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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. 611/2014*,**

Communication submitted by:	P.A. (represented by counsel)
Alleged victim:	The complainant
State party:	The Netherlands
Date of complaint:	10 June 2014 (initial submission)
Date of present decision:	2 May 2016
Subject matter:	Expulsion to Kazakhstan
Procedural issues:	Non-substantiation of the claim
Substantive issues:	Risk of torture upon return to the country of origin
Article of the Convention:	3

1.1 The complainant is P.A., a national of Kazakhstan born in 1959 currently residing in the Netherlands, where his asylum application has been rejected. The complainant asserts that his rights under article 3 of the Convention will be violated if the State party proceeds with his forcible deportation. The complainant is represented by counsel.

1.2 On 13 June 2014, acting under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to remove the complainant to Kazakhstan while his complaint was under consideration by the Committee.

Factual background

2.1 The complainant is of Russian ethnicity and is a Russian Orthodox Christian. Before 1999, he had encountered several issues in Almaty, Kazakhstan, owing to his Russian

* Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).

** The following members of the Committee participated in the examination of the communication submitted by the complainant: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.

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ethnicity.[1] In 1999, he worked at a marketplace with a friend, K., who the complainant alleges was subsequently murdered by Muslims. The complainant was routinely forced to bribe a police officer to stop being harassed owing to his ethnicity.[2]

2.2 Around November 2001, the complainant began to notice that his eldest son, A., had become more solitary and had just broken up with his girlfriend. Around the end of November 2001, the complainant's wife found a flyer in Russian and Arabic among their son's clothing. The flyer stated that Allah is great and that the brothers of the religion of Islam should fight against the "infidel dogs" to purify the land of infidelity. The complainant's wife was shocked at the discovery and discussed it with the complainant. They spoke about the flyer with A., who told them that he had just received it on the street and that it was not a cause for concern. Between 10 and 15 January 2002, the complainant's wife found a green flag with an Arabic inscription in black.[3] She and the complainant discussed it with A., feeling that it could not be a coincidence. A. angrily told them that "it was his life".

2.3 The complainant submits that he and his wife had to explain to A. that they were different from Muslims and that the complainant had been injured during the murder of his friend K. in 1999, which he alleges had been committed by Muslims.[4] The complainant also reminded A. that his younger brother, I., had been stabbed because he played for an overtly Muslim soccer club.[5] A. still did not want to listen, and told his parents that the Muslim people with whom he was associating were not those who had attacked K. and I. A. told his parents to mind their own business and, around 15 January 2002, he left the family home and rented an apartment of his own. A. came back to visit on I.'s birthday on 25 January 2002, but after that his parents never saw him again. He once called them to tell them he was all right.

2.4 On 10 March 2002, the complainant's wife saw that I. had been stopped by two men on his way to school. When his mother asked him who they were, he told her they had introduced themselves to him as Ahmed and Rishwan. On 14 March, the complainant's wife again saw I. being stopped by the same men. When she asked I. about it, he told her that they had proposed that he join a military sport camp where he could play soccer and learn how to handle weapons. He would become a man and a fighter for Allah. They told him they would come back for his answer. When the complainant returned home from work, his wife told him about the events. The complainant was shocked and became concerned, because he had already lost A. to "those people".[6]

2.5 On 19 March 2002, the complainant talked to both of his sons.[7] He saw Ahmed and Rishwan, introduced himself to them as I.'s father and asked what they wanted from his son. They told him to mind his own business, at which point the complainant became angry and grabbed one of the men. One of them hit the complainant, who hit back once. The men then hit him repeatedly, and neighbours came to see what was happening. Ahmed and Rishwan fled and made a sign with their hand across their throat.

[1] It was not expressly stated in the complaint whether the initial facts in this section had taken place in Kazakhstan. In a follow-up correspondence dated 13 June 2014, counsel stated that the events had taken place in Almaty.

[2] The complainant does not provide further details on the alleged harassment, and does not specify which type of officer had been giving him problems.

[3] The complainant does not provide further details on this flag/towel.

[4] The details of this injury have not been provided.

[5] The complainant provides no further details.

[6] The complainant states that he does not know who had approached A., but I. was approached by two men who introduced themselves as Ahmed and Rishwan.

[7] The complainant does not expand further on his discussion with A. and I.

