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

FIRST SECTION

CASE OF RYABIKIN v. RUSSIA

(Application no. 8320/04)

JUDGMENT

STRASBOURG

19 June 2008

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

In the case of Ryabikin 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,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 8320/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkmen national, Mr Aleksandr Ivanovich Ryabikin ("the applicant"), on 5 March 2004.

2. The applicant, who had been granted legal aid, was represented by Ms O. Tseytlina, a lawyer practising in St Petersburg. The Russian Government ("the Government") were initially represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their representative, Mrs V. Milinchuk.

3. The applicant alleged, in particular, that his extradition to Turkmenistan would entail a violation of Article 3 of the Convention, that his detention pending extradition had been unlawful and that no judicial review had been available in respect of that detention, in breach of the provisions of Article 5 §§ 1 (f) and 4 of the Convention.

4. On 9 March 2004 the President of the Chamber indicated to the respondent Government that the applicant should not be extradited to Turkmenistan until further notice (Rule 39 of the Rules of Court). On 9 April 2004 the Court granted priority to the application (Rule 41 of the Rules of Court). On 8 September 2005 the Court decided that the interim measure should be lifted.

5. By a decision of 4 April 2007 the Court declared the application partly admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1953 and currently lives in St Petersburg.

A. Proceedings in Turkmenistan

8. The applicant was born and lived in Ashkhabad, Turkmenistan. He is of Russian ethnic origin and has family members in Russia. In Turkmenistan he headed a limited liability company called Argamak, which was engaged in the construction business and trade.

9. According to the applicant, between 1997 and 1999 Argamak performed works under a government contract. The applicant submitted that certain officials from the Ministry of Finance of Turkmenistan had refused to honour their obligations under the contract and to pay for the work performed unless the applicant paid a bribe in the amount of 10,000 United States dollars (USD). The applicant further submitted that in May 2000 he had applied to the Ministry of the Interior's Department for Economic Crime and complained about two inspectors from the Ministry of Finance, S. and D. Both inspectors, according to the applicant, were of Turkmen ethnic origin. The Department for Economic Crime allegedly supplied the applicant with specially marked banknotes and S. was detained during the transfer of the money. Following a criminal investigation, the case against S. and D. was referred to a court, which after two days of hearings ordered an additional investigation. It appears that the applicant participated as a witness. The applicant, who submitted that he did not speak Turkmen, was not provided with an interpreter, although the proceedings were conducted in Turkmen. The applicant was not aware of the outcome of the criminal case.

10. After May 2000 the applicant allegedly came under pressure from the law-enforcement bodies. According to him, officers of those bodies threatened him with revenge and demanded that he change his position in the criminal case. The applicant submitted that in October and November 2000 he had been called in for questioning at the transport police department for organised crime about 25 times, that is, almost every day. He also received threats from D. and the relatives of S. Also in October and November 2000 the applicant was allegedly questioned on several occasions by the Turkmenistan State Security Committee about his economic activities and was asked to become an informant. When the applicant refused he received further threats.

11. As a result, the applicant submitted that he feared for his life and for the lives of his relatives. The applicant felt that he had become a target, in

particular because he belonged to the Russian minority, and decided to leave Turkmenistan.

B. Proceedings relating to the applicant's status in Russia

12. On 1 December 2000 the applicant applied for Russian citizenship at the Russian embassy in Ashkhabad. The applicant submitted that all the required documents had been collected and registered at the embassy and that he had received notification that his case file had been registered as no. 22850.

13. On 15 December 2000 the office of the Russian Federal Migration Service at the embassy in Turkmenistan supplied the applicant with a document entitled "Permission to Repatriate from Turkmenistan to Russia and the Granting of Migrant Status". The document was based on the bilateral treaty on resettlement.

14. On 28 December 2000 the applicant received an exit visa from Turkmenistan valid for three months. On 21 January 2001 the applicant travelled to the United Arab Emirates on a private invitation.

15. On 13 May 2001 the applicant was issued with an entry visa by the Russian embassy in the United Arab Emirates, with the purpose of entry indicated as "permanent residence".

16. On 9 June 2001 the applicant went to Moscow by plane. On 17 June 2001 he travelled to St Petersburg, where his brother lives, and from then on resided at his brother's address.

17. The applicant submitted that in June 2001 he had visited the office of the Federal Migration Service in St Petersburg, where he was advised that he should not apply for refugee status because he already had migrant status, and that he should proceed with his application for Russian citizenship.

18. On several occasions between 2001 and 2003 the applicant contacted the Russian embassy in Turkmenistan, the Presidential Commission on Citizenship Issues and the Ministry of the Interior, enquiring about the progress of his application for citizenship. He submitted that he had not received any relevant response.

19. On 9 July 2003 the applicant again applied to the St Petersburg office of the Federal Migration Service and asked in writing to be granted refugee status. On 23 September 2003 the applicant was interviewed and submitted that he feared persecution in Turkmenistan and that he was the subject of a criminal investigation. The applicant submitted all the necessary documents to the migration service, including his national passport.

20. On 24 October 2003 the St Petersburg office of the Federal Migration Service rejected the applicant's application for refugee status, and on 27 October 2003 the applicant was notified of this in writing. The letter of rejection stated that the applicant had not met the criteria for refugee

status, and that the real reason for his arrival in Russia was most probably an attempt to escape the criminal proceedings against him. The decision stated that in 2001 the applicant had obtained migrant status in the Russian embassy for himself and for his family; however, his family had continued to reside in Turkmenistan. The applicant had travelled first to the United Arab Emirates on business, and had arrived in Russia only in June 2001. Since his arrival the applicant had failed to obtain legal status in Russia and had not applied for a residence permit or registration at his place of residence. The decision further stated that the St Petersburg Regional Department of the Interior had confirmed that the applicant had been wanted by the Turkmen authorities since April 2001 and in Russia, further to a request by the Turkmen authorities, since December 2002. The letter also informed the applicant that he could appeal to a district court against the decision and that he should leave Russia if he had no other legal grounds for remaining.

21. On 24 November 2003 the applicant appealed to the Kuybyshevskiy district court of St Petersburg against the refusal of his application. On the same day the case was registered by the court and the first meeting between the parties was scheduled for 15 December 2003. At the same time, the judge requested the applicant's file from the St Petersburg office of the Federal Migration Service.

22. On 15 December 2003 the hearing was scheduled for 2 February 2004. On 2 February 2004 the judge decided that a request should be sent to Turkmenistan asking about the applicant's participation as a witness in the criminal case against S. and D. The next hearing was first scheduled for 30 March 2004 and then postponed until 10 June 2004.

23. At the same time, the applicant again contacted various bodies in relation to his application for citizenship. On 28 January 2004 the Presidential Commission on Citizenship Issues informed the applicant that his application for citizenship had been returned to the Russian embassy in Turkmenistan for further processing.

