



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

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**Committee against Torture**

**Communication No. 433/2010**

**Decision adopted by the Committee at its forty-eighth session, 7 May–1 June 2012**

<i>Submitted by:</i>	Alexander Gerasimov (represented by the Open Society Justice Initiative and the Kazakhstan International Bureau for Human Rights and the Rule of Law)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Kazakhstan
<i>Date of complaint:</i>	22 April 2010 (initial submission)
<i>Date of decision:</i>	24 May 2012
<i>Subject matter:</i>	Failure to carry out a prompt and impartial investigation into torture allegations, to bring perpetrators to justice and provide full and adequate reparation;
<i>Procedural issues:</i>	<i>Ratione temporis</i> ; exhaustion of domestic remedies; withdrawal of complaint before the Committee
<i>Substantive issues:</i>	Torture; severe pain or suffering; effective measures to prevent torture; prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed; right to complain to, and to have his case promptly and impartially examined by, competent authorities; right to fair and adequate compensation; interference with the right of petition under article 22
<i>Articles of the Convention:</i>	1; 2; 12; 13; 14; 22

## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-seventh session)**

concerning

#### **Communication No. 433/2010\*\***

<i>Submitted by:</i>	Alexander Gerasimov (represented by the Open Society Justice Initiative and the Kazakhstan International Bureau for Human Rights and the Rule of Law)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Kazakhstan
<i>Date of complaint:</i>	22 April 2010 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting on 24 May 2012,*

*Having concluded* its consideration of complaint No. 433/2010, submitted to the Committee against Torture by Alexander Gerasimov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainants, their counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1. The complainant is Alexander Gerasimov, a Kazakh national born in 1969. He claims to be a victim of a violation by Kazakhstan<sup>1</sup> of articles 1, 2, 12, 13, 14 and 22, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

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\*\* The decision was adopted by vote. Nine members voted in favour and one member, Xuexian Wang, abstained.

<sup>1</sup> Kazakhstan made the declaration under article 22 of the Convention against Torture on 21 February 2008.

Punishment. He is represented by the Open Society Justice Initiative and the Kazakhstan International Bureau for Human Rights and the Rule of Law.<sup>2</sup>

### **The facts as presented by the complainant**

2.1 On 27 March 2007, the complainant went to the local police station, the Kostanai City Southern Department of Internal Affairs, where his stepson A. had been detained. The complainant was taken to an office on the third floor and was locked in there for approximately 30 minutes.

2.2 At around 8 p.m., five police officers entered the office and demanded that he confess to the murder of an elderly woman living in his neighbourhood. While acknowledging that he knew the woman, he denied any involvement in her death. Over about an hour, the complainant was interrogated and advised to confess the crime. He continued to deny the allegations. One of the officers inflicted several heavy blows to his kidneys. The officers then threatened him with sexual violence.

2.3 He was thereafter forced to the floor, chest down. The officers tied his hands behind his back using his belt. Four officers held his legs and torso so that he could not move. The fifth officer took a thick clear polypropylene bag and placed it over his head. This officer then forced his right knee into his back, and began to pull the plastic bag backwards, suffocating him until he bled from his nose, ears and from the abrasions on his face (technique known as “dry submarino”) before finally losing consciousness. When the complainant started losing consciousness, the bag was loosened. This process was repeated multiple times.

2.4 As a result of such treatment, the complainant became disoriented and stopped resisting. At some point, his blood became visible on the polypropylene bag and on the floor. His eyebrow area, nose and ears were all bleeding. Upon seeing the blood, the officers stopped the torture. The complainant spent the night in a chair, under the supervision of a police officer.

2.5 The complainant’s detention on 27 March 2007 was not registered and he was not provided with a lawyer. On 28 March 2007, he was interrogated by the police investigator, who hit him on the head with a large book. At 6 p.m., he was released without being charged with any offence. Immediately following his release, he suffered from severe headaches and nausea. Once home, he continued to have severe headaches and the same evening was admitted to the Neurosurgical Department at the Kostanai City Hospital, where he was diagnosed with a major closed craniocerebral trauma, brain contusion, contusions to the right kidney, the lumbar region, and the soft tissue of the head, and a contused wound to the right superciliary arch.<sup>3</sup> He remained in the hospital for 13 days, and after discharge continued to experience strong headaches, pain in his kidney areas, and hand and eye tremors.

2.6 On 29 March 2007, the complainant’s stepson submitted a complaint both on his own behalf and on behalf of the complainant to the Prosecutor’s Office for the City of Kostanai (City Prosecutor’s Office). On 5 April 2007, the complainant himself submitted a complaint to Southern Department of Internal Affairs, which is the police station where the alleged torture occurred. In April 2007, the Southern Department of Internal Affairs

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<sup>2</sup> A power of attorney, dated 22 February 2010 and signed by the complainant, is enclosed with the complaint.

<sup>3</sup> Discharge note available on file. The complainant’s injuries are also depicted in the photographs provided. A DVD, containing the complainant’s oral testimony about his torture, is also available on file.

undertook a preliminary inquiry and took statements from the complainant, his stepsons and three police officers. The police officers who were interviewed stated that the complainant and his stepsons were questioned at the police station but that they did not observe any injuries. Other officers suggested that they were never even brought to the police station.

2.7 On 23 April 2007, a medical examination was conducted to evaluate his health. This document has never been provided to the complainant or his legal representatives. Between April and August 2007, the complainant was treated by a neurologist. He began to suffer from hallucinations and a sense of insurmountable and indeterminate fear. On 7 August 2007, he was diagnosed with post-traumatic stress disorder. He was referred to a psychiatric hospital for further examination and treatment, where the diagnosis was confirmed, and he underwent treatment from 8 August to 3 September 2007.

2.8 On 8 May 2007, the investigator decided not to initiate a criminal investigation. The decision was upheld by the Senior Assistant Prosecutor for Kostanai City on 30 May 2007, but thereafter quashed by the City Prosecutor's office on 10 June 2007 who ordered the Department of Internal Security within the Kostanai Regional Department of Interior Affairs to investigate the complainant's allegations.

