

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

THIRD SECTION

CASE OF KHAMIDKARIYEV v. RUSSIA

(Application no. 42332/14)

JUDGMENT

STRASBOURG

26 January 2017

FINAL

29/05/2017

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



In the case of Khamidkariyev v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 5 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 42332/14) 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 Mirsobir Mirsobitovich Khamidkariyev ("the applicant"), on 10 June 2014.

2. The applicant was represented by Mr I. Vasilyev, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant's representative alleged that on 9 June 2014 the applicant had been abducted in Moscow with a view to his involuntary removal to Uzbekistan, even though he faced a real risk of ill-treatment in that country. At a later stage of the proceedings it transpired that the applicant had been arrested in Uzbekistan.

4. On 10 June 2014 the Acting President of the Section to which the case had been allocated indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited, expelled or otherwise involuntarily removed from Russia to Uzbekistan or any other country for the duration of the proceedings before the Court. The Acting President also observed that the Government were required, under Rule 39 § 1, to put in place an appropriate mechanism tasked with both preventive and protective functions, to ensure that the applicant benefited from immediate and effective protection against unlawful or irregular removal from the territory of Russia and the jurisdiction of the Russian courts. Factual information was requested from the Government under Rule 54 § 2 (a) of the Rules of Court. The Government were further requested to

produce copies of all the documents related to the criminal investigation file opened in connection with the applicant's abduction on 9 June 2014. It was also decided to grant the case priority under Rule 41 of the Rules of Court.

5. On 27 August 2014 the application was communicated to the Government. The Government were requested to submit detailed factual information pertaining to the application. In particular, they were asked to produce passenger lists for all Uzbekistan-bound flights that departed from Russia between 9 and 12 June 2014. Moreover, the Government were requested to provide a complete copy of the criminal investigation file in relation to the applicant's abduction, as well as documents relating to the pre-investigation inquiry.

6. On 22 April 2015 the President of the Section to which the case had been allocated decided to ask the Government, under Rule 54 § 2 (c) of the Rules of Court, whether they had complied with their obligation arising from Article 38 of the Convention after their refusal to submit in full the material requested by the Court in connection with the applicant's abduction and transfer to Uzbekistan and to properly account for the missing elements. The request was sent to the Government by letter on 24 April 2015.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1978. He is currently serving a prison sentence in Uzbekistan.

8. The information provided by the applicant's representative and the Government concerning the circumstances of the case is limited and conflicting. The elements at the Court's disposal are described below.

A. Information submitted by the applicant's representative

9. The following account of events is based on a series of written submissions to the Court by the applicant's representative.

1. Background information

10. The applicant, while living in Uzbekistan, was a friend of a former boyfriend of Ms Gulnara Karimova, one of President Islam Karimov's daughters. At some point Ms Karimova turned against her former boyfriend's friends. Fleeing political persecution, on 26 December 2010 the applicant moved to Russia. He resided in Moscow with his partner, Ms I., and their child.

11. In 2011 the Uzbek authorities charged the applicant *in absentia* with crimes related to religious extremism on account of his alleged involvement in the establishment in 2009 of a jihadist organisation, issued an arrest warrant and put his name on an international wanted list.

12. On 10 July 2013 the applicant was arrested in Moscow on the basis of the Uzbek warrant.

13. On 12 July 2013 the Golovinskiy District Court of Moscow authorised the applicant's detention pending extradition.

14. On 9 August 2013 the Golovinskiy inter-district prosecutor's office of Moscow ordered the applicant's release on the grounds that the Uzbek authorities had not lodged a formal extradition request and that the crimes he had been charged with did not constitute criminal offences under Russian law. It was also noted that the applicant could not have established the jihadist organisation in 2009 as the organisation in question had been banned by the Supreme Court of Russia in 2003. The applicant was then released.

15. Following his release, the applicant continued to live in Moscow. At some point he applied for refugee status, referring to a risk of ill-treatment in Uzbekistan.

16. On 8 November 2013 the Moscow Department of the Federal Migration Service ("the Moscow FMS") dismissed the allegations of a risk of ill-treatment in Uzbekistan as unfounded and rejected the applicant's application for refugee status. He challenged that decision in court.

17. On 12 May 2014 the Zamoskvoretskiy District Court of Moscow approved the applicant's application, quashed the Moscow FMS's rejection and ordered it to grant the applicant refugee status.

18. The applicant's passport remained in the Moscow FMS's file concerning his application for refugee status.

19. Given that no appeal against the judgment of 12 May 2014 was lodged within the required time, the judgment entered into force.

2. The applicant's disappearance

20. On the evening of 9 June 2014, while the applicant and his family were visiting a friend, Mr T., the applicant's child fell ill. The applicant and Ms I. decided to take him to hospital and the applicant called a taxi. A silver Lada Priora arrived. Mr T. wanted to accompany the applicant and Ms I., but the Lada's driver told him that the car had been ordered for two adult passengers only. The applicant, Ms I. and the child got into the taxi.

21. On their way, at about 7.20 p.m., Ms I. decided to stop at a pharmacy in the centre of Moscow. She took the child out of the taxi and the applicant waited in the car. When Ms I. left the pharmacy she saw that the taxi had driven away. A woman told Ms I. that she had seen two men getting in a parked car, which had then driven off.

22. Ms I. tried calling the applicant but his mobile telephone was turned off. She then alerted Mr T.

23. The applicant's representative was notified of the applicant's disappearance shortly after. On the same date, that is, on 9 June 2014, he contacted the Federal Security Service ("the FSB") and the border control agency, asking them to prevent the applicant's involuntary removal from Russian territory. According to the applicant's representative, he suspected the involvement of two FSB officers, "Timur" and "Zakhar", who had shown an interest in the applicant in 2011. Nevertheless, he did not mention those people in his letters to the FSB and the border control agency.

3. The applicant's reappearance in Uzbekistan

24. On 18 June 2014 the investigation department of the Uzbek Ministry of the Interior informed the applicant's father that the applicant had been arrested and placed in custody on 17 June 2014. On 25 June 2015 the applicant's representative forwarded a copy of the notification to the Court.

25. The criminal case against the applicant was brought to trial before the Tashkent City Court. He was appointed a legal aid lawyer.

4. Information collected by the applicant's representative in Tashkent

26. At the end of October 2014 the applicant's representative, Mr Vasilyev, travelled to Tashkent. He discovered that the applicant had been kept incommunicado in a remand prison in Tashkent. Mr Vasilyev was repeatedly denied access to the applicant.

(a) Information communicated orally to Mr Vasilyev by the applicant

27. Mr Vasilyev attended three hearings at the Tashkent City Court on 31 October, and 3 and 4 November 2014. On 31 October and 3 November 2014 the trial judge allowed Mr Vasilyev to talk to the applicant. During the conversations the applicant sat in a cage in the courtroom surrounded by guards. The applicant's representative summarised the applicant's description of the events of 9 June 2014, given orally on 31 October and 3 November 2014, as follows.

28. At 7 p.m. on 9 June 2014 the applicant had been abducted by two FSB officers. They had put a sack over the applicant's head during the abduction. They had then taken the applicant to an unidentified house, tied him up and taken the sack off his head. The applicant had recognised the two men as "Timur" and "Zakhar", the FSB officers whom he had met previously in November 2011. The two men had beaten the applicant and kept him inside the house until the following day.

