



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ERGASHEV v. RUSSIA

(Application no. 12106/09)

JUDGMENT

STRASBOURG

20 December 2011

FINAL

04/06/2012

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Ergashev v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
 Anatoly Kovler,
 Peer Lorenzen,
 Elisabeth Steiner,
 Khanlar Hajiyeu,
 Mirjana Lazarova Trajkovska,
 Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 November 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 12106/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Uzbek national, Mr Urinboy Ergashev (“the applicant”), on 3 March 2009.

2. The applicant was represented by Ms O. Tseytlina, a lawyer practising in St Petersburg, who was assisted by lawyers of the EHRAC/Memorial Human Rights Centre, an NGO with offices in London and Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his detention by the Russian authorities with a view to his extradition to Uzbekistan, where he faced politically motivated persecution by the local authorities, gave rise to violations of his rights under Article 3, Article 5 and Article 6 § 2 of the Convention.

4. On 22 June 2010 the President of the Chamber to which the case was allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Russia, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice.

5. On 1 September 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in St Petersburg.

The circumstances of the case

1. Information submitted by the applicant

(a) Background information

7. In 1989 the applicant became a mullah in the mosque of Mamurobod in Uzbekistan. In 1999 he graduated as a qualified Arabic teacher from the Foreign Languages Institute in Andijan, Uzbekistan. From 1999 to 2007 he was not officially employed and provided religious consultations about Islam, as well as teaching Arabic and Koran studies.

8. In May 2007 the applicant moved to Russia. On 6 June 2007 he was registered as a migrant in St Petersburg.

(b) Proceedings in Uzbekistan

9. On 8 December 2007 the Andijan Region Investigations Department of the Uzbek Ministry of the Interior charged the applicant *in absentia* with a number of crimes including membership of an extremist organisation, attempting to overthrow the State's constitutional order and dissemination of the views of a radical extremist movement. The applicant's name was put on the wanted list; an arrest warrant was issued against him.

10. On 25 September 2008 the Prosecutor General's Office of Uzbekistan forwarded a request for the applicant's extradition to the Russian Prosecutor General's Office.

11. On 23 January 2009 the Prosecutor General's Office of Uzbekistan informed the Russian Prosecutor General's Office that it "... guarantee[d] that the prosecution of U. Ergashev [would] be carried out in strict compliance with Uzbek legislation".

12. On 2 March 2009 the Andijan Town Court ordered the applicant's arrest. The decision did not set any time-limits for the applicant's detention.

(c) Proceedings in Russia

(i) Extradition proceedings

13. On 1 September 2008 the applicant was arrested in St Petersburg on the basis of a letter from the Uzbek authorities and placed in a detention centre.

14. On 22 June 2009 the Russian Prosecutor General's Office issued an extradition order against the applicant. The text of the decision included the following:

“... the Andijan Region Investigations Department of the Uzbek Ministry of the Interior is investigating a criminal case against U. Ergashev ...

The charges against U. Ergashev state that between 22 May 1999 and 2007, in the Andijan region of Uzbekistan, being an active member of the prohibited religious extremist movement ... with the aim of overthrowing the State's constitutional order, ... he actively participated in the criminal activities of the supporters of the extremist religious movement ... and publicly called for the overthrow of the constitutional order of the Republic of Uzbekistan by engaging in ‘jihad’ (holy war) and for the creation of an Islamic State ...

... The actions of U. Ergashev are punishable under Russian criminal law and correspond to paragraph 1 of Article 280 (public calls for extremist activities), paragraph 2 of Article 282 (incitement to hatred) and paragraph 2 of Article 282-3 (membership of an extremist organisation) of the Russian Criminal Code; the penalties envisaged under those Articles entail deprivation of liberty for more than one year. The limitation period for the above crimes under Russian and Uzbek law has not expired ...”

15. The applicant appealed against the extradition order to the St Petersburg City Court (“the City Court”), stating, among other things, that he was being persecuted by the Uzbek authorities for his political and religious beliefs and that if extradited, he would be subjected to ill-treatment in Uzbekistan.

16. On 14 August 2009 the City Court overruled the extradition order, stating that it had been issued prematurely – that is, before the examination of the applicant's request for temporary asylum – and ordered the applicant's release from detention.

17. The prosecutor's office appealed against that decision to the Supreme Court of the Russian Federation (“the Supreme Court”). On 30 September 2009 the Supreme Court overruled the decision of 14 August 2009 and remitted the case for a fresh examination.

18. On 5 May 2010 the City Court again examined the applicant's complaint and upheld the extradition order, referring, amongst other things, to the guarantees provided by the Uzbek Prosecutor General's office to the effect that the applicant would not be subjected to ill-treatment in Uzbekistan. The applicant appealed against that decision to the Supreme Court.

19. On 22 June 2010 the European Court of Human Rights granted a request by the applicant for the application of interim measures under Rule 39 of the Rules of Court entailing the suspension of his extradition to Uzbekistan.

20. On 7 July 2010 the Supreme Court dismissed the applicant's appeal and the extradition order became final.

(ii) The applicant's detention with a view to extradition and his complaints on the matter

(α) The first period of the applicant's detention

21. On 1 September 2008 the applicant was arrested. On 3 September 2008 the Smolninskiy District Court of St Petersburg ("the Smolninskiy District Court") authorised the applicant's detention on the basis of the arrest warrant issued by the Uzbek authorities on 8 December 2007 (see paragraph 12 above). In its decision the court referred to Article 108 of the Code of Criminal Procedure ("the CCP"). No time-limits were set for his detention.

22. On 17 October 2008 the Smolninskiy District Court further authorised the applicant's detention with a view to extradition without laying down any relevant time-limits. In its decision the court referred to Articles 108 and 466 of the CCP.

23. On 29 January 2009 the applicant complained to the Smolninskiy District Court that his detention pending extradition was unlawful. On 2 February 2009 the court allowed his complaint in full and released him. The court's decision stated, amongst other things, that the applicant's detention had not been extended by court orders and its length was uncertain, in violation of Article 109 of the CCP and of Article 5 of the Convention.

24. The prosecutor's office appealed against that decision. On 12 February 2009 the St Petersburg City Court upheld the decision of 2 February 2009 on appeal and reaffirmed that the applicant's detention during the above period had been unlawful.

(β) The second period of the applicant's detention

25. On 3 March 2009 the applicant was arrested again. On 4 March 2009 (in the documents submitted the date was also referred to as 6 March 2009) the Tsentralniy district prosecutor's office of St Petersburg ("the prosecutor's office") requested that the Dzerzhinskiy District Court of St Petersburg ("the Dzerzhinskiy District Court") authorise the applicant's detention with a view to extradition.

26. On 6 March 2009 the Dzerzhinskiy District Court refused to grant the prosecutor's request, stating that the applicant had already been detained on the same grounds and that the authorities had failed to prove that he

intended to abscond. In spite of the above decision, the applicant was not released from detention as on the same date the prosecutor's office ordered his detention on the basis of the arrest warrant issued by the Andijan Town Court on 2 March 2009.

27. On 18 March 2009 (in the documents submitted the date was sometimes given as 10 March 2009) the applicant complained to the Dzerzhinskiy District Court, stating, among other things, that in the absence of an extradition order his detention was unlawful, that he had already been detained with a view to extradition between 1 September 2008 and 2 February 2009 and that his further detention from 3 March 2009 was against the law as it was based on the same grounds.

28. On 18 March 2009 the Dzerzhinskiy District Court examined the applicant's complaint under Article 125 of the CCP (complaints against acts and decisions of officials involved in criminal proceedings) and dismissed it, stating that the prosecutor's detention order of 6 March 2009 was lawful and substantiated as it had been based on the detention order issued by the Andijan Town Court on 2 March 2009. The court did not examine the applicant's allegation that his continued detention from 3 March 2009 was against the law as it was based on the same grounds as his previous detention between 1 September 2008 and 2 February 2009.

