



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

FIRST SECTION

CASE OF MAMAZHONOV v. RUSSIA

(Application no. 17239/13)

JUDGMENT

STRASBOURG

23 October 2014

FINAL

23/03/2015

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

In the case of Mamazhonov v. Russia,

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 30 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 17239/13) 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 Ikromzhon Makhkamovich Mamazhonov (“the applicant”), on 8 March 2013.

2. The applicant was represented by Mrs N. Yermolayeva and Mr A. Gladkikh, lawyers practising in Moscow and Orenburg respectively. 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, in particular, that in the event of his extradition to Uzbekistan he risked being subjected to ill-treatment.

4. On 11 March 2013 the Acting President of the First Section indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice. It was also decided to grant this case priority under Rule 41 of the Rules of Court.

5. On 10 May 2013 the complaint concerning an alleged risk of treatment contrary to Article 3 of the Convention in the event of the applicant’s extradition to Uzbekistan was communicated to the Government and the remainder of the application was declared inadmissible.

6. On 25 May 2013 the Government informed the Court that the authorities had taken the relevant steps to guarantee that the applicant would not be extradited to Uzbekistan until further notice.

7. On 13 June 2013 the applicant’s representatives informed the Court of his alleged disappearance and possible abduction following his release from a detention centre in Orenburg.

8. On 14 June 2013 the President of the First Section asked the Government, under Rule 54 § 2 of the Rules of Court, to provide additional factual information concerning the circumstances of the applicant's alleged disappearance and possible abduction.

9. On 5 July 2013 the requested factual information was submitted by the Government.

10. On 8 July 2013 the President of the First Section invited the parties to submit further written observations in respect of the applicant's alleged disappearance and abduction.

11. On 9 July 2013 the Court informed the Committee of Ministers of the communication of the case to the Government and the applicant's alleged disappearance and abduction. The Court's letter was accompanied by the applicant's representatives' letter of 13 June 2013 and the Government's reply of 5 July 2013, and by the Statement of facts and questions to the parties and a list of additional questions the parties were requested to deal with in their written observations.

12. Subsequently, the parties provided the Court with submissions on the admissibility and merits of the case both in respect of an alleged risk of ill-treatment in the event of the applicant's extradition to Uzbekistan, and his alleged disappearance and abduction following his release from detention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

13. The applicant was born in 1968 in Khanabad, Uzbekistan.

14. In 2008, in the face of potential prosecution for religious extremism, he fled Uzbekistan with a forged Kyrgyz passport under an assumed name. On 19 April 2008 he entered the territory of the Russian Federation.

15. On 6 September 2009 he obtained a Russian passport using forged documents.

A. Prosecution of the applicant in Uzbekistan

16. On 26 January 2009 and 28 September 2012 the applicant was indicted by the investigative authorities of Uzbekistan on charges of terrorism, inciting religious hatred, encroaching upon the constitutional order, illegally crossing the State border, organising a criminal group, producing and disseminating material threatening public security and order, participating in religious extremist, separatist, and fundamentalist

movements, and smuggling. Since the Uzbek authorities could not locate him he was indicted *in absentia*.

17. According to the Uzbek investigative authorities, in 2006 and 2007 the applicant had been actively involved in operating the terrorist organisation ‘Islamic Movement of Uzbekistan’, which has extensive ties with Al-Qaeda, Islamic Jihad and Libyan Jamaat. He allegedly took part in recruiting and training terrorists, smuggling extremist material into Uzbekistan, organising gatherings where extremist material, including video and audio recordings, were viewed and distributed, fundraising for terrorist acts, training recruits in using firearms and hand-grenades, and facilitating illegal border crossings by the leaders of the Islamic Movement of Uzbekistan. The Uzbek authorities further contended that members of the above-mentioned group had been involved in terrorist acts that had taken place in Khanabad and Andizhan on 25 and 26 May 2009.

18. On 27 January 2009 the Andizhan Criminal Court ordered the applicant’s pre-trial detention. The order was issued *in absentia* and the reasons given were the gravity of the charges against the applicant and the fact that he could not be located. On the same day an investigator issued an international search and arrest warrant against him.

B. The applicant’s apprehension and extradition proceedings

19. In March 2010 the Uzbek investigative authorities sent a notification to the Ministry of Internal Affairs Anti-Extremism Department in the Orenburg Region that according to their intelligence, the applicant was living in the region.

20. On 10 March 2010 the applicant’s name and his two aliases were put in the ‘RM’ public transport search and identification system. The record mentioned his alleged association with radical and extremist organisations.

21. On 11 June 2012 the ‘RM’ system registered the sale of a ticket for a passenger train going from Moscow to Bishkek. The ticket had been bought under the applicant’s assumed name, which he used in his Russian passport. An alert was sent to the Ministry of Internal Affairs.

22. On 13 June 2012 at approximately 2.45 a.m. the applicant was apprehended at Orenburg railway station by officers of the Ministry of Internal Affairs Anti-Extremism Department and Federal Security Service (FSB). During the initial identity check, he used his Russian passport bearing an assumed name.

23. After the applicant’s true identity had been established, an ‘express interview’ was conducted with him by Orenburg’s assistant transport prosecutor, Mr M. The applicant stated during the interview that he had fled Uzbekistan after learning that he was suspected of taking part in watching extremist material, while his prosecution was actually politically motivated.

He further stated that since his entry into Russia, he had been living on various construction sites in Moscow, Tula and Orenburg.

24. At 4.10 a.m. a record of apprehension of a person under an international search and arrest warrant was drawn up and the applicant was officially informed of his rights and the nature of the charges in Uzbekistan.

25. On the same day at 1.40 p.m. he was once again interviewed by Mr M. During the interview, he was informed of the right not to incriminate himself and that he would be provided with an interpreter if needed. He expressed his wish to give answers in Russian. The interview record was verified and signed by him.

26. The applicant stated during the interview that in 2008 he had decided to leave Uzbekistan because of possible prosecution for watching video material which was considered extremist by the Uzbek authorities. He further stated that he had procured a forged Kyrgyz passport under an assumed name, which he had used to enter Russia and obtain Russian citizenship. In particular, the interview record contained the following passages:

“... Until 2008 my permanent income came from exchanging currency in Khanabad and selling fruit...

In April 2008 an acquaintance [working] in law enforcement informed me that my name was on the list of people suspected of extremism. Aware that my acquaintances had been prosecuted for watching extremist material and sentenced to lengthy prison terms, I decided to evade law enforcement, since I had also watched that material...

In June 2012 I decided to return to Uzbekistan because I no longer wished to be a fugitive and it was necessary to make contact with the law enforcement bodies in Uzbekistan to resolve the situation surrounding [their] search [for me].

As to the criminal case against me I learnt of its existence from my wife during a phone conversation in 2009...I did not understand what the charges against me were, but presumed that I had been prosecuted for watching the extremist videos.

I did not commit any of the crimes I am accused of, except illegally crossing the Uzbek border. In spring 2008 I watched a documentary at home with some of my acquaintances about the killing of Muslims in Afghanistan and Iraq by US soldiers – I presume they were Muslims because the majority of population in those countries are followers of Islam. We did not like the actions of the American soldiers and we discussed that. I do not think I committed any crime...

I did not request political asylum or refugee status in the Russian Federation...

I believe that my prosecution is politically motivated, because I do not like Uzbekistan's policies on entrepreneurs; an opinion I expressed to the State institutions of Uzbekistan.”

27. Later that day the applicant was placed in a pre-trial detention facility, SIZO-3 in Orenburg, pursuant to the detention order issued by the Andizhan Criminal Court. The Embassy of Uzbekistan in the Russian Federation was notified of the arrest.

28. On 12 July 2012 an extradition request under the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 (“the Minsk Convention”) was lodged by the Prosecutor General’s Office of Uzbekistan. Making reference to the provisions of the Minsk Convention and Uzbek legislation, the request included the following assurances:

- (a) The applicant would not be extradited to any third country or prosecuted for any crime which did not serve as the basis for his extradition without Russian authorities’ agreement. He would be free to leave Uzbekistan after the trial and serving his sentence.
- (b) The Uzbek legislation in force prohibited criminal proceedings on a discriminatory basis, the use of torture or ill-treatment, and guaranteed respect for defence rights.
- (c) He would be provided with medical assistance if necessary.

29. On 13 July and 6 December 2012 and on 6 March 2013 the applicant’s detention was extended by the Promyshlenniy District Court of Orenburg.

30. On 12 November 2012 the Deputy Prosecutor General of the Russian Federation examined the merits of the extradition request and authorised it in respect of the charges of terrorism, participating in an armed group, and illegally crossing the Uzbek border. The request was refused in respect of the other charges due to a lack of evidence and/or their being no comparable crimes under Russian law. The extradition authorisation did not examine any risks to which the applicant might have been exposed in Uzbekistan and merely stated that “no obstacles to extraditing Mr Mamazhonov under international law or the legislation of the Russian Federation had been established”.

31. On 28 November 2012 the applicant’s representative Mr Gladkikh lodged a complaint against this decision, alleging that the applicant was at a heightened risk of being subjected to torture if extradited to Uzbekistan. The complaint stressed that since the applicant’s asylum application had not been definitively dismissed on appeal, any extradition authorisation was unlawful.

32. The complaint alleged that contrary to the interpretation of the law in force provided by Ruling no. 11 of 14 June 2012 of the Plenum of the Supreme Court of the Russian Federation (see paragraphs 98 below), the prosecutor had neglected his incumbent duty to consider the risk of torture in Uzbekistan, having regard to the general situation in the destination country and the applicant’s personal situation, and the fact that the text of the extradition authorisation gave no reasons in this regard.

33. The applicant’s representative also referred directly to eleven of the Court’s judgments issued between 2008 and 2012 in which a violation under Article 3 of the Convention had been found in similar circumstances. He argued that the prosecution authorities had disregarded the Court’s

conclusion that individuals accused of crimes concerning politics and religion constituted a “risk group” systematically exposed to ill-treatment in Uzbekistan. Accordingly, their extradition, just like the applicant’s, had been contrary to the Russian Federation’s obligations under the Convention.

34. Referring to reports by the United Nations agencies, Amnesty International, Human Rights Watch and CIVICUS in the last nine years, the applicant’s representative alleged that the use of torture and ill-treatment was commonplace in respect of people accused of religiously and politically motivated crimes.

35. Lastly, relying on the official position of certain Russian State institutions, Mr Gladkikh highlighted the fact that the Ministry of Foreign Affairs in its note of August 2009 “On human rights in Uzbekistan” stated:

“... criminal trials are characterised by a dependence on forced confessions, and a lack of adequate legal representation... it is also noted that people convicted of anti-State, religious and politically motivated crimes are incarcerated in much stricter regimes than others...”

36. The complaint also quoted a March 2011 letter from the head of the Third CIS Department of the Ministry of Foreign Affairs to the director of the Federal Migration Service:

“... Considering the reasoning of the European Court of Human Rights, it is actually possible to state that currently the extradition, deportation or administrative removal to Uzbekistan of any person wanted by the law enforcement agencies... will constitute a violation of the Convention...”

37. On 27 December 2012 the Orenburg Regional Court dismissed the complaint. It stated that the approval of the request was lawful, properly reasoned, and took into account the assurances of the Uzbek authorities. Furthermore, it considered that the ill-treatment allegations were merely a defence strategy of the applicant, who had procured a forged Kyrgyz passport under an assumed name, illegally crossed the Russian border on 19 April 2008, obtained Russian citizenship under an assumed name, and lodged an asylum request only after his apprehension under the international search and arrest warrant. The court noted that he had been convicted in Russia on 1 October 2012 of forgery and fined 6,000 Russian roubles (RUB) (150 euros (EUR)) (see paragraphs 40-41 below). It also stated that the extradition authorisation given by the Deputy Prosecutor General did not presume an automatic transfer of the applicant to Uzbekistan, and that no extradition could take place before his asylum proceedings had finished.

38. On 28 December 2012 the applicant’s representative Mr Gladkikh appealed to the Supreme Court against the Regional Court’s decision, relying on essentially the same arguments as presented before. In addition, he stated in his appeal that contrary to the decision of the Regional Court, the Uzbek authorities had not explicitly stated that the applicant would not be subjected to torture, but had limited their assurance to a statement that the legislation in force prohibited it (see paragraph 28 above). The

representative referred the Supreme Court to the Court's judgment in the case of *Khaydarov v. Russia* (no. 21055/09, § 105, 20 May 2010), where the existence of domestic and international law provisions prohibiting ill-treatment was not considered to be a sufficient assurance in itself.

39. On 12 March 2013 the Supreme Court of the Russian Federation dismissed the appeal and upheld the lower court's decision and extradition authorisation. The relevant parts of the decision read as follows:

"... [In his appeal] Mr Mamazhonov indicates that [the Regional Court] ignored the fact that ... he had requested asylum and thus may not be returned to Uzbekistan. The court did not examine all the circumstances and adopted a wrong decision...

