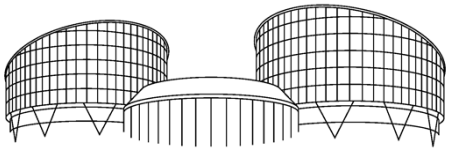

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF EGAMBERDIYEV v. RUSSIA

(Application no. 34742/13)

JUDGMENT

STRASBOURG

26 June 2014

FINAL

17/11/2014

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

In the case of Egamberdiyev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 34742/13) 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 a national of Uzbekistan, Mr Fayzullo Yuldashevich Egamberdiyev ("the applicant"), on 30 May 2013.

2. The applicant was represented by Ms N. Yermolayeva, a lawyer 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 that his removal to Uzbekistan would expose him to a high risk of ill-treatment in breach of Article 3 of the Convention. He complained that his detention in the framework of removal proceedings had been incompatible with the requirements of Article 5 § 1 (f) of the Convention.

4. On 31 May 2013 the Acting President of the First Section decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicant should not be expelled from Russia for the duration of the proceedings before the Court. The Acting President also decided to give priority to the application under Rule 41.

5. On 24 September 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975 in the Andijan Region of Uzbekistan.

A. The applicant's arrest and extradition proceedings

7. The applicant first arrived in Russia in November 2008. In summer 2009 he applied for Russian nationality using a false name and a forged Kyrgyz passport. His application was granted on 16 March 2010.

8. On 31 July 2009 an investigator from the National Security Service of Uzbekistan issued a decision to charge the applicant with membership of the extremist organisation Nurchilar (also spelled Nurcilar) and possession and dissemination of extremist literature, offences under Articles 244-1(3) and 244-2(1) of the Uzbek Criminal Code. A search warrant was issued on the same date. On 5 August 2009 the Unus-Abad District Court ordered the applicant's arrest.

9. On 22 February 2013 the applicant was arrested in Omsk and charged with using a false identity document to cross the Russian border. Once his real identity had been established, he was detained pending extradition proceedings. On 26 February 2013 the Isilkul Town Court of the Omsk Region imposed a custodial preventive measure, which was subsequently extended on 22 March and 22 April 2013 until 22 June 2013.

10. On 22 March 2013 the Russian Prosecutor General's office received an extradition request from his Uzbek counterpart. The request stated that the applicant was wanted in Uzbekistan in connection with his membership of an extremist organisation, an offence under Article 244-1(1) of the Uzbek Criminal Code.

11. On 23 May 2013 the Isilkul town prosecutor lifted the custodial measure that had been imposed in the extradition proceedings. The extradition was adjourned until such time as the criminal proceedings against the applicant on the charge of using a false document had been completed.

12. As of the date of the applicant's most recent submission of 6 March 2014, he was not aware of the outcome of the extradition proceedings.

B. Expulsion proceedings

13. On 23 May 2013, immediately after the applicant's release from custody, the Isilkul Town Court heard an administrative case against him on the charge of illegal residence in Russia, an offence under Article 18.8 § 1 of the Code of Administrative Offences. The Town Court found the

applicant guilty and sentenced him to a fine and administrative removal from Russia ("expulsion order"). Pending removal, he was to be held in the Centre for Social Adaptation for foreign nationals.

14. On 29 May 2013 the applicant asked the Court to apply interim measures under Rule 39 of the Rules of Court to prevent his expulsion to Uzbekistan. The Court granted his request on 31 May 2013.

15. On 11 June 2013 the Omsk Regional Court summarily rejected the appeal against the Town Court's expulsion order of 23 May 2013.

C. Criminal proceedings against the applicant

16. In the meantime, on 6 June 2013 an investigator with the border control department of the Federal Security Service for the Kurgan and Tyumen Regions had the applicant transferred from the Centre for Social Adaptation to the Kazanskoye police ward in the Tyumen Region pending the criminal proceedings against him on the charge of using a false passport.

17. On the following day the Kazanskiy District Court of the Tyumen Region issued a detention order against the applicant and he was placed in remand prison IZ-72/2 in the Tyumen Region.

18. On 17 September 2013 the Kazanskiy District Court found the applicant guilty of using two false passports and of illegally crossing the Russian border, and sentenced him to a fine. He was released in the courtroom.

D. Refugee status proceedings

19. On 27 March 2013, while in custody awaiting a decision on the extradition request, the applicant applied for refugee status in Russia, claiming that he feared persecution on account of his religious beliefs.

