



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 661/2015<sup>\*, \*\*</sup>

<i>Communication submitted by:</i>	Ashim Rakishev (father) and Dmitry Rakishev (son) (represented by counsel, Anara Ibraeva)
<i>Alleged victims:</i>	The complainant and his deceased son
<i>State party:</i>	Kazakhstan
<i>Date of complaint:</i>	10 January 2014 (initial submission)
<i>Date of adoption of decision:</i>	31 July 2017
<i>Subject matter:</i>	Torture and death of the complainant's son following arrest and detention
<i>Substantive issue:</i>	Torture — prompt and impartial investigation
<i>Procedural issue:</i>	None
<i>Articles of the Convention:</i>	1, 2 and 11-14

#### Background

1. The complainant is Ashim Rakishev, a national of Kazakhstan born in 1954. He submits the complaint on his behalf and on behalf of his deceased son, Dmitry Rakishev, also a national of Kazakhstan, born in 1980. He claims that Kazakhstan has violated his and his son's rights under articles 1, 2 and 11-14 of the Convention. The complainant is represented by counsel.

#### The facts as presented by the complainant

2.1 The complainant submits that since January 2011, his son Dmitry was under investigation concerning three cases of theft. He therefore had to report to a local police station on a regular basis. On 28 April 2011, at approximately noon, his son arrived at the Department of Internal Affairs of the city of Stepnogorsk to report. While there, he told his father, the police officers wanted him to confess to having committed a number of crimes.

2.2 On 29 April 2011, Dmitry was sent to the temporary detention facility in Stepnogorsk. At the time of the detention, he did not report having any major health issues or injuries. The medical personnel of the facility examined him and issued a medical certificate indicating that he had a haematoma on his left eye and on his right hand.

\* Adopted by the Committee at its sixty-first session (24 July-11 August 2017).

\*\* The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller-Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.



2.3 The complainant submits that on the same date, Dmitry was subjected to torture with the aim of extracting his confession. The police officers beat him and broke his ribs. Thereafter, Dmitry's state of health deteriorated. The administration of the detention facility had to call an ambulance four times: twice on 30 April 2011, then again on 3 May and on 7 May.

2.4 Starting on 30 April 2011, A.D., the chief of the detention facility, consistently rejected requests for Dmitry Rakishev to be hospitalized despite the recommendations of an emergency ambulance medical doctor. The doctor had twice mentioned the necessity of the hospitalization in the detention facility's record book. Subsequently, these notes were secretly removed from the records.

2.5 On 3 May 2011, the complainant's son told the medical personnel of the detention facility about pain in the right side of his body. On 5 May, he complained about headaches and an overall feeling of exhaustion. He was then taken to a local out-patient hospital for medical examination, where it was established that two of his ribs had been broken. The medical doctor who examined Dmitry ordered his immediate hospitalization. The doctor also explained to the detention facility's medical doctor, who had accompanied Dmitry, that if he was not hospitalized he could die. The facility's medical doctor reported to the chief of the detention facility about the recommendation to hospitalize Dmitry. Nevertheless, the chief rejected the recommendation.

2.6 The complainant further submits that on 7 May 2011, his son's health deteriorated dramatically and he was taken to Stepnogorsk Central Hospital. He was examined, and it was established that he had two broken ribs, pneumothorax and stage 2 pneumonia. In the evening of the same day, three doctors of the hospital, including two surgeons, decided that it was not necessary to hospitalize him.

2.7 On 8 May 2011, at 7.58 a.m., Dmitry was found dead in his cell at the Stepnogorsk temporary detention facility. On 10 May, a forensic medical examination was performed. According to the examination report, he had died from stage 2 pneumonia. On 11 May, the complainant requested the head of the Department of Internal Affairs of Stepnogorsk to perform another forensic medical examination on his son, inter alia on the grounds that he had internal injuries, such as broken ribs, which he had sustained after he was detained in the temporary detention facility. A second forensic medical examination was performed and, according to the examination report of 9 June 2011, Dmitry had pneumonia, broken ribs and failure of several internal organs due to lung failure. The forensic experts also concluded that he had several light bodily injuries inflicted on him 8-15 days before the forensic examination.

