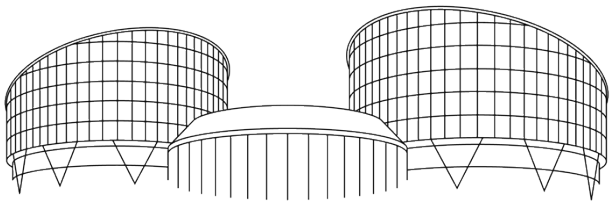

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF UMIROV v. RUSSIA

(Application no. 17455/11)

JUDGMENT

STRASBOURG

18 September 2012

FINAL

11/02/2013

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

In the case of Umirov 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,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 17455/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Sadirbek Shavkatovich Umirov ("the applicant"), on 17 March 2011.

2. The applicant was represented by Ms S. Gannushkina, Chairwoman of the Civic Assistance Committee, which is a non-governmental organisation based in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 March 2011 the President of the First Section, acting upon the applicant's request of the same date, 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 to grant priority treatment to the application.

4. On 31 May 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and resides in Moscow.

A. The applicant's arrest and extradition proceedings

6. In September 2009 the applicant arrived in Russia from Uzbekistan and settled in the Moscow Region. Until December 2009 he was officially registered with the Russian migration authorities in Moscow. According to the Government, he subsequently resided without formal registration in the Moscow region. According to the applicant, he always complied with the legal requirement for registration at one's place of residence.

7. In the meantime, on 20 November 2009 the Uzbek authorities charged the applicant *in absentia* under Articles 159 § 3(b) and 244-2 § 1 of the Uzbek Criminal Code, which punish calls to overthrow the constitutional order of Uzbekistan and involvement in religious, extremist, separatist and other banned organisations (see paragraphs 78-79 below). The applicant was accused of being member of a group called *Warriors of Islam* which, apparently, had been prohibited in Uzbekistan and had been classified as an extremist religious organisation by the Uzbek authorities. It is stated in the information note sent by the Uzbek authorities to their Russian counterparts that this group was a faction of the Islamic Party of Turkestan (formerly called the Islamic Movement of Uzbekistan), which had been banned in Uzbekistan.

8. The Uzbek decision listing the charges against the applicant reads as follows:

> "... [The applicant] was actively engaged in spreading propaganda in the Navoi region. These activities were aimed at securing the confidentiality of information relating to the group's actions, securing strict compliance with the orders issued by the group's supporters, ensuring the return [of society] to the roots of Islam and making everyday life based solely on the rules of the Koran. His activities were also aimed at political and armed struggle against those who oppose the [group's] ideas and [those] who are treated as enemies of Islam. His propaganda activities had the goal of uniting all Muslims and creating the united State of the "Islamic Caliphate" governed by rules of Shariah; [all the] while considering the democratic changes in Uzbekistan [brought about] by means of laws wrong and [illegitimate].
>
> In particular, [the applicant] participated in the activities of "communes" run by his group in the Navoi region. Having joined others in an organised criminal group, he studied printed material produced by the group's supporters. He was active in spreading propaganda among people having no stable opinion, encouraging them to join the group and promoting the group's ideas. All these had as their subsequent aim the overthrow of the constitutional order ...
>
> Also, in 2008 together with his accomplices within the group [the applicant] participated in the group's meetings, [which were] aimed at the armed overthrow of the constitutional order ..."

9. On 20 November 2009 the applicant's name was put on a wanted list.

10. By a decision of 23 November 2009 the Navoi Town Court of Uzbekistan ordered the applicant's detention and that he be held in remand centre no. 7 in the town of Kattakurgan.

B. Application for refugee status and temporary asylum in Russia

11. According to the applicant, in November 2009 he called his relatives in Uzbekistan and learnt that he was wanted by the Uzbek authorities on criminal charges.

12. In April 2010 the applicant requested that the regional migration authority grant him refugee status. The applicant was given a certificate confirming that his application for refugee status was being processed.

13. The applicant submitted to the migration authority that he had left Uzbekistan because of numerous arrests since September 2009 in the village of Talkok, where he had been residing at the time. Several people had been arrested on various charges, for instance in relation to drug trafficking. The applicant also affirmed that: he was not a member of any political or religious organisation; he had not taken part in any opposition movement; and he had not distributed any political or religious literature. Lastly, he stated that he feared returning to Uzbekistan, where he would be placed in detention.

14. On 21 May 2010 the applicant was arrested and detained in relation to the criminal proceedings pending against him in Uzbekistan (see paragraph 19 below). It is unclear whether the applicant amended – in any significant manner – his refugee application on account of the circumstances relating to these proceedings and the Uzbek extradition request.

15. By a decision of 5 July 2010 the migration authority rejected the refugee application in the following terms:

> "The applicant has not presented any facts concerning his fear of political or religious persecution. He indicated during the interview that he did not know of any political parties and that he had not been a member of any religious or non-governmental organisations; he had not been the victim of any violent incidents. Having regard to the reasons for his departure from Uzbekistan, it does not appear that he was persecuted on account of his political views or religious beliefs.
>
> The applicant is of the Islamic faith, which is the dominant religion in his country. Nothing prevents him from praying and going to a mosque. He is not involved in any political activity.
>
> Also, regarding the allegation concerning the arrests in September 2009 and that the applicant had been ordered to go to a police station, it does not appear that any repressive measures were taken against him.
>
> The Federal Migration Authority (FMA) has provided the following information concerning the political, social, economic and migration situation in Uzbekistan:
>
> 80% of the population are Sunni Muslims. The FMA has no facts in its possession regarding persecution on religious or political grounds. Article 31 of the Uzbek Constitution and other laws provide for civic rights and freedoms for all citizens, irrespective of their ethnicity, religious beliefs or political views. The Freedom of Conscience and Religious Organisations Act contains clear rules concerning religious organisations, their interaction with the State and fully guarantees the right to manifest

one's religion, alone or in community with others ... Uzbekistan has ratified, without reservations, all six main UN treaties concerning human rights and regularly submits reports to the competent agencies of the United Nations. In total, Uzbekistan has ratified over sixty international treaties relating to human rights. Uzbekistan is not a party to the 1951 UN Convention on the Status of Refugees and its Protocol. However, in November 1999 they signed the Charter of European Security, thus undertaking to protect refugees. In 1996 Uzbekistan became a party to the UN Convention against Torture.

There can be various understandable reasons compelling a person to leave the country of his origin, but only one qualifies [that person to fall within] the notion of refugee. The expression "owing to a well-founded fear of being persecuted" makes all other reasons irrelevant.

The applicant has not adduced convincing grounds for leaving his country of nationality for reasons which would fall within the scope of section 1 § 1(1) of the Refugees Act ..."

16. On 8 July 2010 the migration authority dispatched a letter notifying the applicant of the refusal. The letter also indicated that the refusal could be challenged before the FMA or a court and that in the absence of other legal grounds for staying on the territory of Russia the applicant would have to leave it. Apparently, the applicant received this letter but did not apply for judicial review.

