CENTRAL ASIA PROGRAM

Challenges to Freedom of Movement in Azerbaijan

CAP Paper 210, August 2018

Tural Aghayev is an Azerbaijani human rights lawyer. He received a Bachelor's degree from Baku State University Law School in 2008. He subsequently studied at the Europa-Institut at Saarland University in Germany, earning a Master's degree in 2015. This research and a subsequent paper were written as part of a fellowship at the CEELI Institute in Prague granted to several young, talented human rights lawyers from Azerbaijan over the past 2 years.

Freedom of movement is a fundamental right. It encompasses the right to move from one place to another within the territory of a country, the right to leave a country (including one's state of origin), and the right to return to it.[1] This right is enshrined in international treaties relating to civil and political rights, including the Universal Declaration of Human Rights,[2] the International Covenant on Civil and Political Rights (ICCPR),[3] the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[4] the Convention on the Rights of Persons with Disabilities,[5] and various regional treaties, including the European Convention on Human Rights,[6] the African Charter on Human and Peoples' Rights,[7] etc. This right is also provided for in state constitutions. Notably, however, this right is not absolute: it can be restricted, and certain dictatorial, authoritarian governments take full advantage of their ability to abuse this fact.

Freedom of movement is one of the main issues facing present-day Azerbaijan. According to international and domestic reports, the Azerbaijani government has been using restrictions on movement as a tool of political pressure against journalists, politicians, and civil society activists since the 2000s. These pressures allow the government to control opposition figures and cut off their direct relations with the international community.

In the first part of this paper, the current situation regarding the restriction of movement in Azerbaijan and the legal basis for these restrictions will be reviewed. The persons who are subject to travel bans, the purported reasons for these bans, and the government's alleged motivations for imposing such restrictions will be discussed.

The second part will focus on international institutions that receive complaints regarding violations of the right to freedom of movement. This section will focus on the increasingly relevant and effective ICCPR and its semi-judicial body, the United Nations Human Rights Committee. Relevant hearings of the latter body will be presented.

In the final part, the role of the European Convention on Human Rights (ECHR) and its judicial body, the European Court of Human Rights (ECtHR), as it pertains to the protection of the right to freedom of movement will be investigated. The case law of the Strasbourg court, an indispensable part of jurisprudence under the ECHR, will be a main reference point. The procedure for bringing a case before the ECtHR will also be explored in detail.

This research is intended to explore the issues around freedom of movement, looking in turn at legal procedures for addressing violations at domestic, regional, and international level. It will hopefully be of use to all those who engage with issues pertaining to freedom of movement, including human rights lawyers

and students of human rights.

Freedom of Movement in Azerbaijan

The Freedom of Movement Situation in the Country

The right to freedom of movement is a problematic issue in Azerbaijan. As stated above, since this right is not absolute under international treaties, states are allowed to impose certain restrictions on it. Theoretically, these restrictions must be compatible with the freedom of movement provisions in any international treaties ratified by a given country (in this case Azerbaijan). However, certain parts of these provisions are abused by numerous states, Azerbaijan among them. Reports on Azerbaijan prepared by international human rights organizations and state and interstate institutions (Freedom House, Amnesty International, the U.S. State Department, the UN Human Rights Committee, etc.) highlight numerous issues compromising Azerbaijan's commitment to freedom of movement, particularly travel bans. Where other authoritarian regimes banish troublemakers from the country, Azerbaijan apparently prefers to keep them nearby, preventing dissidents and critical journalists from leaving the country. Human rights defenders are aware that in order to control and put pressure on troublesome activists and journalists, the Azerbaijani government has begun to implement travel bans, finding this a more effective manner of silencing opposition than arrests.[8]

In the Special Rapporteur of the United Nations Human Rights Committee's report on his mission to Azerbaijan, the freedom of movement situation is described as follows:

> ...During the visit, the Special Rapporteur received many reports and testimonies pointing to the intensified crackdown on and criminalization of civil society in Azerbaijan. In that context, the authorities have targeted defenders, journalists, lawyers and grassroots activists through the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans. ... In late 2015 and early 2016, the Government conditionally released or pardoned a number of human rights defenders. However, none of those released had their convictions vacated and several still face travel restrictions. ...Many human rights defenders and dozens of NGOs, their leaders and employees and their families have been subjected to administrative and criminal prosecution, including arbitrary detention, the seizure of their assets and bank accounts, travel bans and enormous fines and tax penalties. ...The Special Rapporteur recommends that the Government of Azerbaijan... release all human rights defenders in detention, drop criminal charges against NGO leaders and employees, rescind travel bans and unblock their bank accounts, in line with the resolutions and recommendations of international and regional mechanisms.[9]

In its 2016 World Report, Human Rights Watch describes travel bans as one of Azerbaijan's chief methods of cracking down on political activists and journalists:

> The government's unrelenting crackdown decimated independent nongovernmental organizations (NGOs) and media. Courts sentenced leading human rights defenders, political activists, and journalists to long prison terms in politically motivated, unfair trials. Dozens more face harassment, have been imprisoned, are under criminal investigation, face travel bans, or have fled. The authorities denied entry to international human rights monitors and journalists. ...almost all Meydan TV journalists in Baku face travel bans.[10]

Similarly, the U.S.-based Freedom House mentioned travel bans imposed by the government of Azerbaijan in its 2017 Report:

> ...Journalists are threatened, harassed, intimidated, and assaulted with impunity, and many have been detained or imprisoned on fabricated charges. An increasing number of journalists face travel bans. ...The government has increasingly restricted freedom of movement, particularly foreign travel, for opposition politicians, journalists, and civil society activists. Courts denied several appeals by such individuals against their travel bans in 2016.[11]

In its 2016 report, the U.S. State Department referred to travel bans as one of the most concerning issues in Azerbaijan:

> ...authorities conducted numerous criminal investigations into the activities of independent organizations, froze bank accounts, and harassed local staff, including incarcerating and placing travel bans on some NGO leaders.... The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights; however, the government limited freedom of movement for an increasing number of activists and journalists. ...The number of activists and journalists whom the authorities prevented from traveling outside the country increased compared to the previous year. Examples included Popular Front Party chairman Ali Kerimli (since 2006), blogger Mehman Huseynov, investigative journalist Khadija Ismayilova, lawyers Intigam Aliyev and Asabali Mustafayev, opposition REAL members Natig Jafarli and Azer Gasimli, Emin Milli's brother-in-law Nazim Agabeyov, and at least 15 freelance journalists who filed material with Meydan TV.[12]

Domestic human rights organizations, too, cover challenges to freedom of movement in their reports. In its

report on freedom of expression in Azerbaijan, the Institute for Reporters' Freedom and Safety (IRFS), an Azerbaijani NGO, writes:

> In a country where space for freedom of expression is narrowing, journalists are facing a range of obstacles to their legitimate work, such as travel bans, police interrogations and even cyber attacks. In the light of these findings, to fulfil its international commitments and basic responsibilities to its own citizens, the government of Azerbaijan must... lift travel restrictions hindering the professional activities of journalist and activists.[13]

Persons Facing Travel Bans

Politicians

Challenges to freedom of movement in Azerbaijan date back to the early 2000s. After Azerbaijan ratified the ECHR and accepted the jurisdiction of the ECtHR, the first judgment regarding Azerbaijan in which the Court found that freedom of movement had been violated was **Hajibeyli v. Azerbaijan.**[14]

In 2015, the ECtHR delivered its second judgment on freedom of movement in respect to Azerbaijan. This was the case of **Kerimli v. Azerbaijan**,[15] in which the Court also found a violation of freedom of movement.

While the Azerbaijani government fully implemented the judgment of the ECtHR in the case of Hajibeyli v. Azerbaijan, in the second case, in which the Court found in favor of politician Ali Kerimli, the judgment was not fully implemented: Kerimli's right to freedom of movement was not ensured, nor was he issued a passport.

Even more politicians have been subjected to travel bans in the past 3-4 years, during which time the civil and political rights situation in the country has deteriorated dramatically. On August 12, 2016, **Natig Jafarli**, the executive secretary of the opposition movement Republican Alternative (REAL), was arrested in relation to the criminal case opened against NGOs in 2014. Since his criminal case remains ongoing, a travel ban has been imposed on him.[16]

On September 28, 2016, **Azer Gasimli**, deputy chairman of REAL, was turned back at the border checkpoint while traveling to Georgia. It appeared that he had been banned from leaving the country. He noted that there was no criminal case related to him, but observed that he had previously been summoned to the Serious Crimes Investigation Department of the Prosecutor General's Office regarding the case of Natig Jafarli.

Journalists

Around 20 journalists have recently been subjected to travel bans in Azerbaijan, a tactic that is used with particular frequency against freelance journalists.[17] In August 2015, the Serious Crimes Investigation Department of the Prosecutor General's Office opened a criminal case against Meydan TV, an independent online media outlet based outside Azerbaijan, under Articles 213.2.2 (evasion of taxes in a large amount), 192.2.2 (illegal business), and 308.2 (abuse of power) of the Criminal Code. According to the lawyer who defended these journalists before the domestic authorities, the names of at least 15 journalists, photo reporters, columnists, editors, etc. cooperating with Meydan TV in Baku and abroad are mentioned in the criminal case.[18] Almost all those who live in Azerbaijan have faced travel bans.

Sevinj Vagifgizi, **Ayten Farhadova,** and **Izolda Aghayeva**, Baku-based journalists, worked for Meydan TV at the time in question. On September 20, 2015, while returning from Ukraine, they were told by the Department for Combating Organized Crime (DCOC) that they had been banned from leaving Azerbaijan, notwithstanding that they were coming to Azerbaijan, not going. They were taken to the Department for Combating Organized Crime. "At 11am, the deputy chief of the investigations department came and said that we had been brought here because of the criminal case against Meydan TV. As we had been called as witnesses in this case, we had been banned from leaving the country," said Sevinj Vaqifqizi.[19] It appeared that they had been placed under a travel ban at the behest of the Serious Crimes Investigation Department of the Prosecutor General's Office (SCIDPGO). The journalists lodged an appeal against the decision with the Nasimi District Court.

