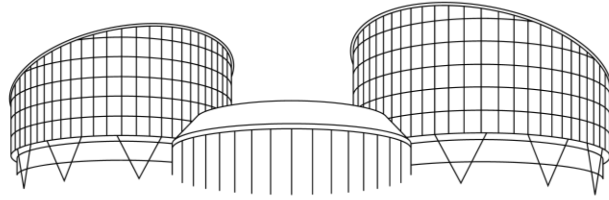

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KARIMOV v. RUSSIA

(Application no. 54219/08)

JUDGMENT

STRASBOURG

29 July 2010

FINAL

21/02/2011

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

In the case of Karimov v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 54219/08) 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 Abdumutallib Karimov (“the applicant”), on 13 November 2008.

2. The applicant was represented by Ms E. Ryabinina and Mr R. Zilberman, lawyers practising in Moscow and Yoshkar-Ola. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his detention by the Russian authorities with a view to his extradition to Uzbekistan, where he faced politically motivated persecution by the local authorities, gave rise to violations of his rights under Articles 3, 5 and 13 of the Convention.

4. On 13 November 2008 the President of the Chamber to which the case was allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Russia, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice.

5. On 20 May 2009 the President of the First Section of the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1964 and lives in Yoshkar-Ola, the Republic of Mari-Al.

7. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Proceedings in Uzbekistan

8. The applicant was born and used to live in Ayim, Uzbekistan. From 1997 to 2005 he owned a small grocery shop there.

9. On 13 May 2005 the applicant went to the town of Andijan to pick up merchandise from a wholesale market. On that date a demonstration was taking place in the town's Bobur square; the applicant decided to join the event. At some point the local authorities opened fire on the demonstrators. The applicant managed to escape, but lost his passport in the crowd. Fearing prosecution by the authorities for participation in the Andijan demonstration, he left the country.

10. On 18 June 2005 the Prosecutor General's Office of Uzbekistan charged the applicant *in absentia* with a number of crimes including commission of terrorist acts, membership of a number of extremist organisations including Hizb-ut-Tahrir, attempts to overthrow the State's constitutional order and organisation of mass disorder. The applicant's name was put on the wanted list. The prosecutor's office issued an arrest warrant against the applicant.

11. On 5 July 2008 the Prosecutor General's Office of Uzbekistan forwarded a request for the applicant's extradition to Uzbekistan to the Prosecutor General's Office of the Russian Federation.

12. On 2 August 2008 the Andijan regional prosecutor's office additionally charged the applicant with a number of crimes including conducting a holy war to create an Islamic state, financing terrorist activities, membership of extremist organisations and organisation of mass disturbances.

B. Proceedings in Russia

1. Proceedings concerning the obtaining of a false passport

13. On an unspecified date in June 2005 the applicant arrived in Yoshkar-Ola, the Republic of Mari-Al, Russia. From June 2005 to 11 June

2008 he lived with his brother, Mr Kh.K., and worked in the construction business.

14. On an unspecified date in 2007 the applicant obtained a false passport of a Kirgiz national.

15. On 19 June 2008 the Tsentralniy Department of the Interior of Yoshkar-Ola ("the Tsentralniy UVD") instituted criminal proceedings against the applicant under Article 327 of the Criminal Code (forgery of documents).

16. On 30 December 2008 the Yoshkar-Ola Town Court ("the Town Court") found the applicant guilty of forging documents and ordered him to pay a fine of 10,000 Russian roubles (RUB). The applicant did not appeal against the sentence.

2. *Extradition proceedings*

17. On 11 June 2008 the applicant was arrested in Russia (see paragraph 31 below). On the same date and on 19 June 2008 he was questioned and stated that he was being subjected by the Uzbek authorities to politically motivated persecution in connection with events in Andijan in May 2005. He denied any involvement in illegal activities.

18. On 2 July 2008 the applicant was questioned again. He reiterated that he was being sought by the Uzbek authorities for alleged participation in the Andijan events in May 2005 and denied any involvement in extremist organisations.

19. On 5 July 2008 the Prosecutor General's Office of Uzbekistan forwarded a request for the applicant's extradition (see paragraph 11 above).

20. On 17 July 2008 the Federal Migration Service ("the FMS") informed the Prosecutor General's Office that the applicant did not have Russian citizenship.

21. On 6 August 2008 the Mari-Al FMS informed the Mari-Al prosecutor's office that on 1 August 2008 the applicant's request for asylum had been rejected.

22. On 4 August 2008 the Russian Ministry of Foreign Affairs informed the Prosecutor General's Office that they did not have any information precluding the applicant's extradition. The text of the document comprised three lines and stated:

> "The Russian Ministry of Foreign Affairs has no information precluding Mr A. Karimov's extradition to the law-enforcement bodies of Uzbekistan for criminal prosecution."

23. On 30 August 2008 the Federal Security Service ("the FSB") informed the Prosecutor General's Office that they did not have any information precluding the applicant's extradition to Uzbekistan. The text of the document stated:

> “The FSB has no information concerning either the politically motivated persecution of Mr A. Karimov (who was born in 1964 in Uzbekistan) or any obstacles precluding his extradition to the law-enforcement bodies of Uzbekistan.
>
> His extradition to the Uzbek authorities would not damage the interests or security of the Russian Federation.”

24. On 18 September 2008 the Russian Prosecutor General's Office ordered the applicant's extradition to Uzbekistan.

25. On 25 September 2008 the applicant was informed of the extradition order. He appealed against it to the Supreme Court of Mari-Al. Referring to the case-law of the European Court of Human Rights, the applicant stated that he was being sought by the Uzbek authorities for the alleged commission of political crimes and that his extradition would expose him to a real risk of ill-treatment by the local authorities. He further stated that the Russian Office of the UN High Commissioner for Refugees had recognised the need for his international protection and requested that the extradition decision be overruled as unlawful.

