



## International Covenant on Civil and Political Rights

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### Advance unedited version

#### Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2945/2017\*\*\*

<i>Communication submitted by:</i>	Alexander Lapshin (represented by his wife, Ecaterina Copilova)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	1 February 2017 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 decision, transmitted to the State party on 2 February 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2022
<i>Subject matter:</i>	Extradition of the author to Azerbaijan, non-refoulement
<i>Procedural issues:</i>	Ratione materiae
<i>Substantive issue:</i>	Torture, inhuman and degrading treatment; non-refoulement
<i>Articles of the Covenant:</i>	7, 13, 14
<i>Articles of the Optional Protocol:</i>	3

1.1 The author of the communication is Alexander Lapshin, a national of the Russian Federation and Israel, born in 1976. At the time of the submission, the author claimed that his extradition to Azerbaijan from Belarus would violate his rights under article 7 of the Covenant. He also claimed to be a victim of a violation of his rights under article 14 of the Covenant. The Covenant entered into force for the State party on 30 December 1992. The author is represented by his wife, Ecaterina Copilova.

1.2 On 2 February 2017, the Special Rapporteur on new communications and interim measures decided to grant the author's request for interim measures and asked the State party not to extradite the author to Azerbaijan while his communication was being considered by

\* Adopted by the Committee at its 135<sup>th</sup> session (27 June-27 July 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobayyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

the Committee. Despite the Committee's request, on 7 February 2017, the author was extradited to Azerbaijan.

### **Facts as presented by the author**

2.1 The author is a well-known blogger, whose popular travel blog posts are hosted on the website "LiveJournal" in Russian. He has already visited over 120 countries, including conflict and post-conflict territories.

2.2 In April 2011 and October 2012, he travelled to the region of Nagorno-Karabakh. On his blog, he criticised Azerbaijan's policies and called for the independence of the disputed region from Azerbaijan.

2.3 On an unspecified date, criminal proceedings against the author were instituted under articles 281 (2) and 318 (2) of the Criminal Code of Azerbaijan. The author was accused of illegally visiting the region of Nagorno-Karabakh, which is perceived by Azerbaijani authorities as "occupied territories of Azerbaijan, and calling for the recognition of its independence from Azerbaijan. In the meantime, the Ministry of Foreign Affairs of Azerbaijan included him in the official blacklist of persons wanted for having crossed the state border of Azerbaijan illegally (article 318 (2)<sup>1</sup> of the Criminal Code) and for making public statements against Azerbaijan (article 281(2)<sup>2</sup> of the Criminal Code).

2.4 On an unspecified date, the Azerbaijani authorities issued an extradition request against the author. On this basis, on 15 December 2016, the author was arrested in Minsk, where he was on a visit at that time,<sup>3</sup> with a view to his extradition to Azerbaijan.

2.5 On 16 December 2016, the Belarusian authorities placed the author in pre-extradition detention. From 16 December 2016 to 25 January 2017, the counsel, hired by his wife, were denied access to the case-file. He was repeatedly questioned by the prosecutor in the absence of his counsel, and he was not allowed to meet his wife.

2.6 The author challenged his detention pending extradition. On 27 December 2016, his complaint was rejected by a first-instance court. On 6 January 2017, his appeal was rejected by a court of appeal. The hearings were held in the absence of the author who had not been summoned by the court. The hearings were closed and counsel were requested not to disclose information about the case.

2.7 On 17 January 2017, the Deputy Prosecutor General of Belarus ordered the extradition of the author to Azerbaijan on the criminal charges pending against him there. The extradition order stated that the author was accused of bypassing checkpoints and illegally crossing the border of Azerbaijan, in conspiracy with a group of people, in April 2011 and October 2012.

2.8 On 18 January 2017, the author was provided with a faxed copy of the extradition order. He was not apprised of his rights or the avenues of appeal. On 21 January 2017, he was provided with another copy of the same extradition order.

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<sup>1</sup> Article 318. Illegal crossing of border of the Republic of Azerbaijan.

318 (1) – crossing of protected border of the Azerbaijan Republic without established documents or outside of border check-point – is punished by the penalty at a rate from two hundred up to five hundred of nominal financial unit or imprisonment for the term up to two years.

318 (2) – the act provided by article 318 (1) of the present Code committed on preliminary arrangement by a group of persons or organized group either with application of violence or with threat of its application – is punished by imprisonment for the term up to five years.

