



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
28 December 2023

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 840/2017*, **

<i>Communication submitted by:</i>	Aleksandr Aleksandrov (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Kazakhstan
<i>Date of complaint:</i>	30 March 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 15 September 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	3 November 2023
<i>Subject matter:</i>	Cruel, inhuman or degrading treatment or punishment
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; medical negligence in prison; protection against ill-treatment and intimidation
<i>Articles of the Convention:</i>	1, 12–14 and 16

1.1 The complainant is Aleksandr Aleksandrov, a national of Kazakhstan born on 16 October 1978. Parts of the complainant's submission were transmitted to the Committee by his mother, Gulnur Aleksandrova, with his authorization. The complainant raises claims falling under articles 1, 12 to 14 and 16 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 21 February 2008. The complainant is not represented by counsel.

1.2 On 11 November 2021, the Committee's Rapporteur on reprisals sent a letter to inform the State party that the complainant had been subjected to ill-treatment at the detention facility. The Rapporteur requested the State party to provide information in respect of the complaint's allegations of reprisals and to ensure that he was not subjected to threats or violence in connection with the submission of the present communication.

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



Factual background

2.1 In 2011, the complainant was sentenced to life in prison. He is currently serving his sentence in a maximum security prison, facility No. 161/3, in Zhitiqara, Kazakhstan.

2.2 On 12 October 2010, the complainant took part in a robbery targeting bank couriers. During the robbery, he was shot in the upper part of his right thigh and apprehended by the police. Because of the injury, he spent two weeks in Shakhtinsk trauma unit. On 29 April 2011, the competent inter-district court of Karaganda Province convicted the complainant of banditry, robbery, murder and attempted murder and sentenced him to life in prison. On 21 June 2011, the conviction was upheld on appeal by the appellate board of the Karaganda Provincial Court. According to the complainant, upon his arrival at the facility on 19 August 2011, the prison administration took away his crutches, forcing him to move around by jumping on one leg. After three and a half years of having to move around in that manner, he started having an excruciating pain in his left leg. On 6 April 2012, the complainant was officially recognized as having a category III disability. Since January 2016, he has moved around his cell by crawling on the floor and has performed everyday activities, such as showering or going to the bathroom, with the help of other inmates.

2.3 On 9 July 2014, the complainant was examined by a doctor brought to the facility by his mother. In a report, the doctor stated that, upon arrival at the facility on 19 August 2011, the complainant had been diagnosed with a malunion fracture of the right thigh bone. The gunshot had caused a displaced femur fracture, which had not healed properly owing to a lack of adequate medical treatment, causing persistent nerve pain with dystrophy and atrophy of the limb tissues. The doctor concluded that the injury required a thorough medical examination, followed by radical surgery.

2.4 On 24 November 2014, a panel of doctors, including a neurosurgeon and a trauma specialist from Kostanay Provincial Hospital and a trauma specialist from Zhitiqara District Hospital, conducted a telemedical consultation. The panel recommended that the administration of the facility conduct an additional examination of the complainant (full radiography of the pelvic bones, joints and lumbar spine) to confirm the diagnosis and determine the scope of surgical treatment.

2.5 On 31 January 2015, following a request by the prosecutorial authorities, the complainant was examined by a neurosurgeon. On the basis of the complainant's symptoms and the in-person examination, the doctor concluded that the complainant's peripheral nervous system was not damaged and that surgery was not necessary.

2.6 On 5 March 2015, a panel of doctors from Kostanay Provincial Hospital, consisting of the deputy head of the hospital, the head of the trauma unit and a trauma specialist, examined the complainant, diagnosed him with a malunion femur fracture and sciatica and recommended an additional examination by a neurosurgeon. On 31 March 2015, a neurosurgeon from Kostanay Provincial Hospital examined the complainant and found no indications of nerve damage in the lower limbs. The doctor concluded that surgery was not necessary and recommended that the complainant be monitored by a trauma specialist. He prescribed the complainant a cane and orthopaedic shoes.

2.7 In 2015, the facility, acting within the framework of the complainant's individual rehabilitation programme, ordered a cane and orthopaedic shoes. The complainant refused to accept and wear them, insisting on surgery.

