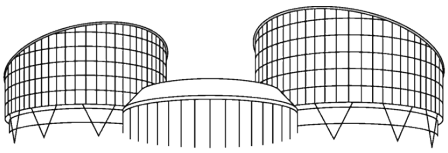

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KASYMAKHUNOV v. RUSSIA

(Application no. 29604/12)

JUDGMENT

STRASBOURG

14 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.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kasymakhunov v. Russia,

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

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

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 29604/12) 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 Yusup Salimakhunovich Kasymakhunov ("the applicant"), on 15 May 2012.

2. The applicant was represented by Mr K. Koroteyev and Ms E. Ryabinina, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that in the event of his extradition to Uzbekistan he would be subjected to a risk of ill-treatment, that there was no effective remedy for that complaint, and that his detention pending extradition had been excessively long. The applicant's representatives later submitted that the applicant had been unlawfully and forcibly transferred to Uzbekistan, in breach of his right of individual application.

4. On 17 July 2012 the Acting President of the Section to which the case was allocated indicated to the respondent Government that the applicant should not be extradited to Uzbekistan until further notice (Rule 39 of the Rules of Court). On 7 August 2012 the same Acting President decided to amend the interim measure and to indicate to the Government that the applicant should not be extradited or otherwise removed against his will to Uzbekistan until further notice.

5. On 29 August 2012 the application was communicated to the Government.

6. On 17 December 2012 the President of the Section invited the parties to submit further information, and on 22 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 1964. His current whereabouts are unknown.

8. The applicant was a member of Hizb ut-Tahrir, a radical Islamic organisation calling for the overthrow of non-Islamic governments and the establishment of an Islamic Caliphate. Hizb ut-Tahrir is classified as a terrorist organisation and banned both in Uzbekistan and in Russia.

9. According to the applicant, he left Uzbekistan for Russia in 1995. In 1998 he lost his Uzbek passport, no. CL-0084412, issued in 1995.

A. Initiation of criminal proceedings against the applicant in Uzbekistan, the requests for his extradition, his arrest and the criminal proceedings against him in Russia

10. On 30 October 1999 the Andizhan Regional Department of the National Security Service of Uzbekistan opened criminal proceedings against the applicant on suspicion of membership of Hizb ut-Tahrir.

11. On 15 December 1999 the applicant was charged *in absentia* with attempting to overthrow the constitutional order, a criminal offence under Article 159 of the Criminal Code of Uzbekistan. The statement of charges indicated that the applicant, being an active member of Hizb ut-Tahrir, had founded several local sections of that organisation, had involved minors in its activities and had distributed its literature calling for the overthrow of governments in Central Asia and the entire world and their replacement by an Islamic State in the form of a recreated Caliphate. On the same date, the prosecutor for the Andizhan Region ordered the applicant's arrest. The applicant was put on the list of wanted persons.

12. On 13 June 2000 the Prosecutor General's Office of Uzbekistan informed the Prosecutor General's Office of the Russian Federation that they had information that the applicant was living in Moscow, and

requested the Russian authorities to arrest him and extradite him to Uzbekistan.

13. On 13 February 2004 the applicant was arrested with a view to his extradition.

14. On 19 February 2004 the Andizhan Regional Department of the National Security Service of Uzbekistan amended the charges against the applicant. An additional charge of founding a criminal organisation, a criminal offence under Article 242 of the Criminal Code of Uzbekistan, was brought against him.

15. On 11 March 2004 the Prosecutor General's Office of Uzbekistan lodged a formal request for the applicant's extradition with the Prosecutor General's Office of the Russian Federation.

16. On 25 March 2004 the Russian authorities instituted criminal proceedings against the applicant on suspicion of membership of Hizb ut-Tahrir. He was charged with aiding and abetting terrorism, founding a criminal organisation, and use of forged documents, offences under Articles 205.1 § 1, 210 § 1 and 327 § 3 of the Russian Criminal Code. The extradition proceedings were suspended pending the criminal proceedings in Russia.

17. On 11 November 2004 the Moscow City Court found the applicant guilty as charged and sentenced him to seven years and four months' imprisonment. On 13 January 2005 the Supreme Court of the Russian Federation upheld the conviction on appeal.

18. On an unspecified date in 2004 the applicant was transported to correctional colony no. IK-18 in the Murmansk Region. It can be seen from a letter of 1 July 2011 from the head of the correctional colony that the applicant's personal file did not contain any passport or other identity document.

19. On 8 June 2011 the Andizhan Regional Department of the National Security Service of Uzbekistan amended the charges against the applicant, adding charges of dissemination of materials damaging to public order, membership of a religious extremist group, and smuggling of extremist materials, criminal offences under Articles 244-1, 244-2 and 246 of the Criminal Code of Uzbekistan.

20. On 10 June 2011 the applicant finished serving his prison term and on an unspecified date the extradition proceedings were resumed.

21. On 16 December 2011 the Prosecutor General's Office of Uzbekistan submitted an updated request for the applicant's extradition.

B. Decisions concerning the applicant's detention

22. On 9 June 2011 the Kolskiy District Court of the Murmansk Region ordered the applicant's detention pending the resumed extradition proceedings, relying on Articles 108 and 466 of the Code of Criminal

Procedure ("the CCrP"). On 28 June 2011 the Murmansk Regional Court upheld the decision on appeal.

23. The applicant's detention was extended by the Kolskiy District Court on 9 August and 8 November 2011 and 7 February, 6 April, 6 June and 8 October 2012 on the basis of Articles 109 and 466 of the CCrP. On 8 October 2012 the applicant's detention was extended until 10 December 2012. All extension orders were upheld by the Murmansk Regional Court on appeal.

C. Applications for refugee status

24. On 10 May 2011 the applicant applied to the Russian Federal Migration Service ("the FMS") for refugee status. In particular, he submitted that he was being persecuted in Uzbekistan for his religious beliefs and that he feared torture and ill-treatment in Uzbekistan in the criminal proceedings against him.

25. On 3 June 2011 the Murmansk Regional Department of the FMS declared his application inadmissible, finding that he was not eligible for refugee status. He had been convicted of a serious criminal offence in Russia and was suspected of a similar offence in Uzbekistan. He had not submitted any documentary evidence or witness statements confirming that the criminal proceedings against him were politically motivated.

26. The applicant challenged that decision before a deputy head of the FMS. He submitted, in particular, that the decision of 3 June 2011 had been taken on the basis of a written questionnaire without any interview. He had not been allowed to contact a lawyer before filling the questionnaire in.

27. On 1 August 2011 the deputy head of the FMS confirmed the decision of 3 June 2011. He found that the Uzbek authorities had charged the applicant with criminal offences in connection with his membership of Hizb ut-Tahrir. Hizb ut-Tahrir had been classified as a terrorist organisation by the Russian Supreme Court and thus constituted a serious danger for the national security of all States. The applicant had earlier been convicted by a Russian court for creating and leading a section of Hizb ut-Tahrir in Russia. Moreover, he had submitted false information about the date of his arrival in Russia. He had stated in the questionnaire that he had left Uzbekistan for Russia in 1995, whereas the documents in the criminal case file showed that he had arrived in Russia in 1999. The applicant had not produced any evidence confirming his allegation that the criminal charges against him were politically motivated.

28. The applicant challenged the decision of 1 August 2011 before the Basmanniy District Court of Moscow. He reiterated his fears of being subjected to ill-treatment in Uzbekistan and his arguments that the criminal proceedings against him were politically motivated and that he was in fact being persecuted for his religious beliefs. He further cited extracts from the

the Moscow City Court judgment of 11 November 2004 confirming that that court had established that he had lived in Russia since at least 1996. Finally, he asserted that he had ceased to be a member of Hizb ut-Tahrir in 2004 and no longer participated in that organisation's activities.

29. On 14 October 2011 the Basmanniy District Court confirmed the decision of 1 August 2011. It found that the reasons for the refusal of refugee status advanced by the FMS were convincing and that the applicant had failed to substantiate his allegation that he had been persecuted for his religious beliefs. Moreover, the applicant had not applied for refugee status within a day of crossing the Russian border, as required by Russian law (see paragraph 85 below). Given that his close relatives continued to live in Uzbekistan, his return there was possible. The court also found it established that the applicant had in fact arrived in Russia in 1995.

30. On 1 March 2012 the Moscow City Court upheld the judgment of 14 October 2011 on appeal, finding that it was lawful, well-reasoned and justified.

D. Decision to extradite the applicant and subsequent appeal proceedings

31. On 6 June, 25 and 26 July, 15 and 23 August and 5 October 2011 the Ministry of Foreign Affairs, the FMS and the Federal Security Service informed the Prosecutor General that the applicant did not hold Russian citizenship and that there were no other obstacles to his extradition to Uzbekistan.