17. Instead, in October 2010 the applicant requested that the migration authority grant him temporary asylum in Russia (see paragraph 44 below). The migration authority rejected this request on 20 December 2010. The applicant did not challenge this refusal before a court.

18. In March 2012 the applicant lodged a new application for temporary asylum. On 5 June 2012 the migration authority granted the applicant temporary asylum in Russia, considering that it was necessary in order to provide a legal basis for his continued presence in Russia and Russia's compliance with the Court's indication under Rule 39 of the Rules of Court. Such temporary asylum should remain in force until delivery of the final judgment by the Court and, in any event, no longer than until 5 June 2013.

C. Facts relating to the applicant's arrest and detention in Russia with a view to extradition

19. The applicant was arrested in the town of Krasnogorsk in the Moscow Region on 21 May 2010. The actual circumstances leading to the applicant's arrest remain unclear. The arrest record reads as follows:

"*Identity document*: an information document concerning the search for the religious extremist (passport details); a document concerning a pending application for refugee status ...

Grounds and reasons for arrest: [the applicant] is subject to an arrest warrant procedure; a detention order [has been] issued by [an Uzbek] court ...

> {In pre-printed letters} I have been informed that under Article 46 of the Code of Criminal Procedure I am entitled to know the accusation against me, ... to have legal assistance from the moment indicated in Article 49 §§ 2 and 3.1 of the Code, to have meetings in private with counsel before my first questioning ...
>
> I have been informed that I am suspected of offences directed against the constitutional order of Uzbekistan and [of the] creation of a criminal community ..."

The record bears the applicant's signature and a note by him saying that he had read the documents and had no comment on them.

20. On the same date, the Russian authorities contacted their Uzbek colleagues, informing them of the applicant's arrest and seeking confirmation of the Uzbek authorities' intention to request the extradition of the applicant. That same day, the Uzbek authorities submitted a document requesting the applicant's detention to the Russian authorities.

21. The applicant also signed, apparently on 22 May 2010, another document entitled *Notification of rights to the suspect*. On the same date, the applicant was interviewed by a deputy town prosecutor and confirmed to him in writing that he had been informed of his rights not to incriminate himself and to have the assistance of an interpreter. He waived the assistance of an interpreter, stating that he could read, speak and understand Russian.

22. On 23 May 2010 the Krasnogorsk Town Prosecutor ordered the applicant's detention, doing so with reference to the Uzbek detention order of 23 November 2009 and Article 61 of the 1993 Minsk Convention (see paragraph 75 below).

23. According to the applicant, after his arrest his procedural rights were not explained to him and he was unable to have the assistance of a lawyer until some time later. In the applicant's submission, on 10 June 2010 the staff of the detention facility where he was being kept refused to allow lawyer L. to visit him, stating that he had no formal authorisation for that visit from the Krasnogorsk Prosecutor's Office.

24. On 28 June 2010 the Prosecutor General's Office received a formal extradition request from the Uzbek authorities, which contained the following statement:

> "We guarantee that, as required under Articles 16, 17 and 24 of the Uzbek Code of Criminal Procedure, [the applicant] will not be subjected to torture, cruel, inhuman or degrading treatment or punishment; the extradition request is not aimed at persecuting him for political reasons, [or] on grounds relating to race, religious beliefs or nationality. In compliance with Article 66 of the [Minsk] Convention he will not be surrendered to another country without Russia's consent ... Since 1 January 1998 the death penalty has been abolished in Uzbekistan ..."

25. On 29 June 2010 the Krasnogorsk Town Prosecutor considered the applicant's detention again and ordered, without specifying the duration, the applicant's detention under Article 466 § 2 of the CCrP (see paragraph 56 below).

26. On 20 July 2010 the town prosecutor applied to the Krasnogorsk Town Court, seeking authorisation of the applicant's continued detention. By a decision of 21 July 2010 the Town Court confirmed the lawfulness of the prosecutor's previous decisions ordering the applicant's detention. Referring to Articles 109 and 466 § 1 of the CCrP, the court extended the applicant's detention "until 21 August 2010 to amount in total to three months" (apparently, counting from the date of the applicant's arrest). Lawyer B. was present at the detention hearing and acted as counsel for the applicant.

27. Before the expiry of the previous detention order, on 13 August 2010 the acting town prosecutor sought an extension of the applicant's detention because the extradition proceedings were still pending. On 27 August 2010 the Town Court extended the applicant's detention until 21 November 2010. Lawyer P. was present at the detention hearing and acted as counsel for the applicant.

28. Before the expiry of the previous detention order, the regional prosecutor sought an extension of the applicant's detention. On 18 November 2010 the Town Court extended the applicant's detention until 21 February 2011, to amount in total to nine months. Lawyer S. was present at the detention hearing and acted as counsel for the applicant.

29. On 18 February 2011 the Town Court examined an extension request from the regional prosecutor and extended the applicant's detention until 21 May 2011, to amount in total to twelve months. Lawyer M. was present at the detention hearing and acted as counsel for the applicant.

30. Apparently, no request for participation in the above court hearings concerning the applicant's detention had been submitted by lawyer L. The transcripts of the above hearings do not contain any request from the applicant to appoint L. or to dismiss the appointed lawyers for any reason.

31. On an unspecified date, lawyer L. started to represent the applicant in the extradition proceedings.

32. On 16 May 2011 the Moscow Regional Court examined submissions from L. and extended the applicant's detention until 21 November 2011, concluding that, if at large, the applicant would flee justice. The court also noted that the Court had made an indication under Rule 39 of the Rules of Court, thus (temporarily) preventing enforcement of the extradition order which had become final on 17 March 2011. The applicant appealed. On 7 July 2011 the Appeal Section of the Regional Court upheld the detention order. Apparently, the applicant did not lodge a cassation appeal.

33. On 21 November 2011 the acting town prosecutor ordered the applicant's release from custody due to the expiry of the maximum eighteen-month statutory period of detention. The applicant was released on the same day.

D. Extradition proceedings

34. In the meantime, on 5 October 2010 the Russian Prosecutor General's Office issued an extradition order in respect of the applicant. The order indicated that there were no obstacles to extraditing the applicant under Russian law and the international treaties binding Russia.

35. According to the applicant, the Krasnogorsk Prosecutor's Office did not allow his lawyer L. access to the extradition file until 12 October 2010, and, even after the lawyer was granted access to the materials in question, he was unable to obtain a copy of the extradition order. It appears that the applicant complained of these matters to higher prosecutor's offices on several occasions.

36. In a letter of 26 November 2010 the Moscow Region Prosecutor's Office replied to the applicant's lawyer, stating that his complaints against the detention centre and the Krasnogorsk Prosecutor's Office had been examined and resolved. In particular, he had been authorised to meet with the applicant and obtain access to the materials concerning the extradition proceedings. The letter also stated that the applicant's lawyer could receive the extradition order of 5 October 2010 from the applicant, or make a copy at his own expense from the extradition file.

37. In a letter of 30 November 2010 the Russian Prosecutor General's Office informed the applicant's lawyer that his complaints against the Krasnogorsk Prosecutor's Office and the detention centre were being examined. The extradition order of 5 October 2010 was enclosed with this letter.

