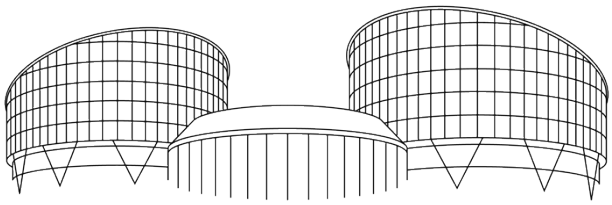

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RUSTAMOV v. RUSSIA

(Application no. 11209/10)

JUDGMENT

STRASBOURG

3 July 2012

FINAL

03/10/2012

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

In the case of Rustamov v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 12 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 11209/10) 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 Uzbekistani national, Mr Sobir Aminovich Rustamov ("the applicant"), on 25 February 2010.

2. The applicant, who had been granted legal aid, was represented by Mr Kh. M. Khadisov, a lawyer practising in Chernoye, Moscow Region. The Russian Government ("the Government") were represented by Mr Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his extradition to Uzbekistan would entail a violation of Article 3 of the Convention and that no effective domestic remedy was available to him by which to challenge his extradition on this ground. He further claimed that his detention pending extradition was unlawful in breach of Article 5 of the Convention and that the extradition would constitute an interference with his family life in breach of Article 8 of the Convention.

4. On 30 August 2010 the President of the First Section 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.

5. On 27 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

6. The applicant was born in 1966. Before 2005 he lived in Uzbekistan. He currently lives in Moscow.

A. Background events

7. Until 2005 the applicant lived in Samarkand, Uzbekistan. He is married and has six minor children.

8. According to the applicant, between 1999 and 2005 he was on several occasions questioned by Samarkand police in connection with his alleged membership of Hizb ut-Tahrir ("HT"), a transnational Islamic organisation, banned in Russia, Germany and some Central Asian republics. The applicant's submission stated that he was not a member of HT.

9. He submitted that he had been ill-treated and threatened by the police several times, and had to sign unspecified documents, and that at some point his house had been searched without a warrant.

10. At some point in August 2005 the applicant fled to Russia. He had not applied for registration with the Federal Migration Service.

11. On an unspecified date in April 2007 the applicant returned to Uzbekistan to renew his passport, which was due to expire. He successfully renewed the document and returned to Russia.

12. Since the end of April 2007 the applicant has lived in Moscow with his wife and three minor children. The three other children are living in Uzbekistan with the applicant's sister-in-law.

B. Proceedings in Uzbekistan

13. On 8 June 2009 the National Security Department of the Samarkand Region of Uzbekistan brought criminal proceedings against the applicant on suspicion of attempting to overthrow the Uzbek State's constitutional order.

14. On 24 June 2009 the Samarkand Town Court (Uzbekistan) ordered that the applicant should be placed in custody on suspicion of attempting to overthrow the Uzbek State's constitutional order (Article 159 § 3 (b) of the Criminal Code of the Republic of Uzbekistan), as well as participation in and direction of religious, extremist, separatist and other prohibited organisations, and forming an armed organisation or gang to commit offences (Article 244-2 § 1 of the Code). The court specified, with reference to the materials of the domestic investigation, that the applicant was suspected of membership of HT and that he had had books and leaflets

which made public calls for the overthrow of the Uzbek Government and for the creation of an Islamic state, which had been seized from him.

15. On the same date the applicant's name was placed on a wanted list by the National Security Department of the Samarkand Region of Uzbekistan.

16. On 26 June 2009 the Uzbek authorities formally charged the applicant *in absentia* with attempting to overthrow the Uzbek State's constitutional order, participation in and direction of religious, extremist, separatist and other prohibited organisations, and forming an armed organisation or gang to commit offences, as well as holding a position of authority or a special position within such an organisation or gang (Articles 159 § 3 (b), 242 § 1 and Article 244 - 2 § 1 of the of the Criminal Code of the Republic of Uzbekistan).

C. The applicant's detention and extradition proceedings

1. Extradition proceedings

17. On 4 February 2010 the applicant was arrested by Russian police in Moscow on the ground that his name had been put on a cross-border wanted list by the Uzbek authorities. On the same date the Samarkand Department of the Interior sent the Veshnyaki District Department of the Interior (Moscow) a request for the applicant to be kept in custody. The request contained, in particular, the following paragraph:

> "[A] criminal Rustamov Sobir Aminovich is wanted by the ... Samarkand Department of the Interior ..."

18. On 16 February 2010 the Uzbek Prosecutor General's Office requested the Russian Prosecutor General's Office to extradite the applicant to Uzbekistan. The request contained assurances that the applicant would be prosecuted only for the offences for which he would be extradited, that he would be able to freely leave Uzbekistan when he had stood trial and served any sentence, and that he would not be expelled or extradited to a third State without the consent of the Russian authorities.

19. On 8 April 2010 the Russian Ministry of Foreign Affairs submitted a letter in connection with the applicant's case to the Prosecutor General's Office of the Russian Federation. The text of the document comprised three lines and stated:

> "The Russian Ministry of Foreign Affairs is not aware of anything precluding ... Mr Rustamov's extradition to the law-enforcement bodies of Uzbekistan for criminal prosecution."

(a) Decision to extradite the applicant

20. On 4 August 2010 the Russian Prosecutor General's Office ordered the extradition of the applicant to Uzbekistan on account of the charges under Articles 159 § 3 (b) and 242 § 1 of the Criminal Code of the Republic of Uzbekistan (attempt to overthrow the Uzbek State's constitutional order, participation in and direction of religious, extremist, separatist and other prohibited organisations). By the same decision the Prosecutor General's Office refused the extradition request in so far as it concerned the charges under Article 244-2 § 1 of the Criminal Code of the destination country, corresponding to Article 282-2 § 2 of the Criminal Code of the Russian Federation ("the CCrP") (membership of an organisation banned by a final court decision because of its extremist activities), since the time-limits for prosecution of the applicant under Russian law had expired.

21. On 20 August 2010 the applicant challenged the Prosecutor General's order in court, arguing that he had already been subject to beatings and threatening in 1999-2005 in Samarkand and risked further ill-treatment and torture in Uzbekistan. He further argued that according to independent international observers ill-treatment was widespread in the Uzbek prison system and fair trial guarantees were not respected. Referring to the Court's case-law on the matter, he submitted that these findings had been disregarded by the Prosecutor General's office and insisted that he had not committed any crimes in Uzbekistan.

(b) Application of Rule 39 of the Rules of Court

22. On 30 August 2010 the Court granted the applicant's request for application of interim measures under Rule 39 of the Rules of Court and indicated to the Government that they should suspend his extradition to Uzbekistan.

(c) Proceedings at the Moscow City Court

23. On 10 September 2010 the Moscow City Court dismissed the applicant's appeal against the extradition order by the Prosecutor General's Office. The court found no circumstances precluding the extradition.

24. The court established at the outset that the applicant had not obtained Russian citizenship or applied for it in accordance with the law. It further observed that on 16 June 2010 his application for refugee status had been refused by the Moscow Department of the Federal Migration Service ("the FMS"). The court cited the statement in the FMS decision (see paragraph 57 below) that the applicant had not satisfied the criteria to be granted refugee status, for lack of a well-founded fear of persecution for reasons of race, religion, nationality, ethnic origin, membership of a particular social group, or political opinion. The court reiterated that the actions imputed to the applicant were punishable under the Russian Criminal Code.

25. The court further observed, with reference to the conclusions drawn by the Federal Security Service and the Ministry of Foreign Affairs of the Russian Federation, that

> "[there had been] no information concerning either any politically motivated persecution of the applicant or any obstacles precluding his extradition to Uzbekistan. His extradition to Uzbekistan would not damage the interests or security of the Russian Federation".

26. The court pointed out that the Uzbek Prosecutor General's Office had given assurances in the request for extradition that the applicant would be prosecuted only for the offence for which he was to be extradited, that he would be able to freely leave Uzbekistan when he had stood trial and served any sentence, and that he would not be expelled or extradited to a third State without the consent of the Russian authorities. Thus, the court found no grounds in international agreements or the legislation of the Russian Federation to prevent the applicant's extradition.

27. The court further rejected the applicant's submission that he had arrived in Russia in order to avoid the risk of ill-treatment. It found that, when interviewed on the date of his arrest, the applicant stated that he had arrived in Moscow looking for employment and had denied that any political charges were pending against him. The court noted from the applicant's testimony of 4 February 2010 that in 2007 he had been able to visit Uzbekistan and then return to Moscow; he had been neither persecuted nor searched for in his home country.

28. The court concluded that the applicant's submissions to the effect that he would risk ill-treatment if extradited to his home country were of a "presumptive nature" and "constituted his personal opinion", which "was not corroborated by the results of checks conducted by the Federal Migration Service of Russia and the Prosecutor General's Office of the Russian Federation in the course of the extradition proceedings".

29. It also pointed out that the issue of whether the applicant was guilty of the crimes in respect of which the Uzbek authorities had requested his extradition could only be assessed by a court in the requesting country examining the merits of the criminal case against him. Hence, the applicant's arguments that he was not guilty and that the charges against him were fabricated could not be subject to examination in the proceedings at hand. The court concluded that the extradition order was lawful and well founded.

(d) Hearing before the Supreme Court of the Russian Federation

30. On 17 September 2010 the applicant appealed against the Moscow City Court decision, arguing that the decision on the applicant's extradition had been taken in violation of Articles 3, 5, 6 and 8 of the European Convention on Human Rights. With reference to the Court's case-law and, in particular, to the judgment in case of *Ismoilov and Others v. Russia*

(no. 2947/06, 24 April 2008) he submitted that he would face ill-treatment in Uzbekistan. The applicant argued that he had been questioned by the police of Samarkand on several occasions since 1999, with a view to extracting a confession that he was a member of HT. During one of the interrogations, which took place on an unspecified date, the local police had handcuffed the applicant, severely beaten him and threatened him with torture. While he was on police premises the applicant had seen a young man being tortured by police officers. As a result, the applicant had signed unspecified documents there. The applicant's flat had been searched several times, and his relatives had received numerous threats from agents of the State. The applicant referred to written statements from witnesses to the searches of the flat and interrogations of the applicant's relatives, carried out in connection with the applicant's request for refugee status (see paragraph 56 below). Finally, the applicant made reference to reports by the UN Special Rapporteur on the question of torture dated 2002 and 2006, as well as to the International Helsinki Federation for Human Rights report dated 2007, from which it followed that a widespread practice of ill-treatment of detainees remained a problem in Uzbekistan.