32. By a letter of 12 March 2012 the Prosecutor General's Office of Uzbekistan gave an assurance that the applicant would not be extradited to a third-party State, or prosecuted or punished for any offences committed before extradition which were not mentioned in the extradition request, without Russia's consent. It also stated that after serving his sentence he would be free to leave Uzbekistan. It further stated that Uzbek law prohibited any discrimination on grounds of sex, race, ethnic origin, language, religious or other beliefs or social status, as well as torture, violence or other forms of inhuman or degrading treatment. The Prosecutor General's Office of Uzbekistan gave an undertaking that the relevant provisions of Uzbek law would be respected in the criminal proceedings against the applicant.

33. The applicant asked the Prosecutor General's Office of the Russian Federation to refuse the request for his extradition. He submitted, in particular, that he would run a real risk of torture or inhuman treatment if extradited to Uzbekistan. Relying on Article 3 of the Convention and the Court's case-law (he referred to *Ismoilov and Others v. Russia*, no. 2947/06, 24 April 2008; *Muminov v. Russia*, no. 42502/06, 11 December 2008; *Khodzhayev v. Russia*, no. 52466/08, 12 May 2010; *Abdulazhon Isakov v.*

Russia, no. 14049/08, 8 July 2010; *Yuldashev v. Russia*, no. 1248/09, 8 July 2010; *Karimov v. Russia*, no. 54219/08, 29 July 2010; *Gaforov v. Russia*, no. 25404/09, 21 October 2010; *Sultanov v. Russia*, no. 15303/09, 4 November 2010; and *Yakubov v. Russia*, no. 7265/10, 8 November 2011), he argued that members of Hizb ut-Tahrir were at an increased risk of ill-treatment. Finally, he submitted that he had already been convicted for membership of Hizb ut-Tahrir by a Russian court and had served his sentence, and that his extradition would therefore be in breach of his right not to be tried or punished twice for the same offence.

34. On 19 April 2012 the Prosecutor General's Office ordered the applicant's extradition to Uzbekistan. The prosecutor listed the charges against the applicant and found that his actions were punishable under Russian criminal law. An extradition order was granted in respect of the charge of founding a criminal organisation. The prosecutor found that the said offence corresponded to the offence of leadership of a criminal organisation under Russian criminal law. However, the prosecutor rejected as grounds for extradition the charges of attempted overthrow of the constitutional order, dissemination of materials damaging to public order, membership of a religious extremist group, and smuggling of extremist materials because those offences were either time-barred, had not been punishable under Russian criminal law at the time of their alleged commission by the applicant, or had later been decriminalised.

35. The applicant challenged the extradition order before the Murmansk Regional Court. He submitted, in particular, that the charges against him were politically motivated, that he would be subjected to a serious risk of torture in Uzbekistan, and that he had been already convicted for the same offence by a Russian court. To substantiate the risk of ill-treatment he relied on the case-law of the Court cited above and on reports by the United Nations High Commissioner for Refugees ("UNHCR"), Human Rights Watch and Amnesty International according to which the human rights situation in Uzbekistan in general, and in Uzbek detention facilities in particular, was alarming because ill-treatment in order to obtain self-incriminating statements was widespread and members of prohibited religious organisations, such as Hizb ut-Tahrir, were at an increased risk of ill-treatment. The applicant also submitted to the court letters from Human Rights Watch and Amnesty International in which they expressed their concern about his impending extradition to Uzbekistan where, being a member of Hizb ut-Tahrir, he would certainly face a serious risk of torture or inhuman treatment

36. On 1 June 2012 the Murmansk Regional Court upheld the extradition order. It held that the Uzbek and Russian authorities had followed the extradition procedure set out in the applicable international and domestic law. The applicant was charged with offences punishable under Uzbek and Russian criminal law and there was no evidence that he was

being persecuted for his political opinions. The Regional Court further held that the applicant's allegations of a risk of ill-treatment were based on assumptions. The international reports and the case-law of the Court relied upon by the applicant were irrelevant because they described the general situation in Uzbekistan rather than the applicant's personal circumstances. It was significant that the competent Russian authorities, such as the Ministry of Foreign Affairs, had not detected any obstacles to the applicant's extradition, that his application for refugee status had been dismissed, and that assurances of humane treatment had been provided by the Uzbek authorities.

37. The applicant appealed. He reiterated the arguments he had advanced before the Prosecutor General's Office and the Murmansk Regional Court and argued that the Regional Court had disregarded those arguments and the evidence he had adduced of the existence of a serious risk of ill-treatment. He further submitted that the diplomatic assurances that he would not be ill-treated were unreliable as there was no mechanism for monitoring compliance, or accountability for a breach of such assurances.

38. On 18 July 2012 the Supreme Court of the Russian Federation dismissed his appeal and upheld the decision of 1 June 2012, endorsing the reasoning of the Regional Court. In reply to the applicant's argument that his extradition would be in breach of his right not to be tried or punished twice for the same offence, the Supreme Court held that he had been convicted by a Russian court for acts he had committed in his capacity as a member of Hizb ut-Tahrir between 1999 and 2004 in Russia, while his extradition was sought in respect of acts he had committed in the same capacity between 1994 and 1999 in Uzbekistan.

E. The applicant's release

39. On 8 November 2012, as the date of expiry of the maximum detention period established by domestic law was approaching, the applicant made a written statement that he had no intention of returning to Uzbekistan and that if he disappeared it should be understood that he had been abducted and forcibly transferred to Uzbekistan. For the same reason of fear of abduction he also requested that his representatives, Ms Ryabinina and Mr Koroteyev, be present at the moment of his release.

40. On 10 December 2012 the prosecutor of the Murmansk Region ordered the applicant's release because the maximum detention period established by domestic law had expired.

41. The applicant was released on the same day. In accordance with his request, his release took place in the presence of his representatives, Ms Ryabinina and Mr Koroteyev. He was issued with a release certificate bearing his identity photograph. He did not have any other identity documents.

42. On the same day the applicant took a plane to Moscow together with his representatives. He rented a flat in the village of Verbilki in the Moscow region. It was agreed between the applicant and Ms Ryabinina that he should telephone Ms Ryabinina every day.

43. On 11 December 2012 the applicant applied for temporary asylum. It appears that the proceedings are still pending.

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

44. On 12 December 2012 the applicant told his representative Ms Ryabinina that two cars were following him everywhere and that he feared abduction. Ms Ryabinina telephoned the Government's Representative to inform him of that conversation.

45. The next day the applicant stayed at home fearing abduction.

46. On 14 December 2012 the applicant telephoned his landlady at about 1.20 p.m. to ask if he could borrow a screwdriver from her. She answered in the affirmative and the applicant said he would come to fetch it in the next half hour. He never went to get it and has not been seen or heard of since.

47. Late in the evening of the same day, Ms Ryabinina did not receive her usual daily call from the applicant, so she attempted to contact him. His mobile phone was switched off. Ms Ryabinina immediately informed the police and the Government's Representative of the applicant's disappearance. She also attempted unsuccessfully to obtain information about the applicant from the border control authorities.

48. On 15 December 2012 the applicant's landlady let Ms Ryabinina, Mr Koroteyev and Mr U. into the applicant's flat. His personal belongings, including his clothes, his copy of the Koran, his prayer mat and his mobile phone charger, as well as documents relating to his case, were found there. The fridge was full of food, the lights were on and some repair tools had been left on the floor. Ms Ryabinina contacted the Government's Representative to inform him of these facts.

49. It can be seen from a document issued on 26 March 2013 by the Uzbekistan Airways (*O'zbekiston havo yo'llari*) that the applicant departed Moscow Domodedovo Airport for Tashkent, Uzbekistan, on board regular flight no. HY-602 at 11.45 p.m. on 14 December 2012. His ticket was issued on passport no. CL-0084412.

50. The applicant's current whereabouts within Uzbekistan remain unknown.

G. Official inquiry into the applicant's disappearance

51. On 15 December 2012 Ms Ryabinina lodged a complaint about the applicant's disappearance with the Zaprudnenskiy police station in the

Taldom District of the Moscow Region. She was immediately questioned and described the circumstances of the applicant's disappearance.

52. On the same day the police examined the applicant's flat and questioned his landlady. The landlady described the applicant's telephone call of the previous day, his intention to come to her flat to borrow a screwdriver and his eventual failure to appear.