<sup>2</sup> Article 281. Public appeals directed against the state.

281 (1) – public appeals to violent capture of authority, violent deduction of authority or violent change of constitutional grounds or infringement of territorial integrity of the Azerbaijan Republic, as well as distribution of materials of such contents – is punished by imprisonment for the term up to five years.

281 (2) – the same acts committed repeatedly or by a group of persons – is punished by imprisonment for the term from five up to eight years.

<sup>3</sup> As a national of the Russian Federation, the author did not need a visa to enter Belarus.

2.9 On 24 January 2017, the author appealed the extradition order. On 26 January 2017, the City Court of Minsk rejected his appeal and upheld the extradition order.

2.10 The author submits that although the decision of the City Court of Minsk could have been further appealed to the Supreme Court of Belarus, this avenue is not an effective remedy as the court acts under direct instructions of the President of Belarus. The extradition process was initiated based on the agreement reached between the Presidents of Belarus and Azerbaijan. Therefore, such an appeal would only be a formality and would not have any practical effect on the author's rights.<sup>4</sup> Furthermore, the procedure before the Supreme Court (closed court session by a single judge in the presence of a public prosecutor where counsel are not allowed) demonstrates that this avenue of appeal lacks impartiality.

### The complaint

3.1 At the time of the submission, the author claimed that he would face a real risk of torture, if extradited to Azerbaijan, in violation of article 7 of the Covenant. The risk was based on the background of the case, his criticism of the Azerbaijan's policy on the Nagorno-Karabakh region and of the Azerbaijan's government in general, and the country's poor human rights record, specifically in relation for his journalistic activity and the expression of his views. The author added that all relevant facts and circumstances should be considered, including the general human rights situation in Azerbaijan. The author also submitted that the risk of him being subjected to ill-treatment, retaliation and harassment in Azerbaijan was also acknowledged by different human rights organisations<sup>5</sup> and countries.<sup>6</sup> The author also submitted that Azerbaijan had publicly and strongly encouraged employing and inflicting inhuman treatment on persons of Armenian origin or those who have had any connection with the Republic of Armenia and the region of Nagorno-Karabakh.

3.2 The author also claimed that fair trial guarantees, enshrined in article 14 of the Covenant, were breached in his case. In particular, he was questioned in the absence of a counsel, the content of the extradition order was not explained to him, he was not summoned to the court hearings held on 27 December 2016 and 6 January 2017, his counsels were denied access to the case-file materials between 16 December 2016 and 25 January 2017 without any reason, the court hearings were not open to the public and counsel were prohibited from disclosing information about the case. Additionally, he was denied the possibility to contact the Embassies of Israel and the Russian Federation.

3.3 The author further claimed that the criminal case against him in Azerbaijan was fabricated and his prosecution was politically motivated, as a retaliation for his journalistic activities, his criticism of the human rights violations committed by the authorities of Azerbaijan and his statements in support of the international recognition of the Nagorno-Karabakh region. Azerbaijan has declared 180 journalists *personae non grata* and banned their entry to Azerbaijan for visiting the disputed territory of the Nagorno-Karabakh region and spreading information about it. The blacklist of the Ministry of Foreign Affairs of Azerbaijan also included a number of celebrities who visited the region of Nagorno-Karabakh, such as Montserrat Caballé (deceased) and Plácido Domingo. The author submits that the government of Azerbaijan offers economic and other benefits to Belarus in order to achieve its political goals of restricting the flow of foreigners into Nagorno-Karabakh through Armenia and of silencing those journalists and activists who have shown interest in the coverage of the on-going and unresolved conflict.

3.4 The author noted that back in 2011 and 2012 when he had visited the region of Nagorno-Karabakh, the only point of access into the region of Nagorno-Karabakh was through the side of the Republic of Armenia, which had the only open, safe and functioning border crossing with Nagorno-Karabakh. Azerbaijan had no effective control over Nagorno-

<sup>4</sup> The author filed the appeal to the Supreme Court on an unspecified date.

<sup>5</sup> The author refers to the following statements and media articles: <https://cpj.org/2017/01/blogger-jailed-in-belarus-faces-extradition-to-aze/>; <https://asbarez.com/osce-freedom-of-media-rep-says-lapshin-will-face-grave-punishment-if-extradited-to-baku/>.

