

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

FIRST SECTION

CASE OF ESHONKULOV v. RUSSIA

(Application no. 68900/13)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

01/06/2015

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



In the case of Eshonkulov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 68900/13) 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 a national of Uzbekistan, Mr Javokhir Eshonkulov ("the applicant"), on 4 November 2013.

2. The applicant was represented by Ms D. Trenina and Ms Ye. Ryabinina, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his removal to Uzbekistan would expose him to a high risk of ill-treatment in breach of Article 3 of the Convention. He complained that his detention in the framework of removal proceedings had been incompatible with the requirements of Article 5 § 1 (f) of the Convention and that the wording of the judicial decision breached his presumption of innocence.

4. On 5 November 2013 the Acting President of the First Section decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicant should not be expelled from Russia for the duration of the proceedings before the Court. The Acting President also decided to give priority to the application under Rule 41.

5. On 10 January 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1983 and has lived in Moscow since 15 May 2012.

A. The applicant's arrest and extradition proceedings

7. On 27 April 2013 the applicant was arrested in Moscow on the basis of an arrest warrant that had been issued on 15 November 2012 by a criminal court in the Uzbek city of Qarshi. The applicant was charged with participation in banned religious organisations, including the Islamic Movement of Uzbekistan, dissemination of ideas of religious extremism, and organisation of illegal departure of persons to foreign countries, including for training in terrorist camps in Pakistan.

8. On 30 April 2013 the Simonovskiy District Court of Moscow approved the applicant's detention pending extradition. Following the receipt of extradition request, the applicant's detention was extended until 27 October 2013.

9. On 22 October 2013 the Russian Prosecutor General granted the request of his Uzbekistani counterpart for the applicant's extradition. The extradition decision read in particular as follows:

> "Mr Eshonkulov is accused of ... having committed the following crimes in the period from December 2011 to September 2012 in the territory of the Russian Federation:
>
> - undermining the constitutional foundations of the Uzbekistan Republic by means of public calls to extremist activities ... calls for forcible removal of the State leaders of Uzbekistan ... incitement to undergoing training in the special sabotage and terrorism training facilities of the international terrorist organisation 'Islamic Movement of Uzbekistan' ...
>
> - used the money from his accomplices to purchase videos of the international terrorist organisation 'Islamic Movement of Uzbekistan' ... propagating the ideas of religious extremism, separatism and fundamentalism, calls to pogroms and extermination of unfaithful, and distributed those videos among Uzbek nationals ...
>
> ...
>
> The fact that Mr Eshonkulov committed crimes ... in the territory of the Russian Federation is not an obstacle to his being extradited, since the Russian competent authorities did not institute any criminal proceedings in connection with these crimes ..."

10. On 27 October 2013 the maximum six-month period of the applicant's detention pending extradition expired. From the remand prison he was taken to the Donskoy district police station where an assistant prosecutor communicated the release order to him. On his way out of the

police station, the applicant was arrested for an infringement of migration rules.

11. On 1 November 2013 counsel for the applicant submitted an appeal against the extradition decision to the Moscow City Court, complaining that the Prosecutor General gave no assessment to the risk of torture.

12. By judgment of 28 November 2013, the Moscow City Court rejected their challenge to the extradition decision, finding that there was no evidence that the applicant would be subject to unlawful prosecution or torture in Uzbekistan, and noting the assurances provided by the Uzbekistani Government to the Russian Prosecutor General. It refused to examine the reports by international human rights NGOs and UN bodies about the situation in Uzbekistan which the defence prayed in aid, finding that those documents had no direct bearing on the issues considered.

13. On 19 February 2014 the Supreme Court of the Russian Federation examined and rejected the final appeal against the extradition order. It refused likewise to take into consideration translations of the Court's judgments in similar cases or the documents from NGOs and UN bodies.

B. Expulsion proceedings

14. Following the applicant's release from custody, by judgment of 28 October 2013, the Simonovskiy District Court of Moscow found him guilty of having been unlawfully resident in Russia from February 2013 and until his arrest on 27 April 2013. The District Court sentenced the applicant to a fine and administrative expulsion from Russia. Pending expulsion, he was to be detained in Moscow Centre for Detention of Foreign Nationals no. 1.

