



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2947/2017*, **

<i>Communication submitted by:</i>	Ferid Ragim oğly Yusub (represented by counsel, Darya Trenina, Eleonora Davidyan and Kirill Zharinov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	3 February 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 6 February 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	4 July 2023
<i>Subject matter:</i>	Extradition to Azerbaijan
<i>Procedural issues:</i>	Exhaustion of domestic remedies; examination by another procedure of international investigation or settlement
<i>Substantive issues:</i>	Non-refoulement; risk of torture and other forms of ill-treatment
<i>Article of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	1 and 5 (2) (a) and (b)

1.1 The author of the communication is Ferid Ragim oğly Yusub, a national of Azerbaijan born in 1978. When the present communication was submitted the author was facing extradition to Azerbaijan in view of the criminal charges brought against him in that country. He claims that, in the event of his extradition, the State party would violate his rights under article 7 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobayyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Committee member Farid Ahmadov did not participate in the examination of the communication.



1.2 On 6 February 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party not to extradite the author to Azerbaijan pending consideration of his communication.

Facts as submitted by the author

2.1 In 1998, the author's sister G. married Sh., who was a close friend and supporter of the President of Azerbaijan, A. In 2004, shortly after the election of the new President, Sh. was appointed head of the Internal Security Service of the Ministry of Internal Affairs of Azerbaijan and subsequently, head of the General Directorate for Criminal Investigations in the Ministry. Since July 2015, Sh. has been head of the Transport Police of Azerbaijan. Sh. and G. have four daughters, who are minors. On numerous occasions, G. has complained that Sh. has subjected her and her daughters to domestic violence. The author submits that he tried to protect his sister from domestic violence and sent complaints to the Prosecutor General, the President of Azerbaijan and international organizations, such as the Organization for Security and Cooperation in Europe.

2.2 In 2008, Sh. initiated divorce proceedings and threatened to strip G. of her parental rights should she try to complain of domestic violence. G. therefore fled to the United Arab Emirates with her daughters. Since then, the author has been persecuted by the police in Azerbaijan. He submits that he has been detained on several occasions and subjected to ill-treatment while in detention.¹ His periods in detention have not been officially recorded and he was forced to sign certain papers before being released. Fearing further persecution, he changed his surname, received new identity documents and in 2009 fled from Azerbaijan.² In 2012, he moved to Egypt.³ On 6 January 2013, he was recognized as a refugee by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Egypt on the grounds of a well-founded fear of persecution if he were forcibly returned to Azerbaijan.⁴ In early 2014, he left Egypt due to the deterioration of the security situation in the country. In 2015, he moved to the Russian Federation, married a Russian national and has resided in the State party with his family since then.

2.3 In 2009 Sh. forced G. and her daughters to return to Azerbaijan. Domestic violence continued. In April 2014, G. and her daughters managed to change their identity documents and fled from Azerbaijan to Georgia, where they were granted asylum and subsequently resettled in a European Union country. At that time, the author was living in Belarus.

2.4 On 19 April 2014, a senior investigator from the Investigations Department of the Main Directorate for Combating Organized Crime of the Ministry of Internal Affairs of Azerbaijan opened criminal case No. 141900165 against a group of persons who were allegedly involved in organizing the illegal departure of G. and her children from Azerbaijan. On 18 March 2015, the author was charged in absentia under articles 177.3.2, 318.2, 320.1 and 320.2 of the Criminal Code of Azerbaijan (in regard to, respectively, theft, illegal crossing of the State border, forgery of an official document and use of forged documents) and the criminal proceedings against him were separated from criminal case No. 141900165. On 29 March 2015, the author was put on a wanted list. On 1 April 2015, the Narimanovsky District Court of Baku ordered his arrest in absentia.

2.5 On 13 May 2015, the author was arrested in Moscow pursuant to the international search initiated by Azerbaijan. On 15 May 2015, the Meshchansky District Court of Moscow ordered that he be remanded in detention for a period of one month. The term of the author's detention was subsequently extended on several occasions. On 4 May 2016, the author was released, having given a written undertaking not to leave the city.

¹ No further details of the author's alleged ill-treatment are provided in the submission form.

² No information on the country of destination after the departure of the author from Azerbaijan in 2009 is provided in the submission form.

³ This information is provided in the submission form before the Committee.

⁴ According to the refugee registration card issued to the author by UNHCR in Egypt, the author arrived in Cairo on 8 October 2009. The registration card was issued on 10 July 2013 for a period of three years.

2.6 On 29 May 2015, the Office of the Prosecutor General of the Russian Federation received an extradition request for the author in relation to the criminal charges pending against him in Azerbaijan. The extradition request contained assurances to the effect that the author would be afforded the opportunity for defence; that he would not be subjected to torture, inhuman or degrading treatment or punishment; and that the extradition was not intended to prosecute the author on grounds of race, religious affiliation, nationality or political opinion.

