



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

Distr.: General
18 January 2012

Original: English

Committee against Torture

Communication No. 444/2010

**Decision adopted by the Committee at its forty-seventh session, 31
October to 25 November 2011**

| | |
|-----------------------------------|---------------------------------------------------------------------------------------------------------|
| <i>Submitted by:</i> | Toirjon Abdussamatov and 28 other complainants (represented by counsel, Christine Laroque, ACAT-France) |
| <i>Alleged victims:</i> | The complainants |
| <i>State party:</i> | Kazakhstan |
| <i>Date of complaint:</i> | 24 December 2010 (initial submission) |
| <i>Date of present decision:</i> | 15 November 2011 |
| <i>Subject matter:</i> | Extradition of the complainants to Uzbekistan |
| <i>Substantive issue:</i> | Risk of torture upon return to the country of origin |
| <i>Procedural issue:</i> | N/A |
| <i>Article of the Convention:</i> | 3 |

Decision on admissibility

1.1 The complainants are 19 Uzbek and Tajik citizens: Torjon Abdussamatov (born on 6 March 1974, Uzbek citizen); Faizullohon Akbarov (born on 9 March 1990, Uzbek citizen); Shodiev Akmaljon (born on 20 November 1977, Tajik citizen); Suhrob Bazarov (born on 7 August 1978, Uzbek citizen); Ahmad Boltaev (born on 15 May 1968, Uzbek citizen); Shuhrat Botirov (born on 18 October 1986, Uzbek citizen); Mukhitdin Gulamov (born on 24 November 1967, Uzbek citizen); Shukhrat Holboev (born on 25 January 1973, Uzbek citizen); Saidakbar Jalolhonov (born on 5 September 1974, Uzbek citizen); Abror Kasimov (born on 20 December 1983, Uzbek citizen); Olimjon Kholturaev (born on 27 October 1975, Uzbek citizen); Sarvar Khurramov (born on 16 December 1983, Uzbek citizen); Oybek Kuldashv (born on 8 February 1982, Uzbek citizen); Kobiljon Kurbanov (born on 16 May 1966, Uzbek citizen); Bahriddin Nurillaev (born on 6 September 1983, Uzbek citizen); Bahtiyor Nurillaev (born on 24 February 1971, Uzbek citizen); Ulugbek Ostonov (born on 11 March 1973, Uzbek citizen); Otobek Sharipov (born on 20 April 1978, Uzbek citizen); Tursunboy Sulaimonov (born on 2 March 1976, Tajik citizen). They are all Muslims and currently detained in Kazakhstan, awaiting extradition to Uzbekistan. The complainants claim that their extradition to Uzbekistan would constitute a violation by Kazakhstan¹ of article 3 of the Convention against Torture. They are represented by counsel, Christine Laroque, Action by Christians for the Abolition of Torture (ACAT France).

1.2 On 24 December 2010, pursuant to rule 114, paragraph 1, of the Committee's rules of procedure, the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, requested the State party not to extradite the complainants to Uzbekistan while their complaint was under consideration by the Committee.

1.3 On 31 December 2010, the Rapporteur on new complaints and interim measures extended the registration and the interim measures to 9 additional complainants, all Uzbek citizens. They are Abduazimhuja Yakubov (22 June 1982, Uzbek citizen); Uktam Rakhmatov (born on 20 March 1989, Uzbek citizen); Alisher Khoshimov (born on 23 December 1969, Uzbek citizen); Oybek Pulatov (born on 5 November 1987, Uzbek citizen); Maruf Yuldoshev (born on 29 December 1990, Uzbek citizen); Isobek Pardaev (born on 9 March 1987, Uzbek citizen); Ravshan Turaev (born on 23 December 1969, Uzbek citizen); Dilbek Karimov (born on 22 July 1987, Uzbek citizen); Sirojiddin Talipov (born on 9 March 1986, Uzbek citizen).

1.4 On 21 January 2011, the Rapporteur on new complaints and interim measures extended the registration and interim measures to Fayziddin Umarov (born on 7 November 1978, Uzbek citizen). The total of the complainants are 27 Uzbek and 2 Tajik citizens.

