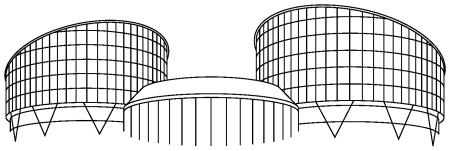

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RAKHIMOV v. RUSSIA

(Application no. 50552/13)

JUDGMENT

STRASBOURG

10 July 2014

FINAL

15/12/2014

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

In the case of Rakhimov 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 André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 50552/13) 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 Nabi Naimovich Rakhimov (spelled in the passport as Nabi Rahimov; "the applicant"), on 7 August 2013.

2. The applicant was represented by Ms D.V. Trenina, a lawyer practising in Moscow, and Ms Ye. Ryabinina, who had been a programme officer of the Institute of Human Rights in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that in the event of his administrative removal to Uzbekistan he risked being subjected to torture and ill-treatment, that both his detention between 24 and 30 July 2013 and his detention pending administrative removal had been unlawful, that an effective judicial review of the latter period of detention had not been available to him, and that the conditions of his detention at a local police station had been appalling.

4. On 8 August 2013 the President of the Section decided to indicate to the Government of Russia, under Rule 39 of the Rules of Court, that the applicant should not be expelled or otherwise involuntarily removed from Russia to Uzbekistan or another country for the duration of the proceedings before the Court. On the same date the application was granted priority under Rule 41 of the Rules of Court.

5. On 27 September 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971. Prior to his arrest he was residing in the Moscow Region.

7. On an unspecified date in 1999 the applicant arrived in Russia and settled in Moscow. Between 1 and 18 November 2009 he travelled to Uzbekistan (see paragraphs 43-44 below). It appears from the domestic judgment of 18 September 2013 (see paragraph 39 below) that he was registered with the local migration authorities from 20 November 2009 to 18 February 2010.

A. Criminal proceedings against the applicant in Uzbekistan

8. On 3 March 2010 the National Security Department of the Samarkand Region of Uzbekistan brought criminal proceedings against the applicant on suspicion of his alleged membership between 1990 and 1998 of Hizb ut-Tahrir ("HT"), a transnational Islamic organisation, banned in Russia, Germany and some Central Asian republics, and making public calls to overthrow the constitutional order of Uzbekistan and to establish an Islamic state in its place.

9. On 6 April 2010 the applicant was charged *in absentia* in Uzbekistan with attempting to overthrow the Uzbek State's constitutional order (Article 159 § 3 (b) of the Criminal Code of the Republic of Uzbekistan); storage and disseminating of documents containing ideas of religious extremism, separatism and fundamentalism, and threats to national security and public order (Article 244-1 § 3 (a) of the Code); and participation in and direction of religious, extremist, separatist and other prohibited organisations (Article 244-2 § 1 of the Code). The statement of charges indicated that between 1990 and 1998 the applicant, as a member of HT, had regularly held unlawful religious gatherings with three other persons at which they had made "public calls to overthrow the existing constitutional order" in their home country and "made use of materials containing ideas of religious extremism". The applicant had shown a video-recording of an address by Yu., the leader of the religious extremist "Islamic Movement of Uzbekistan". Furthermore, since 1990 the applicant had systematically participated in religious studies and physical training sessions of a "shahid belt community", as well as meetings organised by R. at which public calls

for the replacement of the Uzbek Government by an Islamic state in the form of a recreated Caliphate had been made.

10. On the same date the Samarkand Town Court ordered the applicant's arrest, and his name was put on the cross-border list of wanted persons.

B. Extradition proceedings and the applicant's detention between 17 April and 30 July 2013

11. On 17 April 2013 the applicant was arrested by the police in Moscow as a person wanted by the Uzbek authorities. On the same date the National Security Department of the Samarkand Region of Uzbekistan confirmed their intention to request the applicant's extradition and requested that he be remanded in custody.

12. When interviewed by the police on the same date after his arrest, the applicant stated that he had moved to Russia in 1999 to look for work. He had not registered as a foreign national temporarily residing in the country and had not applied for refugee status in Russia. He was unaware of the reasons for his criminal prosecution in Uzbekistan and had not been persecuted on political grounds in his home country. His wife and four minor children lived with him in the Moscow Region.

1. Extradition proceedings

13. On 13 May 2013 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 being extradited, that he would be able to freely leave Uzbekistan once 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, or 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, that the criminal proceedings against him would be conducted in compliance with the domestic law of the Republic of Uzbekistan, and that he would receive any medical treatment required.

14. On 1 July 2013 the applicant's representative filed objections against the extradition request. She 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 (*Yakubov v. Russia*, no. 7265/10, 8 November 2011; *Rustamov v. Russia*, no. 11209/10, 3 July 2012; and *Zokhidov v. Russia*, no. 67286/10, 5 February 2013), as well as to the reports by UN bodies and NGOs cited in paragraphs 64, 65, 67, 68, 70 and 71 below, she submitted

that the applicant, who had been charged with religious and political offences, including membership of HT, would run an increased risk of ill-treatment and would be deprived of the minimum fair-trial guarantees if extradited to the requesting country. The applicant's representative also referred to a report of 2009 by the CIS Department of the Ministry of Foreign Affairs of the Russian Federation in which the department, referring to various international NGO reports, pointed out that criminal proceedings in Uzbekistan depended to a considerable extent on self-incriminating statements. She further referred to a letter of 2011 from the same CIS Department, which stated that any extradition to Uzbekistan would be in breach of Article 3 of the Convention from the point of view of the European Court.

15. According to a letter from the prosecutor's office of 30 July 2013 (see paragraph 19 below), on 24 July 2013 the Prosecutor General's Office refused to order the applicant's extradition, since his criminal prosecution had become time-barred. According to the applicant, neither he nor his representatives had been informed about the refusal at that point. The parties have not submitted a copy of the relevant decision.

2. The applicant's detention between 19 April and 30 July 2013 and his release from detention

(a) Detention order and subsequent extension of the applicant's detention

16. On 19 April 2013 the Kuntsevskiy District Court of Moscow ordered the applicant's detention pending extradition until 17 May 2013. The decision was not appealed against.

17. On 16 May 2013 the Kuntsevskiy District Court of Moscow ordered an extension of the applicant's detention until 17 October 2013 in order to ensure his extradition.

18. On 29 May 2013 the Moscow City Court upheld the decision on appeal.

(b) The applicant's release from custody

19. By a letter of 30 July 2013 the head of the extradition department of the Prosecutor General's Office informed the Kuntsevskiy Inter-District prosecutor of Moscow that on 24 July 2013 the Prosecutor General's Office had refused to order the applicant's extradition to Uzbekistan since his criminal prosecution had become time-barred, and requested that the applicant be immediately released from custody. The letter continued as follows:

> "At the same time, [I] ask you to check the lawfulness of Mr Rakhimov's residence in Russia and his compliance with the immigration laws.

> [I] ask you to send a copy of the release order, as well as information about the results of the check, to the extradition department of the city prosecutor's office no later than 31 July 2013 by fax and mail."

20. A hand-written note on the letter, apparently made by the addressee, indicated that it would be necessary "to conduct a migration check under Article 18 § 8 [of the Code of Administrative Offences] if there are grounds [for it]".

21. By a decision of 30 July 2013 the Kuntsevskiy Inter-District prosecutor's office ordered the applicant's release from detention, because on 24 July 2013 the extradition proceedings had been discontinued. At 6.45 p.m. on that date the applicant was released from a remand centre in Moscow.

C. The applicant's new arrest and the administrative removal proceedings

1. The applicant's re-arrest on 30 July 2013

22. According to the applicant, at 6.45 p.m. on 30 July 2013 he was apprehended by the police at the exit of the remand centre, immediately after his release from detention, and taken into custody.