29. On 8 May 2009 the City Court upheld the decision of 18 March 2009 on appeal. It did not examine the applicant's allegations concerning the use of the same grounds for his continued detention either.

30. On 13 May 2009 the applicant again complained to the Dzerzhinskiy District Court, stating that his detention was unlawful and excessively lengthy as the two-month time-limit for the detention had expired and his further detention had not been authorised by the Russian courts.

31. On 27 May 2009 the Dzerzhinskiy District Court allowed the applicant's complaint and acknowledged the excessive length of his detention. However, the applicant remained in detention. The applicant appealed against that decision.

32. On 3 August 2009 the City Court overruled the decision of 27 May 2009 on appeal and remitted the case for a fresh examination. The applicant remained in detention.

33. On 25 August 2009 the Dzerzhinskiy District Court again allowed the applicant's complaint of 13 May 2009. The court stated that the applicant's detention as of 7 May 2009 had been unlawful as it had not been duly extended by the domestic courts. It ordered the applicant's release from detention even though he had actually been released on 14 August 2009 following the decision of the City Court (see paragraph 16 above). The prosecutor's office appealed against the decision. On 27 October 2009 the City Court upheld the decision of 25 August 2009 on appeal.

(γ) Further developments

34. On 6 September 2010 the applicant was arrested by the National Interpol Bureau in St Petersburg and the Leningrad Region and taken to the Viborgskiy district department of the interior in St Petersburg (the Viborgskiy ROVD), where he was detained from 11.35 a.m. to 5.30 p.m. before being released on an undertaking to visit the Viborgskiy district prosecutor's office.

35. On 8 September 2010 the Viborgskiy district prosecutor's office placed the applicant under house arrest "pending extradition to Uzbekistan".

(iii) *Conditions of the applicant's detention and transfer*

(α) Conditions of the applicant's detention between 3 and 7 March 2009

36. At about 10.30 a.m. on 3 March 2009 the applicant was arrested in the building of the Dzerzhinskiy District Court (see paragraph 25 above). He was taken to a police station (78th office of the St Petersburg department of the interior – *78-й отдел милиции*), where he was detained until 1 p.m. on 7 March 2009.

37. During these four days the applicant was detained in an administrative-detention cell. The conditions of his detention were as follows: the cell, which measured 6 sq. m, had a tiny window; it did not have ventilation; there was no bed or toilet; the applicant slept on a narrow wooden bench which was designed for seating; no food or drink was given to him throughout the detention; and he was allowed to use the toilet in the adjacent area only with the permission of the police officers. The applicant had to obtain drinking water from the toilet.

(β) Conditions of the applicant's detention between 7 March and 14 August 2009

38. At about 1 p.m. on 7 March 2009 the applicant was transferred from the police station to remand prison IZ-47/4 in St Petersburg.

39. Between 7 and 11 March 2009 the applicant was detained in cell no. 82, measuring 18 sq. m, with ten other inmates. There were only eight bunk beds; the applicant therefore had to sleep on the floor. The cell had neither a table nor hot water. No proper bedding was provided for the applicant. His personal space amounted to 1.6 sq. m. The inmates constantly smoked in the cell, which had an adverse effect on the applicant's health. On 11 March 2009 the applicant was allowed to take his first five-minute shower since his arrest on 3 March 2009.

40. On 12 March 2009 the applicant was transferred to cell no. 130/2 (tuberculosis cell) as it had been established that he was suffering from tuberculosis. The cell measured about 30 sq. m and had fifteen bunks. Between 12 and 15 March 2009 it held seven inmates; between 16 and

18 March it held eleven inmates; between 19 and 28 March it held twelve inmates; between 5 and 17 May thirteen inmates; on 18 May nine inmates; on 19 May ten inmates; and between 20 and 25 May eleven inmates. Depending on the number of inmates the applicant's personal space varied from 4.6 to 2.5 sq. m. The table in the cell was a few metres from the toilet; no disinfectant was provided for the latter. The inmates had to do their laundry in the cell using a basin. Irrespective of the gravity of their medical condition and the degree of contagiousness, the inmates were kept together in the same cell.

41. On 29 March 2009 the applicant was transferred to cell no. 130/3, which measured about 32 sq. m, had fourteen bunks and housed from eight to twelve other inmates. Between 29 and 31 March it held twelve inmates; between 1 and 8 April it held eleven inmates; between 9 and 13 April twelve inmates; between 14 and 19 April nine inmates; between 20 and 28 April ten inmates; on 29 and 30 April twelve inmates; and between 1 and 4 May thirteen inmates. Depending on the number of inmates, the applicant's personal space varied from 3.6 to 2.5 sq. m. On 5 May 2009 the applicant was transferred back to cell no. 130/2.

42. On 25 May 2009 the applicant was transferred to cell no. 158, which measured 20.3 sq. m and had twelve bunks. On 25 May it held twelve inmates; on 26 May eleven inmates; on 27 May ten inmates; and between 28 May and 9 June twelve inmates. Depending on the number of inmates the applicant's personal space varied from 2 to 1.7 sq. m. On 9 June 2009 the applicant was transferred to another cell.

43. On 10 June 2009 the applicant was placed in cell no. 160, which measured 20.9 sq. m and had eight bunks. Between 9 June and 14 August 2009 the cell held seven or eight inmates. The applicant's personal space amounted to less than 3 sq. m. In addition, the inmates smoked in the cell, which had an adverse effect on the applicant's health as the cell was not properly ventilated.

44. The applicant substantiated his account of the conditions of detention in the remand prison by the following documents: a witness statement by Mr K. Petrov, who was detained with the applicant in cell no. 82, dated 16 February 2011; a witness statement by Mr Z. Elmuratov, who was detained with the applicant in cells no. 130/2 and no. 149, dated 16 February 2011; a witness statement by Ms E. Polyakova, head of a human rights NGO which monitored the conditions of detention in remand prison IZ 47/4, dated 8 February 2011; and a number of photographs of the applicant's detention cells.

(γ) Conditions of the applicant's transfer to the courthouse and conditions of his detention there

45. On a number of occasions between 4 and 29 March 2009 the applicant was handcuffed and taken to the Dzerzhinskiy District Court in a

lorry for transporting detainees (Avtozak). The lorry was equipped with three cages measuring 1.5 m by 3 m; each cage contained ten inmates, who were transported in cramped conditions.

46. Upon arrival in the courthouse, the applicant was placed for several hours in a cell without windows, measuring 12 sq. m, with a narrow bench and without ventilation. He was usually detained there with two other men. No food or drink was given to him in the courthouse.

(δ) The applicant's complaints about the conditions of detention and the lack of medical assistance

47. On 18 March 2009 the applicant complained to the Dzerzhinskiy District Court, alleging, amongst other things, that the conditions of his detention were inadequate (see paragraph 27 above).

48. In its decision of 18 March 2009 the Dzerzhinskiy District Court left the applicant's complaint about the conditions of his detention unexamined. The applicant did not raise the issue of the conditions of his detention on appeal as he considered that an appeal would be ineffective.

49. From the documents submitted it appears that the applicant neither applied for medical assistance while in remand prison IZ-47/4 nor complained about the lack of such assistance to the prison's administration.

(iv) *The applicant's requests for refugee status and temporary asylum*

50. On 20 October 2008 the applicant applied to the St Petersburg Department of the Federal Migration Service ("the FMS") for refugee status in Russia, referring to his politically motivated persecution in Uzbekistan and the risk of ill-treatment.

51. On 22 December 2008 the FMS rejected the applicant's request, stating that it had been motivated by an attempt to avoid lawful criminal prosecution in Uzbekistan and that his allegations of a risk of ill-treatment there were unsubstantiated. The applicant was informed of the refusal on 22 January 2009.