2.8 According to the complainant, he lodged numerous complaints with the prosecutorial authorities, the head of the penal correction system and national human rights bodies, to no avail.¹ According to the documents provided by the State party, while at the facility, the complainant received several replies.

2.9 On 21 June 2013, in reply to a letter from the complainant, dated 27 April 2013, a provincial department of the Medical and Pharmaceutical Oversight Committee of the Ministry of Health stated that it had examined his medical documentation, met with him personally and concluded that he had been diagnosed correctly and had received adequate

¹ The complainant does not provide any documents or explanations as to the content of his complaints.

medical treatment. On 16 July 2013, a provincial department of the Social Protection and Oversight Committee of the Ministry of Labour and Social Protection informed the complainant that his medical documents indicated that he had been correctly recognized as having a category III disability according to national legislation. On 4 September 2015 and 28 March 2016, the Ministry of Health replied to complaints that the complainant had lodged either directly or through the Kazakhstan International Bureau for Human Rights and Rule of Law, a non-governmental organization. In its letters, the Ministry referred to the complainant's medical examinations and emphasized that he had refused to accept the treatment prescribed. The Ministry stated that the administration of the facility and the relevant department of the penal correction system were responsible for organizing the complainant's medical treatment and that all the necessary specialists would be made available. Upon the complainant's request, on 23 September 2015, the Health Department of the Authority (*Akimat*) of Kostanay Province forwarded him a copy of his medical records held by the facility and the reports of the examinations conducted. In November 2015, the Health Department sent two similar letters in which it listed the complainant's previous medical examinations and pointed out that he had refused to accept the walking aid prescribed.

2.10 On 8 January 2016, the National Human Rights Centre of Kazakhstan replied to a complaint made by the complainant during the Ombudsman's visit to the facility. The Centre stated that the complainant's state of health was satisfactory and that he had been provided with the necessary medical treatment and attention. On 11 August 2016, in reply to a complaint about ill-treatment and unlawful actions on the part of the facility's administration, the Centre stated that the Zhitiqara District prosecutor had visited the facility and had not confirmed the allegations and reiterated that the complainant had received the necessary medical care.

2.11 On 28 June 2016, the Office of the Prosecutor General replied to a complaint made by the complainant about unlawful actions on the part of the facility's administration. In its letter, the Office dismissed the allegations of a lack of adequate medical treatment as unsubstantiated and assured the complainant that the facility had been requested to address other violations relating to access to telephone calls and family visitation rights. On 16 October 2017, the Zhitiqara District prosecutor's office replied to a complaint made by the complainant concerning a lack of proper hygiene facilities, indicating that there was no evidence that the facility's administration had obstructed the complainant's access to communal hygiene facilities and that he had recently moved to a cell with an individual sink and a shower.

2.12 On 16 October 2017, in reply to a letter from the complainant, dated 13 October 2017, the head of the Kostanay Province department of the penal correction system stated that the complainant had been provided with adequate rations, in line with the dietary standards established for prisoners.

Complaint

3.1 The complainant claims that the State party failed to take effective measures to stop the acts of torture, despite his complaints. He therefore requests the State party to initiate a prompt and impartial investigation and to provide him with fair and adequate compensation.

3.2 The complainant claims that the authorities failed to provide him with adequate medical treatment, thus forcing him to suffer from pain every day. The complainant also claims that the facility's administration systematically beats inmates or uses loyal inmates to threaten those with whom they share their cells. As punishment for his complaints, the complainant was placed in solitary confinement on several occasions.

3.3 The complainant claims that the prison administration interferes with his correspondence, hindering his submission of complaints to the domestic authorities and thus making it impossible for him to pursue any domestic remedies.

State party's observations on admissibility

4.1 On 24 November 2017, the State party submitted observations on the admissibility of the communication.

4.2 The State party points out that the complainant never raised complaints of torture with the domestic authorities. On 19 October 2017, after the State party had been informed of the registration of the present communication, the internal security unit of the Internal Affairs Department of Kostanay Province initiated an inquiry into the complaints. During an interview, the complainant retracted all the allegations of torture, stating that he had once heard the screams of another inmate whom he had suspected of being beaten. The prison medical records do not indicate any injuries sustained during the complainant's detention at the facility. On 6 November 2017, the inquiry was closed.