2.6 On the same evening, around 9 p.m., three Muslim men with beards came to the door. When the complainant opened the door, he was immediately hit by one of them and his nose was broken. Then he was kicked by the three men while trying to protect his face. The complainant's wife, witnessing this incident, screamed and threw a chair through the window, hoping that the window would break and neighbours would notice. The neighbours heard the noise and called the police. They came to the complainant's home and told the perpetrators that they had called the police. The perpetrators then left and threatened that, the next time they came, the complainant would be dead.

2.7 On 20 March 2002, the complainant went to the Department of Home Affairs[8] to file a complaint against the perpetrators, where he spoke with an officer, Major D.J.. The complainant's face was then still bruised and his nose was broken. When the complainant told the officer about the attacks and about his sons being "crimped",[9] the officer told him he was probably drunk or perhaps insane, and should see a psychiatrist. The officer claimed that there were no such problems in the country, and that the complainant had made it all up, was not sane and needed medical treatment. The complainant then threatened that if he would not help him he would go to the media. The officer then told the complainant that if he did so he would be in real trouble and that he should leave Kazakhstan if he did not like it.

2.8 The complainant was furious after this conversation and felt powerless. On 21 March 2002, he called his friend S.V. and his wife to ask them what to do. They came to the complainant's house at around 5 p.m. that evening. Then, plain-clothes policemen came to the house; one was holding a gun and the others were probably holding their guns under their coats. When they saw the complainant's wife and friends, they looked surprised and told the complainant to come with them to the Department of Home Affairs because they had arrested suspects and wanted the complainant to identify them.

2.9 Upon arrival at the Department of Home Affairs, the complainant was brought to the basement. In the basement were cells and interrogation rooms. The complainant was brought to one of these interrogation rooms and was handcuffed to a radiator. He was hit on the head with a seat pad. Then he was hit and kicked by five policemen. They asked the complainant if Russians were oppressed in Kazakhstan. The complainant replied no. He was then hit on his head again and passed out. He does not remember how long he remained unconscious but, when he regained consciousness, he was no longer handcuffed and was no longer wearing any pants. He was naked from waist down and noticed that he had been raped. The officers again asked him if he had any problems in Kazakhstan, and he replied no. They threatened him that, if he complained again, everything that had happened to him would also happen to his family. They told him that it would be better if he left. After midnight on 22 March, they let him go. He took a taxi home. The taxi driver helped the complainant up to the fifth floor. Friends told the complainant's wife that she and the complainant were no longer safe and that S.V. would pick them up early in the morning.

2.10 On 22 March 2002, at about 6 a.m., S.V. came to pick up the family and took them to a house. That day, they decided to flee the country. They could not go to Russia because they did not have Russian nationality and did not have close family there. S.V. used to work for law enforcement and used his contacts to find out how they could leave the country. Because they needed money, the complainant and his wife sold their house. Until April 2002, they stayed with S.V. On 1 May 2002, S.V. took the complainant and his family to an old cottage, where they stayed until 26 September 2002, while S.V. arranged for their travel.

[8] The complainant provides no further details regarding this "department".

[9] This is the word used by the complainant. The meaning is unclear, but it is believed it means "recruited".

On 26 September, S.V. told the family that they could go to the Netherlands if they paid $5,000.

2.11 On 27 September 2002, the complainant went to see I.'s soccer coach to collect I.'s birth certificate, which he had left with the coach for registration. He then went to S.V.'s house, for which he had a key. While he was trying to open the door, he was tapped on the back by, he believes, either Ahmed or Rishwan. The complainant believes he had been followed there from the soccer stadium where he went to pick up the birth certificate. The man stabbed the complainant in his left side. The complainant entered the house and the perpetrator left. The complainant, bleeding, left S.V.'s house with his family and went back to the old cottage. He stopped at a hospital on the way, to receive treatment for his wound. On 4 October 2002, at 6 a.m., S.V. came and told them that the train would leave at 8.20 a.m. that day. The family left Kazakhstan on the night between 5 and 6 October 2002. On 7 October 2002, they arrived in Moscow. They eventually arrived in the Netherlands on 10 October 2002.

The complaint

3.1 The complainant submits that the State party would violate his rights under article 3 of the Convention by forcibly removing him to Kazakhstan, because he believes there to be a real risk that he would be subjected to torture or that his security would be endangered because of his ethnic and religious background as a Russian Orthodox Christian; because his sons were "crimped" by jihadis and one of his sons has already become a jihadi; because he was assaulted by jihadis; because the police illegally detained, tortured and raped him; because the private individuals and State officials responsible for attacking him would not be punished, given the widespread impunity in the country; and because, if he returns, he would be seen as a threat to the authorities because he threatened to tell the media, faced torture and rape and found a way to flee the country to tell his story. The complainant also asserts that there is a consistent pattern of gross and massive violations of human rights in Kazakhstan and that, on this basis alone, he should not be sent there.

