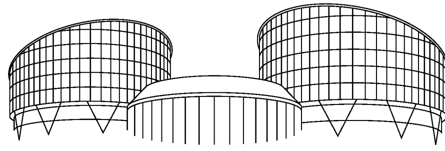

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF MUKHITDINOV v. RUSSIA

*(Application no. 20999/14)*

JUDGMENT

STRASBOURG

21 May 2015

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

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

Isabelle Berro, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 21 April 2015,

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

# PROCEDURE

1. The case originated in an application (no. 20999/14) 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 Mr Lutpiddin Bakhritdinovich Mukhitdinov ("the applicant"), on 13 March 2014.

2. The applicant was represented by Ms N. Yermolayeva, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his removal to Uzbekistan would expose him to a risk of ill-treatment in breach of Article 3 of the Convention. He complained that the latest period of his detention in the framework of extradition proceedings had been unlawful and that the courts had disregarded his arguments about the unlawful nature of the detention.

4. On 17 March 2014 the Acting President of the First Section decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited or otherwise involuntarily removed from Russia to Uzbekistan or another country for the duration of the proceedings before the Court. The Acting President also requested the Government to put in place an appropriate preventive and protective mechanism capable of ensuring the applicant's effective protection (following in particular his release from detention) against his unlawful or irregular removal from the territory of Russia and the jurisdiction of the Russian courts and to inform the Court of the measures taken. The Acting President also decided to give priority to the application under Rule 41.

5. On 7 May 2014 the application was communicated to the Government.

6. On 22 July 2014 the applicant's representative informed the Court of his disappearance following his release.

7. On 24 July 2014 the President of the First Section asked the Government, under Rule 54 § 2 of the Rules of Court, to provide additional factual information concerning the circumstances of the applicant's disappearance and his current whereabouts.

8. On 8 September 2014 the President of the First Section invited the parties to submit further written observations in respect of the applicant's disappearance and the progress of the investigation into that matter.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. The applicant's name and nationality

9. The applicant, Mr Lutpiddin Bakhritdinovich Mukhitdinov (a.k.a. Sattarov, see below), was born in 1967 in the Uzbek SSR of the USSR. He claims to have lived in Uzbekistan until 1992 when he left for Saudi Arabia.

10. Since 1997 the applicant has been living in Russia. In 2001, he acquired Russian nationality and changed his name to Sattarov.

11. On 7 May 2013 the Tyumen division of the Federal Migration Service determined that the applicant had obtained Russian nationality by fraud and cancelled his Russian passport. On 25 December 2013 the Tyumen Regional Court upheld, in the final instance, the decision of the Migration Service.

12. According to the letter from the police chief in Namangan, Uzbekistan, dated 8 April 2013, the applicant forfeited his Uzbek nationality because of his unaccounted absence from the country for more than five years.

### B. The charges against the applicant in Uzbekistan

13. On 7 May 1998 a criminal case was instituted against the applicant in Uzbekistan on the charge of illegal crossing of the Uzbek State border, an offence under Article 223 of the Uzbek Criminal Code.

14. On 15 December 2009 further charges were levelled against the applicant under Article 159 § 3 of the Uzbek Criminal Code ("Infringement of the constitutional order of Uzbekistan") and Article 242 § 1 ("Organisation of a criminal enterprise"). The charges related to the

applicant's alleged participation in the religious terrorist organisation The Islamic Movement of Uzbekistan (Wahhabii); he was suspected of meeting with its representatives during his stay in Saudi Arabia and of spreading the ideas of the organisation.

15. On 16 December 2009 the Namangan Criminal Court issued an arrest warrant.

## C. The extradition proceedings in Russia

16. On 30 June 2013 the applicant was arrested in Tyumen, Russia.

17. On 2 July 2013 the Kalininskiy District Court of Tyumen issued a detention order valid until 30 July 2013. On the latter date the District Court extended the authorised detention period until 30 December 2013. The extension was upheld by the Tyumen Regional Court on 15 August 2013.

18. On 11 December 2013 the Russian Prosecutor General approved the applicant's extradition in relation to the offence of organising, and taking part in, the activities of the Islamic Movement of Uzbekistan, an extremist organisation (Article 244-2 § 1 of the Uzbek Criminal Code). It was noted that "the [applicant's] extradition ... in relation to the extremist charges ... cannot be regarded as an obstacle for extradition since no procedural decision was taken in this respect by the competent Russian authorities" and further that the Uzbek authorities had provided "diplomatic assurances that [the applicant] ... would not be subject to torture, violence, other cruel or degrading treatment".

19. On 26 December 2013 the District Court approved a further extension of the detention period until 30 March 2014. The applicant challenged the extension before the Regional Court, claiming that the maximum detention period in case of a medium-gravity offence, for which his extradition had been approved, was set by law at six months. By decision of 13 February 2014, the Regional Court quashed the extension order of 26 December 2013, finding that the District Court did not give any specific reasons for extending the applicant's detention, and remitted the detention matter to the District Court. It directed that the applicant should remain in custody until 24 February 2014.

20. In the meantime, on 21 January 2014 the Tyumen Regional Court upheld the extradition order as being lawful and justified. The court noted that the Uzbekistan Prosecutor's Office provided the appropriate assurances, that the Russian Ministry of Foreign Affairs had no information capable of preventing the applicant's extradition, that the Russian Federal Security Service had no information about the applicant's persecution in Uzbekistan for political motives and that counsel's allegations of a real risk of ill-treatment or torture in Uzbekistan were "unsubstantiated" (*голословные*).

21. On 21 February 2014 the District Court issued a new extension order by which the applicant's detention was extended until 30 March 2014. The applicant challenged it on the same grounds as before. On 11 March 2014 the Regional Court granted the applicant's complaint and released him from custody, finding that by virtue of Article 109 of the Code of Criminal Procedure his detention could not have been extended beyond the initial six-month period.

22. On 19 March 2014 the Supreme Court rejected at final instance the applicant's challenge to the decision on his extradition to Uzbekistan. It stated that the arguments about a real risk of torture and political persecution were "unconvincing".

### D. The applicant's disappearance

23. In the early morning of 22 July 2014 the applicant was taken away from his home by seven uniformed officers of the Federal Migration Service. The applicant's lawyer arrived immediately on the scene and attempted to follow them but was stopped by the traffic police.

24. When the applicant's wife and son arrived at the local office of the Migration Service later on that day, they were told that he had already been released.

25. On 27 July 2014 the applicant's representative before the Court sent a faxed letter to the Federal Security Service, the Border Control and the Prosecutor General's Office, asking them to stop the applicant's unlawful transfer to Uzbekistan. She stated that she had information that the applicant was detained in a police ward in Tyumen and that he might be placed on the next flight to Tashkent.

