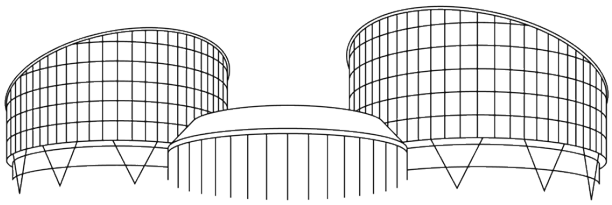

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF ZOKHIDOV v. RUSSIA**

*(Application no. 67286/10)*

JUDGMENT

STRASBOURG

5 February 2013

**FINAL**

08/07/2013

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

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

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

# PROCEDURE

1. The case originated in an application (no. 67286/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Rustam Zokhidov ("the applicant"), on 19 November 2010.

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

3. The applicant alleged, in particular, that if he was extradited to Uzbekistan he would run a risk of being subjected to ill-treatment, and that he had not been afforded effective remedies in respect of that grievance; that his detention pending extradition had been unlawful; that he had not been promptly informed of the reasons for his detention; and that there had been no effective and speedy judicial review of his detention.

4. On 19 November 2010 the President of the First Section indicated to the respondent Government that the applicant should not be extradited to Uzbekistan until further notice (Rule 39 of the Rules of Court). On the same date the application was granted priority under Rule 41 of the Rules of Court.

5. On 17 March 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).

6. In March and August 2012 the parties submitted further written observations at the request of the President of the Chamber (Rule 54 § 2 (c) of the Rules of Court).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972 and is currently serving a term of imprisonment in Uzbekistan.

### A. The background to the case and the applicant's arrival in Russia

8. In 1999-2000 the applicant started studying Islam and attending a mosque in the town of Urgut, Uzbekistan.

9. On an unspecified date in 2000 a local police officer summoned the applicant to the police station and questioned him extensively on his reasons for attending the mosque. The police officer entered the applicant's name in a special book. After the conversation, the applicant stopped going to the mosque as he was afraid.

10. On an unspecified date in 2005 the applicant arrived in Russia to look for work. He settled in St Petersburg, where his wife and minor daughter joined him in 2006. According to the applicant, in St Petersburg he lived in a community of Uzbek migrants, taking up temporary jobs such as street cleaner, and so his command of Russian remained poor.

### B. Criminal proceedings against the applicant in Uzbekistan

11. On 7 May 2010 an investigator of the Urgut branch of the National Security Service ("the Urgut NSS") instituted criminal proceedings against the applicant in connection with his presumed participation in Hizb ut-Tahrir ("HT"), a religious organisation recognised as extremist and banned in Uzbekistan (Article 159 § 1 of the Uzbek Criminal Code ("the UCC")). The applicant was suspected of having participated, in the period between 2001 and 2005, in the above-mentioned organisation by creating secret cells for it at the place of his residence and organising the meetings of its members with a view to creating an "Islamic Caliphate".

12. On 21 May 2010 the Samarkand department of the National Security Service ("the Samarkand NSS") charged the applicant, in connection with his presumed membership of HT, with public appeals to overthrow the constitutional order of Uzbekistan committed as part of an organised group (Article 159 § 3 (a) of the UCC), preparation and dissemination of extremist materials constituting a threat to national security and public order (Article 244 § 3 of the UCC) and participation in an extremist organisation (Article 244 § 1 of the UCC). The decision stated, among other things, that, after joining HT, the applicant had recruited new members for the

organisation, had organised meetings for them, at which he had called for the seizure of State power, and had stored and disseminated the organisation's extremist materials.

13. On 21 May 2010 the Samarkand City Court ordered the applicant's placement in custody. On the same day the applicant's name was put on a wanted list.

### C. Proceedings concerning the applicant's detention with a view to extradition

14. On 14 July 2010 the applicant was arrested in St Petersburg. His arrest record of the same date stated that he had been arrested in accordance with the Minsk Convention as a person who was on an international wanted list. The arrest record contained the following pre-typed statement, signed by the applicant:

> "I have been informed of the receipt of the competent foreign authority's notification that they are sending an extradition request, a detention [order] or a final judgment convicting [me] (*to be filled in if the documents mentioned have been received at the time of the compilation of the record*)".

15. The arrest record also contained the following statement, signed by the applicant: "Concerning [his] arrest [the applicant] stated: as to the reasons why [I am] being sought in the territory of the Republic of Uzbekistan [I] don't know anything".

16. On 15 July 2010 the applicant was interviewed by the acting prosecutor of the Frunzenskiy District of St Petersburg ("the district prosecutor"). Following the interview, the district prosecutor compiled two documents entitled "express interview record of a person arrested under an international warrant" (*лист экспресс-опроса задержанного по межгосударственному розыску*) and an "explanation" (*объяснение*). Both documents were signed by the applicant.

17. The interview record contained pre-typed fields, with information to be filled in, such as the applicant's name, date and place of birth, data concerning his identity documents, the authority which had arrested him in Russia, and whether he had applied for political asylum or was in possession of information relating to State secrets. The document did not contain any description of the charges in connection with which the applicant was wanted; it only referred to the Articles of the UCC, as follows:

> "...
>
> 8. Date of initiation of search, Article: 01.06.2010, circular 2010/316, Article 159 § 3 (a), Article 244-I § 3 (a), Article 244-2 of the Criminal Code of Uzbekistan.
>
> ...

16. Statement of the detained, which State he considers himself to be a national of, his account of the reasons for his criminal prosecution: [the applicant] considers himself a citizen of Uzbekistan, he learnt that he is being sought by the Uzbek law-enforcement authorities at the time of his arrest."

18. The "explanation" of 15 July 2010 started with the pre-typed statement: "I have a good command of Russian and do not need the services of an interpreter", signed by the applicant. It continued with the information that the applicant had arrived in Russia in 2005 to work, had not previously applied for registration or asylum and that he had learnt that he was wanted by the Uzbek authorities at the time of his arrest on 14 July 2010. The explanation did not contain any reference to the charges on which the applicant was wanted.

19. On 15 July 2010 the district prosecutor ordered the applicant's placement in custody with reference to Article 61 of the Minsk Convention. The decision stated that the applicant was wanted by the Uzbek authorities "for having committed crimes under Articles 159 § 3 (a), 244-I § 3 (a), and 244-2 of the Uzbekistan Criminal Code", without providing any further information in that regard. It further noted that on 14 July 2010 the Uzbek authorities had confirmed their intention to request the applicant's extradition and had forwarded the Samarkand City Court's detention order in respect of the applicant. No time-limits for the applicant's detention were set in the decision and the applicant was not provided with a copy of it.

20. On 16 August 2010 the Russian General Prosecutor's Office ("the Russian GPO") received the request by their Uzbek counterpart for the applicant's extradition (see paragraph 33 below).

21. On 18 August 2010 the applicant appointed a lawyer, Mrs K., to represent him in the domestic proceedings, and it appears that she had access to him on the same date.

22. On 24 August 2010 the district prosecutor again ordered the applicant's detention. He referred to the extradition request received from the Uzbek authorities, and the Uzbek court's detention order and relied on Article 466 § 2 of the Russian Code of Criminal Procedure ("the CCrP"). The applicant was not provided with a copy of that decision.

23. On 15 September 2010 the applicant, through his lawyer, complained to the Frunzenskiy District Court of St Petersburg ("the District Court") under Article 125 of the CCrP that his detention was unlawful, and requested to be released. He submitted that he had a poor command of Russian, except for some basic communication, that he had not been explained, in a language he understood, the reasons for his arrest and placement in custody and accusations against him, and that he had signed the arrest and interview records, as well as the "explanation", without understanding their meaning, under stress, and on the instructions of the prosecutor, who had allegedly told him that they would "just talk" and that he then would invite an interpreter for him. The applicant further

complained that the detention orders of 15 July and 24 August had been unlawful. As regards the former, it had not set any time-limits for the detention and referred only to Article 61 of the Minsk Convention. The applicant had not been provided with a copy of that detention order or a translation of it into Uzbek. The second decision had ordered the applicant's detention *de novo*, without setting any time-limits for it, which contradicted decision no. 101-O of the Constitutional Court. None of the detention orders set out the procedure for challenging them before the courts.

24. On 15 September 2010 the district prosecutor requested the District Court to extend the applicant's detention until 15 January 2011. On the same date the applicant's lawyer requested the District Court to secure, before examining the extension request, the translation into Uzbek of the documents concerning the applicant's detention and extradition, including the detention orders of 15 July and 24 August 2010 and the documents concerning his criminal prosecution in Uzbekistan and the Uzbek court's detention order, and to give him time to acquaint himself with those documents. It appears that her request was turned down.

25. By a decision of 15 September 2010 the District Court granted the prosecutor's request and extended the applicant's detention until 15 January 2011. It can be seen from the decision and the hearing record that an interpreter for the applicant participated in the hearing. As regards the applicant's argument that he had not been made aware of the reasons for his arrest and detention, the District Court noted that in his explanation of 15 July 2010 the applicant had stated that he did not need the services of an interpreter.

26. On 17 September 2010 the District Court returned to the applicant's lawyer her complaint of 15 September 2010 on the ground that she had failed to enclose a representation mandate (*ордер*). She appealed against the decision of 17 September 2010 and on 26 October 2010 the District Court informed her that her appeal would be examined by the St Petersburg City Court ("the City Court") and that she would be advised of the hearing date by that court.

27. On 18 September 2010 the applicant's lawyer appealed against the detention order of 15 September 2010 to the City Court and on 18 October 2010 the District Court received an additional appeal statement from her. In those appeal statements the applicant's lawyer reiterated that the authorities had failed to inform her client of the reasons for his arrest and the charges against him, as had been stated in her complaint under Article 125 of the CCrP of 15 September 2010. She also stressed that the applicant's poor command of Russian had been recognised by the District Court, which had considered it necessary to secure an interpreter's presence at the hearing of 15 September 2010.

28. On 10 November 2010 the City Court set aside the decision of 15 September 2010. The case was examined with the participation of an

interpreter for the applicant. The court found that at the time of his arrest on 14 July 2010 the applicant had not been advised of his right to an interpreter and a lawyer. Moreover, the District Court had recognised at the hearing of 15 September 2010 that the applicant's command of Russian was poor and had appointed an interpreter for him. By dismissing, without sufficient reasons, the applicant's request to have access to the case-file materials with the participation of an interpreter, the District Court had breached his right to state his case in court. By the same decision the court extended the applicant's detention until 30 November 2010.

29. On 22 November 2010 the District Court extended the applicant's detention until 15 January 2011. The case was examined in the presence of an interpreter.

30. On 9 December 2010 the applicant retracted his appeal against the decision of 17 September 2010, considering that it was devoid of purpose and could not lead to his release because on 22 November 2010 the District Court had already authorised his detention until 15 January 2011.

31. On 12 January 2011 the City Court upheld the decision of 22 November 2010 on appeal and on 14 January 2011 the District Court extended the applicant's detention until 15 April 2011.

32. On 14 April 2011 the St Petersburg City Court ordered the applicant's release from custody owing to the fact that it had set aside the decision to extradite the applicant to Uzbekistan (see below).

### D. Extradition proceedings

33. On 16 August 2010 the Russian GPO received their Uzbek counterpart's request for the applicant's extradition. The document also stated, among other things, that without Russia's consent the applicant would not be extradited to a third-party State, or be prosecuted or punished for offences committed before extradition and not mentioned in the extradition request, and that he would be free to leave Uzbekistan after serving his sentence. The request further stated that he would be provided with medical assistance, if necessary, and secured the right to a fair trial, and that his criminal prosecution was not discriminatory. Lastly, the document mentioned that the Uzbek legislation prohibited torture and inhuman and degrading treatment and that Uzbekistan had abolished the death penalty.

34. On 5 September 2010 the applicant's lawyer, K., informed the prosecuting authorities that she was representing the applicant in the extradition proceedings and requested to be informed if any decisions concerning the applicant's extradition had been taken.

35. On 9 September 2010 a deputy Prosecutor General decided to extradite the applicant to Uzbekistan. The prosecutor's decision enumerated the charges against the applicant and stated that his actions were punishable

under Russian criminal law. The extradition order was granted in respect of actions aimed at the overthrow of the constitutional order, public appeals inciting extremist activities and participation in an organisation banned by a court decision owing to its extremist activities, which were proscribed by Russian criminal law. Lastly, it noted that no reasons had been established which precluded the applicant's extradition to Uzbekistan. In the applicant's submission, he was not informed of that decision.