3.2 The complainant states that he has scars that have been examined by Amnesty International doctors, which issued a report confirming that the scars are consistent with the torture methods that were allegedly used on him. He has also been diagnosed with post-traumatic stress syndrome and suffers from severe depression. He cannot sleep well because he has nightmares in which he relives his trauma and has night sweats. He is concerned about his son A.'s connections with jihadis in Kazakhstan. The complainant suffers from chronic suicidal ideation: he always walks with a razor in his pocket and has a rope in his house. His wife is very concerned about his condition. He feels that he has no future, especially because of his precarious legal status in the Netherlands and the possibility of returning to the place where he was tortured and illegally detained.

3.3 The complainant asserts that his credibility was never questioned by the Dutch immigration authorities, not even by the highest court, which based its decision to deny asylum on the possibility for the complainant to relocate internally within Kazakhstan. However, the complainant established in his second asylum procedure that this is not a valid ground to deny his asylum claim, because: (a) under the current immigration policy, an asylum applicant cannot be relocated internally if the trauma against him or her was caused by perpetrators who are in general not being punished for their acts, which is the case because police officers often detain and torture people illegally in Kazakhstan with full impunity; and (b) the complainant was not allowed — unfairly — to present his medical report as new evidence for his second asylum procedure, despite the fact that the report indicated that relocation in Kazakhstan is not possible for the complainant on medical grounds because of his negative experiences with the authorities there, which he associates

with the entire country, and because these negative experiences prevent him from asking for help from a higher authority in Kazakhstan.

3.4 The complainant states he has not submitted the same matter for examination before another procedure of international investigation or settlement. He does not expressly affirm to have exhausted domestic remedies, but states he has availed himself of the following mechanisms in the Netherlands: (a) an asylum application, which was denied on 8 May 2003; (b) an appeal against that denial, which was rejected by the Court of First Instance in Leeuwarden on 17 May 2004;[10] and (c) an application for suspension of departure on medical grounds, which was filed on 16 May 2012 then denied on 10 October 2012.[11] On 1 November 2012, he filed a petition against that denial on medical grounds, which in turn was denied on 13 November 2012.[12] On 10 January 2013, he filed an appeal against the latter denial, which was rejected by the Court of First Instance in Zwolle on 21 May 2013.[13]

State party's observations on admissibility and merits

4.1 By a note verbale dated 15 December 2014, the State party submitted its observations on the admissibility and merits. It recalls the facts of the case and provides excerpts from relevant domestic legislation. The State party submits that the complainant sought asylum on 13 October 2002. In this context, he was interviewed twice: on 13 October and 15 October 2002. During the second interview, the complainant had a chance to elaborate on his initial asylum claims. On 5 December 2002, a "complimentary" interview took place. The State party submits that all interviews were conducted in Russian.

[10] The complainant states that the Court found that the Kazakh authorities did not have a general policy of discrimination against non-Kazakhs, but that it was likely that the complainant and his family had been persecuted owing to their Russian background. The complainant's asylum history is consistent with what is known about the country through objective sources. The Court also found that the complainant had asked a major in the police force for protection. With regard to the torture that the complainant was subjected to and the threats made to him and his family, it appeared that the complainant would not be able to ask for protection from a higher authority in Kazakhstan.

[11] The complainant states that the application for suspension of departure on medical grounds was denied on the grounds that article 64 of the Aliens Act was inapplicable, because the Bureau for Medical Advice had concluded that the complainant was fit to fly and simply needed to be accompanied by a psychiatric nurse. The Bureau also concluded that a medical emergency (within three months) would not occur if he were not treated for his medical complaints in his homeland.

[12] The complainant states he had claimed there would be a medical emergency within three months because he was chronically suicidal, which the Bureau for Medical Advice acknowledged. He also asserted that treatment in his homeland would not be considered safe because the cause of his medical symptoms lie in the traumatic experiences he had undergone there. The complainant states that the petition was denied on the grounds that, under the law, the advice of the Bureau is considered objective expert advice and must be proved to not be objective by the petitioner. In the present case, the Bureau concluded that there would be no medical emergency, and the victim did not prove otherwise by providing new or supplementary medical information. Moreover, a suicidal nature due to fear of deportation does not fall under the scope of article 64 of the Aliens Act, because it has no medical basis. The credibility of the trauma caused in the homeland is an asylum issue and should not be part of the regular procedure.