26. Further to the Court's request for factual information (see paragraph 7 above), on 7 August 2014 the Government replied that the applicant's current whereabouts were not known, that he had not been detained or transferred outside of the Russian territory by State agents and there was no information about him crossing of the State border.

27. On 20 August 2014 the Tyumen Regional Prosecutor's office advised the applicant's representative as follows:

> "As regards [your] allegation about an unlawful arrest of Mr Mukhitdinov, I inform you that on 22 July 2014 the officers of the Tyumen regional branch of the Federal Migration Service conducted, in accordance with the approval plan on combating illegal migration, checks in the places where foreign nationals and stateless persons live, including the premises of a mosque at 9, Zhdanova street, Tyumen. Following the check, three persons, including Mr Mukhitdinov, were brought to the immigration control department. Upon identification, he was released.
>
> According to the information provided, Mr Mukhitdinov (Sattarov) was not arrested by the police on 22 July 2014 or any other date; the police has no information about his whereabouts."

28. On 1 September 2014 the Tyumen Regional Prosecutor's office additionally informed the counsel that on 25 August 2014 the Tyumen Regional Investigations Committee instituted a criminal case into the applicant's disappearance.

## II. RELEVANT DOMESTIC LAW

29. The Code of Criminal Procedure regulates proceedings concerning extradition to other States. A summary of the relevant provisions can be found in *Savriddin Dzhurayev v. Russia* (no. 71386/10, §§ 70-75, ECHR 2013).

30. The period of detention pending investigation of a criminal case must not exceed two months (Article 109 § 1 of the Code of Criminal Procedure) but may be extended up to six months by a judge of a district court or a military court of a corresponding level. Further extensions up to twelve months may be granted with regard to persons accused of serious or particularly serious criminal offences (Article 109 § 2). Extensions up to eighteen months may be granted as an exception with regard to persons accused of particular serious criminal offences (Article 109 § 3).

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

## III. REPORTS ON UZBEKISTAN BY INTERNATIONAL NON-GOVERNMENTAL HUMAN RIGHTS ORGANISATIONS

32. For the most recent relevant reports on Uzbekistan by the international non-governmental human rights organisations, see *Egamberdiyev v. Russia*, no. 34742/13, §§ 31-34, 26 June 2014.

33. On 6 November 2014 the Amnesty International released a call for urgent action against an unfair trial of an extradited refugee Mirsobir Khamidkariev (EUR 62/008/2014):

> “**Mirsobir Khamidkariev**, a producer and businessman from Uzbekistan, is currently held in a pre-trial detention centre (SIZO), in Tashkent. On 9 June [2014] he was reportedly abducted by officers of the Russian Federal Security Service (FSB) from a street in central Moscow, Russian Federation, and forcibly returned to Uzbekistan the following day. He was held incommunicado in a basement in an unidentified location in Moscow for a day, forced to wear a bag over his head, and subjected to repeated beatings. He was then handed over to Uzbekistani law enforcement officers at an airport in Moscow. Mirsobir Khamidkariev’s wife and his lawyer in Moscow were unable to establish contact with him and did not know his whereabouts until he re-appeared in the basement of a detention facility run by the Ministry of Internal Affairs (MVD) in Tashkent two weeks later. According to his Russian lawyer, who was able to get access to him in Tashkent on 31 October, upon return to Tashkent Mirsobir Khamidkariev was subjected to torture and other ill-treatment by law enforcement officers for two months to force him to confess to fabricated charges. He was tied to a bar attached to the wall with his head facing down and beaten repeatedly. The officers knocked out seven of his teeth and broke two of his ribs.
>
> The authorities in Uzbekistan have accused him of creating a banned religious extremist organization, Islam Jihadchilari, a charge he has strongly denied. According to his Russian lawyer, the charges against Mirsobir Khamidkariev refer to a conversation he had had with acquaintances at an informal gathering in Tashkent during which he allegedly expressed concern about the oppression of Islam and stated his support for women wearing headscarves. Court hearings have been postponed several times and the next one is scheduled for 13 November [2014].”

## IV. COUNCIL OF EUROPE TEXTS ON THE DUTY TO COOPERATE WITH THE COURT, THE RIGHT TO INDIVIDUAL PETITION AND INTERIM MEASURES

34. The Committee of Ministers’ Interim Resolution CM/ResDH(2013)200, concerning execution of the Court’s judgments in the *Garabayev* group of cases against the Russian Federation (see *Garabayev v. Russia*, no. 38411/02, 7 June 2007), was adopted on 26 September 2013 at the 1179th meeting of Ministers’ Deputies. It reads as follows:

> “The Committee of Ministers ...
>
> Considering the cases decided by the Court, in which the latter found violations by the Russian Federation due to the applicants’ abductions and irregular transfers from

the Russian Federation to States where the applicants face a real risk of torture and ill-treatment, and in breach of an interim measure indicated by the Court under Rule 39 of its Rules of Procedure;

Recalling that given the number of communications received, including from the Court, relating to alleged similar incidents that have been reported, revealing an alarming and unprecedented situation, the Committee has been calling upon the Russian authorities to adopt as a matter of urgency special protective measures for applicants exposed to a risk of kidnapping and irregular transfer;

Noting that the Russian authorities have taken a number of general measures to prevent abductions and illegal transfers from the Russian territory of persons in whose respect extradition requests were filed and the Court has indicated an interim measure under Rule 39 of its Rules;

Deeply regretting that these measures do not appear to have been sufficient to address the need for urgent adoption of special preventive and protective measures that are effective;

Deploring that to date, no reply has been received to the letter sent on 5 April 2013 by the Chairman of the Committee of Ministers to his Russian counterpart conveying the Committee's serious concerns in view of the persistence of this situation and its repeated calls for the urgent adoption of such protective measures;

Underlining that in its judgment in the Abdulkhakov case, the Court noted that "any extra-judicial transfer or extraordinary rendition, by its deliberate circumvention of due process, is an absolute negation of the rule of law and the values protected by the Convention";

Stressing that this situation has the most serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court,

CALLS UPON the Russian authorities to take further action to ensure compliance with the rule of law and with the obligations they have undertaken as a State party to the Convention,

EXHORTS accordingly the authorities to further develop without further delay an appropriate mechanism tasked with both preventive and protective functions to ensure that applicants, in particular in respect of whom the Court has indicated an interim measure, benefit (following their release from detention) from immediate and effective protection against unlawful or irregular removal from the territory of Russia and the jurisdiction of the Russian courts."