36. On 30 September 2010 the applicant's lawyer renewed her request to the Russian GPO to be informed whether any decisions had been issued in respect of her client in the extradition proceedings.

37. On 15 October 2010 the Russian GPO informed K. that on 9 September 2010 it had decided to extradite the applicant to Uzbekistan and that since the latter had not made use of his right to challenge it in the courts, the order had become final. However, his extradition had been stayed owing to his application for asylum lodged on 1 October 2010 (see below).

38. On 18 October 2010 the applicant complained about the extradition order before the St Petersburg City Court, submitting that neither he himself nor his lawyer had been furnished with a copy of the extradition order, and requesting that the time-limits for appealing against it be reinstated. With reference to reports by UN bodies, NGOs such as Human Rights Watch, and the judgments of the European Court in the cases of *Ismoilov*, *Muminov*, *Yuldashev* and *Karimov v. Russia* he argued that he ran a real risk of being exposed to ill-treatment in case of his extradition to Uzbekistan. He also argued that the legal classification of his acts by the Russian GPO under the Russian criminal law had been incorrect and that the limitation period for his criminal prosecution had expired.

39. On 19 November 2010 the President of the First Section granted the applicant's request for an interim measure and indicated to the Russian Government under Rule 39 of the Rules of Court that they should not extradite the applicant to Uzbekistan until further notice. The Court's letter of the same date, addressed to both parties, in so far as relevant, reads as follows:

> "On 19 November 2010 the President of the Section to which the case has been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to your Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice.
>
> The parties' attention is drawn to the fact that failure of a Contracting State to comply with a measure indicated under Rule 39 may entail a breach of Article 34 of the Convention. In this connection, reference is made to paragraphs 128 and 129 of the Grand Chamber judgment of 4 February 2005 in the case of *Mamatkulov and Askarov v. Turkey* (applications nos. 46827/99 and 46951/99) as well as point 5 of the operative part."

40. On 26 November 2010 the City Court dismissed the applicant's complaint against the extradition order. As regards the risk of ill-treatment, the court considered that the applicant's reference to reports from various international actors, as well as judgments of the European Court which had not become final, was not indicative of the existence of such a risk for the applicant personally, and that his submissions in that regard were speculative and "not objectively confirmed". It also noted that in issuing the decision to extradite the applicant the Russian GPO had taken into account their Uzbek counterpart's assurances that he would not be subjected to treatment in breach of Article 3.

41. The applicant appealed against the decision, reiterating that, as a person accused of participation in a proscribed religious and extremist organisation and of crimes against State security, he ran an increased risk of ill-treatment and torture in case of his extradition. In this connection, he relied on reports from various international organisations, which specifically pointed out that individuals accused of membership of HT were particularly exposed to a risk of torture. He also referred to the case-law of the European Court mentioned in his previous complaint to the City Court. He further asserted that the assurances provided by the Uzbek authorities were unreliable and insufficient, and averred that the Russian GPO had given an incorrect legal classification of the offences imputed to him by the Uzbek authorities under the Russian criminal law, and that his criminal prosecution had become time-barred under Russian law.

42. On 28 February 2011 the Supreme Court of the Russian Federation ("the Supreme Court") set aside the decision of 26 November 2011 and instructed the first-instance court to verify the applicant's allegations concerning the legal classification of his acts under the Russian criminal law and the expiry of the limitation periods for his criminal prosecution.

43. On 14 April 2011 the City Court set aside the extradition order in respect of the applicant, finding that the Russian GPO's legal classification of his acts under the Russian criminal law was incorrect and that his criminal prosecution had become time-barred. By the same decision it ordered the applicant's release.

44. On 8 June 2011 the Supreme Court dismissed an appeal by the Russian GPO against the decision of 14 April 2011, endorsing the reasoning of the City Court. The Supreme Court also noted that in taking its decision it had taken into account the conclusions of the European Court made in a number of similar cases to the effect that ill-treatment of detainees in Uzbekistan constituted a serious problem and that the guarantees of the Uzbek authorities were not sufficient to dispel the risk of such treatment.

## E. Asylum proceedings

45. On 1 October 2010 the applicant filed an application for asylum with the St Petersburg branch of the Federal Migration Service ("the FMS").

46. By a telegram of 4 October 2010 the applicant's lawyer informed the Russian GPO that her client had lodged an asylum application.

47. On 11 November 2010 an official of the St Petersburg branch of the FMS interviewed the applicant in connection with his asylum application. In the applicant's submission, he informed the official that he was persecuted in his home country on account of his religious beliefs.

48. On 17 November 2010 the St Petersburg branch of the FMS notified the applicant that on 16 November 2010 it had discontinued its examination of his asylum application with reference to Article 2 § 1 of the Refugees Act (commission by the asylum seeker of serious non-political crimes in his home country).

49. On 19 November 2010 the applicant appealed to the FMS against the refusal to examine his application for asylum on the merits. Relying on reports by various international organisations, he submitted that, as a person accused of membership of HT, he belonged to an identifiable group in respect of which credible sources had reported an increased risk of ill-treatment by the Uzbek authorities. He also referred to the European Court's findings in the *Muminov* case and other judgments concerning the extradition or expulsion to Uzbekistan of presumed members of HT. He therefore claimed that he was persecuted by the Uzbek authorities on account of the political and religious opinions imputed to him and stressed that the interviewing officer had limited his questioning to the circumstances of his arrival in Russia and questions as to whether he had a valid registration or a work permit, and had disregarded his submission that he had become a refugee *sur place* because he had become aware of his criminal prosecution in Uzbekistan only after his arrest and detention in Russia.

50. By a telegram of 19 November 2010 the applicant's lawyer notified the Russian GPO that her client had lodged an appeal against the refusal to consider his application for asylum.

51. On 12 January 2011 the applicant's lawyer supplemented her client's complaint to the FMS of 19 November 2010 with further extensive references to reports by the UN Committee against Torture, Human Rights Watch and Amnesty International, and information from the Russian Ministry of the Foreign Affairs. She also extensively cited the judgments of the European Court in the cases of *Muminov*, *Ismailov and Others, Yuldashev, Abdulazhon Isakov* and *Karimov v. Russia.*

52. On 18 February 2011 the FMS set aside the decision of 16 November 2010 and informed the applicant that his request for asylum would be examined on the merits.

53. On 17 March 2011 the St Petersburg branch of the FMS dismissed the applicant's request for refugee status. It reasoned that he had applied for asylum only two and a half months after his arrest with a view to extradition and that he had breached the residence regulations and submitted false information in that regard, which indicated that the charges levelled against him in Uzbekistan were not without foundation. Moreover, he was wanted by the Uzbek authorities on suspicion of participation in HT, which had been banned as an extremist organisation by the Russian Supreme Court. The decision did not mention the applicant's arguments concerning the risk of ill-treatment.

54. The applicant had access to a copy of that decision on 8 June 2011, following which he challenged it before the FMS. In his complaint the applicant reiterated his arguments concerning the risk of ill-treatment, with reference to materials stemming from international governmental and non-governmental organisations and the judgments of the European Court. In particular, he stressed that he was wanted by the Uzbek authorities on account of imputed political and religious beliefs and extremist activities and thus belonged to an identifiable group particularly targeted by the authorities and ran an increased risk of ill-treatment. He also submitted that he had left Uzbekistan in 2005 of his own free will to look for a job and had at that time not been aware of his criminal prosecution, which had been initiated only in 2010. The applicant stressed that he had become aware of the substance of the accusations against him only on 29 September 2010, when some of the documents concerning the charges against him had been translated into Uzbek, and that immediately after that he had applied for refugee status.

55. In the applicant's submission, for the duration of the examination of his appeal against the decision of 17 March 2011 the St Petersburg branch of the FMS had issued him with a residence registration [*свидетельство о регистрации*] attesting to the lawfulness of his stay in Russia. The registration address given in the document was that of the St Petersburg branch of the FMS. That address had been used in the notarially certified authority form the applicant issued for his lawyer, K.

56. On 15 July 2011 the FMS dismissed the applicant's complaint about the decision of 17 March 2011. It noted that, according to information from the Russian Ministry of Foreign Affairs, the human rights situation in Uzbekistan was "ambiguous". Whilst the country had ratified all major UN instruments, in 2000-2001 the Uzbek authorities had arrested hundreds of followers of HT on suspicion of their participation in several explosions in Tashkent. Moreover, the Uzbek authorities considered that members of HT had actively participated in the Andijan events of 2005. It further cited the Ministry as stating that "with a view to securing internal stability the leadership of Uzbekistan is conducting a strict policy of control over attitudes and mind frames in all segments of Uzbek society, and of

suppression of all terrorist and fundamentalist religious threats, backed up by the security forces and the judicial system". The FMS went on to note that it endorsed the findings of its regional branch as to the absence of any circumstances indicating that the applicant would be unlawfully persecuted in Uzbekistan and pointed out that he had resided unlawfully in Russia after his arrival because his registration and work permits had been forged. The decision was silent on the applicant's arguments concerning the risk of ill-treatment in case of his return to his home country.

57. On 9 August 2011 officials of the St Petersburg branch of the FMS seized the applicant's residence registration document. On the same date the applicant requested them to issue him with a residence registration for the address at which he actually resided in St Petersburg, submitting that he would challenge the refusals to grant him asylum in the courts and that he would need the impugned document in order to do so. According to the applicant, his request received no reply. On the same date he complained about the refusals of the migration authorities to grant him asylum (decisions of 17 March and 15 July 2011) to the Frunzenskiy District Court of St Petersburg, giving his actual address of residence.

58. On 24 August 2011 the Frunzenskiy District Court refused to entertain the applicant's complaint on the ground that the address given in his lawyer's authority form and that indicated by the applicant differed and that the applicant had failed to prove that he was registered at the actual address indicated by him.

59. On 10 September 2011 the applicant complained about the decisions refusing to grant him asylum to the Dzerzhinskiy District Court of St Petersburg ("the Dzerzhinskiy District Court"). He reiterated the arguments he had raised before the migration authorities, including his submissions concerning the risk of ill-treatment, and averred that both migration authorities in dismissing his asylum application had disregarded his detailed submissions on that matter, supported with references to European Court judgments and materials from international organisations.

60. On 25 November 2011 the Dzerzhinskiy District Court dismissed the applicant's complaint. It noted that, according to Article 10 § 3 of the Refugees Act, an asylum seeker was to lodge a complaint about a migration authority's decision (a) within one month of receiving written notification of such decision, or within a month of having lodged a complaint, should he receive no written reply to it, or (b) within three months of learning of the refusal to grant him asylum. As regards the decision of 17 March 2011, the court found that the applicant had received written notification of it on 21 March 2011 and had obtained a copy of the decision not later than 8 June 2011, whilst he had lodged his complaint with the court on 10 September 2011. Accordingly, he had missed the time-limits for challenging the impugned decision before a court. Moreover, the applicant had made use of his right to challenge the decision of 17 March 2011 before

the FMS. As to the decision of the FMS dated 15 July 2011, the Dzerzhinskiy District Court refused to examine the applicant's complaint in that part on the ground that he had no valid registration in St Petersburg and that he had, accordingly, to lodge his complaint with the court having territorial jurisdiction over the FMS, which was located in Moscow.

61. On 5 December 2011 the applicant appealed against the District Court's decision to the St Petersburg City Court. He furnished the Court with a copy of his appeal statement and a certificate of posting showing that it was despatched to the City Court on that date.

## F. The applicant's deportation to Uzbekistan

### *1. The applicant's account*

62. At 7 a.m. on 21 December 2011 several individuals who introduced themselves as police officers and officials of the St Petersburg branch of the FMS burst into the flat occupied by the applicant and his family on the pretext of an identity check. The applicant immediately called his lawyer, K., and switched his mobile to conference call mode so as to enable her to participate in the conversation. The applicant and K. informed the intruders that proceedings concerning his application for refugee status were pending before the appellate court and the applicant showed them a stamped copy of his appeal statement. They also informed them that he could not be returned to Uzbekistan because the Court had applied Rule 39 in his case, which was pending before it. The applicant showed the officers a copy of the Court's letter. The applicant's lawyer also informed the officers that she was on her way to the flat, but at that moment the connection was cut. Despite these explanations, the applicant was handcuffed, placed in a car and taken to an unknown destination. His relatives were not allowed to follow him.

