

FIRST SECTION

CASE OF SHAKUROV v. RUSSIA

(Application no. 55822/10)

JUDGMENT

STRASBOURG

5 June 2012

FINAL

22/10/2012

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



In the case of Shakurov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 55822/10) 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 Askhat Askhatovich Shakurov ("the applicant"), on 19 July 2010.

2. The applicant was represented by Ms Y. Ryabinina and Ms N. Yermolayeva, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 12 October 2010 the President of the First Section, acting upon the applicant's request of 11 October 2010, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Uzbekistan until further notice and granting priority treatment to the application.

4. On 4 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Yasnogorsk, the Tula Region (Russia).

A. The applicant's arrival in Russia

6. In March 2002 the applicant, an officer in the Uzbek Armed Forces, left his military unit in Uzbekistan and went to Russia for employment-related reasons. He settled in the town of Yasnogorsk, in the Tula Region, some thirty kilometres to the north of Tula. Two years later his spouse and their two children, born in 1994 and 2000, moved over from Uzbekistan and subsequently obtained Russian citizenship. In 2007 the applicant's spouse bought a house in Yasnogorsk.

7. Until 2007, for unspecified reasons, the applicant lived separately from his spouse and children.

8. On 30 July 2009 the Uzbek Ministry of Health recommended, at the applicant's spouse's request, that their elder daughter be admitted to a neurological hospital in Moscow in order to treat her neurological condition. The certificate stated that the child should be accompanied by her mother.

9. The applicant did not apply for Russian citizenship, as he explained, because he had lost his Uzbek national passport in 2002. Neither did he make any attempts to regularise his stay in Russia or to register his residence in the country between 2002 and 2010.

B. Criminal proceedings against the applicant in Uzbekistan

10. In the meantime, on 24 June 2002 the Uzbek authorities instituted criminal proceedings against the applicant under Article 287-3 of the Uzbek Criminal Code ("the UCC") for desertion. The offence was punishable by up to five years' imprisonment.

11. On 29 July 2002 the military prosecutor's office of the Tashkent Command ("the military prosecutor's office") issued a bill of indictment and an arrest warrant against the applicant. On the same day the military prosecutor's office suspended the investigation on account of the failure to establish the applicant's whereabouts and put his name on a wanted list.

12. On 6 September 2002 the military prosecutor's office issued a search warrant for the applicant.

13. On 9 November 2009 the military prosecutor's office re-classified the charges against the applicant as aggravated desertion, punishable by five

to ten years' imprisonment, and charged him *in absentia* under Article 228-2 of the UCC.

C. Proceedings against the applicant in Russia

1. Criminal proceedings and the applicant's detention

14. On 27 October 2009 the Yasnogorsk District Department of the Interior ("the ROVD") brought criminal proceedings against the applicant on suspicion of having threatened his spouse with death (Article 119-1 of the Russian Criminal Code, "the RCC"). On the same day the applicant was arrested and placed in remand centre no. 71/1.

15. On 29 October 2009 the Yasnogorsk District Court of the Tula Region ("the district court") authorised the applicant's detention at the request of the ROVD. The Yasnogorsk District Prosecutor's Office ("the district prosecutor's office") backed up the request, referring, in particular, to the fact that the applicant was wanted for a crime committed in Uzbekistan. The district court ordered the applicant's detention on the basis of Articles 99, 100 and 108 of the Russian Code of Criminal Procedure ("the CCrP"), stating as follows:

> "It can be seen from materials submitted to the Court that Mr Shakurov is suspected of a minor criminal offence carrying a penalty of up to two years' imprisonment. He is unemployed, that he has no permanent income, and has not registered his residence in Russia. Therefore, the court agrees with the investigator that there are grounds to believe that, if at large, he, understanding the nature of the penalty he could face, may flee investigation and prosecution, continue criminal activities and put pressure on the victim and witnesses so that they alter their testimony, thus hindering the criminal proceedings".

The applicant did not appeal.

16. On 16 December 2009 the district court extended the applicant's detention to 16 January 2010 on similar grounds, with reference to Articles 108 § 3 and 109 §§ 1 and 2 of the CCrP. The applicant did not exercise his right of appeal.

17. On 11 January 2010 the Justice of the Peace of the Yasnogorsk District discontinued the criminal proceedings against the applicant because of reconciliation between the parties, and ordered his immediate release. It is unclear whether the applicant was indeed released. On the same day he was placed in custody with a view to extradition (see paragraph 37 below).

2. Extradition proceedings

18. In the meantime, on 27 October 2009 the ROVD received information concerning the criminal proceedings initiated against the applicant in Uzbekistan from their Uzbek counterparts.

19. On 4 November 2009 the district prosecutor interviewed the applicant. As can be seen from the questioning record, signed by the applicant, the applicant explained that he had left Uzbekistan in March 2002 as he had faced workplace discrimination "on account of his origins" from his commanding officers, who had refused to consider his resignation requests. He had arrived in Russia with a view to obtaining Russian citizenship and getting employment. He had applied neither for Russian citizenship, as he had lost his Uzbek passport, nor for political asylum or refugee status, as he had not been subjected to persecution on political grounds in Uzbekistan. He considered himself a Russian citizen. The applicant understood that the Uzbek authorities wanted him for military desertion.

The prosecutor concluded as follows:

> "Presently, Mr Shakurov's extradition to the law-enforcement authorities of Uzbekistan is precluded by the criminal proceedings brought under Article 119 § 1 of the RCC, which are pending against him in Russia".

20. On 5 November 2009 at an interview with a deputy district prosecutor the applicant added that he had left the military service also because of the very low wages and discrimination from his senior colleagues due to his poor command of Uzbek. Discrimination on that ground had been very common at his workplace. Thus, the commanding officers had "fabricated" criminal cases against fifteen servicemen. The applicant feared that he would be tortured by Uzbekistan security forces in the event of extradition, since it was common practice. He intended to submit an asylum request as he feared persecution on the grounds of his nationality and language skills. He considered that the criminal proceedings pending against him in Russia and the fact that his spouse and children lived in Russia and were Russian citizens were obstacles to his extradition to Uzbekistan.

21. On 6 November 2009 the prosecutor's office of the Tula Region ("the regional prosecutor's office") forwarded the extradition material to the International Legal Cooperation Unit of the Prosecutor General's Office, stating as follows:

> "The measure of restraint with a view to ensuring Mr Shakurov's possible extradition has not been applied to him because it is not necessary."

22. On 23 or 25 November 2009 the Prosecutor General's Office received a request for the applicant's extradition from its Uzbekistan counterpart, dated 13 November 2009. The request was reasoned by the charges brought against the applicant under Article 288-2 of the UCC. Relying on Article 66 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention"), the Uzbek authority assured its Russian counterpart that the applicant would not be extradited to a third country without the consent of the Russian

Federation, that no criminal proceedings would be initiated and he would not be tried or punished for an offence which was not the subject of the extradition request and he would be able to freely leave Uzbekistan once the court proceedings had terminated and the punishment served.

23. On 30 November 2009 the Russian Prosecutor General's Office asked the Prosecutor General's Office of Uzbekistan to provide diplomatic assurances and conduct a check as to the applicant's allegations of workplace discrimination and torture in the event of his extradition to Uzbekistan.

24. On 7 December 2009 the Russian Federal Migration Service ("the FMS") stated that the applicant had neither applied to register his residence in the Tula Region nor to obtain migrant status or Russian citizenship.

25. On 10 December 2009 the Federal Security Service ("the FSB") wrote to the regional prosecutor's office stating that it saw no obstacles to the applicant's extradition.

26. On 15 December 2009 a district military prosecutor of the Tashkent Command of Uzbekistan issued a statement in connection with the criminal proceedings pending against the applicant in Uzbekistan, which read as follows:

> "Following Mr Shakurov's statement at the interview of 4 November 2009 [...], military prosecutors of the Tashkent command questioned the former commanding officer Mr S., the head of the human resources Mr K. and [some other] officers. They clarified that the unit servicemen had mainly spoken Russian. Servicemen who had not mastered Uzbek had not been subjected to discrimination. Mr Shakurov had spoken good Russian and Uzbek. During the period of his service, he had submitted only one request, dated 25 August 2000, whereby he had asked to extend his term of office until 24 November 2003. That request had been granted."

27. On 21 December 2009 the Uzbek Prosecutor General's Office assured its Russian counterpart that the criminal proceedings against the applicant had been conducted without discrimination on account of his ethnic origin, religion, language or social status and that, if extradited, the applicant would not be subjected to ill-treatment and his right to defend himself, including through legal assistance, would be secured. The criminal proceedings would be carried out in strict compliance with the Uzbek Code of Criminal Procedure and international treaties.

28. On 11 January 2010 the Yasnogorsk District Court ordered the applicant's placement in custody with a view to extradition (see paragraph 37 below).

29. On 19 January and 3 February 2010 the Ministry of the Interior and the FSB informed the Prosecutor General's Office that there were no obstacles to the applicant's extradition to Uzbekistan.

30. On 24 June 2010 the Deputy Prosecutor General granted the extradition request. The prosecutor decided to extradite the applicant under charges of desertion, a crime punishable under Article 338-1 of the RCC.

He noted that the statute of limitations for the offence had not expired either in Russia or in Uzbekistan. He further pointed out that, in line with the Minsk Convention and the CCrP, differences in the classification of the offence and its elements under the Russian and the Uzbek criminal law were not sufficient grounds for refusing extradition. The prosecutor also referred to the information provided by the FMS that the applicant was an Uzbek national who had not applied for Russian citizenship. The prosecutor concluded that there were no obstacles to his extradition to Uzbekistan.