<sup>6</sup> The author refers to the following statements and media articles: <http://www.prensacentroarmenio.com.ar/ministerio-de-relaciones-exteriores-de-rusia-la-extradicion-de-lapshin-a-azerbaiyan-es-inaceptable/?lang=en>; [https://arminfo.info/full\\_news.php?id=23721&lang=3](https://arminfo.info/full_news.php?id=23721&lang=3).

Karabakh and no national of Azerbaijan could access that territory without the permission of the authorities of Nagorno-Karabakh. There was no crossing point from the territory under the effective control of Azerbaijan into the region of Nagorno-Karabakh. The author argued that the same situation existed in many other post-conflict areas, which neither precluded the journalist and human rights organisations from entering those areas, nor resulted in their persecution.

#### **State party's observations on the merits**

4.1 By *notes verbales* of 9 February 2017 and 3 April 2017, the State party requested that the communication be provided in Russian or Belarusian languages. By *note verbale* of 6 July 2017, the State party informed that it would endeavour to consider this communication and requested an extension of deadline to submit its observations.

4.2 In a *note verbale* dated 5 September 2017, the State party submitted its observations on the merits of the communication. The State party reported that article 7 (2) of the Belarusian Criminal Code provides for the possibility to extradite a foreign national or stateless person to a foreign state for prosecution. The Prosecutor General and his deputies are competent to decide whether to extradite a person.

4.3 The Republic of Belarus and Azerbaijan are parties to the 2002 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002 Chisinau Convention). According to article 66 (1), (2) and (4) of the Convention, the parties are obliged to extradite a person present in their territory for criminal prosecution.

4.4 The rights and obligations of a person arrested in connection with an international warrant for extradition, including the right to appeal the arrest and detention in court, are provided in articles 507 and 508 of the Code of Criminal Procedure.

4.5 The decision to arrest the author was taken on 1 July 2016 by the Nasiminsky District Court of Baku, Azerbaijan. Since 28 July 2016, the author has been on an international wanted list for having committed the crimes under articles 281 (2) and 318 (2) of the Criminal Code of Azerbaijan.

4.6 On 15 December 2016, the author was detained in Belarus with a view to his extradition to Azerbaijan. On 16 December 2016, he was detained in accordance with a decision of the deputy prosecutor of the Pervomaisky district of Minsk. The author was explained the procedure for appealing that decision.

4.7 According to Article 144 (1-3) of the Code of Criminal Procedure, the arrest can be appealed within 72 hours. The appeal must be heard by a single judge in closed session; counsel has the right to participate. If necessary, the arrested person may be subpoenaed.

4.8 The author's lawyer appealed his arrest. On 27 December 2016, the Pervomaisky Court of Minsk considered the complaint and rejected it on the ground that the arrest was lawful.

4.9 According to articles 145 (2), (5), (6) of the Code of Criminal Procedure, a court's decision to dismiss an appeal can be appealed within 24 hours to a higher court. Such an appeal shall be heard by a single judge of the higher court within three days in a closed session with the participation of the prosecutor. The decision is final, enters into force immediately and is not subject to appeal, but it may be appealed under the supervisory review procedure by authorized persons pursuant to article 404 of the Code of Criminal Procedure.

4.10 The author's lawyer appealed once again his arrest. On 6 January 2017, the Minsk City Court considered the complaint and rejected it, stating that the arrest was lawful. He did not appeal the decision to the Supreme Court.

4.11 The State party submits that the courts did not find it necessary for the author to participate in the court hearings; however, his counsel did participate. Thus, the author's rights to a fair trial and to a public hearing by competent and independent courts and the right to appeal were respected.

4.12 The State party submits that unlawful acts committed by the author under the Azerbaijani Criminal Code may also be prosecuted under the Belarusian Criminal Code. As

the statute of limitations for holding a person criminally liable under the Criminal Code of Belarus had not expired, the Deputy Prosecutor General granted the request of the General Prosecutor's Office of Azerbaijan to extradite the author on 17 January 2017.

4.13 Such decision may be appealed within ten days to the Minsk City Court or the Regional Court. This possibility is a constitutional guarantee of protection of the right of persons involved in the procedure of international legal assistance in criminal cases.