52. On 4 March 2009 (in the documents submitted the date is sometimes given as 4 April 2009) the Dzerzhinskiy District Court upheld the refusal by the FMS. The applicant did not appeal against that decision and the decision of 22 December 2008 became final.

53. On 8 April 2009 (in the documents submitted the date is sometimes given as 27 April 2009) the applicant applied to the FMS for temporary asylum in Russia.

54. On 6 May 2009 the FMS rejected the request. The applicant appealed to the Russian FMS against the refusal.

55. On 6 August 2009 the Russian FMS overruled the decision of 6 May 2009 and referred the applicant's request back for a fresh examination.

56. On 11 November 2009 the FMS again rejected the applicant's request for temporary asylum. The applicant appealed to the Russian FMS.

57. On 23 February 2010 (in the documents submitted the date is sometimes given as 28 February 2010) the Russian FMS overruled the decision of 11 November 2009 and again referred the applicant's request back for a fresh examination.

58. On 30 April 2010 the FMS rejected the applicant's request for temporary asylum for the third time.

59. On 24 May 2010 the applicant again appealed against the refusal to the Russian FMS. On 30 August 2010 the Russian FMS overruled the decision of 30 April 2010 and again referred the applicant's request back for a fresh examination.

60. On 16 December 2010 the FMS rejected the applicant's request for temporary asylum for the fourth time. The applicant appealed against the refusal to the Russian FMS. The proceedings appear to be still pending.

(v) TV news broadcasts of 3 March 2009

61. At 6 p.m. and 11 p.m. on 3 March 2009 the Russian television channel NTV broadcast its regular TV news bulletin in St Petersburg. News reports, quoting the press unit of the Main Department of the Interior of St Petersburg and the Leningrad Region (the GUVd), displayed full-face and profile photographs of the applicant and contained the following information:

Newscaster: "... a terrorist from Uzbekistan, who worked in St Petersburg as a driver of a KAMAZ lorry, was arrested today in the city centre by Interpol officers. The leading member of the Wahhabi extremist religious movement had moved to St Petersburg two years ago and since then had worked as a driver for various companies. Having graduated from a foreign languages institute, he worked in Uzbekistan as a mullah. The 52-year-old Urinboy Ergashev has been on the authorities' wanted list for two years; he has been charged with a number of serious crimes, including terrorism ..."

Newscaster: "Mr D.R., the deputy head of the National Interpol Bureau in St Petersburg and the Leningrad Region, commented ..."

Mr D.R.: "... having studied the ideas of the political extremist movement ... [the applicant] had created the 'Khalka' group to spread the ideas of the Wahhabi movement in order to change the existing State order in Uzbekistan, seize power and remove lawfully elected officials ..."

Newscaster: "... the law-enforcement bodies presume that the group headed by Ergashev was planning to create an Islamic State in the Fergana valley; it was financed by foreign organisations from Afghanistan and Pakistan prohibited by the Uzbek authorities. Currently the arrested man ... is in detention and after all the paper formalities he will be extradited to his homeland, where a trial is awaiting him ..."

2. The Government's submissions as to the facts

(a) Conditions of the applicant's detention between 3 and 7 March 2009 in the 78th office of the St Petersburg department of the interior

62. The applicant was detained in the 78th office of the St Petersburg department of the interior from 10.30 a.m. on 3 March 2009 until an unspecified time on 7 March 2009.

63. The applicant was detained in an administrative-detention cell measuring between 3 and 3.2 sq. m, which was not equipped for sleeping, and therefore no bed linen was provided. The applicant was allowed to use the toilet in the adjacent area of the police station with the permission of the police officers. The toilet was equipped with cold water. There were no shower facilities. The applicant's cell was ventilated twice a day by the police officers. The applicant was not provided with food by the authorities, but the officers allowed his relatives to bring him food and drink.

(b) Conditions of the applicant's transfer to the courthouse

64. The applicant was transported from the detention centre to the courthouse on three occasions, on 17 and 18 March and on 27 May 2009, in specially equipped GAZ-3307 and GAZ-32594 vehicles. The vehicles have twenty-six seating places, which are divided between two shared cells and one solitary cell.

65. On 17 March 2009 the applicant was transported in the same vehicle with twenty-three other detainees; on 18 March 2009 with twelve other detainees; and on 27 May 2009 with ten other detainees.

66. On each occasion the applicant was provided with a daily ration of food as prescribed by the relevant regulations.

(c) Conditions of the applicant's detention in remand prison IZ-47/4 in St Petersburg

67. From 7 March to 14 August 2009 the applicant was detained in seven different cells; in each cell the number of inmates matched the number of bunk beds, and therefore the applicant had an individual bed. He was provided with bed linen and cutlery. The applicant was detained:

- from 7 to 11 March 2009 in cell no. 82, measuring 18.1 sq. m, with three other inmates (capacity: four inmates);
- from 11 to 30 March 2009 in cell no. 130/2, measuring 32.3 sq. m, with seven other inmates (capacity: eight);
- from 30 March to 5 May 2009 in cell no. 130/3, measuring 32.2 sq. m, with seven other inmates (capacity: eight);
- from 5 May to 25 May 2009 in cell no. 149, measuring 20.3 sq. m, with four other inmates (capacity: five);
- from 25 May to 9 June 2009 in cell no. 158, measuring 20.3 sq. m, with four other inmates (capacity: five);

- from 9 to 10 June 2009 in cell no. 163, measuring 9.8 sq. m, with one other inmate (capacity: two);
- from 10 June to 14 August 2009 in cell no. 160, measuring 20.9 sq. m, with four other inmates (capacity: five).

68. The Government substantiated their account of the amount of personal space afforded to the applicant in the remand prison with poor-quality copies of several pages of a registration log “on transfers of inmates between cells” dated February 2009 to February 2010. The document did not contain any comprehensible information and included tables of numbers; no names or other information about the inmates were provided. The Government also furnished several statements by the remand prison’s staff confirming the number of bunk beds in each of the applicant’s cells. These statements neither provided information as to the actual number of inmates detained in each cell nor specified whether the number of detainees exceeded the cell’s capacity at the given period of time.

69. According to the Government, the sanitary conditions in each cell complied with the relevant regulations. Medical staff of the remand prison checked the sanitary conditions of all cells on a daily basis and disinfected the cells at prescribed intervals. The ventilation in all cells was in working condition, and each cell was equipped with a cold water basin. On request the inmates could obtain hot water; they were also allowed to use electric kettles. The applicant was allowed a weekly fifteen-minute shower; his bed-linen was changed weekly. The inmates’ laundry was collected for washing once a week; the inmates were also allowed to do their laundry in plastic buckets provided by the administration.

70. According to the copies of documents enclosed with the Government’s submissions, from 11 March to 25 May 2009 the applicant was detained in the remand prison’s tuberculosis centre to receive medical treatment for the disease.

(d) The applicant’s detention pending extradition

71. According to the Government, the applicant’s detention on remand was based on Article 466 §§ 1 and 2 of the CCP.

72. On 3 September 2008 the Smolninskiy District Court authorised the applicant’s detention from 1 September 2008 to 2 February 2009.

73. On 17 October 2008 the Smolninskiy District Court again authorised the applicant’s detention with a view to extradition.

74. According to the Government, on 4 March 2009 the Dzerzhinskiy District Court authorised the applicant’s detention. However, from the documents submitted it appears that on 6 March 2009 the District Court actually refused to authorise the applicant’s detention (see paragraph 26 above).

75. On 6 March 2009 the Tsentralniy district prosecutor's office of St Petersburg detained the applicant on the basis of the Andijan Town Court's detention order of 2 March 2009.