2.9 In June 2007, the complainant received several anonymous phone calls from unknown people who threatened him with initiation of a criminal case against him unless he withdrew his complaint. The complainant feared for his and his family's safety and filed a complaint regarding the threats on 13 June 2007. On 12 June 2007, he had already filed a complaint to the Regional Prosecutor's Office because police officers had offered his stepsons 500,000 tenge (approximately 4,000 USD) in exchange for the withdrawal of their complaints and their stepfather's complaint.

2.10 On 19 June 2007, the Regional Prosecutor's office for Kostanai Region (Regional Prosecutor's Office) informed him that his complaint had been sent to the Department of Internal Security of the Regional Department of Internal Affairs for further review. On 28 June 2007, the Regional Department of Internal Affairs informed him that the review had resulted in finding a violation of the obligation to register a detainee and that disciplinary sanctions, up to removal from their positions, were to be taken against a number of staff. It also stated that criminal charges had been brought against staff of the Southern Department of Internal Affairs under article 308, part 4 (a), of the Criminal Code of Kazakhstan, which criminalizes actions taken in excess of official authority or involving the use or threat of violence.<sup>4</sup>

2.11 On 16 July 2007, a scientific examination was conducted on the clothes worn by the complainant and three police officers present in the Southern Department of Internal Affairs on the night of 27 March 2007. Neither the complainant nor his lawyer knew about this examination. The examination concluded that fibers found on the complainant's clothes were not similar to those found on the officers' clothing. However, the results of the examination appear to have been compromised as the officers had washed their clothes.

2.12 In July, the Regional Prosecutor's Office reversed the Regional Department of Internal Affairs decision to open a criminal investigation and sent the case to the Department for Combating Economic Crimes and Corruption for the Kostanai Region (DCECC) for further examination. On 5 September 2007, DCECC refused to initiate criminal proceedings for lack of evidence establishing a link between the police officers' actions and the complainant's injuries. On 12 September 2007, the complainant appealed

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<sup>4</sup> These charges appear to have been dropped when the case was transferred to the Department for Combating Economic Crimes and Corruption (DCECC) in September 2007.

the DCECC decision to the Regional Prosecutor's Office, which reversed the DCECC decision on 24 September 2007 and referred the case back for further examination.

2.13 On 3 December 2007, the Regional Department of Internal Affairs reported on its investigation, stating that a number of flagrant violations of laws and regulations had been found, that 10 police officers had been removed from their positions and that a follow-up investigation was being conducted. On 1 February 2008, DCECC refused to initiate criminal proceedings on grounds that it was not possible to prove involvement of the police officers. On 19 March 2008, the Regional Prosecutor's Office upheld the DCECC decision. A further appeal to the Second Court of the City of Kostanai (City Court) was rejected on 25 March 2008. On 20 May 2008, the complainant further requested the General Prosecutor's Office to initiate a criminal investigation in view of deficiencies of the DCECC investigation;<sup>5</sup> the request was rejected on 11 June 2008. As the City Court had already rejected the appeal, no further challenge to this decision was made.

2.14 The complainant claims that he has exhausted all domestic remedies with numerous complaints to the prosecution authorities and to the court, including four appeals against the refusal to start a criminal investigation. Although the decision of the City Court suggested that there was a further appeal to the Regional Court, that appeal was not effective in practice. Article 109 (9) of the Criminal Procedure Code of Kazakhstan allows for only three days in which to appeal a decision of the City Court to the Regional Court, counted from the date of the decision. However, the lawyer received the decision only after the three-day period for appeal had expired.

2.15 In addition, there is a real risk of threats and violence against himself and his family if he were to continue his complaint domestically, in view of the threats he has already received in connection with his complaint. Furthermore, the procedure has now become unreasonably delayed such that there is no duty to pursue it further. Given the gravity of the violations against him, only a criminal investigation and prosecution would constitute an effective remedy. The failure of the State party to open a criminal investigation has hindered his ability to invoke any other available remedy.

### **The complaint**

3.1 The complainant claims that the treatment inflicted upon him by police amounted to torture, in violation of article 1. Although the acts of torture complained of preceded the entry into force of the Convention, the violation has a continuous nature. Recalling the Committee's jurisprudence,<sup>6</sup> he claims that the violation has since been affirmed by the State party by act or clear implication, due to its willful failure to acknowledge responsibility for the torture, to make any changes to the legal system that permitted the torture and its continuing failure to conduct an adequate investigation. In addition, he continues to suffer from post-traumatic stress disorder as a result of the torture, which

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<sup>5</sup> The complainant's lawyer argued that: (a) the examination of the complaint was superficial and biased; (b) the forensic medical examination did not appear to consider the complainant's subsequent outpatient care; (c) even if the complainant's injuries were "light", that did not rule out the possibility that he had been tortured; (d) the investigation ignored important contradictions in police officers' testimony; (e) two police officers confirmed that the complainant had been detained and questioned, as his interrogation was recorded at the Regional Department of Internal Affairs on 28 March 2007 and his wife's visit is recorded in the admission log; (f) the investigation failed to exhaust all avenues to identify the persons who inflicted the complainant's injuries. In particular, the police did not interview: the complainant's co-workers; V.P., who notified the complainant's wife that their son had been detained; the medical personnel at the City Hospital where the complainant was treated and other patients in his ward who observed police officers visiting the complainant.

<sup>6</sup> Communication No. 247/2004, *A.A. v. Azerbaijan*, inadmissibility decision adopted on 25 November 2005.

means that the previous violation continues to have an effect upon him, which itself amounts to a violation of the Convention.

3.2 The complainant claims that the State party has failed to establish adequate safeguards to prevent ill-treatment and torture, in breach of article 2 of the Convention. His detention was not registered nor was he provided with access to a lawyer and independent examination by a medical doctor.