4.14 Pursuant to Article 516 (1), (2) of the Code of Criminal Procedure, a court decision on extradition may be appealed within one month to the Minsk City Court or to the regional court. Such an appeal is heard by a single judge in a closed session with the participation of the prosecutor and the complainant or his defense counsel.

4.15 The author appealed the extradition decision to the Minsk City Court. On 26 January 2017, the court considered the complaint with the participation of the author, his lawyers and the prosecutor and dismissed it as the previous court's decision was lawful.

4.16 According to Articles 516 (5), (8), (9) of the Code of Criminal Procedure, a court decision on extradition can be appealed within ten days to the Supreme Court. Such an appeal shall suspend the execution of the court decision. Such an appeal is heard by a single judge in a closed session with the obligatory participation of the prosecutor. The decision of the judge of the Supreme Court is final.

4.17 The author and his lawyers appealed the decision of the Minsk City Court of 26 January 2017.

4.18 On 7 February 2017, the Supreme Court considered the complaints and dismissed them. The court considered the allegations according to which the extradition was politically motivated as it related to the political views and professional activities of the author. These facts were not confirmed.

4.19 The State party asserts that domestic authorities have properly assessed the author's allegations that he might be subjected to torture and inhumane treatment upon return to Azerbaijan. Furthermore, the General Prosecutor's Office of Azerbaijan guaranteed that the extradition request was not politically motivated and that the author would not be subjected to torture or inhuman and degrading treatment. He would be given every opportunity to defend himself. In addition, the State party indicated that neither the Russian Federation nor Israel requested the extradition of the author.

4.20 During his stay in Belarus, the author was represented by two lawyers,<sup>7</sup> with whom he could communicate in private without any time or length restrictions, so his right to legal assistance was not violated.

#### **Additional submission from the author**

5.1 On 13 September 2018, the author submitted additional information where he reiterated the facts of the case.

5.2 He claimed that immediately after his detention he was transferred to the Pervomaisky district police station. He was not informed about his rights and the reason for the detention, but he managed to inform his wife about the detention. It is only after his wife's intervention that he was provided with the detention report, from which it was difficult to understand the reasons for the detention.

5.3 The author was not given the opportunity to contact the embassies of the Russian Federation and Israel, of which he is a citizen. Both embassies were not informed about the detention of their citizen. The diplomats were allowed to visit him only one month after his arrest. The embassies were not informed of the dates of the court hearings in the author's case.

5.4 The author claims that the investigation (extradition procedure) in Belarus suffered from various procedural flaws, as he was not provided with a lawyer at the time of his detention, it is only later that his wife hired lawyers for him; the lawyers did not have access

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<sup>7</sup> The lawyers were hired by the author's wife.

to the case file received from Azerbaijan, thus the author could not obtain proper legal assistance in Belarus. The relevant state bodies provided important decisions late, and therefore it was very difficult to appeal them in time. In addition, all court hearings concerning the author's arrest were closed, and the author did not participate in them. He was also denied access to these court decisions.

5.5 During his detention in SIZO No. 1, the author was visited by some representatives of the State Security Committee (KGB) and the General Prosecutor's Office. These visits were conducted without the author's defence counsel and without any records of the interrogations. They insisted that the author sign a voluntary agreement to be extradited to Azerbaijan. When the author refused to sign this document, he was placed in a cell without heating, which worsened his health.

5.6 The author claims that there are numerous irregularities and errors in the text of the extradition decision; for example, the name of the court that took the decision to put the author on international wanted list is incorrect; the elements of crimes that the author was suspected of in Azerbaijan (see, para. 2.3 above) are not the same as those in the Criminal Code of Belarus.<sup>8</sup> Furthermore, he was accused of having crossed a *protected*<sup>9</sup> border of Azerbaijan without established documents or outside of border check-point, whereas back in 2011 and 2012, there was no crossing point from the territory under the effective control of Azerbaijan into the region of Nagorno-Karabakh.

5.7 During the court session in Minsk City Court on 26 January 2017, the lawyers were able to familiarize themselves with the case materials one hour before the beginning of the session. It took the judge 10 minutes to decide on the author's case. Regarding the different names of the court that made the decision to declare the author internationally wanted, the Minsk City Court stated that it was just a translation error. The case file received from Azerbaijan stated that the prosecution of the author had nothing to do with his professional activities and that there was no risk to the author's health in Azerbaijan.

