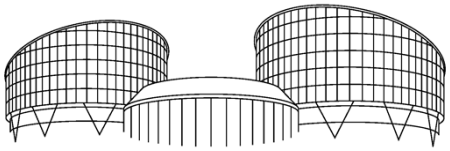

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ISMAILOV v. RUSSIA

(Application no. 20110/13)

JUDGMENT

STRASBOURG

17 April 2014

FINAL

08/09/2014

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 Ismailov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 20110/13) 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 Khamidullo Shukirdzhanovich Ismailov ("the applicant"), on 21 March 2013.

2. The applicant was represented by Ms N. Yermolayeva and Ms Ye. 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 his forcible removal to Uzbekistan would subject him to a risk of ill-treatment, that his detention pending expulsion had been unlawful, and that no effective judicial review of his continued detention had been available to him.

4. On 22 March 2013 the Acting President of the Section to which the case was allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be removed or extradited to Uzbekistan until further notice, and granted priority treatment to the application under Rule 41 of the Rules of Court.

5. On 6 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980. Prior to his arrest in 2012 he resided in Arzamas, in the Nizhniy Novgorod Region. He is currently detained in the special detention facility in Balakhna, in the Nizhniy Novgorod Region.

1. The applicant's arrival in Russia and his immigration status

7. Until April 2011 the applicant lived in Uzbekistan. His family members, including a minor son, live in Uzbekistan. From 2001 onwards he went to Russia on several occasions, in order to earn money.

8. On 12 April 2011 the applicant arrived in Russia to look for employment. On 12 July 2011 the period of the applicant's lawful residence in Russia expired.

9. On 24 January 2012 he was fined for failure to comply with immigration laws. He did not leave the country at that point.

2. Criminal proceedings against the applicant in Uzbekistan

10. On 12 June 2012 the investigator at the Department of the Interior of the Andizhan Region of Uzbekistan charged the applicant with establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organisations (Article 244-2 of the Uzbek Criminal Code). The applicant was accused, in particular, of membership of a banned religious extremist organisation, "the Islamic Movement of Uzbekistan", and a terrorist organisation, "O'zbekiston Islomiy Harakati", between late 2008 and October 2009. According to the relevant investigator's decision, the applicant, together with his brother and two other persons, "planned to destroy the constitutional order of Uzbekistan" and then "to create an Islamic State on the territory of Nizhniy Novgorod, Russia". For these purposes they had moved to Russia and started to "study the ideology of the head of the terrorist movement, Tohir Yo'ldoshev, and Jumaboi Khojayev, also known as Jummah Namangani". Further, together with other members of O'zbekiston Islomiy Harakati, they had planned an attack with intent to destroy the constitutional order of Uzbekistan and other countries in order to create an Islamic State there. They had also attempted to "carry out terrorist attacks". The investigator stated that there was sufficient evidence against the applicant, without giving further details.

11. On the same date, the Andizhan Town Court of Uzbekistan ordered the applicant's arrest and his name was put on a cross-border wanted list.

3. Extradition proceedings and detention pending extradition

(a) Extradition proceedings

12. On 13 September 2012 the applicant was arrested in the town of Arzamas in the Nizhny Novgorod Region, pursuant to a request by the Uzbek authorities, and was detained pending extradition.

13. On 12 October 2012 the Deputy Prosecutor General of the Republic of Uzbekistan submitted a formal request for the applicant's extradition. The request contained assurances that the applicant would be prosecuted only for the offences for which he was extradited, that he would be able to freely leave Uzbekistan when he had stood trial and served any sentence, and that he would not be expelled or extradited to a third State without the consent of the Russian authorities. The Uzbek prosecutor's office further assured its Russian counterpart that the applicant would not be prosecuted in Uzbekistan on political or religious grounds, that he would not be subjected to torture or other inhuman or degrading treatment, that he would be provided with an opportunity to defend himself, *inter alia* through legal assistance, and that the criminal proceedings against him would be conducted in compliance with the domestic law of the Republic of Uzbekistan. It was pointed out in the letter that all forms of inhuman and degrading treatment were prohibited in the destination country.

14. On 12 November 2012 the lawyer representing the applicant in the domestic proceedings filed objections against the extradition request. He argued that according to independent international observers, ill-treatment was widespread in the Uzbek prison system and fair trial guarantees were not respected. Referring to the Court's case-law on the matter, he submitted that the applicant, who was charged with a religious offence, would run a risk of ill-treatment and would be deprived of the minimum fair trial guarantees if extradited to the requesting country.

15. On 9 April 2013 the Prosecutor General's Office of Russia refused the Uzbek authorities' extradition request. It appears that the decision was not appealed against, and the extradition proceedings were discontinued. The parties did not submit a copy of the decision.

16. By a letter of 12 August 2013 the Prosecutor's General Office, in reply to a letter from the applicant's lawyer, notified the applicant of the decision to refuse his extradition to Uzbekistan.

(b) The applicant's detention pending extradition

17. On 15 September 2012, that is, two days after the applicant's arrest, the Arzamas Town Court authorised his detention pending extradition. It appears that the decision was not appealed against.

18. On 12 November 2012 the Town Court extended the period of his detention to a total of six months, that is, until 12 March 2013. That decision was upheld by the Nizhniy Novgorod Regional Court on appeal on

11 December 2012. Until 11 March 2013 the applicant was detained in remand prison FKU SIZO-3 in the Vadskiy District of the Nizhniy Novgorod Region.

4. The applicant's re-arrest and detention pending administrative removal

(a) Events of 11-12 March 2013 and the applicant's arrest on 13 March 2013

19. On 11 March 2013, that is, one day before the date when he was due to be released, the applicant was transferred to the Arzamas police station. On 12 March 2013 the authorised term of his detention pending extradition expired, and the Arzamas town prosecutor ordered the applicant's release.

(i) The applicant's account of the events

20. According to the applicant, at midnight on 12 March 2013 he was let out into the internal yard of the police station. He was not provided with any documents confirming his release from custody. Immediately afterwards, at 0.05 a.m. on 13 March 2013, he was arrested in the yard by officers of the local department of the Federal Migration Service in connection with a violation of immigration laws (Article 18-8 of the Code of Administrative Offenses ("the CAO")) and taken into custody.

(ii) Official account of the events

21. The Government submitted that "according to the [case] materials on the applicant's detention" he had had to be released from custody at 7 p.m. on 12 March 2013.

22. According to the custody register at the Arzamas police station, the applicant was released from detention at 11.55 p.m. on 12 March 2013, on account of the expiry of the time-limit for his detention.

23. According to the Arzamas Town Court's decision of 13 March 2013 (see paragraph 28 below), the applicant was arrested at 0.05 near the Arzamas police station in the course of an "extraordinary check" by the Arzamas unit of the Nizhniy Novgorod Regional Department of the Federal Migration Service.