26. On 31 October 2008 the Supreme Court of Mari-Al rejected the applicant's appeal and upheld the extradition order stating, *inter alia*, the following:

> “....the law-enforcement bodies of the Republic of Uzbekistan charged A. Karimov with criminal conspiracy ... with the aim of undermining State security, destabilising the social and political order ...
>
> These actions on the part of A. Karimov are classified [by the Uzbek authorities] as the use of violence and force jeopardising the safety of persons and property with the aim of forcing State bodies to take or not to take certain actions ... that is, as the crime punishable under Article 155 § 3 (a) of the Uzbek Criminal Code...
>
> ...The factual circumstances and legal assessment of the actions of which A. Karimov is accused are described in the statements of charges of 18 June 2005 and 2 August 2008...
>
> ...the [applicant's] allegations about the risk of ill-treatment in Uzbekistan were not confirmed by the documents examined during the hearing...
>
> ...the Republic of Uzbekistan guaranteed that the applicant would not be extradited to a third country without the consent of the Russian Federation ... [and] that after the trial and the completion of his sentence he would be free to leave Uzbekistan.”

27. On 7 November 2008 the applicant appealed against the above decision and the extradition order to the Supreme Court of the Russian Federation (“the Supreme Court”). He stated that the proceedings concerning his request for refugee status in Russia were still pending and that his extradition would expose him to a real risk of ill-treatment by the Uzbek authorities.

28. On 13 November 2008 the European Court of Human Rights granted the applicant's request for the application of interim measures under Rule 39 of the Rules of Court to suspend his extradition to Uzbekistan.

29. On 23 December 2008 the Supreme Court rejected the applicant's appeal and made the extradition order final. The court stated that the applicant had applied for refugee status in Russia only after his arrest on 11 June 2008, that his allegations of a risk of ill-treatment were unsubstantiated and that "...the Uzbek Prosecutor General's Office guaranteed that ... it would prosecute A.M. Karimov only for the crimes he had been charged with...".

30. On 22 September 2009 the applicant requested the Prosecutor General's Office to cancel the extradition order of 18 September 2008 as he had been granted temporary asylum in Russia (see paragraph 57 below). He did not receive any response from the authorities.

3. The applicant's detention pending extradition

31. On 11 June 2008 the applicant was arrested in Yoshkar-Ola and placed in the local detention centre IZ-12/1 ("the detention centre").

32. On 12 June 2008 the Town Court ordered the applicant's detention until 12 July 2008, stating that:

> "...the deputy head of the Department of the Interior of the Andijan Region of Uzbekistan .... requested that A.M. Karimov be arrested ... and that the request for his extradition be submitted [to the Russian authorities] within one month".

On 17 June 2008 the applicant appealed against this decision to the Mari-Al Supreme Court. On 2 July 2008 the latter upheld the extension order.

33. On 4 July 2008 the Town Court extended the applicant's detention until 21 July 2008. On 7 July 2008 the applicant appealed against this decision to the Mari-Al Supreme Court. On 1 August 2008 the latter upheld the extension order.

34. On 22 July 2008 counsel for the applicant requested the head of the detention centre to release the applicant as the term of his detention had expired on 21 July 2008 and his detention after that date was unlawful.

35. On the same date the head of the detention centre replied to counsel, stating the following:

> "...the law-enforcement bodies of the Russian Federation received a request from the Prosecutor General's Office of Uzbekistan concerning A.M. Karimov's extradition... In connection with this [the applicant's] detention is lawful and substantiated".

36. On the same date, 22 July 2008, counsel for the applicant appealed against the reply of the head of the detention centre to the Yoshkar-Ola Town Court, under Article 125 of the Code of Criminal Procedure (complaints against acts and decisions of officials involved in criminal

proceedings). He stated that the applicant's detention had been authorised only until 21 July 2008 and that his detention after that date was unlawful. On 25 July 2008 the Town Court examined this complaint and set it aside without examination, stating that the applicant had failed to accurately define his request and to provide copies of the relevant court extension orders. The decision stated that the applicant should correct the above deficiencies and resubmit his complaint by 30 July 2008. The applicant appealed against this decision to the Mari-Al Supreme Court, which on 4 August 2008 returned his appeal without examination for failure to comply with the requirements specified in the decision of 25 July 2008.

37. Meanwhile, on 24 July 2008 the Town Court, at the request of the Yoshkar-Ola prosecutor, extended the applicant's detention until 12 December 2008. As to the applicant's allegation concerning the unlawfulness of his detention between 21 and 24 July 2008, the court stated:

> "... Taking into account the fact that the Yoshkar-Ola prosecutor had already requested the court to detain the applicant pending his extradition, and that this request had been granted ... the present prosecutor's request for extension of the applicant's detention should cover the applicant's detention between 12 June and 24 July 2008..."

On 28 July 2008 the applicant appealed against this extension order to the Mari-Al Supreme Court. On 14 August 2008 the latter upheld the extension of the applicant's detention; it left without examination the issue of the lawfulness of his detention between 21 and 24 July 2008.

38. On 5 December 2008 the Town Court, at the request of the Yoshkar Ola prosecutor, extended the applicant's detention pending extradition until 12 March 2009. On the same date the applicant appealed against this decision to the Mari-Al Supreme Court. On 19 December 2008 the latter upheld the extension order.

39. On 11 March 2009 the Town Court, at the request of the Yoshkar-Ola prosecutor, extended the applicant's detention until 11 June 2009. On 13 March 2009 the applicant appealed against this decision to the Mari-Al Supreme Court. On 26 March 2009 the latter upheld the extension order.

40. On 22 May 2009 the Town Court rejected the request of the Yoshkar-Ola prosecutor and refused to extend the applicant's detention until 11 December 2009 (up to 18 months). The prosecutor's office appealed against the refusal to the Supreme Court. On 23 June 2009 the Supreme Court upheld the refusal to extend the applicant's detention.

41. On 11 June 2009 the applicant was released from the detention centre.

4. The applicant's requests for refugee status and temporary asylum

(a) The applicant's request for refugee status

42. On 23 June 2008 the applicant lodged a preliminary request for refugee status in Russia. On 7 July 2008 he lodged the full application.

43. On 1 August 2008 the Mari-Al FMS refused to examine the applicant's request. The decision referred to Article 5 § 1 (1) of the Federal Law on refugees, which stated that one of the reasons for refusing to examine an application for refugee status was the opening of criminal proceedings against the person applying for refugee status.