3.3 In violation of articles 12 and 13, no prompt, impartial and effective investigation was carried out into his allegations of torture. The investigation was not conducted by an independent and impartial body, since it was entrusted to the Southern Department of Internal Affairs who were alleged to have committed the torture and thereafter to the body hierarchically superior, the Regional Department of Internal Affairs. Furthermore, the preliminary investigation commenced only one month after the complaint and the scientific examination of the complainant's clothes was conducted three months after the alleged torture. The investigation failed to interview key witnesses and he was excluded from effective participation in the investigative process and never consulted on the substance of the investigation. The investigation failed to ascertain and attribute criminal responsibility for the torture inflicted on him. Although his attempts to bring about an effective investigation continued after the entry into force of the Convention, no investigation has been undertaken that satisfies the requirements of the Convention.

3.4 He further claims that the domestic law effectively prevents him from bringing civil proceedings for compensation in violation of article 14 of the Convention, as the right to compensation is recognized only after conviction of the officials by a criminal court. As a result, he has not obtained compensation or medical rehabilitation for his torture.

#### **State party's preliminary observations**

4.1 On 18 January 2011, the State party provided its preliminary observations. It submits that, on 6 December 2010, the General Prosecutor's Office quashed the DCECC decision of 1 February 2008 refusing to initiate criminal proceedings and opened a criminal case against the police officers of the Southern Department of Internal Affairs pursuant to article 347-1, part 2 (a), of the Criminal Code (torture).

4.2 The State party further refers to a number of decrees, policies and plans of actions to combat torture that have been adopted in response to torture allegations, including the regular monitoring of places of detention with the participation of representatives of non-governmental organizations, as well as to the organization of training sessions, round tables and seminars on the prevention of torture and ill-treatment for law enforcement personnel.

#### **Representatives' comments**

5.1 On 28 February 2011, the complainant's representatives confirmed that, on 6 December 2010, in response to the complaint submitted to the Committee, the General Prosecutor's Office opened a criminal case under article 347-1, part 2 (a), of the Criminal Code (torture).<sup>7</sup>

5.2 On 8 January 2011, a psychiatric examination of the complainant was ordered. In view of the anxiety caused by the renewed investigation and interrogations, the complainant's health deteriorated and on 14 January 2011 a doctor prescribed his hospitalization. Therefore, he requested that the examination be postponed. Nevertheless,

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<sup>7</sup> A copy of the decision of 6 December 2010 is available on file.

the psychiatric examination was held on 18 January 2011. On 2 February 2011, the complainant's counsel was allowed to see the psychiatric report, but was not given a copy.

5.3 In the course of the renewed investigation, the complainant was questioned in the presence of a lawyer on at least four occasions: on 19 January, 21 January, 25 January and 2 February 2011. Prior to 19 January 2011, he was questioned without a lawyer. During questioning on 19 January 2011, he gave a detailed statement about the torture to which he had been subjected, consistent with his earlier statements. He again described the physical injuries that he had sustained and the treatment he had suffered.

5.4 The legal representatives further recall the threats that were made against the complainant in 2007 and state that the circumstances of the renewed investigation have led to renewed intimidation. In late January 2011, the complainant's wife informed the Kazakhstan International Bureau for Human Rights and the Rule of Law that the family had received a call from a prosecutor named A.K. threatening to reopen the murder case that was the cause of the initial arrest and torture of the complainant. The prosecutor confirmed to the Bureau during a phone conversation that he had called the family in an attempt to ensure that they give evidence. When asked to refrain from putting pressure on the family, he claimed that he was conducting a thorough investigation. The complainant told a representative of the Bureau on several occasions that his family, in particular his wife, were very "tired" of his complaints, they want to "forget everything and just live". He also mentioned on 18 February 2011 that his family was putting pressure on him to withdraw his complaint. He repeated several times that his wife was very worried about possible retaliation against their family.

5.5 On 21 February 2011, the prosecutor informed the Kazakhstan International Bureau for Human Rights and the Rule of Law that the renewed investigation had been terminated in accordance with article 37 of the Criminal Procedure Code (circumstances excluding criminal investigation) and that, on 5 February 2011, the complainant refused the services of his lawyer, stating that he had no claims against the police.

5.6 The complainant's representatives claim that the renewed investigation lacks independence, is delayed, is not effective and has not resulted in any criminal prosecutions, and refer to the Committee's jurisprudence that an investigation must be commenced promptly and conducted expeditiously.<sup>8 9</sup> In this case, the domestic investigation was suspended on 5 September 2007. By the time the investigation was reopened, almost four years had passed. The restarting of the investigation after the lapse of three years did not constitute an effective investigation.

5.7 The primary focus of the reopened investigation appeared to be the repeated interrogations of the complainant and his family, including a compulsory psychiatric evaluation of him against his will and forcing him to engage in confrontations with the police officers. No charges have been brought against any of the officers responsible for the torture and the investigation has again been closed.

5.8 The complainant's representatives welcome the general measures to combat torture outlined by the State party, but note that the State party has not explained how any of these new measures relate to the complainant's case. These measures are not sufficient to remedy his complaint in the absence of proper reparations, which would have to include recognition of responsibility for the violations, a proper investigation, compensation and rehabilitation. Only the creation of an independent commission of inquiry, having all the characteristics stipulated in chapter III of the Manual on Effective Investigation and Documentation of

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<sup>8</sup> Communication No. 59/1996, *Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.7.

<sup>9</sup> Committee against Torture, concluding observations on Kazakhstan, CAT/C/KAZ/CO/2, para. 24.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, paras. 2, 85 and 86), with full powers to summon witnesses and recommend a criminal prosecution, will be sufficient to remedy the violation of the Convention.

5.9 In response to the complaint to the Committee, the State party questioned the complainant's mental health and ordered a psychiatric evaluation. The renewed investigation has the characteristics of an attempt to intimidate the complainant into withdrawing his petition, a practice widely used in Kazakhstan.<sup>10</sup> Any such intimidation hinders the right of individual petition, as established in articles 13 and 22 of the Convention. By making the declaration under article 22 of the Convention in 2008, Kazakhstan implicitly undertook not to interfere with the right of individuals to communicate with the Committee, as to do so would render the right which it had recognized ineffective in practice.

