



# 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. 3193/2018\*, \*\*

<i>Communication submitted by:</i>	Aslan Achmetovič Jandiev (represented by counsel, Lukáš Opett)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Slovakia
<i>Date of communication:</i>	15 June 2018 (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 21 June 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	16 July 2024
<i>Subject matter:</i>	Extradition to the Russian Federation (non-refoulement)
<i>Procedural issues:</i>	Admissibility – substantiation of claims; <i>res judicata</i>
<i>Substantive issue:</i>	Freedom from torture or cruel, inhuman or degrading treatment or punishment
<i>Article of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2 and 5 (2)

1.1 The author of the communication is Aslan Achmetovič Jandiev, a national of the Russian Federation born on 23 October 1978. The author claims that his rights under article 7 of the Covenant have been and would be violated again if he were extradited to the Russian Federation, where he fears he is at risk of torture. The Optional Protocol entered into force for the State party on 28 August 1993. The author is represented by counsel.

1.2 On 21 June 2018, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party to refrain from extraditing the author to his country of origin while his communication was being considered. On 13 July

\* Adopted by the Committee at its 141st session (1–23 July 2024).

\*\* 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, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



2018,<sup>1</sup> the Committee reiterated its request for interim measures. On 17 July 2018, the author was extradited to the Russian Federation, despite the request for interim measures made by the Committee to the State party. On 18 July 2018, the State party submitted a request to consider the admissibility of the communication separately from the merits. On 24 October 2022, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to examine the admissibility of the communication together with the merits.

### **Facts as submitted by the author**

2.1 The author is an agricultural worker, a national of the Russian Federation of Ingush ethnicity and a Muslim, born on 23 October 1978 in Kostroma Province, Russian Federation. After graduating from school, he began working in construction, in 1998, and then in agriculture in 2001. From late 2005 onwards, the author was detained and interrogated multiple times and tortured by the police of the Russian Federation, in the context of its anti-terrorism operation in Ingushetia over the period from 2004 to 2007. In May 2006, the author was detained by the police in the Russian Federation and transported to the Municipal Police Department for Domestic Matters. He was beaten by police officers to force him to confess to criminal activities. He was hospitalized from 12 May to 14 June 2006, due to concussion as a result of torture.<sup>2</sup>

2.2 Subsequently, the author was accused of being a member of an organized crime group deemed to have committed several criminal offences between 2 February and 25 June 2006.<sup>3</sup> The author denied these accusations, stating that they were clearly connected with the political situation in Ingushetia,<sup>4</sup> his ethnicity and his religious affiliation. The accusations against him were based on testimonies by other persons who later retracted their statements and indicated that they had been forced to testify by the Russian authorities.

2.3 In September 2006, the author went into hiding from the State authorities of the Russian Federation with his relatives and acquaintances. In March 2008, he went to the city of Kislovodsk and then left the Russian Federation, first for Ukraine and subsequently Slovakia, Czechia and, ultimately, Germany, where he arrived in April 2008. However, he was returned to Czechia and then to Slovakia, where he applied for asylum on 13 May 2008 under a different identity out of fear for his life and of extradition, given the influence of the Government of the Russian Federation within Eastern Europe. The asylum claim was rejected on 18 November 2010. On an unspecified date in 2010, the author left Slovakia for Belgium, where he unsuccessfully applied for asylum in November 2010, and was ultimately returned to Slovakia on 9 December 2010.

2.4 On 9 December 2010, the author again applied for asylum in Slovakia, this time under his real name. The proceedings have been pending for almost eight years and have been continually prolonged. The Migration Office rejected his asylum application five times, with all the decisions subsequently quashed by the domestic courts.

2.5 On 2 February 2011, the Office of the Prosecutor General of the Russian Federation requested the Ministry of Justice of Slovakia to extradite the author to be tried on charges

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<sup>1</sup> In response to the updated information provided by the author on 12 July 2018 about the imminent risk of his extradition.

<sup>2</sup> The hospital release form (counsel's translation) states that: "He was injured as a result of a beating. He lost [consciousness] for 10 minutes. Brought in by the ambulance. Recorded vomiting once and sickness, systematic dizziness. Damages to the memory of the events which preceded the injury and of the time of injury... They discovered during the visual examination numerous scratches on the upper and lower limbs with significant bruise, contusion and flesh wounds of the soft tissues on the chest part of the backbone and in the projection of the shoulder girdle."

<sup>3</sup> The author underlines that this period also includes the time when he was hospitalized.