23. According to the administrative offence record (see paragraph 25 below), the applicant was arrested at 8.10 p.m. by an officer of the Department of the Interior of the Mozhaiskiy District of Moscow in connection with a violation of the immigration laws (Article 18-8 of the Code of Administrative Offences ("the CAO")).

24. At 8.10 p.m. on 30 July 2013 an officer of the Mozhaiskiy District Department of the Interior recorded that the applicant had been arrested "for the purpose of drawing up an administrative record". In the part of the record reserved for comments the applicant wrote that he objected to the arrest and that he could not be removed to Uzbekistan since he ran a risk of torture there. Furthermore, proceedings were pending in respect of his refugee status.

25. At some point on the same date an administrative-offence record was drawn up on account of the applicant's failure to leave Russia after 12 July 2011. The applicant, in a hand-written comment made in the relevant part of the record, conceded that he had breached the migration laws but claimed that he could not be removed to Uzbekistan because he would be tortured in his home country.

26. On the same date the case file was forwarded to the Kuntsevskiy District Court of Moscow. By a separate petition the head of the Mozhaiskiy District Department of the Interior requested the court to order the applicant's detention pending administrative removal, since he had been residing in Russia unlawfully and in breach of the immigration laws and had

been avoiding leaving Russia; accordingly there were grounds to believe that he would continue to breach the immigration laws.

2. Proceedings before the Kuntsevskiy District Court of 31 July 2013

27. On 31 July 2013 the Kuntsevskiy District Court of Moscow examined the applicant's case.

28. During the hearing the defence acknowledged that the applicant had failed to register with the migration authorities or leave Russia, contrary to the requirements of the immigration laws. However, they submitted that, in accordance with Article 28.1 of the CAO, administrative proceedings should have been brought against him as soon as sufficient data indicating the occurrence of an administrative offence had been obtained. When the applicant had been arrested on 17 April 2013, the authorities had already been in possession of sufficient information on the applicant's immigration status. However, administrative proceedings had not been brought against him until three months and two weeks later, once the term of his detention pending extradition had expired. In those circumstances, the defence considered that the administrative removal of the applicant, if ordered, would amount to a form of extradition in disguise.

29. The defence further submitted that in any event the applicant's expulsion could not be ordered, since proceedings were pending in respect of his refugee status. They pointed out in this connection that the applicant's request for refugee status had been accepted for examination (see paragraph 40 below), and that he had received no response by the time of the events.

30. Lastly, the defence made a detailed argument to the effect that the applicant was wanted by the Uzbek authorities in connection with charges relating to religious offences, and would therefore run a risk of ill-treatment if expelled to Uzbekistan. They referred to reports by the UN and international non-governmental organisations (cited in paragraphs 64, 67-68 and 72-73 below), as well as the Court's case-law in support of that position.

31. The Kuntsevskiy District Court found the applicant guilty of the administrative offence of breaching the immigration regulations (Article 18 § 8 of the CAO). The court considered that the administrative-offence record had been compiled by a competent officer and in accordance with the domestic law. It rejected as irrelevant the applicant's arguments to the effect that the authorities had been aware of the impugned breach of the immigration laws as early as 17 April 2013, arguing that on that date the applicant had been arrested on different grounds. The court took note of the applicant's submissions concerning his request for refugee status and dismissed them as having no bearing on the administrative offence under examination. The lack of information on the progress of the proceedings in

respect of refugee status did not preclude the court from applying an administrative sanction under Article 18 § 8 of the CAO.

32. When deciding on the sanction to be applied, the court took note of "the information on the applicant's personality", as well as of the fact that he had admitted breaching the immigration laws. On the other hand, it observed that the applicant had been unlawfully residing in Russia for a considerable period of time and that he did not have a permanent residence or job in Russia. In accordance with Article 18 § 8 of the CAO the court fined the applicant 2,000 Russian roubles (RUB) and ordered his administrative removal from Russia.

33. Lastly, the court granted the request of the head of the Mozhaiskiy District Department of the Interior for the applicant's placement in detention pending removal. It reiterated that the applicant had been residing in Russia in breach of the law and had avoided – and was likely to further avoid – leaving Russia of his own will. The court decided that the applicant should be detained in a special detention centre for foreigners of the Moscow Department of the Interior until his administrative removal. No specific time-limit for the applicant's detention was given by the court.

3. Appeal proceedings before the Moscow City Court

34. On 5 and 26 August 2013 the defence submitted their points of appeal before the Moscow City Court. In addition to their initial arguments, they submitted, first, 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, on 30 July 2013 the applicant had only just been let out of the remand centre when he was immediately arrested at the exit of the detention facility. They argued that the administrative-offence record had been forged and therefore was inadmissible. Secondly, they maintained that the applicant's expulsion would amount to his "extradition in disguise". They pointed out, with reference to the letter of 30 July 2013 (see paragraph 19 above) that the very initiative to conduct an urgent check of the applicant's migration status had been taken by the prosecutor's office, that is the authority in charge of his extradition case. The interest the prosecutor's office displayed in the carrying out of the migration check – a matter clearly outside their competence – could be interpreted as an indication of that authority's interest in ensuring the applicant's return to Uzbekistan. However, the applicant, if removed to his home country, would be unable to benefit from the minimum guarantees he could have in extradition proceedings.

35. Thirdly, the defence maintained that domestic law prohibited the expulsion of a person who had applied for refugee status until a final decision in that respect had been made. However, the domestic court had omitted to elaborate on that aspect of the case. They argued that, contrary to the first-instance court's findings, the requirement to take into account the

proceedings in respect of the applicant's refugee status had had no effect on the lower court's findings as to whether an administrative offence had – or had not – taken place. However, it could have had a bearing on the determination of the administrative sanction. In that regard, they drew the appeal court's attention to the fact that administrative removal constituted a sanction additional to an administrative fine.

36. Fourthly, the defence stressed that the first-instance court had failed to make any assessment of their ill-treatment argument. Having referred to the Court's case-law, they reiterated their extensive submissions as regards the risk of ill-treatment if the removal order were to be enforced. They complained that the first-instance court had refused to admit to the case the reports by reputable NGOs, the Russian courts' decisions, or the Court's decisions in similar cases.

37. Lastly, the defence 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.

38. The examination of the case was initially scheduled for 2 September 2013 but was adjourned in order to obtain updated information on the proceedings in respect of the applicant's refugee status from the Federal Migration Service.

39. On 18 September 2013 the Moscow City Court upheld the judgment of 31 July 2013, finding it lawful and justified. It held that the first-instance court had been right in finding that the applicant's actions had constituted an administrative offence. The appeal court upheld the administrative sanction as lawful and found no grounds to amend it. The court rejected the applicant's argument to the effect that he could not be removed from Russia in the absence of a final decision in the refugee-status proceedings as irrelevant, since "the examination of the respective appeal did not have a bearing on the event or the legal qualification of the administrative offence". The court further noted that, in any event, on 27 August 2013 his application for refugee status had been refused. As regards the applicant's argument about the authorities' failure to bring the administrative proceedings against him in a timely manner, the court considered that this circumstance did not constitute a ground for quashing the lower court's judgment. It argued that that violation had been insignificant, since the time at which the respective record of the administrative offence had been drawn up had not had a "preclusive effect *(«не является пресекательным»)*".

D. Refugee-status proceedings

40. At some point in May 2013 the applicant applied to the Moscow Department of the Federal Migration Service ("the Moscow FMS") for refugee status in Russia on the grounds of fear of persecution on account of fabricated charges against him relating to a religious offence. He submitted

that the accusations against him were unfounded. On 24 June 2013 his case was accepted for consideration.

41. On 6 August 2013 the Russian Office of the United Nations High Commissioner for Refugees (UNHCR) concluded, in a letter to the applicant's representative, that there existed a real risk of ill-treatment of persons whose extradition was sought in connection with politically motivated charges of a religious nature.