44. On 24 September 2008 the Russian Office of the UN High Commissioner for Refugees informed the Mari-Al FMS that "the refusal to provide access to the refugee status procedure to A. Karimov violates Article 14 of the UN Declaration of Human Rights of 1948...".

45. On 1 October 2008 the applicant appealed against the refusal to the Town Court. He stated that he had left Uzbekistan out of fear of ill-treatment by the local authorities for alleged participation in the demonstration in Andijan in May 2005 and that he was being sought by the Uzbek authorities for political crimes. The applicant requested the court to overrule the refusal and order the FMS to examine his request.

46. On 2 October 2008 the Russian Office of the UN High Commissioner for Refugees wrote to the Russian Prosecutor General stating that the Prosecutor General's decision to extradite the applicant to Uzbekistan had been taken without proper examination of his request for refugee status in Russia.

47. On 3 October 2008 the Russian Office of the UN High Commissioner for Refugees wrote to the Head of the Russian FMS. The letter stated that the information provided by the applicant about events in Uzbekistan had been confirmed as truthful and that his fear of ill-treatment by the Uzbek authorities was justified and substantiated. The letter requested the Russian authorities to take into consideration the High Commissioner's opinion concerning the applicant's case during the examination of his request for refugee status in Russia.

48. On 9 October 2008 the court granted the applicant's appeal and ordered that the Mari-Al FMS examine the applicant's request for refugee status.

49. On 22 October 2008 the Mari-Al FMS decided to examine the applicant's request.

50. On the same date, 22 October 2008, the Russian Office of the UN High Commissioner for Refugees wrote to the Supreme Court of Mari-Al. The letter stated that the applicant "...falls under the definition of refugee as provided by the Geneva Convention..." and that he faced a real risk of ill-treatment in Uzbekistan if extradited. The letter stated that the

applicant's extradition would violate the obligations of the Russian authorities under the Convention Relating to the Status of Refugees.

51. On 14 November 2008 the Prosecutor General's Office informed the applicant that his extradition to Uzbekistan had been suspended pending completion of the examination of his request for refugee status.

52. On 16 January 2009 the Russian Office of the UN High Commissioner for Refugees informed the applicant's representative that the application of Rule 39 by the European Court of Human Rights should not be terminated as it was the only safeguard protecting the applicant from extradition to Uzbekistan.

53. On 22 January 2009 the Mari-Al FMS rejected the applicant's request for refugee status in Russia. The applicant appealed against this decision to the Town Court. On 5 March 2009 the court upheld the refusal. The applicant appealed against the court's decision to the Mari-Al Supreme Court. On 16 April 2009 the latter examined the appeal and forwarded the case for fresh examination to the Town Court.

54. On 27 April 2009 the Russian Office of the UN High Commissioner for Refugees wrote to the Town Court confirming that the applicant's fear of politically motivated persecution and ill-treatment in Uzbekistan was justified and substantiated.

55. On 15 May 2009 the Town Court rejected the applicant's appeal and upheld the refusal to grant him refugee status. On 18 June 2009 the refusal was made final by the Mari-Al Supreme Court.

(b) The applicant's request for temporary asylum

56. On 16 June 2009 the applicant lodged a temporary asylum request with the FMS stating that he feared politically motivated persecution and ill-treatment in Uzbekistan.

57. On 31 August 2009 the FMS allowed the applicant's request and granted him temporary asylum for one year.

II. RELEVANT INTERNATIONAL AND DOMESTIC LEGAL MATERIALS

A. Detention pending extradition and judicial review of detention

1. *The Russian Constitution*

58. The Constitution guarantees the right to liberty (Article 22):

> “1. Everyone has the right to liberty and personal integrity.

> 2. Arrest, placement in custody and detention are permitted only on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

2. The European Convention on Extradition

59. Article 16 of the European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

> "1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
>
> ...
>
> 4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

3. The 1993 Minsk Convention

60. The CIS Convention on legal aid and legal relations in civil, family and criminal cases (the 1993 Minsk Convention), to which both Russia and Uzbekistan are parties, provides that a request for extradition must be accompanied by a detention order (Article 58 § 2).

61. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest containing a reference to the detention order and indicating that a request for extradition will follow must be sent. A person may also be arrested in the absence of such request if there are reasons to suspect that he or she has committed, in the territory of the other Contracting Party, an offence entailing extradition. The other Contracting Party must be immediately informed of the arrest (Article 61).

62. A person arrested pursuant to Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

4. The Code of Criminal Procedure

63. Chapter 13 of the Russian Code of Criminal Procedure ("Preventive measures") governs the use of preventive measures (*меры пресечения*), which include, in particular, placement in custody. Custody may be ordered by a court on an application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years'

imprisonment, provided that a less restrictive preventive measure cannot be used (Article 108 §§ 1 and 3). The period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period to six months (Article 109 § 2). Further extensions to twelve months, or in exceptional circumstances, eighteen months, may be granted only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

64. Chapter 16 ("Complaints about acts and decisions by courts and officials involved in criminal proceedings") provides for the judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of the parties to criminal proceedings (Article 125 § 1). The court must examine the complaint within five days from its receipt.

65. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. On receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to the person whose extradition is sought. The measure must be applied in accordance with the established procedure (Article 466 § 1). A person who has been granted asylum in Russia because of possible political persecution in the State seeking his extradition may not be extradited to that State (Article 464 § 1 (2)).

66. An extradition decision made by the Prosecutor General may be challenged before a court. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in the relevant international and domestic law (Article 463 §§ 1 and 6).

5. *The Code of Civil Procedure*

67. A person may apply for judicial review of decisions and acts or failures to act by a State body or a State official that are capable of violating his or her rights or freedoms, hindering the exercise of his or her rights and freedoms, or imposing an obligation or liability unlawfully (Articles 254 § 1 and 255). If the court finds the application well-founded, it must order the State body or State official concerned to remedy the violation or remove the obstacle to the exercise of the rights and freedoms in question (Article 258 § 1).