2.8 The complainant also submits that on 26 June 2011, criminal proceedings concerning his son's ill-treatment were initiated under article 103, paragraph 1, of the Criminal Code of Kazakhstan for the serious injuries suffered by his son.

2.9 On 1 September 2011, another forensic medical examination was performed and it was concluded that serious bodily injuries had been inflicted on him several days before his death and that if he had received adequate and timely treatment in a hospital, his death would have been prevented.

2.10 The complainant submits that on 30 October 2011, the Department of Internal Affairs of Stepnogorsk initiated criminal proceedings against the doctors who refused to hospitalize Dmitry. On 8 May 2012, the criminal case was terminated by the Office of the Prosecutor of Stepnogorsk for lack of evidence that a crime had been committed.

2.11 On 7 September 2012, the Stepnogorsk City Court found A.D., the chief of the Stepnogorsk detention facility, guilty of having committed a crime under article 316 (2) of the Criminal Code (negligence) and sentenced him, inter alia, to three years of imprisonment, suspended for two years. However, on the occasion of the twentieth anniversary of the independence of Kazakhstan, the court released A.D. pursuant to article 3 of the law on amnesty on the occasion of the independence of the Republic of Kazakhstan.

2.12 On 18 September 2012, the complainant appealed the judgment of the Stepnogorsk City Court of 7 September. He requested that the case be sent for further examination; that his civil claim concerning compensation for non-pecuniary damages be satisfied; and that it

be established that there had been violations of his son's rights to life, dignity and security of the person, to effective legal remedies, to a fair trial and to legal assistance. On 6 November, the Akmolinsk Regional Court upheld the lower court's decision.

2.13 On 23 April 2013, the complainant submitted a complaint to the Supreme Court within the supervisory review proceedings requesting that the case be reviewed. On 10 June, the Supreme Court dismissed the complaint. In addition, on 19 September, the Office of the Prosecutor General also rejected the complainant's supervisory complaint on the grounds that no violations of material and procedural norms had been found.

2.14 The complainant submitted to the prosecutors' office and during the trial of A.D., as well as within the subsequent appellate and cassation proceedings challenging the Stepnogorsk City Court's judgment of 7 September 2012, some 40 complaints and motions concerning the fact of his son's torture while in the short-term detention facility of Stepnogorsk; all were in vain.

### **The complaint**

3.1 The complainant claims that his son was subjected to torture to force him to testify against himself, in violation of article 1 of the Convention.

3.2 The complainant further claims that the State party failed to assure the security of his son and to stop the acts of torture in the pretrial detention facility, contrary to article 2 of the Convention.

3.3 The complainant also claims that the State party failed to monitor the implementation of the regulations concerning medical assistance to detained and convicted persons, in violation of article 11 of the Convention. As a consequence, the complainant's son was denied medical assistance on a number of occasions.

3.4 The complainant also claims that the State party failed to initiate a prompt and impartial investigation concerning the fact of his son's torture, in violation of articles 12 and 13 of the Convention.

3.5 He finally claims that the State party did not provide him with fair and adequate compensation, contrary to article 14 of the Convention.

### **State party's observations on admissibility and the merits**

4.1 On 30 July 2015, the State party submitted that it carries out "systematic measures" to combat torture and other types of ill-treatment. The State party ratified the Convention in 1998 and joined the Optional Protocol in 2008.

4.2 The Prosecutor General of the Republic of Kazakhstan approved instructions to handle complaints regarding torture. In February 2009, the State party approved an action plan to amend the national legislation to conform with its international obligations. Also, action plans were approved to monitor places of detention, including monitoring of places of detention by non-governmental organizations.

4.3 Article 146<sup>1</sup> of the Criminal Code of Kazakhstan prohibits torture, in accordance with the requirements of article 1 of the Convention. When complaints of torture are made, the Prosecutor General mandates the participation of medical doctors in documenting injuries.

4.4 The State party also established a national preventive mechanism. It has simplified the procedure for submitting a torture complaint and its consideration. Each place of detention has a special "complaints box" accessible to all detainees. Also, the current Criminal Procedure Code calls for the suppression of evidence if it is obtained as a result of torture. Furthermore, victims of torture can claim financial compensation, which is paid by the State party.