38. The applicant challenged the extradition order before the Moscow Regional Court, stating that he had not been involved in the offences imputed to him, and, at the time of his departure from Uzbekistan, his name had not been on a wanted list.

39. On 25 January 2011 the Regional Court held a hearing and heard submissions from the applicant and his lawyer, L. The Regional Court confirmed the extradition order in the following terms:

> "The Uzbek extradition request is in compliance with the European Convention on Extradition and Article 58 of the Minsk Convention ... The case file contains assurances from the requesting State that the extradition request does not aim at persecuting [the applicant] for political reasons, [or] on grounds relating to race, religion or nationality. The Uzbek authorities have given guarantees that in the event of his extradition [the applicant] would not be subjected to torture, inhuman or degrading treatment or punishment; he would be prosecuted only for the offences mentioned in the extradition request ... The migration authority has dismissed [the applicant's] application for refugee status ... He has not sought judicial review of this refusal ... He has not sought judicial review of the refusal of temporary asylum ...
>
> The allegation concerning human-rights violations in Uzbekistan has been examined by this court. The general and political situation in that country has also been taken

> into consideration ... However, the [applicant's] allegation in itself is not a reason for granting his challenge to the extradition order ...
>
> The extradition request contains a statement that [the applicant] was/is not being persecuted for political reasons or on grounds relating to race, religion or nationality and that he would not be subjected to torture, cruel, inhuman or degrading treatment or punishment.
>
> [The applicant] and his lawyer have not adduced any objective reasons which would allow [this court] to doubt the assurances made by the Uzbek authorities ... When examining [the applicant's] applications for refugee status and temporary asylum, the authorities established he had not adduced any well-founded reasons [to the effect] that he had left his country for reasons relating to fears of being persecuted on account of his race, religious beliefs, nationality or his belonging to a specific social group or due to his political views ..."

40. On 17 March 2011 the Supreme Court of Russia rejected the applicant's appeal and upheld the decision of 25 January 2011, largely relying on the reasoning of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Refugee proceedings

41. The Refugees Act (Law no. 4258-I of 19 February 1993) defines a refugee as a person who is not a Russian national and who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (section 1(1)(1)). The migration authority may refuse to examine an application for refugee status on the merits if the person concerned has left the country of his nationality in circumstances falling outside the scope of section 1(1)(1), and does not want to return to the country of his nationality because of a fear of being held responsible for an offence (*правонарушение*) committed there (section 5(1)(6)).

42. Persons who have applied for or been granted refugee status cannot be returned against their will to the State of which they are a national where their life or freedom would be imperilled on account of their race, religion, nationality, membership of a particular social group or political opinion (sections 1 and 10(1)).

43. Having received a refusal to examine an application for refugee status on the merits and having decided not to exercise the right of appeal under section 10, the person concerned must leave the territory of Russia

within one month of receiving notification of the refusal if he or she has no other legal grounds for staying in Russia (section 5(5)). Under section 10(5), having received a refusal to examine an application for refugee status on the merits or a refusal of refugee status and having exercised the right of appeal against such refusals, the person concerned must leave the territory of Russia within three days of receiving notification of the decision on the appeal if he or she has no other legal grounds for staying in Russia. If, after the appeal has been rejected, the person concerned still refuses to leave the country, he or she is to be deported (section 13(2)).

44. If the person satisfies the criteria set out in section 1(1)(1), or if he or she does not satisfy such criteria but cannot be expelled or deported from Russia for humanitarian reasons, he or she may be granted temporary asylum (section 12(2)). Persons who have been granted temporary asylum cannot be returned against their will to the country of which they are a national or to the country of their former habitual residence (section 12(4)).

B. Extradition proceedings

1. Constitution of the Russian Federation of 1993

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

2. Code of Criminal Procedure

46. The term "court" is defined by the Code of Criminal Procedure ("the 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).

47. 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).

48. Chapter 13 of the CCrP governs the application of preventive measures. Detention is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a criminal offence punishable by at least two years' imprisonment when it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for remand in custody may be submitted to a court by an investigator (*следователь*) with the support of the head of the investigative authority or by the police officer in charge of the inquiry (*дознаватель*) with the support of a prosecutor (Article 108 § 3). A request for remand in custody

should be examined by a judge of a district court or a military court of a corresponding level in the presence of the person concerned (Article 108 § 4). Appellate courts should examine appeals lodged against judicial decisions on remand in custody within three days (Article 108 § 11). The period of detention pending the investigation of a criminal case must not exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level. Further extensions up to twelve months may be granted with regard to persons accused of serious or particularly serious criminal offences (Article 109 § 2). Extensions up to eighteen months may be granted on an exceptional basis with regard to persons accused of particularly serious criminal offences (Article 109 § 3).

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

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

51. Article 462 of the CCrP provides that an extradition order may be subject to judicial review, in which case the extradition order should not be enforced until the final judgment.

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

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

54. In the event that a foreign national whose extradition is being sought is being prosecuted or is serving a sentence for another criminal offence in Russia, his extradition may be postponed until the prosecution is terminated,

the penalty is lifted on any valid ground or the sentence is served (Article 465 § 1).

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

56. 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).

3. Decisions of the Russian Constitutional Court and Supreme Court

(a) Decision of 17 February 1998

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

(b) Decision no. 101-O of 4 April 2006

58. 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.

59. 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, which in the case of Russia was the procedure laid down in the CCrP. That procedure comprised, in particular, Article 466 § 1 of the CCrP and the provisions 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.

60. 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.

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

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

62. The Constitutional Court refused the request on the grounds that it was not competent to indicate specific provisions of criminal law governing the procedure and the maximum periods for holding a person in custody with a view to extradition. That matter was within the competence of the courts of general jurisdiction.

(d) Decision no. 333-O-P of 1 March 2007

63. 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, in that it required a court to examine whether the arrest was lawful and justified.

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

(e) Decision no. 383-O-O of 19 March 2009

65. 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 maximum periods 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 the constitutional rights of [the claimant] ..."

(f) Ruling no. 22 of 29 October 2009 by the Russian Supreme Court

66. In Ruling no. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 ("the Ruling"), it was stated that, pursuant to Article 466 § 1 of the CCrP, only a court could order the remand in custody of a person in respect of whom an extradition check was pending and where the authorities of the country requesting extradition had not submitted a court decision remanding him or her in custody. The judicial authorisation of remand 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 remanded in custody (paragraph 34 of the Ruling). In deciding to remand a person in custody, a court was to examine whether there were factual and legal grounds for the application of that preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor was entitled to remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP.

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

(g) Ruling no. 11 of 14 June 2012 by the Russian Supreme Court

68. In Ruling no. 11 of 14 June 2012 the Plenary session of the Supreme Court indicated with reference to Article 9 of the CCrP and Article 3 of the Convention that extradition could be refused if exceptional circumstances disclosed that such extradition would entail a danger to the person's life and health on account of, among others, his or her age and physical condition (paragraph 13 of the Ruling). Russian authorities dealing with an extradition case should assess the circumstances relating to the absence of serious reasons to believe that the person concerned could be subject to ill-treatment or that this person could be persecuted because of his or her race or political opinions (paragraph 14).

