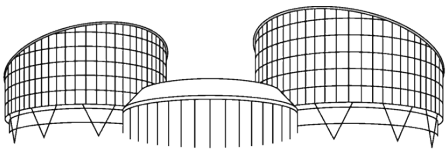

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ERMAKOV v. RUSSIA

(Application no. 43165/10)

JUDGMENT

STRASBOURG

7 November 2013

FINAL

24/03/2014

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

In the case of Ermakov v. Russia,

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 43165/10) 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 Azamatzhon Erkaboyevich Ermakov ("the applicant"), on 2 August 2010.

2. The applicant was represented by Ms Y.Z. Ryabinina, Ms N.V. Yermolayeva, a lawyer practising in Moscow, and Mr Yu.A. Sidorov, a lawyer practising in Nizhniy Novgorod. 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 his extradition to Uzbekistan would entail a violation of Article 3 of the Convention, that no effective domestic remedy was available to him by which to challenge his extradition on that ground, and that his detention pending extradition and the ensuing house arrest had been unlawful, in breach of Article 5 of the Convention. The applicant's representatives further submitted that the applicant had been unlawfully and forcibly transferred to Uzbekistan. They referred to Articles 3 and 34 in respect of the latter complaint.

4. On 22 September 2010 the President of the First Section indicated to the respondent Government that the applicant should not be extradited to Uzbekistan for the duration of the proceedings before the Court (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 4 July 2011 the application was communicated to the Government.

6. On 7 November and 4 December 2012 the President invited the parties to submit further information, and on 11 January 2013 requested further written observations in respect of the applicant's alleged abduction and transfer to Uzbekistan. The parties were also requested to provide information on the progress of the internal inquiry and the applicant's whereabouts once such information was available. In consequence, the parties provided the Court with several further submissions containing information about fresh developments in the case and further observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1972. Until 2 November 2012 he was detained in Nizhniy Novgorod. He is currently held in detention in Andijan, Uzbekistan.

A. The applicant's background and his arrival in Russia

8. Until 2009 the applicant and his family were living in the Zhalokuduk District of the Andijan Region, located in the Fergana Valley of Uzbekistan. He transported goods to the nearby villages in a cart pulled by a donkey. The applicant is a practising Muslim. In 1995 he started performing Salah and attending a mosque.

9. In 2007 the applicant's passport ("the old passport") expired, and, to apply for its renewal, he completed a "form no. 1", a questionnaire containing his personal details and the old passport number. On 29 March 2007 he was issued with a new passport ("the current passport"). The original form no. 1 was filed at the local branch of the Department of the Interior of the Andijan Region, Uzbekistan.

10. According to the applicant, in March 2009 he learned of the arrest of a neighbour with whom he had regularly performed Salah. Being aware of the widespread practice of torture in detention in Uzbekistan, he decided to leave the country for fear of arrest on fabricated charges and torture in custody.

11. On 11 March 2009 the applicant arrived in Russia via the Moscow Domodedovo International Airport ("Domodedovo Airport"). On 23 July 2009 he was issued with a temporary residence permit valid until August 2012. He lived in Dzerzhinsk in the Nizhniy Novgorod Region, until his arrest. His wife and a minor daughter live in Andijan.

B Criminal proceedings against the applicant in Uzbekistan

12. On 26 August 2009 the Investigative Unit of the Andijan Regional Department of the Interior brought criminal proceedings against a group of persons, apparently including the applicant, on suspicion of setting up a criminal group attempting to overthrow the constitutional order of the Uzbek State.

13. On 16 September 2009 the above-mentioned department issued two separate formal statements of charges against the applicant. Both decisions specified that he had been charged *in absentia* with involving minors in criminal activity (Article 127 § 3 (b) of the Criminal Code of the Republic of Uzbekistan ("the UCC")), terrorism (Article 155 § 1 of the UCC), incitement to hatred and hostility giving rise to discrimination on grounds of race and religion by an organised group and by means dangerous to the public (Article 156 § 3), conspiracy to overthrow the Uzbek State's constitutional order (Article 159 § 4), unlawful crossing of the State border (Article 223 § 3 (b)), repeated forgery of official documents and use of the fabricated documents (Article 228 § 2 (a), (b)), setting up a criminal group (Article 242 § 1), producing and disseminating documents containing ideas of religious extremism, separatism and fundamentalism, and threats to national security and public order (Article 244(1) § 3 (a) of the UCC), setting up, managing and participating in extremist, separatist, fundamentalist and other banned organisations (Article 244(2) § 1 of the UCC), and smuggling material disseminating extremist, separatist and radical fundamentalist ideas (Article 246 of the UCC).

14. The first statement of charges, issued in respect of the applicant only, began with an outline of Uzbek State policy in the sphere of the fight against religious extremism and, in particular, referred to the events of 2005 in the Fergana Valley as an armed attempt to seize State power conducted by members of the extremist movement "Akromiya" with the assistance of international terrorist forces and "under the influence of certain States acting on the basis of double standards and seeking to achieve their own geopolitical aims". It further described actions allegedly committed by various individuals identified as members of the criminal group the applicant belonged to. The actions imputed directly to the applicant were described as follows:

> "Ermakov, with a view to studying the works of the leader of the criminal association 'the Islamic Movement of Uzbekistan' ... and having chosen the path of jihad, met in January 2000 with residents of the Dzhalakuduk District of the Andijan Region [six names quoted] and others ... studied the ideas of the religious extremist movement and became member of the extremist movement 'Wahhabi'."

15. In the second statement of charges the investigator listed various actions the applicant had participated in "as a member of a criminal group" or "on the basis of a criminal conspiracy". In particular, he was suspected of

membership of the banned religious movement "Wahhabism", studying materials by the Islamic Movement of Uzbekistan, spreading ideas of religious extremism, disseminating and storing video-materials by the above-mentioned banned religious movements, and providing financial support to members of the criminal group.

16. On 16 September 2009 the Andijan Town Court ordered the applicant's arrest. On the same date his name was put on the cross-border list of wanted persons by the decision of an investigator of the Andijan Regional Department of the Interior. It appears that at some point the applicant was placed on the Interpol Wanted Fugitives List (in the absence of further information, see paragraph 96 below).

C. The extradition proceedings

17. On 14 November 2009 the police arrested the applicant in the Nizhniy Novgorod Region of Russia as a person on the cross-border wanted list. On the same date the Anti-Terrorism Criminal Investigation Unit of the Uzbekistan Department of the Interior confirmed to the Russian authorities the applicant's placement on the cross-border wanted list and its intention to request his extradition, enclosing a petition for the applicant's arrest and placement in custody, the first statement of charges, his passport details, and a copy of the form no. 1.

18. On 1 December 2009 the applicant wrote a letter to the prosecutor's office of the Nizhniy Novgorod Region stating that he had left Uzbekistan after the arrest of his neighbour, out of fear that he would also be arrested, tortured and convicted on fabricated charges. He stated that he had gone to Russia in order to earn money, firmly denied all charges against him as fabricated and asked the Russian authorities not to send him to Uzbekistan, referring to the risk of torture in detention.

19. On 10 December 2009 the Deputy Prosecutor General of Uzbekistan sent a request for the applicant's extradition to Uzbekistan to the Russian Prosecutor General's Office. The request contained assurances that the applicant would be prosecuted only for the offences for which he was being extradited, that he would be able to freely leave Uzbekistan when he had stood trial and served any sentence, and that he would not be expelled or extradited to a third State without the consent of the Russian authorities. The second statement of charges was enclosed with the request.

20. On 18 March 2010 the Deputy Prosecutor General of Uzbekistan reiterated the earlier assurances provided in respect of the case and further assured his Russian counterpart that the applicant would not be prosecuted on political, racial or religious grounds, that he would not be subjected to torture or other inhuman or degrading treatment, and that the guarantees of a fair trial would be observed in the criminal proceedings against him.

21. On 12 April 2010 the Russian Prosecutor General's Office ordered the extradition of the applicant to Uzbekistan on account of the charges under Articles 159 § 3 (b) and 242 § 1 of the Criminal Code of the Republic of Uzbekistan (attempt to overthrow the Uzbek State's constitutional order, participation in and direction of religious, extremist, separatist and other prohibited organisations), Article 127 § 3 (b) (involvement of minors in criminal activity), Article 155 § 1 (terrorism), Article 156 § 3 (incitement to hatred and hostility giving rise to discrimination on grounds of race and religion by an organised group and by means dangerous to the public), Article 159 § 4 (conspiracy to overthrow the Uzbek State's constitutional order), Article 223 § 3 (b) (unlawful crossing of the State border), Article 242 § 1 (setting up a criminal group), and Article 244 (1) § 3 (a) of the UCC (producing and disseminating documents containing ideas of religious extremism, separatism and fundamentalism, and threats to national security and public order). By the same decision the Prosecutor General's Office refused the extradition request in so far as it concerned the charges under Article 246 of the UCC (forgery), stating that the alleged offence had been committed by a different person, Article 228 § 2 (a) and (b) (smuggling material disseminating extremist, separatist and radical fundamentalist ideas), since the offence was not punishable under Russian law, and Article 244(2) § 1 of the UCC (participating in extremist, separatist, fundamentalist and other banned organisations), since the charge was subsumed by another one in accordance with Russian law.

22. On 26 April 2010 the applicant and his lawyer sought judicial review of the extradition order. They submitted, in particular, that it was unlawful since it had been issued before the applicant's request for refugee status had been determined by the domestic authorities. They argued that the "Wahhabism" movement was not an organisation banned in Russia and the documents submitted by the Uzbek authorities lacked information on the applicant's membership of a religious organisation after 2009. They pointed out that, according to the decision of 16 September 2009, the applicant was charged with several offences as the perpetrator. However, the facts outlined in the statement of charges concerned acts allegedly committed by several other persons, but not by the applicant. They stated that the applicant had been charged with an attempt to overthrow the State order of his home country and therefore his criminal prosecution was politically motivated. Finally, referring to the Court's extensive case-law on the matter and various reports by international observers, the defence stressed that the use of torture and ill−treatment against detainees in Uzbekistan was systematic and went unpunished by the law-enforcement and security authorities, and that the applicant ran an individualised risk of ill-treatment in the event of extradition.

23. On 8 July 2010 the Nizhniy Novgorod Regional Court upheld the extradition order as lawful and well-founded. The applicant was present,

represented, and assisted by an interpreter. During the hearing the applicant maintained that he had a limited command of Russian, and that he had decided to leave Uzbekistan after his neighbour's arrest out of fear of arrest and torture. He had not applied for refugee status in Russia immediately after his arrival there, since he had at first been unaware of the charges against him and then he had thought that such information would lead to his expulsion from Russia. He had only made such an application after receiving his lawyer's advice. The lawyer maintained his grounds for appeal and pointed out that the case-file did not contain the first statement of charges but only the second, which was different from the initial one.

24. The defence further requested the admission of Ms Ryabinina as the applicant's defender (*«защитник»*), since she could provide an expert opinion on the situation in Uzbekistan and law-enforcement practice in similar cases. The court rejected that request, finding that the applicant was represented by a professional lawyer, and that Ms Ryabinina was not a member of the applicant's family, had only a technical education and did not practise "in the law-enforcement sphere on extradition matters".

25. The Regional Court observed that the applicant did not have refugee status in Russia; he had failed to either apply for it in a timely manner or to advance a plausible explanation for that omission. The court observed that on 19 April 2010 the Nizhniy Novgorod Federal Migration Service (FMS) had refused to accept his request for an examination on the merits (see paragraph 33 below), noting that the decision "was, in substance, correct" and that it had not been appealed against within the time-limits set out in the domestic law. The court noted, without giving further details, that there was no evidence that the applicant had been, or would be, prosecuted in Uzbekistan on political or religious grounds. Turning specifically to the allegation of persecution on political grounds, the court rejected it as having no legal basis. The court noted that, in accordance with the reservation of the Russian Federation on ratification of the European Convention on Extradition, Russian law did not contain a definition of a "political offence" and the list of offences the Russian Federation would not consider as "political" or "connected with political offences" was not exhaustive. Finally, the court found no formal obstacles to the applicant's extradition and noted that the Uzbek authorities had provided assurances in the applicant's case.

26. On 14 July 2010 the defence appealed against the Regional Court's decision, arguing that the first-instance court had omitted to make a legal assessment of the evidence submitted in support of the argument concerning the risk of ill-treatment in custody. The defence pointed to various discrepancies between the two statements of charges constituting the basis for the arrest request and the formal extradition request, respectively, and concluded that the charges had been fabricated. They further argued, on the basis of the first statement of charges, that it did not contain information

about offences committed by the applicant but referred to suspicions in respect of other persons. They maintained that the decision to extradite the applicant had been taken unlawfully in the absence of a final ruling in the refugee status proceedings, and also challenged the refusal to admit Ms Ryabinina as the applicant's defender.

27. On 19 July 2010 the applicant's lawyer lodged objections regarding the court hearing transcript, stating, in particular, that the following information had not been included therein: the applicant's request for a letter from the United Nations High Commissioner for Refugees to be admitted to the case file (see paragraph 35 below), submissions regarding the applicant's limited command of Russian, and a request for a legal assessment of the charges against the applicant. At some point the Regional Court rejected these objections.

28. At some point the applicant' lawyer lodged a request with the office of the Prosecutor General of the Russian Federation for clarifications as regards the significant discrepancies in the two statements of charges against the applicant. On 27 July and 16 August 2010 the Prosecutor General's Office informed the applicant that, *inter alia*, it had requested clarifications on the matter from the office of the of the Privolzhskiy Department of Transport prosecutor. In the meantime, on 3 August 2010 the Office of the Prosecutor General office of the Russian Federation received a letter dated 26 July 2010 from their Uzbek counterpart specifying that the applicant's extradition was sought only in connection with the offences listed in the formal request for extradition (apparently, those listed in the second statement of charges) and asking for the first statement of charges forwarded by the Uzbek authorities on the date of the applicant's arrest in Russia to be disregarded.

29. On 22 September 2010 the Supreme Court of the Russian Federation rejected the applicant's appeal against the judgment of 8 July 2010 and upheld the extradition order and the Regional Court's decision as lawful and well-founded. In reaching that conclusion, the Supreme Court referred to the assurances by the Uzbek authorities and noted that the Ministry of Foreign Affairs of the Russian Federation had not pointed out any obstacles to the applicant's extradition to Uzbekistan. The court found no evidence that the applicant had been, or would be, prosecuted on political or religious grounds and observed that the applicant neither had refugee status nor could be regarded as a person seeking such status in the Russian Federation. As regards the alleged discrepancies in the statements of charges provided by the Uzbek authorities to their Russian counterparts, the Supreme Court rejected that argument as irrelevant, since it was not the task of the domestic courts, or the prosecutor's office, to decide on the applicant's guilt in the extradition proceedings. The Supreme Court rejected the request for Ms Ryabinina to be admitted as a defender and questioned as a specialist,

upheld the Regional Court's refusal to do so and endorsed its reasoning in that respect. The extradition order became final.

D. Refugee status proceedings

30. On 10 December 2009 the applicant lodged a request for refugee status in Russia with the Nizhniy Novgorod FMS on the ground of fear of persecution because of his religious beliefs. He submitted that the accusations against him were unfounded and that he faced torture and other forms of ill-treatment if extradited to Uzbekistan. He had left Uzbeksitan after the arrest of a neighbour with whom he had regularly attended the mosque. He referred to reports by the UN agencies issued in 2006-2007 and reports by respected international NGOs demonstrating that torture was widespread in Uzbekistan and confessions were often extracted from defendants under duress. He also referred to the Court's case-law, in particular the case of *Ismoilov and Others v. Russia* (no. 2947/06, 24 April 2008), concerning extradition to Uzbekistan. He specified that he had not applied for refugee status immediately after his arrival in Russia because of his poor command of Russian and also because he had "not been aware of such a possibility".

31. By a letter of 25 December 2009 the Nizhniy Novgorod FMS advised the applicant that it could not examine his application since he did not meet the "refugee" criteria set out in the domestic law. On 15 January 2010 the applicant challenged that refusal before the Federal Migration Service of the Russian Federation ("the Russian FMS"), submitting that the Nizhniy Novgorod FMS had failed to establish the facts of the case and, furthermore, that he had left Uzbekistan before the opening of the criminal case against him in his home country.

32. On 8 April 2010 the Russian FMS notified the applicant that it had instructed the Nizhniy Novgorod FMS to examine his request.

33. By a letter of 21 April 2010 the Nizhniy Novgorod FMS informed the applicant that on 19 April 2010 it had refused to examine the complaint, since the applicant did not meet the "refugee" definition.

34. On 14 May 2010 the applicant appealed against that decision to the Russian FMS, referring to the regional migration authority's failure to assess the risk of ill-treatment. In addition to his earlier submissions he provided references to articles from the local press published in January-May 2010 concerning the continuing practice of ill-treatment of detainees in Uzbekistan. The appeal was received by the Russian FMS on 15 June 2010. On 12 July 2010 the Russian FMS accepted the applicant's complaint and remitted it to the regional migration authority for examination on the merits.

35. In the meantime, on 6 July 2010 the Moscow Office of the United Nations High Commissioner for Refugees (UNHCR) informed the defence

that the applicant met the criteria established by its statute and was eligible for international protection under its mandate.

