

[Kazakhstan: Extradition to Kyrgyzstan breaches prohibition against refoulement](#)

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Valetov v. Kazakhstan (2104/2011)

Summary

In March 2014, the Human Rights Committee was asked to consider whether Kazakhstan had violated its obligations under the International Covenant on Civil and Political Rights with respect to the extradition of an individual to a country where he believed he would be subject to a risk of being tortured.

The communication was submitted by a national of the Russian Federation under the Optional Protocol to the Covenant.

Background



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Background

In 2001, the author, Nikolai Valetov, was arrested and accused of murder in Kyrgyzstan. While in detention, he was subjected to severe torture resulting in serious injury to his genitalia and him becoming an invalid. He was refused medical attention despite having requested a doctor on several occasions.

In August 2001, the author escaped from detention and crossed the border into Kazakhstan, where his passport was taken and he was arrested and sentenced to prison for crimes allegedly committed in Kazakhstan.

In April 2004, the author escaped from his detention in Kazakhstan and returned to Kyrgyzstan. He was subsequently arrested for theft and imprisoned, before being released under an amnesty, and finally returned

to Kazakhstan in January 2006. Upon his return to Kazakhstan, he was again arrested and imprisoned.

In July 2011, the Kostanay prosecutor in Kazakhstan placed the author under extradition arrest in response to a request from the Office of the General Prosecutor in Kyrgyzstan.

On 23 August 2011, the General Prosecutor approved the extradition request. The Kostanay District Court rejected both of the author's appeals.

On 13 September 2011, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author alleged that his extradition to Kyrgyzstan would violate the prohibition on torture under article 7 of the Covenant on the basis that the Kazakh authorities were aware of his previous torture in Kyrgyzstan and that such torture was applied routinely there. He also alleged a violation of article 14(3) of the Covenant for having been denied access to a lawyer while in detention.

On 14 October 2011, the author was extradited to Kyrgyzstan despite the Committee's interim measures request that it refrain from doing so pending the Committee's determination of the author's complaint.

The Committee's decision

Regarding the complaint's admissibility, the Committee noted that the author had not brought the issue of access to legal counsel before the domestic courts. Accordingly, the Committee found that the author's claims with respect to violations of article 14(3) of the Covenant were inadmissible pursuant to article 5(2)(b) of the Optional Protocol. The Committee considered that the author had sufficiently substantiated his claims under article 7 of the Covenant for the purposes of admissibility, having already raised these before the Kazakh domestic courts on multiple occasions.

On the merits, the Committee noted that article 7 of the Covenant prohibits States from exposing individuals to the risk of torture through expulsion or extradition, regardless of the type of criminal conduct that the individual may be accused of. This prohibition imposes an obligation on the State to conduct a thorough assessment of relevant information that was known, or should have been known, to the State's authorities. A State may therefore be acting in violation of the Covenant when it removes an individual to a jurisdiction where there are substantial grounds for believing that the extradited individual will face such risks. The Committee observed that at the time of the author's extradition, there were credible public reports of widespread use of torture against detainees in Kyrgyzstan.

The Committee noted that Kazakhstan had received assurances from the General Prosecutor's Office in Kyrgyzstan that the author's rights would be respected. It considered, however, that such assurances would have to contain a monitoring mechanism and be safeguarded by practical arrangements sufficient to ensure the implementation of such assurances. That representatives of the Kazakh embassy were not able to gain permission to visit the author in Kyrgyz detention demonstrated the lack of such practical arrangements. In such circumstances, the Committee concluded that the assurances from the Kyrgyz General Prosecutor could not be considered an effective mechanism for protecting the author from the risk of torture. The Committee therefore found that Kazakhstan had failed to consider important risk factors related to the extradition and that the author's extradition constituted a violation of article 7 of the Covenant.

In light of the above, the Committee concluded that Kazakhstan was under an obligation to provide the author with an effective remedy, including adequate compensation. Kazakhstan was invited to put into place an effective mechanism for monitoring the author's situation in cooperation with Kyrgyzstan and to provide the Committee with updated information on a regular basis regarding the author's situation.

Kazakhstan must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

Kevin Clement is an international lawyer, based in Paris.