20. By a decision of 20 June 2013, the Omsk division of the Federal Migration Service ("the FMS") refused the application, finding that the applicant had waited for about five years after his first entry to Russia before asking for asylum, that he had used false names and documents in order to stay in Russia, and that he had no credible claim of a risk of persecution.

21. The applicant lodged a hierarchical appeal, which was rejected by the central office of the FMS on 11 September 2013. The decision was notified to his lawyer by letter of 16 September 2013.

22. Unaware of the refusal, on 18 September 2013 the applicant went to the Omsk office of the FMS for a certificate of pending refugee-status proceedings, which would have allowed him to reside legally in Russia. He was arrested in the office and placed into custody pending expulsion under the expulsion order of 23 May 2013 (see paragraph 13 above).

23. On 22 January 2014 the Basmannyi District Court of Moscow rejected an appeal lodged by the applicant against the FMS's decision of 11 September 2013. The District Court found that the applicant had failed to prove that he risked persecution in Uzbekistan.

24. An appeal against the District Court's judgment is pending. The applicant is now in custody in the Omsk Centre for Social Adaptation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. Pursuant to section 34(5) of the Foreigners Act (Law no. 115-FZ of 25 July 2002), foreign nationals subject to administrative removal who have been placed in custody pursuant to a court order are detained in special facilities until the execution of the decision on administrative removal.

26. Article 3.10 § 1 of the Code of Administrative Offences defines administrative removal as the forced and controlled removal of a foreign national or a stateless person across the Russian border. Under Article 3.10 § 2, administrative removal is imposed by a judge or, in cases where a foreign national or a stateless person has committed an administrative offence upon entry to the Russian Federation, by a competent public official. Under Article 3.10 § 5, for the purposes of execution of the decision on administrative removal a judge may order the detention of the foreign national or the stateless person in a special facility.

27. Under Article 31.9 § 1 a decision imposing an administrative penalty ceases to be enforceable after the expiry of two years from the date on which the decision became final.

28. Article 3.9 provides that an administrative offender can be punished with administrative detention only in exceptional circumstances, and for a maximum term of thirty days.

29. In decision no. 6-R of 17 February 1998 the Constitutional Court stated, with reference to Article 22 of the Constitution concerning the right to liberty and personal integrity, that a person subject to administrative removal could be placed in detention without a court order for a term not exceeding forty-eight hours. Detention for over forty-eight hours was permitted only on the basis of a court order and provided that the administrative removal could not be effected otherwise. The court order was necessary to guarantee protection not only from arbitrary detention of over forty-eight hours, but also from arbitrary detention as such, while the court assessed the lawfulness of and reasons for the placement of the person in custody. The Constitutional Court further noted that detention for an indefinite term would amount to an inadmissible restriction on the right to liberty as it would constitute punishment not provided for in Russian law and which was contrary to the Constitution.

III. REPORTS ON UZBEKISTAN BY INTERNATIONAL ORGANISATIONS

30. For relevant reports on Uzbekistan by the UN institutions and NGOs until 2011, see *Abdulkhakov v. Russia*, no. 14743/11, §§ 99-105, 2 October 2012 and *Zokhidov v. Russia*, no. 67286/10, §§ 107-113, 5 February 2013.

31. The 2014 World Report published by Human Rights Watch on 21 January 2014, in so far as relevant, reads as follows:

> "Uzbekistan's human rights record remained abysmal across a wide spectrum of violations. The country is virtually closed to independent scrutiny ...
>
> Torture remains systematic in the criminal justice system. The International Committee of the Red Cross took the unusual step in April of announcing publicly its decision to end prison visits in Uzbekistan. It cited its inability to follow standard procedures for visits, including being able to access all detainees of concern and speaking with detainees in private ...
>
> ...
>
> Torture plagues Uzbekistan's places of detention, where it is often used to coerce confessions and occurs with impunity. Methods include beating with batons and plastic bottles, hanging by the wrists and ankles, rape, and sexual humiliation.
>
> There is no evidence that the introduction of *habeas corpus* in 2008 has reduced torture in pretrial custody or ensured due process for detainees. Authorities routinely violate the right to counsel. Defense lawyers that take on politically sensitive cases have been disbarred since the passage of a law in 2009 dissolving the independent bar association.
>
> The government regularly denies the existence of torture and has failed to implement meaningful recommendations made by the United Nations special rapporteur in 2003 or similar ones by international bodies in the past decade.
>
> Authorities refuse to investigate torture allegations and Human Rights Watch continues to receive credible reports of torture, including suspicious deaths in custody ...
>
> Authorities continued their campaign of arbitrary detention and torture of Muslims who practice their faith outside state controls. In April, the Initiative Group of Independent Human Rights Defenders estimated there were 12,000 persons currently imprisoned on vague and overbroad charges related to 'religious extremism,' with over 200 convicted this year alone.
>
> Followers of the late Turkish Muslim theologian Said Nursi were imprisoned for religious extremism ...
>
> Authorities often extend sentences of prisoners convicted of 'religious' offenses for alleged violations of prison regulations. Such extensions occur without due process and add years to a prisoner's sentence. They appear aimed at keeping religious prisoners incarcerated indefinitely ..."