31. On 6 and 14 July 2010 the applicant sought judicial review of the extradition decision. He stated, in particular, that his decision to leave the Uzbek army had been wrongly classified as desertion; that the statute of limitations for desertion had expired; that, since he had not mastered the Uzbek language, he had been discriminated against in Uzbekistan, in particular by superior colleagues who had told him he should learn Uzbek; that, if extradited, he ran the risk of being subjected to torture, a widespread practice in Uzbekistan, along with other human rights violations; that he had been permanently residing in Russia for over eight years and had no intention to return to Uzbekistan; that his spouse and children were Russian citizens and that his disabled daughter needed costly medical treatment, unavailable in Uzbekistan.

32. From 6 to 9 August 2010 the Tula Regional Court ("the regional court") heard the applicant's case in the presence of his lawyer. The applicant specified that he had left Uzbekistan for Russia in order to ensure his family's well-being. He considered that after his departure, the Uzbek authorities had launched a search for him with a view to bringing him to justice for desertion. Uzbek policemen had threatened his spouse. He clarified that he would risk political persecution in the event of extradition for the reason that he had not mastered Uzbek, although he had studied it at school, and that he generally disapproved of the politics of Uzbekistan, although neither he nor his family had been politically or religiously active or persecuted. While in Russia, the applicant had used his USSR military officer's professional card *(удостоверение офицера СССР)* as an identity document and, consequently, had had no need to apply for asylum or refugee status there.

33. On 9 August 2010 the regional court upheld the extradition decision and, relying on Articles 462 § 1 and 464 §§ 1-2 of the CCrP and Article 57 of the Minsk Convention, rejected the applicant's appeal. The court established that the applicant had left Uzbekistan for purely economic reasons. Neither the applicant nor his extended family had been discriminated against or persecuted for political reasons in the requesting country. The alleged police threats towards his spouse were unsubstantiated. The Uzbek authorities had provided sufficient assurances that the applicant's rights would be fully respected in the event of extradition. The statute of limitations for desertion had not expired either under the Uzbek or

the Russian law. The applicant's health was in a satisfactory condition and, as such, did not preclude him from being extradited. As regards the applicant's family situation, the court stated the following:

> "Mr Shakurov's argument that his departure from Uzbekistan in 2002 was motivated by the necessity to provide medical treatment for his child is unsubstantiated. As can be seen from medical certificate no. 490 appended to the case file, the Ministry of Health of Uzbekistan recommended the treatment [in Moscow] only on 30 July 2009 at the relatives' request.
>
> Mr Shakurov's children have been living with his spouse, who has been taking care of them".

34. On 12, 16 and 31 August and 10 September 2010 the applicant and his legal counsel appealed against the first-instance judgment. They challenged the charges against the applicant, argued that the regional court had failed to take into account the circumstances which had prompted his departure from Uzbekistan, underlined that his spouse and children were Russian citizens and expressed a fear for his life in case of extradition. As to the applicant's family life, the applicant's lawyer argued as follows:

> "The first-instance court did not properly take account of the difficult family circumstances of [the applicant]: his daughter's illness and disability status, the recommendation that her health care be sought in Russia, and the futility of [the applicant's] retirement applications to the military command and insufficiency of the emoluments..."

35. On 30 September 2010 the Supreme Court of the Russian Federation ("the Supreme Court") dismissed the points of appeal and upheld the first-instance judgment. The hearing was held by video link and the applicant was legally represented. The appeal court found that the lower court had issued a lawful and reasoned decision. It pointed out that the applicant had been prosecuted for the crime of desertion punishable both in Uzbekistan and Russia, that the statute of limitations had not expired and that the Uzbek authorities had furnished the necessary diplomatic assurances. The court relied on Chapter 54 of the CCrP.

3. The applicant's detention with a view to extradition

36. On 11 January 2010 the district prosecutor submitted a request to place the applicant in custody with a view to extradition on the basis of Articles 108, 109 and 466 § 1 of the CCrP.

37. On 11 January 2010 the district court ordered the applicant's placement in custody pending extradition. The applicant was kept in remand centre no. 71/1. Relying on Article 56 § 2 of the Minsk Convention and Articles 108, 109 and 466 § 1 of the CCrP, the district court stated as follows:

> "Under Article 287-3 of the UCC and Article 337-4 of the RCC, desertion is punishable by up to five years' imprisonment.

> [...] Mr Shakurov is an Uzbek citizen. He has not applied to renounce his Uzbek citizenship.
>
> Mr Shakurov has not applied for political asylum or refugee status in Russia. He has not had access to data under the Russian official secrets legislation or data which could affect Russian national security interests.
>
> He has not been persecuted in Uzbekistan on political, racial or religious grounds or for any antisocial activity.
>
> [...] The criminal proceedings brought against him in Russia under Article 119 § 1 of the RCC were terminated on 11 January 2010 in view of the parties' reconciliation.
>
> According to the materials submitted to the Court, the Prosecutor General's Office should receive documents from the Uzbek law-enforcement authorities in support of the lawfulness of the arrestee's extradition and carry out the extradition request. Given that the charges against [the applicant] constitute a crime both in Uzbekistan and Russia and that he previously absconded from the Uzbek investigation authorities, there are no grounds for denying his extradition under Article 464 of the CCrP".

The District Court did not set a time-limit for detention.

38. The applicant and his counsel lodged an appeal. They claimed, in particular, that the statute of limitations for his prosecution in Uzbekistan had expired, that the applicant had been living in Russia for over eight years and that his spouse and children were Russian citizens. The applicant asked the court to change the measure of restraint to an undertaking not to leave Russia or to quash it and grant him refugee status or political asylum.

39. On 10 February 2010 the regional court upheld the detention order on appeal, supporting the district court arguments with the following:

> "Pursuant to Article 8 of the Minsk Convention and Article 78 of the RCC, the running of the statute of limitations is suspended in the event that the accused is being searched for.
>
> Mr Shakurov is an Uzbek citizen and has not obtained Russian citizenship. His residence in Russia is not in compliance with domestic law and cannot be a ground for granting him Russian citizenship. He has not applied for political asylum or refugee status in Russia.
>
> [...] the court rejects as unsubstantiated the applicant's argument that he was unaware of the charges brought against him in Uzbekistan, the institution of criminal proceedings against him and the search warrant issued for him there.
>
> His other arguments for appeal, such as his continuous residence in Russia and family situation, cannot be taken into account for the purpose of ordering detention pending extradition.
>
> The court observes that the district court committed no breaches of the CCrP which could necessitate the quashing of its decision".

40. On 4 March 2010 the district court extended the applicant's detention pending extradition to 11 May 2010, taking it to a total of four months. The court relied on Article 109 of the CCrP. The applicant and his lawyer attended the hearing. The court established that there were no grounds for altering the preventive measure, stating as follows:

> "According to the materials submitted to the Court, the Prosecutor General's Office should receive documents confirming the lawfulness of the arrestee's extradition from the Uzbek law-enforcement authorities and carry out the extradition procedure. Mr Shakurov is charged with an offence constituting a crime both in Uzbekistan and in Russia, he absconded from the Uzbek prosecuting authorities and no ground for denying extradition under Article 464 of the CCrP can be applied to his case.
>
> Mr Shakurov's placement in custody as a measure of restraint was valid, lawful, well-grounded and conducted in compliance with the criminal-procedure laws.
>
> The circumstances under which the measure of restraint was imposed on Mr Shakurov have not changed."

41. On 10 March 2010 the applicant submitted his points of appeal. He specified that his application for political asylum had been disallowed (see paragraph 61 below) and contested that he had absconded from the Uzbek law-enforcement authorities. He further reiterated his reasons for departing from Uzbekistan, such as his disapproval of the Uzbek political regime, discrimination against the Russian-speaking population and the ensuing lack of opportunity for his spouse to obtain a University degree, the absence of quality medical care and of educational prospects for the children, and a low standard of living. The applicant pursued his argument as follows:

> "I believe that the above-mentioned facts allow me to choose a place of residence for me and my family. I have always thought of Russia as my motherland (although I was born in Kazakhstan).
>
> I also ask the honourable court to consider that I have never been convicted, I have been officially married since 1993, my spouse is a Russian citizen, I have to provide for two underage children (one of whom has been suffering from a disability since childhood) who are also Russian citizens, and I have been permanently residing in Yasnogorsk (what else is needed to obtain Russian citizenship?).
>
> In view of the above, I ask you to quash the decision of the district court [to extend the detention term]. For, in the event of my extradition and unlawful conviction in Uzbekistan [...], I have rather substantiated reasons to fear persecution and I really fear for my life."

The points of appeal reached the regional court on 23 March 2010.

42. On 28 April 2010 the regional court dismissed the applicant's appeal, addressing his arguments in full and rejecting them as unsubstantiated. The applicant's lawyer attended the hearing. With reference to Article 109 of the CCrP and Article 34 of the Ruling of

29 October 2009 of the Russian Supreme Court, the regional court stated as follows:

> "Extending Mr Shakurov's detention pending extradition, the [district] court put forward convincing arguments. In view of the material in its possession, the judges' panel agrees with these arguments....
>
> The personal situation of the accused, including his arguments for appeal, was taken into account by the [district] court. Although there is no information in the case file as to Mr Shakurov's child's disability, this fact cannot cast doubt on the validity of the court's argument in favour of the extension of the detention term."

43. On 6 May 2010 the district court extended the applicant's detention to 11 July 2010, taking it to a total of six months. In doing so, the district court referred to Article 109 of the CCrP and provided similar reasoning as in its decision of 4 March 2010 (see paragraph 40 above). It also took into account the letter of the Uzbek Prosecutor General's Office (see paragraph 22 above) and the applicant's pending request for refugee status. The applicant and his lawyer attended the detention hearing. However, neither of them appealed.