15. On 27 February 2014 the Moscow City Court upheld the District Court's judgment. It refused to take into account the arguments by the defence about the risk of ill-treatment that the applicant would face in Uzbekistan, stating that such arguments were "based on conjectures" and were not supported with the materials in the case file. In the City Court's view, the information on Uzbekistan concerned the general situation in the country and was not indicative of a violation of the rights of the specific individuals. As regards the alleged violation of Article 5 of the Convention, the City Court simply stated that there was no violation and that the Court's findings in the *Azimov v. Russia* case were irrelevant.

C. Refugee status proceedings

16. On 20 May 2013 the applicant applied for asylum; the Russian Federal Migration Service rejected his application on 24 September 2013. On 24 October 2013 he asked for a judicial review of the refusal.

17. On 16 December 2013 the Basmannyi District Court of Moscow dismissed the applicant's appeal, finding that the applicant had not produced sufficient evidence of the risk of persecution. It held that the "reason why [the applicant] does not wish to return to Uzbekistan is his fear of the real danger of criminal prosecution". The court found no political motives in the charges levelled against the applicant and observed that the acts he was charged with were also criminal under Russian criminal law. The District Court observed that the applicant had applied for asylum only after his arrest in Russia rather than immediately after he had arrived to Russia.

18. The applicant appealed to the Moscow City Court. The City Court considered and rejected his appeal on 20 June 2014. On the alleged risk of ill-treatment, it held as follows:

> "...The claimant's assertion that 'his cousins are serving sentences in Uzbekistan for their religion' ... cannot be taken into consideration because he has not produced any evidence to substantiate his claim. Making a global assessment of the submissions, the first-instance court correctly considered that there were no grounds to assume that the claimant would face a real risk of inhuman treatment. Applying the standards for the assessment of the allegation of ill-treatment in case of his return to Uzbekistan (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 65, ECHR 2005-I), the court considers that the ill-treatment which the claimant may allegedly face in Uzbekistan would not reach the minimum threshold of severity attracting the protection of Article 3 of the Convention."

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Pursuant to section 34(5) of the Foreigners Act (Law no. 115-FZ of 25 July 2002), foreign nationals subject to administrative removal who have been placed in custody pursuant to a court order are detained in special facilities until the execution of the decision on administrative removal.

20. Article 3.10 § 1 of the Code of Administrative Offences defines administrative removal as the forced and controlled removal of a foreign national or a stateless person across the Russian border. Under Article 3.10 § 2, administrative removal is imposed by a judge or, in cases where a foreign national or a stateless person has committed an administrative offence upon entry to the Russian Federation, by a competent public official. Under Article 3.10 § 5, for the purposes of execution of the decision on administrative removal a judge may order the detention of the foreign national or the stateless person in a special facility.

21. Under Article 31.9 § 1 a decision imposing an administrative penalty ceases to be enforceable after the expiry of two years from the date on which the decision became final.

22. Article 3.9 provides that an administrative offender can be punished with administrative detention only in exceptional circumstances, and for a maximum term of thirty days.

23. In decision no. 6-R of 17 February 1998 the Constitutional Court stated, with reference to Article 22 of the Constitution concerning the right to liberty and personal integrity, that a person subject to administrative removal could be placed in detention without a court order for a term not exceeding forty-eight hours. Detention for over forty-eight hours was permitted only on the basis of a court order and provided that the administrative removal could not be effected otherwise. The court order was necessary to guarantee protection not only from arbitrary detention of over forty-eight hours, but also from arbitrary detention as such, while the court assessed the lawfulness of and reasons for the placement of the person in custody. The Constitutional Court further noted that detention for an indefinite term would amount to an inadmissible restriction on the right to liberty as it would constitute punishment not provided for in Russian law and which was contrary to the Constitution.

24. Providing guidance to the national courts on dealing with extradition requests, the Plenary 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.

