

Before the United Nations Committee against Torture

In the case of

Alexander Pavlovich GERASIMOV

and

the Republic of Kazakhstan

(Communication No. 433/2010)

**CONSOLIDATED COMMENTS ON THE GOVERNMENT
SUBMISSION ON THE MERITS OF APRIL 2011 AND
FURTHER SUBMISSION ON ADMISSIBILITY AND MERITS OF MAY 2011**

to

The United Nations Committee against Torture
c/o Petitions Team
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Introduction

1. In April 2011, the Government of Kazakhstan submitted to the Committee additional observations on the merits of the Communication (“*Observations*”). In May 2011 the Government submitted further observations on the merits of the complaint, and for the first time made comments regarding its admissibility (“*Further Observations*”). Many of these arguments repeat submissions which the Government has previously made. We have previously responded to several of the arguments made in these submissions in our *Reply to the Government’s Response* submitted on 28 February 2011 (“*Reply*”) and our *Comments to Purported Letter of Withdrawal* submitted on 6 May 2011 (“*Comments*”).
2. As explained in our *Comments*, we have consulted with Mr. Gerasimov and we are not instructed to withdraw the claim against Kazakhstan that is currently before the Committee. Neither the handwritten letter dated 3 February 2011 nor the typed letter dated 18 February 2011 can be regarded as an unequivocal withdrawal, as they were produced as a result of pressure upon Mr. Gerasimov, and are inconsistent with his clear, consistent and repeated testimony of the torture he suffered.
3. As a result, we reiterate the submissions in the *Communication*. The Committee should move to consider the merits of the complaint and find that: (A) the treatment of Mr. Gerasimov amounted to torture; Kazakhstan (B) failed to establish adequate safeguards against ill-treatment, which facilitated his torture; (C) failed to conduct a prompt and effective investigation into the allegations of torture; and (D) failed to provide access to effective remedies including compensation and reparation for the torture. We also reiterate our request in the *Comments* of 6 May 2011 that the Committee should examine whether Kazakhstan has violated its obligation to protect complainants from intimidation and to give effect to the right of individual petition.

Background

4. On 27 March 2007, Mr. Gerasimov was beaten and threatened with sexual violence by police officers in Kostanay, then tied up and repeatedly suffocated until he bled from his nose and ears and lost consciousness. As a result of his injuries he spent 13 days in hospital and suffers from Post-Traumatic Stress Disorder (PTSD). Despite formal complaints there has never been a proper investigation into his torture.
5. On 22 April 2010, Mr. Gerasimov submitted a *Communication* to the Committee regarding the torture that he suffered and the Government’s failure to effectively investigate that torture or provide reparations.
6. On 18 January 2011, Kazakhstan responded to the *Communication*, claiming that a new investigation had been commenced. The opening of this investigation was based on findings that its earlier decision to cancel the investigation was baseless, that Mr. Gerasimov had provided consistent testimony of his torture, and that this testimony was confirmed by statements from other witnesses and by forensic medical evidence (*Reply*, paras. 7-9).¹ However, this investigation was closed in February 2011 without any charges being brought against the police who tortured Mr. Gerasimov (*Reply*, para. 21).
7. In its *Observations* of 14 April 2011, the Government provides an account of the original detention and questioning of Mr. Gerasimov and his step-sons, the investigation of their complaints, and Mr. Gerasimov’s subsequent purported withdrawal of his complaint. The Government’s *Further Observations* of 6 May 2011 provide additional details of the proceedings, including an overview of multiple complaints lodged by Mr. Gerasimov from

¹ See Resolution on the cancellation of the refusal to initiate criminal case, 2 December 2010, p. 2.

30 March 2007 until 1 February 2008 (omitting his complaints to and decisions of the prosecutor's offices and the court of March-June 2008), and describing the renewed investigation from late December 2010 to early February 2011.

Admissibility

8. The communication is admissible and should be considered on the merits. Mr. Gerasimov exhausted all available and effective domestic remedies. The Government's challenge to the admissibility of the case, raised for the first time in its *Further Observations* in May 2011, ignores domestic challenges filed by Mr. Gerasimov between March and May 2008; fails to account for the continuing nature of the violations against him; and actually confirms the unduly delayed nature of the proceedings. Finally, as explained in our previous submissions, the letters relied upon by the Government do not represent a free and unequivocal withdrawal of the communication by Mr. Gerasimov and should not prevent the Committee from considering the merits of the case.