The attorney Mr Gladkikh requests in the interests of Mr Mamazhonov...that extradition proceedings be terminated. The attorney believes that [the Regional Court] violated Russian and international asylum law and did not examine the fact that the applicant had requested asylum. The court also did not examine any evidence proving that Mr Mamazhonov might be subjected to torture...in Uzbekistan. In his opinion, the case file does not contain guarantees that [the applicant] would not be subjected to unlawful actions and [the decision must therefore be quashed as unreasoned]...

When the Prosecutor General's Office decided to transfer Mr Mamazhonov to the law enforcement agencies of Uzbekistan, his asylum request was denied.

[Furthermore, the Supreme Court restated the reasons for the denial of asylum and the assurances provided by the Uzbek authorities.]

...

The arguments of Mr Mamazhonov and his counsel that in Uzbekistan he will be persecuted on religious and political grounds are unfounded, since there is no objective proof.

The material in the case file demonstrates that Mr Mamazhonov's prosecution by the Uzbek authorities is of a general nature and is not related to the policies of that State.

Mr Mamazhonov did not submit to the court any convincing arguments giving weighty grounds to believe that the Uzbek authorities might subject him to torture, inhuman or degrading treatment or punishment, or that he might be persecuted on the grounds of race, religious beliefs, citizenship, ethnicity, belonging to a social group, or political convictions.

[The Supreme Court] finds no grounds to annul the decision..."

C. Prosecution of the applicant in Russia

40. On 10 July 2012 a criminal investigation was initiated by the Russian authorities in respect of the use of forged identification papers by the applicant.

41. On 1 October 2012 the Justice of the Peace for the 8th Circuit of the Promyshlenniy District of Orenburg convicted the applicant of using of forged documents (a Russian passport) and fined him RUB 6,000 (EUR 150). During the trial, he acknowledged his guilt, but stated that the

procurement of false Kyrgyz and Russian identification papers had been a necessary measure to avoid his arbitrary prosecution in Uzbekistan for the crimes he had not committed.

D. Asylum proceedings

42. On 3 August 2012 Mr Gladkikh applied on the applicant's behalf for asylum, alleging that the criminal charges against him had been "fabricated" after he, a successful businessman, had refused to pay bribes and provide pay-offs to the Uzbek authorities.

43. On 20 August 2012 the applicant was interviewed by the immigration authorities and his answers were recorded in an asylum questionnaire.

44. On 24 August 2012 the Orenburg Regional Department of the Federal Migration Service refused to consider the merits of his request, because in their opinion it had been lodged only to evade prosecution in Uzbekistan, and the applicant had failed to substantiate his alleged fear of return. The relevant parts of the decision read as follows:

"... In the questionnaire, Mr Mamazhonov states that the reasons for his arrival in Russia were the extortionist demands of the authorities, unlawful persecution for his business success, and fear for his life. He submitted no other reasons, and stated that he had never been a member of religious, political or non-governmental organisations.

According to the questionnaire, there were no incidents of violence against him in Uzbekistan; he never complained of persecution to the law enforcement or State institutions in Uzbekistan or to human rights organisations.

He explains his unwillingness to return to the country of origin by his fear of prosecution for serious offences by the law enforcement authorities in Uzbekistan...

The fact that Mr Mamazhonov, expressing his wish to receive protection from the Russian Federation... did not lodge his asylum request at the border crossing in 2008... or attempt to legalise his status during the lengthy period thereafter, and [did so] only after his apprehension [under the warrant] for crimes committed in Uzbekistan, demonstrates that the objective reason for...his arriving in Russia was to evade prosecution for crimes committed outside of Russia...

During his stay in Russia between June 2008 and August 2012, Mr Mamazhonov had also committed an offence by [being in possession of] forged documents and unlawfully obtaining a Russian passport...

It follows that the analysis of the reasons given in the asylum questionnaire, case file and search for the applicant for the crimes committed outside of Russia... does not lead to a conclusion [that there is any risk of him being persecuted in Uzbekistan]."

45. On 16 October 2012 the Leninskiy District Court of Orenburg in reviewing the above decision, established that the applicant had illegally crossed the Russian border on 19 April 2008, procured a forged Kyrgyz passport under an assumed name, obtained Russian citizenship under that name, and lodged an asylum request only after his apprehension under the

international search and arrest warrant. On that basis the court rejected his complaint against the immigration authorities' decision.

46. On an unspecified date the applicant appealed against the District Court's decision. He alleged that both the immigration authorities and District Court had failed to consider his claims that he risked ill-treatment if returned to Uzbekistan.

47. On 11 January 2013 the Orenburg Regional Court dismissed the appeal and upheld the lower court's decision and immigration authorities' refusal to consider the asylum request. In particular, it stated:

"Information from reputable international human rights organisations concerning the unfavourable political climate in Uzbekistan and practice of malicious persecution of those accused of crimes against the State was not proven by objective evidence within the framework of Mr Mamazhonov's case and may not serve as a basis for the annulment of a judicial decision... Moreover, a competent State institution deciding on asylum status independently evaluates the situation in a specific country relying on its own sources, and the opinion of human rights organisations is not determinative of such a decision..."

48. On 7 February 2013 the applicant lodged a request for temporary asylum in Russia, but it was denied by the immigration authorities on 6 March 2013.

E. Interim measure under Rule 39 of the Rules of Court

49. On 8 March 2013 the applicant's representative Mrs Yermolayeva submitted to the Court a request for the application of an interim measure under Rule 39 of the Rules of Court to stay the applicant's extradition to Uzbekistan until further notice. The request specified that the applicant's extradition would expose him to a risk of treatment contrary to Article 3 of the Convention. The evidence and arguments presented to the Court were essentially the same as the evidence and arguments previously presented to the national authorities.

50. On 11 March 2013 the Acting President of the First Section indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice.

51. By a letter of 15 May 2013 the Russian Government informed the Court that they had taken relevant steps to guarantee that the applicant would not be extradited to Uzbekistan until further notice. In particular, the Prosecutor General's Office, departments of the Ministry of Internal Affairs, and Border Guards Service had been ordered to prevent the applicant's extradition or removal from Russia, and other law enforcement agencies had been instructed to comply with the measure applied.

F. The applicant's release and disappearance

52. On 11 June 2013 the applicant's representative Mr Gladkikh was informed that the applicant would be released on 12 June 2013. However, since it was a public holiday in Russia the release was rescheduled to 9 a.m. the following day. Mr Gladkikh was informed in person.

53. A decision to release the applicant dated 13 June 2013 was issued by the Prosecutor General's Office. It restated the procedural history of the case available to the Russian authorities at that time and explicitly mentioned the application of an interim measure by the Court. In the absence of any further legal grounds for the applicant's detention, his release was ordered.

54. According to statements submitted to the Court by the applicant's representative, he arrived at the detention facility on 13 June 2013 at 6 a.m. Despite his previous enquiries about the time of release, Mr Gladkikh was informed at 7.30 a.m. that the applicant had been released at 7.15 a.m. and had left in an unknown direction. According to the Government's submissions, the release had taken place at 6.30 a.m.

55. Later the same day Mr Gladkikh lodged a request with the Investigative Committee of the Orenburg Region. The relevant parts of the request read as follows:

"... [On 12 June 2013] officers at the checkpoint [of SIZO-3] informed me that... Mr Mamazhonov was going to be released on 13 June, no earlier than 9 a.m.

Relying on the veracity of the information provided, I arrived this morning at SIZO-3, where I was informed at 7.15 a.m. [sic] that Mr Mamazhonov had already been released and had departed in an unknown direction. I was refused information about the precise time of release [sic]. At the present moment I'm not aware of the whereabouts of my client.

I draw your attention to the fact that during a private conversation, Mr Mamazhonov asked me to be personally present during his release and to further support him until the regularisation [of his immigration status] in Russia; he strongly denied any possibility of returning to Uzbekistan voluntarily.

Having regard to these facts, and the fact that there have previously been instances of disappearances from Russia of Uzbek nationals charged with State crimes, whose extradition was being sought [by the Uzbek authorities], I have grounds to believe that Mr Mamazhonov was abducted by interested parties with a view to transferring him to Uzbekistan.

Accordingly, I request [that]:

1. An inquiry is initiated into these allegations.
2. Criminal proceedings are initiated into the suspected [abduction]..."

56. Similar requests were lodged with the Prosecutor General's Office, Border Guards Service of the FSB, and the police.

57. On 14 June 2013 the administration of the detention facility SIZO-3 sent a letter to the Embassy of Uzbekistan, informing it of the applicant's release.

58. Following Mr Gladkikh's request a preliminary inquiry into the applicant's alleged disappearance was initiated by the Internal Affairs Department OP-4 in Orenburg.

59. On 17 June 2013 the inquiry was handed over to the Investigative Committee, since the crime suspected fell under their jurisdiction. The inquiry case file reached them on 19 June 2013.

60. On 19 June 2013 the investigator examined the applicant's cell in SIZO-3 and seized from the administration the applicant's personal file and the available video surveillance recordings.

61. On the same day he questioned four officers working at the detention centre who were present during the applicant's release. They stated that the applicant (i) had been released at the expiry of the court-ordered detention, (ii) had been informed of his obligation to register with the immigration authorities, (iii) had not made any complaints or requests during his release, and (iv) had not been approached after his release by anyone in uniform, Asian-looking or anyone else.

62. On 20 June 2013, in reply to the investigator's request, the Federal Migration Service informed him that there was no record of the applicant in their databases, and the Border Guards Service of the FSB stated that due to the absence of any IT systems at the borders of the Orenburg Region it was not possible to provide information about a specific person.

63. On 21 June 2013 the period of inquiry was extended by ten days to collect further evidence.

64. On the same day, in reply to the investigator's request, the Internal Affairs Department in Orenburg Region stated that since 13 June 2013 the applicant had not been apprehended or detained by the police.

65. On 26 June 2013 the applicant's cellmate in SIZO-3, Mr G., was interviewed after being cautioned about criminal liability for perjury. The relevant part of the interview record stated as follows:

".... In June 2013 he was released... He did not know about his release from detention because he was woken up early in the morning and told that he was being released...he did not inform me of his future plans. I am not aware where he might be."

66. On 26 June 2013 an officer of the Anti-Extremism Department in the Orenburg Region, Mr Ab., who was involved in apprehending the applicant, was questioned after being cautioned about criminal liability for perjury. He stated, in particular, that (i) the applicant was of no interest to his agency since there was no evidence of his involvement in criminal activities in Orenburg, (ii) that he was not aware of the applicant's possible whereabouts, and (iii) that there had been no contact or exchange of information between his agency and the Uzbek law enforcement agencies.

67. On the same day the investigator requested from the Transport Prosecutor's Office in Orenburg a copy of the extradition case file, in order to fully consider the possibility of the applicant's forced removal to Uzbekistan. It was provided on 28 June 2013.

68. On the same day, in reply to the investigator's repeated request, the Federal Migration Service informed him that there was no record of the applicant crossing the State border after 11 June 2013.

69. On 27 June 2013 an officer of the FSB in the Orenburg Region, Mr St., who was involved in apprehending the applicant, was questioned after being cautioned about criminal liability for perjury. His statements were essentially the same as those provided previously by Mr Ab., the officer of the Anti-Extremism Department in the Orenburg Region (see paragraph 66 above).

70. On the same day the applicant's representative Mr Gladkikh was interviewed after being cautioned about criminal liability for perjury. The relevant part of the interview records stated as follows:

"On 12 June 2013 I arrived at SIZO-3 in Orenburg with Mr Al. and Mr R.M., who lives in Uzbekistan but works in Moscow and who is a brother of Mr Mamazhonov... I was told [by officers of the detention facility] that the client's release would not take place that day, since the papers were not ready... [I was told to return the next day by 9 a.m.]

... While Mr Mamazhonov was detained in SIZO-3 I frequently visited him, but he never informed me of any visits from law enforcement agents or anyone else [or] the use of unlawful investigative measures or torture. If something like that had happened to him, he would have told me about it. I personally have also never been contacted about Mr Mamazhonov by agents of the State or other services of Russia or Uzbekistan; from what I know the same applies to his relatives...

... [O]n 13 June 2013 I arrived at SIZO-3 at around 6 a.m. The officer on duty refused to provide me with any information on Mr Mamazhonov... [she] told me that at 7.15 a.m. he was being released... At 9 a.m. I called SIZO-3 and was informed that Mr Mamazhonov had been released at 8 a.m. To date I have not been aware of his whereabouts, his relatives do not have this information either, as he did not make any contact. I am saying that his Russian passport has been seized and his Uzbek passport has been lost. Before his release Mr Mamazhonov did not inform me of an intention to move somewhere after his release; on the contrary, he wanted to regularise his status in Russia. I personally believe that certain parties from Uzbekistan interested in his return are implicated in [his] disappearance. There have been similar cases in Russia in the past."