63. Upon the applicant's lawyer's advice, the applicant's wife and brother immediately went to search for the applicant at several police stations and the FMS premises in the Frunzenskiy District of St Petersburg, and K. herself contacted the St Petersburg immigration detention centres but their attempts produced no results. K. also informed the head of the foundation "Right to Asylum", Ms E.Z., and the local office of the United Nations High Commissioner for Refugees about the applicant's disappearance.

64. At about 3 p.m. on the same day, the applicant's wife informed K. that the applicant had called her from a third person's mobile phone and had told her that he was at the premises of the St Petersburg branch of FMS, following which the phone had been taken from him and switched off and she had been unable to reach him. At about 3.10 p.m. K. called the department for refugees and forced migrants of the St Petersburg branch of the FMS, informed them of the applicant's situation and stressed that she

was looking for him. Her interlocutor, who introduced himself as E.Sh., replied that he had no information regarding the applicant, the reasons for his arrest or his whereabouts.

65. At about 8 p.m. K. and the applicant's wife complained to the investigation department of the Frunzenskiy District of St Petersburg about the applicant's disappearance but the latter authority refused to follow up on their complaint.

66. At about 8.40 p.m. on the same day, K. was informed that a man who was unknown to the applicant's family had recently contacted the applicant's relatives and told them that the applicant was at Pulkovo airport and that he would be soon put on a plane to Samarkand, Uzbekistan. The man stated that the applicant had asked him to call his relatives because the applicant "was being guarded by two Interpol officers" who would not allow him to make any phone calls. K. conveyed that information to Ms E.Z. and the office of the United Nations High Commissioner for Refugees and called the duty unit of the North-Western transport prosecutor's office, which was responsible for Pulkovo airport, where she spoke to officer A.A. She informed him of the applicant's situation and requested him to take urgent steps to prevent her client's unlawful transfer to Uzbekistan. A.A. promised her that he would report the situation to his superiors.

67. At about 9.30 p.m. K. was informed that the applicant had called his relatives from an unknown mobile number and had swiftly told them that he was on the plane, where he had been requested to sign some papers but had refused, and that before his transfer to the airport he had been held at the premises of the department for refugees and forced migrants of the St Petersburg branch of the FMS. The connection had suddenly been cut.

68. According to a written statement by Ms E.Z., between 8.40 p.m. and 8.50 p.m. on 21 December 2011 K. informed her that the applicant had been taken to Pulkovo airport to be transferred to Uzbekistan. Ms E.Z. then immediately conveyed that information to Ms T.K., head of the criminal law department of the Office of the Representative of the Russian Federation at the European Court of Human Rights, and requested the latter to take urgent measures to prevent the applicant's transfer. At about 9.40 p.m. T.K. informed Ms E.Z. that she had taken all possible steps to notify the competent authorities, including the Russian GPO, with a view to preventing the applicant's forced transfer; however, she was not sure, given the late hour, whether this would produce any results. Meanwhile, Ms E.Z. informed the Office of the Ombudsman of Russia of the risk of the applicant's forced transfer to Uzbekistan. At 10 p.m. Ms E.Z. contacted the transport prosecutor's office responsible for Pulkovo airport. The on-duty officer, Mr A.A., confirmed to Ms E.Z. that the applicant's lawyer K. had already informed him about the risk of the applicant's forced transfer to Uzbekistan. In reply to Ms E.Z.'s request that urgent steps be taken to

prevent the transfer, he informed her that he had sent an officer to verify whether the applicant had been checked in for the flight, to which Ms E.Z. immediately replied that the applicant must already be on the plane and that his unlawful transfer to Uzbekistan would be in breach of the international obligations of the Russian Federation. However, instead of taking any steps, A.A. started asking her various questions, such as whether the applicant had bought a ticket for the flight, whether a criminal case had been opened into his abduction, and so on. In her statement Ms E.Z. further submitted that immediately after her call A.A. was contacted by the Office of the Ombudsman of Russia, whose officials yet again explained to him the legal consequences of the applicant's transfer to Uzbekistan. At 10.40 p.m. Ms E.Z. again contacted A.A. to ask him whether the applicant had been taken off the flight, to which A.A. replied in the negative. He further told her that the applicant's name was not among the persons who had bought tickets for the flight or those who had been checked in for it and that no check had been conducted inside the plane because the airstairs had already been removed from it. A.A. disregarded Ms E.Z.'s remarks that to search for the applicant in the list of checked-in passengers was useless because in several previous cases individuals, such as Mr Abdulkhakov and Mr Dzhurayev, had been unlawfully transferred from Russia without being formally checked in.

*2. Information submitted by the Government*

69. On 21 December 2011 the head of the St Petersburg branch of the FMS issued a decision on the applicant's deportation with reference to Articles 10 § 5 and 13 § 2 of the Refugees Act. The decision stated that on 25 November 2011 the Dzerzhinskiy District Court had dismissed the applicant's complaint about the migration authorities' refusals to grant him asylum, that that decision had become final on 6 December 2011, and that there were no legal grounds for the applicant's stay in Russia.

70. On 21 December 2011 officers of the FMS conducted a check at the applicant's place of residence with a view to verifying whether he had left Russia. Having established that he had not, they took him to the premises of the St Petersburg branch of the FMS, where a decision concerning his deportation was served on him in the presence of an interpreter. In the Government's submission, the applicant did not express the intention to challenge the deportation order against him.

71. Subsequently the applicant was taken to Pulkovo airport, where he passed through passport control and the Federal Security Service ("the FSB") officers "stamped his passport to prove that he had crossed the State border of the Russian Federation". The applicant was conveyed to the plane and took flight no. FV-879 from St Petersburg to Samarkand, its departure time being 8 p.m.

72. The Government presented no documents in support of their submissions, except a copy of the deportation order.

## G. Events in Russia and Uzbekistan following the applicant's deportation

73. On 22 December 2011 the applicant's lawyer, K., learnt that after the applicant's plane had landed in Samarkand, Uzbekistan, he had immediately been brought to the Samarkand Department of the Ministry of the Interior and taken from there to Tashkent by officers of the National Security Service.

74. Subsequently, K. complained about the applicant's transfer to Uzbekistan to the Russian GPO and the investigation department of the Frunzenskiy District of St Petersburg.

75. On 10 February 2012 the Russian GPO replied to K. that by a final decision of 8 June 2011 the Supreme Court had set aside the extradition order in respect of the applicant. On 19 August 2011 the Russian GPO had informed their Uzbek counterpart that they could not extradite the applicant. According to the information available to the Russian GPO, on 21 December 2011 the head of the St Petersburg branch of the FMS had issued a deportation order in respect of the applicant and the latter had been deported on the same date. The St Petersburg prosecutor's office was examining whether the deportation order had been well-founded.

76. In K.'s submission, after his transfer to Uzbekistan the applicant was held in detention and in April 2012 the Samarkand City Court convicted him of the offences for which his extradition had been sought and sentenced him to eight years' imprisonment. The applicant was represented by a court-appointed lawyer, his relatives were not admitted to the court hearings and he refused their help. Moreover, he informed them that their telephones were being tapped and they were being shadowed and told them that he had been "advised" to tell them to discontinue their communication with his lawyer in Russia "in order to avoid any problems". At a short meeting with him, in the presence of the prison escort officers, the applicant's wife noticed a bruise and an abrasion on the left side of his face. In her submission, he looked exhausted and told her that he had not been provided with a copy of the judgment convicting him, and that he had been "advised" not to appeal against it because otherwise he would obtain a longer imprisonment term and his relatives would have problems. The Uzbek authorities disregarded the applicant's relatives' requests to be provided with a copy of the trial judgment. All the lawyers they contacted in Uzbekistan with a view to securing legal assistance for the applicant refused to take up his case, saying that it was political and that becoming involved in the case could lead to their losing their lawyer's licences.

# II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

## A. Extradition proceedings

### *1. The Code of Criminal Procedure*

77. Chapter 54 of the Code of Criminal Procedure ("CCrP") of 2002 governs the procedure to be followed in the event of extradition.

78. An extradition decision made by the Prosecutor General may be challenged before a court (Article 463 § 1). In that case the extradition order should not be enforced until a final judgment is delivered (Article 462 § 6).

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

80. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in the applicable international and domestic law (Article 463 § 6).

81. Article 464 § 1 lists the conditions under which extradition cannot be authorised. Thus, the extradition of the following should be refused: 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 is being 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 limitation period or on 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 of the Russian Federation and international treaties (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)).

82. Where 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).

*2. Decisions of the Russian Supreme Court*

83. In its ruling no. 11 of 14 June 2012, the Plenary Session of the Russian Supreme Court indicated, with reference to Article 3 of the Convention, that extradition should be refused if there were serious reasons to believe that the person might be subjected to torture, inhuman or degrading treatment in the requesting country. Extradition could also be refused if exceptional circumstances disclosed that it might entail a danger to the person's life and health on account of, among other things, his or her age or physical condition. Russian authorities dealing with an extradition case should examine whether there were reasons to believe that the person concerned might be sentenced to the death penalty, subjected to ill-treatment or persecuted because of his or her race, religious beliefs, nationality, ethnic or social origin or political opinions. The courts should assess both the general situation in the requesting country and the personal circumstances of the person whose extradition was sought. They should take into account the testimony of the person concerned and that of any witnesses, any assurances given by the requesting country, and information about the country provided by the Ministry of Foreign Affairs, by competent institutions of the United Nations, and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

## B. Detention pending extradition and judicial review of detention

*1. The Russian Constitution*

84. The Constitution guarantees the right to liberty (Article 22):

> "1. Everyone has the right to liberty and personal integrity.
>
> 2. Arrest, placement in custody and detention are only permitted on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

85. Article 46 of the Constitution provides, among other things, that everyone should be guaranteed judicial protection of his or her rights and freedoms, and stipulates that decisions, actions or inaction on the part of State bodies, local self-government authorities, public associations and officials may be challenged before a court.

*2. The 1993 Minsk Convention*

86. The CIS Convention on legal assistance and legal relations in civil, family and criminal cases ("the Minsk Convention"), to which both Russia and Uzbekistan are parties, provides that in executing a request for legal assistance, the requested party applies its domestic law (Article 8 § 1).

87. A request for extradition must be accompanied by a detention order (Article 58 § 2). Upon receipt of a request for extradition, measures should be taken immediately to find and arrest the person whose extradition is sought, except in cases where that person cannot be extradited (Article 60).

88. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest containing a reference to the detention order and indicating that a request for extradition will follow must be sent (Article 61 § 1). A person may also be arrested in the absence of such a request if there are reasons to suspect that he has committed, in the territory of the other Contracting Party, an offence for which extradition may be requested. The other Contracting Party must be immediately informed of the arrest (Article 61 § 2).

89. A person arrested pursuant to Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

*3. The Code of Criminal Procedure*

90. Article 1 § 3 of the CCrP provides that general principles and norms of international law and international treaties to which the Russian Federation is a party are a constituent part of its legislation concerning criminal proceedings. Should an international treaty provide for rules other than those established in the CCrP, the former are to be applied.

91. The term "court" is defined by the CCrP 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).

92. Chapter 13 of the CCrP ("Preventive Measures") governs the use of preventive measures (*меры пресечения*) while criminal proceedings are pending. Such measures include placement in custody. Custody may be ordered by a court on an application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be used (Article 108 §§ 1 and 3). An initial period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period up to six months (Article 109 § 2). Further extensions of up to twelve months, or in exceptional circumstances, up to eighteen months, may only be granted if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must then be released immediately (Article 109 § 4). If the grounds serving as the basis for a preventive measure have changed, the preventive measure must be

cancelled or amended. A decision to cancel or amend a preventive measure may be taken by an investigator, a prosecutor or a court (Article 110).

93. Chapter 16 ("Complaints about acts and decisions by courts and officials involved in criminal proceedings") provides for the judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of the parties to criminal proceedings (Article 125 § 1). The competent court is the court with territorial jurisdiction over the location at which the preliminary investigation is conducted (ibid.). Following the examination of the complaint, a judge can issue a decision to declare the challenged act, inaction or decision of the law-enforcement authority unlawful or unjustified and to instruct that authority to rectify the indicated shortcoming or to dismiss the complaint (Article 125 § 5).

94. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to the person whose extradition is sought. The measure must be applied in accordance with established procedure (Article 466 § 1). If a request for extradition is accompanied by a detention order issued by a foreign court, a prosecutor may impose house arrest on the individual concerned or place him or her in detention "without seeking confirmation of the validity of that order from a Russian court" (Article 466 § 2).

*4. Relevant case-law of the Constitutional and Supreme Courts of Russia*

95. On 4 April 2006 the Constitutional Court examined an application by Mr N., who had submitted that the lack of any limitation in time on the detention of a person pending extradition was incompatible with the constitutional guarantee against arbitrary detention. In its decision no. 101-O of the same date, the Constitutional Court declared the application inadmissible. In its view, the absence of any specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the Minsk Convention provided that, in executing a request for legal assistance, the requested party was to apply its domestic law, which in the case of Russia was the procedure laid down in the CCrP. Such procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Preventive Measures"), which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests. Accordingly, Article 466 § 1 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP or the time-limits fixed in the Code. The

Court also refused to analyse Article 466 § 2, finding that it had not been applied in Mr N.'s case.

96. On 1 March 2007 the Constitutional Court in its decision no. 333-O-P held that Articles 61 and 62 of the Minsk Convention, governing a person's detention pending the receipt of an extradition request, did not determine the body or official competent to order such detention, the procedure to be followed, or any time-limits. Under Article 8 of the Minsk Convention, the applicable procedures and time-limits were to be established by domestic legal provisions.

97. The Constitutional Court further 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 could 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. The Constitutional Court held that Article 466 § 1 of the CCrP, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure and within the time-limits established in Chapter 13 of the CCrP.

98. On 19 March 2009 the Constitutional Court, by its decision no. 383-O-O, dismissed as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the CCrP, stating as follows:

> "[This provision] does not establish time-limits for custodial detention and does not establish the grounds 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] ..."

99. On 10 February 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No. 1, aimed at clarifying the application of Article 125 of the CCrP. It stated that acts or inaction on the part of investigating and prosecuting authorities, including a prosecutor's decision to hold a person under house arrest or to place him or her in custody with a view to extradition, could be appealed against to a court under Article 125 of the CCrP. The Plenary stressed that in declaring a specific decision, act or inaction on the part of a law enforcement authority unlawful or unjustified, a judge was not entitled to annul the impugned decision or to order the official responsible to revoke it or to carry out any specific acts, but could only instruct him or her to rectify the indicated shortcomings. Should the authority concerned fail to comply with the court's instructions,

an interested party could raise that matter before a court, which could issue a special decision [*частное определение*] drawing the authority's attention to the situation.

100. On 29 October 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No. 22, stating that, pursuant to Article 466 § 1 of the CCrP, only a court could order the placement in custody of a person in respect of whom an extradition check was pending when the authorities of the country requesting extradition had not submitted a court decision ordering his or her placement in custody. The judicial authorisation of the placement in custody in that situation was to be carried out in accordance with Article 108 of the CCrP and following a prosecutor's request for that person to be placed in custody. In deciding to remand a person in custody, a court was to examine if there existed factual and legal grounds for applying that preventive measure. If the extradition request was accompanied by a detention order made by a foreign court, a prosecutor was entitled to place the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCrP.

101. In a recent ruling, no. 11 of 14 June 2012, the Plenary Session of the Russian Supreme Court held that a person whose extradition was sought could be detained before the receipt of an extradition request only in cases specified in international treaties to which Russia was a party, such as the Minsk Convention. Such detention should be ordered and extended by a Russian court in accordance with the procedure, and within the time-limits, established by Articles 108 and 109 of the CCrP. The detention order should mention the term for which the detention or extension was ordered and the date of its expiry. If the request for extradition was not received within a month, or forty days if the requesting country was a party to the Minsk Convention, the person whose extradition was sought should be immediately released.

## C. Status of refugees

### *1. The 1951 Geneva Convention on the Status of Refugees*

102. Article 33 of the UN Convention on the Status of Refugees of 1951, which was ratified by Russia on 2 February 1993, provides as follows:

> "1. No Contracting State shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."

*2. Refugees Act*

103. The Refugees Act (Law no. 4258-I of 19 February 1993), as in force at the material time, incorporated the definition of the term "refugee" contained in Article 1 of the 1951 Geneva Convention, as amended by the 1967 Protocol relating to the Status of Refugees. The Act 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, 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, unwilling to return to it (section 1 § 1 (1)).

104. The Act does not apply to anyone believed on reasonable grounds to have committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime outside the country of refuge prior to his admission to that country as a person seeking refugee status (section 2 § 1 (1) and (2)).

105. A person who has applied for refugee status or who has been granted refugee status cannot be returned to a State where his life or freedom would be imperilled on account of his race, religion, nationality, membership of a particular social group or political opinion (section 10 § 1).

106. Decisions of the law-enforcement authorities taken in connection with the Refugees Act can be appealed against to a higher-ranking authority or a court (Article 10 § 2). The decision can be challenged within one month of receipt of a written notification of it or, in case of lack of a written reply, within one month after the complaint was lodged, and within three months after the asylum seeker has become aware of the refusal to grant him or her refugee status (Article 10 §§ 2 and 3). An individual who has been notified of the refusal to grant him or her asylum and who has made use of his or her right of appeal against the refusal, should there be no other legal grounds for him or her to remain, has to leave the territory of the Russian Federation within three working days of receipt of the notification of the decision dismissing his or her complaint (Article 10 § 5). An individual failing to comply with this requirement and refusing to leave Russian territory of his or her own free will is deported (expelled) from the territory together with the members of his or her family in accordance with the provisions of the Act, the relevant legislation and the international agreements to which the Russian Federation is a party (Article 13 § 2).

# III. INTERNATIONAL MATERIALS

## A. Reports on Uzbekistan by the UN institutions and NGOs

107. For relevant reports on Uzbekistan during the period between 2002 and 2007 and, in particular, on the situation of persons accused of membership of HT, see *Muminov v. Russia*, no. 42502/06, §§ 67-72 and 73-74, 11 December 2008.

108. Referring to the situation regarding torture in Uzbekistan, the report of the UN Special Rapporteur on Torture to the 3rd Session of the UN Human Rights Council on 18 September 2008 states as follows:

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

109. In its 2010 report (CCPR/C/UZB/CO/3), the UN Human Rights Committee, stated, in so far as relevant:

> "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) ..."

110. 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, from persons suspected of being members of banned Islamic groups or of having committed terrorist offences. The report stressed that the Uzbek authorities were continuing to actively seek extradition of those persons, particularly

presumed members of HT, from the neighbouring countries, including Russia, and that most of those returned to Uzbekistan were held incommunicado, which increased their risk of being tortured or ill-treated.

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

> "Amnesty International believes that there has been a serious deterioration in the human rights situation in Uzbekistan since the so-called Andizhan events in May 2005. ...
>
> Particularly worrying in the light of Uzbekistan's stated efforts to address impunity and curtail the use of cruel, inhuman and degrading treatment have been the continuing persistent allegations of torture or other ill-treatment by law enforcement officials and prison guards, including reports of the rape of women in detention. ...
>
> Furthermore, Amnesty International is concerned about reports of human rights violations carried out in the context of the stated aim of protecting national security and the fight against terrorism, following a number of reported attacks and killings throughout the country in 2009. ....
>
> Amnesty International is concerned that the authorities' response to attacks which occurred in May and August 2009 has been inconsistent with the obligations to respect the prohibitions against arbitrary detention and torture or other ill-treatment and the right to fair trial as enshrined in the ICCPR.
>
> There were reported attacks in the Ferghana Valley and the capital Tashkent in May and August 2009 respectively; and a pro-government imam and a high-ranking police officer were killed in Tashkent in July 2009. The Islamic Jihad Union (IJU) claimed responsibility for the attacks in the Ferghana valley: attacks on a police station, a border checkpoint and a government office in Khanabad on 26 May 2009, as well as a suicide bombing at a police station in Andizhan the same day. At least three people died in a shoot-out between unidentified armed men and security forces in Tashkent on 29 August 2009. ...
>
> Authorities blamed the Islamic Movement of Uzbekistan (IMU), the Islamic Jihad Union (IJU) and the unregistered Islamist Hizb-ut-Tahrir party, banned in Uzbekistan, for the attacks and killings.
>
> These crimes were followed by reports of new waves of arbitrary detentions. Among the scores detained as suspected members or sympathizers of the three above-named organizations were men and women who attended unregistered mosques, studied under independent imams, had travelled or studied abroad, or had relatives who lived abroad or were suspected of affiliation to banned Islamist groups. Many are believed to have been detained without charge or trial for lengthy periods, allegedly subjected to torture and/ or sentenced after unfair trials.
>
> In September 2009, at the start of the first trial of individuals charged in connection with the May attacks in the Ferghana Valley, human rights activists reported that the proceedings were closed to the public, despite earlier assurances by the President and the Prosecutor General that the trial would be both open and fair. However, independent observers were not given access to the court room. Relatives of some of

the defendants told human rights activists that defence lawyers retained by them were not given access to the case materials and were denied access to the court room.

At least 30 men were arrested in October 2009 in Sirdaria on suspicion of involvement in the July killings in Tashkent and of being members of Hizb-ut-Tahrir. Relatives of some of the accused insisted the men had no connection with Hizb-ut-Tahrir or armed groups, but merely practised their faith outside state-registered mosques. Relatives alleged that some of the accused had been tortured in pre-trial detention in an attempt to force them to confess to participating in the July killings. The mother of one of the men arrested said that her son's face was swollen and his body covered in bruises, that needles had been inserted in the soles of his feet and electroshocks applied to his anus, and that he had difficulties eating, standing or walking.

In April 2010 a court in Dzhizakh sentenced 25 men to terms of imprisonment from between two to 10 years in connection with the July and August 2009 attacks. All were convicted of attempting to overthrow the constitutional order and of religious extremism. At least 12 of the men had alleged in court in March 2010 that their confessions had been obtained under torture and the trial judge had ordered an investigation into these allegations, but ultimately found their allegations of torture to be unfounded. Independent observers reported that the men had admitted to having participated in prayer meetings and having practiced sports together, but had denied that they were part of a group intent on overthrowing the constitutional order.

Furthermore, Amnesty International is concerned by the risk of refoulement within extradition procedures. The Uzbekistani authorities continue to actively seek the extradition, in the name of national security and the fight against terrorism, of members or suspected members of banned Islamic movements or Islamist parties, such as Hizb-ut-Tahrir, or people suspected of involvement in the May 2005 Andizhan events, from neighbouring countries as well as the Russian Federation. ...

Despite assertions by Uzbekistan that the practice of torture has significantly decreased, Amnesty International continues to receive reports of widespread torture or other ill-treatment of detainees and prisoners.

According to these reports, in most cases the authorities failed to conduct prompt, thorough and impartial investigations into the allegations of torture or other ill-treatment. Amnesty International is concerned that impunity prevails as prosecution of individuals suspected of being responsible for torture or other ill-treatment remains the exception rather than the rule. ...

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

112. In January 2011 Human Rights Watch released its annual World Report for 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 ...
>
> ...
>
> Criminal Justice, Torture, and Ill-Treatment
>
> Torture remains rampant in Uzbekistan. Detainees' rights are violated at each stage of investigations and trials, despite habeas corpus amendments that went into effect in 2008. The Uzbek government has failed to meaningfully implement recommendations to combat torture that the United Nations special Rapporteur made in 2003.
>
> Suspects are not permitted access to lawyers, a critical safeguard against torture in pre-trial detention. Police use torture and other illegal means to coerce statements and confessions from detainees. Authorities routinely refuse to investigate defendants' allegations of abuse.
>
> ...
>
> On July 20, 37-year-old Shavkat Alimhodjaev, imprisoned for religious offenses, died in custody. The official cause of death was anemia, but Alimhodjaev had no known history of the disease. According to family, Alimhodjaev's face bore possible marks of ill-treatment, including a swollen eye. Authorities returned his body to his family's home at night. They insisted he be buried before sunrise and remained present until the burial. Authorities have not begun investigating the death.
>
> ...
>
> Freedom of Religion
>
> Although Uzbekistan's constitution ensures freedom of religion, Uzbek authorities continued their unrelenting, multi-year campaign of arbitrary detention, arrest, and torture of Muslims who practice their faith outside state controls or belong to unregistered religious organizations. Over 100 were arrested or convicted in 2010 on charges related to religious extremism.
>
> ...
>
> Key International Actors
>
> The Uzbek government's cooperation with international institutions remains poor. It continues to deny access to all eight UN special procedures that have requested invitations, including those on torture and human rights defenders ..."

