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

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Committee against Torture

Follow-up report on decisions relating to communications submitted under article 22 of the Convention*

Introduction

1. The present report compiles information received from States parties and complainants since the fifty-sixth session of the Committee against Torture, which was held from 9 November to 9 December 2015.

A. Communication No. 580/2014

F.K. v. Denmark

Decision adopted on:	23 November 2015
Violation:	Article 3; and article 12, read in conjunction with article 16
Remedy:	The Committee was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Turkey or to any other country where he ran a real risk of being expelled or returned to Turkey. The Committee also found that the State party had violated the requirements of article 12, read in conjunction with article 16, of the Convention.

2. On 4 April 2016, the State party submitted that, on 9 January 2015, the complainant had requested the Refugee Appeals Board to reopen his asylum case, referring to the medical examination made by Amnesty International on 25 September 2014. On 18 September 2015, the Board refused to reopen the complainant's asylum case, stating that "no new factual information of such significance to the case has been provided in the request for reopening as to justify a certain probability that the decision rendered would have been different, had the information been available when the Board made its original decision on the application". As regards the report on the examination of the complainant for signs of torture, which was conducted by the Amnesty International Danish Medical

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

Group, the Board observed that the examination could not lead to a different assessment of the credibility of the complainant's statements concerning his activities for the Kurdish Workers Party (PKK). The Board further observed that the majority of the members of the Board had found that they could not dismiss the complainant's statement that he had been a member of several lawful Kurdish parties from 2006 to 2010 and that he had been detained several times during that period after having participated in demonstrations and celebrations of Kurdish festivals. However, the majority of the members found that he had failed to substantiate his grounds for asylum relating to his membership in PKK and his participation in combat training. Accordingly, the majority of the Board members found that he had also failed to demonstrate the probability that he would be at a real risk of being subjected to torture if returned to Turkey. The State party had not yet forwarded the Board's decision of 15 September 2015 to the Committee before the Committee adopted its decision on the communication on 23 November 2015. The decision is appended to the 4 April 2016 submission.

3. In consequence of the decision adopted by the Committee on 23 November 2015, the Refugee Appeals Board reopened the complainant's asylum case for review at an oral hearing before a new panel on 14 March 2016. It is observed that an oral hearing before a new panel means that the matter is reconsidered by five Board members, including a judge, in an adversarial procedure in which the applicant is represented by counsel.

4. A new decision was adopted by the Board on 17 March 2016. The Board found that the applicant had failed to substantiate his grounds for asylum. His statements that the authorities had subjected him to repeated physical and mental abuse from 2006 to 2008 could not be considered as facts. The applicant had failed to offer, with the degree of certainty and accuracy that should be expected, an account of when and how he had been active within the Kurdish parties and of the circumstances related to his detentions and the abuse against him. The applicant's statements that he had joined PKK and that he had escaped in the summer of 2010 after an armed confrontation between government forces and the guerrilla unit of PKK on the way to a training camp in the mountains could not be considered as facts either. During the asylum proceedings, the applicant had given inconsistent statements as to how he had joined PKK, his statement that he had sought weapons training had been found to be non-credible and his statement that, after the confrontation, he had started wondering whether he was prepared to fight other Kurds, who constituted some of the government forces, was also found to be non-credible. Moreover, the applicant's statement that the Turkish authorities did not realize during his alleged detentions that he was wanted seems non-credible based on the background information available on the nature and the intensity of the efforts of the Turkish police and intelligence service to arrest Kurdish opponents of the Turkish regime and charge them under Turkish anti-terrorism legislation. The Board observed in respect of the medical examination of the applicant conducted by the Amnesty International Danish Medical Group that, on several points, the findings mentioned in the report of 25 September 2014 did not accord with the information regarding physical abuse committed against the applicant stated by him during the asylum proceedings.

5. The Refugee Appeals Board further contended that the applicant's grounds for seeking asylum (except for his fear of punishment for evasion of compulsory military service) related to the applicant's termination of his membership in PKK and the Kurdistan Communities Union and his escape from the training camp in the summer of 2010, and that in any case the conclusion of the medical examination was not seen to be directly linked to the assessment of the credibility of the applicant's statements about the events included in that part of his grounds for seeking asylum which had emerged after the time when the torture allegedly took place. Moreover, the Board found no basis for considering the applicant's statements about and recollection of the events included in that part of his

grounds for asylum to have been affected in a crucial way by any physical abuse to which he had allegedly been subjected.

6. According to the information available, the circumstance that the applicant had not performed compulsory military service would not entail any disproportionate sanction, and it was found that such a circumstance could not justify a residence permit.

7. Based on the above, the Refugee Appeals Board found that the conditions for residence under section 7 (1) or 7 (2) of the Aliens Act had not been satisfied.