The Nasimi District Court heard **Sevinj Vaqifqizi**'s appeal

and dismissed it, saying that it did not qualify for supervisory proceedings.[20] After the Appellate Court also dismissed the complaint, she brought the case before the ECtHR.

On June 20, 2016, **Ayten Ferhadova** appealed the SCIDPGO decision to the Nasimi District Court, but her complaint, too, was dismissed. After the complaint was also dismissed by the Baku Appellate Court, she applied to the ECtHR.

On March 21, 2016, transiting through Georgia on her way to Turkey for educational purposes, **Izolda Aghayeva** was stopped at the Georgia-Azerbaijan border.[21] As it was already clear that the travel ban was based on the decision of SCIDPGO, she lodged a complaint, but it was dismissed and the Appellate Court upheld the decision. The case was taken to the ECtHR.

Aynur Elgunesh, another freelance journalist, has faced problems at the border since 2014. According to her, on every trip she faces delays at passport control as border guards call their colleagues to check information about her. "Every time, they let me cross the border after a long wait and a series of telephone calls. During these calls, I was identified as 'person number five.' When I asked for the reason, they never answered," she says.[22] She asked Azerbaijan's General Prosecutor's Office, the Border Guard, and the Ministry of Internal Affairs for a written explanation, but none was forthcoming. Finally, on December 6, 2015, en route to Sweden, she was informed that a travel ban had been imposed on her. Again, the court case against Meydan TV was the central factor. After all her appeals were rejected at the domestic level, Elgunesh took the case to the ECtHR.[23]

On June 30, 2015, four Meydan TV employees—**Natig Javadli, Shirin Abbasov, Elnur Mukhtarov,** and **Ayten Alakbarova**—were prevented from traveling to Tbilisi. Border guards informed them that they were under a travel ban, which had apparently been imposed that same day.[24] The reasons were the same as for the other journalists who faced a travel ban: the Meydan TV case.

Guler Mehdizade, another freelance journalist working with Meydan TV at the time, received her travel ban in July 2015. Again, the main factor was Meydan TV and her appeals were rejected.

Besides Meydan TV journalists, **Khadija Ismailova**, a prominent and well-known journalist noted for her investigative work on corruption in Azerbaijan, was arrested on December 5, 2014. On September 1, 2015, she was sentenced to seven-and-a-half years in prison.[25] On May 25, 2016, the Azerbaijani Supreme Court ordered her release, on the condition of probation. The Court did not drop the indictment against her, with the result that she found herself facing three-and-a-half years of probation, a two-year ban on professional activity, a travel ban, and other restrictions.[26] Ismailova lodged a complaint against the travel ban with the Binagadi District Court. On June 28, 2016, the Binagadi District Court denied her request to leave the country. She appealed this decision, but on August 15, 2016, the Baku Court of Appeals denied her appeal and upheld the Binagadi District Court's decision.[27] Ismailova then submitted an application to the ECtHR.

Natig Adilov from the *Azadliq* newspaper, **Babek Bekir** from Radio Liberty, and others are also among those facing travel bans.

Human Rights Defenders

Civil society in Azerbaijan has seen serious setbacks since 2009. Civil society actors, whose activities have increasingly come into conflict with tightening government policy, have found their rights to freedom of expression, assembly, and association compromised. High-level government officials have used disturbing rhetoric to disparage human rights defenders and declare them tools of Western influence bound to undermine the state.[28] During a recent visit, the Special Rapporteur of the UN Human Rights Committee received many reports and testimonies pointing to the increasing crackdown on and criminalization of civil society in Azerbaijan. In that context, the authorities have targeted defenders, journalists, lawyers, and activists through the use of politically motivated criminal prosecutions, arrests, imprisonment, and travel bans. They have also used administrative detention, on what are often seen to be spurious misdemeanor charges of resisting police orders or petty hooliganism,

to intimidate political and social media activists.[29]

Intigam Aliyev is a prominent human rights defender and head of the Legal Education Society, a human rights organization. As a human rights lawyer, Aliyev has submitted more than 200 applications to the European Court of Human Rights on parliamentary election-rigging and abuses of the rights to free speech and a fair trial. In 2012, Aliyev was awarded the People in Need's Homo Homini Award in recognition of his commitment to defending human rights.[30] On August 8 of that year, he was arrested; he was subsequently sentenced to seven-and-a-half years in prison and a three-year ban on holding certain positions and conducting specific activities under Articles 179.3.2 (misappropriation), 192.2.2 (illegal business with extraction of large income), 213.2.2 (tax evasion), 308 (abuse of official power), and 313 (falsifying data in official documents).[31] On March 28, 2016, the Supreme Court of Azerbaijan ordered his release, reducing his prison sentence to a five-year suspended sentence. This did, however, come with a travel ban. On June 15, 2016, the Sumgayit Regional Court granted him permission to travel abroad for a period of 10 days,[32] but after that, he was again subjected to a travel ban, which remains in force.

Besides Intigam Aliyev, fellow human rights defenders **Asabali Mustafayev** and **Annagi Hajibayli** are also subject to travel restrictions.

Legal Basis for Freedom of Movement in Domestic Law

Freedom of movement and restrictions on it are provided for in several domestic laws. **The Constitution of Azerbaijan** is the primary legal basis for freedom of movement. **Article 28** of the Constitution reads**:**

I. Everyone has the right to freedom.
II. The right to freedom can be restricted only as specified by law, by way of detention, arrest, or imprisonment.
III. Everyone legally on the territory of the Republic of Azerbaijan may travel without restrictions, choose their place of residence, and travel abroad.
IV. Any citizen of the Republic of Azerbaijan has the right to return to his/her country whenever he/she so desires.

Article 148.2 of the Constitution further states that international agreements to which the Republic of Azerbaijan is a party constitute an integral part of the country's legislative system. This means that international treaties that contain provisions on freedom of movement can be referred to as law in domestic legal proceedings. Among such international provisions are **Article 12 of the ICCPR** and **Article 2 of Protocol No. 4 to the ECHR**.

Admittedly, due to the non-absolute nature of freedom of movement, certain restrictions may be imposed on it, provided that such restrictions are enshrined in law. One such measure is a restriction on the right to enter and exit the country, generally referred to as a travel ban. Article 9 of the Azerbaijan Migration Code enumerates circumstances under which an individual's ability to travel might be restricted:

9.1. A citizen of the Republic of Azerbaijan (hereinafter referred to as "citizen") is entitled to free entry into or exit from the country, by crossing the border checkpoints of the country.
9.2. No citizen can be deprived of the right to enter and exit the country.
9.3. A citizen's right to exit the country can only be temporarily restricted in the following cases:
9.3.1. If the citizen is arrested or if any temporary restriction is imposed on him/her in compliance with the Code of Criminal Procedure of the Republic of Azerbaijan—until his/her release, the end date of the restriction, or the termination of the restriction;
9.3.2. If the citizen is imprisoned—until he/she serves the main punishment defined in the Criminal Code of the Republic of Azerbaijan or he/she is released from the punishment, except for the case set forth in Article 9.3.4 of this Code;
9.3.3. If compulsory measures of medical nature are applied to him/her in compliance with the Code of Criminal Procedure of the Republic of Azerbaijan—until the termination of the application of the compulsory measures of medical nature;
9.3.4. If a suspended sentence is imposed on him/her by charging him/her with the obligations set forth in the Criminal Code of the Republic of Azerbaijan or if s/he is released on parole—until the end of the probation period or non-served part of the punishment, or until earlier and complete termination of the suspended sentence or the charged obligations, respectively;
9.3.5. In case of enlistment in limited compulsory military service—until the end of the period of the limited compulsory military service or until released from that service in compliance with the law;
9.3.6. In case of the existence of a court decision that has legally entered into force temporarily restricting a citizen's right to leave the country for not executing a court order given upon the court decision because of unexcused reasons within a period defined for voluntary execution—until the adoption of a decision on removal of the restriction;
9.3.7. According to international medical sanitary rules or international agreements to which the Republic of Azerbaijan

is a party, during entry to/exit from countries where prophylactic vaccination is required—until implementation of the prophylactic vaccination.
9.4. Military servicemen serving in the Military Forces of the Republic of Azerbaijan and in other military unions envisaged by the legislation (excluding military attaches, military representatives, and their assistants), as well as military servicemen in compulsory military service, who are involved in international military trainings, other activities or operations beyond the borders of the Republic of Azerbaijan relating to anti-terror, rescue, and service necessity can exit the Republic of Azerbaijan if they receive official permission from the relevant executive authorities.
9.5. The right to permanent residence abroad of persons allowed to work with state secrets can be temporarily restricted until the end of the confidentiality period (not more than 5 years) of the information with which they have been allowed to become acquainted.
9.6. Data on citizens whose right to enter and exit the country is restricted should be entered on the watch list of "Entry-Exit and Registration" Automated Interagency Data-Search System and the active status of the data should be changed when relevant grounds are removed.
9.7. If a state of emergency or danger to human life, health, and freedom occurs in any country, the relevant executive authority of the Republic of Azerbaijan will immediately warn the population of the Republic of Azerbaijan and recommend that citizens temporarily refrain from going to that country.[33]

Under Article 95 of the Code of Criminal Procedure, witnesses can be subject to restrictions on freedom of movement:

95.4. The witness shall fulfill the following duties in accordance with this Code:
95.4.7. to be at the disposal of the court, not to go elsewhere without the permission of the court or without notifying the prosecuting authority of his whereabouts;

Article 163 of the Code of Criminal Procedure of the Republic of Azerbaijan relates to house arrest, which may be imposed on the accused as a restrictive measure. It includes, among other things, restrictions on freedom of movement:

163.1. House arrest is a restrictive measure which restricts a person's liberties and some other rights by court decision, without the accused being detained on remand or isolated completely from society.
…
163.3. House arrest may be accompanied by application of the following measures, separately or where possible jointly:
163.3.1. prohibition of leaving one's home at any time or at certain times;

Freedom of movement of the accused is restricted under **Article 165 of the Code of Criminal Procedure**, in a move referred to as a "restraining order":

165.1. A restraining order is a restrictive measure under which the suspect or accused shall make a written undertaking to remain at the disposal of the prosecuting authority, not to go elsewhere without its permission, not to hide from it, not to engage in criminal activity, not to impede the investigation or court hearing, to attend as required by the preliminary investigator, investigator, prosecutor, or court and to inform them of any change of address.
165.2. A restraining order shall be imposed on the suspect or accused by the prosecuting authority.