(e) TV news broadcasts of 3 March 2009

76. In their observations of 17 January 2011 the Government submitted that the text of the TV broadcast had been prepared on the basis of the official statement provided by the National Interpol Bureau in St Petersburg and the international search warrant issued against the applicant. The broadcast had stated that the applicant had been charged with serious crimes by the Uzbek authorities, but not that he was guilty. The law-enforcement bodies had only suspected that the applicant was pursuing extremist goals. The expression "terrorist from Uzbekistan" had been used by the TV journalists and had not been part of the official information statement issued by the National Interpol Bureau in St Petersburg.

II. RELEVANT INTERNATIONAL AND DOMESTIC LEGAL MATERIAL

A. Detention pending extradition and judicial review of detention

1. The Russian Constitution

77. The Constitution guarantees the right to liberty (Article 22):

"1. Everyone has the right to liberty and personal integrity.

2. Arrest, placement in custody and detention are permitted only on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

2. European Convention on Extradition

78. Article 16 of the European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

"1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

...

4. Provisional arrest may be terminated if, within eighteen days of arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed forty days from the date of

that arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.”

3. *The 1993 Minsk Convention*

79. The CIS Convention on legal aid and legal relations in civil, family and criminal cases (the 1993 Minsk Convention), to which both Russia and Uzbekistan are parties, provides that a request for extradition must be accompanied by a detention order (Article 58 § 2).

80. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest, containing a reference to the detention order and indicating that a request for extradition will follow, must be sent. A person may also be arrested in the absence of such a request if there are reasons to suspect that he or she has committed, in the territory of the other Contracting Party, an offence entailing extradition. The other Contracting Party must be immediately informed of the arrest (Article 61).

81. A person arrested under Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

4. *The Code of Criminal Procedure*

82. The term “court” is defined by the Code of Criminal Procedure (“the CCP”) of 2002 as “any court of general jurisdiction which examines a criminal case on the merits and delivers decisions provided for by this Code” (Article 5 § 48). The term “judge” is defined by the CCP as “an official empowered to administer justice” (Article 5 § 54).

83. A district court has the power to examine all criminal cases except for those falling within the respective jurisdictions of a justice of the peace, a regional court or the Supreme Court of Russia (Article 31 § 2).

84. Chapter 13 of the CCP (“Preventive measures”) governs the use of preventive measures (*меры пресечения*), which include, in particular, placement in custody. Placement in custody is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a crime punishable by at least two years’ imprisonment where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for placement in custody should be examined by a judge of a district court or a military court of a corresponding level (Article 108 § 4). A judge’s decision on placement in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime cannot exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level (Article 109 § 2). Further extensions may be granted

only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3).

85. Chapter 16 (“Complaints about acts and decisions by courts and officials involved in criminal proceedings”) provides for the judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of parties to criminal proceedings (Article 125 § 1). The court must examine the complaint within five days of its receipt.

86. Chapter 54 (“Extradition of a person for criminal prosecution or execution of sentence”) regulates extradition procedures. On receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to the person whose extradition is sought. The measure must be applied in accordance with the established procedure (Article 466 § 1). Upon receipt of a request for extradition accompanied by an arrest warrant issued by a foreign judicial body, a prosecutor may place the person whose extradition is being sought under house arrest or in custodial detention without prior approval of his or her decision by a court of the Russian Federation (Article 466 § 2).

87. An extradition decision made by the Prosecutor General may be challenged before a court. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in the relevant international and domestic law (Article 463 §§ 1 and 6).

5. The Code of Civil Procedure

88. A person may apply for judicial review of decisions and acts or failures to act by a State body or a State official that are capable of violating his or her rights or freedoms, hindering the exercise of his or her rights and freedoms, or imposing an obligation or liability unlawfully (Articles 254 § 1 and 255). If the court finds the application well-founded, it must order the State body or State official concerned to remedy the violation or remove the obstacle to the exercise of the rights and freedoms in question (Article 258 § 1).

6. Case-law of the Constitutional Court

(a) Constitutional Court decision no. 292-O of 15 July 2003

89. On 15 July 2003 the Constitutional Court issued decision no. 292-O concerning a complaint by Mr Khudoyorov of *ex post facto* extension of his “detention during judicial proceedings” by the Vladimir Regional Court decision. It held as follows:

“Article 255 § 3 of the Code of Criminal Procedure of the Russian Federation provides that the [trial court] may ... once six months has passed since the case was sent to it, extend a defendant’s detention for successive periods of up to three months. It does not contain, however, any provisions permitting the courts to take a decision extending a defendant’s detention once the previously authorised time-limit has expired, in which event the person is detained for a period without a judicial decision. Nor do other rules of criminal procedure provide for such a possibility. Moreover, Article 10 § 2 and Article 109 § 4 of the Code of Criminal Procedure expressly require the court, prosecutor, investigator ... to immediately release anyone who is unlawfully held in custody beyond the time-limit established in the Code. Such is also the requirement of Article 5 §§ 3 and 4 of the European Convention ... which is an integral part of the legal system of the Russian Federation, pursuant to Article 15 § 4 of the Russian Constitution ...”

(b) Constitutional Court decision no. 101-O of 4 April 2006

90. Verifying the compatibility of Article 466 § 1 of the CCP with the Russian Constitution, the Constitutional Court reiterated its established case-law to the effect that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

91. In the Constitutional Court’s view, the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution, as well as the legal norms laid down in Chapter 13 of the CCP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the authorities to apply a custodial measure without abiding by the procedure established in the CCP, or in excess of the time-limits fixed therein.

(c) Constitutional Court decision no. 158-O of 11 July 2006 on the Prosecutor General’s request for clarification

92. The Prosecutor General asked the Constitutional Court for an official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person’s detention with the aim of extradition.

93. The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific criminal-law provisions governing the procedure and time-limits for keeping a person in custody with the aim of extradition. That was a matter for the courts of general jurisdiction.

(d) Constitutional Court decision no. 333-O-P of 1 March 2007

94. In this decision the Constitutional Court reiterated that Article 466 of the CCP did not imply that the detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

(e) Ruling no. 22 of 29 October 2009 of the Plenary Session of the Supreme Court of the Russian Federation

95. In this ruling the Supreme Court reiterated that the arrest and detention of a person with the aim of extraditing him or her under Article 466 of the CCP should comply with the requirements of Article 108 of the CCP, and that detention pending extradition could be extended only in compliance with the requirements of Article 109 of the CCP.

7. Conditions of detention in remand prisons

96. The 1995 Law on the conditions of detention of suspects and accused persons (as amended) provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell (section 23). The Law also provides that inmates are entitled to medical assistance (section 17). If an inmate's health deteriorates, the medical officers of the remand prison are obliged to examine the inmate promptly and inform him or her of the results of the examination in writing. If the administration refuses, the refusal can be appealed against to a prosecutor or court. If an inmate suffers from a serious disease, the administration of the remand prison is obliged immediately to inform the prosecutor, who can carry out an inquiry into the matter (section 24).

B. Relevant documents concerning the use of diplomatic assurances and the situation in Uzbekistan

97. The European Committee for the Prevention of Torture ("the CPT"), in its 15th General Report of 22 September 2005 on its activities covering the period from 1 August 2004 to 31 July 2005, expressed concern about reliance on diplomatic assurances in the light of the absolute prohibition on torture:

"38. Reference was made in the Preface to the potential tension between a State's obligation to protect its citizens against terrorist acts and the need to uphold fundamental values. This is well illustrated by the current controversy over the use of 'diplomatic assurances' in the context of deportation procedures. The prohibition of torture and inhuman or degrading treatment encompasses the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to such methods. In order to avoid such a risk in given cases, certain States have chosen the route of seeking assurances from the country of destination that the person concerned will not be ill-treated. This practice is far from new, but has come under the spotlight in recent years as States have increasingly sought to remove from their territory persons deemed to endanger national security. Fears are growing that the use of diplomatic assurances is in fact circumventing the prohibition of torture and ill-treatment.