71. Later that day, in reply to the investigator's request, the Transport Department of the Ministry of Internal Affairs in Orenburg stated that there was no record of the applicant buying train or plane tickets between 13 and 27 June 2013.

72. On 27 June 2013, relying on the results of the preliminary inquiry, the Investigative Committee initiated criminal proceedings in respect of the applicant's disappearance and suspected murder. The investigation was

assigned to a group of investigators from the Investigative Committee, the FSB, and the regional Ministry of Internal Affairs.

73. On 1 July 2013 a detailed plan of the investigation was adopted by the group of investigators, presided by Mr L. The plan contained several dozen investigative measures each assigned to specific investigators. The measures were aimed at detecting the current whereabouts of the applicant, discovering information and evidence, and verifying five existing theories about the applicant's disappearance. The theories adopted were that:

- (a) the applicant was alive, but was voluntarily avoiding contact to evade the law enforcement agencies;
- (b) the applicant was alive, but could not contact anyone due to serious illness;
- (c) the applicant had left Russia to further engage in terrorist activities in Uzbekistan, Kyrgyzstan and other countries;
- (d) the applicant had died and his death had been caused by an illness, accident or other non-criminal circumstances; or
- (e) the applicant had become the victim of a crime (murder or kidnapping).

74. Later that day an investigator examined the area around SIZO-3 and established that there had been no outside video surveillance cameras placed there.

75. On 8 July 2013 the applicant's representative Mr Gladkikh challenged the opening of an investigation into his client's disappearance and suspected murder, arguing that the investigation should be based on his suspected abduction. On 27 July 2013 he was informed by the investigator that there was no evidence to substantiate the suspected abduction.

76. Later that day the applicant's representative Mr Gladkikh was once again interviewed after being cautioned about criminal liability for perjury. His statement was essentially the same as his previous one (see paragraph 70 above).

77. On 9 July 2013 the release officer of SIZO-3, Mrs L.S., was questioned after being cautioned about criminal liability for perjury. The relevant parts of the interview records read as follows:

"... [The prosecutor's decision to release Mr Mamazhonov on 13 June 2013 due to expiry of the maximum period for his detention] arrived at SIZO-3 on 11 June 2013 at around 5.30 p.m. ...

During the afternoon of 11 June 2013, the lawyer Mr Gladkikh...called me to inquire about the date of release... [Mrs L.S. informed him that it would be 13 June 2013]...

Around 10 a.m. on 12 June 2013 I was informed by officers at the checkpoint that Mr Gladkikh had visited [SIZO-3 to inquire about Mr Mamazhonov's release]...

On 13 June 2013 I arrived at work at around 6.30 a.m. at the request of the head of SIZO-3, Mr L.A.... [and immediately took part in Mr Mamazhonov's release]...

During the release, Mr Mamazhonov asked me whether his lawyer was waiting for him, but I could not tell [him] because I did not know..."

78. On the same day the head of SIZO-3, Mr L.A., was questioned after being cautioned about criminal liability for perjury. The relevant parts of the interview records read as follows:

“... During Mr Mamazhonov’s detention in SIZO-3 and after the prosecutor’s decision to release him, I was made aware of [his] concerns for his safety after release.

Accordingly, in order to ensure his safety I made the decision to release [him] before regular working hours...

I took part in [his] release...as an officer in charge of supervising the release procedure...

[After release] Mr Mamazhonov left the premises of SIZO-3. He left the area and passed the guards alone...

I am not aware if anyone was meeting him...”

79. On 15 July 2013 three security guards of SIZO-3 who were present during the applicant’s release were questioned after being cautioned about criminal liability for perjury. They all stated that the release had taken place at around 6.30 a.m. and were not aware if anyone had been expecting the applicant, since they could not leave their duty stations in the building.

80. On 12 July 2013, in reply to the request of 8 July 2013, the administration of SIZO-3 informed the investigation that while there were video surveillance cameras covering the building and adjacent area, the recordings of 13 June 2013 were no longer available due to the expiry of their storage period. However, the recording from the camera at the checkpoint of the detention facility covering the period between 5 and 6.57 a.m. that day was available (see paragraphs 91-95 below), since a local copy had been saved following a request in the course of the preliminary inquiry.

81. On 17 and 20 July 2013 the FSB in the Orenburg Region informed the chief investigator that they had complied with the investigative tasks assigned to them. They stated that they had contacted the National Security Service of Uzbekistan in order to obtain information about the applicant’s possible whereabouts, establish a list of his relatives, and procure the necessary background information. They further stated that according to their sources, the applicant might have been assisted in illegally crossing the Russian border by Mr Al., with whom he had previously collaborated extensively in illegal activities.

82. On 1 August 2013 the applicant’s cellmate in SIZO-3, Mr G., was repeatedly questioned after being cautioned about criminal liability for perjury. He mostly confirmed his previous statements, supplementing them with the following relevant passages:

“... Mr Mamazhonov told me that in Uzbekistan he had been prosecuted for terrorism. He told me that in Uzbekistan he might have been sentenced to 18 to 19 years’ imprisonment...

[He] also told me that in the summer of 2012 he had decided to travel to Uzbekistan by train, because he was worried about his two or three wives and seven children...

... He had only learnt of the international search warrant after his apprehension...

[He] did not want to return to Uzbekistan, because he would have been sentenced to lengthy imprisonment there...

[He] also mentioned that if there was no possibility of him staying in Russia, he would travel to Kyrgyzstan or Kazakhstan, where he had acquaintances...

[A day before his release he was informed of it]

Mr Mamazhonov told me that his lawyer was going to inform his friends and relatives of the day of release and that they were going to come and meet him...

[He was convinced that his friends and relatives] were going to help him relocate to another country if he was not able to stay in Russia, because he did not want to return to Uzbekistan..."

83. On 5 August 2013 Mr R.M., the applicant's brother, was officially recognised as a victim by the investigative authorities.

84. On the same day the investigator sent a request for legal cooperation to the Uzbek authorities. The competent authorities were requested to inform Mr R.M. of his status in the investigation conducted in Russia and question him according to a non-exhaustive list of approximately thirty questions concerning the applicant's background, state of health and mind, social and family ties, political and religious affiliations, and questions in respect of the events of 12 and 13 June 2013. Lastly, the Uzbek authorities were requested to collect a saliva sample from him for his DNA, in the event of a future need for identification.

85. On 7 August 2013, in reply to the request of 5 August 2013, the Federal Migration Service informed the investigation that there was no record of Mr Mamazhonov crossing the Russian border.

86. According to the material in the Court's possession, other investigative activities between June and August 2013 included a screening of the applicant's possible contacts, a search for possible witnesses, monitoring of the sale of train and airline tickets, putting the applicant on the list of missing persons, and sending legal cooperation requests to neighbouring regions.

87. The applicant's representatives' submissions of 20 December 2013 addressed to the Court were accompanied by an undated letter by Mr Gladkikh (the applicant's second representative). The relevant parts of the letter stated:

"... in the beginning of September 2013 I received a phone call on my mobile from a man identifying himself as a relative of my client, Mr Mamazhonov. The man told me [the applicant] was being held in custody in Andizhan and that the criminal case would be sent to trial soon. Due to fears for his safety, he refused to provide me with detailed information on the case...or to state his full name.

Furthermore, from a private conversation with an investigator, Mr L., I have learnt that he (the investigator) is preparing to go on a mission to Uzbekistan in order to get statements from Mr Mamazhonov himself concerning the circumstances of the criminal case opened following his disappearance. He further informed me that the statements...would be obtained by officials of the Uzbek law enforcement agencies, and that just he himself would be present during the interview.”

88. On 21 April 2014 the applicant’s representatives informed the Court of the recent developments in the case. In particular, the letter stated:

“... The applicant’s lawyer Mr Gladkikh recently received a call from an unknown person...[who stated] that the applicant was currently being detained in Khanabad (Uzbekistan) and that the criminal case against him was about to be handed over to the court. The man also informed me that the applicant’s brother (who was acknowledged as a victim of the crime in the criminal investigation into the applicant’s abduction in Russia) was also currently being detained in Uzbekistan...”

The applicant’s representatives also pointed out that the initial authorities’ intention to conduct certain investigative measures in Uzbekistan was not realised for unknown reasons. The intention to visit Uzbekistan confirms in itself that the applicant was in Uzbekistan...

The detention of the applicant’s brother, Mr R.M. (whose name was mentioned in the request for cooperation of 08.08.2013...) illustrates the reluctance of the Uzbek authorities to provide the Russian investigative authorities with an opportunity to get an independent statement from [him]...”

89. No other information is available to the Court regarding the progress of the criminal investigation.

90. The applicant’s whereabouts are currently unknown.

G. Recordings from the video surveillance camera in SIZO-3

91. The Government submitted as evidence to the Court a recording from the video surveillance camera placed inside SIZO-3 in Orenburg facing the checkpoint of the detention facility, opposite the only entrance to the building. The recording covers the period between 6.13 and 7 a.m. on 13 June 2013, the day of the applicant’s release.

92. On the recording, at 6.17 a.m. a person identifying himself as Mr Ikromzhon Makhkamovich Mamazhonov is brought before an officer responsible for releasing detainees. He gives the same date and place of birth as those indicated (in paragraph 13) above, and gives an address in Orenburg as his place of residence. He is provided with an identity certificate, and after receiving it at 6.19 a.m. leaves, presumably after being released from the detention centre.

93. The recording of the next forty minutes shows several people approach and pass the checkpoint.

94. At 6.26 a.m. the following fragments of a conversation are audible:

“Woman: Permission to enter.

...

Man [over the phone]: Where are you? The exit? Alone? ...

Woman: ... civilians...

Man: Civilians?

Woman: No... [he] is in uniform and two civilians..."

95. At 6.43 a.m. a senior officer approaches the checkpoint, presumably from outside the building:

"Officer at the checkpoint: Good morning, Sir!

Senior officer: Hello! Have you seen anything?

Officer at the checkpoint: ...

Senior officer: I am asking you if you have seen anything.

Officer at the checkpoint: No.

Senior officer: OK. I am asking just in case."

H. Committee of Ministers' decision concerning the applicant's disappearance

96. On 10 July 2013 the Ministers' Deputies at the 1176th meeting, having considered the information and documents made available to them by the applicant's representatives and the Court (see paragraph 11 above), adopted the following decision concerning the applicant's disappearance:

"The Deputies,

Recalling the decisions adopted at their 1164th meeting (5-7 March 2013) (DH) and 1172nd meeting (4-6 June 2013) (DH) in the Garabayev group of cases against the Russian Federation,

1. noted with grave concern that a further incident involving allegations of kidnapping and illegal transfer of an applicant protected by an interim measure indicated by the Court under Rule 39 has been reported, this time in the context of the Mamazhonov case;

2. strongly insisted that light be shed on this incident and on the fate of the applicant as quickly as possible;

3. consequently insisted again on the pressing need to adopt as of now measures to ensure an immediate and effective protection of the applicants in a similar situation against kidnappings and irregular removals from the national territory;

4. recalled in this context the letter sent by the Chairman of the Committee of Ministers to the Minister of Foreign Affairs of the Russian Federation;

5. agreed that a draft interim resolution will be considered in the light of progress that would have been made, including the updated action plan submitted by the Russian authorities; this text will be circulated in the draft revised order of business of their 1179th meeting (24-26 September 2013) (DH)."

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

A. Extradition proceedings

97. The Code of Criminal Procedure 2002 regulates proceedings concerning extradition to other States. A summary of the relevant provisions has been previously provided by the Court in the case of *Savridin Dzhurayev v. Russia* (no. 71386/10, §§ 70-75, ECHR 2013).

98. Providing guidance to the national courts on dealing with extradition requests, the Plenum of the Supreme Court of the Russian Federation indicated in its Ruling no. 11 of 14 June 2012, with reference to Article 3 of the Convention, that extradition should be refused if there are serious reasons to believe that the person may be subjected to torture or inhuman or degrading treatment in the requesting country. Extradition may also be refused if exceptional circumstances disclose that it may entail a danger to the person's life and health on account of, among other things, his or her age or physical condition. Russian authorities dealing with an extradition case should examine whether there are reasons to believe that the person concerned may be sentenced to the death penalty, subjected to ill-treatment or persecuted because of his race, religious beliefs, nationality, ethnic or social origin or political opinions. The Supreme Court further stated that the courts should assess both the general situation in the requesting country and the personal circumstances of a person whose extradition is being sought. They should take into account the testimony of the person concerned and that of any witnesses, any assurances given by the requesting country, and information about the country provided by the Ministry of Foreign Affairs, competent United Nations agencies and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

B. Status of refugees

99. The relevant provisions of domestic and international law concerning the status of refugees have been previously provided by the Court in *Savridin Dzhurayev* (ibid., § 92-99).