35. The Parliamentary Assembly's Resolution 1991 (2014), entitled "Urgent need to deal with new failures to co-operate with the European Court of Human Rights", was adopted on 10 April 2014. It reads as follows:

"Parliamentary Assembly

1. Recalling its Resolution 1571 (2007) on member States' duty to co-operate with the European Court of Human Rights and Resolution 1788 (2011) "Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights", the Parliamentary Assembly stresses the importance of the right of individual application to the European Court of Human Rights ("the Court"). The protection of this right is the purpose of individual measures indicated by the Court under Rule 39 of its Rules of Court, which are designed to prevent the creation of a fait accompli.

2. The Assembly considers any disrespect of legally binding measures ordered by the Court, such as interim measures indicated under Rule 39, as a clear disregard for the European system of protection of human rights under the European Convention on Human Rights (ETS No. 5, “the Convention”).

3. The Assembly therefore calls on all States Parties to the Convention to respect interim measures indicated by the Court and to provide it with all the information and evidence it requests.

4. The Assembly strongly condemns instances of outright violations by several States Parties to the Convention (Italy, the Russian Federation, the Slovak Republic and Turkey) of the Court’s interim measures aimed at protecting applicants from extradition or deportation to countries where they would be at risk of, in particular, torture, as well as of the interim measures in relation to Russia’s military actions in Georgia (see Georgia v. Russia II).

5. The Assembly insists that international co-operation between law-enforcement bodies based on regional agreements, such as the Shanghai Cooperation Organisation, or on long-standing relations, must not violate a State Party’s binding commitments under the Convention.

6. The Assembly is therefore particularly concerned about the recent phenomenon, observed in the Russian Federation, of the temporary disappearance of applicants protected by interim measures and their subsequent reappearance in the country which had requested extradition. The clandestine methods used indicate that the authorities had to be aware of the illegality of such actions, which can be likened to the practice of “extraordinary renditions” repeatedly condemned by the Assembly.

7. The Assembly welcomes the increasing use, by the Court, of factual presumptions and the reversal of the burden of proof in dealing with refusals of States Parties to co-operate with it, which consist in their failure to provide full, frank and fair disclosure in response to requests by the Court for further information or evidence.”

36. On 5 June 2014 during the 1201st meeting of the Minister’s Deputies, the Committee of Ministers adopted the following decision:

“The Deputies

1. noted with grave concern that yet another applicant in this group of cases, Mr Yakubov, had allegedly been abducted in Moscow in April 2014 despite the repeated calls by the Committee of Ministers on the Russian authorities to take the necessary measures to prevent such incidents (see, in particular, Interim Resolution CM/ResDH(2013)200);

2. urged the Russian authorities to continue their investigation into Mr Yakubov’s disappearance in order to shed light on the circumstances of this incident, taking into account the findings of the European Court of Human Rights as regards the involvement of the State authorities in other cases, notably in the case of Savriddin Dzhurayev;

3. noted, with concern, that this incident casts doubts on the soundness of the preventive and protective arrangements set up by the Russian authorities in response to the Committee’s call in September 2013, and requested, in this context, the Russian authorities to ensure that relevant individuals are informed of the protective measures available;

> 4. further noted, with concern, that no information about any progress in the investigations into similar previous incidents in this group of cases has been provided;
>
> 5. invited the Russian authorities to provide information on the different issues raised in this group of cases in good time for their 1208th meeting (September 2014) (DH).”

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. The applicant initially complained under Article 3 of the Convention that the national authorities had failed to consider his claims that he risked ill-treatment in the event of his extradition to Uzbekistan, and that if extradition was to take place it would expose him to that risk. Further to information about the applicant’s disappearance and the Government’s reply to the Court’s request for factual information (see paragraphs 23-26 above), the Court decided to consider, from the standpoint of Article 3 of the Convention, whether the Government had complied with their obligation to take measures both before and after his disappearance to prevent him from being transferred to Uzbekistan and whether there had been a thorough and effective investigation capable of elucidating the crucial aspects of the incident and of leading to identification and punishment of those responsible for the disappearance. Article 3 of the Convention reads as follows:

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

### A. Admissibility

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

### B. Merits

39. The Court observes at the outset that the present case raises two distinct issues under Article 3 of the Convention: (1) the authorities’ alleged responsibility for the applicant’s disappearance, either through the direct involvement of State agents or through a failure to comply with their positive obligation to protect the applicant against the risk of disappearance; and (2) their alleged failure to comply with the procedural obligation to

conduct a thorough and effective investigation into his disappearance. The Court reiterates that the determination of these issues will depend upon, notably, the existence at the material time of a well-founded risk that the applicant might be subjected to ill-treatment in Uzbekistan (see *Kasymakhunov v. Russia*, no. 29604/12, § 120, 14 November 2013). The parties disagreed on the latter point. The Court will therefore start its examination by assessing whether the applicant's forcible return to Uzbekistan exposed him to such a risk. It will subsequently examine the other issues arising under Article 3 mentioned above.

### 1. *Whether the applicant's return to Uzbekistan exposed him to a real risk of treatment contrary to Article 3*

#### (a) Submissions by the parties

40. The Government submitted that the applicant's allegations that he risked ill-treatment in the event of his extradition to Uzbekistan had been duly considered by the national authorities. The Russian Prosecutor General had received the assurances from his Uzbekistani counterpart that the applicant would not be subjected to torture or inhuman or degrading treatment and that he would be given an opportunity to defend himself. The Russian authorities had no information about any extradited persons having been ill-treated or tortured in Uzbekistan. The Government pointed out that Uzbekistan was a party to international instruments prohibiting torture and ill-treatment and that the extradition was refused in respect of the offences of organising a criminal association, illegal crossing of the State border, terrorism and infringement of the constitutional order of the Republic of Uzbekistan.

41. The applicant replied that diplomatic assurances by the Uzbek authorities did not refute his arguments about high risk of ill-treatment (he referred to the Court's established case-law: *Abdulkhakov v. Russia*, no. 14743/11, §§ 149-150, 2 October 2012, and *Saadi v. Italy* [GC], no. 37201/06, §§ 147-148, ECHR 2008). The Government's claim that they had no information about anyone being ill-treated in Uzbekistan appeared to be false in the light of the recent reports by Amnesty International about the destiny of Mr Khamidkariyev who had been abducted in Russia and forcibly returned to Uzbekistan where he faced an unfair trial based on his confessions obtained by torture (see paragraph 33 above and the facts of application no. 42332/14). The mere fact of ratification of international human rights treaties by Uzbekistan does not in itself provide sufficient safeguards against ill-treatment because of the absence of any control mechanisms in relation to the country's compliance with its commitments (here the applicant referred to the Court's findings in: *Ermakov v. Russia*, no. 43165/10, § 204, 7 November 2013, and *Khodzhayev v. Russia*, no. 52466/08, § 98, 12 May 2010). The applicant deemed illogical the

Government's argument that his extradition had been refused in respect of some of the charges. What is important is that it was authorised for the offence of participation in an extremist organisation which put him in a vulnerable group systematically subject to torture. In view of the recent publications by international human rights organisations, the applicant submitted that there were no improvements in the sphere of human rights in Uzbekistan and that torture of persons suspected of prohibited religious activities had remained a widespread practice. However, the applicant's allegations of an increased risk of torture were not examined at any stage of the domestic proceedings.