Article 169 of the same code—which discusses so-called police supervision—also contains provisions which restrict the freedom of movement of the suspect or accused. It reads:

169.1. Police supervision as a restrictive measure shall entail the application to the suspect or accused of the legal restrictions provided for in this article.
169.2. The suspect or accused who is under police supervision may not go elsewhere or change his permanent or temporary address within the boundaries of the appropriate settlement without the permission of the preliminary investigator, investigator, prosecutor, or court. He shall report to the police according to the schedule determined by the police and shall register his presence. With a view to supervising his behavior, the suspect or accused may be summoned by the police at any time. To this end, the relevant police officials shall have the right to come to the house of the suspect or accused, even against his will.

Freedom of movement and restrictions on it are discussed in **Article 1 of the Law of the Republic of Azerbaijan,** which deals with exit from the country, entry into the country, and passports:

Each citizen of the Azerbaijan Republic (hereinafter "citizen") has the right, as specified by the law, to free exit from the country and entry into the country through the checkpoints specially provided for such purposes. The citizen cannot be denied the right of exit from the country nor of entry into the country. This right may be temporarily restricted in the following cases and simultaneously postponed in the cases stipulated by clause 4:

1) if the citizen has an obligation in force on information containing state or military secrets—until such obligation is invalidated by a procedure determined by the legislation of the Republic of Azerbaijan;
2) if criminal proceedings are initiated against the citizen or he/she has been convicted—until the cessation of the proceedings or expiration of the penalty period, or acquittal, respectively;
3) when the citizen has been called up for military service—until the completion of the military service or excusal from it in accordance with the law;
4) Until prophylactic vaccinations have been given when entering countries where preventive inoculations should be given according to international

medical sanitary regulations or intergovernmental treaties supported by the Azerbaijan Republic (and for exit from these countries).

Article 84.1 of the Law of the Azerbaijan Republic on Execution enables the court, upon the request of the bailiff, to impose restrictions on a debtor's right to leave the country on the grounds that a debtor has failed to pay a judgment debt before the expiration of the time limit set for voluntary payment.[34]

Article 231.3 of the Civil Procedural Code of the Azerbaijan Republic describes imposing travel restrictions on debtors in detail.[35] **Article 231.4** contains provisions for lodging a complaint against the court's decision.[36]

Article 23.1.15-3 of the Tax Code of the Republic of Azerbaijan enables tax authorities to apply to the court with a view to imposing restrictions on the taxpayer's right to leave the country in case of failure to pay debts, interest, and financial sanctions.[37] **According to Article 24.0.2-1**, it is the responsibility of the state tax authorities to lift restrictions should the grounds for the restrictions be removed.[38]

Article 23 of the Law of the Republic of Azerbaijan on the Status of Military Personnel restricts the rights and freedoms, including freedom of movement, of military personnel due to military service.[39] They are prohibited from living abroad permanently.[40] Servicemen of the Armed Forces of the Republic of Azerbaijan and other military units may leave the Republic of Azerbaijan with the permission of the authorities concerned. Military attachés, military representatives, and their assistants, as well as military personnel conducting special tasks outside the country, are excluded.[41]

Article 25 of the Law of the Republic of Azerbaijan on State Secrets contains provisions that restrict the rights and freedoms, including the freedom of movement, of those who work with state secrets. Their right to leave the country can be restricted for a period not to exceed five years.[42]

Protection Mechanisms at the International Level

The Role of United Nations Bodies Regarding the Protection of Freedom of Movement

As we know, the United Nations (UN) was established for the purpose of maintaining international peace and security, developing respect for the principle of equal rights and self-determination of peoples, and promoting and encouraging respect for human rights and fundamental freedoms.[43] The term "human rights" was mentioned seven times in the **UN Charter**, making the promotion and protection of human rights a key purpose and guiding principle of the Organization.[44]

The international human rights movement was strengthened when the United Nations General Assembly adopted the **Universal Declaration of Human Rights (UDHR)** on December 10, 1948. This was the first time that states attempted to agree on a comprehensive catalog of the rights of the human person in a single document.[45] The Declaration spelled out basic civil, political, economic, social, and cultural rights to which all human beings should be entitled.[46] Over time, the Declaration has become accepted as including the fundamental norms of human rights that everyone should respect and protect. Although the UDHR is not binding, many of its provisions have been incorporated into customary international law, which is binding on all states.[47] In intergovernmental and diplomatic relations, in arguments submitted to judicial tribunals, in the actions of intergovernmental organizations, and in the writings of legal scholars, the provisions of the UDHR have been accepted and confirmed as part of customary international law.[48]

Among other rights and fundamental freedoms, the UDHR enshrined the right to freedom of movement. **Article 13** of the UDHR relates to this right:

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.[49]

Since the UDHR itself was not binding, a legally binding document that would hold states responsible for violations

of human rights and freedoms was required. The creation of a system of human rights protection required: (a) the conceptualization of a program; (b) the definition of human rights; (c) the creation of compulsory norms; and (d) control systems for the implementation and monitoring of human rights in political and legal terms.[50] Thus, on the basis of the UDHR, two main binding instruments—the **International Covenant on Civil and Political Rights** and the International Covenant on Economic, Social, and Cultural Rights—were drafted and submitted to the UN General Assembly for discussion in 1954. The two documents were adopted in 1966 and entered into force in 1976.[51] **Article 12** of the ICCPR was devoted to the right to freedom of movement. It reads:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.[52]

The Universal Declaration of Human Rights (1948), together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,[53] form the so-called **International Bill of Human Rights**. These laws have also been expanded by a set of international human rights treaties and other instruments adopted since the creation of the United Nations.[54]

There are two Optional Protocols to the Covenant. **The First Optional Protocol**, which entered into force on the same date as the Covenant itself (March 23, 1976), establishes an individual complaints mechanism, allowing individuals to complain to the Human Rights Committee about violations of the Covenant. This has led to the creation of a complex jurisprudence on the interpretation and implementation of the Covenant.

The Second Optional Protocol, which was adopted in 1989 and entered into force on July 11, 1991, abolishes the death penalty except for the most serious crimes of a military nature committed during wartime.

Individual Complaint Mechanism before the UN Human Rights Committee. Case Law

The UN Human Rights Bodies

The United Nations promotes human rights and fundamental freedoms by means of different monitoring mechanisms. These mechanisms are the UN bodies, which are divided into two parts: **charter-based bodies** and **treaty-based bodies**. Charter-based bodies were created on the basis of the provisions laid down in the Charter of the United Nations or the resolutions of principal organs of the UN, whose authority derives from the UN Charter.[55] Charter-based bodies have broad human rights mandates, address an unlimited audience, and take action by a majority vote of the members of the UN General Assembly.[56] These bodies include the **Human Rights Council** and its subsidiaries, including the **Universal Periodic Review Working Group**, the **Advisory Committee**, **Special Procedures of the Human Rights Council**, and the **Human Rights Council Complaint Procedure**.[57] Treaty-based bodies are established based on the provisions of a specific legal instrument and have more narrow mandates. The set of requirements codified in the legal instrument applies only to those countries that have ratified it.[58] Treaty-based bodies include the **Human Rights Committee** (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Subcommittee on Prevention of Torture (SPT), the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on Enforced Disappearances (CED).[59]

Human Rights Committee. The Optional Protocol

As mentioned above, treaty-based bodies were created under the international human rights treaties and are made up of independent experts who monitor states' compliance with their treaty obligations. Most of these

bodies receive secretariat support from the Human Rights Council and the Treaties Division of the Office of the High Commissioner for Human Rights.[60] The United Nations Human Rights Committee (hereafter "the Committee") is a treaty body of the ICCPR. It was established under **Article 28** of the ICCPR.
The **First Optional Protocol** to the ICCPR allows individuals to complain to the Human Rights Committee about violations of the Covenant. It is a procedural, semi-judicial mechanism for the Committee to receive and consider individual complaints alleging a violation of the Covenant, namely the substantive rights contained in Part III, if appropriate in conjunction with the provisions of Parts I and II.[61] As its name makes clear, the Protocol is not compulsory, but once a state party to the Covenant also becomes a party to the Protocol, any person subject to the jurisdiction of that state may submit a written complaint to the Human Rights Committee (assuming that permissible reservations have not been ruled out).[62] This is not limited to nationals or to persons within a state's territory, but extends to all persons who are directly subject to a state's exercise of power through its authorities. Thus, a national of a state party residing abroad who is denied a passport by that state is able to bring a claim to the Committee.[63]

Parties who ratify or accede to the Optional Protocol recognize the competence of the UN Human Rights Committee to hear complaints from individuals who claim their rights under the Covenant have been violated. The Protocol puts forward admissibility requirements in Articles 1, 2, 3, and 5, while Article 4 sets out basic procedural requirements. The Committee reports annually to the General Assembly on its activities concerning complaints under Article 6. Articles 7-14 contain technical provisions: becoming a party to the Protocol, entry into force, notification, amendment, denunciation, etc.