<sup>4</sup> The period between 2004 and 2007 was one in which so-called Chechen and Islamic rebels were particularly active, with many terrorist attacks carried out not only in Chechnya but also in Ingushetia and North Ossetia-Alania. At the same time, there was rivalry and land disputes between these territories. These activities triggered an anti-terrorist operation by Government of the Russian Federation, which was accompanied by considerable violations of human rights, torture and forced confessions, especially from Muslim citizens of Ingushetia, North Ossetia-Alania and Chechnya, in an attempt to suppress the terrorist organizations operating in those territories.

related to acts of terrorism that he had allegedly committed with other individuals in North Ossetia–Alania. The Office of the Prosecutor General of the Russian Federation provided the State party with the following diplomatic guarantees: that court proceedings would be held in accordance with the standards of international law; that the author would be prosecuted only for the offences for which he would be extradited and that he would not be extradited to another State without the consent of the State party; that the author would not be subjected to torture or inhuman treatment; and that he would be able to leave the Russian Federation once he completed his sentence. At the State party's request, the possibility for the extraditing State to monitor the author after his extradition to the Russian Federation, if the State party so wishes, was included as a guarantee.

2.6 On 9 February 2016, the Supreme Court of Slovakia quashed a previous decision of 5 October 2015 rendered by the Regional Court in Košice, quashed the decision of the Migration Office and returned the matter to the Migration Office for renewed consideration. The Supreme Court did not agree that the author's story should be characterized as untruthful. It contested an expert opinion of 18 October 2015, according to which the concussion that the author had suffered in May 2006 could not have resulted in the current memory blackouts suffered by the author. The court considered that that conclusion – based only on a discussion with the person under observation and one medical report from 2006, which had diagnosed a brain injury – without any other expert examination, such as through scanning methods, could not be considered sufficiently substantiated. Acknowledging that information from the area of the author's country of origin had confirmed the existence of practices leading to forced confessions, the Supreme Court considered that the statement by the Migration Office that the author's story was not truthful and that the author was unreliable was premature and unconvincing in that context.

2.7 The Supreme Court considered that the practices of the police in the Russian Federation, as described by the author, could be considered, without any doubt, a serious violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). It considered therefore that the conclusion of the Migration Office that the author did not fulfil the legal requirements for the granting of asylum, without the author being able to provide further arguments to support his case, was unreasonable and premature. The Supreme Court concluded that the fact that the author had been tortured in the past did not mean that the risk of similar treatment had ceased to exist. It considered that the probability of the author being further exposed to torture was increased by the fact that he had unsuccessfully sought international protection. According to the Supreme Court, the threat was sufficiently individualized and the author was in danger, given the specific circumstances of his situation. The Supreme Court noted that the torture of the author in the Russian Federation had been sufficiently proven and that the author faced a real threat of being tortured again if he were to be extradited.

2.8 The Supreme Court contested the effectiveness of the guarantees offered by the Government of the Russian Federation, emphasizing that the criminal proceedings against the author would not take place in Moscow but in North Ossetia–Alania or Ingushetia. Therefore, it was necessary to evaluate the exact situation in those regions, and potential guarantees should be provided from those regions and their authorities, which had not happened. After evaluating reports from international non-governmental organizations, the Supreme Court concluded that the guarantees did not reduce or eliminate the reasonable fears of a reoccurrence of the same practices if the plaintiff returned to his country of origin for the purposes of criminal prosecution.

2.9 Despite the decision by the Supreme Court, the Migration Office again rejected the author's asylum application. On 14 February 2017, the decision of the Migration Office not to grant asylum was again cancelled by the Regional Court in Košice, as the decision was not aligned with the legal opinion issued by the Supreme Court. The Regional Court also questioned the effectiveness of the guarantees offered by the Government of the Russian Federation and ordered their evaluation in relation to recent developments in the Russian Federation, in particular the amendment of its constitutional law enabling the authorities not to comply with decisions of the European Court of Human Rights. At that time, the Migration Office again issued a notification of prolongation of the asylum proceedings, in an attempt to ensure that the author was extradited before the decision on asylum was made.

2.10 On 24 March 2016, the European Court of Human Rights declared inadmissible as manifestly unfounded the author's application in relation to article 3 of the European Convention on Human Rights.<sup>5</sup> The Court concluded that there were no substantial grounds for believing that the author would be exposed to a real risk of ill-treatment if extradited.<sup>6</sup> As to the diplomatic guarantees offered by the Government of the Russian Federation, the Court noted that they were similar to guarantees offered in previous cases, which had been respected by the Government of the Russian Federation. It therefore found no reason to doubt them in the author's case.

