



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2570/2015\*, \*\*

<i>Communication submitted by:</i>	Anatoliy Lytvyniuk (represented by counsel, Andrea Saccucci)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Italy
<i>Date of communication:</i>	9 October 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 February 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	26 July 2019
<i>Subject matter:</i>	Extradition to Ukraine
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Right to life; risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	7, 9 (1), (3) and (4), 10 (1) and (2)
<i>Article of the Optional Protocol:</i>	2

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



1.1 The author of the communication is Anatoliy Lytvyniuk, a Ukrainian national born on 20 November 1979. At the time of submitting the present communication, he was subject to extradition to Ukraine, in order to face criminal charges for a robbery allegedly committed in 2000. He claimed that by extraditing him to Ukraine, Italy would violate his rights under articles 7, 9 (1), (3) and (4) and 10 (1) and (2) of the Covenant. The Optional Protocol entered into force for the State party on 15 September 1978. The author is represented by counsel.

1.2 On 16 February 2015, pursuant to rule 94 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures decided not to issue a request for interim measures. On 7 December 2017, the Special Rapporteur decided to deny the author's requests to issue a request for interim measures.

### **The facts as submitted by the author**

2.1 At an unknown date, the author came to Vicenza, Italy, "for reasons of work".<sup>1</sup> On 4 June 2010, the district court of Sosnivisky, Cherkasy, Ukraine, issued an arrest warrant against the author in connection with a robbery that he had allegedly committed on 9 May 2000 in a private house in the village of Fałęcice-Wola, Poland. On 30 May 2011, the warrant was reissued. On 20 July 2011, Italian police officers entered the author's house and arrested him. On 2 August 2011, Ukraine issued an extradition request to the Italian authorities. Both States are parties to the European Convention on Extradition of 13 December 1957.

2.2 On 2 September 2011, the author was released from prison and placed under house arrest. Meanwhile, the Ukrainian authorities provided supporting documents to the extradition request: an arrest warrant, a summary of the relevant facts of the case and "legal characterization of the alleged offence". On 27 September 2011, the Chief Prosecutor of the Venice Court of Appeal initiated legal proceedings for the author's extradition. On 21 November 2011, the author challenged his extradition, claiming that there was a lack of strong evidence of guilt; that the lapse of time rendered the alleged offence not liable to prosecution according to the law of both States; that neither a decree of the Minister of Justice nor a complaint by the victim had been filed in the case, as required under Italian legislation; and that the author would be put at real risk of cruel, inhuman and degrading treatment and even torture if extradited to Ukraine. On 28 November 2011, the Venice Court of Appeal rejected the extradition request, as the conditions set forth by international and domestic law had not been met. In particular, the Court of Appeal held that the alleged offence was time-barred.

2.3 The Prosecutor challenged the decision before the Court of Cassation, arguing that the Court of Appeal had misinterpreted internal provisions governing the statute of limitations. The Prosecutor held that the offence allegedly committed should have been legally characterized under Italian law as aggravated robbery – and not simply as robbery, as stated by the Court of Appeal. Consequently, according to Italian legislation, the period of limitation of the offence would only expire on 9 May 2015. Article 10 of the Convention on Extradition denies extradition if the offence is time-barred "according to the law of either the requesting or the requested party." The Prosecutor maintained that the statute of limitations for the alleged offence had not expired according to Ukrainian law either, because the period of limitation had been interrupted by the issuance of an arrest warrant on 3 September 2007. Regarding the issue of gross human rights violations committed against detainees in Ukraine, the Prosecutor simply recalled prior jurisprudence in which the Court of Cassation had granted extraditions to Ukraine in the past.