Temporal Jurisdiction

9. Contrary to the government's argument that the violations are not within the temporal jurisdiction of the Committee, the authorities have affirmed the violation, which is continuing in nature.
10. The government claims that the competence of the Committee against Torture to consider communications from Kazakhstan starts only from 2010 (*Further Observations*, p. 3). However, Kazakhstan made the required declaration under Articles 21 and 22 of the UNCAT on 21 February 2008, recognizing the competence of the Committee to receive and consider State and individual communications.
11. We reiterate the arguments, set out in the *Communication* (paras. 57- 65), which explain why the claims are admissible. The torture of Mr. Gerasimov in 2007 has been affirmed by the State Party by act or clear implication, due to its willful failure to acknowledge responsibility for the torture, and its continuing failure to mount an adequate investigation. In addition, Mr. Gerasimov continues to suffer from PTSD as a result of the torture, which means that the previous violation continues to have an effect upon him which itself amounts to a violation of the UNCAT.
12. The failure to investigate that torture also continued after Kazakhstan made its Article 22 declaration. Although the Government claims that the last procedural decision was on 1 February 2008 (*Further Observations*, p. 3), this ignores the attempts by Mr. Gerasimov to obtain an effective investigation from March to June 2008, which were detailed in the *Communication* (paras. 51-54). The Government has still not undertaken an investigation into the torture that satisfies the requirements of the Convention under Article 12 and 13, which constitutes an ongoing violation. The failure to prevent torture and failure to provide adequate remedies for torture are also ongoing violations.

Exhaustion of Domestic Remedies

13. Mr. Gerasimov has exhausted domestic remedies in this case, and is not required to take any further steps to exhaust because any remedies are ineffective and have become unduly prolonged, and because of the threats and intimidation against him (*Communication*, paras. 66-76).
14. The government argues that Mr. Gerasimov has not exhausted domestic remedies, in particular by not appealing the closure of the criminal case on 1 February 2008 and on 6 February 2011. To the contrary, as we informed the Committee in the *Communication*, he did appeal that decision: he filed three appeals to prosecutors' offices, as well as a judicial

appeal which the City Court rejected on 25 March 2008 (*Communication*, para. 52); and any further appeal under Article 109 from this decision of the City Court was not available or effective in practice (*Communication*, para. 68-69). Given the intimidatory manner in which the renewed investigation was conducted, it would be unreasonable to expect Mr. Gerasimov to re-start the new circle of appeals to the same bodies that have already considered his case several times.

15. In addition, as we previously submitted, Mr. Gerasimov could not be required to challenge the closing of the renewed investigation, which was itself ineffective, and had become unduly prolonged (*Reply*, paras. 23-28). Indeed, the Government lists the long period of time since the torture as the first reason for closing the renewed investigation (*Further Observations*, p. 8)

Withdrawal

16. The Government asks the Committee to reject the case on the basis of either of the purported withdrawal letters from February 2011. We reiterate that none of the incidents relied upon can be seen as a “spontaneous, voluntary repudiation” of the complaint to the Committee, as the Government claims (*Further Observations*, p. 5). The Government has failed to mention the numerous occasions in January 2011 (*Reply*, paras 8-11) when, under interrogation, with his lawyer present and on videotape, Mr. Gerasimov 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 substance of the communication as it is in the interests of justice to do so.
17. *Letter of 3 February 2011*. The Government relies on this short letter written by Mr. Gerasimov which states that he refuses to testify further and that he recants his testimonies since he had a nervous breakdown when testifying. The letter does not indicate any wish to withdraw the complaint before the Committee (*Observations*, p. 2 and 4; *Further Observations*, p. 4-5, 10-11). Mr. Gerasimov 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 did withdraw (*Comments*, para. 17).
18. *Interrogation of 6 February 2011*. The *Observations* also mention that Mr. Gerasimov was interrogated by police on 6 February 2011 about the circumstances of writing the letter (*Observations*, p. 3), and annex a very short note of what is said to be a record of the interrogation, in which Mr. Gerasimov purportedly refuses to testify further. The record confirms that this interrogation was held without a lawyer, as the police obtained from Mr. Gerasimov a statement refusing the services of his lawyer (*Further Observations*, p. 10). This record of interrogation is the only one produced by the Government in either of its *Observations*: it has not provided records of any of the nine interrogations or confrontations in the renewed investigation, including those conducted in the presence of counsel on 19 January, 21 January, and 25 January in which Mr. Gerasimov repeated the details of the torture which he suffered (see *Reply*, paras. 8-11).
19. *Letter of 18 February 2011*. The Government also relies on a typed, notarized letter dated 18 February 2011, in Russian and English, and signed by Mr. Gerasimov, which stated that he wished to withdraw his communication to the Committee as he had acted “in a temper, in a painful nervous condition”. In our *Comments* of 6 May 2011, we informed the Committee that following a visit from two police investigators, Mr. Gerasimov had written the 3 February letter and that 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 signed after quickly looking at it. Thus, the typed letter dated 18 February 2011 and sent to the Committee was prepared by the Government, rather than by Mr. Gerasimov himself, was altered in a significant way from the original handwritten letter, and was signed as a result of the same pressure.