29. On 10 June 2014 the two FSB officers had taken the applicant to a runway at one of Moscow's airports without passing through any border or passport controls as the applicant's passport had remained with the Moscow

FMS. The FSB officers had handed the applicant over to Uzbek officials near the steps of a Tashkent-bound airplane.

30. Once in Uzbekistan, the applicant had been placed under arrest by the Main Investigation Department of the Ministry of the Interior of Uzbekistan on suspicion of crimes related to religious extremism. He had been kept in detention for two months and had been subjected to torture and other ill-treatment by Uzbek law-enforcement officers with a view to securing a self-incriminating statement. The applicant had been tied head downwards to a bar attached to the wall and had been beaten repeatedly. The officers had broken two of the applicant's ribs and knocked out seven of his teeth.

(b) Information provided by Ms I.

31. On 4 November 2014 the applicant's representative interviewed Ms I.

32. Ms I. stated that on 3 May 2011 an FSB officer named "Zakhar" and some police officers had come to their Moscow flat to search for the applicant, but had not found him.

33. In November 2011 "Zakhar" and another FSB officer, "Timur", had interviewed Ms I. about the applicant and his religious views and practices.

34. Following the applicant's abduction, on 10 June 2014 Ms I. had called "Timur" on his mobile phone, enquiring about her partner. "Timur" had replied that he was no longer working for "that office" (the FSB). Ms I. had also tried calling "Zakhar" but had received no response.

35. On 13 June 2014 Ms I. had flown to Tashkent with her son and mother. Upon arrival she had been detained at the airport for seven hours and then released.

36. Ms I. had been questioned by the investigator in charge of the applicant's case at the Ministry of the Interior of Uzbekistan, Mr K., but had been denied access to the applicant. When she had seen the applicant in the courtroom, he had made signs to her that he had been beaten.

(c) Information provided by the applicant's mother

37. On 4 November 2014 Mr Vasilyev interviewed the applicant's mother, Ms Kh.

38. Ms Kh. stated that her younger son had been convicted of crimes related to religious extremism in December 2010, which had influenced the applicant's decision to leave Uzbekistan. She had had occasional contact with the applicant during his time in Moscow.

39. On 15 June 2014 Ms I. had arrived in Uzbekistan and informed Ms Kh. of the applicant's abduction.

40. On 25 June 2014 officers of the Ministry of the Interior of Uzbekistan had come to Ms Kh.'s home and searched it.

41. On 27 June 2014 the applicant's mother had visited the investigator, K., who had said that the applicant had voluntarily returned to Tashkent on 8 June 2014 and had gone to the police with a statement of surrender.

42. Some people had informed Ms Kh. that her son had been severely beaten while in detention. She had not had access to the applicant, but when she had seen him in the courtroom, he had looked very poorly.

5. The applicant's conviction

43. On 18 November 2014 the Tashkent City Court found the applicant guilty of crimes under Articles 216 ("the illegal establishment of public associations or religious organisations") and 244² ("the establishment of, management of, participation in religious extremist, separatist, fundamentalist or other proscribed organisations") of Uzbekistan's Criminal Code and sentenced him to eight years' imprisonment.

44. The lawyer appointed for the applicant refused to lodge an appeal against the judgment.

45. On 26 November 2014 Mr Vasilyev lodged an appeal with the Appeal Chamber of the Tashkent City Court on the applicant's behalf. It appears that later the applicant withdrew the statement of appeal.

46. The applicant remains imprisoned in Uzbekistan.

6. Appeal proceedings relating to the applicant's refugee status application

47. On 29 July 2014 the Moscow FMS lodged an appeal against the judgment of 12 May 2014. The statement accompanying the appeal did not contain any request to restore the time-limit for lodging it.

48. The Moscow City Court admitted the appeal on an unspecified date. The reasons for admitting it after the time-limit had run out are unknown.

49. On 19 October 2014 the UNHCR Representation in the Russian Federation ("the UNHCR") submitted a memorandum on the applicant's case to the Moscow City Court for consideration. It was noted that torture was a widespread method of coercion used by the Uzbek authorities to obtain self-incriminating statements from those suspected of involvement in "religious extremism". The statement read, in particular:

> "As follows from the document of the Call for Urgent Action published by Amnesty International on 6 November 2014, after the forced return to Uzbekistan, Mr Khamidkariyev was subjected to torture and other kinds of proscribed treatment and punishment for two months with a view to obtaining a confession to made-up charges – he was tied head down to a bar attached to a wall and beaten, as a result of which he had seven teeth knocked out and two ribs broken."

50. On 2 December 2014 the Moscow City Court examined the appeal lodged by the Moscow FMS against the judgment of 12 May 2014, quashed the judgment and upheld the Moscow FMS's decision of 8 November 2013

owing to the fact that the applicant had not provided "convincing and irrefutable evidence of the existence of well-founded fears of becoming a victim of persecution in Uzbekistan". The reasons for examining a belated appeal on the merits were not given in the text of the judgment.

B. Information submitted by the Government

51. In the course of the proceedings before the Court, the Government sent four sets of correspondence, the contents of which are described below.

1. Letter of 1 July 2014

52. By a letter of 1 July 2014 in reply to the Court's request for information of 10 June 2014, made at the same time as the indication of the interim measures (see paragraph 4 above), the Government informed the Court that "the relevant State bodies have been informed about the disappearance of the applicant and the indication by the Court of the interim measures under Rule 39 of the Rules of Court".

53. They further noted that the applicant had not been "apprehended by the officers of any Russian law-enforcement bodies on 9 June 2014 in Moscow" and that "his current whereabouts [are] unknown".

54. The Government also stated that on 10 June 2014 the Basmannyy district department of the interior ("the Basmannyy police") had received a complaint about the applicant's kidnapping from Mr T. and that on 19 June 2014 a case file with the preliminary inquiry conducted on the basis of that complaint had been forwarded to the Basmannyy district investigative unit of the Moscow investigative department of the Investigative Committee of the Russian Prosecutor's Office ("the investigative authority") "for further enquiry and the possible initiation of a criminal case".

55. Lastly, they noted that the applicant's representative's letter of 25 June 2014 (see paragraph 24 above) had been forwarded to the investigative authority for consideration.

56. No documents were enclosed with the letter of 1 July 2014.

2. Observations on the admissibility and merits of the application of 24 October 2014

57. On 24 October 2014 the Government submitted their observations on the admissibility and merits of the application, the contents of which can be summarised as follows.

58. On 9 September 2014[1] the investigative authority opened an investigation into the applicant's kidnapping as criminal case no. 815447

1. See paragraph 77 below, from which it appears that the date is 9 July 2014.

under Article 126 § 2 (a) of the Russian Criminal Code ("aggravated kidnapping").

59. In the course of the investigation CCTV pictures from cameras located in the vicinity of the scene of the incident were examined. They showed that on 9 June 2014 at about 7 p.m. the applicant had been kidnapped by unidentified people and taken away by car.

60. The Government claimed that the Court's demand to submit lists of passengers checked in on Uzbekistan-bound flights between 9 and 12 June 2014 (see paragraph 5 above) could not be complied with as the lists in question contained personal data about third parties and could not be submitted to the Court without their prior consent.

61. The Government further submitted that there was no information about the arrest of the applicant on 9 June 2014 by law-enforcement agencies or his detention in remand prisons in Moscow or the Moscow Region, and that no information regarding the applicant crossing the State border had been received at that time.