III. REPORTS ON UZBEKISTAN BY INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

25. For the most recent relevant reports on Uzbekistan by the international human rights non-governmental organisations, see *Egamberdiyev v. Russia*, no. 34742/13, §§ 31-34, 26 June 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant alleged that if returned to Uzbekistan he would run a real risk of being subjected to torture and ill-treatment in breach of Article 3 of the Convention, which provides as follows:

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

A. Submissions by the parties

27. The Government submitted 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 expulsion proceedings, the Government asserted that his claims had been duly reviewed and found to be devoid of substance. In their opinion, the assurances presented to the Russian authorities by the Uzbekistani authorities were sufficient and compatible with the countries' international obligations and domestic legal developments. As regards the expulsion proceedings, the expulsion order did not specify that the applicant was to be taken to Uzbekistan, but merely stated that he was to be removed from the territory of the Russian Federation. The Government concluded that a risk of the applicant's treatment contrary to Article 3 of the Convention had not been convincingly established.

28. The applicant submitted that he had raised the issue of his risk of being subjected to ill-treatment if returned to Uzbekistan in the extradition, expulsion and refugee-status proceedings, advancing a number of specific arguments, such as an increased risk of ill-treatment of persons who were, as was the applicant, accused of participation in a banned religious activity. The Russian courts failed to analyse the nature of the charges against the applicant, disregarded the link between the charges and the risk of ill-treatment and did not examine the information from various international organisation and from the Court's judgments. The applicant rejected the Government's argument that the decision on his administrative removal did not necessarily mean that he would be expelled to Uzbekistan. No other possibility had ever been discussed in the course of the administrative proceedings and, furthermore, there was no reason to believe that any other country would be willing to accept him. His placement in the detention facility foreclosed the possibility of his voluntary and independent departure from Russia and prevented him from choosing the country of destination.

29. The applicant further submitted that there existed the administrative practice of substituting expulsion for extradition which was based on an unpublished order of the Moscow Region prosecutor, no. 86/81 of 3 July 2009, which provided that in every case of release of a detained individual because his extradition was impossible, it was mandatory to decide on his administrative expulsion from Russia. The applicant therefore maintained that his expulsion had been ordered to secure his rendition to the Uzbekistani authorities, that is to prevent him from being released and to secure either expulsion or extradition, as the case might be, and that his allegations of the risk of ill-treatment had not been thoroughly examined in the administrative expulsion proceedings.

B. The Court's assessment

1. Admissibility

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

2. Merits

31. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles set out in, among others, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

32. 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, *Savriddin Dzhurayev v. Russia*, no. 71386/10, ECHR 2013 (extracts), *Kasymakhunov v. Russia*, no. 29604/12, 14 November 2013; *Abdulkhakov v. Russia*, no. 14743/11, 2 October 2012, and *Iskandarov v. Russia*, no. 17185/05, 23 September 2010). 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. 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. 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.

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

33. At the outset, the Court reiterates that for more than a decade the United Nations agencies and international non-governmental organisations issued alarming reports concerning the situation in 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.

34. The Court has been previously confronted with many cases concerning forced return from Russia to Uzbekistan of the persons accused by the Uzbek authorities of criminal, religious and political activities (see most recently, *Egamberdiyev v. Russia*, no. 34742/13, 26 June 2014; *Akram Karimov v. Russia*, no. 62892/12, 28 May 2014; *Nizamov and Others v. Russia*, nos. 22636/13, 24034/13, 24334/13 and 24528/13, 7 May 2014, with further references). It has been the Court's constant position 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.

35. In the present case, the applicant consistently and specifically argued – in the extradition, expulsion and refugee-status proceedings – that he had been prosecuted for religious extremism and his membership of the above-mentioned vulnerable group. The same followed from the extradition documents which were produced by the requesting Uzbekistani authority. 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 religious and political extremism. These allegations regarding his criminal conduct and its nature remained unchanged throughout the relevant proceedings in the Russian Federation.

36. 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 place definitively the applicant within the group of individuals at a severe risk of ill-treatment in the event of their removal to Uzbekistan.

37. In the light of the above considerations, the Court is satisfied that the Russian authorities had before them a sufficiently corroborated claim that the applicant could face a real risk of ill-treatment if returned to Uzbekistan.