2.11 On 2 May 2018, the Constitutional Court, in its last resort, confirmed a decision by the Minister of Justice dated 7 February 2018, which granted permission to extradite the author, basing the decision on the above-mentioned decision of the European Court of Human Rights. However, according to the author, the Constitutional Court did not take into account a substantial change in the factual circumstances after the European Court of Human Rights rendered its decision, to an extent that refutes the key assumptions on which the decision of the European Court of Human Rights was based.

2.12 The author had been in detention for almost seven years, since 21 January 2011, at the time of the initial submission.

2.13 The author submits that, on 28 May 2018, he applied to the European Court of Human Rights for a renewal of the proceedings and requested interim measures, following the decision of the Constitutional Court of 2 May 2018. His request for interim measures was rejected by the European Court of Human Rights on 30 May 2018, as the European Convention on Human Rights does not allow for proceedings to be renewed. The author therefore withdrew his application to the European Court of Human Rights on 5 June 2018. There are no other pending proceedings regarding the matter before an international authority.

### **Complaint**

3.1 The author invokes article 7 of the Covenant and considers that his right not to be subjected to torture has been violated, as the State party not only approved his extradition to a country where he is at risk of being subjected to torture but did so while the domestic authorities were still evaluating his application for international protection (asylum or subsidiary protection).

3.2 As to the inadmissibility decision rendered by the European Court of Human Rights on 24 March 2016, the author submits that there has been a substantial change in the factual circumstances since that decision was handed down, which entitles him to a new evaluation of the risk of torture that he would face if he were to be extradited to the Russian Federation. The decision of 9 February 2016 of the Supreme Court and that of 14 February 2017 of the Regional Court in Košice were not taken into account by the European Court of Human Rights. On the basis of these two decisions, the author identifies a strong possibility of being granted asylum or subsidiary protection.

3.3 The author draws the Committee's attention to reports by non-governmental organizations documenting numerous cases of people in a similar situation who were tortured by the authorities in the Russian Federation and from whom confessions were forcibly extracted. At the same time, the judicial system in the Russian Federation is not a sufficient guarantee for preventing torture or for removing its consequences.

3.4 As to the diplomatic guarantees provided by the Government of the Russian Federation, the author contests their trustworthiness and submits that, in the past, the Government of the Russian Federation has repeatedly violated such guarantees. He also submits that the guarantees were provided by the Office of the Prosecutor General of the

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<sup>5</sup> European Court of Human Rights, *A.Y. v. Slovakia*, Application No. 37146/12, Decision, 24 March 2016.

<sup>6</sup> In that context, the author argues that the European Court of Human Rights based its decision on the findings of the Migration Office in regard to the author's asylum application, which were subsequently annulled by the Supreme Court in its decision of 9 February 2016. The author adds that the assumptions contained in the decision of the European Court of Human Rights were refuted by the Supreme Court in its decision.

Russian Federation, which was not in charge of the investigation or the criminal prosecution in the author's case. The Russian Federation is a federative State, and the author's investigation is led by the authorities of Ingushetia, which are the source of the risk of torture and which have not provided any diplomatic assurances.

3.5 The author also emphasizes that the asylum proceedings in his case started on 9 December 2010 and had not been exhausted at the date of submission of the initial communication to the Committee. The mere length of the asylum proceedings indicates that his application is not groundless. The Supreme Court, in its decision of 9 February 2016, also declared that his statements were trustworthy and that he had a right to be protected against extradition.

3.6 The author points to the ineffective steps by the State party's authorities concerning his asylum application. He recalls that the Migration Office issued four decisions not to grant the author asylum – preceding the decision of the Supreme Court of 9 February 2016 – which were all cancelled by the courts. Following the decision rendered by the Supreme Court, the Migration Office again issued a decision not to grant the author asylum, which was then cancelled, as it did not respect the decision of the Supreme Court. After that decision of the Supreme Court, and for more than a year, the Migration Office repeatedly postponed the proceedings without issuing a decision on the merits. Therefore, the author considers that the Migration Office tried to prevent him from effectively seeking protection in the form of asylum or subsidiary protection, with the intention of ensuring that he was extradited following the extradition proceedings and before issuing a final decision on his asylum application.

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

4.1 On 18 July 2018, the State party submitted its observations on the admissibility of the communication, arguing that the communication was inadmissible, given that the same matter had been examined under another procedure of international investigation or settlement.

4.2 The State party submits that the author's case has already been decided on the merits by the European Court of Human Rights. The communication is thus inadmissible on the basis of *res judicata*. The State party requests that the decision of the European Court of Human Rights be respected. Contradictory outcomes would jeopardize the credibility of the Court as an international judicial body.

