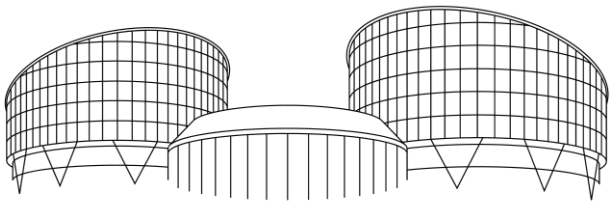

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BAKOYEV v. RUSSIA

(Application no. 30225/11)

JUDGMENT

STRASBOURG

5 February 2013

FINAL

05/05/2013

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

In the case of Bakoyev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 30225/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbekistani national, Mr Bafokul Bozorovich Bakoyev ("the applicant"), on 3 May 2011.

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

3. The applicant alleged, in his initial application form, that, if extradited to Kyrgyzstan, he would be subjected to ill-treatment and would not receive a fair trial.

4. On 18 May 2011 the President of the First Section, acting upon a request of 16 May 2011 by the applicant, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Kyrgyzstan until further notice and granting priority treatment to the application.

5. On 24 June 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. On 14 December 2011 the applicant informed the Court that the Russian authorities had cancelled the order for his extradition to Kyrgyzstan and taken a decision to extradite him to Uzbekistan. He complained that in the event of his extradition to Uzbekistan he would also face the risk of ill-treatment and suffer a flagrant denial of a fair trial. The applicant further

challenged the lawfulness of his detention pending extradition. He asked for the application of Rule 39.

7. On 16 December 2011 the President of the First Section decided to indicate to the Government, under Rule 39, that the applicant should not be extradited to Uzbekistan until further notice.

8. On 20 December 2011 questions were put to the Government under Articles 3 and 6 of the Convention regarding the applicant's upcoming extradition to Uzbekistan.

9. On 16 March 2012 the applicant's complaint under Article 5 § 1 was additionally communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant, an Uzbekistani national of Uzbek ethnic origin, was born in 1953 and currently lives in Moscow.

11. Between 1953 and 2002 the applicant lived in Uzbekistan. From 2002 to 2008 he lived in Kyrgyzstan. He moved back to Uzbekistan in 2008 and lived there until 2010.

12. According to the applicant, he is not a member of any political or religious organisations.

13. On 30 May 2010 the applicant left Tashkent, Uzbekistan, and arrived in Moscow on a business trip.

A. Criminal proceedings against the applicant in Kyrgyzstan

14. Meanwhile, on 6 March 2009 the Osh City Prosecutor's Office of Kyrgyzstan opened criminal proceedings against the applicant under Article 166 § 3 (2) of the Criminal Code of Kyrgyzstan (large-scale fraud).

15. On 20 March 2009 the statement of charges against the applicant was issued.

16. On 27 March 2009 the Osh City Court of Kyrgyzstan decided that the applicant should be remanded in custody.

17. On 28 March 2009 the applicant's name was put on a cross-border wanted list.

B. Criminal proceedings against the applicant in Uzbekistan

18. On 13 July 2010 the chief investigator of the investigation department of the Gidzhuvanskiy District Department of the Interior, in the Bukhara Region, Uzbekistan, opened criminal proceedings against the

applicant under Article 168 § 3 (a) of the Criminal Code of Uzbekistan for fraud.

19. On 13 September 2010, charges were brought against the applicant. On the same date the applicant's name was put on a cross-border wanted list.

20. On 14 September 2010 the Gidzhuvanskiy District Court remanded the applicant in custody.

C. The applicant's arrest in Russia and proceedings with a view to his extradition

1. Proceedings with a view to the applicant's extradition to Kyrgyzstan

21. On 3 June 2010 the applicant was arrested by the police in Moscow as a person wanted by the Kyrgyzstani authorities, and placed in remand prison IZ-77/4.

22. On 4 June 2010 the Kuzminskiy Inter-District Prosecutor of Moscow ordered the applicant's placement in custody with a view to extradition.

23. On 29 June and 20 July 2010 the Kuzminskiy Inter-District Prosecutor of Moscow interviewed the applicant. The applicant submitted that he was a national of Uzbekistan and that he frequently went to Russia on business. According to him, he had not applied for Russian citizenship, political asylum or refugee status. The applicant also stated that he was unaware that the Kyrgyzstani authorities were searching for him and confirmed that he would appear before the investigator as he had nothing to fear. The applicant added that, if extradited to Kyrgyzstan, he would not consider his criminal prosecution to be politically or religiously motivated.

24. On 12 July 2010 the Prosecutor General's Office of Kyrgyzstan sent the Russian Prosecutor General's Office a request for the applicant's extradition to Kyrgyzstan. The request contained assurances that the applicant would not be expelled or extradited to a third State without the consent of the Russian authorities, that the applicant was being prosecuted for an ordinary criminal offence devoid of any political character or discrimination on any ground, that he would be prosecuted only for the offence for which he was being extradited and that he would be able to freely leave Kyrgyzstan after he had stood trial and served a sentence.

25. On 2 August 2010 the Prosecutor General's Office of Kyrgyzstan submitted to its Russian counterpart certified copies of the decisions to initiate criminal proceedings against the applicant, to bring criminal charges against him, and to put him on the cross-border wanted list, as well as the court order to place him in custody, and an extract from the Criminal Code of Kyrgyzstan.