1.5 Under rule 114 (former rule 108)², of its rules of procedure, the Rapporteur on new complaints and interim measures acting on behalf of the Committee requested the State party, on 24 and 31 December 2010 and 21 January 2011, not to extradite the complainants to Uzbekistan while their communication was under consideration by the Committee. On 6 May 2011 and 9 June 2011, the request for interim measures was reiterated.

¹ Kazakhstan made the declaration under article 22 of the Convention on 21 February 2008.

² Rules of procedure CAT/C/3/Rev. 5, dated 21 February 2011.

The facts as presented by the complainants

2.1 The complainants are peaceful and devout practitioners of Islam. They fled Uzbekistan for fear of persecution for practising their religion. Some of them had already been detained in Uzbekistan and some fled Uzbekistan after being accused of religious extremism. Twelve (12) complainants were recognized as mandate refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR) between 2005 and March 2010.³ In January 2010, a new Law on Refugees came into force in Kazakhstan, requiring all asylum-seekers, as well as mandate refugees recognized by UNHCR, to register with the Government of Kazakhstan and no longer with UNHCR. The complainants duly registered with the Migration Police in May 2010.

2.2 Between 9 and 11 June 2010, the complainants were arrested by the Kazakh migration police and by plainclothes agents believed to be from the Committee for National Security (KNB). No arrest warrant was shown at the time of the arrest; some of the complainants, however, saw it later. In May 2010, the Central Committee for Determination of Refugee Status (CDRS) conducted interviews with the complainants without the assistance of a lawyer or a translator. On 11 and 27 August 2010, CDRS rejected their asylum applications, regardless of the previous status of UNHCR mandate refugees of 12 complainants. The decisions merely stated that the cases did not satisfy the criteria for refugee status, without providing any other explanations.

2.3 On 8 September 2010, the Office of the Prosecutor in Almaty announced that, upon a request from the Uzbek authorities and in accordance with the 1993 Minsk Convention and the 2001 Shanghai Convention, the complainants would be extradited to Uzbekistan, as they were involved in “illegal organizations” (art. 159 of the Uzbek Criminal Code) and accused of “attempts to overthrow the constitutional order” (art. 244-2, of the Uzbek Criminal Code) in Uzbekistan. However, neither the order of extradition nor any other written notification was given to them. Their relatives tried to hire lawyers, however most of them refused to defend them, as it was considered to be a political case. Two lawyers hired by UNHCR could access the detainees only three months after their arrest and could meet their clients only twice for 15-20 minutes with each complainant.

2.4 In October 2010, the 12 complainants’ relatives, who had mandate refugee status, were informed that, pursuant to article 1 (F)(c), of the 1951 Refugee Convention, UNHCR decided to cancel their mandate refugee status. The relatives, however, did not obtain any documents by UNHCR supporting this decision.

2.5 On 6 December 2010, the Almaty District Court No. 2 decided to deal jointly with the complainant’s appeals against the CDRS decisions. At the time of the submission of the initial complaint on 24 December 2010, the Court had rejected six appeals. On 14 December 2010, the court released a ruling with gross breaches of fair hearing. He read by mistake the verdict of Mr. Holboev, whose hearing was ongoing, instead of Mr. Hoshimov’s verdict. Despite interruption by the lawyer, the judge continued to read the verdict using Mr. Hoshimov’s and Mr. Holboev’s names alternately and then rejecting the appeal of Mr. Hoshimov.. Copies of the verdicts were not given to the lawyers.

³ Torjon Abdussamatov, he was awaiting resettlement to a third country; Faizullohon Akbarov; Suhrob Bazarov; Ahmad Boltaev; Mukhitdin Gulamov, he was awaiting resettlement to a third country; Saidakbar Jalolhonov, he was awaiting resettlement to a third country; Olimjon Kholturaev, he was awaiting resettlement to a third country; Sarvar Khurramov; Bahridin Nurillaev; Bahtiyor Nurillaev; Ulugbek Ostonov; Otabek Sharipov, he was awaiting resettlement to a third country.