44. On 7 July 2010 the district court extended the applicant's detention to 11 September 2010 under Article 109 of the CCrP, taking it to a total of eight months. The hearing was held in the presence of the applicant and his legal counsel. They challenged the lawfulness of the charges pending against the applicant in Uzbekistan and claimed that Article 109 of the CCrP was inapplicable to his case since the applicant had not been charged with a serious criminal offence and thus could not be detained for more than six months under the CCrP.

45. With reference to the letter of the 13 November 2009 of the Uzbek Prosecutor General's Office (see paragraph 22 above), the court considered that aggravated desertion was a serious crime punishable by up to ten years' imprisonment under Article 228-2 of the UCC and Article 338-2 of the RCC. Therefore, Article 109 was applicable to the applicant's case with a view to extending his detention above six months. The court also took note of the refusal of his refugee application by the FMS on 7 June 2010 (see paragraph 65 below). The court stated as follows:

> "As can be seen from the materials submitted to the court, Mr Shakurov has been charged with a criminal offence which is classified as serious both in the territory of Uzbekistan and in the territory of Russia. He has previously absconded from the Uzbek investigation authorities. Presently, the Russian Prosecutor General's Office has granted the extradition request submitted by its Uzbek counterpart [...].
>
> Mr Shakurov's placement in custody as a measure of restraint was valid, lawful, well-grounded and conducted in compliance with the Russian criminal-procedure laws.
>
> The circumstances under which the measure of restraint was imposed on Mr Shakurov have not changed."

46. On 12 July 2010 the applicant appealed against the first-instance decision. He challenged the validity of the extradition request, claimed that the Uzbek authorities had failed to prove that he had been timely informed of the charges pending against him and their subsequent re-classification as aggravated desertion. Lastly, he complained that the first-instance court had disregarded his personal situation. On 15 July 2010 the applicant's points of appeal reached the district court. On an unspecified date, the district court submitted the file to the regional court, which was the appeal-instance court for the detention issue. It is likewise unclear when the file in fact reached the regional court. The regional court issued its decision on 18 August 2010. It is undisputed, however, that, having received the file, the appeal court issued its decision within three days, as required under the CCrP (see paragraph 75 below).

47. As indicated, on 18 August 2010 the regional court examined the applicant's arguments and dismissed them as unsubstantiated. Both the applicant and his lawyer were present at the hearing. The regional court stated, *inter alia*, that the district court had taken its decision in compliance with Chapters 13 and 54 of the CCrP, the European Convention on Extradition of 13 December 1957 and the Minsk Convention. The district court had considered the extradition request to the extent that the international treaties and Chapter 54 of the RCC so allowed. The applicant's personal situation had also been taken into account. In view of the above, the regional court concluded that:

> "Hence, as a result of real judicial review, the [district] court reasonably and rightly established that Mr Shakurov's term of detention should be extended.
>
> At present, Mr Shakurov's detention does not fall foul of Article 5 § 1 (c) of the European Convention [...] or Article 55 § 3 of the Russian Constitution, according to which individual rights and freedoms can only be restricted by a Federal Law in so far as it is necessary for the protection of the constitutional order, morals, health and legal interests of other citizens."

48. On 8 September 2010 the district court, at the request of the Deputy Regional Prosecutor of 1 September 2010, extended the applicant's detention to 11 November 2010, taking it to a total of ten months. Relying on Article 109 of the CCrP, the court provided similar reasoning as on 7 July 2010 (see paragraph 44 above). As an additional ground for extension, the court referred to the pending judicial review in respect of the Prosecutor General's Office's decision to grant the extradition request.

The applicant and his legal counsel attended the hearing.

49. On 13 September 2010 the applicant submitted his points of appeal. Yet again, he challenged the charges brought against him in Uzbekistan and argued that the statute of limitations had expired. He referred to Article 464 §§ 1-4 of the CCrP. On 16 September 2010 the points of appeal reached the district court. On an unspecified date, the district court submitted the file to

the regional court. Whereas it is unclear when the file reached the regional court, it remains undisputed that, having received the file, the appeal court issued its decision within three days, as required under the CCrP (see paragraph 75 below).

50. On 29 September 2010 the regional court dismissed the applicant's appeal with similar reasoning as on 18 August 2010 and also referred to Article 5 § 1 (c) of the Convention, the European Convention on Extradition and the Minsk Convention. Relying on the ruling of 29 October 2009 of the Supreme Court, the regional court highlighted that in extending detention with a view to extradition, a court was to apply Article 109 of the CCrP, according to which detention can be extended to up to twelve months.

The applicant did not attend the hearing but was represented at it.

51. On 8 November 2010 a deputy regional prosecutor requested to extend the applicant's detention for another two months, taking it to a total of twelve months. The prosecutor took note of the refusal of the applicant's asylum and refugee status requests (see paragraphs 61, 65 and 68 below), against which the applicant did not appeal. The prosecutor also pointed to the application of Rule 39 of the Rules of Court to the applicant's case, stating as follows:

> "Up to present the European Court has not lifted Rule 39 of the Rules of Court and, therefore, Mr Shakurov cannot be extradited and should be remanded in custody in accordance with Article 109 of the CCrP."

The prosecutor requested to extend the applicant's detention, *inter alia*, "with a view to ensuring his detention until the European Court of Human Rights examines his application and with a view to surrendering him to the Uzbek law-enforcement authorities for the purpose of prosecution."

52. On 11 November 2010 the district court granted the prosecutor's request and extended the applicant's detention to 11 January 2011 under Article 109 of the CCrP. Both the applicant and his legal counsel attended the hearing. The applicant argued that the term of his detention pending extradition had started running on 4 November 2009 when the district prosecutor interviewed him following the receipt of information on the charges pending against him in Uzbekistan (see paragraph 19 above). The applicant's lawyer asked the court to release the applicant since the term authorised under Article 109 of the CCrP had expired and Rule 39 of the Rules of Court had been applied to his case. The court established that the applicant's placement in custody with a view to extradition had been ordered on 11 January 2010 and rejected the applicant's argument as unsubstantiated. In extending the detention term, the court relied on Article 109 of the CCrP and gave similar reasoning as on 7 July 2010 (see paragraph 44 above).

53. On 17 and 18 November 2010 the applicant and his legal counsel introduced their points of appeal. They reiterated that the applicant's term of detention with a view to extradition had started running on 4 November

2009 at the latest. Yet on 29 October 2009 the court deciding on the extension of his detention on criminal charges in Russia had been aware that the applicant had been wanted for a crime committed in Uzbekistan (see paragraph 15 above). In accordance with Article 109 § 3, detention could be extended beyond twelve months only in view of particularly serious charges, which was not his case. The prosecutor had wrongly construed Rule 39 of the Rules of Court as a ground for extending his detention pending examination of his application by the Court. Since the application of Rule 39 barred the applicant from extradition, his continuous detention was unlawful and contrary to Article 5 § 1 (f) of the Convention. The applicant had no intention to flee Russia and asked the appeal court to consider his family situation.

54. On 1 December 2010 the regional court dismissed the applicant's and his lawyer's points of appeal, who both attended the hearing. The regional court upheld the grounds for extending the applicant's detention put forward by the district court and emphasised that his detention was not in breach of Article 5 of the Convention. The court established that the date of the applicant's detention pending extradition had started running on 11 January 2010, reasoning as follows:

> "Contrary to the assertions of the [applicant's] lawyer, the fact that the Uzbek law-enforcement authorities had been searching for Mr Shakurov for the purpose of prosecution was not the ground for the court's order to place him in custody [on 29 October 2009].
>
> The fact that the extradition check was launched when Mr Shakurov was being held in custody on criminal charges brought against him in Russia is no reason for calculating the term of his detention pending extradition from this date.
>
> Thus, pursuant to Article 465 of the CCrP, a foreign national who is being prosecuted or is serving a penalty for a crime committed in the Russian territory cannot be surrendered until the prosecution is terminated, the penalty is lifted on any valid ground or the sentence is served.
>
> On 11 January 2010 the justice of the peace [...] terminated Mr Shakurov's prosecution under Article 119 § 1 of the RCC [...], lifted the measure of restraint and released him.
>
> Thereafter the district prosecutor submitted a court request under Articles 97 § 2 and 466 of the CCrP to place Mr Shakurov in custody pending his possible extradition to Uzbekistan.
>
> On 11 January 2010 the district court granted the said request. Therefore, the term of Mr Shakurov's detention with a view to extradition under Article 109 of the CCrP started running from this date."

55. On 11 January 2011 the district prosecutor ordered that the applicant be released under house arrest for the reason that the maximum authorised detention term had expired and that Rule 39 of the Rules of Court had been

applied to his case. The prosecutor relied on provisions of Chapters 13 and 54 of the CCrP, in particular Article 109 § 2. The applicant was released.

56. On 18 January 2011 the applicant appealed.

57. On 1 February 2011 the regional prosecutor's office quashed the decision of 11 January 2011.

58. On the same day the district court discontinued the proceedings on the ground that the impugned decision had been quashed and the applicant had consequently recalled his complaint of 18 January 2011.

59. On 2 February 2011 the district prosecutor's office ordered the applicant not to leave his town of residence.

4. Asylum and refugee applications

(a) Applications for political asylum and refugee status

60. On 15 January 2010 the applicant lodged a request for political asylum and refugee status with the FMS department in the Tula Region ("the regional FMS"). He submitted, in particular, that he disapproved of the politics of Uzbekistan and the low-quality medical care, that he had left Uzbekistan for work-related reasons and that he and his family had been discriminated against there, owing to their insufficient command of the Uzbek language.