31. On 11 November 2010 the Supreme Court of the Russian Federation examined the applicant's appeal in the presence of his counsel. The court established that the extradition order had been issued in accordance with law. Referring to the applicant's complaints that he risked ill-treatment and torture in Uzbekistan, the court reiterated that the applicant had never cited a risk of persecution and ill-treatment before the Russian authorities before his arrest on 4 February 2010. Furthermore, when questioned by the prosecutor on that date, he had submitted that he had arrived in Russia in order to look for work. He had not applied for refugee status on arrival in Moscow in 2005, but had only done so after he had been placed in custody.

32. The court further pointed out that in 2007 the applicant had returned to Uzbekistan to renew his passport. The authorities had not been searching for him. He had not been ill-treated, threatened or otherwise persecuted, and was able to renew his passport and return to Moscow freely and unharmed. The court further noted that three of the applicant's children were living in Uzbekistan.

33. Finally, it rejected the applicant's reference to several reports by independent international human rights protection associations, including the reports referred to in the *Ismoilov* case (cited above), as outdated. The court pointed out that the competent domestic authorities had conducted checks through diplomatic channels and had concluded on the absence of any obstacles to the applicant's extradition. It found that the Prosecutor General had not been in possession of any information on human rights violations in Uzbekistan in 2010 when deciding on the extradition issue. The court concluded that the applicant's fear of ill-treatment and

persecution if extradited was unfounded, and upheld the Moscow City Court judgment of 10 September 2010. The extradition order became final.

(e) Further developments

34. On 19 April 2011 the Deputy Prosecutor General of the Republic of Uzbekistan sent a letter to the Deputy Prosecutor General of the Russian Federation, in addition to the extradition request of 16 February 2010. The letter contained assurances that the applicant would not be prosecuted in Uzbekistan on political grounds, and that the criminal proceedings against him would be conducted in compliance with the domestic law of the Republic of Uzbekistan and international treaties to which Uzbekistan was a party. It was pointed out in the letter that all forms of inhuman and degrading treatment were prohibited in the destination country.

2. Detention pending extradition

(a) The applicant's arrest and detention until 25 March 2010

35. On 4 February 2010 the applicant was arrested by the Russian police in Moscow on the ground that his name had been put on a cross-border wanted list by the Uzbek authorities. On the same date the Veshnyaki District Department of the Interior (Moscow) received a request from the Samarkand Department of the Interior (Uzbekistan) to keep the applicant in custody.

36. On 5 February 2010 the prosecutor of the Perovskiy Inter-District Prosecutor's Office authorised his detention. The prosecutor observed that on 24 June 2009 the applicant had been placed on a wanted list and the Samarkand Town Court had ordered his placement in custody, and that on 26 June 2009 the applicant had been charged with several offences in his home country. Therefore, the prosecution was in possession of information that the applicant had committed crimes on the territory of Uzbekistan. Accordingly, the applicant could be remanded in custody, as provided by Article 61 of the CIS Convention on legal aid and legal relations in civil, family and criminal cases (the 1993 Minsk Convention). No time-limits for the detention were set in the decision.

37. On 16 February 2010 the Uzbek Prosecutor General's Office requested the Russian Prosecutor General's Office to extradite the applicant to Uzbekistan. The Uzbek authority enclosed copies of the relevant documents, apparently including a copy of the judgment of the Samarkand Town Court of 24 June 2009. According to the Government, the request was received by the Russian Prosecutor General's Office on 1 March 2010.

38. According to the decision of the Perovskiy District Court (Moscow) of 25 March 2010 (see paragraph 40 below), on 2 March 2010 the prosecutor of the Perovskiy Inter-District Prosecutor's Office issued a new

decision to remand the applicant in custody until 4 April 2010. The prosecutor referred to Article 466 § 2 of the CCrP and Article 60 of the 1993 Minsk Convention. The parties did not submit a copy of that decision.

(b) First extension of the detention period

39. At some point the Perovskiy Inter-District Prosecutor's Office requested an extension of the applicant's detention, because the necessary checks within the extradition proceedings had not been completed, further information on the applicant's character needed to be obtained, and the extradition proceedings were lengthy by nature.

40. On 25 March 2010 the Perovskiy District Court extended the applicant's detention until 4 August 2010. The applicant was represented in the proceedings by a State-appointed lawyer. The court stated by way of justification that the applicant had been charged with serious offences in Uzbekistan, had been placed in custody on the basis of a court decision of a foreign State, did not have a permanent place of residence in Russia, and therefore could abscond if released. The court observed that the applicant had not applied for Russian citizenship. The court also found that further checks were needed in the course of the extradition proceedings, which would require additional time "for objective reasons". When granting the extension, the court referred to the provisions of Article 109 of the CCrP.

41. The applicant did not lodge an ordinary appeal against the decision. He subsequently attempted to challenge the decision by way of supervisory review, but to no avail.

(c) Second extension of the detention

42. At some point in July 2010 the Perovskiy Inter-District Prosecutor's Office requested a further extension of the applicant's detention pending extradition, until 4 February 2011, referring to Article 109 of the CCrP and § 34 of the Directive Decision no. 22 of 29 October 2009 by the Supreme Court of the Russian Federation.

43. On 28 July 2010 the Perovskiy District Court extended the applicant's detention until 4 February 2011, with reference to Article 109 of the CCrP, in order to secure the applicant's extradition to Uzbekistan. The court found that the applicant had been charged with serious offences in Uzbekistan, which were also punishable under the Russian criminal law. He had not applied for Russian citizenship and did not have refugee status in Russia. The court also took into account the applicant's personality, referring to the fact that he had been unemployed and had no permanent residence in Russia. The court considered that the applicant was likely to abscond if released. The court further noted that extradition proceedings were pending at the material time, and considered that the extension of the detention period was objectively justified by the need to complete the extradition procedure.

44. The applicant did not challenge the decision on appeal.

(d) Third extension of the detention period

45. At some point the prosecutor of Moscow requested a further extension of the applicant's detention. The applicant argued in reply that he had not committed any crimes in Uzbekistan. The applicant's lawyer pointed out that the applicant had complained to the European Court of Human Rights, and that his case was pending before the Court at the material time, and requested the applicant's release. The parties did not submit copies of those requests.

46. On 27 January 2011 the Moscow City Court extended the period of the applicant's detention for six more months. The court allowed the prosecutor's argument that the extension was necessary in order to secure the applicant's extradition to Uzbekistan. The period of the applicant's detention was assessed by the court as reasonable, since it was justified by the necessity to comply with the extradition procedure. The court found that the circumstances of the applicant's case requiring his placement in custody had not changed. The court pointed out that the applicant's argument regarding the application of the interim measure under Rule 39 of the Rules of Court could not be taken into account, since the European Court of Human Rights had not examined the applicant's case on the merits at the material time and, in any event, the application of an interim measure did not constitute a ground for release. The court further rejected the applicant's submission that he had not committed the offences referred to, finding that "such an argument was rebutted by the [above] documents" and, in any event, that issue could not be subject to examination in the proceedings concerning the extension of the detention period. The court further observed that the applicant did not have a permanent place of residence in Russia and had not been granted refugee status. It noted that the applicant had been charged with serious and particularly serious crimes in Uzbekistan, which were also punishable under Russian law. The court further found that the applicant had previously absconded from the Uzbek authorities and therefore there were grounds to believe that he would flee from justice if released. It further decided, without giving further details, that the applicant's family situation, medical condition and age were compatible with his detention. The court concluded, with reference to Articles 109 and 466 § 1 of the CCrP, that the applicant's detention should be further extended until 4 August 2011, that is for a total of eighteen months.

47. The applicant's lawyer appealed against the extension. He requested the applicant's release from custody, with reference to the Court's decision to apply Rule 39 in his case, arguing that the applicant ran the risk of ill-treatment in Uzbekistan. The representative further submitted that the applicant would not constitute a threat to the Russian Federation if released

from custody. Finally, the representative argued that the applicant's criminal prosecution in Uzbekistan had not been in accordance with law.

48. On 2 March 2011 the Supreme Court of the Russian Federation upheld the extension. The court found that the decision on the applicant's extradition had been lawful and that it had become final. The court was not competent to review the reasonableness of the extradition decision in the proceedings at stake. When authorising the extension of the detention, the lower court had correctly found that the suspension of the extradition proceedings pursuant to the application of Rule 39 of the Rules of Court did not constitute a ground for the applicant's release. The Supreme Court found that a custodial measure had been applied with a view to securing the extradition, and on account of the fact that the applicant did not have a permanent residence in Russia.

(e) The applicant's release from custody on 4 August 2011

49. On 4 August 2011 the Perovskiy Inter-District Prosecutor's Office ordered the applicant's release from detention, against an undertaking not to leave the town. The prosecutor's office observed that the applicant's detention had previously been extended several times, and that the domestic courts had upheld as lawful the Prosecutor General's decision to extradite the applicant to Uzbekistan. The court further noted that he had an application pending before the European Court of Human Rights, and found that the applicant "could reside on the territory of the Russian Federation pending [his] extradition".

50. On 4 August 2011 the applicant was released from custody. It appears that the release order was not appealed against.

D. Interview of 4 February 2010 and the applicant's requests for asylum and refugee status

1. Application to the UNHCR

51. It follows from the decision of the FMS of 16 June 2010 that on 22 December 2009 the applicant applied to the Russian Department of the UN High Commissioner for Refugees ("the UNHCR") as a person seeking asylum on the territory of the Russian Federation. On an unknown date he was issued with a certificate of refugee status, not further specified, valid until 22 March 2010, by the UNHCR Office in Moscow. According to the applicant's representative, the applicant had been recognised as a refugee under the mandate of the UNHCR. The parties have not submitted any documents or further details in this respect.

2. Interview on 4 February 2010 by the Perovskiy Inter-District Prosecutor

52. On 4 February 2010, when interviewed by an assistant prosecutor of the Perovskiy Inter-District Prosecutor's Office immediately after his arrest, the applicant stated that he was looking for work and needed to provide his family with financial support, and gave these statements as the reasons for his moving to Russia. He submitted that since 2005, the date of his arrival in Russia, he had not registered as a foreign national temporarily residing in the country. He stated that he had not been aware of any charges against him in Uzbekistan, had not been persecuted on political grounds in his home country, and had not applied for refugee status in Russia.

53. The applicant was not represented by a lawyer at the interview. He produced a handwritten note to certify that he did not need the assistance of a lawyer or an interpreter.