6. *Case-law of the Constitutional Court*

(a) Constitutional Court decision no. 292-O of 15 July 2003

68. On 15 July 2003 the Constitutional Court issued decision no. 292-O concerning a complaint by Mr Khudoyorov about the *ex post facto* extension of his "detention during trial" by the Vladimir Regional Court's decision. It held as follows:

> "Article 255 § 3 of the Code of Criminal Procedure of the Russian Federation provides that the [trial court] may ... upon the expiry of six months after the case was sent to it, extend the defendant's detention for successive periods of up to three months. It does not contain, however, any provisions permitting the courts to take a decision extending the defendant's detention on remand once the previously authorised time-limit has expired, in which event the person is detained for a period without a judicial decision. Nor do other rules of criminal procedure provide for such a possibility. Moreover, Articles 10 § 2 and 109 § 4 of the Code of Criminal Procedure expressly require the court, prosecutor, investigator ... to immediately release anyone who is unlawfully held in custody beyond the time-limit established in the Code. Such is also the requirement of Article 5 §§ 3 and 4 of the European Convention ... which is an integral part of the legal system of the Russian Federation, pursuant to Article 15 § 4 of the Russian Constitution..."

(b) Constitutional Court decision no. 101-O of 4 April 2006

69. Verifying the compatibility of Article 466 § 1 of the CCP with the Russian Constitution, the Constitutional Court reiterated its established case-law to the effect that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

70. In the Constitutional Court's view, the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution, as well as the legal norms laid down in Chapter 13 of the CCP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the authorities to apply a custodial measure without abiding by the procedure established in the CCP, or in excess of the time-limits fixed therein.

(c) Constitutional Court decision no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

71. The Prosecutor General asked the Constitutional Court for an official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person's detention with a view to extradition.

72. The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific criminal-law provisions governing

the procedure and time-limits for holding a person in custody with a view to extradition. That was a matter for the courts of general jurisdiction.

(d) Constitutional Court decision no. 333-O-P of 1 March 2007

73. In this decision the Constitutional Court reiterated that Article 466 of the CCP did not imply that detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

B. Status of refugees

1. The 1951 Geneva Convention Relating to the Status of Refugees

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

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

2. Refugees Act

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

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

77. A person who has applied for refugee status or who has been granted refugee status cannot be returned to a State where his life or freedom would be imperilled on account of his race, religion, nationality, membership of a particular social group or political opinion (section 10 § 1).

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

C. Relevant documents concerning the use of diplomatic assurances and the situation in Uzbekistan

79. UN General Assembly resolution 62/148 of 18 December 2007 ("Torture and other cruel, inhuman or degrading treatment or punishment" (UN Doc.:A/RES/62/148)) reads as follows:

> "The General Assembly...
>
> 12. Urges States not to expel, return ('*refouler*'), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement..."

80. In his interim report submitted in accordance with Assembly resolution 59/182 (UN Doc.: A/60/316, 30 August 2005), the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reached the following conclusions:

> "51. It is the view of the Special Rapporteur that diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated. The Special Rapporteur is therefore of the opinion that States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.
>
> 52. The Special Rapporteur calls on Governments to observe the principle of non-refoulement scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognized as refugees."

81. Specifically referring to the situation regarding torture in Uzbekistan and returns to torture effected in reliance upon diplomatic assurances from the Uzbek authorities, the UN Special Rapporteur on Torture stated to the 2nd Session of the UN Human Rights Council on 20 September 2006:

> "The practice of torture in Uzbekistan is systematic, as indicated in the report of my predecessor Theo van Boven's visit to the country in 2002. Lending support to this finding, my mandate continues to receive serious allegations of torture by Uzbek law enforcement officials... Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. Against such significant, serious and credible evidence of systematic torture by law enforcement officials in Uzbekistan, I continue to find myself appealing to Governments to refrain from transferring persons to Uzbekistan. The prohibition of torture is absolute, and States risk violating this prohibition - their obligations under international law - by transferring persons to countries where they may be at risk of torture. I reiterate that diplomatic assurances are not legally binding, undermine existing obligations of States to prohibit torture, are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States."

82. Further referring to the situation regarding torture in Uzbekistan, the UN Special Rapporteur on Torture stated to the 3rd Session of the UN Human Rights Council on 18 September 2008:

> "741. The Special Rapporteur ... stressed that he continued to receive serious allegations of torture by Uzbek law enforcement officials...
>
> 743. Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, and any independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. Even more so, given that no independent monitoring of human rights is currently being conducted.
>
> 744. In light of the foregoing, there is little evidence available, including from the Government that would dispel or otherwise persuade the Special Rapporteur that the practice of torture has significantly improved since the visit which took place in 2002..."

83. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows:

> 22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a

formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases.

23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that 'unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel'. The Supreme Court of Canada addressed the issue in its decision in *Suresh v. Canada* (*Minister of Citizenship and Immigration*), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling

'...the difficulty in relying too heavily on assurances by a state that it will refrain from torture in the future when it has engaged in illegal torture or allowed others to do so on its territory in the past. This difficulty becomes acute in cases where torture is inflicted not only with the collusion but through the impotence of the state in controlling the behaviour of its officials. Hence the need to distinguish between assurances regarding the death penalty and assurances regarding torture. The former are easier to monitor and generally more reliable than the latter.'

24. In his report to the UN General Assembly of 1 September 2004, the special Rapporteur of the UN Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment examined the question of diplomatic assurances in light of the *non-refoulement* obligations inherent in the absolute and non-derogable prohibition of torture and other forms of ill-treatment. Noting that in determining whether there are substantial grounds for believing that a person would be in danger of being subjected to torture, all relevant considerations must be taken into account, the Special Rapporteur expressed the view that:

'in circumstances where there is a consistent pattern of gross, flagrant or mass violations of human rights, or of systematic practice of torture, the principle of *non-refoulement* must be strictly observed and diplomatic assurances should not be resorted to.'"

84. United States Department of State, 2009 Country Reports on Human Rights Practices – Uzbekistan, 11 March 2010.

"**Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

Although the constitution and law prohibit such practices, law enforcement and security officers routinely beat and otherwise mistreated detainees to obtain confessions or incriminating information. Torture and abuse were common in prisons, pretrial facilities, and local police and security service precincts. Prisoners were subjected to extreme temperatures. Observers reported several cases of medical abuse, and one known person remained in forced psychiatric treatment.