2.7 On 21 May 2015, while in detention, the author lodged a request for refugee status with the State party's migration authorities. In substantiation of his request, he referred to the circumstances of the family conflict with Sh. and stated that the criminal case against him had been falsified by Sh. On 28 September 2015, the Moscow Department of the Federal Migration Service rejected the author's request on the grounds that the information provided by him in substantiation of the reasons for his departure from Azerbaijan was of a private, family nature and did not meet the criteria set out under the law on refugees, which require that there must be a well-founded fear of being persecuted in the country of origin for reasons of race, religion, nationality, membership of a particular social group or political opinion. The author appealed the decision before the Federal Migration Service, which rejected his appeal on 10 December 2015 on the same grounds. On 13 April 2016, the author requested temporary refugee status. On 20 April 2016, the Moscow Department of the Federal Migration Service rejected his request owing to the lack of humanitarian reasons justifying his temporary stay in the State party. On 27 June 2016, the Federal Migration Service upheld this decision.

2.8 On an unspecified date, in the framework of the extradition check, the Office of the Prosecutor General of the Russian Federation requested the Office of the Prosecutor General of Azerbaijan to clarify the author's role and the extent of his involvement in each of the criminal offences with which he was charged. Following the request, on 2 February 2016 the investigator from the Main Directorate for Combating Organized Crime adopted a new decision to charge the author under articles 177.3.2, 318.2, 320.1 and 320.2 of the Criminal Code of Azerbaijan. In particular, the author was accused of forming a criminal group in Azerbaijan in 2014 with the aim of organizing the departure of his sister G. and her children from Azerbaijan by illegally crossing the State border using forged identity documents. For that purpose, at the beginning of 2014 members of the criminal group, with the participation of the author, illegally entered Sh.'s apartment in Baku and stole 60,000 manats, thereby causing Sh. major damage. The stolen funds were partially used by the author and members of the criminal group to forge passports, identity cards and other official documents for G. and her children. In April 2014, G. and her children, using the forged documents, illegally crossed the State border and entered Georgia.

2.9 On 23 March 2016, the Office of the Prosecutor General of the Russian Federation decided to grant the extradition request. The author challenged the decision before the Moscow City Court, alleging that there was a high risk that he would be subjected to proscribed treatment in the requesting country in view of the conflict with the high-ranking official from the Ministry of Internal Affairs of Azerbaijan. The author also informed the court of the refugee status granted to him by UNHCR in Egypt.

2.10 Between April and September 2016, the Moscow City Court conducted hearings on the author's case. At the hearings, the author provided his account of the events concerning his persecution by Sh. as a result of the conflict arising from domestic violence in his sister G's family. He indicated, *inter alia*, that in October 2008 he was detained by police officers from the Yasamalsky district in Baku. The officers took him to the police station and interrogated him using physical force to extract information from him about the whereabouts of G. and her children. Due to the injuries sustained as a result of the interrogation, he was placed in the Efendiyev hospital in Baku. After his discharge from the hospital, he left Azerbaijan. In October 2009, he arrived in Egypt and applied to UNHCR for refugee status. Since 2009, he had not entered Azerbaijan. His brother, A.R.Y, had also been detained and ill-treated by the police in Azerbaijan for the same reasons.

2.11 Concerning the author's and his brother's detention, ill-treatment and ensuing medical treatment in Azerbaijan, the court sent a request to the Office of the Prosecutor General of the Russian Federation with a view to verifying the author's allegations. On 5 May 2016, the

Office of the Prosecutor General of the Russian Federation sent an inquiry to the Office of the Prosecutor General of Azerbaijan, requesting it to provide information as to whether the author and his brother had been arrested or detained on any grounds since 2008; whether they had been subjected to unlawful methods of interrogation or physical violence; and whether the author had been hospitalized in 2008–2009 in the Efendiyev hospital in Baku. The Prosecutor General also requested any evidence refuting the author's allegations to the effect that he could not have committed the offences he was charged with, since he had been in Egypt in 2014, where he had obtained refugee status due to the risk of him of being subjected to persecution if he returned to Azerbaijan. The Prosecutor General further requested clarification as to whether the author's allegations to the effect that he had been persecuted since 2008 by a high-ranking official in Azerbaijan, with the aim of establishing the whereabouts of the latter's former wife and children, were credible. In response, information was provided to the effect that neither the author nor his brother A.R.Y had been detained by the authorities in Azerbaijan or subjected to any psychological or physical abuse, nor had they been treated in Baku city hospital Efendiyev No. 2 in 2008–2009. On 11 June 2016, the Office of the Prosecutor General of Azerbaijan also informed the Office of the Prosecutor General of the Russian Federation that UNHCR had refused to provide any information regarding the author's refugee status in 2013 due to the confidential nature of the procedure.