3. Proceedings concerning the applicant's request for refugee status

54. On 9 February 2010 the applicant lodged a request with the FMS for refugee status in Russia. In his application he submitted, in particular, that since 1999 he had been persecuted in Uzbekistan on political grounds. He was a practising Muslim. He had been repeatedly arrested by Samarkand police and questioned in connection with his alleged membership of extremist organisations. The police had repeatedly searched his apartment in Samarkand without producing any documents authorising the searches. The police ordered him to report to a local police station every two months. Convinced that his persecution would continue, in August 2005 the applicant had left Uzbekistan for Russia, where he started working as a driver. He had settled in Russia with his family, including three of his six minor children. He argued that he had not committed the offences he was accused of, had never been a member of proscribed religious organisations, and had not attempted to overthrow the government. He submitted, without further details, that "all his next of kin and friends" had been prosecuted in Uzbekistan on political grounds. He concluded that he ran a real risk of ill-treatment if returned to his home country.

55. On 15 March 2010 the applicant was questioned by the assistant prosecutor of the Perovskiy Inter-District Prosecutor's Office and submitted that he had been persecuted in Uzbekistan in connection with his alleged membership of HT.

56. On 14 April 2010 the applicant, assisted by a lawyer and an interpreter, was interviewed by FMS officers. He stated that he was being sought by the Uzbek authorities for political crimes and he had left Uzbekistan out of fear of ill-treatment by the local police. He practised Islam, and when in Uzbekistan he had been openly persecuted by the authorities for his religious beliefs. It appears that the applicant's lawyer

referred to several statements by eyewitnesses to the searches of the applicant's flat. The statements were produced in Uzbek. The applicant did not submit a translation or a summary of their contents.

57. On 16 June 2010 the Moscow Department of the FMS refused his request for refugee status, stating that the applicant had failed to provide sufficient evidence that he risked ill-treatment if extradited to Uzbekistan. He had failed to apply for asylum in due time after his arrival in Russia. The FMS noted that on 22 December 2009 the applicant had applied to the Russian Department of the UN High Commissioner for Refugees and had been issued with "a certificate valid until 22 March 2010". At the same time, the FMS noted that he had introduced his application for refugee status only after his arrest. Furthermore, when questioned on the date of his arrest in Moscow, the applicant stated that he had been unaware of the charges against him and had arrived in Moscow looking for employment.

58. At the same time, the FMS observed, with reference to the charging order by the Uzbek authorities of 24 June 2009, that the applicant had been placed on a wanted list and was facing serious charges in Uzbekistan. The FMS cited the testimony of the applicant's former colleague M., who had allegedly influenced the applicant to join HT. In 1999-2005 the applicant had allegedly spread HT ideas among Uzbekistani youth and been active in organising local branches of HT, despite numerous warnings by the local law-enforcement authorities.

59. The migration authority concluded that the applicant had failed to apply for refugee status in a timely manner, and that the grounds referred to by the applicant were insufficient to demonstrate the existence of a well-founded fear of persecution in his home country.

60. The applicant appealed to the Zamoskvoretskiy District Court of Moscow against the decision of 16 June 2010, submitting that the Uzbek authorities were persecuting him on religious grounds in connection with his alleged membership of HT, a banned religious organisation. He reiterated that, given the nature of the charges against him, he ran a risk of ill-treatment in custody if extradited to Uzbekistan, and his family could also become subject to persecution.

61. On 12 November 2010 the Zamoskvoretskiy District Court examined the applicant's appeal in the presence of his lawyer and dismissed it. The court observed that before his arrest the applicant had been living in Moscow with his wife and three minor children. The court found no evidence that the applicant's arrival in Russia had been caused by any form of political persecution. It pointed out that the applicant had failed to apply for asylum within a day of crossing the Russian border in 2005, as required by the domestic law, and an application for refugee status had only been introduced by him after the arrest. The court endorsed the FMS conclusion that the underlying reason for the applicant's asylum request was an attempt to avoid criminal responsibility in Uzbekistan.

62. On 4 February 2011 (according to the applicant) or on 22 February 2011 (according to the authorities) the applicant's lawyer introduced an appeal against the decision. The applicant's representative argued, in particular, that the applicant was being unlawfully prosecuted in Uzbekistan in violation of his right guaranteed by Article 9 of the European Convention of Human Rights. The FMS had disregarded the applicant's arguments regarding fear of persecution and ill-treatment for him and his family, as well as the witnesses' statements. The charges against him had been fabricated and the prosecution case was extremely weak. The applicant had not committed the offences imputed to him. Nonetheless, he had been questioned by local law-enforcement authorities, and his flat had been searched on several occasions. He had left Uzbekistan fearing further persecution. Contrary to the FMS arguments, in 2009 the applicant had applied to the Russian Department of the UNHCR. The applicant had not been aware that criminal proceedings had been pending against him at the time of his arrest. This is why he had not lodged a request for refugee status on the date of his arrest, but had only done so in February 2010.

63. It appears that at some point a domestic court extended a ten-day time-limit for introduction of the grounds of appeal and accepted the applicant's appeal against the judgment for examination. The hearing on the applicant's appeal was initially scheduled for 18 April 2011, but was subsequently postponed to 4 May 2011, due to the parties' failure to appear.

64. On 4 May 2011 the Moscow City Court upheld the first-instance court's decision in the presence of the applicant's lawyer. It found that the first-instance court had correctly established the facts of the case. The court observed that the applicant's elder brother, his sister and the applicant's three minor children were living in Uzbekistan at the material time. The court further reproduced verbatim the first-instance court's conclusion that the applicant had failed to apply for refugee status in a timely manner and had not produced sufficient evidence that he would be subjected to persecution if extradited to Uzbekistan.

4. Proceedings concerning the request for temporary asylum

65. On 7 July 2011 the applicant submitted a request for temporary asylum to the FMS Moscow. The request emphasised the applicant's risk of being subjected to torture as a result of politically motivated persecution if extradited.

66. According to the applicant, on 18 July 2011 (or on 16 July 2011, as cited in the judgment of the Zamoskvoretskiy District Court of 22 February 2012, see paragraph 68 below) the FMS Moscow refused to grant him temporary asylum in Russia. The parties did not submit a copy of the decision in that respect. The applicant's statement of appeal and the first-instance court's decision (see paragraphs 67-68 below) indicate that the application was rejected on the ground that there were no humanitarian

grounds for temporary asylum to be granted. There was no evidence that the applicant needed medical care or that, in the event of his extradition to Uzbekistan, he would face a risk of being subjected to torture or ill-treatment. According to the applicant's statement of appeal, the FMS found that reform of the system of administration of justice in Uzbekistan was under way, and that the destination country had signed various international human rights treaties and was pursuing a dynamic social, economic and cultural policy.

67. The applicant appealed against the FMS's decision to the Zamoskvoretskiy District Court. He argued, in particular, that he had consistently informed the authorities of his previous ill-treatment in Uzbekistan. He reiterated that on the date of his arrest he had told the authorities that he had arrived in Russia to look for work and not as an asylum-seeker, because he had not been informed of the purpose of the interview. Finally, he challenged the FMS's findings as regards the human rights instruments signed by Uzbekistan and recent developments in the social and economic policy of the destination country as irrelevant.

68. On 22 February 2012 the Zamoskvoretskiy District Court dismissed his appeal for lack of humanitarian grounds which could warrant granting him temporary asylum. The court observed, in particular, that the FMS's decision had been based on information provided by the Samarkand police authorities in Uzbekistan about the charges against him in the destination country. Further, in the court's view, the FMS had duly taken account of the applicant's arrest and detention on 4 February 2010 pending extradition. The court concluded that the FMS refusal to grant him temporary asylum was lawful since, first, the applicant's health was satisfactory and he had not furnished a medical certificate confirming that he required medical care. Second, the court found that the applicant had not referred to "specific indications that there existed a real threat to the applicant's security" or that he had been persecuted by the Uzbek authorities.

69. On 26 February 2012 the applicant appealed against the decision of the first-instance court. It appears that the appeal proceedings are pending before the Moscow City Court.

E. Events of 19 November 2010

70. In a faxed letter of 19 November 2010 the applicant's representative before the Court submitted that on that date the applicant had allegedly "signed unknown documents" in the absence of the representative or an interpreter. The representative submitted that the applicant may have been forced to sign these documents. Neither in the letter nor in the observations submitted on 11 July 2011 did the applicant's representative provide further details regarding either the contents of the documents or the circumstances of the applicant's meeting with the unspecified authorities.

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). Arrest, placement in custody and custodial detention are permissible only on the basis of a court order. The term during 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. Placement in custody is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a crime punishable by at least two years' imprisonment, where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for placement in custody should be examined by a district court judge or a judge of a military court at an equivalent level (Article 108 § 4). A judge's decision on placement in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime 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 (Article 109 § 2). Further extensions may be granted only if the person has been charged with serious or particularly serious criminal offences. In particular, extensions up to eighteen months may be granted as an exception with regard to persons accused of particularly serious criminal offences (Article 109 §§ 2 and 3).

75. Chapter 16 of the CCrP lays down the procedure by which acts or decisions of a court or public official involved in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of the inquiry, an investigator, a prosecutor or a court may be challenged by "parties to criminal proceedings" or by "other persons in so far as the acts and decisions [in question] touch upon those persons' interests" (Article 123). Those acts or omissions may be challenged before a prosecutor

(Article 124). Decisions taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of "parties to criminal proceedings" or of "hindering an individual's access to court" may be subject to judicial review (Article 125).

76. 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 decide on the preventive measure in respect of the person whose extradition is sought. The preventive measure is to be applied in accordance with the established procedure (Article 466 § 1).

77. 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).

78. Extradition may be denied if the act that gave grounds for the extradition request does not constitute a crime under the Russian Criminal Code (Article 464 § 2 (1)).

C. Decisions of the Russian Constitutional Court

1. Decision of 17 February 1998

79. Verifying the compatibility of Article 31 § 2 of the Law on Legal Status of Foreign Nationals in the USSR of 1982, 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

80. 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.

81. 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 CCrP 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.

82. 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

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

84. The Constitutional Court dismissed 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

85. 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.

86. The Constitutional Court held that Article 466 § 1 of the CCrP, 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

87. 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. Directive Decision no. 1 of 10 February 2009

88. By a Directive Decision No. 1 adopted by the Plenary Session of the Supreme Court of the Russian Federation on 10 February 2009, ("Directive Decision of 10 February 2009") the Plenary Session issued several instructions to the courts on the application of Article 125 of the CCrP. The Plenary reiterated that any party to criminal proceedings or other person whose rights and freedoms were affected by actions or inaction on the part of the investigating or prosecuting authorities in criminal proceedings could rely on Article 125 of the CCrP to challenge a refusal to institute criminal proceedings or a decision to terminate them. The Plenary stated that whilst the bulk of decisions amenable to judicial review under Article 125 also included decisions to institute criminal proceedings, refusal to admit defence counsel or to grant victim status, a person could not rely on Article 125 to challenge a court's decision to apply bail or house arrest or to remand a person in custody. It was further stressed that in declaring a specific action or inaction on the part of a law-enforcement authority unlawful or unjustified, a judge was not entitled to quash the impugned decision or to oblige the official responsible to quash it, but could only request him or her to rectify the shortcomings indicated. Should the impugned authority fail to comply with the court's instructions, an interested party could complain to a court about the authority's inaction and the latter body could issue a special decision *[частное определение]*, drawing the authority's attention to the situation. Lastly, the decision stated that a prosecutor's decision to place a person under house arrest or to remand him or her in custody with a view to extradition could be appealed against to a court under Article 125 of the CCP.