C. Criminal investigation

100. On 4 March 2013 the provisions of Article 144 of the Code of Criminal Procedure 2002, which regulates preliminary inquiries into the reports of a crime, were significantly amended. Every report of a crime must be accepted, verified and decided upon within three days (extended to ten or thirty days under certain circumstances) by an inquiry officer, inquiry agency, investigator or prosecutor.

101. Prior to the amendments, Article 144 § 1 had provided that the investigative authorities could proceed with their inquiry, with expert assistance or on their own, to carry out documentary verifications, checks, and the examination of documents, objects or dead bodies, and could issue compulsory orders for operational search activities. The amendments introduced in 2013 significantly broadened these powers, essentially equalising them with the powers afforded by a criminal investigation. The new inquiry methods include collecting statements and samples for comparative examinations, requesting documents and objects, seizing them, and ordering forensic expert examinations.

102. Newly introduced paragraph 1.1 of the Article essentially equalised the legal status, rights and obligations of people involved in a preliminary inquiry with those of people involved in a criminal investigation. The provision specifically mentions the right of a person not to incriminate himself, his spouse or close relatives, the right to be represented by legal counsel, and the right to appeal against the actions (or inaction) of investigative authorities. These people may be requested to respect the confidentiality of the proceedings, and their safety may be ensured in the manner prescribed by the Code of Criminal Procedure.

103. New Section 1.2 of the Article states that the results of a preliminary inquiry may be used as evidence if they comply with the requirements of the Code of Criminal Procedure. It is specifically mentioned that after a criminal investigation has been formally initiated, the defence has a right to request an additional or repeat forensic expert examination, and that such a request must be granted.

104. A criminal investigation may be initiated by an investigator or prosecutor following a complaint by an individual or on the investigating authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147).

105. Decisions by an investigator or prosecutor refusing to institute criminal proceedings or terminating a case, and other orders and acts or omissions which may infringe the constitutional rights and freedoms of the parties to criminal proceedings or to restrict access to justice, may be appealed against to a district court, which is empowered to check the lawfulness and grounds of the impugned decisions (Article 125).

III. COUNCIL OF EUROPE TEXTS ON THE DUTY TO COOPERATE WITH THE COURT, THE RIGHT TO INDIVIDUAL PETITION AND INTERIM MEASURES

106. Subsequent to the resolutions adopted by the Parliamentary Assembly and Committee of Ministers on the duty to cooperate with the Court, the right to individual petition and interim measures, as presented in

Savridin Dzhurayev (cited above, §§ 108-20), three further relevant documents were adopted by the Council of Europe bodies.

107. The Committee of Ministers' Interim Resolution CM/ResDH(2013)200, concerning execution of the Court's judgments in the *Garabayev* group of cases against the Russian Federation, was adopted on 26 September 2013 at the 1179th meeting of Ministers' Deputies. It reads as follows:

"The Committee of Ministers...

Considering the cases decided by the Court, in which the latter found violations by the Russian Federation due to the applicants' abductions and irregular transfers from the Russian Federation to States where the applicants face a real risk of torture and ill-treatment, and in breach of an interim measure indicated by the Court under Rule 39 of its Rules of Procedure;

Recalling that given the number of communications received, including from the Court, relating to alleged similar incidents that have been reported, revealing an alarming and unprecedented situation, the Committee has been calling upon the Russian authorities to adopt as a matter of urgency special protective measures for applicants exposed to a risk of kidnapping and irregular transfer;

Noting that the Russian authorities have taken a number of general measures to prevent abductions and illegal transfers from the Russian territory of persons in whose respect extradition requests were filed and the Court has indicated an interim measure under Rule 39 of its Rules;

Deeply regretting that these measures do not appear to have been sufficient to address the need for urgent adoption of special preventive and protective measures that are effective;

Deploing that to date, no reply has been received to the letter sent on 5 April 2013 by the Chairman of the Committee of Ministers to his Russian counterpart conveying the Committee's serious concerns in view of the persistence of this situation and its repeated calls for the urgent adoption of such protective measures;

Underlining that in its judgment in the *Abdulkhakov* case, the Court noted that "any extra-judicial transfer or extraordinary rendition, by its deliberate circumvention of due process, is an absolute negation of the rule of law and the values protected by the Convention";

Stressing that this situation has the most serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court,

CALLS UPON the Russian authorities to take further action to ensure compliance with the rule of law and with the obligations they have undertaken as a State party to the Convention,

EXHORTS accordingly the authorities to further develop without further delay an appropriate mechanism tasked with both preventive and protective functions to ensure that applicants, in particular in respect of whom the Court has indicated an interim measure, benefit (following their release from detention) from immediate and effective protection against unlawful or irregular removal from the territory of Russia and the jurisdiction of the Russian courts."

108. The Parliamentary Assembly's Resolution 1991 (2014), entitled "Urgent need to deal with new failures to co-operate with the European Court of Human Rights", was adopted on 10 April 2014. It reads as follows:

"Parliamentary Assembly

1. Recalling its Resolution 1571 (2007) on member States' duty to co-operate with the European Court of Human Rights and Resolution 1788 (2011) "Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights", the Parliamentary Assembly stresses the importance of the right of individual application to the European Court of Human Rights ("the Court"). The protection of this right is the purpose of individual measures indicated by the Court under Rule 39 of its Rules of Court, which are designed to prevent the creation of a *fait accompli*.

2. The Assembly considers any disrespect of legally binding measures ordered by the Court, such as interim measures indicated under Rule 39, as a clear disregard for the European system of protection of human rights under the European Convention on Human Rights (ETS No. 5, "the Convention").

3. The Assembly therefore calls on all States Parties to the Convention to respect interim measures indicated by the Court and to provide it with all the information and evidence it requests.

4. The Assembly strongly condemns instances of outright violations by several States Parties to the Convention (Italy, the Russian Federation, the Slovak Republic and Turkey) of the Court's interim measures aimed at protecting applicants from extradition or deportation to countries where they would be at risk of, in particular, torture, as well as of the interim measures in relation to Russia's military actions in Georgia (see *Georgia v. Russia II*).

5. The Assembly insists that international co-operation between law-enforcement bodies based on regional agreements, such as the Shanghai Cooperation Organisation, or on long-standing relations, must not violate a State Party's binding commitments under the Convention.

6. The Assembly is therefore particularly concerned about the recent phenomenon, observed in the Russian Federation, of the temporary disappearance of applicants protected by interim measures and their subsequent reappearance in the country which had requested extradition. The clandestine methods used indicate that the authorities had to be aware of the illegality of such actions, which can be likened to the practice of "extraordinary renditions" repeatedly condemned by the Assembly.

7. The Assembly welcomes the increasing use, by the Court, of factual presumptions and the reversal of the burden of proof in dealing with refusals of States Parties to co-operate with it, which consist in their failure to provide full, frank and fair disclosure in response to requests by the Court for further information or evidence."

109. Recommendation 2043 (2014) was adopted on 10 April 2014 by the Parliamentary Assembly on the basis of the above Resolution. It reads:

"Parliamentary Assembly

1. The Parliamentary Assembly refers to its Resolution 1991 (2014) on the urgent need to deal with new failures to co-operate with the European Court of Human Rights, to Resolution CM/Res(2010)25 of the Committee of Ministers on member

States' duty to respect and protect the right of individual application to the European Court of Human Rights, adopted as a response to Assembly Resolution 1571 (2007) on member States' duty to co-operate with the European Court of Human Rights, and to the Committee of Ministers' decision regarding kidnappings and irregular removals from the national territory taken at its 1176th meeting on 10 July 2013.

2. The Assembly commends the Committee of Ministers for following up on a regular basis cases of non-respect of the interim measures of the European Court of Human Rights.

3. The Assembly invites the Committee of Ministers to continue insisting on the effective investigation of any violations of the Court's interim measures, in particular irregular removals from the national territory, and to require the States Parties concerned to hold to account the perpetrators of any illegal acts."

IV. COMMITTEE OF MINISTERS' DECISIONS UNDER ARTICLE 46 ON RELATED CASES CONCERNING RUSSIA

110. In addition to the Committee of Ministers' decisions under Article 46 in cases concerning Russia cited in *Savridin Dzhurayev* (cited above, § 121-126) and their decision on the applicant's disappearance (see paragraph 96 above), the Minister's Deputies adopted the following decision on 4-6 March 2014 during their 1193rd meeting:

"The Deputies

1. expressed serious concern that, according to the Court, the repetitive nature of the violations established suggests that certain authorities developed a practice in breach of their obligations under Russian law and the Convention;

2. also expressed serious concern that, notwithstanding their interim resolution of September 2013 and the measures already adopted by the Russian authorities, the Committee has been seized of a new incident concerning Mr Azimov, reported to have been abducted on 3 December 2013 from a temporary accommodation centre under the authority of the Federal Migration Service;

3. further expressed serious concern that the current whereabouts of Mr Azimov have not yet been established and therefore urged the Russian authorities to reinforce their investigation efforts and to continue to keep the Committee informed of all developments;

4. noted with interest the recent diplomatic efforts undertaken by the Russian authorities with respect to other applicants who were allegedly abducted and subsequently reappeared in detention in other countries and strongly encouraged them to continue their efforts with a view to ensuring that these applicants are not subjected to treatment in breach of the Convention;

5. concerning general measures, recalled the letter of 5 April 2013 by the Chairman of the Committee of Ministers to the Russian Minister of Foreign Affairs and their interim resolution of September 2013; while noting the updated action plan subsequently submitted by the Russian authorities, regretted the slow progress to date and therefore strongly urged the Russian authorities to:

provide information promptly on how they will ensure the practical implementation of the required protective and preventive mechanism (notably, as regards the

application of protection measures available to victims and witnesses in criminal proceedings; the improvement of security guarantees in temporary accommodation centres; and providing assistance in the resettlement to third countries where there is no risk of treatment contrary to the European Convention);

transmit further details on the measures aimed at improving the efficiency of investigations, in particular how they will ensure close scrutiny of these investigations at an appropriate official level as well as on the recent initiative of the Prosecutor General's Office to put under special control the rapid reaction of prosecutors in the face of detected attempts of abductions from the territory of the Russian Federation;

6. decided to resume consideration of these issues at their 1208th meeting (September 2014) (DH)."

111. On 5 June 2014 during the 1201st meeting of the Minister's Deputies, the following decision was adopted:

"The Deputies

1. noted with grave concern that yet another applicant in this group of cases, Mr Yakubov, had allegedly been abducted in Moscow in April 2014 despite the repeated calls by the Committee of Ministers on the Russian authorities to take the necessary measures to prevent such incidents (see, in particular, Interim Resolution CM/ResDH(2013)200);

2. urged the Russian authorities to continue their investigation into Mr Yakubov's disappearance in order to shed light on the circumstances of this incident, taking into account the findings of the European Court of Human Rights as regards the involvement of the State authorities in other cases, notably in the case of Savriddin Dzhurayev;

3. noted, with concern, that this incident casts doubts on the soundness of the preventive and protective arrangements set up by the Russian authorities in response to the Committee's call in September 2013, and requested, in this context, the Russian authorities to ensure that relevant individuals are informed of the protective measures available;

4. further noted, with concern, that no information about any progress in the investigations into similar previous incidents in this group of cases has been provided;

5. invited the Russian authorities to provide information on the different issues raised in this group of cases in good time for their 1208th meeting (September 2014) (DH)."

V. REPORTS ON THE SITUATION IN UZBEKISTAN

112. The relevant reports by the UN agencies and international NGOs on the situation in Uzbekistan during the period 2002 to 2011 are summarised in the case of *Zokhidov v. Russia* (no. 67286/10, §§ 107-13, 5 February 2013).

113. In January 2013 Human Rights Watch released its annual World Report for 2013. The chapter entitled "Uzbekistan", in so far as relevant, reads:

"Criminal Justice, Torture, and Ill-Treatment

Torture remains rampant and continues to occur with near-total impunity. Detainees' rights are violated at each stage of investigations and trials, despite habeas corpus amendments passed in 2008. The government has failed to meaningfully implement recommendations to combat torture made by the UN special rapporteur in 2003 and other international bodies. Suspects are not permitted access to lawyers, a critical safeguard against torture in pre-trial detention. Police coerce confessions from detainees using torture, including beatings with batons and plastic bottles, hanging by the wrists and ankles, rape, and sexual humiliation. Authorities routinely refuse to investigate allegations of abuse ... Human Rights Watch continues to receive regular and credible reports of torture, including suspicious deaths in custody in pre-trial and post-conviction detention.

Freedom of Religion

Although Uzbekistan's Constitution ensures freedom of religion, authorities continued their multi-year campaign of arbitrary detention, arrest, and torture of Muslims who practice their faith outside state controls. Over 200 were arrested or convicted in 2012 on charges related to religious extremism."