...

Authorities reportedly gave harsher than normal treatment to individuals suspected of extreme Islamist political sympathies, notably pretrial detainees who were alleged members of banned extremist political organizations Hizb ut-Tahrir (HT) or Nur. Local human rights workers reported that authorities often paid or otherwise induced common criminals to beat suspected extremists and others who opposed the government. Two human rights defenders who were arrested reported beatings in pretrial detention facilities.

There were reports of politically motivated medical abuse. Victims could request through legal counsel that their cases be reviewed by an expert medical board. In practice, however, such bodies generally supported the decisions of law enforcement authorities.

...

Prison and Detention Center Conditions

Prison conditions remained poor and in some cases life threatening. There continued to be reports of severe abuse, overcrowding, and shortages of food and medicine. Tuberculosis and hepatitis were endemic in the prisons, making even short periods of incarceration potentially life-threatening. Family members frequently reported that officials stole food and medicine that were intended for prisoners.

There were reports that authorities did not release prisoners, especially those convicted of religious extremism, at the end of their terms. Instead, prison authorities contrived to extend inmates' terms by accusing them of additional crimes or claiming the prisoners represented a continuing danger to society. These accusations were not subject to judicial review."

85. The European Committee for the Prevention of Torture ("the CPT"), in its 15th General Report of 22 September 2005 on its activities covering the period from 1 August 2004 to 31 July 2005, expressed concern about reliance on diplomatic assurances in the light of the absolute prohibition on torture:

"38. Reference was made in the Preface to the potential tension between a State's obligation to protect its citizens against terrorist acts and the need to uphold fundamental values. This is well illustrated by the current controversy over the use of 'diplomatic assurances' in the context of deportation procedures. The prohibition of torture and inhuman or degrading treatment encompasses the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to such methods. In order to avoid such a risk in given cases, certain States have chosen the route of seeking assurances from the country of destination that the person concerned will not be ill-treated. This practice is far from new, but has come under the spotlight in recent years as States have increasingly sought to remove from their territory persons deemed to endanger national security. Fears are growing that the use of diplomatic assurances is in fact circumventing the prohibition of torture and ill-treatment.

39. The seeking of diplomatic assurances from countries with a poor overall record in relation to torture and ill-treatment is giving rise to particular concern. It does not necessarily follow from such a record that someone whose deportation is

> envisaged personally runs a real risk of being ill-treated in the country concerned; the specific circumstances of each case have to be taken into account when making that assessment. However, if in fact there would appear to be a risk of ill-treatment, can diplomatic assurances received from the authorities of a country where torture and ill-treatment is widely practised ever offer sufficient protection against that risk? It has been advanced with some cogency that even assuming those authorities do exercise effective control over the agencies that might take the person concerned into their custody (which may not always be the case), there can be no guarantee that assurances given will be respected in practice. If these countries fail to respect their obligations under international human rights treaties ratified by them, so the argument runs, why should one be confident that they will respect assurances given on a bilateral basis in a particular case?
>
> 40. In response, it has been argued that mechanisms can be devised for the post-return monitoring of the treatment of a person deported, in the event of his/her being detained. While the CPT retains an open mind on this subject, it has yet to see convincing proposals for an effective and workable mechanism. To have any chance of being effective, such a mechanism would certainly need to incorporate some key guarantees, including the right of independent and suitably qualified persons to visit the individual concerned at any time, without prior notice, and to interview him/her in private in a place of their choosing. The mechanism would also have to offer means of ensuring that immediate remedial action is taken, in the event of it coming to light that assurances given were not being respected."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

86. The Government contended that the application should be declared inadmissible as incompatible *ratione personae*. They submitted that the applicant had not been extradited by the Russian authorities to Uzbekistan, the impugned measure had not been applied to him, his extradition had been suspended and therefore he could not claim to be the victim of a violation of Article 3.

87. The applicant contested the objection and submitted that there was a high risk of his being ill-treated if extradited to Uzbekistan, that the decision to extradite him had been made final by the Russian authorities and that his extradition had been suspended only as a result of the application of the interim measures by the Court.

B. The Court's assessment

88. The Court reiterates that an individual may no longer claim to be a victim of a violation of the Convention where the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see, among many authorities, *Achour v. France* (dec.) no. 67335/01, 11 March 2004, where the authorities annulled the expulsion order against the applicant, and *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

89. As to the specific category of cases involving expulsion measures, the Court has consistently held that an applicant cannot claim to be the "victim" of a measure which is not enforceable (see *Vijayanathan and Pusparajah v. France*, 27 August 1992, § 46, Series A no. 241-B; see also *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005, and *Etanji v. France* (dec.), no. 60411/00, 1 March 2005). It has adopted the same stance in cases where execution of the deportation or extradition order has been stayed indefinitely or otherwise deprived of legal effect and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (see *Kalantari v. Germany* (striking out), no. 51342/99, §§ 55-56, ECHR 2001-X, and *Mehemi v. France (no. 2)*, no. 53470/99, § 54, ECHR 2003-IV; see also *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 355, ECHR 2005-III; *Andriÿ v. Sweden* (dec.), no. 45917/99, 23 February 1999; *Benamar and Others v. France* (dec.), no. 42216/98, 14 November 2000; and *Djemailji v. Switzerland* (dec.), no. 13531/03, 18 January 2005).

90. The present application concerns the applicant's extradition to Uzbekistan where, according to him, he would face a serious risk of ill-treatment by the authorities on account of his political and religious beliefs. The Court observes firstly that the decision concerning the applicant's extradition was made final by the Russian authorities on 23 December 2008 (see paragraph 29 above); secondly, the decision not to extradite the applicant until further notice from the European Court was taken by the Russian authorities in November 2008 only because of the application of Rule 39 of the Rules of Court. Clearly, the fact that the applicant had not been handed over to the Uzbek authorities did not constitute any acknowledgment, whether explicit or implicit, on the part of the Russian authorities that there had been or would have been a violation of Article 3 or that the applicant's extradition order had been deprived of its legal effect.