2.12 At one hearing, UNHCR submitted an opinion in the case and its representative was heard by the court. On the basis of country information, UNCHR indicated that for persons who were perceived as political opponents by the Azerbaijani authorities there was a real risk of torture and ill-treatment if they returned to Azerbaijan. The author, by openly objecting to domestic violence against women, was associated with the opposition in Azerbaijan and, therefore, had a well-founded fear of being subjected to torture and other forms of ill-treatment if extradited. UNHCR also confirmed that the author had been recognized as a refugee by its office in Egypt on 6 January 2013 due to a well-founded fear of persecution if he returned to Azerbaijan.⁵

2.13 On 19 September 2016, the Moscow City Court adopted a judgment rejecting the author's complaint and finding no obstacles to his extradition. The court found that there was no evidence provided to the effect that the author had been persecuted in Azerbaijan on grounds of race, religion, nationality, political opinion or membership of a particular social group. The author left Azerbaijan due to circumstances of a personal, family nature and no convincing and credible information had been provided that would justify his fear of persecution by the Azerbaijani authorities. The court further found that the extradition procedure in the author's case had been complied with; the criminal acts he had been charged with in the requesting country were also criminally punishable in the Russian Federation; and the decision on the extradition had been taken by an authorized official within the limits of his or her competence under the law. The court also took into account that the requesting country had provided diplomatic assurances in relation to the author and would ensure that representatives of the Russian diplomatic services could visit him in detention.

2.14 In response to the argument that the author was perceived by the Azerbaijani authorities as a political opponent on account of his openly objecting to domestic violence against women, the court indicated that the author had not applied for asylum upon his arrival in the Russian Federation in 2015, nor had he provided information about his human rights activities in Azerbaijan in his applications before the domestic authorities or at the hearings. The case file did not contain any information about the author's membership of a journalistic community or political opposition to the Azerbaijani authorities. In relation to the information on the general human rights situation in the requesting country, the court held that the author had not provided sufficient evidence indicating that the general situation was applicable to his personal circumstances and was likely to entail the use of torture and other proscribed treatment.

2.15 On 26 September 2016, the author gave an interview on Radio Svoboda about the persecution he and his family were subjected to in Azerbaijan.

⁵ As was clarified by the UNCHR representative at the hearing before the Moscow City Court, the author applied to the UNCHR office in Cairo in 2012.

2.16 On 12 January 2017, the decision of the Moscow City Court in the author's case was upheld by the Supreme Court on appeal.

2.17 On 15 January 2017, the author requested the European Court of Human Rights to apply interim measures to prevent his extradition. On 17 January 2017, the Court rejected his request on account of his failure to comply with the admissibility criteria. The author submits that he did not pursue his application further and therefore his complaint has never been considered by the Court on the merits.

2.18 On 13 January 2017, the author requested that the international search for him through the International Criminal Police Organization (INTERPOL) be discontinued, in reference to his being recognized as a refugee by UNHCR. On 23 January 2017, the Commission for the Control of INTERPOL's Files stated that the data in relation to the author had been deleted from INTERPOL files, as they did not comply with INTERPOL rules. The author received a certificate to the effect that he was not subject to an INTERPOL red notice or diffusion and was not known in INTERPOL databases.

Complaint

3.1 The author submits that, in the event of his extradition to Azerbaijan, he would be at risk of being subjected to torture in violation of his rights under article 7 of the Covenant, on account of his personal circumstances and the general human rights situation in the requesting country.

3.2 In particular, in relation to the general human rights situation in Azerbaijan, the author submits, with reference to the information available from international intergovernmental and non-governmental organizations, that it is characterized by a widespread practice of the use of torture by law enforcement authorities with a view to extracting confessions, as well as the prosecution of the opposition and critics of the Government on politically motivated charges.⁶ Concerning his personal situation, the author submits that the risk of him being subjected to proscribed treatment is predetermined by the fact that in Azerbaijan he is regarded as an opponent of the current regime due to the confrontation, originating from the family conflict rooted in domestic violence, between him and the high-ranking official from the Ministry of Internal Affairs of Azerbaijan, who is a close friend of the President. The author notes in this respect that his criminal prosecution in Azerbaijan was initiated by the Ministry of Internal Affairs. Furthermore, the issue of domestic violence is regarded as taboo by the Azerbaijani authorities and anyone who raises the issue is seen as a critic of the current regime. The author further submits that he criticized the current regime in the media. The fact that he had been recognized as a refugee by UNHCR was made public in the course of the extradition proceedings, which might prompt the Azerbaijani authorities to retaliate.

State party's observations on admissibility

4.1 In a note verbale dated 28 March 2017, the State party submitted its observations on the admissibility of the communication. It stated that, as at 6 March 2017, the author had not been handed over to the authorities of the requesting country because he had absconded, in breach of his written undertaking not to leave.