32. Amnesty International's Annual Report for 2012, released on 23 May 2013, in so far as relevant, reads as follows:

> "Concerns remained over the frequent use of torture and other ill-treatment to extract confessions, in particular from those suspected of links with banned religious groups ...
>
> 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 ...
>
> 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 ..."

33. The report of Amnesty International published on 3 July 2013, entitled "Eurasia: Return to torture: Extradition, forcible returns and removals to Central Asia", covered the situation of extradition, expulsion and forcible returns from Ukraine and Russia to the countries of Central Asia. The report reads, in so far as relevant:

> "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 ...
>
> In all five republics [Uzbekistan, Tajikistan, Turkmenistan, Kyrgyzstan and Kazakhstan], 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 ..."

34. Amnesty International's written statement to the 25th session of the UN Human Rights Council (3-28 March 2014), entitled "Uzbekistan: Torture and other cruel, inhuman or degrading treatment in Uzbekistan", reads, in so far as relevant, as follows:

> "Despite some formal steps toward strengthening safeguards against torture and other cruel, inhuman or degrading treatment or punishment, serious concerns remain about Uzbekistan's failure to implement existing laws and safeguards, to adopt new effective measures toward the prevention of torture, and to hold accountable those responsible for torture. Amnesty International is concerned that impunity prevails in Uzbekistan as the prosecution of individuals suspected of being responsible for torture or other ill-treatment continues to remain the exception rather than the rule.
>
> Amnesty International has continued to receive persistent and credible allegations of routine and pervasive torture and other ill-treatment by security forces during arrest, transfer, in police custody and in pre-trial detention and by security forces and prison personnel in post-conviction detention facilities. These include scores of reports that individuals charged with or convicted of "anti-state" and terrorism-related offences, in particular members or suspected members of political opposition parties and banned Islamic movements or Islamist groups and parties, continue to be particularly vulnerable to being tortured or otherwise ill-treated by security forces.
>
> Methods of torture or other ill-treatment in detention described by former prisoners, including released human rights defenders, include beating detainees with batons, iron rods, bottles filled with water while they are handcuffed to radiators or suspended from ceiling hooks, asphyxiation with plastic bags or gasmasks with the air supply turned off, inserting needles under finger or toenails, electroshock, dousing with freezing water, and rape of both men and women. Amnesty International's research shows that in the vast majority of cases the authorities have failed to conduct effective investigations into allegations of torture or other ill-treatment by detainees.
>
> ...
>
> Torture and other ill-treatment continue to be used specifically to extract confessions and other incriminating information and more generally to intimidate and punish detainees, including human rights defenders, individuals perceived to be political opponents or who have fallen out of favour with the authorities. The courts continue to heavily rely on these so-called "confessions" extracted under torture, duress or deception. Too often judges are willing to ignore or dismiss as unfounded allegations of torture or other ill-treatment, even when presented with credible evidence in court, despite directives by the Plenum of the Supreme Court of Uzbekistan explicitly prohibiting the use of torture to extract confessions and the admissibility of such tainted evidence in court proceedings. Such directives have been issued twice in the last decade, but have had virtually no effect."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant alleged that if returned to Uzbekistan he would run a real risk of being subjected to torture and ill-treatment in breach of Article 3 of the Convention, which provides as follows:

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

A. The parties' submissions

36. The Government submitted that the decision on the applicant's administrative removal from Russia was well-reasoned and proportionate. The courts took into account that he had used false identity documents, had minor children in Uzbekistan and had no family members, place of residence or stable income in Russia. The expulsion order did not specify that the applicant was to be taken to Uzbekistan, but merely stated that he was to be removed from the territory of the Russian Federation. As to the applicant's allegation that he risked ill-treatment in Uzbekistan, the Government pointed out that Uzbekistan had ratified various international human-rights treaties, that it was making democratic improvements, and that the habeas corpus procedure had been implemented in January 2008. They further argued that the case-law of the Court gave no examples of individuals who had been ill-treated in Uzbekistan following their extradition from Russia. The Government were sceptical about the NGO reports concerning the situation in Uzbekistan referred to by the applicant; in the Government's view, they contained general allegations that were uncorroborated by specific factual information. The applicant's allegations that he risked ill-treatment were too generic and insufficient to demonstrate that the human-rights situation in Uzbekistan was so poor that all extraditions to that State should be stopped.