24. In January 2004 the applicant wrote to the Ministry of the Interior. He stated that he had applied for Russian citizenship in December 2000, and that consideration of such applications should take between six and twelve months. He had received no reply to his application. On 21 January 2004 the Passport and Visa Service of the Ministry of the Interior informed the applicant that his application had been forwarded to the St Petersburg Department of the Interior and that it would inform him of the results.

C. Request for extradition to Turkmenistan and the applicant's detention

25. The applicant's family – his wife, daughter, son and two grandchildren – remained in Turkmenistan. After the applicant had arrived

in Russia, his wife informed him that she had been summoned to the State Security Committee on several occasions and questioned about her husband's whereabouts. She also told him that a criminal case against him had been opened and that part of his property had been confiscated.

26. On 12 February 2004 the applicant was summoned to the Passport and Visa Service of the St Petersburg Department of the Interior to discuss "issues relating to the granting of Russian citizenship".

27. On 25 February 2004 the applicant went to the Department's premises, where he was arrested. He was told that his detention related to a criminal case in Turkmenistan.

28. On 26 February 2004 the prosecutor of the Central District of St Petersburg issued an order for the applicant's arrest on the basis of international search warrant no. 1207, issued by Turkmenistan in 2001. The order listed details of the charges brought against the applicant, which included the embezzlement of about USD 139,000 in 2000 and 2001, when the applicant had been the director of a Turkmen-US joint venture. He was charged with offences under Article 228, part 4, of the Turkmen Criminal Code. On 4 April 2001 he had been declared a wanted person in Turkmenistan, and on 26 April 2001 a prosecutor in Turkmenistan had issued an arrest warrant. The Prosecutor General of Russia had been informed of the applicant's detention. The prosecutor requested the Kuybyshevskiy district court of St Petersburg to authorise the applicant's detention.

29. On 27 February 2004 the applicant was brought before the Kuybyshevskiy district court. He was represented by a lawyer. The prosecutor requested the court to detain the applicant and stated that he had been wanted in Turkmenistan since April 2001 for an offence under Article 228, part 4, of the Turkmen Criminal Code. The Prosecutor General's Office had been informed of the applicant's arrest. The court ordered the applicant's detention pending his extradition to Turkmenistan. The court did not specify the term of his detention.

30. The applicant's lawyer appealed to the St Petersburg City Court. The motion stated that the applicant's appeal concerning his refugee status was pending before the same court. It referred to his pending application for Russian citizenship. It further stated that the applicant had been detained unlawfully, as there had been no decision by the competent prosecutor to detain him with a view to his deportation.

31. On 3 March 2004 the head of the Ashkhabad criminal police requested the Kuybyshevskiy district court to authorise the applicant's detention on charges of embezzlement on a large scale, an offence punishable under the Turkmen Criminal Code by eight to fifteen years' imprisonment. The letter stated that the question of extradition would be immediately resolved through the prosecutor generals' offices of the two countries.

32. On 3 March 2004 the applicant asked Ms Tseytlina to represent him. The applicant submitted that Ms Tseytlina had been denied access to the documents that had served as a ground for his detention, including information about the criminal proceedings in Turkmenistan and the decision of the Prosecutor General to detain him with a view to his extradition. On 9 March 2004 the lawyer submitted a written complaint to the President of the Kuybyshevskiy district court. On 11 March 2004 the lawyer was informed that she could have access to the documents in question if she submitted a written request to the judge. In reply to her written request the President of the Kuybyshevskiy district court postponed the hearing from 11 until 12 March 2004.

33. On 9 March 2004 the Office of the United Nations High Commissioner for Refugees (UNHCR) in Moscow issued a letter stating that the applicant's appeal concerning his refugee status was pending before the Kuybyshevskiy district court and that his extradition to Turkmenistan prior to determination of his appeal might be in violation of section 10 of the Refugees Act and Article 33 of the 1951 UN Convention relating to the Status of Refugees, to which Russia was a party.

34. On 9 March 2004 the European Court, under Rule 39 of the Rules of Court, requested the Russian authorities not to extradite the applicant to Turkmenistan until further notice.

35. On 12 March 2004 the St Petersburg City Court, in the presence of the applicant's lawyer, upheld the decision of 27 February 2004. The City Court noted that the applicant was on the international wanted list and that on 26 February 2004 [this should read 2001] the deputy prosecutor of Ashkhabad had ordered his arrest. In the absence of a decision by a foreign court to detain the applicant the Russian court was competent to do so at the prosecutor's request. The decision of the City Court did not specify a term for the applicant's detention.

36. On 17 March 2004 the Prosecutor General's Office received a request from Turkmenistan for the applicant's extradition. The Russian Government referred to this document but no copy was submitted to the Court. The applicant and his lawyer submitted that they had not seen the document.

37. On 24 March 2004 the Russian Government informed the Court that the applicant had been detained in accordance with Article 466 of the Code of Criminal Procedure (CCP) and that no decision to extradite him had been taken. The Government further submitted that all proceedings in Russia would be suspended until further notice from the Court.

38. On 25 May 2004 the Prosecutor General of Turkmenistan addressed the following letter to the Deputy Prosecutor General of Russia:

> "The General Prosecutor's Office of Turkmenistan presents its compliments to the Prosecutor General's Office of the Russian Federation and issues a guarantee that Aleksandr Ivanovich Ryabikin will face criminal prosecution only in respect of the

> crimes committed by him (embezzlement on a large scale) and [that he] will not be subjected to, and has never been subjected to, persecution on political, religious or ethnic grounds."

39. On 27 August 2004 the Kuybyshevskiy district court dismissed the applicant's complaint concerning his refugee status on the ground that the applicant had failed to substantiate the allegations regarding his fear of ethnic or religious-based persecution in Turkmenistan.

40. On 4 November 2004 the St Petersburg City Court upheld the decision of 27 August 2004. Both courts noted that the applicant had not submitted any specific information about his alleged persecution on ethnic or religious grounds. They concluded that his fear of being returned to Turkmenistan was based mainly on the criminal proceedings initiated against him and that he had used the refugee status procedure as a means of evading those proceedings.

41. In the meantime, on 8 September 2004, the Deputy Prosecutor General had submitted a request for supervisory review (*надзорное представление*) to the Presidium of the St Petersburg City Court. In it he challenged the procedural fairness of the decision of 12 March 2004 on the ground that the applicant's presence had not been secured.

42. On 29 September 2004 the Presidium of the City Court quashed the decision of 12 March 2004 in the supervisory review proceedings and referred it back for re-examination. On 12 October 2004 the City Court again upheld the decision of 27 February 2004 to detain the applicant. The applicant participated by video link.

D. Further proceedings to challenge the lawfulness of the applicant's detention

43. After March 2004 the applicant appealed against his detention on several occasions. Since he had been arrested in the Central Administrative District of St Petersburg, he complained to the three courts operating in the district, namely the Kuybyshevskiy, Smolninskiy and Dzerzhinskiy district courts. He also submitted appeals to the Kalininskiy district court, which has jurisdiction in respect of pre-trial detention centre IZ-47/4, where he had been detained.