The Human Rights Committee notes that its competence enables it to impose an obligation on Member States not to hinder access to the Committee and to prevent any retaliation against complainants, notwithstanding that this is not expressly provided in the Protocol.[64]

On March 2, 1992, Azerbaijan became a member of the United Nations. On August 13, 1993, Azerbaijan acceded to the ICCPR[65] and, on November 27, 2011, to the Optional Protocol to the ICCPR.[66] Thus, it recognized the competence of the UN Human Rights Committee to consider complaints from individuals who claimed that their rights under the Covenant had been violated.[67]

Jurisprudence and an Interpretation of the Human Rights Committee on the Freedom of Movement. General Comment No. 27

The UN human rights treaties have treaty bodies, committees made up of independent experts that monitor implementation of the core international human rights treaties. In order to understand the provisions, the treaties need to be interpreted. Interpretation rests with the committees concerned. All the Committees publish their interpretation of the content of human rights provisions. These interpretations are called "general comments," and are given on thematic issues or methods of work.[68] They cover a wide range of subjects, from the comprehensive interpretation of substantive provisions to general guidance.[69] When delivering decisions, the committees refer to the general comments in order to substantiate their conclusions. The Human Rights Committee has a general comment on Article 12 (freedom of movement), referred to as General Comment No. 27.[70]

In its interpretation, the Committee states that freedom of movement is an indispensable condition for the free development of a person. Restrictions may be imposed on the rights protected under Article 12 without prejudice to the principle of liberty of movement, and are governed by the requirement of necessity provided for in Article 12, Paragraph 3, provided that it is consistent with the other rights recognized in the Covenant. In their reports, states parties should provide the Committee with the relevant domestic legal rules and administrative and judicial practices concerning the rights guaranteed by Article 12.

In its decision of **Zoolfia v. Uzbekistan**,[71] the Committee recalls General Comment 27 on Article 12, where it stated that freedom of movement is an indispensable condition

for the free development of an individual. However, it also recalls that the rights provided under Article 12 are not absolute. The Committee notes that Paragraph 3 of Article 12 allows for exceptional cases in which the exercise of rights protected by Article 12 may be restricted. In accordance with the provisions of that paragraph, a state party may restrict the exercise of those rights only if the restrictions are provided by law; are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others; and are consistent with the other rights recognized in the Covenant. In the present case, however, the state party failed to provide any information that would justify such a restriction or its proportionality. Accordingly, the Committee concluded that there had been a violation of Article 12, Paragraphs 2 and 3 of the Covenant.

Once a person is lawfully within a state, any restrictions on his or her rights guaranteed by Article 12, Paragraphs 1 and 2, as well as any treatment different from that accorded to nationals, have to be justified under the rules of Article 12, Paragraph 3. The individuals also have the right to determine their destination state as part of the legal guarantee in Article 12, Paragraph 2. **Orazova v. Turkmenistan**[72] is one of the Human Rights Committee's important decisions on travel bans and bears a substantial resemblance to the travel ban situation in Azerbaijan. Svetlana Orazova (the author of the complaint) was stopped by Turkmen border officials while boarding a flight from Ashgabat to Tashkent in January 2004, without any explanation. Since then, she has not been able to travel abroad or within the country. In June 2008, her husband was prevented from leaving the country for Moscow. The authorities also prevented their daughter, then a student at Beijing University, from leaving the country. In its decision, the Committee recalls its General Comment No. 27 on the freedom of movement. The Committee reiterates its interpretation that the rights covered by Article 12, Paragraph 2 are not absolute and may be restricted in accordance with the permissible limitations set out in Article 12, Paragraph 3. In its General Comment No. 27, the Committee also notes that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function."[73] The Committee found that the state party had violated the author's rights under Article 12, Paragraph 2 of the International Covenant on Civil and Political Rights.[74]

The obligations are aimed at ensuring the rights guaranteed by Article 12, Paragraph 2 and are imposed both on the state of residence and on the state of nationality. Since international travel usually requires the appropriate documents, the right to leave a country also covers the right to obtain the necessary travel documents. The issuing of passports is the obligation of the state of nationality of the individual. A state's refusal to issue or renew a passport for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere. A refusal cannot be justified by claiming that the national would be able to return to the state's territory without a passport.

Article 12, Paragraph 3 provides for exceptional circumstances in which rights under Paragraphs 1 and 2 may be restricted. These restrictions must be provided by law, must be necessary in a democratic society, must be for the protection of these purposes, and must be consistent with all other rights recognized in the Covenant.[75] Restrictions that are not provided for by the law or are not consistent with the requirements of Article 12, Paragraph 3 would violate the rights guaranteed by Paragraphs 1 and 2.[76] States should always respect the principle that the restrictions must not impair the essence of what is right; the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and must not use wide margins when exceeding the bounds of the permissible restriction enumerated by Article 12, Paragraph 3.[77] In the case of **Zoolfia v. Uzbekistan**, referring to General Comment 27, the Committee noted that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must conform to the principle of proportionality; they

must be appropriate to achieve their protective function."[78]

The principle of proportionality has to be observed not only in theory but also in practice. That is to say, it should be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities when applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.

The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality. For instance, an individual cannot be prevented from leaving a country merely on the grounds that he or she is the holder of "state secrets."[79]

The application of the restrictions permissible under Article 12, Paragraph 3 needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the rights enshrined in Article 12, Paragraphs 1 and 2 were restricted by making distinctions of any kind, such as on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Some Azerbaijanis living abroad and receiving the nationality of another state face problems when entering the country. Some Azerbaijanis are refused visas to visit their relatives. They believe this refusal is due to their anti-government stance. On this point, part of the General Comment No. 27 on Article 12, Paragraph 4 is relevant: it notes that the wording of the paragraph does not distinguish between nationals and aliens. Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country." The scope of "his own country" is broader than the concept "country of his nationality." It is not confined to nationality in a formal sense; at the very least, it embraces an individual who, because of his or her special ties to a given country, cannot be considered a mere alien.[80]

How to Submit Communications to the UN Human Rights Committee

Requirements

The First Optional Protocol allows individuals to complain to the Human Rights Committee about violations of the ICCPR.[81] Fact Sheet No. 7 (rev. 1)[82] explains the procedures open to individuals and groups who want the United Nations to take action on a human rights situation pertaining to them.

The basic concept is that anyone may bring a complaint alleging a violation of treaty rights for quasi-judicial adjudication by the body of experts set up by the treaty.[83] "Treaty bodies" are committees composed of independent experts elected by those states that are party to the relevant treaty.[84] They are tasked with monitoring implementation of the rights set forth in the treaties and deciding on complaints brought against those States.

The complaint mechanism for alleged violations of the articles enshrined in the ICCPR is regulated by the First Optional Protocol to the Covenant, a separate treaty that is open to states party to the Covenant.[85] States that are party to the Optional Protocol recognize the competence of the Human Rights Committee—a panel of 18 independent experts who meet three times a year—to receive complaints from persons within their jurisdiction who allege violations of their rights under the Covenant.[86]

A complaint can be brought against a state only if it satisfies two conditions. Firstly, the state must be a party to the ICCPR. Secondly, the state party must have recognized the competence of the committee by becoming a party to the First Optional Protocol.

Having a lawyer prepare your case is not necessary, though it is recommended. You may complain on behalf of another person on condition that you obtain his or her written consent. In exceptional cases, you may complain without such consent—for example, parents may lodge a complaint on behalf of young children or someone may complain on behalf of a person who is in prison without access to the outside world. Under these circumstances,

the Committee will not require formal authorization.

A complaint to a committee, called a "communication," need not take any particular form. Your claim should be in writing and duly signed. It should provide basic personal information about yourself (name, nationality, and date of birth) and indicate the state against which your complaint is lodged.

You should set out, chronologically, all the facts supporting your claim. You should also show that you have exhausted the domestic remedies available.[87] You should inform the Committee about whether you have submitted your case to another means of international investigation or settlement.[88] Finally, you should substantiate why you think that the facts you have put forward constitute a violation of the ICCPR. Identifying the articles of the treaty that have allegedly been violated is recommended but not necessary. All information should be provided in one of the secretariat's working languages.[89]

The applicant, referred to as "the author," should produce all documents relevant to his or her claims and arguments, especially administrative or judicial decisions by the national authorities.[90] It is also helpful to provide copies of the relevant national laws.[91] In case of a lack of essential information, the secretariat will ask the author to provide additional details.[92]

The communication must be submitted within five years after the author of the communication has exhausted domestic remedies. Where applicable, it can also be submitted within three years of the conclusion of another international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.[93] Delay in submitting your case may make it difficult for the state party to respond properly.

There are two major stages of a case: the "admissibility" stage and the "merits" stage. The "admissibility" of a case means that the formal requirements are met, allowing the Committee to consider its substance.[94] On the basis of the "merits" of the case, the committee decides whether or not your rights under a treaty have been violated.[95]

The Committee has the capacity to take urgent action on those occasions where irreparable harm would be suffered if the case were examined in the usual course.[96] These are called "interim measures." Typically, such requests are issued in order to prevent actions that cannot later be undone, for instance the execution of a death sentence or the deportation of an individual to a country where he or she may face torture or the death penalty.