20. As explained in the *Reply*, Mr. Gerasimov has come under pressure from his family to withdraw the complaint. He was required by the police to have a confrontation with his wife and her adult sons, during which they demanded that he stop the proceedings; and he informed Ms. Miller from the KIBHR that his family is tired of his complaint and that his wife fears retaliation for his pursuing it (*Reply*, paras. 18-20). This pressure followed previous threats made against Mr. Gerasimov and attempts to bribe him in order to abandon his complaint in 2007 (*Communication*, paras. 44-46; *Reply*, paras. 15-20).
21. The Government has failed to respond to the consistent and detailed accounts which Mr. Gerasimov has given of his torture over the past four years, including a detailed statement and video-reconstruction of the torture given two years later and reaffirmation of his torture during the renewed investigation. Such testimony cannot simply be dismissed as the product of a nervous condition, anger or illness, as the Government claims. The short and perfunctory statement of purported withdrawal relied upon by the Government to avoid liability for the torture is in contrast to the repeated, detailed and consistent testimony which Mr. Gerasimov has given of his torture: to the police and to doctors in early 2007, to the Committee on video in April 2009 and in writing in November 2009, and again during the renewed investigation in January 2011.
22. 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 they should not bar the Committee from considering the substance of Mr. Gerasimov's communication (*Comments*, paras. 13-18, 26-29).

Other Issues

23. The *Observations* also claim that eight policemen were subject to various unspecified disciplinary sanctions for violations of the internal regulations that resulted in unlawful temporary detention of Mr. Gerasimov (*Observations*, p. 3 and 5; *Further Observations*, p. 10). However, no details of the violations or sanctions are provided, and there is no mention of any sanctions for any torture or mistreatment of Mr. Gerasimov.
24. The *Observations* finally argue that Mr. Gerasimov did not personally prepare and sign the Communication to the Committee (*Observations*, p. 3-4; *Further Observations*, p. 4). The Committee has before it a power of authority signed by Mr. Gerasimov on 22 February 2010, which confirms that Mr. Gerasimov authorises the Justice Initiative and KIBHR to be his representatives before the Committee and to submit applications and other filings on his behalf. Furthermore, Mr. Gerasimov personally signed each page of his statement which was filed with the *Communication* (as Exhibit 39), and explained his torture on video (as Exhibit 34).

Arguments on the Merits

25. None of the arguments presented by the Government undermine the consistent accounts which Mr. Gerasimov has given of his torture, but rather corroborate key elements of his narrative and confirm that the renewed investigation into that torture was not effective. Mr. Gerasimov has maintained a consistent and detailed account of the torture he suffered at the hands of the police in March 2007. The renewed investigation appears to have been aimed at intimidating Mr. Gerasimov into withdrawing his complaint.