44. Before the domestic courts the applicant submitted that in accordance with the Code of Criminal Procedure his detention could be authorised only for two months, and that after 27 April 2004 it had became unlawful.

45. In addition, the applicant applied on numerous occasions to various prosecutors' offices in relation to the issue of the lawfulness of his detention.

46. A summary of these proceedings is set out below.

1. Proceedings before the Kuybyshevskiy district court

47. On 3 May 2004 the applicant, and on 19 May 2004 his lawyer, submitted complaints to the Kuybyshevskiy district court, alleging that the authorisation for his detention which that court had given on 27 February 2004 had expired on 27 April 2004 and had not been extended.

48. On 26 May 2004 the Kuybyshevskiy district court informed the applicant's lawyer that the complaints had been transferred to the St Petersburg prosecutor's office.

49. The applicant's lawyer appealed against the court's actions to the St Petersburg City Court on 3 June 2004, both directly and via the district court. On the same day the Kuybyshevskiy district court informed the applicant that his complaint had been forwarded to the city prosecutor's office.

50. On 14 June 2004 the applicant's lawyer again complained to the St Petersburg City Court, challenging the Kuybyshevskiy district court's refusal to consider the complaints.

51. In reply, on 23 June 2004 the St Petersburg City Court forwarded the applicant's complaint to the city prosecutor's office.

52. On 29 June 2004 the Kuybyshevskiy district court replied to the applicant that his complaints to the City Court had been forwarded to the St Petersburg prosecutor's office, which he should contact in the future if he wished to apply to have the measure of restraint imposed on him changed.

53. On 13 July 2004 the President of the Kuybyshevskiy district court informed the applicant's lawyer that no decision had been taken by that court, and that therefore no appeals were possible.

2. Proceedings before the Smolninskiy district court

54. On 4 June 2004 the applicant complained to the Smolninskiy district court of the unlawfulness of his detention. On 15 June 2004 the authorities in the detention facility returned the complaint to the applicant, with a letter from a judge of that court stating that it had no jurisdiction to consider it.

55. On 24 June 2004 the applicant, and on 25 June his lawyer, wrote to the Smolninskiy district court, complaining of the applicant's unlawful detention and requesting it to adopt a formal decision on his complaint. On 25 June the applicant's lawyer also complained to the St Petersburg City Court.

56. On 9 July 2004 the St Petersburg City Court returned to the applicant's lawyer her complaints concerning the actions of the Kuybyshevskiy and Smolninskiy district courts without examining them, and stated that she could appeal against the Kuybyshevskiy district court's decision of 27 February 2004 by means of supervisory review.

57. On 12 July 2004 the Smolninskiy district court returned the complaints to the applicant and stated that he could not appeal against a

forwarding letter and that no decision had been taken on his complaint for lack of jurisdiction. All questions relating to extradition fell within the competence of the Prosecutor General's Office, to which he should apply.

3. Proceedings before the Dzerzhinskiy district court

58. On 2 June 2004 the applicant complained of his unlawful detention to the Dzerzhinskiy district court. On an unspecified date that court returned his complaint without examining it and stated that since no investigation was pending in respect of the applicant in the Central Administrative District of St Petersburg, it had no jurisdiction with regard to his detention. The court informed him that he should challenge the lawfulness of his detention before the Kalininskiy district court, which was responsible for the detention centre where he had been detained.

59. On 15 July 2005 the applicant appealed against that decision to the City Court through the district court. On an unspecified date the court returned the applicant's complaint and stated that since no investigation was pending in respect of him in the Central Administrative District, he should appeal against his detention to the authority responsible for his extradition.

60. On 19 July 2004 the applicant's lawyer again contacted the Dzerzhinskiy district court, requesting it to review the substance of the complaint. On 13 August 2004 the court ordered an oral hearing in the applicant's case and requested the city prosecutor's office to send it all the documents relating to his extradition and detention.

61. On 18 August 2004 the Dzerzhinskiy district court held an oral hearing in the presence of the applicant and his lawyer and refused to consider the complaint on the merits for lack of territorial jurisdiction. The court stated the following:

> "The applicant's reference to Article 109 of the CCP is unfounded because Chapter 54 of the CCP, which regulates extradition on criminal charges, does not provide for a procedure for extending a person's detention. Persons arrested under Article 466 of the CCP may remain in detention until extradited to the foreign State. The law on criminal procedure links the term of detention only to the pre-established date set by the parties for transfer of the detainee (Article 467 § 1 CCP). The law contains no reference to application of Article 109 by analogy; therefore, the obligation on the investigators to seek an extension of the detention does not apply to this category of persons. Neither the European Convention on Extradition (13 July 1957) nor the Minsk Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, as amended on 28 March 1997 (Article 62), contains any provision corresponding in meaning to Article 109 of the CCP.
>
> The court does not question the fact that Mr Ryabikin, who is being kept in detention, has the right to judicial protection as guaranteed by the Constitution of Russia. However, the court considers that he and his lawyer can exercise this right by challenging the actions of the officials concerned through civil proceedings, by submitting a complaint to a competent court at the location of the St Petersburg prosecutor's office or the Prosecutor General's Office, which is the body on which

Russian criminal procedural law confers responsibility for issues relating to extradition."

62. The applicant's lawyer appealed against this decision on 25 August 2004. She argued that the provisions of Article 109 of the CCP should apply in the applicant's case and that the courts should be competent to review the lawfulness of his detention. She stated that Russian law provided that all issues relating to application of the provisions of criminal and criminal procedural law should be resolved in the manner provided for by the CCP and not through civil proceedings.

63. On 25 November 2004 the St Petersburg City Court dismissed the appeal and upheld the decision of 18 August 2004. In addition to the conclusions of the district court, it stated that the applicant could appeal to a court against the prosecutor's actions under Article 125 of the CCP.

4. Proceedings before the Kalininskiy district court

64. On 30 April 2004 the applicant complained to the Kalininskiy district court, through the authorities in the detention facility, of the unlawfulness of his detention. On 5 May 2004 the head of the detention facility returned the complaint to the applicant, noting that the Kalininskiy district court had no jurisdiction to deal with it and that the applicant should apply to the St Petersburg City Court instead.

65. On 18 May 2004 the applicant's lawyer wrote to the head of the detention facility and stated that the latter had exceeded his powers in refusing to forward the applicant's complaint to the court. She also noted that the applicant's continued detention was unlawful and requested his release.

66. On 19 May 2004 the applicant's lawyer submitted a complaint concerning the applicant's detention to the Kalininskiy district court. On 25 May the court refused to consider the complaint in substance because no investigation was pending in respect of the applicant in Russia, and the provisions of the CCP did not therefore apply to him.

67. On 3 June 2004 the applicant's lawyer appealed against that decision to the City Court, which on 2 September quashed the order of 25 May 2004 and remitted the case to the district court.