2. Directive Decision No. 22 of 29 October 2009

89. In a Directive Decision No. 22, adopted by the Plenary Session of the Supreme Court on 29 October 2009 ("Directive Decision 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 a preliminary check of the extradition request "an extradition check" was

pending and where the authorities of the country requesting extradition have not submitted a court decision remanding him or her in custody. 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. 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 by 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. 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

90. For relevant reports on Uzbekistan in the time span between 2002 and 2007 and, in particular, on the situation of persons accused of membership of Hizb ut-Tahrir, see *Muminov v. Russia*, no. 42502/06, §§ 67-72 and 73-74, 11 December 2008.

91. In Amnesty International Report 2009 on Uzbekistan, published in May 2009, that organisation stated that it was continuing to receive persistent allegations of widespread torture and ill-treatment, stemming from persons suspected of being members of banned Islamic groups or of having committed terrorist offences. The report stressed that the Uzbek authorities were continuing to actively seek extradition of those persons and, in particular, presumed members of Hizb ut-Tahrir, from the neighbouring countries, including Russia, and that most of those returned to Uzbekistan were held incommunicado, which increased their risk of being tortured or ill-treated.

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

> "Uzbekistan's human rights record remains abysmal, with no substantive improvement in 2010. Authorities continue to crackdown 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.

... On July 20, 37-year-old Shavkat Alimhodjaev, imprisoned for religious offenses, died in custody. The official cause of death was anemia, but Alimhodjaev had no known history of the disease. According to family, Alimhodjaev's face bore possible marks of ill-treatment, including a swollen eye. Authorities returned his body to his family's home at night. They insisted he be buried before sunrise and remained present until the burial. Authorities have not begun investigating the death.

...

Freedom of Religion

Although Uzbekistan's constitution ensures freedom of religion, Uzbek authorities continued their unrelenting, multi-year campaign of arbitrary detention, arrest, and torture of Muslims who practice their faith outside state controls or belong to unregistered religious organizations. Over 100 were arrested or convicted in 2010 on charges related to religious extremism.

...

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 ..."

93. The "Uzbekistan 2011" chapter of the Amnesty International annual report 2011, released in May of the same year, in so far as relevant, states as follows:

"Reports of torture or other ill-treatment continued unabated. Dozens of members of minority religious and Islamic groups were given long prison terms after unfair trials ...

Torture and other ill-treatment

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.

Several thousand people convicted of involvement with Islamist parties or Islamic movements banned in Uzbekistan, as well as government critics and political opponents, continued to serve long prison terms under conditions that amounted to cruel, inhuman and degrading treatment.

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

Counter-terror and security

Closed trials started in January of nearly 70 defendants charged in relation to attacks in the Ferghana Valley and the capital, Tashkent, in May and August 2009 and the killings of a pro-government imam and a high-ranking police officer in Tashkent in July 2009. The authorities blamed the Islamic Movement of Uzbekistan (IMU), the Islamic Jihad Union (IJU) and the Islamist Hizb-ut-Tahrir party, all banned in Uzbekistan, for the attacks and killings. Among the scores detained as suspected members or sympathizers of the IMU, the IJU and Hizb-ut-Tahrir in 2009 were people who attended unregistered mosques, studied under independent imams, had travelled abroad, or were suspected of affiliation to banned Islamic groups. Many were believed to have been detained without charge or trial for lengthy periods. There were reports of torture and unfair trials ...

• In April, Kashkadaria Regional Criminal Court sentenced Zulkhumor Khamdamova, her sister Mekhriniso Khamdamova and their relative, Shakhlo Pakhmatova, to between six and a half and seven years in prison for attempting to overthrow the constitutional order and posing a threat to public order. They were part of a group of more than 30 women detained by security forces in counter-terrorism operations in the city of Karshi in November 2009. They were believed to have attended religious classes taught by Zulkhumor Khamdamova in one of the local mosques. The authorities accused Zulkhumor Khamdamova of organizing an illegal religious group, a charge denied by her supporters. Human rights defenders reported that the women were ill-treated in custody; police officers allegedly stripped the women naked and threatened them with rape.

• Dilorom Abdukadirova, an Uzbek refugee who had fled the country following the violence in Andizhan in 2005, was detained for four days upon her return in January, after receiving assurances from the authorities that she would not face charges. In March, she was detained again and held in police custody for two weeks without access to a lawyer or her family. On 30 April, she was convicted of anti-constitutional activities relating to her participation in the Andizhan demonstrations as well as illegally exiting and entering the country. She was sentenced to 10 years and two months in prison after an unfair trial. Family members reported that she appeared emaciated at the trial and had bruises on her face ...

Freedom of religion

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

• Suspected followers of the Turkish Muslim theologian, Said Nursi, were convicted in a series of trials that had begun in 2009 and continued into 2010. The charges against them included membership or creation of an illegal religious extremist organization and publishing or distributing materials threatening the social order. By December 2010, at least 114 men had been sentenced to prison terms of between 6 and 12 years following unfair trials. Reportedly, some of the verdicts were based on confessions gained under torture in pre-trial detention; defence and expert witnesses were not called; access to the trials was in some cases obstructed while other trials were closed."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

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

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

95. He further complained that he had had no effective remedies in respect of his complaints under Article 3 of the Convention, in breach of Article 13. That provision 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

96. The Government pointed out at the outset that the applicant had lodged his appeal against the judgment of the Zamokvoretskiy District Court outside a ten-day time-limit set out in the domestic law. However, the domestic courts granted an extension of the period for introduction of the grounds of appeal. They examined the appeal against the refusal to grant the applicant refugee status. Furthermore, the applicant made use of the procedure for challenging the extradition order by the Prosecutor General. In each set of the proceedings, his arguments were examined by the courts at two levels of jurisdiction. Therefore, the applicant had an effective domestic remedy in respect of his complaint under Article 3 and was able to make use of it.

97. Furthermore, the Government submitted that the applicant had failed to raise the issue of a potential risk of ill-treatment when he was arrested on 4 February 2010. He had not informed the Russian authorities about the political charges against him during interviews with a police investigator and a local prosecutor on that date. He had only raised that issue on 9 February 2010, when applying for refugee status.

98. The Government further argued that the domestic authorities, including the FMS and the courts, had carefully examined the applicant's allegations that he would risk ill-treatment if extradited to Uzbekistan. In

particular, the FMS examined the applicant's complaint that he risked ill-treatment if extradited to Uzbekistan on 16 June 2010, that is before the Prosecutor General's office had decided on the applicant's extradition. The conclusions by the FMS had been subsequently upheld by the domestic courts. Furthermore, the ill-treatment grievance had also been duly examined within the proceedings concerning the validity of the extradition order. The courts had correctly dismissed the applicant's allegations as unfounded. They had also taken into account the reports on Uzbekistan by the UN Institutions of 2002 and 2006. In the proceedings concerning the applicant's challenge of the extradition order the domestic courts had reached a reasoned conclusion that the Prosecutor General's Office did not possess any information on human rights violations in Uzbekistan in 2010.

99. With reference to the report on the applicant's case by the Prosecutor General of Russia dated 24 April 2011, the Government submitted that the crimes of which the applicant was accused in his home country were not punishable by the death penalty, that Uzbekistan had ratified various international human rights treaties, including the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, that the requesting country was making democratic improvements, and that the Uzbek authorities provided assurances that the applicant would not be ill-treated if extradited.

2. The applicant

100. As regards Article 3, the applicant maintained his complaint. In reply to the Government's submissions he argued that he had not raised the issue of risk of ill-treatment in Uzbekistan on 4 February 2010 because he had not been granted access to either a lawyer or an interpreter. He had not been in possession of all the information about the grounds for his arrest and detention. On that date he had signed several documents without actually having read them. Once he had obtained additional information on the case from his lawyer, he had complained to the Russian authorities about the risk of political persecution and ill-treatment in Uzbekistan without delay, that is as early as 9 February 2010.

101. He further submitted that the applicant and his representative had consistently referred to the applicant's previous experience in Uzbekistan in their complaints before the domestic courts at two levels of jurisdiction. They had also cited the reports by the international observers, but their arguments had been rejected. As regards the domestic courts' refusal to admit these reports on the ground that they were outdated, he argued that the domestic courts were able to obtain more recent information on the human rights situation in Uzbekistan from the public domain.

102. The applicant further challenged the Government's reference to assurances that the trial against the applicant would be fair. He submitted, in particular, that at the very beginning of the proceedings against him the

Uzbek authorities had been already regarding him as a criminal, in violation of the presumption of innocence. In fact, they had informed their Russian colleagues that the applicant was a criminal in their letter of 4 February 2010, in the absence of a conviction by a competent court. Therefore, contrary to the Government's submissions, the fair trial guarantees were already not being observed by Uzbekistan at the earliest stage of the proceedings. Furthermore, the Prosecutor's Office of Uzbekistan requested the applicant's extradition in February 2010, whilst their assurances that the applicant would not be subjected to any form of prohibited treatment only reached the Russian authorities on 19 April 2011. Therefore, at the initial stage of the extradition proceedings there was a risk of the applicant being returned to Uzbekistan in the absence of any assurances from the Uzbek authorities.

103. Finally, as regards Article 13, the applicant submitted that the domestic remedies in respect of his complaint under Article 3 were ineffective. The domestic courts had rejected a reference to numerous reports by international observers, as well as to the applicant's own previous experience in Uzbekistan. The courts had disregarded several detailed reports which had been cited by the defence and, in any event, were available in the public domain.

B. The Court's assessment

1. Article 3

Admissibility

104. 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

105. The Court reiterates at the outset that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94), and the right to political asylum is not explicitly protected by either the Convention or its Protocols (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, 11 January 2007). However, extradition by a Contracting State may give rise to an issue under Article 3,

and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008). 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 (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

106. An assessment as to whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of Article 3 inevitably requires that the Court assess the conditions in the receiving country against the standards of that Convention provision (see *Mamatkulov and Askarov v. Turkey [GC],* nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (see *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

107. In determining whether it has been shown that the applicant runs a real risk of suffering treatment proscribed by Article 3 if extradited, the Court will examine the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Saadi*, cited above, § 128). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215).