53. On 18 December 2012 Ms Ryabinina's complaint was referred to the Taldom Town Investigations Committee.

54. On 21 December 2012 a search file was opened by the local police in respect of the applicant. Several of the applicant's neighbours were questioned on 22 December 2012 in connection with the search. They were unable to provide any information about the applicant. The police established that the last signal had been emitted by the applicant's mobile phone at 2.26 p.m. on 14 December 2012. The mobile phone had been inactive since. Finally, the police checked nearby hospitals, morgues and detention facilities and circulated the applicant's description to the police duty posts at Moscow metro stations, train stations and airports. No trace of the applicant was found.

55. On 24 December 2012 the Taldom Town Investigations Committee returned Ms Ryabinina's complaint to the Taldom District Department of the Interior because the requisite formalities had not been complied with in the referral of 18 December 2012.

56. On 29 December 2012 the Taldom District Department of the Interior referred Ms Ryabinina's complaint to the Taldom Town Investigations Committee for a second time.

57. On 9 January 2013 the chief investigator of the Taldom Town Investigations Committee refused to open criminal proceedings into the applicant's disappearance. He made a summary of the statements by Ms Ryabinina, the applicant's landlady and two of his neighbours. He then found that there was no evidence of kidnapping or murder. The applicant could have gone into hiding to evade extradition and the criminal proceedings in Uzbekistan.

58. On 11 January 2013 the head of the Taldom Town Investigations Committee annulled the decision of 9 January 2013 and ordered a further inquiry. He ordered, in particular, that Ms Ryabinina and other acquaintances of the applicant be questioned, that it be established whether the applicant had bought train or plane tickets, and that a request for information be sent to the Uzbek authorities to find out whether the applicant was currently in detention in Uzbekistan.

59. On 15 January 2013 the chief investigator of the Taldom Town Investigations Committee asked the Department of the Interior of the Moscow Region to check the applicant's name in their internal databases in order to establish whether he had recently bought train or plane tickets.

60. On 17 January 2013 the Department of the Interior of the Moscow Region replied that the applicant's name had been on the federal list of wanted persons since 7 May 2012. The Department of the Interior did not have any information concerning train or plane tickets bought by the applicant.

61. On 20 January 2013 Ms Ryabinina sent to the chief investigator of the Taldom Town Investigations Committee a written statement describing in detail the circumstances of the applicant's disappearance.

62. On 21 January 2013 the chief investigator of the Taldom Town Investigations Committee refused to open criminal proceedings into the applicant's disappearance, advancing the same reasons as in the decision of 9 January 2013.

63. On 28 January 2013 the head of the Taldom Town Investigations Committee annulled the decision of 21 January 2013 and ordered a further inquiry. He ordered, in particular, that the investigative measures set out in the decision of 11 January 2013 be carried out.

64. On 7 February 2013 the chief investigator of the Taldom Town Investigations Committee sent a request for information to Uzbekistan Airways. He asked them to inform him whether the applicant had recently bought tickets from the company.

65. On 7 February 2013 the chief investigator of the Taldom Town Investigations Committee refused to open criminal proceedings into the applicant's disappearance for a third time, for the same reasons as before. He noted that no reply had yet been received to the request for information sent to Uzbekistan Airways.

66. On 11 February 2013 the head of the Taldom Town Investigations Committee annulled the decision of 7 February 2013 and ordered a further inquiry. He noted that the chief investigator had not still carried out the investigative measures mentioned in the decision of 11 January 2013.

67. On 15 February 2013 the Taldom Town Investigations Committee opened criminal proceedings into the applicant's disappearance.

68. On 26 February 2013 Ms Ryabinina requested that the applicant be granted the procedural status of victim and that she be recognised as his representative. On 2 March 2013 Mr Koroteyev submitted a similar request. They received no formal reply to their requests. According to the Government, the investigator replied to them orally that they were not relatives of the applicant and could not therefore claim to be victims.

69. On 2 March 2013 Mr U., who had accompanied Ms Ryabinina and Mr Koroteyev to the applicant's flat on 15 December 2012, was questioned. He described the applicant's flat as they had found it.

70. On the same day the investigator collected the applicant's belongings from Ms Ryabinina. He drew up a list of those belongings, which included the applicant's clothes and other belongings, such as a

prayer mat, books, documents, photographs, a mobile phone charger, a wristwatch, a razor, a nail file and a glasses case.

71. According to the Government, on 15 and 25 March 2013 the investigator sent requests for assistance to the Uzbek authorities. He asked for assistance in questioning the applicant's relatives and in establishing the applicant's whereabouts. The Court has not been informed of any reply.

72. On 26 March 2013 Uzbekistan Airways confirmed that a person named Yu. S. Kasymakhunov had taken a flight to Tashkent on 14 December 2013. The investigator sent a request for further information but has not received any reply to date.

73. The criminal proceedings are still pending. As confirmed by the Government, Ms Ryabinina and Mr Koroteyev were not informed about the progress of the investigation because they did not have any procedural status in the proceedings.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

A. Extradition proceedings

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

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

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

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

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

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

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

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

B. Status of Refugees

1. The 1951 Geneva Convention on the Status of Refugees

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

> "1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."

2. Refugees Act

83. The Refugees Act (Law no. 4258-I of 19 February 1993) incorporated the definition of the term "refugee" contained in Article 1 of the 1951 Geneva Convention, as amended by the 1967 Protocol relating to the Status of Refugees. The Act defines a refugee as a person who is not a Russian national and who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it (section 1 § 1 (1)).

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

85. An application for refugee status must be submitted: (1) to the Russian Consulate before arrival in Russia; (2) to the State Border Control Office at the time of crossing the Russian border; (3) to the State Border Control Office, the local Department of the Interior or the local office of the FMS within a day of an illegal crossing of the Russian border; or (4) to the local office of the FMS having territorial jurisdiction over the place of the person's lawful residence (section 4 § 1).

86. A person who has applied for refugee status or who has been granted refugee status cannot be returned to a State where his life or freedom would

be imperilled on account of his race, religion, nationality, membership of a particular social group, or political opinion (section 10 § 1).

87. If a person satisfies the criteria established in section 1 § 1 (1), or if he does not satisfy such criteria but cannot be expelled or deported from Russia for humanitarian reasons, he may be granted temporary asylum (section 12 § 2). A person who has been granted temporary asylum cannot be returned against his will to the country of his nationality or to the country of his former habitual residence (section 12 § 4).

C. Shanghai Cooperation Organisation

88. Russia is a member State of the Shanghai Cooperation Organisation (SCO) together with China, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. All these States signed the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism, which requires the member States to co-operate in arresting people accused on charges relating to terrorism, separatism or extremism. In the implementation of that Convention with regard to issues concerning extradition and legal assistance in criminal cases, the Parties must cooperate in conformity with the international treaties to which they are parties and the national laws of the Parties (Article 2 § 2 of that Convention).

89. On 5 July 2005 the Concept on Cooperation between SCO member States in the Fight against Terrorism, Separatism and Extremism was adopted. It provides that the SCO States are committed to refusing asylum to people who are suspected or accused of offences relating to terrorism, separatism or extremism (section 1).

III. INTERNATIONAL MATERIAL

A. Reports on Uzbekistan

90. For a summary of the recent reports on Uzbekistan by the UN institutions and by NGOs, see *Abdulkhakov v. Russia*, no. 14743/11, §§ 99-107, 2 October 2012. For relevant reports on the particular situation of persons accused of membership of Hizb ut-Tahrir, see *Muminov v. Russia*, no. 42502/06, §§ 73-74, 11 December 2008.

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

91. 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 v. Russia*, no. 71386/10, §§ 108-120, ECHR 2013.

C. Reports on the Shanghai Cooperation Organisation

92. The UN Human Rights Committee considered the sixth periodic report of the Russian Federation and adopted the following concluding observations on 28 October 2009 (CCPR/C/RUS/CO/6):

> "17. The Committee is concerned about reports of extraditions and informal transfers by the State party to return foreign nationals to countries in which the practice of torture is alleged while relying on diplomatic assurances, notably within the framework of the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism ...
>
> The State party should ensure that no individual, including persons suspected of terrorism, who are extradited or subjected to informal transfers, whether or not in the context of the Shanghai Cooperation Organisation, is exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment. Furthermore, the State party should recognise that, the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. The State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals."