5.8 Appealing this decision of the Minsk City Court, the author personally and through his lawyers requested the asylum status or additional protection in Belarus. However, the

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<sup>8</sup> Article 361. Calls for actions aimed at harming the national security of the Republic of Belarus  
1. Public appeals to seizure of state power, or violent change of the constitutional system of the Republic of Belarus, or treason against the state, or committing an act of terrorism or sabotage, or committing other actions aimed at harming the national security of the Republic of Belarus, or distribution of materials containing such appeals shall be punishable by arrest or imprisonment for up to three years.

2. Calls to a foreign state, a foreign or international organization to commit actions aimed at harming the national security of the Republic of Belarus, or distribution of materials containing such appeals, in the absence of signs of a more serious crime - shall be punishable shall be punished with arrest or imprisonment up to three years.

3. Actions provided for in paragraphs 1 or 2 of this article, committed with the use of mass media or the Internet global computer network - shall be punishable by imprisonment for a term of two to five years.

Article 371. Illegal Crossing of State Border of the Republic of Belarus

1. The intentional illegal crossing of the state border of the Republic of Belarus by a motor vehicle, inland waterway vessel (self-propelled), mixed (river-sea) vessel (self-propelled), small motor vessel, vessel with outboard engine, jet ski, aircraft with engine, as well as intentional illegal crossing of the state border of the Republic of Belarus in another way, committed within a year after imposing an administrative penalty for the same violation - shall be punishable by a fine, or arrest, or imprisonment for up to two years.

2. The intentional illegal crossing of the State border of the Republic of Belarus committed by a person previously convicted of a crime under this Article, or by a foreign national or stateless person deported or expelled from the Republic of Belarus before the expiration of the prohibition to enter the Republic of Belarus, or by an official using his official powers - shall be shall be punishable by arrest, or restriction of liberty for up to five years, or imprisonment for the same period.

3. Intentional illegal crossing of the state border of the Republic of Belarus committed by an organized group - shall be punishable by imprisonment for a term of three to seven years with or without a fine.

<sup>9</sup> Emphasis added by the author.

Ministry of Internal Affairs stated that such request was never made.<sup>10</sup> The author claims that this document disappeared from the case materials.

5.9 The author and his lawyers did not receive the decision of the Supreme Court of 7 February 2017. At the moment of the announcement of the decision, the author was already in the personal airplane of the President of Azerbaijan to transfer him to Baku.

5.10 The author also indicated that during his detention, he could not communicate with his family, including through correspondence. He was not allowed to pass through his lawyers any signed documents, including the authorization for his wife to represent him before the Human Right Committee.

5.11 Once he arrived in Azerbaijan, the author was placed in incommunicado detention in Kurdakhany prison for seven months, where his health deteriorated. The counsel that was appointed to defend him did not speak Russian, Hebrew or English.

#### **Author's comments to the State party's observations on the merits and additional submission**

6.1 On 25 October 2018, the author submitted his comments on the State party's observations. He argued that articles 361 (3) and 371 (3) of the Belarusian Criminal Code are different from articles 281 (2) and 318 (2) of the Azerbaijani Criminal Code. Accordingly, the decisions of the Belarusian authorities contravene international law, including article 66 (2) of the 2002 Chisinau Convention. Pursuant to this provision, extradition for the purpose of prosecution shall be granted for those acts which are punishable under the domestic law of the requesting and requested Contracting Parties (i.e. the principle of double criminality) and for which the penalty is imprisonment for at least one year or more. The author argues, in particular, that article 361 of the Belarusian Criminal Code does not establish liability for public incitement to violate the territorial integrity of another state, including Azerbaijan. Article 371 of the Belarusian Criminal Code can be applied in the case of a repeated violation and only within a year after the imposition of an administrative fine.

6.2 The author claims that the Belarusian authorities falsified his case and the decision to extradite him was politically motivated. It could also be proved by the fact that the author and his lawyers were not provided with extradition materials for familiarisation.

6.3 On 22 June 2022, the author submitted that in Azerbaijan he was placed in Kurdakhany prison. On 20 July 2017, he was convicted in Azerbaijan for unlawfully traveling to Nagorno-Karabakh (article 318 (2) of the Criminal Code / crossing the State border outside the checkpoints). He was sentenced to three years' imprisonment and a mandatory expulsion from Azerbaijan after he had served his prison sentence. Following his conviction, the author instituted the relevant proceedings for his transfer to Israel where he would serve the prison sentence.