108. 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).

109. As regards the general situation in a particular country, the Court has held on several occasions that it can attach a certain importance to information contained in recent reports from independent international human rights protection associations or governmental sources (see, for example, *Saadi*, cited above, § 131, with further references). 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 (ibid.).

110. 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).

(b) Application to the present case

111. The Government argued that the domestic authorities had correctly dismissed the applicant's allegation that he would run a risk of ill-treatment or torture if returned to Uzbekistan. Relying on various reports by international organisations and his own experience, the applicant disputed the Government's argument. 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 material as well as by material originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see *Ismoilov and Others*, cited above, § 120). The Court will first assess whether the applicant's grievance received an adequate response at the national level (see *Muminov v. Russia*, cited above, § 86).

(i) Domestic proceedings

112. Having regard to the materials in its possession, the Court notes that the applicant complained that he risked being subjected to treatment in breach of Article 3 during the extradition, refugee status and temporary asylum proceedings, and that in all those sets of proceedings the domestic authorities took cognisance of his submissions. The temporary asylum proceedings are currently pending before the appeal court, whilst the domestic judicial decisions in the extradition and refugee status proceedings are final. Hence, in assessing whether the applicant's grievance received an adequate reply, the Court will primarily have regard to the two latter sets of proceedings. However, it will also take into account the domestic authorities' reasoning in the temporary asylum proceedings, where relevant.

113. Referring to the record of the applicant's interview of 4 February 2010, the Government submitted that the applicant had failed to inform the authorities of his fear of persecution in Uzbekistan in a timely manner. The Court observes that the information contained in the written explanation signed by the applicant on that date was, indeed, not particularly detailed. However, as early as 9 February 2010 the applicant, in his application for refugee status, clearly articulated a fear of ill-treatment and persecution on political grounds if returned to Uzbekistan. Furthermore, in all sets of

proceedings under consideration the applicant addressed to the domestic courts, as well as to the FMS, detailed submissions on the risk that he would be subjected to treatment in breach of Article 3 (see paragraphs 21, 30, 54-56, 60, 62, and 67 above). Among other things, he described his own experience at the hands of Uzbek law-enforcement officials and referred to their systematic use of ill-treatment against detainees and, in particular, people accused of membership of proscribed religious organisations, such as HT. In support of his allegations the applicant relied on reports by international organisations and UN agencies concerning the human rights situation in Uzbekistan. He further referred to the witnesses' statements. Therefore, the Court is satisfied that the applicant consistently raised before the domestic authorities the issue of the risk that he would be subjected to treatment in breach of Article 3, advancing a number of specific and detailed arguments.

114. However, the Court is not persuaded that the domestic authorities made an adequate assessment of the risk of ill-treatment if the applicant was extradited to his home country, for the following reasons.

115. First, the Court has doubts that the applicant's personal circumstances were subject to rigorous scrutiny by the domestic courts. The Court notes in this respect that in the extradition, refugee status and temporary asylum proceedings the domestic courts rejected the applicant's allegations that there was a risk that he would be subjected to ill-treatment with reference to two key elements: first, the domestic authorities stated that the applicant had not applied for refugee status immediately after his arrival in Russia. In fact, in both sets of proceedings they explicitly stated that his arguments concerning persecution were not valid because he had not applied for asylum in due time. Second, the domestic courts consistently pointed out that in 2007 the applicant had been able to travel to Uzbekistan and had returned to Russia unharmed.

116. As regards the applicant's failure to apply for refugee status in due time, it is not in dispute between the parties that the applicant had arrived in Russia in 2005 seeking employment, whilst the request for refugee status had not been introduced until 2010. The Court observes, however, that the main thrust of the applicant's grievance was his persecution by the Uzbek authorities in connection with allegations of serious criminal offences punishable by long prison terms. The Court reiterates in this respect that, whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). It has been the Court's constant approach that the conduct of the person concerned, however undesirable or dangerous, cannot be taken into account, with the consequence that the protection afforded by Article 3 of the Convention is

broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see *Saadi*, cited above, § 138, with further references). Similarly, as regards the events of 2007, the Court observes that the main thrust of the applicant's argument is that since he will be detained if extradited to Uzbekistan, he runs a risk of being ill-treated in the context of the criminal proceedings currently pending against him in the requesting State. These proceedings were opened in 2009, that is two years after the applicant's most recent visit to his home country. Therefore, in the Court's view, a mere reference to the events in 2007, taken separately, cannot be accepted as a sufficient ground for rejecting the complaint that there is a real personal risk of ill-treatment in case of his extradition and arrest in Uzbekistan in the context of the criminal proceedings against him.

117. The Court further observes that in the extradition proceedings the remainder of the applicant's argument as regards the risk of ill-treatment were briefly rejected as being of a "presumptive nature" and constituting the applicant's "personal opinion" (see paragraph 28 above). Likewise, in the refugee status proceedings the courts held that the applicant had not produced sufficient evidence that he would be subjected to ill-treatment if extradited to Uzbekistan (see paragraph 64 above). The Court further takes note of the findings in the proceedings concerning temporary asylum by the Zamoskvoretskiy District Court of 22 February 2012, that the applicant "had not referred to specific evidence that there existed a real threat to [his] security" (see paragraph 68 above). In the absence of further elaboration by the domestic courts, the exact meaning of these similar findings in the three sets of proceedings remains obscure. The Court reiterates that requesting an applicant to produce "indisputable" evidence of a risk of ill-treatment in the requesting country would be tantamount to asking him to prove the existence of a future event, which is impossible, and would place a clearly disproportionate burden on him. In this respect it further reiterates its constant case-law to the effect that what should be assessed in this type of case are the foreseeable consequences of sending the applicant to the receiving country (see, among other authorities, *Vilvarajah and Others*, cited above, § 108).

118. In this context, the Court considers it important that the domestic courts disregarded the applicant's submission that he ran a particular risk of torture as a person charged with participation in and direction of religious, extremist, separatist and other prohibited organisations. For instance, in the extradition proceedings the Moscow City Court had found no evidence of politically motivated persecution of the applicant (see paragraph 25 above), and the Supreme Court of Russia upheld that conclusion. Likewise, the first-instance court in the refugee status proceedings stated that the underlying reason for the applicant's request was an attempt to avoid criminal responsibility in the requesting country (see paragraph 61 above; see also

paragraph 64 above as regards the appeal proceedings). These findings were at variance with the applicant's submission, cited earlier in the same decision, that he feared being returned to Uzbekistan because of the risk of torture in the context of criminal proceedings concerning the charges of politically motivated offences (see paragraph 60 above).

119. Second, the Court considers that the domestic authorities did not pay requisite attention to the evidence concerning the human rights situation in the requesting country. For instance, as regards the proceedings concerning the applicant's extradition, the reports produced by the UN agencies covering the years 2002-06, as well as the Court's findings in the case of *Ismoilov and Others*, cited above, were rejected by the Supreme Court of Russia as outdated (see paragraph 33 above). As regards the applicant's submission that the domestic courts were under an obligation to obtain the latest information from the public domain of their own motion, the Court reiterates that 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 paragraph 108 above). However, at the same time the Court notes that the domestic courts' analysis of the human rights situation in Uzbekistan was confined, in essence, to a reference to the results of checks by various domestic authorities, without any additional details. For instance, in the extradition proceedings the domestic courts referred to the results of the investigations by the Federal Security Service and the Ministry of Foreign Affairs, without elaborating on that issue (see paragraph 25 above). In the absence of further details on this point the Court considers that a brief reference to the above results of inquiries cannot be accepted as sufficient for the purpose of the analysis of the human rights situation in the host country.

120. Finally, the Court observes that the domestic courts in the extradition proceedings readily accepted the assurances provided by the Uzbek authorities as a firm guarantee against any risk of the applicant being subjected to ill-treatment after his extradition (see paragraph 26 above). The Court observes, however, that it was only on 19 April 2011, that is several months after the appeal proceedings against the extradition order had been completed, that the Uzbek authorities provided additional assurances that the applicant had not been prosecuted in Uzbekistan on political grounds, and that all forms of inhuman and degrading treatment had been prohibited in the destination country (see paragraph 34 above), while the assurances submitted on 16 February 2010 and accepted by the domestic courts did not contain any such information. In any event, in the Court's view, it was incumbent on the domestic courts to verify that such assurances were reliable and practicable enough to safeguard the applicant's right not to be subjected to ill-treatment by the authorities of that State (see, *mutatis*

mutandis, *Saadi*, cited above, § 148). The Court is bound to conclude, however, that the Moscow City Court and the Supreme Court of Russia failed to assess the assurances in the light of the Convention requirements (see paragraph 131 below for the Court's own assessment).

121. Having regard to the above, and in particular to the lack of thorough and balanced examination of the general human rights situation in Uzbekistan, the unqualified reliance on the assurances provided by the Uzbek authorities and the failure to give meaningful consideration to the applicant's personal circumstances, the Court finds that the authorities did not carry out a "proper assessment" of the risk of the applicant being subjected to torture or other forms of ill-treatment if he were extradited to Uzbekistan.

(ii) The Court's assessment of the risk

122. The Government argued that the offences of which the applicant was accused in his home country were not punishable by the death penalty. The Court notes, however, that the thrust of the applicant's complaint concerns not a fear of receiving the death penalty but the risk that he would be subjected to ill-treatment or torture if he were expelled to Uzbekistan. The Court's task is now to establish whether there is a real risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. Since he has not yet been extradited, owing to the application 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 (see, among others, *Gaforov v. Russia*, no. 25404/09, § 128, 21 October 2010).

123. In the Government's submission, the applicant's allegation of risk of ill-treatment or torture remained unconfirmed by the domestic authorities. The Court nonetheless reiterates that in cases concerning aliens facing expulsion or extradition it is entitled to compare material made available by the Government with information from other reliable and objective sources (see *Gaforov*, cited above, § 129).

124. The Court observes in the first place that in several judgments concerning expulsion or extradition to Uzbekistan it noted, with reference to material from independent sources covering the time span between 2002 and 2007, that the practice of torture of those in police custody was "systematic" and "indiscriminate" (see, for example, *Muminov* and *Ismoilov and Others*, both cited above, §§ 93 and 121 respectively, with further references). In its recent judgments concerning the same subject, after examining the latest available information, the Court pointed out that there was no concrete evidence of any fundamental improvement in that area (see *Abdulazhon Isakov v. Russia*, no. 14049/08, § 109, 8 July 2010; *Yuldashev v. Russia*, no. 1248/09, § 93, 8 July 2010; and *Sultanov v. Russia*, no. 15303/09, § 71, 4 November 2010).