A. Mr. Gerasimov was Tortured

26. Mr. Gerasimov was tortured in violation of Article 1 of the Convention against Torture. He has provided numerous detailed accounts of the mistreatment and beatings that he was subjected to by the police, which amount to torture. Much of this evidence is acknowledged by the Government.
27. The Government *Observations* are inaccurate in their description of Mr. Gerasimov's detention, stating that Mr. Gerasimov was detained and taken to the police station (*Observations*, p. 1; *Further Observations*, p. 5), whereas in fact he attended the station voluntarily with his wife in order to find his stepson, Anatoly Pshechenko, after being told by his wife that Anatoly had been detained by the police. It was while Mr. Gerasimov was in the police station looking for his stepson that he was grabbed by the police and detained (*Communication*, paras. 11-14; see also *Further Observations*, p. 6).
28. The Government *Observations* agree that Mr. Gerasimov and his stepsons promptly complained of their torture and made statements complaining that the police had inflicted physical and mental suffering on them to try and obtain confessions (*Observations*, p. 1-2; *Further Observations*, p. 5-6). He maintained this consistent account during many of the questioning sessions in the renewed investigation in January 2011 (*Reply*, paras. 13-14; *Comments*, paras. 8-11), and the Government concedes that he testified that he was knocked to the floor, struck repeatedly, and choked or suffocated (*Observations*, p. 2; *Further Observations*, p. 7). The *Observations* also confirm that Mr. Gerasimov immediately sought medical attention, and that at this first opportunity he told the doctors that "In A.P. Gerasimov's own words, he had sustained the bodily injuries at the hands of the police officers" (*Observations*, p. 2; *Further Observations*, p. 7).
29. This testimony is confirmed by medical evidence, as described in the original *Communication* (paras. 32-34). The Government's *Observations* recognise that Mr. Gerasimov "was diagnosed with a cerebral contusion and bruises to the lumbar region" (p. 2). The *Further Observations* specify that "A. P. Gerasimov had bodily injuries in the form of a brain concussion, facial abrasions, a wound on the right supraorbital ridge, a contusion of the right kidney, and bruises on the body" (p. 7). This corroborates Mr. Gerasimov's account of being hit in the head with a book, and held down on the ground while a police officer covered his head with a plastic bag and then:

"forced his right knee into Mr. Gerasimov's back, along his spine, and began to pull the plastic bag backwards. Mr. Gerasimov's head and neck were pulled back. He felt as if his spine would crack." (*Communication*, para. 20; see generally paras. 18-29)
30. However, the Government arbitrarily rejects the consistent evidence of Mr. Gerasimov, failing to respond to the numerous consistent statements made in the original investigation and in January of this year, in which Mr. Gerasimov identified the suspects and gave clear evidence as to the way that they had tortured him. The Government *Observations* variously attempt to dismiss his evidence as "inconsistent" or being given "in a fit of anger" or "in a nervous condition", arguing that when interrogated (without his lawyer) during the renewed investigation, he did not identify certain suspects or said they didn't use violence against him (*Observations*, p. 2; *Further Observations*, p. 8).
31. The *Observations* refer to the 18 January 2011 psychiatric evaluation of Mr. Gerasimov as showing signs of short-term depressive reaction to justify closing the investigation without bringing charges against the police (*Observations*, p. 3). As we noted in our *Reply*, this examination was ordered "to establish the mental state of the victim, since there is a doubt

in his ability to correctly perceive the circumstances relevant to the case”² (*Reply*, paras. 10-12, 54). It was carried out against Mr. Gerasimov’s will (*Reply*, para. 11). The Government notes that Mr. Gerasimov and his representative disagreed with the results of the examination and requested a copy; and confirms that they have not been provided with a copy of the results of this examination. It does not give any reasons for the refusal to provide a copy, beyond stating that according to the legislation, it has no obligation to do so (*Further Observations*, p. 7 and 9).

32. The Government also refers to a 1978 mental health record, but does not provide a copy of it, and does not explain its relevance to this complaint. No mention was made of this document in the domestic proceedings. The Government also refers a diagnosis of an “acute stress reaction” in August 2007 (*Further Observations*, p. 7), which would not be surprising given that Mr. Gerasimov had been tortured a few months before and then threatened when he attempted to pursue justice in his case.
33. In contrast, the Government ignores Mr. Gerasimov’s testimony when questioned in presence of his lawyer on 19, 21 and 25 January 2011, in which he gave detailed accounts of the torture which were consistent with his earlier statements (*Reply*, para. 14; *Comments*, paras. 8-11). Despite confirming that he was interrogated on those dates (*Further Observations*, p. 9), the Government fails to provide the records of this testimony while providing and relying on records of a subsequent interrogation regarding his handwritten statement.
34. The tactics adopted by the Government to discredit the testimony of Mr. Gerasimov should be considered by this Committee. Rather than reviewing the clear medical evidence that supports the allegations of ill-treatment, the first response of the authorities was to require him to submit to a compulsory psychiatric evaluation seemingly aimed at showing that he was mentally ill. Such tactics should have no place in a democratic society.
35. The evidence before the Committee, in particular the consistent and detailed testimony of Mr. Gerasimov, corroborated by medical evidence, is sufficient for the Committee to find that Mr. Gerasimov was tortured, in violation of Article 1 of the Convention.