26. On an unspecified date the Russian Prosecutor General's Office made enquiries to the Russian Ministry of Foreign Affairs on the issue of

extradition to Kyrgyzstan. It appears that the request concerned several persons, all of whom, except the applicant, were nationals of Kyrgyzstan. On 25 October 2010 the Ministry of Foreign Affairs replied as follows:

> "... When taking the ultimate decision on the extradition of nationals of Kyrgyzstan, it is necessary to take into account the difficult internal political situation which has emerged in Kyrgyzstan at the present time, as well as the aggravation of inter-ethnic tension, which gives rise to the possibility of biased examination of cases against citizens of this country not belonging to the titular ethnic group.
>
> In particular, the Ministry of Foreign Affairs has information concerning serious breaches in a number of court proceedings against Kyrgyz nationals of Uzbek origin; cases of intimidation of witnesses and assaults on lawyers are not infrequent.
>
> ...
>
> The Ministry of Foreign Affairs has no information which prevents the following nationals of Kyrgyzstan [list of names, including the name of the applicant] from being extradited."

27. On 28 December 2010 the Deputy Prosecutor General of Kyrgyzstan provided additional assurances to his Russian counterpart, stating, *inter alia*, that the request for the applicant's extradition had no connection with the events in Bishkek in April 2010[1] and in Osh in June 2010[2]; that the applicant would not be subjected to any form of discrimination on any ground, including his nationality, that he would be provided with every opportunity to defend himself, including legal aid, and that he would not be subjected to any form of ill-treatment.

28. On 18 January 2011 the Deputy Prosecutor General of Russia approved the request by the Prosecutor General's Office of Kyrgyzstan for the applicant's extradition. The decision noted that the acts of which the applicant was accused were punishable under the Russian Criminal Code with a penalty exceeding one year's imprisonment, that the prosecution was not time-barred, that the applicant was a national of Uzbekistan, that he had not acquired Russian nationality, and that his extradition was not in breach of international agreements or domestic law.

29. The applicant appealed against the extradition order to the Moscow City Court. He alleged that, in view of the unstable political situation in Kyrgyzstan and ethnic unrest between the Kyrgyz majority and the Uzbek minority, the decision in his case entailed serious risks to life and limb.

30. On 25 February 2011 the Moscow City Court rejected the applicant's appeal. It held that the extradition order of 18 January 2011, having been based on a sufficient review of the evidence relating to extradition, had been lawful and justified. The City Court further found no reasons to doubt that the diplomatic assurances of the Prosecutor General's Office of Kyrgyzstan would be observed. It dismissed as objectively

[1] Revolution.
[2] Massacre and subsequent exodus of Kyrgyzstan-based Uzbeks.

unfounded the applicant's argument about the risk of his being subjected to torture, humiliation and arbitrary prosecution upon his extradition to Kyrgyzstan.

31. On 4 May 2011 the Supreme Court of Russia upheld that decision on appeal.

2. Annulment of the decision on the applicant's extradition to Kyrgyzstan and proceedings with a view to his extradition to Uzbekistan

32. In the meantime, on 18 April 2011 the Deputy Prosecutor General of Uzbekistan sent his Russian counterpart a request for the applicant's extradition to Uzbekistan. The request was based on the charges brought against the applicant under Article 168 § 3 (a) of the Criminal Code of Uzbekistan and contained assurances that he would not be extradited to a third country without the consent of the Russian authorities, that no criminal proceedings would be initiated and that he would not be tried or punished for an offence which was not the subject of the extradition request and would be able to freely leave Uzbekistan once the court proceedings had terminated and the punishment had been served. The request was further accompanied by certified copies of the decisions to initiate criminal proceedings against the applicant and to bring criminal charges against him, the court order of 14 September 2010 to place him in custody (see paragraph 20 above), an extract from the Criminal Code of Uzbekistan and a certificate confirming that the applicant was a national of Uzbekistan. This request was received by the Russian authorities on 28 April 2011.

33. On 2 June 2011 the Kuzminskiy Inter-District Prosecutor of Moscow interviewed the applicant. The applicant submitted that he was a national of Uzbekistan, that he had left Uzbekistan for Kyrgyzstan in 2002 on business and that in 2008 he had returned to Uzbekistan. He further stated that his family were permanently resident in Uzbekistan. According to him, he frequently went to Russia on business. On the most recent occasion, the applicant had arrived in Russia on 20 May 2010 on a business trip. He had not applied for Russian citizenship or refugee status, and had not been subjected to persecution on political grounds in Uzbekistan. The applicant also stated that he was unaware that the Uzbekistani authorities were searching for him and gave assurances that he would appear before the investigator as he had nothing to fear.