39. The seeking of diplomatic assurances from countries with a poor overall record in relation to torture and ill-treatment is giving rise to particular concern. It does not necessarily follow from such a record that someone whose deportation is envisaged personally runs a real risk of being ill-treated in the country concerned; the specific circumstances of each case have to be taken into account when making that assessment. However, if in fact there would appear to be a risk of ill-treatment, can diplomatic assurances received from the authorities of a country where torture and ill-treatment is widely practised ever offer sufficient protection against that risk? It has been advanced with some cogency that even assuming those authorities do exercise effective control over the agencies that might take the person concerned into their custody (which may not always be the case), there can be no guarantee that assurances given will be respected in practice. If these countries fail to respect their obligations under international human rights treaties ratified by them, so the argument runs, why should one be confident that they will respect assurances given on a bilateral basis in a particular case?

40. In response, it has been argued that mechanisms can be devised for the post-return monitoring of the treatment of a person deported, in the event of his/her being detained. While the CPT retains an open mind on this subject, it has yet to see convincing proposals for an effective and workable mechanism. To have any chance of being effective, such a mechanism would certainly need to incorporate some key guarantees, including the right of independent and suitably qualified persons to visit the individual concerned at any time, without prior notice, and to interview him/her in private in a place of their choosing. The mechanism would also have to offer means of ensuring that immediate remedial action is taken, in the event of it coming to light that assurances given were not being respected.”

98. United Nations (“UN”) General Assembly Resolution 62/148 of 18 December 2007 (“Torture and other cruel, inhuman or degrading treatment or punishment” (UN Doc.:A/RES/62/148)) reads as follows:

“The General Assembly ...

12. Urges States not to expel, return (*refouler*), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of *non-refoulement* ...”

99. In his interim report submitted in accordance with Assembly Resolution 59/182 (UN Doc.: A/60/316, 30 August 2005), the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reached the following conclusions:

“51. It is the view of the Special Rapporteur that diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated. The Special Rapporteur is therefore of the

opinion that States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.

52. The Special Rapporteur calls on Governments to observe the principle of *non-refoulement* scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognised as refugees.”

100. Specifically referring to the situation regarding torture in Uzbekistan and returns to torture effected in reliance upon diplomatic assurances from the Uzbek authorities, the UN Special Rapporteur on Torture stated to the 2nd Session of the UN Human Rights Council on 20 September 2006:

“The practice of torture in Uzbekistan is systematic, as indicated in the report of my predecessor Theo van Boven’s visit to the country in 2002. Lending support to this finding, my mandate continues to receive serious allegations of torture by Uzbek law enforcement officials ... Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. Against such significant, serious and credible evidence of systematic torture by law enforcement officials in Uzbekistan, I continue to find myself appealing to Governments to refrain from transferring persons to Uzbekistan. The prohibition of torture is absolute, and States risk violating this prohibition – their obligations under international law – by transferring persons to countries where they may be at risk of torture. I reiterate that diplomatic assurances are not legally binding, undermine existing obligations of States to prohibit torture, are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States.”

101. Further referring to the situation regarding torture in Uzbekistan, the UN Special Rapporteur on Torture stated as follows to the 3rd Session of the UN Human Rights Council on 18 September 2008:

“741. The Special Rapporteur ... stressed that he continued to receive serious allegations of torture by Uzbek law enforcement officials ...

743. Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, and any independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. Even more so, given that no independent monitoring of human rights is currently being conducted.

744. In light of the foregoing, there is little evidence available, including from the Government that would dispel or otherwise persuade the Special Rapporteur that the

practice of torture has significantly improved since the visit which took place in 2002 ...”

102. The UN High Commissioner for Refugees’ Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows:

“22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State’s compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases.

23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that ‘unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel’. The Supreme Court of Canada addressed the issue in its decision in *Suresh v. Canada (Minister of Citizenship and Immigration)*, contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling

‘... the difficulty in relying too heavily on assurances by a state that it will refrain from torture in the future when it has engaged in illegal torture or allowed others to do so on its territory in the past. This difficulty becomes acute in cases where torture is inflicted not only with the collusion but through the impotence of the state in controlling the behaviour of its officials. Hence the need to distinguish between assurances regarding the death penalty and assurances regarding torture. The former are easier to monitor and generally more reliable than the latter.’

24. In his report to the UN General Assembly of 1 September 2004, the special Rapporteur of the UN Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment examined the question of diplomatic assurances in light of the *non-refoulement* obligations inherent in the absolute and non-derogable prohibition of torture and other forms of ill-treatment. Noting that in determining whether there are substantial grounds for believing that a person would be in danger of being subjected to torture, all relevant considerations must be taken into account, the Special Rapporteur expressed the view that:

‘in circumstances where there is a consistent pattern of gross, flagrant or mass violations of human rights, or of systematic practice of torture, the principle of *non-refoulement* must be strictly observed and diplomatic assurances should not be resorted to.’”

103. The relevant passage of the United States Department of State’s 2010 Country Reports on Human Rights Practices concerning Uzbekistan, dated 8 April 2011, reads as follows:

“Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution and law prohibit such practices, law enforcement and security officers routinely beat and otherwise mistreated detainees to obtain confessions or incriminating information. Sources reported that torture and abuse were common in prisons, pre-trial facilities, and local police and security service precincts. Reported methods of torture included severe beatings, denial of food, sexual abuse, tying and hanging by the hands, and electric shock. Family members of prisoners reported several cases of medical abuse, and one person reportedly remained in forced psychiatric treatment. The government reported that during the first six months of the year, it opened 226 criminal cases against 285 employees of law enforcement bodies. Of these, 75 persons were accused of charges related to abuse of power, and four were charged with torture or other brutal or degrading treatment. The remaining cases were for unspecified offenses. During the first nine months of the year, the government dismissed and brought criminal charges against 186 employees of law enforcement bodies for unstated reasons ...

Prison and Detention Center Conditions

Prison conditions were in some circumstances life threatening. Officials reported that the prison system is filled to only 74 percent of capacity, but reports of overcrowding were common, as were reports of severe abuse and shortages of medicine. Inmates and their families reported that food and water were of poor quality but generally available. There were reports of political prisoners being held in cells without proper ventilation, and prisoners occasionally were subjected to extreme temperatures. Family members of inmates reported incidents of sexual abuse. Family members also reported that officials frequently withheld or delayed delivery of food and medicine intended for prisoners.

Relatives of prisoners reported the deaths of several prisoners serving sentences, most of whom received sentences related to religious extremism. In some cases, family members reported that the body of the prisoner showed signs of beating or other abuse, but authorities pressured the family to bury the body before examination by a medical professional ...

According to family members and some NGOs, authorities failed to release prisoners, especially those convicted of religious extremism, at the end of their terms. Prison authorities often extended inmates’ terms by accusing them of additional crimes or claiming the prisoners represented a continuing danger to society ...”

104. Amnesty International issued on 1 May 2010 a document entitled “Uzbekistan: A Briefing on Current Human Rights Concerns”, stating the following:

“Amnesty International believes that there has been a serious deterioration in the human rights situation in Uzbekistan since the so-called Andizhan events in May 2005. ...

Particularly worrying in the light of Uzbekistan’s stated efforts to address impunity and curtail the use of cruel, inhuman and degrading treatment have been the continuing persistent allegations of torture or other ill-treatment by law enforcement officials and prison guards, including reports of the rape of women in detention. ...

Despite assertions by Uzbekistan that the practice of torture has significantly decreased, Amnesty International continues to receive reports of widespread torture or other ill-treatment of detainees and prisoners.

According to these reports, in most cases the authorities failed to conduct prompt, thorough and impartial investigations into the allegations of torture or other ill-treatment. Amnesty International is concerned that impunity prevails as prosecution of individuals suspected of being responsible for torture or other ill-treatment remains the exception rather than the rule. ...