114. The chapter on Uzbekistan in Amnesty International's 2013 annual report released in May 2013 reads, in so far as relevant, as follows:

"Torture and other ill-treatment

Torture and other ill-treatment of detainees and prisoners by security forces and prison personnel continued to be routine. Scores of reports of torture and other ill-treatment emerged during the year, especially from men and women suspected or convicted of belonging to Islamic movements and Islamist groups and parties or other religious groups, banned in Uzbekistan. As in previous years, the authorities failed to conduct prompt, thorough, and impartial investigations into such reports and into complaints lodged with the Prosecutor General's Office...

Counter-terror and security

The authorities continued to seek the extradition of suspected members of Islamic movements and Islamist groups and parties banned in Uzbekistan in the name of security and the fight against terrorism. They also requested the extradition of political opponents, government critics and wealthy individuals out of favour with the regime. Many of these extradition requests were based on fabricated or unreliable evidence. The government offered diplomatic assurances to sending states to secure the returns, pledging free access to detention centres for independent monitors and diplomats. In practice, they did not honour these guarantees. Those forcibly returned to Uzbekistan faced incommunicado detention, torture and other ill-treatment and, after unfair trials, long prison sentences in cruel, inhuman and degrading conditions. The authorities were also accused of attempting assassinations of political opponents living abroad."

115. In its 2013 report "Return to Torture: Extradition, Forcible Returns and Removals to Central Asia", Amnesty International stated as follows:

"Over the past two decades thousands of people across the region have alleged that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a forced confession or money from relatives. In this period, piecemeal reforms have been introduced in most Central Asia countries with the aim of strengthening the accountability of law enforcement agencies and improving the protection available in the criminal justice system. Nowhere, however, have they had any significant success in eliminating the practices of torture and other ill-treatment that are often used in

relation to people suspected of ordinary crimes, and routinely used in relation to political opponents and individuals suspected of involvement in extremism and terrorism-related activities or in banned religious groups.

...

... Detainees are often tortured and ill-treated while being held incommunicado for initial interrogations. Those detained in closed detention facilities run by National Security Services on charges related to national security or ‘religious extremism’ are at particular risk of torture and other ill-treatment.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF EXPOSING THE APPLICANT TO A RISK OF ILL-TREATMENT BY EXTRADITION TO UZBEKISTAN

116. The applicant complained under Article 3 of the Convention that the national authorities had failed to consider his claims that he risked ill-treatment in the event of his extradition to Uzbekistan, and that if extradition was to take place it would expose him to that risk. Article 3 of the Convention reads as follows:

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

117. The Government contested these arguments.

A. Submissions by the parties

1. *The Government*

118. The Government in their submissions argued that the applicant’s allegations that he risked ill-treatment in the event of his extradition to Uzbekistan had been considered by the national authorities and dismissed on sufficient grounds. Referring to the decisions of the prosecution and immigration authorities and the domestic courts in the course of the extradition and asylum proceedings, the Government argued that his claims had been duly reviewed and found to be devoid of any proof. In their opinion, the assurances presented to the Russian authorities by the Prosecutor General’s Office of Uzbekistan were sufficient and coherent with the countries’ international obligations and domestic legal developments.

119. As regards the existence of this risk, the Government in their submissions considered the applicant’s claims to be overbroad, unfounded, and deceptive. Referring to the case of *Mamatkulov and Askarov v. Turkey*

[GC] (nos. 46827/99 and 46951/99, § 73, ECHR 2005-I) they stressed that while the resources available to the Court described the general situation in a country, specific allegations of an applicant had to be supported by other evidence; no such evidence had been submitted in the present case. They stated that situation in Uzbekistan was not so grave as to render any extradition impossible. Moreover, they highlighted the fact that nothing in the Court's case-law supported the argument that any of the people actually extradited from Russia to Uzbekistan had ever been subjected to ill-treatment.

120. Turning to the applicant's conduct, they stated that between 2008 and 2012 and until his apprehension, the applicant had made no effort to legalise his status in Russia or request protection and asylum. On the contrary, he had been engaged in criminal activities in Russia and convicted for using forged documents. They pointed to the inconsistency of the applicant's statements in the extradition and asylum proceedings. During his apprehension on 13 June 2012, the applicant stated that he had left Uzbekistan to evade prosecution for watching extremist material, while in the asylum proceedings he had referred only to the extortionist demands of the authorities towards his business. They further mentioned that right after his apprehension, the applicant had stated that he intended to return to Uzbekistan to resolve the situation with his prosecution. Accordingly, in the Government's opinion, the applicant had had no real fear of being exposed to ill-treatment in the event of his return to Uzbekistan.

2. The applicant

121. The applicant's representatives in their submissions argued that the national authorities' consideration of the claims regarding the risk of ill-treatment had been formalistic and perfunctory.

122. They referred to the absolute nature of protection afforded by Article 3 of the Convention and stated that in the present case, the national authorities had failed to discharge their obligation to duly review the applicant's claims that he would face a real and imminent risk of ill-treatment in Uzbekistan. In this connection, they specifically noted that the authorities' outward reliance on the assurances provided by the Prosecutor General's Office of Uzbekistan had been unjustified in view of their general nature and wording. They further stated that according to the Court's case-law, assurances provided by national authorities were insufficient in themselves where there was reliable evidence of resorting to or tolerating treatment contrary to the principle of the Convention (*Ryabikin v. Russia*, no. 8320/04, § 119, 19 June 2008). In the opinion of the applicant's representatives, the same approach disqualified the Government's reliance on ratification by Uzbekistan of international human rights treaties and regular submissions to the United Nations bodies.

123. In reply to the Government's argument about the applicant's failure to present the national authorities with specific evidence pertaining to his personal situation and justifying his fear of ill-treatment in Uzbekistan, they contended that, considering the reports by international organisations and the Court's judgments in similar cases, the existence of charges involving religious and politically motivated crimes directly and indisputably placed the applicant in the group of individuals systematically subjected to ill-treatment. The applicant's allegations before the national authorities had therefore been sufficiently supported by the available evidence.

124. The applicant's representatives did not dispute the applicant's statements on 13 June 2012 concerning his wish to return to Uzbekistan to clarify the situation with his prosecution, but they surmised that the Government had erred in their conclusions. The applicant, who had left Uzbekistan in 2008, had been largely unaware of any developments in his case, including the existence of a search and arrest warrant and, having had scarce contact with his family and relatives, he had been naturally inclined to remedy this lack of information. However, none of this proves that he had had no fear of ill-treatment, especially considering his statements to a cellmate in Orenburg.

125. Lastly, they contended that the Government's reliance on examining the applicant's claims in the asylum proceedings was unfounded. In their opinion, these proceedings were incapable of preventing extradition and thus in principle did not provide for due and effective consideration of allegations of a risk of ill-treatment. Furthermore, the applicant's asylum request had been dismissed in the preliminary consideration procedure and thus had never been properly considered on the merits.

B. The Court's assessment

1. Admissibility

126. The Court notes that these complaints 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) General principles

127. The Court reiterates at the outset that Contracting States have the right, as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94), and that the right to asylum is not

explicitly protected by either the Convention or its Protocols (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, ECHR 2007 I).

128. However it is the Court's settled case-law that expulsion or extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3 (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

129. The assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of Article 3 inevitably requires the Court to assess the conditions in the destination country against the standards of that Convention provision (see *Mamatkulov and Askarov* [GC], cited above, § 67). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative and depends on all the circumstances of the case (see *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

130. In determining whether it has been shown that the applicant runs a real risk of suffering treatment proscribed by Article 3 if extradited, the Court will examine the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Saadi*, cited above, § 128). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition; the Court is not precluded, however, from having regard to information which comes to light subsequent to the extradition. This may be of value in confirming or refuting the assessment that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215; and *Mamatkulov and Askarov* [GC], cited above, § 69).

131. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin*, cited above, § 112).

132. As regards the general situation in a particular country, the Court can attach a certain importance to the information contained in recent reports by independent international human rights protection associations or governmental sources (see *Saadi*, cited above, § 131, with further references). Furthermore, in assessing whether there is a risk of ill-treatment in the requesting country, the Court assesses the general situation in that country, taking into account any indications of improvement or worsening of the human-rights situation in general or in respect of a particular group or area that might be relevant to the applicant's personal circumstances (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 337, ECHR 2005-III).

133. At the same time, reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence, with reference to the individual circumstances substantiating his fears of ill-treatment (see *Mamatkulov and Askarov* [GC], cited above, § 73, and *Dzhaksybergenov v. Ukraine*, no. 12343/10, §37, 10 February 2011).

134. In a case where assurances have been provided by the receiving State, they constitute a further relevant factor the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Saadi*, cited above, § 148, and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 187, ECHR 2012).

135. In respect of the standard of review of ill-treatment claims on the domestic level the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic material as well as by material originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see *Salah Sheekh*, cited above, § 136, and *Ismoilov and Others v. Russia*, no. 2947/06, § 120, 24 April 2008).

136. In the recent cases against the Russian Federation examined under Article 3 concerning the extradition of applicants to Uzbekistan and Tajikistan, the Court identified the critical elements to be subjected to a searching scrutiny (see, among many other authorities, *Iskandarov v. Russia*, no. 17185/05, 23 September 2010; *Savridin Dzhurayev*, cited above; *Kasymakhunov v. Russia*, no. 29604/12, 14 November 2013;

Abdulkhakov v. Russia, no. 14743/11, October 2012; *Muminov v. Russia*, no. 42502/06, 11 December 2008; and *Zokhidov*, cited above).

137. Firstly, it has to be considered whether an applicant has presented the national authorities with substantial grounds for believing that he faced a real risk of ill-treatment in the destination country (see e.g. *Garabayev v. Russia*, no. 38411/02, § 78, 7 June 2007). Secondly, the Court would inquire into whether the claim has been assessed adequately by the competent national authorities discharging their procedural obligations under Article 3 of the Convention and whether their conclusions were sufficiently supported by relevant material (see e.g. *Muminov v. Russia*, no. 42502/06, § 87, 11 December 2008). Lastly, having regard to all of the substantive aspects of a case and the available relevant information, the Court would assess the existence of the real risk of suffering torture or treatment incompatible with the Convention standards (see e.g. *Ismoilov and Others v. Russia*, no. 2947/06, §§ 120-124, 24 April 2008).

(b) Application of these principles to the present case

(i) Existence of substantial grounds for believing that the applicant faced a real risk of ill-treatment

138. As has been stated above, the Court's initial task is to satisfy itself that the national authorities were presented with sufficiently substantiated and specific grounds for believing that the applicant faced a real risk of ill-treatment in the destination country.

139. At the outset, the Court notes that for more than a decade the United Nations agencies and international non-governmental organisations (see paragraphs 112-115) issued alarming reports concerning the situation of the criminal justice system in Uzbekistan, the use of torture and ill-treatment techniques by law enforcement agencies, severe conditions in detention facilities, systemic persecution of political opposition, and harsh treatment of certain religious groups. This view of the situation in the country is also partly shared by the Russian authorities, since in 2009 the Russian Ministry of Foreign Affairs, describing the situation in Uzbekistan, recognised the reliance in criminal trials on forced confessions and much stricter regimes of incarceration for those convicted of anti-State, religious and politically motivated crimes (see paragraph 35 above).

140. The Court has been previously confronted with other cases concerning removals from the Russian Federation to Uzbekistan of those accused by the Uzbek authorities of criminal, religious and political activities (see most recently, among many other authorities, *Ermakov v. Russia*, no. 43165/10, 7 November 2013; *Kasymakhunov*, cited above; and *Ismailov v. Russia*, no. 20110/13, 17 April 2014). In these and other similar cases, the Court systematically found that extradition or expulsion of the applicants to Uzbekistan in the face of their prosecution for extremism

would run contrary to Article 3 of the Convention by exposing them to a risk of ill-treatment at the hands of the law enforcement agencies, despite heinous nature of these crimes and threats to national security.

141. Having regard to the above-mentioned reports by the international and non-governmental organisations and its case-law, the Court concludes that the Russian authorities had substantial grounds for believing that the individuals, whose extradition was sought by the Uzbek authorities on charges of religiously or politically motivated crimes, constituted a vulnerable group, running a real risk of treatment contrary to Article 3 of the Convention in the event of their transfer to Uzbekistan.

142. Turning to the present case, it is apparent that in the context of the extradition proceedings the applicant consistently and specifically argued that he had been prosecuted for religious extremism and faced a risk of ill-treatment (see paragraphs 26 and 33 above). He thus directly stated his belonging to the above-mentioned vulnerable group.

143. The Court is conscious of the fact that in the asylum proceedings, the applicant relied on a diverging account of the reasons which triggered his departure from Uzbekistan and the grounds underlying his fear of return (see paragraphs 26, 33, 42 and 44 above). Indeed, the Russian authorities had to deal with at least two versions of events, one construed about his entrepreneurial activities and the extortionist demands of the Uzbek authorities, and the other about his distant connection to political and religious opposition in his home country.