**(b) The Court's assessment**

42. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles set out in, among others, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

43. In the recent cases against the Russian Federation examined under Article 3 concerning the extradition of applicants to Uzbekistan and Tajikistan, the Court identified the critical elements to be subjected to a searching scrutiny (see, among many other authorities, *Savriddin Dzhurayev v. Russia*, no. 71386/10, ECHR 2013 (extracts); *Kasymakhunov* and *Abdulkhakov*, both cited above; and *Iskandarov v. Russia*, no. 17185/05, 23 September 2010). Firstly, it has to be considered whether an applicant has presented the national authorities with substantial grounds for believing that he faced a real risk of ill-treatment in the destination country. Secondly, the Court would inquire into whether the claim has been assessed adequately by the competent national authorities discharging their procedural obligations under Article 3 of the Convention and whether their conclusions were sufficiently supported by relevant material. Lastly, having regard to all of the substantive aspects of a case and the available relevant information, the Court would assess the existence of the real risk of suffering torture or treatment incompatible with the Convention standards.

*(i) Existence of substantial grounds for believing that the applicant faced a real risk of ill-treatment*

44. At the outset, the Court reiterates that for more than a decade the United Nations agencies and international non-governmental organisations issued alarming reports concerning the situation in the criminal justice system in Uzbekistan, the use of torture and ill-treatment techniques by law enforcement agencies, severe conditions in detention facilities, systemic persecution of political opposition, and harsh treatment of certain religious groups.

45. The Court has been previously confronted with many cases concerning forced return from Russia to Uzbekistan of the persons accused

by the Uzbek authorities of criminal, religious and political activities (see most recently, *Egamberdiyev v. Russia*, no. 34742/13, 26 June 2014; *Akram Karimov v. Russia*, no. 62892/12, 28 May 2014; *Nizamov and Others v. Russia*, nos. 22636/13, 24034/13, 24334/13 and 24528/13, 7 May 2014, with further references). It has been the Court's constant position that the individuals, whose extradition was sought by the Uzbek authorities on charges of religiously or politically motivated crimes, constituted a vulnerable group, running a real risk of treatment contrary to Article 3 of the Convention in the event of their transfer to Uzbekistan.

46. In the present case, the applicant consistently emphasised throughout the domestic proceedings that he had been prosecuted for religious extremism and his membership of the above-mentioned vulnerable group. The same followed from the extradition documents which were produced by the requesting Uzbekistani authority. The international search and arrest warrant and extradition request submitted by the Uzbek authorities were clear as to their basis, namely that he was wanted for prosecution in Uzbekistan on charges of religious extremism. These allegations regarding his criminal conduct and its nature remained unchanged throughout the relevant proceedings in the Russian Federation.

47. This fact alone, taken in the context of the international reports regarding the systemic ill-treatment of those accused of religious and political crimes, was sufficient to place definitively the applicant within the group of individuals at a severe risk of ill-treatment in the event of their removal to Uzbekistan.

48. In the light of the above considerations, the Court is satisfied that the Russian authorities had before them a sufficiently corroborated claim that the applicant could face a real risk of ill-treatment if returned to Uzbekistan.

*(ii) Duty to assess adequately claims of a real risk of ill-treatment relying on sufficient relevant material*

49. The Court notes firstly that, despite the applicant advancing a substantiated claim of the risk of ill-treatment at the hands of the Uzbek law enforcement authorities, on 11 December 2013 the Prosecutor General's Office authorised his extradition to Uzbekistan without examining any of the risks to him and merely referring to an absence of "obstacles" for transfer (see paragraph 18 above). No evidence has been presented by the Government to demonstrate that the Prosecutor General's Office made any effort to evaluate the risks of extradition to the State where, according to reputable international sources, the use of torture is commonplace and defence rights are routinely circumvented. Furthermore, the Prosecutor General's unqualified reliance on the assurances provided by the Uzbek authorities was at variance with the Court's established position that in themselves these assurances are not sufficient and that the national authorities need to treat with caution the assurances against torture given by

a State where torture is endemic or persistent and whose assurances did not provide for any monitoring mechanism (see, among others, *Kasymakhunov*, cited above, § 127, and *Yuldashev v. Russia*, no. 1248/09, § 85, 8 July 2010, with further references). Accordingly, the Court is unable to conclude that the applicant's claims concerning his probable ill-treatment at the hands of the Uzbek authorities were duly considered by the prosecution authorities.

50. Secondly, the Court is of the opinion that the domestic courts have likewise failed to carry out a comprehensive and adequate assessment of the applicant's claims under Article 3 of the Convention. Thus, the Tyumen Regional Court and the Supreme Court refused to consider, in the extradition proceedings, a wide range of references to the Court's case-law, UN agencies' and non-governmental organisations' reports on the situation in Uzbekistan and appeared to attach the decisive weight to the assurances of the Uzbek authorities, taking them at face value, without engaging in an analysis of the context in which they were given or making their detailed assessment against the Convention requirements (see paragraphs 20 and 22 above). The Court finds it difficult to reconcile the authoritative directions given by the Supreme Court to the lower courts in its Ruling no. 11 of 14 June 2012 to engage in a thorough and comprehensive review of the serious claims of ill-treatment and the restricted scope of inquiry it had adopted in the present case. It needs to be recalled in this connection that even if the national courts considered the applicant's arguments substantively unconvincing, they should have dismissed these arguments only after a thorough analysis. Nothing in the material in the Court's possession gives reason to believe that the Regional or Supreme Courts, confronted with substantial grounds for believing in a real risk of ill-treatment amply supported by various international sources, honoured this claim with due and sufficient attention.