4. Judicial decisions concerning the risk of ill-treatment in extradition cases

69. By a judgment of 10 December 2010 the Supreme Court of Tatarstan annulled an extradition order in respect of Mr Soliyev. With reference to the international reports and other material submitted by the applicant and the European Court's case-law on the matter, the court considered that there was a persistent practice of torture of detained suspects or convicts in Uzbekistan and that the applicant also faced a risk of such mistreatment. The court also noted that "in a number of judgments the European Court has held that the mere fact of detention in this country created a risk of ill-treatment". On 3 February 2011 the Supreme Court of Russia upheld the

judgment of 10 December 2010, noting that there had been a material difference between the criminal offences mentioned in the extradition request and the corresponding offences under the Russian Criminal Code; that the extradition order had been issued before the final decision had been taken on the applicant's refugee application; and that there had been indications of a risk of ill-treatment in Uzbekistan, in particular in the absence of any relevant assurances on the part of the Uzbek authorities.

70. By a judgment of 28 December 2010 the Saratov Regional Court annulled an extradition order in respect of Mr Khodzhamberdiyev, mainly because of inconsistencies and mistakes made in the comparative assessment of the relevant criminal offences under Uzbek and Russian law. In addition, the court made the following findings:

> "... The allegation of a risk of ill-treatment should be dismissed because the case file contains written assurances made by the deputy Prosecutor General of Uzbekistan, who affirmed that prosecution of the applicant would be in strict conformity with the Uzbek Code of Criminal Procedure ... The court has no reason to distrust these guarantees ...
>
> Article 464 of the Russian CCrP prohibits the extradition of a person who has been granted asylum in Russia on account of persecution in the requesting State because of his race, religion, citizenship, ethnic or social origin or political beliefs.
>
> Prior to the date of the extradition order, [the applicant] had applied for refugee status and had subsequently sought judicial review of the refusal of such status in Russia. Such review proceedings have not been completed. Taking into account paragraph 1 and 4 of section 10 of the Refugees Act, a person cannot be extradited before a court decision has been taken on judicial review of a refusal of refugee status. Thus, the extradition order was premature, in breach of the Refugees Act ..."

On 4 March 2011 the Supreme Court upheld the judgment of 28 December 2010.

C. Other relevant documents

71. By a decision of 14 February 2003 the Supreme Court of Russia classified as terrorist a number of organisations, including the Islamic Party of Turkestan (formerly known as the Islamic Movement of Uzbekistan). The Supreme Court prohibited the activity of these organisations on the territory of Russia. As regards the Islamic Party of Turkestan ("the IPU"), the decision contains the following information:

> "[T]he IPU was created in 1995. Its activities are sponsored and financed by foreign Islamist clerical centres, [and are] aimed at establishing extremist religious organisations in Uzbekistan and other countries of the Commonwealth of Independent States. The agenda of the party is to restore the Islamic Caliphate ... Its immediate goals include destabilisation of the internal political situation in Uzbekistan by way of terrorist acts, military actions, hostage taking ... Since early 1999 the IPU's actions

have become radically violent, including explosions and kidnappings. The IPU has active contacts with the Taliban Movement ..."

III. RELEVANT INTERNATIONAL DOCUMENTS AND OTHER MATERIAL

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

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

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

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

75. The person whose extradition is sought may be arrested before receipt of a request for extradition if there is a related petition. The petition must make reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). A person may be arrested even without the above petition, provided there are reasons to suspect that he or she committed in another Contracting State a criminal offence for which extradition may be requested (Article 61 § 2). If the person is arrested or detained before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

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

77. In addition, Article 61-1 provides that before receiving a request for extradition, a Contracting State should search for a person in its territory, at the request of another Contracting State and if there are reasons to do so. The request for a search should provide all available information and should be accompanied with a certified detention order.

B. Material concerning Uzbekistan

1. Criminal Code of Uzbekistan

78. Article 159 of the Uzbek Criminal Code, entitled "Attacks against the constitutional order of the Republic of Uzbekistan", refers to public calls for unconstitutional change to the existing structure of the State, for the seizure of power or removal from power of legally elected or designated authorities or for the unconstitutional violation of the unity of the territory of the Republic of Uzbekistan, as well as the production or dissemination of materials having such content. Such acts are punishable by a fine of up to five years' imprisonment. When committed by an organised group or in its interest, they are punishable by up to twenty years' imprisonment (§ 3 (b)).

79. Article 244 § 2 of the Code, entitled "Establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organisations", refers to the offence of establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organisations. Such acts are punishable by a term of imprisonment of up to fifteen years and, if they cause serious damage, up to twenty years.

2. Material concerning the human-rights situation in Uzbekistan

80. For relevant documents on Uzbekistan in the time span between 2002 and 2007, see *Muminov v. Russia*, no. 42502/06, §§ 67-74, 11 December 2008.

(a) The United Nations

81. In support of his allegation of a risk of ill-treatment in Uzbekistan, the applicant relied on the 2010 report of the UN Human Rights Committee (CCPR/C/UZB/CO/3), which reads, in so far as relevant, as follows:

> "11. The Committee notes with concern the continued reported occurrence of torture and ill-treatment, the limited number of convictions of those responsible, and the low sanctions generally imposed, including simple disciplinary measures, as well as indications that individuals responsible for such acts were amnestied and, in general, the inadequate or insufficient nature of investigations on torture/ill-treatment allegations. It is also concerned about reports on the use, by courts, of evidence obtained under coercion, despite the 2004 ruling of the Supreme Court on the inadmissibility of evidence obtained unlawfully ...
>
> 19. The Committee is concerned regarding the limitations and restrictions on freedom of religion and belief, including for members of non-registered religious groups. It is concerned about persistent reports on charges and imprisonment of such individuals. It is also concerned about the criminalization, under article 216-2 of the Criminal Code, of "conversion of believers from one religion to another (proselytism) and other missionary activities" (CCPR/C/UZB/3, para. 707). (art. 18) ..."

(b) Human Rights Watch

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

> "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 ...
>
> 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 ...
>
> 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.
>
> ...
>
> 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 ..."

83. The applicant also relied on Human Rights Watch's 2011 report entitled *No One Left to Witness*, which reads, in so far as relevant, as follows:

> "... Nearly a decade since the special rapporteur determined that torture in Uzbekistan was "systematic" and "widespread", and almost seven years since the Andijan massacre, Uzbekistan's atrocious human rights record and the position of its independent civil society activists continue to worsen. The Uzbek government has used the passage of habeas corpus and other reforms as public relations tools, touting the laws as signs of its ongoing "liberalization" of the criminal justice system. But there is no evidence the Uzbek government is committed to implementing the laws that it has passed or to ending torture in practice.
>
> In fact, in several important respects, the situation has deteriorated. The government has moved to dismantle the independent legal profession and has closed off the country to independent monitoring and human rights work. Arrests and persecution of political and human rights activists have increased, and credible reports of arbitrary detention and torture of detainees, including several suspicious deaths in custody, have continued. The crackdown on independent Muslims has proved unrelenting, and the government has remained persistent in its refusal to allow domestic and international NGOs, including Human Rights Watch, to operate without interference from authorities. One respected criminal defense lawyer in Tashkent recently

described this sense of deepening crisis. Torture in pre-trial detention remains widespread and may even be on the rise, she found, the only difference now is that there is "no one left to witness" ongoing abuses ..."