34. On 2 September 2011 the Deputy Prosecutor General of Russia annulled the decision of 18 January 2011 to extradite the applicant to Kyrgyzstan. The decision read as follows:

> "In connection with the decision of the President of the [First] Section of the European Court of Human Rights on the application of Rule 39 of the Rules of Court in the case of *Bakoyev v. Russia* (application no. 30225/11), the Representative of the Russian Federation at the European Court of Human Rights – Deputy Minister of

> Justice of the Russian Federation G.O. Matyushkin – submitted information to the Prosecutor General's Office of the Russian Federation on the suspension of any measures relating [the applicant's] surrender (extradition), deportation or other forcible removal to Kyrgyzstan until further notice.
>
> To date the European Court has not discontinued the application of Rule 39, and therefore [the applicant] cannot be surrendered to the law-enforcement bodies of the Republic of Kyrgyzstan.
>
> By a decision of the Kuzminskiy Inter-District Prosecutor of Moscow of 2 June 2011 [the applicant] was released from custody because of the expiry of the statutory maximum period for [his] detention on remand.
>
> At present the Prosecutor General's Office of the Russian Federation has received a request from the Prosecutor General's Office of the Republic of Uzbekistan for [the applicant's] extradition to Uzbekistan on charges of fraud under Article 168 § 3 (a) of the Criminal Code of Uzbekistan.
>
> Taking into account the decision of the European Court of Human Rights to halt [the applicant's] extradition to the Republic of Kyrgyzstan, as well as the fact that [the applicant] is a national of Uzbekistan, the request for [the applicant's] extradition to Uzbekistan should be granted and the decision on [his] extradition to Kyrgyzstan should be annulled."

35. On the same day the Deputy Prosecutor General of Russia took a decision to extradite the applicant to Uzbekistan. The decision noted that the acts of which the applicant was accused were punishable under Article 159 § 3 of the Russian Criminal Code by a penalty exceeding one year's imprisonment, that the prosecution was not time-barred, that the applicant was a national of Uzbekistan, that he had not acquired Russian nationality, and that his extradition was not in breach of international agreements or domestic law.

36. The applicant's lawyer lodged an appeal against the extradition order of 2 September 2011. He argued that, if extradited, the applicant would run the risk of being subjected to inhuman treatment and torture, because of the existence of a widespread practice of mass and flagrant human rights violations in Uzbekistan.

37. On an unspecified date in October 2011 the Deputy Prosecutor General of Uzbekistan submitted to the Russian authorities additional assurances to the effect that the applicant would not be persecuted on political, racial or religious grounds, that he would not be subjected to torture, violence or other inhuman or degrading treatment, that his criminal prosecution would be carried out in strict compliance with the law and that he would be provided with every facility to defend himself, including legal aid.

38. On 19 October 2011 the Moscow City Court dismissed the applicant's appeal against the extradition order. Regarding the alleged risk of ill-treatment in the event of extradition, the court held as follows:

"[The applicant's and his lawyer's] arguments that in the event of [the applicant's] extradition to Uzbekistan [the latter] would be subjected to torture and inhuman or degrading treatment are unsubstantiated.

In particular, the references ... to the instances of human rights violations in the Republic of Uzbekistan are of a general, unspecified nature and have no connection to [the applicant].

Furthermore, the examples put forward by [the applicant's representative] from material issued by international human rights organisations and publications in the press concerning human rights violations in Uzbekistan concerned a certain category of persons: human rights activists, religious believers, refugees and those seeking asylum who were persecuted in Uzbekistan for their religious convictions, membership of Islamic parties and movements banned in Uzbekistan, and for their criticism of the Government's policies; this cannot apply to [the applicant] since [he] is charged with having committed criminal offences of a different legal nature, liability for which is provided for in Article 168 § 3 (a) of the Criminal Code of Uzbekistan, and does not belong to [any] of the above-mentioned categories of persons.

The court also takes into consideration [the fact] that none of the organisations mentioned by [the applicant's representative] has given a single example to show that any of the persons previously extradited from Russia to Uzbekistan had been subjected to torture.

[The applicant's and his lawyer's] arguments are further disproved by [the applicant's] statements [during the interviews of 29 June and 20 July 2010 and 2 June 2011] whereby [he] indicated that the reason for his departure from Uzbekistan had been to deal with business matters in the Russian Federation and denied any persecution [in Uzbekistan] on political grounds or having applied for political asylum and citizenship in the Russian Federation. [The applicant] further indicated that he had been living in Uzbekistan since his birth; that he was unaware of being searched for by law-enforcement bodies of the Republic of Uzbekistan; and that he was prepared to appear before the investigator as he had nothing to fear. He did not mention any instances of having been subjected to [ill-treatment] in the Republic of Uzbekistan, nor did he express any fears in that regard.

The accuracy of the records of [the above interviews] was repeatedly certified by [the applicant's] signature.

[The applicant] for the first time expressed his fears [of being subjected to ill-treatment in the event of his extradition to Uzbekistan] in the present complaint to the court, after his arrest in Moscow and the decision of the Deputy Prosecutor General of the Russian Federation on his extradition to Uzbekistan, and this, in the court's opinion, represents an attempt to avoid [criminal prosecution in Uzbekistan].

The court also takes into consideration the fact that despite concerns expressed [by the applicant in relation to the alleged risk of being subjected to ill-treatment in the event of his extradition] [he] has never renounced his Uzbekistani citizenship, that his family and all his relatives reside in Uzbekistan, and that after his arrival in Russia [the applicant] freely moved about within Russian territory, [yet] did not apply for refugee status or political or temporary asylum in connection with his [alleged] persecution in the Republic of Uzbekistan.

...

> Therefore, [the applicant's and his lawyer's arguments] ... are of a hypothetical nature and reflect only their personal opinion, which is disproved by the documents relating to the checks carried out by the Federal Migration Service and the Prosecutor General's Office of the Russian Federation prior to the decision on [the applicant's] extradition, and by the information communicated by [the applicant] himself.
>
> Under these circumstances the court does not have any strong reasons to believe that after his extradition to the Republic of Uzbekistan [the applicant] would be subjected to any treatment that would be unlawful from the point of view of international law. ..."