37. The applicant disagreed with the Government's assertion that the domestic authorities had given due consideration to his arguments about the high risk of ill-treatment in Uzbekistan. As regards the removal proceedings, the Code of Administrative Offences contained no provision that would require the decision-making body to consider allegations of a serious risk of ill-treatment and that remedy was therefore ineffective, even in theory. Contrary to the Government's claim, nothing in the expulsion order of 23 May 2013 had indicated that the risk of ill-treatment had somehow been taken into account. Nor had the appeal judgment of the Omsk Regional Court mentioned any arguments relating to that risk. In the refugee-status proceedings, neither the FMS nor the courts had addressed

the applicant's arguments about the risk of ill-treatment in Uzbekistan. The authorities had thus failed to consider the Article 3 issues.

38. The applicant maintained that he continued to run a serious risk of ill-treatment in Uzbekistan. He referred to the recent reports and publications by international human-rights NGOs, which noted no positive changes in the Uzbek law-enforcement authorities and their widespread recourse to torture, especially in respect of persons suspected of banned religious activities. He pointed out that the Court had found a violation of Article 3 in many cases in which individuals suspected of links to extremist religious groups had been extradited or expelled to Uzbekistan (citing, as recent examples, *Kasymakhunov v. Russia*, no. 29604/12, 14 November 2013; *Ermakov v. Russia*, no. 43165/10, 7 November 2013, and *Abdulkhakov*, cited above). The Court had also found that the protection of Article 3 applied to applicants who had been accused of membership of a group in respect of which reliable sources had confirmed a continuing pattern of ill‑treatment and torture on the part of the authorities (reference was made to *Zokhidov*, cited above, § 138). The applicant maintained that that finding applied to him in view of his alleged membership of the Nurchilar religious movement.

39. The applicant rejected the Government's argument that the decision on his administrative removal did not necessarily mean that he would be expelled to Uzbekistan. No other possibility had ever been discussed in the course of the administrative proceedings and, furthermore, there was no reason to believe that any other country would be willing to accept him. His placement in the detention facility foreclosed the possibility of his voluntary and independent departure from Russia and prevented him from choosing the country of destination. He disagreed with the Government's submission that his expulsion had been made necessary because of his failure to abide by the Russian migration laws and the absence of family ties in Russia. Article 3 prohibited ill-treatment in absolute terms and there could be no justification for imposing a sanction that would expose him to a real risk of torture.

B. Admissibility

40. The Court observes firstly that, no decision on Uzbekistan's extradition request having being taken, it is only called upon to examine the applicant's complaint under Article 3 of the Convention in relation to the expulsion proceedings.

41. 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.

C. Merits

42. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles set out in, among others, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references). It must first establish whether the applicant's allegations regarding the risk of ill-treatment if expelled to Uzbekistan were duly assessed by the domestic authorities.

43. As regards the refugee-status proceedings, the Court observes that the decisions by the migration authorities and by the District Court mainly referred to the fact that the applicant had waited for too long before applying for refugee status, and that he had failed to substantiated his claim that he risked political or religious persecution. On the first point, the Court reiterates 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, the domestic authorities' findings as regards the failure to apply for refugee status in due time did not, as such, refute his allegations under Article 3 of the Convention (see *Ermakov*, cited above, § 196). On the second point, the Court emphasises that the criteria that are laid down for granting refugee status are not identical to those that are used for assessment of the risk of treatment contrary to Article 3 of the Convention. The applicant made detailed submissions about the risk of his being subjected to ill-treatment if he were returned to his home country, relying on information from various international organisations and on the judgments of this Court. However, the domestic decisions did not mention those submissions or draw any conclusions from them. The Court has no information on the outcome of the final round of appeal proceedings on refugee status (see paragraph 24 above).

44. As to the proceedings concerning the applicant's administrative removal, the Court notes that the scope of the review by the domestic courts was confined to establishing the fact that the applicant's presence in Russia had been illegal. In this connection, the Court reiterates that, in view of the absolute nature of Article 3, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). Therefore, the domestic courts' findings as regards the applicant's failure to abide by Russian laws could not, as such, refute his allegations under Article 3 of the Convention.