6.4 On 10 September 2017, there was a security incident in Kurdakhany prison that led to the author's hospitalisation.<sup>11</sup> On 11 September 2017, the author was pardoned by the President of Azerbaijan. On 14 September 2017, immediately after his discharge from the hospital, the author was expelled to Israel.

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

*State party's failure to respect the Committee's request for interim measures pursuant to rule 94 of its rules of procedure and article 1 of the Optional Protocol*

7.1 The Committee notes that the adoption of interim measures pursuant to rule 94 of its rules of procedure, in accordance with article 1 of the Optional Protocol, is vital to the role

<sup>10</sup> No further information was provided by the author.

<sup>11</sup> For more information, please refer to the judgment of European Court of Human Rights dated 20 May 2021 in *Lapshin v. Azerbaijan* (application no. 13527/18).

entrusted to the Committee under that article. Failure to respect the interim measure requested by the Committee with a view to preventing irreparable harm undermines the protection of the rights enshrined in the Covenant.

7.2 As indicated in paragraph 19 of the Committee's general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol, failure to implement interim measures is incompatible with the obligation to respect in good faith the procedure of individual communications established under the Optional Protocol. The Committee is therefore of the view that, by failing to respect the request for interim measures transmitted to the State party on 2 February 2017 the State party failed in its obligations under article 1 of the Optional Protocol.<sup>12</sup>

#### *Considerations of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee observes that the State party has not expressly contested the authors' argument that they exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. In light of the information available on file, the Committee observes the authors have exhausted domestic remedies for the claims raised before the Committee, therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 The Committee notes the author's claim that his rights under article 14 of the Covenant have been violated in the course of the extradition proceedings, as he was questioned in the absence of counsel, the content of the extradition order was not explained to him, he was not summoned to the court hearings held on 27 December 2016 and 6 January 2017, his counsel were denied access to the case-file material between 16 December 2016 and 25 January 2017 with no reasons given, the court hearings were not open to the public and counsel were prohibited from disclosing information about the case. In that regard, the Committee refers to its jurisprudence that proceedings relating to the extradition, expulsion and deportation of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14, but are governed by article 13 of the Covenant.<sup>13</sup> The Committee notes, however, that the author did not invoke article 13 of the Covenant in his communication. The Committee considers, therefore, that this part of the communication is incompatible *ratione materiae* with the Covenant and declares it inadmissible under article 3 of the Optional Protocol.

8.5 The Committee considers, however, that the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under article 7 of the Covenant. Accordingly, the Committee declares this part of the communication admissible and proceeds with its consideration on the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

<sup>12</sup> See, *B.A. et al. v. Austria* (CCPR/C/127/D/2956/2017), paras. 9.1 and 9.2; and *F.F.J.H. v. Argentina* (CCPR/C/132/D/3238/2018), paras. 16.1 and 16.2.

<sup>13</sup> The Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 17; *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5; and *Everett v. Spain* (CCPR/C/81/D/961/2000), para. 6.4.



9.2 The Committee recalls its general comment No. 31,<sup>14</sup> in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>15</sup> The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,<sup>16</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>17</sup>

9.3 The Committee notes that at the time of the submission of the present communication, the author claimed that, in case of his extradition to Azerbaijan, he would face a real risk of torture and other ill-treatment contrary to article 7 of the Covenant, as a retaliation for his journalistic activities, his criticism of the human rights violations committed by the authorities of Azerbaijan and his statements in support of the international recognition of the Nagorno-Karabakh region. The Committee also notes that, on 7 February 2017, the State party's authorities proceeded with the author's extradition to Azerbaijan, despite the Committee's request to suspend the author's extradition while his communication was being considered by the Committee. The Committee further notes that in Azerbaijan the author was convicted for unlawfully traveling to Nagorno-Karabakh (article 318 (2) of the Criminal Code / crossing the State border outside the checkpoints), sentenced to three years' imprisonment and a mandatory expulsion from Azerbaijan after he had served his prison sentence. The Committee recalls in that regard that the evaluation of whether the State party's authorities have properly assessed the risk faced by the author in case of his extradition to Azerbaijan, should be made on the basis of the information available to the State party's authorities at the time when they were taking a decision on the extradition request submitted by the Azerbaijani authorities with regard to the author.