4.3 The State party challenges the author's claim that the substance of his arguments with respect to changes in factual circumstances were not adequately considered. The rejections by the European Court of Human Rights of the author's requests for interim measures<sup>7</sup> proved that no new factual circumstances had emerged in his case. The State party submits that, if the European Court of Human Rights had believed that new factual circumstances had emerged following its decision of 24 March 2016, it would have issued new interim measures, as it did in several other cases.<sup>8</sup> The author's case has therefore already been considered on the merits by another procedure of international investigation or settlement.

4.4 The State party submits that it could not accommodate the Committee's request to refrain from extraditing the author to the Russian Federation in the light of the findings of the Constitutional Court,<sup>9</sup> the legally non-binding nature of the Committee's decisions, the

<sup>7</sup> On 8 February 2018, the European Court of Human Rights decided not to grant the author's interim measures and not to prevent his extradition. On 28 May 2018, the author lodged a new request for interim measures before the Court to prevent his extradition to the Russian Federation. On 29 May 2018, the European Court of Human Rights decided not to grant the interim measures and not to prevent the applicant's extradition.

<sup>8</sup> European Court of Human Rights, *Chentiev v. Slovakia*, Application No. 27145/14; and *Ibragimov v. Slovakia*, Application No. 65916/10.

<sup>9</sup> On 13 July 2018, the author applied to the Constitutional Court of Slovakia, again claiming that his fundamental rights had been violated. The Constitutional Court did not suspend the enforceability of the extradition decision issued by the Minister of Justice on 7 February 2018 before the author's actual extradition on 17 July 2018.

risk of releasing the author upon the expiration of the statutory limit for detention and the risk that the author presented to public safety.

4.5 On 14 August 2018, the State party informed the Committee that, on 7 August 2018,<sup>10</sup> the Constitutional Court had rejected the author's complaint of a violation of his fundamental rights in the context of his extradition to the Russian Federation, despite the Committee's request for interim measures of 21 June 2018.

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

5.1 On 14 September 2018, the author submitted his comments on the State party's observations on admissibility, arguing that the communication was admissible and that article 5 (2) (a) of the Optional Protocol applied only to ongoing proceedings and not to the present communication, given that the examination of the author's case by the European Court of Human Rights had concluded.<sup>11</sup>

5.2 The author submits that new factual circumstances emerged following the decision of 24 March 2016 of the European Court of Human Rights.<sup>12</sup> The non-permissibility of the extradition of the complainant to the Russian Federation can be derived from this new evidence. These factual circumstances were not considered by the European Court of Human Rights or the domestic courts in the State party,<sup>13</sup> nor did it consider whether an asylum-seeker could be extradited during ongoing asylum proceedings.<sup>14</sup> The decision of 24 March 2016 therefore does not render the communication inadmissible. With respect to the Court's denials of the interim measures requests of 8 February 2018 and 28 May 2018, the author emphasizes that such decisions are not on the merits and were reached without evaluating the facts. Moreover, the Court is not bound by such decisions when evaluating an application on its substance. Because the author was not provided with preliminary protection by the Court, he concluded the proceedings, which appeared ineffective, and submitted a communication to the Committee.

5.3 The author also submits that the State party violated articles 2 (1) to (3), 5 (1) and 5 (2) of the Covenant and articles 1 and 2 of the Optional Protocol by extraditing him to the Russian Federation on 17 July 2018.<sup>15</sup> The State party did not respect the interim measures requesting it to refrain from extraditing the author while his communication was under consideration by the Committee. Moreover, the author is of the opinion that the State party did not contest the factual argumentation that he set out, nor its legitimacy.

5.4 The author challenges the State party's contention that the Committee's decisions, including interim measures, are not legally binding. It is a fundamental rule of international law that international treaties are of a legally binding nature.<sup>16</sup> Furthermore, article 1 of the Optional Protocol indicates that States parties have provided the Committee with the competence to receive individual complaints. States parties have therefore committed themselves to respecting the Views issued by the Committee and should be obliged to respect the requests for interim measures. The author argues that otherwise the protection afforded to an individual on the basis of article 1 would be illusory. Through article 2 of the Optional Protocol, States parties allow individuals to file complaints with the Committee. This obligation is violated where the State party, through its failure to comply with the

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<sup>10</sup> Constitutional Court of Slovakia, Decision No. III ÚS 319/2018-30, 7 August 2018. The Constitutional Court decided to reject the author's complaint for lack of competence to hear the case and also pointed out that the Committee's decisions are non-binding.

<sup>11</sup> All proceedings before international bodies had concluded either by a decision or on the basis of a request of the applicant.