42. On 27 August 2013 the Moscow FMS rejected the applicant's application for refugee status. According to a copy of the decision as submitted by the parties, it observed that the applicant was wanted in Uzbekistan in connection with his alleged membership of HT and noted that "the initiator of the search had confirmed its intention to claim extradition". The authority reiterated that it was for a petitioner to adduce persuasive arguments why there existed an individual risk of persecution on the grounds of nationality, religious beliefs or membership of a social group. The authority took note of both the administrative removal order of 31 July 2013 (see paragraph 31 above) and the indication by the Court of an interim measure in the applicant's case (see paragraph 4 above). The Moscow FMS found as follows:

> "It transpires from the case materials that after the death of the applicant's mother in 1999 the applicant's father married another woman. In order to obtain the father's heritage, in 2002 she complained to the local police that some time before the applicant had come to Uzbekistan to kill his father. However, according to the applicant, criminal proceedings had not been brought against him. However, in 2009-2010 she wrote a new complaint, this time accusing the applicant of extremism. It may be concluded from the above that the reason for which, according to the applicant, unfounded charges had been brought against him was a domestic conflict."

43. The Moscow FMS also noted that the applicant had deliberately hidden the fact of the State border transfer between 1 and 18 November 2009 and that he had not applied for refugee status until his arrest, even though he had learned of the extremism charge against him in 2010. The authority also observed that the applicant's brother was living in Uzbekistan and had not been persecuted. It therefore concluded that the applicant had lodged a request with the sole purpose of avoiding criminal prosecution in Uzbekistan and that he did not satisfy the refugee criteria.

44. On 26 October 2013 the defence lodged an appeal against the refusal with the Russian FMS office, arguing that the FMS Moscow 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. They submitted, in response to the regional authority's findings (see paragraph 42 above), that it was immaterial who had brought the complaint against the applicant. Nor was the situation of his brother of relevance, since no criminal case had been opened against him in Uzbekistan. Contrary to the migration authority's findings, the applicant had not learned about the exact nature of

the charges or the stage of the proceedings against him in Uzbekistan until his arrest. The fact of his border crossing in 2009 was of little relevance and did not undermine his statement that since 1999 he had not left Russia for a considerable period of time. The Moscow FMS in its decision had referred to the extradition proceedings but had omitted to note the crucial point, namely the fact that extradition had been refused in the meantime (see paragraph 15 above). Lastly, the defence reiterated that the practice of torture against detainees in Uzbekistan could be described as systemic and that there was no evidence of any improvement in recent years. The defence referred, in particular, to the concluding observations of the UN Human Rights Committee of 2010, as well as the Human Rights Watch reports of 2011 and 2013 (see paragraphs 67-68 below), the Amnesty International reports published in May and July 2013 (see paragraphs 71-72 below), and other material (see paragraphs 64 and 66 below). They maintained that the applicant, charged with membership of HT, ran a particularly serious risk of ill-treatment and detention in his home country.

45. On 25 December 2013 the Russian FMS rejected the applicant's appeal. The federal migration authority considered that the Moscow FMS had thoroughly analysed all the relevant circumstances and had taken a well-founded and lawful decision that the applicant did not meet the refugee criteria. The Russian FMS further noted that it was not competent to conduct investigative activities within a criminal case or to doubt the well-foundedness of the materials submitted by the Prosecutor's Office of the Russian Federation about the criminal case brought by the Uzbek authorities.

46. By the same decision the Russian FMS instructed the Moscow FMS to examine the issue of granting the applicant temporary asylum in Russia, with regard to the indication made by the Court under Rule 39 of the Rules of Court (see paragraph 4 above). The parties have not informed the Court of any follow-up to that instruction.

47. On 26 February 2014 the defence challenged the decision of 25 December 2013 before the Basmannyy District Court of Moscow as unlawful and unfounded. They reiterated their earlier submissions regarding the risk of ill-treatment in the event of the applicant's expulsion (see paragraphs 40 and 44 above) and referred, in addition to the international material cited in their earlier submissions, to the World Report released by Human Rights Watch in January 2014 (see paragraph 69 below). They argued that the federal migration authority had failed to address the foreseeable consequences of the applicant's removal to Uzbekistan, and above all the risk of ill-treatment run by the applicant in the event of his removal. Instead of conducting such an analysis, the migration authority argued that they were not competent to conduct an investigation or review the extradition materials, even though that issue had been clearly outside the scope of the applicant's request. That attitude, in the applicant's view, rather

demonstrated that the Russian FMS were relying on the presumption of his guilt in the criminal proceedings brought against him by the Uzbek authorities.

48. It appears that the appeal proceedings are pending to date.

E. Conditions of the applicant's detention in the temporary detention cell of a local police station and his transfer to a different facility

49. After his arrest on the evening of 30 July 2013 (see paragraph 22 above) the applicant was placed in a cell at the Mozhaiskiy District police station of Moscow.

50. According to the applicant, the cell measured 4.5 sq. m and accommodated, during the applicant's detention there, between four and fifteen detainees. It was separated from the main corridor by a barred grill. The applicant did not have an individual sleeping place, since the cell was equipped with only one metal bench instead of beds. There were no windows in the cell, so he had no access to natural light and air. The cell was not equipped with a lavatory or toilet facilities. No linen or mattresses were available. The applicant received food and water once a day.

51. According to the Government, the cell measured 5.46 sq. m. The applicant was provided with food and bed linen.

52. At 12.10 p.m. on 5 August (according to the Government) or on 6 August 2013 (according to the applicant) the applicant was transferred to the Moscow special detention centre for foreigners. The parties have not submitted documents in respect of the date of that transfer.

53. The applicant is detained in the Moscow special detention centre for foreigners to date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Extradition proceedings and refugee status

54. In its Ruling no. 11 of 14 June 2012, the Supreme Court indicated, with reference to Article 3 of the Convention, that extradition should be refused if there were serious reasons to believe that the person might be subjected to torture or inhuman or degrading treatment in the requesting country. Extradition could also be refused if exceptional circumstances disclosed that it might entail a danger to the person's life and health on account of, among other things, his or her age or physical condition. It is for the prosecutor's office to demonstrate that there are no serious reasons to believe that the person concerned might be sentenced to the death penalty, subjected to ill-treatment or persecuted because of his or her race, religious

beliefs, nationality, ethnic or social origin or political opinions. The courts should assess both the general situation in the requesting country and the personal circumstances of the individual whose extradition was sought. They should take into account the testimony of the person concerned and that of any witnesses, any assurances given by the requesting country, and information about the country provided by the Ministry of Foreign Affairs, by competent United Nations institutions and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The courts should also take into account the Court's conclusions in similar cases.

55. For a summary of other relevant provisions on extradition proceedings, see *Kasymakhunov v. Russia* (no. 29604/12, §§ 74-80, 14 November 2013).

56. For a summary of the relevant provisions of the Refugees Act, see *Abdulkhakov v. Russia* (no. 14743/11, §§ 95-98, 2 October 2012).

B. Expulsion proceedings

1. Code of Administrative Offences

57. Under Article 3.2 § 1 (7), administrative removal constitutes an administrative penalty. In Article 3.10 § 1 of the Code of Administrative Offences, administrative removal is defined 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 following 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 stateless person in a special facility.

58. Article 18.8 provides that a foreign national who infringes the residence regulations of the Russian Federation, including by living in the territory without a valid residence permit, or by non-compliance with the established procedure for residence registration, will be liable to an administrative fine of RUB 2,000 to 5,000 and possible administrative removal. 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. Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or to a higher court.

59. Under Article 27.5 § 2, a person subject to administrative proceedings for a breach of the rules on residence within the Russian

territory can be held in administrative detention for a term not exceeding forty-eight hours.

60. Under Article 31.1 a decision on an administrative offence takes effect on expiry of the term for bringing an appeal. Decisions which cannot be appealed against take effect immediately.