B. Failure to Adopt Safeguards to Prevent Torture.

36. Kazakhstan failed to establish adequate safeguards against ill-treatment during the initial period of detention, contrary to Article 2. In particular, Kazakhstan failed to adopt measures that effectively prevent unregistered detention, to provide access to a lawyer, and to allow medical examinations to take place. These failures created an environment which facilitated torture.
37. The Government has not provided any arguments which address these failures. The Government’s claims that it implemented new policies and general remedies to combat torture in 2010, while welcome if implemented in practice, do not themselves remedy the absence of safeguards which facilitated the torture in his case (*Reply*, paras. 29-30).

C. Failure to Conduct an Effective Investigation.

38. Kazakhstan has failed to conduct an effective investigation into the allegations of torture, contrary to Article 12 and Article 13: the investigation was not independent or impartial; was not commenced or conducted promptly; failed to take a number of essential steps; did not provide an opportunity for Mr. Gerasimov to be involved; was conducted in secret

² See Resolution Ordering a Psychiatric Examination, 8 January 2011.

without any public report; and did not identify or punish those responsible for Mr. Gerasimov's torture (*Communication*, paras. 120-160).

39. Although the Government reopened the investigation in December 2010, this renewed investigation was closed again in February 2011 without any meaningful progress or any finding of responsibility. We have previously made submissions explaining why this reopened investigation also was not effective and did not provide Mr. Gerasimov with an effective remedy for the violations which he suffered (*Reply*, paras. 23-28).
40. *Ineffective*. Nothing in the Government's *Observations* addresses the inadequate and ineffective nature of the investigations or undermines our arguments on these violations. The *Observations* state that the renewed investigation was closed because of lack of evidence (*Observations*, p. 3 and 4; *Further Observations*, p. 8), and the first reason given in the *Further Observations* for closing the renewed investigation is that "proving the guilt of the field agents was difficult because of the amount of time that had passed since the infliction of the bodily injuries (3 years and 8 months)" (p. 8), thus appearing to admit that the delay had had a direct impact upon the investigation. The renewed investigation did not examine or explain the medical evidence of torture. Indeed, the only medical examination which was conducted was a compulsory psychiatric examination of Mr. Gerasimov against his will and designed to cast doubt on his recollection rather than to evaluate the impact of the torture upon him (see para. **Error! Reference source not found.**, above). The *Further Observations* reveal that although the police interrogated Mr. Gerasimov (or required him to participate in the confrontations with the police or family members) on nine occasions, his family refused to cooperate, the policemen accused of torture either refused to testify or simply denied using violence against him, and "other police officers den[ie]d" that their three colleagues tortured Mr. Gerasimov (p. 8).
41. *Independent*. The *Reply* set out the need for and characteristics of a Commission of Inquiry (paras. 31-46). The brief renewed investigation, which the *Observations* claim was supervised by a task force with members of the Office of the Prosecutor General, the Ministry of Interior and the Department for Combating Economic Crimes and Corruption (*Observations*, p. 1), falls well short of this standard. The investigative actions were conducted under the auspices of the prosecutor's office in Kostanay. The investigators appeared to be interested only in further intimidating Mr. Gerasimov and closing the case. An investigation by a group of law-enforcement bodies who then delegate the actual conduct of the investigation to local officers does not meet to the requirements of the independency and impartiality. The *Observations* demonstrate the biased nature of the renewed investigation, in that while forcing Mr. Gerasimov to undergo numerous interviews, the investigators were immediately satisfied with the bare denials offered by the police officers involved in the incident, and the statements of Mr. Gerasimov's wife or step-sons that "they do not remember anything and have no claims against the police" (*Observations*, p. 2).³
42. *Sanctions*. The Government of Kazakhstan has continued to fail to hold anyone accountable for the torture of Mr. Gerasimov. The *Observations* refer to a series of unspecified disciplinary sanctions against eight policemen for violating internal regulations, leading to the illegal detention of Mr. Gerasimov (*Observations*, p. 3 and 5). However, such sanctions cannot constitute a sufficient safeguard or a remedy for the numerous administrative and procedural failings which facilitated the torture, especially given that the Government

³ The *Further Observations* include applications by Mr. Gerasimov's wife and step-sons requesting that they not be called to testify, and decisions denying these motions. However, they do not provide any information about what steps were taken to pursue these inquiries further.

specifically notes that these measures are not related to the torture of Mr. Gerasimov (*Further Observations*, p. 10). Such vague disciplinary sanctions for breaching internal regulations are not an effective remedy for torture.