68. On 27 October 2004 the Kalininskiy district court held a hearing in the case and requested the St Petersburg prosecutor's office to submit documents justifying the applicant's detention. Pending receipt of the documents, it adjourned consideration of the case until 23 December, and subsequently until 29 December 2004. On 29 December the hearing was adjourned until 13 January 2005, and subsequently until 16 February 2005.

69. On 16 February 2005 the Kalininskiy district court, at a public hearing in the presence of the applicant and his lawyer, reviewed the complaint concerning the unlawfulness of his detention. The court

dismissed the complaint and ruled that the case should be transferred to the Kuybyshevskiy district court.

5. Appeals to the prosecutors' offices

70. The applicant and his lawyer applied on numerous occasions to prosecutors at various levels, seeking to obtain his release.

71. On 14 April 2004 the St Petersburg prosecutor's office informed the applicant, in reply to his request to be released, that the Prosecutor General's Office was considering the request for his extradition, that he would be informed of the outcome and that there were no reasons to release him from detention.

72. On 25 May 2004 the Prosecutor General's Office of Russia wrote as follows to the applicant's lawyer:

> "[The applicant] was detained in St Petersburg in accordance with Article 61 of the [Minsk] Convention on Legal Assistance, as a person in respect of whom an international search warrant had been issued by the Turkmen law-enforcement bodies.
>
> Within 40 days the Prosecutor General of Turkmenistan submitted a request for the extradition of Mr Ryabikin. On that basis, on an application by the St Petersburg prosecutor's office, the Kuybyshevskiy district court applied the preventive measure of detention under Article 446 § 1 of the CCP.
>
> The question of extending the detention of a person detained under Article 446 § 1 of the CCP is not dealt with by Russian legislation.
>
> According to the information provided by the Representative of the Russian Federation at the European Court of Human Rights, the decision of the President of the Chamber of the European Court to apply Rule 39 of the Rules of Court concerned only the expulsion/extradition/deportation, or any other forcible transfer, of Mr Ryabikin to Turkmenistan, and no decision to release him has been taken."

73. On 8 and 21 June 2004 the St Petersburg city prosecutor's office informed the applicant's lawyer that her complaints of 12, 25 and 28 May and 7 July 2004 concerning the applicant's release were unsubstantiated, because Article 466 of the CCP did not provide for the possibility of extending the detention of persons being held with a view to extradition.

74. On 8 July 2004 the Prosecutor General's Office informed the applicant that his extradition to Turkmenistan had been stayed in view of the Court's application of Rule 39 of the Rules of Court. His allegations concerning persecution in Turkmenistan on political and ethnic grounds were under consideration. The letter concluded that there were no reasons to change the preventive measure applied to him.

75. On 26 August 2004 the Prosecutor General's Office replied to the applicant's request to release him by a letter similar to that of 25 May 2004.

76. On 31 December 2004 the Prosecutor General's Office replied to the applicant's lawyer, stating that the applicant's detention was lawful and that on 12 October 2004 the St Petersburg City Court had upheld the lawfulness

of the decision of 27 February 2004. It further stated that the applicant's complaint concerning the lawfulness of his detention had been accepted for review by the Kalininskiy district court.

6. Complaints to the head of the detention facility

77. The applicant and his lawyer also appealed directly to the head of detention facility IZ-47/4, requesting the applicant's release and stating that his detention since 27 April 2004 had been unlawful.

78. On 1 June 2004 the applicant's lawyer was informed that his continued detention was based on the court's decision of 27 February 2004, taken in accordance with Article 446 of the CCP.

79. The applicant again complained to the head of detention facility IZ 47/4 on 2 and 28 September 2004.

80. The applicant submitted that his medical condition had deteriorated while he was in detention.

81. On 17 February 2005 the head of the facility replied to the applicant's lawyer that the applicant had been diagnosed with coronary heart disease and arrhythmia, but that he had received medical treatment and did not require hospitalisation.

E. The applicant's release

82. On 9 March 2005 the Kuybyshevskiy district court accepted for review the applicant's complaint concerning the unlawfulness of his continued detention, in which he had also referred to the deterioration of his health.

83. On 14 March 2005 the Prosecutor General's Office, in response to the request by the Kuybyshevskiy district court, stated that no decision concerning the applicant's extradition to Turkmenistan had been taken and that his continued detention was lawful.

84. On 14 March 2005 the Kuybyshevskiy district court held a public hearing in the presence of the applicant and his lawyer and decided to release him. The court noted that no decision on extradition had been taken by the Prosecutor General's Office, in view of the application of Rule 39 of the Rules of Court. It further noted that the CCP did not provide for the extension or alteration of a preventive measure in respect of a person arrested further to an extradition request. The district court directly applied Article 17 of the Constitution of Russia, which guarantees rights and freedoms in accordance with internationally recognised principles and norms of international law, and Article 5 of the European Convention on Human Rights, and concluded that the applicant should be released.

85. The Prosecutor General's Office appealed against that decision, but on 14 April 2005 the St Petersburg City Court upheld it.

F. Subsequent developments

86. In their latest observations submitted in July 2007, the Government stated that on 22 April 2005 the Prosecutor General's Office of Turkmenistan had provided guarantees to its Russian counterpart to the effect that the applicant would not be subjected to torture, inhuman or degrading treatment or punishment in that country. The same letter also stated that the applicant would not be send to a third state without the consent of the Russian authorities; once the judicial proceedings were over and the applicant had served his sentence, he would be allowed to leave Turkmenistan without any hindrance. The Russian Government did not submit a copy of this letter to the Court.

87. In September 2005 the Court lifted the interim measure applied previously in respect of the applicant's extradition. At the same time it requested the Government to inform it of any new developments regarding the extradition proceedings pending against the applicant.

88. The applicant submitted that he continued to be under threat of arrest and extradition to Turkmenistan. According to him, on 5 December 2005 two plainclothes policemen had visited his brother's house in St Petersburg, looking for him. They did not produce any documents and said that the applicant should go to the City Department of the Interior.

89. On 7 December 2005 the applicant's lawyer and his brother went to the Department's offices and were informed that the interim measure had been lifted and that the applicant should report to the Department of the Interior. No documents were produced in respect of any proceedings. The officers also refused to clarify whether there had been a decision to extradite the applicant to Turkmenistan. On 8 December 2005 the applicant called the Department but again received no explanations as to the status of his extradition. He did not go there in person, fearing that he would again be arrested.

90. In January 2006 the Government informed the Court that "the Prosecutor General's Office reverted to the examination of the question of the applicant's possible extradition. Since the applicant's whereabouts are not established, the … Ministry of the Interior, acting on instructions of the Prosecutor General's Office, is taking actions in order to apprehend the applicant." In reply, the Court reminded the Government that they had been requested to submit updated information concerning the applicant's extradition. No such information has been forthcoming.