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

38. The Court will next examine whether the Russian authorities discharged their obligation to give an adequate assessment to the applicant's claim of the risk of ill-treatment in the event of his return.

39. The Court notes firstly that, despite the applicant advancing a substantiated claim of the risk of ill-treatment at the hands of the Uzbek law enforcement authorities, on 22 October 2013 the Prosecutor General's Office 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 9 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 routinely circumvented. Furthermore, the Prosecutor General's unqualified reliance on the assurances provided by the Uzbek authorities was at variance with the Court's established position that in themselves these assurances are not sufficient 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 is 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.

40. Secondly, the Court is of the opinion that the domestic courts have likewise failed to carry out a comprehensive and adequate assessment of the applicant's claims under Article 3 of the Convention. Thus, the Moscow City Court and the Supreme Court refused to consider, in the extradition proceedings, a wide range of references to the Court's case-law, UN agencies' and non-governmental organisations' reports on the situation in Uzbekistan and appeared to attach the decisive weight to the assurances of the Uzbek authorities, taking them at face value, without engaging in an analysis of the context in which they were given. 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 restricted scope of enquiry it had adopted in the present case. It needs to be recalled in this connection that even if the national courts considered the applicant's arguments substantively unconvincing, they 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 City or Supreme Courts, 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.

41. As regards the refugee-status proceedings, the Court observes that the decisions by the migration authorities and by the courts appears to give preponderant weight to the fact that the applicant had waited for too long before applying for refugee status, and that he had failed to substantiate his claim that he risked political or religious persecution. On the first point, the Court reiterates that, whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, the domestic authorities' findings as regards the failure to apply for refugee status in due time did not, as such, refute his allegations under Article 3 of the Convention (see *Ermakov v. Russia*, no. 43165/10, § 196, 7 November 2013). On the second point, the Court emphasises that the criteria that are laid down for granting refugee status are not identical to those that are used for assessment of the risk of treatment contrary to Article 3 of the Convention. The applicant made detailed submissions about the risk of his being subjected to ill-treatment if he were returned to his home country, relying on information from various international organisations and on the judgments of this Court. However, the domestic decisions only mentioned those submissions in passing and did not analyse them in any detail.

42. As to the proceedings concerning the applicant's administrative expulsion, the Court notes that the scope of the review by the domestic courts was largely confined to establishing the fact that the applicant's presence in Russia had been illegal. In this connection, the Court reiterates that, in view of the absolute nature of Article 3, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). Therefore, the domestic courts' findings as regards the applicant's failure to abide by Russian laws do not, as such, refute his allegations under Article 3 of the Convention.

43. Having regard to the foregoing, the Court is not persuaded that the applicant's allegations that he risked ill-treatment have been duly examined by the domestic authorities. It must, accordingly, assess whether there exists a real risk that the applicant would be subjected to treatment proscribed by Article 3 if he were to be removed to Uzbekistan.

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

44. The Court notes firstly that the Government in their observations pointed out that the decision on the applicant's expulsion did not specify that he was to be expelled to Uzbekistan, but merely stated that he was to be removed from the territory of Russia. However, the Court must accept the applicant's argument that no other possibility was discussed in the course of the expulsion proceedings. It notes, furthermore, that the Government provided no information regarding any other country willing to accept him. Accordingly, the Court cannot but conclude that the decision on the

applicant's administrative removal presupposed his expulsion to Uzbekistan.

45. The Court has had occasion to deal with a number of cases raising the issue of a risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, with reference to material from various sources, that the general situation with regard to human rights in Uzbekistan is alarming, that reliable international material has demonstrated the persistence of a serious issue of ill-treatment of detainees, the practice of torture against those in police custody being described as "systematic" and "indiscriminate", and that there is no concrete evidence to demonstrate any fundamental improvement in that area (see *Egamberdiyev*, *Akram Karimov*, *Kasymakhunov, Ermakov, Umirov*, all cited above; see also *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008, and *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008).