61. 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. Under Article 31.9 § 2, if the defendant impedes the enforcement proceedings, the limitation period specified in Article 31.9 § 1 is interrupted.

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

2. Relevant case-law of the Constitutional Court

63. In decision no. 6-R of 17 February 1998 the Constitutional Court stated, with reference to Article 22 of the Constitution, 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. RELEVANT INTERNATIONAL MATERIAL

A. UN Human Rights Committee

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

> "11. The Committee notes with concern the continued reported occurrence of torture and ill-treatment, the limited number of convictions of those responsible, and the low sanctions generally imposed, including simple disciplinary measures, as well as indications that individuals responsible for such acts were amnestied and, in general, the inadequate or insufficient nature of investigations on torture/ill-treatment allegations. It is also concerned about reports on the use, by courts, of evidence obtained under coercion, despite the 2004 ruling of the Supreme Court on the inadmissibility of evidence obtained unlawfully. ...
>
> ...

19. The Committee is concerned regarding the limitations and restrictions on freedom of religion and belief, including for members of non-registered religious groups. It is concerned about persistent reports on charges and imprisonment of such individuals. It is also concerned about the criminalization, under article 216-2 of the Criminal Code, of 'conversion of believers from one religion to another (proselytism) and other missionary activities... (art. 18). ..."

B. UN Committee against Torture

65. The applicant referred to the Decision of 1 June 2012 by the UN Committee against Torture under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-eighth session) in case no. 444/2010, *Abdussamatov et al. v. Kazakhstan* (A/67/44). The decision, in so far as relevant, reads as follows:

"With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on Uzbekistan's third periodic report, in which it expressed its concern about numerous, on-going and consistent allegations of routine use of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement and investigative officials or with their instigation or consent, and that persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention." (§ 13.6)

66. In its concluding observations on the fourth periodic report of Uzbekistan of 10 December 2013 (CAT/C/UZB/CO/4), the UN Committee against Torture observed as follows:

"7. The Committee is concerned about numerous, ongoing and consistent allegations that torture and ill-treatment are routinely used by law enforcement, investigative and prison officials, or at their instigation or with their consent, often to extract confessions or information to be used in criminal proceedings. While recognizing that the State party is not subject to the jurisdiction of the European Court of Human Rights, the Committee notes that in 2011 the Court determined that 'the use of torture and ill-treatment against detainees in Uzbekistan is 'systematic', 'unpunished' and 'encouraged' by law enforcement and security officers.' The Committee is concerned that the State party deemed 'unfounded' numerous complaints of torture raised during the review, several of which had previously been addressed by other United Nations human rights mechanisms. It notes that while the State party indicated that 45 individuals were prosecuted for torture in the period 2010-2013, the State party recorded 336 complaints of torture or ill-treatment against law enforcement officers during the same period. While welcoming the information submitted by the State party that the legislative, judicial and executive branches of Government are combating torture, the Committee is concerned that it has not received information suggesting that executive branch officials have recently and publicly condemned torture or directed condemnation to police and prison officials.

...

16. The Committee is concerned about numerous allegations that persons deprived of their liberty were subjected to torture or ill-treatment for the purpose of compelling a forced confession and that such confessions were subsequently admitted as evidence

in court in the absence of a thorough investigation into the torture allegations. The Committee is further concerned at the failure of the State party to provide the Committee with information on cases in which judges have deemed confessions inadmissible on the grounds that they were obtained through torture, or with data on the number of cases in which judges have sought investigations into allegations made by defendants that they confessed to a crime as a result of torture (art. 15).

...

18 While noting the affirmation of the State party that all places of detention are monitored by independent national and international organizations and that they would welcome further inspections, the Committee remains concerned at information it has received indicating the virtual absence of independent and regular monitoring of the places of detention. The Committee is further concerned at the information it has received about measures taken by the State party that have impeded the work of numerous independent human rights organizations which previously operated in the State party. The Committee is alarmed by the announcement in April 2013 by the International Committee of the Red Cross that it was ceasing its visits to places of detention in the State party on the grounds that it had been unable to follow its working procedures, rendering such visits 'pointless'."

C. Human Rights Watch

67. The applicant referred to the Report released by Human Rights Watch on 13 December 2011 "No One Left to Witness: Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan", which, in so far as relevant, reads as follows:

"In fact, in several important respects, the situation has deteriorated. The government has moved to dismantle the independent legal profession and has closed off the country to independent monitoring and human rights work. Arrests and persecution of political and human rights activists have increased, and credible reports of arbitrary detention and torture of detainees, including several suspicious deaths in custody, have continued. The crackdown on independent Muslims has proved unrelenting, and the government has remained persistent in its refusal to allow domestic and international NGOs, including Human Rights Watch, to operate without interference from authorities. ...Torture in pre-trial detention remains widespread and may even be on the rise ... the only difference now is that there is 'no one left to witness' ongoing abuses.

Based on over 100 interviews with torture victims, their relatives, lawyers, human rights defenders, scholars, and government officials in Uzbekistan between 2009 and 2011, this report focuses on three issues: the failure of habeas corpus, the persistence of torture in pre-trial detention, and the dismantling of the independent legal profession in Uzbekistan.

The report ... documents the use of various forms of torture and ill-treatment in pre-trial detention since habeas corpus and other reforms were adopted, such as beatings with rubber truncheons and water-filled bottles, electric shock, hanging by wrists and ankles, rape and sexual humiliation, asphyxiation with plastic bags and gas masks, and threats of physical harm to loved ones. Finally, the report documents the authorities' crackdown on Uzbekistan's fledgling legal profession, particularly against criminal defense lawyers who have dared to raise allegations of torture and take on politically sensitive cases.

Human Rights Watch found that in the four years since its enactment, habeas corpus exists largely on paper. ... [i]n Uzbekistan arbitrary detention is the rule rather than the exception. In practice, habeas corpus does little to protect detainees in Uzbekistan from torture and ill-treatment.

...

Police and security agents continue to use torture to coerce detainees to implicate themselves or others, viewing it as an effective instrument for securing convictions and meeting internal quotas. While used against suspected opponents of the government, torture is also applied to detainees for 'common' crimes. As before habeas corpus, confessions obtained under torture are often the sole basis for convictions. Judges still fail to investigate torture allegations, to exclude evidence obtained through torture or without counsel present, or to hold perpetrators accountable.

Some lawyers, victims, and activists report that torture may be on the rise given Uzbekistan's deepening government-imposed isolation since the 2005 Andijan massacre and the absence of any independent monitoring of torture on the ground. ... It has persistently refused to allow the UN special rapporteur on torture and other UN human rights experts to visit the country, despite their repeated requests for access, and does not allow international human rights groups or independent media outlets to operate."

68. The applicant further referred to the World Report released by Human Rights Watch in January 2013, which, in so far as relevant, reads as follows:

"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."

69. World Report released by Human Rights Watch in January 2014 and drawing on events through November 2013, 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. Freedom of expression is severely limited. Authorities continue to crack down on rights activists, harass activists living in exile, and persecute those who practice their religion outside strict state controls. Forced labor of adults and children continues. 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.

Criminal Justice and Torture

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. 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. In March a Tashkent court sentenced 16-year-old Grigorii Grigoriev, son of rights activist Larisa Grigorieva, on trumped-up charges of theft. The judge ignored Grigoriev's testimony that he required hospitalization after police beat him into a confession. In June, police in Urgench hit Sardorbek Nurmetov, a Protestant Christian, five times with a book on the head and chest, kicked him in the legs, and refused him medical attention. Police ignored Nurmetov's formal complaint and initiated charges for illegally storing religious materials in his home.

Freedom of Religion

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 also imprison and fine Christians who conduct peaceful religious activities for administrative offenses, such as illegal religious teaching.

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."