36. On 12 August 2010 the Nizhniy Novgorod FMS rejected the applicant's request for refugee status by a letter received by the applicant on 16 August 2010, citing two grounds for the refusal: (1) failure to meet the "refugee" definition; and (2) the inapplicability of the Refugee Act to individuals who had "committed a serious criminal offence of a non-political nature outside the Russian Federation before being admitted to the Russian Federation as a person requesting refugee status".

37. On 23 September 2010 the applicant appealed against that refusal, maintaining that the charges had been fabricated and pointing to the risk of ill-treatment, with 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. He also requested an extension of the one month time-limit for lodging his appeal, since he had allegedly not been able to understand the contents of the letter of 12 August 2010 because of his poor command in Russian, and his lawyer had explained the grounds for the refusal to him only on 21 September 2010.

38. On 20 October 2010 the Russian FMS rejected the appeal. It noted that, according to information from the Russian Ministry of Foreign Affairs, the human rights situation in Uzbekistan was "ambiguous". The dissemination of ideas of religious extremism and separatism constituted a criminal offence in that country. After the defeat of the Andijan uprising the importing of Islamic literature had been proscribed. The Uzbekistan leadership had an expressed intention to fine and put in jail individuals who worshipped outside the areas designated for that purpose. The Uzbek authorities considered that members of the Islamic Movement of Uzbekistan and Akromiya, a branch of Hizb-ut-Tahrir, had actively participated in the Andijan events of 2005, and criminal proceedings against 121 persons, including ten members of Akromiya, were underway. Turning to the applicant's case, the FMS noted that the applicant had failed to apply for asylum in due time after his arrival in Russia and had referred to his poor command in Russian to justify that failure. However, the migration authority noted that, first, the applicant had performed military service in Sakhalin, Russia, in 1990-1992, which would have been impossible without an adequate knowledge of Russian, and second, he had received a temporary resident permit for Russia in July 2009. Thus, the Russian FMS concluded that the applicant had provided false information about his language proficiency and that fact "undermined confidence in the applicant and in the remainder of his submissions". The FMS concluded as follows:

> "Having analysed the applicant's submissions and the information provided by the Ministry of Foreign Affairs and the Federal Migration Service of the Russian Federation on the situation in Uzbekistan and the activities of banned religious

> organisations, [the Russian FMS] finds no grounds to consider that the applicant would be persecuted on racial, religious, nationality, social or political grounds in the event of his return [to the requesting country]."

39. On 7 December 2010 the applicant challenged that decision in court. In written submissions and an oral statement made during the court hearing the defence reiterated the applicant's fear that, in the event of extradition to Uzbekistan, he would be subjected to torture with a view to extracting a confession from him in respect of offences he had not committed. He further stated that the FMS had failed to duly assess that risk. As to his limited command of Russian, he stated that he had performed his military service 18-20 years prior to his arrest, that fluent Russian had not been necessary for obtaining the temporary residence permit and, furthermore, that his difficulty in understanding Russian had been confirmed in several hearings concerning his extradition and the extensions of his pre-trial detention, where the courts had heard him in person and had agreed that he needed an interpreter's assistance.

40. On 5 March 2011 the Basmnnyy District Court of Moscow rejected that appeal. The court reiterated that the applicant had not complained of a risk of persecution in Uzbekistan and had not raised his wish to remain in Russia as a refugee until his arrest. His allegations of persecution for attending a mosque were ill-founded, given that the majority of the population of the destination country freely practised Islam. In addition, the court noted that the destination country had signed various international human rights treaties concerning, in particular, the protection of refugees. The court further endorsed the Russian FMS's decision as lawful, noting the applicant's failure to adduce "convincing arguments to support his allegations of fear of unlawful persecution on religious grounds".

41. The applicant appealed, maintaining the claims summarised in paragraph 39 above and submitting in addition that the first-instance court had failed to assess the risk on the basis of all available information, as well as to address his counter-arguments to the FMS's conclusion regarding his command of the Russian language.

42. On 24 June 2011 the Moscow City Court upheld the judgment of 5 March 2011. The appeal court found that the migration authority had taken its decision in compliance with the existing procedure and that the first-instance court had duly assessed the circumstances of the case. The City Court endorsed the conclusion that no evidence of the applicant's persecution on religious grounds had been adduced, and noted that the defence had not referred to any new facts capable of altering that conclusion. The court also referred to several international human rights treaties signed by Uzbekistan and noted that on 22 October 2009 the European Union had lifted various sanctions, including an arms embargo, against that country on account of progress achieved in the human rights sphere and the abolition of the death penalty there.

E. The applicant's arrest, detention and house arrest pending extradition

1. The applicant's detention pending extradition

(a) Arrest and detention up to 8 July 2010

43. Following the applicant's arrest on 14 November 2009 (see paragraph 17 above), on 15 November 2009 the Nizhniy Novgorod transport prosecutor ordered his placement in custody pending extradition. On 18 December 2009 the Nizhniy Novgorod Kanavinskiy District Court rejected the applicant's appeal against the detention order. On 12 March 2010 the Nizhniy Novgorod Regional Court upheld decision on appeal.

44. On 17 December 2009, upon receipt of the formal request for the applicant's extradition (see paragraph 19 above), the Nizhniy Novgorod deputy transport prosecutor, by a separate decision, again ordered the applicant's detention pending extradition. It is unclear whether the decision was appealed against.

45. It appears that at some point the Nizhniy Novgorod transport prosecutor's office asked the court to extend the applicant's detention.

46. On 30 December 2009 the Kanavinskiy District Court examined that request, found that the latest extension of the applicant's detention had been granted on 15 November 2009 [sic], and the applicant could be held in custody on the basis of a prosecutor's order for a period not exceeding two months. The court noted the receipt of the formal extradition request from the Uzbek authorities (see paragraph 19 above), observed that the extradition proceedings had not been completed, and decided that the applicant should remain in custody until 14 March 2010.

47. The applicant's lawyer appealed, arguing, *inter alia*, that the applicant had been held in custody unlawfully since 14 November 2009.

48. On 5 March 2010 the Nizhniy Novgorod Regional Court dismissed the appeal and endorsed the extension of 30 December 2009.

49. On 4 March 2010 the Kanavinskiy District Court of Nizhniy Novgorod Nizhniy Novgorod extended the applicant's detention pending extradition until 14 May 2010. On 26 May 2010 the Nizhniy Novgorod Regional Court rejected the applicant's appeal of 9 March 2010 and upheld the extension order.

50. On 7 May 2010 the Kanavinskiy District Court further extended the applicant's detention until 14 July 2010. The decision was upheld on appeal by the Nizhniy Novgorod Regional Court on 15 June 2010.

(b) The extension order of 8 July 2010 of the Nizhniy Novgorod Regional Court and the appeal proceedings

51. On 8 July 2010 the Nizhniy Novgorod Regional Court, when examining the applicant's appeal against the extradition order (see paragraphs 23-25 above), authorised the extension of the applicant's detention until 14 November 2010. The court found no reason to apply a preventive measure other than detention, since it was necessary to ensure the applicant's extradition.

52. On 3 September 2010, by an additional statement of appeal against the judgment of 8 July 2010, the defence challenged the Regional Court's findings in so far as they concerned the extension of the detention. He complained, in particular, about the overlap of the extension with the ruling of the Kanavinskiy District Court of 8 July 2010 (see paragraph 54 below).

53. On 22 September 2010 the Supreme Court of Russia, deciding on the applicant's appeal against the extradition order (see paragraph 29 above), upheld the entirety of the lower court's findings without addressing the detention issue separately.

(c) The extension order of 8 July 2010 of the Kanavinskiy District Court and the appeal proceedings

54. On 8 July 2010 the Kanavinskiy District Court, by a separate decision, extended the applicant's detention until 14 September 2010.

55. On 10 August 2010 the Nizhniy Novgorod Regional Court upheld the extension on appeal. The Regional Court found there was no contradiction between the two decisions of 8 July 2010 issued by the District Court and the Regional Court since the first one concerned the applicant's detention pending extradition, whilst the second one dealt with the lawfulness of the extradition order.

(d) The extension order of 2 November 2010 and the appeal against it

56. On 19 October 2010 the transport prosecutor's office lodged an application for a further extension of the applicant's detention with the Nizhniy Novgorod Regional Court.

57. On 2 November 2010 the Nizhniy Novgorod Regional Court examined the matter and granted an extension until 14 May 2011. According to the hearing transcript, the applicant requested the court to change the preventive measure in respect of him to one of house arrest, and gave the address of a relative in Nizhniy Novgorod where he could reside pursuant to the application of such a measure. He stated that before his arrest he had lived in Nizhniy Novgorod and not in Dzershinsk, the place of his formal residence registration. He did not remember the exact address in Nizhniy Novgorod he had resided at. The applicant's lawyer stated at the hearing that the applicant had introduced an application with the Court and that an interim measure had been applied to his case under Rule 39 of the

Rules of Court. The lawyer pointed to the similarly between the applicant's case and several others previously examined by the Court (for instance, the case of *Ismoilov and Others,* cited above) and stated that the applicant had a good chance of winning his case in Strasbourg. The lawyer submitted that "there exist[ed] legal grounds for decreasing the amount of compensation, and even reducing it to zero" if the preventive measure in respect of the applicant was changed to a milder one. The lawyer provided a full address in Nizhniy Novgorod where the applicant could be placed under house arrest and specified that the applicant himself had by mistake cited the wrong street name.

58. When granting the extension, the Regional Court observed that the circumstances requiring the applicant's detention remained unchanged. The court noted that the extradition order in respect of the applicant had indeed become final but the extradition had been suspended pursuant to the application of Rule 39 by the Court, and therefore the extradition order could not be enforced. However, there existed a risk of the applicant's absconding if he was released. The court noted that the applicant was wanted for particularly serious offences, had been hiding from the Uzbek authorities, and measures were being taken to ensure his extradition which involved the application of international treaties; therefore his case should be considered exceptional. His detention was in accordance with the domestic law. Various case documents demonstrated the reasonableness of the suspicion against him as regarded the well-foundedness of the accusations brought by the Uzbek authorities, but the Regional Court was not competent to decide on that matter. It concluded that the extension of the applicant's detention was in compliance with Article 5 § 1 (f) of the Convention. The court further rejected the possibility of changing the preventive measure to house arrest, since the applicant had been unable to indicate a specific address where he could reside if such a measure was applied, or to provide any further details in support of his petition.

59. On 8 November 2010 the applicant appealed against the decision. In particular, he challenged the Regional Court's reference to the gravity of the charges against him and the exceptional nature of the case as immaterial. With reference to the *Chahal* case (see *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V), he stated that no action had been taken with a view to his extradition since 2 September 2010, when the extradition order had become final, and the Regional Court had failed to indicate any specific measures to be taken to enforce the extradition order after that date. He drew the court's attention to contradictory documents submitted by the Uzbek authorities and submitted that the charges were fabricated and unfounded.

60. On 14 January 2011 the Supreme Court of the Russian Federation dismissed the applicant's appeal. The court endorsed the first-instance court's reasoning as lawful and well-founded. In particular, it upheld the

Regional Court's findings as to the gravity of the charges against the applicant, the possibility of his absconding or obstructing justice, and the exceptional nature of his case. The Supreme Court observed that the lower court had reached its conclusions on the basis of all available material, including the information on the application pending before the European Court. The court further upheld as reasonable the refusal to place the applicant under house arrest, since the address of his registration was no longer his place of residence, he had failed to give his latest place of residence in Nizhniy Novgorod, and he had been unable to provide either an address where he could he held under house arrest or any other details.

2. The applicant's house arrest

61. On 13 May 2011 the Kanavinskiy District Court changed the preventive measure in respect of the applicant to house arrest, on account of the expiry of the maximum term for his detention pending extradition and in order to ensure the applicant's extradition, which was suspended at the time pursuant to the application of the interim measure by the Court. The applicant and his representative were present at the hearing. The court referred, in particular, to Articles 107 and 109 of the Code of Criminal Procedure of the Russian Federation ("the CCrP"). The house arrest order read as follows:

> "... to prohibit [the applicant] from leaving his permanent place of residence at the address [...], communicating, without an investigator's prior consent, with suspects, accused, victims or other participants in the criminal case, and from sending and receiving correspondence, or using any means of communication."

62. The court specified that the local transport prosecutor's office and the Nizhniy Novgorod Department of the Federal Security Service was to ensure supervision of the applicant's compliance with the restrictions imposed. The court further ordered the applicant's immediate release from detention and specified that the decision could be appealed against in the Nizhniy Novgorod Regional Court within three days, and that the applicant could participate in the appeal hearing if he chose to appeal.

63. The applicant did not appeal against the house arrest order.

64. On 17 May 2011 the applicant's lawyer lodged a petition *(ходатайство)* under Articles 119 and 120 of the CCrP with the Nizhniy Novgorod transport prosecutor asking him "to lodge a petition with a court" for the discontinuation of the applicant's house arrest. Referring to Articles 107, 108 and 109 of the CCrP, the lawyer submitted that the period the applicant had spent in detention should be counted towards the term of the house arrest, pointed out that the maximum period for the applicant's detention had expired on 14 May 2011, and claimed that further application of the preventive measure to him was therefore unlawful.

65. On 20 May 2011 the transport prosecutor's office notified the applicant of an extension of the time-limit for the examination of his request until 26 May 2011.

66. On 26 May 2011 Ms L., the deputy transport prosecutor of the Privolzhskiy Region, rejected the applicant's request – which she referred to as "a request to bring an extraordinary appeal" *(«ходатайство о принесении протеста»)* – against the judgment of 13 May 2011. She noted that the court had examined all available material on the extradition procedure and taken a reasonable and lawful decision to place the applicant under house arrest in order to ensure his extradition, that there was no reason to change the preventive measure, and that the domestic law did not specify a maximum time-limit for house arrest. A copy of the decision was submitted to the Court by the Government. It appears that the applicant and his lawyer did not receive it.

67. By a letter of 26 May 2011 Mr D., Head of the Supervision Department of the Privolzhskiy transport prosecutor's office, informed the applicant that there were no grounds to bring an extraordinary appeal and cited the same reasons as in the above decision.

68. On 15 June 2011 the applicant challenged D.'s refusal to request his release in the Kanavinskiy District Court under Article 125 of the CCrP.

69. On 7 July 2011 the Kanavinskiy District Court rejected a complaint by the applicant about "the refusal to bring an application for a change of the preventive measure in respect of the applicant", noting that the applicant had complained about the actions of D., who had not taken any decisions in the applicant's case, the refusal having in fact been issued by L. The applicant did not appeal against that decision.

70. On 1 August 2011 the Nizhniy Novgorod deputy transport prosecutor discontinued the applicant's house arrest on account of his placement in custody on 5 July 2011 in connection with a criminal case against him in Russia (see paragraphs 73-74 below).

71. On 6 September 2011 the applicant brought a civil action against the transport prosecutor's office under Articles 254-256 of the Code of Civil Procedure, requesting the court to order the transport prosecutor's office to quash the refusal of 26 May 2011.

72. On 13 September 2011 the Kanavinskiy District Court refused to examine the civil complaint against the impugned prosecutor's decision, finding that the dispute at stake fell within the province of criminal rather than civil procedural law. It appears that the applicant did not appeal.

F. Criminal case against the applicant in Russia and his new arrest and detention

73. According to the official account of the events, on 1 July 2011 the applicant was stopped by police on the street in Nizhniy Novgorod while

carrying a hand grenade in the pocket of his jeans. According to the applicant, the grenade had been planted on him by the police. Criminal proceedings were brought against him on suspicion of the illegal procurement, storage and possession of arms. On 1 and 4 July he was questioned in respect of the incident.

74. On 5 July 2011 the applicant was arrested and placed in pre-trial detention in the Nizhniy Novgorod IZ 52/1 detention facility ("SIZO-1") pending the investigation of the above criminal case. His detention was extended several times by the domestic courts.

75. According to the applicant's representatives' submissions to the domestic authorities (see paragraph 104 below), the applicant's personal belongings, including his money, were held in trust for him by Mr Sidorov, his representative in the domestic proceedings and before this Court.

76. On 7 September 2011 the Nizhniy Novgorod Kanavinskiy District Court convicted the applicant as charged and sentenced him to one year and four months' imprisonment.

77. The applicant appealed against the conviction and the appeal hearing was scheduled for 23 November 2012. He remained in detention in SIZO-1 pending the examination of his appeal. On 2 November 2012 the applicant was released from detention (see paragraphs 83-88 below).

78. On two occasions, that is, on 23 November and 25 December 2012, the Nizhniy Novgorod Regional Court adjourned the appeal hearings because of the applicant's absence and because he had not been properly notified of the examination of his case (see paragraph 124 below for details). On 29 January 2013 the Regional Court upheld the conviction in the applicant's absence.

G. The applicant's alleged abduction and transfer to Uzbekistan

1. Background information and the underlying context

(a) Measures taken by the Government in response to the application of Rule 39

79. In the wake of the application of the interim measure under Rule 39 in the applicant's case on 22 September 2010 (see paragraph 4 above), the Government submitted on 4 October 2010 that the Russian authorities had taken steps to ensure that the applicant would not be extradited to Uzbekistan until further notice. On 30 November 2012 the Government submitted that at some point the Privolzhskiy regional transport prosecutor's office and the prosecutor's office of the Nizhniy Novgorod Region had received all necessary orders to take additional measures for non-admission of the forced transfer of the applicant to Uzbekistan.