<sup>12</sup> The new circumstances are the decision of the Supreme Court of Slovakia of 9 February 2016 and other findings from the asylum proceedings.

<sup>13</sup> E.g. the decision of the Constitutional Court of Slovakia of 2 May 2018.

<sup>14</sup> This question was not even considered in the decision of the European Court of Human Rights. Therefore, the decision of the European Court of Human Rights in the matter cannot present an obstacle to the consideration of the present communication.

<sup>15</sup> He adds that the domestic remedies in this regard have been exhausted with the decision of 7 August 2018 of the Constitutional Court.

<sup>16</sup> Article 26 of the Vienna Convention on the Law of Treaties, 23 May 1969.

Committee's request for interim measures, prevents an individual from bringing a complaint before the Committee.

5.5 The author's reading of the Constitution of Slovakia allows for his case to be re-examined by the national authorities on the basis of a decision from the Committee.<sup>17</sup> Renewal of the proceedings would provide the author with a sense of redress, owing to the fact that his rights have been violated by the State party due to its failure to comply with the request for interim measures, whose binding nature should be reasserted by the Committee.

5.6 The author requests the Committee to recommend to the State party to grant him adequate financial compensation for the damages suffered by the violation of his rights.

#### **State party's additional observations**

6.1 On 12 December 2018 and 1 March 2019, the State party submitted that representatives of the Embassy of Slovakia to the Russian Federation in Moscow had conducted a visit to the Federal State Institution for Detention in Vladikavkaz, where the author was being held in custody. The visit was aimed at monitoring the observance of the rights guaranteed by the author's home country.

6.2 The consent by the Ministry of Justice of the State party to extradite the author on charges of organized crime and complicity in a terrorist attack hinged on the diplomatic assurances provided by the Russian Federation.

6.3 During the monitoring visit conducted on 21 February 2019, the author was interviewed in private. He appeared to be in good physical condition and did not complain about unsatisfactory conditions of detention or about having been subjected to torture or abuse, nor did he claim to have been injured or beaten. The author stated that he had been granted all rights. In his view, the guards were "normal". He was granted access to medical care and could be visited by relatives, whom he could also contact by videoconference. The detention facility was modern, with a capacity of 35 inmates.

6.4 The visit indicated that the guarantees given by the Office of the Prosecutor General of the Russian Federation had been upheld and were likely to be further respected. The State party promised to continue its monitoring.

#### **Author's comments on the State party's additional observations**

7.1 In a letter to the Committee of 7 May 2019, the author's counsel expressed doubts about the conditions of detention of the author, given that, following the author's extradition, he had had no direct information from him about the place and conditions of detention, and the counsel's inquiries had remained unanswered.<sup>18</sup>

7.2 However, the author's counsel argues that updated information on the author's conditions of detention would have no bearing on the ongoing proceedings before the Committee, because the State party violated the author's rights by extraditing him to the Russian Federation, despite the serious risk that he would be subjected to torture and the fact that his asylum proceedings were still pending and in disregard of the Committee's request for interim measures to stay his extradition while his complaint was being examined by the Committee. It is essential to consider what the risk of torture was at the moment of the author's extradition and what the State party did to properly examine this risk.

7.3 By submissions of 30 June and 19 July 2019, the author's counsel reiterated that he had not heard from the author directly by mail and indicated that he doubted the State party's assessment of the author's conditions of detention.

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<sup>17</sup> Article 133 of the Constitution of Slovakia.

<sup>18</sup> On 17 May 2019, the counsel sent an inquiry to the author about his whereabouts, conditions of detention and fairness of the criminal proceedings. However, on 15 July 2019, the counsel indicated to the Committee that the author had not received the counsel's letter of inquiry.

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

8.1 On 1 March 2023, the State party submitted its observations on the merits. It recalled the findings of the Constitutional Court of Slovakia taking into account the conclusions of the European Court of Human Rights on the author's application. Having considered the obligation to comply with the statutory regulation regarding the time limits for the author's detention, and being aware of the risk that the author has presented to public security, the State party had no possibility to accommodate the Committee's request for interim measures to refrain from extraditing the author to the Russian Federation.

8.2 Having accepted the diplomatic guarantees by the Russian Federation, the State party has also taken proactive measures to ensure that the author's rights are respected, in accordance with international human rights law.