91. In these circumstances, the Court considers that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

92. The applicant complained that his extradition to Uzbekistan would expose him to a real risk of torture and ill-treatment prohibited by Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

93. The Government submitted that the allegation of politically motivated persecution of the applicant had been assessed by the Russian courts when examining his appeals against the extradition order, and rejected as unfounded. The Russian courts had relied on the statement from the Prosecutor General's Office of Uzbekistan to the effect that the applicant would face no risk of ill-treatment if he were to be extradited to Uzbekistan and on the fact that the Russian authorities such as the Ministry of Foreign Affairs and the FSB did not have any information confirming his allegation. Referring to the assurances from the Uzbek authorities the Government argued that the applicant would not be subjected to ill-treatment or punishment contrary to Article 3 of the Convention.

94. The applicant maintained that he had argued before the Russian courts that he faced a real risk of ill-treatment and political persecution in Uzbekistan. He had submitted reports on Uzbekistan by the UN institutions and international NGOs confirming that torture was widespread in detention facilities and that this information had not received proper assessment from the Russian authorities. He further maintained that the authorities had failed to take into account the information from the Russian Office of the UN High Commissioner for Refugees confirming that the risk of his being ill-treated in Uzbekistan was justified and substantiated. He pointed out that the courts had rejected his arguments without giving any reasons except a reference to the assurances given by the Uzbek authorities. Finally, he referred to a number of cases examined by the Court in which it had been established that extradition to Uzbekistan of a person sought for political crimes would constitute a violation of Article 3.

B. The Court's assessment

1. Admissibility

95. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

96. For a summary of the relevant general principles emerging from the Court's case-law see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 66-70, ECHR 2005-I.

97. From the materials submitted by the parties it is clear that the applicant was arrested in Russia and subsequently detained at the request of the Uzbek authorities, who suspected him of a number of crimes, including an attempt to overthrow the constitutional order and membership of extremist organisations. The Russian authorities commenced extradition proceedings against him. Throughout the proceedings the applicant claimed that his extradition to Uzbekistan would expose him to a danger of ill-treatment. He also lodged an application for asylum, reiterating his fears of torture and persecution for political motives. He supported his submissions with reports prepared by UN institutions and international NGOs describing the ill-treatment of detainees in Uzbekistan. The Russian Office of the UN High Commissioner for Refugees confirmed that his fear of persecution and ill-treatment in Uzbekistan was justified and substantiated. The Russian authorities rejected his application for refugee status and ordered his extradition to Uzbekistan based on assurances from the Uzbek authorities and information received from the Ministry of Foreign Affairs and the FSB (see paragraphs 26-29 above).

98. The Court's task is to establish whether there exists a real risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. Since he has not yet been extradited owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case. It follows that, although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive (see *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports* 1996-V).

99. As regards the applicant's allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that a general problem still persists in that country in this regard (see, for example, *Ismoilov and Others v. Russia*, no. 2947/06, §§ 120-121, 24 April 2008, and *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008). No concrete evidence has been produced to demonstrate any fundamental improvement in this field in Uzbekistan in the last several years (see paragraphs 81, 82 and 84 above). The Court therefore considers that the ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan.

100. As to the applicant's personal situation, the Court observes that he was charged with a number of politically motivated crimes. Given that an arrest warrant was issued in respect of the applicant, it is most likely that he would be placed in custody directly after his extradition and therefore would run a serious risk of ill-treatment. The Court also takes note of the information received from the Russian Office of the UN High Commissioner for Refugees confirming the applicant's allegations of a risk of ill-treatment in Uzbekistan in the event of his extradition (see paragraphs 47, 50 and 54 above).

101. As to the Government's argument that assurances were obtained from the Uzbek authorities, the Court has already cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent (see *Chahal*, cited above, and *Saadi v. Italy* [GC], no. 37201/06, §§ 147-148, ECHR 2008-...). Given that the practice of torture in Uzbekistan is described by reputable international sources as systematic (see paragraphs 81-83 above), the Court is not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.

102. Accordingly, the applicant's forcible return to Uzbekistan would give rise to a violation of Article 3 as he would face a serious risk of being subjected there to torture or inhuman or degrading treatment.

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

103. The applicant complained under Article 5 § 1 of the Convention that his detention pending extradition between 21 and 24 July 2008 had been unlawful as it was not based on a court order, and that the domestic regulations concerning detention pending extradition were not sufficiently clear and predictable. The relevant parts of Article 5 § 1 read as follows:

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

A. The parties' submissions

104. The Government acknowledged that the applicant's detention between 21 and 24 July 2008 had not been based on a court order but

contended that the applicant had failed to appeal against it. In particular, they submitted that the applicant's lawyer had failed to lodge a proper complaint about it with the domestic courts (see paragraph 36 above). At the same time the Government contended that in any case this period of detention had been authorised by the court order of 24 July 2008 which had extended the applicant's detention until 12 December 2008.

105. The Government further contended that the applicant's detention pending extradition complied fully with the domestic legislation, in particular with the provisions of Article 466 § 1 of the Code of Criminal Procedure. Referring to Constitutional Court decision no. 333-O-P of 1 March 2007 (see paragraph 73 above), they argued that the relevant provisions had been predictable, clear and foreseeable and had enabled the applicant to estimate the length of his detention pending extradition.

106. The applicant disagreed with the Government. He submitted that the decision concerning his complaint about the unlawfulness of his detention between 21 and 24 July 2008 had been taken on 4 August 2008, that is, after the court order of 24 July 2008 extending his detention until 12 December 2008, and that in such circumstances it would have been futile and ineffective for him to further appeal against the actions of the head of the detention centre, which would not have led to his release from unlawful detention but rather to disciplinary measures against the official. He further submitted that he had appealed against the extension order of 24 July 2008, which would have been an effective remedy, but that the domestic courts had failed to examine the issue of the lawfulness of his detention between 21 and 24 July 2008.

107. The applicant submitted that the domestic regulations concerning detention pending extradition were not sufficiently clear and predictable. He further stated that the application of the interim measure by the Court could not serve as justification for extending his detention pending extradition indefinitely.