125. The Government may further be understood to argue in general terms that the situation in Uzbekistan had been improving during the period under consideration in the present case. However, having examined recent material originating from reliable and objective sources (see *Salah Sheekh*, cited above, § 136), the Court is unable to find elements which would be indicative of such an improvement. Quite to the contrary, it follows from the latest reports by Human Rights Watch and Amnesty International, as well from information from other organisations to which the above non-governmental organisations refer in their documents, that the use of torture and ill-treatment against detainees in Uzbekistan is systematic and unpunished by law-enforcement and security officers. According to those sources, despite the Uzbek authorities' assertions that such practices had significantly decreased, reports of torture and ill-treatment of detainees and prisoners continued unabated (see paragraphs 91-93 above). Against this background the Court cannot but conclude that the ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan.

126. As regards the applicant's personal situation, the Court considers it important to note that the applicant is wanted by the Uzbek authorities on charges of attempting to overthrow the Uzbek State's constitutional order, as well as participation in and direction of religious, extremist, separatist and other prohibited organisations, because of his presumed participation in the activities of HT, a proscribed religious organisation. In its *Muminov* judgment the Court considered that there were serious reasons to believe in the existence of the practice of persecution of members or supporters of that organisation. It found that reliable sources affirmed the existence of a practice of torture against persons accused of membership of HT, with a view to extracting self-incriminating confessions and to punishing those persons, who were perceived by public authorities to be involved in religious or political activities contrary to State interests (*see Muminov*, cited above, § 95).

127. Having regard to recent reports on the matter, the Court points out that they all refer to the Uzbek authorities' continuing persecution of people suspected of or charged with religious extremism, including presumed members of HT, and state that there are credible allegations of torture in respect of those people, as well as cases of deaths in custody (see paragraphs 91-93 above). In this respect it is also significant for the Court that the Uzbek authorities have consistently refused to allow independent observers access to detention facilities (see paragraphs 92-93 above). Accordingly, in the light of evidence showing a persistent pattern of persecution of accused members of HT involving torture and ill-treatment the Court considers that no concrete elements have been produced to show any fundamental improvement in the area concerning this particular group (compare *Chahal v. the United Kingdom*, 15 November 1996, §§ 102-03, *Reports of Judgments and Decisions* 1996-V).

128. Against this background the Court reiterates that in *Saadi* (cited above, § 132) it held that where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of the information contained in recent reports from independent international human rights protection associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. The Court considers that this reasoning applies in the present case, where the applicant is accused of membership of a group in respect of which reliable sources confirm a continuing pattern of ill-treatment on the part of the authorities, as has been stated above. Although in such circumstances the Court will normally not insist that the applicant show the existence of further special distinguishing features (see *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008), it considers it nonetheless important to point out that the applicant repeatedly submitted to the competent Russian authorities that he had already been subjected to persecution and ill-treatment at the hands of the Uzbek law-enforcement authorities in connection with his presumed membership of HT. In the proceedings concerning the validity of the extradition order he presented a detailed account of how the alleged ill-treatment had occurred (see paragraph 30 above), and referred to the witnesses' depositions. Against this background, the Court considers that the applicant's submissions concerning persecution by the authorities and alleged experience of ill-treatment cannot be discarded as completely without foundation.

129. The Court further finds significant the applicant's submission which was not disputed by the Government that the office of the UNHCR, after examining the applicant's case, found that he was eligible for international protection under its mandate (see paragraphs 51 and 57 above).

130. In so far as the Government may be understood to argue that that risk could be negated because Uzbekistan had become a party to the UN Convention against Torture, it is reiterated that the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, § 147).

131. Finally, as to the Government's argument that assurances were obtained from the Uzbek authorities, the Court has already cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent (see *Chahal*, cited above, and *Saadi,* cited above, §§ 147-48). In any event, the Court notes that Uzbekistan is not a Contracting State to the Convention (compare, among many others,

Gasayev v. Spain (dec.), no. 48514/06, 17 February 2009), nor have its authorities demonstrated the existence of an effective system of legal protection against torture that could act as an equivalent to the system required of the Contracting States. Quite to the contrary, numerous reports available to the Court agree on Uzbekistan's reluctance to investigate allegations of torture and to punish those responsible, as well as to cooperate with international monitoring mechanisms (see paragraphs 91-93 above). In these circumstances, the Court is not persuaded that the assurances by the Uzbek authorities are in themselves sufficient to ensure adequate protection against the risk of ill-treatment in the case at hand (see, for instance, *Gaforov,* cited above, § 138, and *Yuldashev*, cited above, § 85).

132. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant would face a real risk of treatment proscribed by Article 3, if extradited to Uzbekistan. The Court concludes therefore that implementation of the extradition order against the applicant would give rise to a violation of Article 3 of the Convention.

3. Article 13 in conjunction with Article 3 of the Convention

(a) Admissibility

133. The Court notes that the complaint under Article 13 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

134. Having regard to the applicant's submissions, the Court considers that the gist of his claim under Article 13, which it considers "arguable" (see *Muminov,* cited above, § 99), is the domestic authorities' alleged failure to carry out a rigorous scrutiny of the risk that he would be subjected to ill-treatment if extradited to Uzbekistan (see paragraph 103 above).

135. In this respect the Court notes that it has already examined that allegation in the context of Article 3 of the Convention. Having regard to its findings in paragraphs 112-21 above, the Court considers that there is no need to examine this complaint separately on its merits (see, *mutatis mutandis, Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI; and *Gaforov,* cited above, §§ 143-44).

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

136. The applicant argued, firstly, that his detention with a view to extradition had been in breach of the requirement of lawfulness under

Article 5 of the Convention. Secondly, the applicant complained that the authorities had not displayed sufficient diligence in the conduct of the extradition proceedings. The Court will examine these complaints under Article 5 § 1. The relevant parts of this provision read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Submissions by the parties

1. The applicant

137. In his application form of 16 August 2010 the applicant submitted, without further details, that he considered the decision on the extension of his detention by the Perovskiy District Court of 25 March 2010 unlawful and unreasonable.

138. By a letter of 31 January 2011 the applicant further complained that the extension of his detention of 27 January 2011 had been unlawful and unfounded.

139. Subsequently, in the observations of 11 July 2011 the applicant submitted that he or his representative had been unable to challenge the decision of 25 March 2010, since during these proceedings the applicant had been represented by a State-appointed lawyer and not a lawyer of his own choosing. He further pointed out that the Russian authorities had received a request for his extradition only eighteen days after his arrest. Therefore, for at least eighteen days he had been detained without legal justification. In these circumstances, he was unable to foresee either the overall duration of his detention or any further actions by the Russian authorities. He had reiterated that there had existed no grounds for his arrest or prolonged detention in the Russian Federation. However, he had been placed in custody in the absence of any information from the Uzbek authorities.

140 He further argued in his observations that there were no grounds for him to be placed in custody in Russia. The applicant submitted that in deciding on the measure of restraint the prosecutor's office and the domestic courts did not take into account the fact that the applicant had been the only breadwinner in his family and had six minor children, three of them living in Russia. He argued that he had not been charged with a criminal offence in Russia and had not committed a crime on Russian territory. He had been unable to flee from justice, since he had been put on a cross-border wanted list and had been awaiting the outcome of the refugee status proceedings.

Furthermore, he did not have any reason to commit an offence in Russia, since that would have aggravated his situation in the host country. Therefore, there had been no reason to arrest and detain him in Russia. Finally, he submitted that the domestic courts' reasoning for several extensions of the applicant's detention was confined to the argument that the circumstances of the case had not changed since the date of the arrest. Therefore, according to the applicant, the domestic courts, when extending his detention, had failed to assess the evolving individual circumstances of the applicant's case and had disregarded the risk of ill-treatment and unfair trial if he were to be extradited.

2. The Government

141. The Government insisted that the applicant's arrest and detention pending extradition had been lawful, as it had been based on the Samarkand Town Court decision of 24 June 2009, and that it fully complied with the domestic law provisions.

142. They argued that on 4 February 2010 the applicant was arrested by local police officers in compliance with Article 91 § 2 of the CCrP. In fact, the information provided by the Uzbek authorities and, in particular, that contained in the decision of the Samarkand Town Court of 24 June 2009, constituted a reasonable ground to believe that the applicant had committed criminal offences.

143. As regards the period immediately after the arrest, they contended that the decisions of the Petrovskiy Inter-District prosecutor's office dated 5 February and 2 March 2010 had fully complied with the domestic legislation, in particular with the provisions of Article 466 § 2 of the CCrP of the Russian Federation. Referring to Ruling no. 22 of 29 October 2009 of the Plenary Session of the Supreme Court of the Russian Federation (see paragraph 89 above), they argued that in the present case the extradition request had been accompanied by a detention order of a foreign court, and therefore the prosecutor was entitled to remand the applicant in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months. They further pointed out that the prosecutor's decision had been challengeable in the courts under Article 125 of the CCrP.

144. As concerns the subsequent period, the Petrovskiy District Court had ordered an extension of the applicant's detention because the applicant had been charged with particularly serious offences in Uzbekistan and did not have either a permanent residence in Russia or an official source of income. Therefore, in the Government's submission, the domestic court had reached a well-founded conclusion that the applicant could have absconded if released. Finally, on 28 June 2010 and 27 January 2011 the applicant's detention had been lawfully extended by the domestic courts in compliance with the time-limits specified in Article 109 of the CCrP, since the

circumstances which had led to the initial decision on the measure of restraint in respect of the applicant had not changed.

145. They further pointed out that the applicant had been able to appeal to the Perovskiy District Court against the Perovskiy Inter-District Prosecutor's decision of 5 February 2010, but had not availed himself of that remedy. They further argued that the applicant could have lodged ordinary appeals against the extension orders of 25 March and 28 July 2010 by the Perovskiy District Court, but had failed to do so.

146. They further argued, in respect of the entire detention period, that the applicant had been able to foresee the maximum statutory period of his detention with a view to extradition, that is until a decision was taken by the Prosecutor General's Office on the extradition request or until expiry of the time-limits set in the detention orders. The applicant should have realised that the final decision concerning his extradition could not have been taken before his application for refugee status and his appeals against an extradition decision had been examined. They submitted that throughout the entire detention period the domestic authorities conducted the extradition proceedings with due diligence. Lastly, they asserted that from 30 August 2010 the Russian authorities had been obliged to hold the applicant in custody because the Court had indicated to them under Rule 39 of the Rules of Court that his extradition should be suspended. They submitted in conclusion that the applicant was able to foresee the period of his detention until the suspension of the extradition proceedings pursuant to the application of the interim measure, and that the overall duration of the detention was in compliance with the requirements of Article 5 § 1 (f) of the Convention.