G. Conditions in Turkmenistan

91. The applicant submitted a number of reports on the situation in Turkmenistan, including documents issued by the OSCE, the European Parliament, the UN Commission on Human Rights, the US State

Department, Amnesty International, Memorial, Human Rights Watch and the International Helsinki Federation for Human Rights. These documents speak of serious and continuing human rights violations occurring in Turkmenistan. In particular, they refer to persecution of ethnic minorities including Russians, violations of the principle of a fair trial, widespread use of torture, intolerable conditions of detention and lack of access to detainees by independent bodies, lawyers and relatives.

92. In particular, the OSCE Moscow Mechanism Rapporteur's Report on Turkmenistan, issued by Prof. Emmanuel Decaux on 12 March 2003, stated:

> "Large-scale violations of all the principles of due process of law, like arbitrary detentions or show trials took place. Not only torture has been used to extract confessions, but the forced use of drugs was a means of criminalising the detainees, entailing lethal risks for them. A multiform collective repression fell on the 'enemies of the people', whereas forced displacement is announced in arid regions of the country, especially against people targeted on the ground of their ethnic origin. Even if the death penalty has been legally abolished, in practice, the survival expectancy of political detainees and displaced persons seems very low."

The Report recommended, *inter alia*:

> "Third States, and particularly the States parties to the European Convention on Human Rights, should refuse to extradite or to hand over Turkmen nationals who, in the current circumstances, are in danger of being subjected to torture or inhuman and degrading treatments. They should envisage the possibility of granting refugee status to all persons having a well-founded fear of persecution and co-operate with the UNHCR to this end."

93. On 23 October 2003 the European Parliament adopted a resolution on Turkmenistan, which stated that "the already appalling human rights situation in Turkmenistan has deteriorated dramatically recently, and there is evidence that this Central Asian state has acquired one of the worst totalitarian systems in the world". It called on the Turkmen government, among other things, to conduct impartial and thorough investigations into all allegations of torture and ill-treatment of persons held in custody, to allow the International Committee of the Red Cross access to prisoners and to ensure that independent observers were granted access to criminal trials.

94. Resolution 2003/11 of the Commission on Human Rights on the situation of human rights in Turkmenistan deplored "[t]he conduct of the Turkmen authorities with regard to the lack of fair trials of the accused, the reliance on confessional evidence which may have been extracted by torture or the threat of torture, the closed court proceedings, contrary to Article 105 of the Constitution of Turkmenistan… and the refusal to allow diplomatic missions or international observers in Ashkhabad access to the trials as observers".

95. Resolution 2004/12 of the Commission on Human Rights on the situation of human rights in Turkmenistan expressed its grave concern "at the continuing failure of the Government of Turkmenistan to respond to the

criticisms identified in the report of the Rapporteur of the Moscow Mechanism of the OSCE as regards the investigation, trial and detention procedures following the reported assassination attempt against President Niyazov in November 2002, as well as the failure of the Turkmen authorities to allow appropriate independent bodies, family members and lawyers access to those convicted, or to provide any kind of evidence to dispel rumours that some of the latter have now died in detention". The Commission also called on Turkmenistan "[t]o grant immediate access by appropriate independent bodies, including the International Committee of the Red Cross, as well as lawyers and relatives, to detained persons, especially to persons detained following the events of 25 November 2002".

96. The report of the UN Secretary-General on the situation of human rights in Turkmenistan of 3 October 2006 (A/61/489) concluded that "gross and systematic violations of human rights continued in the country". Among the main areas of concerns identified were the repression of political dissent, the situation of minorities (including ethnic non-Turkmen), the use of torture and the absence of an independent judiciary.

97. Citing human rights concerns, the European Parliament in October 2006 adopted a resolution to stop further consideration of an interim trade agreement with Turkmenistan. The International Trade Committee resolution stated that the European Union would approve an interim trade agreement with Turkmenistan only if "clear, tangible, and sustained progress on the human rights situation is achieved." It called on the Turkmen Government to release all political prisoners, allow the registration and free functioning of non-governmental organisations, permit the International Committee of the Red Cross to work freely in the country and grant United Nations human rights monitors "timely" access to Turkmenistan to monitor the situation.

98. The organisation Human Rights Watch in its 2007 World Report described Turkmenistan as "one of the world's most repressive and closed countries," where the authorities severely suppressed all forms of dissent and isolated the population from the outside world. Its human rights record in 2006 was described as "disastrous". In particular, the report mentioned discrimination against ethnic and religious minorities in many important areas of social life, resort to torture and poor prison conditions. It also noted that "the government persisted in its refusal to grant international organizations access to prisons".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 2002 Code of Criminal Procedure (CCP)

99. Articles 108 and 109 of the CCP contain provisions relating to pre-trial detention. They provide that detention can be imposed by a judge on a reasoned request by the prosecutor, or an investigator duly authorised by the prosecutor, if no other measure of restraint can be applied. The decision of the court to impose detention can be appealed against within three days to a higher court, which must consider it within three days from the day of receipt of the appeal. Article 109 lays down the following terms of pre-trial detention. The initial term of detention cannot exceed two months. If the investigation continues, it can be extended to a maximum of six months by the court on an application by the prosecutor. After that, on an application by the regional prosecutor, it can be extended up to a maximum of 12 months. In exceptional circumstances, on an application by the Prosecutor General or his deputy, pre-trial detention can be extended up to a maximum of 18 months.

100. Article 125 of the CCP provides for judicial review of decisions by investigators that are liable to infringe the constitutional rights of the participants in the proceedings or prevent a person's access to court.

101. Chapter 54 of the CCP regulates extradition on criminal charges. Articles 462 and 463 state that the decision to extradite a person further to a request from another country is taken by the Prosecutor General or his deputy. Such decision is subject to appeal to a regional court within 10 days from the date of notification of the decision to the person concerned. The complaint is reviewed at a public hearing, in the presence of the person in question, his representative and the prosecutor. The decision of the regional court can be appealed against to the Supreme Court.

102. Article 464 provides that extradition cannot take place if the person whose extradition is sought is a Russian national or if he has refugee status.

103. Article 466 contains provisions relating to the detention of a person whose extradition is sought. Detention can be authorised by the Prosecutor General or his deputy upon receipt of an extradition request. If a foreign court has authorised the person's arrest, the decision of the prosecutor does not need to be confirmed by a Russian court. The period of detention cannot exceed the normal terms of detention pending investigation laid down by the Code of Criminal Procedure for similar crimes.

B. The 1993 Minsk Convention

104. Article 5 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the 1993 Minsk

Convention), to which both Russia and Turkmenistan are parties, provides that the Parties communicate through their central, regional and other bodies. Its other relevant provisions are as follows:

Article 61: Arrest or detention before the receipt of a request for extradition

"1. The person whose extradition is sought may also be arrested before receipt of a request for extradition, if there is a related petition (*ходатайство*). The petition shall contain a reference to a detention order ... and shall indicate that a request for extradition will follow. A petition for arrest ... may be sent by post, wire, telex or fax.