62. The notification by the Uzbek authorities to the applicant's father of 18 June 2014 concerning the applicant's arrest and detention in Uzbekistan had been added to the criminal investigation file.

63. The Government concluded that there was no evidence to prove any direct or indirect involvement of the Russian authorities in the applicant's alleged kidnapping and transfer to Uzbekistan.

64. The Russian authorities had not been made aware and could not have known of any risk that the applicant might be kidnapped.

65. The Government were not in a position to provide information on the criminal proceedings against the applicant in Uzbekistan as those proceedings fell outside their jurisdiction. However, they had sent a request for mutual legal assistance to the Uzbek authorities in order to establish the applicant's whereabouts.

66. In conclusion, the Government submitted that there had not been any administrative practice of the involuntary removal of persons in respect of whom Rule 39 had been applied to their countries of nationality. Inquiries and investigations were opened into instances of the disappearance of such people. The Russian Prosecutor's Office oversaw the compliance with Russian law of any decisions taken in the course of such inquiries and investigations. A large group of State agencies had held a co-ordination meeting on 10 September 2014 on the further enforcement of measures to ensure the security of asylum seekers.

67. No documents were enclosed with the Government's observations of 24 October 2014.

3. Further observations of 26 February 2015

68. On 26 February 2015 the Government, in reply to the applicant's observations on the admissibility and merits of the application, submitted

that they reaffirmed the position stated in their observations of 24 October 2014 and commented on the applicant's just satisfaction claims.

69. No documents were enclosed with the Government's correspondence of 26 February 2015.

4. Letter of 15 May 2015

(a) Cover letter

70. Following the Court's additional question to the Government regarding the respondent State's compliance with Article 38 of the Convention (see paragraph 6 above), the Government submitted a letter which read as follows:

> "With reference to your letter of 24 April 2015 in respect of the above application, please find enclosed copies of the criminal investigation documents disclosed by the investigative authorities after a repeated request.
>
> The Government kindly ask the Court to join the documents to the case-file."

71. No answer to the Court's question under Article 38 of the Convention was given.

(b) Documents enclosed

72. Forty-three pages of various documents issued by the Russian and Uzbek authorities were enclosed with the Government's cover letter.

(i) Documents issued by the Russian authorities

(α) Summary of events in chronological order

73. The contents of the documents issued by the Russian authorities and which were enclosed with the Government's letter of 15 May 2015 can be summarised as follows.

74. On 10 June 2014 Mr T. reported the applicant's kidnapping to the Basmannyy police and made a statement. Mr T. stated, in particular, that a woman on the street near the pharmacy had seen two men getting into the parked silver Lada Priora.

75. On 10 June 2014 Ms I. made a statement to the Basmannyy police that at 7 p.m. on 9 June 2014 she, her partner and child had taken a taxi, a silver Lada Priora. She had got out of the car to go into a pharmacy, but by the time she had come out the taxi had disappeared.

76. On 30 June 2014 the Basmannyy police reported to the investigative authority that they had failed to identify the applicant's whereabouts and that there had been no "positive information" concerning any aeroplane or railway tickets issued in the applicant's name or about the applicant being placed in remand prisons. Furthermore, it was noted that the Moscow department of the FSB and the data centre of the Russian Ministry of the

Interior had not sent any reply to the police's enquiries. The Basmannyy police also reported that the whereabouts of Mr T. and Ms I. were unknown and that it had been impossible to identify the taxi driver who had taken the applicant to the scene of the kidnapping.

77. On 9 July 2014 the investigative authority decided to open a criminal investigation into the applicant's kidnapping. The decision described the events as follows:

> "On 9 June 2014 at about 7 p.m. persons who have not been identified by the investigation, acting jointly and by common accord, approached a car which has not been identified by the investigation parked near house no. 7/2 at Bolshoy Kharitonyevskiy Lane in Moscow, in which Mr Khamidkariyev was travelling, and, having got in the said car against the will of the victim, kidnapped Mr Khamidkariyev, fleeing the scene of the crime in the said car to an unknown destination."

78. On 11 September 2014 the investigative authority requested the transport police to inform them whether any aeroplane or railway tickets had been issued in the applicant's name between 1 June and 1 August 2014.

79. On 9 October 2014 the investigative authority granted the applicant victim status in case no. 815447.

80. On 15 January 2015 an investigator with the investigative authority decided to suspend the investigation of case no. 815447. The decision stated that the applicant's whereabouts had been established as he had been detained in a remand prison in Tashkent, the scene of the incident had been inspected, seven witnesses had been questioned, various requests had been sent to the Russian authorities and a request for mutual legal assistance had been sent to Uzbekistan, but no reply had been received.

81. On 29 April 2015 the investigator's superior at the investigative authority overruled the decision of 25 April 2015 to suspend the case and returned it to the investigator on the grounds that the suspension decision had been taken prematurely. It was noted that the following measures had to be taken to ensure a proper investigation: a response to the request for mutual legal assistance from the Uzbek authorities had still to be received, as had replies to "previously sent requests". "Other requisite investigative and procedural measures" also still had to be performed.

82. On 29 April 2015 an investigator at the investigative authority decided to resume case no. 815447 following the order from his superior. It is clear from the text of the decision that between 9 October 2014 and 29 April 2015 the investigation had been suspended and resumed four times on the basis of decisions by a more senior officer at the investigative authority or by a prosecutor.

(β) Other documents

83. The materials provided by the Government included the following documents:

- an undated sheet of paper with no letterhead entitled “Federal Search for an Individual” containing the applicant’s personal information and information on a criminal case pending against him in Uzbekistan, from which it transpires that the applicant was put on a Russian federal wanted list. The sheet contains a handwritten note “Database ‘Region’ of the Russian Ministry of the Interior (has not been arrested)”.

- an undated document entitled “Request for legal assistance” addressed to “the competent State bodies of Uzbekistan” and signed by an investigator at the investigative authority, including a list of questions to ask the applicant, Ms I. and the officers in charge of the applicant’s arrest. The questions concerned, in particular, the circumstances of the applicant’s arrival in Uzbekistan, including how he crossed the border and the reasons for his detention in Tashkent.

(ii) Documents issued by the Uzbek authorities

84. The contents of the documents issued by the Uzbek authorities which were enclosed with the Government’s letter of 15 May 2015 can be summarised as follows.

85. According to an arrest record drawn up in Russian by the Uzbek police the applicant was placed under arrest at 10.40 a.m. on 14 June 2014 as a suspect in a crime under Article 244² § 1 of the Uzbek Criminal Code. The place of arrest was not indicated in the record. The grounds for the arrest were stated as “other information leading to a suspicion that a person has committed a crime, and if the person has attempted to flee or has no abode or his or her identity has not been established”. The purpose of the arrest was stated as “there are enough grounds to suspect the person of having committed a crime”. A note observed that “the arrested person has been placed in a temporary detention unit of the Ministry of the Interior of Uzbekistan”.

86. According to a document in Russian entitled “Record of providing an arrested person with the right to make a telephone call” of 14 June 2014, the applicant made use of that right to call his mother between 10.45 and 10.49 a.m. on 14 June 2014 to inform her of his arrest.

87. The record of the search of the applicant in Russian showed that 300 Russian roubles and one metallic ring were seized from the applicant when he was searched after being arrested.