Admissibility

Before the committee considers the merits or substance of the case, admissibility requirements must be fulfilled.[97] The committee may consider one or several of the following factors:

- If a complaint is lodged on behalf of another person, has sufficient authorization been obtained or otherwise been justified to do so?
- Is the person a victim of the alleged violation?
- Is the complaint compatible with the provisions of the ICCPR?
- Is the complaint sufficiently substantiated? If the person has not sufficiently developed the facts of the complaint or the arguments for a violation of the ICCPR, the committee may reject the claim as insufficiently substantiated for the purposes of admissibility; in other words, it may be declared "manifestly ill-founded."
- Does the complaint relate to events that happened prior to the entry into force of the First Optional Protocol for the state concerned?
- Have all domestic remedies been exhausted?
- Has the complaints process been abused?[98]
- Is the complaint being examined under another mechanism of international settlement?[99] If the complaint has been submitted to another treaty body or to a regional mechanism—for example, the European Court of Human Rights—the committee cannot examine the complaint without falling foul of the principle of non-duplication, which is intended to avoid unnecessary duplication at the international level.
- Is the complaint precluded by a reservation which the state has made to the Optional Protocol?

Merit

Once the committee decides that

the case is admissible, it goes on to consider the merits of the complaint, stating its reasons for concluding that a violation has or has not occurred under the various articles it considers applicable.[100] In most cases, the committee can refuse to consider complaints due to a reservation by the state concerned. In exceptional cases, it may find a reservation impermissible and consider the case despite the reservation. If the communication is admitted by the committee, it is submitted, through the Secretary General, to the state party concerned.[101] The author of the communication must be informed of any response submitted by the state and must have the opportunity to submit any additional information.[102] If the state party fails to respond to the author's complaint, the committee takes a decision on the basis of the original complaint. Once the Committee reaches a decision on the case, this decision is communicated to the author and the state party simultaneously.

What Happens If the Committee Decides Your Case?[103]

Crucially, there is no appeal against the Committee's view; its decision is final. If the Committee finds that the state party has violated the ICCPR, it invites the state to inform the Committee, within three months, about the measures it has taken to carry out the Committee's ruling.

If the Committee decides that there has been no violation of the treaty or that a complaint is inadmissible, once the decision has been transmitted to the author and the state party, the process is considered complete. Any complaint about this decision must be sent to the Office of the High Commissioner for Human Rights of the UN.[104]

Protection Mechanism at European Level

The Role of the Council of Europe: The European Convention on Human Rights

The Council of Europe has a unique place on the European and international political stage. It is the oldest international organization dedicated to the promotion of cooperation in Europe.[105] It achieves this through the protection and promotion of human rights, democracy, and the rule of law, which are its *raisons d'etre*.[106] Since its creation, the Council of Europe has successfully pursued its goals. It has responded to major changes on the European political and social field and taken action in cases of threats to human rights within Europe.[107] Today, its role is more vital than ever, as its jurisdiction has been extended to Eastern Europe, the South Caucasus, and Russia. Human rights, democracy, and the rule of law are not yet strong enough in these regions (the situations in Russia, Turkey, and the South Caucasus are the worst). Under these circumstances, the Council of Europe works to safeguard the fundamental rights and freedoms of the hundreds of millions of citizens in its 47 member states. The main legal instrument for protection and promotion of human rights is the **European Convention on Human Rights and Fundamental Freedoms** (hereinafter the European Convention). It entered into force in 1953 and is the main European human rights convention. It is similar to the ICCPR in the sense that it guarantees civil and political rights.[108]

The number of parties increased greatly following the fall of the Berlin Wall in 1989 and with the disintegration of Yugoslavia in the early 1990s.[109] After the collapse of the Soviet Union and the emergence of new democracies in Central and Eastern Europe, the Council of Europe held the first summit of heads of state of all its member states in Vienna in 1993.[110] As a result, the Vienna Declaration was put forward, according to which the whole of Europe was declared a "vast area of democratic security."[111]

Despite Article 4 of the Statute of the Council of Europe, which states that "any European State which is deemed to be able and willing to fulfill the provisions of Article 3 (the rule of law and enjoyment of human rights and fundamental freedoms) can become a member of the COE,"[112] certain states still face human rights problems. In 2003, the decision was made to allow Russia to become a member of the Council of Europe. However, it was not clear how best to proceed with the three countries in the Caucasus region. Finally, it was concluded that Armenia, Georgia, and Azerbaijan— but not the Central Asian states—should be able to become members of

the Council of Europe.[113] With the admission of Russia and other post-communist states to the Council of Europe, the number of state parties rose from 22 in 1989 to 47 in 2008.[114] This increase resulted in new problems of interpretation and application of the Convention and greatly increased the court's workload.[115] As such, several additional Protocols have been added to its substantive and procedural provisions.

The substantive guarantee in the Convention has been provided by the addition of further rights. These include the right to freedom of movement, mentioned in the First, Fourth, Twelfth and Thirteenth Protocols to the Convention. Other Protocols have amended the enforcement machinery. The most recent Protocols of this kind are the Eleventh and Fourteenth Protocols, which introduced fundamental reforms to the Convention's enforcement machinery. The Protocols, which make procedural changes, must be ratified by all member states.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which secures rights and freedoms other than those already included in the Convention and in the first Protocol thereto (hereinafter **Protocol No. 4**), was the second Protocol to add substantive provisions to the Convention (the first being Protocol No. 1). **Article 2** of this protocol is related to freedom of movement:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.[116]

Signing in support of this Protocol began in 1963 and it entered into force in 1968 after being ratified by five member states. Azerbaijan signed it, along with the Convention, on January 1, 2001 and ratified both documents on April 25, 2002, whereupon they entered into force.

The European Court of Human Rights. Case Law

Travel Bans

The ECHR is a legally binding obligation on the 47 member states of the Council of Europe to guarantee a set of human rights to everyone within their jurisdiction. Article 19 of the Convention states that in order "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights. It shall function on a permanent basis. The ECtHR reviews the implementation of the ECHR by Member States when it determines cases brought against them."[117] The Court makes many decisions related to freedom of movement. Among them are two cases that relate to travel bans imposed by the Azerbaijani government, in which the Court delivered a judgment against Azerbaijan and found a violation of Article 2 of Protocol No. 4.

The first judgment of the ECtHR in which the Court found a violation of freedom of movement in Azerbaijan was the case of **Hajibeyli v. Azerbaijan**.[118] The applicant was a politician and a member of the opposition. On April 29, 2000, several opposition political parties held an unauthorized demonstration in Baku. The applicant was detained and taken to a police station, where he was charged with obstructing state officials by actual or threatened use of force. On January 25, 2001, the Baku City Prosecutor's Office decided to suspend the investigation into his case on the grounds that one of the co-accused had absconded and could not be located nor his testimony obtained. On July 7, 2004, the applicant lodged a complaint with the court, claiming that the prosecutor's actions were unlawful, and requested that the court discontinue the proceedings. He further noted that his case was still at the preliminary investigation stage, despite the fact that the proceedings had been instituted four years earlier and no procedural act had been carried out during that period. He pointed out that he remained under a travel ban and could not obtain a passport to travel abroad.

After exhausting domestic remedies, the applicant challenged the decisions of the domestic courts before the Strasbourg Court. The Court noted that, "the criminal proceedings were unreasonably lengthy while the case did not appear to be particularly complex. Whereas the prosecuting authorities failed to make any progress in the investigation for more than five years, it is difficult to see, in the circumstances of the present case, any plausible justification for the continued restriction of the applicant's freedom of movement; especially without any review of the necessity for it either when the investigation was suspended or when the applicant specifically complained of the restriction in July 2004."[119] The Court considered that it "was disproportionate to restrict the applicant's freedom of movement for a period of three years and five months after the entry into force of the Convention (and for five years and four months in total), particularly when the investigation had clearly failed to produce any results and the case ended up being discontinued on account of the expiry of the criminal limitation period. Therefore, the Court finds in respect of the restriction in its entirety that a fair balance between the demands of the general interest and the applicant's rights was not achieved."[120] It notes that "the charges against the applicant became time-barred on 30 April 2005, whereas the preventive measure was not lifted until 14 September 2005. Consequently, in addition to its finding in the previous paragraph that there were no lawful grounds for the continued restriction of the applicant's freedom of movement, the restriction during this period was not 'in accordance with the law.'"[121] Accordingly, the Court found a violation of Protocol 4, Article 2.[122]

Restrictions on Conditionally Released Persons

In the case of a person who has been released on probation or who has received a suspended sentence, restrictions on freedom of movement can be justified only if public interest outweighs the individual's right to freedom of movement and authorities show reasonable grounds for refusing the individual a passport.[123] In Azerbaijan, journalists and human rights lawyers are often released on probation but remain subject to travel bans. Journalist Khadija Ismailova and lawyer Intigam Aliyev are among those who have been subjected to travel bans after their release. From this perspective, **Vlasov and Benyash v. Russia**[124] is a landmark case. On August 31, 2011, the Central District Court of Sochi convicted the applicant, Benyash, of extortion and sentenced him to three years' imprisonment, suspended for three years. He was released in the courtroom. On December 5, 2011, the Federal Migration Service refused Benyash's application for a passport on the grounds that he had been arrested on September 1, 2010 and the criminal proceedings against him were still pending. Benyash applied for judicial review of the refusal. On June 28, 2012, the Central District Court of Sochi upheld the refusal as lawful: "...for the time being the sentence of August 31, 2011 has not yet been served; the applicant is a convicted offender, and, accordingly, the refusal of travel documents does not violate his rights."

In order to challenge the Entry and Exit Procedures Act, the applicant lodged a complaint with the Constitutional Court. The Constitutional Court dismissed the complaint on the grounds that a suspended sentence does not mean that the convicted offender has been exempted from punishment: he or she is on probation during the specified period of time and may be subject to additional restrictions during that period.[125] After domestic remedies were exhausted, the case was bought before the ECtHR.