46. As regards the applicant's personal situation, the Court notes that he was wanted by the Uzbek authorities on charges related to his alleged membership of a Muslim extremist movement. Those charges constituted the basis for the extradition request and the arrest warrant issued in respect of the applicant. Thus, his situation is no different from that of other Muslims who, on account of practising their religion outside official institutions and guidelines, are charged with religious extremism or membership of banned religious organisations and, on that account, as noted in the reports and the Court's judgments cited above, are at an increased risk of ill-treatment (see, in particular, *Ermakov*, cited above, § 203).

47. The Court is bound to observe that the existence of domestic laws and international treaties guaranteeing respect for fundamental rights is not in itself sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities that are manifestly contrary to the principles of the Convention (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 128, ECHR 2012). Furthermore, the domestic authorities, as well as the Government before the Court, used summary and non-specific reasoning in an attempt to dispel the alleged risk of ill-treatment on account of the above considerations.

48. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant would face a real risk of treatment proscribed by Article 3 of the Convention if deported to Uzbekistan.

49. The Court therefore concludes that the enforcement of the expulsion order against the applicant would give rise to a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 3

50. The applicant contended, under Article 13 of the Convention, that no effective remedies were available to him in respect of his allegations that he risked ill-treatment in the event of his return to Uzbekistan. 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."

51. The Court considers that the gist of the applicant's claim under Article 13, which it finds admissible, is that the domestic authorities failed to carry out a rigorous scrutiny of the risk of ill-treatment the applicant would face in the event of his forced removal to Uzbekistan. The Court has already examined that submission in the context of Article 3 of the Convention. Having regard to its findings above, the Court considers that there is no need to examine this complaint separately on its merits (see, for a similar approach, *Azimov v. Russia*, no. 67474/11, § 145, 18 April 2013).

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

52. The applicant complained that his detention pending expulsion had been in breach of Article 5 § 1 (f) of the Convention. He further complained under Article 5 § 4 of the Convention that he had been unable to obtain a judicial review of his detention. The relevant parts of Article 5 provide as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. ..."

A. Admissibility

53. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

54. The Court will consider firstly whether there existed a possibility of effective supervision over the applicant's detention and secondly whether the applicant's detention was compatible with the requirements of Article 5 § 1 (f) (see *Kim v. Russia*, no. 44260/13, § 38, 17 July 2014, and *Azimov*, cited above, § 146 et seq.)

1. Compliance with Article 5 § 4 of the Convention

55. The Government submitted that the applicant had been able to take part in all the hearings concerning his detention and to put forward his arguments about alleged violation of Article 5 of the Convention.

56. The applicant emphasised that the Simonovskiy District Court had failed to consider his arguments and that the Moscow City Court had simply stated that there was no violation. He maintained that the Russian law did not provide for a periodic review of the lawfulness of detention following the decision on the administrative expulsion.

57. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Muminov*, cited above, § 113, and *Ismoilov and Others v. Russia*, cited above, § 145, with further references).

58. The Court notes at the outset that a judicial review of the kind required under Article 5 § 4 cannot be said to be incorporated in the initial expulsion order of 28 October 2013. The thrust of the applicant's complaint under Article 5 § 4 was not directed against the initial decision on his placement in custody but rather against his inability to obtain a judicial review of his detention after a certain lapse of time. The detention under Article 5 § 1 (f) lasts, as a rule, for a significant period and depends on circumstances which are subject to change over time. Given that since the delivery of the City Court's appeal judgment of 27 February 2014 the applicant has spent more than ten months in custody, new issues affecting the lawfulness of the detention might have arisen during that period. In such circumstances the Court considers that the requirement under Article 5 § 4 was neither incorporated in the initial detention order of 28 October 2013

nor fulfilled by the appeal court (see *Rakhimov v. Russia*, no. 50552/13, § 147).