5.10 Legal representatives are concerned about the request by the prosecutor to subject the complainant to psychiatric evaluation, since the purpose was not to establish the effect of torture but to establish the complainant's mental state "since there was a doubt about his ability to correctly perceive the circumstances relevant to the case".<sup>11</sup> The purpose of the evaluation thus appears to have been to discredit or intimidate the complainant.

5.11 In the light of the above, the State party has violated the complainant's rights under articles 1, 2, 12, 13, and 14, of the Convention.

#### **Complainant's further submission**

6. In March 2011, the complainant provided the Committee with a notarized letter in Russian (with a copy to the Ministry of Foreign Affairs of Kazakhstan), dated 18 February 2011 and accompanied by an English translation, by which he requested the withdrawal of the complaint submitted on his behalf on 22 April 2010, since he has not personally prepared or signed any submission, it having been prepared by the Open Society Justice Initiative and the Kazakhstan International Bureau for Human Rights and the Rule of Law on the basis of his power of attorney.<sup>12</sup> He further stated that the complaints against the police officers were written "in a temper, in a painful nervous condition" and that he had no claims against them.<sup>13</sup>

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

7.1 On 14 April and 6 May 2011, the State party provided further observations. It submits that, on 27 March 2007, the complainant and his two stepsons were suspected of

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<sup>10</sup> Reference to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Kazakhstan, A/HRC/13/39/Add.3. The pattern and practice of intimidation of those who make complaints of torture represent a particular problem in Kazakhstan: "Many of the detainees interviewed by the Special Rapporteur indicated that they had been threatened with further charges, longer imprisonment and, in some cases, sexual violence by fellow inmates in order to make them withdraw complaints or sign declarations that they did not have any complaints or statements that they had sustained injuries while resisting arrest ... Such behaviour, besides going counter to international standards, renders any complaints system meaningless and should be addressed in a determined manner." (para. 59); "it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals" (para. 51), and that detainees had suffered intimidation in preparation for his visit (paras. 22 and 73). As a result, he identified a need for the State to take measures to "protect complainants against reprisals" (para. 80 (c)).

<sup>11</sup> Decision of 8 January 2011 ordering a psychiatric examination (available on file).

<sup>12</sup> See footnote 2 above.

<sup>13</sup> The notarized letter is dated 18 February 2011 and is signed by the complainant.

having committed the murder of an elderly woman and were taken to the Southern Department of Internal Affairs. On 30 March and 2 April 2007, they filed complaints to the City Prosecutor's Office against officers of the Department of Internal Affairs (A., B. and M.), claiming that they had been mistreated in order to make them to confess to the murder. On 30 May 2007, the Senior Assistant Prosecutor for Kostanai City refused to open a criminal case for lack of evidence. The decision was quashed on 10 June 2007 by the City Prosecutor's Office due to incomplete investigation.

7.2 On 12 and 13 June 2007, the complainant filed complaints to the Regional Prosecutor's Office, claiming that he was receiving threats from unknown persons to withdraw his complaints. On 18 June 2007, the respective complaints were forwarded to the Department of Internal Security within the Regional Department of Internal Affairs. On 25 June 2007, the Department of Internal Security opened a criminal case against police officers under article 308, part 4 (a), of the Criminal Code (abuse of power or official authority with aggravating circumstances). The case was closed on 29 June 2007, for lack of evidence. On 27 June 2007, eight police officers, including Mr. A., Mr. B. and Mr. M., were subject to various disciplinary sanctions for violations of the internal regulations that resulted in the unlawful detention of the complainant and his stepsons.

7.3 On 3 July 2007, a criminal case was reopened by the Department of Internal Security, decision which was quashed by the Regional Prosecutor's Office on 18 July 2007, who transmitted the case file to DCECC for further investigation. DCECC decided on two occasions not to open a criminal case for lack of evidence; however, those decisions were quashed by the Regional Prosecutor's Office due to incomplete investigation. On 1 February 2008, DCECC again refused to open a criminal case for lack of evidence. Excepting the complainant's contradictory and inconsistent testimonies and the findings of the forensic medical examination, no other evidence in support of his allegations was found. All avenues for collection of additional evidence have been exhausted.

7.4 On 6 December 2010, in order to verify the allegations presented by the complainant to the Committee, the DCECC decision of 1 February 2008 was quashed by the General Prosecutor's Office and a criminal case was opened against the police officers under article 347-1, part 2 (a), of the Criminal Code (torture).

7.5 During his interrogation, the complainant stated that, on 27 March 2007, when he attended the police station because of his stepson's detention, he was taken to the third floor where three policemen mistreated him in order to obtain a confession to the murder of his neighbour. He spent the night on a chair under the supervision of a policeman and was interrogated by the investigator the next morning. Upon release on 28 March 2007, he was hospitalized in the Kostanai City Hospital.

7.6 During their questioning as witnesses, the complainant's wife, his stepsons and their friend refused to testify, requesting the closure of the investigation and mentioning that they have no claims against police, although during the preliminary inquiry the complainant's stepsons claimed that they had been ill-treated by policemen in order to make them confess to the murder of their neighbour.

7.7 In the course of the preliminary inquiry, the complainant gave contradictory statements. During the confrontation with policemen, the complainant stated that Mr. A only suffocated him with the plastic bag. He also declared that Mr. M only recorded his personal information. He did not identify the third officer, Mr. B., and declared that the persons who ill-treated him were not among these three police officers. During their interrogation as suspects, officers denied the allegations of mistreatment and beatings. Other officers of the Southern Department of Internal Affairs interrogated as witnesses did not confirm the fact of torture.

7.8 The medical personnel of the Kostanai City hospital were also questioned and stated that, at the end of March 2007, the complainant was taken to the hospital by ambulance, where he was diagnosed with a cerebral contusion and bruises to the lumbar region, which he claimed he had sustained at the hands of police. The forensic medical examination attested the following injuries: brain contusion, facial abrasions, contused wound on the right supraorbital ridge, contusion of the right kidney and bruises on the body.