45. Having regard to the foregoing, the Court is not persuaded that the applicant's allegations that he risked ill-treatment have been duly examined by the domestic authorities. It must, accordingly, assess whether there exists a real risk that the applicant would be subjected to treatment proscribed by Article 3 if he were to be removed to Uzbekistan.

46. The Court notes firstly that the Government in their observations pointed out that the decision on the applicant's administrative removal did not specify that he was to be expelled to Uzbekistan, but merely stated that he was to be removed from the territory of Russia. However, the Court must accept the applicant's argument that no other possibility was discussed in the course of the administrative proceedings. It notes, furthermore, that the Government provided no information regarding any other country willing to accept him. Accordingly, the Court cannot but conclude that the decision on the applicant's administrative removal presupposed his expulsion to Uzbekistan.

47. 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 material 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, most recently, *Kasymakhunov, Ermakov, Abulkhakov, Umirov*, all cited above; see also *Rustamov v. Russia*, no. 11209/10, § 125, 3 July 2012; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008; and *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008).

48. As regards the applicant's personal situation, the Court notes that he was wanted by the Uzbek authorities on charges related to his alleged membership of a Muslim extremist movement. Those charges constituted the basis for the extradition request and the arrest warrant issued in respect of the applicant. Thus, his situation is no different from that of other Muslims who, on account of practising their religion outside official institutions and guidelines, are charged with religious extremism or membership of banned religious organisations and, on that account, as noted in the reports and the Court's judgments cited above, are at an increased risk of ill-treatment (see, in particular, *Ermakov*, cited above, § 203).

49. The Court is bound to observe that the existence of domestic laws and international treaties guaranteeing respect for fundamental rights is not in itself sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities that are manifestly contrary to the principles of the Convention (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 128, ECHR 2012). Furthermore, the domestic authorities, as well as the Government before the Court, used summary and

non-specific reasoning in an attempt to dispel the alleged risk of ill-treatment on account of the above considerations.

50. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant would face a real risk of treatment proscribed by Article 3 of the Convention if deported to Uzbekistan.

51. The Court therefore concludes that the enforcement of the expulsion order against the applicant would give rise to a violation of Article 3 of the Convention.

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

52. The applicant contended, under Article 13 of the Convention, that no effective remedies were available to him in respect of his allegations that he risked ill-treatment in the event of his return to Uzbekistan. 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."

53. The Court considers that the gist of the applicant's claim under Article 13, which it finds admissible, is that the domestic authorities failed to carry out a rigorous scrutiny of the risk of ill-treatment the applicant would face in the event of his forced removal to Uzbekistan. The Court has already examined that submission in the context of Article 3 of the Convention. Having regard to its findings above, the Court considers that there is no need to examine this complaint separately on its merits (see, for a similar approach, *Azimov v. Russia*, no. 67474/11, § 145, 18 April 2013).

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

54. The applicant complained, under Article 5 § 1 (f) of the Convention, that his detention pending administrative removal after 23 May 2013 had been unlawful. Article 5 § 1 (f) of the Convention reads as follows:

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

55. The Government submitted that the applicant's detention was based on a reasonable suspicion that he had committed an offence. It was also necessary to prevent him from fleeing. The maximum time-limit for enforcement of the expulsion order is set at two years.

56. The applicant submitted that he was not questioning before the Court the lawfulness of his detention in the extradition proceedings, from 22 February to 23 May 2013, or that in the criminal proceedings, from 6 June to 17 September 2013. As regards the detention imposed in the expulsion proceedings, he claimed that the authorities had become aware of the fact that he was using a false passport when he was arrested, on 22 February 2013. However, it was not until three months later that the prosecutor instituted expulsion proceedings against him. The applicant claimed that the real purpose of the expulsion proceedings was to keep him under the authorities' control for two more years without a possibility of periodic review. Such a long stay in detention significantly exceeded the maximum custodial sentence under the Code of Administrative Offences and his detention pending expulsion was of a punitive, rather than preventive, nature.

B. Admissibility

57. 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.

C. Merits

58. The Court observes that the applicant's complaint refers to the periods from 23 May to 6 June 2013 and from 18 September 2013 to the present day, in which he has been detained with a view to his administrative removal ("expulsion") from Russia (see paragraphs 13-16 and 22 above). Since the administrative removal amounts to a form of "deportation" in terms of Article 5 § 1 (f) of the Convention, that provision is applicable in the instant case.