D. Amnesty International

70. The applicant also referred to the 2011 annual report by Amnesty International released in May of the same year, which states as follows:

"Closed trials started in January of nearly 70 defendants charged in relation to attacks in the Ferghana Valley and the capital, Tashkent, in May and August 2009 and the killings of a pro-government imam and a high-ranking police officer in Tashkent in July 2009. ... Among the scores detained as suspected members or sympathizers of the IMU, the IJU and Hizb-ut-Tahrir in 2009 were people who attended unregistered mosques, studied under independent imams, had travelled abroad, or were suspected of affiliation to banned Islamic groups. Many were believed to have been detained without charge or trial for lengthy periods. There were reports of torture and unfair trials. ... In January, human rights defender Gaibullo Dzhalilov was sentenced to nine years in prison for attempting to overthrow the constitutional order and membership of a banned religious organization. [He] had been monitoring the detentions and trials of members or suspected members of Islamic movements banned in Uzbekistan and had raised allegations of torture or other ill-treatment. Gaibullo Dzhalilov claimed that he had been forced under duress to confess to being a member of Hizb-ut-Tahrir."

71. Amnesty International's Annual Report for 2012, also referred to by the applicant, reads in the relevant part as follows:

"Despite assertions by the authorities that the practice of torture had significantly decreased, and the introduction of new legislation to improve the treatment of detainees, dozens of reports of torture and other ill-treatment of detainees and prisoners emerged throughout the year. In most cases, the authorities failed to conduct prompt, thorough and impartial investigations into these allegations. ... The authorities continued to seek the extradition of members or suspected members of Islamic movements and Islamist groups and parties banned in Uzbekistan in the name of national and regional security and the fight against terrorism. Those forcibly returned to Uzbekistan were at serious risk of torture and other ill-treatment and long prison sentences in cruel, inhuman and degrading conditions following unfair trials. At least 12 of the 28 Uzbekistani men extradited from Kazakhstan in June (see Kazakhstan entry) were reported to have been put on trial on charges of religious extremism and alleged membership of the Jihadchilar (Jihadists) Islamist organization. All of the men were held incommunicado following their extradition. Human rights monitors believed they were detained in Tashkent prison and were at grave risk of torture. They also reported that relatives were intimidated by security forces and prevented from discovering the whereabouts of the men."

72. Amnesty International's Annual Report for 2013, 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."

73. The applicant further referred to the report by Amnesty International published on 3 July 2013 entitled "Eurasia: Return to torture: Extradition, forcible returns and removals to 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, 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 ..."

E. Other relevant material

74. For a summary of other relevant reports by UN institutions and NGOs on Uzbekistan during the period between 2002 and 2011, see *Abdulkhakov* (cited above, §§ 99-101 and 103-07). For relevant reports on the particular situation of persons accused of membership of Hizb ut-Tahrir, see *Muminov v. Russia* (no. 42502/06, §§ 73-74, 11 December 2008).

75. For a summary of the relevant provisions of the 1951 Geneva Convention on the Status of Refugees and the CIS Convention on legal assistance and legal relations in civil, family and criminal cases, see *Abdulkhakov* (cited above, §§ 94 and 79-82, respectively).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant complained, under Article 3 of the Convention, that his extradition or expulsion to Uzbekistan, if enforced, would expose him to a real risk of torture and ill-treatment. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

77. The Government initially submitted that in the course of the extradition proceedings the Government of Uzbekistan had provided assurances that, if returned to Uzbekistan, the applicant would not be persecuted, in particular, on religious or political grounds. According to the Government, the arguments submitted by the applicant had not been "objectively confirmed". The applicant had failed to adduce evidence that he risked being subjected to ill-treatment in the event of his extradition to Uzbekistan. Furthermore, the courts had carefully examined his allegations regarding the risk of his being subjected to ill-treatment if he were returned to Uzbekistan. In the Government's view, the decision on the applicant's administrative removal was well-founded, as he had failed to regularise his stay in Russia, despite being well aware of the applicable procedure. The Government also pointed out that the decision did not specify that the applicant was to be expelled to Uzbekistan, but merely stated that he was to be removed from the territory of the Russian Federation.

78. The applicant contested the Government's argument that the decision on administrative removal did not necessarily mean that he would be expelled to Uzbekistan. He stated that no other possibility had ever been discussed in the course of the administrative proceedings and, furthermore, that there was no reason to believe that any other country would be willing to accept him.The applicant submitted that he had brought his fears of ill-treatment in Uzbekistan to the attention of the domestic authorities during the refugee-status and extradition proceedings. He had relied on reports by UN agencies and respected international NGOs, which clearly demonstrated that individuals who, like him, were suspected of membership of Hizb ut-Tahrir were at an increased risk of ill-treatment. In particular, to demonstrate that there had not been any positive change in the human-rights situation in Uzbekistan, he had referred to the concluding observations of the UN Committee against Torture of 10 December 2013, the Human Rights Watch report released in January 2014 and the Amnesty International

report of July 2013 (cited in paragraphs 66, 69 and 73 above, respectively). He had also made reference to the Court's case-law (cited in paragraph 14 above), as well as the cases of *Umirov v. Russia* (no. 17455/11, 18 September 2012); *Abdulkhakov* (cited above)*; Ermakov v. Russia* (no. 43165/10, 7 November 2013); and *Kasymakhunov* (cited above). However, the domestic authorities had not taken into account the evidence he had submitted and had dismissed his fears as unsubstantiated without making a thorough assessment of the general situation in Uzbekistan or his personal situation.

79. In their further observations the Government submitted in reply that the evidence referred to by the applicant was clearly inadmissible. First, the Court's case-law cited by the applicant, as well as the Amnesty International and Human Rights Watch annual reports issued in 2011 contained an assessment of the situation in Uzbekistan for the period before 2009, and were therefore outdated. Secondly, the Government were sceptical about the NGO reports concerning the situation in Uzbekistan referred to by the applicant. In the Government's view, the reports by Amnesty International and Human Rights Watch contained general allegations uncorroborated by specific factual information. They maintained that those organisations' methods of obtaining information for their reports "could not be found liable enough for the examination of the case by the Court". The Government maintained that the reports did not prove that there was a risk of ill-treatment in Uzbekistan, either in the applicant's case or in general. In their view, it would be incorrect to reject the State's diplomatic assurances – an *a priori* reliable statement – "on the basis of reports prepared without any rules of procedure and evidence".

B. The Court's assessment

1. Admissibility

80. 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.

2. Merits

(a) General principles

81. The Court reiterates at the outset that Contracting States have the right, as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94), and that the right to political asylum is

not explicitly protected by either the Convention or its Protocols (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, 11 January 2007). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008).

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

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

84. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

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

86. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of bodies of the United Nations, particularly given their direct access to the authorities of the country of destination, as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do (see *NA. v. the United Kingdom*, no. 25904/07, § 121, 17 July 2008). While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human-rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court (ibid., § 122).

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

(b) Application of the principles to the present case

88. Turning to the circumstances of the present case, the Court observes that the applicant raised the issue of his risk of being subjected to ill-treatment if he were returned to Uzbekistan in the extradition, expulsion and refugee status proceedings. Having regard to his submissions, the Court is satisfied that they remained consistent and that he advanced a number of specific and detailed arguments in support of his grievance. Among other things, he claimed that the Uzbek law-enforcement authorities systematically resorted to the use of torture and ill-treatment against detainees. He stressed that persons accused of membership of proscribed religious organisations that were considered extremist, such as the HT, as well as those suspected of crimes against State security, ran an increased risk of being subjected to treatment in breach of Article 3. In support of his allegations the applicant relied on reports by various reputable international organisations and the findings of this Court in a number of cases concerning similar situations where applicants had faced return or had been removed to Uzbekistan in connection with criminal proceedings charged with participation in HT, religious extremism or attempted overthrow of the constitutional order (see paragraphs 14, 30, 36, 40, 44 and 47 above).