4.2 The State party notes, in the context of preventing the extradition, that article 7 of the Covenant requires it to be established that at the time of the extradition there was a real risk of the author being subjected to proscribed treatment in Azerbaijan. The burden of proof in this situation lies with the author.⁷ The mere possibility of ill-treatment due to an individual situation does not in itself entail a violation of article 7 of the Covenant, so the author's

⁶ Reference is made to the concluding observations of the Human Rights Committee and the Committee against Torture on the fourth periodic reports of Azerbaijan (CCPR/C/AZE/CO/4 and CAT/C/AZE/CO/4, respectively); *Amnesty International Report 2015/16*; *Human Rights Watch World Report 2017*; United States Department of State, "2016 country reports on human rights practices: Azerbaijan"; and Freedom House, "Freedom in the world 2016".

⁷ Reference is made to European Court of Human Rights, *Saadi v. Italy*, Application No. 37201/06, Judgment, 28 February 2008, para. 129.

allegations need to be confirmed by other evidence.⁸ The State party submits that there is no information available about the author's human rights activities in Azerbaijan, nor is there any information about his membership in a journalistic community or political opposition to the Azerbaijani authorities. The State party notes that the author started criticizing the political regime in Azerbaijan after the decision on his extradition had been made. In particular, on 26 September 2016 he spoke on Radio Svoboda. The State party further notes that Azerbaijan is a party to the Covenant and independently bears the obligation to comply with its requirements. Azerbaijan has provided assurances to the effect that the author would not be subject to the death penalty, torture or other inhuman or degrading treatment or punishment. According to the State party, there are no substantial grounds for believing that the author would be subjected to proscribed treatment if extradited.

4.3 The State party further argues that the communication is inadmissible for non-exhaustion of domestic remedies, as the author failed to complain against the court decisions in his case to the Presidium of the Supreme Court in the framework of the supervisory review procedure. The State party provides statistical information for 2016, which, in its opinion, demonstrates that such a complaint to the Presidium of the Supreme Court is an effective remedy.

Author's comments on the State party's observations on admissibility

5.1 On 31 July 2017, the author submitted his comments on the State party's observations on admissibility. He also informed the Committee that on 28 July 2017, he had lodged a supervisory review complaint to the Presidium of the Supreme Court against the court decisions in his case.

5.2 The author argues that a supervisory review complaint before the Presidium of the Supreme Court is not effective, since it constitutes an extraordinary remedy, which is not directly accessible, as the outcome depends on the discretionary power of a single judge. Furthermore, the current procedural legislation does not establish a time limit for lodging a supervisory review complaint, thus creating legal uncertainty. Supervisory review complaints do not have suspensive effect in the context of extradition, which is an additional element testifying to the ineffectiveness of the remedy. The author submits that he is not aware of any case where a supervisory review complaint would have led to a stay of extradition, nor he is aware of any case in which an extradition order was overturned by the Presidium of the Supreme Court.

State party's observations on the merits

6.1 By a note verbale dated 21 August 2017, the State party submitted its observations on the merits. It recalled the circumstances of the case and noted, in relation to the author's request for refugee status, that the migration authorities had fully examined all the circumstances of the case, including the author's personal situation and the general situation in Azerbaijan. The migration authorities correctly concluded that the author had no justified fear of being persecuted in his country of origin due to his race, religion, nationality, membership of a particular social group or political opinion.

6.2 Concerning the decision to grant the extradition request and the corresponding decisions of the domestic courts in the author's case, the State party submits that, according to the information provided by the Office of the Prosecutor General of Azerbaijan, from 2008 to 21 August 2017, the author and his brother were not detained or taken into custody by the police in Azerbaijan, were not subjected to any kind of ill-treatment in 2008 and 2009 and did not seek medical assistance in medical institutions.

6.3 The State party further submits that the information concerning the author's recognition as a refugee by the UNHCR office in Egypt was provided to the domestic courts by the author and his counsel and was the subject of a public hearing. The author produced a

⁸ Reference is made to European Court of Human Rights, *Vilvarajah and others v. United Kingdom*, Applications No. 13163/87, No. 13164/87, No. 13165/87, No. 13447/87 and No. 13448/87, Judgment, 30 October 1991, para. 111; and *Mamatkulov and Askarov v. Turkey*, applications No. 46827/99 and No. 46951/99, Judgment, 4 February 2005, para. 73.

refugee registration card, dated 6 January 2013, which expired on 10 July 2016. There was no information available on that card as to the grounds for granting refugee status to the author, who had arrived in Egypt in 2009. During the extradition check and in the course of the court proceedings in the author's case, it was not possible to reliably establish whether the author was granted refugee status in Egypt in connection with events that had occurred in Azerbaijan or on other grounds. The State party notes that, in these circumstances, the author's allegations to the effect that the Office of the Prosecutor General of the Russian Federation contributed to the disclosure of the author's former refugee status in Egypt, which exposed him to a risk of "retaliation" on the part of the Azerbaijani authorities, are far-fetched.