(c) Amnesty International

84. In Amnesty International's 2009 Report on Uzbekistan, published in May 2009, that organisation stated that it continued to receive persistent allegations of widespread torture and ill-treatment, stemming from persons suspected of being members of banned Islamic groups or having committed terrorist offences. The report stressed that the Uzbek authorities continued to actively seek the extradition of those persons from 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.

85. The chapter on Uzbekistan in the Amnesty International 2011 annual report, 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 six 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 ARTICLE 3 OF THE CONVENTION

86. The applicant complained that his extradition to Uzbekistan would subject him to a real risk of ill-treatment in breach of Article 3 of the Convention. It reads as follows:

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

A. The parties' submissions

87. The Government argued that the applicant did not have victim status, as enforcement of the extradition order had been and remained suspended due to the application of Rule 39 of the Rules of Court. The Uzbek authorities had provided assurances that the applicant would not be prosecuted for offences other than those indicated in the extradition request; that he would not be surrendered to another State without Russia's consent; and that he would not be subjected to ill-treatment. The offences for which the applicant was being prosecuted did not entail the possibility of a sentence of capital punishment. The Russian courts had delved into the issue of the possible risk of the applicant's ill-treatment and had dismissed it.

88. The applicant argued that none of the Russian authorities had properly examined his claim that he would be exposed to a risk of being subjected to ill-treatment if extradited to Uzbekistan. Those authorities had only relied on the material obtained from the Russian governmental agencies. No attempt had been made to study reliable independent sources. The Court had previously confirmed that the ill-treatment of detainees was a pervasive and enduring problem in Uzbekistan, especially in respect of detainees charged with politically-motivated criminal offences, as in his case. This submission had been and remained corroborated by other independent sources. If extradited, the applicant would be placed in detention pending trial and thus was running a risk of torture in view of the charges against him. The Uzbek assurances should be disregarded, in view of the overall climate of impunity for human rights abuses in Uzbekistan and absence of any control mechanism attached to the assurances given by the Uzbek authorities.

B. The Court's assessment

1. Admissibility

89. The Court notes that the extradition order remains in force and thus that the applicant can still be regarded as running a risk of extradition in view of the criminal case pending against him in Uzbekistan. It is also noted that in June 2012 the applicant was granted temporary asylum in Russia, which is a temporary measure aimed at Russia's complying with the Court's indication under Rule 39 of the Rules of Court and at regularising the applicant's presence in the country for the time being (see paragraph 18 above). It has not been alleged, and the Court does not consider, that the above measure affected the applicant's victim status since the extradition order, which is at the heart of the present complaint, remains enforceable. Therefore, the applicant has not lost victim status in respect of the alleged violation of Article 3 of the Convention.

90. The Court also notes that the Government has not argued that the applicant did not exhaust domestic remedies in respect of the present complaint on account of his failure to seek judicial review of the decisions taken by the Russian migration authorities in respect of his applications for refugee status and temporary asylum.

91. 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

92. The Court reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the requesting country. The establishment of that responsibility inevitably involves an assessment of the situation in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the requesting country, whether under general international law, the Convention or otherwise. In so far as any responsibility under the Convention is or may be incurred, it is responsibility incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Mamatkulov and*

Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

93. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports of Judgments and Decisions* 1997-III). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports* 1996-V).

94. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of the applicant being extradited to the requesting country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008; see also paragraphs 99-100 below concerning the assessment of and weight to be given to the available material).

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

96. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the requesting country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available 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).

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

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

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

100. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to

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

(b) Application of the principles to the present case

(i) Domestic proceedings

101. The Court observes that the applicant arrived in Russia in September 2009 and was officially registered as resident there. In November 2009 a criminal case was opened against him in Uzbekistan. Having learnt about it, in April 2010 the applicant requested that the regional migration authority grant him refugee status. Since the applicant was not subject to any deportation or removal measure at the time, it may be assumed that the purpose of the refugee application was to impede his eventual extradition and/or to secure a legal ground for his presence on the territory of Russia. In July 2010 the refugee application was rejected. On 5 October 2010 the Russian Prosecutor General's Office issued an extradition order in respect of the applicant. In June 2012 the migration authority granted temporary asylum to the applicant, on account of the continuing application of the Court's indication to the Russian authorities under Rule 39 of the Rules of Court (see paragraph 18 above).

102. As recently reiterated by the Russian Supreme Court (see paragraph 68 above), the Russian authorities were called to assess the existence and scope of the risk of ill-treatment of the applicant. They were required to do so with reference to those facts which were known or ought to have been known to them when they examined the applicant's application for refugee status and at the time of the extradition case which concluded with the extradition order.

103. The Court has not been provided with copies of the applicant's submissions before the domestic authorities in relation to the alleged risk of his being subjected to ill-treatment. However, it follows from the available material that, apparently at some stages of the proceedings without the benefit of legal assistance, he argued in substance that, in view of the nature of the criminal charges against him, he would be persecuted for "political and religious" reasons in Uzbekistan. Apparently, he did not adduce any evidence before the migration authorities concerning the *Warriors of Islam* group, while denying any previous involvement in related religious activities. Admittedly, there was scarce recent and specific information

reporting cases of ill-treatment in Uzbekistan of detainees charged in relation to their membership of this group and/or their affiliation to the Islamic Movement of Uzbekistan or the Islamic Party of Turkestan.

104. The Court further observes that the regional migration authority focused on the "political" aspect of persecution. Relying on a general information note (covering an unspecified period of time) from the Federal Migration Authority on the general human rights situation in Uzbekistan, the migration authority concluded that the applicant had left his country of nationality for reasons unrelated to a well-founded fear of being persecuted.

105. As to the examination of the issue of a risk of ill-treatment in the course of the extradition proceedings, it does not follow from the available material that after his arrest the applicant made any specific allegations of a risk of ill-treatment in Uzbekistan. This explains, at least in part, why the extradition order contained no assessment of the risk of the applicant being subjected to inhuman or degrading treatment in Uzbekistan. The court conducting judicial review of the extradition order referred to the conclusions reached by the migration authority in respect of the refugee application.

(ii) The Court's assessment

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

107. The Court has had occasion to deal with a number of cases raising an issue of a risk of ill-treatment in the event of a foreigner's extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State.