2.4 Before the Court of Cassation, the author argued that: (a) both the Ukrainian authorities, in the original arrest warrant, and the Italian authorities, in the course of proceedings before the Venice Court of Appeal, had brought the accusation of robbery and that aggravating circumstances could not be charged *ad libitum*; (b) the first arrest warrant issued on 3 September 2007 had not been served on or communicated to him and that, in any event, the extradition request had been based on a subsequent warrant that was issued

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<sup>1</sup> No details provided.

after the period of limitations had expired; and (c) in the case of extradition, the author would risk serious human rights violations.

2.5 On 17 April 2012, the Court of Cassation upheld the Prosecutor's appeal and quashed the previous decision, sending the case back to another section of the Venice Court of Appeal in order for it to duly consider "the legal relevance" of every element of the case at hand and, in particular, "the aggravating circumstances mentioned in the documents supporting the request of extradition [which] are relevant in order to determine the period of limitation of the alleged offence".

2.6 On 26 October 2012, the Venice Court of Appeal confirmed that the conditions for extradition had not been met, since "no evidence of guilt [was] to be found in the documents supporting the request". However, on 8 March 2013, the Court of Cassation again upheld an appeal by the Prosecutor and quashed the second decision by the Venice Court of Appeal, referring the case back to a different section of the Court. In particular, the Court of Cassation held that "if the formal request of extradition and the documents attached thereto did not provide for evidence of guilt, the Court of Appeal should have requested supplementary information [to the authorities of the requesting State] as foreseen by article 13 of the ECE".

2.7 On 21 November 2013, the Venice Court of Appeal again rejected the extradition request because it did not meet the requirements set forth by domestic and international law. According to the court, extradition was to be denied on account of "consistent evidence that corroborates the doubt that, if rendered to the Ukrainian authorities, [the author] would predictably be subjected to a penitentiary treatment contrary to fundamental human rights, with regard to his personal safety, and could be deprived of an effective remedy to obtain limitation of the duration of his provisional custody [as attested by] the recurring warnings of physical violence against detainees and of inadequate health assistance to them in Ukrainian prisons [which] makes even more negative the perspective of detention in Ukraine".

2.8 On 8 April 2014, for the third time, the Court of Cassation upheld the appeal filed by the Prosecutor and quashed the decision. However, the court did not send the case back to the Venice Court of Appeal, but ruled on the merits and authorized the extradition of the author with a final and binding decision, concluding that he would not face a real risk of being subjected to cruel, inhuman and degrading treatment in the case of extradition to Ukraine. According to the author, in reaching this conclusion, the Court of Cassation disregarded the vast majority of the materials that he provided because they "did not come from reliable sources"<sup>2</sup> and deemed other materials irrelevant.<sup>3</sup>

2.9 On 11 July 2014, the Italian Minister of Justice issued an extradition decree, allowing the author to be extradited for execution of the arrest warrant issued by the tribunal of Cherkasy on 30 May 2011 for the offence of robbery. According to the decree, given that Ukraine is a member of the Council of Europe, a party to the European Convention on Human Rights and the European Convention on Extradition, it could not be argued that inhuman and degrading treatment are provided for by law in the Ukrainian legal system, and the current situation of political uncertainty in Ukraine would not directly affect the author and his detention. The extradition decree was neither served on nor communicated to the author, who did not know about its existence until 10 September 2014, when his brother obtained access to the case file at the Registry of the Venice Court of Appeal.

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<sup>2</sup> The author claims that his sources were reliable: international organizations such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, non-governmental organizations, such as Amnesty International, and even Ukrainian parliamentary bodies such as the Ukrainian Parliament Commissioner for Human Rights, established to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>3</sup> A report of Amnesty International from 2012 and several judgments of the European Court of Human Rights.

