state prosecutor asked to exclude from the scope of the charge <...> the qualifying sign "with the use of torture" <...>, since in the case in question [the defendant] did not commit acts related to torture". And again, how the law enforcer distinguishes torture from other forms of violence remains unexplained.

Interestingly, the reclassification of "torture" to "violence" is often<sup>1</sup> requested by the state prosecutor – and the court, **bound** by his position and unable to independently pass

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<sup>1</sup> In our compilation of 18 published decisions, leniency was requested by the state prosecution in six cases.

sentence on the more serious *corpus delicti*<sup>1</sup>, makes a relevant decision (and thereby, as if relieving itself of the obligation to argue for the mitigation of charges). This is what happened in Kamchatka, for example. In **one of cases** several defendants were reclassified from "torture" to "violence" at the request of the state prosecution, despite a ruptured spleen and serious harm to the victim's health. He was kicked with his feet wearing heavy special shoes, pepper sprayed and left injured at the place where he was brought in the trunk of a service vehicle. There was no reasoning for such a decision — although the prosecutor **is obliged to** motivate the change of qualification, and the court **must** consider this motivation — just as there was no torture, according to law enforcers.

All this suggests that even legislative changes (so far) have not led to substantive changes in the state's understanding of torture and abuse of power — **the new provisions have not resulted in a surge of cases, and episodes of violence are being preserved under the previous, more lenient legal classification.**

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<sup>1</sup> In order to ensure the defendants' right to defense and within the framework of the implementation of the adversarial principle, courts may not pass sentences on a more serious article than provided for in the indictment (ruling, act) or than requested by the state prosecutor, who may fully or partially drop the charges or mitigate the qualification. In case of disagreement with a milder classification, the court can return the case for further investigation — this possibility was introduced into the Criminal Procedure Code of the Russian Federation following the initiative of the Constitutional Court of the Russian Federation in 2014 — but without specifying to the investigation and prosecution the exact provision under which the defendant should be prosecuted.

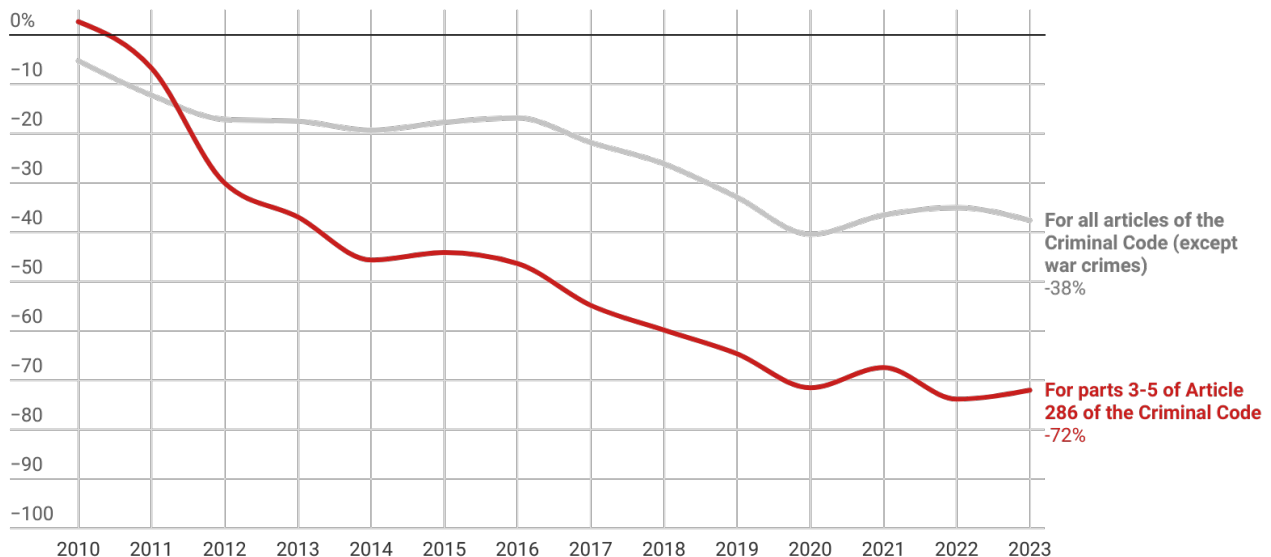
Technically, this is the path that courts could have taken to prevent the prosecution from attempting to mitigate the responsibility of those being tried for torture and abuse of power.

## Fair punishments?

The total number of convictions for abuse of power has been steadily decreasing over the years. In the last 15 years, there have been 72% fewer of them. The trend towards a gradual decrease in the number of defendants and convicted persons is characteristic of the entire criminal record structure in Russia – however, for official crimes the rate of reduction in the absolute number of convicted persons is almost twice as fast as the national average.