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

*(iii) Existence of a real risk of ill-treatment*

52. The Court has had occasion to deal with a number of cases raising the issue of a risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, with reference to material from various sources, that the general situation with regard to human rights in Uzbekistan is alarming, that reliable international material has demonstrated the persistence of a serious issue of ill-treatment of detainees, the practice of torture against those in police custody being described as "systematic" and "indiscriminate", and that there is no concrete evidence to demonstrate any fundamental improvement in

that area (see *Egamberdiyev; Akram Karimov*; *Kasymakhunov; Ermakov; Umirov*, all cited above; see also *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008; and *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008).

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

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

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

56. The Court therefore concludes that the enforcement of the extradition order and the applicant's return to Uzbekistan exposed him to a real risk of treatment contrary to Article 3 of the Convention.

### 2. *Whether the Russian authorities were responsible for a breach of Article 3 on account of the applicant's disappearance*

#### (a) Submissions by the parties

57. The Government submitted that, upon receipt of the Court's indication of an interim measure under Rule 39 of the Rules of Court, they had required the Tyumen Regional Prosecutor's office, the regional police department and the Border Service to abstain from any actions in relation to the applicant's transfer to Uzbekistan. After learning of the applicant's disappearance, the Investigations Committee instituted criminal proceedings under Article 126.1 of the Russian Criminal Code (abduction). The

Government submitted that the applicant was searched for by means of checking the registers of various hospitals, correctional facilities, homeless persons, unidentified bodies, and police departments. The applicant's home was searched and his toothbrush was removed for taking DNA samples. Records of the applicant's calls were obtained from mobile operators. The Government claimed that they did not have any information about the applicant's movements inside Russia or about his crossing the Russian border.

58. The applicant's representative maintained that his disappearance was the result of his abduction for the purpose of his involuntary removal to Uzbekistan. This was supported by the fact that he had been taken away from his home by State agents (the FMS officers) who had attempted to avoid eye-witnesses and prevented his lawyer from following them and that he had not contacted his lawyer or his relatives in Russia in order to inform them of his whereabouts after he had last been seen on the premises of the Tyumen FMS. Already on 11 March 2014 he had prepared a written statement, indicating that he had no intention to leave for Uzbekistan and that he feared abduction. The representative pointed out that, without passport or other travel document in his possession, the applicant could not leave of his will: he had never received an Uzbek passport, while his Russian passport had been cancelled by the Russian courts. The representative emphasised that the Government failed to provide any explanation of the applicant's disappearance or to put in place a legal mechanism capable of preventing his forcible transfer to Uzbekistan. Despite the available information that he might be sent to Uzbekistan on the Tashkent-bound flight, no measures had been taken in order to prevent it from happening or at least to check the flight and the passenger manifest. Finally, the representative submitted that the investigation conducted by the Russian authorities into the disappearance had been ineffective. Neither his counsel, nor his wife, nor the Court were informed about the progress of the investigation or given access to its materials. Some obvious steps were not taken: the FMS officers were not interviewed and the passenger lists were not examined. The search in the applicant's home and the removal of his toothbrush would be of little help in establishing his whereabouts.

#### (b) The Court's assessment

59. The Court observes that the parties' arguments raise three distinct issues, namely whether the authorities (i) complied with their obligation to protect the applicant against the risk of the treatment contrary to Article 3 of the Convention, (ii) conducted an effective investigation into the applicant's disappearance, and (iii) should be held accountable for the applicant's disappearance. The Court will examine each of these issues separately.

*(i) Whether the authorities complied with their obligation to protect the applicant against the risk of a forcible transfer to Uzbekistan*

60. The Court reiterates that the obligation on Contracting Parties, under Article 1 of the Convention, to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take reasonable steps to provide effective protection of vulnerable persons and to prevent ill-treatment of which the authorities have or ought to have knowledge. Where the authorities of a State party are informed of an individual's exposure to a real and imminent risk of torture and ill-treatment through his transfer by any person to another State, they have an obligation under the Convention to take, within the scope of their powers, such preventive operational measures as, judged reasonably, might be expected to avoid that risk (see *Kasymakhunov*, cited above, §§ 134-135, and the authorities cited therein).

61. As the Court has established in paragraph 47 above, the applicant belonged to a group of people who have been systematically subjected to ill-treatment in Uzbekistan in connection with their prosecution for religiously and politically motivated crimes. The factual pattern in the applicant's case is relevantly similar to other cases, in which the Court found that people whose extradition had been sought on similar charges had been forcibly transferred from Russia to either Uzbekistan or Tajikistan (see, among others, *Iskandarov*; *Abdulkhakov*; *Savriddin Dzhurayev*; and *Kasymakhunov*, all cited above). It is beyond any doubt that the Russian authorities were well aware – or ought to have been aware – of these incidents and, in the light of their experience and knowledge, must have reasonably considered that the applicant faced a similar risk of disappearance and irregular transfer after his release from custody on 11 March 2014. Indeed, the Russian authorities had been insistently alerted by both the Court and the Committee of Ministers to the recurrence of similar incidents of unlawful transfer from Russia to States not parties to the Convention, in particular Tajikistan and Uzbekistan. The Court refers in this connection to the five Committee of Ministers' decisions of 8 March, 6 June, 23 September, 6 December 2012 and 7 March 2013 regarding certain applicants' abductions and forced transfers to Uzbekistan and Tajikistan (their relevant parts are reproduced in *Savriddin Dzhurayev*, cited above, §§ 122-126). Each of these decisions recalled the Russian authorities that they had a duty to ensure that no similar incidents would occur in future by introducing special protective measures.

62. Having regard to the above general context and the repetitive pattern of disappearances of applicants in similar circumstances, the Court is satisfied that the Russian authorities were aware before and after the applicants' release that he faced a real risk of forcible transfer to the country where he could be subjected to torture or ill-treatment. These circumstances, coupled with the applicant's background, were worrying enough to trigger

the authorities' special vigilance and require appropriate measures of protection in response to this special situation (see *Kasymakhunov*, cited above, § 136).

63. The Government did not inform the Court of any timely preventive measure taken by competent State authorities to avert the risk of the applicant's abduction or forcible transfer. Having regard to the established pattern of disappearances, sending a letter to the regional prosecutor's office, to the regional police department and to the Border Service to inform them of the Court's indication of an interim measure, as the Government claimed they did (see paragraph 57 above), was manifestly insufficient to discharge the duty of protection which the Russian authorities owed to the applicant. It does not appear that the applicant's representative's faxed communication to the Federal Security Service, the Border Control and the Prosecutor General's Office, advising them of the applicant's disappearance and his impending transfer to Uzbekistan, elicited any prompt and robust reaction from the State authorities concerned (see paragraph 25 above). There is for instance no evidence that any warning message was conveyed to the airport authorities, alerting them to the applicant's special situation and the need to protect him from a forcible transfer to Uzbekistan (compare *Kasymakhunov*, cited above, § 138).