B. The Court's assessment

1. As regards the complaint concerning lawfulness of the detention

(a) Admissibility

147. The Court notes that in the observations the applicant advanced several specific arguments relating to the legality of his detention from 4 February to 25 March 2010 based on the decisions of the Pervoskiy Inter-District Prosecutor of 5 February and 2 March 2010 (see paragraphs 36 and 38 above). In so far as the Government argued that the applicant had failed to exhaust domestic remedies, since the decisions by the Perovskiy Inter-District Prosecutor were subject to appeal, the Court is mindful of its findings in the case of *Dzhurayev v. Russia* (no. 38124/07, 17 December 2009), in which the exhaustion issue had been discussed and the Court was not persuaded that the existence of the remedies relied on in that case, as

well in the present case, was sufficiently certain both in theory and in practice (see *Dzhurayev*, cited above, § 67). However, the Court does not need to examine the exhaustion issue in the present case, for the following reason. The Court observes that the period of detention authorised by the inter-district prosecutor's orders of 5 February and 2 March 2010 ended on 25 March 2010 (see paragraph 40 above), when the applicant's further detention was authorised by the Perovskiy District Court (see, by contrast, *Dzhurayev*, cited above, §§ 11-20 and 75, where no court decision had been issued to extend the applicant's custodial detention). That later decision entered into force ten days later. However, the applicant only raised his arguments as regards deficiencies of his initial remand in custody in his observations dated 11 July 2011. Thus, by operation of the six-month rule under Article 35 § 1 of the Convention, the Court does not have jurisdiction to delve into the lawfulness of the applicant's arrest and the initial period of detention under the detention order of 4 February 2010 (from 4 February to 25 March 2010) (see, in so far as relevant, *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).

148. The Court further notes from the application form dated 16 August 2010 that the applicant considered the decision of 25 March 2010 by the Pervoskiy District Court unlawful and unreasoned. He had furnished no further details in this respect. Even assuming that the applicant, represented before the Court since 25 February 2010, provided some indication of the factual basis of the complaint and the nature of the alleged violation (see, in so far as relevant, *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001) – a hypothesis favourable to the applicant – the Court accepts the Government's argument that the applicant failed to lodge an ordinary appeal against the detention order of 25 March 2010. In fact, the decision of 25 March 2010 contained an unequivocal indication that it could be appealed against within ten days from the date of delivery of the decision. The Court further takes cognisance of the applicant's submissions of 11 July 2011 that he was unable to challenge the decision of 25 March 2010, since during these proceedings he had been represented by a State-appointed lawyer and not a lawyer of his own choosing. However, in the absence of any further details, the Court is not persuaded that there existed exceptional circumstances which might have precluded the applicant or the State-appointed counsel from lodging such an appeal or, in the alternative, precluding the applicant's representative before the Court from requesting an extension of the time-limits for introducing such an appeal (see also paragraph 172 below). Likewise, the Court notes that the applicant failed to introduce an ordinary appeal against the decision of 28 July 2010 by the Perovskiy District Court (see paragraphs 43-44 above). The Court thus finds that the complaint relating to the lawfulness of his detention in

the period prior to 27 January 2011 should be dismissed for non-exhaustion of domestic remedies, in line with Article 35 § 1 of the Convention.

149. As to the lawfulness of the applicant's detention after 4 February 2011, 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.

(b) Merits

(i) General principles

150. The Court observes that deprivation of liberty under Article 5 § 1 (f) of the Convention must be "lawful" (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009). Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (ibid.).

(ii) Application to the present case

151. The Court observes that between 4 February 2010 and 4 August 2011 the applicant remained in detention with a view to his extradition to Uzbekistan. It has already found that the applicant's complaints related to the initial period of detention and the extension are inadmissible (see paragraphs 147-48 above). It will therefore only take into account the period between 4 February and 4 August 2011.

152. It is true that in a number of previous cases concerning the lawfulness of detention pending extradition in Russia the Court found a violation of the said provision of the Convention. In doing so, the Court had regard to the absence of clear legal provisions establishing a procedure for ordering and extending detention with a view to extradition and setting time-limits on such detention, as well as an absence of adequate safeguards

against arbitrariness (see, for example, *Dzhurayev*, cited above, § 68, and *Sultanov*, cited above, § 86).

153. Turning to the period under review, the Court points out that, unlike the cases mentioned above, from 4 February to 4 August 2011 the applicant's detention was ordered by a competent court, and the extension order contained time-limits, in line with the requirements of Article 109 of the Code of Criminal Procedure (see, for comparison, *Nasrulloyev v. Russia*, no. 656/06, §§ 73-75, 11 October 2007). The Court observes that the applicant faced particularly serious charges in Uzbekistan in connection with the offences which were also regarded as "particularly serious" under the Russian law, on the basis of which his detention was extended to eighteen months, in accordance with Article 109 § 2 of the CCrP (see paragraph 46 above). Following the respective extension request with reference to the application of Rule 39 of the Rules of Court *vis-à-vis* the applicant, the domestic courts extended his detention. Both the Moscow City Court and the Supreme Court of Russia assessed the lawfulness and various other circumstances, which were considered relevant to the applicant's detention, including the progress of the extradition proceedings. The applicant was clearly advised of the possibility of appealing. The lawfulness of that detention was reviewed and confirmed by the appeal court. At the expiry of the statutory eighteen-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 49 above).

154. The applicant did not put forward any other argument to the domestic courts and this Court 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.

155. Finally, in so far as the applicant may be understood to argue that he had remained in detention on the basis of fabricated charges, the Court reiterates that it is immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel or to extradite can be justified under national law or the Convention (see, mutatis mutandis, *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I).

156. The foregoing considerations are sufficient to enable the Court to conclude that there had been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 4 February to 4 August 2011.

2. As regards the length of the applicant's detention with a view to extradition and the authorities' diligence in the conduct of the extradition proceedings

(a) Admissibility

157. In so far as the applicant may be understood to have complained about the length of the uninterrupted period of his detention during the extradition proceedings and the authorities' diligence in the conduct of these proceedings, his complaint relates, in substance, to the entire period between 4 February 2010 and 4 August 2011. The Court considers that this period of detention constitutes a continuing situation 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).

158. 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.

(b) Merits

(i) General principles

159. The Court reiterates 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 *Ismoilov and Others*, cited above, § 135, with further references). 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*, cited above, § 74).

(ii) Application to the present case

160. Turning to the present case, the Court observes that the period complained of started running on 4 February 2010, when the applicant was placed in custody with a view to extradition, and ended on 4 August 2011, when he was released. As a result, the applicant spent exactly eighteen months in custody, the maximum period allowed by law.

161. The Court observes at the outset that the Moscow City Court and the Supreme Court of Russia in their respective decisions of 27 January and 2 March 2011, as well as the Government in their observations, referred to the interim measure indicated by the Court under Rule 39 of the Rules of Court. It is true that after 30 August 2010, when that interim measure was adopted under Rule 39 of the Rules of Court, there existed a legal obstacle to the applicant's extradition to Uzbekistan. 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 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).

162. In the light of its earlier conclusions (see paragraphs 153-56 above), and in so far as it is competent to decide on the matter (see paragraphs 147-49), the Court is satisfied that the applicant's detention during that period had been in compliance with domestic law. It is now to be ascertained whether the extradition proceedings remained in progress between 4 February 2010 and 4 August 2011 to justify the applicant's detention with a view to extradition, and whether they were prosecuted with due diligence. The Court has to determine whether the length of the detention did not exceed what was reasonably required for the purpose pursued and whether the detention was closely connected to the basis for detention relied on by the Government (see paragraph 159 above).

163. The Court observes that the extradition proceedings in the present case were initiated on 16 February 2010 and were pending until 4 August 2010, when the extradition order was issued. The applicant was interviewed, the Russian Prosecutor General's Office received an extradition request and diplomatic assurances from its Uzbek counterpart, and the Federal Security Service and the Ministry of Foreign Affairs submitted that there were no obstacles to his extradition to Uzbekistan. The Court further notes that between 4 August and 11 November 2010 the extradition order was reviewed by courts at two levels of jurisdiction. Hence, the Court accepts that the extradition proceedings were in progress at that time, too. It further

finds that the authorities and courts before which the case came gave their decisions within a normal time.

164. As regards the subsequent period, the Court observes that after the confirmation of the extradition order on appeal on 11 November 2010, the applicant was remanded in custody until 4 August 2011.

165. At the same time, the Court notes that for the major part of that period the proceedings concerning the applicant's claim for refugee status were pending. As the outcome of these proceedings could be decisive for the question of the applicant's extradition, the Court will take into account the course of these proceedings for the purposes of determining whether any action was "being taken with a view to extradition". The Court notes that in those proceedings the case was examined by the domestic courts at two levels of jurisdiction. Further, the Court cannot overlook the fact that the applicant's own conduct gave rise to an aggregate delay of three months (see, in so far as relevant, *Kolompar v. Belgium*, 24 September 1992, § 42, Series A no. 235-C), since the applicant only appealed against the first-instance judgment of 12 November 2010 in February 2011 (see paragraph 62 above). The Court further notes that the hearing on the applicant's appeal initially scheduled for 18 April 2011 was subsequently postponed until 4 May 2011, due to the parties' failure to appear. Finally, the Court observes that since 7 July 2011 proceedings concerning the applicant's request for temporary asylum have been pending before the domestic authorities (see paragraphs 65-69 above). In these circumstances the Court is satisfied that actions were taken by the authorities in the proceedings which could have had a bearing on the extradition issue, and the authorities and courts before which the case came gave their decisions within reasonable time.

166. In sum, the Court considers that the requirement of diligence was complied with in the present case, and the overall length of the applicant's detention was not excessive (compare *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011 *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011; and *Abdolkhani and Karimnia,* cited above, §§ 134-35). There has therefore been no violation of Article 5 § 1 of the Convention on this account.

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

167. The applicant may also be understood to complain under the Convention that he was deprived of the right to have the lawfulness of his detention reviewed by a court.

168. The Court will examine this complaint under Article 5 § 4 of the Convention, which 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. The parties' submissions

1. The Government

169. The Government argued that the applicant had had at his disposal an effective procedure by which he could have challenged his detention. In particular, he had been able to challenge the prosecutor's decision of 5 February 2010 before a district court under Article 125 of the CCrP, but the applicant and his representative had not availed themselves of this opportunity. Furthermore, they submitted that the applicant or his defence counsel could have lodged appeals against the detention orders by the Perovskiy District Court of 25 March 2010 and 28 June 2010, but had failed to do so. At the same time, they noted that the applicant's representative had appealed against the extension order of 27 January 2011, and his application was examined as to the merits by the Supreme Court of the Russian Federation.