8.3 The State party reiterated its request that the Committee declare the present communication inadmissible as *res judicata*, in view of the fact that the same claims have already been decided on the merits by the European Court of Human Rights, which declared the application in relation to articles 3, 13 and 6 of the European Convention on Human Rights inadmissible on 24 March 2016, bringing the application of the interim measures to an end and thereby removing the obstacle preventing the applicant's extradition.<sup>19</sup>

8.4 The State party recalled its previous arguments with regard to the extradition decision by the Minister of Justice, the decision of the Constitutional Court of Slovakia of 2 May 2018, the applications to the European Court of Human Rights<sup>20</sup> and the monitoring visit conducted at the facility where the author was placed.

8.5 The State party requests the Committee to respect the final decisions of the European Court of Human Rights. If decided otherwise, the conclusions of the Committee in the present case would not be in compliance with the final decisions of the international judicial body.

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

9.1 On 11 October 2023, the author's counsel submitted comments on the State party's observations on the merits, dated 1 March 2023.

9.2 Although the author's counsel accepted the State party's account of the facts, it considered their observations to be incomplete. With regard to the interim measures request issued by the European Court of Human Rights in relation to *A.Y. v. Slovakia*, in 2012, it constituted an obstacle to the extradition of the applicant. The three arguments related to a perceived lack of credibility and consistency, for which the Court considered the author's application inadmissible in its decision of 24 March 2016, and were all refuted by later decisions of the national authorities in the asylum procedure, including the Supreme Court of Slovakia and the Regional Court in Košice.

9.3 The author's counsel reiterated his main claim that the author was extradited on 17 July 2018, in violation of the Committee's request for interim measures of 21 June 2018.

9.4 With regard to the State party's information about the only visit to monitor the conditions of detention of the author, which occurred some 3.5 years ago, in line with the diplomatic guarantees, the information has not been updated and it could have changed since that time in a substantial way, due to the risk that the author faces of torture or other ill-treatment. The author's counsel questions the effectiveness of such means of supervision, given that the approval of a judge is required for each monitoring visit, which excludes the moment of surprise. The counsel also questions the date when the actual visit took place,

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<sup>19</sup> The European Court of Human Rights concluded that it had not been established in the author's case that there were substantial grounds for believing that he would be exposed to a real risk of ill-treatment in the event of his extradition to the Russian Federation. The Court pointed out that the guarantees provided by the Russian Federation were similar to those provided in other cases involving Slovakia that had been accepted by the Court (see *Chentiev and Ibragimov v. Slovakia*, Applications No. 51946/08 and No. 21022/08).

<sup>20</sup> In its decision of 26 May 2020, the Constitutional Court again dismissed the complaint of the author, in which he had reiterated the claims of a violation of his fundamental rights, due to the length of the extradition detention.



given that the Ministry of Justice and the Ministry of Foreign and European Affairs both indicated that it had taken place already on 21 February 2019. However, the State party did not mention the date of such a monitoring visit in its observations of 12 December 2018, and there is also a lack of certainty about the number of visits undertaken in 2019 and whether there have been any other visits since.

9.5 Through a status enquiry, the Slovak post office confirmed that the counsel's letter was delivered to the author on 29 May 2019, however, it is not certain that the signature on the note of receipt belongs to the author. The counsel is not able to verify the relevance of the information about the status of the author provided by the State party, given that the author has not subsequently contacted the counsel's law firm. The author's counsel is therefore not able to confirm or deny the State party's information.

9.6 The author's counsel concluded by objecting to the State party's reference to the decisions of the Constitutional Court and the European Court of Human Rights, its arguments about the limitations on the duration of detention of the author and its assertion that the danger posed by the author to public security was the reason that it was not possible to comply with the Committee's interim measures request to halt the author's extradition. Such interpretation is in contradiction to the State party's Constitution and its obligations under the Covenant (arts. 2 (3) (a) and (c)) to prevent irreparable harm. The counsel rebuts the State party's assertion that the decision of inadmissibility of the European Court of Human Rights represents *res judicata* preventing the proceedings before the Committee, given that the European Convention on Human Rights and the Covenant are two separate legal instruments, and that the European Court did not rule on the claims raised by the author under article 7 of the Covenant.

#### **Additional submissions**

##### *From the author*

10.1 On 11 January 2024, the author's counsel submitted further comments, indicating, inter alia, that he had had no updates on the author's conditions of detention since 18 July 2020, when the State party had reported on its monitoring visit. Even from that report, it was not evident when the latest monitoring visit of the author had been undertaken, who was present, what information the author provided and whether there were currently any checks on the diplomatic guarantees at all.

10.2 According to the information from the Embassy of Slovakia in Moscow of 17 November 2019, the author had been transported to the Federal Penitentiary Facility in the city of Dimitrovgrad, Ulyanovsk Province. Although the consul of the Embassy indicated that the Embassy was enquiring about the possibility of carrying out a subsequent visit to the author, no corresponding information has been provided to the author's counsel.