2. The person may also be detained without the petition referred to in point 1 above if there are legal grounds to suspect that he has committed, in the territory of the other Contracting Party, an offence entailing extradition.

3. In case of [the person's] arrest or detention before receipt of the *request* for extradition, the other Contracting Party shall be informed immediately."

Article 61-1: Search for a person before receipt of the request for extradition

"1. The Contracting Parties shall ... search for the person before receipt of the request for extradition if there are reasons to believe that this person may be in the territory of the requested Contracting Party ...

2. A request for the search ... shall contain ... a request for the person's arrest and a promise to submit a request for his extradition.

3. A request for the search shall be accompanied by a certified copy of ... the detention order ...

4. The requesting Contracting Party shall be immediately informed about the person's arrest or about other results of the search."

Article 62: Release of the person arrested or detained

"1. A person arrested pursuant to Article 61 § 1 and Article 61-1 shall be released ... if no request for extradition is received by the requested Contracting Party within 40 days of the arrest.

2. A person arrested pursuant to Article 61 § 2 shall be released if no petition issued pursuant to Article 61 § 1 arrives within the time established by the law concerning arrest."

C. Case-law of the Constitutional Court

105. On 4 April 2006 the Constitutional Court examined an application by Mr Nasrulloyev, who claimed that since the detention of a person pending extradition was not limited in time, the resulting legal situation was incompatible with the constitutional guarantee against arbitrary detention.

The Constitutional Court declared the application inadmissible. It found that there was no ambiguity in the contested provisions because the general provisions governing measures of restraint were applicable to all forms and stages of criminal proceedings, including proceedings concerning extradition. The Constitutional Court reiterated its settled case-law to the effect that excessive or arbitrary detention, unlimited in time and without judicial review, was not compatible with the Constitution. On 11 July 2006 the Constitutional Court refused to issue a clarification of that decision, noting that it was not competent to indicate specific legal provisions regulating the procedure and time-limits for application of a custodial measure in extradition proceedings, that being within the competence of the courts of general jurisdiction.

D. Case-law of the Supreme Court

106. The Government referred in their submissions to two decisions by the Supreme Court. According to the Government, on 12 October 2005 the Presidium of the Supreme Court had stated in a case concerning extradition of an Azeri citizen that the provisions of Article 109 of the CCP were not applicable to the situation of detention pending extradition. Similarly, in the case of Mr A. concerning the latter's detention with a view to extradition to Armenia, the Criminal Division of the Supreme Court held as follows (case no. 72-005-19, 8 June 2005):

> "The term of detention of a person who is to be extradited to the place of commission of an offence... is not governed by Article 109 of the Code of Criminal Procedure. In accordance with the requirements of [the 1993 Minsk Convention], a person arrested at the request of a foreign state may be held in custody for forty days until a request for extradition has been received. Subsequent detention of the person is governed by the criminal law of the requesting party (Armenia in the instant case)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

107. The applicant submitted that by taking a decision to extradite him to Turkmenistan Russia would be in breach of Article 3 of the Convention, which provides:

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

1. Submissions of the parties

108. The applicant claimed that his extradition to Turkmenistan would be incompatible with Article 3. He stated that the authorities had failed to take into account information which indicated that there existed a real risk of torture and ethnically motivated persecution. He referred to numerous data showing that torture and ill-treatment were widespread among detainees in Turkmenistan, and that as a member of an ethnic minority he would be in a particularly vulnerable situation.

109. The Government insisted that there was no reason to expect treatment contrary to Article 3 if the applicant were to be sent to Turkmenistan. They noted, in particular, the reasoned decision of the St. Petersburg office of the Federal Migration Service of 24 October 2003, confirmed by the decisions of the competent courts, by which the applicant's application for refugee status had been declared ill-founded. The Government stressed that the applicant had been charged with a criminal offence of an economic nature (embezzlement) which was unrelated to any political or ethnic issues. He had initially participated in the investigative actions and had left Turkmenistan in 2001 without encountering any hindrance from the Turkmen authorities. Furthermore, the Government noted that his family continued to reside in Turkmenistan and that there were no grounds to believe that they had been subjected to improper treatment or discrimination. Finally, the Government referred to two letters containing assurances from the Prosecutor General's Office of Turkmenistan to the effect that the applicant would not be exposed to persecution or discrimination and would not be subjected to inhuman or cruel treatment and punishment (see paragraphs 38 and 86 above). The Government stated that they had no reason to look into the conditions of detention of the applicant in Turkmenistan, because he had not been detained there.

2. General principles

110. It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing

Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 89-91; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, Series A no. 215, p. 36, § 107; and *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 758, § 37).

111. In determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu*. The Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other, reliable and objective sources. The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion (see *Vilvarajah and Others*, cited above, p. 36, § 107). Where the applicant has not yet been expelled, the material point in time is that of the Court's consideration of the case (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, pp. 1856 and 1859, §§ 86 and 97, *Reports* 1996-V; *H.L.R. v. France*, cited aboveI, p. 758, § 37; and *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 69, ECHR 2005-I).

112. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

113. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, 5 July 2005; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani*

and Others v. Germany (dec.), no. 67679/01, 31 May 2001) and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

114. In cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the sources mentioned in the previous paragraph, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned (see, *mutatis mutandis*, *Salah Sheekh v. the Netherlands*, no. 1948/04, §§ 138-149, ECHR 2007-… (extracts), and *Saadi v. Italy* [GC], no. 37201/06, § 132, 28 February 2008).

3. Application in the present case

115. Turning to the circumstances of the present case, the Court observes that to date no decision has been taken concerning the applicant's extradition to Turkmenistan. Nevertheless, the parties do not dispute that the applicant remains under a threat of such extradition. The applicant has not disclosed his whereabouts to the authorities because he fears that a decision to extradite him to Turkmenistan could be taken and carried out at any moment. In such circumstances, the Court finds that the issue under Article 3 persists. The Court will also, in the light of the case-law cited above, take into account the present conditions in the country of destination.

116. The Court notes that the evidence from a range of objective sources summarised above demonstrates that extremely poor conditions of detention, as well as ill-treatment and torture, remain a great concern for all observers of the situation in Turkmenistan. It also notes that accurate information about the human rights situation in Turkmenistan, and in particular about places of detention, is scarce and difficult to verify, in view of the exceptionally restrictive nature of the prevailing political regime, described as "one of the world's most repressive and closed countries" and the systematic refusal of the Turkmen authorities to allow any monitoring of places of detention by international or simply non-governmental observers. Hence, the fate of even the most prominent prisoners often remains unknown even to their families (see paragraphs 91-98 above).

117. However, as the Court has noted in previous cases, the findings above attest to the general situation in the country of destination. They should be supported by specific allegations and require collaboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73). In the same context, the Court should examine whether the authorities assessed the risks of ill-treatment prior to taking the decision on extradition (ibid., §§ 67-69).