24. At 1.20 a.m. on 13 March 2013 an officer of the Arzamas Department of the Interior drew up a record of the applicant's arrest "for the establishment of the circumstances of an administrative offence following a request by the Arzamas Department of the Federal Migration Service." At some point in the morning of 13 March 2013 an administrative-offence record was drawn up in respect of the applicant in connection with his failure to leave Russia after 12 July 2011. At some point on 13 March 2013 the applicant was interviewed by the head of the Arzamas unit of the Federal Migration Service and submitted, *inter alia*, that he had not applied

for refugee status in Russia and had not had valid reasons not to leave Russia.

(b) Expulsion proceedings and application of Rule 39 of the Rules of Court

(i) Proceedings before the Arzamas Town Court

25. On 13 March 2013 the Arzamas Town Court of the Nizhniy Novgorod Region examined the applicant's case. During the hearing the applicant acknowledged that he had not left Russia after 12 July 2011, contrary to the requirements of the immigration laws. However, his representative submitted that, in accordance with Article 28.1 of the CAO, administrative proceedings should have been brought against him immediately upon the obtaining of sufficient data indicating the occurrence of an administrative offence. The applicant had been arrested on 13 September 2012, and by 14 or 15 September 2012 the authorities had been in possession of sufficient information on the applicant's immigration status. However, administrative proceedings had been brought against him only six months later, once the term of his detention pending extradition had expired. In these circumstances, the defence considered that the administrative removal of the applicant, if ordered, would amount to a form of extradition in disguise.

26. The defence further referred to reports by the UN, international non-governmental organisations, and the Court's case-law, arguing that the applicant was wanted by the Uzbek authorities in connection with charges relating to a religious offence, and thus he would run a risk of ill-treatment if expelled to Uzbekistan.

27. Finally, they submitted that in any event his expulsion could not be ordered, since refugee-status proceedings were pending in respect of him. They pointed out in this connection that he had appealed against the refusal of 7 December 2012 to grant him refugee status (see paragraph 36 below) and had received no response by the time of the events.

28. The Arzamas Town Court found that the applicant had been residing in Russia in breach of the immigration laws. The court established that at 0.05 a.m. on 13 March 2013 at the address of the Arzamas police station "the applicant had failed to leave the Russian Federation after the expiry of the registration term, that is, 12 July 2011". The court established that there were no circumstances precluding his administrative removal from Russia. The court dismissed the applicant's argument as regards the refugee-status proceedings, observing that "according to the letter of 23 January 2013 by the Russian Federal Migration Service ("the Russian FMS"), his relevant application had been rejected" (see, for the contents of the letter, paragraph 38 below). It also noted, without giving further details, that the defence's submissions as regards the risk of torture in Uzbekistan "could not be accepted as well-founded". In accordance with Article 18 § 8 of the

CAO the court found the applicant liable to pay a fine in the amount of 3,000 Russian roubles (RUB) and ordered his administrative removal from Russia. Citing the provisions of the CAO on controlled forced removal (see paragraphs 50-51 below), the court decided that the applicant should be detained in a special detention centre at the Nizhniy Novgorod Regional Department of the Interior *(«специальный приемник ГУВД по Нижегородской области»)* until his administrative removal. No specific time-limit for the applicant's detention was given by the court.

(ii) Indication of the interim measure under Rule 39

29. On 22 March 2013 the Court indicated to the Government, under Rule 39 of the Rules of Court, that the applicant's administrative removal and extradition should be suspended until further notice.

(iii) Proceedings at the Nizhniy Novgorod Regional Court

30. On 19 March 2013 the defence appealed against the decision of 13 March 2013. In addition to their initial arguments, they submitted that the first-instance court had incorrectly established the facts of the case, including in respect of the applicant's arrest. Contrary to the case materials, they submitted, on 12 March 2013 the applicant had only been let out into the yard of the police station and, in any event, he had not been provided with any documents confirming his release from custody. Therefore, at 0.05 a.m. on 13 March 2013 he had not been at liberty and thus had been unable to deliberately "avoid leaving Russia". They further maintained that the applicant's expulsion would amount to his "extradition in disguise". The extradition proceedings in respect of him had been pending at the material time. The applicant, if removed to Uzbekistan, would be unable either to challenge any decision taken within the extradition proceedings, or to benefit from the minimum guarantees in such proceedings.

31. They also stated that, contrary to the court's findings, no final decision in the refugee-status proceedings had been taken on 25 January 2013, as clearly confirmed by the letter of the Russian FMS. Where an application for refugee status was made, domestic law prohibited the expulsion of an applicant in the absence of a final decision on his refugee status. They stressed that the first-instance court had failed to make any assessment of their ill-treatment argument, and reiterated their submissions as regards the risk of ill-treatment if the removal order were to be enforced. Finally, they submitted that the decision ordering the applicant's detention did not contain any time-limit and was therefore in breach of Article 5 of the Convention.

32. On 26 March 2013 the Nizhniy Novgorod Regional Court upheld the administrative removal order, finding that the first-instance court had correctly established the facts of the case, assessed the admissibility of various items of evidence and applied the domestic law. The appeal court

upheld the administrative sanction as lawful and found no grounds to amend it. As regards the applicant's argument about the authorities' failure to bring the administrative proceedings against him in a timely manner, the court noted that the administrative-offence record had been drawn up in accordance with the domestic procedure. The court found nothing in the applicant's submissions to suggest that his family members had been persecuted in Uzbekistan. Finally, it noted the applicant had not been granted refugee status in Russia. The administrative removal order became final.

33. After 12 March 2013 the applicant was detained in the special detention facility in Arzamas. At some point before 25 November 2013 he was transferred to the special detention facility in Balakhna, in the Nizhniy Novgorod Region. He remains detained there to date.

5. Interviews of 14 and 27 September 2012 and refugee-status proceedings

34. On 14 September 2012, when interviewed by the Arzamas town prosecutor after his arrest, the applicant stated that he had moved to Russia to look for work. Since April 2011, the date of his arrival in Russia, he had not registered as a foreign national temporarily residing in the country. He stated that he had not been persecuted on political grounds in Uzbekistan, and had not applied for refugee status in Russia. He had learned that a criminal case was pending against him in his home country from his parents, since at some point local police had searched their home. However, he had been unaware of the nature of the charges and the basis on which the criminal case had been brought against him until his arrest in Russia. He made similar submissions when interviewed by the Vasdkiy district prosecutor of the Nizhniy Novgorod Region on 27 September 2012.