##### *From the State party*

11. On 20 May 2024, the State party submitted further observations, informing the Committee that the author was in prison in Vladikavkaz on 21 July 2019 when he had been visited by the Slovak diplomatic staff and he was in good condition, that the author could not be visited between 2020 and 2022 by the Slovak authorities, owing to the restrictions related to the coronavirus disease (COVID-19) pandemic, that the Slovak authorities were informed in October 2020 by the Russian authorities that the author was being held in the Federal Penitentiary Facility in Dimitrovgrad, Ulyanovsk Region, and that, in October 2023, the author's counsel requested the Slovak authorities to carry out an additional visit to the author, the request was transmitted to the Russian authorities on 19 January 2024 and was answered in the affirmative in February 2024, however, the exact date of a visit had not been fixed and was being negotiated. The State party also reiterated its arguments on the inadmissibility of the present communication on the grounds of *res judicata*.

### Issues and proceedings before the Committee

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

12.1 In a note verbale dated 21 June 2018, the Committee requested the State party to refrain from extraditing the author to the Russian Federation. It reiterated that request in a note verbale dated 13 July 2018. The Committee notes that the State party failed to respect the Committee's request for interim measures by extraditing the author on 17 July 2018, before the Committee had concluded its consideration of the present communication.

12.2 The Committee recalls 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 measures requested by the Committee with a view to preventing irreparable harm undermines the protection of the rights enshrined in the Covenant.<sup>21</sup>

12.3 The Committee reiterates that, apart from any violation of the Covenant found against a State party in a communication, a State party commits serious violations of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant or to render examination by the Committee moot and the expression of its Views concerning the implementation of the obligations of the State party under the Covenant nugatory and futile.<sup>22</sup> Having been notified of the communication and the request by the Committee for interim measures of protection, the State party failed in its obligations under article 1 of the Optional Protocol by extraditing the alleged victim before the Committee had concluded its consideration of the present communication.<sup>23</sup>

#### *Consideration of admissibility*

13.1 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.

13.2 As regards article 5 (2) (a) of the Optional Protocol, the Committee takes note of the State party's objection that the author's application on this issue was rejected by the European Court of Human Rights as inadmissible. The State party also argued that the same matter, in which the interim measures were granted, was considered on the merits and constitutes *res judicata*, which should prevent consideration of the present communication. The Committee takes note of the author's assertion however that the application to the Court did not concern the same matter, arguing that the present communication has addressed new circumstances which arose after 24 March 2016, that article 5 (2) (a) of the Optional Protocol conceives as obstacle to admissibility another pending international investigation or settlement, not proceedings that were concluded, and that the author requested interim measures from the Court on 8 February and 28 May 2018, which were rejected, and the author withdrew his application to the Court on 5 June 2018 (see para. 2.13 above). The Committee therefore considers that the same matter is not being examined under another procedure of international investigation or settlement and that it is therefore not precluded from considering the author's claims by the requirements of article 5 (2) (a) of the Optional Protocol.

13.3 The Committee takes note of the author's statement that he has exhausted all effective domestic remedies available to him, in the context of both extradition and asylum proceedings. In the absence of any objection by the State party in that connection, the

<sup>21</sup> See, e.g., *Saidov v. Tajikistan* (CCPR/C/81/D/964/2001), para. 4.4; *Tolipkhuzhaev v. Uzbekistan* (CCPR/C/96/D/1280/2004), para. 6.4; *Kovaleva et al. v. Belarus* (CCPR/C/106/D/2120/2011), para. 9.5; and *Rehman v. Hungary* (CCPR/C/138/D/2963/2017), para. 7.1.

<sup>22</sup> See, e.g., *Piandiong v. Philippines* (CCPR/C/70/D/869/1999 and CCPR/C/70/D/869/1999/Corr.1), para. 5.1; *Idiev v. Tajikistan* (CCPR/C/95/D/1276/2004), para. 7.3; *Maksudov et al. v. Kyrgyzstan* (CCPR/C/93/D/1461/2006, 1462/2006, 1476/2006 and 1477/2006), paras. 10.1–10.3; *Yuzepchuk v. Belarus* (CCPR/C/112/D/1906/2009), para. 6.2; and *Kovaleva et al. v. Belarus*, para. 9.4. See also general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, paras. 15 and 19.

<sup>23</sup> *Rehman v. Hungary*, para. 7.2.

Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

13.4 The Committee considers the author's claims under article 7, read in conjunction with article 2 (3), of the Covenant to have been sufficiently substantiated for the purposes of admissibility, and, in absence of observations from the State party to the contrary, proceeds to its examination of the merits.