The complaint

3.1 The complainants refer to the concluding observations by the Human Rights Committee for Uzbekistan, in which it expressed concerns about the limitations and restrictions on freedom of religion and belief and about the use of criminal law to penalize the apparently peaceful exercise of religious freedom, including for members of non-registered religious groups and the persistent reports of charges and imprisonment of such individuals,⁴ as well as to the report by the Human Rights Watch stating that Uzbek authorities have targeted and imprisoned Muslims and other religious believers who practise their faith outside official institutions or who belong to unregistered religious organizations. This campaign has resulted in the arrest, torture, and incarceration of thousands of peaceful people branded as “extremists”.⁵

3.2 They also refer to General Assembly resolution 60/174 on the situation of human rights in Uzbekistan, and that some persons who sought asylum abroad and were returned to Uzbekistan have been kept in detention in unknown places and possibly subjected to treatment in breach of the Convention.⁶ The complainants claim that individuals returned to Uzbekistan pursuant to extradition requests are reported to be held in incommunicado detention and therefore submitted to a risk of torture or ill-treatment as well as subjected to unfair trial.⁷

3.3 The complainants further submit that Uzbekistan’s record on torture and ill-treatment has been well documented⁸ and that in 2010, the Human Rights Committee noted with concern the continued reported occurrence of torture and ill-treatment⁹ and in 2007, this Committee expressed concern about numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent.¹⁰ ACAT-France, counsel for the complainants, has been closely following-up dozens of cases of torture victims and notes that the torture practice remains systematic in Uzbekistan and that Muslims practising their faith outside official State controls are significantly targeted for acts of torture and forms of mistreatment in custody.

3.4 The complainants also refer to several decisions by the European Court of Human Rights (ECHR), including, inter alia¹¹, *Ismailov and others v. Russia*¹² in which it barred the extradition from the Russian Federation to Uzbekistan of 12 Uzbek refugees who were accused of being members of an illegal Islamist group on the ground that it would be a violation of article 3 of the European Convention on Human Rights. ECHR noted that it

⁴ CCPR/CO/83/UZB, para. 22 and CCPR/C/UZB/CO/3, para. 19.

⁵ Human Rights Watch’s report, *Creating Enemies of the State- Religious Persecution in Uzbekistan* (2004), available online at: <http://www.hrw.org/en/reports/2004/03/29/creating-enemies-state-0>.

⁶ General Assembly resolution 60/174 on the situation of human rights in Uzbekistan, 14 March 2006.

⁷ The complainants cite the example of four asylum seekers arrested at the same time as themselves, for three of which their whereabouts remain unknown after their extradition to Uzbekistan in September, October and November 2010.

⁸ See for example: Human Rights Society of Uzbekistan “Ezgulik”, *Analytic report on the situation with human rights in the Republic of Uzbekistan for the year 2009*, March 2010, Section 4; Amnesty International, *Uzbekistan – A briefing on current human rights concerns*, May 2010; Human Rights Watch’s report, *Nowhere to turn – Torture and ill-treatment in Uzbekistan*, 2007.

⁹ CCPR/C/UZB/CO/3, para. 11.

¹⁰ CAT/C/UZB/CO/3, para. 6 (a).

¹¹ See ECHR, *Muminov v. Russia*, Application No. 42502/06 2008; *Garayev v. Azerbaijan*, Application No. 53688/08, 10 June 2010; *Isakov v. Russia*, Application No. 14049/08, 8 July 2010; *Sultanov v. Russia*, Application No. 15303/09, 4 November 2010.

¹² ECHR, *Ismailov and others v. Russia*, Application No. 30352/03, 6 November 2008.

was not convinced by the Government's argument that they had an obligation under international law to cooperate in fighting terrorism and had a duty to extradite the applicants who were accused of terrorist activities, irrespective of a threat of ill-treatment. It also noted that it was not persuaded that the assurances from Uzbekistan offered a reliable guarantee against the risk of ill-treatment.

3.5 The complainants submit that the available domestic remedies are not effective, as gross breaches of the complainant's rights to a fair trial have been committed. An interpreter was neither provided during the interview conducted for their asylum application, nor the trial hearings. The complainants had access to lawyers only three months after their arrest and only once or twice with limited time. They were not provided an interpreter to communicate with their lawyers. Their lawyers were refused access to significant documents necessary to prepare their clients' case and they were prevented from including into the defence torture evidence in Uzbekistan. Moreover, some hearings were held in the complainants' absence.