39. The applicant's lawyer lodged an appeal against the decision of 19 October 2011, arguing, *inter alia*, that the Moscow City Court had failed to take into consideration the contents of international materials attesting to the existence of a regular practice of mass and flagrant violations of human rights in Uzbekistan which was not limited to human rights activists, religious believers, refugees and asylum-seekers.

40. On 19 December 2011 the Supreme Court of Russia upheld the decision of 19 October 2011. It found that the Moscow City Court had reached a reasoned conclusion that there were no grounds preventing the applicant's extradition to Uzbekistan. It further held that there was no reason to believe that the applicant would run the risk of being subjected to ill-treatment in the event of his extradition to Uzbekistan; that the applicant was a national of Uzbekistan; that he did not have Russian citizenship; that he had not acquired refugee status and had never been persecuted on political or religious grounds in the requesting country; that he resided in Russia without being registered as resident there; and that the criminal prosecution regarding the charges brought against him was not time-barred.

D. Decisions concerning the applicant's detention

1. The applicant's detention with a view to his extradition to Kyrgyzstan

41. On 3 June 2010 the applicant was arrested in Moscow (see paragraph 21 above).

42. On 4 June 2010, on the basis of the provisions of Article 61 § 1 of the Minsk Convention and Article 108 of the Russian Code of Criminal Procedure, the Kuzminskiy Inter-District Prosecutor of Moscow ordered the applicant's detention pending receipt of an extradition request from the Kyrgyzstani authorities.

43. On 8 July 2010 the Kuzminskiy Inter-District Prosecutor of Moscow ordered the applicant's detention until 3 August 2010 pending receipt of an extradition request from the Kyrgyzstani authorities.

44. On 3 August and 2 December 2010 the Kuzminskiy District Court of Moscow extended the applicant's detention until 3 December 2010 and 3 June 2011 respectively.

45. On 2 June 2011 the Kuzminskiy Inter-District Prosecutor ordered the applicant's release from custody as the statutory maximum period for his detention with a view to extradition to Kyrgyzstan had ended.

2. The applicant's detention with a view to his extradition to Uzbekistan

46. On the same day, however, the Kuzminskiy Inter-District Prosecutor, with reference to the extradition request of 18 April 2011 from the Uzbekistani authorities (see paragraph 32 above), to a detention order of the Gizhduvanskiy District Court of Uzbekistan of 14 September 2010 (see paragraph 20 above) and to Article 466 § 2 of the Russian Code of Criminal Procedure, took a fresh decision to remand the applicant in custody pending his extradition to Uzbekistan.

47. On 28 June 2011 the Kuzminskiy District Court of Moscow dismissed an appeal by the applicant against that decision, holding that it was lawful and justified. On 12 August 2011 the Moscow City Court quashed the decision of 28 June 2011 on appeal and remitted the matter to the lower court for a fresh examination.

48. Following a fresh examination, on 30 August 2011 the Kuzminskiy District Court held that the decision of 2 June 2011 to remand the applicant in custody had been unlawful and unjustified. On the same day the Kuzminskiy District Court refused a request by the prosecutor for the extension of the custodial measure. On 19 September 2011 the Moscow City Court upheld the decision of 30 August 2011 on appeal.

49. In a separate set of proceedings, on 29 July 2011 the Kuzminskiy District Court extended the applicant's detention until 2 December 2011, with reference to Article 109 of the Russian Code of Criminal Procedure. The court noted that the applicant was charged in Uzbekistan with a serious offence punishable by more than one year's imprisonment under Russian law, that he had absconded from the Uzbekistani authorities and that he had no permanent residence in Russia. Therefore, in the court's view, the applicant's continued detention was necessary to secure his extradition to Uzbekistan, as he might flee from the law-enforcement authorities if released.

50. On 24 August 2011 the Moscow City Court quashed the decision of 29 July 2011 on appeal and remitted the matter to a different bench for fresh consideration. The court further ordered that the custodial measure be maintained until 31 August 2011.

51. On 31 August 2011 the acting Kuzminskiy Inter-District Prosecutor ordered the applicant's release, pursuant to the court order of 30 August 2011 (see paragraph 48 above).

52. In the applicant's submission, once informed of the prosecutor's decision of 31 August 2011, he was immediately detained as a suspect under Article 91 of the Russian Code of Criminal Procedure and placed in a

temporary detention facility until 2 September 2011. According to the Government, on 31 August 2011 the applicant was released and remained at liberty until 2 September 2011.

53. On 2 September 2011 the acting Kuzminskiy Inter-District Prosecutor, with reference to Article 466 § 2 of the Russian Code of Criminal Procedure, took a decision to remand the applicant in custody on the basis of the detention order of the Gizhduvanskiy District Court of Uzbekistan of 14 September 2010.

54. On 31 October 2011 the Kuzminskiy District Court extended the applicant's detention until 6 March 2012. The Moscow City Court upheld that decision on appeal on 7 December 2011.

55. On 22 February 2012 the Kuzminskiy District Court extended the applicant's detention until 2 June 2012. The applicant appealed against that detention order. The results of the examination of his appeal have not been made available to the Court by either party to the proceedings.