118. The Government referred to the fact that the applicant's request for refugee status had been rejected by the Russian migration authorities and then by the courts. This had been done mainly on the following grounds: the applicant had been allowed to leave Turkmenistan legally and without any hindrance; his family continued to reside safely in Turkmenistan; on arrival in Russia the applicant had not immediately applied for asylum; and the criminal proceedings in Turkmenistan were not in any way linked to his political, religious or ethnic background, but stemmed from commercial activities in which he had been engaged. The authorities had found no grounds to support the assertion that the applicant had been subjected to racially motivated persecution, and had therefore decided that he was not a refugee within the meaning of the relevant legislation. The Court does not see any basis to question these conclusions. However, it has already found on several occasions that the protection afforded by Article 3 is wider than that provided by Article 33 of the 1951 Convention relating to the Status of Refugees, on which the relevant Russian legislation is based (see, *mutatis mutandis*, *Ahmed v. Austria*, judgment of 17 December 1996, *Reports* 1996-VI, § 41).

119. The Court notes that the Government invoked assurances from the Prosecutor General of Turkmenistan to the effect that the applicant would not be subjected to ill-treatment there. However, no copy of that letter has been submitted to the Court. In any event, even accepting that such assurances were given, the Court notes that the reports cited above noted that the authorities of Turkmenistan systematically refused access by international observers to the country, and in particular to places of detention. In such circumstances the Court is bound to question the value of the assurances that the applicant would not be subjected to torture, given that there appears to be no objective means of monitoring their fulfilment. The Court also recalls its previous practice whereby it has found that diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, §§ 147-148).

120. The Court further notes that it does not appear that the Russian authorities have otherwise addressed the applicant's concerns relevant to Article 3, since the proceedings for refugee status were limited to the question whether he could claim to be a victim of persecution on one of the grounds listed in the relevant provisions of domestic and international law. In their observations the Government stated that they had no reasons to look into the conditions of detention of the applicant in Turkmenistan, because he had not been detained there. However, in view of the absolute character of Article 3, such assessment should take place prior to the decision on extradition and should take into account the relevant factors in order to

prevent the ill-treatment from occurring (see, for a recent case, *Garabayev v. Russia*, no. 38411/02, § 79, 7 June 2007, ECHR 2007-… (extracts)).

121. The main argument raised by the applicant under Article 3 is the danger of ill-treatment in detention in Turkmenistan, exacerbated by his ethnic background. The Court observes that in Turkmenistan the applicant was charged with a serious crime (embezzlement), potentially entailing a heavy prison sentence of eight to fifteen years (see paragraph 31 above), and that in 2001 a warrant was issued for his arrest. If extradited to Turkmenistan, the applicant would almost certainly be detained and runs a very real risk of spending years in prison. In view of the information cited above about the conditions of detention, incommunicado detention and the vulnerable situation of minorities, the Court finds that there are sufficient grounds for believing that he would face a real risk of being subjected to treatment in violation of Article 3 of the Convention.

122. Thus, in the particular circumstances of the present case, the Court finds that the applicant's extradition to Turkmenistan would be in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (f) OF THE CONVENTION

123. The applicant complained under Article 5 § 1 of the Convention that he had been unlawfully held in custody pending extradition. 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 against whom action is being taken with a view to ... extradition."

1. Submissions of the parties

124. The applicant argued that his detention had been unlawful because the procedure prescribed by the domestic and international legislation was not complied with. He also stressed that the proceedings had not been conducted with the requisite diligence and that his detention was therefore arbitrary.

125. In the Government's submission, the applicant's detention was duly authorised in April 2001 by a prosecutor in Turkmenistan. In Russia it was authorised by the Kuybyshevskiy district court on 27 February 2004, as confirmed on appeal by the St. Petersburg City Court. The Government noted that on 4 April 2006 the Constitutional Court had issued a decision on

a complaint similar to that of the applicant. Subsequently, on 11 July 2006, the Constitutional Court refused to issue a clarification of that decision, noting that it was not competent to indicate specific legal provisions regulating the procedure and time-limits for application of a custodial measure in extradition proceedings, that being within the competence of the courts of general jurisdiction (see paragraph 105 above). Referring to the Supreme Court's position in the case of Mr A. and in another case, for which no copy of the decision was provided, the Government insisted that Article 109 of the CCP laying down limits for pre-trial detention was not applicable to extension of the period of detention of persons held in custody with a view to extradition (see paragraph 106 above).

126. They also submitted that the applicant himself had contributed to the prolongation of his detention by lodging "unfounded applications" for refugee status in Russia and subsequently contesting the refusals before the Russian courts. Furthermore, between March 2004 and September 2005 the applicant could not be extradited, in accordance with the interim measure indicated by the Court.

2. The Court's assessment

127. 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-… (extracts)).

128. In so far as the question concerns the quality of national law governing detention pending extradition, the Court recalls that it has already faced a similar issue in the case of *Nasrulloyev v. Russia* (no. 656/06, § 77, 11 October 2007). In their arguments in the present case the Government referred to the domestic legal provisions and practice governing such detention, which the Court has already found to be inconsistent, mutually exclusive and not circumscribed by adequate safeguards against arbitrariness. In the *Nasrulloyev* judgment, the provisions of Russian law governing detention of persons with a view to extradition were found to be neither precise nor foreseeable in their application and to fall short of the "quality of law" standard required under the Convention.

129. The Court remarks that the inconsistency of the domestic law has come into the spotlight again in the present case. Throughout the applicant's detention, the Russian law-enforcement system was unable to identify the competent body responsible for authorisation of his detention, to point to the applicable legal provisions and to determine the time-limits of such detention. For example, on 26 May and 3 June 2004 the Kuybyshevskiy

district court forwarded the applicant's complaint about his illegal detention to the St. Petersburg prosecutor's office. On 25 May 2004 the Prosecutor General's Office admitted in a letter to the applicant's lawyer that the "question of extending the detention of a person detained [for the purposes of extradition] is not dealt with by the Russian legislation". On 12 July 2004 the Smolninskiy district court informed the applicant that he should contact the Prosecutor General's Office for all matters concerning his detention pending extradition. On 18 August 2004 the Dzerzhinskiy district court expressed the view that the provisions of the CCP were inapplicable in the applicant's case, and advised him to appeal the actions of the officials concerned in civil proceedings (see paragraphs 47-61 above). On 16 February 2005 the Kalininskiy district court ruled that the case should be transferred to the Kuybyshevskiy district court. Finally, on 14 March 2005 the Kuybyshevskiy district court found that no provisions existed in the Russian legislation governing the extension of detention of persons in the applicant's situation. He was released with direct reference to Article 5 of the Convention (see paragraph 84 above).