3.6 With regard to their continued detention, the complainants submit that they have not been charged with any offence under the Kazakh law and that there is no legal basis for their continued detention since June 2010.

State party's observations on the admissibility

4.1 On 22 February 2011, the State party requested that the Committee consider the admissibility separately from the merits. The State party explains that between 9 and 20 June 2010, 19 foreigners, who were sought after by Uzbekistan, were arrested, four of which were asylum-seekers and 15 had been previously recognized by UNHCR as refugees. As of 1 January 2010, the law on refugees came into force and refugees who had their status recognized previously were no longer valid. The complainants status was reviewed by a Commission, in which an expert from UNHCR took part and which studied materials provided by the Uzbek Government. The complainants' refugee status was either revoked or not granted. From 10 to 29 December 2010, the district court of Almalin rejected the complainants' appeal against the Commission's decision to revoke or not grant their refugee status. The complainants appealed to the Almaty city court, which has so far reviewed eight cases and rejected their appeals. Within 15 days of the appeal court's decision, the complainants may file a cassation appeal. Furthermore, the supervisory review before the Supreme Court is also available to them within a year entry into force of the final decision.

4.2 The State party submits that the complainants failed to exhaust all domestic remedies, considering that their cases are either in the appeal or cassation stage.

The complainants' comments on the admissibility

5.1 The complainants recall that at the time of submission, they had stated that domestic remedies were not yet exhausted, however they reiterate that they do not consider the available domestic remedies to be effective and that extradition may occur in practice any time before the exhaustion of domestic remedies, despite a well-founded risk of torture.

5.2 The complainants further submit that, on 6 February 2011, a new law governing the process of extradition and refugee status came into force. At the time of submission, the Criminal Procedure Code did not provide for judicial review of an extradition decision by the General Prosecutor, therefore, at the time of submission no effective remedy was available against the extradition decision. Although the complainants appealed the revocation/denial of refugee status at the first instance court, the communication was submitted to this Committee before exhaustion of domestic remedies, due to the ineffectiveness of the remedies. In November 2005, nine Uzbek nationals who were under determination for refugee status by UNHCR were extradited without a possibility to appeal.

Between September and December 2010, four men were extradited to Uzbekistan, for example S.K. was extradited before the Refugee Status Commission could interview him, U.A. whose asylum application was rejected, was extradited while his appeal was pending, R.R. was extradited before determination of his refugee status and K.K. was extradited after his refugee status had been denied. The complainants submit that this practice shows that in the State party bilateral agreements take precedence over non-refoulement obligations.

5.3 On 6 February 2011, new provisions came into force and include a special judicial review of the extradition order and a prohibition for extradition if the person might risk torture upon extradition. On 15 February 2011, the complainants, invoking these new provisions, appealed the extradition orders in the first instance court. Considering that this new remedy has not yet been used, the complainants explain that they cannot assess its effectiveness.

5.4 With regard to the State party's argument that the presence of UNHCR officials added to the legality of the decision by the Commission on Refugee Status Determination, the complainants note that dissenting opinions by UNHCR in four cases (the files of the other complainants were not accessible) demonstrate that the CDRS insufficiently considered the evidence.

5.5 With regard to the appeal hearings in the Almalin District Court, the complainants note that OSCE had sent independent observers to monitor the trials from 10 to 29 December 2010. In their observations of 14 February 2011, the OSCE states that the trials were in clear violation of the principles of legality, impartiality and other fair trial standards protected under article 14, of the International Covenant on Civil and Political Rights and provisions of the national legislation. The complainants were not allowed to be present at trial, the complainants' files were not made available to their lawyers or only for ten minutes and the judges took very little time to make a decision and no factual evidence was mentioned. The appeal trials also failed to be impartial, legal and in compliance with the principle of equality of arms. Most of the complainants' appeals have been reviewed and all were rejected.