### The number of those convicted under the "torture" article has fallen by 72% over the years

At the same time, the rate of reduction of the total number of convicted persons in Russia is almost twice as slow



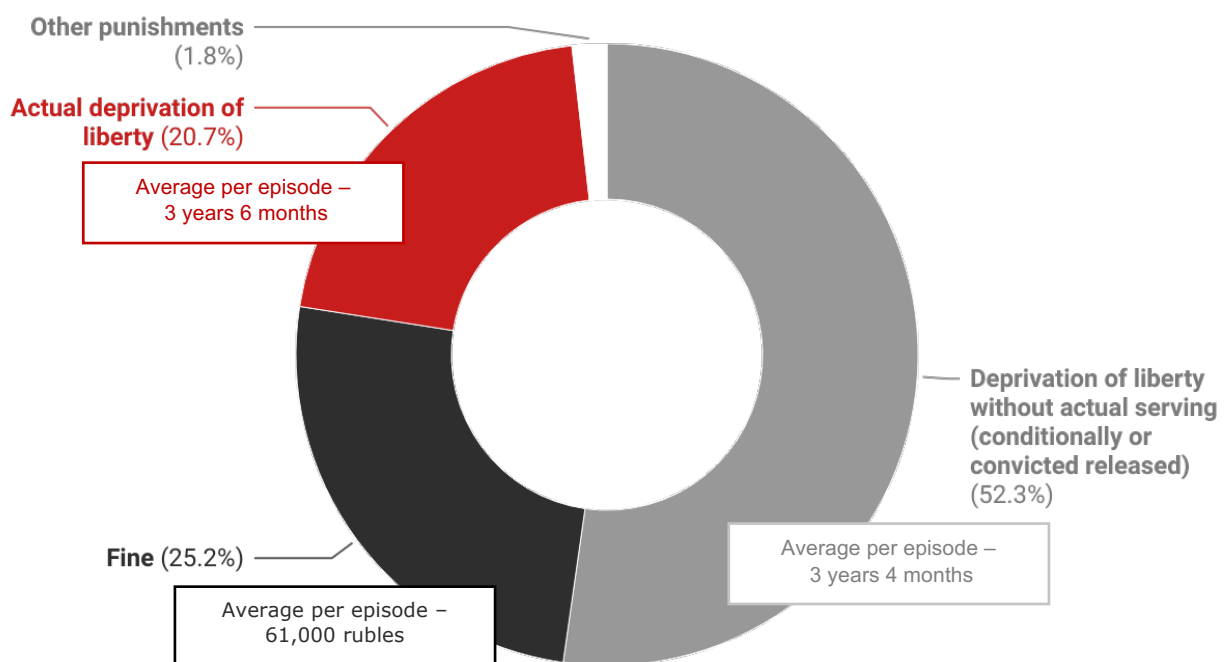
At the same time, the highest share of acquittals — **almost 25 times higher** than for other articles — also concerns officials and law enforcement officers, whose verdicts are still issued under the same Part 3 of Article 286 of the Criminal Code of the Russian Federation.

**Only 20% of torturers are sent to colonies,**  
and the price of one torture is only 61,000  
rubles

It is indeed quite difficult to be sent to a colony for violence committed by law enforcement officers. As the analysis of unloaded sentences shows, a quarter of convicts are fined for violence, with one episode of the crime estimated by the court at 61,000 rubles, which the convict must transfer not to the victim, but to the federal treasury.

### Courts are not inclined to be harsh on defendants in "torture" cases

Only one fifth of those convicted under parts 3-5 of article 286 of the Criminal Code are sent to places of deprivation of liberty



73% of law enforcers receive prison sentences, **but less than a third of them are sent to colonies for real isolation.** Part 3 of Article 286 (violence) provides for a term of 3 to 10 years of imprisonment, part 4 (torture) – from 4 to 12 years, part 5 (torture with the death of the victim or causing serious harm to health) – up to 15 years. At the same time, the average real term that law enforcers receive for one episode deemed by the courts to be violent abuse of power is on average about 3 years and 6 months. This doesn't even reach the middle of what is prescribed by the legislator.

If we take a cross-section only on "torture" sentences, then of all those convicted under Part 4 of Article 286 of the Criminal Code of the Russian Federation, only five went to prison. The sentences imposed on them for one episode of torture, without taking into account the aggregate, did not exceed 4 years and 6 months, which is only one year more than the usual term for the use of violence and still falls short of the midpoint set by the legislator.