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

> "**Reports of torture or other ill-treatment continued unabated. Dozens of members of minority religious and Islamic groups were given long prison terms after unfair trials** ...
>
> ...
>
> Torture and other ill-treatment
>
> Despite assertions by the authorities that the practice of torture had significantly decreased, reports of torture or other ill-treatment of detainees and prisoners continued unabated. In most cases, the authorities failed to conduct prompt, thorough and impartial investigations into these allegations.
>
> Several thousand people convicted of involvement with Islamist parties or Islamic movements banned in Uzbekistan, as well as government critics and political opponents, continued to serve long prison terms under conditions that amounted to cruel, inhuman and degrading treatment.
>
> Uzbekistan again refused to allow the UN Special Rapporteur on torture to visit the country despite renewed requests.
>
> ...
>
> Counter-terror and security
>
> Closed trials started in January of nearly 70 defendants charged in relation to attacks in the Ferghana Valley and the capital, Tashkent, in May and August 2009 and the killings of a pro-government imam and a high-ranking police officer in Tashkent in July 2009. The authorities blamed the Islamic Movement of Uzbekistan (IMU), the Islamic Jihad Union (IJU) and the Islamist Hizb-ut-Tahrir party, all banned in Uzbekistan, for the attacks and killings. Among the scores detained as suspected members or sympathizers of the IMU, the IJU and Hizb-ut-Tahrir in 2009 were people who attended unregistered mosques, studied under independent imams, had travelled abroad, or were suspected of affiliation to banned Islamic groups. Many were believed to have been detained without charge or trial for lengthy periods. There were reports of torture and unfair trials.
>
> ...
>
> • In April, Kashkadaria Regional Criminal Court sentenced Zulkhumor Khamdamova, her sister Mekhriniso Khamdamova and their relative, Shakhlo Pakhmatova, to between six and a half and seven years in prison for attempting to overthrow the constitutional order and posing a threat to public order. They were part of a group of more than 30 women detained by security forces in counter-terrorism operations in the city of Karshi in November 2009. They were believed to have attended religious classes taught by Zulkhumor Khamdamova in one of the local mosques. The authorities accused Zulkhumor Khamdamova of organizing an illegal religious group, a charge denied by her supporters. Human rights defenders reported

that the women were ill-treated in custody; police officers allegedly stripped the women naked and threatened them with rape.

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

...

Freedom of religion

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

• Suspected followers of the Turkish Muslim theologian, Said Nursi, were convicted in a series of trials that had begun in 2009 and continued into 2010. The charges against them included membership or creation of an illegal religious extremist organization and publishing or distributing materials threatening the social order. By December 2010, at least 114 men had been sentenced to prison terms of between 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."

## B. Council of Europe documents relating to the disappearance of applicants in respect of whom interim measures had been applied by the Court

114. In a decision (CM/Del/Dec(2012)1144/18) adopted on 6 June 2012 at the 1144th meeting of the Ministers' Deputies, the Committee of Ministers reiterated its concerns about repeated incidents of disappearance of applicants in respect of whom interim measures had been applied by the Court, and continued as follows:

"The Deputies

1. recalled that in the Iskandarov case, despite the government's assertion that the applicant's kidnapping had not been imputable to the State authorities, the Court found violations of the Convention on account of the applicant's arbitrary deprivation of liberty by the Russian State agents and his subsequent removal to Tajikistan in breach of the State's obligation to protect him against the risk of ill-treatment;

2. recalled further that at its last meeting the Committee expressed its profound concern that similar incidents had subsequently taken place in respect of other applicants whose applications are pending before the Court and in which the Court applied interim measures in order to prevent their extradition in view of the imminent risk of serious violations of the Convention faced by them;

3. deplored the fact that, notwithstanding the serious concerns expressed in respect of such incidents by the President of the Court, the Committee of Ministers and by the Russian authorities themselves, they were informed that yet another applicant disappeared on 29 March 2012 in Moscow and shortly after found himself in custody in Tajikistan;

4. took note of the Russian authorities' position according to which the investigation in the Iskandarov case is still ongoing and had not at present established the involvement of Russian State into the applicant's kidnapping;

5. regretted however that up to now, neither in the Iskandarov case nor in any other case of that type have the authorities been able to make tangible progress with the domestic investigations concerning the applicants' kidnappings and their transfer, nor to establish the responsibility of any state agent ..."

# THE LAW

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

115. The applicant complained that his removal to Uzbekistan had breached Article 3 of the Convention and that he had not had effective remedies in respect of that grievance, contrary to Article 13 of the Convention. These provisions read as follows:

**Article 3**

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

**Article 13**

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

## A. Submissions by the parties

116. The Government argued that the domestic authorities had carefully examined the applicant's allegation that he would run a risk of being subjected to ill-treatment if he was returned to the requesting country. According to the information of the Russian Ministry of Foreign Affairs and the Intelligence Department of the FSB, there were no circumstances precluding his extradition. Moreover, the Uzbekistan GPO had assured its Russian counterpart that the applicant would not be extradited to a third country without the consent of the Russian authorities; that he would be criminally prosecuted and would serve his sentence only in connection with the offences in respect of which his extradition was being sought; that after serving his sentence he would be free to leave Uzbekistan; and that he would receive medical assistance if necessary and be secured the guarantees of a fair trial. Furthermore, Uzbekistan had abolished the death penalty and the UCC stipulated that criminal proceedings were to be conducted on the basis of equality of arms and that no one could be subjected to torture or inhuman or degrading treatment.

117. The Government further submitted that it had been open to the applicant to challenge the extradition order in the courts and that, following such a complaint, the St Petersburg City Court had set aside the extradition order and had released the applicant from custody.

118. With reference to reports from various international bodies, the applicant argued that, as a person accused of participation in a proscribed religious organisation considered extremist by the requesting authorities, he ran a real risk of ill-treatment if removed to Uzbekistan. He averred that there was abundant information from reliable international sources showing that individuals in his situation were specifically targeted by the Uzbek authorities for ill-treatment and that, accordingly, the risk of him being subjected to such treatment was significantly higher.

119. The applicant further argued that the Government's reference to the information from the Russian Foreign Ministry and the FSB was irrelevant and could not be considered a thorough assessment of his personal situation and his allegations regarding the risk of ill-treatment. He maintained that the domestic authorities had disregarded his allegations of the risk of ill-treatment both in the extradition and asylum proceedings, despite the information he had relied on stemming from reputable international organisations and concerning the specific situation of individuals accused of membership of Hizb ut-Tahrir, and they had heavily relied on the assurances of the Uzbek authorities, which were neither reliable nor sufficient. In particular, in the asylum proceedings the Russian authorities had explicitly refused to take into account a number of relevant materials he had relied on, preferring to briefly mention only the information from the Russian Ministry of Foreign Affairs.

## B. The Court's assessment

### *1. Admissibility*

120. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### *2. Merits*

#### (a) Article 3

##### *(i) General principles*

121. The Court reiterates at the outset that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94), and that the right to political asylum is not explicitly protected by either the Convention or its Protocols (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, ECHR 2007 I (extracts)). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3.

122. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008). Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention, or otherwise (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

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

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

125. 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).

126. As regards the general situation in a particular country, the Court has held on several occasions that it can attach certain importance to the information contained in recent reports from independent international human-rights-protection bodies and non-governmental organisations (see *Saadi*, cited above, § 131, with further references). At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (*ibid*.).

127. Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

*(ii) Application of these principles to the present case*

128. Turning to the circumstances of the present case, the Court observes that the applicant raised the issue of his risk of being subjected to ill-treatment if he was returned to Uzbekistan both in the extradition and asylum proceedings. Having regard to his submissions, the Court is satisfied that they remained consistent and that he advanced a number of specific and detailed arguments in support of his grievance. Among other things, he claimed that the Uzbek law-enforcement authorities systematically resorted to the use of torture and ill-treatment against detainees and stressed that persons accused of membership of proscribed religious organisations considered extremist, such as the HT, as well as those suspected of crimes against State security, ran an increased risk of being subjected to treatment in breach of Article 3. In support of his allegations the applicant relied on reports by various reputable international organisations and the findings of this Court in a number of cases concerning similar situations where

applicants had faced return or had been removed to Uzbekistan in connection with criminal proceedings on charges connected to participation in HT, religious extremism or attempted overthrow of the constitutional order (see paragraphs 38, 41, 49, 51, 54 and 59 above).

129. Having regard to the extradition proceedings, the Court points out that in the final round the domestic courts set aside the extradition order in respect of the applicant. Whilst the Supreme Court in its decision briefly noted that it had also taken into account the European Court's findings concerning the ill-treatment of detainees in Uzbekistan and the insufficiency of the assurances provided by the requesting party, the Court considers that it is clear from the first-instance and the appellate courts' decisions that the main reason for their refusal of the applicant's extradition was of a more "technical" nature, namely the fact that his prosecution had become time-barred under the Russian law (see paragraphs 43 and 44 above).

130. As regards the asylum proceedings, the Court observes that the migration authorities in their decisions to refuse the applicant's asylum request mainly referred to the fact that he had waited too long before applying for refugee status and had breached the residence regulations by submitting false information. Despite the applicant's detailed submissions concerning his risk of being subjected to ill-treatment if he was returned to his home country, supported with reference to information stemming from various international organisations and judgments of this Court, the decisions of the migration authorities were silent on those specific arguments (see paragraphs 53 and 56 above). Although the FMS decision of 15 July 2011 contained a vague statement to the effect that there were no circumstances indicating that the applicant would be "unlawfully persecuted" in Uzbekistan, in the absence of an explanation of the exact meaning of that phrase, and having regard to the decisions of the migration authorities, the Court is unable to accept that they carried out a thorough assessment of the applicant's allegations concerning the risk of ill-treatment. Lastly, having regard to the applicant's submissions concerning the circumstances surrounding the enforcement of the deportation order against him (see paragraphs 62-68 above), which were not contested by the Government, the Court is not convinced that he was provided with any reasonable opportunity to raise the matter before the authorities who had ordered his deportation to Uzbekistan and carried out the order (compare *Muminov*, cited above, § 90).

131. Having regard to the foregoing, the Court is not persuaded that the applicant's grievance was thoroughly examined by the domestic authorities and has, accordingly, to assess whether at the time of his removal from Russia there existed a real risk that he would be subjected in Uzbekistan to treatment proscribed by Article 3.

132. It was not contested between the parties that the applicant left the territory of Russia on 21 December 2011. Hence, it is that date that the

Court will take into consideration when carrying out its assessment of the applicant's submissions under Article 3.

133. The Government argued that, according to the information of the Russian Ministry of Foreign Affairs and the FSB, there were no circumstances which would preclude the applicant's extradition to Uzbekistan. Whilst noting that the Government failed to elaborate on that point, the Court reiterates that in cases concerning aliens facing expulsion or extradition it is entitled to compare material referred to by the Government with information from other reliable and objective sources (see *Salah Sheekh*, cited above, § 136, and *Gaforov v. Russia*, no. 25404/09, § 129, 21 October 2010).

134. In this connection, the Court observes, firstly, that it has had occasion to deal with a number of cases raising the issue of a risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, with reference to information from various sources relating to the period between 2002 and 2007, that the general situation with regard to human rights in Uzbekistan was alarming, and material from reliable international sources has demonstrated the persistence of a serious issue of ill-treatment of detainees, the practice of torture against those in police custody being described as "systematic" and "indiscriminate" (see, for example, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008, and *Muminov*, cited above, § 93).

135. In recent judgments concerning the same subject and covering the period after 2007 until recently, after having examined the latest available information, the Court has found that there was no concrete evidence to demonstrate any fundamental improvement in that area (see, among many others, *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Abdulazhon Isakov v. Russia*, no. 14049/08, § 109, 8 July 2010; *Yuldashev v. Russia*, no. 1248/09, § 93, 8 July 2010; *Sultanov v. Russia*, no. 15303/09, § 71, 4 November 2010; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; and *Rustamov v. Russia*, no. 11209/10, § 125, 3 July 2012). Against this background, and having regard to the information summarised in paragraphs 108-113 above, the Court cannot but confirm that the issue of ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan. At the same time, the Court reiterates that it has consistently emphasised that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010, and *Shakurov v. Russia*, no. 55822/10, § 135, 5 June 2012).