35. On 2 October 2012 the applicant lodged an application for refugee status with the Nizhniy Novgorod FMS on the ground of fear of persecution on account of fabricated charges relating to a religious offence. He stated that he did not have any religious beliefs. However, he had learned after his arrest that he had been charged with a religious offence. He submitted that the accusations against him were unfounded. He feared that in Uzbekistan he would be tortured, forced to incriminate himself and sentenced to imprisonment for religiously motivated anti-State offences he had not committed.

36. On 7 December 2012 the Nizhniy Novgorod FMS rejected the application. They referred to the applicant's own submissions, as well as the results of checks conducted by the local Department of the Interior and FMS. It also noted that the Nizhniy Novgorod Regional Department of the Federal Security Service had recommended that the applicant should not be granted refugee status. The decision also contained a reference to an unspecified undated report on the State system and the social and economic

situation in Uzbekistan. It was stated in the report, *inter alia*, the Uzbek authorities exercised close control over the religious life of the population, that Uzbekistan had ratified several UN human rights treaties and that the use of any unlawful investigative methods was prohibited in the requesting country. The Nizhniy Novgorod FMS observed, with reference to the applicant's own submissions, that he had applied for refugee status after learning, at the time of his arrest, that he had been placed on the wanted list. Thus, there were grounds to consider the applicant's request as an attempt to avoid extradition. The Department further found that the applicant had not had any problems with the authorities in his home country prior to his departure to Russia. Overall, the Nizhniy Novgorod FMS concluded that the applicant had not produced any "objective evidence to the effect that he would be persecuted on national, religious or political grounds" and that he had left Uzbekistan in order to look for employment, that is, for a reason falling outside the scope of an admissible refugee request.

37. On 25 December 2012 the applicant lodged an appeal against the refusal with the Russian FMS office, referring to the risk of ill-treatment and imprisonment in his home country. He cited reports by various NGOs for 2011-2012 pointing to serious human rights problems in Uzbekistan and stated that the Nizhniy Novgorod FMS had omitted to take into account the political and religious nature of the charges against him and to analyse the specific circumstances of his case.

38. The Russian FMS received the applicant's appeal on 15 January 2013 and by a letter of 23 January 2013 advised him that it would be considered upon receipt of documents from the Nizhny Novgorod FMS.

39. On 11 February 2013 the Russian FMS dismissed his appeal. It upheld the decision of the Nizhniy Novgorod FMS, finding that the latter had examined all the relevant individual, social and political aspects of the case and had reached a well-founded conclusion. The Russian FMS found that there was no evidence that the criminal proceedings against the applicant "had a political background". It noted that neither the applicant nor his wife, child, mother or father, who resided in Uzbekistan, had received any threats or been subjected to any kind of persecution, and reiterated that the applicant had only applied for refugee status after his arrest. It further found that the applicant did not fit the definition of a refugee, since a fear of criminal prosecution did not constitute a ground for granting refugee status.

40. By a letter of 12 February 2013 the Russian FMS sent its decision to the applicant by post at the address of the remand centre in Arzamas. Having received the decision on 15 March 2013, he challenged it on 2 April 2013 before the Basmannyy District Court of Moscow. He argued, in particular, that the Russian FMS had failed to address his arguments or to assess the circumstances of his case. He reiterated, in addition to his initial submissions, that the thrust of his grievance was not simply the fact of the

criminal prosecution, but the fear of being subjected to torture in detention in Uzbekistan with a view to a confession being extracted in respect of offences he had not committed.

41. On 18 June 2013 the Basmnnyy District Court dismissed the appeal and endorsed the Russian FMS's decision as lawful, noting the applicant's failure to adduce "convincing arguments to support his allegations of fear of being persecuted for reasons of race, religion, nationality or membership of a particular social group". The court noted from the questionnaire completed by the applicant on the date of the submission of his application that he had not been a member of any political, religious or military organisations in his home country and had not had any problems with the authorities prior to his departure for Russia. Nothing in the statement of charges drawn up by the Uzbek authorities revealed any political motivation. The court reiterated that the applicant's family members were living in Uzbekistan and were not subject to any kind of persecution. The actual purpose of his application was to avoid criminal prosecution in Uzbekistan. Further, the applicant had not complained of a risk of persecution in Uzbekistan and had not expressed his wish to remain in Russia as a refugee until after his arrest. Moreover, there existed no medical reasons precluding his departure from Russia. The court concluded that the applicant did not meet the "refugee" definition.

42. The court also refused the defence's request to have Ms Ryabinina questioned as an expert on the human rights situation in Uzbekistan.

43. The applicant appealed, reiterating his earlier arguments and submitting that the first-instance court had failed to assess the risk on the basis of all the available information, as well as to address his counter-arguments to the Russian FMS's decision. He maintained that the charges against him were politically motivated and emphasised the risk of ill-treatment, with extensive references to reports by Human Rights Watch and Amnesty International, as well as to the Court's case-law. As regards the court's finding that none of his family members had been persecuted, he noted that on 12 March 2013 his brother had also been arrested in Arzamas, but had then been released because his extradition had been refused by the Russian authorities.

44. On 24 October 2013 the Moscow City Court upheld the judgment of 18 June 2013. The applicant in his observations of 25 November 2013 provided a copy of the information note on the case progress from the city court's website containing the case references and indicating that the appeal had been rejected and the judgment had been upheld. The parties did not submit a copy of the decision.

6. Information on temporary asylum proceedings

45. In their letter of 4 April 2013 the Government submitted that at some point the applicant had applied for temporary asylum in Russia, and on

23 January 2013 the Nizhniy Novgorod FMS had refused his application, the refusal being upheld on 18 February 2013 by the Sormovskiy District Court of Nizhniy Novgorod.

46. The applicant stated that he had not applied for temporary asylum and enclosed a letter from the Nizhniy Novgorod FMS of 29 May 2013 confirming that the authority had not received any such application from him.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Administrative removal and detention pending enforcement of the removal order

(a) Code of Administrative Offences

(i) Infringement of the residence regulations

47. Article 18.8 of the CAO provides that a foreign national who infringes the residence regulations of the Russian Federation, including by residing on the territory of the Russian Federation without a valid residence permit or by failing to comply with the established procedure for residence registration, is liable to punishment by an administrative fine of RUB 2,000 to 5,000, with or without administrative removal from the Russian Federation.

48. The prescribed time-limit for administrative offences listed in Article 18.8 is one year from the date the relevant offence was committed (Article 4.5 § 1).

(ii) Administrative removal

49. Article 23.1 § 3 provides that the determination of any administrative charge that may result in removal from the Russian Federation must be made by a judge of a court of general jurisdiction.

50. Article 3.10 § 1 provides for two types of administrative removal, namely controlled unaided removal (or "controlled independent exit") and controlled forced removal. The type of administrative removal is determined by the judge examining the case (Article 3.10 § 4).