88. On 18 June 2014 the Main Investigation Department of the Ministry of the Interior of Uzbekistan informed the applicant’s father that his son, who had been wanted and “declared guilty in absentia”, had been arrested on 17 June 2014, placed in custody and had been participating in investigative measures.

89. According to a Russian translation of a document in Uzbek of 10 February 2015 an investigator, K., at the Ministry of the Interior of Uzbekistan asked the State Customs Committee of Uzbekistan to provide

information on "the facts of crossing the State border of Uzbekistan" by the applicant between 1 June and 1 July 2014. A Russian translation of the reply in Uzbek by the State Customs Committee of Uzbekistan of 12 February 2015 stated that there was no information in the customs' database on the applicant crossing the Uzbek border between 1 June and 1 July 2014. It was noted that the database was compiled on the basis of written statements by those crossing borders and could thus contain errors owing to differences in people's handwriting.

90. According to the record of an interview held on 11 February 2015 K. questioned the applicant as a victim in an unspecified criminal case. The interview was in Russian. In the course of the interview the applicant stated that he had not been arrested by the Russian authorities and that he had voluntarily left Moscow to go to Uzbekistan to visit his ailing mother. He stated that he had had no documents on him. Once in Uzbekistan, the applicant had taken a taxi to his mother's, but the taxi had broken down and stopped. After getting out of the car, the applicant had been asked by police officers who had happened to be passing for an identification document. Since he had had no such document, he had been taken to a police station for identification and then arrested. The applicant's answer to a question about his whereabouts between 9 and 15 June 2014 was as follows:

> "On 9 June 2014 I was at home, in the evening I took the child to hospital, then at about 9 p.m. I returned and stayed at home. Then on 10 June 2014 I was at home and at about 11 p.m. went to the railway station, and at 12 midnight left for Uzbekistan by bus. I was on the road for about seventy-two hours or a little longer, and on 14 June 2014 I arrived at the border between Kazakhstan and Uzbekistan, then, using roundabout ways, I crossed the border and at about 7 a.m. was on Uzbek territory, where I was arrested by officers of law-enforcement agencies."

91. On 12 February 2015 the investigator K. questioned Ms I. as a witness. The interview was in Russian. Ms I. stated that the applicant had voluntarily and secretly left for Uzbekistan by bus on 10 June 2014 and that she had flown to Tashkent on 13 June 2014.

92. On 12 February 2015 K. questioned one of the police officers who had arrested the applicant, Mr Kh., as a witness. The interview was in Russian. The answer to the question about the circumstances of the applicant's arrest reads as follows:

> "On 14 June 2014 at about 7.30 a.m. in the Yakkasarayskiy district of Tashkent Mr Khamidkariyev was stopped with a view to checking his identity documents, however, given that he had no documents on him, the latter was taken to the Yakkasarayskiy district department of the interior of Tashkent, where it was established that Mr Khamidkariyev was wanted, accordingly, Mr Khamidkariyev was taken to the initiator of the search for him in the temporary detention facility of the Ministry of the Interior of Uzbekistan, where the requisite documents were filled in."

93. On an unspecified date K. drew up a report on the actions performed under the request for mutual legal assistance. According to the report, the investigator had questioned Ms I., Mr Kh. and the applicant, had received

copies of documents pertaining to the applicant's arrest, requested information concerning the border crossing and had identified two men allegedly connected with the applicant who as of November 2014 had been fighting on the side of ISIS in Syria.

94. The Government also submitted two documents in Uzbek of 14 June 2014 – a copy of the first page of Ms I.'s passport, and an extract from the Criminal Code of Uzbekistan with the text of Article 244² § 1 in Russian. The Article reads as follows: "the establishment, management, or participation in religious extremist, separatist, fundamentalist or other proscribed organisations shall be punishable by five to fifteen years of imprisonment".

II. REPORTS ON UZBEKISTAN BY INTERNATIONAL NON-GOVERNMENTAL HUMAN RIGHTS ORGANISATIONS

95. For the relevant reports on Uzbekistan by UN bodies and international non-governmental human rights organisations up to 2014, see *Egamberdiyev v. Russia* (no. 34742/13, §§ 31-34, 26 June 2014).

96. The relevant parts of the Concluding observations on the fourth periodic report of Uzbekistan (CCPR/C/UZB/CO/4) adopted by the UN Human Rights Committee on 20 July 2015, read as follows:

> "**State of emergency and counter-terrorism**
>
> 11. The Committee, while noting that a draft State of Emergency Act has been prepared, remains concerned (CCPR/C/UZB/CO/3, para. 9) that existing regulations on states of emergency do not comply with article 4 of the Covenant. It also remains concerned (CCPR/C/UZB/CO/3, para. 15) about: (a) the overly-broad definition of terrorism and terrorist activities that is reportedly widely used to charge and prosecute members or suspected members of banned Islamic movements; (b) legal safeguards for persons suspected of, or charged with, a terrorist or related crime and allegations of incommunicado detention, torture and long prison sentences in inhuman and degrading conditions in respect of such persons (arts. 4, 7, 9, 10, 14, 18 and 19) ...
>
> **Deaths in custody**
>
> 12. The Committee is concerned about reports of deaths in custody and denial of adequate medical care. It is also concerned about the lack of effective and independent investigations into such cases (arts. 2 and 6) ...
>
> **Torture**
>
> 13. The Committee remains concerned that the definition of torture contained in the criminal legislation, including article 235 of the Criminal Code, does not meet the requirements of article 7 of the Covenant, as it is limited to illegal acts committed with the purpose of coercing testimony and therefore in practice is restricted to acts of torture committed only by a person carrying out an initial inquiry or pretrial investigation, a procurator or other employee of a law-enforcement agency, and results in impunity for other persons, including detainees and prisoners. The Committee is also concerned that the State party continues to grant amnesties to

persons who have been convicted of torture or ill-treatment under article 235 of the Criminal Code (arts. 2 and 7) ...

14. The Committee remains concerned about reports that torture continues to be routinely used throughout the criminal justice system; that, despite the existing legal prohibition, forced confessions are in practice used as evidence in court, and that judges fail to order investigations into allegations of forced confessions even when signs of torture are visible; that persons complaining of torture are subjected to reprisals and family members are often intimidated and threatened to ensure that complaints are retracted; and that the rate of prosecution is very low and impunity is prevalent (arts. 2, 7 and 14) ...

Liberty and security of person

15. The Committee remains concerned that the State party retains the 72-hour period of detention of persons suspected of having committed an offence before bringing them before a judge, and therefore welcomes the State party's statement that the length of custody may be reduced to 48 hours in the future. It is also concerned about deficiencies in the application of the legislation governing judicial control of detention (habeas corpus) in practice, particularly allegations of: (a) forging the time or date of detention to circumvent the legal period of detention: (b) habeas corpus hearings in the absence of the detainee, especially in politically-related cases; (c) violations of the right of detainees to a lawyer, including to a lawyer of their choice, and deficient legal representation provided by State-appointed defence lawyers (arts. 9 and 14)."

97. The Uzbekistan chapter of the World Report 2015 by Human Rights Watch reads, in so far as relevant, as follows:

"Imprisonment and Harassment of Critics

The Uzbek government has imprisoned thousands of people on politically motivated charges to enforce its repressive rule, targeting human rights and opposition activists, journalists, religious believers, artists, and other perceived critics.