*Consideration of the merits*

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

14.2 The Committee takes note of the author's claims that, by permitting his extradition, and if extradited to the Russian Federation, he would be at risk of torture, inhuman and degrading treatment or punishment. He fears such risks on account of his perceived membership of an organized crime group, in the context of which investigation he was detained and exposed to violence to force a confession, in connection with the political situation in Ingushetia, his ethnicity and religious affiliation and the nature of charges brought against him, which are connected to terrorism-related crimes. The Committee also takes note of the author's account of having endured previous beatings and torture by the federal security forces between 2005 and 2006. The Committee further takes note of the author's references to the country information concerning the torture of terrorist suspects in the Russian Federation. The Committee notes that the author has raised these claims before the authorities of the State party in the context of the asylum proceedings.

14.3 The Committee takes notes of the author's allegations that the Migration Office of Slovakia and the courts failed to properly assess his account of previous detention, torture and forced confessions by the federal security service of the Russian Federation while considering his asylum request and did not take into consideration the country information concerning the treatment of terrorism suspects in the Russian Federation. The Committee also takes note of the author's claim that the Migration Office repeatedly failed to consider the opinion of the Supreme Court or regional courts indicating that, given that the author had previously been exposed to torture at the hands of the federal authorities and the authorities in Ingushetia, the risk of torture for the author, if extradited, were foreseeable, real and personal, which led to five decisions not to grant the author asylum, and that the asylum proceedings were still pending at the time when the author was extradited, without a suspensive effect on his extradition.

14.4 The Committee observes, from the documents provided by the author, that the domestic authorities, in assessing his asylum application, focused on the fact that the author had been charged with terrorism-related crimes, that he left the Russian Federation in March 2008 with possibly forged documents, that he used a false identity in the initial asylum proceedings in the State party, that his statements were not considered credible and that he tried to obtain international protection in other European countries before returning to the State party in 2010, where he again applied for asylum. The Committee notes the reliance of the domestic authorities on the guarantees provided by the Office of the Prosecutor General of the Russian Federation in the extradition request of 2 February 2011 (see para. 2.5 above), namely, that the author would enjoy fair trial safeguards and would not be subjected to persecution or to torture, which the State party managed to monitor only on one occasion, on 21 July 2019, as reported to the Slovak authorities and conveyed to the Committee on 20 May 2024 (see para. 11 above), and that the author's counsel has not received any further updates on the author's situation since then.

14.5 The Committee notes that the available information does not allow it to establish whether the State party's asylum authorities carried out a personal interview with the author, who was considered a risk to public security and was put in extradition detention. The authorities also did not consider the author's claims from the point of view of the principle of non-refoulement, to ensure that he would not be exposed to treatment contrary to article 7 of the Covenant, even if he did not meet the requirements in order to obtain a status of refugee or subsidiary or temporary protection in accordance with the State party's legislation, nor was there sufficient evaluation in the decisions of the domestic authorities and courts of previous the experiences of the author in North Ossetia-Alania, i.e. why the author's allegations were

repeatedly questioned and perceived as not credible, why the Supreme Court's legal opinion in that regard was not respected by the subsidiary asylum authorities and why the country information related to prevalence of persecution and torture in the context of anti-terrorism operations within the Russian Federation was ignored by those authorities.

14.6 In the light of the foregoing, the Committee considers that the author's claims were sufficiently substantiated and finds that the State party has failed to duly assess the author's claims concerning possible risk of treatment contrary to article 7 of the Covenant in case of extradition, in particular as the asylum proceedings were not terminated when the author was extradited. The Committee is therefore of the opinion that the State party violated its procedural obligations under article 7 of the Covenant, by failing to duly assess the personal circumstances of the author, and under article 1 of the Optional Protocol, due to the State party's disregard of the Committee's request for interim measures to stay his extradition while his case was under consideration by the Committee. The stated violation of article 7 has been compounded by relying on diplomatic guarantees that cannot be considered as reliable and verifiable when not regularly monitored.

15. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under article 7, read in conjunction with article 2 (3), of the Covenant and of article 1 of the Optional Protocol.

16. 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 to take appropriate steps to verify the author's current status and continue to regularly monitor the author's condition, in cooperation with the authorities of the Russian Federation, after the extradition and subsequent to any conviction and sentence, and to provide the author with adequate compensation for the violation of his rights. The State party is also under an obligation to take all steps necessary to prevent similar violations from recurring in the future.

17. 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 and to provide an effective remedy when it has been determined that a violation has occurred, 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 widely disseminated in the official language of the State party.

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