4.5 Regarding the merits of the present communication, the State party submits that on 29 December 2010, Dmitry Rakishev was indeed charged with theft. When he was

<sup>1</sup> Formerly article 141-1 of the Criminal Code, which was in force until 1 January 2015.

questioned, as a suspect and as a defendant, he confessed to committing the theft and selling the proceeds to someone he knew, O.R. As a result, Mr. Rakishev was released on his own recognizance and was asked not to leave his area of residence, and to report to the police if needed.

4.6 On 21 February 2011, Dmitry Rakishev's case file was sent to the Stepnogorsk City Court for trial hearings. Mr. Rakishev was summoned for these hearings multiple times, but failed to appear. Because of Mr. Rakishev's failure to appear, the court decided to remand him to detention, once he was arrested. On 29 April, Dmitry Rakishev was found and arrested and placed in a detention centre in the city of Stepnogorsk.

4.7 On 8 May 2011, the doctors of the ambulance confirmed the death of Dmitry Rakishev. On the basis of autopsy results issued on 9 June, the cause of death was identified as stage 2 subcutaneous fibrinogen pneumonia, which, in turn, caused general intoxication in the body and acute pulmonary heart failure.

4.8 Also, experts identified various injuries on the body of the deceased: bruises under the left eye and on the right shoulder and haemorrhages in soft tissues of the left frontal area, right frontal parietal area and left parietal area of the head, which could have been caused by the impact of a blunt object or objects, possibly 8-15 days before death. These injuries could not have caused death and were considered to be "light bodily injuries". It was also ascertained that ribs 7 and 8 had been broken, possibly two to three weeks before death; these were considered "moderate bodily injuries" and could not have caused death.

4.9 In addition, autopsy results revealed psoriasis, phlegmon of the soft tissues of the cheek-mandibular area of the face, small-focal and perivascular cardiosclerosis, lumpy-stage coronarosclerosis, subtotal fatty liver, chronic hepatitis and focal nephrosclerosis, all of which did directly cause the death of Dmitry Rakishev.

4.10 At the request of the relatives of Dmitry Rakishev, another medical forensic examination was ordered on 11 May 2011.<sup>2</sup>

4.11 The State party further submits that on 27 June 2011, the Stepnogorsk police initiated a criminal investigation into the injuries identified on the complainant's body, based on article 104 (1) of the Criminal Code.<sup>3</sup>

4.12 The records indicate that when first detained in the detention centre in Stepnogorsk, Mr. Rakishev was examined by a paramedic, O.T. On 25 July 2011, O.T. was questioned, and testified that she had indeed identified some injuries on Mr. Rakishev's body when he was admitted to the detention centre. Mr. Rakishev explained that several days earlier he had been involved in a fight (without providing any details), which caused the injuries. The relevant entry was made in the medical records at the detention centre.

4.13 On 4 May 2011, Mr. Rakishev complained of chest pain and an ambulance was called. O.T. reported that he told her that on 29 or 30 April 2011, he had fallen from the upper bunk in his cell. The next day, in the morning, Mr. Rakishev was taken to Stepnogorsk Central Hospital where he was examined by a traumatologist, who diagnosed two broken ribs and concluded that he needed "urgent hospitalization". O.T. requested permission to hospitalize him from the chief of the detention centre, A.D, who, in response to this request, "did not say anything". O.T. examined Mr. Rakishev twice on 6 May. On 8 May, she was present to witness his death.

4.14 Several witnesses confirmed O.T.'s testimony. For example, N.G., who was at the time held in the same cell as Dmitry Rakishev, stated that Mr. Rakishev told him that he had been beaten in a fight before being admitted to the detention centre. N.G. also testified that he did not see anyone torturing Mr. Rakishev. The State party denies the allegation that N.G. had been threatened or mistreated by the investigators.

4.15 Furthermore, the State party submits that Dmitry Rakishev's father, Ashim Rakishev, was recognized as a victim and as a representative of his deceased son on 1 August 2011.

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<sup>2</sup> The State party also submits that on 19 May 2011, the criminal case against Dmitry Rakishev was discontinued due to death of the defendant.

<sup>3</sup> Defined by the State party as "causing 'moderate bodily injuries'".