...

Criminal Justice and Torture

In November 2013, the United Nations Committee against Torture stated that torture is "systematic," "unpunished," and "encouraged" by law enforcement officers in Uzbekistan's police stations, prisons, and detention facilities run by the SNB. Methods include beating with batons and plastic bottles, hanging by wrists and ankles, rape, and sexual humiliation.

Although authorities introduced habeas corpus in 2008, there has been no perceptible reduction in the use of torture in pretrial custody or enhanced due process for detainees. Authorities routinely deny detainees and prisoners access to counsel, and the state-controlled bar association has disbarred lawyers that take on politically sensitive cases."

98. The chapter on Uzbekistan of Amnesty International's report for 2014/15, in so far as relevant, reads as follows:

"**Torture and other ill-treatment**

Police and officers of the National Security Service (SNB) continued to routinely use torture and other ill-treatment to coerce suspects and detainees, including women and men charged with criminal offences such as theft, fraud or murder, into

confessing to a crime or incriminating others. Detainees charged with anti-state and terrorism-related offences were particularly vulnerable to torture. Detainees were often tortured by people wearing masks.

Police and SNB officers regularly used convicted prisoners to commit torture and other ill-treatment on detainees in pre-trial detention. Under the Criminal Code, prisoners, unlike officials, could not be held responsible for torture but only for lesser crimes. A former detainee described witnessing officers and prisoners torture men and women in interrogation rooms in an SNB pre-trial detention centre, as well as in bathrooms and showers, punishment cells and purpose-built torture rooms with padded rubber walls and sound-proofing. He described SNB officers handcuffing detainees to radiators and breaking their bones with baseball bats.

Courts continued to rely heavily on confessions obtained under torture to hand down convictions. Judges routinely ignored or dismissed as unfounded defendants' allegations of torture or other ill-treatment, even when presented with credible evidence.

Two men, who were sentenced in 2014 to 10 years in prison each for alleged membership of a banned Islamist party, claimed in court that security forces had tortured them to sign false confessions by burning their hands and feet against a stove. One defendant told the judge that security forces had pulled out his fingernails and toenails. The judge failed to inquire further into the torture allegations, and admitted the confessions as evidence.

...

Counter-terror and security

The authorities became increasingly suspicious of labour migrants returning from abroad who may have had access to information on Islam which is censored or banned in Uzbekistan, resulting in an increased number of arrests and prosecutions for "extremism". The authorities claimed that migrant workers were targeted in Russia for recruitment by the IMU, IS or other groups characterized as extremist.

In November, security forces detained dozens of labour migrants who had returned from Russia and Turkey, in raids in the capital Tashkent and several regions of the country, amid disputed claims that they were members of the banned Islamist party Hizb ut-Tahrir and had links to IS members in Syria. Human rights defenders reported that security forces used torture to extract confessions from them."

99. In April 2015, Amnesty International published a report entitled "Secrets and Lies: Forced Confessions under Torture in Uzbekistan", which reads, in particular, as follows:

"Torture is endemic in Uzbekistan's criminal justice system. Security forces use torture against men and women charged with criminal offences, such as theft and murder, as well as against individuals who have fallen out of favour with the authorities, including former officials, police officers and entrepreneurs. Increasingly, however, over the last 15 years, those particularly vulnerable to torture and other ill-treatment have been men and women charged with or convicted of "anti-state" and terrorism-related offences. In particular, these are Muslims worshipping in mosques outside state control or under independent imams, and members or suspected members of political opposition parties and banned Islamic movements or Islamist groups and parties, all of whom the authorities consider a threat to national and regional security."

THE LAW

I. OBSERVANCE OF ARTICLE 38 OF THE CONVENTION

100. Although the structure of the Court's judgments traditionally reflects the numbering of the Articles of the Convention, the Court has also examined a Government's compliance with their procedural obligation under Article 38 of the Convention at the outset, especially if negative inferences are likely to be drawn from the Government's failure to submit the requested evidence (see *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, § 338, 24 July 2014).

101. Having regard to the Government's failure to provide the Court with a complete file on the investigation into the applicant's abduction (see paragraphs 5, 6, 67, and 69-94 above), the Court considers it appropriate to begin its examination of the present case by analysing whether the Government have complied with their procedural obligation under Article 38 of the Convention, which is worded as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

A. The parties' submissions

102. The Government did not make any submissions to answer the Court's question concerning their compliance with Article 38 of the Convention.

103. The applicant did not comment on the contents of the Government's letter of 15 May 2015.

B. The Court's assessment

104. The Court will examine the issue in the light of the general principles of its case-law concerning Article 38 of the Convention summarised, in particular, in *Husayn (Abu Zubaydah)* (cited above, §§ 352-56).

105. The Court observes that the facts of the present case are complex. The circumstances are highly controversial and are in dispute between the parties, and could only be elucidated through genuine cooperation by the respondent Government in line with Article 38 of the Convention (see *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, § 163, 3 October 2013).

106. The Court repeatedly put detailed factual questions and requested the relevant domestic documents from the respondent Government (see paragraphs 4-6 above). The Government, without advancing any reasons,

chose not to comply with those requests (see paragraphs 67 and 69-94 above).

107. The Court reiterates that Article 38 of the Convention requires the respondent State to submit the requested material in its entirety, if the Court so requests, and to account for any missing elements. The Government did not comply with that obligation, thus further complicating the examination of the present case by the Court. In the Court's view, the Government's failure to cooperate on such a crucial point highlights the authorities' unwillingness to uncover the truth regarding the circumstances of the case (see, with further references, *Nizomkhon Dzhurayev*, cited above, § 164).

108. Having regard to the aforementioned, the Court considers that the Government have fallen short of their obligation to furnish all the necessary facilities to the Court in its task of establishing the facts of the case, as required under Article 38. It will draw such inferences as it deems relevant regarding the well-foundedness of the applicant's allegations on the merits.

109. Accordingly, the Court concludes that the Government's failure to provide it with the relevant information and documents amounts to a disregard for its duty to cooperate with the Court under Article 38 of the Convention.

II. ESTABLISHMENT OF THE FACTS

110. The Court observes that both parties to the present case have submitted information concerning its factual circumstances that is very fragmented.

A. The parties' submissions

1. The applicant's representative

111. The applicant's representative summarised the applicant's description of the events of 9 June 2014, given orally to the representative on 31 October and 3 November 2014 in the courtroom in Tashkent (see paragraphs 27-30 above), as follows.

112. At 7 p.m. on 9 June 2014 the applicant had been abducted by "Timur" and "Zakhar", FSB officers whom he had previously met in November 2011. The two men had put a sack over the applicant's head during the abduction. They had then taken him to an unidentified house, tied him up and taken the sack off his head. The FSB officers had beaten the applicant and kept him inside the house until the following day.

113. On 10 June 2014 "Timur" and "Zakhar" had taken the applicant to a runway at one of Moscow's airports without passing through any border or passport controls as the applicant's passport had remained with the

Moscow FMS. The FSB officers had handed the applicant over to Uzbek officials near the steps of a Tashkent-bound airplane.

114. Once in Uzbekistan, the applicant had been placed under arrest by the Main Investigation Department of the Ministry of the Interior of Uzbekistan and had been subjected to torture and other ill-treatment by law-enforcement officers for two months with a view to securing a self-incriminating statement. The applicant had been tied to a bar attached to the wall head downward and had been beaten repeatedly. The Uzbek officers had broken two of the applicant's ribs and knocked out seven of his teeth.