5.6 With regard to the argument by the State party that the complainants would have a possibility to submit a supervisory review to the Supreme Court, the complainants argue that this does not constitute an effective remedy, as it is discretionary and does not prevent the entry into force and execution of the appeal court's decision. It further does not have suspensive effect.¹³

The complainants' further submission

6.1 On 5 May 2011, the complainants made further submissions, in which they highlighted the danger of an imminent extradition. They base their fear on statements by a Kazakh immigration officer, who informed the complainants' spouses that they should prepare for the extradition, as well as a statement by an officer from the Prosecutor's Office, who stated that the extraditions will not take place before the Cassation Court finishes reviewing the cases. Nine appeals have already been rejected and it is expected that the rest of the verdicts will be rendered in May 2011.

6.2 On 15 February 2011, in accordance with the new criminal legislation, criminal appeals were introduced against the deportation order to the court of first instance. According to independent trial monitors, the hearings were summary and claims with respect to the risks of torture in Uzbekistan were not considered. The defence lawyer did not have enough time to present all the evidence. On 15 March 2011, the Almalin District

¹³ See communication No. 249/2004, *Dar v. Norway*.

Court ruled that the Prosecutor General's decision to extradite the complainants was lawful. Appeals were introduced to the Almaty City Court, the last instance, and appeal hearings were scheduled for 20 April 2011. Without prior notice, two defence lawyers were called to the court on 14 April 2011 and the hearing for the 29 complainants took place. On 14 April 2011, the City Court upheld the first instance court decision.

6.3 The complainants note that civil appeals are currently pending before the Cassation Court. In April 2011, nine appeals had been rejected and the verdicts enter into force ten days from the receipt of the decision, therefore placing the complainants under imminent danger of extradition. They requested the Committee to reiterate the interim measures (see para. 1.4).

State party's observations on the merits

7.1 On 24 June 2011, the State party submitted its observations on the merits and informed the Committee on the extradition of 19 complainants. It recalls that from 9 June to 14 December 2010, 19 foreigners under arrest warrant in Uzbekistan for serious crimes were arrested. Four of them were asylum-seekers and 15 had received refugee status by UNHCR. As of 1 January 2010, matters relating to asylum-seekers and refugees were regulated by the new law on refugees and therefore refugee status formerly issued by UNHCR were withdrawn. A special commission under the Ministry of Labour and Social Affairs (Ministry of Interior as of 30 September 2010) reviewed the 19 complainants' refugee status. An expert from UNHCR Geneva participated in the examination and had access to all meetings and documentation. The commission also reviewed material provided by Uzbekistan. A lawyer from the State party's Human Rights Office monitored the work of the commission. The commission rejected the asylum claims and withdrew the refugee status of all 19 complainants. From 10 to 29 December 2010, the court No. 2 of the Almalinsky rayon of Almaty reviewed the complainants' claims and endorsed the commission's decision rejecting refugee status. From 2 February to 29 March 2011, the city court of Almaty rejected the complainants' appeal. The cassation appeals of 28 complainants¹⁴ were rejected and the commission's decision became final. The complainants also instituted proceedings under article 531-1 of the Criminal Procedure Code against the decision by the General Prosecutor to extradite them to Uzbekistan. On 15 March 2011, the court of the Almalinsky rejected their complaint. The Almaty city court equally rejected their appeal and the decision of the General Prosecutor to extradite them became final.

7.2 With regard to the allegations of torture and cruel treatment against the detainees by the State party's authorities,¹⁵ the State party submits that the Prosecutor of Almaty carried out an inquiry with regard to 19 complainants with the cell mates, medical personnel, the administration of the place of detention, as well as medical records and other records kept as foreseen in internal instructions and concluded that there had not been any complaint against the authorities. All complainants received an initial medical exam upon arrival in the place of detention. There has not been any complaint with regard to the medical care in detention and the complainants received legal aid. The complainants could meet their lawyers and families without restriction. For example Mr. Ostonov met 14 times with his wife and 5 times with his lawyer and Mr. Kurbanov was visited by his mother 7 times, his wife 10 times and his lawyer 6 times. On 22 November 2010, the Prosecutor of Almaty investigated allegations of torture against Mr. Kasimov, brought by his wife, and found that

¹⁴ It is not clear from the State party's observations if they address only 19 complainants (which ones is not clear) or if they address 28 complainants, in this case it is not clear what happened to the remaining complainant.