2.10 On 11 August 2014, without knowing about the existence of the extradition decree, the author submitted a request for interim measures to the European Court of Human Rights. On 17 September 2014, the Court decided not to issue interim measures, but the author wished to maintain his application. On 20 November 2014, he was informed that on 30 October 2014 and 13 November 2014, the Court, sitting in a single judge formation, had decided to declare his application inadmissible.<sup>4</sup>

### The complaint

3.1 In his initial submission, the author invokes substantial grounds for believing that, if extradited to Ukraine, he would be exposed to a real risk of being subjected to multiple gross violations of the rights and freedoms protected by the Covenant. The author does not claim that extradition as such violates the Covenant, but rather that the particular circumstances related to the effects of his extradition would raise issues under specific provisions of the Covenant, because if a State party extradites a person within its jurisdiction in circumstances such that, as a result, there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant.<sup>5</sup>

3.2 Reports and judgments of international and domestic courts demonstrate, beyond any reasonable doubt, that there are substantial grounds for believing that if he was extradited, the author would face a real risk of suffering serious violations of his rights under the Covenant, causing irreparable damage. In particular, the author fears that upon return to Ukraine, he would (a) be subjected to cruel, inhuman and degrading treatment, in breach of articles 7 and 10 (1) and (2) (a); (b) suffer torture during pretrial detention, in violation of article 7; and (c) be indefinitely held in provisional detention and deprived of the right to periodically review its lawfulness, in breach of article 9 (1), (3) and (4).

3.3 Invoking article 7 of the Covenant, the author claims that Italy had an obligation to conduct a thorough assessment of the information that was known – or ought to have been known – to the Italian authorities at the time of the decision on extradition and which is relevant for the determination of the risks associated with the extradition. Such an assessment must not be a pure formality, but must be effective.<sup>6</sup> The Italian authorities also did not seek any kind of assurance from Ukraine as to what his treatment would be in prison upon his return.<sup>7</sup> Instead, they authorized extradition to a country known to the Committee for “the continued occurrence of torture and ill-treatment by law enforcement authorities”.<sup>8</sup>

3.4 If extradited, the author would be provisionally held in SIZO No. 30, which is one of the 49 Ukrainian prisons where persons awaiting trial are detained. According to the report to the Government of Ukraine issued in 2013 by the European Committee for the Prevention of Torture, the level of overcrowding in SIZO facilities is particularly high and the current standard of living space per remand prisoner is “far from acceptable”; and these facilities are located in “very old buildings” that are “structurally unsuited to perform their function in accordance with modern accommodation standards and, moreover, were frequently in a severely dilapidated condition”.<sup>9</sup> In a report in 2013, the Ukrainian Parliament Commissioner for Human Rights also denounced “certain typical violations of human rights that may amount to ill-treatment” such as prisoners held for several hours in cubicles that were not fit to hold people (owing to a lack of windows, ventilation and toilets); cells with insufficient natural and electric lighting; cells and other holding areas not equipped with forced ventilation; prisoners with tuberculosis held together with healthy

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<sup>4</sup> The English translation of the letter mentions that in the light of the material in its possession and insofar as the matters complained of are within its competence, the Court found that the admissibility criteria set out in articles 34 and 35 of the Convention had not been met.

<sup>5</sup> See *Kindler v. Canada* (CCPR/C/48/D/470/1991), paras. 6.1 and 13.1.

<sup>6</sup> See *Valetov v. Kazakhstan* (CCPR/C/110/D/2104/2011), paras. 14.3 and 14.6.

<sup>7</sup> See *Maksudov and others v. Kyrgyzstan* (CCPR/C/93/D/1461, 1462, 1476 & 1477/2006), para. 12.6.

<sup>8</sup> CCPR/C/UKR/CO/7, para. 15.

<sup>9</sup> See Council of Europe, *Report to the Ukrainian Government on the Visit to Ukraine Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013* (CPT/Inf (2014) 15), paras. 100–101.

prisoners; prisoners conveyed to court hearings without a proper food supply; untimely and inefficient investigation of the instances of bodily harm being inflicted on prisoners; and cell toilets in improper conditions and with no flushes.<sup>10</sup> For the author, such violations do have per se a systemic character and affect every detainee of the SIZOs, irrespective of his status of political or common criminal, his race, nationality, religion etc.