108. In one of these cases, the Court noted the disturbing situation with regard to human rights in Uzbekistan but considered that the mere possibility of ill-treatment on account of an unsettled situation there would not in itself give rise to a breach of Article 3, in the absence of any adverse interest the Uzbek authorities had in the applicants, for instance on account of pending criminal proceedings or previous political activities (see *N.M. and M.M. v. the United Kingdom* (dec.), nos. 38851/09 and 39128/09, 25 January 2011, in which case the applicants alleged that they would be at risk of ill-treatment in Uzbekistan because their exit visas had expired and because they had claimed asylum in the United Kingdom). In reaching the above conclusion, the Court also noted that it was unlikely that the applicants would be kept in detention in the event of their return to Uzbekistan.

109. By comparison, as regards detainees in Uzbekistan, the Court stated, with reference to materials from various sources covering the time span between 2002 and 2010, in a number of judgments concerning expulsion or extradition to Uzbekistan that the available updated and reliable material confirmed the persisting serious issue concerning ill-treatment of detainees; that there was no concrete evidence to demonstrate any fundamental improvement in that area; and that the respondent Government had either underestimated the gravity of the human rights situation in Uzbekistan or had failed to show that the situation had improved during the period under consideration (see, among many others, *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008, and *Yakubov v. Russia*, no. 7265/10, §§ 81-82, 8 November 2011).

110. These considerations served as the background describing the general situation for the Court's analysis of the applicants' individual circumstances in each case. As the Court stated in *Mamatkulov and Askarov* (cited above, §§ 72-73), while the reports of international human rights organisations denounced an administrative practice of torture and ill-treatment of political dissidents and the Uzbek regime's related repressive policy and described the general situation in Uzbekistan, they did not support the specific allegations made by the applicants in that case and required corroboration by other evidence.

111. For example, the Court dealt with a case concerning applicants who were suspected of financing insurgents in relation to the unrest in Andijan in May 2005 (see *Ismoilov and Others v. Russia*, no. 2947/06, §§ 116-28, 24 April 2008). Some of them had fled persecution in Uzbekistan on account of their religious beliefs, had earlier experienced ill-treatment at the hands of the Uzbek authorities or had seen their relatives or business partners arrested and charged with participation in illegal extremist organisations. The Court considered that the available reliable reports indicated that the persons charged in connection with the Andijan events were likely to be detained, if extradited, and were at an increased risk of ill-treatment. The Court concluded that the applicants, who had in the meantime been granted protection from the UNHCR, would be at a real risk of suffering ill-treatment if returned to Uzbekistan.

112. For comparison, in *Elmuratov v. Russia* (no. 66317/09, § 84, 3 March 2011) the Court considered that the mere fact that the applicant was charged with theft in Uzbekistan did not suffice to conclude he ran a risk of being tortured in the event of his extradition to that country. The Court stated that his allegation that any criminal suspect in Uzbekistan ran a risk of ill-treatment was too general and that there was no indication that the human rights situation in the requesting country was serious enough to call for a total ban on extradition to it.

113. In *Garayev v. Azerbaijan* (no. 53688/08, § 72, 10 June 2010) the Court noted that the applicant's family had been either arrested or

prosecuted in Uzbekistan, that their accounts of ill-treatment were mutually consistent and appeared to be credible, and that the applicant himself had been previously arrested and convicted in suspicious circumstances. The Court noted that the applicant's description of previous ill-treatment was detailed and convincing. Therefore, despite the fact that the applicant was wanted for an offence which was not politically motivated, the Court considered that he ran a real risk of being subjected to treatment contrary to Article 3 of the Convention.

114. Indeed, as regards what have been termed "politically motivated offences", the Court has examined a number of cases in which the applicants were accused of criminal offences in relation to their involvement with prohibited religious organisations in Uzbekistan, for example *Hizb ut-Tahrir* ("HT"). For instance, in *Muminov* (cited above, § 95) the Court noted that, even though the applicant faced expulsion from Russia to Uzbekistan after his extradition there had been refused, it remained the case that he was wanted by the Uzbek authorities for his alleged involvement in the activities of HT and that there were serious reasons to believe that there was ongoing violent persecution of members or supporters of that organisation, whose underlying aims appeared to be both religious and political and in contradiction with the policies pursued by the government in place (see also *Karimov v. Russia*, no. 54219/08, §§ 10 and 100, 29 July 2010).

115. The Court considers that the present case is similar to this last group of cases. The main thrust of the applicant's argument before the Court is that being accused in relation to the activity of an Islamic religious group classified in Uzbekistan as extremist he runs a real risk of ill-treatment in the event of his extradition there.

116. The Court observes that the available reports refer to the Uzbek authorities' campaign of detention and criminal prosecution of Muslims who practice their faith outside state controls or who belong to unregistered religious organisations, groups or informal associations. The Court has previously considered that there was a serious issue relating to ill-treatment of detainees charged in relation to their membership of and activities within such organisations, groups or informal associations, sometimes with an intertwined religious and political agenda (see, for instance, *Abdulazhon Isakov v. Russia*, no. 14049/08, § 110, 8 July 2010; *Sultanov v. Russia*, no. 15303/09, § 72, 4 November 2010; and *Ergashev v. Russia*, no. 12106/09, § 113, 20 December 2011).

117. As to the applicant's personal situation, the applicant is wanted by the Uzbek authorities on charges of religious extremism because of his presumed participation in the activities of a proscribed religious group. It is undisputed that this group was unlawful in Uzbekistan as an extremist Islamic organisation and that it was part of, or affiliated to, the Islamic Party of Turkestan (also or previously known as the Islamic Movement of

Uzbekistan). Concerning the latter, it is classified and prohibited as an extremist/terrorist organisation in Uzbekistan, Russia and some other countries.

118. The Uzbek authorities were of the opinion that the applicant had been engaged in active propaganda activities in the Navoi region some time in 2008-09 (see paragraph 8 above). The group's ideas and goals apparently included a return to the roots of Islam, making everyday life based solely on the rules of the Koran and creating a united State of the "Islamic Caliphate" governed by the rules of Shariah. The foregoing goals required or could require political and armed struggle against those who oppose such ideas, the democratic legislative changes in Uzbekistan being considered "wrong and [illegitimate]". The Uzbek authorities also claimed that the applicant had studied printed material produced by the group's supporters, that he had encouraged others to join the group and had promoted the group's ideas during meetings.

119. The above constituted the basis of the extradition request in respect of the applicant. Various international reports and the Court itself in a number of judgments (see above) have pointed to the risk of ill-treatment which could arise in similar circumstances. This could not have been overlooked by the Russian authorities, who dealt with the applicant's case in 2010 and early 2011. In other words, these circumstances "ought to have been known to the Contracting State" at the relevant time (see, as a recent authority, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 121, 23 February 2012).

120. Against this background, the Court notes the summary and unspecific reasoning adduced by the domestic authorities, and the Government before the Court, to dispel the alleged risk of ill-treatment on account of the above considerations, including the evident pre-existing adverse interest the Uzbek authorities had in the applicant. The Court is bound to observe that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights 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 *Hirsi Jamaa and Others*, cited above, § 128). Furthermore, it is noted that the court conducting judicial review in the present case stated that the allegation of a risk of ill-treatment "in itself [was] not a reason for granting [the] challenge to the extradition order". In such circumstances, the Court doubts that the issue of the risk of ill-treatment was subject to rigorous scrutiny in the extradition case. No fair attempt was made at the domestic level to assess the materials originating from reliable sources other than those provided by the Russian public authorities.