[13] The complainant states that the Court found that there were no grounds to doubt the medical investigation carried out by the Bureau for Medical Advice. The Court considered that, on the basis of the Bureau's report, there would not be a medical emergency within three months. On the basis of this conclusion, the question of the possibility for medical treatment in the complainant's homeland was no longer relevant. The fact that the Bureau did not invite the complainant for a medical check was not relevant because the Bureau has legal discretion to decide whether a medical check is necessary. The Immigration and Naturalization Service had the right to decide not to hear the complainant in person because the petition was evidently unfounded.

4.2 On 20 March 2003, the complainant was given a written notification that the Government intended to deny his asylum application, to which the complainant responded with his letter dated 17 April 2003. In a decision dated 8 May 2003, the complainant's asylum application was rejected. On 2 June 2003, the complainant filed for a judicial review of this decision, which was heard by a district court on 11 February 2004. On 14 May 2004, that court rejected the application for review as "unfounded".

4.3 On 7 June 2004, the complainant filed an appeal against the district court judgment with the Administrative Jurisdiction Division of the Council of State. In a decision dated 28 September 2004, the Division declared the appeal "manifestly unfounded".[14]

4.4 The State party acknowledges that it is not aware as to where the complainant resided between 2004 and 2012. On 16 May 2012, the complainant submitted a request under section 64 of the Aliens Act 2000 in connection to his situation. The issue to be reviewed was whether the complainant was healthy enough to travel. The Bureau for Medical Advice was asked to submit a medical report, which it did on 4 October 2012. In a decision dated 10 October 2012, the complainant's application under section 64 was denied. The complainant filed an objection to that decision, which was rejected as unfounded on 13 November 2012. On the same date, the complainant filed a request for a review of that decision by the district court, which rejected the appeal as unfounded on 21 May 2013.

4.5 On 16 June 2013, the complainant lodged an appeal against that decision with the Administrative Jurisdiction Division, which rejected the petition on 21 August 2013 as "manifestly unfounded". On 28 August 2013, he submitted a new asylum application, which was denied on 5 September 2013. The complainant appealed against that decision, but the District Court of the Hague rejected his appeal as unfounded. On 12 December 2013, the Administrative Jurisdiction Division also denied his appeal as manifestly unfounded.

4.6 Regarding the merits of the present communication, the State party submits that, during the asylum proceedings, the complainant had ample opportunities to elaborate on the veracity of the accounts of the facts, if unable to produce any documentary evidence. The initial asylum decisions could then be reviewed by courts, and the district court's decision could be reviewed by the Administrative Jurisdiction Division. The complainant in the present complaint was interviewed three times and was able to submit further information and clarification to his testimony.

4.7 The State party challenges the complainant's assessment that there is a "pattern of gross and mass violations of human rights" in Kazakhstan. Although the human rights situation in Kazakhstan gives cause for concern, there is no reason to conclude that the expulsion to Kazakhstan per se would constitute a violation of article 3 of the Convention. The complainant must therefore make a "persuasive case" for his fear of persecution, based on foreseeable, real and personal risk of torture.

4.8 The complainant refers to his ethnic and religious background and that "jihadis" tried to recruit his sons, the eldest one successfully. He claims that he was approached by jihadis and they assaulted him. The complainant further claims that the authorities in Kazakhstan never accepted his formal complaints regarding these assaults and, instead of protecting him, raped him and assaulted him themselves. According to the complainant, relocating within Kazakhstan is not an option, because it is unlikely that the perpetrators of those assaults will be held accountable. The complainant also associates the whole country with this experience and, as a result, has had medical problems.

[14] The State party submits that, under section 91, subsection 2, of the Aliens Act 2000, the Administrative Jurisdiction Division may simply find an appeal as manifestly unfounded, without further explanations.

4.9 The State party submits that the complainant's account in support of his asylum application is credible. However, it does not believe that the complainant has established a credible risk of torture if returned to Kazakhstan. The State party submits that, when the complainant stayed with friends at their home, he did not have any problems. Moreover, he was able to leave Kazakhstan by lawful means. It is highly unlikely that, after 12 years, he would still be of particular interest to the police officers who allegedly detained and assaulted him or to the Kazakh authorities in general. The complainant provides no information that he is wanted by the authorities. His detention and torture is therefore unlikely if he is returned.