2. The Government

115. The Government submitted that according to CCTV pictures the applicant had been kidnapped at about 7 p.m. on 9 June 2014 by unidentified people and had been taken away by car to an unidentified destination. There had been no proof of the direct or indirect involvement of the Russian authorities in the applicant's alleged abduction and forced transfer to Uzbekistan.

B. The Court's assessment

116. From the limited material provided by the parties the Court can discern the following as the few facts which appear to be not in dispute. Both parties have agreed that the applicant was abducted in Moscow at about 7 p.m. on 9 June 2014 (see paragraphs 21 and 77 above). It follows by implication from the Government's assertion that the applicant was kidnapped by unidentified people (see paragraph 115 above) that they have acknowledged that the applicant was restricted in exercising his free will from that moment on. It is thus reasonable to assume that the Government have not contested the allegation that the applicant was involuntarily removed from the Russian territory. Furthermore, there is no dispute about the fact that the applicant was arrested and placed in custody in Tashkent by the Uzbek authorities, although there appears to be a certain amount of confusion as to the date of his arrest (see paragraphs 24, 62 and 92 above). The Government also raised no objection to the applicant's representative's submission that the applicant stood trial at Tashkent City Court and was convicted of crimes related to religious extremism (see paragraph 43).

117. Nevertheless, the events from 7 p.m. on 9 June 2014 onwards, in particular the factual circumstances of how the applicant travelled from Russia to Uzbekistan, have not been elucidated.

118. The Court notes in passing that the Government enclosed a record of the applicant's interview by the Uzbek authorities, without providing any accompanying comment or explanation. According to that document, the applicant had travelled from Moscow to Tashkent by bus without a passport

(see paragraph 90 above). Were the Government to be understood to be tacitly relying on the explanation appearing in that document, the Court would be reluctant to accept is as satisfactory given that the interview in question was not attended by sufficient procedural safeguards against abuse and arbitrariness.

119. The Court reiterates that it has established a number of general principles concerning situations in which, owing to a conflicting account of events by the parties, it has confronted difficulties when establishing the facts (for a summary of those principles see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

120. In particular, the Court reaffirms its constant position that the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation where the events giving rise to a complaint under Articles 2 or 3 of the Convention lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII), or where, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish in the context of a disappearance complaint under Article 5 of the Convention that he or she was officially summoned by the authorities, entered a place under their control and has not been seen since (see *Tanış and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII).

121. Turning to the circumstances of the present case, the Court observes that, owing to the scarcity of the information before it, it is not in a position to establish with certainty the exact circumstances of the applicant's travel from Moscow to Tashkent, including the date of arrival to destination and the means of transportation employed. Given that three documents issued by the Uzbek authorities that were submitted by the Government suggest that he reached Tashkent on 14 June 2014 (see paragraphs 85-86 above), the Court is ready to accept, in the absence of any other evidence, that date as the date of arrival. As to the means of transportation, the applicant's representative submitted that the applicant was put on an aeroplane in one of the Moscow airports. The Government remained silent on the matter. The Uzbek authorities implied that the applicant took a bus from Moscow to Tashkent.

122. The Court considers that, owing to the scarcity of the information available, it cannot establish the precise circumstances surrounding the applicant's travel from Moscow to Tashkent. Nevertheless, it regards the following two elements as salient for the analysis of the present case: (a) that the applicant was without his passport on 9 June 2014 (see paragraph 18 above), and (b) that, in order to arrive to Tashkent, he must have crossed the Russian State borders in one manner or another.

123. The Court notes in this connection that it has previously concluded that a forcible transfer of an individual to a State that was not a party to the Convention by aircraft from Moscow or the surrounding region could not happen without the knowledge and either passive or active involvement of the Russian authorities (see *Iskandarov v. Russia*, no. 17185/05, §§ 113-15, 23 September 2010; *Abdulkhakov v. Russia*, 14743/11, §§ 125-27, 2 October 2012; and *Ermakov v. Russia*, no. 43165/10, § 176, 7 November 2013). Any airport serving international flights is subject to heightened security measures, remaining under the permanent control of the respondent State's authorities and notably, the State border service (ibid., also, see *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 201-02, ECHR 2013 (extracts)). As to the possibility of transport by bus, it would appear implausible that an individual whose name appeared on the wanted lists (see paragraphs 11 and 83 above) could travel some 3,400 kilometres through Russia and Kazakhstan by bus and cross the Russia-Kazakhstan and Kazakhstan-Uzbekistan State borders unimpededly despite having no passport on him (see paragraph 18 above).

124. The Court considers, accordingly, that a strong presumption of the Russian authorities' involvement in the applicant's relocation to Uzbekistan has arisen. The Government, however, have failed to rebut this presumption. In particular, they did not disclose the passenger logs for the Tashkent-bound flights which had departed from the Moscow airports after 9 June 2014 (see paragraph 60 above). Nor did the Government submit any explanation as to how the applicant could cross the Russian border without a passport.

125. In view of the above, the Court considers that, whereas the applicant made out a *prima facie* case that he had been abducted and transferred to Uzbekistan with the direct or indirect involvement of the Russian authorities, the Government failed persuasively to refute his allegations and to provide a satisfactory and convincing explanation as to how the applicant arrived in Tashkent.

126. The Court accordingly finds it established that the Russian authorities bear responsibility, as a result of direct or indirect involvement, for the applicant's forcible transfer from Moscow to Tashkent. On the basis of this finding, the Court will proceed to examine the applicant's complaints under Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

127. The applicant's representative submitted that there had been a violation of Article 3 of the Convention on account of the applicant's secret transfer to Uzbekistan, which could only have been carried out with the active or passive involvement of the Russian authorities, and that the

Russian authorities had failed to conduct an effective investigation into the abduction. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

1. The Government

128. The Government denied the involvement of any of their authorities in the applicant's abduction (see paragraph 115 above).

129. The Government further stated that the Ministry of Transport of Russia had confirmed that no aeroplane or railway ticket had been issued in the applicant's name between 1 June and 1 August 2014. Despite an explicit request by the Court, the Government refused to provide lists of passengers registered on flights to Uzbekistan between 9 and 12 June 2014, arguing that those lists contained the personal data of third parties.

130. The Government also submitted that the Russian authorities had not been made aware of any risk of a possible kidnapping of the applicant prior to 9 June 2014.

131. Lastly, they stated that they could not provide any information on the course of the criminal proceedings against the applicant in Uzbekistan as the matter fell outside the jurisdiction of the Russian authorities.

2. The applicant

132. The applicant's representative submitted that the applicant had been forcibly handed over to Uzbek State agents by the FSB agents "Timur" and "Zakhar". The applicant had been subjected to torture while in detention in Uzbekistan. The Russian authorities had belatedly opened an investigation into the applicant's abduction and had failed to take all the requisite measures to elucidate its circumstances, in breach of their procedural obligation under Article 3 of the Convention.

B. The Court's assessment

1. Admissibility

133. 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.

2. Merits

(a) Scope of the case and applicable general principles

134. The Court observes at the outset that it has established in its case-law a number of general principles governing situations in which substantial grounds have been shown for believing that an alien would, if extradited or expelled from a Contracting State, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the destination country (see, with further references, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-36, ECHR 2008; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 113-21, ECHR 2012; and *F.G. v. Sweden* [GC], no. 43611/11, §§ 111-18, 23 March 2016).