93. In their 2013 report "Return to Torture: Extradition, Forcible Returns and Removals to Central Asia", Amnesty International expressed deep concern about section 1 of the Concept on Cooperation between SCO member States in the Fight against Terrorism, Separatism and Extremism (see paragraph 89 above), which, in their view, removes the possibility to apply for refugee status (and thus seek and obtain asylum and protection against persecution) even where a person is only suspected of an offence relating to terrorism, separatism or extremism. In Amnesty International's opinion, this contradicts the 1951 UN Convention relating to the Status of Refugees. Amnesty International writes as follows [internal footnotes are omitted]:

> "In the 2005 Declaration of Heads of SCO Member States in Astana, Kazakhstan, participating states committed to denying asylum to all individuals accused or suspected of 'terrorism, extremism or separatism'. This is of particular concern to Amnesty International, as it effectively denies access to refugee-determination procedures – and consequently the right to seek and enjoy asylum from persecution – to any individual who is accused or merely suspected of acts of "terrorism, extremism or separatism" in one of the SCO member states, in a way that is not consistent with the Refugee Convention. The Declaration, like most formal SCO documents and agreements, makes no reference to the international obligations of its member states, including the principle of *non-refoulement* enshrined in the 1951 Refugee Convention and the absolute prohibition of torture or other ill-treatment.

These agreements that have been concluded within the framework of the SCO have made the extradition of refugees to member states significantly easier as states prioritize these agreements over international human rights and refugee obligations. According to human rights defenders from the Komitet Grazhdanskoe Sodeistvie (KGS) or Civil Assistance Committee in Russia 'there has been a sharp increase in extraditions of refugees to the countries [of the CIS] of which they are citizens, since the SCO was set up.'

Co-operation between the police and security services of SCO member states has similarly increased, especially in the apprehension and detention of individuals wanted on criminal charges in a member state ..."

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

94. 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, §§ 121-126.

95. 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 the disappearance of an applicant in respect of whom an interim measure had been 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

96. Given the lack of agreement between the parties on the events that took place on 14 December 2012, it is necessary for the Court to establish the facts of the present case.

A. Submissions by the parties

97. The Government submitted that the investigation into the applicant's disappearance was still pending and that to date it had not yet been possible to establish what had happened on 14 December 2012.

98. The applicant's representatives submitted that the applicant had been forcibly removed from Russia to Uzbekistan, either by the Russian authorities or at least with their acquiescence. In particular, the applicant had stated clearly before his release that he had no intention of returning to Uzbekistan of his own free will and that he feared abduction. On the day after his release he had lodged an application for temporary asylum, which further confirmed his intention to remain in Russia. On 14 December 2012, immediately before his disappearance, he had told his landlady he would come to see her within the next half an hour but had never done so. The state of his flat and the personal belongings that were left there gave the impression that the applicant had left for a short time intending to return to the flat without delay. The facts outlined above made it clear that the applicant had no intention of running away, let alone of returning to Uzbekistan, and that, on the contrary, he was anxious to stay in Russia as long as he could. The hypothesis of a forcible removal to Uzbekistan was further strengthened by the fact that two days before his disappearance the applicant had been followed by two cars. Moreover, given that the applicant had no valid identity documents allowing him to cross the Russian border, his Uzbek passport having expired in 2009 when he had turned forty-five, it would not have been possible for him to pass through border control and to board the flight to Uzbekistan without the assistance of the authorities. Lastly, the applicant's representatives invited the Court to draw inferences from the authorities' failure to undertake a thorough investigation into the applicant's disappearance and to put forward an alternative version of the events.

B. The Court's assessment

1. General principles

99. 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).

100. 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).

101. 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 v. Russia*, 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

102. The Court must start its examination by establishing two major points: whether the applicant travelled to Uzbekistan voluntarily and, if not, whether the Russian authorities were involved in his transfer to Uzbekistan.

103. The Court notes at the outset that it 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 *Iskandarov v. Russia*, no. 17185/05, 23 September 2010; *Abdulkhakov,* cited above; and *Savriddin Dzhurayev*, cited above; see also paragraphs 94 and 95 above). It is against the background of the regular recurrence of such incidents, for which the authorities have not provided any adequate explanation, that the Court will examine the present case.

104. It is significant that in the present case, in contrast to the previous cases, the parties were not able to contact the applicant and he was thus unable to provide a description of the events of 14 December 2012 (see, by contrast, *Abdulkhakov,* cited above, §§ 54-60 and 120, and *Savriddin Dzhurayev*, cited above, § 37-41 and 131), and no eye-witnesses to the applicant's disappearance have been identified to date. However, it is undisputed that the representatives lost contact with the applicant on 14 December 2012, and that in the evening of the same day the applicant took a flight from Moscow Domodedovo Airport to Tashkent. As to the applicant's situation after his departure from Russia, the Court notes that the parties were unable to provide information on his current whereabouts within Uzbekistan.

105. The Court takes note of the position of the applicant's representatives, who firmly ruled out the possibility that he had travelled to Uzbekistan voluntarily. That position is supported by a substantial body of evidence attesting to the applicant's constant and unfaltering intention of remaining in Russia and his fear of being forcibly transferred to Uzbekistan. In particular, the Court finds it significant that the applicant faces serious charges in Uzbekistan, where an arrest warrant has been issued in respect of him (see paragraphs 11, 14 and 19 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 the different sets of domestic proceedings (see paragraphs 24, 28, 33, 35 and 37 above). In July 2012 he

submitted a request for an interim measure to this Court, requesting the suspension of his extradition (see paragraph 4 above). Further, shortly before his release the applicant made a written statement to the effect that he had no intention of returning to Uzbekistan and that, fearing abduction, he wished his representatives to be present at the moment of his release (see paragraph 39 above). On 11 December 2014, the day after his release, he lodged an application for temporary asylum and rented a flat in the Moscow region where he intended to live while his application was being examined (see paragraphs 42 and 43 above). Finally, the Court finds no reason to distrust the applicant's representatives' statement that on 12 December 2012, two days before his disappearance, the applicant, who was convinced that he had been followed by two cars, again expressed a fear of being apprehended and transferred to Uzbekistan (see paragraph 44 above). Against this background, the Court is not prepared to accept that he suddenly changed his mind and travelled voluntarily to Uzbekistan unless that is corroborated by other evidence. No such evidence has been submitted by the Government.

106. The version of an involuntary transfer to Uzbekistan advanced by the applicant's representatives is further corroborated by the undisputed circumstances in which he disappeared. It has been established by witness statements that on 14 December 2012, the day of his return to Uzbekistan, the applicant telephoned his landlady and told her he would come to see her within the next half an hour to fetch a screwdriver. He did not come as promised and has not been seen or heard of since (see paragraph 46 above). When his representatives visited his flat on the next day it looked as if the applicant had left it for a short time and intended to return without delay: the lights were on, the refrigerator was full of food and the applicant's personal belongings, including his clothes, personal documents and photographs, religious items and everyday necessities such as a razor, a wristwatch and a mobile phone charger, had been left in the flat (see paragraphs 48 and 70 above). The Court finds it difficult to believe that the applicant decided to return to Uzbekistan and departed with no luggage, leaving behind all his documents, clothes and items of everyday necessity. The above circumstances raise further doubts as to the voluntary nature of the applicant's return to Uzbekistan.

107. The circumstances in which the plane tickets were bought and the airport border control was crossed further undermined the version of the applicant's voluntary return to Uzbekistan. It can be seen from the document issued by Uzbekistan Airways that the travel ticket was issued on passport no. CL-0084412. In the absence of any documents – such as an extract from the border control register – recording the crossing of the Russian border by the applicant, it may be presumed that the same passport was used by him to pass through the airport border control. It is significant that that passport – which the applicant had allegedly lost in 1998 – was not

listed among the documents kept in his personal detention file or among the documents which were in his possession when he was released (see paragraphs 9, 18 and 41 above). In fact, that passport was never mentioned in the domestic proceedings. The above circumstances lend weight to the applicant's allegation that the passport had been lost. It is important to note in this connection that the Government did not submit any documents capable of refuting that allegation.

108. Even assuming that the applicant was in possession of passport no. CL-0084412, the Court notes that that passport had expired in 2009 when the applicant had turned forty-five. However, unable to establish with certainty whether the date of expiry was clearly indicated in old Uzbek passports issued in the 1990s, the Court cannot draw firm conclusions as to whether the fact that the passport was no longer valid must have been evident to the employees of the airline company who issued the ticket, or to the border control agents. Indeed, it cannot be excluded that the applicant could have passed through border control with an invalid passport without a clear indication as to the date of validity owing to inattentiveness or error on the part of the agent responsible. However, the question of how the applicant could have crossed the border with an invalid passport does not appear to have been addressed by the investigators at the domestic level. There is no evidence that disciplinary or other liability proceedings were initiated against the border control agents responsible. The Court attaches great importance to – and draws inferences from – the authorities' failure to clarify the passport issue.