(b) The applicant's written statement of 2 July 2011

80. On 2 July 2011 the applicant produced a written statement to his lawyer to the effect that he wished to maintain his case before the Court and if ever he claimed otherwise, it would mean that he had changed his position under pressure.

(c) Letter of 25 January 2012 of the Registrar of the Court

81. On 25 January 2012 the Registrar of the Court sent a letter to the Russian Government on behalf of the President of the Court in connection with another case, expressing his profound concern at the repeated allegations concerning the secret transfer of applicants from Russia to Tajikistan in breach of interim measures applied under Rule 39 of the Rules of Court. Referring to this situation as worrying and unprecedented, the letter invited the Russian Government to provide the Court with exhaustive information about any follow-up given to the incidents in Russia. It also drew the authorities' attention to the fact that interim measures continued to apply in twenty-five other cases concerning extradition and expulsion, including the present case. As an indication of the seriousness with which he viewed this turn of events, the President asked that the Chairman of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General of the Council of Europe be informed immediately (see the full text of the letter quoted in *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 52, 25 April 2013).

82. According to the Government's submissions in reply to that letter made in another case pending before this Court, on 3 February 2012 the Office of the Representative of the Russian Federation at the Court informed the Prosecutor's General's Office, the Ministry of the Interior, the FMS and the Federal Security Service of the interim measures issued by the Court.

2. The applicant's disappearance following his release from SIZO-1 in Nizhniy Novgorod on 2 November 2012

83. On 26 October 2012 Mr Sidorov, the applicant's lawyer, visited the applicant in SIZO-1, where he was serving his sentence of imprisonment (see paragraph 76 above). According to Mr Sidorov, the applicant expressed a fear of being apprehended and transferred to Uzbekistan immediately after release from custody. Allegedly, he had expressed similar concerns in his earlier conversations with the lawyer. The applicant promised to telephone Mr Sidorov immediately after his release.

84. The applicant's term of imprisonment was due to end on 5 November 2012. In accordance with Article 173 of the Code of Execution of Sentences of the Russian Federation, in cases where a detainee's term of imprisonment ends on a national holiday, the person is to be released on the

day immediately before the holiday. Thus, the applicant's release was due on 2 November 2012, the last day before a long week-end and national holiday.

85. At 6 a.m. on 2 November 2012, the applicant was released from SIZO-1. According to the release certificate, the applicant's current passport was returned to him upon release.

86. The office hours of the remand facility started at 8 a.m. At some point on 2 November 2012 Mr Sidorov went to SIZO-1 to meet his client. The remand prison authorities did not allow him to see the applicant, explaining that that day was a professional holiday for officers of the prison service[1]. They did not inform the lawyer of the applicant's release.

87. Having received no telephone call from the applicant on the date of his expected release or later, on 6 November 2012 (the next working day after the national holiday and long week-end in Russia) Mr Sidorov again went to SIZO-1 to enquire about his client. He was informed by the detention facility officers that the applicant had been released from custody on 2 November 2012.

88. The applicant never contacted his representatives after his release, and they have not seen him or been unable to contact him ever since.

3. The applicant's crossing of the State border at Domodedovo Airport in Moscow and his departure for Tashkent

89. In the evening of 2 November 2012, apparently at 11.45 p.m (Moscow time), the applicant departed Domodedovo Airport for Tashkent, Uzbekistan, on board regular flight no. HY-602 operated by Uzbek Airlines (*O'zbekiston havo yo'llari*). The distance between Nizhniy Novgorod and Domodedovo Airport is approximately 420 kilometres. Information provided by the parties about the events of that day may be summarised as follows.

(a) Information submitted by the Government

90. According to a certificate issued on 15 November 2012 by the Border Control Department of the Federal Security Service of Russia, on 2 November 2012 the applicant left Russia by the above-mentioned flight, having "used his Uzbek passport, no. [the number of the current passport] to buy plane tickets".

91. On 30 November 2012 the Government submitted that, according to the "Central Database of Aliens" of the Federal Migration Service, the applicant crossed the Russian State border at the checkpoint in

1. According to the order of 14 September 2006 N 617 by the Head of the Penitentiary System of the Russian Federation, a professional holiday for officers of remand centres and prisons is celebrated on 31 October each year.

Domodedovo Airport. They have not furnished any document in support of that submission.

92. On 4 December 2012 the Court asked the Government to specify the means of transport used by the applicant to get from Nizhniy Novgorod to Moscow on 2 November 2012, to provide the exact times of his transfers on that date, and to submit documents in support, such as, for instance, the relevant records from an airline company, or the train company, used by the applicant. No such information has been provided by the Government to date. On 11 February 2013 they submitted, without providing further details or documents, that the applicant's name was not in the electronic database of persons on federal and local wanted lists – the "Search-Highway" («*Розыск-Магистраль*»).

93. On 3 May 2013 the Government submitted that the plane ticket had been issued in Tashkent on the basis of the "form no. 1". The applicant had checked in for the flight and departed for Tashkent alone. There was no information that he had been escorted by any other person.

(b) Information submitted by the applicant's representatives

94. Referring to the release certificate of 2 November 2012 (see paragraph 85 above), the applicant's representatives submitted that the only document in the applicant's possession on the date of his release had been his Uzbek travel passport, and that he had had no money, credit cards or winter clothes with him.

95. According to the information provided by Uzbek Airlines, as summarised in the decision not to bring criminal proceedings of 11 March 2013 (see paragraph 122 below):

> "... the flight ticket for Mr Ermakov was issued in Tashkent on the basis of a "registration list *form no. 1*" for Uzbek nationals issued by the Zhalokudukskiy District Department of the Interior of the Andijan Region of Uzbekistan, [on the basis of] the Republic of Uzbekistan passport no. [the old passport number cited]."

96. According to an undated reply by the Russian National Central Interpol Bureau, summarised in the decision of 11 March 2013 (see paragraph 122 below),

> "... on 1 December 2012 the applicant's name was deleted from the Interpol Wanted Fugitives list because of his arrest. On the basis of that information, the search for the applicant in Russia was also discontinued."

4. Other developments and information on the applicant's current whereabouts

(a) The Government

97. The Government in their observations, including their latest submissions of 3 May 2013, have not provided any information about the applicant's whereabouts.

(b) The applicant's representatives

98. The representatives have been unable to contact the applicant since his release and they have not had any information on his whereabouts. They attempted to contact the applicant's relatives in Uzbekistan, but received no reply. They submitted that the relatives could have been intimidated or the applicant could be detained incommunicado. On 18 December 2012 they submitted, with reference to a "confidential source whose identity has not been disclosed because of fears for his security", that the applicant was being held in detention in Andijan, Uzbekistan, but stressed that no official confirmation of that information was available.

99. On 13 March 2013 Amnesty International launched an "urgent action campaign" and issued a statement expressing concerns about the applicant's alleged unlawful abduction, stating that the applicant faced a serious risk of torture. According to the statement, the applicant was "allegedly held in pre-trial detention in Andijan, eastern Uzbekistan".

100. On 17 June 2013 the applicant's representatives submitted a copy of a letter of 4 April 2013 from the Ministry of the Interior of the Republic of Uzbekistan confirming, in reply to a request by an unspecified person or authority, that the applicant was being held in pre-trial detention in remand facility no. UYa-64/14 (*Следственный изолятор УЯ 64/14*) in the Andijan Region of Uzbekistan.

H. Official inquiry and repeated refusals to institute criminal proceedings in respect of the impugned events

1. Information on the progress of the inquiry as submitted by the Government

101. On 30 November and 18 December 2012 the Government informed the Court that an inquiry into the applicant's disappearance was pending and that the authorities did not have any information on the applicant's forced transfer across the Russian border. They enclosed copies of the release certificate and the judgment of 7 September 2012.

102. On 11 February 2013 the Government stated that in December 2012 and on 9 January 2013 the Russian authorities had requested

unspecified law-enforcement bodies and the Ministry of the Interior of Uzbekistan to provide them with information on the applicant's whereabouts. Further, at some point in course of the internal inquiry the video-records from Domodedovo Airport cameras had been requested by the investigators, but the footage was "not available yet". They further stated, without enclosing any documents, that the material in the inquiry file did not contain any information on the applicant's transfer to Uzbekistan against his will and that his name had not been found in the Search-Highway system (see paragraph 147 below).

103. In their latest observations, dated 3 May 2013, the Government stated that the domestic inquiry was still in progress. In particular, at some point the Airline and Water Service of the Moscow Transport Inter-District Investigative Department of the Russian Federation Investigative Committee had been requested to obtain submissions from the crew members of the flight by which the applicant had left Moscow for Tashkent. The Court has received no update on the progress of that request. The Government enclosed copies of the refusals to bring criminal proceedings of 8 February and 11 March 2013 and the respective decisions ordering the quashing of those refusals (see paragraphs 116 and 122 below).

2. The applicant's representatives' complaints to various authorities and the pre-investigation inquiry into the circumstances of the applicant's disappearance

(a) The representatives' complaints to various authorities and the replies they received

104. On 6 November 2012 Mr Sidorov applied to the local police and prosecutor's office requesting the opening of an investigation into the applicant's disappearance. On the same date the applicant's other representatives before the Court informed the Prosecutor General's office, the Federal Security Service and the Ministry of the Interior about the incident and asked the authorities to take urgent measures to establish the applicant's whereabouts, to provide information on the applicant's crossing of the Russian State border, and to open an investigation into the circumstances of his disappearance.

105. On 15 November 2012 the Federal Security Service of the Russian Federation advised Ms Ryabinina that domestic law did not provide for keeping a record of persons crossing State borders. However, the border control services were under an obligation to inform the migration authorities of the entry and departure of foreign nationals to and from the Russian Federation each day. That information constituted the basis for the federal migration record system.

106. Decision no. 94 of the Russian Government of 14 February 2007 on the State Information System of Migration Records did not list the legal

representative of an individual among those entitled to request access to that information system (sections 18-27 of the Decision).

107. On 12 December 2012 Ms Yermolayeva sent an enquiry as to the applicant's whereabouts to the office of the Prosecutor General of Uzbekistan, referring to the information on the applicant's departure for Tashkent provided by the Government. It appears that she did not receive a reply.

(b) First refusal to open criminal proceedings and its quashing

108. On an unspecified date an investigator from police department no. 7 of the Ministry of Internal Affairs in Nizhniy Novgorod opened a pre-investigation inquiry into the circumstances of the applicant's disappearance.

109. On 6 December 2012 the investigator decided not to bring criminal proceedings in respect of the incident. The applicant's representatives have not received a copy of the refusal.

110. On 10 December 2012 the Department of the Interior of the Nizhniy Novgorod Region advised Ms Ryabinina that her complaint about the applicant's disappearance had been examined and it had been decided "not to bring criminal proceedings and not to open a search file *(розыскное дело)* in respect of Mr Ermakov". The Department further noted that measures for establishing the applicant's whereabouts were "being taken in connection with the already existing search file".

111. On 12 December 2012 Mr Sidorov requested the administration of SIZO-1 to produce the footage of the surveillance cameras of the detention facility in order to confirm the exact time of the applicant's release on 2 November 2012, to inform him of the progress of the inquiry, and to provide him with copies of any decisions taken during it.

112. On 14 December 2012 the prosecutor of the Sovetskiy District of Nizhniy Novgorod quashed the decision of 10 December 2012 on the ground that the inquiry had not been complete, and ordered an additional inquiry into the circumstances of the applicant's disappearance. The parties did not provide a copy of that decision.

(c) Second refusal to open criminal proceedings and its quashing

113. On 24 December 2012 the case was assigned to the Sovetskiy District Investigative Department of the Nizhniy Novgorod Regional Investigative Committee ("the Sovetskiy investigative department").

114. On 29 December 2012 the Sovetskiy investigative department requested the "Domodedovo Airport Aviation Security" company to provide the video footage taken by the airport surveillance cameras on 2 November 2012.

115. On 23 January 2013 the above-mentioned company informed the investigators that their request needed to be directed to a different company,

"Domodedovo IT Services" – and that, in any event, in accordance with the internal regulations, video records were only kept for thirty days.

116. On 8 February 2013 the Sovetskiy investigative department refused to open criminal proceedings in respect of the incident, for lack of a criminal event. The decision was taken on the basis of the following evidence:

- submissions by D., an acquaintance of the applicant from Nizhniy Novgorod, who stated that he had not seen the applicant for more than a year;
- submissions by Kh., living in Nizhniy Novgorod and referred to in the decision as the applicant's sister; she stated in a telephone conversation with an investigator that neither she nor her relatives in Uzbekistan had any information about the applicant's whereabouts;
- information by the Federal Security Service on the applicant's border crossing at Domodedovo Airport and his departure for Tashkent;
- statements by the police officers in charge of the investigation of the criminal case against the applicant in Russia. The officers submitted that the applicant had not complained of a fear of abduction or any threats to his life before his release;
- submissions by the SIZO-1 officer on duty at the checkpoint of the detention facility on 2 November 2012. She clearly remembered the applicant, since he had been released early in the morning on that date, which had not been the usual practice of the detention facility. She was unaware whether any person had come to meet the applicant on his release, since the window shutters at the checkpoint had been closed at that time of the day and she could not see anything outside her workstation.

117. The applicant's representatives submit that they did not receive a copy of that decision. It was furnished to the Court by the Government on 3 May 2013.

118. On 11 February 2013 the deputy head of the Sovetskiy investigative department quashed the above decision, noting that it was necessary to obtain information from the Moscow office of Uzbek Airlines, as well as materials from the Moscow transport prosecutor's office. An additional inquiry was ordered.

119. On 12 February 2012 the office of the prosecutor of the Nizhniy Novgorod Region, in response to the applicant's representative's request of 12 December 2012 (see paragraph 111 above), stated that the video surveillance records of the detention facility were kept for only thirty days, and therefore the video footage for the date in issue was no longer available, and that all copies of the decisions taken in the course of the inquiry had been sent to the representatives in due time.

(d) Third refusal to open criminal proceedings and the latest information on the state of the inquiry

120. On 17 February 2013 the Domodedovo Airport Customs Service inspector in charge of the spot checks of passengers going through the "Green Channel" on 2 November 2012 filed written submissions in reply to the Sovetskiy investigative department's request. He stated that he did not remember the applicant and reported that there had not been any unusual situations on that date. Having analysed its records for the said date, the Customs Service further specified that the applicant had not declared any goods before his departure.

121. On 27 February 2013 the Border Control Department of the Federal Security Service submitted, in reply to the investigators' inquiry, that the departmental officer in charge of border control on 2 November 2012 did not remember the applicant. The officer specified that as a rule any person crossing the State border at the airport approached the border control point unaccompanied. If, exceptionally, a person was escorted (for instance, for medical reasons or in the case of the expulsion of a foreign national by the law-enforcement agencies), the controller had to inform his superior at the control service thereof. However, no such report had been made on that date.

122. On 11 March 2013 the Sovetskiy District Investigative Department issued a new refusal to bring criminal proceedings, for the lack of the event of the crime. In addition to the evidence cited in the decision of 8 February 2013 (see paragraph 116 above), the investigator referred to a statement by the assistant to the Head of the remand prison, who stated that he had released the applicant but did not remember him. The decision further contained a reference to the reply of Uzbek Airlines (see paragraph 95 above), the information obtained from the Border Control Department of the Federal Security Service and the Customs Service of Domodedovo Airport (see paragraphs 120-121 above), and the information provided by the National Interpol Bureau (see paragraph 96 above). Having examined all the above material, the investigator concluded that there was no evidence that the applicant had been abducted. On 28 March 2013 Mr Sidorov was notified of the refusal.

123. On 15 March 2013 the Deputy Head of the Sovetskiy Investigative Department ordered that the inquiry be resumed, and stated that it was necessary to question the applicant. The inquiry is apparently still pending to date.

(e) Procedural steps taken within the criminal proceedings against the applicant in Russia

124. On two occasions, 23 November 2012 and 25 December 2012, the Nizhniy Novgorod Regional Court adjourned hearings concerning the applicant's appeal against the conviction of 7 September 2012, on account

of the applicant's absence. The court found no evidence that the applicant had been properly notified of the examination of his case, and scheduled a new examination of the case for 25 December 2012, sending the summons to the address of the applicant's house arrest in Nizhniy Novgorod, as well as to his permanent address in the village of Zhalolkuduk in the Andijan Region of Uzbekistan. On 25 December 2012 the applicant's lawyer asked the Nizhniy Novgorod Regional Court to request the Office of the Prosecutor General of Uzbekistan to provide information on the applicant's whereabouts, so that the summons concerning the appeal proceedings against his conviction in Russia could be sent to him, but the request was refused by the court.

125. Once the conviction was upheld on appeal (see paragraph 78 above), on 10 February 2013 the Nizhniy Novgorod Regional Court sent a copy of the appeal judgment to the military commission of the Zhalokudukskiy District in the Andijan Region of Uzbekistan, for information.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Extradition proceedings and refugee status proceedings

126. Article 3 of the European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

> "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
>
> The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons. ...
>
> This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character."