61. On 22 January and 1 February 2010 the regional FMS stated that the applicant's request for political asylum could not be processed in view of the visa-free regime between Russia and Uzbekistan. Consequently, the regional FMS advised the applicant to apply for refugee status.

62. On 17 February 2010 the applicant submitted an application for refugee status, as indicated. He provided the same reasoning as in the request of 15 January 2010.

63. On 12 March 2010, at an interview with a regional FMS officer, the applicant stated that in the event of his extradition to Uzbekistan he feared prosecution and imprisonment for desertion, a crime that he had not committed.

64. On 29 March 2010 the applicant submitted that the statute of limitations for desertion had expired and that he had not been notified of the launch of the criminal proceedings against him in Uzbekistan.

65. On 7 June 2010 the regional FMS rejected the applicant's request for refugee status. The FMS found that the applicant faced no risk of persecution on account of his origin, religion, nationality or belonging to a particular social group. Discrimination that the applicant might face owing to his allegedly insufficient command of the Uzbek language did not amount to persecution on account of his origin. The applicant had left Uzbekistan for economic reasons. The FMS concluded that he did not wish to return to Uzbekistan so as to avoid prosecution for the crime with which he had been charged. The FMS also noted that since the applicant's arrival

in Russia in 2002 he had made no steps to claim refugee status until his arrest and subsequent detention with a view to extradition.

66. The applicant did not appeal against the above decision.

(b) Applications for temporary asylum

67. The applicant submitted two requests for temporary asylum, on 23 June 2010 and 18 January 2011. The second request emphasised the applicant's risk of being subjected to torture as a result of politically motivated persecution in the event of extradition. He supported his argument with references to the systematic practice of torture described by international human rights reports.

68. On 12 July 2010 the regional FMS rejected his first application on the ground that the applicant's health was in a satisfactory condition, that he did not require any medical care and that, in the event of his extradition to Uzbekistan, he would face no risk of being subjected to torture or ill-treatment, or being involved in an internal or international conflict. With reference to a report of the Ministry of Foreign Affairs no. 22201/3 fms of 4 March 2010 (*№ 22201/3 фмс*, "the MFA report") and an information notice from the FMS on the socio-political and socio-economic situation in Uzbekistan of 23 April 2010 ("the information notice"), the regional FMS stated that there was no information as to the practice of ill-treatment in respect of persons extradited to Uzbekistan and those detained in Uzbek prisons. The notice emphasised ongoing reforms of the Uzbek judiciary and the abolition of the death penalty in the country as of 1 January 2008. It also specified that Uzbekistan had ratified over sixty international human rights treaties. Copies of the report and the information notice were not submitted to the Court.

69. The applicant did not appeal against the above decision.

70. On 26 April 2011 the regional FMS granted a year's temporary asylum to the applicant, valid until 25 April 2012. The FMS reasoned that the Prosecutor General's Office had allowed the extradition request, that Rule 39 of the Rules of Court had been applied to the applicant's case and that, otherwise, his stay in Russia would remain irregular until the European Court delivered its judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation of 1993

71. Everyone has a right to liberty and security (Article 22 § 1). Detention is permissible only on the basis of a court order. The length of time for which a person may be detained prior to obtaining such an order must not exceed forty-eight hours (Article 22 § 2).

B. Code of Criminal Procedure

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

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

74. Chapter 13 of the CCrP governs the application of preventive measures. Detention is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a criminal offence punishable by at least two years' imprisonment where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A court request for detention is submitted by an investigator *(следователь)* with the support of the head of the investigative authority or by a police officer in charge of the inquiry *(дознаватель)* with the support of a prosecutor (Article 108 § 3). A request for detention should be examined by a judge of a district court or a military court of a corresponding level in the presence of the person concerned (Article 108 § 4).

75. A judge's decision on detention is amenable to appeal before a higher court within three days after its delivery date (Article 108 § 11 of the CCrP). A statement of appeal should be submitted to the first-instance court (Article 355 of the CCrP). While the CCrP contains no time-limit during which the first-instance court should send the statement of appeal and the case file to the appeal-instance court, Order no. 36 of 29 April 2003 by the Judicial Department of the Supreme Court of Russia requires that, "after the expiry of the three-day time-limit for appeal", the first-instance court should submit the detention file to the higher court. Having received this file, second-instance courts should examine appeals lodged against the judge's decisions on detention within three days (Article 108 § 11).

76. The period of detention pending investigation of a criminal case must not exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level. Further extensions up to twelve months may be granted with regard to persons accused of serious or particularly serious criminal offences (Article 109 § 2). Extensions up to eighteen months may be granted as an exception with regard to persons accused of particular serious criminal offences (Article 109 § 3).

77. A measure of restraint can be applied with a view to ensuring a person's extradition in compliance with the procedure established under Article 466 of the CCrP (Article 97 § 2).

78. Chapter 54 of the CCrP (Articles 460-468) governs the procedure to be followed in the event of extradition.

79. A court is to review the lawfulness and validity of a decision to extradite within a month of receipt of a request for review. The decision should be taken in open court by a panel of three judges in the presence of a prosecutor, the person whose extradition is sought and the latter's legal counsel (Article 463 § 4).

80. Article 464 § 1 lists the conditions under which extradition cannot be authorised. Thus, the extradition of the following should be denied: a Russian citizen (Article 464 § 1-1) or a person who was granted asylum in Russia (Article 464 § 1-2); a person in respect of whom a conviction became effective or criminal proceedings were terminated in Russia in connection with the same act for which he or she has been prosecuted in the requesting State (Article 464 § 1-3); a person in respect of whom criminal proceedings cannot be launched and a conviction cannot become effective in view of the expiry of the statute of limitations or under another valid ground under Russian law (Article 464 § 1-4); or a person in respect of whom a Russian court established obstacles to extradition, in accordance with the legislation and international treaties of the Russian Federation (Article 464 § 1-5). Finally, extradition should be denied if the act that gave grounds for the extradition request does not constitute a criminal offence under the RCC (Article 464 § 1-6).

81. In the event that a foreign national, whose extradition is being sought, is being prosecuted or is serving a penalty for another criminal offence in Russia, his extradition may be postponed until the prosecution is terminated, the penalty is lifted on any valid ground or the sentence is served (Article 465 § 1).

82. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the Prosecutor General or his deputy is to "take measures" in order to decide on the preventive measure in respect of the person whose extradition is being sought. The preventive measure is to be applied in accordance with the established procedure (Article 466 § 1).

83. Upon receipt of a request for extradition accompanied by an arrest warrant issued by a foreign judicial body, a prosecutor may place the person whose extradition is being sought under house arrest or in custodial detention without prior approval of his or her decision by a court of the Russian Federation (Article 466 § 2).

C. Decisions of the Russian Constitutional Court

1. Decision of 17 February 1998

84. Verifying the compatibility of section 31 § 2 of the Law on the Legal Status of Foreign Nationals in the USSR of 1981, the Constitutional Court ruled that a foreign national liable to be expelled from the Russian territory could not be detained for more than forty-eight hours without a court order.

2. Decision no. 101-O of 4 April 2006

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

86. In the Constitutional Court's view, the absence of specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 1993 Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, that is the procedure laid down in the CCrP. That procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Preventive measures"), which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests.

87. The Constitutional Court emphasised that the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP or in excess of the time-limits fixed in the Code.

3. Decision no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

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

89. The Constitutional Court refused the request on the ground that it was not competent to indicate specific provisions of the criminal law governing the procedure and time-limits for holding a person in custody

with a view to extradition. That matter was within the competence of the courts of general jurisdiction.

4. Decision no. 333-O-P of 1 March 2007

90. The Constitutional Court reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention as such, in that it required a court to examine whether the arrest was lawful and justified.

91. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure established in the Russian Code of Criminal Procedure and within the time-limits fixed in the Code.

5. Decision no. 383-O-O of 19 March 2009

92. The Constitutional Court dismissed as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the CCrP, stating that this provision "does not establish time-limits for custodial detention and does not establish the reasons and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign state to detain an accused. Therefore the disputed norm cannot be considered to violate constitutional rights of [the claimant] ..."

D. Decisions of the Russian Supreme Court

1. Ruling no. 22 of 29 October 2009

93. In Ruling no. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 ("the Ruling of 29 October 2009"), it was stated that, pursuant to Article 466 § 1 of the CCrP, only a court could order the placement in custody of a person in respect of whom an extradition check was pending and where the authorities of the country requesting extradition had not submitted a court decision remanding him or her in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with

Article 108 of the CCrP and following a prosecutor's request for that person to be placed in custody (paragraph 34 of the Ruling). In deciding to remand a person in custody a court was to examine if there were factual and legal grounds for the application of that preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor was entitled to remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP.

94. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCrP.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. The 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention")

95. When carrying out actions requested under the Minsk Convention, to which Russia and Uzbekistan are parties, an official body applies its country's domestic laws (Article 8 § 1).

96. Extradition for the institution of criminal proceedings can be sought with regard to a person whose acts constitute crimes under the legislation of the requesting and requested parties and are punishable by imprisonment of at least one year (Article 56 § 2).

97. Upon receipt of a request for extradition, the requested country should immediately take measures to search for and arrest the person whose extradition is being sought, except in cases where no extradition is possible (Article 60).

98. The person whose extradition is sought may be arrested before receipt of a request for extradition if there is a related petition. The petition must contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested or placed in detention before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

99. A person detained pending extradition pursuant to Article 61 § 1 of the Minsk Convention must be released if the requesting country fails to submit an official request for extradition with all requisite supporting documents within forty days of the date of placement in custody (Article 62 § 1).