109. Finally, and most importantly, the Court observes that at the time of his return to Uzbekistan the applicant was on the federal list of wanted persons (see paragraph 60 above). In these circumstances, the Court is struck by the Government's failure to provide any plausible explanation of how the applicant was able to pass freely through the airport border control without being stopped. Again, the Court draws strong inferences from the authorities' failure to elucidate the circumstances of the crossing of the Russian border by the applicant. Indeed, it finds nothing in the Government's submissions to rebut the applicant's representatives' assertion that the Russian authorities were implicated in his transfer through the airport passport and customs checks. The Court sees only two possible sequences of events that could have taken place at the airport border control: either the authorities knowingly let the applicant through the border formalities in defiance of the fact that his name was on the list of wanted persons, or he was taken on board a plane to Uzbekistan without complying with the normal formalities. While the Court is obviously unable to accept any of the above versions as being beyond reasonable doubt in the absence of any further information about the events which unfolded at the airport in the evening of 14 December 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 Moscow Domodedovo Airport.

110. 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 on 14 December 2012 of his own free will but was forcibly transferred to Uzbekistan by an unknown person or persons, 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 emphasises that it draws strong inferences in support of this version from the Russian authorities' failure to conduct a meaningful investigation (see paragraphs 145 to 152 below) and to refute the applicant's representatives' account or provide a plausible alternative explanation of the events of that day.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

111. 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 on account of his secret transfer to Uzbekistan, which 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. Article 3 reads as follows:

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

A. Admissibility

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

B. Merits

1. Submissions by the parties

113. The Government submitted that the applicant had not proved that his extradition to Uzbekistan would expose him to any risk of ill-treatment or political persecution. His allegations of such risks had been examined and rejected by the Russian courts. The Government reiterated the reasoning of the domestic courts. They maintained, in particular, that the reports by the UNHCR, Human Rights Watch and Amnesty International, and the case-law of the Court referred to by the applicant before the domestic courts described the general situation in Uzbekistan rather than the applicant's personal circumstances. The fact that he was a member of Hizb ut-Tahrir was, in their opinion, insufficient to warrant a finding that he was at an increased risk of ill-treatment. It was also relevant that the applicant had not applied for refugee status immediately after his arrival in Russia in 1999. The fact that he had not lodged an application for refugee status until 2011 showed that the he himself had not considered the risks of ill-treatment serious enough.

114. The Government further relied on the diplomatic assurances provided by the Uzbek Prosecutor General's Office. They submitted that there was no reason to doubt that the assurances would be complied with: Uzbekistan was a party to all UN human rights treaties prohibiting torture, and submitted regular reports to the UN bodies responsible for their supervision. To the Government's knowledge, none of the persons extradited from Russia to Uzbekistan had been ill-treated.

115. The Government also referred to the fact that the applicant had been convicted of criminal offences in Russia similar to the offences imputed to him in Uzbekistan, which showed that the applicant was a recalcitrant criminal and that the Uzbek criminal proceedings against him were not politically motivated. They further submitted that allowing such a dangerous criminal to stay in Russia would create a danger for Russian citizens. Moreover, it would undermine Russia's relations with Uzbekistan.

116. As regards the applicant's transfer to Uzbekistan, the Government submitted that the investigation was still pending and listed the investigative measures that had been performed to date. These measures had not yet led to the establishment of the circumstances of the applicant's return to Uzbekistan.

117. The applicant submitted that he had brought his fears of ill-treatment in Uzbekistan to the attention of the domestic authorities during the refugee-status and extradition proceedings. He had relied on reports by UN agencies and respected international NGOs which clearly demonstrated that individuals who, like him, were suspected of membership of Hizb ut-Tahrir were at an increased risk of ill-treatment. However, the domestic

authorities had not taken into account the evidence he had submitted and had dismissed his fears as unsubstantiated without a thorough assessment of the general situation in Uzbekistan or his personal situation, relying on the diplomatic assurances provided by the Uzbek authorities. Yet, those assurances were unreliable on account of the absence of any mechanism of compliance monitoring or any accountability for their breach (he referred to *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 189, ECHR 2012 (extracts)).

118. Following the applicant's disappearance on 14 December 2012, his representatives argued that the Russian authorities had been responsible for his forcible transfer to Uzbekistan. His transfer through the Russian State border at Domodedovo Airport could not have taken place without the authorisation, or at least acquiescence, of the State agents in charge of the airport. The Russian authorities had moreover failed to comply with their positive obligation to protect him from a forcible return to Uzbekistan. The fact that there was no information about the applicant's current whereabouts or about the pmrogress of the criminal proceedings against him proved, in their opinion, that the secret transfer, comparable to an "extraordinary rendition", had been carried out for the purposes of detention and interrogation outside the normal legal framework. As a result, the applicant currently faced a particularly serious risk of ill-treatment.

119. Finally, the applicant's representatives argued that the authorities had failed to conduct an effective investigation into the applicant's abduction and transfer to Uzbekistan. In particular, they submitted that although the police had been informed about the applicant's disappearance early in the morning of 15 December 2012, it had not been until 15 February 2012, that is, two months later, that the criminal proceedings had been opened. The applicant had not to date been granted the procedural status of a victim and his representatives had been denied access to the case file. The investigation therefore lacked transparency. 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, an extract from the border control register). The investigation had failed to establish the degree of involvement of Russiacn State agents in the applicant's abduction and forcible transfer to Uzbekistan. Nor had it been clarified whether the applicant was currently held in a detention facility in Uzbekistan.

2. The Court's assessment

120. The Court notes at the outset that the present case raises two distinct issues under Article 3 of the Convention: (1) the authorities' alleged responsibility for the applicant's transfer to Uzbekistan, either through the direct involvement of State agents in the secret transfer or through a failure to comply with their positive obligation to protect the applicant against a

real and immediate risk of forcible transfer to Uzbekistan; and (2) their alleged 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 depend 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

121. 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 reiterated in, among others, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

(ii) Application to the present case

122. The Court has had occasion to deal with a number of cases raising an issue of a risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, with reference to materials from various sources, that the general situation with regard to human rights in Uzbekistan is alarming, that reliable international material has demonstrated the persistence of a serious issue of ill-treatment of detainees, the practice of torture against those in police custody being described as "systematic" and "indiscriminate", and that there is no concrete evidence to demonstrate any fundamental improvement in that area (see, among many others, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008; *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008; *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; *Rustamov v. Russia*, no. 11209/10, § 125, 3 July 2012; and *Abdulkhakov v. Russia*, no. 14743/11, § 141, 2 October 2012).

123. As regards the applicant's personal situation, the Court observes that he was wanted by the Uzbek authorities on charges of attempting to overthrow the Uzbek State's constitutional order, founding of a criminal organisation, membership of a religious extremist group, dissemination of materials damaging to public order and smuggling of extremist materials, because of his presumed participation in the activities of Hizb ut-Tahrir, a proscribed religious organisation. The Court has examined a number of cases in which the applicants were accused of criminal offences in relation

to their involvement with Hizb ut-Tahrir (see *Muminov*, cited above, §§ 94-98; *Karimov v. Russia*, no. 54219/08, § 100, 29 July 2010; *Yakubov*, cited above, §§ 83-94; *Rustamov v. Russia*, no. 11209/10, § 126 and 127, 3 July 2012; and *Zokhidov v. Russia*, no. 67286/10, § 136 and 137, 5 February 2013). It has found that such persons were at an increased risk of ill-treatment and that their extradition or expulsion to Uzbekistan would give rise to a violation of Article 3.

124. The Court reiterates in this connection that where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human rights protection bodies or non-governmental organisations, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances the Court will not then insist that the applicant show the existence of further special distinguishing features (see *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008, and *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008). The Court considers that this reasoning applies in the present case, where the applicant is accused of membership of a group in respect of which reliable sources confirm a continuing pattern of ill-treatment and torture on the part of the authorities (see, for similar reasoning, *Rustamov*, cited above, § 128, and *Zokhidov*, cited above, § 138).

125. The Court further observes that the above circumstances were brought to the attention of the authorities. In particular, the applicant relied on international reports and the Court's case-law (see paragraphs 24, 28, 33, 35 and 37 above). However, his application for refugee status was rejected as inadmissible by the Federal Migration Service, which found – and that finding was subsequently confirmed by domestic courts – that the applicant was not eligible for refugee status because he was charged with a serious criminal offence and there was no evidence that the charges were politically motivated. The applicant's arguments in respect of the risk of ill-treatment were not addressed at all (see paragraphs 25, 27, 29 and 30 above). As to the extradition proceedings, the Court is struck by the summary reasoning put forward by the domestic courts and their refusal to take into account materials originating from reliable sources, such as international reports and the Court's case-law (see paragraphs 36 and 38 above). In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the refugee-status or extradition proceedings.