144. Despite this inconsistency in the applicant's arguments, the Court considers that the Russian authorities had at their disposal a sufficiently substantiated account indicating a real risk of ill-treatment. The international search and arrest warrant and extradition request submitted by the Uzbek authorities were clear as to their basis, namely that he was wanted for prosecution in Uzbekistan on charges of terrorism, separatism, religious and political extremism. These allegations regarding his criminal conduct and its nature remained unchanged throughout the relevant proceedings in the Russian Federation. It follows that all of the documents submitted by the Uzbek law enforcement agencies to the Russian authorities in the context of legal cooperation on extradition unequivocally stated that the applicant had been accused of religiously and politically motivated crimes.

145. This fact alone, taken in the context of the international reports regarding the systemic ill-treatment of those accused of religious and political crimes, was sufficient to definitively place the applicant within the group of individuals at a severe risk of ill-treatment in the event of their removal to Uzbekistan. Furthermore, the validity of his claims was supported by the Court's judgments regarding removals to Uzbekistan, where essentially similar claims were considered clear and sufficient to trigger European supervision under Article 3 of the Convention (see, among other authorities, *Rustamov v. Russia*, no. 11209/10, 3 July 2012; *Umirov*

v. Russia, no. 17455/11, 18 September 2012; and *Abdulkhakov*, cited above).

146. The Russian Government stressed in their submissions that nothing in the Court's case-law demonstrated that people previously extradited from Russia to Uzbekistan have ever been subjected to ill-treatment. The Court has previously noted great difficulties encountered by the lawyers and relatives in obtaining any reliable information about the situation of some of such persons following their transfers to Uzbekistan, as well as allegations of ill-treatment (see *Mamatkulov and Askarov*, cited above, § 36; *Ermakov*, cited above, §§ 98-100; and *Zokhidov*, cited above, § 76). However, even in the absence of final evidence in some of the cases, one must not overlook the absolute nature of the protection provided by Article 3 and that a serious risk of torture, inhuman or degrading treatment is sufficient to trigger the protective mechanisms of the Convention. The assumption that certain people in a comparable situation might have been fortunate enough to avoid these risks may not lessen the weight attached by the national authorities or this Court to well substantiated claims of a real risk of ill-treatment.

147. In the context of the present case, the Court is satisfied that the applicant presented the Russian authorities with substantial grounds for believing that he faced a real risk of ill-treatment in Uzbekistan.

(ii) Duty to adequately assess claims of a real risk of ill-treatment relying on sufficient relevant material

148. Having concluded that the applicant advanced at the national level a valid claim based on substantial grounds for believing in real risk of treatment contrary to Article 3 of the Convention, the Court must examine whether the authorities discharged their obligation to adequately assess this claim relying on sufficient relevant material.

149. The Court notes that the applicant argued before the domestic courts that his extradition would expose him to a real risk of being subjected to treatment contrary to Article 3, and in the Government's opinion this argument had been adequately considered by the Prosecutor General's Office and domestic courts and rejected.

150. The Court reiterates that where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011). This should not lead, however, to abdication of the Court's responsibility and a renunciation of all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance (see *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, § 69, Series A no. 246-A, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 192, ECHR 2006-V).

151. Accordingly, the Court will first assess whether the applicant's complaint received an adequate reply at the national level.

152. Turning to the present case, the Court considers that the domestic authorities did not carry out a rigorous scrutiny of the applicant's claims that he risked ill-treatment in his home country (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 82, 13 December 2012). The Court reaches this conclusion relying on two major aspects of the case.

153. Firstly, despite the applicant advancing a valid claim based on substantial grounds for believing in possible ill-treatment at the hands of the Uzbek law enforcement authorities, on 12 November 2012 the Deputy Prosecutor General of the Russian Federation authorised his extradition to Uzbekistan without examining any of the risks to him and merely referring to an absence of "obstacles" for transfer (see paragraph 30 above). No evidence has been presented by the Government to demonstrate that the Prosecutor General's Office made any effort to evaluate the risks of extradition to the country where, according to reputable international sources, the use of torture is commonplace and defence rights are habitually circumvented. Furthermore, the Deputy Prosecutor General's outright and unreserved reliance on the assurances provided by the Uzbek authorities was incompatible with the Court's established position that in themselves these assurances are not sufficient (see paragraph 134 above) and that the national authorities need to treat with caution the assurances against torture given by a State where torture is endemic or persistent (see *Yuldashev v. Russia*, no. 1248/09, § 85, 8 July 2010 with further references). Accordingly, the Court finds itself unable to conclude that the applicant's claims concerning his probable ill-treatment at the hands of the Uzbek authorities were duly considered by the prosecution authorities.

154. Secondly, the Court is of the opinion that the domestic courts had also failed to adequately assess the applicant's claims under Article 3 of the Convention.

155. At the outset, it should be noted that the applicant's representative Mr Gladkikh, in challenging the Deputy Prosecutor General's extradition authorisation in the domestic courts, consistently substantiated the risk of ill-treatment with a wide range of references to the Court's case-law, UN agencies' and non-governmental organisations' reports on the situation in Uzbekistan, and the position of some Russian State institutions (see paragraphs 32-36 above). He further argued that the applicant belonged to a "risk group" and that the extradition authorisation had been contrary to the Supreme Court's authoritative interpretation of the Russian law in its Ruling no. 11 of 14 June 2012, which demanded a rigorous examination of the relevant claims and taking into consideration of all available information.

156. On 27 December 2012 the Orenburg Regional Court, and on 12 March 2013 the Supreme Court of the Russian Federation, curtly dismissed all of the above arguments on appeal (see paragraphs 37 and 39

above). They rejected all of the claims pertaining to a risk of ill-treatment as “general” and lacking any “specific convincing arguments”. Furthermore, following the lead of the prosecution authorities, the domestic courts undisputedly attached significant weight to the assurances of the Uzbek law enforcement agencies and took them at face value, without engaging in an analysis of the context in which they were given.

157. The Court finds it difficult to reconcile the authoritative directions given by the Supreme Court to the lower courts in its Ruling no. 11 of 14 June 2012 to engage in a thorough and comprehensive review of the serious claims of ill-treatment and the restrained position taken by the Regional Court and Supreme Court itself in the present case.

158. In the appeal judgment, the Supreme Court sketchily stated that the applicant and his representative had not submitted any “convincing arguments giving weighty grounds to believe that the Uzbek authorities might subject him to torture, inhuman or degrading treatment”. Accordingly the applicant’s substantial grounds for fear were summarily dismissed without reference to any specific circumstances or material capable of proving to the contrary. It needs to be stated in this regard that even if the national court considered the applicant’s arguments substantively unconvincing, it should have dismissed these arguments only after a thorough analysis. Nothing in the material in the Court’s possession gives reason to believe that the Supreme Court, confronted with substantial grounds for believing in a real risk of ill-treatment amply supported by various international sources, honoured this claim with due and sufficient attention.

159. Furthermore, the Court does not lose sight of the fact that the Supreme Court adopted a trivial attitude towards the applicant’s claim that he risked ill-treatment, while it had been undisputedly aware of an interim measure indicated to the Government of the Russian Federation under Rule 39 of the Rules of Court on 11 March 2013. It is beyond doubt that an indication of an interim measure by an international tribunal might not in itself create a *res judicata* effect for the national courts, but at the very least indirectly calls for searching rather than passing scrutiny of the relevant matters.

160. Having regard to the conclusion reached above, the Court considers that while the applicant sufficiently substantiated his claim that he risked ill-treatment in Uzbekistan, the Russian prosecution authorities and courts failed to adequately assess his claims relying on sufficient relevant material. This failure opened the way for the applicant’s extradition to Uzbekistan, where he might have been subjected to ill-treatment. There has accordingly been a violation of Article 3 of the Convention.

(iii) Existence of a real risk of ill-treatment

161. The Court is mindful of the failure of the national authorities to rigorously review serious and reasoned claims of the applicant, which is in itself an affront to the protection mechanism established under the Convention. It would be normally redundant for an international tribunal to engage in a further detailed substantive review of the relevant matters, since the abovementioned failure even taken alone is sufficient for finding of a violation of Article 3 of the Convention. However, having regard to the specific circumstances of the case, the Court finds itself compelled to further examine whether the applicant would be exposed to a real risk of ill-treatment in the event of his transfer to Uzbekistan.

162. Turning to the present case, the Court once again notes that in the recent years, there has been no improvement in either the criminal justice system of Uzbekistan in general, nor in the specific treatment of those prosecuted for religiously and politically motivated crimes. It appears that the use of torture, forced confessions and the denial of access to lawyers remain commonplace (paragraphs 112-115 above).

163. It has been established above that the applicant had presented the Russian authorities with evidence capable of proving that there were substantial grounds for his claims that he belonged to a group of people systematically subjected to ill-treatment in Uzbekistan in connection with their prosecution for religiously and politically motivated crimes. In a number of judgments cited above (paragraphs 140 and 145) the Court had concluded that removal to Uzbekistan of persons in a comparable situation would give rise to a violation of Article 3 of the Convention.

164. The Court finds that in the present case the Government have not put forward any argument capable of serving as a basis for the conclusions different from the cases cited above. As it had been established above the Russian authorities in the extradition proceedings failed to adequately assess the applicant's claims of a risk of ill-treatment and relied heavily on the assurances of the Uzbek authorities, which failed to meet the Convention requirements.

165. Accordingly, having regard to the available material disclosing a real risk of ill-treatment to persons accused, like the applicant, of religiously and politically motivated crimes, the Court concludes that authorisation of the applicant's transfer to Uzbekistan exposed him to a real risk of treatment contrary to Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S "DISAPPEARANCE"

166. The applicant's representatives submitted under Article 3 of the Convention that the Russian authorities were implicated in the applicant's disappearance, which in their opinion had resulted in his abduction and

illegal transfer to Uzbekistan. They contended that the domestic authorities had failed to take the necessary measures to prevent the applicant's disappearance. Lastly, they submitted that the investigation into the disappearance and possible abduction had been ineffective. Article 3 of the Convention reads as follows:

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

167. The Government contested these arguments.

A. Submissions by the parties

168. The applicant's representatives contended that despite the application of an interim measure under Rule 39 of the Rules of Court, the applicant's disappearance had resulted in his abduction and forcible removal to Uzbekistan performed with the assistance or at the very least the non-intervention of the Russian national authorities. In support of their position, they relied on the applicant's exceptionally early release from SIZO-3 in Orenburg, the unusual procedure followed by the administration of the detention centre, audible fragments of conversations from the video surveillance recordings and an anonymous phone call received by one of its staff. They contended that the investigation into the applicant's disappearance had evidently been ineffective; it had not been independent due to the participation of the security services, the investigation's theories were unrealistic, several obvious investigative actions had been omitted, and they had not been allowed to consult the material. Lastly, they stated that the Russian authorities, in this case as well as generally, had failed to establish a protective mechanism capable of preventing the applicant's disappearance and possible transfer to Uzbekistan.

169. The Government argued that these allegations were mere conjectures devoid of clear factual basis. They contended that nothing in the present case either indicated the involvement of the Russian authorities in the applicant's disappearance or supported the claim that he had been forcibly removed to Uzbekistan. They further argued that there were certain grounds to believe that the applicant himself would be willing to avoid any contact with the national authorities, his family and representatives. Regarding the effectiveness of the investigation into his disappearance, the Government insisted that all the necessary action had been taken in a timely fashion, and that the running of the investigation had been treated with the utmost concern and attention by the law enforcement agencies. Regarding the measures taken by the authorities to protect the applicant from possible removal to Uzbekistan, they argued that the immigration and law enforcement agencies had been ordered to refrain from removing him, the Federal Migration Service had been considering his application for

temporary asylum, and that each disappearance case had been investigated, with those responsible having made the best efforts possible.

B. The Court's assessment

1. Admissibility

170. The Court notes that these complaints 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

171. The Court observes that the parties' arguments raise three distinct issues, namely whether the authorities (i) complied with their obligation to protect the applicant against the risk of treatment contrary to Article 3 of the Convention, (ii) conducted an effective investigation into the applicant's disappearance, and (iii) should be held accountable for the applicant's disappearance.

172. Having regard to the complexity of the facts and distinctiveness of the applicable legal standards, the Court must examine each of these issues separately.

(a) Whether the authorities complied with their obligation to protect the applicant against a risk of treatment contrary to Article 3 of the Convention

173. The Court reiterates at the outset that the obligation on Contracting Parties under Article 1 of the Convention, to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 198, ECHR 2012, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 115, ECHR 2000-III). Those measures should provide effective protection, in particular, to vulnerable people and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V, and, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII). Where the authorities of a State party are informed of a real and immediate risk of exposure to torture and ill-treatment, they have an obligation under the Convention to take, within the scope of their powers, such preventive operational measures that,

judged reasonably, might be expected to avoid that risk (see, *mutatis mutandis*, *Osman*, § 116, and *Savridin Dzhurayev*, § 180, both cited above).