B. Reports on human-rights situation in Uzbekistan

100. For relevant reports on Uzbekistan in the period between 2002 and 2007, see *Muminov v. Russia*, no. 42502/06, §§ 67-72, 11 December 2008.

101. The UN Special Rapporteur on Torture stated to the 2nd Session of the UN Human Rights Council on 20 September 2006 the following:

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

102. In November 2007 the UN Committee Against Torture considered the third periodic report of Uzbekistan (CAT/C/UZB/3) and adopted, *inter alia*, the following conclusions (CAT/C/UZB/CO/3):

> "6. The Committee is concerned about:
>
> (a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;
>
> (b) Credible reports that such acts commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;
>
> (c) The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention...
>
> 9. The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention...
>
> 11. The Committee remains concerned that despite the reported improvements, there are numerous reports of abuses in custody and many deaths, some of which are alleged to have followed torture or ill-treatment..."

103. In November 2007 Human Rights Watch issued a report entitled "Nowhere to Turn: Torture and Ill-Treatment in Uzbekistan", which provides the following analysis:

> "Prolonged beatings are one of the most common methods used by the police and security agents to frighten detainees, break their will, and compel them to provide a confession or testimony. They often start beating and kicking detainees with their hands, fists, and feet and then continue using truncheons, filled water bottles and various other tools...
>
> Several individuals reported that they were either tortured with electric shocks or forced by police to watch as others were tortured with it...
>
> Police and security officers sometimes use gas masks or plastic bags to effect near asphyxiation of detainees. After forcing an old-fashioned gas mask over the head of the victim, who in some cases is handcuffed to a chair, the oxygen supply is cut..."

104. The UN Special Rapporteur on Torture stated to the 3rd Session of the UN Human Rights Council on 18 September 2008 the following:

> "741. The Special Rapporteur ... stressed that he continued to receive serious allegations of torture by Uzbek law enforcement officials...
>
> ...
>
> 744. In light of the foregoing, there is little evidence available, including from the Government that would dispel or otherwise persuade the Special Rapporteur that the practice of torture has significantly improved since the visit which took place in 2002..."

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

> "Amnesty International believes that there has been a serious deterioration in the human rights situation in Uzbekistan since the so-called Andizhan events in May 2005. ...
>
> Particularly worrying in the light of Uzbekistan's stated efforts to address impunity and curtail the use of cruel, inhuman and degrading treatment have been the continuing persistent allegations of torture or other ill-treatment by law enforcement officials and prison guards, including reports of the rape of women in detention. ...
>
> Despite assertions by Uzbekistan that the practice of torture has significantly decreased, Amnesty International continues to receive reports of widespread torture or other ill-treatment of detainees and prisoners.
>
> According to these reports, in most cases the authorities failed to conduct prompt, thorough and impartial investigations into the allegations of torture or other ill-treatment. Amnesty International is concerned that impunity prevails as prosecution of individuals suspected of being responsible for torture or other ill-treatment remains the exception rather than the rule.

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

106. In January 2011 Human Rights Watch released its annual World Report 2010. The chapter entitled "Uzbekistan", in so far as relevant, states as follows:

"Uzbekistan's human rights record remains abysmal, with no substantive improvement in 2010. Authorities continue to crack down on civil society activists, opposition members, and independent journalists, and to persecute religious believers who worship outside strict state controls ...

...

Criminal Justice, Torture, and Ill-Treatment

Torture remains rampant in Uzbekistan. Detainees' rights are violated at each stage of investigations and trials, despite habeas corpus amendments that went into effect in 2008. The Uzbek government has failed to meaningfully implement recommendations to combat torture that the United Nations special rapporteur made in 2003.

Suspects are not permitted access to lawyers, a critical safeguard against torture in pre-trial detention. Police use torture and other illegal means to coerce statements and confessions from detainees. Authorities routinely refuse to investigate defendants' allegations of abuse.

...

Key International Actors

The Uzbek government's cooperation with international institutions remains poor. It continues to deny access to all eight UN special procedures that have requested invitations, including those on torture and human rights defenders ..."

107. The applicant referred to a document entitled "On Torture and Arbitrary Detention in Uzbekistan and Turkmenistan. Report to UN Special Mechanisms", which was issued on 3 March 2011 by the World Alliance for Citizen Participation (CIVICUS). In so far as relevant, it stated the following:

"[...] years after the special rapporteur on torture concluded that systemic torture exists in Uzbekistan, torture [...] continues to be a routine component of investigations and detention and is a common practice in the penal systems. Forms of torture include.

• Bludgeoning with batons
• Genital mutilation
• Male and female rape and sodomy
• Psychological humiliation and degradation
• Electrocution

...

Other at risk groups include:

...

• Refugees and asylum seekers who are often deported from other CIS countries back to Uzbekistan...”

108. Chapter “Uzbekistan 2011” of the Amnesty International annual report 2011, released in May of the same year, in so far as relevant, states as follows:

“Despite assertions by the authorities that the practice of torture had significantly decreased, reports of torture or other ill-treatment of detainees and prisoners continued unabated. In most cases, the authorities failed to conduct prompt, thorough and impartial investigations into these allegations.

...

Uzbekistan again refused to allow the UN Special Rapporteur on torture to visit the country despite renewed requests”.

109. In support of his allegation of the risk of ill-treatment in Uzbekistan, in particular, poor conditions of detention and a lack of medical assistance in prisons, the applicant also referred to a news item available on the Internet site http://www.fergananews.com. This document described the case of Colonel Yuriy Korepanov, formerly a citizen of Uzbekistan who had taken Russian citizenship and had been prosecuted for treason in Uzbekistan. At a certain point after his conviction Mr Korepanov had suffered a stroke and had been transferred to another prison, without his family being informed thereof.

THE LAW

I. THE ALLEGED RISK OF ILL-TREATMENT

110. The applicant complained that if extradited he would be ill-treated in Uzbekistan, in breach of Article 3 of the Convention. It reads as follows:

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

111. The applicant also alleged under Article 13 of the Convention that his related arguments had not been properly dealt with at the domestic level. 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."

A. The parties' submissions

1. The Government

112. The Government argued that the Russian authorities (the MFA, the FSB, the FMS and the courts) had duly examined the applicant's allegations of ill-treatment in the event of his extradition to Uzbekistan and dismissed such allegations as unfounded. The Government referred to the FMS information notice and the report of the Ministry of Foreign Affairs, denying the practice of torture and ill-treatment in respect of detainees in Uzbek prisons and the existence of any internal or international conflict, which would pose a real threat to the applicant's life and freedom (see paragraph 68 above).

113. The Government further relied on the diplomatic assurances provided by the Uzbek Prosecutor General's Office. The Government emphasised that there was no reason to doubt them since Uzbekistan had ratified over sixty international human rights treaties and regularly submitted reports to UN treaty bodies. Lastly, the Government underlined recent legal accomplishments made by Uzbekistan in the area of human rights, in particular relating to the abolition of capital punishment and introduction of a *habeas corpus* procedure.

2. The applicant

114. The applicant argued that the Russian authorities had not properly examined his argument that he risked ill-treatment in Uzbekistan. He claimed that the FMS information notice and the MFA report should not be relied on since the Government had not submitted them to the Court. He referred to reports of the UN agencies and NGOs affirming the practice of torture in Uzbek detention facilities, which the Government had disregarded.

115. The applicant further argued that the diplomatic assurances of the requesting State were insufficient to discard the risk of ill-treatment. First, there was no control mechanism at the domestic level which would allow tracking the authorities' compliance with the assurances and holding them

liable in case of a breach. Second, the information sent by the Prosecutor General's Office to their Uzbek counterpart following the extradition request, such as the applicant's intention to apply for asylum in Russia and his criticism of the human rights situation in Uzbekistan, made him particularly vulnerable to a risk of political persecution. Lastly, as the Court had established in a number of cases concerning extradition to Uzbekistan, assurances from the Uzbek authorities could not offer a reliable guarantee against the risk of ill-treatment, given that the practice of torture there was described by reputable international sources as being systematic.

116. The applicant maintained that, given a number of international reports on the general human rights situation in Uzbekistan, the existence of domestic laws and accession to international treaties by the requesting State were not sufficient to offer him adequate protection against the risk of ill-treatment.

B. The Court's assessment

1. Admissibility

117. 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

(a) General principles

118. In order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

119. It has not been the Court's purpose to borrow the approach of the national legal systems that use the above standard. The Court's role is not to rule on criminal guilt or civil liability, but rather on Contracting States'

responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others v. Turkey* [GC], 16 September 1996, § 168, *Reports of Judgments and Decisions* 1996-IV).

120. The Court reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the receiving country. The establishment of that responsibility inevitably involves an assessment of the situation in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

121. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports of Judgments and Decisions* 1997-III). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts

which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports* 1996-V).

122. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008; see also paragraphs 126-128 concerning the assessment of and weight to be given to the available material).

123. As regards the general situation in a particular country, the Court considers that it can attach certain weight to the information contained in recent reports from independent international human rights protection organisations or governmental sources (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, ECHR 2005-VI; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007).

124. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

125. Concerning its own scrutiny, the Court reiterates that, in view of the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a case. The Court has held in various contexts that where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among others, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011). Although the Court is not bound by the findings of domestic courts, in normal circumstances it

requires cogent elements to lead it to depart from the findings of fact reached by those courts (ibid).

126. At the same time, as already mentioned, in accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. With reference to extradition or deportation, the Court reiterates that in cases where an applicant provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable sources (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007).

127. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi v. Italy* [GC], no. 37201/06, § 143, ECHR 2008). Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do (see *NA. v. the United Kingdom*, no. 25904/07, § 121, 17 July 2008).

128. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Ultimately, the Court's own assessment of the human rights situation in a country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be returned to that country. Thus the weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3 (ibid, § 122).

(b) Application of the above principles to the present case

(i) Domestic proceedings

129. The Court will first assess whether the applicant's grievance received an adequate reply at the national level. Having regard to the materials in its possession, the Court notes that the applicant complained of the risk of being subjected to ill-treatment in breach of Article 3 in both extradition and asylum proceedings.

130. As regards the extradition proceedings, the Court observes that the applicant only broadly referred to the risk of being subjected to ill-treatment. He argued, *inter alia*, that human rights violations, including torture, were common in Uzbekistan and that he risked workplace discrimination and political persecution in Uzbekistan because he had not mastered the Uzbek language and generally disapproved of the politics of Uzbekistan. However, as the applicant acknowledged, neither he nor his family had been politically or religiously active or persecuted. The applicant submitted that his wife had been threatened by the Uzbek police prior to her departure from the country but failed to provide additional detail in this regard. He had not relied on any personal experience of ill-treatment at the hands of the Uzbek law-enforcement authorities or relevant reports by international organisations and UN agencies.

131. Having regard to the material in its possession, the Court is satisfied that the domestic authorities, including the courts at two levels of jurisdiction, gave proper consideration to the applicant's arguments and dismissed them as unsubstantiated. There is nothing in the case file to doubt that the domestic authorities made an adequate assessment of the risk of ill-treatment in the event of the applicant's extradition to Uzbekistan.

132. As regards the asylum proceedings, the Court points out that the applicant lodged requests for political and temporary asylum, and refugee status with the regional FMS. Yet again, he only broadly referred to the risk of treatment in breach of Article 3, challenging the charges brought against him in Uzbekistan and insisting on the economic reasons which had prompted his departure. Although in his second temporary asylum request the applicant did refer to international human rights reports deploring the practice of torture in Uzbekistan, it was not until January 2011 that this request was submitted, that is over three months after the extradition order had been upheld on appeal.

133. The Court notes that, but for the political asylum request, which was disallowed owing to the visa-free regime between Russia and Uzbekistan, the regional FMS examined the applicant's argument of the risk of ill-treatment in the event of extradition. The Court emphasises that the applicant did not seek judicial review of the above decisions. Therefore, it cannot be argued that he disagreed at any point with the assessment made by the migration authorities. Furthermore, the Court cannot disregard that

temporary asylum was eventually granted to the applicant until 25 April 2012 (see paragraph 70 above).

(ii) The Court's assessment

134. In line with the case-law cited above, the Court will now examine whether the foreseeable consequences of the applicant's extradition to Uzbekistan are such as to bring Article 3 of the Convention into play. Since he has not yet been extradited owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case, taking into account the assessment made by the domestic courts.

135. As regards the general situation in the receiving country, which is not a Council of Europe member State, the Court does not lose sight of the disquieting reports on the human rights situation in Uzbekistan (see paragraphs 100-109 above). Nonetheless, it emphasises that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010).

136. The Court is mindful of the fact that it has on several occasions found violations of Article 3 of the Convention in cases involving extradition or deportation to Uzbekistan. However, the applicants in those cases had been charged with politically and/or religiously motivated criminal offences (see *Ismoilov and Others v. Russia*, no. 2947/06, § 122, 24 April 2008; *Muminov v. Russia*, no. 42502/06, § 94, 11 December 2008; and *Yuldashev v. Russia*, no. 1248/09, § 84, 8 July 2010). The applicant in the present case is charged in Uzbekistan with military desertion, which is an ordinary criminal offence (see *Elmuratov v. Russia*, no. 66317/09, § 84, 3 March 2011, also concerning extradition to Uzbekistan). While he raised an argument about a risk of political persecution, notably for the reason of his poor command of the Uzbek language, this argument is not substantiated.

137. No evidence has been adduced before the Court to confirm that Russian-speaking criminal suspects of non-Uzbek ethnic origin are treated differently from ethnic Uzbek criminal suspects. The applicant's allegations that any criminal suspect in Uzbekistan runs a risk of ill-treatment are unconvincing. Furthermore, the materials at the Court's disposal do not indicate that the applicant belongs to any proscribed religious movement or any vulnerable group susceptible of being ill-treated in the requesting country; or that he or members of his family were previously persecuted or ill-treated in Uzbekistan (contrast *Garayev v. Azerbaijan*, no. 53688/08, § 72, 10 June 2010). Therefore, the applicant has not substantiated any individual circumstances which could support his fears of ill-treatment in that country (see *Puzan v. Ukraine*, no. 51243/08, § 34, 18 February 2010).

138. Importantly, in the course of the extradition proceedings, the applicant mostly challenged the charges brought against him in Uzbekistan and referred to the overall poor economic and human rights situation there. He stated that he had left Uzbekistan with a view to ensuring his family's well-being, in particular their economic well-being (see paragraphs 31 and 32 above). The applicant did not submit asylum or refugee applications until January 2010, that is right after his detention with a view to extradition and over seven years after his arrival in Russia (see paragraph 60 above). He grounded the applications in the same manner as the appeals against the extradition order (see paragraphs 60 and 62 above). At the interview with the FMS in March 2010 the applicant submitted that he feared imprisonment for desertion, a criminal offence he had not committed (see paragraph 63 above). It appears that the applicant did not challenge the refusals of his refugee and asylum applications before domestic courts. The Court further points out that only in his second application for temporary asylum in January 2011 did the applicant attempt to substantiate his fear of ill-treatment as a result of politically motivated persecution by referring to reports prepared by international observers and the Court's case-law, albeit concerning differing contexts.

139. The Court concludes that the applicant has not corroborated allegations of a personal risk of ill-treatment in Uzbekistan, and thus has failed to substantiate his allegations that his extradition there would be in violation of Article 3 of the Convention.

140. Accordingly, there would be no violation of that provision in the event of the applicant's extradition to Uzbekistan.

141. In view of the foregoing, the Court does not find it necessary to deal separately with the applicant's grievance under Article 13 of the Convention, which essentially contains the same arguments as already examined by the Court under Article 3 of the Convention.

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

142. The applicant alleged that there had been a breach of Article 5 § 1 of the Convention because the extradition proceedings had not been pursued with the requisite diligence. In his submissions of 8 November 2010 he also argued that his detention from 29 October 2009 to 11 January 2011 had been unlawful.

143. Article 5 § 1 reads in the relevant parts 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:
>
> ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

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

A. Submissions by the parties

1. The applicant

144. The applicant argued that the term of detention pending extradition had started running on 29 October 2009 when the court had first ordered his detention. Since the statutory twelve-month period of detention under Article 109 of the CCrP had thus expired on 29 October 2010, there had been no legal basis for his subsequent detention from 29 October 2010 to 11 January 2011. In the applicant’s view, the legal provisions governing detention pending extradition did not provide him with an opportunity to estimate the maximum statutory period of detention. As a result, the domestic courts had construed and applied them in an arbitrary manner.

145. The applicant also claimed that the domestic authorities had not displayed due diligence in conducting the extradition proceedings, in particular from 3 February to 24 June 2010, when the said proceedings remained dormant. The domestic courts had failed to take into account the progress of the extradition proceedings. The Government had failed to provide reasons for the applicant’s detention during this period.

2. The Government

146. The Government insisted that the applicant’s detention pending extradition included only the period of time from 11 January 2010 to 11 January 2011. They argued that this period of detention was lawful as it was based on detention orders issued by competent courts. While deciding on the extension, the courts had taken into account the progress of the extradition proceedings against the applicant. In compliance with Article 463 § 4 of the CCrP, the domestic courts at two levels of jurisdiction had swiftly examined the applicant’s appeals against the extradition decision within a month.

147. The Government also submitted that, pursuant to the decisions of the Constitutional Court and the Supreme Court of Russia, the provisions of Chapter 13 of the CCrP, in particular Articles 108 and 109, were fully

applicable to persons detained with a view to extradition under Article 466 § 1 of the CCrP. The applicant's placement into custody had been ordered in accordance with Article 108 of the CCrP. His detention had been repeatedly extended under Article 109 of the CCrP. The domestic courts had referred to these provisions in their decisions. Upon the expiry of the maximum authorised detention term under Article 109 of the CCrP, the applicant had been released. Hence, the applicable legislation had enabled him to estimate the length of his detention.

148. Furthermore, the applicant had had the opportunity to challenge the lawfulness of his detention in Russian courts. The fact that higher courts had not ruled in his favour did not mean that the procedure had been ineffective.

149. The extradition proceedings had been conducted with requisite diligence and ended on 30 September 2010. After the indication of the interim measure by the Court on 12 October 2010, the applicant could not be extradited.

B. The Court's assessment

1. Admissibility

150. The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

151. Thus, the Court observes at the outset that the complaint relating to the lawfulness of the applicant's detention after 29 October 2009 was first raised before the Court on 8 November 2010.

152. Thus, as regards formal lawfulness, the Court is only competent to examine the periods of detention ordered by the district court on 6 May, 7 July, 8 September and 11 November 2010 (see, in a similar context, *Solovyev v. Russia*, no. 2708/02, § 83, 24 May 2007; *Savenkova v. Russia*, no. 30930/02, § 62, 4 March 2010; and *Vladimir Krivonosov v. Russia*, no. 7772/04, § 109, 15 July 2010).