Allegations have also been made that individuals returned to Uzbekistan from other countries pursuant to extradition requests have been held in *incommunicado* detention, thereby increasing their risk of being tortured or otherwise ill-treated and have been subjected to unfair trial. In one case in 2008, for example, a man who was returned to Uzbekistan from Russia was sentenced to 11 years' imprisonment after an unfair trial. His relatives reported that, upon his return to Uzbekistan, he was held *incommunicado* for three months during which time he was subjected to torture and other ill-treatment in pre-trial detention. He did not have access to a lawyer of his own choice and the trial judge ruled evidence reportedly adduced as a result of torture admissible. ...

The government continued its strict control over religious communities, compromising the enjoyment of their right to freedom of religion. Those most affected were members of unregistered groups such as Christian Evangelical congregations and Muslims worshipping in mosques outside state control."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION CONCERNING THE APPLICANT'S EXTRADITION

105. The applicant complained under Article 3 of the Convention that his extradition to Uzbekistan would subject him to a real risk of torture and ill-treatment. Article 3 reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

106. The Government submitted that the applicant's allegation of politically motivated persecution had been assessed by the Russian courts when examining his appeals against the extradition order, and rejected as unfounded. The Russian courts had relied on the statement from the Prosecutor General's Office of Uzbekistan to the effect that the applicant would face no risk of ill-treatment if he were to be extradited to Uzbekistan

and on the fact that the Russian authorities did not have any information confirming his allegation. Referring to the assurances from the Uzbek authorities, the Government argued that the applicant would not be subjected to ill-treatment or punishment contrary to Article 3 of the Convention.

107. The applicant maintained that he had argued before the Russian courts that he faced a real risk of ill-treatment and political persecution in Uzbekistan. He had submitted reports on Uzbekistan by the UN institutions and international NGOs confirming that torture was widespread in detention facilities and that this information had not received proper assessment by the Russian authorities. He pointed out that the courts had rejected his arguments without giving any reasons except a reference to the assurances given by the Uzbek authorities. Finally, he referred to a number of cases examined by the Court in which it had been established that extradition to Uzbekistan of a person sought for political crimes would constitute a violation of Article 3.

B. The Court's assessment

1. Admissibility

108. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

109. For a summary of the relevant general principles emerging from the Court's case-law see *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, §§ 66-70, ECHR 2005-I).

110. From the material submitted by the parties it is clear that the applicant was arrested in Russia and subsequently detained at the request of the Uzbek authorities, who suspected him of a number of crimes, including an attempt to overthrow the constitutional order and membership of extremist organisations. The Russian authorities commenced extradition proceedings against him. Throughout the proceedings the applicant claimed that his extradition to Uzbekistan would expose him to a danger of ill-treatment. He also lodged an application for asylum, reiterating his fears of torture and persecution for political motives. He supported his submissions with reports prepared by UN institutions and international NGOs describing the ill-treatment of detainees in Uzbekistan. The Russian authorities ordered his extradition to Uzbekistan based on assurances from the Uzbek authorities.

111. The Court's task is to establish whether there exists a real risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. Since he has not yet been extradited owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case. It follows that, although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive (see *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports of Judgments and Decisions* 1996-V).

112. As regards the applicant's allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that a general problem still persists in that country in this regard (see, for example, *Karimov v. Russia*, no. 54219/08, §§ 79-85, 29 July 2010; *Ismoilov and Others v. Russia*, no. 2947/06, §§ 120-121, 24 April 2008; and *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008). No concrete evidence has been produced to demonstrate any fundamental improvement in this field in Uzbekistan in the last few years (see paragraphs 100, 101, 103 and 104 above). The Court therefore considers that the ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan.

113. As to the applicant's personal situation, the Court observes that he was charged with a number of politically motivated crimes. Given that an arrest warrant was issued in respect of the applicant, it is most likely that he would be placed in custody directly after his extradition and therefore would run a serious risk of ill-treatment.

114. As to the Government's argument that assurances were obtained from the Uzbek authorities, the Court has already cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent (see *Chahal*, cited above, and *Saadi v. Italy* [GC], no. 37201/06, §§ 147-148, ECHR 2008-...). Given that the practice of torture in Uzbekistan is described by reputable international sources as systematic, the Court is not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.

115. Accordingly, the applicant's forcible return to Uzbekistan would give rise to a violation of Article 3 as he would face a serious risk of being subjected there to torture or inhuman or degrading treatment. Therefore, the Court decides to maintain the application of Rule 39 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

116. The applicant complained under Article 3 of the Convention about the conditions of his detention in the police station in March 2009 and in remand prison IZ-47/4 between March and August 2009, and the conditions

in which he was transported to the Dzerzhinskiy District Court in March 2009. Under the same heading the applicant complained of the lack of medical assistance during his detention in remand prison IZ-47/4. Article 3 reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties’ submissions

117. The Government contended that this complaint was inadmissible on account of the applicant’s failure to exhaust domestic remedies. They pointed out that the applicant had not complained about the conditions of his detention in the police station in March 2009 and in remand prison IZ-47/4 to the competent domestic authorities. In any event, this complaint should be dismissed as unsubstantiated as the conditions of the applicant’s detention in the above-mentioned facilities and of his transfer to the Dzerzhinskiy District Court had been compatible with the requirements of Article 3.

118. The applicant contended that the conditions of his detention in the above-mentioned facilities and his transfer to the courthouse had caused him mental and physical suffering and amounted to ill-treatment. Referring to the Court’s case-law, he further stated that there was no effective domestic remedy against the structural problem of poor conditions of detention in Russia.

B. The Court’s assessment

1. Admissibility

(a) The complaint concerning the lack of medical assistance in remand prison IZ-47/4 between 7 March and 14 August 2009

119. The Court notes that the applicant failed to furnish any evidence to substantiate his allegations of a lack of medical assistance. In addition, it does not appear from the material submitted that he ever complained on that account to the administration of the detention facility.

120. It follows that this part of the applicant’s complaint under Article 3 must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) The complaint concerning the conditions of the applicant's transfer to and detention in the courthouse

121. The Court notes that the applicant failed to furnish any evidence to substantiate his allegations about the conditions of his transfer to the courthouse and of his detention there.

122. It follows that this part of the applicant's complaint under Article 3 must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(c) The complaint concerning the conditions of the applicant's detention at the 78th office of the St Petersburg department of the interior and in remand prison IZ-47/4 in St Petersburg

123. The Court has already on a number of occasions examined a similar objection by the Russian Government as regards the exhaustion of domestic remedies and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicants by a prosecutor, a court or another State agency, bearing in mind that the problems arising from the conditions of their detention were apparently of a structural nature and did not concern their personal situation alone (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and *Guliyev v. Russia*, no. 24650/02, § 34, 19 June 2008).

124. In the present case, the Court notes that, in spite of the Government's contention to the contrary, the applicant unsuccessfully raised the issue of the conditions of his detention with the domestic authorities (see paragraph 47 above). Further, the Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or demonstrating that the remedies available to him were effective, that is to say, that they could have prevented violations from occurring or continuing, or that they could have afforded him appropriate redress (see, to the same effect, *Babushkin v. Russia*, no. 67253/01, § 37, 18 October 2007, and, more recently, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009). Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

125. The Court considers that the applicant's complaints about the conditions of his detention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) Conditions of the applicant's detention between 3 and 7 March 2009 in the 78th office of the St Petersburg department of the interior

(i) Submissions by the parties

126. The Government submitted that the applicant's detention had complied with the requirements of Article 3 of the Convention. They stated that the police officers had tried to improve the conditions of the applicant's detention in the administrative-detention cell. They had allowed his relatives to bring him food and given him their permission to use a toilet located on the premises of the police station.

127. The applicant submitted that he had spent several days in appalling conditions in a cell which was designed for a stay of only a few hours.