4.3 The State party claims that, under national legislation, actions or inaction on the part of the authorities can be challenged to the relevant supervising officer. If unsuccessful, their decisions can be appealed to the domestic courts.² Legislation provides for a similar procedure for complaints about actions or inaction on the part of a prosecutor or other investigative authority.³ While at the facility, the complainant sent 84 complaints to various authorities but never appealed their responses to the domestic courts. Between 2014 and 2017, the prosecutor's office conducted three inquiries into the complainant's allegations of an inability to send correspondence from the facility but found no evidence that his correspondence had ever not been sent. In addition, in its response of 31 August 2014 to a similar complaint lodged by the complainant's mother on 13 August 2014, the financial police stated that it had found no evidence of a crime and refused to initiate criminal proceedings. That refusal was not appealed by the complainant or his mother.

4.4 In parallel, the complainant lodged various complaints with the domestic courts about other matters. For instance, he lodged a complaint with the Zhitiqara District Court of Kostanay Province, requesting a transfer from the strict regime of detention to a more lenient regime. He claimed that being forced to perform orders and walk on one leg was causing him physical and psychological suffering, requested that each day in those conditions be counted as seven days of his sentence and sought 80 million tenge (approximately €386,413 on the date of the Court's decision) in damages. On 4 March 2015, the Zhitiqara District Court upheld his complaint in part and transferred him from the strict regime of detention to the regular regime, refusing the remainder of his requests. The complainant did not appeal that decision. Moreover, in 2015, the complainant contested a two-day placement in solitary confinement, which had been applied to him as a disciplinary sanction by the facility's administration. On 17 June 2015, the Zhitiqara District Court dismissed his complaint and, on 23 July 2015, the Kostanay Provincial Court upheld that decision on appeal. In 2016, the complainant requested the Zhitiqara District Court to allow him extended family visits and telephone calls and to extend his allocated television and electrical socket use time. On 17 August 2016, the Zhitiqara District Court partially granted the requests by allowing telephone calls and visits. On 8 September 2016, the Kostanay Provincial Court upheld that decision on appeal.

4.5 The State party concludes that the complainant had access to effective remedies at the national level but did not avail himself of them. Since the complainant failed to exhaust the available domestic remedies, the communication should be declared inadmissible.

Complainant's submission on the reprisals

5.1 On 15 October 2021, the complainant informed the Committee that, on 6 September 2019, he had been subjected to torture by other inmates at the behest of the facility's administration.

5.2 The complainant states that, on 6 September 2019, three inmates approached him, told him that they would take him to the shower room and asked him to take his clothes off. In the shower room, the inmates tied the complainant to his wheelchair and tied his feet together. He called for help, but to no avail, even though the guards should have been waiting outside the shower room. One of the inmates hit the complainant in the chest several times, while another put a gag in his mouth and tightened it so hard that his dental prosthesis broke. They

² The State party refers to article 12 of the Act on the Procedure for Considering Communications from Individuals and Legal Entities and article 292 of the Code of Civil Procedure of Kazakhstan.

³ The State party refers to articles 106 and 107 of the Code of Criminal Procedure of Kazakhstan.

threatened the complainant with sexual violence, saying that explicit pictures would be sent to his mother. Then the inmates told him that they were now in charge of the facility and that the administration had assigned them to watch over the other inmates.

5.3 Once the complainant had left the shower room, he approached the guards in the hallway and told them that he would not return to his cell with the inmates in question. A guard took the complainant to the administration's office. While in the office, a guard handcuffed him, and another group of inmates tied him to his wheelchair. An inmate suffocated him until he lost consciousness. When the complainant regained consciousness, someone was pushing him in his wheelchair back to his cell. In the cell, the same inmates who had previously taken the complainant to the shower room pushed him out of the wheelchair, threatened him and told him that he should obey their orders. The threats and humiliation continued throughout the night.

5.4 The complainant claims that he had not previously informed the Committee or his mother about those events, as he had been frightened. For the same reason, he had not complained about the assault to the national authorities.