7.9 According to the medical records made available to DCECC, the complainant has been under psychiatric supervision since 1978 with the diagnosis of mild mental retardation. On 8 August 2007, in view of the acute reaction of the complainant to stress, his diagnosis was complemented with reactive psychosis and depressive-paranoid syndrome. Based on this, a forensic psychiatric evaluation was ordered on 8 January 2011.

7.10 On 14 January 2011, the complainant requested postponement of investigative actions due to health reasons, which request was denied pending the conduct of the forensic psychiatric examination which, *inter alia*, was called upon to evaluate if he was fit for participation in investigative actions.

7.11 On 18 January 2011, the psychiatric examination concluded that the complainant presented signs of short-term depressive reactions and was fit to participate in investigative actions. The complainant and his legal representative were acquainted with the findings and contested them, without however indicating the grounds.

7.12 The complainant was summoned to testify nine times between 19 December 2010 and 6 February 2011. No pressure was exerted on the complainant and his family. On 19 January 2011, the complainant declined, in writing, the State party's offer for measures of protection because of absence of threats.

7.13 On 3 February 2011, the complainant filed a written statement refusing the services of his lawyer.<sup>14</sup> On 5 February 2011 the Prosecutor of the Kostanai Region received the complainant's written declaration, dated 3 February 2011, by which he had retracted his previous statements since he had a nervous breakdown when testifying and refused to testify because of the amount of time that had passed since the events.<sup>15</sup> On 6 February 2011, the complainant was interrogated about the circumstances in which he wrote the respective letter, and he stated that it was written by him without any external pressure. He refused to testify further because he could not remember the circumstances of the case and he had no claims against the police.<sup>16</sup>

7.14 On 6 February 2011, the Assistant Prosecutor for Kostanai Region closed the criminal case for lack of evidence. The decision is well-founded because of the complainant's contradictory and inconsistent statements given in the course of the investigation, the written refusals of his wife and stepsons to testify,<sup>17</sup> the complainant's retraction of his testimonies and refusal to testify further and the forensic psychiatric examination's findings of 18 January 2011.

7.15 The State party argues that it was impossible to prove the guilt of police officers because of the length of time (three years and eight months) that has passed since the infliction of bodily injuries, the complainant's contradictory statements and the subsequent retraction of those statements, the refusal of the complainant's wife and his stepsons to testify and the denial of torture allegations by police officers.

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<sup>14</sup> Copy available on file.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

7.16 The State party contends that the communication should be declared inadmissible on the following grounds: (1) the events complained of occurred on 27 March 2007 and the last procedural decision on the case was taken on 1 February 2008, i.e. before Kazakhstan recognized the Committee's competence under article 22; (2) the complainant failed to appeal in court, as provided for under article 109 of the Criminal Procedure Code, the decision of 1 February 2008 (refusal to open a criminal case) and of 6 February 2011 (closure of the criminal case) – thus, he has not exhausted all available domestic remedies; (3) in March 2011, the Ministry of Foreign Affairs received a notarized letter by which the complainant withdrew his complaint before the Committee. In the light of the complainant's withdrawal of the complaint submitted to the Committee by third parties, the Committee should not examine it.

7.17 The State party states that the claims advanced by the complainant's representatives are unfounded. The allegations of torture have not been confirmed in the course of the investigation. Furthermore, the complainant declared that he had not submitted any complaint to the Committee and did not insist on further investigation of the criminal case. Although the State party has taken all measures to ensure that an objective investigation is carried out, it is not possible to criminally prosecute the police officers in view of insufficient evidence and the position of the complainant himself. However, eight police officers were subject to various disciplinary sanctions (see para. 7.2). It also submits that, according to domestic legislation, the issue of compensation for torture is decided only after conviction of the officials by a criminal court.

#### **Representatives' comments on admissibility and merits**

8.1 On 15 July 2011, the complainant's representatives submitted comments on admissibility and merits. With regard to the State party's argument that the violations are not within the temporal jurisdiction of the Committee, they reiterate the argument that the torture of the complainant in 2007 has been affirmed by the State party by act or clear implication due to its wilful failure to acknowledge responsibility for the torture and its continuing failure to conduct an adequate investigation also after Kazakhstan made the declaration under article 22 of the Convention on 21 February 2008. The State party ignores the attempts by the complainant to obtain an effective investigation from March to June 2008 by claiming that the last procedural decision was on 1 February 2008. It has still not undertaken an investigation that satisfies the requirements of articles 12 and 13 of the Convention, which constitutes an ongoing violation. The failure to prevent torture and failure to provide adequate remedies for torture are also ongoing violations.

8.2 As to the complainant's alleged failure to appeal the decisions of 1 February 2008 and of 6 February 2011, representatives note that he filed appeals to prosecutors' offices, as well as a judicial appeal to the City Court which was rejected on 25 March 2008. Any further appeal under article 109 was not available or effective in practice. Given the intimidating manner in which the renewed investigation was conducted, it would be unreasonable to expect him to restart the new round of appeals to the same bodies that have already considered his case repeatedly.

8.3 Concerning the complainant's purported withdrawal letters from February 2011 invoked by the State party, none of the incidents relied upon can be seen as a "spontaneous, voluntary repudiation" of the complaint to the Committee. The State party has failed to mention the numerous occasions in January 2011 when, under interrogation, with his lawyer present, the complainant repeated his allegations. Instead, it has focused on the subsequent occasion when, under highly questionable circumstances – i.e. being questioned by the police without a lawyer present – he was intimidated into writing a short letter refusing to testify further. Without a free and unequivocal withdrawal, the Committee should continue to consider the communication as it is in the interests of justice to do so.

8.4 With regard to the complainant's letter dated 3 February 2011 which states that he refuses to testify further and that he recants his testimonies, it does not indicate any wish to withdraw the complaint before the Committee. The complainant wrote this letter after testifying that he was under pressure to withdraw his case. At around the same time, an investigator showed him statements from the police officers who tortured him promising not to accuse him of libel if he withdrew. The State party also mentions that the complainant was interrogated by police on 6 February 2011 about the circumstances of writing the 3 February letter, and the record of the interrogation in which the complainant purportedly refuses to testify further confirms that this interrogation was held without a lawyer, as the police obtained from him a statement refusing the services of his lawyer.