(i) Domestic proceedings

89. Having regard to the extradition proceedings, the Court points out that on 24 July 2013 the Prosecutor's General Office refused the applicant's extradition. Regrettably, the parties have not submitted a copy of that authority's decision in this regard. The Court is only in possession of a copy of the prosecutor's office letter of 30 July 2013, from which it follows that the reason for the refusal of the applicant's extradition was of a "technical" nature, namely the fact that his prosecution had become time-barred under Russian law (see paragraph 15 above).

90. Turning to the refugee status proceedings, the Court notes that the applicant's appeal against the decision of 25 December 2013 is currently pending before the authorities. The Court will therefore focus on the available material about this set of proceedings, namely the decisions of the Moscow and Russian FMS of 27 August and 25 December 2013 (see paragraphs 42 and 45 above).

91. As regards the migration authorities' reference to the applicant's failure to apply for refugee status in due time (see paragraph 43 above), it is not in dispute between the parties that the applicant arrived in Russia in 1999 – and re-entered, after a short visit to Uzbekistan, in 2009 – when no charges were pending against him, and applied for refugee status more than three years later, after his arrest. The Court further notes from the interview record of 17 April 2013 that the applicant learned about the exact nature of the charges against him when he was arrested (see paragraph 12 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.

92. Similarly, as regards the applicant's failure to inform the authorities of his short visit to Uzbekistan in November 2009 (see paragraph 43 above), the FMS offices failed to explain how that flaw detected by them undermined the applicant's central claim under Article 3 of the Convention (see, in so far as relevant, *Azimov v. Russia*, no. 67474/11, §§ 119-23, 18 April 2013).

93. As regards the failure to adduce convincing arguments pertaining to the existence of a risk (see paragraph 42 above), the Court reiterates, yet again, 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*, cited above, § 117). 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 is a high likelihood that he would be ill-treated (see *Azimov*, cited above, § 128). Detailed submissions to that effect were made by the applicant in the present case. However, the Court is bound to note that the migration authorities put forward summary and unspecific reasoning to reject them. The Court agrees with the applicant that the conclusion of the Moscow FMS on the reasons for the criminal persecution – namely, a domestic conflict (see paragraph 42 above) – as well as the issue of the well-foundedness of the accusations against him in Uzbekistan, were of little relevance for the purposes of the risk assessment. Otherwise, the applicant's submissions as regards both a general human-rights situation in Uzbekistan and a particular risk of ill-treatment run by him in view of the charges brought against him in his home country, remained without a response.

94. Lastly, turning to the administrative removal proceedings, the Court notes that the domestic courts failed to consider, at any stage of the proceedings, the applicant's detailed allegations regarding the risk of ill-treatment (see paragraphs 31 and 39 above) and their refusal to take into account materials originating from reliable sources, such as international reports and the Court's case-law. The extensive submissions by the defence concerning the risk of ill-treatment in the event of the applicant's removal to Uzbekistan were not addressed in the removal proceedings at all.

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

(ii) The Court's assessment

96. 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 accepts the applicant's argument that no other possibility was discussed in the course of the administrative proceedings. Secondly, it notes 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.

97. Turning specifically to the Government's argument about the admissibility of evidence and the failure to give more weight to the diplomatic assurances, the Court notes at the outset that this issue is raised for the first time in the Government's further observations before this Court, whilst the domestic authorities either refused to admit the relevant international material, let alone analyse it (as in the expulsion proceedings, see paragraphs 31 and 39 and, for the Court's assessment, paragraph 94 above) or rejected the submissions based on it in a summary manner (see paragraphs 42-43 and 45 above). Similarly, as regards the diplomatic assurances given in the extradition proceedings, in the absence of a copy of the decision of 24 July 2013, there is nothing to suggest that they were assessed in detail by the domestic authorities against the Convention requirements in any round of the domestic proceedings (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 188 and 189, ECHR 2012 (extracts), and *Abdulkhakov*, cited above, § 150).

98. 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" (see, among many others, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008; *Muminov*, cited above, §§ 93-96; *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Yakubov*, cited above, §§ 81 and 82; *Rustamov*, cited above, § 125; *Abdulkhakov*, cited above, § 141; *Zokhidov*, cited above, § 135; as well as, more recently, *Ermakov*, cited above, § 201; and *Kasymakhunov*, cited above, § 122).

99. Furthermore, there is no concrete evidence to demonstrate any fundamental improvement in that area. In reaching that conclusion, the Court has regard, among others, to very recent reports of Amnesty International and Human Rights Watch on Uzbekistan (see paragraphs 69 and 72-73 above) drawing on events of 2012 and up to November 2013. As regards the admissibility of such reports, the Court has on several occasions addressed this issue in its case-law (see paragraphs 83 and 85-86 above) and sees no reason to depart from its settled approach in this respect. The Court notes that the conclusions of those reports are corroborated, in particular, by the findings of the UN bodies (see paragraphs 64-66 above), which were at no point disputed by the Government. Bearing in mind the authority and reputation of the authors of those reports, the fact that on the points in question their conclusions are consistent with each other and that those

conclusions are corroborated in substance by other sources, the Court does not doubt their reliability (see *Saadi*, cited above, § 143; see also *Azimov*, cited above, § 137, and the extensive case-law cited in paragraph 98 above). All these reports describe a disturbing situation and, in particular, mention numerous and regular cases of torture and ill-treatment of detainees. The Court further notes that the Government have not adduced any evidence capable of rebutting the assertions made in the sources cited by the applicant (see *Saadi*, cited above). Having regard to the information summarised in paragraphs 64-73 above, the Court cannot but confirm that the issue of ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan.

100. As regards the applicant's personal situation, the Court observes that he was wanted by the Uzbek authorities on charges of attempting to overthrow the Uzbek State's constitutional order, membership of a religious extremist group and dissemination of extremist materials, because of his presumed participation in the activities of Hizb ut-Tahrir, a proscribed religious organisation. The above charges constituted the basis for the extradition request and the arrest warrant issued in respect of the applicant. The Court has examined a number of cases in which the applicants were accused of criminal offences in relation to their involvement with Hizb ut-Tahrir (see *Muminov*, cited above, §§ 94-98; *Karimov v. Russia*, no. 54219/08, § 100, 29 July 2010; *Rustamov*, cited above, §§ 126 and 127; and the very recent case of *Kasymakhunov*, cited above, § 123). It has found that such persons were at an increased risk of ill-treatment and that their extradition or expulsion to Uzbekistan would give rise to a violation of Article 3.

101. 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 *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 121, ECHR 2012). Nonetheless, in the Court's view, the domestic authorities either adduced 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, or avoided analysing that issue at all. Turning again to the assurances given by the Uzbek authorities and relied on by the Government, the Court finds, in addition to its conclusion in paragraph 97 above, that they were given for the purposes of extradition proceedings that were ultimately discontinued and as such are of no direct relevance to the expulsion proceedings.

102. In view of the above considerations and having regard, *inter alia*, to 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.

103. 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.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION

104. The applicant complained, under Article 3 of the Convention (cited in paragraph 76 above), of inhuman and degrading conditions of detention in a severely overcrowded cell at the Mozhaiskiy District police station of Moscow between 30 July and 6 August 2013. He alleged, in particular, that the cell in which he had been held for almost seven days had been originally designed for short periods of detention not exceeding several hours, and that it had been severely overcrowded.

A. The parties' submissions

105. The Government admitted that the conditions of the applicant's detention in the temporary detention cell of the Mozhaiskiy District police station were in breach of Article 3 of the Convention. They specified that, while the applicant's detention in that cell between 30 and 31 July 2013 (date of the judgment of the Kuntsevskiy District Court of Moscow, see paragraph 31 above) was in compliance with domestic law requirements, the remainder of the detention period between 31 July 2013, after the delivery of the impugned judgment, and 5 August 2013 was not. They admitted that the cell for detaining persons charged with administrative offences was not designed for the detention of foreign nationals in respect of whom administrative removal orders had been issued by the domestic courts. Such persons were supposed to be detained in special detention centres of the Ministry of the Interior of the Russian Federation.