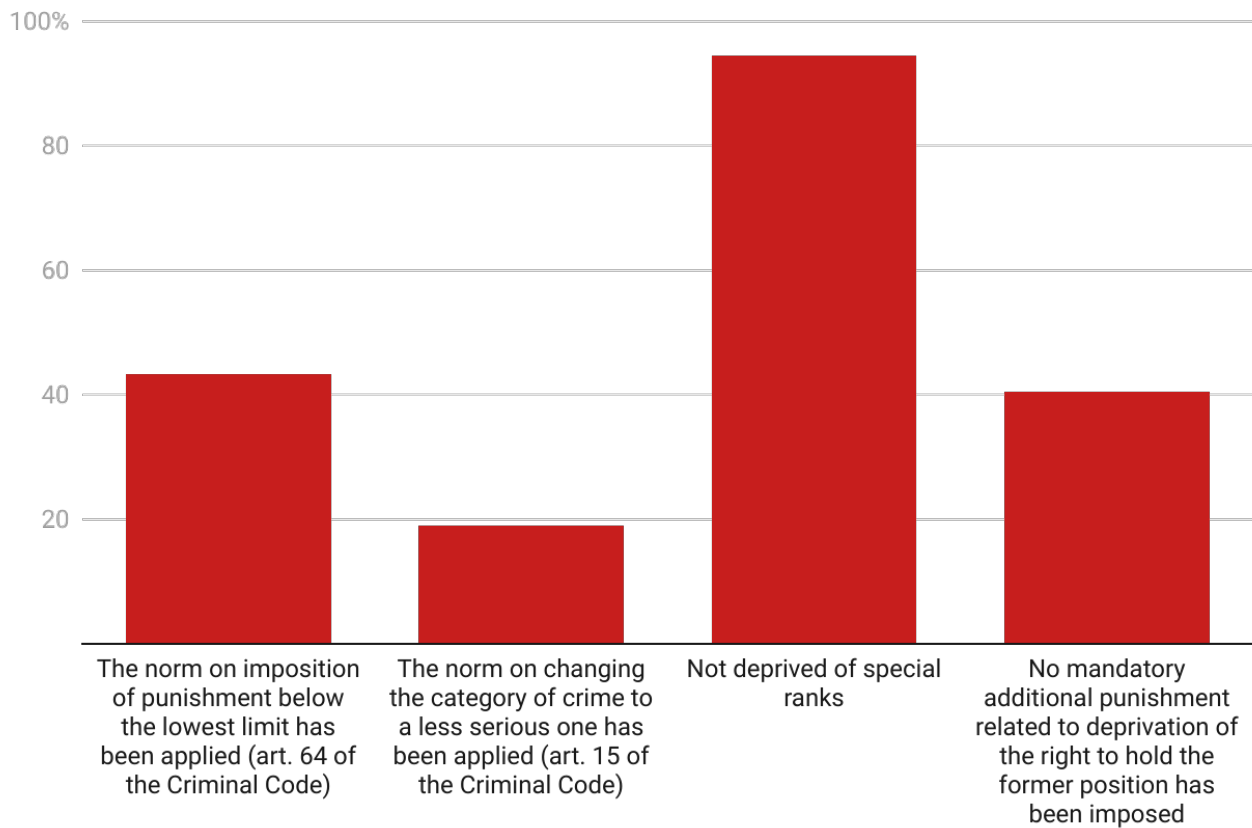
**Courts do everything to mitigate the punishment of torturers: 4 convicts out of 10 receive sentences below the lowest**

Such loyalty to torturers becomes possible due to the application of the norm on imposing punishment below the lowest limit (Article 64 of the Criminal Code of the RF). It applies if the courts conclude that the penalty prescribed by the legislature is too severe and would not meet the requirements of proportionality and fairness. In more than 40% of "torture" cases, the courts apply this legal instrument, while in 2023, only every 20th convicted person in Russia was sentenced to a milder punishment than provided for by the article. Once again, Themis is more loyal to representatives of the authorities than to ordinary citizens.

Also, when it comes to torture, courts are often inclined to change the category of the crime to a less serious one (Article 15 of the Criminal Code of the Russian Federation). By default, the use of violence (part 3 of article 286 of the Criminal Code) is a serious crime, and torture (parts 4 and 5 of article 286 of the Criminal Code) is a particularly serious crime. In 2023, only 2% of those convicted across Russia changed the category of severity of the offense, but in the case of forceful violence, courts are almost 10 times more likely to be loyal.