3.5 SIZO No. 30 is particularly problematic. The European Court of Human Rights has already found Ukraine in violation of article 3 of the European Convention with regard to the detention conditions in that facility.<sup>11</sup> Although in that case the Court addressed the particular issue of medical assistance during detention rather than the conditions of SIZO No. 30 as such – and although the decision refers to the past – more recent judgments of the Court show that average conditions of detention in SIZOs have not improved since 2005 and that not only medical assistance is at issue.<sup>12</sup>

3.6 Invoking article 10 (1) of the Covenant, the author emphasizes that the Committee has repeatedly found in similar cases that conditions of detention in Ukraine amount to inhuman treatment.<sup>13</sup> Moreover, conditions of detention in Ukrainian SIZOs could actually be worse than a few years ago owing to the current military crisis and political unrest in the country.

3.7 Invoking article 9 (1), (3) and (4) of the Covenant, the author submits that his extradition to Ukraine would put him at real risk of suffering indefinite pretrial detention in SIZO No. 30 and of being deprived of the right to challenge the lawfulness of his detention. Reports indicate “the excessive use and length of pre-trial detention” in Ukraine.<sup>14</sup> While the Italian judicial and executive authorities did not find an established risk in the case of extradition to Ukraine, the British courts consistently deny requests by Ukraine for this very reason.<sup>15</sup> The author concedes that the new Ukrainian Code of Criminal Procedure, which entered into force on 20 December 2012, provides a remedy to challenge the legality of pretrial detention. However, it is not effective in practice, as upheld by OHCHR reports about lengthy pretrial detention.<sup>16</sup>

3.8 Finally, the decision of inadmissibility delivered by the European Court of Human Rights does not amount to a real assessment of the substance of the author’s complaints. Accordingly, his case cannot be considered as having been “examined” under another procedure of international investigation or settlement.<sup>17</sup>

#### **State party’s observations on admissibility and the merits**

4.1 In its submissions dated 14 May 2015, the State party recalls that the author’s case has been declared inadmissible by the European Court of Human Rights. It also recalls that extradition proceedings between Italy and Ukraine are regulated in accordance with the European Convention on Extradition and that Ukraine has been a member of the Council of Europe since 1995, having ratified the European Convention on Human Rights.

<sup>10</sup> See Ukrainian Parliament Commissioner for Human Rights, “Monitoring of custodial settings in Ukraine. Current implementation of the national preventive mechanism: report 2012” (2013), pp. 80–83, available from [www.ohchr.org/Documents/HRBodies/OPCAT/NPM/AnnualReport2012\\_Ukraine.pdf](http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/AnnualReport2012_Ukraine.pdf).

<sup>11</sup> See European Court of Human Rights, *Ukhan v. Ukraine*, application No. 30628/02, 18 December 2008.

<sup>12</sup> See European Court of Human Rights, *Buglov v. Ukraine*, application No. 28825/02, 10 July 2014, and *Osakovskiy v. Ukraine*, application No. 13406/06, 17 July 2014.

<sup>13</sup> See *Zheludkova v. Ukraine* (CCPR/C/76/D/726/1996) and *Butovenko v. Ukraine* (CCPR/C/102/D/1412/2005).

<sup>14</sup> See Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report on the human rights situation in Ukraine” (15 April 2014), para. 43, and *Zheludkova v. Ukraine*, paras. 8.2–8.3.

<sup>15</sup> See, for example, High Court of Justice, Queen’s Bench Decision, *Government of Ukraine v. Igor Lutsyuk*, judgment of 18 January 2013.

<sup>16</sup> OHCHR, “Report on the human rights situation in Ukraine”, para. 45.

<sup>17</sup> See *Weiss v. Austria* (CCPR/C/77/D/1086/2002), para. 8.3.