¹⁵ The complainants have not made such a claim in their communication before the Committee.

the allegations were denied by his cellmate and himself when he was examined by medical personnel with regard to a tooth problem. With regard to an allegation of denial of medical care for Mr. Akbarov, the State party explains that on 12 and 25 December 2010, he was taken to a medical facility following his complaint about heart problems and respiratory difficulties. After examination by the medical personnel, ambulatory treatment in the place of detention was ordered. Mr. Sharipov, who had a medical complaint on 5 January 2011, was treated and did not make any complaint about the medical or administrative personnel of the prison. According to the medical personnel of the places of detention in which the complainants were held, the complainants underwent regular medical examinations. From the complainants themselves, the authorities did not receive any complaints about torture or cruel treatment.

7.3 Regarding upholding the rights of the complainants, the State party submits that during the judicial proceedings, monitoring was carried out by a representative of UNHCR and of the State party's Human Rights Office. There were no complaints about the proceedings before the commission. The proceedings were transparent and impartial and followed international norms, including the 1951 Refugee Convention. The complainants' requests for refugee status were examined pursuant to the law on refugees and the complainants brought the negative decision to all instances, that is, the first instance, the appeal and cassation instance. Legal representation of the complainants was guaranteed before all instances. The decision of the commission on migration was based on the fact that the complainants would pose a threat to the State party and could cause significant damage to the security of other countries. The complainants did not receive refugee status pursuant to article 1 F (c), of the 1951 Refugee Convention. The State party further submits that Uzbekistan is a party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture, therefore the criminal investigation against the complainants will be made according to the Uzbek national law and to its international obligations.

7.4 The complainants were extradited pursuant to the bilateral agreement of 22 January 1993 (the Commonwealth of Independent States' (C.I.S.) Convention on Legal Assistance and Conflicts in Law Matters of Civil, Family, and Criminal Law, the Minsk Convention hereafter). The Uzbek authorities guaranteed to respect their rights and freedoms, and that no torture or cruel, inhuman or degrading treatment would harm them. The State party therefore submits that the present communication before the Committee against Torture is without merits.

The complainants' comments on the State party's observations

8.1 On 5 August 2011, the complainants' counsel submitted her comments on the State party's observations. Counsel notes, first, that the State party refers to only 19 complainants out of 29. Further, she reiterates her view that the remedies provided to the complainants in the context of their asylum applications were not effective.¹⁶ Counsel notes that according to the State party, the asylum requests of the complainants were rejected on the basis of section 12 of the Refugee Act, pursuant to which refugee status is not granted if there are

¹⁶ In this context, counsel refers to paragraph 19 of the concluding observations of the Human Rights Committee concerning the examination of the initial report of Kazakhstan in July 2011, CCPR/C/KAZ/CO/1[, noting with concern that despite the enactment of new refugee legislation in 2010, its application does not guarantee the rights protected under the Covenant, and that individuals, in particular Uzbek nationals..., have no protection under the principle of non-refoulement. Counsel also refers to a submission prepared by several Kazakhs NGOs in June 2011, expressing similar concerns and referring expressly to the situation of the complainants in the present case (Kazakh NGOs joint report to the Human Rights Committee, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Almaty_report_HRC102.pdf].

serious doubts to believe that the asylum-seekers took or take part in forbidden religious organisations. Counsel explains that this provision of the law was criticized as being contrary to international refugee law.¹⁷

8.2 Concerning the State party's explanations on the allegations of the complainants' torture in Kazakhstan (see paragraph 7.2 above), counsel contends that the present communication focused on article 3 of the Convention and that, in any event, counsel has no information in this connection, the communication with the complainants having been uneasy due to their detention in Kazakhstan. In addition, after their removal to Uzbekistan, the complainants are detained incommunicado.

8.3 Counsel notes that the complainants were extradited on 9 June 2011 by the State party, which gave "wrongfully its cooperation agreement with Uzbekistan precedence of the non-refoulement obligation", without respecting the Committee's request for interim measures of protection and in spite of two reminders to this effect, and without addressing the issue of the interim measures in its submissions, with the knowledge that the complainants would be in danger of being subjected to torture upon return, and depending on "unreliable diplomatic assurance" reportedly provided by Uzbekistan. Counsel notes that the State party has officially acknowledged the removal of 28 individuals; she requests clarifications about the whereabouts and the status of the one remaining individual.