51. Article 3.10 § 5 allows domestic courts to order a foreign national's detention with a view to administrative removal.

52. Article 27.3 § 1 provides that administrative detention can be authorised in exceptional cases if it is necessary for the fair and speedy determination of the administrative charge or for the execution of the penalty.

(iii) Appeal against the administrative removal order

53. Article 30.1 § 1 guarantees the right to appeal against a court's decision on an administrative offence to a higher court. Such appeal must be lodged within ten days from the date of the relevant decision (Article 30.3 § 1). An appeal against an administrative removal order must be forwarded to the higher court on the same day (Article 30.2 § 2), and examined within one day of the submission of the appeal (Article 30.5 § 3).

(iv) Supervisory review

54. Article 30.12 provides that first-instance and appeal judgments which have become final can be challenged by, *inter alia*, the defendant or his counsel by way of supervisory review. A regional prosecutor or his deputy, or the Prosecutor General or his deputy can also lodge requests for supervisory review.

55. Requests for supervisory review must be lodged with regional courts or the Supreme Court of Russia. Such requests are to be examined by the Presidents of such courts or their deputies. The Supreme Court is empowered to deal with appeals against decisions taken on supervisory review at the regional level (Article 30.13).

56. Requests for supervisory review must indicate the grounds for review (Article 30.14 § 5). The scope of the review is limited to the grounds indicated in the request and the observations in reply. If the interests of legality so require, the supervisory-review judge may review the case in its entirety (Article 30.16 §§ 1 and 2). Renewed requests for supervisory review on the same grounds before the same court are not allowed (Article 30.16 § 4).

57. As a result of the examination of the case by way of supervisory-review proceedings, the following decisions may be taken: (1) to dismiss the request for supervisory review and uphold the initial decision; (2) to amend the judgment or other decision, if the shortcomings revealed may be rectified without remittal of the case for a new examination, and provided that such decision does not lead to the application of a heavier administrative penalty and otherwise does not adversely affect the petitioner's position; (3) to quash the judgment or decision and remit the case for fresh examination to the first-instance court, in case of a serious violation of the procedural law; or (4) to quash the judgment or other judicial decision and discontinue the administrative proceedings, where the offence is of an insignificant nature or there are circumstances excluding the possibility of conducting the administrative proceedings, or lack of evidence in respect of the circumstances forming the basis for the judgment or decision in the administrative case (Article 30.17 § 2).

58. In decision no. 598-O of 3 April 2012 concerning the supervisory review under the CAO, the Constitutional Court found that recourse to

supervisory review should be allowable only after exhaustion of the ordinary appeal procedures and should remain limited to exceptional cases disclosing that in the earlier proceedings there had been an error which had determined the outcome of the case or significantly adversely affected the rights or interests of the petitioner.

(v) Enforcement of the decision imposing an administrative penalty

59. Article 27.19 provides that individuals in respect of whom controlled forced removal has been ordered should be placed in special detention facilities, to ensure the execution of the removal order.

60. Article 31.9 § 1 provides that a decision imposing an administrative penalty may not be enforced after the expiry of a two-year period from the date on which the decision became final.

(vi) Administrative arrest as an administrative sanction

61. Article 3.9 provides that an administrative offender can be penalised by administrative arrest only in exceptional circumstances, and with a maximum term of thirty days.

(b) Federal Law no. 109-FZ of 18 July 2006

62. Section 20 § 2 (2) of Federal Law no. 109-FZ of 18 July 2006 provides that a foreign national temporarily residing in Russia must register with a local migration authority within seven days of his arrival.

(c) Constitutional Court Judgment no. 6-P of 17 February 1998

63. In judgment no. 6-P of 17 February 1998 the Russian Constitutional Court held, with reference to Article 22 of the Russian Constitution, that the detention of a person with a view to removing him from Russia requires a court decision if that detention exceeds forty-eight hours. The decision must establish whether the detention is necessary for the purposes of enforcing the removal. The court must also assess the lawfulness and reasons for the detention. Detention for an indefinite period of time is not acceptable, since it may become a form of punishment, for which there is no provision in Russian law and which is incompatible with the provisions of the Constitution.

2. Refugee status and detention pending extradition

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

III. RELEVANT INTERNATIONAL MATERIAL

65. In January 2013 Human Rights Watch released its annual World Report for 2013. The chapter entitled "Uzbekistan", in so far as relevant, states:

> "Uzbekistan's human rights record remains atrocious, with no meaningful improvements in 2012. Torture is endemic in the criminal justice system. Authorities intensified their crackdown on civil society activists, opposition members, and journalists, and continued to persecute religious believers who worship outside strict state controls.
>
> ...
>
> **Criminal Justice, Torture, and Ill-Treatment**
>
> Torture remains rampant and continues to occur with near-total impunity. Detainees' rights are violated at each stage of investigations and trials, despite habeas corpus amendments passed in 2008. The government has failed to meaningfully implement recommendations to combat torture made by the UN special rapporteur in 2003 and other international bodies. Suspects are not permitted access to lawyers, a critical safeguard against torture in pre-trial detention. Police coerce confessions from detainees using torture, including beatings with batons and plastic bottles, hanging by the wrists and ankles, rape, and sexual humiliation. Authorities routinely refuse to investigate allegations of abuse ... Human Rights Watch continues to receive regular and credible reports of torture, including suspicious deaths in custody in pre-trial and post-conviction detention.
>
> **Freedom of Religion**
>
> Although Uzbekistan's Constitution ensures freedom of religion, authorities continued their multi-year campaign of arbitrary detention, arrest, and torture of Muslims who practice their faith outside state controls. Over 200 were arrested or convicted in 2012 on charges related to religious extremism."

66. The chapter on Uzbekistan in the Amnesty International 2013 annual report, released in May of the same year, reads, in so far as relevant, as follows:

> "**Torture and other ill-treatment**
>
> Torture and other ill-treatment of detainees and prisoners by security forces and prison personnel continued to be routine. Scores of reports of torture and other ill-treatment emerged during the year, especially from men and women suspected or convicted of belonging to Islamic movements and Islamist groups and parties or other religious groups, banned in Uzbekistan. As in previous years, the authorities failed to conduct prompt, thorough, and impartial investigations into such reports and into complaints lodged with the Prosecutor General's Office.
>
> ...
>
> **Counter-terror and security**
>
> The authorities continued to seek the extradition of suspected members of Islamic movements and Islamist groups and parties banned in Uzbekistan in the name of security and the fight against terrorism. They also requested the extradition of political opponents, government critics and wealthy individuals out of favour with the regime.