135. The Court also observes that in a series of recent cases against the Russian Federation it has dealt with relatively novel issues under Article 3 of the Convention arising in connection with the disappearance from Russian territory of applicants facing charges of politically or religiously motivated crimes in Uzbekistan and Tajikistan (see, among others, *Iskandarov*; *Abdulkhakov; Savriddin Dzhurayev*; all cited above; *Kasymakhunov v. Russia*, 29604/12, 14 November 2013; and *Mukhitdinov v. Russia*, 20999/14, 21 May 2015). In those cases, where the Court found it established that the applicants had been removed from the Contracting State's jurisdiction in an irregular manner, two distinct issues under Article 3 of the Convention arose: the alleged responsibility of the Russian authorities for the applicants' disappearance, either through the direct involvement of State agents or through a failure to comply with their positive obligation to protect an applicant against the risk of disappearance; and their alleged failure to comply with the procedural obligation to conduct a thorough and effective investigation into the disappearances. The determination of those issues depended on the existence at the material time of a well-founded risk that an applicant might be subjected to ill-treatment in the destination country (see *Ermakov*, cited above, § 192, and *Kasymakhunov*, cited above, § 120).

136. Although the thrust of the present case is the applicant's alleged irregular removal from Russian territory, the Court considers that its analysis under Article 3 of the Convention ought to depart from the model applied in the cases mentioned in paragraph 135 owing to the specificities of the factual circumstances at hand, which are listed below.

137. First, at the time of his disappearance from Moscow, the applicant was wanted in Uzbekistan for crimes related to religious extremism. In that sense, the present application is similar to the cases in which the Court found that people facing charges of politically or religiously motivated crimes had been forcibly transferred from Russia to either Uzbekistan or Tajikistan (see, among others, *Abdulkhakov*; *Savriddin Dzhurayev*; *Ermakov*; *Kasymakhunov*; and *Mukhitdinov*, all cited above). However, the

applicants in all those cases were removed from Russia after the respective applications had been lodged and interim measures had been indicated to the Russian Government by the Court. That renders them distinguishable from the present case, where the request for interim measures and the application as such were brought before the Court after the applicant's alleged abduction in Moscow (see paragraphs 1 and 4 above).

138. Secondly, no extradition or expulsion proceedings were pending in Russia against the applicant at the time of his disappearance (see paragraph 14 above). Moreover, by 9 June 2014 the Moscow FMS had been obliged to grant the applicant refugee status by the Zamoskvoretskiy District Court's judgment of 12 May 2014 (see paragraph 17 above).

139. In those circumstances, the Court deems it appropriate to examine the applicant's complaints under Article 3 of the Convention in the light of the general principles referred to in paragraph 134 above and the cases mentioned in paragraph 135, bearing in mind the need to draw a distinction where appropriate.

(b) The applicant's exposure to a risk of ill-treatment in Uzbekistan

140. In order to proceed with the examination of the applicant's grievances under Article 3 of the Convention in its substantive and procedural aspects, the Court considers it necessary to establish first of all whether the applicant could be said to have faced a real risk of ill-treatment in Uzbekistan. It will do so in the light of the relevant general principles summarised, among many other authorities, in the *Savriddin Dzhurayev* judgment (cited above, §§ 148-53).

141. The Court has dealt 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, with further references, *Mukhitdinov*, cited above, § 52). Against that background, and having regard to the information summarised in paragraphs 96-99 above, the Court cannot but confirm that the ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan (see *Nizamov and Others v. Russia*, nos. 22636/13 and 3 others, § 40, 7 May 2014).

142. The Court will now examine whether there were any individual circumstances substantiating the applicant's fears of ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I). It reiterates that where an applicant alleges that he or

she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human rights protection bodies or non-governmental organisations, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances the Court will not then insist that the applicant show the existence of further special distinguishing features (see *Saadi*, cited above, § 132, and *N.A. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008). The Court notes in this connection that the applicant was charged and convicted in Uzbekistan of "the illegal establishment of public associations or religious organisations" and of "the establishment of, management of, participation in religious extremist, separatist, fundamentalist or other proscribed organisations" (see paragraph 43 above). In the Court's view, those charges are, without any doubt, of a political and religious character (see *Kholmurodov v. Russia*, no. 58923/14, § 65, 1 March 2016). Accordingly, the Court is satisfied that the applicant belongs to a particularly vulnerable group, whose members are routinely subjected to treatment proscribed by Article 3 of the Convention in the destination country.

143. Moreover, the information in the Court's possession concerning the applicant's fate in Uzbekistan, albeit limited, suggests that when in Tashkent the applicant's contacts with the outside world were severely restricted (see paragraphs 26, 36 and 42 above), which is in line with concerns, voiced in particular by Amnesty International, that individuals returned to Uzbekistan from other countries were held incommunicado, which increased their risk of being ill-treated (see *Ermakov*, cited above, § 206).

144. In view of the foregoing, the Court concludes that the applicant's involuntary removal to Uzbekistan exposed him to a real risk of treatment contrary to Article 3 of the Convention.

(c) Substantive aspect of Article 3 of the Convention

(i) The respondent State's positive obligation to protect the applicant against a real and immediate risk of forcible transfer to Uzbekistan

145. The Court has already found that where the authorities of a State party are informed of a real and immediate risk to an individual on account of his or her exposure to a real and imminent risk of torture and ill-treatment through his or her transfer by any person to another State they have an obligation under the Convention to take, within the scope of their powers, such preventive operational measures as, judged reasonably, might be expected to avoid that risk (see, with further references, *Savriddin Dzhurayev*, cited above, § 180). The Russian authorities have

been alerted by both the Court and the Committee of Ministers to the recurrence of similar incidents of the unlawful transfer from Russia to States not parties to the Convention, in particular Tajikistan and Uzbekistan, of applicants subject to an interim measure indicated by the Court under Rule 39 of the Rules of Court (for a summary of the relevant statements, see *Savriddin Dzhurayev*, cited above, §§ 121-26, and *Kasymakhunov*, cited above, § 136). Furthermore, by a letter of 25 April 2012 the Registrar of the Court expressed on behalf of the President of the Court profound concern at the disappearance of another applicant, Savriddin Dzhurayev, in Russia and his subsequent transfer to Tajikistan "notwithstanding the interim measures indicated under Rule 39 of the Rules of Court" (for the full text of the letter, see *Savriddin Dzhurayev*, cited above, § 52).

146. However, the Court is not persuaded that an obligation to take preventive operational measures arose in the present case as no interim measure had been applied by the Court in respect of the applicant at the time of his abduction (see, by contrast, *Savriddin Dzhurayev*, cited above, §§ 4 and 38; *Nizomkhon Dzhurayev*, cited above, §§ 4 and 67; *Ermakov*, cited above, §§ 4 and 85-88; and *Kasymakhunov*, cited above, §§ 4 and 44-49). The Court considers that it would be too far-reaching, if not unwarranted, to find that the Russian authorities had any particular grounds to exercise special vigilance in respect of the applicant, who only became subject to interim measures after his abduction. To hold otherwise would suggest that there existed an obligation on the authorities constantly to supervise any Uzbek or Tajik nationals on Russian territory, which would not only impose an unrealistic burden on the State but would also run contrary to the notion of the personal autonomy of such foreign nationals, which is an important principle underlying the interpretation of the guarantees of Article 8 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III).