126. It can be seen from the judicial decisions in the extradition proceedings that, when rejecting the applicant's arguments concerning the risk of ill-treatment in Uzbekistan, the courts gave preponderant importance to the diplomatic assurances provided by the Uzbek authorities. In this

regard, the Court reiterates that it has previously cautioned against reliance on diplomatic assurances against torture from States where torture is endemic or persistent. Furthermore, it should be pointed out that even where such assurances are given, that does not absolve the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Chahal v. the United Kingdom*, 15 November 1996, § 105, *Reports of Judgments and Decisions* 1996-V; *Saadi*, cited above, § 148; and *Othman (Abu Qatada),* cited above, §§ 188 and 189).

127. The Court notes that the assurances provided by the Uzbek authorities were couched in general stereotyped terms and did not provide for any monitoring mechanism. It finds unconvincing the authorities' reliance on such assurances, without their detailed assessment against the Convention requirements (*see Othman (Abu Qatada)*, cited above §§ 188 and 189).

128. In view of the above considerations, the Court finds that the Government have not put forward any fact or argument capable of persuading it to reach a conclusion different from the conclusion made in the similar cases cited in paragraph 123 above. Having regard, *inter alia*, to the available material disclosing a real risk of ill-treatment to persons accused, like the applicant, of criminal offences in connection with their membership of Hizb ut-Tahrir, and to the absence of sufficient safeguards to dispel this risk, 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 were responsibile for a breach of Article 3 on account of the applicant's forcible transfer to Uzbekistan

(i) Whether the respondent State is liable on account of the passive or active involvement of its agents in the applicant's forcible transfer to Uzbekistan

129. The Court will first examine the applicant's representatives' argument 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.

130. The Court agrees with the applicant's representatives that the suspicious circumstances of the applicant's forcible transfer to Uzbekistan via Domodedovo Airport, and the authorities' failure to elucidate the incident, may be held to infer that the applicant was transferred to Uzbekistan in accordance with a plan involving Russian State officials.

131. 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,

particularly given the lack of a specific credible account of the applicant's abduction and transfer to Uzbekistan. In particular, the Court has never been provided with evidence of the role Russian State officials might have played in this regard. Indeed, the events that took place on 14 December 2012 between 1.20 p.m., when the applicant was last heard of, and 11.45 p.m., when his flight departed Moscow for Tashkent, remain unknown.

132. 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 previously 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 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 108 and 109 above and paragraphs 145 to 152 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 v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, §§ 191-93, ECHR 2012).

133. Even though the Court has found that the applicant's transfer through the Russian State border at Domodedovo Airport could not have taken place without the authorisation, or at least acquiescence, of the State agents in charge of the airport (see paragraph 110 above), and although the authorities' attitude leads 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 the involvement of Russian State agents in the impugned abduction and forcible transfer to Uzbekistan, as in any event the respondent State must be found responsible for a breach of its positive obligations under Article 3 for the reasons set out below.

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

134. 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* 1998-VIII).

135. 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, 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).

136. In the present case, it is 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 following the applicant's release. Indeed, the Russian authorities had been insistently alerted by both the Court and the Committee of Ministers to the recurrence of similar incidents of unlawful transfer from Russia to States not parties to the Convention, in particular Tajikistan and Uzbekistan (see paragraphs 94 and 95 above, see also the text of the letter sent on 25 January 2012 to the Russian Government by the Registrar of the Court on behalf of the President of the Court, expressing his profound concern at the repeated allegations concerning secret transfers of applicants in breach of interim measures applied under Rule 39 of the Rules of Court, quoted in *Savriddin Dzhurayev*, cited above, § 52). These circumstances, coupled with the applicant's background, were worrying enough to trigger the authorities' special vigilance and require appropriate measures of protection in response to this special situation.

137. It is also important to note that two days before the applicant's abduction his representatives contacted the Government's Representative to inform him that the applicant was allegedly being followed everywhere by two cars. In the evening of 14 December 2012, the day of the applicant's abduction, immediately after losing contact with him, the applicant's representatives again contacted the Government's Representative, as well as the police (see paragraphs 44 and 47 above). The Court is satisfied that the applicant's representative alerted the relevant State authorities in a timely manner, provided sufficient evidence of the applicant's vulnerable situation, and advanced weighty reasons warranting extraordinary measures of protection against the real and immediate risk he was facing.

138. Nonetheless, the Government failed to inform the Court of any timely preventive measure taken by competent State authorities to avert that

risk. Thus, there is no evidence that any warning message was conveyed to the competent law-enforcement authorities, such as the authorities in charge of the Moscow airports, in respect of the applicant's special situation and the need to protect him from a forcible transfer to Uzbekistan.

139. The Court notes with particular concern that the authorities failed in their duty of protection when the applicant crossed the Russian border at Domodedovo Airport in the evening of 14 December 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 (see paragraph 110 above), in manifest disregard of their obligation to protect the applicant.

140. As a result, the applicant was removed from Russian jurisdiction to Uzbekistan, where he ran a risk of being exposed to ill-treatment (as established in paragraphs 122 to 128 above).

141. Therefore, the Court finds that the Russian authorities failed in their positive obligation to protect the applicant against the real and immediate risk of forcible transfer to Uzbekistan and ill-treatment in that country.

(c) Whether the authorities conducted an effective investigation

142. The Court reiterates that Article 3, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires 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* 1998 VIII, and *El Masri*, cited above, § 182).

143. 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* 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).

144. 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 forcible transfer to another State. Where the authorities of a State party are informed of such an incident, they have an obligation under the Convention to conduct an effective investigation in accordance with the principles set out in paragraphs 142 and 143 above (see *Savriddin Dzhurayev*, cited above, § 190).

145. Turning to the circumstances of the present case, the Court observes that the relevant information and complaints were brought to the authorities' attention on 15 December 2012, the day after the applicant's disappearance. On the same day, the police searched the applicant's flat and questioned his landlady. During the next week, however, the police remained idle and it was not until 21 December 2012 that a search file was opened and the first search measures - such as the questioning of the neighbours and the circulation of the applicant's description to the police duty posts at Moscow metro stations, train stations and airports - were carried out. Those search measures did not produce any results and were followed by a new period of inactivity of more than two weeks during which the applicant's file was sent to and fro between the police and the competent investigations committee because of uncompleted formalities. When the file was ultimately accepted by the competent investigations committee on 9 January 2013, the investigator in charge of the case immediately, and without performing any new investigative measures, refused to open criminal proceedings for lack of evidence of a kidnapping or murder.

146. The Court further notes that the investigator's decision not to open criminal proceedings was annulled on 11 January 2013 by the head of the investigations committee, who ordered additional investigative measures. During the following month the investigator issued two similar refusals to open criminal proceedings which were set aside by the head of the investigations committee for failure to comply with the decision of 11 January 2013. Indeed, the only investigative measures carried out during that month were a request for information to the Department of the Interior of the Moscow Region about train or plane tickets bought by the applicant, which did not return any results, and a request for the same information to Uzbekistan Airways. The Court finds it particularly striking that on the same day the request for information was sent to Uzbekistan Airways, and without waiting for a reply, the investigator issued a new decision refusing

to open criminal proceedings reiterating the exact reasons which had been earlier invalidated by his superior.

147. It was not until 15 February 2013, two months after the applicant's disappearance, that criminal proceedings were finally opened. In the Court's view, the belated commencement of the inquiry and the delays in its progress imputable to the domestic authorities resulted in the loss of precious time, which could not but have a negative impact on the success of the investigation (see, *mutatis mutandis*, *Mikheyev v. Russia*, no. 77617/01, § 114, 26 January 2006, and *Polonskiy v. Russia*, no. 30033/05, § 111, 19 March 2009).

148. It is also important to note that several contradictory aspects of the case were not addressed by the investigators and still remain unresolved. In particular, the investigating authorities did not make any attempt to elucidate the role that Russian State agents might have played in the applicant's abduction and secret transfer to Uzbekistan, although the highly suspicious circumstances of the applicant's crossing of the Russian border must have triggered the authorities' utmost attention. At no point did the investigators examine how the applicant, who was on the federal list of wanted persons and whose passport had expired, could have passed though the airport border control (see paragraphs 108 and 109 above). There is nothing in the case file to suggest that any request for the border control register or other official document recording the applicant's crossing of the Russian border was made, nor were the border control agents questioned.

149. Further, given that the applicant's flight number was known to the authorities, it would have been possible to obtain witness statements from the crew members on the flight by which the applicant left Moscow for Uzbekistan on the day of his disappearance. However, the questioning of the members of the crew about the circumstances in which the applicant boarded and disembarked the flight was never envisaged. Finally, the investigators failed to establish whether the applicant was currently in detention in Uzbekistan. Although requests for information on the applicant's whereabouts were indeed sent to the Uzbek authorities, neither the Court nor the applicant's representatives were informed of any reply.