121. Lastly, the Court has taken note of the assurances provided by the Uzbek authorities. However, like in some previous cases, cited above, having examined their contents, the Court is not persuaded that these assurances were sufficient to dispel the alleged risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. In this respect, the Court reiterates that it has already cautioned against reliance on diplomatic assurances against torture from States where torture is endemic or persistent. Furthermore, it should be pointed out that even where such assurances are given, that does not absolve the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see, *Chahal*, § 105 and *Saadi*, § 148, both cited above). The Court finds unconvincing the national authorities' reliance, without any assessment or discussion, on such assurances for dispelling the risk of ill-treatment.

122. In view of the above considerations and having regard, *inter alia*, to the background of the criminal prosecution of the applicant, the nature and the factual basis of the charges against the applicant, the available material disclosing a real risk of ill-treatment of detainees in a situation similar to that of the applicant and the absence of sufficient elements dispelling this risk, the Court concludes that the applicant's extradition to Uzbekistan on the basis of the extradition order of 5 October 2010 would be in breach of Article 3 of the Convention.

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

123. The applicant also argued that his above complaint under Article 3 of the Convention had not been properly assessed at the domestic level, in breach of Article 13 of the Convention.

124. The Government contested the applicant's submission.

125. Having regard to the applicant's submissions, the Court considers that the gist of his claim under Article 13, which it considers admissible, is the domestic authorities' alleged failure to carry out rigorous scrutiny of the risk of him being subjected to ill-treatment in the event of his extradition to Uzbekistan.

126. In this respect, the Court notes that it has already examined that submission in the context of Article 3 of the Convention. Having regard to its findings in paragraph 122 above, the Court considers that there is no need to examine this complaint separately on its merits (see, for a similar approach, *Gaforov v. Russia*, no. 25404/09, § 144, 21 October 2010).

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

127. The applicant complained that his arrest and detention from 21 May 2010 to 21 November 2011 had been in breach of Article 5 § 1 of the Convention. It reads, in its relevant parts, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (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. The parties' submissions

1. The applicant

128. In his submissions of 17 March 2011, the applicant argued that his arrest and detention should have been carried out in compliance with the requirements of Chapter 54 of the Russian Code of Criminal Procedure. The applicant claimed that his arrest had been unlawful because at the time of his arrest there had been no request from the Uzbek authorities to the Russian authorities to assist them in determining the applicant's whereabouts (in Russia). Such a request had been necessary in order to comply with Articles 6–8, 61 and 61-1 of the Minsk Convention. Furthermore, the documents justifying the applicant's arrest had contained contradictory information concerning the charges against him. His detention had not been based, at the time, on any assessment of the actual circumstances relating to him.

129. In his submissions made in January 2012, the applicant further specified that it had been contrary to Russian law for his arrest and the initial period of his detention to have been authorised by a Russian prosecutor rather than a court and that he should not have been kept in detention for more than six months. Lastly, he argued that his detention had not been justified, as the extradition proceedings had not been and were not being pursued with the requisite diligence, in particular after the Court's indication under Rule 39 of the Rules of Court.

2. The Government

130. The Government submitted that the Minsk Convention required that the applicant's arrest and detention be regulated by the Russian CCrP,

which included Chapters 13 and 54. Referring to a 1998 constitutional ruling, the Government argued that Article 466 § 1 of the CCrP required any deprivation of liberty exceeding forty-eight hours after arrest to be authorised by a court decision. Article 61 § 1 of the Minsk Convention allowed detention before receipt of a formal extradition request, which had been the case in respect of the applicant when a prosecutor had ordered his detention. After receipt of such a request, the applicant's situation had come within the scope of Article 466 § 2 of the CCrP. His detention had thus been sought before and authorised by a court.

131. The Government also submitted that Article 109 of the CCrP authorised up to eighteen months of detention for serious criminal offences (which is a category of gravity between minor and particularly serious offences). All detention ordered had indicated the authorised period of detention. The applicant had failed to use the procedural means available to appeal against decisions taken by a prosecutor or a court. An appeal court was empowered to order release. The applicant's detention after May 2011 had been justified with reference to the Court's indication under Rule 39 of the Rules of Court. All detention decisions had been issued in the presence of various lawyers appointed as defence counsel.

B. The Court's assessment

1. Admissibility

(a) As regards legality of the applicant's arrest and detention

132. The applicant complained of the alleged unlawfulness of his arrest and the initial period of his detention, which had been authorised by a prosecutor. The Court observes that, in the absence of any court decision to be taken into consideration in the chain of exhaustion of domestic remedies, the violations complained of ended on 21 July 2010 when a court issued a detention order. Even accepting that the related complaints were first raised, in substance, before the Court at the earliest on 17 March 2011, it still follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

133. In so far as the applicant's submissions relate to the legality of his subsequent detention on the basis of detention orders issued by a court, neither before the domestic courts nor before this Court did the applicant put forward any specific and convincing arguments suggesting that his detention after 21 July 2010 was in breach of Article 5 § 1 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) As regards the length of the applicant's detention with a view to extradition and the authorities' diligence in the conduct of the extradition case

134. The Court 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. Thus, it should be declared admissible.

2. Merits

135. 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 deportation or extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to extradite can be justified under national or Convention law. Deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008).

136. It has not been substantiated, and the Court does not consider, that there were any significant unjustified delays or periods of inaction attributable to the State during the applicant's detention between May 2010 and March 2011. Indeed, it appears that the extradition and related proceedings were "in progress" all this time.

137. As to the subsequent period of the applicant's detention, it is noted that the domestic proceedings which related to, or at least had a bearing on, the extradition case were completed in March 2011. The extradition order became enforceable. However, its enforcement has been suspended since March 2011 on account of the Court's indication under Rule 39 of the Rules of Court. So, the applicant remained for some eight months in detention until his release in November 2011.

138. It is common ground between the parties that during some eight months of the applicant's detention between March and November 2011 no procedural measures or alike were taken in relation to the extradition case.

139. However, it is the Court's well-established case law that this period of detention should be distinguished from the earlier period of the applicant's detention (see *Chahal*, cited above, § 114, and, recently, *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011). Indeed, during this most recent period of detention the Government

refrained from extraditing the applicant in compliance with the request made by the Court under Rule 39 of the Rules of Court. So, the extradition proceedings were thereby temporarily suspended pursuant to the request made by the Court and were, nevertheless, in progress (see, for a similar approach, *Al Hanchi*, cited above, §§ 49-51, and *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012, both concerning longer periods of detention, albeit, in a deportation context).

140. Indeed, the Court reiterates that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov*, cited above, §§ 99-129). However, the implementation of an interim measure following an indication by the Court to a State Party that it should not, until further notice, 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).