174. At the same time, it is a well-established position of the Court that the scope of any positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 245, ECHR 2011 (extracts)).

175. The Court must start its examination by establishing whether the authorities were aware that the applicant faced a real and immediate risk of exposure to ill-treatment after his release from detention on 13 June 2013.

176. It has been established above that the applicant belongs to a group of people systematically subjected to ill-treatment in Uzbekistan and Tajikistan in connection with their prosecution for religiously and politically motivated crimes. Furthermore, the factual pattern in the applicant's case is appreciably similar to other cases where it has been established that people whose extradition had been sought on similar charges were forcibly transferred from the Russian Federation to one of the Uzbekistan and Tajikistan (see, among other authorities, *Iskandarov*; *Abdulkhakov*; *Savridin Dzhurayev*, and *Kasymakhunov*, all cited above).

177. Without reflecting on the Russian Government's consistent position on the absence of their involvement in these and other irregular transfers, the Court is convinced that at the very least, the authorities were aware of these incidents and judging by their experience and knowledge, must have reasonably considered that the applicant faced a similar real and imminent risk of disappearance and irregular transfer right after his release. This conclusion is further supported by the fact that on 11 March 2013 the Court indicated to the Government a relevant interim measure under Rule 39 of the Rules of Court preventing his extradition to Uzbekistan until further notice.

178. The authorities' awareness and sensitivity in similar factual situations should have also been advanced by the five Committee of Ministers' decisions of 8 March, 6 June, 23 September, 6 December 2012 and 7 March 2013 regarding certain applicants' abductions and forced transfers to Uzbekistan and Tajikistan (the relevant parts of which are reproduced in *Savridin Dzhurayev*, cited above, §§ 122-26). In each of these decisions, the Russian authorities were invited to ensure that no similar incidents would occur in future by introducing special protective measures.

179. The authorities' awareness of the existence of such risks in the present case is proven by the fact that indication of the interim measure under Rule 39 was explicitly mentioned in the Prosecutor General's Office

decision to release the applicant on 13 June 2013 (see paragraph 53 above). It is further confirmed beyond doubt by the statement of the head of the SIZO-3 detention facility to the investigating authorities that during detention and after the decision to release, he was aware of the applicant's concerns for his safety after release (see paragraph 78 above).

180. Lastly, on 13 June 2013, the day the applicant was released and disappeared, his representative Mr Gladkikh immediately informed the Investigative Committee, Prosecutor General's Office, Border Guards Service and FSB. He explicitly stated that the applicant was facing a risk of unlawful transfer to Uzbekistan (see paragraph 55 above).

181. Accordingly, the Court is satisfied that the Russian authorities were aware before and after the applicants' release that he faced a real and immediate risk of forcible transfer and exposure to torture and ill-treatment.

182. It is evident for the Court that the present case differs significantly from the extradition to Uzbekistan and Tajikistan cases mentioned above, in the fact that the applicant disappeared after release without reliable proof of him being transferred to Uzbekistan. However, this difference is immaterial for the present analysis, since the Russian authorities by their own admission (see paragraph 176 above) were aware of the general situation and specific concerns of the applicant, and treated the risk as serious, real, and immediate.

183. The next step in the Court's examination must be to analyse whether the State took preventive operational measures that, judged reasonably, might have been expected to avoid the risk of forcible transfer and exposure to torture and ill-treatment.

184. The Court notes that the Government failed to present evidence of any timely preventive measures taken by the law enforcement agencies to avert the risk of abduction after the applicant's disappearance and only some indication of the measures taken prior to release.

185. Relying on the material in its possession, the Court is able to discern only one preventive measure taken by the administration of the detention facility SIZO-3 aimed at addressing the applicant's fear for his safety after release, namely his release outside of regular working hours (see paragraph 78 above); however, the relevance and effectiveness of this measure were never explained.

186. While an early morning release was considered by the head of SIZO-3 to be an appropriate measure to ensure the applicant's safety in the face of his fears, the Court fails to grasp the significance or expected benefit of this measure. On the contrary, it appears that letting out of the detention facility the person fearing unlawful and covert action, alone and outside of the normal working hours, might have been one of the contributing factors to his disappearance, partly because of the failure of Mr Gladkikh to meet his client.

187. It is not disputed by the parties that since 11 June 2013 until the day of the applicant's release the applicant's representative Mr Gladkikh consistently enquired about the date and time of release. This fact is definitively corroborated by the statement the release officer of the detention facility, Mrs L.S., made to the investigator (see paragraph 77 above). Furthermore, in the same statement she stated that during his release, the applicant had specifically enquired whether his lawyer had been present.

188. Admittedly, the Government is correct in highlighting certain inconsistencies in Mr Gladkikh's statements to the national authorities and the Court made on 13 June 2013 concerning the events that day (see paragraphs 54 and 55 above), namely that he gave 7.15 a.m. and 7.30 a.m. as the time of the applicant's release and whether he had been informed of the time of that release. They further pointed out that since Mr Gladkikh alleged that he had been in front of SIZO-3 on the day in question since 6 a.m., he had been bound to have encountered the applicant next to the only entrance to the building, despite the actual time of release.

189. However, in the Court's opinion, the factual relevance of these arguments does not render them decisive. The authorities decided to release the applicant early in the morning in the absence of Mr Gladkikh despite clear requests from both of them and consequently diminished the marginal value of the devised protective measure. Indeed, as the Government stressed in their submissions, the Russian legislation does not prescribe a detainee's release in the presence of a lawyer, but nor does it prescribe his release at 6 a.m. Accordingly, it might not have been reasonably expected that the applicant's early release in the light of the failure to secure the presence of his lawyer could counterbalance the risk of forcible transfer to Uzbekistan.

190. Lastly, it has to be noted that despite the law enforcement agencies being notified by Mr Gladkikh of the applicant's disappearance virtually immediately, nothing in the material in the Court's possession indicates that any steps were taken by the authorities for several days. It is evident that in the event of a disappearance of a person belonging to a vulnerable group of people facing the risk of abduction, any protracted and unjustified delay diminishes the effectiveness of any subsequent action. In the present case, the Government failed to inform the Court of any timely preventive measure taken by the competent State authorities subsequent to the applicant's disappearance, and it must therefore be inferred that no such measure had been implemented.

191. Having regard to the above findings, it must be concluded that the national authorities were aware before the applicants' release of a real and immediate risk of forcible transfer and exposure to torture and ill-treatment, but failed to take any preventive protection measures against this risk. Accordingly, there has been a violation of Article 3 of the Convention on this account.

(b) Whether the authorities conducted an effective investigation into the applicant's "disappearance"

192. The Court reiterates that Article 3, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation into any arguable claim of torture or ill-treatment by State agents. Such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *El-Masri*, cited above, § 182).

193. The investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions (see *Assenov and Others*, cited above, § 103; *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); and *El-Masri*, cited above, § 183). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 104, ECHR 1999-IV; *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000; and *El-Masri*, cited above, § 183). The investigation should be independent from the executive in both institutional and practical terms (see *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports of Judgments and Decisions* 1998-IV; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004) and allow the victim to participate effectively in the investigation in one form or another (see, *mutatis mutandis*, *Oğur*, § 92, and *El-Masri*, §§ 184-85, both cited above).

194. In the Court's view, all the above principles apply to the situation of an individual's exposure to a real and imminent risk of torture and ill-treatment through his forcible transfer to another State. Where the authorities of a State party are informed of such an incident, they have an obligation under the Convention to conduct an effective investigation (see *Savridin Dzhurayev*, cited above, § 190).

195. The Court acknowledges the recent legislative reforms, which resulted in a series of amendments to the Criminal Procedure Code, significantly broadening the powers of investigative authorities to conduct preliminary inquiries into the reports of a crime, improving the legal status of victims and witnesses and making it more possible to discover and secure

evidence in a prompt and definitive manner (see paragraphs 100-103 above). The Court considers that these reforms, at least in principle, better equipped the law enforcement agencies to deal with the applicant's reported disappearance and allegations of his abduction.

196. The Court notes that between 19 and 27 June 2013 the investigator conducting a preliminary inquiry into the applicant's disappearance examined his cell in SIZO-3, seized his personal file and the available video surveillance recordings, questioned four officers of the detention facility who were present during the release, and obtained a copy of the extradition case file. He also questioned the applicant's cellmate, representative, officers of the FSB and Anti-Extremism Department in the Orenburg Region, and contacted the Federal Migration Service, Border Guards Service and Transport Department of the Ministry of Internal Affairs to verify whether the applicant had been arrested, had crossed the State border or had bought train or airline tickets.

197. On 27 June 2013 on the basis of the information obtained during the preliminary inquiry, a criminal investigation into the applicant's disappearance was initiated. In the course of the following month and a half, the inter-agency investigative group repeatedly questioned all the detention facility officers present during the release, the applicant's cellmate and representative, and officers of the law enforcement agencies involved in the applicant's initial apprehension and extradition. They also sent requests for legal cooperation to the Uzbek authorities, located the applicant's relatives, put the applicant's name on the list of missing persons, monitored the sale of tickets and border crossings, and sent multiple information requests to various agencies.

198. While the Court notes the diversity and multiplicity of the actions taken during the preliminary inquiry and initial stage of the criminal investigation, it finds itself unable to conclude that the investigation into the applicant's disappearance was effective for the following reasons.

199. Firstly, it is impossible for the Court to overlook the fact that there was an unexplained delay of six days between notification of disappearance by the applicant's representative on 13 June 2013 and the first steps of the preliminary inquiry on 19 June 2013. It is beyond doubt that promptness is a key factor in investigating a disappearance and suspected international abduction and for this reason, the period of six days spent by the law enforcement agencies in settling jurisdictional issues and transferring the case file was evidently excessive and demonstrated a lack of diligence on their part. In the Court's view, the delayed commencement of the inquiry resulted in a loss of precious time, which had a negative impact on the success of the investigation (see, *mutatis mutandis*, *Mikheyev v. Russia*, no. 77617/01, § 114, 26 January 2006; *Polonskiy v. Russia*, no. 30033/05, § 111, 19 March 2009; and *Dobriyeva and Others v. Russia*, no. 18407/10, § 74, 19 December 2013).

200. Secondly, the Court observes that from the day of the applicant's disappearance, his representative Mr Gladkikh consistently alleged that he might have been abducted in order to be forcibly transferred to Uzbekistan (see paragraph 55 and 70 above). Despite the authorities' awareness of similar previous incidents, the investigation refused to entertain abduction as one of the possible theories for his disappearance, due to an alleged lack of evidence capable of substantiating it (see paragraph 75 above). The Court finds this approach of the investigative authorities disconcerting, since out of the five theories adopted by the investigation (see paragraph 73 above) there had seemingly been no evidence for the majority of them either. For example, while nothing in the material supplied by the parties indicates that the applicant was of poor health, his disappearance due to health-related reasons featured in two of the working theories of the investigation. By contrast, the applicant's abduction for forcible transfer purposes had not been adopted even as a working theory, despite falling within the factual pattern of other cases involving stayed extraditions to Uzbekistan and Tajikistan. Accordingly, the Court concludes that the investigation in the applicant's case was excessively restrictive in its interpretation of the events and ignored certain valid and plausible accounts of the events.

201. Thirdly, as stated above the first two months after the applicant's disappearance were marked by the multiplicity and diversity of the investigative actions within the preliminary inquiry and criminal investigation procedures. However, the Court is unaware of any developments in the investigation of the incident beyond August 2013. The applicant's fate remains unresolved. The Government did not provide any information, and the applicant's representatives alleged that there had effectively been no progress in the case. Under these circumstances, the Court must presume that after August 2013 the investigation stalled without any results being achieved, new actions planned or conclusions reached by the law enforcement agencies. No reasons were advanced by the respondent Government to justify this unexpected suspension of activities. Thus, despite the initial active approach of the investigative authorities, the Court concludes that the subsequent cessation of activities irreparably undermined the effectiveness of the investigation.

202. In view of the conclusions presented above, the Court finds that the authorities did not conduct an effective investigation into the applicant's disappearance and possible forcible transfer to Uzbekistan, where he might be exposed to a real and imminent risk of torture and ill-treatment, contrary to Article 3 of the Convention.

(c) Whether the authorities are accountable for the applicant's "disappearance"

203. At the outset, the Court notes that the obligation of a State to put in place the necessary protective measures for an applicant fearing abduction is

an obligation of means and not of an end. It would be untenable to oblige a High Contracting Party to devise a system of measures capable of protecting a person from all eventualities of life and to ensure absolute success of these measures. Consequently, no direct and solid inference can be drawn from the Court's conclusions that no adequate protective mechanism had been established and the fact that the applicant disappeared.