64. Therefore, the Court finds that the Russian authorities failed in their positive obligation to protect the applicant against the real and immediate risk of exposure to torture and ill-treatment.

*(ii) Whether the authorities conducted an effective investigation into the applicant's disappearance*

65. The Court reiterates that where the authorities of a State party are informed of an individual's exposure to a real and imminent risk of torture or ill-treatment through his forcible transfer to another State, they have an obligation under the Convention to conduct an effective investigation capable of leading to the identification and punishment of those responsible (see *Kasymakhunov*, cited above, § 144, and *Savriddin Dzhurayev*, cited above, § 190). To be effective, the investigation must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, in particular, eyewitness testimony and forensic evidence (see the authorities cited in *Kasymakhunov*, § 143).

66. The Court notes with satisfaction that a criminal investigation into the applicant's probable abduction was instituted without delay. It reiterates in this connection that institution of criminal proceedings is the best, if not the only, procedure in the Russian criminal-law system that is capable of

meeting the Convention requirements of an effective investigation (see *Savriddin Dzhurayev*, cited above, § 193, and *Lyapin v. Russia*, no. 46956/09, §§ 135-137, 24 July 2014).

67. However, it follows from the Government's submissions that, since the beginning of the investigation, little has been done to establish the applicant's whereabouts and to identify those responsible for his disappearance. The nature of the queries, which included calls to various registers of missing persons and taking samples of the applicant's DNA, indicates that the investigation adopted as the only working hypothesis that of the applicant's death or abduction by private parties. There is no information that any consideration has been given to the plausible version of his forced transfer to Uzbekistan by State agents. As a consequence, the elementary and obvious investigative steps have not been taken. The investigators did not interview the officers of the Federal Migration Service who had apprehended the applicant and later brought him to their premises. It was not established whether the applicant had been taken from his home – as his lawyer claimed – or from a mosque – as it follows from the prosecutor's reply of 20 August 2014 – and what the legal grounds for detaining the applicant had been. The investigation did not identify or interview anyone who might have witnessed his release or might have seen him later on that day. There is no indication that passenger lists for the flights to Uzbekistan were obtained and checked or that the ground staff at the airports and officers of the Border Control were shown the applicant's photograph and questioned.

68. Having regard to the deficiencies of the investigation it has identified above, the Court finds that it was neither thorough nor sufficiently comprehensive and thus fell short of the requirements of Article 3 of the Convention.

*(iii) Whether the respondent State is liable on account of the passive or active involvement of its agents in the applicant's disappearance*

69. The Court reiterates that the obligation on the authorities to take preventive operational measures to protect an individual from the risk of ill-treatment is an obligation of means and not of result. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of that obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, *mutatis mutandis*, *O'Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts)). Moreover, even where the Court has established that the obligation to take preventive measures was not properly discharged, this finding is not sufficient, on its own, to hold that the authorities were involved in, or responsible for, the applicant's

disappearance (see *Mamazhonov v. Russia*, no. 17239/13, § 203, 23 October 2014).

70. The Court observes that, since the morning of 22 July 2014 when he was taken into custody, the applicant has not been seen in Russia, Uzbekistan or anywhere else. His location has remained unknown to date. This distinguishes the present case from those cases in which the applicants' disappearance from Russia was followed by their reported reappearance in the requesting State which led the Court to conclude to the Russian authorities' apparent involvement into facilitating a cross-border transfer (see, among others, *Iskandarov*, §§ 113-115; *Adbulkhakov*, §§ 125-127; and *Savriddin Dzhurayev*, § 202, all cited above). By contrast, in the recent *Mamazhonov* case the applicant had never been seen upon his release from detention. In that case the Court found no indication of the Russian authorities' involvement in the applicant's disappearance since the Government were able to produce evidence that the applicant had left the detention facility on his own (see *Mamazhonov*, cited above, §§ 205-206).

71. By analogy with the importance of the protection against ill-treatment, the Court considers that it must subject allegations of disappearance to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. It reiterates that persons who have been taken into custody are in a vulnerable position and the authorities are under a duty to protect them (see *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII). Where an individual disappears from custody, it is incumbent on the State to account for his fate.

72. What little information is available to the Court about the circumstances surrounding the applicant's disappearance indicates that in the early morning of 22 July 2014 he was detained by officers of the Federal Migration Service, taken away in their car and brought to their official premises (see paragraphs 23 and 27 above). The applicant's next-of-kin were told later on that day that he had been released and the same was asserted by the supervising prosecutor in his reply to the applicant's counsel and by the Government in their observations. However, by contrast with the *Mamazhonov* case, there is no evidence of his release from custody. Even if the premises of the Federal Migration Service were not equipped with CCTV, as the detention facility in the *Mamazhonov* case was, it must have been possible to identify the persons who were present on the premises at the relevant time and to obtain statements from them. As the Court has found above, it does not appear that any such steps were taken.

73. The Court reiterates that the only genuine way for Russia to honour its Convention obligations in the present case was to ensure that an exhaustive investigation of the incident was carried out and to inform the Court of its results. The Government's manifest failure to comply with their obligations in that respect (see paragraphs 66-68 above) and to adduce

crucial information and evidence compels the Court to draw strong inferences in favour of the applicant's representative's position (Rule 44C § 1 of the Rules of Court). In this connection, the Court attaches great weight to the way in which the official inquiries were conducted, as the authorities did not appear to want to uncover the truth regarding the circumstances of the case (see *Savriddin Dzhurayev*, cited above, § 200, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 191-193, ECHR 2012).

74. The Court also considers that the applicant's disappearance must be seen not as an isolated occurrence but against the background of many similar incidents that have taken place in the recent years in Russia. In the leading *Savriddin Dzhurayev* case, the Court found that the repeated abductions of individuals and their ensuing transfer to the countries of destination by deliberate circumvention of due process – notably in breach of the interim measures indicated by the Court – amounted to a flagrant disregard for the rule of law and suggested that certain State agencies had developed a practice in breach of their obligations under the Russian law and the Convention (see *Savriddin Dzhurayev*, cited above, § 257). The Court called on the Russian Government to take urgent and robust action to further improve domestic remedies and to prevent their unlawful circumvention in extradition matters (ibid., § 261).