136. As regards the applicant's personal situation, the Court notes that he was wanted by the Uzbek authorities on charges of public appeals to overthrow the constitutional order of Uzbekistan, participation in an extremist organisation, and preparation and dissemination of extremist

materials constituting a threat to national security and public order, all in connection with his presumed membership of HT, a proscribed religious organisation (Articles 159 and 244 of the UCC). In its *Muminov* judgment, the Court considered that there were serious reasons to believe in the existence of the practice of persecution of members or supporters of that organisation and found that reliable sources confirmed the existence of a practice of torture against persons accused of offences in connection with presumed membership of HT, such as crimes under Article 159 and 244 of the UCC, with a view to extracting self-incriminating confessions and to punishing those persons, who were perceived by the public authorities to be involved in religious or political activities contrary to State interests (*Muminov*, cited above, § 95).

137. Since the above-mentioned judgment the Court has examined further cases concerning persons accused of criminal offences in connection with their presumed membership of HT in Uzbekistan and found, with reference to materials covering the period between 2009 and 2011, that there existed a persistent pattern of persecution of such individuals evidenced by credible allegations of torture, ill-treatment and also deaths in custody (see, among the most recent authorities, *Yakubov*, cited above, §§ 84-85 and 87, and *Rustamov*, cited above, § 127). In those cases the Court established that such persons were at an increased risk of ill-treatment and that their extradition or expulsion to Uzbekistan would give rise to a violation of Article 3.

138. The Court considers it important to reiterate in connection with what has been stated above that in the case of *Saadi* it held that where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human rights protection bodies or non-governmental organisations, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances the Court will not then insist that the applicant show the existence of further special distinguishing features (see *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008). The Court considers that this reasoning applies in the present case, where the applicant is accused of membership of a group in respect of which reliable sources confirm a continuing pattern of ill-treatment and torture on the part of the authorities (see paragraphs 107, 110, 111 and 113 above).

139. It is also significant for the Court that the criminal proceedings against the applicant were opened in the aftermath of terrorist attacks in the Fergana Valley which had taken place in 2009. During the period following the incident, reputable international NGOs stated that the Uzbek authorities blamed HT, among other organisations, for the attacks and killings and

reported a wave of arbitrary arrests of persons suspected of involvement with HT, followed by their incommunicado detention, charges of religious extremism or attempted overthrow of the constitutional order, and their ill-treatment and torture to obtain confessions (see paragraphs 110, 111and 113 above). In the Court's view, the fact that the charges against the applicant date from a period close to the above-mentioned events can also be regarded as a factor intensifying the risk of ill-treatment for him.

140. In view of the foregoing, the Court considers that it has been demonstrated that there are substantial grounds to believe that the applicant faced a real risk of treatment proscribed by Article 3. In so far as the Government may be understood to argue that the prohibition of torture by the UCC negated such a risk, it is reiterated that the existence of domestic laws guaranteeing respect for fundamental rights in principle is not in itself sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see, among many other authorities, *Saadi*, cited above, § 147 *in fine*).

141. As to the assurances given by the Uzbek authorities and relied on by the Government, the Court notes that the Russian Supreme Court, even in its brief statement in that regard, expressed doubts about their reliability (see paragraph 44 above). In any event, it considers that they were couched in general terms and no evidence has been put forward to demonstrate that they were supported by any enforcement or monitoring mechanism (see, by contrast, *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 188-89, 17 January 2012).

142. In the light of the considerations mentioned above, the Court considers that the applicant's deportation to Uzbekistan gave rise to a violation of Article 3.

#### (b) Article 13

143. In view of the foregoing, the Court does not find it necessary to deal separately with the applicant's complaint under Article 13 of the Convention, which essentially contains the same arguments as already examined by the Court under Article 3 of the Convention (see *Gaforov*, cited above, § 144).

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

144. The applicant complained that his detention from 14 July to 15 September 2010 had been unlawful, in breach of Article 5 § 1 (f) of the Convention, which reads 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 against whom action is being taken with a view to ... extradition."

## A. Submissions by the parties

145. The Government argued that, in view of the existence of a foreign court's detention order in respect of the applicant, his detention between 14 July and 15 September 2010 had been authorised by two prosecutor's orders pursuant to Article 466 of the CCrP, and that it complied with the requirements of the Minsk Convention. On 15 September 2010, that is, two months after the initial order to place the applicant in custody had expired, the courts had extended his detention in accordance with Articles 108 and 109 of the CCrP. The Government acknowledged that the fact that the decisions of 15 July and 24 August 2010 did not contain specific time-limits for the applicant's detention was indicative of an "uncertainty" which was incompatible with Article 5 § 1 (f), but concluded that, overall, his detention during the period complained of had still been lawful and not in breach of the said Convention provision.

146. Referring to the Court's findings in the case of *Dzhurayev v. Russia* (no. 38124/07, 17 December 2009) and the Constitutional Court's decisions nos. 101-O and 333-O-P, the applicant submitted that neither Article 466 of the CCrP nor Article 61 of the Minsk Convention established a procedure for ordering the detention of a person with a view to extradition. Moreover, those provisions did not set any time-limits for such detention. As to the Government's reference to Articles 108 and 109 of the CCrP, those provisions governed the procedure for the placement of a person in custody by a court and not by a prosecutor. Lastly, he stressed that the Government had acknowledged that the lack of time-limits in the prosecutor's detention orders was incompatible with Article 5 § 1 (f).

## B. The Court's assessment

### *1. Admissibility*

147. The Court considers 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**

148. The Court notes that the applicant complained about a specific period of his detention, namely between 14 July and 15 September 2010. Accordingly, it will examine this complaint as submitted by the applicant.

149. It further observes that it is common ground between the parties that during the period in question the applicant was detained with a view to his extradition from Russia to Uzbekistan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example, to prevent his committing an offence or absconding. In that respect, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V).

150. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III, and *Nasrulloyev v. Russia*, no. 656/06, § 70, 11 October 2007).

151. The Court must therefore ascertain whether the domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court emphasises that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 does not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, it also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of law" in

this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Nasrulloyev*, cited above, § 71, 11 October 2007, with further references).

**(b) Application of these principles to the present case**

152. Turning to the circumstances of the present case, the Court observes that the main controversy between the parties is whether the prosecutors' detention orders, which referred, among other things, to the detention order issued by an Uzbek court, could serve as a legal basis for the applicant's detention for the period between 14 July and 15 September 2010.

153. The Government argued that, given the existence of the Uzbek court's detention order, the applicant's detention during the impugned period was governed by Article 466 of the CCrP and was in accordance with the requirements of the Minsk Convention. The Court observes, however, that the Russian prosecutor's detention order of 15 July 2010 contained no reference to Article 466 of the CCrP, presumably because that provision, as follows from its wording, started to apply only from the moment of receipt of the extradition request. In the applicant's case that request was received on 16 August 2010 (see paragraph 20 above). Hence, the Court must assess what was the legal basis for the applicant's detention from 14 July to 16 August 2010.

154. In this connection, the Court notes that the Government in their submissions, as well as the prosecutor in his detention order of 15 July 2010, referred to Article 61 of the Minsk Convention. However, the Court agrees with the applicant's argument that Article 61 of the Minsk Convention does not establish any procedural rules to be followed when placing a person in custody before an extradition request has been received. Indeed, the Minsk Convention refers back to domestic law, providing that the requested party should apply its national legal provisions when executing a request for legal assistance, including a special request for arrest pending the receipt of an extradition request as mentioned in its Article 61 (see paragraph 86 above). It follows that Article 61 of the Minsk Convention can serve as a legal basis for detention only in conjunction with corresponding domestic legal provisions establishing the grounds and the procedure for ordering detention, as well as the applicable time-limits (see the Constitutional Court's decision cited in paragraph 96 above). However, neither the prosecutor in his decision nor the Government referred to any provision in domestic law authorising the former authority to place the applicant in custody pending the receipt of an extradition request. Accordingly, from 14 July to 16 August 2010 the applicant was in a legal vacuum that was not covered by any domestic legal provision clearly

establishing the grounds of his detention and the procedure and time-limits applicable to that detention pending the receipt of the extradition request.

155. It further seems that after the receipt of the extradition request on 16 August 2010, the applicant's detention started to be governed by Article 466 § 2 of the CCrP. However, that provision remains silent on the procedure to be followed when ordering or extending the detention of a person whose extradition is sought. Nor does it set any time-limits for detention pending extradition (see paragraph 94 above). The Court also observes that in its decision of 19 March 2009 specifically concerning Article 466 § 2 the Constitutional Court, whilst finding that the impugned provision did not violate a person's constitutional rights by not establishing any grounds or procedure for ordering detention pending extradition or time-limits for such detention, did not explain, which legal provisions did govern such a procedure and what time-limits were to be applied in situations covered by Article 466 § 2 (see paragraph 98 above).

156. Accordingly, the Court cannot but note the absence of any precise domestic provisions which would establish under what conditions, within what time-limits and by a prosecutor of which hierarchical level and territorial affiliation the issue of detention is to be examined after the receipt of an extradition request.

157. The ambiguity of Article 466 § 2 of the CCrP is amply illustrated by the circumstances of the present case, where, although the extradition request was received on 16 August 2010, it was not until 24 August 2010, that is, eight days later, that the prosecutor ordered the applicant's detention on the basis of Article 466 § 2 of the CCrP (see paragraph 22 above). During that entire period the applicant remained unaware of the grounds for his detention and the time-limits for it.

158. Further, it is significant for the Court that the detention order of 24 August 2010 did not refer to any domestic legal provision, be it a provision from Chapter 13 of the CCrP or otherwise, confirming the competence of that particular prosecutor (the prosecutor of the Frunzenskiy District of St Petersburg) to order the applicant's detention. Nor did the decision set any time-limit on the applicant's detention or refer to any domestic legal provision establishing such a time-limit.

159. It follows that the applicant's detention from 16 August to 15 September 2010 was based on a legal provision, namely Article 466 § 2 of the CCrP, which, on account of its lack of clear procedural rules, was neither precise nor foreseeable in its application.

160. The Court also is also mindful of the Government's acknowledgement of the fact that the lack of time-limits in both detention orders contributed to the state of uncertainty in which the applicant found himself during the period of time under consideration.

161. It is further noted that in a recent ruling the Russian Supreme Court gave an authoritative interpretation of Russian legal provisions applicable to

detention pending extradition, including detention both before and immediately after the receipt of an extradition request (see paragraph 101 above). The Court notes, however, that that ruling was adopted on 14 June 2012, long after the applicant's release. It therefore cannot alter the conclusion that at the time of the applicant's detention the Russian legal provisions governing detention pending the receipt of an extradition request, and any eventual extension of detention following the receipt of such a request, were neither precise nor foreseeable in their application. In any event, it follows from the ruling that the applicant's detention should have been ordered and extended by a Russian court rather than by a prosecutor.

162. In view of the foregoing, the Court concludes that from 14 July to 15 September 2010 the applicant was kept in detention without a specific legal basis or clear rules governing his situation, which fact is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, *mutatis mutandis*, *Yudayev v. Russia*, no. 40258/03, § 59, 15 January 2009, and *Baranowski v. Poland*, no. 28358/95, § 56, ECHR 2000-III). The deprivation of liberty to which the applicant was subjected during that period was thus not circumscribed by adequate safeguards against arbitrariness. Russian law at the material time therefore fell short of the "quality of law" standard required under the Convention. The national system failed to protect the applicant from arbitrary detention, and his detention cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention.

163. There has therefore been a violation of Article 5 § 1 (f) of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

164. The applicant complained under Article 6 § 3 (a) that he had not been provided with a translation of the decisions concerning his placement in custody of 15 July and 24 August 2010, and that he had been deprived of his right to be informed promptly, in a language he understood, of the reasons for his arrest and the charges against him. The Court considers that this complaint should be examined under Article 5 § 2 of the Convention, which reads as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

## A. Submissions by the parties

165. The Government argued that at the time of his arrest the applicant had been informed of the reasons for it, and that this was confirmed by the arrest record, signed by him. Moreover, when interviewed on 15 July 2010, the applicant had said that he spoke Russian and refused the services of an interpreter. Thus, it was clear from the arrest and interview records of 15 July 2010 that the applicant had been informed that he had been arrested and placed in custody because his name was on an international wanted list.