127. When depositing the instrument of ratification on 10 December 1999, the Russian Federation made the following declaration:

> "The Russian Federation proceeds from the understanding that the provisions of Article 3 of the Convention should be so applied as to ensure inevitable responsibility for offences under the provisions of the Convention.
>
> The Russian Federation proceeds from the understanding that legislation of the Russian Federation does not provide for the notion « political offences ». In all cases when deciding on extradition the Russian Federation will not consider as «political offences» or «offences connected with political offences» along with offences,

specified in Article 1 of the 1975 Additional Protocol to the 1957 European Convention on Extradition, in particular, the following acts:

...

h. ... other comparable crimes specified in the multilateral international treaties which the Russian Federation is a party to."

128. For a summary of other relevant provisions concerning extradition proceedings and refugee status proceedings, see *Zokhidov v. Russia*, no. 67286/10, §§ 77-83 and 102-06 respectively, 5 February 2013.

B. Preventive measures and appeal against them

1. House arrest

(a) CCrP provisions in force at the material time

129. Article 107 § 1 of the CCrP, as in force at the material time, provided that house arrest consisted of restricting a suspect's or an accused's freedom of movement, as well as forbidding him or her to (1) communicate with certain persons, (2) receive and send correspondence, and (3) conduct conversations using any means of communication. A suspect or an accused could be put under house arrest on the grounds and in accordance with the procedure set out in Article 108 of the CCrP (placement in custody – see paragraphs 135 and 140 below), with due regard for the person's age, health, family status and other circumstances (Article 107 § 2). A decision to place a suspect or an accused under house arrest was to specify the restrictions imposed and designate a supervisory authority to ensure that the restrictions were observed (Article 107 § 3).

(b) Constitutional Court's case-law and subsequent amendment of Article 107 of the CCrP

130. In Decision (*Определение*) N 9-O-O of 27 January 2011 the Constitutional Court found that the applicable criminal procedure law, in so far as it provided that house arrest was an alternative to detention on remand, implied that a court decision on placement under house arrest should contain a specific and reasonable time-limit for the application of that preventive measure (§ 2.1 of the Decision)

131. By Ruling *(Постановление)* N 27-П of 6 December 2011, the Constitutional Court of the Russian Federation reiterated the Court's case-law to the effect that the difference between deprivation of and restriction upon liberty is one of degree or intensity, and not one of nature or substance (§ 2 of the Ruling). Having analysed the relevant provisions of the CCrP governing house arrest and detention, taken together, as well as the nature of the restrictions applied to an individual in the case of house arrest, the Constitutional Court found, in particular, that house arrest, like

detention on remand, implied the compulsory isolation of an accused or a suspect from society, in a limited space, and the prevention of the person from working, moving freely and communicating with other persons. Thus, in view of the restrictions suffered, house arrest involved a direct restriction of a person's right to physical liberty and security. Therefore, the procedural guarantees in the case of house arrest should be the same as those applicable to detention on remand (§ 3 of the Ruling).

132. The Constitutional Court observed that Article 107 of the CCrP, as in force at the material time, did not specify either the maximum period for house arrest, or instructions on how it should be applied or extended. The Constitutional Court held as follows (§ 4 of the Ruling):

> "Therefore, the provisions of Article 107 of the CCrP, taken alone or in conjunction with other provisions of the Code, create uncertainty as regards the duration of house arrest, its extension, and the maximum time limit precluding any further extension of [that preventive measure], and thus allow for the establishment of time-limits in respect of a restriction of the constitutional right to liberty and security of a person in an arbitrary manner and solely upon the decision [of a law-enforcement authority]."

133. The Constitutional Court declared Article 107 of the CCrP unconstitutional in so far as it did not specify the period for which house arrest could be applied, the grounds and procedure for the extension or the maximum period for placement under house arrest.

134. On 7 December 2011 and 11 March 2013 Article 107 of the CCrP was amended. Article 107 § 2 now stipulates that a period of house arrest may not exceed two months. Where it is impossible to complete a preliminary investigation, and in the absence of grounds for amendment or annulment of the preventive measure, a court may extend that period within the procedure provided for in Article 109 of the CCrP. Article 107 § 2.1 stipulates that a period of detention on remand should be counted toward the period of the house arrest and the total length of house arrest and detention on remand may not exceed the maximum time-limit set out in Article 109, irrespective of the order of application of these two preventive measures.

2. Placement in custody

135. Custody may be ordered by a court on 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).

136. A 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 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 be released immediately (Article 109 § 4).

137. A period spent under house arrest should be counted towards the total period of detention (Article 109 § 10 (2)).

138. 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).

139. For a summary of other relevant CCrP provisions see *Zokhidov*, cited above, § 94.

3. Appeal against a preventive measure

140. Article 108 § 11 of the CCrP provides that a judge's decision on detention is amenable to appeal before a higher court within three days of its delivery. Having received the file, the second-instance court must examine the appeal lodged against the judge's detention decision within three days. A decision by the second-instance court to annul the detention is to be executed immediately.

141. Chapter 45 of the CCrP, as in force at the material time, set out the appeal procedure. Article 373 of the CCrP, as in force at the material time, established the scope for the examination of a case by an appeal court. It provided that the appeal court was to examine appeals with a view to verifying the lawfulness, validity and fairness of the judgment or other judicial decision of the first-instance court. An appeal court could also directly examine evidence, including additional material submitted by the parties (Article 377 §§ 4 and 5, as in force at the material time).

142. Article 378 § 1, as in force at the material time, provided that the appeal court could take the following decisions: (1) to dismiss the appeal and uphold the judgment or other judicial decision taken by the first-instance court; (2) to quash the judgment or other judicial decision and discontinue the criminal proceedings; (3) to quash the judgment and remit the case for fresh examination to the first-instance court, or (4) to amend the judgment or other judicial decision taken by the first-instance court.

143. A violation of procedural law where a party to the proceedings had been deprived of or restricted in the exercise of his or her procedural rights, or where a procedure had not been complied with, or where there had been another defect which had influenced or could have influenced the fairness of the proceedings, constituted a ground for the quashing or amendment of a judicial decision (Article 381 of the CCrP, as in force at the material time).

C. Petitions

144. Chapter 15 of the CCrP provides that suspects, defendants and their representatives may petition officials for taking procedural decisions that would secure rights and legitimate interests of the petitioner (Article 119 § 1). A petition may be lodged at any stage of the criminal

proceedings (Article 120 § 1), in particular, with the court (Article 120 § 1). It may be also lodged by a prosecutor (Article 120 § 3).

D. Complaints about officials' unlawful actions

145. Chapter 16 of the CCrP ("Complaints about the acts and decisions of courts and officials involved in criminal proceedings") provides for 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 parties to criminal proceedings (Article 125 § 1).

146. Chapter 25 of the Code of Civil Procedure sets out the procedure for judicial review of complaints about decisions, acts or omissions of State authorities and officials. A citizen may lodge a complaint about an act or decision by any State authority which he believes has breached his rights or freedoms either with a court of general jurisdiction or by sending it to the directly superior official or authority (Article 254). The complaint may concern, in particular, any decision, act or omission which has violated rights or freedoms, or has impeded the exercise of rights or freedoms, of the citizen (Article 255).The complaint must be lodged within three months of the date on which the citizen learnt of the breach of his rights.

E. Legal provisions governing police databases

147. For a summary of the legal provisions concerning the database code-named "Search-Highway" ("*Розыск-Магистраль*") and establishing the procedure for its operation, see *Shimovolos v. Russia*, no. 30194/09, §§ 40-41, 21 June 2011.

F. Procedure for leaving the Russian Federation

148. Section 28 § 1 of Federal Law No. 114-FZ of 15 August 1996 on the Procedure for Entering and Leaving the Russian Federation ("the Entry Procedure Act") provides that a foreign national's leaving of the Russian Federation may be restricted where criminal proceedings are pending against him or her, until a final decision in those proceedings is adopted.

III. INTERNATIONAL MATERIAL

A. Reports on Uzbekistan

149. For a summary of the recent reports on Uzbekistan by the UN institutions and by NGOs, see *Zokhidov*, cited above, §§ 107-13.

B. Interim measures and the duty to cooperate with the Court

150. For a summary of the Council of Europe texts on the duty to cooperate with the Court, the right to individual petition, and interim measures, see *Savriddin Dzhurayev*, cited above, §§ 108-20.

C. Committee of Ministers' decisions under Article 46 on related cases concerning Russia

151. For a summary of the Committee of Ministers' decisions under Article 46 on related cases concerning Russia adopted between 8 March 2012 and 7 March 2013, see *Savriddin Dzhurayev*, cited above, §§ 121-26.

152. At the 1176th meeting of the Ministers' Deputies held on 10 July 2013, the Committee of Ministers adopted the following decision in the wake of yet another incident involving allegations of disappearance of the applicant in respect of whom the interim measure was indicated by the Court (CM/Del/Dec(2013)1176/H46-2E):

> "The Deputies,
>
> Recalling the decisions adopted at their 1164th meeting (5-7 March 2013) (DH) and 1172nd meeting (4-6 June 2013) (DH) in the Garabayev group of cases against the Russian Federation (see the list below),
>
> 1. noted with grave concern that a further incident involving allegations of kidnapping and illegal transfer of an applicant protected by an interim measure indicated by the Court under Rule 39 has been reported [...]
>
> 2. strongly insisted that light be shed on this incident and on the fate of the applicant as quickly as possible;
>
> 3. consequently insisted again on the pressing need to adopt as of now measures to ensure an immediate and effective protection of the applicants in a similar situation against kidnappings and irregular removals from the national territory;
>
> 4. recalled in this context the letter sent by the Chairman of the Committee of Ministers to the Minister of Foreign Affairs of the Russian Federation;
>
> 5. agreed that a draft interim resolution will be considered in the light of progress that would have been made, including the updated action plan submitted by the Russian authorities; this text will be circulated in the draft revised order of business of their 1179th meeting (24-26 September 2013) (DH)."

THE LAW

I. ESTABLISHMENT OF THE FACTS

153. Given the lack of agreement between the parties on the events that took place on 2 November 2012, the Court must start its examination by establishing the relevant facts.

A. The parties' submissions

154. The applicant's representatives contended that the applicant had been abducted and transferred to Uzbekistan against his will. Referring to the nature of the charges against the applicant and his fears of abduction and ill-treatment if transferred to his home country, they found it implausible that the applicant would have willingly travelled to Tashkent without saying a word to his lawyers. They found it alarming that the applicant had not telephoned his lawyer after his release, as agreed, and suggested that his freedom of movement and communication must have been restricted. Furthermore, they pointed to several circumstances indicating that he had not travelled to Uzbekistan voluntarily: the plane tickets had been bought in Tashkent using the applicant's old passport; it would have been impossible for him to travel from Nizhniy Novgorod to Moscow, since at the time of the events he was on the wanted list, and therefore would have been stopped by the authorities if he had attempted to buy any kind of travel ticket from an airline or railway company. Furthermore, he had been released from detention without any money or winter clothes. They concluded that the applicant could only have been transferred to Moscow and then to Tashkent by unknown persons and against his will.

155. They also argued that the Russian authorities' conduct both prior to and after the applicant's disappearance demonstrated their knowledge of and involvement in his abduction and forced repatriation. They referred, in particular, to the way in which the applicant had been released from detention. His release had been under the total control of the State agents, and the authorities had organised it in a deviation from the ordinary procedure and had deliberately prevented the lawyer's attendance on the day of the applicant's disappearance. Furthermore, as regards the events at Domodedovo Airport, it was clear that the applicant could not have crossed the State border freely and unaccompanied. He had been on the Interpol wanted list, and the search for him in Russia had not been discontinued; furthermore, he was a foreign national against whom criminal proceedings were pending in Russia. Any of these factors, taken alone, would prompt the authorities to arrest the applicant or at least to stop him for a further check in the normal course of events. Furthermore, they stated, with reference to the Registrar's letter of 25 January 2012 and the Government's reply thereto, that all competent authorities, including the border control services, had been well aware of the risks faced by the applicant, and his crossing the Russian border should have alerted the competent authorities to stop the applicant for a further check. They concluded that either the authorities had knowingly let the applicant through the border without applying the required formalities, or he had been taken on board a plane to Uzbekistan without complying with the regular formalities.

156. Lastly, they invited the Court to draw the following inferences from the following conduct of the authorities. First, the authorities had not undertaken a thorough investigation in the wake of the applicant's disappearance, since several months after the incident its crucial circumstances had not been addressed, and important evidence had not been secured. Second, the Government had failed to provide the Court with timely updates on the progress of the inquiry, or even information the applicant's whereabouts. They challenged as inaccurate the Government's statements that the applicant's name had not been found in the "Search-Highway" database and that the Border Service did not keep a register of individuals crossing the State border. They pointed out that the Government had not addressed certain crucial aspects of the case, such as, for instance, the means of transport used by the applicant for the internal journey to Moscow, or the document used by the applicant to cross the border.

157. The Government contested that account of the events. They submitted that on 2 November 2012 the applicant had been released from detention, as required by the domestic law. They denied having any responsibility for the applicant's fate following his release and affirmed that the applicant had not been handed over to Uzbekistan through the extradition procedure. They stressed that an investigation into the circumstances of the applicant's disappearance was under way and that no evidence had been found which demonstrated that the applicant had left Russia for Uzbekistan against his will.

B. The Court's assessment

1. General principles

158. In cases in which there are conflicting accounts of events, the Court is inevitably confronted, when establishing the facts, with the same difficulties as those faced by any first-instance court (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 151, 13 December 2012). The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, with further references, *El Masri*, cited above, § 155).

159. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not

to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, with further references, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005−VII; *Iskandarov v. Russia*, no. 17185/05, § 107, 23 September 2010; and *El Masri*, cited above, § 151).

160. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation). In certain circumstances, where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among others, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000−VII, and *Iskandarov*, cited above, § 108). Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion, or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate (Rule 44C § 1 of the Rules of Court).

2. Application to the present case

161. The Court observes that the parties disagree as to how the applicant made his way to Uzbekistan on 2 November 2012 on two major points: the voluntary nature of his travel to his home country, and the involvement of the Russian authorities in his transfer to Uzbekistan.

162. The Court notes at the outset that the parties were not able to contact the applicant and he was thus unable to provide a description of the events of 2 November 2012 (see, by contrast, *Abdulkhakov v. Russia*, no. 14743/11, §§ 54-60 and 120, 2 October 2012, and *Savriddin Dzhurayev*, cited above, § 37-41 and 131), and that no eye-witnesses to the applicant's

alleged apprehension after his release have been identified to date. However, it is undisputed that the representatives lost contact with the applicant after his release from detention at 6 a.m. in Nizhniy Novgorod, and that in the evening of the same date the applicant took the flight from Moscow to Tashkent.

163. As to the applicant's situation after his departure from Russia, the Court notes that the Government were unable to provide information on his whereabouts. However, according to the letter of the Uzbek authorities of 4 April 2013, the applicant was being held in a remand prison in Andijan (see paragraph 100 above). In the absence of any further clarifications, the Court finds no reason to distrust that document and finds it established that at some point shortly after his return to his home country, no later than 1 December 2012, the applicant was arrested and placed in custody in Uzbekistan. Against this background, the Court will now address the core elements of the case.

164. The applicant's representatives firmly ruled out the possibility that he had voluntarily travelled to Uzbekistan and surrendered himself to the Uzbek authorities. The Government did not provide any argument or evidence to dispute that statement, but merely referred to the lack of information on the applicant's leaving Russia against his will.

165. The Court notes that the applicant faced serious charges in Uzbekistan, where an arrest warrant had been issued in respect of him (see paragraphs 13-16 above). He consistently raised the argument that he feared he would be subjected to ill-treatment in custody in the event of his return to Uzbekistan in various sets of domestic proceedings (see paragraphs 22, 26, 30, 34, 37, 39 and 41 above and 190 below). In 2010 he submitted a request for an interim measure to this Court, requesting the suspension of his extradition (see paragraph 4 above). His interest in maintaining his application before the Court is further confirmed by his handwritten note of 2 July 2011 (see paragraph 80 above). Finally, turning to the events directly preceding his release from custody in Russia, the Court finds no reason to distrust the applicant's representative's statement that on 26 October 2011, less than a week before his disappearance, the applicant expressed a fear of being apprehended and transferred to Uzbekistan after his release from custody. Against this background, the Court is not prepared to accept the Government's allegation that he had suddenly changed his mind and travelled voluntarily to Uzbekistan unless it is corroborated by other evidence.

166. The Court cannot but find that the Government's version of events sits ill with the information and evidence gathered by the parties in respect of various important aspects of this case, as addressed below.

(a) The placement of the applicant's name on the wanted list

167. The Court considers it important to note at the outset that, according to the information obtained from the Russian National Central Interpol Bureau, referred to in the domestic proceedings and at no point disputed by the parties, the applicant's name was not taken off the Interpol Wanted Fugitives' list until 1 December 2012. The search for the applicant in Russia was not discontinued until receipt of the information about his arrest (see paragraph 96 above). The Court also takes note of the letter by the Department of the Interior of 10 December 2012 to the effect that the search for the applicant was being conducted within the existing search profile (see paragraph 110 above). In the absence of any further clarifications, the Court finds no reason to doubt that information and considers it established that on the date of the applicant's release from custody and journey to Uzbekistan on 2 November 2012 his name was still on the cross-border wanted list, and the search for him in Russia on the basis of the valid arrest warrant of the Uzbek authorities had not been discontinued.