> Many of these extradition requests were based on fabricated or unreliable evidence. The government offered diplomatic assurances to sending states to secure the returns, pledging free access to detention centres for independent monitors and diplomats. In practice, they did not honour these guarantees. Those forcibly returned to Uzbekistan faced incommunicado detention, torture and other ill-treatment and, after unfair trials, long prison sentences in cruel, inhuman and degrading conditions. The authorities were also accused of attempting assassinations of political opponents living abroad."

67. In their 2013 report "Return to Torture: Extradition, Forcible Returns and Removals to Central Asia", Amnesty International stated as follows:

> "Over the past two decades thousands of people across the region have alleged that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a forced confession or money from relatives. In this period, piecemeal reforms have been introduced in most Central Asia countries with the aim of strengthening the accountability of law enforcement agencies and improving the protection available in the criminal justice system. Nowhere, however, have they had any significant success in eliminating the practices of torture and other ill-treatment that are often used in relation to people suspected of ordinary crimes, and routinely used in relation to political opponents and individuals suspected of involvement in extremism and terrorism-related activities or in banned religious groups.
>
> ...
>
> ... Detainees are often tortured and ill-treated while being held incommunicado for initial interrogations. Those detained in closed detention facilities run by National Security Services on charges related to national security or "religious extremism" are at particular risk of torture and other ill-treatment."

68. For a summary of the relevant reports by the UN institutions and NGOs on Uzbekistan during the period between 2002 and 2011, see *Zokhidov*, cited above, §§ 107-13, with further references.

THE LAW

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

69. The applicant complained that in event of his extradition or administrative removal to Uzbekistan he would risk being subjected to ill-treatment in breach of Article 3 of the Convention, which reads as follows:

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

70. He further complained under Article 13 that he did not have an effective domestic remedy in respect of the above grievance. Article 13 of the Convention reads as follows:

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

A. The parties' submissions

71. The Government submitted, on the one hand, that the applicant had had not requested refugee status immediately on his arrival in Russia and had also omitted to raise the issue of the risk of ill-treatment within the administrative-removal proceedings. According to them, where applicants raised an ill-treatment argument before the authorities in extradition proceedings, the domestic courts duly verified those allegations. To demonstrate the existence of an "established practice" in that regard, they referred to the case of *Zokhidov* (cited above), where the applicant had brought his ill-treatment argument to the attention of the domestic authorities and the extradition order had been set aside. In any event, the applicant in the present case had failed to provide any reliable evidence demonstrating that if he was removed to Uzbekistan he would run the risk of being subjected to ill-treatment. On the other hand, they maintained that the applicant had various remedies available to him to raise the ill-treatment issue and had "made use of them in full". The domestic authorities had carefully examined the potential risk of treatment contrary to Article 3, as well as the applicant's family situation, in the administrative-removal and the refugee-status proceedings and had dismissed his allegations. They also noted that it had remained open for the applicant to challenge the latest court decisions in the refugee-status and the administrative-removal proceedings by lodging a further complaint with the Nizhniy Novgorod Regional Court by way of cassation appeal and with the Supreme Court by way of supervisory review and concluded that the complaint was manifestly ill-founded.

72. The applicant submitted in reply that he had consistently raised the grievance concerning the risk of ill-treatment at all stages of the extradition, the expulsion and the refugee-status proceedings. He maintained that the administrative-removal proceedings had been used by the authorities in order to circumvent the guarantees available to the applicant in extradition proceedings. For instance, the CAO did not contain any provisions obliging the authorities concerned to consider the risk of ill-treatment allegations in a removal case. The refugee-status proceedings had not had any suspensive effect in relation to the administrative expulsion. He further argued that a supervisory-review appeal against the final administrative removal order would not have suspensive effect either, and therefore could not be regarded as an effective remedy.

73. He further maintained that the domestic authorities had disregarded his allegations of a risk of ill-treatment both in the administrative-removal

and the asylum proceedings, despite the information he had relied on stemming from reputable international organisations, and had failed to question Ms Rryabinina as an expert. He relied on the Court's earlier finding in several extradition cases that the ill-treatment of detainees was a pervasive and enduring problem in Uzbekistan, especially in respect of detainees charged with membership of banned religious organisations, as in his case. Those findings were corroborated by other independent sources. If forcibly removed to Uzbekistan, he would be placed in detention and thus run an increased risk of torture in view of the charges against him.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Article 3 of the Convention

(i) General principles

75. The Court will examine the merits 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 of the principles to the present case

76. The Government may be understood as arguing that the applicant did not bring a sufficiently reasoned argument with regard to the risk of ill-treatment in the event of his removal to Uzbekistan to the attention of the authorities. The Court notes that they refer in this regard to the case of *Zokhidov* (cited above), in which the extradition order in respect of the applicant was set aside. In the Government's view, that happened because Mr Zokhidov – unlike the applicant in the present case – had submitted persuasive and consistent arguments in respect of the risk of ill-treatment, which had received due assessment by the domestic courts. The Court observes that the same example has been quoted by the Government in other similar cases (see, for instance, *Ermakov v. Russia*, no. 43165/10, § 185, 7 November 2013). Nonetheless, even leaving aside the subsequent developments in *Zokhidov* (cited above, § 62 et seq.), the Court observes that the main reason for the domestic authorities' refusal to extradite the applicant in that case was of a more "technical" nature, namely the fact that

his prosecution had become time-barred under Russian law (see *Zokhidov*, cited above, § 129). Therefore, the Court is not persuaded by the Government's argument as regards the existence of the "established practice" in dealing with the risk of ill-treatment complaints, in so far as it is based on the *Zokhidov* case.

77. Be that as it may, the Court observes that the applicant in the present case raised the issue of the risk of being subjected to ill-treatment if returned to Uzbekistan in the extradition, administrative-removal and the refugee-status proceedings. While denying any previous involvement in religious activities, he argued that in view of the nature of the criminal charges against him he would be persecuted for "political and religious" reasons in Uzbekistan. The Court is satisfied that his submissions remained consistent and that he advanced a number of specific and detailed arguments in support of his grievance (see paragraphs 14, 25-26, 30-31, 35, 37 and 40 above). Therefore, the Court considers that the applicant duly brought his complaint to the attention of the authorities.

(α) The domestic authorities' assessment of the risk

78. The Court notes that the extradition proceedings in the present case were discontinued on 9 April 2013 (see paragraph 15 above). Regrettably, the parties have not submitted a copy of the relevant decision, and its reasoning remains unknown to the Court. Further, having regard to the applicant's clarifications and in the absence of copies of the domestic decisions referred to by the Government (see paragraphs 45-46 above), the Court finds that the applicant has not applied for temporary asylum in Russia. In any event, the applicant is currently facing removal to Uzbekistan pursuant to the order of the domestic courts in the administrative proceedings. Therefore, the Court will focus on the available material about the administrative-removal and the refugee-status proceedings.