166. The applicant submitted that he had a poor command of Russian because after his arrival in the country he had stayed within the Uzbek community. He had not been provided with a translation into Uzbek of the detention orders of 15 July and 24 August 2010. The Frunzenskiy District Court had dismissed his request to have access to a translation of those documents into his mother tongue and, accordingly, he had been deprived of his right to be informed of the reasons for his arrest and the charges against him, which situation had only been remedied at the hearing on 22 November 2010. He further argued that when he had been visited for the first time by his lawyer, who spoke some Uzbek, in detention, he had told her that he thought he had been arrested because of irregularities in his identity papers.

167. The applicant further stressed that it could be seen from the arrest record that he had not been asked which language he wished to be interviewed in, and that the interview record of 15 July 2010 mainly contained information taken from the documents he had had in his possession at the time of his arrest. The applicant had not, in reality, understood the meaning of the statement that he "had a good command of Russian and did not need the services of an interpreter" which he had signed. Moreover, during the interviews on 14 and 15 July 2010 he had been able to understand only simple questions – such as whether he had a family and a job. The applicant further stressed that it had been the prosecutor's office which had informed the District Court at the hearing of 15 September 2010 of the need to provide him with the services of an interpreter, and that the St Petersburg City Court in its decision of 10 November 2010 had confirmed that the applicant's command of Russian was poor and that the prosecutors had not advised him at the time of his arrest of his right to legal representation and to have an interpreter.

## B. The Court's assessment

### *1. Admissibility*

168. The Court considers 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*

169. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly" (in French: "*dans le plus court délai"*), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Čonka v. Belgium*, cited above, § 50, with further references). It also reiterates that paragraph 2 of Article 5, as paragraph 4, makes no distinction between persons deprived of their liberty by arrest and those deprived of it by detention (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 414).

170. Turning to the facts of the present case, and in so far as the applicant may be understood to complain that he was not provided with written translations of the prosecutors' detention orders, the Court considers it important to emphasise that Article 5 § 2 neither requires that the necessary information be given in a particular form nor that it should consist of a complete list of the charges held against the arrested person. Furthermore, when a person is arrested with a view to extradition, the information given may be even less complete (see *Kaboulov v. Ukraine*, no. 41015/04, § 144, 19 November 2009). However, this information should be provided to the detained in an adequate manner so that the persons knows of the reasons relied on to deprive him of his liberty, as well as has some information concerning the accusations brought against him or her by the requesting country (see *Shamayev and Others*, cited above, §§ 413 and 422, ECHR 2005-III).

171. Hence, the Court must assess whether, in the circumstances of the present case, the applicant was promptly informed about the reasons for his arrest and detention and the charges against him. In this regard, it observes that it follows from the materials available that when examining the issue of the applicant's detention the domestic courts considered that he had a poor command of Russian, since they appointed interpreters for him, who participated in all the hearings concerning his detention (see, in particular, paragraphs 25, 28 and 29 above). The applicant did, however, submit, and this appears to be supported by copies of his interview record and his

"explanation" of 15 July 2010, that he was able to understand and answer in Russian basic questions concerning his arrival in Russia, his family and his employment situation (see paragraphs 17 and 18 above).

172. Having regard to the applicant's arrest and interview records, as well as his explanation (see paragraphs 14, 15, 17 and 18 above), the Court notes that those documents contained a reference to the fact that he was wanted by the Uzbek authorities, and it is prepared to accept that the applicant was able to infer that he was being sought by them. It points out, however, that none of the documents mentioned above outlined, even briefly, the reasons why the Uzbek authorities' were searching for him. Indeed, the interview record of 15 July 2010 contained only a reference to the numbers of several Articles from the Uzbekistan Criminal Code (see, by contrast *Khudyakova v. Russia*, no. 13476/04, § 81, 8 January 2009, and compare *Rusu v. Austria*, no. 34082/02, §§ 38-40, 2 October 2008).

173. The Court also does not lose sight of the fact that at the time of the events described above the applicant was not represented and that his lawyer, who spoke some Uzbek and could have explained to him what those documents implied, assuming that such form of notification met the requirements of Article 5 § 2 of the Convention (see, *mutatis mutandis, Saadi v. the United Kingdom* [GC], no. 13229/03, § 84, ECHR 2008), stepped in the proceedings only on 18 August 2010, that is, more than a month later (see, by contrast, *Khudyakova*, cited above, § 81).

174. Having regard to the foregoing, the Court considers that the applicant was not promptly provided with sufficient information concerning his arrest and detention and the charges brought against him (see *Rusu*, cited above, § 40; *Shamayev and Others*, cited above, §§ 421-22; and *Saadi*, cited above, § 84, where a delay of seventy-six hours in providing reasons for detention was found to be incompatible with the promptness requirement under Article 5 § 2).

175. Accordingly, there has been a violation of Article 5 § 2 of the Convention.

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

176. The applicant complained that he had been deprived of an effective opportunity to challenge the prosecutors' detention orders of 15 July and 24 August 2010 and that his complaint in that regard had not been examined speedily. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

### A. Submissions by the parties

177. The Government argued that it had been open to the applicant to complain about his detention ordered on 15 July and 24 August 2010 under Article 125 of the CCrP to the Frunzenskiy District Court, that is, the court which had jurisdiction to examine complaints by persons held in custody in the Frunzenskiy District of St Petersburg, and that that court had the power to order the applicant's release. In particular, under Article 125 § 5 a judge could declare a decision by a law-enforcement authority unlawful or unjustified and instruct the authority to rectify the indicated shortcomings. In the same procedure, should the court find that a person was unlawfully detained with a view to extradition, it was open to it, pursuant to Article 1 § 3 of the CCrP and Article 46 of the Constitution, to apply provisions established by an international treaty and to order such detainee's release from custody.

178. The Government further submitted that on 15 September 2010 the applicant's lawyer had complained to the Frunzenskiy District Court under Article 125 of the CCrP about the detention orders of 15 July and 24 August 2010. However, the court had returned the complaint to her and instructed her to rectify several shortcomings. The lawyer had failed to comply with the court's instructions and had chosen to appeal against the decision of 17 September 2010. Following her withdrawal of the appeal on 9 December 2010, the proceedings were terminated. Accordingly, the Government concluded that the applicant had had an opportunity to obtain review of his detention.

179. At the same time, the Government conceded that the applicant had not been provided with copies of the prosecutors' detention orders of 15 July and 24 August 2010 and had not been advised of the procedure for challenging those decisions, which fact had prevented him from obtaining a speedy review of his detention and was in breach of Article 5 § 4 of the Convention. The fact that the applicant's lawyer had managed to lodge a complaint about those detention orders did not remedy the breach of applicant's right to a speedy review of his detention under Article 5 § 4.

180. The applicant stressed that the Government had confirmed that he had neither been provided with copies of the prosecutors' detention orders nor had the procedure for challenging them in the courts explained to him, and that they had acknowledged that there had been a breach of the requirement of "speediness" under Article 5 § 4 on that account.

181. The applicant further submitted that although the Frunzenskiy District Court had received his appeal statement against the decision of 17 September 2010 on 26 October 2010, the appeal hearing had been scheduled only for 9 December 2010. However, by that time, in a decision of 15 September 2010, the Frunzenskiy District Court had already extended his detention until 15 January 2011 and that extension had been confirmed

in a decision of 22 November 2010. Hence, after those court decisions the examination of the complaint under Article 125 of the CCrP about the prosecutors' detention orders had become devoid of any purpose because it could not lead to the applicant's release. The applicant had nonetheless raised those issues when challenging the decision of 22 November 2010 on appeal. However, on 12 January 2011 the St Petersburg City Court had dismissed his submissions in that part.

## B. The Court's assessment

### *1. Admissibility*

182. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### *2. Merits*

#### (a) Alleged inability to obtain review of the detention ordered by the prosecutors

183. The Government argued that it had been open to the applicant to challenge the prosecutors' detention orders under Article 125 of the CCrP.

184. In this connection, the Court reiterates that where the decision depriving a person of liberty is one taken by an administrative body, Article 5 § 4 obliges the Contracting States to make available to the person detained a right of recourse to a court (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12, and, more recently, in the context of detention pending extradition, *Soliyev v. Russia*, no. 62400/10, § 50, 5 June 2012). In order to constitute such a "court" an authority must provide the fundamental guarantees of procedure applied in matters of deprivation of liberty (see ibid.), and the review should be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1 (see *E. v. Norway*, 29 August 1990, § 50, Series A no. 181 A). The Court has specifically and consistently emphasised that the reviewing "court" must not have merely advisory functions, but must have the competence to "decide" on the "lawfulness" of the detention and to order release if the detention is unlawful (see, among many other authorities, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, ECHR 2009; *Ireland v. the United Kingdom*, 18 January 1978, § 200, Series A no. 25; *Chahal*, cited above, § 130; and, more recently, *Soliyev*, cited above, § 52, and *Rustamov*, cited above, § 175).

185. The Court observes that it has stated in a number of earlier cases relating to applicants' detention pending extradition that Article 125 of the CCrP could not be considered to provide an avenue for judicial complaints by individuals detained with a view to extradition, because Russian courts have consistently refused to examine applications lodged by people in that position, on the ground that they were not party to criminal proceedings against them in Russia (see, for example, *Ismoilov and Other,* cited above, § 50, 24 April 2008, and *Sultanov,* cited above, § 91, 4 November 2010, with further references).

186. It is further noted that in its Directive Decision no. 1 of 10 February 2009, aimed at clarifying the practice of the application of Article 125 of the CCrP by the domestic courts, the Supreme Court in plenary session stated that a prosecutor's decision to place a person in custody pending extradition was also amenable to judicial review under Article 125 of the CCrP (see paragraph 99 above). This approach was subsequently confirmed by Directive Decision no. 22, issued on 29 October 2009 (see paragraph 100 above).

187. The Government submitted, with reference to Articles 1 § 3 and 125 § 5 of the CCrP and Article 46 of the Constitution, that a court examining a complaint by a person detained pending extradition against detention orders issued by a prosecutor had authority to release such detainee, should it find the underlying detention orders unlawful or unjustified. The Court notes, however, that none of the legal provisions relied on by the Government explicitly provides for the court's competence to release a detainee in the applicant's situation (see paragraphs 85 and 90 above). As regards, in particular, Article 125 § 5, it only states that a court examining a complaint lodged under that provision can declare a decision issued by a law-enforcement authority unlawful or unjustified and instruct that body to rectify the indicated shortcomings (see paragraph 93 above).

188. The Court further observes that in Directive Decision no. 1, which gave an authoritative interpretation of the application of Article 125 of the CCrP, the Supreme Court specifically emphasised that in declaring a decision of a State authority unlawful or not justified, a judge was not entitled to annul it or to order the law-enforcement authority or official to revoke it or to carry out specific procedural acts, but could only instruct them to rectify the shortcomings he had indicated (see paragraph 99 above). Having regard to this authoritative interpretation of the application of Article 125 of the CCrP, the Court has doubts as to whether a domestic court was empowered under that legal provision to order the applicant's release from custody, or to order the prosecutor under whose detention orders he was detained at the material time to release him, even if it found the impugned detention orders unlawful or unjustified.

189. The Court also notes that Directive Decision no. 1 provided for the opportunity for an interested party to complain again to a court about

inaction on the part of the law-enforcement authorities should the shortcomings indicated not be rectified, in which case a judge could issue a "special decision" drawing the authority's attention to the situation (see paragraph 99 above). However, the Court is not persuaded that that can be regarded as a "power to release", within the meaning of the case-law summarised above.

190. In any event, the Court takes note of the Government's statement that the applicant "had not been provided with the prosecutor's detention orders" (see paragraph 179 above). Whilst it is not entirely clear when he was ultimately furnished with them, it follows from the applicant's lawyer's complaint of 15 September 2010, and this was not contested by the Government, that she must have been made aware of their content by that date in order to raise before the courts specific arguments concerning their alleged unlawfulness (see paragraph 23 above). However, on the same date the Frunzenskiy District Court authorised an extension of the applicant's detention until 15 January 2011. Although the appellate court set aside that decision on 10 November 2010 and remitted the case to the first-instance court, it extended the applicant's detention until 30 November 2010 and, in the new round of proceedings, on 22 November 2010 the District Court again authorised his detention until 15 January 2011. Against this background, and particularly given the existence of court-issued detention orders authorising the applicant's detention during the period from 15 September 2010 onwards, the Court accepts the applicant's argument that a complaint about the prosecutor's detention orders had become devoid of purpose because it could not have led to his release.