43. The Committee should find that Kazakhstan has failed to effectively investigate, in violation of Articles 12 and 13, and recommend that it create an independent Commission of Inquiry.

D. Failure to Provide Redress.

44. Kazakhstan has failed to provide access to effective remedies including compensation, rehabilitation, and adequate reparation for the torture, contrary to Article 14. Despite his efforts to have his claim for ill-treatment by the police properly considered by the courts, Mr. Gerasimov continues to suffer the effects of his torture and receives no assistance for that suffering.
45. Nothing in the Government's *Observations* or previous submissions addresses the failure to provide redress. As we have already demonstrated, the renewed investigation did not lead to any remedies for Mr. Gerasimov, and only put additional pressure on Mr. Gerasimov's family and employment situation, causing him additional distress (see *Reply*, paras. 18-20, 53-54; *Comments*, paras. 6, 14-15). Both sets of *Observations* also confirm that Mr. Gerasimov is unable to obtain restitution or compensation for his torture because no-one has been prosecuted and found guilty (*Observations*, p. 5; *Further Observations*, p. 12).

E. Violation of the Right to Petition

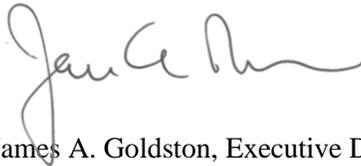
46. The government has sought to intimidate Mr. Gerasimov into dropping his complaint, by forcing him to undergo a psychiatric examination, by encouraging his family to pressure him to drop the case, and by repeatedly interrogating him until, without a lawyer, the police managed to obtain a short note from him refusing to testify further. The failures outlined above demonstrate that the purpose of the renewed investigation was not to find the truth, but to intimidate the author into withdrawing his complaint.
47. The *Comments* of 6 May 2011 and the *Reply* of 28 February 2011 describe the intimidation that Mr. Gerasimov and his family were subjected to as well as how this led his family to put pressure on him to drop the case. The circumstances in which the purported withdrawal letters were obtained are described in the *Comments* of 6 May 2011 (*Comments*, para. 13-18) and above, and was as a result of substantial pressure from his family and from the conduct of the investigation, in which the investigators interrogated the victim rather than the alleged perpetrators. This behavior reflects a history of intimidation in this case. When Mr. Gerasimov initially complained of torture, he and his family were threatened and offered bribes to drop the case (*Communication*, paras. 44-46, 73-74). The *Further Observations* confirm that he complained to the police about these repeated threats at the time (p. 1-2).
48. The Government's indication that it provided "protection" to Mr. Gerasimov, but that he subsequently refused this, does not detract from the interference with his right of petition, given the nature of the pressure that has been placed on Mr. Gerasimov, and the fact that the "protection" measures would likely have involved further official surveillance by the same institutions conducting the investigation.
49. As noted in the *Reply*, the way in which this investigation was conducted should be seen in the context of a pattern and practice in Kazakhstan of intimidation against those who make complaints of torture, which the UN Special Rapporteur on Torture noted in 2009 (*Reply*, paras. 15-20; *Comments*, para. 12).

50. This case is the first communication from Kazakhstan ever filed to a UN treaty body, and the apparent intimidation and pressure exerted on the author set a worrying precedent which could have a chilling effect on future complainants. Given the history of intimidation against Mr. Gerasimov and against others who allege torture in Kazakhstan, the Committee should respond robustly to this tactic and find that there has been a failure of the duty to protect complainants from intimidation (Article 13) and to give effect to the right of individual petition (Article 22).

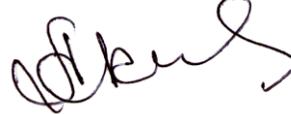
Conclusion

51. In light of the submissions above, along with those made in the original *Communication*, the *Reply* of 28 February 2011, and the *Comments* of 6 May 2011, we ask the Committee to move to examine the merits of this case, to find that Kazakhstan has violated Articles 1, 2, 12, 13 and 14 of the Convention, and to examine whether Kazakhstan has also violated Mr. Gerasimov's right to petition under Articles 13 and 22 of the Convention.

New York, 15 July 2011



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