8. Against that background, the Board did not allow the applicant's alternative claim for adjournment of the case pending an examination for signs of torture, or his other alternative claim for remission of the case to the Danish Immigration Service for re-examination.

9. Also against that background, the Board maintained that returning the applicant to Turkey would not be contrary to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Board continued to find that the applicant had not satisfied the conditions for residence under section 7 of the Aliens Act.

10. The full wording of the Board's decision of 17 March 2016 is appended to the State party's submission.

11. It appears from the above decision of the Board that, in the light of the Committee's decision, the Board has allowed the complainant a full reconsideration of his asylum case, taking into account the obligations of Denmark under the Convention and the Committee's decision.

12. With regard to the Committee's finding of violation of article 12, read in conjunction with article 16, of the Convention, the State party submits that it follows from paragraph 6.2 of the Committee's decision concerning this part of the communication that the Committee considered that it was not precluded by the requirements of article 22 5 (b) of the Convention from examining the present case. The State party maintains that the decision of the Committee seems to be based on misunderstandings regarding the facts of the case and the relevant provisions of Danish law. It maintains that the complainant, in his comments of 7 October 2014, referred to four different issues as being one and the same issue, and that all of those issues must be considered and appealed separately under Danish law. The State party maintains that domestic remedies have been exhausted for only one of those four issues, which are the following:

(a) Detention under section 36 of the Aliens Act: the complainant did not appeal the orders of the District Court of Hillerød to the High Court at any time and therefore has not exhausted domestic remedies;

(b) Order for the presentation of the complainant at the embassy of Turkey in Copenhagen: domestic remedies have been exhausted;

(c) Use of force by prison officers on 18 December 2013: pursuant to section 63 of the Constitution of Denmark, the decision made by the Department of Prisons and Probation on 22 May 2014 can be brought before the Danish courts. The complainant failed to bring the decision before the Danish courts and therefore has not exhausted domestic remedies;

(d) Handling of the complainant by the police on 18 December 2013: if the complainant had wanted to complain about the practice, policy or procedure of the police in connection with his detention, such complaint could be lodged with the Danish National Police, with the right to appeal the decision to the Ministry of Justice. He never lodged any complaint about police practice, policy or procedure in connection with his detention and

therefore has not exhausted domestic remedies. Against this background, the State party asks the Committee to reconsider this part of the communication.

13. With regard to general measures taken to give effect to the decision of the Committee, the State party submits that, when exercising their powers under the Aliens Act, the Danish Immigration Service and the Refugee Appeals Board are legally obliged to take the international obligations of Denmark into account, including the jurisprudence of the Committee.

14. The decision adopted by the Committee in the case at hand will therefore be taken into account by the Danish Immigration Service and the Refugee Appeals Board in their assessment of the international obligations of Denmark.

15. At its meetings, the Coordination Committee of the Refugee Appeals Board is always informed of any new decisions or views adopted by the Committee regarding Denmark in which a violation is found to have occurred in cases involving asylum seekers. The Coordination Committee meets every two months. All members of the Refugee Appeals Board receive a copy of the minutes of Coordination Committee meetings.

16. In addition, decisions adopted by the Committee are reported in the annual report of the Board. That report is distributed to all members of the Board for use in their work and is publicly available on the website of the Board. The annual report also includes a chapter on cases brought before international bodies, which comprises a general paragraph on the relevant conventions and a review of the decisions and views transmitted to Denmark during the reporting year.

17. The Government further observes that, when exercising their powers under Danish law, police and prison officers are also legally obliged to take the international obligations of Denmark into account, including the jurisprudence of the Committee. The decision adopted by the Committee in the present case has also been forwarded to the Prison and Probation Service and the Danish National Police. The Ministry of Foreign Affairs has made the Committee's decision publicly available on its website.

18. On 4 April 2016, the complainant submitted a new communication to the Committee, stating that the State party had failed to implement the decision of the Committee. He submitted that, on 14 March 2016, the Refugee Appeals Board had reopened the complainant's case for review at an oral hearing before a new panel and, in a decision dated 17 March 2016, had again rejected his asylum claims. During the hearing, the complainant had again stated that he was willing to submit to an independent medical examination regarding his torture claims, but that no such examination had been ordered. The members of the Board had had the opportunity to ask him questions but had refrained from doing so. After the decision of the Board not to grant his application for asylum, the complainant had been arrested and placed in detention prior to deportation.

19. The complainant further submitted that the State party had also failed to redress the violations of article 12, read in conjunction with article 16, of the Convention.

20. The Committee decided to register a new complaint regarding the allegations of potential violation of article 3 of the Convention and to keep the follow-up dialogue open with regard to the violations of article 12, read in conjunction with article 16, of the Convention.