4.10 Various reports show that, increasingly, the national authorities in Kazakhstan have taken measures to tackle abuse by police officers.[15] In a report dated 27 February 2014,[16] the United States of America Department of State indicated that the authorities have taken measures against such abuse, including setting up a national preventive mechanism to prevent torture. In 2012, the Kazakh Commission on Human Rights, which advises the President on human rights issues, found that cases of torture and other kinds of cruel treatment still occurred, though not systematically. According to a report by the organization Freedom House,[17] "later in 2013 there were a few signs that the authorities were beginning to tackle abuse in places of detention". Thus, applying to Kazakh authorities for protection cannot be dismissed as pointless and dangerous.

4.11 The State party considers that the complainant will not encounter any problems owing to his ethnicity. According to the May 2014 country information compiled by the Austrian Country of Origin Information Department,[18] 23.7 per cent of the population of Kazakhstan is of Russian ethnicity, comprising the largest minority group in the country. Regarding the complainant's religious identity, in his statements that he gave during the asylum proceedings, he admitted that he never practised any religion, despite being born Christian.

4.12 The State party submits that the alleged problems that the complainant encountered were of local nature and that he can distance himself by relocating within the country, especially to the northern part of the country, where the majority of the population is of Russian ethnicity. The complainant does not cite a lack of medical facilities or social services that could warrant asylum being granted on humanitarian grounds. In view of the above, the State party submits that the complainant has not shown foreseeable, real and personal risk of torture if returned to his country of origin.

The complainant's comments on the State party's observations on admissibility and merits

5.1 On 16 April 2015, in response to the State party's observations, the complainant submits that he is claiming asylum not only on the basis of a pattern of gross and mass violations of human rights in Kazakhstan, but also on his personal facts and circumstances that can be seen as substantial grounds for being exposed to a risk of torture if returned to his home country. The State party explicitly confirms that it finds the complainant's story

[15] In support, the State party refers to following reports: 1) Freedom House: Nations in Transit 2014 — Kazakhstan, 12 June 2014; 2) US State Department: Country Report on Human Rights Practices 2013 — Kazakhstan, 27 February 2014; 3) Human Rights Watch: World Report 2014 — Kazakhstan, 21 January 2014; 4) Amnesty International, Old Habits: The routine use of torture and other ill-treatment in Kazakhstan, 11 July 2013.

[16] Available from www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm?year=2013&dlid=220395#wrapper.

[17] Available from freedomhouse.org/report/nations-transit/2014/kazakhstan.

[18] Available from www.ecoi.net/file_upload/1729_1409729871_kaza-eff-cfs-2014-05.pdf.

credible. These past events constitute a strong indication that the complainant would be exposed to the same kind of treatment if returned.

5.2 The complainant submits that it is unreasonable for the State party to request evidence that he is wanted in Kazakhstan. The complainant has not been in the country for 12 years and doesn't have access to such information. The consistent pattern of mass violations of human rights continues to this day in Kazakhstan. Corruption is widespread in the Government of Kazakhstan, which makes it possible to cover up abuse by law enforcement agencies.

5.3 The complainant further submits that he is exposed to a risk of torture given the fact that he will be sent home without a passport, which will lead authorities to believe that he has sought asylum in the Netherlands. Regarding the eventual protection from the local authorities, the complainant submits that police impunity remains a norm. The Committee itself in its November 2014 review of Kazakhstan expressed concerned at the fact that less than 2 per cent of complaints of torture have led to prosecutions.[19] In its universal periodic review, Kazakhstan supported the recommendation that it establish an independent investigation mechanism for cases of torture.[20]

5.4 The complainant contends that the risk of being subjected to torture has only increased over the years for those with Russian ethnicity and, while ethnicity is not the only risk factor, it is a significant factor. Information on the country shows that discrimination against ethnic Russians is still a big problem in Kazakhstan. In a statement dated 15 July 2009,[21] the Independent Expert on minority issues stated that Kazakh courts have never received a discrimination complaint based on ethnicity or nationality.

5.5 The complainant furthermore claims that he still fears jihadis as they were one of the reasons why they fled the country. He also claims that the fear of extremism associated with "certain currents of Islam" is widespread, and that the Islamic State in Iraq and the Levant is organizing "family trips" to the Syrian Arab Republic for Muslims from Central Asia.