6.4 The State party submits that the criminal prosecution of the author in Azerbaijan is of a general criminal nature and is not related to the politics of the requesting country. Although the author was present on the territory of the Russian Federation for certain periods since 2009, he did not apply for refugee status in connection with his persecution in Azerbaijan. It was only after his detention that he submitted his application for refugee status in the Russian Federation.

6.5 The State party reiterates its arguments provided in its observations of 28 March 2017 and summarized in paragraph 4.2 above. It indicates that the author's account of the events, including his allegations of past experience of torture, was comprehensively and objectively examined by the domestic authorities and courts and was found to be unsubstantiated. The State party reiterates that there is no information available about the author's human rights activities in Azerbaijan, nor about his membership of a journalistic community or of political opposition to the Azerbaijani authorities. The author became involved in criticizing the Government of Azerbaijan after the decision on his extradition had been taken.

6.6 With reference to the European Court of Human Rights, the State party argues that a mere reference to the existence of a general human rights problem in a particular country cannot constitute grounds for refusing extradition. Appropriate evidence is required to demonstrate that the general situation applies to individual circumstances. In the author's case, the domestic courts examined the author's individual circumstances, his family situation, the reasons for his departure from Azerbaijan and came to a reasonable conclusion that the general human rights situation in Azerbaijan was inapplicable to the author's individual circumstances.

6.7 The State party further argues that there is no reason to question the assurances given in the author's case by Azerbaijan, which is a party to the Covenant and other international human rights treaties. The requesting country guaranteed that the author would not be subjected to proscribed treatment; that access to him would be ensured for Russian diplomatic representatives; and that the criminal proceedings against him would be conducted in strict compliance with international treaties, including the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.

6.8 The State party concludes by indicating that it is not bound by the Committee's request to suspend the author's extradition. In the course of the extradition check, no objective evidence was obtained to the effect that, in the event of extradition, the criminal prosecution against the author would be biased and prejudicial or that he would be subjected to proscribed treatment or punishment. The assurances provided by the requesting country are sufficient to prevent such risks. The State party considers that the author's rights under article 7 of the Covenant have not been violated.

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

Author's further submission

7. On 15 January 2018, the author's counsel informed the Committee that the author had been detained by officers from the Kirovsky district police department in Yaroslavl.

Although the author informed the police of the interim measures applied by the Committee in his case, the police did not release him.⁹

Author's comments on the State party's observations on the merits

8.1 On 23 March 2018, the author submitted comments on the State party's observations on the merits and informed the Committee about further developments in his case. He submitted, in particular, that on 3 August 2017, the Supreme Court had rejected his supervisory review complaint as unfounded. On 16 January 2018, the Kirovsky District Court of Yaroslavl found him guilty of an administrative offence under article 18.8 (1.1) of the Code on Administrative Offences (failure to leave the Russian Federation after the expiration of the established period of stay) and fined him 2,000 Russian roubles.

8.2 Concerning the merits of the case, the author reiterates that, if extradited, he would be at risk of being subjected to proscribed treatment contrary to article 7 of the Covenant. He is being persecuted in Azerbaijan due to the exposure of domestic violence in the family of a high-ranking official and ally of the President of Azerbaijan. The issue of domestic violence against women and children is taboo in Azerbaijan and any person raising the issue is regarded as a critic of the regime.

8.3 The author notes that although the burden of proof lies with him, the requirement to provide evidence should not be interpreted in a formalistic manner. The benefit of the doubt should be given to an asylum-seeker,¹⁰ whereas a request to provide "indisputable" evidence of a risk of ill-treatment in the requesting country would be tantamount to a request to prove the existence of a future event, which is impossible, and would impose a clearly disproportionate burden.¹¹ The author argues that the migration authorities and courts of the State party approached the analysis of the risk for him of being subjected to proscribed treatment in Azerbaijan in a formalistic manner. They ignored the substance of his claim, namely that he was perceived as a critic of the regime in the requesting country and, therefore, belonged to a particularly vulnerable group.

8.4 In relation to the fact that his request for refugee status in the State party was lodged only after his arrest on 13 May 2015, the author explains that he left Azerbaijan in 2009 and had not returned to the country since then. He was recognized as a refugee by UNHCR in Egypt and until his detention in 2015 he was not aware that his persecution in Azerbaijan had taken the form of the criminal prosecution that put him at risk of being returned to his country of origin.

8.5 As regards the State party's argument during the extradition check it was not possible to reliably establish whether the grounds for granting him refugee status in Egypt related to any events in Azerbaijan, the author notes that this allegation is not true. He repeatedly and consistently raised before the domestic authorities and courts the circumstances which had compelled him to leave Azerbaijan and seek asylum in Egypt. The author notes that he informed the Moscow City Court of the circumstances of his unacknowledged detention and ill-treatment in Azerbaijan in 2008. Given that no record of his detention had been drawn up, no documents that would confirm his detention were provided by Azerbaijan in response to the request from the Office of the Prosecutor General of the Russian Federation. The author notes in this respect that the unconditional reliance by the State party on the information provided by the requesting country does not comply with the principle of a thorough examination of a complaint involving the risk of torture.