2. The applicant

170. The applicant submitted in his observations dated 11 July 2011 that the available procedure for review of detention was not effective, for the following reasons. First, in the proceedings concerning the extension of the applicant's detention, the domestic courts at all levels of jurisdiction factually reproduced the same reasoning, that there had been no new circumstances warranting an application of a measure of restraint milder than detention. Furthermore, the proceedings for review were ineffective, since on 25 March 2010 the Perovskiy District Court ordered the applicant's detention in the absence of the guarantees from the Uzbek authorities that the applicant would not be subjected to ill-treatment in case of his extradition. Finally, the applicant or his representative had been unable to challenge the judgment of 25 March 2010, since during these proceedings the applicant had been represented by a State-appointed lawyer and not a lawyer of his own choosing.

B. The Court's assessment

1. Admissibility

171. The Court observes that the applicant only raised his grievances under Article 5 § 4 in his observations of 11 July 2011.

172. The Court reiterates that the running of the six-month time-limit for complaints not included in the initial application is not interrupted until the date when such later complaints are first submitted to the Court (see paragraph 147 above; see also, among others, *Pavlenko v. Russia*, no. 42371/02, § 94, 1 April 2010). Furthermore, the complaints under Article 5 § 4, being rather specific, cannot be seen as an elaboration of an initial general complaint relating to the lawfulness of the applicant's detention pending extradition. The applicant, represented before the Court since 25 February 2010, does not refer to any exceptional circumstances which could preclude him from raising these issues, and, in particular, a complaint concerning the alleged defects of the legal representation in the proceedings of 25 March 2010, at an earlier stage of the proceedings before the Court. Bearing in mind the six-month requirement laid down in Article 35 § 1, the Court considers that it does not have jurisdiction to examine the complaints under Article 5 § 4 in so far as they concern the extensions ordered on 25 March and 28 July 2010. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

173. 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 order of 27 January 2011, as upheld on 3 March 2011. As regards the applicant's argument that the domestic courts extended the period of his detention on 27 January 2011 with reference to the fact that the circumstances of the case had not varied, the Court considers that the applicant's grievance concerned the scope of review in the proceedings concerning his detention. The Court further considers 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. It must therefore be declared admissible.

2. Merits

174. The Court notes at the outset that the argument raised by the applicant under Article 5 § 4 is rather specific. He submits that the requirements of Article 5 § 4 were not complied with, since the domestic courts, in essence, kept endorsing the initial findings of the Perovskiy District Court of 25 March 2010, whereas he has not adduced any specific argument contesting the effectiveness of the available procedure (see, for instance, *Nasrulloyev*, cited above, §§ 79 and 84-90, and *Ryabikin,* cited above, §§ 134-41) or substantiating any unfairness in such proceedings (see, for example, *Khudyakova v. Russia*, no. 13476/04, § 84 and 96-101, 8 January 2009). The Court will therefore examine the complaint as submitted by the applicant.

175. The Court reiterates at the outset that the notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, meaning that an arrested or detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1. Article 5 § 4 does not guarantee a right to judicial review with sufficient scope to empower a court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to have a bearing on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1. The reviewing "court" must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary for an Article 5 § 4 procedure to be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], cited above, §§ 202-03, with further references).

176. Turning to the present case, the Court considers that the proceedings by which the applicant's detention was ordered and extended amounted to a form of periodic review of a judicial character (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 171, 17 January 2012). It is not in dispute that the first-instance court was enabled to assess the conditions which, according to paragraph 1 (f) of Article 5, were essential for "lawful" detention with a view to extradition. In addition, it was open to the applicant under Russian law to appeal against the detention order to a higher court, which was able to review it on various grounds. As with the procedure before the first-instance court, there is no reason to doubt that an appellate court was capable of assessing the lawfulness of the applicant's detention with a view to extradition.

177. The Court further observes that the applicant was able to raise before the courts at two levels of jurisdiction various arguments relating to his detention he considered appropriate. The domestic courts gave consideration to the arguments advanced by the applicant, as well as assessed the reasonableness of the applicant's detention in the context of the stage of the extradition proceedings (see paragraphs 46 and 48 above). In the Court's view, the applicant was thereby enabled to "take proceedings" by which the lawfulness of his detention could have been effectively assessed by a court and, furthermore, that the review in the proceedings in

question was wide enough to bear on the conditions which were essential for the applicant's lawful detention within the meaning of Article 5 § 1.

178. In these circumstances, and ruling on the complaint under Article 5 § 4 as it was presented in the applicant's observations, the Court finds that there was no violation of Article 5 § 4 of the Convention in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

179. The applicant complained in his initial application that his extradition to Uzbekistan from Russia, where he lived with his wife and three minor children, would be in violation of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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. Arguments of the parties

180. The Government confirmed that by the date of the applicant's arrest with a view to extradition he was living in Moscow with his wife and three of their six minor children, while the other three children remained in Uzbekistan. They argued that the decision to extradite the applicant to his home country did not constitute an interference within the meaning of Article 8 § 1. The decision was in accordance with law, namely Article 466 § 2 of the Code of Criminal Procedure of the Russian Federation and Article 61 § 1 of the 1993 Minsk Convention. It served a legitimate aim and was necessary in a democratic society. First, it was justified by a pressing social need to ensure that the proceedings against the applicant in Uzbekistan were conducted with reasonable grounds to suspect him of having committed particularly serious crimes in Uzbekistan. It was proportionate to the legitimate aim pursued, because neither the applicant's wife nor their children held Russian nationality. They were Uzbek nationals. The applicant's wife and three children could follow him to Uzbekistan if the applicant was extradited.

181. In his observations the applicant maintained in broad terms that his arrest with a view to extradition constituted an interference with his family life. Before the arrest he had been living in Moscow with his wife and three children. He was the only breadwinner in the family. However, he had become unable to support his family financially because of his arrest and

extradition proceedings. Once the applicant had been arrested "family reunion" was no longer possible for him and his relatives. He submitted that the Russian authorities could have "controlled the entry, residence and expulsion of aliens" without arresting him. Finally, he pointed out that his arguments as regards interference with his family life in the event of arrest and extradition had been disregarded by the Russian courts.

B. The Court's assessment

182. Assuming that this complaint is to be declared admissible, the Court reiterates its finding that the applicant's extradition to Uzbekistan would constitute a violation of Article 3 of the Convention (see paragraph 132 above). Having regard to the above finding relating to Article 3, the Court considers that it is not necessary to examine the hypothetical question whether, in the event of extradition to Uzbekistan, there would be a violation of Article 8 (see *Hilal,* cited above, § 71; *Saadi*, cited above, § 170; and *Kolesnik v. Russia*, no. 26876/08, § 96, 17 June 2010).

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

183. The applicant complained under Articles 3, 5, 9, 13 of unlawful arrest, ill-treatment and persecution on the ground of his religious beliefs in Uzbekistan in 1999 - 2005 and that there were no effective remedies against these violations.

184. The Court observes that in so far as these complaints are directed against Uzbekistan, which is not a High Contracting Party to the Convention, it follows that they are incompatible *ratione personae* with the provisions of the Convention, and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

185. Furthermore, the applicant complained, referring to Article 9, that his request for refugee status was refused by the FMS. He further referred in general terms to Protocol No. 7 to the Convention.

186. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

187. Finally, the applicant may be understood to complain about an unjustified interference with his right of individual petition under Article 34 of the Convention with reference to the events of 19 November 2010.

188. However, the Court finds no basis in the applicant's submissions on which it could conclude that there had been any such unjustified

interference. It considers accordingly that there has been no breach of Article 34 of the Convention.

VI. RULE 39 OF THE RULES OF COURT

189. The Court observes 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, no reference of the case to the Grand Chamber has been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

190. It considers that the indication made to the Government under Rule 39 of the Rules of Court must remain in force until the present judgment becomes final.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

191. 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

192. The applicant claimed 702,000 Russian roubles (RUB), or approximately 17,532 euros (EUR), in respect of pecuniary damage. RUB 270,000 of this amount represented the applicant's family's living expenses in Moscow for the period of his detention, RUB 324,000 for the rent of an apartment in Moscow and RUB 108,000 for the expenses of the other members of the applicant's family, living in Uzbekistan, for the same period. He averred that he was not able to submit any documents in support of his claim. He further claimed RUB 1,000,000 (approximately EUR 24,974) in respect of non-pecuniary damage as a result of the alleged violation of Article 8 in his case and RUB 1,000,000 in respect of non-pecuniary damage in connection with his complaints under Articles 3 and 5 of the Convention.

193. The Government argued that the applicant's claim was excessive and that, if a Court was to find a violation of his Convention rights, a finding of a violation would constitute sufficient just satisfaction.

194. The Court observes that no breach of Article 3 has yet occurred in the present case. However, it found that the decision to extradite the

applicant would, if implemented, give rise to a violation of that provision. It considers that its finding regarding Article 3 in itself amounts to adequate just satisfaction for the purposes of Article 41 (see *Daoudi v. France*, no. 19576/08, § 82, 3 December 2009, and *Chahal*, cited above, § 158).

B. Costs and expenses

195. The applicant also claimed EUR 635 for legal costs incurred in the the domestic proceedings, of which EUR 300 constituted the lawyer's fee for participation in the hearings before the Moscow City Court and the Supreme Court of the Russian Federation, EUR 160 represented transportation expenses in connection with the participation in the proceedings, and EUR 175 "subsistence allowance in connection with appearance at the oral hearing". The applicant did not submit any supporting documents in respect of the claims.

196. The Government submitted that the claims were unsubstantiated.

197. 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. Having regard to the above and to the fact that the amount of EUR 850 has already been paid to the applicant by way of legal aid, the Court does not consider it necessary to make any further award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3, 5 § 1 as regards lawfulness of the applicant's detention between 4 February and 4 August 2011 and the authorities' diligence in the extradition proceedings, under Article 5 § 4 as regards the scope of review in the extension proceedings of 27 January 2011, as well as under Articles 8 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that, if the decision to extradite the applicant to Uzbekistan were to be enforced, there would be a violation of Article 3 of the Convention;

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

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

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

6. *Holds* that it is not necessary to examine the complaint under Article 8 of the Convention;

7. *Holds* that there has been no breach of Article 34 of the Convention;

8. *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 a further order is made;

9. *Holds* that its findings made under Article 3 constitute adequate just satisfaction;

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

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

Søren Nielsen
Registrar

Nina Vajić
President