8.4 Counsel claims that the complainants' expulsion took place on the basis of the C.I.S. Minsk Convention. This Convention, however, does not refer to the non-refoulement obligation resulting of the State party's adherence to the Convention against Torture, and its provisions cannot release the State party from its obligations not to return an individual if a risk of torture exists in the receiving State.

8.5 Counsel further contends that the State party was aware of the existence of a risk, for the complainants, of being subjected to torture in Uzbekistan, although in its observations it does not comment specifically on the matter. She points out that several public reports on the widespread use of torture in Uzbekistan were released by United Nations institutions,¹⁸ and international and national NGOs. The European Court of Human Rights has also developed a constant jurisprudence establishing the existence of such serious risk in case of extradition to Uzbekistan. In their asylum applications, the complainants had provided details on the personal risk of torture they faced in Uzbekistan; a number of them also referred to past tortures suffered there. All of the complainants are charged with serious crimes in Uzbekistan, such as belonging to a prohibited religious movement, and as such, all of them belong to a group systematically exposed to ill-treatment. In addition, half of the complainants have been previously granted refugee status in Kazakhstan, by UNHCR, prior to the entry into force of the new asylum legislation.

¹⁷ Counsel refers to a report prepared by the FIDH in October 2009 : "Kazakhstan/Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees". Finally, counsel explains that Kazakh NGOs criticise the role of UNHCR as participating in the determination of asylum status in the State party (Kazakhstan Coalition of Nongovernmental Organizations (NGOs) against Torture, 2010 Report, p11, <http://www.bureau.kz/news/download/175.pdf>), and notes that the Human Rights Committee has expressed similar concerns in its concluding observations on Kazakhstan in July 2011.

¹⁸ Reference is made to the concluding observations on Uzbekistan by the Committee against Torture, CAT/C/UZB/CO/3, those of the Human Rights Committee, CCPR/CO/83/UZB, and a report by the Special Rapporteur on the question of torture (A/HRC/13/39/Add.6), as well as public reports concerning Uzbekistan prepared by ACAT France, Amnesty International, and Human Rights Watch, and Uzbek NGOs.

8.6 Finally, on the issue of diplomatic assurances, counsel explains that the Human Rights Committee, in its concluding observations concerning Kazakhstan in July 2011, has specifically warned the State party to exercise utmost care in relying on diplomatic assurances when considering the return of foreign national to countries where they are likely to be subjected to torture or serious human rights violations; the Committee encouraged the State party to monitor the manner such individuals are treated after return and to take appropriate action if the assurances were not respected. In the present case, according to the counsel, no appropriate follow-up mechanism for the monitoring of the situation of the complainants exists in Uzbekistan, and there is no access to the complainants there.

Additional information by the State party

9.1 On 13 September 2011, the State party requested, under rule 117, paragraph 4, of the Committee's rules of procedures, to have the opportunity to have an oral hearing with the Committee in order to provide additional information and answer questions on the merits of the communication.

9.2 On 23 September 2011, the State party submitted additional information. It reiterates that all proceedings concerning the asylum applications of the complainants before the Migration Committee of the Ministry of Labour and Social Policy (since 30 September 2010, the Migration Committee is part of the Ministry of Internal Affairs) were lawful. According to the State party, the authorities' decision not to grant asylum to the complainants was grounded and lawful. Representatives of UNHCR were also present, and interviewed all applicants. UNHCR's representatives had access to all documents before the Migration Committee and presented recommendations, which were taken into account by the State party's authorities. In addition, the Migration Committee was provided with all extradition materials received from the Uzbek authorities. No claims were formulated by the complainants' lawyers during the interviewing process. All stages of the work of the Migration Committee were monitored by a lawyer from the Human Rights Bureau (an NGO), who did not report any violation either.

9.3 All refusals to grant asylum to the complainants were examined and confirmed by a court, including on appeal. The decisions to have the complainants extradited were also verified and confirmed in court, including on appeal. All proceedings were transparent and held in an impartial manner. All complainants were offered the services of lawyers, at all stages of the trial, including representing their interests on appeal.