56. On 1 June 2012 the acting Kuzminskiy Inter-District Prosecutor, in view of the expiry of the statutory maximum period for the applicant's detention as provided for by Article 109 of the Russian Code of Criminal Procedure, took a decision to release the applicant on an undertaking not to leave his place of residence.

E. Refugee proceedings

57. In the meantime, on 11 February 2011 the applicant had lodged a request with the Russian Federal Migration Service ("the FMS") for refugee status. He submitted that in the event of his extradition to Kyrgyzstan he, as an ethnic Uzbek, would run a real risk of prosecution on the ground of his nationality.

58. On 4 May 2011 his application was rejected by the Moscow Department of the FMS. The FMS noted, in particular, that after his entry to Russia on 30 May 2010, the applicant, a national of Uzbekistan, had been arrested by the police on 3 June 2010 as a person wanted by the Kyrgyzstani authorities for having committed a crime under Article 166 § 3 of the Criminal Code of Kyrgyzstan, which corresponded to Article 159 § 4 of the Russian Criminal Code (large-scale fraud). The FMS took note of the fact that the applicant had not applied for refugee status until 11 February 2011. The FMS then examined the political and legal developments in Kyrgyzstan in recent years. It noted that the applicant had not denied the charges brought against him by the Kyrgyzstani authorities, that he had not participated in any inter-ethnic clashes between the Kyrgyz majority and the Uzbek minority in the city of Osh in 2010, and that he had not put forward any evidence of being persecuted by persons belonging to the Kyrgyz majority. The FMS concluded, therefore, that the applicant had left Kyrgyzstan and was unwilling to return there as he wished to avoid criminal

prosecution for the crime with which he had been charged, for which reason he was not eligible for refugee status.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

59. Article 21 of the Constitution provides:

> "2. No one shall be subjected to torture, violence or other severe or humiliating treatment or punishment."

60. Article 22 reads as follows:

> "1. Everyone shall have the right to liberty and security.
>
> 2. Arrest, detention and remanding in custody shall be allowed only on the basis of a court order. A person may not be detained for more than forty-eight hours prior to such an order."

61. Article 62 provides:

> "3. Foreign nationals and stateless persons shall enjoy in the Russian Federation the rights and bear the obligations of citizens of the Russian Federation, except for cases envisaged by federal law or the international agreements to which the Russian Federation is a party."

62. Article 63 reads as follows:

> "2. In the Russian Federation it shall not be allowed to extradite to other States those people who are persecuted for political convictions, as well as for actions (or inaction) not recognised as a crime in the Russian Federation. The extradition of people accused of a crime, and also the handing over of convicted persons to serve sentences in other States, shall be carried out on the basis of federal law or the international agreements to which the Russian Federation is a party."

B. The Criminal Code of the Russian Federation

63. The Russian Criminal Code provides that foreign nationals and stateless persons residing in Russia who have committed a crime outside its borders can be extradited to a State seeking their extradition with a view to criminal prosecution or the execution of a sentence (Article 13 § 2).

C. The Code of Criminal Procedure of the Russian Federation

64. The term "court" is defined by the Code of Criminal Procedure as "any court of general jurisdiction which examines a criminal case on the merits and delivers decisions provided for by this Code" (Article 5 § 48). The term "judge" is defined as "an official empowered to administer justice" (Article 5 § 54).

65. Chapter 12 of the Code ("Arrest of a suspect") provides that an investigating authority, an investigator or a prosecutor has the right to arrest a person suspected of having committed a criminal offence which is punishable by imprisonment if that person has been caught committing a crime or immediately after having committed a crime; if victims or eyewitnesses have identified that person as the perpetrator of a criminal offence; or if obvious traces or signs of a criminal offence have been discovered on that person or his or her clothes, or with the person or in his or her house. If there are other circumstances giving grounds to suspect a person of having committed a crime, that person may be arrested if he or she has attempted to hide, or does not have a permanent residence, or if the person's identity has not been established, or if the investigator has submitted to the court a request for the application of a custodial measure in respect of that person (Article 91).

66. Article 92 sets out the procedure for the arrest of a suspect. The detention record must be drawn up within three hours of the time the suspect is brought to the investigating authorities or the prosecutor. The detention record must include the date, time, place, grounds and reasons for the arrest. It should be signed by the suspect and the person who made the arrest. Within twelve hours of the time of the arrest the investigator must notify the prosecutor of it in writing. The suspect must be interviewed in accordance with the questioning procedure and a lawyer must be provided to him or her at his or her request. Before the questioning the suspect has the right to a confidential two-hour meeting with a lawyer.

67. Chapter 13 ("Preventive measures") governs the use of preventive measures (*меры пресечения*) while criminal proceedings are pending. Such measures include placement in custody. Custody may be ordered by a court on an application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be used (Article 108 §§ 1 and 3). An application for detention should be examined by a judge of a district court or a military court of a corresponding level in the presence of the person concerned (Article 108 § 4).

68. A judge's decision on detention is amenable to appeal before a higher court within three days after its delivery (Article 108 § 11). The appeal court must determine the appeal within three days of its receipt (Article 108 § 11).

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

70. If the grounds serving as the basis for a preventive measure have changed, the preventive measure must be cancelled or amended. A decision to cancel or amend a preventive measure may be taken by an investigator, a prosecutor or a court (Article 110).