79. Turning first to the refugee-status proceedings, the Court observes that the applicant's request for refugee status was rejected as inadmissible by the migration authorities, and subsequently by the courts, with reference to two key arguments: that he had waited too long before applying for refugee status, and that he had failed to adduce convincing arguments to demonstrate the existence of a risk of ill-treatment in the event of his removal to Uzbekistan.

80. As regards the applicant's failure to apply for refugee status in due time, it is not in dispute between the parties that the applicant arrived in Russia in April 2011, when no charges were pending against him, and applied for refugee status a year and five months later, after his arrest. The Court further notes from the interview record of 14 September 2012 and the application for refugee status of 2 October 2012 that the applicant had learned about the nature of the charges against him when arrested (see paragraphs 34-35 above). The Court observes that, in any event, the main

thrust of the applicant's grievance was that he risked persecution by the Uzbek authorities in connection with charges of serious criminal offences punishable by long prison terms, and also ill-treatment in custody. The Court reiterates its constant approach that, whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, it is not possible to weigh the risk of ill-treatment against the reasons put forward for expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). The Court notes that in the present case the domestic authorities' findings as regards the applicant's failure to apply for refugee status in due time did not, as such, refute his allegations under Article 3 of the Convention.

81. As regards the failure to adduce convincing arguments pertaining to the existence of a risk, the Court reiterates that requesting an applicant to produce "indisputable" evidence of a risk of ill-treatment in the requesting country would be tantamount to asking him to prove the existence of a future event, which is impossible, and would place a clearly disproportionate burden on him (see *Rustamov v. Russia*, no. 11209/10, § 117, 3 July 2012). Any such allegation always concerns an eventuality, something which may or may not occur in the future. Consequently, such allegations cannot be proven in the same way as past events. The applicant must only be required to show, with reference to specific facts relevant to him and to the class of people he belongs to, that there was a high likelihood that he would be ill-treated (see *Azimov v. Russia*, no. 67474/11, § 128, 18 April 2013). Even though detailed submissions to that effect were made by the applicant in the present case, the authorities rejected them for lack of evidence that the charges were politically motivated.

82. Otherwise, the migration authority concluded that the applicant did not qualify for refugee status by relying on a general report on the social and political situation in Uzbekistan covering an unspecified period of time, as well as the results of the checks conducted by the local FMS and the Department of the Interior, as well as the observations by the Federal Security Service (see paragraph 36 above). The Moscow FMS and the reviewing first-instance court limited their findings to summary and vague statements that there was no evidence that the applicant would be persecuted in Uzbekistan, without further elaboration on the matter (see paragraphs 39 and 41 above). In the absence of the parties' submissions, the Court is unable to analyse whether a different approach was taken by the Moscow City Court in the appeal proceedings (see paragraph 44 above).

83. As to the administrative-removal proceedings, the Court notes that the domestic courts confined themselves to a finding that the defence's submissions with regard to the risk of ill-treatment were ill-founded, without giving further details. The applicant's arguments, as well as his reference to materials originating from reliable sources, such as

international reports and the Court's case-law, were not addressed at all. The courts only pointed to the lack of evidence that the applicant had been granted asylum in Russia (see paragraphs 28 and 32 above).

84. Having regard to the foregoing, and in particular to the lack of a thorough and balanced examination of the general human rights situation in Uzbekistan and the failure to give meaningful consideration to the applicant's personal circumstances, the Court is not persuaded that the applicant's grievance was subjected to rigorous scrutiny by the domestic authorities. Accordingly, the Court must now assess whether there exists a real risk that the applicant would be subjected in Uzbekistan to treatment proscribed by Article 3 if returned to that country.

(β) The Court's assessment of the risk

85. The Court has had occasion to deal with a number of cases raising the issue of a risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, with reference to 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; *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; and *Abdulkhakov v. Russia*, no. 14743/11, § 141, 2 October 2012). Against this background, and having regard to the information summarised in paragraphs 65-67 above, the Court cannot but confirm that the issue of ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan.

86. As regards the applicant's personal situation, the Court observes that the applicant is wanted by the Uzbek authorities on charges of participating in a banned religious extremist organisation, "the Islamic Movement of Uzbekistan", and a terrorist organisation, "O'zbekiston Islomiy Harakati". The Uzbek authorities were of the opinion that the applicant was plotting to destroy the constitutional order of Uzbekistan. The above considerations constituted the basis for both the extradition request and the arrest warrant issued in respect of the applicant. Various international reports, and the Court itself in a number of judgments, have pointed to the risk of ill-treatment which could arise in similar circumstances (see *Umirov*, cited above, § 119, and *Abdulkhakov*, cited above, § 145).

87. The foregoing cannot have been overlooked by the Russian authorities who dealt with the applicant's case in 2013. In other words, these circumstances "ought to have been known to the Contracting State" at the relevant time (see, as a recent authority, *Hirsi Jamaa and Others v. Italy*

[GC], no. 27765/09, § 121, ECHR 2012). Nonetheless, in the Court's view, the domestic authorities only adduced the summary and non-specific reasoning to dispel the alleged risk of ill-treatment on account of the above considerations, including the evident pre-existing adverse interest the Uzbek authorities had in the applicant. The Court further reiterates that the ratification of international treaties guaranteeing respect for fundamental rights, referred to by the FMS Nizhniy Novgorod (see paragraph 36 above), is not in itself sufficient to ensure adequate protection against a risk of ill-treatment where, as in the present case, reliable sources report practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Hirsi Jamaa and Others,* cited above, § 128).

88. In view of the above considerations and having regard, *inter alia*, the nature and the factual basis of the charges against the applicant, the available material disclosing a real risk of ill-treatment of detainees in a situation similar to his, and the absence of sufficient safeguards dispelling that risk, the Court finds that the applicant would face a serious risk of treatment proscribed by Article 3 of the Convention if removed to Uzbekistan.

89. The Court concludes, therefore, that the applicant's forced return to Uzbekistan, in the form of expulsion or otherwise, would give rise to a violation of Article 3 of the Convention.

(b) Article 13 of the Convention

90. The Court reiterates that, in the specific context of expulsion cases, given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialised and the importance which the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires (i) independent and rigorous scrutiny of a claim that substantial grounds exist for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination, and (ii) the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible (see, among others, *Yakubov v. Russia*, no. 7265/10, § 98, 8 November 2011, with further references).The Court has already examined the applicant's complaint that the domestic authorities failed to carry out a rigorous assessment of the risk of ill-treatment in the event of his forced removal to Uzbekistan in the context of Article 3 of the Convention. Having regard to its findings in paragraphs 79-84 and 87-88 above, the Court does not consider it necessary to deal separately with the applicant's complaint under Article 13 of the Convention.