B. The Court's assessment

1. Admissibility

108. The Government raised an objection of non-exhaustion of domestic remedies by the applicant. The Court reiterates that the decisive question in assessing the effectiveness of a remedy is whether the applicant could have raised that complaint in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 5 of the Convention (see, among other authorities, *Belousov v. Russia*, no. 1748/02, §§ 67-69, 2 October 2008). Further, it is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant did not have recourse

and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say, that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 65, 27 June 2006).

109. Turning to the facts of the present case, the Court notes that the Government suggested that the applicant should have applied to a court with his complaint about his unlawful detention between 21 and 24 July 2008. They did not specify the legal norms providing for the possibility of bringing such a complaint before a court. Nor did the Government supply any example from domestic practice showing that it was possible for the applicant to successfully bring such a complaint. In this connection the Court notes that Russian legislation provides two avenues of appeal in the applicant's situation. The first, which was used by the applicant, is to lodge a complaint under Article 125 of the Code of Criminal Procedure within the framework of criminal proceedings; the second is to apply for compensation through civil proceedings.

110. As to the civil remedies, the Court notes that the Government did not make reference to any legal norm providing for the possibility of bringing such a complaint before a court. Nor did the Government supply any example from domestic practice showing that it was possible for the applicant to bring such a complaint. As to the criminal domestic remedies, the Court notes that Article 125 of the Code of Criminal Procedure stipulates that the domestic courts must examine complaints within five days from their receipt. In the present case, the applicant's complaint lodged on 22 July 2008 was examined by the Town Court on 25 July 2008; this was within the prescribed time-limit, but came after the decision of the very same court of 24 July 2008 extending the applicant's detention until 12 December 2008 and providing retrospective authorisation of his detention during the impugned period. The Court further notes that the applicant raised the issue of his unlawful detention between 21 and 24 July 2008 before the Town Court (see paragraph 37 above), thus making use of an avenue prescribed by domestic law.

111. In such circumstances, it is highly questionable whether the applicant could have effectively challenged the lawfulness of this period of detention before a court. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies in respect of his detention between 21 and 24 July 2008.

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

2. Merits

113. The Court has previously noted that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. The requirement of "quality of law" in relation to Article 5 § 1 implies that where a national law authorises a deprivation of liberty it must be sufficiently assessable, precise and foreseeable in application, in order to avoid all risk of arbitrariness (see *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III, and *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-X (extracts)).

114. In so far as the question concerns the quality of national law governing detention pending extradition, the Court points out that it has already faced similar issues in the cases of *Nasrulloyev v. Russia,* no. 656/06, § 77, 11 October 2007; *Ismoilov and Others,* cited above, §§ 138-140, and *Ryabikin v. Russia*, no. 8320/04, §§ 127-130, 19 June 2008, where the Court found it established that the domestic provisions concerning detention pending extradition fell short of the "quality of law" standard required under the Convention.

115. In their arguments in the present case the Government referred to Constitutional Court decision no. 333-O-P of 1 March 2007. The Court notes that this decision established that the domestic legal provisions and practice governing detention pending extradition should comply with the general rules of criminal procedure, and that this decision did not introduce new rules to be followed by the domestic court in dealing with such detention. Bearing in mind that in the above-mentioned cases the Court already found the rules of criminal procedure concerning such detention to be inconsistent, mutually exclusive and not circumscribed by adequate safeguards against arbitrariness, the Court cannot find that the Government's reference to the Constitutional Court's decision of 1 March 2007 warrants a different conclusion concerning the provisions of Russian law governing the detention of persons with a view to their extradition and their application in the present case.

116. Further, the Court notes that the Government acknowledged that the applicant's detention between 21 and 24 July 2008 had not been based on a court order. At the same time they contended that in any case this detention had been authorised by the court order of 24 July 2008 which had authorised the applicant's detention between 12 June and 24 July 2008 and extended it until 12 December 2008.

117. The Court notes the inconsistency of the Government's stance concerning the legal grounds for the applicant's detention between 21 and 24 July 2008. But even assuming that this detention was authorised by the court order of 24 July 2008, the Court reiterates that any *ex post facto* authorisation of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness. Permitting a prisoner to languish in detention on remand without a judicial decision

would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Khudoyorov,* cited above, § 142).

118. There has therefore been a violation of Article 5 § 1 of the Convention.

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

119. The applicant complained under Articles 5 § 4 of the Convention that he was unable to obtain effective judicial review of his detention. Article 5 § 4 reads as follows:

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

A. The parties' submissions

120. The Government contended that the applicant's complaint should be rejected as manifestly ill-founded and pointed out that all of his complaints in respect of his detention pending extradition had been examined by the domestic courts in compliance with the relevant provisions of the Code of Criminal Procedure. Therefore, the applicant had been able to obtain a review of his detention.

121. The applicant submitted that the Russian courts had failed to speedily review the lawfulness of his detention, in violation of Article 108 § 11 of the Code of Criminal Procedure, which required the second-instance courts to examine appeals within three days of their receipt. He pointed out that all his appeals against the extension orders had been examined by the courts with significant delays.

B. The Court's assessment

1. Admissibility

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

2. Merits

123. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to persons detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski*, cited above, § 68). It is for the State to organise its judicial system in such a way as to enable the courts to comply with the requirements of Article 5 § 4 (see, *mutatis mutandis*, *R.M.D. v. Switzerland*, 26 September 1997, § 54, *Reports* 1997-VI). The question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

124. Turning to the circumstances of the present case, the Court notes that the applicant lodged five appeals against the court extension orders. The first appeal was lodged on 17 June 2008 against the court order of 12 June 2008; this appeal was examined by the Mari-Al Supreme Court on 2 July 2008, that is, fifteen days after its receipt by the court. The second appeal was lodged on 7 July 2008 against the court extension order of 4 July 2008; this appeal was examined by the Mari-Al Supreme Court on 1 August 2008, that is, twenty-five days after its receipt by the court. The third appeal was lodged on 28 July 2008 against the court order of 24 July 2008; this appeal was examined by the Mari-Al Supreme Court on 14 August 2008, that is, twenty-one days after its receipt by the court. The fourth appeal was lodged on 5 December 2008 against the court order of the same date; this appeal was examined by the Mari-Al Supreme Court on 19 December 2008, that is, fourteen days after its receipt by the court. The fifth appeal was lodged on 13 March 2009 against the court order of 11 March 2009; this appeal was examined by the Mari-Al Supreme Court on 26 March 2009, that is, thirteen days after its receipt by the court.