4.2 The State party notes that the Italian Court of Cassation made clear that the risk of ill-treatment stems from either specific legislative or administrative provisions or from de facto situations that are the result of isolated cases dependent upon the behaviour of individuals. Given the absence of possible legislative measures with a negative impact on the treatment of prisoners, the Court of Cassation decided along those lines. The Ministry of Justice upheld that position, adding that the current political situation in Ukraine could not have a direct impact on the author's situation. Following this decision, the author went into hiding.

4.3 Finally, the State party describes the extradition proceedings, emphasizing that there is no legal provision as to the power or faculty to ask or require assurances on the modalities of execution of coercive measures or of detention measures in the case of a sentence. Such a condition or request would amount to undue interference of the requested State in the judicial activity of the requesting State and thus would be totally in contrast with the principles of general international law.<sup>18</sup>

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

5.1 In his comments of 15 January 2016, the author first notes that the State party does not rely on its reservation with regard to article 5 (2) (a) of the Optional Protocol for the purpose of the admissibility of the present communication. In any event, the decision adopted by a single judge of the European Court of Human Rights does not amount to a real assessment of the substance of his complaint.

5.2 In order to oppose the author's claims under the Covenant, the State party simply relies on the fact that Ukraine is a member of the Council of Europe and a party to the European Convention on Human Rights. Such an argument alone is clearly insufficient to show that there is no real risk of ill-treatment in the requesting State, since the ratification of a human rights treaty does not in itself provide any guarantee as to the actual compliance with the obligations ensuing thereof, nor does it give rise to any presumption of compliance. In any event, any such presumption would be rebutted in light of the substantiated information submitted and establishing the existence of a consistent pattern of gross and systematic violation of detainees' rights in Ukraine.

5.3 According to the author, reliable reports already invoked in the original communication show that: (i) conditions of detention in Ukraine are "far from acceptable"; (ii) many detainees are subjected, inter alia, to "beatings, ill-treatment ... sleep deprivation and forced labour"; (iii) from the outbreak of the current hostilities "as an alternative to torture and ill-treatment, detainees are suggested to join the ranks"; and (iv) there is "widespread use of torture ... by law enforcement officers in Ukraine".<sup>19</sup>

5.4 In addition, the Committee against Torture has recently reiterated its concerns about the lack of measures to counteract torture and ill-treatment in Ukraine. It found that in Ukraine, "detained persons do not enjoy in practice all the fundamental legal safeguards from the very outset of deprivation of liberty, in particular in police detention and temporary holding centres, such as being informed of and understanding their rights, having access to an independent doctor and/or to a lawyer and having the right to inform a relative or person of their choice".<sup>20</sup> Moreover, the Committee against Torture stressed the poor conditions in places of detention, including serious overcrowding, which gives rise to inter-prisoner violence. It also expressed concern that the vast majority of Ukrainian prisons do not conform to international standards and about the continuing resort to torture (or other cruel, inhuman or degrading treatment) in order to extort confessions, in spite of the entry into force of the new Code of Criminal Procedure.<sup>21</sup>

5.5 In a recent case, the Committee found a violation of article 7 of the Covenant on account of several episodes of torture suffered by the author while provisionally detained in

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<sup>18</sup> The State party refers to article 696 of the Code of Criminal Procedure of Italy.

<sup>19</sup> The author does not mention the sources of these citations.

<sup>20</sup> CAT/C/UKR/CO/6, para. 9.

<sup>21</sup> *Ibid.*, paras. 19 and 22.