106. The applicant maintained his complaint. He noted that the Government had not commented on his factual allegations. He disagreed with the Government's submissions that the formal basis for his detention before and after 31 July 2013 had had any effect on the conditions-of-detention complaint under Article 3. These conditions had been inhuman from the instant he had been taken to the police station until his transfer to a different detention facility. He maintained that, contrary to the Government's submissions, that transfer took place on 6 August 2013.

B. The Court's assessment

107. The Court notes at the outset that the parties disagree as to the date of the applicant's transfer from the Mozhaiskiy District police station to the special detention centre (see paragraphs 52 and 105-06 above). Regrettably, the Government have not submitted any documents in support of their respective statements. On the other hand, it is not in dispute between the parties that the applicant remained in detention at the police station until at least 5 August 2013. The Court declares admissible – and will accordingly examine the conditions of the applicant's detention complaint – in respect of the period between 30 July and 5 August 2013.

108. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

109. The Court notes that the Government acknowledged that the conditions of the applicant's detention at the Mozhaiskiy District police station between 31 July and 5 August 2013 had not complied with the requirements of Article 3 of the Convention. They argued, however, that the period between 30 and 31 July 2013 was not in breach of that provision (see paragraph 105 above).The Court agrees with the applicant that the formal basis of his detention had no bearing on the conditions of detention at the Mozhaiskiy District police station of Moscow. Indeed, it was not argued that the material conditions of detention had changed during the period between 30 July and 5 August 2013.

110. The Court further notes that the Government have not disputed the applicant's factual allegations of extreme overcrowding, or the inappropriateness of the conditions in the impugned cell for detention exceeding several hours. Having regard to the Government's acknowledgement of a violation of Article 3 in respect of a part of the applicant's detention, as well as to the Court's findings in many similar cases concerning conditions of detention at police stations (see, for instance, *Fedotov v. Russia*, no. 5140/02, § 67, 25 October 2005, and *Andreyevskiy v. Russia*, no. 1750/03, §§ 73-78, 29 January 2009), the Court considers that the conditions of the applicant's detention at the Mozhaiskiy District police station amounted to inhuman and degrading treatment.

111. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the period between 30 July and 5 August 2013.

III. ALLEGED VIOLATIONS OF ARTICLE 13 OF THE CONVENTION

112. The applicant complained that the domestic authorities, both administrative and judicial, had failed to consider effectively his arguments concerning the risk of ill-treatment in Uzbekistan, and that the domestic courts had confirmed the validity of the expulsion order before the completion of the asylum proceedings. He further complained that he had not had effective domestic remedies at his disposal against the inhuman and degrading detention conditions. He relied on Article 13 of the Convention, which 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."

113. The Court notes that this complaint is linked to the complaints under Article 3 examined above and must therefore likewise be declared admissible. Having regard to the findings under Article 3 (see paragraphs 89-103 and 107-11 above, respectively), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

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

114. The applicant complained, under Article 5 § 1 of the Convention, that his detention between 24 and 30 July 2013 had been unlawful. He further complained under that head that his detention pending administrative removal after 31 July 2013 had not been based on sufficiently foreseeable legal norms and that the expulsion decision had not set a time-limit for his detention. Article 5 of the Convention, in so far as relevant, 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

115. As regards the applicant's detention between 24 and 30 July 2013, the Government admitted that the refusal on 24 July 2013 to extradite the applicant clearly meant that there had been no basis for his further detention within the meaning of Article 5 § 1 (f) of the Convention. The Government

acknowledged that the applicant's detention between 24 and 30 July 2013 had not had a legal basis, in breach of Article 5 § 1.

116. As regards the period of detention between 31 July and 5 August 2013, they further admitted that, following the domestic court's judgment of 31 July 2013, the applicant should have been placed in the special detention centre for foreigners (see paragraph 33 above). However, he had remained at the police station until 5 August 2013. Referring to the case of *Proshkin v. Russia* (no. 28869/03, §§ 78 et seq., 7 February 2012), they admitted that there had been a violation of Article 5 § 1 of the Convention in respect of that period. They did not comment on the applicant's subsequent detention.

117. The applicant agreed with the Government in so far as the periods from 24 to 30 July 2013 and from 31 July to 5 August 2013 were concerned. He maintained, in respect of the entire period of his detention pending administrative removal as from 31 July 2013, that administrative-removal proceedings had been initiated only when the authorities had faced the need to release him. He argued that the authorities had abused their powers by ordering his detention within the framework of administrative proceedings solely with a view to ensuring his return to Uzbekistan, notwithstanding the refusal of the extradition request. The applicant considered that his detention pending administrative removal had in any event been unlawful, as the Code of Administrative Offences set no time-limit for such detention, and no such time-limit was given by the domestic courts. He argued that the Russian law on detention pending expulsion was not sufficiently clear and foreseeable. Referring to *Azimov* (cited above, §§ 172-73), the applicant argued that detention pending expulsion must not exceed the maximum term for detention as an administrative penalty, as otherwise it constituted a punitive rather than a preventive measure.

B. The Court's assessment

1. Admissibility

118. The Court finds that these complaints are 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

119. The Court reiterates that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example, to prevent that person's committing an offence or absconding. In this

connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national law or the Convention (see *Ismoilov and Others*, cited above, § 135, with further references).

120. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). The deprivation of liberty must also be "lawful". Where the "lawfulness" of detention is at 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. 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 a 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 *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, with further references).

(b) Application to the present case

(i) As regards the applicant's detention between 24 and 30 July 2013

121. Turning to the present case, the Court observes that on 24 July 2013 the Prosecutor General's Office refused the applicant's extradition (see paragraph 21 above). However, it was not until 30 July 2013 that the applicant was released from the remand prison (see paragraph 22 above). The Court notes the Government's admission that the refusal to extradite the applicant on 24 July 2013 had automatically deprived the applicant's further detention of a lawful basis within the meaning of Article 5 § 1 (f) of the Convention (see paragraph 115 above). The Court does not see any reason to disagree with that assessment and finds that the applicant's detention within the impugned period was no longer covered by Article 5 § 1 (f). It

further finds that his detention did not fall under any other sub-paragraph of Article 5 § 1.

122. Having regard to the Government's admission, as well as to its earlier findings in cases raising a similar issue (see, for instance, *Eminbeyli v. Russia*, no. 42443/02, § 49, 26 February 2009, with further references), the Court finds that the applicant's detention between 24 and 30 July 2013 did not have any legitimate purpose under Article 5 § 1 and was accordingly arbitrary.

123. There has therefore been a violation of that provision in respect of the applicant's detention between 24 and 30 July 2013.

(ii) As regards the applicant's detention pending administrative removal

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

125. It is common ground between the parties that the applicant was residing illegally in Russia for a considerable period of time before his arrest and, therefore, that he had 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 applicant's detention pending expulsion was ordered by a court with jurisdiction on the matter and in connection with an offence punishable by expulsion, and the first-instance court gave certain reasons for its decision to remand the applicant in custody (see paragraph 33 above).

126. The Court further notes the applicant's argument that the real purpose of the detention order of 31 July 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.

127. The Court reiterates that detention may be unlawful if its purported purpose differs from the real one (see *Bozano v. France*, 18 December 1986, § 60, Series A no. 111, and *Khodorkovskiy v. Russia*, no. 5829/04, § 142, 31 May 2011). In *Azimov* (cited above, § 165), the Court found that a decision ordering the applicant's detention pending expulsion had served to circumvent the maximum time-limit laid down in the domestic law for detention pending extradition.