71. A preventive measure may be applied with a view to ensuring a person's extradition in compliance with the procedure established under Article 466 of the CCrP (Article 97 § 2).

72. Chapter 16 ("Complaints about acts and decisions by courts and officials involved in criminal proceedings") provides for the judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of the parties to criminal proceedings (Article 125 § 1). The competent court is the court with territorial jurisdiction over the location at which the preliminary investigation is conducted (ibid.).

73. Chapter 54 of the Code of Criminal Procedure ("Extradition for criminal prosecution or execution of sentence") regulates extradition procedures (Articles 460-468).

74. The Russian Federation can extradite a foreign national or a stateless person to a foreign State on the basis of either a treaty or the reciprocity principle to stand trial or serve a sentence for a crime punishable under Russian legislation and the laws of the requesting State. An extradition on the basis of the reciprocity principle implies that the requesting State assures the Russian authorities that under similar circumstances it would grant a request by Russia for extradition (Article 462 §§ 1 and 2).

75. Extradition can take place where (i) the actions in question are punishable by more than one year's imprisonment or a more severe sentence; (ii) the requested individual has been sentenced to six months' imprisonment or a more severe punishment; and (iii) the requesting State guarantees that the individual in question would be prosecuted only for the crime mentioned in the extradition request, that upon completion of the criminal proceedings and the sentence he or she would be able to leave the territory of the requesting State freely and that he or she would not be expelled or extradited to a third State without the permission of the Russian authorities (Article 462 § 3).

76. The Russian Prosecutor General or his or her deputy decides upon the extradition request (Article 462 § 4). The decision by the Russian Prosecutor General or his or her deputy may be appealed against before a regional court within ten days of receipt of the notification of that decision (Article 463 § 1). In that case the extradition order should not be enforced until a final judgment is delivered (Article 462 § 6). If several foreign States request a person's extradition the decision on which of the requests should be granted is taken by the Prosecutor General of the Russian Federation or his or her deputy. The requested person should be informed of the relevant decision in writing within twenty-four hours (Article 462 § 7).

77. The regional court, sitting as a bench of three judges, verifies the lawfulness and well-foundedness of the extradition decision within one month of the receipt of the appeal, in a public hearing in the presence of a prosecutor, the person whose extradition is sought and the latter's legal counsel (Article 463 § 4). Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in the applicable international and domestic law (Article 463 § 6). The court decides either to declare the extradition decision unlawful and to quash it or to dismiss the appeal (Article 463 § 7). The regional court's decision can be appealed against before the Russian Supreme Court within seven days of its delivery (Article 463 § 9).

78. Article 464 § 1 lists the conditions under which extradition cannot be authorised. Thus, the extradition of the following should be denied: a Russian citizen (Article 464 § 1 (1)) or a person who has been granted asylum in Russia (Article 464 § 1 (2)); a person in respect of whom a conviction has become effective or criminal proceedings have been terminated in Russia in connection with the same act for which he or she has been prosecuted in the requesting State (Article 464 § 1 (3)); a person in respect of whom criminal proceedings cannot be instituted or a conviction cannot become effective in view of the expiry of the statute of limitations or under another valid ground in Russian law (Article 464 § 1 (4)); or a person in respect of whom extradition has been blocked by a Russian court in accordance with the legislation and international treaties of the Russian Federation (Article 464 § 1 (5)). Finally, extradition should be refused if the act that serves as the basis for the extradition request does not constitute a criminal offence under the Russian Criminal Code (Article 464 § 1 (6)).

79. On receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to the person whose extradition is sought. The measure must be applied in accordance with the established procedure (Article 466 § 1).

80. If a request for extradition is accompanied by an arrest warrant issued by a foreign court, a prosecutor may impose house arrest on the individual concerned or place him or her in detention "without seeking confirmation of the validity of that order from a Russian court" (Article 466 § 2).

D. Relevant case-law of the Constitutional Court and the Supreme Court of Russia

81. On 4 April 2006 the Constitutional Court of Russia ("the Constitutional Court") examined an application by a Mr N., who had submitted that the lack of any limitation in time on the detention of a person

pending extradition was incompatible with the constitutional guarantee against arbitrary detention. In its decision no. 101-O of the same date, the Constitutional Court declared the application inadmissible. In its view, the absence of any specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, which in the case of Russia was the procedure laid down in the Code of Criminal Procedure. Such procedure comprised, in particular, Article 466 § 1 of the Code and the norms in Chapter 13 of the Code ("Preventive measures"), which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests. Accordingly, Article 466 § 1 of the Code did not allow the authorities to apply a custodial measure without complying with the procedure established in the Code or the time-limits fixed in the Code. The Constitutional Court also refused to analyse Article 466 § 2, finding that it had not been applied in Mr N.'s case.

82. On 1 March 2007 the Constitutional Court in its decision no.-333-O-P held that Articles 61 and 62 of the Minsk Convention, governing a person's detention pending the receipt of an extradition request, did not determine the body or official competent to order such detention, the procedure to be followed or any time-limits. In accordance with Article 8 of the Minsk Convention, the applicable procedures and time-limits were to be established by domestic legal provisions.

83. The Constitutional Court further reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person could not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention, in that it required a court to examine whether the arrest was lawful and justified. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure and within the time-limits established in Chapter 13 of the Code.