147. Accordingly, the Court does not find, in the particular circumstances of the present case, that the Russian authorities were under an obligation to take preventive operational measures to avoid the risk of the applicant's involuntary transfer to Uzbekistan.

(ii) The respondent State's responsibility for the applicant's removal to Uzbekistan

148. The Court has already found it established in paragraph 126 above that the Russian authorities were either directly or indirectly involved in the applicant's forcible transfer to Tashkent.

149. The Court further notes that it must consider the present case in its context, having regard in particular to the recurrent disappearances of individuals subject to extradition from Russia to Tajikistan or Uzbekistan, and their subsequent resurfacing in police custody in their home country (see paragraph 145 above; also, see *Ermakov*, cited above, § 181). The

regular recurrence of such incidents, for which the authorities have not provided any adequate explanation, lends further support to the version of the facts presented to the Court by the applicant's representatives.

150. The Court has already established that in cases concerning disappearance from the Russian territory of individuals wanted for "extremism" crimes in Uzbekistan and Tajikistan that the Russian authorities bear the burden of proof to show that the applicant's disappearance was not due to the passive or active involvement of the State agents (see, with further references, *Mukhitdinov*, cited above, § 76). It notes that the Government have not discharged the burden in the present case. Their claim that the State agents were not involved in the applicant's kidnapping as such does not suffice to absolve the State from responsibility. The Court accordingly finds that the respondent State must therefore be held accountable for the applicant's disappearance.

151. There has therefore been a violation of Article 3 of the Convention in its substantive aspect.

(d) Procedural aspect of Article 3 of the Convention

152. The Court will now examine whether the Russian authorities have complied with their obligations arising from Article 3 of the Convention in its procedural limb.

153. The Court refers to the general principles pertaining to the procedural aspect of Article 3 of the Convention set out, among many other authorities, in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 114-23, ECHR 2015). It reiterates that those general principles fully apply to a situation where the authorities of a State party are informed of an individual's exposure to a real and imminent risk of torture or ill-treatment through his forcible transfer to another State (see *Savriddin Dzhurayev,* cited above, § 190; *Kasymakhunov*, cited above, § 144; and *Mukhitdinov*, cited above, § 65).

154. Turning to the circumstances of the present case, the Court considers that once it had been informed of the applicant's abduction (see paragraph 23 above) the Russian authorities were under an obligation to investigate the incident, irrespective of the issues of imputability and positive obligations discussed above. It reiterates that Article 3 of the Convention requires the authorities to conduct an effective official investigation into alleged ill-treatment inflicted by private individuals and that the investigation should, in principle, be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. That investigation should be conducted independently, promptly and with reasonable expedition. The victim should be able to participate effectively (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 172, ECHR 2014 (extracts)).

155. The Court observes that a criminal investigation into the applicant's abduction was opened. It emphasises once again that the information at its disposal on the course of the investigation of case no. 815447 is limited and fragmented. That regrettable situation is a direct result of the Government's disregard for their obligation under Article 38 of the Convention (see paragraph 109 above). Nevertheless, even the few elements that could be discerned from the material submitted by the Government to enable the Court to assess compliance with the procedural aspect of Article 3 of the Convention hint at serious deficiencies in the investigation.

156. First, as can be seen from one of the documents provided by the Government (see paragraph 77 above), the investigative authority opened an investigation into the applicant's abduction on 9 July 2014, a month after the abduction had been reported. In the Court's view, such a long delay in commencing the investigation, resulting in a loss of precious time, in itself had a serious, adverse impact on the investigation's prospects of success.

157. Secondly, between July 2014 and April 2015 the investigation was suspended and then resumed at least four times (see paragraph 82 above). The reasons for resuming the investigation in each instance could not be established owing to the lack of information available to the Court. However, as can be seen from the list of measures to be taken to ensure a comprehensive investigation appearing in the decision of 29 April 2015 (see paragraph 81 above), on 25 April 2015 an investigator had decided to suspend the investigation in spite of a lack of response from the Uzbek authorities to the request for mutual legal assistance, which suggests a perfunctory handling of the investigation.

158. Thirdly, as seen in the Basmannyy police's report (see paragraph 76 above), the offices of the FSB and the Russian Ministry of the Interior sent no reply to the police enquiries. The Court considers that such a lack of cooperation between various State agencies in a potentially life-threatening situation, where it could be expected that every means available to the State ought to be employed to elucidate the circumstances of a disappearance, is indicative of the lack of genuine intent on the part of the respondent State to investigate the incident thoroughly.

159. Having regard to the deficiencies identified above, the Court finds that the investigation was neither thorough nor sufficiently comprehensive and thus fell short of the requirements of Article 3 of the Convention.

160. There has accordingly been a violation of Article 3 of the Convention in its procedural aspect.

IV. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

161. The applicant's representative complained that Russia had breached its obligations under Article 34 of the Convention by their failure to comply

with the interim measure indicated under Rule 39 of the Rules of Court. Article 34 of the Convention reads as follows:

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

162. The Government did not comment on that part of the submission.

163. The Court reiterates the relevant general principles summarised, among other authorities, in *Abdulkhakov* (cited above, §§ 222-25). It also observes that in certain circumstances the transfer of an applicant against his will to a country other than the country in which he allegedly faces a risk of ill-treatment may amount to a failure to comply with such an interim measure (ibid., § 227).

164. However, in view of its findings in the present case (see paragraph 147 above), the Court considers that there are no grounds to conclude that Russia did not comply with their obligations arising from Article 34 of the Convention (see *Latipov v. Russia*, no. 77658/11, § 151, 12 December 2013).

V. RULE 39 OF THE RULES OF COURT

165. The Court reiterates that 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.

166. However, given that the applicant is currently in detention in Uzbekistan, the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) has become obsolete. It is therefore appropriate to discontinue the indication made to the Government under Rule 39.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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

168. The applicant's representative submitted that the applicant had sustained non-pecuniary damage. He invited the Court to determine the amount to be paid under this head at its own discretion.

169. The Government submitted that, in their view, there had been no violations of the Convention provisions in the present case. However, were the Court to find to the contrary, a finding of a violation would in itself constitute sufficient just satisfaction.

170. The Court has found violations of Article 3 of the Convention in its substantive and procedural limbs in the present case. It considers it appropriate to award the applicant 19,500 euros (EUR).

171. In view of the applicant's continuing detention and his extremely vulnerable situation in Uzbekistan, the Court considers it appropriate that the amount awarded to him by way of just satisfaction should be held in trust for him by his representative (see *Savriddin Dzhurayev*, cited above, § 251, and point 6 (a) (i) of the operative part, and *Ermakov*, cited above, § 293, and point 9 (a) (i) of the operative part).

B. Default interest

172. 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. *Holds* that the respondent State failed to comply with its duty under Article 38 of the Convention to furnish all the necessary facilities for an effective examination of the application by the Court;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in its substantive aspect;

4. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect;

5. *Holds* that there has been no violation of Article 34 of the Convention;

6. *Decides* to discontinue the application of Rule 39 of the Rules of Court;

7. *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, EUR 19,500 (nineteen thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is to be held by the applicant's representative before the Court in trust for the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Luis López Guerra President