(b) Contradictory information on the purchase of the plane tickets

168. At the initial stage of the proceedings the Government could be understood to argue, with reference to the certificate issued by the Federal Security Service, that the applicant himself bought the plane tickets (in plural, as stated in the above-mentioned certificate) to Tashkent using his current Uzbek passport (see paragraph 90 above). However, this information was in contradiction with the findings made at a later stage in the domestic proceedings – and not disputed by the Government at that point – that the plane ticket for the applicant had been issued in Tashkent, Uzbekistan, on the basis of the form no. 1 for Uzbek nationals originating from the Zhalokudukskiy District Department of the Interior of the Andijan Region (see paragraph 95 above). The Government did not address the apparent contradiction between the two versions. In any event, if the second one is accepted, and even bearing in mind that a copy of the impugned form no. 1 was available both to the Russian authorities and the representatives (see paragraph 17 above), the Government have failed to explain how the applicant, a detainee in Russia until the early morning of 2 November 2012, could possibly have bought the tickets in Tashkent using that form, an internal questionnaire for the passport exchange and, moreover, done so on the basis of his old passport, which had expired in 2007 and had been returned by him to the Uzbek authorities in exchange for the current one (see paragraph 9 above). Similarly, if the Government's initial submission is accepted, it remains unclear how the applicant could have bought tickets for an international flight immediately after his release on the basis of his current passport while having no money (see paragraphs 75 and 85 above) and without being identified by the police at the time of the purchase of the

tickets (see paragraph 166 above). Taking the foregoing into account, the Court is inclined to accept the representatives' submissions that the plane tickets were not bought by the applicant. That circumstance, taken alone, already casts doubt on the consistency of the Government's account of the events.

(c) Circumstances of the applicant's release

169. The circumstances of the applicant's release on 2 November 2012 raise further suspicions about the accuracy of the Government's account. The Government may be understood to argue that, once released, the applicant was no longer under the control of the authorities. The Court is unable to accept that line of reasoning.

170. First, it notes that the release took place exceptionally early in the morning, at 6 a.m. (see paragraph 85 above), that is, outside the office hours of the facility. In fact, the remand prison officer clearly remembered the applicant for exactly the reason that such an early release was rare and exceptional for the detention facility (see paragraph 116 above). Second, it has not been disputed between the parties that the applicant's lawyer went to SIZO-1 on that date to meet his client and was neither admitted to the premises of the detention facility, nor allowed to meet the applicant, or even informed that he had been released (see paragraphs 86-87 above). In such circumstances, the Court cannot but find that the applicant's release was deliberately organised by the Russian authorities without his lawyer or, for instance, relatives, being either present or at least timeously notified thereof.

171. The fact that all contact with the applicant was lost immediately after his release only strengthens the above suspicions, and the Government have failed to provide a reasonable explanation in that respect. For instance, the authorities, when confronted with allegations of the applicant's abduction and disappearance in suspicious circumstances, could at least have timeously obtained and secured the video footage of the surveillance cameras in and around the detention facility, but they omitted to do so (see paragraph 119 above). The Court draws strong inferences from the authorities' failure to secure valuable evidence which could have elucidated the circumstances of the incident, or to make any other meaningful attempt to verify whether the applicant was met by anyone outside the remand centre once he had left the prison, at least for as long as he remained in the immediate vicinity of the detention facility.

(d) The authorities' failure to collect or submit information on the applicant's journey from Nizhniy Novgorod to Moscow

172. It is undisputed that in the evening of the same day the applicant reappeared at Domodedovo Airport, more than four hundred kilometres away from Nizhniy Novgorod. Again, the applicant's representatives firmly rejected the possibility that the applicant could have travelled to Moscow on

his own, without any money or winter clothes and without being stopped by the police when he attempted to buy rail or airline tickets. Thus, they maintained that the applicant must have been transferred to Moscow by another person or persons, against his will.

173. The Government did not deny these allegations with any degree of substantiation or did not put forward their own version of events, even though they had ample opportunities and resources to do so. Indeed, on 4 December 2012 they were explicitly asked by the Court to specify the means of transport used by the applicant to get from Nizhniy Novgorod to Moscow on 2 November 2012 and to submit documents in this regard, such as, for instance, the relevant airline companies' or railway company's records (see paragraph 92 above). Again, it is undisputed that the requested information was in the exclusive possession of the authorities. However, the Court received no reply to its request. Instead, the Government confined themselves to stating that the applicant's name was not in the "Search-Highway" database. The Court notes with concern that the Government failed to submit any document in support of their statement. Moreover, that submission proves all the more surprising given that, as submitted by the Government in one of the earlier cases before the Court (see paragraph 147 above), the "Search-Highway" system was conceived specifically to facilitate discovery of those suspected of criminal offences whose names were on the wanted persons' list. In those circumstances, an admission that the applicant's name for some reason was not present in the database at the time of the events – a hypothesis favourable to the Government – cannot but raise further suspicions as regards the circumstances of the incident of 2 November 2012. Furthermore, it appears that the question of how the applicant had travelled from Nizhniy Novgorod to Domodedovo Airport was not addressed by the investigators at the domestic level. Again, the Court attaches great importance to – and draws inferences from – the authorities' continued failure to clarify the circumstances of the applicant's journey to Moscow.

(e) Crossing of the Russian State border at Domodedovo Airport

174. Bearing the above in mind, the Court will now turn to another crucial aspect of the incident, namely the applicant's journey from Russia to Tashkent via Domodedovo Airport. The Government stated, with reference to the certificate issued by the Border Control Department of the Federal Security Service of Russia, that the applicant had taken a regular Uzbek Airlines flight on that date.

175. Although the applicant's representatives were unable to adduce any witness statements to that effect, they argued that the applicant's transfer to Uzbekistan through Moscow's Domodedovo Airport could not have happened without the knowledge and either passive or active involvement of the Russian authorities. They cited several reasons why the applicant, in

the normal course of events, would not have been allowed to cross the State border without being stopped by the border control officers if he had indeed attempted to cross the State border freely and in accordance with the existing procedure.

176. The Court is mindful of the objective difficulties the applicant's representatives must have faced in producing evidence in support of their allegation, since the events at issue lay within the exclusive knowledge of the authorities. Their allegations were largely supported by the unrebutted presumption, which was upheld by the Court in *Iskandarov* (cited above, §§ 113-15,) and *Abdulkhakov* (cited above, §§ 125−27), that a forcible transfer of an individual to a State that was not a party to the Convention by aircraft from Moscow or the surrounding region could not happen without the knowledge and either passive or active involvement of the Russian authorities. The Court does not discern any reason to reach a different conclusion in the present case. Indeed, it cannot be disputed that any airport serving international flights is subject to heightened security measures, remaining under the permanent control of the respondent State's authorities and notably, the State border service (see *Savriddin Dzhurayev*, cited above, §§ 201-02, with further references). In fact, it is obvious that in order to be able to board a plane the applicant must have crossed the Russian State border and thus should have undergone passport and customs checks by the Russian authorities.

177. The Government confirmed, referring to the "Central Database of Aliens" of the Federal Migration Service, that the applicant had crossed the Russian State border at the checkpoint in Domodedovo Airport. The airport officers on duty at the time of the events submitted that they did not remember either the applicant or "any unusual situation" on that date.

178. The Government failed to provide an extract from the border control register, despite the Court's request. They stated, with reference to the Federal Security Service, that no such database existed. The Court does not need to address that submission separately, in view of the following. First, it has already established that the applicant's name at the time of the events was on the cross-border wanted list, and the search for him in Russia pursuant to an arrest order issued in Uzbekistan had not been discontinued. Second, the Court notes the Government's firm assurances that all necessary measures were taken in the wake of the application of the interim measure in the present case to ensure that the applicant was not extradited to Uzbekistan (see paragraphs 79 and 82 above). In fact, they confirmed on several occasions that the competent authorities, presumably including the border control services, had been timeously instructed on the matter.

179. In these circumstances, the Court is struck by the Government's failure to provide any plausible explanation of how the applicant, who was on the cross-border wanted list, and in respect of whom an interim measure had been applied by this Court, was able to pass freely through the airport

border control at the checkpoint of a major Moscow airport without at least being stopped by the authorities. It is surprising that such a border crossing should not have warranted a further check by the border control officers, called for any form of report, or otherwise amounted to an "unusual situation", contrary to the account given by the authorities.

180. That apparent lacuna in the Government's argument is coupled with an alarming failure on the part of the authorities to timeously secure relevant evidence capable of corroborating the Government's account of the events. It is sufficient to mention that the first request for the footage of the airport's video surveillance cameras was made by the investigators on 29 December 2012, that is, manifestly outside the thirty-day storage time-limit (see paragraph 114 above), and that the airport officers on duty in a busy international airport made their submissions about the events of 2 November 2012 almost three months after the impugned incident (see paragraphs 120 and 121 above). The information concerning a document used by the applicant to cross the border has never been disclosed, and the crew members on the flight have not been interviewed. The Court is prompted to draw further inferences from the authorities' conduct in the present case. Indeed, it finds nothing in the Government's submissions to rebut the applicant's representatives' assertion that either the authorities knowingly let the applicant through the border formalities in defiance of the fact that his name was on the wanted list and of the instructions given to them in the wake of the application of the interim measure by this Court, or he was in fact taken on board a plane to Uzbekistan without complying with the regular formalities. While the Court is obviously unable to accept any of the above versions beyond reasonable doubt in the absence of any further information about the events which unfolded at the airport in the evening of 2 November 2012, it finds it impossible to accept that the applicant's transfer on board an aircraft through the Russian State border could have taken place without the authorisation, or at least acquiescence, of the State agents in charge of Domodedovo Airport.

(f) Context of the present case

181. Lastly, the Court must consider the present case in its context, having regard in particular to the recurrent disappearances of individuals subject to extradition from Russia to Tajikistan or Uzbekistan, and their subsequent resurfacing in police custody in their home country (see paragraph 81 above). The regular recurrence of such incidents, for which the authorities have not provided any adequate explanation, lends further support to the version of the facts presented to the Court by the applicant's representatives.

(g) Conclusion

182. In view of the above, the Court is satisfied that there is *prima facie* evidence in favour of the applicant's account of events and that the burden of proof should shift to the respondent Government. Since, as shown above, the Government have not rebutted the applicant's representatives' version of the incident, the Court finds it established that (a) the applicant did not travel from Russia to Uzbekistan of his own free will but was forcibly transferred to Uzbekistan by an unknown person or persons following his release from SIZO-1 in Nizhniy Novgorod on 2 November 2012, and (b) his transfer through the Russian State border at Domodedovo Airport took place with the authorisation, or at least acquiescence, of the State agents in charge of the airport. The Court again emphasises that it draws strong inferences in support of this version from the Russian authorities' refusal to conduct a meaningful investigation (see also paragraphs 223-227 below) and their ensuing failure to refute the applicant's representatives' account or provide a plausible alternative explanation of the events of that day.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

183. The applicant initially complained under Article 3 of the Convention that if returned to Uzbekistan he would run a real risk of being subjected to ill-treatment in breach of Article 3 of the Convention. His representatives further supplemented his complaint, submitting that there had been a violation of Article 3, as his illegal transfer to Uzbekistan could only have been achieved with the active or passive involvement of the Russian authorities, and that the authorities had failed to conduct an effective investigation.

184. Following those developments, the Court asked the Government to submit additional observations on the merits with regard to two further issues arising under Article 3 of the Convention. The first concerned the authorities' apparent failure to comply with their positive obligation to do all that could be reasonably expected of them to protect the applicant against a real and immediate risk of transfer to Uzbekistan. The second concerned their procedural obligation to conduct a thorough and effective investigation into the applicant's abduction and transfer to Uzbekistan. Article 3 reads as follows:

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

A. The parties' submissions

1. The Government

185. The Government initially submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint concerning the risk of ill-treatment in the case of his extradition. He had not requested refugee status immediately on his arrival in Russia, had stated during the hearing of 8 July 2010 that he had come to the respondent State to earn money, and had also omitted to raise the issue of the risk of ill-treatment before the appeal court on 22 September 2010. To demonstrate the effectiveness of the remedy and the existence of a "well-established practice" in that regard, they referred to the case of Zokhidov (see *Zokhidov*, cited above, communicated to the Government at the time of the events), where the applicant had brought his ill-treatment argument to the attention of the domestic authorities and the extradition order had been set aside.

186. They submitted that, in any event, the applicant had failed to provide any reliable evidence demonstrating that in the event of his extradition to Uzbekistan he would run the risk of being subjected to ill-treatment. The domestic authorities had carefully examined the potential risk of treatment contrary to Article 3 in the refugee status proceedings and dismissed the applicant's allegations. According to the information from the Ministry of the Foreign Affairs and the Federal Security Service of Russia, there had been no obstacles to his extradition. Uzbekistan had ratified various international human rights treaties, it was making democratic improvements, and the Uzbek authorities had provided assurances that the applicant would not be ill-treated if extradited.

187. Subsequently, the Government contested the assertion that the applicant had been abducted and forcibly transferred to Uzbekistan, considering that it was not corroborated by any evidence (see paragraph 157 above). They maintained that an internal inquiry was in progress.

2. The applicant and his representatives

188. The applicant initially submitted, in reply to the non-exhaustion argument, that he had consistently raised the grievance concerning the risk of ill-treatment at all stages of both the extradition and the refugee status proceedings and had requested the admission of several international reports and the questioning of an expert on the matter in the extradition proceedings. He maintained that the domestic authorities had failed to examine the possible risk of ill-treatment in the event of his extradition to the requesting country. In particular, the extradition order did not address that issue at all, and the domestic courts had omitted to examine the said argument in detail. The authorities had relied only on the material obtained from Russian governmental agencies. The Court had previously confirmed

that the ill-treatment of detainees was a pervasive and enduring problem in Uzbekistan, especially in respect of detainees charged with politically motivated criminal offences, as in his case. That finding had been corroborated by other independent sources. If extradited, he would be placed in detention and thus run an increased risk of torture in view of the charges against him. The applicant submitted that the Uzbek assurances should be disregarded, in view of the overall climate of impunity for human rights abuses in Uzbekistan and the absence of a control mechanism in respect of the assurances.

189. Following the applicant's disappearance on 2 November 2012, his representatives argued that the Russian authorities had been aware of the applicant's forcible transfer to Uzbekistan and failed to take measures to protect him. As a result, the applicant had been arrested and detained incommunicado in Uzbekistan and ran a particularly serious risk of ill-treatment there. Furthermore, they argued, the authorities were responsible for the failure to conduct an effective investigation into the matter. The authorities in charge of the inquiry had failed to secure valuable evidence which would have been capable of shedding light on the circumstances of the applicant's disappearance (for example, the video footage of the surveillance cameras at the remand facility and Domodedovo airport). The investigators had omitted to follow such obvious lines of inquiry as, for instance, establishing whether the applicant had been met by anyone on his release from the detention facility; where the plane tickets to Tashkent had actually been bought; and how the applicant had got to Moscow on the date of his disappearance. The investigation had lacked transparency since the representatives had only been granted delayed and limited access to the material gathered in the inquiry. They further submitted that the Government had failed to disclose crucial information on the case, such as the means of transport used by the applicant, and the names of the person or persons who had accompanied him. They also expressed strong doubts as to the reliability of certain information submitted by the Government (see paragraph 156 above) and considered that the absence of a final decision in the domestic proceedings could not be accepted as a valid reason for a failure to provide important information to the Court.

B. The Court's assessment

1. Admissibility

190. As regards the Government's non-exhaustion argument submitted in the initial round of the observations, the Court observes that the applicant raised the issue of his risk of being subjected to ill-treatment if returned to Uzbekistan both in the extradition and refugee status proceedings. The

Court is satisfied that his submissions 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 that were considered extremist, 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 reputable international organisations and the findings of this Court in cases concerning similar situations (see paragraphs 22, 26, 30, 34, 37, 39 and 41 above). The Court considers that the applicant duly brought his complaint to the attention of the authorities, and therefore rejects the Government's objection.

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

2. Merits

192. The Court notes at the outset that the present case raises two distinct issues under Article 3 of the Convention, namely the authorities' apparent failure to comply with their positive obligation to protect the applicant against a real and immediate risk of forcible transfer to Uzbekistan, and their failure to comply with the procedural obligation to conduct a thorough and effective investigation into his abduction and transfer. The Court also notes that its determination of these issues will bear upon, notably, the existence at the material time of a well-founded risk that the applicant might be subjected to ill-treatment in Uzbekistan. The parties disagreed on the latter point. The Court will therefore start its examination by assessing whether the applicant's forcible return to Uzbekistan exposed him to such a risk. It will subsequently examine the other issues arising under Article 3 mentioned above.