The Court reiterated that under Article 2, Paragraphs 2 and 3 of Protocol No. 4 the authorities are obliged to ensure that any restriction of an individual's right to leave his or her country is, from the outset and throughout its duration, justified and proportionate.[126] In certain cases, restrictions on the movements of convicted offenders may be justified, for instance by the need to prevent them from re-engaging in criminal conduct.[127] However, the Court noted that such restrictions can be justified only if there are clear indications of a genuine public interest which outweighs the individual's right to freedom of movement. It further observed that restrictions must be based on concrete elements that are truly indicative of the continued

existence of the risk that such measures seek to forestall. "In cases where the travel ban was the consequence of the applicant's status as a convicted and not yet rehabilitated offender, the Court did not consider that such a general and almost automatic restriction could be regarded as necessary."[128]

The Court considered that the Russian authorities, apart from referring to the applicants' convictions and lack of rehabilitation, did not give any reasons for refusing them passports; they did not examine the applicants' individual situations or explain the need to impose such a measure on them. "They thus failed to carry out the requisite assessment of the proportionality of the restriction of the applicants' right to travel abroad and to provide justification for it."[129] The Court reiterated that the mere fact that an individual has been criminally convicted and has not yet been rehabilitated could not justify restrictions on his or her freedom to leave his or her country.[130] The Russian courts relied only on the formal legality of the ban under section 15(4), disregarding the quality of law. But the Court indicated that such a rigid and automatic approach could not be reconciled with the obligation imposed by Article 2 of Protocol No. 4 to ensure that any interference with an individual's right to leave his or her country is justified and proportionate in the light of the circumstances.[131] The Court therefore considered that the automatic imposition of a travel ban without any regard to the individual circumstances of the person concerned could not be described as "necessary in a democratic society."[132] It concluded that there had been a violation of Article 2 of Protocol No. 4 to the Convention.

Refusal to Issue a Passport

Article 2 of Protocol No. 4 to the Convention guarantees any person the right to freedom of movement, including the right to leave any country for any other country of the person's choice to which he or she may be admitted. The refusal to issue a passport may also amount to interference to the right to freedom of movement, as in the case of Baumann v. France, where the Court held that the refusal to renew the applicant's international passport amounted to a measure restricting his right to leave the country.[133]

The applicant was a German citizen. His passport was seized by French investigators in France during a raid on one of the hotels where alleged car thieves had been staying. One of the suspects was arrested while getting into her boyfriend's (the applicant's) car. The applicant himself, however, was in Germany for treatment. After her release from police custody, court proceedings were not brought against the applicant or his girlfriend. The applicant asked for his passport to be returned, but either this request was not responded to or else it was rejected. The applicant submitted the case to the European Court.

The Court found that, as a result of the seizure of the objects in question, the applicant was deprived of his passport and could not retrieve it for a certain period.[134] Accordingly, it observed that he was denied the use of that identity document, which would have permitted him to leave the country and enter any other country, in the European Union or otherwise. The Court therefore held that the applicant's right to freedom of movement was restricted in a manner amounting to interference as understood in Article 2 of Protocol No. 4 to the Convention.[135] It remained to be determined whether that restriction itself was "in accordance with the law."

The Court noted that the applicant was neither prosecuted nor considered to be a witness and remained uninvolved in the proceedings in the Criminal Court.[136] As such, it did not find any grounds to justify the withholding of the applicant's passport and the continued interference with his right to freedom of movement. The Court did not see any reason to accept that the requirements of the investigation could justify the decision not to return the applicant's passport. Accordingly, it concluded that Article 2 of Protocol No. 4 had been violated.

Kerimli v. Azerbaijan[137] likewise involved a violation of Protocol 4, Article 2. The applicant was an opposition politician. On September 10, 1994, the applicant was arrested during a demonstration and taken to the police department, where a hand grenade was allegedly found in the pocket of his suit jacket. On the same day, criminal proceedings were begun

against him. On September 13, 1994, he was formally charged with illegal weapons possession. He was detained on remand pending trial, but ten days later, he was released from detention. On December 11, 1995, the investigation in the framework of the criminal proceedings against the applicant was suspended on the grounds that "the perpetrator of the criminal offence had not been identified." The applicant was not informed about the decision to suspend the investigation at that time.

The applicant held diplomatic and regular passports from 1998 to 2005 and from 2001 until 2006, respectively. In June 2006, the applicant asked for a new regular passport. However, according to the applicant, his application was rejected in an informal manner. The applicant was informed that the Passport Registration Department of the Ministry of Internal Affairs (PRD) had no information on the outcome of the criminal proceedings begun in 1994. He was told that as the PRD could not issue passports to persons against whom criminal proceedings were pending, he had to provide a statement from the relevant prosecuting authorities confirming that the criminal proceedings had been discontinued.

The applicant later discovered that the criminal proceedings begun in 1994 had been suspended on December 11, 1995 but had never been discontinued. He therefore complained to the relevant authorities about the failure to discontinue the proceedings and his resulting inability to receive a passport.

In September 2006, in his complaint to the authorities concerned, the applicant asked the court to issue him a passport and to order the prosecutor's office to "remove the restriction on his freedom of movement" by discontinuing the criminal proceedings instituted in 1994, noting that the limitation period for prosecution in respect to the criminal offence (under the old Criminal Code) was five years from the date of the alleged offence, while under the new Criminal Code it was seven years from the alleged offence. He therefore argued that the proceedings should have been discontinued years earlier, owing to the expiration of the prescribed period. After the exhaustion of domestic remedies, the applicant brought the case before the Strasbourg Court.

The Court noted that the criminal charge in question became time-barred on September 10, 1999 and it was up to the relevant prosecuting authorities to discontinue the proceedings on that date. As for the 2000 Criminal Code, it came into force after that date and was not applicable at the time. Although the criminal proceedings remained pending after the entry into force of the 2000 Criminal Code, which provided for a longer limitation period, it could not be applied retroactively to the applicant's situation.[138]

The Court also considered that the fact that criminal proceedings had been pending for around 20 years without any procedural activity had had a significant impact on the proportionality of the restriction on the applicant's right to freedom of movement under Article 2 of Protocol No. 4 to the Convention.[139]

The Court reiterated that the authorities were not entitled to maintain a long-term restriction on an individual's freedom of movement without regular re-examination of its justification.[140] It therefore follows that there had been a violation of the applicant's right to leave his country as guaranteed by Article 2.2 of Protocol No. 4.[141]

Restriction on Freedom of Movement or Deprivation of Liberty?

Since restrictions on freedom of movement are prevalent in Azerbaijan and the deprivation of liberty is an important part of its criminal procedures, it is useful to shed light on the differences between them. The ECtHR holds that certain measures involving restrictions on freedom of movement are not always regarded as restrictions on freedom of movement.[142] In order to determine whether an individual's situation is protected by Article 5 of the ECHR or Article 2 of Protocol No. 4, the ECtHR considers the individual's situation, taking into account "a whole range of criteria, such as the type, duration, effects and manner of implementation of the measure in question."[143]

The difference between deprivation of liberty and a restriction on freedom of movement is determined based on

the degree or intensity of measures rather than nature or substance.[144] The assessment will depend on the specific facts of the case.[145] The short duration of a restriction, such as a few hours, will not automatically result in a finding that the situation constituted a restriction on movement as opposed to a deprivation of liberty, however. Other factors are taken into account, such as whether there was an element of coercion[146] and whether the situation had particular effects on the individual, including any physical discomfort or mental anguish.[147]

The case of **Guzzardi v. Italy**[148] is a landmark one in this regard. The applicant had been arrested in connection with a criminal charge, but the pre-detention period had expired before the charges were ready to proceed. He was therefore removed from the prison and taken, under court order, to a small island off Sardinia to be kept under "special supervision." Although the island was 50 square kilometers, the area reserved for persons in "compulsory residence," such as Guzzardi, amounted to no more than 2.5 square kilometers. The applicant was able to move freely around this area during the day but unable to leave his residence between 10 p.m. and 7 a.m. He had to report to the authorities twice daily and could only leave the island with prior authorization and under strict supervision. His contact with the outside world was also supervised and restricted. The applicant lived under these conditions for 16 months. The Strasbourg Court stated that it was not possible to establish a case for deprivation of liberty on the strength of a singular aspect of his regime, but taken cumulatively, in light of the factors set out above, it considered that the applicant had been deprived of his liberty and his case was to be examined under Article 5 rather than Article 2 of Protocol No. 4.[149]

In **Amuur v. France**,[150] the applicants, four Somali nationals, arrived in France by airplane after fleeing Somalia due to fear of persecution. The Minister of Interior refused them the right to enter and they were held in the airport's transit zone. The floor of the Hotel Arcade was adapted for the purpose of holding the four Somali nationals for 20 days before they were sent back to Somalia.

The Court observed that the applicants were under strict police surveillance in the airport's transit zone, without access to legal or social assistance. The Court further held that an asylum-seeker can voluntarily leave the country where he or she wishes to take refuge, but this fact does not exclude a restriction on liberty.[151] Furthermore, the right to leave any country—including one's own—as guaranteed by Protocol No. 4 to the Convention can become theoretical if no other country offers protection similar to that which they were expecting to find in the country in which they sought asylum.[152] The Court concluded that holding the applicants in the transit zone of the airport resulted in a deprivation of liberty.[153] It further noted that this deprivation of liberty was not compatible with paragraph 1 of Article 5 of the Convention, since by holding the applicants in Paris' international airport, they became subject to French law. France's domestic law did not provide for legal, humanitarian, or social assistance, nor did it lay down procedures and time limits for access to such assistance.[154] Therefore, the Court found a violation of Article 5, Paragraph 1 on the basis that there were insufficient guarantees for the applicants' right to liberty under French law. It is clear from this case that ordering a person to stay in a particular place is not enough to amount to a deprivation of liberty as protected by Article 5.[155] "The closed and cut-off nature of such a restriction, coupled with its duration, might be a deprivation of liberty rather than a mere restriction on freedom of movement."[156]

Brief Information on Making an Application to the ECtHR

Unlike communications to the Human Rights Committee, applications to the ECtHR are very prevalent in Azerbaijan.[157] **Article 34** and **35** of the Convention constitute the main legal bases of application to the ECtHR. Article 34 of the Convention guarantees the right of individual application and gives individuals a genuine right to take legal action at the international level.