141. In the present case, it has not been substantiated before the Court, after having raised related complaints before national courts, that the applicant's detention between May and November 2011 was unlawful under Russian law (see also paragraph 133 above). The national court extended the applicant's detention with reference to the relevant legal grounds in terms of Russian law, namely the risk that the applicant would flee justice, if at large. Second, it should be taken into consideration that detention with a view to extradition in the present case was subject to the maximum statutory eighteen-month period. Indeed, at the expiry of such period, the applicant was released at the prosecutor's request. Lastly, there is no indication that the authorities acted in bad faith, that the applicant was detained in unsuitable conditions or that his detention was arbitrary for any other reason (see *Saadi*, cited above, §§ 67-74).

142. In view of the above considerations, the Court concludes that there has been no violation of Article 5 § 1 of the Convention in relation to the length of the applicant's detention with a view to extradition.

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

143. The applicant further complained that there had been a violation of Article 5 § 4 of the Convention on account of impediments to his receiving legal assistance in the detention proceedings. Article 5 § 4 of the Convention 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

144. The applicant complained that he had not been provided with legal assistance after his arrest. Nor had he been able to choose his lawyer at the time. Lawyer L., who had wished to represent him later on, had not been able to access any documents which were relevant to the applicant's deprivation of liberty. L. had not been informed in advance of the date and time of some of the detention hearings before the Krasnogorsk Town Court. As a result, the applicant had been deprived of effective legal assistance. While L. had been informed of two subsequent detention hearings, he had not been able to participate in them due to the belated delivery of the notifications sent by the Krasnogorsk Town Prosecutor's Office (rather than by the Town Court) to his Moscow office.

145. The Government argued that the applicant had been notified of his procedural rights and had been provided with legal assistance from the time of his arrest. At all stages of the proceedings, the applicant had been assisted or represented by lawyers B., Bu., P., S., M. or L.

B. The Court's assessment

146. The Court reiterates that proceedings conducted under Article 5 § 4 of the Convention should be adversarial and ensure equality of arms (see, as a recent authority, *Mooren v. Germany* [GC], no. 11364/03, § 124, 9 July 2009). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII). 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 (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, 19 February 2009). The person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (see, among others, *Niedbała v. Poland*, no. 27915/95, § 66, 4 July 2000, and *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A, concerning detention in the context of paragraph 1 (c) and (e) of Article 5, respectively). Therefore, some form of adversarial proceedings is required in cases concerning detention with a view to extradition (see *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 51, Series A no. 107).

147. While the right to receive legal assistance, if necessary, is implicit in the very notion of an adversarial procedure, this right may be subject to certain limitations where free legal aid is concerned and also where under national law it is for the courts to decide whether the interests of justice require that the detainee be defended by counsel appointed by them (see *Prehn v. Germany* (dec.), no. 40451/06, 24 August 2010). When appointing defence counsel, the national courts must certainly have regard to the defendant's wishes but these can be overridden when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (ibid.).

148. Turning to the present case, the applicant's complaint concerning legal assistance after his arrest in May 2010 was first raised before the Court in March 2011. Leaving aside a possible waiver issue, the Court observes that the situation complained of ended on 21 July 2010 when the applicant was provided with legal assistance at a court hearing concerning his detention. Assuming he had no remedies to exhaust, it follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

149. In addition, without specifying the relevant dates, the applicant alleged that he had been deprived of assistance by L. at a number of court hearings concerning his detention. Even assuming that the applicant did not have to raise this issue on appeal against the related detention order(s) and that he has complied with the six-month rule, the complaint should still be declared inadmissible as it transpires that the national court took care to appoint a lawyer to assist or represent the applicant at the detention hearings. There is no indication that the legal assistance provided to the applicant by the lawyers appointed to represent him was manifestly ineffective or otherwise in breach of Article 5 § 4 of the Convention. The applicant has not substantiated any argument relating to the allegedly non-adversarial nature of or unfairness in the detention proceedings.

150. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

151. The applicant further complained that, if extradited to Uzbekistan, he would not receive a fair trial there.

152. The Government contested that argument.

153. The Court notes that this complaint is linked to the one examined under Article 3 of the Convention and must therefore likewise be declared admissible.

154. Having regard to its finding under Article 3 (see paragraph 122 above), the Court considers that it is not necessary to examine whether, in

this case, there would be a violation of Article 6 § 1 of the Convention in the event of the applicant's extradition to Uzbekistan.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

155. Lastly, the applicant complained that he had not been provided with the services of an interpreter in 2010; that there had been a delay in granting his lawyer access to the extradition file and in examining his appeal against the detention order of 16 May 2011; and that the wording of the extradition order had infringed the presumption of innocence.

156. The Court has examined the remaining complaints as submitted by the applicant. 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 be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

157. 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

158. The applicant claimed compensation in respect of non-pecuniary damage, leaving the amount to the Court's discretion.

159. The Government contested the claim.

160. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the 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 *Yakubov*, cited above, § 111).

B. Costs and expenses

161. The applicant also claimed EUR 50 for postal expenses incurred before the Court.

162. The Government contested this claim.

163. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court grants the claim.

C. Default interest

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

VIII. RULE 39 OF THE RULES OF COURT

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

166. 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 or until further order.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints concerning the risk of the applicant's ill-treatment, the length of his detention with a view to extradition, the risk of unfair trial in Uzbekistan and the lack of effective remedies in respect of the issue of the risk of ill-treatment admissible and the remainder of the application inadmissible;

2. *Holds* unanimously that the applicant's extradition to Uzbekistan would be in breach of Article 3 of the Convention;

3. *Holds* by six votes to one that there has been no violation of Article 5 § 1 of the Convention in relation to the length of the applicant's detention with a view to extradition;

4. *Holds* unanimously that there is no need to examine the complaint under Article 6 of the Convention;

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

6. *Holds* unanimously
(a) that the finding regarding Article 3 of the Convention in itself amounts to adequate just satisfaction for the purposes of Article 41 of the Convention;
(b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50 (fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Vajić is annexed to this judgment.

S.N.
N.A.V.

PARTLY DISSENTING OPINION OF JUDGE VAJIĆ

I agree with the majority that the applicant's extradition to Uzbekistan would be in breach of Article 3 of the Convention. However, I do not agree that in the present case there has been no violation of Article 5 § 1 of the Convention in respect of the length of the applicant's detention with a view to extradition.

For eight months no procedural measures or similar were taken in the applicant's extradition case. It is true that during this time the Government refrained from extraditing the applicant in compliance with the request made by the Court under Rule 39 of the Rules of Court.

I certainly accept 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* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005 I). However, the implementation of an interim measure following an indication by the Court to a State Party that it should not, until further notice, 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).

Article 5 § 1 of the Convention requires 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 (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008). Thus, as indicated in the judgment, detention under Article 5 § 1 (f) of the Convention will be acceptable only for as long as extradition proceedings are in progress. It is clear, however, that in the present case those proceedings ended in March 2011 and that the applicant's subsequent detention for eight months was not required for those purposes. In my opinion, in these circumstances the length of the period under consideration was excessive. I therefore voted for a violation of Article 5 § 1 of the Convention in respect of the length of the applicant's detention with a view to extradition.