9.4 In the present case, the Committee notes that the author's extradition was requested by the Azerbaijani authorities in the context of the criminal proceedings instituted against him under articles 281 (2) and 318 (2) of the Criminal Code of Azerbaijan for illegally crossing a protected border of Azerbaijan without established documents or outside of border check-point, and for calling for the recognition of the independence of the region of Nagorno-Karabakh from Azerbaijan. The Committee also notes that, in the extradition proceedings, the author claimed that he would face a risk of torture in Azerbaijan, due the background of the case, his criticism of the Azerbaijan's policy on the Nagorno-Karabakh region and of the Azerbaijan's government in general. The author specifically argued that he was prosecuted by the Azerbaijani authorities in relation to his journalistic activity and the expression of his views. The author also submitted that Azerbaijan had publically and strongly encouraged employing and inflicting inhuman treatment on persons of Armenian origin or those who have had any connection with the Republic of Armenia and the region of Nagorno-Karabakh. The author also argued that he was accused of having crossed a protected border of Azerbaijan without established documents or outside of border check-point, whereas back in 2011 and 2012, there was no crossing point from the territory under the effective control of Azerbaijan into the region of Nagorno-Karabakh. The author's arguments, however, were dismissed by the State party's authorities and courts as "unconfirmed" (see, para. 4.18 above). In this context, the State party asserted that domestic authorities have properly assessed the author's allegations that he might be subjected to torture and inhumane treatment upon return to Azerbaijan. Furthermore, the General Prosecutor's Office of Azerbaijan guaranteed that the extradition request was not politically motivated and that the author

<sup>14</sup> The Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13), para. 12.

<sup>15</sup> See, *X v. Denmark*, (CCPR/C/110/D/2007/2010), para. 9.2; *A.R.J. v. Australia*, (CCPR/C/60/D/692/1996), para. 6.6; and *X. v. Sweden*, (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>16</sup> See, *Lin v. Australia*, (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>17</sup> See, *Errol Simms v. Jamaica*, (CCPR/C/53/D/541/1993), para. 6.2.

would not be subjected to torture or inhuman and degrading treatment (see, para. 4.19 above). The Committee notes, however, that the information submitted by the author to the State party authorities and courts, as well as information available in the public domain<sup>18</sup> showed that individuals visiting the region of Nagorno-Karabakh and making public statements, criticising Azerbaijan's policy on Nagorno-Karabakh and the Government of Azerbaijan in general, were systematically blacklisted, prohibited entry to Azerbaijan and prosecuted. Journalists and other individuals, such as bloggers, who publicly express their opinions, which are considered by the Azerbaijani authorities as being critical of them, seem to be particularly prone to be subjected to acts of torture, ill-treatment or harassment. In this regard, the Committee also recalls its own finding that there seems to be continued use of different forms of torture and ill-treatment in detention in Azerbaijan against journalists.<sup>19</sup>

9.5 In this context, and in light of the author's personal circumstances as a blogger accused of having committed crimes under articles 281 (2) and 318 (2) of the Criminal Code of Azerbaijan for illegally crossing a protected border of Azerbaijan without established documents or outside of border check-point, and for calling for the recognition of the independence of the region of Nagorno-Karabakh from Azerbaijan, as well as taking into account the information and evidence before it, the Committee considers that the assessment by the State party's authorities and courts of the author's claims about the risk of torture and ill-treatment that he would be exposed to in case of his extradition to Azerbaijan was clearly arbitrary. Accordingly, the Committee considers that the author's extradition to Azerbaijan by the State party constitutes a violation of article 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that by extraditing the author to Azerbaijan, the State party has violated his rights under article 7 of the Covenant. The Committee also concludes that by not respecting its request for interim measures, the State party has violated its obligations under article 1 of the Optional Protocol.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated in the official language of the State party and widely distributed.

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<sup>18</sup> See, *e.g.*, *Aarrass v. Spain* (CCPR/C/111/D/2008/2010), para. 10.4.

<sup>19</sup> Concluding observations on the fourth periodic report of Azerbaijan, (CCPR/C/AZE/CO/4), paras. 18 and 36.