(ii) The Court's assessment

128. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must, for a violation to be found, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

129. The Court observes that it found a violation of Article 3 in a case where an applicant had been kept for twenty-two hours in an administrative-detention police cell without food or drink or unrestricted access to a toilet (see *Fedotov v. Russia*, no. 5140/02, § 68, 25 October 2005).

130. On the facts, the Court observes that the parties' accounts of the conditions in which the applicant had been detained differed in some details. However, there is no need for the Court to establish the truthfulness of each and every allegation by the applicant because it is able to find a violation of Article 3 on the basis of the facts that have been submitted or are undisputed by the Government, for the following reasons.

131. The cell in which the applicant was held for four days had been designed for short-term administrative detention not exceeding three hours. Accordingly, not only was it tiny in surface area – approximately three square metres according to the Government – but also, by its design, it lacked the amenities indispensable for prolonged detention. The cell did not have a toilet or a sink. It was solely equipped with a bench, there being no chair or table or any other furniture.

132. Furthermore, the Court considers it unacceptable for a person to be detained in conditions in which no provision has been made for meeting his or her basic needs (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 106, ECHR 2008-... (extracts)). Even if it is to be accepted that police officers allowed the applicant's relatives to bring him food, their good will could obviously not be a substitute for the lack of the most basic necessities during his detention.

133. There is no evidence in the present case of any positive intention to humiliate or debase the applicant during the detention. Nevertheless, the Court reiterates that the absence of any such intention cannot preclude a finding of a violation of Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005, and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III).

134. The Court considers that the conditions of detention which the applicant had to endure for four days must have caused him distress and hardship and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him. There has accordingly been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention at the police station from 3 to 7 March 2009.

(b) Conditions of the applicant's detention between 7 March and 14 August 2009 in remand prison IZ-47/4 in St Petersburg

(i) Submissions by the parties

135. The Government submitted that the conditions of the applicant's detention complied with the requirements of Article 3 of the Convention. In particular, they stressed that in each of the applicant's cells the number of inmates did not exceed the number of bunks and that throughout his detention the applicant had been afforded sufficient personal space.

136. The applicant alleged that the conditions of his detention in the remand prison had been inadequate. He had been detained there in extremely cramped and poor conditions for more than five months. The applicant did not dispute the number of bunks in the cells. He disagreed, however, with the Government's assertions as to the number of inmates.

(ii) *The Court's assessment*

137. The parties have disputed the actual conditions of the applicant's detention in the remand prison, in particular the amount of personal space afforded to him. According to the applicant, in each cell where he had been detained his average amount of personal space was 2.4 sq. m because the number of inmates exceeded the number of bunks. The Government stated that the number of inmates had not exceeded the number of bunks and that therefore the average amount of personal space available to the applicant had been at least 4 sq. m.

138. The main characteristics not generally disputed by the parties are the number of bunks and the size of the cells. However, the applicant claimed that the cells' population exceeded their capacity, which was confirmed by witness statements by inmates detained with him during the relevant period (see paragraph 44 above). The Government indicated the exact number of inmates in the cells, referring to the copy of the registration log (see paragraph 68 above); they did not provide other evidence to substantiate their submission.

139. In this connection, the Court observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

140. Having regard to the abovementioned principles, together with the fact that the Government failed to produce sufficiently detailed and clear evidence confirming the actual number of inmates in each cell, the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

141. The Court reiterates that in many cases in which detained applicants had at their disposal less than three square metres of personal space, it has found that the lack of personal space afforded to them was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention (see, among many others, *Andrey Frolov v. Russia*, no. 205/02, §§ 50-51, 29 March 2007; *Lind v. Russia*, no. 25664/05, §§ 61-63, 6 December 2007; *Lyubimenko v. Russia*, no. 6270/06, §§ 58-59, 19 March 2009; and, more recently, *Veliyev v. Russia*, no. 24202/05, §§ 129-130, 24 June 2010).

142. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different

conclusion in the present case. Although there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that he was obliged to live, sleep and use the toilet in the same cell as so many other inmates for more than five months was itself sufficient to cause feelings of inferiority and frustration, which must have been exacerbated by the fact that, as the Court will demonstrate below (see paragraph 160 below), his deprivation of liberty during that period lacked a lawful basis (compare *Shchebet v. Russia*, no. 16074/07, § 95, 12 June 2008).

143. There has accordingly been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention between 7 March and 14 August 2009 in remand prison IZ-47/4 in St Petersburg.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

144. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition from 1 September 2008 to 2 February 2009 and again from 3 March to 14 August 2009 had been unlawful. The relevant parts of Article 5 § 1 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A. The parties' submissions

145. The Government stated that on 3 September 2008 the Smolninskiy District Court had authorised the applicant's detention and that upon receipt of the extradition order, the same District Court had on 17 October 2008 authorised his detention with a view to extradition.

146. The Government further submitted that the applicant's detention from 3 March to 14 August 2009 had been authorised twice: firstly, on 2 March 2009 by the Andijan Town Court (in an order approved on 6 March 2009 by the Tsentralniy district prosecutor's office); and, secondly, on 4 March 2009 by the Dzerzhinskiy District Court.

147. The Government contended that the applicant's detention pending extradition complied with the domestic legislation, in particular with the provisions of Article 466 § 1 of the CCP. Referring to Constitutional Court decisions no. 101-O of 4 April 2006 and no. 333-O-P of 1 March 2007 and to Ruling no. 22 of 29 October 2009 of the Plenary Session of the Supreme Court of the Russian Federation (see paragraphs 90-91 and 94-95 above), they argued that the relevant provisions had been clear and foreseeable and had enabled the applicant to estimate the length of his detention pending extradition.

148. The applicant disagreed with the Government. He submitted, *inter alia*, that both of the court orders issued by the Smolninskiy District Court (on 3 September 2008 and 17 October 2008) had been unlawful as neither of them had set time-limits for his detention.

149. The applicant further contended that his detention between 3 March and 14 August 2009 had been unlawful as his detention from 6 March to 14 August 2009 had been based only on the decision of the prosecutor's office and not on a Russian court order.

150. Finally, the applicant submitted that the domestic regulations concerning detention pending extradition were not sufficiently clear and foreseeable.

B. The Court's assessment

1. Admissibility

151. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

152. It is common ground between the parties that the applicant was detained as a person "against whom action is being taken with a view to deportation or extradition" and that his detention fell under Article 5 § 1 (f). The parties disputed, however, whether the detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

(a) The applicant's detention between 1 September 2008 and 2 February 2009

153. The Court observes that the applicant was arrested on 1 September 2008. His detention was initially authorised by the Smolninskiy District Court on 3 September 2008 and subsequently by the same court on 17 October 2008. Both decisions referred to Articles 108 and 466 of the CCP. Neither of the decisions set time-limits for the applicant's detention.

On 2 February 2009 the Smolninskiy District Court released the applicant, having established that his detention from 1 September 2008 to 2 February 2009 was unlawful and unsubstantiated. That decision was upheld on appeal by St Petersburg City Court.

154. The Court sees no reason to hold otherwise. In view of this, and having regard to its extensive case-law on the subject (see, amongst many other authorities, *Nasrulloev v. Russia*, no. 656/06, § 77, 11 October 2007; *Ismoilov and Others*, cited above, § 139; and, more recently, *Khodzhayev v. Russia*, no. 52466/08, § 141, 12 May 2010), the Court finds that this period of the applicant's detention pending extradition cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention.

(b) The applicant's detention between 3 March and 14 August 2009

155. The Court notes that by the time of the applicant's placement in custody the Russian Constitutional Court had already proclaimed that in extradition proceedings the right to liberty should be attended by the same guarantees as in other types of criminal proceedings. It unambiguously indicated that the application of preventive measures with a view to extradition should be governed not only by Article 466 but also by the norms on preventive measures contained in Chapter 13 of the CCP (see paragraph 91 above).