B. Communication No. 441/2010

Evloev v. Kazakhstan

Decision adopted on:	5 November 2013
Violation:	Article 1, in conjunction with article 2 (1); and articles 12-15
Remedy:	The Committee urged the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with redress and fair and adequate reparation for the suffering inflicted, including compensation and full rehabilitation, and to prevent similar violations in the future.

21. On 1 February 2016, the complainant submitted that for two years the State party had failed to implement the Committee's decision. No investigation had taken place; his request for compensation and reparation had been rejected; and no measures had been taken to prevent similar violations in the future. The complainant had filed a request for compensation before a court in Astana on 5 September 2014. On 21 October 2014, the court had refused to accept as evidence two medical examination reports demonstrating the complainant's injuries. On the same date, the court had rejected his compensation claim. The decision had been confirmed on appeal on 25 November 2014 by the appellate court and on 17 December 2015 by the cassation court.

22. The complainant, who is serving his sentence in prison 161/3, further described in detail an incident which had taken place on 14 January 2014, when he and other inmates were severely beaten and humiliated by prison guards, allegedly as a deterrent against the submission of complaints.

23. In February 2016, the complainant's submission was transmitted to the State party for comment.

24. The Committee decided to keep the follow-up dialogue open.

C. Communication No. 497/2012

Bairamov v. Kazakhstan

Decision adopted on:	14 May 2014
Violation:	Article 1, in conjunction with article 2 (1); and articles 12-15
Remedy:	The Committee urged the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with full and adequate reparation, including compensation and rehabilitation, and to prevent similar violations in the future.

25. On 29 December 2015, the State party submitted that on 30 July 2014 the prosecutor's office of Qostanay province had initiated a criminal case under subparagraph A of part 2 of article 347-1 of the Criminal Code ("Torture"). Following a pretrial investigation, on 28 August 2015, the criminal procedure had been terminated in accordance with article 35.1.2 of the Criminal Procedure Code because it had been found

that no crime had occurred. At the time of submission, the case file was with the general prosecutor's office for examination. The results of that examination would be communicated to the Committee at a later stage. The complainant had been awarded compensation of 100,000 tenge (about €255) by a decision of the Qostanay City Court on 12 December 2014. The decisions had been confirmed upon appeal by the Government: on 12 February 2015 by the appellate court and on 15 April 2015 by the cassation court. The above-mentioned amount had been paid in full to the complainant on 10 April 2015.

26. Regarding the recommendation to prevent similar violations in the future, the State party submitted that on 13 July 2013 it had adopted a law on amending and complementing certain legislative acts of the Republic of Kazakhstan on the issues related to the creation of a national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment. The law envisioned regular visits by the National Human Rights Defender, observation commissions and non-governmental organizations to detention centres, penitentiaries and other places of detention. It also envisioned the creation of a national preventive mechanism and the conditions for its work. The mechanism would function in accordance with recommendations contained in Human Rights Council resolution 18/12, on human rights in the administration of justice, in particular juvenile justice. Article 146 of the new Criminal Code (in force since 1 January 2015) foresaw criminal responsibility for torture in line with article 1 of the Convention. The penalties provided had been increased to 10 to 12 years of imprisonment for torture resulting in grievous bodily harm. The mechanism for complaints regarding torture had been simplified. Special mailboxes had been installed in all penitentiary institutions; they had been placed in accessible locations and could be opened only by the Prosecutor. The State party provided further details regarding its judicial reforms and monitoring of places of detention.

27. The State party's observations were transmitted in January 2016 to the complainant for comment.

28. The Committee decided to keep the dialogue open.

D. Communication No. 538/2013

Tursunov v. Kazakhstan	
Decision adopted on:	8 May 2015
Violation:	Articles 3 and 22 (extradition to Uzbekistan)
Remedy:	The Committee urged the State party to provide redress for the complainant, including regular visits and effective monitoring to ensure that he was not subjected to treatment contrary to article 3 of the Convention. The complainant was also entitled to adequate compensation.

29. On 1 February 2016 and on 11 March 2016, the State party submitted that its general prosecutor's office had requested from the general prosecutor's office of Uzbekistan the organization of a visit to the complainant in prison by the State party's diplomatic service on both a regular and an ad hoc basis. It had been agreed that a visit would take place in April 2016. The implementation of the Committee's decision was being monitored by the general prosecutor's office of Kazakhstan.