59. The Court reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must 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. 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 must be appropriate; and the length of the detention must not exceed that reasonably required for the purpose pursued (see *Azimov*, § 161, and *Rustamov*, § 150, both cited above, with further references).

60. It is common ground between the parties that the applicant had been residing illegally in Russia before his arrest and, therefore, had committed an administrative offence punishable by expulsion. The Court is satisfied that on 23 May 2013 his detention pending expulsion was ordered by a court with jurisdiction in the matter and in connection with an offence punishable by expulsion. On 11 June 2013 the Regional Court upheld that decision on appeal. The Court thus concludes that the authorities acted in compliance with the letter of the national law.

61. In so far as the applicant claimed that the real purpose of the expulsion proceedings was to keep him in custody pending the outcome of the extradition proceedings, the Court reiterates that detention may be unlawful if its stated purpose differs from the real one (see *Khodorkovskiy v. Russia*, no. 5829/04, § 142, 31 May 2011; *Čonka v. Belgium*, no. 51564/99, § 42, ECHR 2002-I, and *Bozano v. France*, 18 December 1986, Series A no. 111, § 60). The Court reiterates that in *Azimov*, it found that a decision ordering the applicant's detention pending expulsion had served to circumvent the maximum time-limits laid down in the domestic law for detention pending extradition (see *Azimov*, cited above, § 165). However, it does not need to determine whether the same is true in the instant case because even where the purpose of 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).

62. In the present case, before the authorities ordered the applicant's detention pending expulsion he had already been in detention with a view to extradition for three months. When deciding to keep the applicant in custody pending expulsion, the courts did not set a specific time-limit for his detention. Under Article 31.9 § 1 of the Code of Administrative Offences, an expulsion decision must be enforced within two years (see paragraph 27 above). Thus, after the expiry of such a period, a detainee should be released. This may happen in the present case; however, the possible implications of Article 31.9 § 1 of the Code of Administrative Offences for the applicant's detention are a matter of interpretation, and the rule limiting the duration of the detention of an illegal alien is not set out clearly in the law. It is also unclear what will happen after the expiry of the two-year time-limit, since the applicant will clearly remain in an irregular

situation in terms of immigration law and will again be liable to expulsion and, consequently, to detention on that ground (see *Azimov*, cited above, § 171).

63. The Court further notes that the maximum penalty in the form of deprivation of liberty for an administrative offence under the Code of Administrative Offences in force is thirty days (see paragraph 28 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 29 above). In the present case the "preventive" measure was much heavier than the "punitive" one, which is not normal (see *Azimov*, cited above, § 172).

64. Lastly, the Court reiterates that there are no provisions of Russian law which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion, and no automatic review of his detention at regular intervals (see *Azimov*, cited above, § 153).

65. In view of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 (f) of the Convention.

IV. RULE 39 OF THE RULES OF COURT

66. 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.

67. The Court notes that the applicant is currently detained in Russia and is still liable to administrative expulsion pursuant to the final judgments of the Russian courts in this case. It also observes that no decision in the extradition proceedings has been made. Having regard to the finding that the applicant would face a serious risk of being subjected to torture or inhuman or degrading treatment in Uzbekistan, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court must continue in force until the present judgment becomes final or until further order.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

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

70. The Government considered that the claim was excessive.

71. 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. The Court considers that its finding regarding Article 3 amounts in itself to adequate just satisfaction for the purposes of Article 41.

72. The Court has found a violation of Article 5 § 1 in the present case. It accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It therefore awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicant also claimed EUR 7,200 for costs and expenses, which included EUR 2,300 for twenty-three hours' work by Ms Ryabinina in the domestic proceedings and during the submission of the application to the Court, and EUR 4,900 for forty-nine hours' work by Ms Yermolayeva, who represented the applicant before the Court.

74. The Government pointed out that the applicant had not submitted a legal assistance agreement or other supporting documents. Furthermore, as the applicants' representatives specialised in cases involving extradition and expulsion to the CIS States, the Government expressed doubts as to whether the present case had required research and preparation to the extent claimed by the applicant.

75. 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 5,000, covering costs under all heads plus any tax that may be chargeable to the applicant, and rejects the remainder of the claims under this head.

C. Default interest

76. 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 § 1 (f) of the Convention in respect of the applicant's detention in the framework of the expulsion proceedings;

5. *Decides* to maintain the indication to the Government under Rule 39 of the Rules of Court until such time as the present judgment becomes final, or until further order;

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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President