SIZO No. 29.<sup>22</sup> The fact that a State is party to an international convention on human rights protection does not entail a presumption that the State actually respects those rights. The Italian authorities did not take steps to verify the information provided by the author before the domestic courts in the course of the extradition proceedings. Thus, it contravened the established principle in the Committee's jurisprudence that, prior to extraditing a person to a country where he or she could face a real risk of being subjected to torture or other inhuman and degrading treatment, a State party to the Covenant is under a duty "to carry out a thorough and individualized risk assessment," taking into consideration "all relevant facts and circumstances ... including the general human rights situation in the country to which the author is [to be] deported or extradited".<sup>23</sup>

5.6 Against a background of "continued occurrence of torture and ill-treatment by law enforcement authorities," as already noted by the Committee, it is more than reasonable to expect that the author would be personally at risk if he was extradited to Ukraine. In order to establish whether such a real risk exists in a given case, the Italian authorities should have taken into due consideration all the information provided by the author, including the many reliable public reports submitted before the domestic courts. Instead, all his claims concerning the serious human rights violations occurring in Ukrainian pretrial detention facilities have been overlooked as irrelevant and/or immaterial to his extradition. For this very reason, the author urges the Committee to find a breach of articles 2, 7 and 10 of the Covenant against Italy for not having met its "obligation to conduct a thorough assessment of the information that was known, or ought to have been known, to the State party's authorities at the time of the extradition and which is relevant for the determination of the risks associated with the extradition" and for having decided to extradite him in spite of "credible public reports" which underlined the critical human rights situation in the requesting State.<sup>24</sup>

5.7 The real risk of being subjected to torture and other cruel, inhuman and degrading treatment in the case of extradition to Ukraine spreads from "structural shortcomings". All the information available discloses the existence of a consistent pattern of gross and flagrant violations of the human rights of Ukrainian detainees, on account of the squalid conditions in Ukrainian prisons. In addition, the author, whose extradition is sought to stand trial for a robbery allegedly committed 2000, faces the real risk of being subjected to torture aimed at obtaining his confession. In these circumstances, the author deems himself to be personally at risk of suffering the above-mentioned violations for the very fact of being committed for trial in such a flawed and corrupt legal system.

5.8 Finally, the State party's statement as to assurances is surprising, given that Italy has often resorted to "diplomatic assurances" in the framework of removal of aliens to countries where there was an alleged risk of ill-treatment for the very purpose of claiming compliance with its obligations under the principle of non refoulement.<sup>25</sup> However, it is not the author's intention to suggest that diplomatic assurances would have actually protected him against the alleged risk of ill-treatment if had been extradited because the Committee has already pointed out in the case of *Alzery v. Sweden* that, considering the circumstances prevailing at the material time, such assurances would have been completely insufficient "to eliminate the risk of ill-treatment to a level consistent with the requirements of article 7 of the Covenant".<sup>26</sup> He seeks to stress that the State party did not even attempt to seek information from the requesting State as to the actual conditions of detention awaiting the author in Ukraine, notwithstanding the existence of a consistent pattern of gross, flagrant or mass violation of human rights in the Ukrainian prisons and the current state of domestic

<sup>22</sup> See *Pustovoit v. Ukraine* (CCPR/C/110/D/1405/2005), para. 11 in relation to paras. 2.6–2.7.

<sup>23</sup> See *Aarrass v. Spain* (CCPR/C/111/D/2008/2010), para. 10.3. The same view is shared by the Committee against Torture: see *X v. Kazakhstan* (CAT/C/55/D/554/2013 and Corr. 1), para. 12.7, and *Tursunov v. Kazakhstan* (CAT/C/54/D/538/2013), para. 9.9.

<sup>24</sup> See, *mutatis mutandis*, *Valetov v. Kazakhstan*, paras. 14.2, 14.3 and 14.6.

<sup>25</sup> See European Court of Human Rights, *Saadi v. Italy*, application No. 37201/06, judgment of 28 February 2008, paras. 52 and 116.

<sup>26</sup> See *Alzery v. Sweden* (CCPR/C/88/D/1416/2005), para. 11.5. Also Committee against Torture, *Agiza v. Sweeden* (CAT/C/34/D/233/2003), paras. 13.4–13.5.

turmoil. This attitude shows a total disregard for the obligations ensuing from article 7 of the Covenant.