4.16 On the basis of report No. 79 dated 28 July 2011, the cause of death was identified as acute pulmonary and heart failure, which had developed as a result of pneumonia. These findings led to the conclusion that the complainant's death was a result of "serious bodily injury". The underlying crime was therefore also changed to causing serious bodily injury under article 103 (1) of the Criminal Code.

4.17 On 31 August 2011, Ashim Rakishev requested another forensic medical examination. On the basis of this examination, report No. 138 was issued on 20 September. It concluded that with proper medical treatment of his pneumonia, the death of Dmitry Rakishev could have been avoided. On 27 October, the State party authorities started a separate criminal investigation into the actions of the medical personnel of the Stepnogorsk Central Hospital. On the same date, the criminal investigation was suspended because it was not possible to identify the persons responsible for committing the crime. On 8 May 2012, the criminal investigation was discontinued altogether due to lack of evidence that any crimes had been committed by medical personnel. On 5 May 2015, the Office of the Prosecutor of Stepnogorsk reinstated the criminal investigation. On 30 June, the authorities called for another forensic medical examination. The investigation is ongoing.

4.18 Regarding the criminal investigation into the actions of A.D., the chief of the detention centre, the State party submits that the authorities initiated a criminal investigation based on article 315 (2) of the Criminal Code, failure to perform official duties. The authorities rejected charges under articles 146, torture, and article 103 (1), causing serious bodily injury. On 7 September 2012, A.D. was found guilty under article 316 (2) of the Criminal Code, negligence causing death. He was sentenced to three years of imprisonment, suspended for two years. Due to an act of amnesty, A.D. did not serve his term of imprisonment.

4.19 The lawsuit for compensation for moral and pecuniary damages was transferred to the civil courts. The complainant's allegations regarding lack of redress and compensation are therefore unfounded. The courts did not consider the issue of compensation, since it has not been proven that the complainant was tortured.

4.20 The State party therefore contends that it has conformed to all its obligations under articles 1, 2 and 11-14 of the Convention.<sup>4</sup>

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

5.1 On 4 January and 11 April 2016, the complainant provided his comments on the State party's observations on the merits. The complainant submits that the State party describes in theory its efforts to combat torture, but in practice, the laws are not implemented or are ignored. The present complaint is a good example. For instance, the State party does not provide the exact amounts of compensation paid to victims of torture. Ashim Rakishev was in fact denied any compensation because, as the State party contends, the fact of torture had not been proven. This shows that the State party admits that no compensation will ever be paid to the victims.

5.2 The complainant further submits that the State party has a responsibility to provide persons in detention with necessary medical assistance. It is clear from the State party's submission that such medical assistance was not provided. Despite constant complaints, the paramedic of the detention centre examined Dmitry Rakishev and only prescribed painkillers. Despite being examined by four doctors during 10 days of detention, the complainant died. Despite the complainant's critical condition, he was not hospitalized. Very often, doctors of detention facilities are afraid to report torture, since they are employed by the same detention facility.

5.3 The complainant also submits that Dmitry Rakishev was not detained but reported to the police station himself, on 28 April 2011.

5.4 There are additional facts that the State party did not respond to: that Dmitry Rakishev had significant injuries on his body; that the ambulance was called five times; that

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<sup>4</sup> The State party also contends that it is in full compliance with articles 7 and 14 of the International Covenant on Civil and Political Rights.

there is a report concluding that it was necessary to hospitalize Dmitry Rakishev; that the chief of the detention centre, A.D. while under investigation harassed and threatened witnesses, including N.G.

5.5 The State party does not explain why the criminal investigation against medical personnel was discontinued in 2011 and reinstated only in 2015. To date, the complainant has had no information regarding the results of this investigation. No report was provided based on the examination of 30 June 2015, which allegedly was conducted by the authorities. The complainant further indicates that all investigations have been carried out by the Stepnogorsk police. This means that there will be no thorough, prompt and impartial investigation by authorities.

5.6 The State party, instead of initiating a torture investigation, limited itself to considering negligence by the chief of the detention centre and medical personnel. Meanwhile, several witnesses, such as K.N., who testified in court, and N.G., who submitted written testimony, said that Dmitry Rakishev was beaten by the police officers for failure to appear in court for hearings.