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols

thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.[158]

An application under Article 34 of the Convention must be submitted in writing.[159] The application form is downloaded from the Court's website,[160] printed, filled out, and sent (along with other relevant documents) to the appropriate address.[161]

The responses given on the application form concerning the facts, complaints, and compliance with the requirements of exhausting domestic remedies and the time limit set out in Article 35.1 of the Convention[162] must respect the conditions set out in Rule 47 of the Rules of Court.[163] Any additional submissions, presented as a separate document, must not exceed 20 pages[164] and should be divided into "Facts" and "Complaints or Statements of Violations."

The applicants must comply with admissibility criteria set out in Article 35 of the Convention. They must exhaust all domestic remedies and submit their application within a period of six months from the date on which the final decision was taken.
The application will not be accepted by the Court if it is anonymous or substantially the same as a matter that has already been examined. Nor will it be accepted if it has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

The application will be declared inadmissible if it is incompatible with the provisions of the Convention or the Protocols, is manifestly ill-founded, or abuses the right of individual application. It will also be declared inadmissible if the Court considers that the applicant has not suffered a significant disadvantage, unless respect for human rights, as defined in the Convention and the Protocols, requires an examination of the application and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

The applicant must set out the facts of the case, his or her complaints, and explanations as to compliance with the admissibility criteria in the space provided in the application form. The information should be enough to enable the Court to determine the nature and scope of the application.

An applicant does not need legal representation at the introductory stage of proceedings. If he or she does secure a lawyer, the "authority" section of the application form must be filled in. Both the applicant and the representative must sign the authority section. A separate power of attorney is not acceptable at this stage, as the Court requires all essential information to be contained in its application form.

An application form must be accompanied by the relevant documents:
(a) relating to the decisions or measures complained about;
(b) showing that the applicant has complied with the exhaustion of available domestic remedies and the time limit contained in Article 35.1 of the Convention;
(c) showing, where applicable, information regarding other international proceedings.

The applicant or the designated representative must sign the application form. If represented, both the applicant and the representative must sign the "authority" section of the application form.

Conclusion

The right to freedom of movement is protected by national, regional, and international institutions. If the national institutions fail to protect it adequately, regional and institutional institutions can be triggered. This paper focused on two international bodies which offer effective ways of dealing with violations: the Human Rights Committee and the ECtHR. The protection mechanisms of the two bodies are similar to one another; in particular, the admissibility and merit criteria of the two institutions are almost the same. Despite these similarities, from the applicants' perspective, each body has its advantages and disadvantages.

The formal admissibility criteria of the Human Rights Committee are not as stringent as those of the ECtHR. For instance, communication with the Committee can be submitted within 5 years of the exhaustion of domestic remedies, whereas for the ECtHR, this period is 6 months (and once Protocol No. 15 to the Convention comes into force, it will be decreased to 4 months). But the Committee's

main disadvantage is that its decisions are not legally binding, so the state party is not compelled to implement them.

Despite the stringency of the requirements of the ECtHR compared to those of the Committee, its decisions are legally binding on member states. The Committee of Ministers, which supervises the execution of Court decisions, may impose sanctions against the respondent government. Article 47 of the ECHR says that if the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment of the Court, it may refer to the Court the question of whether that Party has failed to fulfill its obligation. It must do this after serving formal notice to that Party and by a decision adopted by a two-thirds majority vote of the representatives entitled to sit on the committee. If the Court finds a violation, it shall refer the case to the Committee of Ministers for consideration of the measures that should be taken. If the Court finds no violation, it shall refer the case to the Committee of Ministers, which shall close its examination. However, considering that the Council of Europe includes Eastern European countries, the South Caucasus, Turkey, and Russia (the last of which has a great deal of influence over a handful of other Council of Europe member states), getting a two-thirds majority vote of is not easy. This means that it is practically impossible to impose sanctions on the state concerned. For example, Azerbaijan has refused to adhere to certain decisions made by the ECtHR, including the case of **Kerimli v. Azerbaijan**: although the applicant was supposed to receive a passport, this has not yet happened.

If we look at the statistics of the two institutions, we will see that the number of cases that come before the Strasbourg Court—including from Azerbaijan—is higher than the number of those that come before the Human Rights Committee. The main reason for this is the legally-binding nature of ECtHR decisions, even if there are limitations on the execution of Court decisions in some states.

Notes

[1] The definition of freedom of movement is contained in several international and regional human rights instruments, such as the ICCPR and the ECHR.
[2] Universal Declaration of Human Rights, art. 13, available at http://www.un.org/en/universal-declaration-human-rights/.
[3] International Covenant on Civil and Political Rights, art. 12, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.
[4] International Convention on the Protection of the Rights of All Migrant Workers, art. 39, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx.
[5] The Convention on the Rights of Persons with Disabilities, art. 18, available at http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx.
[6] Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf.
[7] African Charter on Human and Peoples' Rights, art. 12, available at http://www.achpr.org/instruments/achpr/.
[8] Gulnar Salimova, "Forced Limbo: How Azerbaijan Prevents Journalists from Leaving the Country," *Open Democracy,* September 27, 2016, https://www.opendemocracy.net/od-russia/gulnar-salimova/forced-limbo-how-azerbaijan-prevents-journalists-from-leaving-country, accessed June 14, 2017.
[9] "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development" (report of the Special Rapporteur on the Situation of Human Rights Defenders on his mission to Azerbaijan, Human Rights Council, 34th session, Agenda item 3, February 27-March

24, 2017, p. 8-9, 22).
[10] Human Rights Watch, "Azerbaijan: Events of 2015," World Report 2016, https://www.hrw.org/world-report/2016/country-chapters/Azerbaijan.
[11] Freedom House, "Azerbaijan," Freedom in the World 2017, https://freedomhouse.org/report/freedom-world/2017/azerbaijan.
[12] U.S. Department of State, Bureau of Democracy, Human Rights and Labour, "Azerbaijan 2016 Human Rights Report," Country Reports on Human Rights Practices for 2016, p. 23, 25-26, https://www.state.gov/documents/organization/265608.pdf.
[13] Institute for Reporters' Freedom and Safety, "Freedom of Expression Ahead of Controversial Constitutional Referendum: 2016 Third Quarterly Report on Freedom of Expression in Azerbaijan," https://www.irfs.org/wp-content/uploads/2016/11/Freedom-of-Expression-Ahead-of-Controversial-Constitutional-Referendum.pdf.
[14] ECtHR, Hajibeyli v. Azerbaijan, Application No. 16528/05, Judgment of 2008.
[15] ECtHR, Kerimli v. Azerbaijan, Application No. 3967/09, Judgment of October 16, 2015.
[16] Institute for Reporters' Freedom and Safety, "Freedom of Expression."
[17] Salimova, "Forced Limbo."
[18] "Court Denies Journalist's Appeal Against Travel Ban," Institute for Reporters' Freedom and Safety, July 25, 2016, https://www.irfs.org/news-feed/court-denies-journalists-appeal-against-travel-ban/, accessed June 16, 2017.
[19] Salimova, "Forced Limbo."
[20] Institute for Reporters' Freedom and Safety, "Court Denies Journalist's Appeal."
[21] "Izolda Aghayeva Banned from Foreign Travel," *Meydan TV*, March 24, 2016, https://www.meydan.tv/en/site/news/12947/Izolda-Aghayeva-banned-from-foreign-travel.htm, accessed June 16, 2017.
[22] Salimova, "Forced Limbo."
[23] "Journalists to Take Fight Against Travel Ban to European Court," Institute for Reporters' Freedom and Safety, December 12, 2016, https://www.irfs.org/news-feed/journalists-to-take-fight-against-travel-ban-to-european-court/, accessed June 18, 2017.
[24] "Meydan TV Staff Banned from Leaving the Country," Institute for Reporters' Freedom and Safety, June 30, 2015, https://www.irfs.org/news-feed/meydan-tv-staff-banned-from-leaving-the-country/, accessed June 13, 2018.
[25] "Azerbaijan: Khadija Ismayilova Sentenced to 7.5 Years in Prison," Organized Crime and Corruption Reporting Project, September 1, 2015, https://www.occrp.org/en/daily/4354-azerbaijan-khadija-ismayilova-sentenced-to-7-5-years-in-prison, accessed June 18, 2017.
[26] "Human Rights Defender Khadija Ismayilova Released after 537 Days in Jail," Front Line Defenders, May 25, 2016, https://www.frontlinedefenders.org/en/case/case-history-khadija-ismayilova, accessed June 18, 2017.
[27] "Journalist Khadija Ismayilova Remains Under Travel Ban," Institute for Reporters' Freedom and Safety, December 8, 2016, https://www.irfs.org/news-feed/journalist-khadija-ismayilova-remains-under-travel-ban/, accessed June 18, 2017.
[28] Special Rapporteur on the Situation of Human Rights Defenders, "Promotion and Protection of All Human Rights," 7.
[29] Ibid, 7-8.
[30] "Case History: Intigam Aliyev," Front Line Defenders, last updated March 31, 2016, https://www.frontlinedefenders.org/en/case/case-history-intigam-aliyev, accessed June 19, 2017.
[31] Ibid.
[32] "Human Rights Defender Intigam Aliyev Allowed to Leave Country," Institute for Reporters' Freedom and Safety, June 5, 2016, https://www.irfs.org/news-feed/human-rights-defender-intigam-aliyev-allowed-to-leave-country/, accessed June 19, 2017.
[33] Migration Code of the Republic of Azerbaijan, art. 9. Last amended May 8, 2017.
[34] Law of Azerbaijan Republic on Execution, art. 84.1, http://e-qanun.gov.az/framework/1406, accessed June 21, 2017.
[35] Civil Procedural Code of the Azerbaijan Republic, art. 231.3, available at http://www.e-qanun.az/code/9, accessed June 21, 2017.
[36] Ibid, art. 231.4
[37] The Tax Code of the Republic of Azerbaijan, art. 23.1.15-3, http://www.e-qanun.az/code/12, accessed June 21, 2017.
[38] Ibid, art. 24.0.2-1
[39] Law of the Azerbaijan Republic on the Status of the Military Personnel, art. 23, http://www.e-qanun.az/framework/6998, accessed June 22, 2017.
[40] Ibid, art. 23 (d).
[41] Ibid, art. 23.3.
[42] Law of the Azerbaijan Republic on State Secrets, art. 25.0.1, http://www.mfa.gov.az/files/file/27.pdf, accessed June 22, 2017.
[43] Charter of the United Nations, art. 1 (June 26, 1954).
[44] Ibid, Articles 1, para. 3, 13, para. 1 b., 55 c., 56, 68, and 76 c. in annex VI.1.
[45] OHCHR, "Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15 (Rev.1)," https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf.
[46] OHCHR, "International Human Rights Law," http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx.
[47] Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law," *Georgia Journal of Internati-*