75. However, since the *Savriddin Dzhurayev* judgment was adopted on 25 April 2013 and became final on 9 September 2013, further instances of disappearances have been reported to the Court. Thus, on 3 December 2013 Mr Azimov, in whose case the Court had previously found that a forced return to Tajikistan would give rise to a violation of Article 3 of the Convention (see *Azimov v. Russia*, no. 67474/11, 18 April 2013), was taken away from the migrants accommodation centre by five individuals who introduced themselves as police officers. On 29 April 2014 Mr Yakubov, also a former applicant before the Court whose planned removal to Uzbekistan was found to be in breach of Article 3 (see *Yakubov v. Russia*, no. 7265/10, 8 November 2011), was intercepted by the police on his way to an interview at the Russian office of the UNHCR and loaded onto an unmarked van. Finally, in the night of 22 July 2014 Mr Isakov disappeared without trace; in his earlier application, the Court also held that his extradition to Uzbekistan would be in breach of Article 3 (see *Abdulazhon Isakov v. Russia*, no. 14049/08, 8 July 2010). In connection with Mr Yakubov's disappearance, the Committee of Ministers noted with concern that the incident cast doubt on the soundness of the protective arrangements set up by the Russian authorities and that there had been no information about any progress in the investigation into similar previous incidents (see paragraph 36 above).

76. Having regard to the fact that the applicant was last seen in the custody of State authorities and to the established and consistent pattern of

disappearances of individuals who were under the State protection, the Court considers that the Russian authorities bear the burden of proof to show that the applicant's disappearance was not due to the passive or active involvement of the State agents. However, they did not discharge the burden and their assertion of the applicant's release cannot be verified owing to serious shortcomings of the domestic investigation and to its restricted scope. The Court accordingly finds that the respondent State must therefore be held accountable for the applicant's disappearance.

77. There has been a violation of Article 3 of the Convention.

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

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

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

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

## III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

80. The applicant complained that his detention after 30 December 2013 had been in breach of Article 5 § 1 (f) of the Convention. He further complained under Article 5 § 4 of the Convention that he had been unable to obtain a judicial review of his detention. The relevant parts of Article 5 provide 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.

...

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. Admissibility

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

## B. Merits

### *1. Submissions by the parties*

82. The Government acknowledged that, after the initial six-month period, the applicant’s detention after 30 December 2013 had been in breach of Article 5 § 1 of the Convention. They maintained however that, in so far as the applicant had been able to take part in the detention hearings and to make oral submissions to the court, there had been no violation of Article 5 § 4.

83. The applicant maintained that his stay in custody after 30 December 2013 had been unlawful. He further submitted that the national courts should have effectively examined the substance of his arguments in order to comply with the requirements of Article 5 § 4. However, neither the Tyumen Regional Court on 13 February 2014, nor the Kalininskiy District Court on 21 February 2014 examined the gist of his complaints. As a consequence, he was released from unlawful detention only on 11 March 2014.

### *2. Compliance with Article 5 § 1 of the Convention*

84. The Court observes that the applicant’s extradition was approved in respect of the offences which were classified as medium-gravity offences under Russian law. In such circumstances, the maximum period of detention was set by law at six months (see paragraph 30 above) and it expired in the applicant’s case on 30 December 2013. His detention after that date ceased to be lawful as a matter of domestic law. The Regional Court, in its decision of 11 March 2014, and the Government in their submissions to the Court, acknowledged its unlawful character.

85. There has therefore been a violation of Article 5 § 1 of the Convention as regards the applicant’s detention after 30 December 2013.

### 3. *Compliance with Article 5 § 4 of the Convention*

86. The Court reiterates that Article 5 § 4 of the Convention entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of their deprivation of liberty. While Article 5 § 4 does not enjoin a court examining a request for release to address every argument contained in detainees' submissions, its guarantees would be deprived of their substance if that court could treat as irrelevant, or disregard, particular facts invoked by detainees which could cast doubt on the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, 19 February 2009, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II). Furthermore, 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. The Court has previously found the delays of 36, 29 and 26 days to be incompatible with Article 5 § 4 (see *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006).

87. The applicant repeatedly raised the argument that his detention had ceased to be lawful upon the expiry of an initial six-month period, both in his statement of appeal to the Regional Court and at the new detention hearing before the District Court (see paragraphs 19 and 21 above). This argument was undeniably an essential condition for determining the lawfulness of his deprivation of liberty in the period after 30 December 2013. However, both courts treated the argument as irrelevant and disregarded it in their decisions. The Regional Court first examined the merits of the applicant's grievance and ordered his release only on 11 March 2014, that is seventy days after his detention had ceased to be lawful. It follows that the scope of the judicial review was manifestly inadequate and that the proceedings were not "speedy" within the meaning of Article 5 § 4 of the Convention.

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

## IV. ALLEGED INTERFERENCE WITH RIGHT TO INDIVIDUAL APPLICATION UNDER ARTICLE 34 OF THE CONVENTION

89. The applicant's representatives alleged that his disappearance and possible unlawful removal from Russia, the failure of the Russian authorities to put in place the necessary protective measures, and a lack of an effective investigation into the matter had been in breach of the interim measure indicated by the Court under Rule 39. These claims, substantively

focusing on a violation of the right to individual application, fall to be examined under Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

90. Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

91. The Court reiterates that, by virtue of Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, which has been consistently reaffirmed as a cornerstone of the Convention system. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of that right (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 102 and 125, ECHR 2005-I, and *Abdulkhakov*, cited above, § 222). The Court does not find it necessary to once again elaborate at length on the importance of interim measures in the Convention system and their exceptional nature calling for maximal cooperation of the State, since these principles are distinctly well-established.

92. The Court finds it alarming that the Russian authorities' conduct appears to follow the same pattern, namely the failure to comply with an interim measure indicated under Rule 39 of the Rules of Court in respect of applicants who are prosecuted in Uzbekistan and Tajikistan in connection with extremist or terrorist charges (see *Kasymakhunov*, §§ 183-189, and *Savriddin Dzhurayev*, §§ 216-219, both cited above). In such circumstances, the Court will consider the previous judgments, the position of the Committee of Ministers, and the unprecedented and recurring nature of similar incidents as a decisive contextual factor in the present analysis (see *Mamazhonov*, cited above, § 215).

93. The Government, in their opinion, fully complied with their obligations under Rule 39 of the Rules of Court and Article 34 of the Convention by informing the relevant law enforcement agencies of the indicated measure and refraining from removing the applicant to Uzbekistan. The Court does not share that view.

94. As the Court has established above, the Russian authorities did not put in place the protective measures capable of preventing the applicant's disappearance and possible transfer to Uzbekistan, nor effectively investigated that possibility (see paragraphs 66-68 above). These findings, seen against the background of irregularities reoccurring in extradition cases against Russia, force the Court to conclude that at the very least the Russian authorities failed to comply with the indicated interim measure by failing to act with the necessary and required diligence (compare *Mamazhonov*, cited above, § 217).