8.6 Concerning the injuries sustained in the course of his interrogation by the Azerbaijani authorities, the author submits that he was treated at the Efendiyev hospital in Baku, where he underwent maxillofacial surgery. He submits that this fact was reported to the Moscow City Court, however the court did not raise any clarifying questions regarding the medical

⁹ On 16 January 2018, the Committee reiterated its request to the State party not to extradite the author to Azerbaijan pending consideration of his communication.

¹⁰ Reference is made to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1992, paras. 196 and 197.

¹¹ Reference is made to European Court of Human Rights, *Yakubov v. Russia*, Application No. 7265/10.

institution where he had been treated, although there are two hospitals named Efendiyev in Baku. The author submits that the Office of the Prosecutor General of the Russian Federation provided to the court the information received from only one of the two so named hospitals to the effect that he had not sought medical treatment there. Thus, the court rejected his respective allegations, relying on incomplete information. The court did not order any additional inquiries on its own initiative to verify the necessary information.

8.7 With regard to the request of the Office of the Prosecutor General of the Russian Federation to the Office of the Prosecutor General of Azerbaijan concerning the author's refugee status in Egypt, the author notes that the Azerbaijani authorities were clearly incompetent in matters of asylum and could not have had the relevant information in their possession. The author asserts that, by making such a request, the State party violated the principle of confidentiality of the asylum application and aggravated the risk for him of being subjected to proscribed treatment in the event of his extradition to Azerbaijan, as the information disclosed might lead to retaliation against him.¹² Furthermore, addressing the Azerbaijani authorities with such a request, rather than sending it to the competent authorities, demonstrates that the State party simulated the extradition check in his case and, presumably, deliberately worsened his situation in retaliation against him for having appealed against the decision on his extradition.

8.8 Commenting on the State party's argument that Azerbaijan is a party to international human rights treaties, the author notes that this fact alone is insufficient to provide adequate protection against the risk of ill-treatment.¹³ The author also argues that the assurances given by the requesting State cannot be considered adequate, as they are formulated in very general terms. Moreover, no mechanism for monitoring compliance with the assurances has been envisaged.

8.9 Concerning the State party's argument to the effect that it considered itself not bound by the Committee's decision on the interim measures in the present case, the author notes that such a position is incompatible with the obligation to comply in good faith with the individual complaints procedure under the Optional Protocol.¹⁴

8.10 The author further provides information from international organizations concerning the use of torture and persecution of the opposition in Azerbaijan.¹⁵

8.11 The author concludes by stating that he has provided exhaustive arguments justifying the real risk for him of being subjected to treatment contrary to article 7 of the Covenant in the event of his extradition to Azerbaijan. The author requests that he be provided with compensation for non-pecuniary damages sustained as a result of mental suffering since his arrest pending extradition in the amount of \$10,000. He further requests that he be reimbursed for the costs incurred by his legal representation before the domestic courts and in the framework of the present communication in the amount of \$2,640.

8.12 On 14 August 2018, the author's counsel informed the Committee that on 12 August 2018, the author had been placed in a detention facility in Moscow, from where he had been transferred to a psychiatric hospital for urgent medical assistance. Counsel further reported that the decision to extradite the author would be implemented on 15 August 2018.¹⁶

8.13 On 19 March 2020, the author's counsel informed the Committee that on 15 August 2018, under the pretext of his transfer to another detention facility, the author was taken to Domodedovo international airport, where he was handed over to the Azerbaijani authorities.

¹² Reference is made to European Court of Human Rights, *N. v. Finland*, Application No. 38885/02, Judgment, 26 July 2005, para. 165; and *Kolesnik v. Russia*, Application No. 26876/08, Judgment, 17 June 2000, para. 70.

¹³ Reference is made to European Court of Human Rights, *Hirsi Jamaa and others v. Italy*, Application No. 27765/09, Judgment, 23 February 2012, para. 128.

¹⁴ Reference is made to Human Rights Committee general comment No. 33 (2008), para. 19.

¹⁵ Reference is made to *Amnesty International Report 2017/18*; *Human Rights Watch World Report 2018*; Freedom House, "Freedom in the world 2017"; and United States Department of State, "2017 country reports on human rights practices: Azerbaijan".

¹⁶ On 15 August 2018, the Committee reiterated its request to the State party not to extradite the author to Azerbaijan pending consideration of his communication.