#### **State party's additional observations**

6.1 In its submission dated 4 March 2016, the State party admitted that the chief of the detention facility, A.D., had committed negligence. According to article 16 (1) and (2) of law No. 353-1 on the order and conditions of detention of persons in specialized institutions which enforce temporary isolation from society, detained persons have a right to free medical services. Article 23 (1) of the law requires the administration of the detention facility to provide health services to suspects and accused persons.

6.2 Articles 1 and 17 of the rules on providing medical services to persons in detention require that a person must be hospitalized if the doctors of the detention facility or doctors of the ambulance service conclude that it is necessary. A.D. was duly informed about such a necessity but failed to authorize hospitalization due to his negligence. Since he did not receive proper medical care, Dmitry Rakishev died in his cell on 8 May 2011. The court concluded that A.D. was guilty of negligence. The court also concluded that A.D. did not foresee that his actions or inaction would have such dire consequences, but he should have foreseen them.

6.3 As submitted previously, the criminal investigation into actions or inaction of the medical personnel have been reinstated and is ongoing. To maintain the impartiality of the investigation, the case was transferred from the Stepnogorsk police to the Burabai regional department of the bureau to combat corruption.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

7.1 Before considering a claim contained 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.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in the present case, the State party has not submitted any challenges regarding the exhaustion of all available domestic remedies. Accordingly, the Committee finds no obstacles to admissibility; it declares the communication admissible and proceeds with the examination of the merits.

##### *Consideration of the merits*

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

8.2 The Committee notes that the complainant has alleged a violation of articles 1 and 2 (1) of the Convention on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant's son was subjected are determined to be acts of torture within the meaning of article 1 of the Convention.<sup>5</sup> In this respect, the Committee notes the results of forensic medical examinations that concluded that the deceased's body bore a number of bruises. In addition, it is also clear to the Committee that Dmitry Rakishev suffered great physical pain, and the administration of the detention facility was forced to call an ambulance. Despite the recommendations by the doctors that he needed to be hospitalized, the chief of the detention facility refused to authorize it. The Committee recalls provisions of the Istanbul Protocol according to which the methods of torture can be both physical and psychological, and can include deprivation of such basic needs as food, water and medical care, among other things.<sup>6</sup> The Committee considers that the lack of medical assistance and the refusal to hospitalize Dmitry Rakishev in critical condition can be characterized as severe pain and suffering inflicted intentionally by an official to obtain a forced confession.

8.3 The Committee considers that under these circumstances, the State party should be presumed liable for the harm caused to Dmitry Rakishev unless it provides a compelling alternative explanation. In the present case, the State party conducted an investigation into A.D.'s negligence. A.D. was convicted and sentenced, but never served a day of imprisonment. Besides these charges, no torture charges were brought against any perpetrators. In the absence of such torture-specific charges and an investigation, and in the circumstances of the present communication, the Committee considers that due weight must be given to the author's detailed allegations. Accordingly, based on the detailed account of the medical condition of Dmitry Rakishev, the refusal by A.D. to hospitalize him, testimonies from at least two witnesses and the corroboration of his allegations in the forensic medical documentation, the Committee concludes that the facts as reported constitute torture by the police within the meaning of article 1 of the Convention and that the State party failed in its duty to prevent and punish acts of torture, in violation of article 2 (1) of the Convention.

8.4 The Committee notes the complainant's claims that fall under article 11 of the Convention and the description of measures taken to combat torture provided by the State party. The Committee considers, however, that the information provided by the State party on its efforts to prevent and combat torture is of a general nature and does not demonstrate that it has taken specific measures to prevent torture in this place of detention. Moreover, the State party has not taken measures "to provide appropriate and effective medical care of prisoners and detained persons, including adequate medicines and examination by independent doctors".<sup>7</sup> Despite the Committee's recommendation to transfer the administration of health care to the Ministry of Health,<sup>8</sup> the doctors at the detention facilities still report to the management of these facilities and therefore cannot be considered independent. Consequently, and in the circumstances of the present case, the Committee finds that the State party is responsible for a violation of article 11 of the Convention.

8.5 The complainant also claims that no prompt, impartial and effective investigation was carried out into his allegations of torture and that those responsible have not been prosecuted, in violation of articles 12 and 13 of the Convention. The Committee notes the unrefuted evidence that Ashim Rakishev raised torture claims regarding his son on numerous occasions.

