

Complaint No. 433/2010 (*Gerasimov v. Kazakhstan*)

Complaint No. 433/2010 (*Gerasimov v. Kazakhstan*) concerned a Kazakh national, who claimed to be a victim of a violation by Kazakhstan of articles 1, 2, 12, 13, 14 and 22 of the Convention. The complainant alleged that he had been subjected to torture by the police, who wanted him to confess to having committed a murder. Although the acts of torture he complained of preceded the entry into force of the Convention for Kazakhstan he claimed that the violation was of a continuous nature. He further claimed that the State party had failed to establish adequate safeguards to prevent ill-treatment and torture, that no prompt, impartial and effective investigation was carried out into his allegations, and that the domestic law effectively prevented 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 officials by a criminal court. The Committee noted the complainant's detailed description of the treatment he was subjected to while in police custody, the medical reports documenting the physical injuries and the psychological damage inflicted on him, the uncontested fact 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. The Committee observed that the State party should be presumed liable for the harm caused to the complainant and that it had not provided a compelling alternative explanation, as well as the uncontested failure to register the complainant's detention, to provide him with a lawyer and with access to an independent medical examination. The Committee also noted that, although the complainant reported the acts of torture several days after the events, a preliminary inquiry was initiated only after a month and, despite being closed and re-started several times, it resulted in the closure of the investigation with no criminal responsibility being attributed to police officers. The Committee recalled that an investigation in itself was 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, promptly and effectively, and concluded that the State party had failed to comply with its obligations under that article. The Committee further noted that it was uncontested that according to domestic law, the right to compensation for torture arises only after the conviction of the responsible officials by a criminal court. The Committee lastly noted that the complainant had sent a notarized withdrawal letter with a copy to the Ministry of Foreign Affairs and that the complainant and his family had been subjected to pressure at the national level in connection with his complaints, therefore it had substantial reason to doubt that the withdrawal letter was produced voluntarily and concluded that the State party had interfered with the complainant's right of petition. The Committee concluded that the facts before it disclosed violations of article 1, in conjunction with article 2, paragraph 1, and articles 12, 13, 14 and 22 of the Convention.