191. Having regard to the foregoing, the Court concludes that, in the circumstances of the present case, the applicant was deprived of an opportunity to obtain review of the detention orders issued by the prosecutors on 15 July and 24 August 2010.

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

#### (b) Speediness of review

193. In view of the findings made above, the Court does not consider it necessary to examine the applicant's complaint about lack of a speedy review of his detention relating to the same proceedings.

## V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

194. The applicant complained that, as a result of his removal to Uzbekistan in breach of the interim measure indicated by the Court under Rule 39, the respondent Government had failed to comply with their obligations under Article 34 of the Convention, which reads as follows:

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

195. The Government acknowledged that the applicant's deportation had been in breach of the interim measure indicated by the Court and that he had been unlawfully deported from Russia. They stated, however, that the domestic authorities had had no intention of breaching Article 34 and that the applicant had been deported owing to the fact that the FMS had not been aware of the application of Rule 39 of the Rules of Court. Moreover, the interim measure had concerned only the applicant's removal in the form of extradition and all the domestic authorities involved in the extradition proceedings had been informed of the application of Rule 39. The FMS was not competent to order the extradition of individuals, and the issue of the applicant's possible deportation had not arisen at the time when the interim measure had been applied. The applicant had had access to the deportation decision with the assistance of an interpreter and had not expressed any intention of appealing against it.

196. The applicant argued that, contrary to the Government's submission, the FMS officials who had carried out his deportation had been aware of the Court's application of Rule 39 because he and his lawyer had not only told them about it but he had also shown them the Court's letter to that effect when they had burst into his flat on 21 December 2011 and had taken him away. In any event, the FMS was a structural division of the Ministry of the Interior and thus part of the Government of the Russian Federation. From the information made available to the Government after notice of the applicant's case had been given to it, it was clear that the FMS had already been involved in the assessment of the issue of whether he was to be returned to Uzbekistan at the time when the extradition proceedings were pending. Accordingly, it was for those State bodies, including the Russian GPO and the Office of the Representative of the Russian Federation at the European Court of Human Rights, to ensure that the information on the Court's application of the interim measure was brought to the attention of all authorities involved.

197. The applicant further stressed that the extraordinarily precipitated enforcement of the deportation order against him and the fact that the authorities hid him from his lawyer on that day strongly contradicted the Government's assertion that the domestic bodies had not intended to act in breach of the interim measure and Article 34 of the Convention. Lastly, he contested their argument that the scope of the interim measure had been limited to extradition. He averred that it had been aimed at preventing the irreparable damage which he risked suffering if he was removed, in any

form, to his country of origin, at allowing him to pursue the proceedings before this Court, and at securing him effective Convention protection.

198. The Court reiterates that Article 34 requires the Contracting States to refrain not only from exerting pressure on applicants but also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure (see *Mamatkulov and Askarov*, cited above, § 102, and *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009).

199. In cases such as the present one, where it is plausibly asserted that there is a risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention, the object of an interim measure is to maintain the status quo pending the Court's determination of the justification for the measure. Thus, being intended to ensure the continued existence of the matter that is the subject of the application, the interim measure goes to the substance of the Convention complaint. As far as the applicant is concerned, the result that he or she wishes to achieve through the application is the preservation of the asserted Convention right before irreparable damage is done to it. Consequently, the interim measure is sought by the applicant, and granted by the Court, in order to facilitate the "effective exercise" of the right of individual petition under Article 34 of the Convention in the sense of preserving the subject matter of the application when that is judged to be at risk of irreparable damage through the acts or omissions of the respondent State (see *Mamatkulov and Askarov*, cited above, § 108; *Shamayev and Others*, cited above, § 473; and *Aoulmi v. France*, no. 50278/99, § 103, ECHR 2006-I (extracts)).

200. Accordingly, and the Court considers it particularly important to emphasise this, indications of interim measures given by it permit it not only to carry out an effective examination of the application but also to ensure that the protection afforded to the applicant by the Convention is effective; such indications subsequently allow the Committee of Ministers to supervise execution of the final judgment. Such measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (see *Mamatkulov and Askarov*, cited above, § 125; *Shamayev and Others*, cited above, § 473; and *Aoulmi*, cited above, § 108).

201. Turning to the circumstances of the present case, the Court observes that on 19 November 2010 it indicated to the Russian Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice (see paragraph 4 above).

202. Having regard to the Government's submissions, the Court observes that whilst they acknowledge that the applicant was deported in breach of the interim measure indicated by the Court and that this was contrary to Article 34, they submit that the FMS authorities that carried out

the deportation order were not aware of the application of Rule 39 of the Rules of Court and it was not their intention to act in non-compliance with Article 34, and that, in any event, the impugned measure only concerned the applicant's removal in the form of extradition.

203. The Court would note in the first place that it is not persuaded by the Government's allegation that the FMS was not aware of the interim measure indicated to the Government. Even assuming that the FMS officials had not known about it prior to the day of the applicant's deportation – a hypothesis favourable to the Government – it can be seen from the applicant's detailed submissions concerning the events of 21 December 2011 that he not only told them that he could not be returned to Uzbekistan because the European Court had applied Rule 39 in his case but also showed them a copy of the Court's letter to that effect. It further seems that the applicant's lawyer, who was able to participate in their telephone conversation via conference mode, also alerted them to that fact (see paragraph 62 above). Having regard to the fact that these submissions were not contested by the Government, the Court is unable to accept their argument in this regard as convincing.

204. In so far as the Government claimed that the domestic authorities had not intended to act in non-compliance with their obligations under Article 34, the Court reiterates that the intentions underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with (see *Paladi*, cited above, § 87). In any event, in this connection the Court cannot but take note of the precipitated manner in which the applicant's deportation was carried out, as well as his submissions, uncontested by the Government, to the effect that he was prevented from contacting his lawyer after he had been taken from his flat, and that the authorities, in fact, did everything to conceal his whereabouts from his lawyer and relatives and flatly denied the fact of his detention at the FMS premises when the lawyer contacted them, although the Government acknowledged in their submissions to the Court that he had been held there before being taken to Pulkovo airport (see paragraphs 62, 64 and 70 above).

205. The Court further points out that its letter informing the Government of the application of Rule 39 of the Rules of Court in the applicant's case did, indeed, state that the applicant should not be extradited to Uzbekistan until further notice (see paragraph 39 above). In this connection it observes that whilst the formulation of the interim measure is one of the elements to be taken into account in its analysis of whether a State has complied with its obligations under Article 34, in making its assessment the Court must have regard not only to the letter but also to the spirit of the interim measure indicated by it (see *Paladi*, cited above, § 91), or, in other words, to the purpose of the measure.

206. Furthermore, in examining a complaint concerning this issue under Article 34, the Court will not re-examine whether its decision to apply interim measures was correct. It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Grori v. Albania*, no. 25336/04, § 184, 7 July 2009, and *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 161, ECHR 2010 (extracts)).

207. Having regard to the principles enunciated above and the circumstances of the applicant's hasty removal, the Court considers that in this type of case, where a risk of irreparable damage to one of the core Convention rights is alleged by the applicant and the interim measure has been applied with a view, among other things, to preserving the status quo and the subject matter of the application, it should not be open to a Contracting State to circumvent the purpose of the interim measure by transferring such individual to a State which is not a party to the Convention, thereby depriving the applicant of its effective protection. The Court notes, moreover, that in the present case this was the country which had sought his extradition.

208. It is true that as a result of the applicant's removal to Uzbekistan the Court is prevented from securing to him the practical and effective benefit of the Convention right asserted, namely to protect him from treatment contrary to Article 3 of which he had been found to face a real risk in the requesting country at the relevant time (see *Labsi v. Slovakia*, no. 33809/08, § 151, 15 May 2012). Indeed, the applicant's transfer to Uzbekistan removed him from Convention protection and frustrated the purpose of the interim measure, which was to maintain the status quo pending the Court's examination of the application and to allow its final judgment to be effectively enforced.

209. Whilst in the present case it appears that the applicant was able, at least at the time when the parties exchanged their additional observations, to maintain contact with his lawyer and family, the Court is concerned by his submission, uncontested by the Government, to the effect that in Uzbekistan he was persistently advised to cut off such communication (see paragraph 76 above). In any event, the fact that the Court was able to examine the applicant's complaints does not prevent an issue arising under Article 34 (see *Shamayev and Others*, cited above, § 517).

210. Lastly, the Court takes into account that the Government, in fact, acknowledged that by deporting the applicant to Uzbekistan, they had failed to comply with their obligations under Article 34 of the Convention.

211. Having regard to the foregoing, the Court concludes that there has been a violation of Article 34 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

212. 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

213. The applicant made no claims in respect of pecuniary damage. As regards non-pecuniary damage, he claimed 30,000 euros (EUR) in respect of the mental suffering he had endured as a result of his removal to Uzbekistan in breach of Articles 3 and 34 of the Convention, as well as in respect of the unlawfulness of his detention, the fact that he had not been informed of the reasons for it or the accusations made against him by the Uzbek authorities, and the fact that he had been unable to obtain the review of the prosecutors' detention orders and that the related proceedings had not been speedy.

214. The Government submitted that, should the Court find a breach of any of the applicant's Convention rights, a finding of a violation would constitute sufficient just satisfaction. They further argued that the amount claimed by the applicant was, in any event, excessive.

215. The Court observes that in the present case it has found a combination of grievous violations of Articles 3, 5 §§ 1, 2 and 4 of the Convention, and established that the respondent Government has failed to comply with its obligations under Article 34 of the Convention. Accordingly, it finds that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the above findings of violations. Therefore, it awards to the applicant the amount claimed, that is, EUR 30,000, in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

### B. Costs and expenses

216. The applicant also claimed EUR 14,766 and 13,747 Russian roubles (RUB) for the costs and expenses incurred in connection with his representation before the domestic courts and this Court, those amounts broken down as follows:

(a) RUB 389,178.9 for 150 hours of work by the lawyer in connection with the applicant's representation before the domestic authorities, comprising, among other things, drafting of legal documents, participation in the applicant's interviews with the migration authorities and the examination of his complaints in the asylum and extradition proceedings

before the courts of first instance and appeal courts, as well as the proceedings concerning his detention, at a rate of EUR 60 per hour;

(b) RUB 207,562.08 for 48 hours of legal drafting of documents submitted to the Court, at a rate of EUR 100 per hour;

(c) RUB 13,747 in respect of travel expenses in connection with the examination of the applicant's appeals against the extradition order before the Supreme Court of Russia in Moscow;

(d) RUB 41,771.869 in respect of postal expenses, calculated as 7% of the costs and expenses incurred.

217. The Government claimed that the costs and expenses incurred in connection with the applicant's representation at the domestic level, as well as the travel expenses, should not be compensated because they were not connected to the proceedings before the Court. They also noted that there were no documents to prove that those expenses, or the postal expenses, had actually been incurred.

218. The Court reiterates that, according to its 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 (see, among many other authorities, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). It also observes that costs and expenses incurred in the domestic proceedings with a view to preventing the alleged violations of the Convention from occurring are also recoverable, in accordance with its case-law (see, for example, *I.J.L. and Others v. the United Kingdom* (just satisfaction), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001).

219. Having regard to the principles mentioned above, the Court disagrees with the Government and finds that the costs and expenses to which the applicant referred as incurred by him at the domestic level were aimed at seeking redress through the domestic legal system for the aforementioned alleged violations. Having furthermore regard to the details submitted by the applicant in support of his claims, including the representation agreements, the lawyer's timesheets and copies of the tickets relating to travel in connection with the examination of the applicant's appeals against the extradition order, the Court considers that those expenses were actually incurred. It notes at the same time that the applicant did not furnish any documents confirming his postal expenses, and whilst it accepts that the present case was rather complex and required a certain amount of research and preparation, it considers nonetheless that these were not required to the extent alleged by the applicant. In sum, having regard to all the materials in its possession, it awards the applicant EUR 11,000 under this head, plus any tax that may be chargeable to the applicant.

### C. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's removal to Uzbekistan;

3. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention in respect of the applicant's detention from 14 July to 15 September 2010;

5. *Holds* that there has been a violation of Article 5 § 2 of the Convention;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's inability to obtain a review of the detention orders of 15 July and 24 August 2010;

7. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 5 § 4 of the Convention about lack of a speedy review of his detention relating to the same proceedings;

8. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

9. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President