On 16 August 2018, upon arrival in Baku, the author was taken to the Main Directorate for Combating Organized Crime of the Ministry of Internal Affairs of Azerbaijan. He was placed in a cell with a person who questioned him about his family and his attitude to the current Government. After a while, the person started exerting psychological pressure by insulting him and threatening him with reprisals. After that, the author was approached by colleagues of Sh., who also exerted psychological pressure, asking him to cooperate with the investigation and plead guilty of the crimes with which he was charged. The author refused. On 17 August 2018, the author was visited by Sh., who exerted psychological pressure on him and threatened him with a lengthy prison term.

8.14 Counsel submits that, while in detention, the author filed numerous complaints to State authorities and human rights organizations. As a result, the attitude towards him significantly deteriorated, he was subjected to psychological and physical violence, including in order to obtain incriminating evidence and other information relating to the criminal case. Thus, one day the author was taken to a room where an investigator, a prosecutor and a doctor were present. They exerted psychological pressure on him, threatened him with a long prison term for refusing to cooperate with the investigation and forced him to handwrite a statement to the effect that he had not been subjected to psychological or physical violence while in detention. The author refused; however, being intimidated, he signed a document drawn up by the prosecutor. After that, the author was taken to a cell, where several unknown men beat him severely.

8.15 According to counsel, between 19 September 2018 and 12 December 2018, the author submitted over 50 complaints to various State authorities, complaining, inter alia, about the refusal to give him access to his criminal case file, the failure to provide copies of the court rulings necessary for further appeal, torture and other forms of ill-treatment. The complaints were left without action.

8.16 On 16 December 2018, the author was released due to the expiration of the period of detention. On 14 June 2019, the Baku Court for Grave Crimes acquitted the author. Thereafter, he left Azerbaijan and returned to the Russian Federation.

State party's additional observations

9.1 On 11 March 2022, the State party submitted its further observations. It reiterated that Azerbaijan was a party to the Covenant and independently bore the obligation to comply with its requirements.

9.2 Concerning the author's stay on the territory of the Russian Federation during the period between 1 and 15 August 2018, the State party submits, in particular, that the author was placed in various detention facilities in the Yaroslavl Region and Moscow, where he was provided with the necessary medical assistance and the opportunity to have a meeting with his counsel, in accordance with the law. On 15 August 2018, the author was extradited to Azerbaijan on the basis of an extradition request from the Office of the Prosecutor General of Azerbaijan. Before his departure, the author underwent a medical examination, which revealed no contraindications for his transfer.

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

10.1 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 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.

10.2 As indicated in paragraph 19 of the Committee's general comment No. 33 (2008), 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 6 February 2017 and reiterated on 16 January and

15 August 2018, the State party failed in its obligations under article 1 of the Optional Protocol.¹⁷

Consideration of admissibility

11.1 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.

11.2 The Committee notes the information provided by the author that, before submitting the present communication, he had lodged a request for interim measures before the European Court of Human Rights and that the request had been rejected by the Court on 17 January 2017 for failure to comply with the admissibility requirements. The Committee also notes the author's submission that he did not pursue further his application before the Court. In these circumstances, the Committee considers that it is not precluded by the requirements of article 5 (2) (a) of the Optional Protocol from examining the present communication.

11.3 The Committee notes the State party's argument that the author has failed to exhaust domestic remedies, namely the supervisory review procedure before the Presidium of the Supreme Court. In that respect, the Committee notes the information received from the author to the effect that he unsuccessfully complained before the Presidium of the Supreme Court, and that his supervisory review complaint was rejected on 3 August 2017 (see para. 8.1 above). The Committee further recalls its jurisprudence, according to which filing requests for supervisory review with the president of a court directed against court decisions that have entered into force and depend on the discretionary power of a judge, constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.¹⁸ The Committee notes in this respect that the State party provided the statistical information in substantiation of its argument that the supervisory review procedure before the Presidium of the Supreme Court constituted an effective domestic remedy to be exhausted. The Committee notes, however, that the statistical information is of a general nature and does not reflect the number of extradition cases involving allegations of a risk of torture and ill-treatment. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

11.4 The Committee considers that the author has sufficiently substantiated his claims under article 7 of the Covenant, for purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

12.2 The Committee notes the author's claim that his extradition to Azerbaijan would breach his rights under article 7 of the Covenant. In particular, the author claims that he risks being subjected to torture and ill-treatment upon return.

12.3 The Committee recalls its general comment No. 31 (2004), 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 articles 6 and 7 of the Covenant (para. 12). The Committee has also indicated that the risk must be personal¹⁹ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm

¹⁷ *Lapshin v. Belarus* (CCPR/C/135/D/2945/2017), paras. 7.1–7.2; *B.A. et al. v. Austria* (CCPR/C/127/D/2956/2017), paras. 9.1–9.2; and *F.F.J.H. v. Argentina* (CCPR/C/132/D/3238/2018), paras. 16.1–16.2.