156. In such circumstances it appears to the Court that, in order to be "lawful" within the meaning of Article 5 § 1 (f) of the Convention, the applicant's detention should have been compatible not only with the requirements of Article 466 § 2 but also with the provisions governing the application of a preventive measure in the form of placement in custody, namely Articles 108 and 109, which are included in Chapter 13 of the CCP.

157. Article 108 § 4 of the CCP expressly provides that the issue of placement in custody is to be decided upon by a judge of a district or military court in the presence of the person concerned. It follows from the wording of Article 5 § 48 and Article 31 § 2 of the CCP that a district court is a court authorised to act on the basis of the CCP, which implies that the term "district court" refers to a court established and operating under Russian law. Accordingly, a judge of a district court is an official authorised to administer justice in the territory of the Russian Federation. Nothing in the wording of Article 108 § 4 of the CCP suggests that a foreign court may act as a substitute for a Russian district court when deciding on a person's placement in custody.

158. Be as it may, the Court reiterates that it has already found the application of the domestic legal rules of criminal procedure concerning detention pending extradition to be inconsistent, mutually exclusive and not circumscribed by adequate safeguards against arbitrariness (see, amongst many other authorities, *Nasrulloev*, cited above, § 77; *Ismoilov and Others*, cited above, § 140; *Ryabikin v. Russia*, no. 8320/04, §§ 127-130, 19 June

2008; *Karimov*, cited above, § 115; and *Sultanov v. Russia*, no. 15303/09, § 86, 4 November 2010).

159. As regards the application of domestic law in the present case, the Court refers to the facts as set out in paragraphs 25-33 above which show in all clarity the absence of a coherent procedure for ordering and extending detention with a view to extradition and setting time-limits for such detention. In particular, it appears that the detention was based on an order of a foreign court and that no time-limits were fixed. Thus, the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. As applied, the national system failed to protect the applicant from arbitrary detention, for which reason his detention cannot be considered “lawful” for the purposes of Article 5 § 1 of the Convention.

160. There has therefore been a violation of Article 5 § 1 of the Convention on account of the applicant’s detention from 3 March to 14 August 2009.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

161. Under Article 5 § 4 of the Convention, the applicant alleged that he had been unable to obtain effective judicial review of his detention. In particular, he alleged that in its decision of 18 March 2009 the Dzerzhinskiy District Court had failed to examine properly the grounds for his repeated detention with a view to extradition. Article 5 § 4 reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

162. The Government contended that the applicant’s complaint should be rejected as unsubstantiated as he had been able to obtain a review of his detention. In particular, they pointed out that in its decision of 18 March 2009 the Dzerzhinskiy District Court had examined the applicant’s complaint. In addition, in their decisions of 2 February 2009 and 25 August 2009 the domestic courts had examined the applicant’s complaints and acknowledged that his detention pending extradition had been unlawful. The Government did not comment on the issue of the speediness of the judicial review of the applicant’s complaints.

163. The applicant disagreed with the Government and submitted that the Dzerzhinskiy District Court had failed to examine his complaint that the grounds for his detention had been unlawful. He pointed out that the Russian courts had failed to undertake a speedy review of the lawfulness of his detention as his complaint of 13 May 2009 had been examined after a significant delay.

164. The Court notes that this complaint should be declared admissible. However, having regard to its finding above it does not find it necessary to examine it separately.

V. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

165. The applicant complained under Article 6 § 2 that the news broadcasts of 3 March 2009 had breached the presumption of his innocence by presuming him guilty of crimes he had been charged with by the Uzbek authorities. The relevant part of Article 6 of the Convention reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. The parties' submissions

166. The Government contended that the applicant's presumption of innocence had not been breached as the impugned press release issued by the National Interpol Bureau in St Petersburg had contained only references to the information received from the Uzbek authorities and had not stated that the applicant was guilty of the alleged crimes.

167. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

168. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

169. The Court reiterates that extradition proceedings fall within the scope of Article 6 § 2 (see *Ismoilov and Others*, cited above, § 164), which, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Alenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It covers, amongst other things, statements made by public officials about pending criminal investigations which encourage the

public to believe the suspect guilty and prejudice the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

170. It has been the Court's constant approach that the presumption of innocence will be violated if a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has constantly emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002, *Nešťák v. Slovakia*, no. 65559/01, §§ 88-89, 27 February 2007 and *Konstas v. Greece*, no. 53466/07, § 45, 24 May 2011).

171. Turning to the facts of the present case, the Court observes that a State television channel twice broadcast a news report quoting the press unit of the Main Department of the Interior of St Petersburg and the Leningrad Region, displaying full-face and profile photographs of the applicant and describing him as "... a terrorist from Uzbekistan ... the leading member of the Wahhabi extremist religious movement ... who has been on the authorities' wanted list for two years ...". This description of the applicant was followed by a statement from the deputy head of the National Interpol Bureau in St Petersburg and the Leningrad Region, in which the official stated in affirmative terms that the applicant "... having studied the ideas of the political extremist movement ... had created the 'Khalka' group to spread the ideas of the Wahhabi movement in order to change the existing State order in Uzbekistan, seize power and remove lawfully elected officials ...". This statement was not limited to describing the status of the applicant's pending extradition but presented it as an established fact, without any qualification or reservation, that he had organised the criminal group and committed the offences.

172. The Court considers that this statement by the public official amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the competent judicial authority. Given that the deputy head of the National Interpol Bureau represented the law-enforcement authorities when interviewed, he should have exercised particular caution in his choice of words when describing the criminal proceedings pending against the applicant (see, *mutatis mutandis*, *Khuzhin and Others v. Russia*, no. 13470/02, §§ 95-96, 23 October 2008, and

Mokhov v. Russia, no. 28245/04, §§ 31-32, 4 March 2010). Therefore, the Court considers that the official's statement must have encouraged the public to believe the applicant to be a criminal before he had been proved guilty according to law. Accordingly, the Court finds that there was a breach of the presumption of the applicant's innocence.

173. There has therefore been a violation of Article 6 § 2 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

174. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

175. The applicant did not submit any claims for pecuniary damage. As regards non-pecuniary damage, he submitted that he had endured stress, frustration and anguish as a result of the high risk of being subjected to torture if extradited to Uzbekistan and of the eleven months of his unlawful detention pending extradition in inadequate conditions. He left the determination of the amount of compensation to the Court.

176. The Government submitted that the applicant was not entitled to any compensation for non-pecuniary damage.

177. The Court, making an assessment on an equitable basis, awards 15,000 euros (EUR) to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

178. Relying on fee agreements and lawyers' time sheets, the applicant claimed EUR 2,650 for the work of his St Petersburg-based lawyer, Ms O. Tseytlina, and EUR 1,000 for the work of his lawyer from the EHRAC/Memorial Human Rights Centre, Mr K. Koroteev. The applicant claimed a total of EUR 3,650 for the work done by lawyers in connection with his representation before the Court. He further claimed 3,944 pounds sterling (GBP) (approximately EUR 4,537) for translation costs and administrative expenses.

179. The Government contended that the applicant had not submitted any proof that the payments had actually been made and that the amounts were reasonable.

180. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,500 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

181. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 3 of the Convention concerning his extradition to Uzbekistan and the conditions of his detention in the 78th office of the St Petersburg department of the interior and in remand prison IZ-47/4 in St Petersburg, and his complaints under Article 5 §§ 1 and 4, and Article 6 § 2 of the Convention, admissible and the remainder of the application inadmissible;
2. *Holds* that in the event of the extradition order against the applicant being enforced, there would be a violation of Article 3 of the Convention;
3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment becomes final;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention pending extradition;
6. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 5 § 4 of the Convention;

7. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles on the date of settlement, save in the case of the payment in respect of costs and expenses:
 - (i) EUR 15,000 (fifteen thousand euros) to the applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into his representatives' bank account in the United Kingdom;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President