5.6 The complainant admits that, while he was born Orthodox Christian, he left the faith and declared himself an atheist. He claims that the atheists face persecution. He cites a case of Aleksandr Kharlamov, an activist, who was charged with "inciting religious discord" after he published several social media posts of atheist nature. In a press release issued in May 2013, Human Rights Watch called on the Kazakh authorities "to amend or repeal the charges".[22] The complainant contends that he has satisfactorily established that his return to Kazakhstan would constitute violation of article 3 of the Convention by the State party.

State party's further submissions

6.1 In a note verbale dated 2 October 2015, the State party reiterates its position that the communication is groundless. The State party argues that there is no indication that the complainant would experience any problems if returned to his country of origin after 12 years of absence. The complainant has not shown that he was a member of any political, religious or social party or movement. The time that elapsed following the complainant's departure from the country should be taken into account in this respect.[23]

[19] See CAT/C/KAZ/CO/3, para. 8.
[20] See A/HRC/28/10, para. 124.17.
[21] Available from www2.ohchr.org/english/issues/minorities/expert.
[22] See www.hrw.org/news/2013/05/21/kazakhstan-drop-religious-incitement-charges.
[23] The State party refers to the decision of the European Court of Human Rights in the case of *Saadi v. Italy*, 28 February 2008, application No. 37201/06.

6.2 The State party adds that there is little risk that the complainant would be interrogated upon his return, since it is up to him to arrange for his travel back to Kazakhstan. The complainant has not demonstrated that the Kazakh authorities are aware of his asylum application. Furthermore, the State party does not believe that the complainant would face any risk of torture based on his Russian ethnicity. As submitted previously, a large portion of the population in Kazakhstan is of Russian ethnicity.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim 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.

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 recognized that the complainant has exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to admissibility, declares the communication admissible and proceeds with its examination on the merits, as far as the complainant's claim under article 3 of the Convention is concerned.

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, in accordance with article 22 (4) of the Convention.

8.2 The Committee must determine whether the expulsion of the complainant to Kazakhstan would violate the State party's obligations under article 3 (1) of the Convention not to expel or return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture.[24] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

8.3 Recalling its general comment No. 1 (1997) on implementation of article 3 of the Convention in the context of article 22 (refoulement and communications), the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal, present, foreseeable and real.

8.4 The Committee takes note of the medical evidence presented by the complainant, according to which he has been diagnosed with post-traumatic stress syndrome and suffers from severe depression. The Committee notes that, according to the complainant, the State party's authorities failed to take into consideration the supporting medical evidence that he presented while evaluating his asylum claims, even if the evidence in question was submitted at a later stage.

[24] See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

8.5 The Committee also notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, the question is whether he remains, at present, at risk of torture in Kazakhstan.

8.6 The Committee also observes that the complainant claims that the State party failed to consider his specific circumstances, including his ethnic and religious background. The complainant further claims that, if returned, he fears that Islamic extremists — who already recruited one of his sons — would target him and would try to recruit his other son. The complainant alleges that the police and the law enforcement in general who mistreated him in the past would do so again if he is returned to Kazakhstan.

8.7 The Committee notes that the complainant merely stated before the State party authorities that he feared being subjected to torture if returned to Kazakhstan, claiming that he had been tortured in the past and that he would be targeted again. The Committee notes, however, that the State party does not challenge the facts as presented by the complainant. The Committee observes that the State party, without questioning the complainant's account, instead argues that he did not prove that he would be targeted again if returned to Kazakhstan.

8.8 The Committee further observes certain uncontroverted facts, namely, that Kazakhstan has a considerable Russian minority, especially in the northern parts of the country; that the complainant, while born Christian, has admitted to be an atheist; and that the complainant has not shown that he is wanted by the authorities in Kazakhstan, or that he would be targeted by the authorities if returned. Furthermore, the complainant failed to provide any explanations regarding his whereabouts from 2002 to 2012 and whether, during that time, he faced any threats of torture or assault. The Committee notes that certain reports about persecution cited by the communication concern cases of religious activists, whereas the complainant has not shown any public activity for which he could have been targeted.

8.9 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory and indicates that it is generally for the complainant to present an arguable case.[25] On the basis of all the information submitted by the parties, including on the general situation of human rights in Kazakhstan, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his expulsion to Kazakhstan would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's expulsion to Kazakhstan would not constitute a breach of article 3 of the Convention.

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[25] See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S.L. v. Sweden*, decision adopted on 11 May 2001, para. 6.3; and No. 347/2008, *N.B-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.