onal and Comparative Law 25, no.1 (1996): 289.
[48] Ibid.
[49] Universal Declaration of Human Rights, art. 13 (December 10, 1948), http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, accessed July 3, 2017.
[50] United Nations, "Protect Human Rights," https://www.unesco.de/c_humanrights/I.php, accessed July 4, 2017.
[51] Marc J. Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (Dordrecht, Boston, and Lancaster: Martinus Nijhoff Publishers, 1987), xix-xx.
[52] ICCPR, Article 12.
[53] The International Convention on Economic Social and Cultural Rights (ICESCR), http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.
[54] United Nations, "Protect Human Rights."
[55] Dag Hammarskjold Library, "UN Documentation: Human Rights—Charter-Based Bodies," http://research.un.org/en/docs/humanrights/charter, accessed July 5, 2017.
[56] Ibid.
[57] Ibid.
[58] Dag Hammarskjold Library, "UN Documentation: Human Rights—Treaty-Based Bodies," http://research.un.org/en/docs/humanrights/treaties, accessed July 5, 2017.
[59] Ibid.
[60] OHCHR, "Human Rights Bodies," http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx, accessed July 5, 2017.
[61] OHCHR, "Fact Sheet No. 15," 10.
[62] Ibid.
[63] Ibid.
[64] Human Rights Committee, 94th session, "General Comment No 33: The Obligations of States Parties under the First Optional Protocol to the International Covenant on Civil and Political Rights," http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.GC.33.pdf, accessed July 6, 2017.
[65] ICCPR, ch. 4.
[66] The First Optional Protocol to the International Covenant on Civil and Political Rights, March 23, 1976.
[67] ICCPR, art. 1.
[68] OHCHR, "Monitoring the Core International Human Rights Treaties," http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx, accessed July 18, 2017.
[69] Ibid.
[70] "ICCPR General Comment No. 27: Article 12 (Freedom of Movement)," adopted November 2, 1999, http://www.refworld.org/docid/45139c394.html, accessed July 18, 2017.
[71] HRC, Zoolfia v. Uzbekistan, View, Communication No. 1585/2007, CCPR/C/96/D/1585/2007, August 21, 2009, para. 8.3.
[72] HRC, Orazova v. Turkmenistan, View, Communication No. 1883/2009, CCPR/C/104/D/1883/2009, March 20, 2012.
[73] Ibid, para. 7.3.
[74] Ibid, para. 8.
[75] Ibid, para. 11.
[76] Ibid, para. 12.
[77] Ibid, para. 13
[78] HRC, Zoolfia v. Uzbekistan, para. 8.3.
[79] Ibid, para. 16
[80] Ibid, para. 20
[81] The First Optional Protocol to the ICCPR, art. 1.
[82] OHCHR, "Fact Sheet No.7/Rev.1, Complaints Procedure," https://www.ohchr.org/Documents/Publications/FactSheet7Rev.1en.pdf.
[83] The First Optional Protocol, art. 1.
[84] ICCPR, art. 28-39.
[85] The First Optional Protocol.
[86] OHCHR, "Fact Sheet No. 15."
[87] The First Optional Protocol, art. 2.
[88] Ibid, art. 5.2 (a)
[89] Rules of Procedure of the Human Rights Committee, January 11, 2012, Rule 28.
[90] Ibid, Rule 86.
[91] Ibid.
[92] Ibid, Rule 97.4
[93] Ibid, Rule 96 (c)
[94] The First Optional Protocol, art. 5.
[95] Ibid, Rule 99-101.
[96] Ibid, Rule 92.
[97] Ibid, Rule 96; The First Optional Protocol, art. 5.
[98] Ibid, art. 5.2 (a)
[99] Ibid, art. 4.
[100] Ibid, Rule 99-101.
[101] Ibid, Rule 99.1
[102] Ibid, Rule 99.3
[103] Ibid, Rule 101.
[104] Mail address: Petitions Team, Office of the High Commissioner for Human Rights United Nations Office at Geneva, 1211 Geneva 10, Switzerland, Fax: + 41 22 9179022 (particularly for urgent matters), E-mail: tb-petitions.hchr@unog.ch.
[105] Council of Europe, "The Council of Europe—800 Million Europeans: Guardian of Human Rights, Democracy and the Rule of Law," 2012, https://www.ecml.at/Portals/1/800_millions_en.pdf, 3.
[106] Ibid.
[107] Ibid.
[108] UN, Department of Economic and Social Affairs, Division for Social Policy and Development, "International Norms and Standards Relating to Disability: Part III, The Regional Human Rights System," 1(1.1).
[109] David Harris, Michael O'Boyle, Ed Bates, and Carla Buckley, *Law of the European Convention on Human Rights, Third Edition* (Oxford: Oxford University Press, 2014), 3.
[110] Hans Winkler, "Council of Europe and Integration of Eastern European States into Europe," in *The Council of Europe: Pioneer and Guarantor for Human Rights and Democracy*, ed. Renate Kicker (Strasbourg: Council of Europe, 2010), 21.
[111] Ibid, 22.
[112] Ibid.
[113] Ibid.
[114] Harris et al., *Law of the European Convention,* 3.
[115] Ibid.
[116] Protocol No. 4 to the Convention

for the Protection of Human Rights and Fundamental Freedoms, art. 2.
[117] ECHR, art. 19.
[118] ECtHR, Hajibeyli v. Azerbaijan.
[119] Ibid, para. 66.
[120] Ibid, para. 67.
[121] Ibid. para. 68.
[122] Ibid. para. 69
[123] Vlasov and Benyash v. Russia, Applications nos. 51279/09 and 32098/13, January 31, 2017, para. 34.
[124] Ibid.
[125] Ibid, para. 22.
[126] Ibid, para. 32.
[127] ECtHR, Raimondo v. Italy, February 22, 1994, § 39.
[128] ECtHR, Milen Kostov v. Bulgaria, Application no. 40026/07, September 3, 2013, § 17.
[129] ECtHR, Vlasov and Benyash v. Russia, Applications nos. 51279/09 and 32098/13, September 20, 2016, para. 35.
[130] ECtHR, Nalbantski v. Bulgaria, Application no. 30943/04, February 10, 2011, § 67.
[131] Ibid, § 62.
[132] ECtHR, Vlasov and Benyash v. Russia, September 20, 2016, para. 37
[133] ECtHR, Baumann v. France, Application no. 33592/96, 2001, § 61
[134] Ibid, § 63
[135] Ibid.
[136] Ibid, § 66
[137] ECtHR, Kerimli v. Azerbaijan.
[138] Ibid, § 51.
[139] Ibid, § 53.
[140] Ibid, § 56.
[141] Ibid, § 57.
[142] Yannis Ktistakis, "Protecting Migrants Under The European Convention On Human Rights And The European Social Charter: A Handbook for Legal Practitioners," Council of Europe, 2013, 23, https://rm.coe.int/168007ff59.
[143] ECtHR, Austin and Others v. the United Kingdom [GC], Nos. 39692/09, 40713/09 and 41008/09, March 15, 2012, para. 57.
[144] ECtHR, Guzzardi v. Italy, No. 7367/76, November 6, 1980, para. 93.
[145] Nuala Mole and Catherine Meredith, *Asylum and the European Convention on Human Rights* (Strasbourg: Council of Europe Publishing, 2010), 138.
[146] ECtHR, Foka v. Turkey, No. 28940/95, June 24, 2008, para. 78.
[147] ECtHR, H.L. v. the United Kingdom, No. 45508/99, October 5, 2004.
[148] ECtHR, Guzzardi v. Italy.
[149] Ibid, para. 95.
[150] ECtHR, Amuur v. France, No. 19776/92, judgment of June 25, 1996.
[151] Ibid, para. 48.
[152] Ibid.
[153] Ibid, para. 49.
[154] Ibid, para. 53.
[155] Mole and Meredith, *Asylum and the European Convention on Human Rights*, 80
[156] Ibid.
[157] The reasons for this will be touched upon in the conclusion of this paper.
[158] ECHR, art. 34.
[159] ECtHR, Rules of Court, Rule 45. The new version entered into force on November 14, 2016. See http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.
[160] The application form can be downloaded from: http://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&c.
[161] An application must be sent to the following address: The Registrar, European Court of Human Rights, Council of Europe, F-67075 Strasbourg Cedex.
[162] ECHR, art. 35.
[163] ECtHR, Rules of Court, Rule 47.
[164] Ibid.