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

91. The applicant complained under Article 5 § 4 that there existed no effective procedure by which he could challenge his continued detention pending administrative removal. Article 5 § 4 reads as follows:

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

A. The parties' submissions

92. The Government submitted, without giving further details, that Articles 30.10 and 30.11-30.13 of the CAO provide for an effective procedure for challenging the administrative removal order. The applicant could have applied to the President of the Nizhniy Novgorod Regional Court for supervisory review of the judgments of the Arzamas Town Court and the Nizhniy Novgorod Regional Court, but had failed to do so.

93. The applicant maintained his complaint. He submitted that the Nizhniy Novgorod Regional Court in it decision of 26 March 2013 had not considered his arguments and had not remedied the situation of uncertainty in his case. He would be unable to obtain judicial review of his detention after a certain lapse of time. Moreover, the supervisory-review procedure was not effective, since, first, there was nothing in Article 30.17 of the CAO to suggest that the supervisory court could order the applicant's immediate release and, second, an application for such review could only be lodged once (Article 30.16 of the CAO).

B. The Court's assessment

1. Admissibility

94. The Court finds that the complaint under Article 5 § 4 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

95. The Court reiterates that the purpose of Article 5 § 4 is to assure individuals who are arrested and detained of the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). A remedy must be made available during a person's

detention to allow that person to obtain a speedy judicial review of the legality of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Ismoilov and Others*, cited above, § 145, with further references). The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4 (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A). By virtue of Article 5 § 4, a detainee is entitled to apply to a "court" having jurisdiction to "speedily" decide whether or not his or her deprivation of liberty has become "unlawful" in the light of new factors which have emerged subsequently to the decision on his or her initial placement in custody (see the aforementioned case of *Ismoilov and Others*, § 146).

(b) Application of the principles to the present case

96. As regards the proceedings of 26 March 2013, the Court is not persuaded by the Government's argument that the applicant obtained judicial review of his detention by appealing against the initial detention order of 13 March 2013. The applicant's complaint under Article 5 § 4 was mainly directed not against the initial decision on his placement in custody, but rather against his inability to obtain judicial review of his detention after a certain lapse of time. The Court notes that detention under Article 5 § 1 (f) lasts, as a rule, for a significant period and depends on circumstances which are subject to change over time (compare *Waite v. the United Kingdom*, no. 53236/99, § 56, 10 December 2002, with further references). Given that the applicant has spent about one year in custody since the relevant appeal decision of 26 March 2013 was given, new issues affecting the lawfulness of the detention might have arisen during that period. Under such circumstances the Court considers that the requirement of Article 5 § 4 was neither incorporated in the initial detention order of 13 March 2013 nor fulfilled by the appeal court (see *Azimov*, cited above, § 151).

97. The Court further observes that the applicant did not attempt to bring any proceedings for judicial review of his detention pending expulsion.

98. The Government submitted that the applicant could have made use of the supervisory-review procedure under Articles 30.11-30.13 of the CAO to obtain review of the lawfulness of his detention. The Court notes that it is incumbent on the Government claiming non-exhaustion to satisfy it that the remedy was an effective one available in theory and in practice at the relevant time (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V), whilst in the present case the Government confined themselves to

a mere reference to the relevant CAO provisions. Be that as it may, the Court does not consider it necessary to assess the effectiveness of the proposed remedy, because, in any event, those provisions, in so far as relevant, only provide for an opportunity to challenge the initial detention order. Admittedly, in the present case the applicant could have requested the supervisory court to assess whether in the initial proceedings there had been an error in determining the outcome of the case or which significantly adversely affected his rights or interests (see, in so far as relevant, the Constitutional Court's decision of 3 April 2012, cited in paragraph 58 above). However, in the absence of any further clarifications, the Court is not persuaded that the suggested remedy would be capable of leading to the examination of the lawfulness of the detention in the light of new factors emerging after a certain lapse of time.

99. Otherwise, the Government did not rely on any provision in domestic law which would have permitted the applicant to bring proceedings for review of his detention pending administrative removal.

100. The Court further notes that no automatic periodic extension of the applicant's detention or any judicial review thereof took place in the relevant period.

101. It follows that throughout the term of the applicant's detention pending expulsion he did not have at his disposal any procedure for a judicial review of its lawfulness in the light of new factors emerging subsequent to the decision on his initial placement in custody.

102. There has therefore been a violation of Article 5 § 4.

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

103. The applicant complained under Article 5 § 1 of the Convention that his detention from 13 March 2013 had been unlawful on account of the non-compliance of the applicable domestic law with the "quality of law" standard, and that none of the court decisions in the administrative proceedings had specified any time limits in respect of his detention, leaving him unable to estimate its length. Article 5 reads, in its relevant parts, as follows:

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

A. The parties' submissions

104. The Government submitted that the applicant's detention pending expulsion had been lawful within the meaning of Article 5 § 1 (f). The applicant was detained with a view to enforcement of the court order for his administrative removal from the country under Article 18.8 § 1 of the CAO. Referring to the reasons given by the courts for the applicant's expulsion and detention, the Government argued that the expulsion proceedings had nothing to do with the extradition proceedings. The law on detention pending expulsion was sufficiently clear and foreseeable. The applicant's detention was necessary to ensure the administrative removal, because he could have absconded from the authorities if released.

105. The applicant maintained that on 12-13 March 2013 he had not in fact been released from detention, and that his detention had constituted an uninterrupted period from 13 September 2012. He argued that administrative-removal proceedings had been initiated only when the authorities had faced the need to release him and the administrative detention had been aimed solely at keeping him under the authorities' exclusive control after the expiry of the term of his detention pending extradition. Further, after 9 April 2013, the date of the formal refusal of his extradition to Uzbekistan, he had been kept in detention so that the authorities could organise his removal to the requesting country. He further argued that the Russian law on detention pending expulsion was not sufficiently clear and foreseeable. In particular, he submitted that his arrest for the purpose of expulsion had been ordered in order to circumvent the requirements of the domestic law, which prescribed a maximum time-limit for detention pending extradition. In contrast, detention pending expulsion was not limited in time under Russian law.

B. The Court's assessment

1. Admissibility

106. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it must be declared admissible.

2. Merits

107. The Court finds that the applicant's detention since 13 March 2013 with a view to his expulsion (administrative removal) from Russia has amounted to a form of "deportation" in terms of Article 5 § 1 (f) of the Convention. Article 5 § 1 (f) of the Convention is thus applicable in the instant case.