84. In decision no. 245-O-O of 20 March 2008, the Constitutional Court of the Russian Federation noted that it had reiterated on several occasions (rulings nos. 14-P, 4-P, 417-O and 330-O of 13 June 1996, 22 March 2005, 4 December 2003 and 12 July 2005 respectively) that a court, when taking a

decision under Articles 100, 108, 109 and 255 of the Russian Code of Criminal Procedure on the placement of an individual into detention or on the extension of a period of an individual's detention, was under an obligation, *inter alia*, to calculate and specify a time-limit for such detention.

85. On 19 March 2009 the Constitutional Court by its decision no.-383-O-O dismissed as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the Code of Criminal Procedure, stating that this provision "does not establish time-limits for custodial detention and does not establish the grounds and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign State to detain an accused. Therefore the disputed norm cannot be considered to violate the constitutional rights of [the claimant] ..."

86. On 29 October 2009 the Plenary Session of the Russian Supreme Court ("the Supreme Court") adopted Directive Decision no. 22, stating that, pursuant to Article 466 § 1 of the Code of Criminal Procedure, only a court could order the placement in custody of a person in respect of whom an extradition check was pending when the authorities of the country requesting extradition had not submitted a court decision to place him or her in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the Code of Criminal Procedure and following a prosecutor's request to that end. In deciding to remand a person in custody, the court had to examine whether there existed factual and legal grounds for applying the preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor, in accordance with Article 466 § 2 of the Russian Code of Criminal Procedure, was entitled to remand a person in custody without a Russian court's authorisation for a period not exceeding two months (as provided by Article 109 § 1 of the Russian Code of Criminal Procedure). In extending such a person's detention with a view to extradition the court was to apply Article 109 of the Russian Code of Criminal Procedure.

87. In its recent ruling no. 11 of 14 June 2012, the Supreme Court indicated, with reference to Article 3 of the Convention, that extradition should be refused if there were serious reasons to believe that the person might be subjected to torture or inhuman or degrading treatment in the requesting country. Extradition could also be refused if exceptional circumstances disclosed that it might entail a danger to the person's life and health on account of, among other things, his or her age or physical condition. The Russian authorities dealing with an extradition case should examine whether there were reasons to believe that the person concerned might be sentenced to the death penalty, subjected to ill-treatment or persecuted because of his or her race, religious beliefs, nationality, ethnic or social origin or political opinions. The courts should assess both the general

situation in the requesting country and the personal circumstances of the person whose extradition was sought. They should take into account the testimony of the person concerned and that of any witnesses, any assurances given by the requesting country, and information about the country provided by the Ministry of Foreign Affairs, by competent United Nations institutions and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

88. The Supreme Court further held that a person whose extradition was sought could be detained before the receipt of an extradition request only in cases specified in international treaties to which Russia was a party, such as Article 61 of the Minsk Convention. Such detention should be ordered and extended by a Russian court in accordance with the procedure, and within the time-limits, established by Articles 108 and 109 of the Code of Criminal Procedure. The detention order should mention the term for which the detention or its extension was ordered and the date of its expiry. If the request for extradition was not received within a month, or forty days if the requesting country was a party to the Minsk Convention, the person whose extradition was sought should be immediately released.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. The 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention")

89. In executing a request for legal assistance under the Minsk Convention, to which Russia, Kyrgyzstan and Uzbekistan are parties, the requested party applies its domestic law (Article 8 § 1).

90. Extradition for the institution of criminal proceedings can be sought with regard to a person whose acts constitute crimes under the legislation of the requesting and requested parties and are punishable by imprisonment for at least one year (Article 56 § 2).

91. A request for extradition must be accompanied by a detention order (Article 58 § 2).

92. Upon receipt of a request for extradition, measures should be taken immediately to find and arrest the person whose extradition is sought, except in cases where that person cannot be extradited (Article 60).

93. A person whose extradition is sought may be arrested before receipt of a request for extradition. In such cases a special warrant for arrest containing a reference to the detention order and indicating that a request for extradition will follow must be issued (Article 61 § 1). If the person is arrested or placed in detention before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

94. A person arrested pursuant to Article 61 § 1 of the Minsk Convention must be released if the requesting country fails to submit an official request for extradition with all the requisite supporting documents within forty days of the date of placement in custody (Article 62 § 1).

B. Reports on the human-rights situation in Kyrgyzstan and Uzbekistan

95. For relevant reports on Kyrgyzstan see *Makhmudzhan Ergashev v. Russia* (no. 49747/11, §§ 30-46, 16 October 2012).

96. For relevant reports on Uzbekistan see *Shakurov v. Russia* (no. 55822/10, §§ 100-109, 5 June 2012).

THE LAW

I. ALLEGED RISK OF ILL-TREATMENT AND DENIAL OF A FAIR TRIAL

97. The applicant initially complained that if extradited to Kyrgyzstan he would run the risk of ill-treatment and would be denied a fair trial. He subsequently brought identical complaints with regard to his extradition to Uzbekistan. The applicant relied on Article 3 and Article 6 § 1 of the Convention, which in so far as relevant read as follows:

Article 3

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

Article 6 § 1

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

98. The Court observes that, while the proceedings before it were pending, the Russian law-enforcement authorities annulled the decision to extradite the applicant to Kyrgyzstan and took a new decision on his extradition to Uzbekistan. Therefore, as matters stand, the applicant no longer faces any risk of removal to Kyrgyzstan. Thus, it must be concluded that the factual and legal circumstances which were at the heart of the applicant's grievance before the Court on that account are no longer valid. Consequently, he can no longer claim to be a victim within the meaning or

Article 34 of the Convention as regards his complaints that he would be subjected to ill-treatment and would be denied a fair trial in Kyrgyzstan (see, in a similar context, *Joesoebov v. the Netherlands* (dec.), no. 44719/06, 2 November 2010; and *Afif v. the Netherlands* (dec.), no. 60915/09, 24 May 2011).