(a) Whether the applicant's return to Uzbekistan exposed him to a real risk of treatment contrary to Article 3

(i) General principles

193. The Court will examine the merits of this part of the applicant's complaint under Article 3 in the light of the applicable general principles, as reiterated in, among others, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

(ii) Application to the present case

194. Having found that the applicant made detailed submissions as regards the risk of treatment contrary to Article 3 in the event of his return to Uzbekistan in both the extradition and refugee status proceedings (see paragraph 190 above), the Court considers that the applicant has satisfied the requirement "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). It will now assess whether the applicant's complaint received an adequate response at the national level (see *Muminov v. Russia*, no. 42502/06, § 86, 11 December 2008).

(α) The domestic court's assessment of the risk

195. As regards the refugee status proceedings, the Court observes that the migration authorities in their decisions refusing to grant the applicant asylum mainly referred to two key arguments: that he had waited too long before applying for refugee status, and that he had submitted incorrect information about his limited command of Russian.

196. As regards the applicant's failure to apply for refugee status in due time, it is not in dispute between the parties that the applicant had arrived in Russia in March 2009, when no charges had been pending against him, and applied for refugee status seven months later, after his arrest. The Court observes that, in any event, the main thrust of the applicant's grievance was his persecution by the Uzbek authorities in connection with charges of serious criminal offences punishable by long prison terms, and a risk of ill-treatment in custody. The Court reiterates in this connection that, whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). The Court notes that in the present case the domestic authorities' findings as regards the failure to apply for refugee status in due time did not, as such, refute his allegations under Article 3 of the Convention.

197. As regards the dispute concerning the applicant's proficiency in Russian, the Court notes at the outset that the applicant's detailed counter-argument in reply to the FMS's findings on his language proficiency did not receive an assessment by the domestic court. In any event, the Court further emphasises that the task of the domestic courts in such cases is not to search for flaws in the alien's account, but to assess, on the basis of all the elements in their possession, whether the alien's fears as to the possible ill-treatment in the country of destination are objectively justified. The mere fact that the applicant failed to submit accurate

information on some points does not mean that his central claim, namely that he faces a risk of ill-treatment in Uzbekistan, is unsubstantiated. The Court stresses that the Russian courts in the present case failed to explain how the flaws detected by them undermined the applicant's central claim (see *Azimov v. Russia*, no. 67474/11, §§ 121-22, 18 April 2013).

198. However, 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 and the courts were silent on his specific arguments (see paragraphs 36, 38, 40 and 42 above). Although the impugned decisions contained vague statements to the effect that there were no circumstances indicating that the applicant would be unlawfully persecuted in Uzbekistan on religious grounds (see paragraphs 40 and 42 above), in the absence of further elaboration by either the migration authorities or the reviewing courts, the Court is unable to accept that they carried out a thorough assessment of the applicant's allegations concerning the risk of ill-treatment.

199. Similarly, in the extradition proceedings the courts placed specific emphasis on the failure to apply for refugee status in a timely manner, and otherwise summarily rejected the applicant's detailed arguments for lack of evidence of the risk of ill-treatment, without providing any additional details in support of their arguments. The applicant's submissions concerning the general human rights situation in Uzbekistan received no assessment by the courts. Instead, the domestic courts in the extradition proceedings readily accepted the assurances provided by the Uzbek authorities as a firm guarantee against any risk of the applicant being subjected to ill-treatment after his extradition (see paragraphs 25 and 29 above). In the Court's view, it was incumbent on the domestic courts to verify that such assurances were reliable and practicable enough to safeguard the applicant's right not to be subjected to ill-treatment by the authorities of that State (see, *mutatis mutandis*, *Saadi v. Italy* [GC], no. 37201/06, § 148, ECHR 2008). However, no such assessment was made in the extradition proceedings.

200. Having regard to the foregoing, the Court is not persuaded that the applicant's grievance was thoroughly examined by the domestic authorities. The Court has therefore to conduct its own scrutiny of whether, on the facts submitted to it, the applicant's return to Uzbekistan subjected him to a risk of treatment in breach of Article 3 of the Convention

(β) The Court's assessment of the risk

201. As regards the general situation in the receiving country, the Court has on several occasions noted the alarming reports on the human rights situation in Uzbekistan in the period between 2002 and 2007 (see, for instance, *Ismoilov and Others*, cited above, § 121, and *Muminov*, cited above, § 93). In recent judgments concerning the same subject and covering

the period after 2007 until recently, after examining the latest available information, the Court has found that there was no concrete evidence to demonstrate any fundamental improvement in that area (see, among others, *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; and *Rustamov v. Russia*, no. 11209/10, § 125, 3 July 2012).

202. At the same time, the Court has consistently emphasised that a 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). The applicant's specific allegations in a particular case require corroboration by other evidence with reference to the individual circumstances substantiating his fear of ill-treatment. The latter should be assessed by the Court having regard, where appropriate, to information which came to light subsequent to the applicant's forcible return to Uzbekistan (see *Savriddin Dzhurayev*, cited above, § 169).

203. As to the applicant's personal situation, the Court notes that he was wanted by the Uzbek authorities on charges of membership of an extremist religious organisation and attempted overthrow of the constitutional order of Uzbekistan. The charges were based on his alleged participation in the activities of banned religious organisations, including the "Wahhabism" movement, and dissemination of the ideas of and information about that movement, as well as the Islamic Movement of Uzbekistan. The above constituted the basis for the extradition request in respect of the applicant and the arrest warrant issued in respect of him. It shows that his situation is similar to that of those Muslims who, because they practised their religion outside official institutions and guidelines, were charged with religious extremism or membership of banned religious organisations and, on this account, as noted in the reports and the Court's judgments cited above, were at an increased risk of ill-treatment (see and *Abdulkhakov*, cited above, § 145). The Court also takes into account that the office of the UN High Commissioner for Refugees found that the applicant's fear of being persecuted and ill-treated if extradited to Uzbekistan was well-founded and granted him protection under its mandate (see paragraph 35 above).

204. The Court further notes the summary and unspecific reasoning used by the domestic authorities, and the Government before the Court, in an attempt to dispel the alleged risk of ill-treatment on account of the above considerations, including the evident pre-existing adverse interest the Uzbek authorities had in the applicant. The Court is bound to observe that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles

of the Convention (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 128, ECHR 2012). Furthermore, it is noted that the courts conducting the judicial review in the present case limited their findings to a summary and vague statements that there was no evidence that the applicant would be persecuted in Uzbekistan, without further elaboration on the matter. In such circumstances, the Court doubts that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the extradition proceedings. No fair attempt was made at the domestic level to assess materials originating from reliable sources other than those provided by the Russian public authorities.

205. As to the assurances given by the Uzbek authorities and relied on by the Government, the Court 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, among many others, *Abdulkhakov*, cited above, § 150; see also, by contrast, *Othman (Abu Qatada*) *v. the United Kingdom*, no. 8139/09, §§ 188-89, ECHR 2012 (extracts)).

206. Moreover, the events following the applicant's forcible return to Uzbekistan can be seen as confirming the well-foundedness of his fears. In particular, it was submitted by his representatives – and not disputed by the Government – that neither his lawyers nor his relatives have been able to contact the applicant during his detention in Andijan. The Court notes that that situation is in line with the concerns voiced by, in particular, Amnesty International (as quoted in *Zokhidov*, cited above, § 111) that individuals returned to Uzbekistan from other countries pursuant to extradition requests were held in *incommunicado* detention, which increased their risk of being ill-treated.

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

(b) Whether the Russian authorities are responsible for a breach of Article 3 on account of the applicant's forcible transfer to Uzbekistan

(i) General principles

208. The Court reiterates that the obligation on Contracting Parties, under Article 1 of the Convention, to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see *El Masri*, cited above, § 198, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 115, ECHR 2000-III). Those measures should provide effective protection, in particular, of vulnerable persons and include reasonable steps to prevent ill-treatment of which the

authorities have or ought to have knowledge (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V, and, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII).

209. Furthermore, the above provisions require by implication that there should be an effective official investigation into any arguable claim of torture or ill-treatment by State agents. Such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *El Masri*, cited above, § 182).

210. The investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions (see *Assenov and Others*, cited above, § 103; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); and *El Masri,* cited above, § 183). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104, ECHR 1999-IV; *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000; and *El Masri*, cited above, § 183). The investigation should be independent from the executive in both institutional and practical terms (see *Ergi v. Turkey,* 28 July 1998, §§ 83-84, *Reports of Judgments and Decisions* 1998-IV; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004) and allow the victim to participate effectively in the investigation in one form or another (see, *mutatis mutandis*, *Oğu*r, cited above, § 92, and *El Masri*, cited above, §§ 184-85).

211. In the Court's view, all the above principles apply to the situation of an individual's exposure to a real and imminent risk of torture and ill-treatment through his transfer by any person to another State (see *Savriddin Dzhurayev*, cited above, §§ 180 and 190, with further references). Where the authorities of a State party are informed of such a real and immediate risk, they have an obligation under the Convention to take, within the scope of their powers, such preventive operational measures as, judged reasonably, might be expected to avoid that risk (see, *mutatis mutandis*, *Osman*, cited above, § 116), and to conduct an effective

investigation into any such incident in accordance with the principles set out in paragraphs 209-210 above.

(ii) Application to the present case

212. The applicant's representatives argued that the highly suspicious events surrounding the applicant's disappearance in Russia, his crossing of the Russian State border, and his ensuing return to Uzbekistan demonstrated that Russian State officials had been passively or actively involved in that operation. They concluded that Russia should be found responsible for a violation of Article 3 of the Convention on that account.

213. The Court agrees with the applicant's representatives that the circumstances of his release in Nizhniy Novgorod on 2 November 2012, which immediately led to his forcible transfer to Uzbekistan via Domodedovo Airport, and the authorities' failure to elucidate the incident could lead to the inference that the applicant was transferred to Uzbekistan in accordance with a plan involving Russian State officials.

214. At the same time, the Court notes that the possible involvement of State agents is not easily traceable in the circumstances of the present case, given in particular the lack of a specific credible account of the applicant's forcible transfer to Moscow and then to Tashkent. The applicant's movements between the time he left the remand centre in Nizhniy Novgorod at 6 a.m. on 2 November 2012 and when he resurfaced, first at Domodedovo Airport, and then in the hands of the Uzbek authorities, are unknown. Having found the version of the applicant's voluntary return implausible (see paragraph 182 above), the Court has never been provided with an alternative credible account of the role which Russian State officials might have played in that regard.

215. While the applicant's representatives cannot be blamed for not adducing further evidence, the alleged involvement of Russian State officials in the transfer needs nonetheless to be corroborated by information from other sources.

216. Bearing in mind the natural limits, as an international court, on its ability to conduct effective fact-finding, the Court reiterates that the proceedings in the present case were largely contingent on Russia's cooperation in furnishing all necessary facilities for the establishment of the facts. The Court has already found that the only genuine way for Russia to honour its undertaking in cases such as the present one is to ensure that an exhaustive investigation of the incident is carried out and to inform the Court of its results (see *Savriddin Dzhurayev*, cited above, § 200). The Government's failure to comply with their obligations in that respect (see paragraphs 171, 173, 179-180 above and 223-226 below) has made it difficult for the Court to elucidate the exact circumstances of the applicant's forcible return to Uzbekistan, and compels the Court to draw strong inferences in favour of the applicant's position (Rule 44C § 1 of the Rules

of Court). In this regard, the Court also attaches great weight to the way in which the official inquiries were conducted (see *El Masri*, cited above, §§ 191-93).

217. Even though the authorities' attitude allows it to draw additional inferences in favour of the assertion made by the applicants' representatives, the Court does not find it necessary to pursue further the issue of Russian State agents' involvement in the impugned abduction and forcible transfer to Uzbekistan, as in any event the respondent State has to be found responsible for a breach of its positive obligations under Article 3 for the reasons set out below.

(α) Whether the authorities complied with their positive obligation to protect the applicant against the real and immediate risk of forcible transfer to Uzbekistan

218. It goes beyond any doubt that the Russian authorities were well aware – or ought to have been aware – of the real and immediate risk of forcible transfer to Uzbekistan in the wake of the applicant's release from SIZO-1 in Nizhniy Novgorod. The applicant's background, and not least the recurrent similar incidents of unlawful transfers from Russia to States not parties to the Convention (in particular Tajikistan and Uzbekistan) – to which the Russian authorities had been insistently alerted by both the Court and the Committee of Ministers (see paragraphs 81 and 151 above) – were worrying enough to trigger the authorities' special vigilance and require appropriate measures of protection in response to this special situation. The Government confirmed that the warning message had been duly conveyed to all competent law-enforcement authorities (see paragraphs 79, 82 and 151 above).

219. Nonetheless, first, the authorities failed to take any measure to protect the applicant at the critical moment of his release from the remand centre on 2 November 2012. On the contrary, that release was deliberately organised in such a way as to exclude the presence of the applicant's representative or, for instance, his relatives, and, as a result, deprived him of any chance of being protected at least by a representative (see paragraph 170 above).

220. Second, the authorities failed in their protection duty at the moment of the applicant's crossing of the Russian border at Domodedovo Airport in the evening of 2 November 2012. Indeed, the Court has found it established that the applicant's forced transfer through the State border was in any event impossible without the authorisation of the Russian authorities or at least their acquiescence, in disregard of their obligation to protect the applicant. Those authorities were aware – or ought to have been aware – of the real and immediate risk of the applicant's forcible transfer to Uzbekistan (see paragraphs 82 and 178-179 above). However, the Government did not

inform the Court of any timely preventive measure taken by competent State authorities to avert that risk.

221. As a result, the applicant was removed from Russian jurisdiction, only to re-appear in detention in Uzbekistan where he ran a risk of being exposed to ill-treatment (as established in paragraphs 201-07 above).

222. Therefore, the Court finds that the Russian authorities did not respect their positive obligation to protect the applicant against the real and immediate risk of forcible transfer to Uzbekistan and ill-treatment in that country.

(β) Whether the authorities conducted an effective investigation

223. The Court notes from the documents submitted by the parties that several investigative actions were taken in the present case. However, in the Court's view, the investigation into the applicant's disappearance and unlawful transfer from Moscow to Uzbekistan was not effective, for the following reasons.

224. First, the Court is unable to find that the authorities took all reasonable steps available to them to secure the evidence (see the case-law cited in paragraph 210 above). The Court reiterates that the authorities did not obtain the video footage from the remand centre of their own motion at the initial and crucial stage of the investigation, within the time-limit set out in the domestic regulations (see paragraphs 119 and 171 above). Similarly, the request for the footage from Domodedovo Airport was not made by the authorities until late December 2012, that is, outside the thirty-day time-limit for the storage of such evidence (see paragraphs 114 and 180 above), of which the authorities were, or ought to have been, aware.

225. Second, several contradictory aspects of the case were not addressed by the investigators. For instance, the applicant's early release from detention – an issue entirely within the authorities' competence – has remained unexplained (see paragraph 171 above). At no point did the investigators address the circumstances of applicant's journey from Nizhniy Novgorod to Moscow. There is nothing in the case file to suggest that any request for the logs of, for instance, local transport companies was made (see paragraph 173 above). Similarly, the contradictory information on the purchase of the plane tickets for the applicant's flight to Tashkent has remained without any assessment (see paragraph 168 above). Further, the applicant's flight number was known to the authorities, and it would have been possible to obtain witness statements from the crew members on the flight by which the applicant left Moscow for Tashkent on the date of his disappearance. However, the need to interview the crew members was mentioned for the first time in the Government's submissions of 3 May 2013, that is, six months after the events. Further, even the exact date of the applicant's arrest in Uzbekistan remains unknown. These considerations lead the Court to conclude that the investigation has been ineffective in that

it failed to promptly follow several obvious lines of inquiry to an extent which undermined its ability to establish the circumstances of the case, and that the authorities have thus failed to carry out a thorough, objective and impartial analysis of all relevant elements (see *Tsechoyev v. Russia*, no. 39358/05, § 153, 15 March 2011)

226. Finally, the Court notes the belated and summary information provided by the respondent Government in respect of the progress of the investigation. In fact, the Government did not submit copies of the refusals to bring criminal proceedings until 3 May 2013, despite the Court's repeated requests for updates on the progress of the inquiry once the information was available (see paragraphs 6 and 103 above). They have not submitted documents requested by the Court which could have elucidated the circumstances of the applicant's travel to Moscow (see paragraphs 92 and 173 above). Further, they have not updated the Court on the applicant's whereabouts even though the Court has on several occasions invited them to do so. The Court finds no arguments to support a hypothesis that the official information of the Ministry of the Interior of Uzbekistan on the applicant's placement in custody obtained by the applicant's representatives at some point before 16 June 2013 (see paragraphs 100 and 163 above) was not accessible to the respondent Government.

227. That being so, and given the Government's attitude on the aforementioned points and the scarce information they provided, the Court accepts the view of the applicants' representatives that the authorities did not conduct an effective investigation in their arguable complaint, as required by Article 3 of the Convention.

(c) Conclusion

228. Consequently, the Court concludes that there has been a violation of Article 3 of the Convention on account of the authorities' failure to protect the applicant against a forcible transfer to Uzbekistan, where he faced a real and imminent risk of ill-treatment, and the lack of an effective investigation into the incident.