(a) General principles

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

(b) Application of the principles to the present case

109. It is common ground between the parties that the applicant resided illegally in Russia at least for some months before his arrest and, therefore, committed an administrative offence punishable by expulsion. The Court reiterates that a period of detention will in principle be lawful if carried out under a court order (see *Alim v. Russia*, no. 39417/07, § 55, 27 September 2011). The Court observes that the applicant's detention pending expulsion was ordered by a court having jurisdiction on the matter and in connection with an offence punishable with expulsion.

110. However, the Court cannot but notice that the domestic courts failed to indicate any reason for the applicant's detention after 13 March 2013. In fact, the courts' reasoning covered the application of an administrative sanction in the form of administrative removal, but not the detention pending such removal. The Court reiterates that "the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1" (see *Khudoyorov v. Russia*, no. 6847/02, § 135, ECHR 2005-X (extracts)).

111. The Court further notes the applicant's argument that the real purpose of the detention order of 13 March 2013 was to keep him detained after the maximum period of detention pending extradition had expired, and that the authorities used expulsion proceedings as a pretext to circumvent

the requirements of the law. Indeed, it is not disputed that the authorities were aware of the applicant's irregular immigration status from the time of his arrest on 13 September 2012 (see paragraph 34 above). Nevertheless, they did not cite that ground for detaining him until the time-limit for his detention pending extradition had expired. However, – even if the official account of the events surrounding the applicant's release is accepted (see paragraphs 22-23 above) – once the said time-limit had expired the applicant was again arrested, right outside the Arzamas police station during an extraordinary check conducted late at night within ten minutes of the applicant's purported release from detention pending extradition (ibid.). After that time the applicant remained in detention "with a view to expulsion", while the extradition proceedings were in progress, until 9 April 2013 (see paragraph 15 above). The Court reiterates in this regard that "detention under Article 5 § 1 (f) must be carried out in good faith" and "must be closely connected to the ground of detention relied on by the Government" (see *Rustamov*, cited above, § 150). In *Azimov* the Court found, in somewhat similar circumstances, that those two conditions had not been met, at least during the short period when the applicant's extradition proceedings were still pending, and probably even after they were over (see *Azimov*, cited above, § 165).

112. Nonetheless – and especially in the absence of any reasoning in the detention order – the Court does not consider it necessary to assess whether the purported reason for the applicant's detention differed from the real one in the present case, for the following reason. Even where the purpose of the detention is legitimate, its length should not exceed that reasonably required for the purpose pursued (see *Azimov*, cited above, § 166, and *Shakurov v. Russia*, no. 55822/10, § 162, 5 June 2012). The Court notes that in the present case the applicant's detention consisted of two periods. First, he was detained for six months with a view to extradition before the authorities ordered his detention pending removal. Second, his detention pending removal has lasted for about one year to date. The question is whether that duration is reasonable.

113. As regards the six-month detention pending extradition, the Court is satisfied that the requirement of diligence was complied with, given that both the extradition and asylum proceedings were pending throughout the entire period in question, with no particular delays attributable to the authorities.

114. As regards the period from 13 March 2013 onwards, pending the enforcement of the administrative removal order, the applicant's detention during that time was mainly attributable to the temporary suspension of the enforcement of the extradition and expulsion orders due to the indication made by the Court under Rule 39 on 22 March 2013.

115. The Court reiterates in this regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim

measures indicated under Rule 39 of the Rules of Court. However, the implementation of an interim measure indicated by the Court does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5 § 1 (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). In a number of cases where the respondent State refrained from deporting applicants in compliance with a request made by the Court under Rule 39, the Court has been prepared to accept that the expulsion proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1 (f) had occurred (see, for instance, *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011, and *Umirov*, cited above, §§ 138-42).That being said, suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation where the applicant languishes in prison for an unreasonably long period (see *Azimov*, cited above, § 171).

116. The Court reiterates that in the present case no specific time-limits for the applicant's detention pending expulsion were expressly set by the courts (see paragraphs 28 and 32 above). According to Article 31.9 § 1 of the CAO, the expulsion decision must be enforced within two years (see paragraph 60 above). However, it is unclear what would happen after the expiry of the two-year time-limit, since the applicant would clearly remain in an irregular situation in terms of immigration law and would again be liable to expulsion and, consequently, to detention on that ground (see *Azimov*, cited above, § 171).

117. The Court further notes in this regard that the maximum penalty in the form of deprivation of liberty for an administrative offence provided for in the CAO is thirty days (see paragraph 61 above), and that detention with a view to expulsion should not be punitive in nature and should be accompanied by appropriate safeguards, as established by the Russian Constitutional Court (see paragraph 63 above). Like in *Azimov* (cited above, § 172) the Court observes that in the present case the "preventive" measure, in terms of its gravity, was much more serious than the "punitive" one.

118. The Court also reiterates that at no time during the entire period of the applicant's detention, when the interim measure applied by the Court was in force, did the authorities re-examine the question of the lawfulness of his continuous detention (see paragraphs 100-01 above).

119. Finally, although the authorities knew that the examination of the case before the Court could take some time, they did not attempt to find "alternative solutions" which would secure the enforcement of the expulsion order in the event of the lifting of the interim measure under Rule 39 (see *Azimov*, cited above, § 173, with further references).

120. In view of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 (f) of the Convention in respect of the applicant's detention pending administrative removal.

IV. RULE 39 OF THE RULES OF COURT

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

122. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

125. The Government contested that claim as unfounded and excessive and submitted that the finding of a violation would constitute sufficient just satisfaction.

126. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the applicant's forced return to Uzbekistan would, if implemented, give rise to a violation of that provision. It considers that its finding regarding Article 3 in itself amounts to adequate just satisfaction for the purposes of Article 41.

127. The Court further observes that it has found violations of Article 5 §§ 1 and 4 of the Convention in the present case. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. The Court therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, (see *Azimov*, cited above, §§ 181-82), and dismisses the remainder of the claims under this head.

B. Costs and expenses

128. The applicant also claimed EUR 7,750 for the costs and expenses incurred before the domestic courts and the Court. He submitted a breakdown of the expenses incurred, which included forty-nine hours of work by Ms Yermolayeva and twenty-eight and a half hours of work by Ms Ryabinina, at the hourly rate of EUR 100.

129. The Government considered that the lawyers' fees had not been shown to have been actually paid or incurred.

130. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,750 covering costs under all heads (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV).

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the forced return of the applicant to Uzbekistan would give rise to a violation of Article 3 of the Convention;

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

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the unavailability of any procedure for a judicial review of the lawfulness of the applicant's detention pending administrative removal;

5. *Holds* that that there has been a violation of Article 5 § 1 (f) of the Convention in respect of the applicant's detention pending administrative removal;

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, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 7,750 (seven thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

8. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that that the applicant should not be removed or extradited to Uzbekistan until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President