95. Evidently, the disappearance of an applicant creates a precarious situation whereby he is deprived of the protection afforded by the Convention mechanism and prevented from participating in the proceedings before the Court, and puts into question the execution of a judgment should it become final.

96. Consequently, the Court concludes that Russia disregarded the interim measure indicated by the Court in the present case under Rule 39 of the Rules of Court and therefore failed to comply with its obligation under Article 34 of the Convention.

## V. RULE 39 OF THE RULES OF COURT

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

98. The applicant's whereabouts are still unknown but he is still liable to be extradited pursuant to the final judgments of the Russian courts in this case. Having regard to the finding that the applicant would face a serious risk of being subjected to torture or inhuman or degrading treatment in Uzbekistan, in pursuit of the interests of the proper conduct of the proceedings, the Court considers it indispensable to maintain the application of the previously indicated measure under Rule 39 of the Rules of Court until such time as the present judgment becomes final or until further order.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government considered that a finding of a violation would constitute sufficient just satisfaction.

102. Having regard to the nature of the established violations of Article 3 of the Convention and specific facts of the present case, and acting on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

103. The applicant also claimed EUR 7,600 for the costs and expenses incurred in the extradition proceedings before the domestic courts and EUR 8,000 for those incurred before the Court.

104. The Government submitted that the applicant did not produce a legal-services agreement or any payment receipts.

105. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs and expenses in the domestic proceedings and EUR 5,000 for the proceedings before the Court, plus any tax that may be chargeable, to be paid into the representatives' bank accounts.

### C. Default interest

106. 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.

## VII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

107. The relevant part of Article 46 of the Convention reads:

**Article 46. Binding force and execution of judgments**

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution ..."

108. The Court notes that the present case disclosed several violations of one of the core rights protected by Article 3 of the Convention, disregard of the interim measure indicated under Rule 39 of the Rules of Court, and interference with the right to individual petition under Article 34 of the Convention. Furthermore, the Court reiterates that the applicant's whereabouts are still unknown and there is no indication of any progress in the investigation into his disappearance.

109. Having regard to the above considerations, bearing in mind a precarious situation whereby the applicant is currently deprived of the protection afforded by the Convention mechanism and being concerned with ensuring binding force and execution of the present judgment, the Court is compelled to examine certain aspects of the present case under Article 46 of the Convention.

### A. Payment of just satisfaction

110. In view of the fact that applicant's whereabouts are still unknown, the Court is concerned with the modalities of payment of just satisfaction. The Court has already been confronted with similar situations involving applicants that happened to be unreachable after their removal from the respondent State. In some of those cases, it indicated that the respondent State must secure payment of just satisfaction by facilitating contact between the applicants, their representatives and the Committee of Ministers (see *Muminov v. Russia* (just satisfaction), no. 42502/06, § 19 and point (c) of the operative part, 4 November 2010, and *Kamaliyevy v. Russia* (just satisfaction), no. 52812/07, § 14 and point 1(c) of the operative part, 28 June 2011). In other cases, the Court ordered the awards to be held by the applicants' representatives in trust for the applicants (see *Hirsi Jamaa*, cited above, § 215, and point 12 of the operative part, ECHR 2012; *Labsi v. Slovakia*, no. 33809/08, § 155 and point 6 of the operative part, 15 May 2012; and *Savriddin Dzhurayev*, cited above, § 251 and point 6 of the operative part).

111. Turning to the present case, the Court observes that after the applicant's disappearance, there has been no contact between him and his representative before the Court or his next-of-kin. In view of this, the Court considers it appropriate that the amount awarded to him by way of just satisfaction be held in trust for him by his representative Ms Yermolayeva until such time as payment to the applicant may be enforced.

### B. Individual remedial measures in respect of the applicant

112. The Court is of the view, however, that the obligation to comply with the present judgment cannot be limited to payment of the monetary compensation awarded under Article 41, which is only designed to make reparation for such consequences of a violation that cannot otherwise be remedied (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 250, ECHR 2000-VIII).

113. The Court reiterates that the primary aim of the individual measures to be taken in response to a judgment is to achieve *restitutio in integrum*, that is, to put an end to the breach of the Convention and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

114. While it must be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State, the adoption of such individual measures that are feasible, timely, adequate and sufficient, the Court find it indispensable for the Russian Federation to vigilantly pursue the criminal investigation into the applicant's disappearance and to take all further measures within its competence in order to put an end to the violations found and make reparations for their consequences.

### C. General measures to prevent similar violations

115. In respect of general measures, the Court reiterates that in *Savriddin Dzhurayev* (cited above, §§ 256-64) it stated that decisive general measures capable of resolving the recurrent problem with similar cases must be adopted without delay, including "further improving domestic remedies in extradition and expulsion cases, ensuring the lawfulness of any State action in this area, effective protection of potential victims in line with the interim measures indicated by the Court and effective investigation into every breach of such measures or similar unlawful acts" (ibid., § 258).

116. The Court is well aware of the legal, administrative, practical and security complexities entangled in the execution of its judgments, and therefore does not find it reasonable to develop any further the approach, which had been previously adopted in *Savriddin Dzhurayev* (cited above).

117. Nevertheless, having regard to the present case the Court reiterates that in *Savriddin Dzhurayev* it approvingly mentioned "the recent significant development of the domestic jurisprudence undertaken by the Supreme Court of the Russian Federation in its Ruling no. 11 of 14 June 2012" (cited above, § 259). The Ruling was considered as the tool allowing the judiciary to avoid such failings as those criticised in that judgment and further develop emerging domestic case-law that directly applies the

Convention requirements through judicial practice. The Court therefore maintains its opinion that a genuine and rigorous application of that Ruling by all Russian courts is capable of improving domestic remedies in extradition and expulsion cases.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of exposing the applicant to a real and imminent risk of torture and ill-treatment by authorising his extradition to Uzbekistan;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the Russian authorities' responsibility for the applicant's disappearance and their failure to carry out an effective investigation into the incident;

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 on account of the applicant's detention after 30 December 2013;

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

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

8. *Decides* to continue to indicate to the Government that it is desirable in the interests of the proper conduct of the proceedings to maintain application of previously indicated measure under Rule 39 of the Rules of Court 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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be held for him in trust by his representative Ms Yermolayeva until such time as payment to the applicant may be enforced;
(ii) EUR 10,000 (ten thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, which include EUR 5,000 (five thousand euros) payable into Mr Khramov's bank account and EUR 5,000 (five thousand euros) payable into Ms Yermolayeva's bank account;

(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 21 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President