5.5 On 21 July 2022, the complainant provided additional submissions relating to his allegations of reprisals. He states that, on 22 December 2021, the Zhitiqara District prosecutor's office interviewed him. During that interview, the complainant requested the initiation of criminal proceedings against five inmates who had assaulted him and the facility's administration for inciting the assault. On 23 December 2021, the authorities opened a criminal investigation for torture. The statements and cross-examinations of witnesses, including inmates who had allegedly been involved in the assault, four correctional officers and two witnesses who had not been involved, did not corroborate the allegations. Two inmates confirmed that they had heard the complainant screaming and calling for help but said that he had later told them that the inmates who had assaulted him were not the same ones whom he had accused during the investigation. The investigator commissioned an expert examination of the video recordings of the complainant's interviews, and it was confirmed in the report, dated 4 March 2022, that the complainant's testimony had not been prepared in advance or rehearsed. On 29 March 2022, the investigation was closed. On 28 April 2022, the Kostanay Province prosecutor's office upheld the decision to close the investigation. On 7 June 2022, the complainant appealed the investigator's decision to close the investigation to the Kostanay investigative court, but his appeal was dismissed. On 15 June 2022, the Kostanay Provincial Court upheld that decision on appeal. The complainant claims that the decision to terminate the investigation of his complaints was unlawful. He states that, according to the expert, his testimony was not premeditated; the expert thus implicitly confirmed that he was telling the truth. In addition, two inmates confirmed that they had heard the complainant screaming and calling for help, but the complainant claims that he never told them that different people had assaulted him.

5.6 On 11 March 2023, the complainant's mother submitted additional observations on the communication. She claims that, throughout her son's stay at the facility, the administration obstructed their exchange of documents. In 2017, she lodged two complaints with the Kostanay Province department of the penal correction system. In reply, the authorities explained that inmates can file complaints themselves or through relatives who have been granted power of attorney. In 2021 and 2022, the complainant's mother filed several complaints about her inability to receive documents from her son during her visits to the facility. In one reply, it was indicated that the facility had been ordered to address the violations and, in another, it was stated that the transfer of documents from inmates to their relatives was not regulated by law.

State party's observations on the complainant's submission on the reprisals

6.1 On 30 June 2022, the State party submitted observations on the allegations of reprisals.

6.2 The State party confirms the complainant's account of the criminal proceedings instituted in respect of his complaint of ill-treatment. It adds that, according to the facility's medical records, the complainant did not complain to the medical unit at any point between the alleged events and the beginning of the investigation. In addition, no video recordings from the facility's cameras were available for the investigative authorities, as they had been

automatically deleted after two years. The State party states that, according to the internal system for the registration of correspondence, the complainant sent 23 complaints to different national authorities between 2019 and 2021. When the administration interviewed the complainant, he denied that it had created any obstacles or resorted to reprisals in connection with his communication to the Committee.

State party's observations on the merits

7.1 On 7 September 2023, the State party submitted observations on the merits of the communication.

7.2 The State party notes several recent developments in the complainant's situation. In 2020, the complainant submitted a petition for pardon to the President of Kazakhstan, which was refused on 27 November 2020. According to the State party, in 2023, the complainant sent seven complaints or enquiries to different domestic authorities, in which, inter alia, he asked for clarification of legal provisions and complained about unlawful actions on the part of the prison administration. The domestic authorities provided adequate replies to all the complaints and enquiries and found no misconduct on the part of the prison staff. On 16 August 2023, the prosecutor's office of Kostanay Province carried out a visit to the facility and interviewed the complainant, who did not make any complaints.

7.3 The State party states that, as a person with a disability, the complainant is provided with adequate medical care and facilities. He is regularly examined by doctors (most recently, on 7 April 2023), has an emergency button in his cell, allowing him to contact the guards, and has a sink and a toilet in the cell, installed on the lower level. The complainant uses a wheelchair to move around, and the facility is appropriately equipped with ramps and benches in shower rooms for his convenience.

7.4 The State party reiterates its previous argument, namely, that the complainant failed to exhaust all the remedies available at the domestic level and that his entire submission is therefore inadmissible.

Complainant's comments on the State party's observations on the merits

8.1 On 13 October 2023, the complainant's mother submitted comments on the State party's observations on the merits of the communication.