229. In the Court's view, Russia's compliance with the above obligations was of particular importance in the present case, as it would have disproved an egregious situation that so far tends to reveal a practice of deliberate circumvention of the domestic extradition procedure and of interim measures issued by the Court (see paragraph 81 above; see also, for the Committee of Ministers' decisions under Article 46 on related cases concerning Russia, *Savriddin Dzhurayev*, cited above, §§ 121-26). The Court reiterates that the continuation of such incidents in the respondent State amounts to a disregard for the rule of law and has serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court (see *Savriddin Dzhurayev*, cited above, § 257).

230. Regard being had to the foregoing, the Court finds that there has been a violation of Article 3 of the Convention in respect of the applicant's forced repatriation to Uzbekistan.

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

231. The applicant complained under Article 13 of the Convention of a lack of effective domestic remedies in Russia in respect of his complaint under Article 3 of the Convention. Article 13 reads as follows:

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

232. While considering this complaint admissible, the Court notes that it raises the same issues as those already examined under Article 3 of the Convention. In view of its reasoning and findings made under the latter provision (see notably paragraphs 195-200 and 218-27 above), the Court does not consider it necessary to deal separately with the applicant's complaint under Article 13 of the Convention.

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

233. The applicant complained under Article 5 § 1 (f) that the initial period of his detention had been ordered by a prosecutor, that his detention pending extradition had been excessively long, and that on 8 July 2010 his detention had been extended by two different courts for different periods of time, in breach of the legal certainty principle. He further complained that his house arrest constituted a deprivation of liberty within the meaning of Article 5 and was unlawful, since the aggregate time he had spent in custody and under house arrest manifestly exceeded the maximum of eighteen months established in the domestic law, and that the domestic law governing house arrest fell short of the "quality of law" requirements. Relevant parts of Article 5 § 1 read as follows:

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

A. The parties' submissions

234. The Government acknowledged, without further details, that there had been a violation of Article 5 § 1 (f) in respect of both the detention pending extradition and the house arrest. However, in the same set of observations they argued, as regards the complaints under Article 5 §§ 1 and 4 about house arrest, that the applicant had failed to lodge an ordinary appeal under Articles 107 § 2 and 108 § 11 of the CCrP against the court decision of 13 May 2011 ordering his house arrest, despite the fact that such an appeal constituted an effective remedy in respect of the complaint.

235. The applicant maintained his complaint. He agreed that there had been a violation of Article 5 § 1 in respect of his detention pending extradition and his house arrest. In response to the non-exhaustion argument, he submitted that the Government had failed to demonstrate that an ordinary appeal against the decision of 13 May 2011 constituted an effective remedy. The relevant CCrP provisions were not clear enough. Chapter 45 of the CCrP did not contain specific provisions on appeals against a preventive measure. It was not clear from Article 108 § 11 of the CCrP that an appeal court could order an applicant's immediate release. He referred to the case of a Mr V., where an extension of Mr V.'s detention pending extradition by the first-instance court had been found unlawful by the appeal instance. However, the appeal court had remitted the case for fresh consideration and had not ordered the applicant's release; as a result, V.'s detention had been again extended by the lower court.

B. The Court's assessment

1. Admissibility

236. The Court notes that the applicant's complaint under Article 5 concerns two distinct periods: first, the detention pending extradition between 14 November 2009 and 13 May 2011 and, second, the period of his placement under house arrest between 13 May and 5 July 2011.

(a) As regards the complaints concerning the house arrest

(i) Applicability of Article 5

237. The Court reiterates that, in order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 § 1, the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is one of degree or intensity, and

not of nature or substance. The question whether there has been a deprivation of liberty is based on the particular facts of the case (see, with further references, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, §§ 57 and 61, ECHR 2012).

238. The Court notes that the Government did not dispute applicability of Article 5 to the applicant's house arrest. The Court further observes that, pursuant to the court's order of 13 May 2011, the applicant was prohibited from leaving his place of residence at a specific address, as well as using any means of communication, and the measure remained in force for approximately one month and two weeks. The Court also notes the position of the Constitutional Court of Russia that, in view of the restrictions imposed, the house arrest involves a direct restriction of the right to physical liberty and security of the person, and the procedural guarantees in the case of house arrest should be similar to those applicable to pre-trial detention (see paragraph 131 above). Therefore, and in the absence of any comments by the parties on the matter, the Court accepts that the applicant's house arrest amounted to a deprivation of liberty within the meaning of Article 5 of the Convention (see *Vachev v. Bulgaria*, no. 42987/98, § 62, ECHR 2004-VIII (extracts); *Nikolova v. Bulgaria (no. 2)*, no. 40896/98, § 60, 30 September 2004; *N.C. v. Italy*, no. 24952/94, § 33, 11 January 2001; and *Bárkányi v. Hungary*, no. 37214/05, § 27, 30 June 2009) for the purposes set out in sub-paragraph (f) of that Article.

(ii) Exhaustion issue

239. The Court notes that the crucial argument advanced by the applicant before the domestic authorities and this Court is that he was initially placed under house arrest in violation of the maximum time-limit established in the domestic criminal procedure law (Articles 109 §§ 4 and 10 (2) and 110 of the CCrP). Bearing that in mind, the Court will now examine whether an ordinary appeal against the court decision ordering his placement under house arrest constituted a remedy to be exhausted.

240. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are available and sufficient in the domestic legal system to afford redress for the violation complained of. It is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress directly in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been discharged, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the

requirement (see *Mooren v. Germany* [GC], no. 11364/03, § 118, 9 July 2009, with further references). The existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II, with further references).

241. Turning to the Government's submissions, the Court observes that, as provided for in Article 107 § 2 at the material time, house arrest was to be applied in accordance with the procedure set out in Article 108 of the CCrP dealing with detention. Article 108 § 11 of the CCrP provides that a judge's decision on detention is amenable to appeal before a higher court within three days of its delivery date. The appeal against the house arrest order was to be examined by the regional court, a judicial body within the meaning of Article 5 (see *E. v. Norway*, 29 August 1990, § 50, Series A no. 181 A). Article 378 § 1, constituting a part of the CCrP chapter dealing with the cassation appeal procedure in force at the material time, clearly provided that the appeal court was competent not only to quash a judicial decision and remit the case for fresh examination to the first-instance court (as in the case of V., cited by the applicant) but also either to purely quash the judicial decision or amend it. In particular, the judicial decision could be quashed or amended in the event of a violation of the law of criminal procedure, which appears to be the crux of the applicant's complaint about his placement under house arrest. The appeal court was competent to verify the lawfulness, validity and fairness of the decision taken by the first-instance court and to examine evidence, including additional material submitted (see paragraph 141 above). Finally, Article 108 § 11 of the CCrP, applicable to the case of house arrest, provided, in clear and unambiguous terms, that the second-instance court's decision to annul the preventive measure was to be executed immediately. It is not disputed that the suggested remedy was directly accessible to the applicant and was not dependent on the exercise of discretion by an intermediary.

242. In the Court's view, those considerations are sufficient to demonstrate that the cassation appeal procedure set out in Article 108 § 11 of the CCrP at the material time satisfied, at least *a priori*, the Convention requirements in so far as it concerned the court's competence to decide on the lawfulness of the initial house arrest order and, eventually, order the applicant's release. Thus, the Government have discharged the burden upon them of proving the availability to the applicant of a remedy capable of providing redress in respect of his complaint and offering reasonable prospects of success. On the contrary, the applicant did not explain why an ordinary appeal against the decision to place him under house arrest had to be considered obviously futile, nor did he point to any specific circumstances precluding him from making such an appeal. The Court notes, in particular, that both the applicant and his representative, a

professional advocate, were present at the hearing of 13 May 2011 and they were advised of the possibility to lodge their appeal within three days.

243. Therefore, the Court accepts the Government's objection of non-exhaustion of domestic remedies and concludes that it was incumbent on the applicant to lodge an ordinary appeal against the initial decision of 13 May 2011 ordering his house arrest before raising his grievance under Article 5 § 1 before the Court. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) As regards the complaints concerning the extradition proceedings

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

244. The applicant complained of the alleged unlawfulness of his arrest and the initial period of his detention, which had been authorised by a prosecutor. The Court observes that the violations complained of ended on 30 December 2009 when a court issued a detention order, and the final decisions in the two rounds of court proceedings in which the issue of the lawfulness of the applicant's detention ordered by the prosecutor was addressed, were taken on 5 and 12 March 2010 (see paragraphs 43 and 48 above). However, the related complaints were first raised before the Court in the application form of 28 September 2010. It follows that these complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

245. In so far as the applicant's submissions relate to the legality of his subsequent detention on the basis of detention orders issued by domestic courts, the Court reiterates that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to deportation or extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition" (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008). Turning to the present case, the Court notes that all the extensions of the applicant's detention were ordered by courts, including the extension until 14 November 2010 granted by the Nizhniy Novgorod Regional Court on 8 July 2010. The Court cannot overlook the fact that on 8 July 2010 the Kanavinskiy District court issued yet another decision authorising an extension of the applicant's detention for a month. The Court considers such an overlap between two domestic rulings regrettable. Nonetheless, both decisions clearly provided that the applicant was to be remanded in custody. In any event, there is nothing to suggest that the domestic courts, including the Regional Court on 8 July 2010, did not have competence to decide on

the matter, or acted in bad faith, or that they neglected to apply the relevant legislation correctly. The extension orders contained specific time-limits, in compliance with Article 109 of the CCrP. The offences the applicant was charged with in Uzbekistan were regarded as "particularly serious" under Russian law, on which basis his detention was extended to eighteen months, in accordance with Article 109 § 3 of the CCrP (see paragraph 136 above). The lawfulness of the detention was reviewed and confirmed by appellate courts on several occasions (as regards the scope of review of the extension order of 8 July 2010, that issue will be addressed under Article 5 § 4 below).

246. In these circumstances, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(ii) As regards the length and diligence complaint under Article 5 § 1

247. In so far as the applicant complained under Article 5 § 1 about the length of his uninterrupted period of detention during the extradition proceedings and the authorities' diligence in the conduct of those proceedings, the Court considers that the complaint, as submitted by the applicant, relates, in substance, to the entire period between 14 November 2009 and 13 May 2011.The Court considers that that period of detention constituted a continuing situation in so far as the issue of diligence under Article 5 § 1 (f) is concerned. Therefore, the Court will assess this period of detention pending extradition in its entirety (see *Rustamov*, cited above, § 157; see also, *mutatis mutandis*, *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007, in the context of Article 5 § 3 of the Convention). Further, the Court is prevented from examining the period of the house arrest on account of the applicant's failure to exhaust domestic remedies (see paragraphs 241-43 above; see also, in so far as relevant, *Shcheglyuk v. Russia*, no. 7649/02, § 37, 14 December 2006; and, by way of contrast, in the context of Article 5 § 3, *Nikolova (no. 2)*, cited above, §§ 60-69).

248. Therefore, the Court considers that the complaint, in so far as the period between 14 November 2009 and 13 May 2011 is concerned, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Therefore, it must be declared admissible.

2. Merits

249. In addition to the principles cited in paragraph 245 above, the Court reiterates that deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). In other words, the length of

the detention for this purpose should not exceed what is reasonably required (see *Saadi v. the United Kingdom*, cited above).

250. Turning to the present case, the Court notes that the Government conceded, without providing any further details, that there had been a violation of Article 5 § 1 (f) in so far as the entire period of the applicant's detention pending extradition and his house arrest was concerned. However, as shown in paragraph 247 above, the Court is only competent to deal with the period of detention between 14 November 2009 and 13 May 2011.

251. It has not been substantiated, and the Court does not consider, that there were any significant unjustified periods of inaction attributable to the State during the applicant's detention between 14 November 2009 and 22 September 2010, when the extradition order became final. It appears that the extradition and related proceedings were "in progress" all that time.

252. As regards the subsequent period, the applicant remained in detention for slightly less than eight months. The Court notes, first, that in accordance with its case-law, this period should be distinguished from the earlier period of the applicant's detention (see *Chahal*, cited above, § 114, and *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011). Indeed, the extradition proceedings were temporarily suspended pursuant to the request made by the Court under Rule 39 of the Rules of Court and were, nevertheless, in progress (see, for a similar approach, *Umirov*, cited above, with further references). However, the implementation of an interim measure does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5 § 1. In other words, the domestic authorities must still act in strict compliance with domestic law (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 74-75, ECHR 2007−II). In the light of its earlier conclusions (see paragraphs 245-46 above), and in so far as it is competent to decide on the matter (see paragraph 244 above), the Court is satisfied that the applicant's detention during that period was in compliance with the domestic law (see *Umirov*, cited above, §§ 140-41), was subject to time-limits, and less strict preventive measures were considered by the courts in the extension proceedings (see paragraphs 58 and 60 above; see also, by contrast, *Azimov*, cited above, § 173).

253. Second, the Court observes that the refugee status proceedings initiated by the applicant were pending throughout the entire period in question (see paragraphs 37-42 above). Bearing in mind that the outcome of those proceedings could be decisive for the question of the applicant's extradition (see *Chahal*, cited above, § 115; *Rustamov*, cited above, § 165; and, in so far as relevant, *Yefimova v. Russia*, no. 39786/09, § 273, 19 February 2013), and finding no particular delays in those proceedings which could be attributable to the authorities, the Court is satisfied that the requirement of diligence was complied with in the present case.

254. The Court therefore concludes that there has been no violation of Article 5 § 1 (f) of the Convention in relation to the length of the applicant's detention with a view to extradition.

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

255. The applicant complained under Article 5 § 4 of the Convention that the examination of his appeals against the prosecutor's arrest orders had been lengthy, that the Supreme Court on 22 September 2010 had failed to deal with his appeal against the extension of his detention or to adduce any reasoning on the detention matter, that the scope of the examination of his complaint in the extension proceedings of 2 November 2010 and 14 January 2011 had been insufficient and that there had not been an effective procedure by which he could challenge his detention after 2 November 2010. He further complained that there had not been an effective procedure by which he could obtain a periodic review of his house arrest. Article 5 § 4 of the Convention reads as follows:

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

A. The parties' submissions

256. The Government submitted that the applicant had been able to appeal against the judicial decisions both extending his detention and ordering his house arrest, and that the review procedure provided for in Articles 108 and 109 of the CCrP complied with the requirements of Article 5 § 4 of the Convention.

257. As regards his detention pending extradition, the applicant maintained his complaints. He argued, in particular, that in the extension proceedings of 2 November 2010 and the ensuing appeal proceedings the domestic courts had failed to examine his main argument that he should have been released since the extradition proceedings had no longer been in progress. In his observations of 21 November 2011 he submitted in addition that his appeal against the extension order of 2 November 2010 had not been examined "speedily". In support of his complaint concerning house arrest he argued that the prosecutor's office had failed to speedily examine his motion for release, and that his subsequent appeal against the refusal in the first instance court had been rejected on formal grounds. He had decided not to appeal against that court's decision, since he had considered such an application to be ineffective. He submitted that the domestic law did not provide for a review procedure in respect of house arrest.

B. The Court's assessment

1. Admissibility

(a) Complaints concerning the detention pending extradition

258. As regards the detention on the basis of the prosecutor's orders, the latest domestic decisions in the respective sets of proceedings were taken on 5 and 12 March 2010, and the complaint was first raised before the Court on 28 September 2010. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

259. Similarly, the complaint concerning the excessive length of the appeal proceedings against the extension order of 2 November 2010 was introduced with the Court on 21 November 2011, after the expiry of the six month time-limit. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

260. On the other hand, in so far as the applicant complained under Article 5 § 4 about the scope of review in the appeal proceedings of 22 September 2010, the extension proceedings of 2 November 2010 and subsequently on appeal on 14 January 2011, and that he had been unable to obtain review of the detention after 2 November 2010, the Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. Therefore, they must be declared admissible.

(b) Complaints concerning house arrest

261. The applicant complained that, contrary to Article 5 § 4 of the Convention, he had not had an opportunity to take proceedings by which the lawfulness of his house arrest could be reviewed. The Court reiterates that Article 5 § 4 of the Convention entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of their deprivation of liberty (see *A. and Others v. the United Kingdom [GC]*, no. 3455/05, § 202, 19 February 2009, with further references).When the decision is made by a court at the close of judicial proceedings, the supervision required by Article 5 § 4 is incorporated in the decision (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). Article 5 § 4 does not guarantee to the detainee a right to obtain a full review of the detention, with all concomitant guarantees of procedural fairness, whenever he wants it, but only at "reasonable intervals" (see *Lebedev v. Russia*, no. 4493/04, § 79, 25 October 2007).

262. The Court notes that in the present case the house arrest was ordered by a court and the overall duration of the preventive measure in question did not exceed one month and two weeks (see paragraph 70 above). In these circumstances, the Court is satisfied that the supervision required by Article 5 § 4 was incorporated in the judicial decision of 13 May 2011. Furthermore, during that period the applicant chose to apply to a prosecutor on 17 May 2011, that is, within a very short period – three days – of the initial house arrest order, requesting him to petition a domestic court to discontinue the house arrest (see paragraph 64 above). That period cannot be said to be reasonable, especially given that the applicant could have raised exactly the same issue of formal lawfulness in respect of the house arrest – the argument advanced by him in his petition to the prosecutor – before the appeal court competent to deal with the matter, but failed to do so (see paragraphs 241-242 above). Instead, he decided to use a procedure which was not directly accessible to him but was clearly dependent on the discretion of a prosecutor, and, furthermore, he did not appeal against the first-instance court's decision of 7 July 2011 on the lawfulness of the refusal to deal with his request (see paragraph 69 above). Taking into account these specific circumstances, notably the relatively short overall duration of the impugned preventive measure and the absence of a final decision concerning the house arrest in any of the sets of proceedings, the Court finds that it does not have sufficient material at its disposal to enable it to draw a conclusion regarding the absence of a procedure by which the lawfulness of the applicant's house arrest in the present case could be reviewed.