125. The Court further observes that throughout the proceedings the applicant remained in detention and that the Government did not argue that the applicant or his counsel had in some way contributed to the length of the appeal proceedings. It therefore follows that the entire length of the appeal proceedings is attributable to the domestic authorities.

126. The Government did not provide any justification for the delays in the examination of the applicant's appeals. In that respect the Court reiterates that where an individual's personal liberty is at stake, the Court has set up very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention (see, for example, *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003, where the Court considered a delay of seventeen days in deciding on the lawfulness of the applicant's detention excessive, and *Butusov v. Russia*, no. 7923/04, § 35, 22 December 2009, where the Court considered that a

delay of twenty days in deciding on the application for release was excessive).

127. Having regard to the above, the Court considers that the delays in question, ranging from thirteen to twenty-five days, cannot be considered compatible with the "speediness" requirement of Article 5 § 4.

128. There has therefore been a violation of Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

129. The applicant alleged that he had had no effective remedy in respect of the above violations. He referred to Article 13, which provides:

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

A. The parties' submissions

130. The Government contended that the applicant had had access to the domestic courts in respect of his complaints concerning the risk of ill-treatment. They referred to the case of *Kurbanov v. Russia* (no. 19293/08), in which the order for the applicant's extradition to Uzbekistan was overruled by the Supreme Court of the Russian Federation on 28 May 2008. They contended that such a remedy was effective and that the fact that the applicant's appeals had not produced the desired outcome did not demonstrate its ineffectiveness.

131. The applicant reiterated his complaint.

B. The Court's assessment

1. Admissibility

132. The Court notes that the applicant's complaint under Article 13 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

133. The Court notes that the scope of a State's obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialised and the importance

which the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires (i) independent and rigorous scrutiny of a claim that there are substantial grounds for believing that there is a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination, and (ii) the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible (or “a remedy with automatic suspensive effect” as it is phrased in *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 66 *in fine*, ECHR 2007-V, which concerned an asylum seeker wishing to enter the territory of France); see also *Jabari v. Turkey*, no. 40035/98, § 50, ECHR 2000-VIII; *Shamayev and Others*, cited above, § 460; *Olaechea Cahuas v. Spain*, no. 24668/03, § 35, ECHR 2006-X; and *Salah Sheekh v. the Netherlands*, no. 1948/04, § 154, ECHR 2007-I (extracts).

134. Judicial review proceedings constitute, in principle, an effective remedy within the meaning of Article 13 of the Convention in relation to complaints in the context of expulsion and extradition, provided that the courts can effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 99, ECHR 2002-II). Turning to the circumstances of the present case, the Court observes that the decision of the Prosecutor General's Office to extradite the applicant was upheld on appeal by the Mari-Al Supreme Court and subsequently by the Supreme Court. In their decisions the domestic courts did not conduct a detailed examination of the applicant's allegation of the risk of ill-treatment in Uzbekistan, simply referring in general terms to the assurances provided by the Uzbek authorities and the brief information received from the Ministry of Foreign Affairs and the FSB (see paragraphs 26 and 29 above). Consequently, the courts failed to rigorously scrutinise the applicant's claims that he faced a risk of ill-treatment in the event of his extradition to Uzbekistan.

135. As to the Government's reference to the case of *Kurbanov v. Russia*, the Court points out that the extradition order against the applicant in that case was indeed overruled; however, this was because the Supreme Court applied the statute of limitations and discontinued the extradition proceedings as time-barred, and not because it examined the issue of the risk of the applicant's being ill-treated in the event of his extradition.

136. It should also be noted that the Government did not refer to any provisions of domestic legislation which could have afforded redress in the applicant's situation or had a suspensive effect on his extradition (see, *mutatis mutandis*, *Muminov*, cited above, §§ 102-104).

137. Accordingly, the Court concludes that in the circumstances of the present case there has been a violation of Article 13 of the Convention

because the applicant was not afforded an effective and accessible remedy in relation to his complaint under Article 3 of the Convention.

138. As regards the applicant's complaints under Article 5 of the Convention, in the light of the Court's established case-law stating that the more specific guarantees of Article 5, which is a *lex specialis* in relation to Article 13, absorb its requirements (see *Dimitrov v. Bulgaria* (dec.), no. 55861/00, 9 May 2006), and in view of its above findings of violations of Article 5 of the Convention, the Court considers that no separate issue arises in respect of Article 13 in conjunction with Article 5 of the Convention in the circumstances of the present case.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

139. The Court has examined another complaint submitted by the applicant under Article 5 § 1 of the Convention alleging that his detention pending extradition between 13 November 2008 and 11 June 2009 was unlawful, and a complaint under Article 6 § 2 alleging that the decision of the Supreme Court of the Republic of Mari-Al of 31 October 2008 violated his right to be presumed innocent. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

140. It follows that this part of application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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

142. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

143. The Government did not dispute the amount claimed.

144. The Court, making an assessment on an equitable basis, awards EUR 13,000 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

145. Relying on the fee agreements and lawyers' timesheets, the applicant claimed EUR 9,100 (EUR 4,400 and 188,000 Russian roubles (RUB)) for the work of his representatives Mr R. Zilberman and Ms E. Ryabinina in representing him before the domestic authorities and the Court, and EUR 610 for administrative and postal expenses.

146. The Government contended that the applicant had not submitted any proof that the payments had been necessary and reasonable.

147. 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 applicant the sum of EUR 9,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3, Article 5 § 1 in respect of the applicant's detention between 21 and 24 July 2008, Article 5 § 4 and Article 13 admissible and the remainder of the application inadmissible;

2. *Holds* that in the event of the extradition order against the applicant being enforced, there would be a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention between 21 and 24 July 2008;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

6. *Holds* that there is no need to examine the alleged violation of Article 13 in conjunction with Article 5 of the Convention;

7. *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 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 9,000 (nine thousand euros) in respect of the applicant's legal representation, plus any tax that may be chargeable to the applicant;
(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;

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

Done in English, and notified in writing on 29 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President