9.4 The State party emphasizes that the decisions of the Migration Commission were based on the existence of reliable and verified information to the effect that the complainants' presence in Kazakhstan constitutes a threat for the State party and could also cause irreparable harm to the security of other States. Article F (c) of the 1951 Convention relating to the Status of Refugees provides that the provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that "he has been guilty of acts contrary to the purposes and principles of the United Nations". Pursuant to article 12 of the Kazakh Law on Refugees, refugee status cannot be granted where there are serious grounds to believe that the interested individuals participate or had participated in the activities of forbidden religious organizations. On this ground, having studied the materials on file, UNHCR has decided to annul the refugee's certificates previously issued to a number of the complainants.

9.5 The State party further explains that the complainants were not subjected to torture or ill-treatment in the Kazakhstan; all complainants underwent medical examinations at the moment of their placement in detention, but no one complained of torture. The Prosecutor's Office has conducted a number of verifications, including in the detention centre the complainants were held, and no acts of ill-treatment were revealed.

9.6 As to the complainant's situation in Uzbekistan, the State party explains that Uzbekistan is a party to the basic international human rights instruments, in particular the Universal Declaration, the International Covenant on Civil and Political Rights, and the Convention against Torture. Criminal prosecutions there are conducted in accordance with national law and in light of the Uzbekistan's international obligations. On this basis, and on the basis of the Minsk Convention, the complainants have been returned to Uzbekistan. Uzbekistan provided guarantees regarding the respect of the basic rights and freedoms of the detainees, and that the latter would not be subjected to torture and other forms of cruel, inhuman or degrading treatment.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedures

10.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.¹⁹

10.2 The Committee observes that any State party which made the declaration under article 22 of the Convention recognizes the competence of the Committee against Torture to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making this declaration, States parties implicitly undertook to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 24 December 2010, 31 December 2010 and 21 January 2011 and reiterated on 6 May 2011 and 9 June 2011, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering the action by the Committee futile and its findings without effect.

Consideration of admissibility

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

11.2 The Committee has noted that the State party initially challenged the admissibility of the communication, arguing that 19 complainants failed to exhaust available domestic remedies, however in their observations on the merits, the State party submitted that the cassation appeals of 28 complainants had been rejected and thus the commission's negative decision on their request for refugee status became final. The State party also noted that the decision of the General Prosecutor to extradite the complainants had become final. The Committee therefore notes that, at the moment of consideration of the present communication, it is uncontested that domestic remedies have been exhausted.

¹⁹ See communication No. 195/2002, *Brada v. France*, decision of 17 May 2005, paras. 6.1 and 6.2;

11.3 The Committee has taken note of the complainants' allegations that their forcible return to Uzbekistan would constitute a violation of the State party's obligations under article 3 of the Convention, and of the State party's comments thereon. The Committee has noted the State party's arguments that the complainants' return was carried out with sufficient guarantees that no breach of the complainants' rights under the Convention would occur in Uzbekistan. The Committee considers however that this is an issue that should be determined on the merits, and notes, in this context, that the existence of unspecified "assurances", given by the receiving State (see paragraph 7.4 above), without, for example, explanations on any post-extradition monitoring mechanism of the complainants' situation in Uzbekistan, cannot be seen as a circumstance demonstrating that there is no prima facie risk for a violation of the complainants' rights under article 3, of the Convention. Accordingly, the Committee declares admissible the complainants' claim, raising issues under article 3 of the Convention.

12. The Committee therefore decides:

- (a) That, by breaching the Committee's request under rule 114 of its rules of procedures, the State party has failed in its obligations to cooperate in a good faith under article 22, of the Convention (see paragraphs 10.1 and 10.2 above);
- (b) That the communication is admissible insofar as it raises issues with respect to article 3 of the Convention;
- (c) To accede to the State party's request for an oral hearing, and, accordingly, to invite it, together with the authors' counsel to an oral hearing on the merits of the communication, to take place at the Committee's forty-eighth session, in May 2012;
- (d) That the State party is requested to submit additional observations on the merits, in particular an updated information of the present situation of the complainants, within two months of the date of transmittal to it of this decision;
- (e) That the State party's observations shall be transmitted to counsel so that she may formulate comments in that respect; and
- (f) That this decision shall be communicated to the State party and to the complainants.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Russian and Chinese as part of the Committee's annual report to the General Assembly.]