263. Therefore, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Merits

(a) As regards the scope of review complaints

264. In addition to the general principles summarised in paragraph 261 above, the Court reiterates that Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the detention of a person to be "lawful" according to Article 5 § 1. The reviewing "court" must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful (see *A. and Others*, cited above, § 202). Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6, it must have a judicial character and provide

guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others*, cited above, § 203). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006−III, with further references). Article 5 § 4 does not impose an obligation to address every argument contained in the detainee's submissions. The judge examining appeals against detention must take into account concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

265. As regards the proceedings of 2 November 2010 and 14 January 2011, the Court notes that applicant complained about the courts' alleged failure to address his argument that the extradition proceedings had no longer been in progress at the time of the events. The Court observes at the outset that, as can be seen from the first-instance hearing record, the defence did not raise that argument on 2 November 2010, insisting rather on the need to change the preventive measure in respect of the applicant in the light of the alleged prospects of his case before the Court (see paragraph 57 above), and they only advanced the impugned reasoning on appeal (see paragraph 59 above). In any event, on 2 November 2010 the first instance-court examined the arguments actually submitted by the applicant and rejected them by a reasoned decision. In particular, the Regional Court noted that the extradition proceedings had been suspended pursuant to the application of Rule 39 (see paragraph 58 above). The appeal court endorsed that reasoning, finding that the first-instance court had carried out a thorough examination of the case on the basis of the available material (see paragraph 60 above). The Court is satisfied that the scope of the review of the lawfulness of the applicant's detention carried out by the domestic courts on those dates complied with the requirements of Article 5 § 4.

266. Therefore, there has been no violation of Article 5 § 4 in respect of the scope of review in the above set of proceedings.

267. By contrast, as regards the proceedings of 22 September 2010 concerning the appeal against the extension order of 8 July 2010, the Court observes that the domestic court did not address the detention issue at all. The Supreme Court, while having dealt in detail with the extradition matter, not only omitted to address the arguments advanced by the applicant in his written submissions challenging his continued detention, but remained silent on the detention issue (see paragraph 53 above). Thus, no evaluation of the appropriateness of continuing the detention was made. By not taking into account the applicant's arguments against his continued detention, the appeal court failed to carry out a judicial review of the scope and nature

required by Article 5 § 4 of the Convention (see, *mutatis mutandis*, *Nikolova* [GC], cited above; see also *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 109, 6 December 2011).

268. There has accordingly been a violation of Article 5 § 4 of the Convention on account of the appeal court's failure to address the detention issue in the proceedings of 22 September 2010.

(b) As regards the availability of the review procedure after 2 November 2010

269. The Court reiterates that the forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4 (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237−A). Long intervals in the context of automatic periodic review may give rise to a violation of Article 5 § 4 (see, among others, *Herczegfalvy v. Austria*, 24 September 1992, § 77, Series A no. 244). By virtue of Article 5 § 4, a detainee is entitled to apply to a "court" having jurisdiction to "speedily" decide whether or not his or her deprivation of liberty has become "unlawful" in the light of new factors which have emerged subsequently to the decision on his or her initial placement in custody (see *Ismoilov and Others*, cited above, § 146). The requirements of Article 5 § 4 as to what may be considered a "reasonable" interval in the context of periodic judicial review varies from one domain to another, depending on the type of deprivation of liberty in issue (see, for a summary of the court's case-law in the context of detention for the purposes set out in sub-paragraphs (a), (c), (e) and (f) of Article 5 § 1, *Abdulkhakov*, cited above, §§ 212-14).

270. The Court takes note of the Government's argument that between the extension hearings the applicant was entitled to lodge an application for release under Articles 108 and 109 of the CCrP. However, it has already found that these provisions do not entitle a detainee to initiate proceedings for examination of the lawfulness of his detention, a prosecutor's application for an extension of the custodial measure being the required element for the institution of such proceedings (see *Abdulkhakov*, cited above, § 210, with further references). In the absence of any arguments capable of persuading it to reach a different conclusion, the Court finds that in the interval between the hearings concerning the application of a preventive measure to him, the applicant was unable to obtain judicial review of the lawfulness of his detention.

271. The Court further notes that on 2 November 2010 the applicant's detention was extended for six months as from 14 November 2010 (the expiry date of the earlier extension order, see paragraph 51 above). It remains to be ascertained whether the interval of six months between the reviews of the lawfulness of the applicant's detention – conducted on

2 November 2010 and 13 May 2011 – can be considered compatible with the requirements of Article 5 § 4.

272. The Court reiterates that it is not its task to attempt to rule as to the maximum period of time between reviews which should automatically apply to a certain category of detainees. The question of whether periods comply with the requirement must be determined in the light of the circumstances of each case (see *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 55, Series A no. 107, and *Oldham v. the United Kingdom*, no. 36273/97, § 31, ECHR 2000-X). The Court must, in particular, examine whether any new relevant factors arisen in the interval between periodic reviews were assessed, without unreasonable delay, by a court having jurisdiction to decide whether or not the detention has become "unlawful" in the light of these new factors (see *Abdulkhakov*, cited above, § 215). For instance, in two Russian cases the Court has found that intervals between periodic reviews of detention ranging from two to four months were compatible with the requirements of Article 5 § 4 (see *Soliyev v. Russia*, no. 62400/10, §§ 57-62, 5 June 2012, and *Khodzhamberdiyev v. Russia*, no. 64809/10, §§ 108-14, 5 June 2012). In *Abdulkhakov* the Court has considered that the efficiency of the system of automatic periodic judicial review was undermined by the fact that a new relevant factor arisen in the interval between reviews and capable of affecting the lawfulness of his detention – that is, the fact that the extradition order in respect of the applicant had become final – was assessed by a reviewing court only three months later (see *Abdulkhakov*, cited above, §§ 216-17).

273. Turning to the circumstances of the present case, the Court observes that by 2 November 2010, the date of the impugned extension, the extradition order had already become final (see, by contrast, *Abdulkhakov*, cited above, § 216). Throughout the entire period of detention authorised on 2 November 2010 the extradition proceedings were temporarily suspended pursuant to the application of the interim measure (see further, in so far as relevant, the Court's findings in paragraph 252 above). Otherwise, it was not demonstrated that any new, relevant factors requiring the review of the lawfulness of the applicant's detention had actually arisen in the interval between the latest extension order and the change of the preventive measure on 13 May 2011. Having regard to the above circumstances of the present case, and in the absence of further information or comments by the parties, the Court does not consider that the length of the interval between the latest extension granted on 2 November 2010 and the proceedings of 13 May 2011, when the preventive measure in respect of the applicant was changed, was unreasonable.

274. Accordingly, there has been no violation of Article 5 § 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

275. 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."

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. The parties' submissions

276. With reference to *Cruz Varas and Others v. Sweden* (20 March 1991, §§ 95-96 and 104, Series A no. 201), the Government argued that failure to comply with a request for interim measures did not *per se* entail a violation of Article 34 of the Convention. According to them, the fact that the applicant had already introduced the application and his representatives continued to pursue the case demonstrated that the applicant's absence from the Russian Federation did not infringe the proceedings before the Court. Furthermore, in accordance with the Court's indications under Rule 39, the applicant had not been extradited.

277. The applicant's representatives contested the Government's arguments, pointing out that the facts of the present application were different in crucial respects from the aforementioned case of *Cruz Varas and Others*, since in Cruz Varas the applicant had remained at liberty and had been able to contact his representatives before the Court. In the present case, on the contrary, the applicant had been transferred to Uzbekistan against his will, there had existed a serious risk of him being subjected to arrest and torture in the detention of the destination country, his whereabouts had remained unknown, and he had been deprived of any opportunity to contact his representatives or otherwise to participate in the Court proceedings. To that extent, the facts of the present case were similar to *Mamatkulov and Askarov v. Turkey* [GC], (nos. 46827/99 and 46951/99, §§ 128-29, ECHR 2005-I), where a violation of Article 34 was found in

similar circumstances. Referring further to the recent cases of *Abdulkhakov* (cited above, §§ 222-31), and *Zokhidov* (cited above, §§ 201-11), they maintained that the respondent State had failed to comply with the interim measure, in breach of Article 34 of the Convention.

B. The Court's assessment

1. General principles

278. The Court reiterates that, by virtue of Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system. According to the Court's established case-law, a respondent State's failure to comply with an interim measure may entail a violation of that right (see *Mamatkulov and Askarov*, cited above, §§ 102 and 125, and *Abdulkhakov*, cited above, § 222).

279. The Court cannot emphasise enough the special importance attached to interim measures in the Convention system. Their purpose is not only to enable an effective examination of the application to be carried out but also to ensure that the protection afforded to the applicant by the Convention is effective; such measures subsequently allow the Committee of Ministers to supervise the execution of the final judgment. Interim 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 v. Georgia and Russia*, no. 6378/02, § 473, ECHR 2005-III; *Aoulmi v. France*, no. 50278/99, § 108, ECHR 2006-I (extracts); and *Ben Khemais v. Italy*, no. 246/07, § 82, 24 February 2009).

280. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, in truly exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. In most of them, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. The vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands that the utmost importance be attached to the question of the States Parties' compliance with the Court's indications in that regard (see, *inter alia*, the firm position on that point expressed by the Committee of Ministers in its Interim Resolution CM/ResDH(2010)83 in the above-mentioned case of *Ben Khemais*). Any laxity on this question would unacceptably weaken the protection of the core rights in the Convention and

would not be compatible with its values and spirit; it would also be inconsistent with the fundamental importance of the right to individual petition and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order (see *Mamatkulov and Askarov*, cited above, §§ 100 and 125, and, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310).

281. Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the interim measure indicated by the Court (*Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). In examining a complaint under Article 34 concerning the alleged failure of a Contracting State to comply with an interim measure, 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 (*Paladi*, cited above, § 92).

2. Application to the present case

282. Turning to the circumstances of the present case, the Court notes that on 22 September 2010 it indicated to the Russian Government, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, that the applicant should not be extradited to Uzbekistan until further notice (see paragraph 4 above). On 2 November 2012 he was transferred to Uzbekistan.

283. The Government pointed out that the applicant's transfer to Uzbekistan had not taken place through the extradition procedure, which had been immediately stayed following the Court's decision of 22 September 2010. The Court is not convinced by the Government's argument. While the measures taken to stay the extradition may be indicative of the Government's initial willingness to comply with the interim measures, they cannot, in the Court's view, relieve the State of its responsibility for subsequent events in the applicant's case. Nor can the Government legitimately pretend, as their argument may suggest, that the applicant's forcible return to Uzbekistan was not prevented by the interim measures which were formulated by the Court in the present case.

284. Further, as established in paragraphs 180 and 182 above, the applicant's transfer to Uzbekistan would not have been possible without authorisation, or at least acquiescence, of the Russian authorities. The Court has already found the Russian authorities responsible for the failure to protect the applicant against his exposure to a real and immediate risk of torture and ill-treatment in Uzbekistan which made possible his forced

repatriation (see paragraphs 218-22 above). This leads the Court to conclude that the responsibility for the breach of the interim measure also lies with the Russian authorities. Indeed, the Court cannot conceive of allowing the respondent State to circumvent an interim measure such as the one indicated in the present case by using another domestic procedure for the applicant's removal to the country of destination or, even more alarming, by allowing him to be arbitrarily removed to that country in an unlawful manner (see *Savriddin Dzhurayev*, cited above, § 217).

285. The fact that the applicant's representatives and, apparently, his relatives have not been able to contact the applicant since his transfer to Uzbekistan and throughout the period of his detention in Andijan, is a matter of concern for the Court and only strengthens the above conclusion. Against this background, the Court is struck by the Government's argument that the applicant's absence from the Russian Federation did not adversely affect the proceedings before the Court. The fact that the Court has been able to examine a case does not prevent an issue from arising under Article 34 (see *Shamayev and Others*, cited above, § 517). Moreover, it is not disputed that the applicant was unable, at the time of the parties' exchange of their additional observations pursuant to the re-communication of the case, to give his account of the incident of 2 November 2012. As a result, the gathering of evidence in respect of the circumstances of applicant's disappearance has proved more complex. It is also undisputed that he was unable to give instructions to the representatives in the proceedings before this Court after 2 November 2012. Therefore, the applicant has been hindered in the effective exercise of his right of individual application guaranteed by Article 34 of the Convention (see *Labsi v. Slovakia*, no. 33809/08, §§ 149-50, 15 May 2012).

286. Finally, the Court observes that repeated incidents of the forced repatriation of applicants to their home countries have been brought to the attention of the Russian Government by the Committee of Ministers, whose decision adopted on 8 March 2012 at the 1136th meeting of the Ministers' Deputies noted that the situation constituted "a source of great concern" for the Russian authorities.

287. In view of the above, the Court concludes that the applicant's transfer to Uzbekistan prevented it from ensuring the applicant's effective protection under the Convention and therefore hindered the effective exercise of his right of application. Accordingly, it finds that Russia failed to comply with the interim measure indicated under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

288. 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

289. The applicant's representatives claimed 50,000 euros (EUR) on behalf of the applicant in respect of non-pecuniary damage. They submitted, in particular, that, by contrast to the *Abdulkhakov* case (cited above, § 236), the applicant's situation was aggravated by the fact that he had been held incommunicado since 2 November 2012. Neither the applicant nor, subsequently, his representatives made any claims in respect of pecuniary damage.

290. The Government submitted that the amount claimed was not in accordance with the Court's case-law in similar cases and was excessive.

291. The Court observes that in the present case it has found a combination of violations of Articles 3 and 5 § 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 violation. Therefore, deciding on an equitable basis, it awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, and rejects the remainder of the claims under that head.

292. In view of the applicant's continuing detention in Uzbekistan, the Court is concerned about how the respondent State will discharge its obligation of payment of just satisfaction. The Court has already been confronted with similar situations involving applicants that happened to be out of reach after their removal from the respondent State. In some of those cases the Court indicated that the respondent State was to secure payment of the just satisfaction by facilitating contacts between the applicants, their representatives and the Committee of Ministers (see *Muminov v. Russia* (just satisfaction), no. 42502/06, § 19 and point (c) of the operative part, 4 November 2010, and *Kamaliyevy v. Russia* (just satisfaction), no. 52812/07, § 14 and point 1 (c) of the operative part, 28 June 2011). In other cases the Court ordered the awards to be held by the applicants' representatives in trust for the applicants (see *Hirsi Jamaa and Others*, cited above, § 215, and point 12 of the operative part, and *Labsi*, cited above, § 155 and point 6 of the operative part).

293. Turning to the present case, and given the applicant's extremely vulnerable situation in Uzbekistan, the Court considers it appropriate that the amount awarded to him by way of just satisfaction should be held in trust for him by his representatives (see *Savriddin Dzhurayev*, cited above, § 251 and point 6 (a) (i) of the operative part).

B. Costs and expenses

294. The applicant's representatives claimed EUR 14,950 for the costs and expenses incurred in the domestic proceedings and before the Court, which included 31.5 hours of work by Ms Ryabinina (including 15.5 after the applicant's disappearance), 101 hours of work by Ms Yermolayeva (including 55 hours of work following the disappearance) and 17 hours of work by Mr Sidorov (all after the events of 2 November 2012) at the hourly rate of EUR 100.

295. The Government argued that the claim should be rejected, since there were no documents to prove that those expenses had actually been incurred.

296. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, as well as to the fact that no violation was found in respect of the part of the application, the Court considers it reasonable to award the sum of EUR 10,000 to cover costs under all heads, plus any tax that may be chargeable to the applicant, to be paid into the applicant's representatives' bank account, and to reject the remainder of the claims under that head.

C. Default interest

297. 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 complaints under Articles 3 and 13 concerning the risk of the applicant's ill-treatment in Uzbekistan and the lack of effective remedies, under Article 5 § 1 (f) about the length of his detention pending extradition, and under Article 5§ 4 concerning the alleged defects in the judicial review of detention in the appeal proceedings of

3 September 2010, the extension proceedings of 2 November 2010 and the appeal proceedings of 14 January 2011, and the unavailability of a review procedure in respect of his detention after 2 November 2010 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to protect the applicant against a real and imminent risk of torture and ill‑treatment by preventing his forcible transfer from Russia to Uzbekistan, and the lack of an effective investigation into the incident;

3. *Holds* that there is no need for a separate examination of the complaint about the lack of effective remedies under Article 13 of the Convention;

4. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention on account of the length of the applicant's detention pending extradition;

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of allegedly insufficient scope of review on 2 November 2010 and 14 January 2011;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account the domestic court's failure to address the detention issue in the appeal proceedings of 22 September 2010;

7. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of the applicant's inability to obtain a review of his detention between 2 November 2010 and 13 May 2011;

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, which sum is to be held by the applicant's representatives before the Court in trust for the applicant;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement and paid into the representatives' bank account;

(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 7 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President