130. In such circumstances the Court does not find any reasons to deviate from the conclusions reached in the *Nasrulloyev* judgment and confirms that the relevant domestic legislation failed to protect the applicant from arbitrariness. His detention cannot therefore be considered "lawful" within the meaning of Article 5 § 1 (f).

131. Furthermore, it should be recalled that any deprivation of liberty is justified under Article 5 § 1 (f) only for as long as deportation proceedings are in progress. If the proceedings are not executed with due diligence, the detention will cease to be permissible under that provision (see *Chahal*, cited above, § 113; *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 19, § 48; and also *Kolompar v. Belgium*, judgment of 24 September 1992, Series A no. 235-C, p. 55, § 36).

132. The Court notes that in the present case the applicant remained in detention between 25 February 2004 and 14 March 2005, that is, for twelve months and eighteen days. As the Government admitted in their observations and as has been stated on several occasions by the domestic authorities, the proceedings relating to his extradition were "suspended" for most of that period. While the Government referred to the interim measure indicated by the Court under Rule 39 of the Rules of Court, this argument cannot be employed as a justification for the indefinite detention of persons without resolving their legal status. In the present case it does not appear that the applicant's detention was in fact justified by the pending extradition proceedings, in the absence of any such decision taken to date. This finding is exacerbated by the Court's conclusion above in relation to Article 3 that no proper evaluation of the applicant's allegations under Article 3 has taken place in the meantime (see, *a contrario*, *Chahal*, cited above, § 117). The

Court therefore finds that the proceedings concerning the applicant's detention were not carried out with the requisite diligence.

133. There has therefore been a violation of Article 5 § 1 (f) of the Convention on account of the unlawful nature of the applicant's detention and the absence of the requisite diligence in the conduct of the proceedings.

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

134. The applicant complained that he had not been able to obtain effective judicial review of his detention under Article 5 § 4, which 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."

1. Submissions of the parties

135. The applicant questioned the availability of judicial review in respect of his detention pending extradition. He submitted that the Russian legislation had no mechanisms for such review, as the courts had refused for over one year to consider his complaints, alleging that they had no jurisdiction to do so. He had finally been released with direct reference to Article 5 of the Convention, but not to any provisions of domestic law.

136. The Government stressed that the applicant's detention had been subject to review by the courts and that on 14 March 2005 the Kuybyshevskiy district court of St. Petersburg had ordered his release, referring directly to the European Convention. The court noted the absence of legal grounds in the domestic legislation which could allow the extension or alteration of measures of restraint in relation to persons detained with a view to extradition. The Government therefore argued that there had been no breach of the applicant's right to judicial review of the lawfulness of his detention.

2. The Court's assessment

137. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which

it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII (extracts)).

138. Turning to the present case, the Court observes that the protracted refusal of the domestic courts to review the complaint on the merits and their eventual reliance on the Convention but not on any domestic instrument suggest that the remedy referred to by the Government was not available. That approach undermined the applicant's ability to seek judicial review of the lawfulness of his detention, as demonstrated by the applicant's futile attempts to obtain such review between March 2004 and March 2005. It is further to be noted that the applicant's detention was finally found to be unlawful in March 2005 by the same Kuybyshevskiy district court, which in 2004 had informed the applicant on several occasions that it was not competent to review the complaint in question. Such a situation clearly cannot be considered consistent with the standards of a certain, accessible and effective judicial remedy listed above.

139. The Court also notes that the applicant's situation with regard to judicial review is similar to that of the applicant in the case of *Nasrulloyev* (see *Nasrulloyev*, cited above, §§ 88-89), where it was established that the applicant had no formal status under national criminal law because there was no criminal case against him in Russia and he could not therefore have the lawfulness of his detention reviewed by a court.

140. It follows that there has been a violation of Article 5 § 4 of the Convention on account of the unavailability of a judicial remedy by which to review the lawfulness of the applicant's detention.

141. The applicant also alleged certain procedural irregularities in the court proceedings relating to the review of his detention; however, in view of its conclusions above the Court does not find it necessary to examine these complaints made under Article 5 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

142. 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

143. The applicant did not claim pecuniary damage. As to non-pecuniary damage, he submitted that the danger of being submitted to torture in

detention in Turkmenistan, his unlawful detention and the prolonged inability to have the lawfulness of his detention examined had caused him feelings of anguish, distress and anxiety for which the sole finding of a violation would not be sufficient compensation. He left the determination of the exact amount of compensation to the Court's discretion.

144. The Government considered that, should the Court find a violation of the Convention, the amount awarded should not exceed the sums awarded in other similar cases. They referred to the case of *Kalashnikov v. Russia*, where the non-pecuniary award constituted 5,000 euros (EUR) (see *Kalashnikov v. Russia*, no. 47095/99, § 143, ECHR 2002-VI).

145. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

146. The applicant claimed reimbursement of EUR 11,750 and 2,441 pounds sterling (GBP) for costs and expenses incurred in the proceedings before domestic authorities and before this Court. He stated that he had been represented by the lawyer O. Tseytlina, who had been assisted by lawyers from the Human Rights Centre Memorial, based in Moscow and in London.

147. In support of his claims the applicant submitted a copy of his agreement with Ms Tseytlina dated 31 March 2004, as well as a copy of an additional agreement on legal aid dated 28 December 2004 naming Ms Tseytlina and three lawyers from Memorial, one of them based in Moscow and two in London. The latter agreement set the costs of representation at EUR 100 per hour for Ms Tseytlina's work, EUR 50 per hour for the Memorial lawyer based in Moscow and GBP 100 per hour for the two lawyers based in London. The applicant thus claimed EUR 8,000 for 80 hours' work by Mrs. Tseytlina, EUR 3,750 for 75 hours' work by the Moscow-based lawyer and GBP 700 for seven hours' work by the two London-based lawyers. In addition, the applicant claimed GBP 1,581 in translation costs, as certified by invoices, and GBP 70 for office and stationery costs.

148. The Government questioned the reasonableness and justification of the expenses claimed.

149. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Nielsen and Johnson v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). It is apparent from the material submitted that the applicant incurred legal costs and expenses in connection with the proceedings relating to determination of his refugee status and

while trying to obtain judicial review of his detention pending extradition. The Court also notes that the case was relatively complex; however, it doubts that it required legal work in the amount claimed by the applicant, especially in view of the applicant's limited submissions after the case had been declared admissible. Having regard to the materials in its possession, the Court awards the applicant EUR 9,000 in costs and expenses, less the EUR 701 received by way of legal aid from the Council of Europe.

C. Default interest

150. 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. *Holds* that the applicant's extradition to Turkmenistan would be in violation of Article 3 of the Convention;

2. *Holds* that there has been a violation of Article 5§ 1 (f) of the Convention;

3. *Holds* that there has been a violation of Article 5§ 4 of the Convention on account of the absence of judicial review of the applicant's detention;

4. *Holds* that there is no need to examine the applicant's other complaints under Article 5§ 4;

5. *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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 8,299 (eight thousand two hundred and ninety-nine euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President