¹⁸ *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protsko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; and *Taysumov et al. v. Russian Federation* (CCPR/C/128/D/2339/2014), para. 8.5.

¹⁹ *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

exists.²⁰ In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.²¹ The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party²² and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.²³

12.4 The Committee observes that the author's case was examined by the State party's courts, which rejected his claims as unfounded. It notes that the author's claim is based on the assertion that, as a result of the family conflict and his confrontation with the high-ranking official in Azerbaijan in an attempt to protect his sister and her daughters from domestic violence, he is regarded as an opponent of the Government in the requesting country and would face a real and personal risk of being subjected to proscribed treatment in the event of his extradition. The Committee further notes the author's account presented in substantiation of his claim before the Moscow City Court, in particular that he was subjected to arbitrary detention and ill-treatment by the police in Baku in October 2008 and was hospitalized due to injuries sustained as a result of the ill-treatment. After receiving medical treatment, he left Azerbaijan and arrived in Egypt in October 2009, where he applied for refugee status (see para. 2.10 above), which was granted in 2013.

12.5 The Committee further observes that, with a view to verifying the credibility of the author's account and assessing the risks he was allegedly facing in the event of his extradition, the Moscow City Court sent an inquiry to the Office of the Prosecutor General of the Russian Federation. The latter, in its turn, through the officially established channels, requested the relevant authorities in Azerbaijan to provide additional information on the matter (see para. 2.11 above). Based on the information submitted by the author and that received as a result of the verification measures, the Moscow City Court arrived at the conclusion that the author's respective allegations were unsubstantiated and that there were no impediments to his extradition. In particular, in its decision of 19 September 2016, the court found that there was no credible evidence presented of the author's persecution in Azerbaijan on political or other grounds, and that the allegations as to the author's past experience of ill-treatment in his country of origin were unsubstantiated.

12.6 In the light of the material available to it, the Committee is of the opinion that the State party took measures which could reasonably be expected to verify the credibility of the author's account and the alleged risks. It also notes the lack of clarity and inconsistency in the author's account. The Committee considers that no evidence was provided establishing that the evaluation of facts and evidence by the State party's courts in the author's case was clearly arbitrary or amounted to a manifest error or denial of justice.

12.7 The Committee further notes that in the present case the State party relied on the assurances given by the requesting country to the effect that treatment contrary to article 7 of the Covenant would not be applied to the author. The Committee reiterates in this respect that, at the very minimum, the assurances procured should contain a monitoring mechanism and be safeguarded by practical arrangements that provide for their effective implementation by both the sending and the receiving States.²⁴ The Committee notes that the assurances obtained from Azerbaijan were not accompanied by such a mechanism or such arrangements.

²⁰ *Ibid.* and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

²¹ *X v. Denmark*, para. 9.2 and *X v. Sweden*, para. 5.18.

²² For example, *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3; *E.P. and F.P. v. Denmark* (CCPR/C/115/D/2344/2014), para. 8.4; *Z v. Denmark* (CCPR/C/137/D/2795/2016), para. 6.8; *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3; and *C.C.N. v. Sweden* (CCPR/C/136/D/3701/2020), para. 6.7.

²³ For example, *E.P. and F.P. v. Denmark*, para. 8.4; *A.B. v. Denmark* (CCPR/C/137/D/2748/2016), para. 7.7; *M.L.A. v. Sweden* (CCPR/C/135/D/3216/2018), para. 7.5; and *Rudurura v. Sweden* (CCPR/C/136/D/3706/2020), para. 8.2.

²⁴ See, for example, *Alzery v. Sweden* (CCPR/C/88/D/1416/2005), para. 11.5; *Maksudov et al. v. Kyrgyzstan*, communications No. 1461/2006, No. 1462/2006, No. 1476/2006 and No. 1477/2006, paras. 12.4 and 12.5; and *Valetov v. Kazakhstan* (CCPR/C/110/D/2104/2011), para. 14.5.

12.8 However, based on the information gathered and the risk assessment made by the State party authorities (paras. 12.5 and 12.6 above) and the materials before it, the Committee cannot conclude that the author's extradition to Azerbaijan exposed him to a real risk of treatment contrary to article 7 of the Covenant.

13. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the extradition of the author pending the Committee's consideration of his communication was in contradiction to the Committee's request for interim measures of protection in the present case, constituting a violation by the State party of its obligations under article 1 of the Optional Protocol.²⁵

14. The State party is under an obligation to avoid violations of article 1 of the Optional Protocol in the future, to comply with the requests of the Committee for interim measures and to ensure that, if such requests are made, authors are not removed from the State party's jurisdiction while their respective cases are under consideration by the Committee.

²⁵ See, for example, *N.S. v. Russian Federation* (CCPR/C/113/D/2192/2012 and CCPR/C/113/D/2192/2012/Corr.1), para. 11; and *K.B. v. Russian Federation* (CCPR/C/116/D/2193/2012), para. 11.