59. The Court reiterates that, since its *Azimov* judgment which concerned a similar complaint (see *Azimov*, cited above, § 153), it has found a violation of Article 5 § 4 in a number of cases against Russia on account of the absence of any domestic legal provision which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion (see *Kim*, cited above, §§ 39-43; *Rakhimov*, cited above, §§ 148-150; *Akram Karimov*, cited above, §§ 199-204, and also *Egamberdiyev*, cited above, § 64). In the *Kim* case, the Government acknowledged a violation of Article 5 § 4 and, having regard to the recurrent nature of the violation, the Court directed that the Russian authorities should "secure in its domestic legal order a mechanism which allows individuals to institute proceedings for the examination of the lawfulness of their detention pending removal in the light of the developments in the removal proceedings" (see *Kim*, cited above, § 71).

60. As the applicant has not had at his disposal a procedure for a judicial review of the lawfulness of his detention, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

2. Compliance with Article 5 § 1 (f) of the Convention

61. The Government asserted that the applicant's detention pending expulsion had been compatible with the requirement of Article 5 § 1 of the Convention.

62. Recalling that detention cannot be considered lawful if its outer purpose differs from the real one, the applicant pointed out that the Russian authorities had been aware of the alleged violation of the migration law already at the moment of his arrest in April 2013. Nevertheless, they had not reacted anyhow until the moment of his release due to the expiry of the time-limit for extradition arrest. As the extradition order had been given shortly before the time-limit, the applicant's release was likely to be considered as a threat to the execution of the extradition order. Hence, the authorities abused their power to order his detention pending expulsion since the real objective of ordering it was to secure his further stay in custody under the authorities' control in order to organise his return to Uzbekistan. Finally, the applicant submitted that the legal provisions governing this type of detention did not set the maximum time-limit for detention pending expulsion and that in practice such detention could last up to two years which was much longer than the maximum term of penalty for an administrative offence.

63. The Court reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in

keeping with the purpose of protecting the individual from arbitrariness. The notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention must be appropriate; and the length of the detention must not exceed that reasonably required for the purpose pursued (see *Azimov*, cited above, § 161, and *Rustamov v. Russia*, no. 11209/10, § 150, 3 July 2012, with further references).

64. It is undisputed that the applicant had been residing illegally in Russia prior to his arrest and, therefore, had committed an administrative offence punishable by expulsion. The Court is satisfied that on 28 October 2013 his detention pending expulsion was ordered by a court with jurisdiction in the matter and in connection with an offence punishable by expulsion. On 27 February 2014 the City Court upheld that decision on appeal. The Court thus concludes that the authorities acted in compliance with the letter of the national law.

65. In so far as the applicant claimed that the real purpose of the expulsion proceedings was to keep him in custody pending the outcome of the extradition proceedings, the Court reiterates that detention may be unlawful if its stated purpose differs from the real one (see *Khodorkovskiy v. Russia*, no. 5829/04, § 142, 31 May 2011; *Čonka v. Belgium*, no. 51564/99, § 42, ECHR 2002-I, and *Bozano v. France*, 18 December 1986, Series A no. 111, § 60). The Court reiterates that in *Azimov*, it found that a decision ordering the applicant's detention pending expulsion had served to circumvent the maximum time-limits laid down in the domestic law for detention pending extradition and that there was evidence of a recurrent practice of Russian authorities to use the expulsion procedure instead of extradition (see *Azimov*, cited above, § 165). The applicant's situation was substantially similar to that of Mr Azimov: the maximum time-limit authorised under the Russian law in the extradition proceedings expired five days after the extradition request had been granted and his further detention in the framework of the extradition proceedings was legally impossible (see, by contrast, *Akram Karimov*, cited above, § 182, in which the extradition request had been refused and the Court found that the order could not possibly have served to circumvent the maximum time-limit for detention pending extradition). Having regard to further evidence which the applicant's submitted in support of his claim of an administrative practice of substituting expulsion for extradition, such as the unpublished order of the Moscow Region prosecutor, no. 86/81 of 3 July 2009, the existence and content of which the Government did not dispute (see paragraph 28 above), the Court considers it plausible that the new

ground for detention (the expulsion decision) was cited primarily to circumvent the requirements of the domestic law which set a maximum time-limit for the extradition detention. The Court reiterates in this respect "detention under Article 5 § 1 (f) must be carried out in good faith" and "must be closely connected to the ground of detention relied on by the Government" (see *Rustamov*, cited above, § 150). It appears that those two conditions have not been met in the present case, at least during the period when the applicant's extradition proceedings were still pending, and probably even after they were over (see *Azimov*, cited above, § 165).