8.6 The Committee notes that the State party did conduct two distinct investigations. One investigation, against A.D., chief of the detention facility, resulted in a guilty verdict, based on his negligence, under article 316 (2) of the Criminal Code. The Committee notes

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<sup>5</sup> See communication No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.4.

<sup>6</sup> *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, para. 145 (n).

<sup>7</sup> See CAT/C/KAZ/CO/3, para. 17 (b).

<sup>8</sup> *Ibid.*, para. 17 (c).

the complainant's contention that A.D. should have been charged under article 146, which directly prohibits torture. The Committee also notes that A.D. was convicted and sentenced to three years of imprisonment with a two-year suspended sentence and was later amnestied, and never served a day in prison. The second investigation concerned medical personnel of the Stepnogorsk Central Hospital. This investigation, as transpires from the State party's submissions, did not result in anyone being held accountable and was actually suspended on 27 October 2011, the day it was opened. It was eventually reinstated in 2015, following the present complaint to the Committee, but to date, the State party has not provided the Committee with any results.

8.7 The Committee recalls that an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations under article 12 of the Convention if it can be shown not to have been conducted impartially.<sup>9</sup> The Committee notes that in the present case, the State party initiated two criminal investigations, conducted several forensic medical examinations and questioned numerous witnesses. The Committee notes, however, that as a result of these investigations, no one was charged with a crime of torture. The single person sentenced for negligence of his official duties as a result of the investigation never served a day in prison, and was not even arrested. The investigation into malpractice by the medical personnel was discontinued without addressing the detailed evidence presented by the complainant and reinstated only in 2015, also without obvious results. The Committee recalls that article 12 of the Convention also requires that the investigation should be prompt and impartial, promptness being essential both to ensure that the victim cannot continue to be subjected to acts of torture and also because, in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.<sup>10</sup>

8.8 In the light of the above findings and based on the materials before it, the Committee concludes that the State party has failed to comply with its obligation to carry out a prompt and impartial investigation into Ashim Rakishev's allegations that his son had been tortured, in violation of article 12 of the Convention. The Committee considers that the State party has also failed to comply with its obligation under article 13 and to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.<sup>11</sup>

8.9 With regard to the alleged violation of article 14 of the Convention, the Committee notes that it is uncontested that the complainant was not able to bring a claim of damages as a result of that torture that his son suffered, based on the fact that no perpetrators of torture were identified. The Committee recalls in this respect that article 14 of the Convention recognizes not only the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. A civil proceeding should be available independently of the criminal proceeding and necessary legislation and institutions for such civil procedures should be in place and available.<sup>12</sup> The Committee notes the State party's argument that since no person was charged and convicted of torture, the courts could not consider the issue of compensation. Owing to the unavailability of civil proceedings independent of the criminal proceedings, and on the basis of the information before it, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.

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<sup>9</sup> See communication No. 257/2004, *Keremedchiev v. Bulgaria*, decision adopted on 11 November 2008, para. 9.4.

<sup>10</sup> See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

<sup>11</sup> In paragraph 9 of its concluding observations on the third periodic report of Kazakhstan (CAT/C/KAZ/CO/3), the State party was also called upon "to ensure that those convicted are punished with appropriate penalties that are commensurate to the gravity of the crime of torture".

<sup>12</sup> See communication No. 441/2010, *Evloev v. Kazakhstan*, decision adopted on 5 November 2013, para. 9.7.

9. The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose violations of article 2 (1), read in conjunction with article 1, and of articles 11-14 of the Convention.

10. The Committee urges the State party to conduct a prompt, impartial and independent investigation, including, where appropriate, specific torture charges against perpetrators, and examine the possible complicity of medical personnel, in order to bring to justice those responsible for Dmitry Rakishev's torture and subsequent death; to provide his father, Ashim Rakishev, with redress and reparation for the suffering inflicted, including compensation; and to prevent similar violations in the future. Pursuant to rule 118, paragraph 5, of its rules of procedure, the State party should inform the Committee within 90 days from the date of the transmittal of the present decision of the steps it has taken in response to the present decision.

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