It turns out that the crimes committed by torturers are less serious in the eyes of law enforcement than the legislator intended. It is virtually impossible to receive the maximum 10, 12 or 15 years of imprisonment for torture – this happens only if violence and torture are combined with some other crime and the court considers a combination of *corpus delicti*. Similarly, torturers are not always banned from working in their previous positions: although the provisions of Parts 3–5 of Article 286 of the Criminal Code of the Russian Federation require judges to deprive convicts of the right to continue their previous activities along with imprisonment, more than 40% of those guilty of violence may return to their former jobs. At the same time, a colossal number of convicts retain their special ranks: after the sentence it is quite possible to remain a major or lieutenant colonel.

## What methods courts use to give lenient sentences to torturers



All this means that the courts, despite the seriousness of the problem of violence by force, continue to treat torturers leniently, looking for any way to reduce their sentences. Judges justify such kindness in their decisions in a very standard way. Among the mitigating circumstances for law enforcers, courts list the usual formulations: the presence of children, commendations in the service, previously untarnished reputation. For military personnel, the fact of participation in "operations to defend the Motherland" is relevant, whether it involves contracts or deployments to Chechnya, Syria, or Ukraine. Some sentences mention the convicts' willingness to reenlist in the armed forces or their active participation in charitable organizations that help servicemen.

## What this is all about

**Statistics still do not allow us to analyze the scale of the problem of torture in Russia** — eight convictions under new anti-torture offenses in the reporting forms for two years do not even approximately reflect the true prevalence of this phenomenon in the country. Despite the changes introduced in 2022, an analysis of the practice in cases involving force abuse does not show a radical shift in law enforcement: the new norms have not improved the portrait of torture and have not reduced the number of convictions for police beatings, bullying and humiliation; and courts continue to resist the changes and do not see a significant difference between violence and torture.

On the one hand, it is the flawed law – the half-hearted reform left courts with the possibility to avoid the word "torture," substituting it with softer synonyms that, in their view, are more appropriate. On the other hand, the issue is the lack of clear criteria and boundaries within the courts, the crossing of which could lead to harsher sentences. Judges who try to understand the difference between "violence" qualified under Part 3 of Article 286 of the Criminal Code of the Russian Federation and torture from the neighboring Parts 4 and 5, as if drawing a dotted line of distinction: for them torture is something prolonged, perverted and especially cruel. Something that should particularly stand out and most likely inspire fear. But such criteria are more akin to everyday perceptions and are far removed from legal categories — let alone from international legal definitions. Almost everything for which Russian law enforcement officers are prosecuted and what we see in the texts of verdicts **should be unequivocally classified as torture** according to **widely accepted global standards**, without any nuances. Russian practice has not yet reached this understanding.

We have long known that the punishment for the use of force in Russia is not commensurate with the damage that torture causes. By daring to use violence, law enforcers are deprived not only of trust from society, but also of the ability to do their job in good faith: testimony and results obtained after torture cannot be considered reliable. By beating prisoners, FSIN officers exclude the possibility of normal correction of convicts, generating risks of recidivism and making the whole system of execution of punishment useless. By slapping soldiers around, commanders undermine public confidence in the entire institution of the military and engender the normalization of violence. And normalized violence always escalates and takes root. However, the state, in the form of judges, who impose minor prison



sentences for torture or allow the crime to be paid off with fines, only encourages violent practices and sponsors their expansion.

However, it would be a mistake to say that the reform was useless. Firstly, not much time has passed since the introduction of new *corpus delicti* in the Criminal Code of the Russian Federation – we can make the first conclusions, but perhaps in the future the trends will change. Second, human rights work sometimes achieves isolated but important results.

In one such case, human rights defenders managed to have the verdict issued under Part 3 of Article 286 of the Criminal Code of the Russian Federation overturned — the appellate court disagreed with the state prosecutor and the court of first instance, which failed to recognize torture in the case of Alexander Sharfutov, a resident of the Nizhny Novgorod region — he was shocked with a stun gun for asking for a blanket. Disagreeing with the qualification and excessively lenient punishment, the appellate panel **sent case** for reconsideration, separately adding that the arguments of the state prosecutor, who unmotivatedly decided to exclude torture from the qualification, looked weak and did not meet the requirements of the law. In such cases, the new anti-torture provisions can serve as a basis for increasing accountability for those who, being in positions of power, allow the use of violence in their work.

Whether such cases will remain isolated will be revealed with time.

## About this texts

The analytical note is based on court decisions uploaded from the websites of Russian courts on June 25, 2024. Some links to court decisions may not open due to crashing Justice state information system (GAS "Justice"). A VPN may be required to open court documents located on Russian government websites.

The parser for obtaining texts was developed by the "To be precise" project team — the download link and installation instructions can be [here](#). A guide to the features and working with the parser can be found [here](#).

### Citation:

Torture in Russia: new norms – old practices. Analytical note. – Nizhny Novgorod : Crew against Torture, 2024. – 27 p.



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