30. The submissions were transmitted to the complainant's counsel for comment.

31. The Committee decided to keep the follow-up dialogue open.

E. Communication No. 500/2012

Ramirez et al. v. Mexico	
Decision adopted on:	4 August 2015
Violation:	Articles 1, 2 (1), 12-15 and 22
Remedy:	The Committee urged the State party: (a) to launch a thorough and effective investigation into the acts of torture; (b) to prosecute, sentence and punish appropriately the persons found guilty of the violations; (c) to order the immediate release of the complainants; and (d) to award fair and adequate compensation to the complainants and their families and provide rehabilitation. The Committee also reiterated the need to repeal the provision of preventive custody from its legislation, and to ensure that military forces were not responsible for law and order.

32. On 8 February 2016, the State party submitted that it had taken note of the Committee's views and recommendations. Nevertheless, the State party challenged the Committee's decision and submitted that domestic remedies were appropriate for the complainants' claims and had not been exhausted.

33. The State party was concerned about the Committee's recommendation related to the complainants' immediate release from prison. The State party asserted that the Committee should refrain from adopting recommendations that jeopardized the State's national interest and public safety. Accordingly, the State party noted its refusal to take any measure in order to give effect to that kind of recommendation.

34. The State party submitted that, regarding the case, on 7 October 2015, the National Human Rights Commission had adopted recommendation 33/2015, addressed to the Secretariat of National Defence and the Office of the General Prosecutor. In compliance with the recommendation of the Commission, the Secretariat had taken the following measures:

- Sent a copy of recommendation 33/2015 to the Executive Commission on Assistance to Victims in order to determinate the way to grant appropriate reparation for the complainants
- Collaborated with the investigation of the Office of the General Prosecutor, providing it with the information required
- Issued instructions for the employment of video cameras by the armed forces to document interactions with civilians, pursuant the Manual on the Use of Force
- Elaborated a comprehensive programme on human rights addressed to the 2nd Military Zone of Tijuana, which had been implemented since 31 October 2015.

35. The State party indicated that the complainants had been acquitted and released from prison on 25 November 2015 by the second district judge for federal criminal proceedings in Nayarit state, who considered that they had been subjected to acts of torture.

36. The State party provided information on the creation of an ad hoc working group composed of the Ministry of the Interior, the Ministry of Foreign Affairs, the Office of the General Prosecutor and the complainants' representatives, and that the Office had initiated a prior enquiry related to the acts of torture denounced by the complainants.

37. The State party provided assurances that it would submit to the Committee information regarding future measures adopted by the authorities to fulfil the recommendation of the National Human Rights Commission.

38. The State party's observations were transmitted in February 2016 to the complainants for comment.

39. The Committee decided to keep the follow-up dialogue open.

F. Communication No. 569/2013

M.C. v. The Netherlands	
Decision adopted on:	30 November 2015
Violation:	Article 3 (expulsion to Guinea)
Remedy:	The Committee was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where there was a real risk of him being expelled or returned to Guinea.

40. On 21 March 2016, the State party submitted that the complainant had been granted an asylum residence permit that was valid until March 2021. It maintained that, with the above measure, due effect had been given to the decision of the Committee.

41. The State party's submission was transmitted to the complainant for comment.

42. The Committee decided to keep the follow-up dialogue open to allow the complainant to provide comment.

G. Communication No. 613/2014

F.B. v. The Netherlands	
Decision adopted on:	20 November 2015
Violation:	Article 3 (deportation to Guinea)
Remedy:	The Committee was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where she ran a real risk of being expelled or returned to Guinea

43. On 21 March 2016, the State party submitted that the complainant had been granted an asylum residence permit that was valid until March 2021. It maintained that, with the above measure, due effect had been given to the decision of the Committee.

44. On 7 May, the complainant submitted that she had no comments on the State party's submission.

45. The Committee's decided to close the dialogue with a note of satisfactory resolution.

H. Communication No. 544/2013

A.K. v. Switzerland	
Decision adopted on:	8 May 2015
Violation:	Article 3 (removal to Turkey)
Remedy:	The Committee expressed its wish to be informed, within 90 days, of whatever steps the State party had taken in the light of the present observations.

46. On 4 November 2015, the complainant submitted that on 1 July 2015 he had been granted refugee status in Switzerland. He noted, however, that by an additional decision of 2 July 2015, the State party had excluded his family from the decision. He maintained that the situation in Turkey was very worrying and that that the situation of his family remained uncertain. He had filed a request for family reunification on 16 September 2015.

47. On 12 January 2016, the State party submitted that the family members of the complainant had been mentioned by mistake in the initial decision granting him asylum and that they were still located in Turkey. It also submitted that only the case of the complainant had been presented before the Committee. However, it indicated that on 22 December 2015 its migration authorities had authorized the wife and the minor children of the complainant to enter Switzerland.

48. In February 2016, the State party's observations were transmitted to the complainant's counsel for comment.

49. The Committee decided to close the dialogue with a note of satisfactory resolution.