8.5 As to the typed, notarized letter dated 18 February 2011, in Russian and English, and signed by the complainant, which stated that he wished to withdraw his complaint to the Committee as he had acted "in a temper, in a painful nervous condition", legal representatives consulted the complainant and were not instructed to withdraw the complaint before the Committee. The so-called withdrawal letter has been obtained in the following circumstances: following a visit from two police investigators, the complainant had written the 3 February letter and, a few days later, one of the police investigators took him to the notary's office where he was given a printed document which he quickly looked at and signed. Thus, the typed letter dated 18 February 2011 and sent to the Committee was prepared by the State party, rather than by the complainant himself, was altered in a significant way from the original handwritten letter, and was signed as a result of the same pressure.

8.6 The purported withdrawal letter relied upon by the State party is in contrast to the repeated, detailed and consistent testimony which the complainant has given of the torture to which he was subjected. The power of attorney signed by the complainant on 22 February 2010 confirms that he authorizes the Open Society Justice Initiative and the Kazakhstan International Bureau for Human Rights and the Rule of Law to be his representatives before the Committee and to submit applications and other filings on his behalf. Furthermore, he personally signed each page of his statement which was filed with the complaint.<sup>18</sup> In the circumstances, neither the 3 February letter, the 6 February interrogation, nor the 18 February letter constitutes a free and unequivocal expression of intent to withdraw his complaint, and therefore should not bar the Committee from considering the substance of the complaint.

8.7 None of the arguments presented by the State party undermine the consistent accounts which the complainant has given of his torture, but rather corroborate key elements of his narrative and confirm that the renewed investigation was not effective. The State party agrees that the complainant and his stepsons promptly made statements complaining that the police had inflicted physical and mental suffering on them to try and obtain confessions. The complainant maintained this consistent account during many of the questioning sessions in the renewed investigation in January 2011 and the State party concedes that he testified that he was mistreated by police. It is uncontested that he immediately sought medical attention and told the doctors that he had sustained injuries at the hands of police. However, the State party arbitrarily rejects the evidence, failing to respond to the numerous consistent statements made in the original investigation and in January 2011, but instead attempts to dismiss the complainant's evidence as "inconsistent" or being given "in a fit of anger" or "in a nervous condition".

8.8 It is recalled that the psychiatric evaluation of 18 January 2011, ordered "to establish the mental state of the victim, since there is a doubt in his ability to correctly perceive the

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<sup>18</sup> The author indeed signed each page of the Russian version of his complaint to the Committee.

circumstances relevant to the case”, was carried out against the complainant’s will. Furthermore, the State party, while merely referring to a 1978 mental health record, does not explain its relevance to this complaint. No mention was made of this document in the domestic proceedings. Rather than reviewing the clear medical evidence that supports the allegations of ill-treatment, the first response of the authorities was to submit the complainant to a compulsory psychiatric evaluation seemingly aimed at showing that he was mentally ill.

8.9 Kazakhstan has violated its obligations under articles 1, 2, 12, 13 and 14, of the Convention. The renewed investigation of December 2010 was closed again in February 2011 without any meaningful progress or any finding of responsibility and did not provide the complainant with an effective remedy. The first reason given by the State party for closing the renewed investigation is that proving the guilt of the police officers was difficult because of the amount of time that had passed since the infliction of the bodily injuries (3 years and 8 months), thus appearing to admit that the delay had had a direct impact upon the investigation. The renewed investigation did not meet the requirements of independence and impartiality. Its biased nature is confirmed by the fact that, while forcing the complainant to undergo numerous interviews, the investigators were immediately satisfied with the bare denials offered by the police officers involved in the incident.

8.10 The State party has failed to hold anyone accountable for the torture of the complainant or provide access to effective remedies, including compensation, rehabilitation, and adequate reparation for the torture, contrary to articles 12, 13 and 14 of the Convention. The State party does not address the failure to provide redress, but confirms that the complainant is unable to obtain restitution or compensation for his torture because no one has been prosecuted and found guilty.

8.11 The State party has sought to intimidate the complainant into dropping his complaint by forcing him to undergo a psychiatric examination, encouraging his family to pressure him to drop the case and repeatedly interrogating him until, without a lawyer, the police managed to obtain a short note from him refusing to testify further. Given the history of intimidation against the complainant, the Committee should find that there has been a failure of the duty to protect complainants from intimidation (art. 13) and to give effect to the right of individual petition (art. 22).

#### **Additional observations by the State party**

9.1 By note verbale dated 24 October 2011, the State party submits that the Open Society Justice Initiative and the Kazakhstan International Bureau for Human Rights and the Rule of Law are not authorized to represent the complainant before the Committee, in the light of his notarized letter of 18 February 2011 by which he voluntarily withdrew the complaint submitted to the Committee. The arguments of the organizations that they have consulted the complainant and were not instructed to withdraw the complaint, as well as that the notarized letter and the letter addressed to the Prosecutor of the Kostanai Region were written under pressure, are unfounded and not corroborated by documentary evidence.

9.2 It further reiterates its previous arguments that the complainant failed to exhaust all domestic remedies and contests the continuous character of the alleged violations of the complainant’s rights in view of the fact that he is no longer in detention and cannot be subjected to any kind of torture. The State party concludes that the complainant’s allegations are unfounded and requests the Committee not to examine the complaint on the merits.

### **Additional comments by the representatives**

10. By letter of 6 December 2011, complainant's representatives refer to their previous comments, and add that the State party appears not to understand the continuing violation arguments, as of course it is not alleged that the complainant is still being tortured, but that the failure to investigate is ongoing.