66. The Court further observes that even where the purpose of the detention was legitimate, its length should not exceed that reasonably required for the purpose pursued (see *Azimov*, cited above, § 166, and *Shakurov v. Russia*, no. 55822/10, § 162, 5 June 2012). In the present case the applicant had already been in detention with a view to extradition for six months before the authorities ordered his detention pending expulsion. His detention pending expulsion has lasted thus far for almost one year. When deciding to keep the applicant in custody pending expulsion, the courts did not set a specific time-limit for his detention. Under Article 31.9 § 1 of the Code of Administrative Offences, an expulsion decision must be enforced within two years. After the expiry of such a period, a detainee should be released. This may happen in the present case; however, the possible implications of Article 31.9 § 1 of the Code of Administrative Offences for the applicant's detention are a matter of interpretation, and the rule limiting the duration of the detention of an illegal alien is not set out clearly in the law. It is also unclear what will happen after the expiry of the two-year time-limit, since the applicant will clearly remain in an irregular situation in terms of immigration law and will again be liable to expulsion and, consequently, to detention on that ground (see *Egamberdiyev*, cited above, § 62, and *Azimov*, cited above, § 171).

67. The Court further notes that the maximum penalty in the form of deprivation of liberty for an administrative offence under the Code of Administrative Offences in force is thirty days, and that detention with a view to expulsion should not be punitive in nature and should be accompanied by appropriate safeguards, as established by the Russian Constitutional Court. In the present case the "preventive" measure was much heavier than the "punitive" one, which is not normal (see *Azimov*, cited above, § 172).

68. Lastly, the Court reiterates that there are no provisions of Russian law which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion, and no automatic review of his detention at regular intervals (see *Azimov*, cited above, § 153, and the Court's findings under Article 5 § 4 above).

69. In view of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 (f) of the Convention.

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

70. The applicant lastly complained that the wording of the extradition decision violated his right to be presumed innocent. Article 6 § 2 reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Submissions by the parties

71. The Government submitted that the Russian authorities did not, and could not, examine the issue of the applicant's guilt or innocence because this matter was within the exclusive jurisdiction of the requesting State. There was nothing in the wording of the extradition decision that could be construed as a breach of the applicant's presumption of innocence.

72. The applicant replied that, according to the extradition order "the fact that [he] committed crimes ... in the territory of the Russian Federation [was] not an obstacle to his being extradited". This statement, in his view, was prejudicial to his presumption of innocence.

B. The Court's assessment

1. Admissibility

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

2. Merits

74. The Court reiterates that it was confronted with a similar complaint in the *Ismoilov and Others* case (cited above), in which it found as follows:

> "162. The Court will first examine whether the applicants may be regarded in the circumstances of this case as 'charged with a criminal offence' for the purposes of Article 6 § 2 when the impugned extradition decisions in respect of them were issued. It observes that the applicants were not charged with any criminal offence within Russia. The extradition proceedings against them did not concern the determination of a criminal charge, within the meaning of Article 6 of the Convention ... Accordingly, at the time when the extradition decisions were made there was no criminal prosecution against the applicants in Russia of which the prosecutor's statements might be regarded as prejudging the outcome.
>
> 163. In the case of *Zollmann* [*Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII] the Court did not confine itself to the finding that no criminal proceedings were pending against the applicant within the United Kingdom,

it went on to examine whether the statements of a State official were linked to any criminal investigations instigated against the applicant abroad. In the present case, the Court must also ascertain whether there was any close link, in legislation, practice or fact, between the impugned statements made in the context of the extradition proceedings and the criminal proceedings pending against the applicants in Uzbekistan which might be regarded as sufficient to render the applicants 'charged with a criminal offence' within the meaning of Article 6 § 2 of the Convention (compare *Zollmann,* cited above).