204. Considering the gravity of the allegation of State agents' involvement in the forcible removal and concealment of the applicant, the Court deems it indispensable to have sufficient, clear and convincing evidence to reach the conclusion suggested by the applicant's representatives. Previously, to be persuaded of similar allegations, the Court has relied on, among other factors, crossing the State border by regular flights despite border controls (see *Iskandarov*, §§ 113-15, and *Ermakov v. Russia*, § 180, both cited above) or the sudden inexplicable disappearance of an applicant from Russia with an almost immediate reappearance in the home country (see *Savridin Dzhurayev*, cited above, § 202). None of the comparable factual and evidentiary arrangements can be observed in this case.

205. The applicant's representatives attached a great deal of importance to irregularities in the applicant's release and argued, by reference to previous cases, that the involvement of the State in the applicant's disappearance could be surmised. In their submissions, they relied heavily on the contents of the video surveillance recording provided by the Government (see paragraphs 91–95 above), alleging that audible fragments of conversations among the officers of the detention facility supported their position.

206. The Court does not find itself able to concur with the applicant's representatives in interpreting the recording. The audible fragments are patently inconclusive and, if anything, the recording proves the validity of the Government's arguments that the applicant had indeed been released, and that it had happened within the time-frame indicated by the authorities of the respondent State.

207. Accordingly, in the present case, the Court does not find it possible to decide on the existence of an established practice of non-compliance with interim measures by the Russian authorities, which had been supposed in the Minister's Deputies decision at their 1193rd meeting on 4-6 March 2014. Nor does it consider indispensable, in the framework of this case, to resort to using the factual presumptions welcomed previously in the Parliamentary Assembly's Resolution 1991 (2014) of 10 April 2014. Even if there were grounds to confirm the development, by certain authorities, of a practice of non-compliance with interim measures (see paragraph 110 above) the facts of each case must be assessed individually in order to attribute responsibility to the Respondent State.

208. While it's regrettable that the applicant's release had been marked by irregularities and most evidently by his early morning discharge from the detention facility, these facts alone or even in conjunction with an anonymous telephone call alleging that the applicant had been transferred to Uzbekistan are incapable of credibly proving the involvement of State agents in the applicant's disappearance or their failure to act in the face of an unlawful removal by others.

209. Having regard to all of the material in its possession, the parties' arguments, the conclusions reached above, and a lack of any convincing reports on the applicant's whereabouts, the Court does not find it possible to conclude that the Russian authorities were implicated in the applicant's disappearance. Accordingly, in this respect there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

210. The applicant complained under Article 13 of the Convention of a lack of effective domestic remedies in Russia in respect of his complaint under Article 3 of the Convention. Article 13 reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

211. In the Court's opinion it raises the issues similar to those already examined under Article 3 of the Convention. In view of its reasoning and findings made under the latter provision (see paragraphs 160, 191 and 202 above), the Court does not consider it necessary to deal with the complaint under Article 13 of the Convention and decides to reject it under Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED INTERFERENCE WITH RIGHT TO INDIVIDUAL APPLICATION UNDER ARTICLE 34 OF THE CONVENTION.

212. The applicant's representatives alleged that his disappearance and possible unlawful removal from Russia, the failure of the Russian authorities to put in place the necessary protective measures, and the lack of an effective investigation into the matter had been in breach of the interim measure indicated by the Court under Rule 39. These claims, substantively focusing on a violation of the right to individual application, fall to be examined under Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

213. Rule 39 of the Rules of Court provides:

“1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.”

214. The Court reiterates that, by virtue of Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, which has been consistently reaffirmed as a cornerstone of the Convention system. According to the Court’s established case-law, a respondent State’s failure to comply with an interim measure entails a violation of that right (see *Mamatkulov and Askarov*, §§ 102 and 125, and *Abdulkhakov*, § 222, both cited above). The Court does not find it necessary to once again elaborate at length on the importance of interim measures in the Convention system and their exceptional nature calling for maximal cooperation of the State, since these principles are distinctly well-established.

215. However, it is alarming that the authorities’ conduct appears to follow the same pattern, namely its failure to comply with an interim measure indicated under Rule 39 of the Rules of Court in respect of applicants criminally prosecuted in Uzbekistan and Tajikistan (see *Kasymakhunov*, §§ 183-89, and *Savridin Dzhurayev*, §§ 216-19, both cited above). In the present circumstances, the Court will consider its previous judgments, the position of other Council of Europe institutions, and the unprecedented and recurring nature of related incidents as a decisive contextual factor in the present analysis.

216. The Government, in their opinion, fully complied with their obligations under Rule 39 of the Rules of Court and Article 34 of the Convention by informing the relevant law enforcement agencies of the indicated measure and refraining from removing the applicant to Uzbekistan. The Court finds itself unable to concur.

217. As has been established above, the national authorities neither put in place the protective measures capable of preventing his disappearance and possible transfer to Uzbekistan, nor effectively investigated that possibility (see paragraphs 191 and 202 above). These conclusions, contrasted against the background of irregularities reoccurring in extradition cases against Russia, force the Court to conclude that at the very least the Russian authorities failed to comply with the indicated interim measure, by failing to act with the necessary and required diligence.

218. Evidently, the disappearance of an applicant creates a precarious situation whereby he is deprived of the protection afforded by the

Convention mechanism and prevented from participating in the proceedings before the Court, and puts into question the execution of a judgment should it become final.

219. Consequently, the Court concludes that Russia disregarded the interim measure indicated by the Court in the present case under Rule 39 of the Rules of Court and therefore failed to comply with its obligation under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

220. 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

221. The applicant’s representatives claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

222. The Government stated there was no explanation of the damage caused to the applicant, since there was no evidence that he had been transferred to Uzbekistan or subjected to treatment contrary to Article 3 of the Convention.

223. Having regard to the nature of the established violations of Article 3 of the Convention and specific facts of the present case, and acting on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

224. The applicant’s representatives also claimed EUR 6,400 for the costs and expenses incurred in the domestic proceedings and EUR 10,600 for those incurred before the Court.

225. The Government, referring to the case of *McCann and Others v. the United Kingdom* (27 September 1995, § 220, Series A no. 324), alleged that the claimed costs had not been actually and necessarily incurred, and that they were rather vague and not based on supporting documents. They concluded that the claims were excessive and unsubstantiated.

226. 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 6,400 covering costs and expenses in the domestic proceedings and EUR 5,000 for the proceedings before the Court, to be paid to the representatives' bank accounts.

C. Default interest

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

VI. APPLICATION OF ARTICLE 46 OF THE CONVENTION

228. The relevant part of Article 46 of the Convention read:

“Article 46. Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution....”

229. The Court notes that the present case disclosed several violations of one of the core rights protected by Article 3 of the Convention, disregard of the interim measure indicated under Rule 39 of the Rules of Court, and interference with the right to individual petition under Article 34 of the Convention. Furthermore the Court is mindful that the applicant's whereabouts are still unknown and there is no indication that any progress had been reached by the national authorities in their attempts to investigate the relevant events.

230. Having regard to the above considerations, bearing in mind a precarious situation whereby the applicant is currently deprived of the protection afforded by the Convention mechanism and being concerned with ensuring binding force and execution of the present judgment, the Court finds itself compelled to examine certain aspects of the present case under Article 46 of the Convention.

A. Payment of just satisfaction

231. In view of the fact that applicant's whereabouts are still unknown, the Court is concerned, to begin with, about how the respondent State will discharge its obligation to pay just satisfaction. The Court has already been confronted with largely similar situations involving applicants that happened to be unreachable after their removal from the respondent State. In some of those cases, it has indicated that the respondent State must secure its payment of just satisfaction by facilitating contact between the

applicants, their representatives and the Committee of Ministers (see *Muminov v. Russia* (just satisfaction), no. 42502/06, § 19 and point (c) of the operative part, 4 November 2010, and *Kamaliyevy v. Russia* (just satisfaction), no. 52812/07, § 14 and point 1(c) of the operative part, 28 June 2011). In other cases, the Court has ordered awards to be held by the applicants' representatives in trust for the applicants (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 215, and point 12 of the operative part, ECHR 2012; *Labsi v. Slovakia*, no. 33809/08, § 155 and point 6 of the operative part, 15 May 2012; and *Savridin Dzhurayev*, cited above, § 251 and point 6 of the operative part).

232. Turning to the present case, the Court observes that after the applicant's disappearance, there was no contact between him and his representatives before the Court or his relatives. In view of this, the Court considers it appropriate that the amount awarded to him by way of just satisfaction be held for him in trust by his representative Mrs Yermolayeva until such time as payment to the applicant may be enforced.

B. Individual remedial measures in respect of the applicant

233. The Court is of the view, however, that the obligation to comply with the present judgment cannot be limited to payment of the monetary compensation awarded under Article 41, which is only designed to make reparation for such consequences of a violation that cannot otherwise be remedied (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 250, ECHR 2000-VIII).

234. The Court reiterates that the primary aim of the individual measures to be taken in response to a judgment is to achieve *restitutio in integrum*, that is, to put an end to the breach of the Convention and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

235. The Court in mindful that the need to investigate the applicant's disappearance had already been highlighted in the decision of the Ministers' Deputies at their 1176th meeting, when they "strongly insisted that light be shed on this incident and on the fate of the applicant as quickly as possible" (see paragraph 96 above).

236. While it must be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State, the adoption of such individual measures that are feasible, timely, adequate and sufficient, the Court find it indispensable for the Russian Federation to vigilantly pursue the criminal investigation into the applicant's disappearance and to take all further measures within its competence in order to put an end to the violations found and make reparations for their consequences.

C. General measures to prevent similar violations

237. In respect of general measures, the Court reiterates that in *Savridin Dzhurayev* (cited above, §§ 256-64) it stated that decisive general measures capable of resolving the recurrent problem with similar cases must be adopted without delay, including “further improving domestic remedies in extradition and expulsion cases, ensuring the lawfulness of any State action in this area, effective protection of potential victims in line with the interim measures indicated by the Court and effective investigation into every breach of such measures or similar unlawful acts” (ibid., § 258).

238. The Court is well aware of the legal, administrative, practical and security complexities entangled in the execution of its judgments, and therefore does not find it reasonable to develop any further the approach, which had been previously adopted in *Savridin Dzhurayev* (cited above).

239. Nevertheless having regard to the present case the Court finds it important to state that in *Savridin Dzhurayev*, cited above, § 259, it approvingly mentioned “the recent significant development of the domestic jurisprudence undertaken by the Supreme Court of the Russian Federation in its Ruling no. 11 of 14 June 2012”. The Ruling was considered as the tool allowing the judiciary to avoid such failings as those criticised in that judgment and further develop emerging domestic case-law that directly applies the Convention requirements through judicial practice. Despite finding in the present case that the Supreme Court itself fell short of applying its Ruling no. 11 of 14 June 2012 (see paragraph 157 above), the Court still maintains its opinion that a genuine and rigorous application of that Ruling by all Russian courts is capable of improving domestic remedies in extradition and expulsion cases.

VII. APPLICATION OF AN INTERIM MEASURE UNDER RULE 39 OF THE RULES OF COURT

240. On 11 March 2013 the Acting President of the First Section indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice. The Government in their submissions stated that they had taken all the necessary steps to comply with the measure indicated by the Court.

241. Having regard to the fact that the applicant’s whereabouts are still unknown, the other circumstances of the present case, the established violations of the Convention rights, and in pursuit of the interests of the proper conduct of the proceedings, the Court considers it indispensable to maintain the application of the previously indicated measure under Rule 39 of the Rules of Court until such time as the present judgment becomes final.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to duly examine the applicant's claims that he risked a real and imminent risk of torture and ill-treatment in Uzbekistan;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of exposing the applicant to a real and imminent risk of torture and ill-treatment by authorising his extradition to Uzbekistan;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the national authorities to put in place protective measures against the risk of exposure to torture and ill-treatment after the applicant's release from the detention facility;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's disappearance;
6. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged involvement of the national authorities in the applicant's disappearance;
7. *Holds* that the respondent State has disregarded the interim measure indicated by the Court under Rule 39 of the Rules of Court and therefore failed to comply with its obligations under Article 34 of the Convention.
8. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to be held for him in trust by his representative Mrs Yermolayeva until such time as payment to the applicant may be enforced;
 - (ii) EUR 11,400 (eleven thousand four hundred euros), plus any tax that may be chargeable to the applicant, with EUR 6,400 (six thousand four hundred euros) to be paid to his representative

Mr Gladkikh's bank account and EUR 5,000 (five thousand euros) to his representative Mrs Yermolayeva's bank account;

(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.

10. *Decides* to continue to indicate to the Government that it is desirable in the interests of the proper conduct of the proceedings to maintain application of previously indicated measure under Rule 39 of the Rules of Court until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 23 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President