153. Therefore, the Court will examine the lawfulness of the applicant's detention from 6 May 2010 to 11 January 2011, when he was released. In this part, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

154. As regards the length of the uninterrupted period of the applicant's detention during the extradition proceedings from 11 January 2010 to 11 January 2011, the Court considers that this period of detention constitutes a continuing situation in so far as the issue of diligence under Article 5 § 1 (f) of the Convention is concerned. Therefore, the Court will

assess this period of detention in its entirety (see, *mutatis mutandis*, *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009; *Gubkin v. Russia*, no. 36941/02, § 134, 23 April 2009; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007, in the context of Article 5 § 3 of the Convention). The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

(a) As regards the lawfulness of the applicant's detention from 6 May 2010 to 11 January 2011

(i) General principles

155. The Court reiterates at the outset that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports* 1996-VI). The text of Article 5 makes it clear that the guarantees it contains apply to "everyone" (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 162, ECHR 2009). Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (ibid, § 163).

156. The Court also reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006). The words "in accordance with a procedure prescribed by law" in Article 5 § 1 do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV). Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see, among others, *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II).

(ii) Application of the principles in the present case

157. Before dealing with the applicant's specific arguments in the present case, the Court observes that unlike in some previous Russian cases concerning detention with a view to extradition (see, among many others, *Dzhurayev v. Russia*, no. 38124/07, § 68, 17 December 2009), the applicant's detention was ordered by a Russian court rather than a foreign court or a non-judicial authority. As to the period under review, the Court points out that from 6 May 2010 to 11 January 2011 the applicant's detention was regularly ordered by a competent court, in compliance with the time-limits set in Article 109 of the Russian Code of Criminal Procedure, in compliance with the ruling of the Supreme Court of Russia (see paragraph 93 above, and, for comparison, *Nasrulloyev v. Russia*, no. 656/06, §§ 73-75, 11 October 2007). The lawfulness of such detention was reviewed and confirmed by the appeal court on several occasions.

158. The Court also observes that the district court specified the time-limits in the detention orders, relying on Article 109 of the CCrP and the Minsk Convention. Both the district and the regional courts assessed the lawfulness and various circumstances, which were considered to be relevant to the applicant's detention, including the progress of the extradition proceedings and his refugee or asylum applications.

159. The Court does not find any reason to disagree with the domestic assessment, in particular that the applicant's detention from 29 October 2009 to 11 January 2010 pending criminal proceedings against him under the Russian CCrP was separate from his subsequent detention pending extradition proceedings. Indeed, the decision of 29 October 2009 authorising the applicant's placement in custody did not refer to the extradition or the criminal proceedings pending against him in Uzbekistan. The applicant's detention pending criminal proceedings (thus falling within the scope of Article 5 § 1 (c)) ended on 11 January 2010. His detention with a view to extradition started on the same day. As prescribed by Article 109 § 2 of the CCrP, the period of the applicant's detention with a view to extradition was terminated on 11 January 2011 upon the expiry of the statutory twelve-month term, conditioned by the gravity of the charges pending against him.

160. Before the domestic courts and this Court the applicant did not put forward any other argument prompting the Court to consider that his detention was in breach of Article 5 § 1 of the Convention. Under such circumstances, the Court does not find that the domestic courts acted in bad faith, that they neglected to apply the relevant legislation correctly or that the applicant's detention during the relevant period of time was unlawful or arbitrary.

161. There has therefore been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 6 May 2010 to 11 January 2011.

(b) As regards the length of the applicant's detention with a view to extradition

162. The Court observes that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent that person's committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national law or the Convention (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal*, cited above, § 112). Deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008).

163. The Court reiterates that the period complained of lasted twelve months. It started running on 11 January 2010, when the applicant was placed in custody with a view to extradition, and ended on 11 January 2011, when he was released. For the reasons presented below, the Court does not consider this period to be excessive.

164. By way of introduction, the Court points out that the extradition proceedings were initiated in October 2009, that is over two months prior to the applicant's arrest and detention for the purposes of Article 5 § 1 (f). Between October 2009 and January 2010, the applicant was interviewed, the Russian Prosecutor General's Office received the extradition request and the diplomatic assurances from its Uzbek counterpart, the FMS confirmed that the applicant had no Russian citizenship and the FSB submitted that there were no obstacles to his extradition to Uzbekistan.

165. The Court further observes that between 11 January 2010, when the applicant was detained, and 24 June 2010, when the extradition order was issued, the extradition proceedings were pending. During this period of time the Ministry of the Interior confirmed that there were no obstacles to the applicant's extradition and the applicant's asylum and refugee claims were examined by the FMS. As it has not been alleged that these proceedings were not a part of the genuine extradition process, they should be taken into account when assessing whether the extradition proceedings were in progress (see *Chahal,* cited above, §§ 113-15, and, by contrast, *M. and Others v. Bulgaria*, no. 41416/08, § 68, 26 July 2011).

166. The Court further notes that between 24 June and 30 September 2010 the extradition order was reviewed by courts at two levels of jurisdiction. In the meantime, the applicant's temporary asylum

request was examined by the FMS. Hence, the Court accepts that the extradition proceedings were in progress at that time, too.

167. As to the remaining period of detention from 30 September 2010 to 11 January 2011, the Court notes that on 30 September 2010 the lawfulness of the extradition order was confirmed by the appeal court. It is noted that, after the confirmation of the extradition order on appeal, the applicant was remanded in custody for three months and eleven days. His continued detention was justified with reference to the CCrP allowing detention of up to twelve months and noting that Rule 39 of the Rules of Court had been applied by the Court on 12 October 2010. The question thus arises as to whether the extradition proceedings remained in progress between 30 September 2010 and 11 January 2011 to justify the applicant's detention with a view to extradition.

168. The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov*, cited above, §§ 99-129). However, the implementation of an interim measure following an indication by the Court to a State Party that it would be desirable, until further notice, not to return an individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5 § 1 (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). In other words, the domestic authorities must still act in strict compliance with domestic law (ibid, § 75).

169. With reference to the period running from 30 September 2010 to 11 January 2011, the Court observes that the applicant faced serious charges in Uzbekistan, on which ground his detention was extended to twelve months, in accordance with Article 109 § 2 of the CCrP. Following the prosecutor's extension request of 8 November 2010 with reference to the application of Rule 39 of the Rules of Court *vi-à-vis* the applicant, domestic courts extended his detention. At the expiry of the statutory twelve-month period, the applicant was released at the prosecutor's request. Relying on Article 109 § 2, the prosecutor reasoned that the maximum authorised detention term had expired and that Rule 39 of the Rules of Court had been applied to the case (see paragraph 55 above).

170. Having regard to the above, the Court concludes that the extradition proceedings, although suspended for over three months pursuant to the request made by the Court, have nevertheless been in progress and in compliance with the domestic law (compare *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011, and *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, §§ 134-35, 22 September 2009).

171. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the present case.

172. There has therefore been no violation of Article 5 § 1 of the Convention on this account.

III. ALLEGED VIOLATIONS OF ARTICLE 5 § 4 OF THE CONVENTION

173. In his submissions of 8 November 2010 the applicant complained under Article 5 § 4 of the Convention that the lawfulness of his detention had not been decided speedily.

174. Article 5 § 4 reads as follows:

> "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. Submissions by the parties

175. The Government argued that the domestic courts had speedily examined the applicant's appeals against the extensions of 4 March, 7 July and 8 September 2010. It had taken the courts from thirteen to thirty-six days to examine the appeals. The length of the proceedings had been due to the necessity to notify the parties to the proceedings of the appeal, to receive objections to his points of appeal and to clarify his intention to resort to legal assistance.

176. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

177. The Court notes that the above complaint was first raised in substance before the Court on 8 November 2010. Bearing in mind the six-month requirement laid down in Article 35 § 1, the Court considers that it is not competent to examine the complaint concerning the extension ordered on 4 March 2010 and upheld on 28 April 2010.

178. At the same time, the Court observes that the applicant has complied with the six-month rule in respect of his grievance relating to the appeal proceedings in respect of the detention orders of 7 July and 8 September 2010. In respect of these detention proceedings, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

(a) General principles

179. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review by appeal proceedings (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007). At the same time, the standard of "speediness" is less stringent when it comes to the proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. Where detention is authorised by a court, subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court would not be concerned, to the same extent, with the speediness of the proceedings before the court of appeal, if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees (ibid).

180. Although the number of days taken by the relevant proceedings is obviously an important element, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Merie v. the Netherlands* (dec.), no. 664/05, 20 September 2007). What is taken into account is the diligence shown by the authorities, the delay attributable to the applicant and any factors causing delay for which the State cannot be held responsible (*Jablonski v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000, and *G.B. v. Switzerland*, no. 27426/95, §§ 34-39, 30 November 2000). The question whether the right to a speedy decision has been respected must thus be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

181. For instance, in one extradition case concerning Russia the Court found that, in addition to a violation under Article 5 § 1 of the Convention, there had been a violation of its Article 5 § 4, noting that the applicant in that case had lodged five appeals against court extension orders and that all of them had been examined by the appeal court with delays ranging from thirteen to twenty-five days, for which the Government provided no convincing justification. The Court concluded that the circumstances of the

case disclosed a violation of Article 5 § 4 (see *Karimov v. Russia*, no. 54219/08, §§ 124-28, 29 July 2010).

(b) Application of the above principles to the present case

182. Turning to the present case, the Court observes that it is undisputed that the appeal against the detention order of 7 July 2010 was received by the district court on 15 July 2010. On an unspecified date, the district court submitted the file to the regional court, which was the second-instance court in such a situation. Having received this file, the regional court examined the appeal on 18 August 2010, that is, thirty-four days after its receipt by the district court. As to an appeal against the district court order of 8 September 2010, this appeal was received by the district court on 16 September 2010. On an unspecified date, the district court submitted the file to the regional court. Having received this file, the regional court examined the appeal on 29 September 2010, that is, thirteen days after its receipt by the district court. It has not been substantiated by the applicant, and the Court does not find on the basis of the available material, that the national courts in the present case acted in breach of the applicable procedural time-limits (see paragraph 75 above).