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

#### *Consideration of admissibility*

11.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

11.2 The Committee notes that the State party contests the Committee's competence *ratione temporis* on grounds that the torture complained of (27 March 2007) and the last procedural decision of 1 February 2008 refusing to open a criminal case occurred before Kazakhstan made the declaration under article 22 of the Convention. The Committee recalls that a State party's obligations under the Convention apply from the date of its entry into force for that State party. It can examine alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence under article 22 if the effects of these violations continued after the declaration, and if the effects constitute in themselves a violation of the Convention. A continuing violation must be interpreted as an affirmation, after the formulation of the declaration, by act or by clear implication, of the previous violations of the State party.<sup>19</sup> The Committee notes that Kazakhstan made the declaration under article 22 of the Convention on 21 February 2008. Although the events complained of occurred before, the DCECC decision of 1 February 2008 (refusal to open a criminal case against police officers) was upheld by the Regional Prosecutor's Office on 19 March 2008, and the complainant's further appeal to the Second Court of the Kostanai city was rejected on 25 March 2008, i.e., after Kazakhstan made the declaration under article 22. Furthermore, the General Prosecutor's Office upheld the DCECC decision on 11 June 2008 by refusing to initiate a criminal investigation. Therefore, the State party's failure to fulfil its obligations to investigate the complainant's allegations and to provide him with redress continued after the State party recognized the Committee's competence under article 22 of the Convention. In the circumstances, the Committee is not precluded *ratione temporis* from considering the present complaint.

11.3 The Committee takes note of the State party's contention that it should not examine the present complaint in view of the complainant's notarized letter of withdrawal dated 18 February 2011. It considers that, in order for the withdrawal of a complaint submitted to the Committee to be valid, the text of the request for withdrawal must be unequivocal and it must be established that such a request has been made voluntarily. The Committee does not consider it necessary, as demanded by the State party, that documentary evidence be submitted to challenge the probative value of the notarized letter. Indeed, the Committee has the power of free assessment of the facts based upon the full set of circumstances in every case.<sup>20</sup> In this case, the circumstances in which the complainant signed the letter, as related by the complainant's representatives, give the Committee substantial reason to

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<sup>19</sup> See communication No. 247/2004, *A.A. v. Azerbaijan*, inadmissibility decision adopted on 25 November 2005, para. 6.4.

<sup>20</sup> See also the Committee's general comment No. 1 (1996) on the implementation of article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, para. 9 (b).

doubt that the letter was produced voluntarily. In the circumstances, the Committee considers that the letter of 18 February 2011 cannot be regarded as a voluntary withdrawal of the complaint and therefore does not preclude the Committee from considering the present complaint.

11.4 The Committee has ascertained, as it is required to do under article 22, paragraph 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.

11.5 With respect to the exhaustion of domestic remedies, the Committee notes that the State party challenges the admissibility on the grounds that the complainant failed to appeal in court the decisions of 1 February 2008 and of 6 February 2011. It observes, however, that the complainant appealed against the decision of 1 February 2008 to the Second Court of the Kostanai city, which rejected the appeal on 25 March 2008. It further takes note of the complainant's uncontested argument that, although a further appeal to the Regional Court was in principle available, it was not available in practice because the lawyer received the decision after the deadline for appeal had expired. As to the complainant's failure to appeal the decision of 6 February 2011, the Committee notes that the renewed investigation was launched on 6 December 2010, almost four years after the alleged incidents had taken place. Therefore, the Committee considers that domestic proceedings have become unreasonably delayed<sup>21</sup> and that the complainant is thus not required to pursue them further. In the light of the above, the Committee concludes that it is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

11.6 With reference to article 22, paragraph 4, of the Convention and rule 111 of the Committee's rules of procedure, the Committee finds no other obstacle to the admissibility of the communication and proceeds to its examination on the merits.

#### *Consideration of the merits*

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

12.2 The Committee notes that the complainant has alleged a violation of article 2, paragraph 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 was subjected are considered acts of torture within the meaning of article 1 of the Convention.<sup>22</sup> In this respect, the Committee notes the complainant's detailed description of the treatment he was subjected to while in police custody and of the medical reports documenting the physical injuries inflicted on him and the long-lasting psychological damage. The Committee considers that this treatment can be characterized as severe pain and suffering inflicted deliberately by officials with a view to obtaining from the complainant a confession of guilt. The State party, while not contesting the medical evidence, denies any involvement by police. It is uncontested that the complainant was in the custody of the police at the time his injuries were incurred, and that he sought medical treatment for his injuries promptly after his release from their custody. Under these circumstances, the State party should be presumed liable for the harm caused to the complainant unless it provides a compelling alternative explanation. The State party has

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<sup>21</sup> See communication No. 119/1998, *V.N.I.M. v. Canada*, decision adopted on 12 November 2002, para. 6.2.

<sup>22</sup> See communication No. 269/2005, *Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.4.

provided no such explanation, and thus the Committee must conclude that the police officers inflicted the complainant's injuries. The Committee also notes the uncontested failure to register the complainant's detention, to provide him with a lawyer and with access to an independent medical examination.<sup>23</sup> Based on the detailed account which the complainant has given of his torture and medical documentation corroborating his allegations, the Committee concludes that the facts, as reported, constitute torture 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, paragraph 1, of the Convention.

12.3 The complainant also claims that no prompt, impartial and effective investigation has been carried out into his allegations of torture, that those responsible have not been prosecuted and that he and his family received threats and were subject to intimidation, in violation of articles 12 and 13 of the Convention. The Committee notes that, although the complainant reported the acts of torture several days after the events, a preliminary inquiry was initiated only after a month and resulted in a refusal to open a criminal investigation. Thereafter, following the complainant's appeals, the investigation was repeatedly restarted and closed several times by different prosecutorial and investigative bodies, and resulted in closure of the investigation with no criminal responsibility being attributed to police officers due to lack of evidence.