164. The Court observes that the applicants' extradition was ordered for the purpose of their criminal prosecution. The extradition proceedings were therefore a direct consequence, and the concomitant, of the criminal investigation pending against the applicants in Uzbekistan. The Court therefore considers that there was a close link between the criminal proceedings in Uzbekistan and the extradition proceedings justifying the extension of the scope of the application of Article 6 § 2 to the latter. Moreover, the wording of the extradition decisions clearly shows that the prosecutor regarded the applicants as 'charged with criminal offences' which is in itself sufficient to bring into play the applicability of Article 6 § 2 of the Convention ... The Court therefore concludes that Article 6 § 2 was applicable in the present case.

165. The Court will next examine whether the reasoning contained in the First Deputy Prosecutor General's decisions to extradite the applicants amounts in substance to a determination of the applicants' guilt contrary to Article 6 § 2.

166. The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence ...

167. The decision to extradite the applicants does not in itself offend the presumption of innocence .... However, the applicants' complaint is not directed against the extradition as such, but rather against the reasoning contained in the extradition decisions. The Court considers that an extradition decision may raise an issue under Article 6 § 2 if supporting reasoning which cannot be dissociated from the operative provisions amounts in substance to the determination of the person's guilt ...

168. The extradition decisions declared that the applicants should be extradited because they had 'committed' acts of terrorism and other criminal offences in Uzbekistan .... The statement was not limited to describing a 'state of suspicion' against the applicants, it represented as an established fact, without any qualification or reservation, that they had been involved in the commission of the offences, without even mentioning that they denied their involvement. The Court considers that the wording of the extradition decisions amounted to a declaration of the applicants' guilt which could encourage the public to believe them guilty and which prejudged the assessment of the facts by the competent judicial authority in Uzbekistan ...

170. Accordingly, there has been a violation of Article 6 § 2 of the Convention."

75. The situation obtaining in the instant case was substantially similar in the relevant aspects: although there were no criminal proceedings against the applicant in Russia, his extradition was ordered for the purpose of his criminal prosecution in Uzbekistan and there existed a close link between the criminal proceedings in Uzbekistan and the extradition proceedings in Russia. The decision to extradite him did not in itself offend the presumption of innocence but the statement that he had "committed crimes ... in the territory of the Russian Federation" was represented as an established fact rather as a mere "state of suspicion" against him (see paragraph 9 above). The wording of the extradition decision thus amounted to a declaration of the applicant's guilt which prejudged the assessment of the facts by the Uzbekistani courts.

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

V. RULE 39 OF THE RULES OF COURT

77. In accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

78. The Court notes that the applicant is currently detained in Russia and is still liable to be extradited or expelled pursuant to the final judgments of the Russian courts in this case. Having regard to the finding that the applicant would face a serious risk of being subjected to torture or inhuman or degrading treatment in Uzbekistan, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court must continue in force until the present judgment becomes final or until further order.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage.

81. The Government considered that the claim was excessive.

82. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the applicant's forced return to Uzbekistan would, if implemented, give rise to a violation of that provision. The Court considers that its finding regarding Article 3 amounts in itself to adequate just satisfaction for the purposes of Article 41.

83. The Court has found other violations of the Convention in the present case. It accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It therefore awards the applicant EUR 8,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

84. The applicant also claimed EUR 9,000 for costs and expenses, which included EUR 2,280 for nineteen hours' work by Ms Ryabinina in the domestic proceedings and during the submission of the application to the Court, and EUR 6,720 for fifty-six hours' work by Ms Trenina who chiefly represented the applicant before the Court.

85. The Government pointed out that the applicant had not submitted a legal assistance agreement or any evidence of payment of the amounts claimed.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000, covering costs under all heads plus any tax that may be chargeable to the applicant, and rejects the remainder of the claims under this head.

C. Default interest

87. 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the forced return of the applicant to Uzbekistan would give rise to a violation of Article 3 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention in respect of the applicant's detention in the framework of the expulsion proceedings;

6. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

7. *Decides* to maintain the indication to the Government under Rule 39 of the Rules of Court until such time as the present judgment becomes final, or until further order;

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 Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President