150. The above considerations lead the Court to conclude that the investigation was 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).

151. Finally, the Court finds that the applicant's right to participate effectively in the investigation was not secured. The representatives' request that the applicant be granted the procedural status of victim and they be recognised as his representatives in the domestic proceedings was rejected.

As a result, the representatives were denied access to the case file and could not exercise, on the applicant's behalf, such important procedural rights as the right to lodge applications, to put questions to witnesses or experts or to obtain copies of procedural decisions (see, for similar reasoning, *Tarariyeva v. Russia*, no. 4353/03, § 93, 14 December 2006, and *Denis Vasilyev v. Russia*, no. 32704/04, § 157, 17 December 2009).

152. In view of the above, the Court finds that the authorities did not conduct an effective investigation into the applicant's forcible transfer to Uzbekistan, where he is now exposed to a real and imminent risk of torture and ill-treatment, contrary to Article 3 of the Convention.

(d) Conclusion

153. Thus, 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 is facing a real and imminent risk of ill-treatment, and of the lack of an effective investigation into the incident.

154. 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 what appears to be an egregious practice of deliberate circumvention of the domestic extradition procedure and of interim measures granted by the Court (see paragraphs 94 and 95 above). The Court reiterates that the continuation of such incidents in the respondent State amounts to a flagrant disregard for the rule of law and has the most 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).

155. 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

156. 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."

157. 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 the reasoning and findings made under the latter

provision, the Court does not consider it necessary to deal separately with the applicant's complaint under Article 13 of the Convention.

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

158. The applicant further complained that his detention with a view to extradition had been excessively long. He relied on Article 5 § 1 of the Convention, the relevant parts of which 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. Admissibility

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

B. Merits

1. Submissions by the parties

160. The Government submitted that the applicant's detention had been ordered and extended by the Russian courts in accordance with the procedure prescribed by domestic law. All detention orders had been lawful, sufficiently reasoned, and justified. As soon as the maximum detention period of eighteen months established by domestic law had expired, the applicant had been immediately released.

161. The applicant submitted that the extradition proceedings had lasted for more than eight years and the authorities had therefore had plenty of time to examine the extradition request and to fulfil all necessary formalities while he had been serving his prison term. By resuming the extradition proceedings only after the end of his prison term, the authorities had failed to exercise due diligence and had made him languish in detention for many additional months after he had finished serving his sentence.

162. The applicant further submitted that although the extradition proceedings had been completed on 18 July 2012, he had not been released

until 10 December 2012, after the expiry of the maximum detention period permitted under Russian law. During that period his extradition had been impossible owing to the interim measure indicated by the Court. Given that it had been clear that the proceedings before the Court would not be completed before the expiry of the maximum detention period and that on that day his extradition would still be impossible because of the pending interim measure, his detention from 18 July to 10 December 2012 could not be considered as permissible detention with a view to extradition.

2. The Court's assessment

(a) General principles

163. It is common ground between the parties that the applicant was detained with a view to his extradition from Russia to Uzbekistan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 28, ECHR 2002-I).

164. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III).

165. Finally, 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* [GC], no. 13229/03, § 72, ECHR 2008).

(b) Application to the present case

166. The Court notes at the outset that the applicant did not allege that his detention had been unlawful. His complaint was limited to the allegedly excessive length of the detention and the lack of due diligence in the conduct of the extradition proceedings by the authorities. The Court does not see any reason to doubt that the applicant's detention was in conformity with the lawfulness requirement of Article 5 § 1 of the Convention. It will therefore concentrate on the length of the applicant's detention, notably on whether the extradition proceedings were conducted with due diligence.

167. The period complained of lasted eighteen months. It started running on 10 June 2011, when the applicant finished serving his prison term and was placed in custody with a view to extradition, and ended on 10 December 2012, when he was released. For the reasons presented below, the Court does not consider this period to be excessive.

168. The Court agrees with the applicant that certain formalities – such as requests to the Ministry of Foreign Affairs, the Federal Migration Service and the Federal Security Service or requests for assurances from the Uzbek authorities – could have been completed by the authorities in advance while the applicant was still serving his prison term. At the same time, it notes that the applicant himself did not submit an application for refugee status until a month before the end of his prison term. It is significant that the refugee-status proceedings lasted from 10 May 2011 to 1 March 2012, during which time the application was examined by the regional and federal departments of the FMS and subsequently by courts at two levels of jurisdiction. The applicant has not argued that those proceedings were not conducted with due diligence. As their outcome could have been decisive for the question of the applicant's extradition, the Court will take into account the conduct of those proceedings for the purpose of determining whether any action was "being taken with a view to extradition" (see *Chahal*, cited above, § 115).

169. The Court further observes that the extradition order was issued on 19 April 2012, less than two months after the application for refugee status was rejected at final instance. Between 19 April and 18 July 2012 the extradition order was reviewed by courts at two levels of jurisdiction. The Court finds no evidence of any significant delays in the conduct of the extradition proceedings.

170. Finally, as to the period of detention from 18 July to 10 December 2012, the Court notes that on 18 July 2012 the lawfulness of the extradition order was confirmed by the appeal court. Although the domestic extradition proceedings were thereby terminated, the applicant remained in custody for a further four months and twenty-three days. During that time the Government refrained from extraditing him, in compliance with the interim measure indicated by the Court under Rule 39 of the Rules of Court. The question thus arises as to whether the extradition proceedings remained in

progress between 18 July and 10 December 2012 and thus justified the applicant's detention with a view to extradition.

171. In accordance with the Court's well-established case law, this period of the applicant's detention should be distinguished from the earlier period (see *Chahal*, cited above, § 114; *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011; and *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012). As a result of the application of the interim measure, the respondent Government could not remove the applicant to Uzbekistan without being in breach of their obligation under Article 34 of the Convention. During that time the extradition proceedings, although temporarily suspended pursuant to the request made by the Court, were nevertheless in progress for the purposes of Article 5 § 1 (f) (see, for similar reasoning, *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 73 and 74, ECHR 2007-II; *Al Hanchi*, cited above, § 51; and *Al Husin*, cited above, § 69). The Court has previously found that where expulsion or extradition proceedings are provisionally suspended as a result of the application of an interim measure, that does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, and on condition that the detention is not unreasonably prolonged (see *Keshmiri v. Turkey (no. 2)*, no. 22426/10, § 34, 17 January 2012, and *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011).

172. The Court observes that after the extradition order in respect of the applicant entered into force he remained in detention for slightly less than five months. That period does not appear to be unreasonably long (see, for example, *Umirov v. Russia*, no. 17455/11, §§ 137-142, 18 September 2012, and *Bakoyev v. Russia*, no. 30225/11, §§ 164-168, 5 February 2013, where the periods of detention following the application of an interim measure by the Court, which lasted eight months and more than five months respectively, were found to be compatible with Article 5 § 1 (f)).

173. It is also relevant that, as the Court has established above (see paragraph 166 above), the applicant's detention during that period was in compliance with the procedure and time-limits established under domestic law. In is important to note in this connection that the detention with a view to extradition in the present case was subject to a statutory maximum eighteen-month period. Indeed, on expiry of such period the applicant was released at the prosecutor's request (see, for similar reasoning, *Gebremedhin*, cited above, §§ 74 and 75; *Umirov,* cited above, § 142; and, by contrast, *Azimov v. Russia*, no. 67474/11, § 171, 18 April 2013). Lastly, there is no indication that the authorities acted in bad faith, that the applicant was detained in unsuitable conditions or that his detention was arbitrary for any other reason (see *Saadi v. the United Kingdom,* cited above, § 74).

174. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the present case and the overall length of the applicant's detention was not excessive.

175. Accordingly, there has been no violation of Article 5 § 1 (f) of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

176. 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

177. The Government submitted that the investigation into the applicant's disappearance was still pending and that to date it had not yet been possible to establish the circumstances of his return to Uzbekistan.

178. The applicant's representatives reiterated their submission that the applicant's forcible removal to Uzbekistan would not have been possible without the authorisation, or at least acquiescence, of the Russian authorities; thus, that removal had been performed in breach of the interim measure indicated by the Court under Rule 39 of the Rules of Court. By failing to comply with the interim measure, the respondent State had violated its obligations under Article 34 of the Convention.

B. The Court's assessment

1. General principles

179. The Court reiterates that, pursuant to 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 (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005-I). Although the object of Article 34 is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 requiring the authorities to furnish all necessary facilities to make possible the proper and effective examination of applications. Such an obligation will arise in situations where applicants are particularly vulnerable (see *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010; *Savitskyy v. Ukraine,* no. 38773/05, § 156, 26 July 2012; and *Iulian Popescu v. Romania*, no. 24999/04, § 33, 4 June 2013).

180. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of the right of individual application (see *Mamatkulov and Askarov*, cited above, §125, and *Abdulkhakov*, cited above, § 222). 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. 36378/02, § 473, ECHR 2005-III; *Aoulmi v. France*, no. 50278/99, § 108, ECHR 2006-I; and *Ben Khemais v. Italy*, no. 246/07, § 82, 24 February 2009).

181. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, only in truly exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. In most of these cases, 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 States Parties in the Izmir Declaration and by the Committee of Ministers in 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 (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161); 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).

182. 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 (see *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Paladi*, cited above, § 92).

2. Application to the present case

183. Turning to the circumstances of the present case, the Court notes that on 17 July 2012 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. On 7 August 2012 the interim measure was amended to indicate that the applicant should not be extradited or otherwise removed against his will to Uzbekistan until further notice (see paragraph 4 above). On 14 December 2012 the applicant was, however, transferred to Uzbekistan.

184. It is significant that the applicant's transfer to Uzbekistan did not take place through the extradition procedure, which had been stayed immediately following the Court's decision of 17 July 2012. 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. Indeed, as established in paragraph 110 above, the applicant's forced transfer to Uzbekistan would not have been possible without the authorisation, or at least acquiescence, of the Russian authorities. 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 alarmingly, by allowing the applicant to be removed to the country of destination in a manifestly unlawful manner (see *Savriddin Dzhurayev*, cited above, § 217).

185. The Court has already found that, in view of the applicant's vulnerable situation and the established real and immediate risk of forcible transfer to Uzbekistan, there were weighty reasons warranting extraordinary measures of protection in response to this special situation. The Russian authorities, however, did not take any measures to protect the applicant against a forced repatriation to Uzbekistan and therefore failed to comply with their positive obligation under Article 3 of the Convention to provide effective protection against an exposure to a real and immediate risk of torture and ill-treatment (see paragraphs 136 to 141 above). This leads the Court to conclude, for the same reasons, that given the positive obligations incumbent on them under Article 34 of the Convention in the special circumstances of the present case (see the case-law cited in paragraph 179 above), the Russian authorities were required to take measures to protect the applicant from a forced transfer to Uzbekistan in order to comply with the interim measure and to make possible a proper and effective examination of the present application. They failed, however, to take any such protective measures and to prevent the applicant's forced repatriation to Uzbekistan.

186. The Court observes in this connection that repeated incidents of 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. The Court cannot but find, on yet another occasion (see *Savriddin Dzhurayev*, cited above, § 257) that, far from having taken any tangible measures to remedy the situation, in the present case certain State authorities has again ignored their Convention obligations altogether, with disregard for the rule of law and the values protected by the Convention, and in breach of their obligation under Article 34 to make possible a proper and effective examination of the application.

187. Indeed, it is a matter of great concern for the Court that the applicant's representatives have not been able to contact the applicant since his transfer to Uzbekistan. It is not disputed that the applicant was unable, at the time the parties exchanged their additional observations following the re-communication of the case, to give his account of the grave incident of 14 December 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 his representatives in the proceedings before this Court after that date. An effective

examination of the application was thereby significantly hampered as a result of the applicant's forced repatriation (see *Labsi v. Slovakia*, no. 33809/08, §§ 149-150, 15 May 2012).

188. Further, and more importantly, as a result of the applicant's forced transfer to Uzbekistan, the Court is now prevented from securing to him the practical and effective benefit of his right under Article 3 of the Convention. The applicant's transfer to Uzbekistan removed him from Convention protection and frustrated the purpose of the interim measure, which was to maintain the status quo pending the Court's examination of the application and to allow its final judgment to be effectively enforced. In such circumstances, the Court's finding that the applicant would face a serious risk of ill-treatment in Uzbekistan (see paragraph 128 above) has been rendered nugatory as it can no longer effectively protect him against the risk of ill-treatment there.

189. In view of the above, the Court concludes that the Russian authorities failed in their obligation to protect the applicant against a forced transfer to Uzbekistan. That transfer prevented the Court from carrying out an effective examination of the application and from ensuring the applicant's effective protection under the Convention. The applicant was therefore hindered in the effective exercise of his right of application. Accordingly, the Court 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.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

190. Lastly, the Court has examined the other complaints submitted by the applicant, and, having regard to all the material in its possession and in so far as they fall within the Court's competence, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

191. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

192. The applicant claimed compensation in respect of non-pecuniary damage. He left the determination of the amount to the Court's discretion. Referring to the cases of *Muminov v. Russia* ((just satisfaction), no. 42502/06, 4 November 2010) and *Kamaliyevy v. Russia* ((just satisfaction), no. 52812/07, 28 June 2011), the applicant's representatives asked, in order to secure payment of the compensation, for the Russian Government to be ordered to establish, through diplomatic channels, the applicant's whereabouts in Uzbekistan and to facilitate contact between the applicant and his representatives.

193. The Government submitted that no compensation should be awarded because the applicant's rights had not been violated by the Russian authorities. The authorities had, moreover, taken all possible measures to establish the applicant's whereabouts, but to no avail.

194. The Court observes that in the present case it has found a violation of Article 3 of the Convention, and established that the respondent Government has failed to comply with their 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.

195. Given that after his forced repatriation to Uzbekistan the applicant's representatives lost any contact with him and that his current whereabouts are unknown, the Court is concerned as to how the respondent State will discharge its obligation of payment of just satisfaction. The Court has already been confronted with 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 contact between the applicants, their representatives, and the Committee of Ministers (see *Muminov v. Russia* (just satisfaction), cited above, § 19 and point (c) of the operative part, and *Kamaliyevy v. Russia* (just satisfaction), cited above, § 14 and point 1 (c) of the operative part). 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 v. Italy* [GC], no. 27765/09, § 215, and point 12 of the operative part, ECHR 2012; *Labsi*, cited above, § 155 and point 6 of the operative part; and *Savriddin Dzhurayev*, cited above, § 251 and point 6 of the operative part).

196. Turning to the present case, the Court notes that the applicant's representatives have no contact with him. Although his current whereabouts within Uzbekistan are unknown, the Court considers it highly probable that he is now detained by the Uzbek authorities. Indeed, the Uzbek authorities have persistently sought his extradition since 2000 and an arrest warrant was issued in respect of him, making it most likely that he was immediately remanded in custody after his arrival at the airport in Tashkent. This hypothesis is further strengthened by the circumstances of his forced transfer to Uzbekistan and the experience derived from similar cases examined by the Court or pending before it (see, for example, *Abdulkhakov* and *Savriddin Dzhurayev*, both cited above, where the applicants ended up in custody after their forced repatriation in similar circumstances).

197. In view of the above, the Court considers it appropriate that the amount awarded to the applicant by way of just satisfaction should be held in trust for him by his representatives.

198. Further, given that the applicant's representatives have no contact with him and taking into account the above finding that the applicant is likely to be currently detained by the Uzbek authorities, the Court considers, in the particular circumstances of the present case and in view of the nature of the violations found, that the respondent State must secure, by appropriate means, the execution of the just satisfaction award. In particular, the respondent State must take measures to facilitate contact between the applicant, on the one hand, and the Committee of Ministers of the Council of Europe, acting under Article 46 of the Convention, and the applicant's representatives in the Convention proceedings, or any other person entitled or authorised to represent the applicant in the enforcement proceedings, on the other.

B. Costs and expenses

199. Relying on his lawyers' timesheets, the applicant claimed EUR 29,500 for legal fees incurred before the Court and in the domestic proceedings.

200. The Government submitted that the applicant had not produced a legal fee agreement or any official document establishing the legal fee rates. The lawyers' fees had not therefore been shown to have been actually paid or incurred.

201. 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 to the fact that some of the applicant's complaints were rejected, the Court considers it reasonable to award the sum of EUR 20,000 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.

C. Default interest

202. 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 concerning the risk of the applicant's ill-treatment in Uzbekistan, the lack of effective remedies for that complaint and the length of his detention pending extradition 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 to examine the complaint under Article 13 of the Convention;

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

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

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 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 in trust for the applicant by his representatives before the Court;

(ii) EUR 20,000 (twenty 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 to the bank account of the applicant's representatives;

(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;

(c) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, payment of the above amount, in particular by facilitating contact between the applicant, on the one hand, and the Committee of Ministers of the Council of Europe and the applicant's representative in the Convention proceedings, or any other person entitled or authorised to represent the applicant in the enforcement proceedings, on the other;

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

Done in English, and notified in writing on 14 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President