128. The Court observes that some elements of the present case present a certain similarity to *Azimov*. Indeed, it is not disputed that the authorities were aware of the applicant's irregular immigration status from the time of his arrest on 17 April 2013 (see paragraph 12 above). Nevertheless, they did not cite that ground for detaining him until his release from detention on 30 July 2013 in connection with the refusal of his extradition. The Court

also takes note of the prosecutor's office letter of 30 July 2013 containing instructions to conduct a check of the applicant's compliance with the immigration laws (see paragraph 19 above). However, the Court considers that the present case differs from *Azimov* in the following aspects.

129. Firstly, in *Azimov* the applicant's detention pending expulsion was ordered while the extradition proceedings were still pending, but the maximum time-limit for detention pending extradition had expired. However, in the case at hand the authorities detained the applicant within the framework of proceedings on administrative removal after Uzbekistan's extradition request had been refused. Therefore, the order could not possibly have served to circumvent the maximum time-limit set down in the domestic law for detention pending extradition.

130. Secondly, in *Azimov* the Court emphasised two specific elements that cast doubt on the good faith of the authorities when ordering the applicant's detention pending expulsion: (i) it was the same court that both examined the applicant's extradition case and recommended that the law-enforcement authorities re-detain the applicant on that new ground; and (ii) the applicant's extradition was "under the control of the President of the Russian Federation", which was found to imply that handing him over to the requesting authorities – Tajikistani in that case – must have been regarded as a top priority. However, neither of those elements is present in the case at hand.

131. Therefore, in the circumstances of the present case the Court cannot find it established beyond reasonable doubt that the authorities were driven by improper reasons in pursuing the administrative case against the applicant and detaining him with a view to expulsion. The Court thus concedes that the applicant's detention pending expulsion pursued one of the legitimate aims indicated in Article 5 § 1 (f), namely to secure his "deportation".

132. The Court further observes that, in any event, 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). The question is whether the duration of the applicant's detention pending administrative removal has been reasonable.

133. The Court observes that the Kuntsevskiy District Court of Moscow ordered the applicant's placement in custody pending administrative removal on 31 July 2013. On 8 August 2013, following a request by the applicant, the Court indicated to the Government, under Rule 39 of the Rules of Court, that the applicant should not be removed to Uzbekistan while the proceedings before the Court were pending. The applicant's appeal against the detention order was rejected by the Moscow City Court on 18 September 2013. Therefore, the applicant's detention during that period was mainly attributable to the temporary suspension of the

enforcement of the expulsion order on account of the indication made by the Court under Rule 39.

134. 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 (see *Mamatkulov and Askarov*, cited above, §§ 99-129). 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). Detention still needs to be lawful and not arbitrary.

135. 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 expulsion proceedings were temporarily suspended but were nevertheless " in progress", and that therefore no violation of Article 5 § 1 (f) had occurred (see *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011; *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012; and *Umirov*, cited above, §§ 138-42).

136. That being said, the suspension of domestic proceedings following 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. The Court observes in the present case that no specific time-limits for the applicant's detention pending expulsion were set by the courts (see paragraphs 33 and 39 above). According to Article 31.9 § 1 of the Code of Administrative Offences, an expulsion decision must be enforced within two years (see paragraph 61 above). Thus, after the expiry of such a period, an applicant should be released. This may happen in the present case; however, it is 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 the immigration law and will again be liable to expulsion and, consequently, to detention on that ground (see *Azimov*, cited above, § 171).

137. The Court also notes in this regard 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 62 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). In the present case the "preventive" measure was much heavier than the "punitive" one, which is not normal (see *Azimov*, cited above, § 172).

138. The Court also notes that at no time during the applicant's detention while 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 147-150 below).

139. Lastly, although the authorities knew that the examination of the case before the Court could take some time, they did not try to find "alternative solutions" to 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).

140. 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.

141. The Court further notes the Government's admission that the applicant's detention between 31 July and 5 August 2013 had been in breach of Article 5, since the place of the applicant's actual detention during the impugned period did not correspond to that indicated by the domestic court. Having regard to its above-mentioned findings, the Court does not find it necessary to rule separately on whether the period of the applicant's detention between 31 July and 5 August 2013 was in compliance with Article 5.

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

142. The applicant complained, under Article 5 § 4, that he had been unable to obtain a periodic review of his detention pending administrative removal. Article 5 § 4 reads as follows:

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

A. The parties' submissions

143. The Government pointed out that the applicant had availed himself of the right to appeal against the administrative-offence decision of 31 July 2013.

144. The applicant noted in reply that neither the first-instance court, in its decision of 31 July 2013, nor the appeal court on 18 September had considered his arguments. In any event, his complaint concerned not the initial decision on his detention pending administrative removal, but the fact that it had been impossible to obtain a review of that decision after a certain lapse of time. He maintained that he had been unable to take proceedings so as to obtain a review of the lawfulness of his ongoing detention, in breach of Article 5 § 4 of the Convention.

B. The Court's assessment

1. Admissibility

145. 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

146. The Court reiterates that the purpose of Article 5 § 4 is to assure to individuals who are arrested and detained 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 at 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 decide "speedily" whether or not his or her deprivation of liberty has become "unlawful" in the light of new factors which have emerged subsequently to the decision on his or her initial placement in custody (see *Ismoilov and Others*, cited above, § 146).

(b) Application of the principles to the present case

147. 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 31 July 2013. As in *Azimov* (cited above, § 151), the applicant in the present case complained under Article 5 § 4 not about the initial decision on his placement in custody, but of his inability to obtain a judicial review of his detention after a certain lapse of time. As the Court further noted in *Azimov* (ibid), 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. Given that since the delivery of the appeal

decision of 18 September 2013 the applicant has so far spent more than nine months in custody, new issues affecting the lawfulness of the detention might have arisen during that period. In such circumstances the Court considers that the requirement under Article 5 § 4 was neither incorporated in the initial detention order of 31 July 2013 nor fulfilled by the appeal court.

148. The Court observes that the applicant did not attempt to bring any proceedings for judicial review of his detention pending expulsion. However, the Government did not refer to any provision in domestic law that would have allowed the applicant to do so. 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.

149. It follows that at no time during the applicant's detention pending expulsion did he have at his disposal any procedure for a judicial review of its lawfulness (see *Azimov*, cited above, §§ 153-54).

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

VI. RULE 39 OF THE RULES OF COURT

151. The Court reiterates 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 the case under Article 43 of the Convention.

152. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) not to expel or otherwise involuntarily remove the applicant from Russia to Uzbekistan must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicant claimed 27,000 euros (EUR) in respect of non-pecuniary damage.

155. The Government submitted that just satisfaction was to be awarded only for the violation of Article 5 § 1 of the Convention in respect of the period between 24 and 30 July 2013. They noted that nothing should be awarded in respect of the complaint under Article 3 concerning the risk of ill-treatment in Uzbekistan, and challenged the remainder of the claims as excessive and unfounded.

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

157. The Court further observes that it has found a violation of Article 3 of the Convention on account of the conditions of the applicant's detention, as well as violations of Article 5 §§ 1 and 4 of the Convention 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. The Court therefore awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of the claims under this head.

B. Costs and expenses

158. The applicant also claimed EUR 8,000 for the costs and expenses incurred before the domestic courts and the Court. He submitted a breakdown of the expenses incurred, which included EUR 4,900 for forty-nine hours of work carried out by Ms Trenina, at an hourly rate of EUR 100 and EUR 3,100 for thirty-one hours' work carried out by Ms Ryabinina, at an hourly rate of EUR 100.

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

160. 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 8,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

161. 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 has been a violation of Article 3 of the Convention on account of the the conditions of the applicant's detention from 30 July to 5 August 2013 at the Mozhaiskiy District police station in Moscow;

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

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention between 24 and 30 July 2013;

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

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's inability to obtain judicial review of his detention pending administrative removal;

8. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable, in the interests of the proper conduct of the proceedings, not to expel or otherwise involuntarily remove the applicant from Russia to Uzbekistan until such time as the present judgment becomes final or until further order;

9. *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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 10 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President