12.4 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>24</sup> In this respect, it notes that the investigation was entrusted to the police department (Southern Department of Internal Affairs) where the alleged torture had been committed and thereafter to the body hierarchically superior (the Department of Internal Security of the Regional Department of Internal Affairs). The Committee recalls its concern that preliminary examinations of complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, and consequently do not lead to impartial examinations.<sup>25</sup>

12.5 Article 12 also requires that the investigation should be prompt, impartial and effective, promptness being essential both to ensuring that the victim cannot continue to be subjected to such acts and 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>26</sup> The Committee notes that a preliminary investigation was started a month after the reported facts of torture, while the medical examination of the complainant was not conducted until 23 April 2007, three weeks after his discharge from the hospital. The scientific examination of the clothes worn by the complainant and the officers accused of torture was carried out only on 16 July 2007, i.e., more than three months after the alleged torture, the result of the examination being compromised because the officers' clothes had been washed. The Committee also notes that the investigation relied heavily on the testimony of the police officers who denied any involvement in the torture and attached little weight to the complainant's consistent statements and the uncontested medical evidence documenting the injuries inflicted on him. Furthermore, although in the course of the renewed investigation of December 2010, the complainant reconfirmed his allegations during numerous interrogations, and despite the

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<sup>23</sup> The Committee expressed concern about insufficient safeguards to prevent torture in detention in its concluding observations on the State party's second periodic report (CAT/C/KAZ/CO/2, para. 9).

<sup>24</sup> See communication No. 257/2004, *Keremedchiev v. Bulgaria*, decision adopted on 11 November 2008, para. 9.4.

<sup>25</sup> See Committee's concluding observations on Kazakhstan, CAT/C/KAZ/CO/2, para. 24.

<sup>26</sup> Communication No. 59/1996, *Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.2.

General Prosecutor's Office's concluding in its decision of 6 December 2010 that the allegations were substantiated and corroborated by medical evidence and witness testimonies, the investigation was terminated in February 2011 without any criminal charges being brought against the perpetrators or any remedy being provided to the complainant.

12.6 The Committee also notes the complainant's allegations that during the investigation of his case in 2007 he and his family suffered threats, attempts at bribing him in order to withdraw his complaints, and that intimidation tactics – including a psychiatric evaluation against his will, pressure on his family to persuade him to drop his claims – were also part of the renewed investigation of 2010–2011. The State party did not provide any information in respect of these allegations other than a blanket denial of use of any pressure or intimidation against the complainant. The Committee notes that the complainant reported the intimidation acts to the Regional Prosecutor's Office in June 2007 and that eventually no action was taken following such complaints. It also notes that such allegations are consistent with the findings of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the existence of a pattern and practice of intimidation of those who make complaints of torture in Kazakhstan.<sup>27</sup> In the light of the psychiatric evaluation conducted against the complainant's will during the renewed investigation, the pressure exercised on his family in order to persuade him to drop his complaints and the incidents of intimidation that had taken place in 2007, the Committee considers that the letters of February 2011 – by which the complainant refused the services of his lawyer and thereafter refused to testify further, retracted his previous statements and declared that he had no claims against the police – cannot be regarded as a result of his free and voluntary consent, without any intimidation or coercion.

12.7 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, impartial and effective investigation into the allegations of torture and to take steps to ensure that he and his family, as the main witnesses, were protected from intimidation as a consequence of their complaints and testimonies given during the investigation, in violation of articles 12 and 13 of the Convention.

12.8 With regard to the alleged violation of article 14 of the Convention, the Committee notes that it is uncontested that the absence of criminal proceedings deprived the complainant of the possibility of filing a civil suit for compensation since, according to domestic law, the right to compensation for torture arises only after conviction of the responsible officials by a criminal court. 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.<sup>28</sup> The Committee considers that, notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding. It considers that compensation should not be delayed until criminal liability has been established. A civil proceeding should be available independently of the criminal proceeding and necessary legislation and institutions for such civil procedures should be in place. If criminal

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<sup>27</sup> See the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Kazakhstan, A/HRC/13/39/Add.3, paras. 51 and 59.

<sup>28</sup> See communication No. 269/2005, *Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.8.

proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence or undue delay of those criminal proceedings constitute a failure on behalf of the State party to fulfil its obligations under the Convention. The Committee emphasizes that disciplinary or administrative remedies without access to effective judicial review cannot be deemed to constitute adequate redress in the context of article 14. 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.<sup>29</sup>

12.9 The Committee reaffirms that, within the framework of the procedure for individual communications set out in article 22, the State party is required to cooperate with the Committee in good faith, to refrain from taking any action that might hinder this process<sup>30</sup> and to abstain from any acts of intimidation or reprisal against complainants, their families and/or authorized representatives, made in connection with a complaint before the Committee. Such acts may include, but are not limited to, any forms of direct or indirect threats, coercion and other improper acts aimed at dissuading or discouraging complainants or potential complainants from submitting their complaints or at pressuring them to withdraw or modify their claims. Any such interference would render the individuals' right of petition under article 22 meaningless.

12.10 The Committee notes that, before signing the withdrawal letter dated 18 February 2011, the complainant signed several other letters by which he refused the assistance of his lawyer, retracted his previous statements and refused to testify further. Thereafter, the only claims against the police remained the ones before the Committee. The Committee observes that the notarized withdrawal letter was sent to the Committee with a copy to the Ministry of Foreign Affairs, with a translation from Russian into English. The Committee takes note of the pressure to which the complainant and his family were subjected at national level, taking also into account the arguments advanced by the complainant's representatives about the circumstances in which the notarized letter was produced and, with reference to its finding that the facts before it disclose a violation of article 13 of the Convention, concludes that the State party's interference with the complainant's right of petition amounts also to a violation of article 22 of the Convention.

13. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations of article 1 in conjunction with article 2, paragraph 1, and of articles 12, 13, 14 and 22, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

14. The Committee urges the State party to conduct a proper, impartial and effective investigation in order to bring to justice those responsible for the complainant's treatment, to take effective measures to ensure that the complainant and his family are protected from any forms of threats and intimidation, to provide the complainant with full and adequate reparation for the suffering inflicted, including compensation and rehabilitation, 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 this decision, of the action it has taken in response to the present decision.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Russian and Chinese as part of the Committee's annual report to the General Assembly.]

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<sup>29</sup> See e.g. communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.5.

<sup>30</sup> See communication No. 341/2008, *Hanafi v. Algeria*, decision adopted on 3 June 2011, para. 9.8.