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

6.1 On 8 March 2016, the State party provided additional observations to the Committee. After describing the substantive and procedural human rights guarantees in the Italian legal system, the State party refers to the use of the interim measures procedure by the European Court of Human Rights and by the Committee.<sup>27</sup>

6.2 The Court of Cassation, as a last-instance adjudicator, intervened three times in the author's case. In its final decision of 8 April 2014, the Court of Cassation noted that the Venice Court of Appeal had pointed to the vagueness of the evidence presented by the author.<sup>28</sup> The Court of Cassation further noted the "constant repressive intervention by the Ukrainian judiciary" in respect to the cases of police abuse invoked by the author in support of his allegation of the risk to which he would be exposed if sent back to Ukraine. The author has also failed to demonstrate the concrete impact of the general political uncertainty on himself or in respect of his detention treatment. The State party further recalls that the author's case refers to a common offence.

6.3 The State party finally refers to the extradition proceedings in the Italian system, which consists of two phases: a judicial phase, where the court of appeal focuses on the respect of rights; and an administrative phase which falls under the competence of the Minister of Justice and which can undergo the control of an administrative court. According to the Italian Constitution, an extradition may not be allowed, under any circumstances, for political crimes. Moreover, the offence for which extradition is requested must be a crime under the legislation of both the requesting and the requested States.

#### **Author's additional observations**

7.1 On 23 May 2016, the author noted that instead of addressing his complaints, the State party's remarks remained general. He notes the State party's inconsistency when affirming that he is sought by the Ukrainian authorities "due to a robbery committed ... in the year 2000 in Poland", whereas it is undisputed that he is sought for "being prosecuted on that charge". The core of his complaints relates to his extradition being sought for facing charges for an alleged robbery that dates back 16 years and in a foreign territory.

7.2 As to the State party's reference to the urgent measures procedure before the European Court and the Committee, the author recalls that the decisions by the Court are not published and their reasons remain obscure. The Committee should not be influenced by the outcome of the interim measures procedure before the European Court.

7.3 The author further contests the State party's allegation that the evidence he produced was unsubstantiated. The Court of Cassation mistakenly questioned the reliability of statements given by the director of a Ukrainian human rights NGO whose members are listed among individual human rights lawyers at risk, as well as by a Ukrainian lawyer subjected to threats for lodging cases before the European Court.

7.4 Recent reports and judgments of the European Court of Human Rights show that the risk of suffering serious human rights violations has increased since the author lodged his communication.<sup>29</sup> The Court has repeatedly held that conditions of detention in SIZO No. 30 in Cherkasy, where the author would be imprisoned awaiting trial if he was extradited,

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<sup>27</sup> Without mentioning specific pages, the State party quotes from Helen Keller and Cedric Marti, "Interim relief compared: use of interim measures by the UN Human Rights Committee and the European Court of Human Rights", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 73 (2013).

<sup>28</sup> For example, when a case was mentioned with regard to the situation in Ukrainian prisons – as considered by the European Court – that case referred to the medical treatment of one prisoner.

<sup>29</sup> See OHCHR, "Report on the human rights situation in Ukraine 16 November 2015 to 15 February 2016", paras. 52–55, and European Court of Human Rights, *Zakshevskiy v. Ukraine*, application No. 7193/04, judgment of 17 March 2016.



do not satisfy the conventional standards and has even considered the practices of ill-treatment in custody and the lack of investigation to constitute a systemic problem.<sup>30</sup>

7.5 Finally, on 24 November 2017, the author's counsel informed the Committee that the author was arrested on 21 November 2017, based on an order of preventive detention issued on 21 July 2014 with a view to his "material rendition" to the requesting State. The author has never been formally served with that order. Then on 28 December 2017, counsel informed the Committee that on 11 December 2017, the author was handed to the Ukrainian authorities.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

