

Complaint No. 444/2010 (*Abdussamatov et al. v. Kazakhstan*)

Complaint No. 444/2010 (*Abdussamatov et al. v. Kazakhstan*) concerned 27 Uzbek and 2 Tajik nationals, who claimed that their extradition to Uzbekistan would constitute a violation by Kazakhstan of article 3 of the Convention against Torture. The Committee requested the State party not to extradite the complainants to Uzbekistan while their communication was under its consideration, but the State party failed to comply with this request. During its forty-seventh session, the Committee decided that, by breaching the Committee's request for interim measures the State party had failed in its obligations to cooperate in a good faith under article 22 of the Convention, and that the communication was admissible insofar as it raised issues with respect to article 3 of the Convention. The complainants are practitioners of Islam and fled Uzbekistan for fear of persecution for practising their religion outside of official institutions. In January 2010, a new law on refugees came into force in Kazakhstan, requiring all asylum seekers, as well as mandate refugees recognized by the Office of the United Nations High Commissioner for Refugees, to register with the Government of Kazakhstan. The complainants duly registered with the Migration Police in May 2010. In August 2010, their asylum applications were rejected and on 8 September 2010 the Office of the Prosecutor announced that, upon a request by the Uzbek authorities and in accordance with the 1993 Commonwealth of Independent States' Convention on Legal Assistance and Conflicts in Law Matters of Civil, Family, and Criminal Law (Minsk Convention) and the 2001 Shanghai Convention, the complainants would be extradited to Uzbekistan, as they were involved in "illegal organizations" and accused of "attempts to overthrow the constitutional order" in Uzbekistan. In December 2010, the Almaty District Court rejected the complainants' appeals. On the merits, the Committee noted the counsel's arguments that the complainants and other individuals returned to Uzbekistan pursuant to extradition requests were generally held in incommunicado detention; counsel's claims that in Uzbekistan the practice of torture and ill-treatment remained systematic and that Muslims practising their faith outside official state control and charged with religious extremism and attempts to overthrow the constitutional order are specifically targeted; and the fact that the State party rejected the complainants' request for asylum on the grounds that they would pose a threat to the State party and could cause significant damage to its security and that of other countries. It also noted the counsel's argument that the proceedings in the State party leading to the extradition of the complainants were not fair, as no interpreter was provided, they had limited access to lawyers and the lawyers did not have access to the files. The Committee also noted the State party's argument that Uzbekistan is party to the International Covenant on Civil and Political Rights and to the Convention against Torture and that Uzbekistan had issued diplomatic assurances guaranteeing that the complainants would not be subjected to torture or cruel, inhuman or degrading treatment. It also noted that, according to the State party, Uzbekistan had assured that international organizations could monitor the detention facilities. The Committee observed that all 29 complainants were Muslims practising their religion outside of Uzbekistan's official institutions and/or accused of terrorism-related crimes. It also recalled that the non-refoulement principle in article 3 of the Convention is absolute and the fight against terrorism did not absolve the State party from honouring its obligation to refrain from expelling an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. It considered that the pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals practising their faith outside of the official framework, had been sufficiently established. It further noted that the State party had not provided evidence refuting the complainants' claims that their extradition proceedings did not satisfy minimum fair trial requirements and that there was no individualized risk assessment of each complainant's personal risk of torture upon return to Uzbekistan. The Committee therefore decided that the facts before it revealed a breach by the State party of articles 3 and 22 of the Convention.