8.2 The complainant's mother emphasized that the State party did not comment on her allegations regarding interference with her communication and exchange of documents with her son at the facility. She reiterated the chronological order of her various complaints to the authorities, as detailed in paragraph 5.6 above.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 In accordance with article 22 (5) (b) of the Convention, the Committee is not to consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's claim that the complainant failed to exhaust the available domestic remedies in respect of his initial complaints concerning a lack of adequate medical treatment and systematic ill-treatment at the facility. At the same time, the complainant alleged that the facility's administration prevented him from lodging complaints with the authorities and courts by obstructing his correspondence. The Committee observes that, between 2013 and 2017, the complainant lodged various complaints with the domestic authorities, regional and local prosecutor's offices and the national courts. However, the decisions show that he never raised complaints about ill-treatment, retaliation suffered for his complaints or inadequate medical care with

the domestic courts. Thus, on the basis of the material before it, the Committee considers that the complainant has failed to adduce any evidence that he faced difficulties in filing complaints or in corresponding with the national courts during that time. In the light of the foregoing, the Committee declares the complaints about inadequate medical care and systematic ill-treatment of prisoners at the facility and about the unlawful disciplinary punishment of the complainant for raising concerns in that regard, falling under articles 1, 12 to 14 and 16 of the Convention, inadmissible under article 22 (2) and (5) (b).

9.3 With regard to the remaining complaint concerning the alleged ill-treatment of the complainant by other prisoners on 6 September 2019, falling under articles 1, 12 to 14 and 16 of the Convention, the Committee notes that the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering that complaint under article 22 (5) (b) of the Convention. Having found no obstacles to its admissibility, the Committee declares that part of the communication admissible and proceeds with its examination on the merits.

Consideration of the merits

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

10.2 The complainant alleges that, on 6 September 2019, he was assaulted by fellow inmates and that the assault was incited and facilitated by the administration of the penitentiary facility, which ignored his screams and calls for help. The Committee notes that neither the complainant nor the State party provided any medical documents, reports or other supporting evidence that would allow for an objective review of the complainant's injuries and their nature and origin. The complainant does not allege that he was denied access to his medical records and therefore could not provide them. Accordingly, on the basis of the information before it, the Committee considers that the complainant has failed to properly substantiate that he sustained injuries or was subjected to treatment that could be characterized as torture or cruel, inhuman or degrading treatment for the purposes of articles 1 or 16 of the Convention.⁴ Accordingly, the Committee is of the view that the facts before it do not reveal a violation by the State party of articles 1, 14 or 16 of the Convention.

10.3 Regarding the complaints raised under articles 12 and 13 of the Convention, pertaining to the State party's failure to conduct a thorough investigation into the complainant's allegations, the Committee notes that the investigative authorities initiated criminal proceedings within a month of being informed of the incident. The Committee also notes that the complainant reported the alleged assault after a significant delay of two years. The Committee further notes that the investigating authorities made efforts to gather various pieces of evidence, conducted interviews with the complainant and several witnesses and commissioned an expert examination. While some of the evidence did not corroborate the complainant's allegations, two witnesses confirmed that they had heard the complainant screaming and calling for help on the day of the alleged assault, despite him later identifying different assailants. The Committee notes that, instead of investigating further, the authorities disregarded those witness statements and discontinued the investigation. In this regard, the Committee recalls the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed with a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture has been committed. In addition, article 13 of the Convention provides the complainant with a right to have his complaint promptly and impartially examined by the competent authorities. The Committee notes that, by deciding to discontinue the investigation of the complainant's allegations after they had been corroborated by two witnesses, the State party did not exhibit sufficient due diligence in establishing the facts and conducting an effective investigation.⁵ The Committee therefore concludes that, in the absence of detailed explanations from the State party, the facts as submitted by the complainant reveal a violation of the State party's obligations under articles 12 and 13 of the Convention.

⁴ See, *mutatis mutandis*, *I.K. v. Norway* (CAT/C/63/D/678/2015), para. 10.2.

⁵ See, *mutatis mutandis*, *Zentveld v. New Zealand* (CAT/C/68/D/852/2017), paras. 9.5–9.9.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it reveal a violation by the State party of articles 12 and 13 of the Convention.

12. The Committee requests the State party to initiate a thorough, impartial and independent investigation into the incidents in question, in full conformity with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with a view to establishing the circumstances of the complainant's case and, where appropriate, filing specific torture charges against perpetrators, bringing those responsible for his treatment to justice and ensuring that no similar violations occur in the future.

13. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.