8.2 The Committee has to ascertain, as required by article 5 (2) (a) of the Optional Protocol, whether the same matter is being examined under another procedure of international investigation or settlement. The Committee observes that, on 11 August 2014, the author presented an application based on the same facts before the European Court of Human Rights. However, on 30 October 2014 and 13 November 2014, a single judge formation of the Court rejected the application. The Committee notes, however, that the Court's decision does not set forth a justification for the inadmissibility finding and that there is no clarification as to the basis of the decision. The letter from the Court stated that on the basis of the items of evidence in its possession and insofar as it was competent to decide on the complaints submitted to it, it had concluded that the author's application did not meet the admissibility criteria established under articles 34 and 35 of the European Convention on Human Rights. The Committee also notes that the State party did not challenge the author's argument concerning the non-preclusive effect of the decision of the European Court.

8.3 The Committee recalls its case law relating to article 5 (2) (a) of the Optional Protocol, according to which, when the European Court bases a declaration of inadmissibility not solely on procedural grounds, but also on grounds arising from some degree of consideration of the substance of the case, then the matter should be deemed to have been examined within the meaning of the respective reservations to article 5. However, the Committee also recalls that, even in cases where applications have been declared inadmissible for lack of an appearance of a violation, the limited reasoning outlined in some decisions of this sort do not enable the Committee to assume that the European Court has examined a case on the merits.<sup>31</sup> In the present case, the Committee notes that the decision of the European Court does not state that the appearance of a violation was not observed but rather indicates simply that the application fails to meet admissibility requirements, without further explanation. Accordingly, the Committee considers that it is not precluded from examining the present communication under article 5 (2) (a) of the Optional Protocol.

8.4 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

8.5 The Committee takes note of the author's claims that by allowing his extradition to Ukraine, the State party would violate his rights under articles 7, 9 (1), (3) and (4) and 10 (1) and (2) of the Covenant. It notes the author's allegations that, upon return to Ukraine, he

<sup>30</sup> See, for example, *Vasily Ivashchenko v. Ukraine*, application No. 760/03, judgment of 26 July 2012, paras. 80 and 83; *Yevgeniy Petrenko v. Ukraine*, application No. 55749/08, judgment of 29 January 2015, para. 70; and *Kaverzin v. Ukraine*, application No. 23893/03, judgment of 15 May 2012, paras. 180–182.

<sup>31</sup> See, for example, *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010), para. 7.3, and *A.G.S. v. Spain* (CCPR/C/115/D/2626/2015), para. 4.2.

would be imprisoned and the conditions of detention would be in breach of articles 7 and 10 (1) and (2) of the Covenant; that he would suffer torture during pretrial detention, in violation of article 7; and that he would be held in indefinitely provisional detention and deprived of the right to a periodic review of the lawfulness of his detention, in breach of article 9 1), (3) and (4). The author also complains that the Italian authorities did not seek any assurances from Ukraine as to his treatment in prison upon his return.

8.6 The Committee recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>32</sup> It follows from the author's account of the domestic decisions that the Italian Court of Cassation thoroughly assessed the validity of the request for extradition on three occasions and also examined the author's submissions as to the allegedly relevant human rights issues in Ukraine. The Committee also notes that the author invokes general conditions of detention in Ukraine, which are similar for all other detainees and do not reveal any specific risk of irreparable harm such as that contemplated in article 7 of the Covenant. The Committee considers that the information at its disposal demonstrates that the State party took into account all the elements available, including the legal characterization of the alleged crime and the human rights situation in the requesting country. The Committee therefore considers that, while the author disagrees with the factual conclusions of the State party's authorities and with their decision to uphold his extradition, he has not shown that the decisions of the Italian courts were arbitrary or manifestly erroneous, or amounted to a denial of justice. The author has equally not sufficiently substantiated his belief that he would suffer torture during pretrial detention or why he would be held indefinitely in provisional detention and deprived of the right to have the lawfulness of his detention reviewed. Accordingly, the Committee considers that the communication is insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision will be communicated to the State party and to the author.

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<sup>32</sup> See, for example, *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015), para. 7.3, and *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 8.3.