183. Be that as it may, as already mentioned above, the question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case, including the diligence shown by the authorities in the conduct of the proceedings. The Court reiterates in that connection that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to deportation or extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see, among others, *Liu v. Russia*, no. 42086/05, § 78, 6 December 2007).

184. In the present case, it has not been substantiated that the applicant or his counsel contributed to the length of the appeal proceedings (contrast *Lebedev* cited above, §§ 99-100, and *Fedorenko v. Russia*, no. 39602/05, § 81, 20 September 2011). It appears that, having received the file, the appeal court examined the appeals within three days, as required under the Russian law. It has not been specified how much time it took to notify the prosecution of the appeal or to receive observations in reply. The Court also observes that the district and regional courts were geographically very close, which could, in principle, contribute to swifter communication between them, in particular, as far as the transfer of the case materials or the scheduling of appeal hearings were concerned. It appears that the major part

of the delays – some ten and thirty days - related to the period of time when the case file was being transferred from the first-instance court to the appeal court. Apparently, the domestic legislation did not set out any relevant time-limit for this purpose (see paragraph 75 above). It therefore follows that the entire length of the appeal proceedings is attributable to the domestic authorities.

185. It does not appear that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the second-instance court. Neither was it argued that proper review of detention had required, for instance, the collection of additional observations and documents pertaining to the applicant's personal circumstances such as his medical condition.

186. The Court considers that it is incumbent on the respondent State to organise its legal system in such a way which allows for speedy examination of detention-related issues.

187. The Court concludes that, in the circumstances of the present case, the delays of thirteen and thirty-four days in examining the appeals against the detention orders of 7 July and 8 September 2010 are incompatible with the "speediness" requirement of Article 5 § 4 (see, for comparison, *Karimov*, cited above, § 127, and *Khudyakova v. Russia*, no. 13476/04, § 99, 8 January 2009).

188. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

189. The applicant complained that execution of the extradition order in respect of him would entail a breach by the respondent State of his right to respect for family life protected under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

190. The Government submitted that the applicant had been arrested in Russia following the extradition request by the Uzbek authorities, which had wanted him on criminal charges. The Government argued that extraditing the applicant, who had no Russian nationality, would not breach

his right to respect for family life, as it was aimed at the fulfilment by Russia of its international obligations under the Minsk Convention in matters of extradition. Thus, execution of the extradition order would be justified under Article 8 § 2 of the Convention.

191. The applicant argued that execution of the extradition order against him would entail "significant and irreparable" consequences to his relationship with his wife and children, especially his daughter who required health care in Russia. The extradition order and judicial review decisions had not properly taken into account various aspects relating to his family life. In particular, the appeal court provided no reasoning in response to his related arguments. His extradition would not pursue any of the aims set out in Article 8 § 2 of the Convention, the Government's reference to their other international obligations being insufficient to outweigh their obligations under Article 8 of the Convention.

B. The Court's assessment

1. Admissibility

192. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it must be declared admissible.

2. Merits

(a) General principles

193. The Court has previously examined a number of cases raising issues of family or private life in the context of expulsion or exclusion of an alien, for instance following a criminal conviction. Article 8 issues were also raised in some cases in which, like in the present case, the applicants faced extradition from the respondent State to another State, in which they were wanted for an offence (see *King v. the United Kingdom* (dec.), no. 9742/07, 26 January 2010, and *Aronica v. Germany* (dec.), no. 72032/01, 18 April 2002; see also *Launder v. the United Kingdom*, no. 27279/95, Commission decision of 8 December 1997, and *A.R. v. Austria*, no. 25342/94, Commission decision of 4 September 1995).

194. The Court has held in cases concerning expulsion of settled migrants that as Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can

sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between a settled migrant and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8 (see, as a recent authority, *Üner v. the Netherlands* [GC], no. 46410/99, § 59, ECHR 2006-XII, and *Boultif v. Switzerland*, no. 54273/00, § 48, ECHR 2001-IX). Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant constitutes interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect.

195. Concerning justification of an interference with a person's private or family life, it is the Court's established case-law that such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned (see, in a variety of contexts, *Maslov v. Austria* [GC], no. 1638/03, § 65, ECHR 2008; *Enea v. Italy* [GC], no. 74912/01, § 140, ECHR 2009; and *S.H. and Others v. Austria* [GC], no. 57813/00, § 89, 3 November 2011).

196. As to the context of extradition, in the *King* case (cited above) the applicant was accused of being a member of an international gang engaged in a conspiracy to import large quantities of ecstasy into Australia. He tried to bar his own extradition from the United Kingdom to Australia, referring to the fact that he had a wife, two young children and a mother in the United Kingdom, whose ill-health would not allow her to travel to Australia. The long distance between the two countries would mean the family would enjoy only limited contact if the applicant were extradited, convicted and sentenced to a term of imprisonment. The Court dismissed this argument as manifestly ill-founded, noting the very serious charges the applicant faced and the interest the United Kingdom had in honouring its obligations to Australia. Mindful of the importance of extradition arrangements between States in the fight against crime, the Court held, in this case, that it would only be in exceptional circumstances that an applicant's private or family life in a Contracting State would outweigh the legitimate aim pursued by his or her extradition.

(b) Application of the above principles to the present case

197. The Court considers, and it is not in dispute between the parties, that the applicant enjoyed "family life" both with his spouse and two children in Russia. It is also uncontested that the extradition order and its execution (would) amount to an interference with his family life in Russia. Thus, Article 8 is applicable in the present case.

198. Furthermore, the Court notes that the applicant does not argue that the extradition would not be in accordance with the law and thus the only matter which falls to be considered is the proportionality of the extradition to the legitimate aims set out in the second paragraph of Article 8.

199. The Court observes that, while the applicant has not complained that his family life was adversely affected by his arrest and detention in Russia in 2010 and after the extradition order was issued, it was his contention that his removal from Russia under this order and, by implication, his possible detention in Uzbekistan pending criminal proceedings against him, interfered or would interfere disproportionately with the family life he enjoyed in Russia. As an argument against extradition, the applicant argued that he had amassed a significant period of residence in Russia, his spouse and children held Russian nationality, lived in Russia, had property there and the elder daughter needed medical treatment in Russia.

200. Concluding that there were no legal obstacles to the extradition of the foreign national, the national courts observed on judicial review that, unlike his family members, the applicant had not acquired Russian nationality and had not regularised his residence in the country. It was also noted that for some two years his family had continued to reside in Uzbekistan after the applicant had left for Russia for employment-related purposes. For its part, the Court observes in that connection that it has not been substantiated that the applicant would have any significant difficulty in maintaining his family life after execution of the extradition order. In fact, it does not appear that the applicant's family members made any supporting statements in the domestic proceedings. On balance, it is unclear how and whether the extradition would particularly affect their relationship with the applicant.

201. As regards medical care provided to the applicant's daughter (who was sixteen at the time and has reached the age of majority now), the reviewing courts took this aspect into consideration, in so far as it was articulated by the applicant. It appears that the treatment could well be pursued without the applicant (see paragraph 33 above). It has not been convincingly shown that the best interests and well-being of the children should have weighed heavily, alone or in combination with other factors, against the extradition.

202. In view of the above, the Court considers that the present case does not disclose any "exceptional circumstances" (see the *King* decision, cited above), and that it has not been substantiated that execution of the extradition order would entail exceptionally grave consequences for the applicant's family life. With due regard to the gravity of the charges against the applicant and the legitimate interest Russia has in honouring its extradition obligations, the Court is satisfied that the extradition decision in respect of the applicant was proportionate to the legitimate aim pursued.

203. The Court concludes that the applicant's extradition would not constitute a violation of Article 8 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

204. 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

205. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

206. The Government considered the amount claimed excessive.

207. The Court has dismissed certain grievances and found a violation of Article 5 § 4 of the Convention in the present case. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. The Court therefore awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

208. The applicant claimed EUR 6,313, including the costs and expenses incurred before the Court as lawyers' fees, postal and sundry expenses.

209. The Government considered that, in addition to being excessive, the lawyers' fees and the other expenses were not shown to have been actually paid or incurred.

210. 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. The applicant did not submit a copy of any document or agreement showing that he has paid the lawyers' fees or that he was under a legal or contractual obligation to do so (see, among others, *Salmanov v. Russia*, no. 3522/04, § 98, 31 July 2008, and *Novikov v. Russia*, no. 35989/02, § 63, 18 June 2009). Regard being had to the above criteria and the absence of any supporting evidence, the Court rejects the claims under this head.

C. Default interest

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

VI. RULE 39 OF THE RULES OF COURT

212. 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 referral 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.

213. The Court considers that the indication made to the Russian Government under Rule 39 of the Rules of Court (see paragraph 3 above) must remain in force until the present judgment becomes final or until further order.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints concerning the risk of ill-treatment in Uzbekistan and the alleged lack of effective remedies; the length of the applicant's detention with a view to extradition; the lawfulness of his detention from 6 May 2010 to 11 January 2011; the speediness of review of the detention orders of 7 July and 8 September 2010; and the complaint concerning the applicant's family life;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that the applicant's extradition would not be in breach of Article 3 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention in conjunction with Article 3;

5. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

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

7. *Holds* that the applicant's extradition would not constitute a violation of Article 8 of the Convention;

8. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
(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;

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

10. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 5 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President