99. The Court therefore rejects this part of the application pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

100. The above findings do not prevent the applicant from lodging a new application before the Court and from making use of the available procedures, including the one under Rule 39 of the Rules of Court, in respect of any new circumstances, in compliance with the requirements of Articles 34 and 35 of the Convention (see *Dobrov v. Ukraine* (dec.), no. 42409/09, 14 June 2011).

101. In so far as the applicant complained that his extradition to Uzbekistan would expose him to a real risk of treatment prohibited by Article 3 of the Convention, the Court notes that this part of the application 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 and must, therefore, be declared admissible.

102. Lastly, as regards the applicant's complaint under Article 6 of the Convention that he would face a denial of a fair trial in the event of his extradition to Uzbekistan, the Government submitted that he had never raised that particular concern before the Russian courts and that there was no information suggesting that his fears were substantiated. The Court will leave aside the question whether the applicant exhausted domestic remedies in respect of this complaint, as it is in any event inadmissible for the following reasons.

103. The Court reiterates that an issue might exceptionally arise under Article 6 of the Convention by an expulsion or extradition decision in circumstances where the fugitive had suffered or risked suffering a flagrant denial of justice in the requesting country (see *Soering v. the United Kingdom*, 7 July 1989, § 113, Series A no. 161; *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 90-91, ECHR 2005-I; and *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 149, ECHR 2010). A flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 260, 17 January 2012). In assessing whether this test has been met, the Court considers that the same standard and burden of proof should apply as in Article 3 expulsion cases. Therefore, it is for the applicant to adduce evidence capable of proving that there are

substantial grounds for believing that, if he is removed from a Contracting State, he would be exposed to a real risk of being subjected to a flagrant denial of justice (ibid., § 261).

104. Turning to the present case, the Court observes that, as was pointed out by the Government, the applicant has never expressed his fears in this regard at domestic level, whereas in his submissions before the Court, the applicant merely referred to the risk of a denial of a fair trial in Uzbekistan without providing any further details or advancing any specific arguments in support of this complaint, let alone corroborating it with any evidence. In such circumstances, the Court finds that the applicant failed to discharge his burden of proof and that his complaint under Article 6 in this regard has not been substantiated.

105. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The parties' submissions

106. The applicant maintained his complaints.

107. The Government submitted that the applicant had failed to provide any reliable evidence to show that in the event of his extradition to Uzbekistan he would run the risk of being subjected to ill-treatment contrary to Article 3 of the Convention. Uzbekistan had sought the applicant's extradition in order to pursue criminal proceedings against him arising out of ordinary criminal charges. The applicant had not alleged that he belonged to any banned religious movement or any other vulnerable group which, according to reliable international sources, systematically endured the practice of ill-treatment in Uzbekistan. Moreover, in his explanations given to a Russian prosecutor on 29 June and 20 July 2010 and 2 June 2011 (see paragraphs 23 and 33 above) the applicant had stated that he had left Uzbekistan for Russia on business and had denied any persecution on political grounds there. He had never sought political asylum in Russia, or applied for Russian citizenship. The Government went on to note that the guarantees provided by the Prosecutor General of Uzbekistan were sufficient to protect the applicant from the risk of being subjected to treatment contrary to Article 3 of the Convention in the event of his extradition.

2. The Court's assessment

(a) General principles

108. The Court reiterates 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 of the Convention in the receiving country. The establishment of that 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 (see *Soering*, cited above, § 91).

109. In determining whether it has been shown that the applicant runs a real risk, if extradited, 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* (see *Saadi v. Italy* [GC], no. 37201/06, § 128, ECHR 2008). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports* 1996-V).

110. 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 (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

111. As regards the general situation in a particular country, the Court considers that it can attach certain importance to the information contained in recent reports from independent international human rights protection

bodies and organisations, or governmental sources (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, ECHR 2005-VI; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007).

112. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

(b) Application of the above principles to the present case

113. The Court observes that the Russian authorities ordered the applicant's extradition to Uzbekistan. The extradition order has not been enforced as a result of an indication by the Court of an interim measure under Rule 39 of the Rules of Court. The Court will therefore assess whether the applicant faces a risk of treatment contrary to Article 3 in the event of his extradition to Uzbekistan – the material date for the assessment of that risk being that of the Court's consideration of the case – taking into account the assessment made by the domestic courts.

114. As regards the general situation in the receiving country, the Court has on several occasions noted the alarming reports on the human rights situation in Uzbekistan relating to the period between 2002 and 2007 (see, for instance, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008; and *Muminov v. Russia*, no. 42502/06, § 93, 11 December 2008). In recent judgments concerning the same subject and covering the period after 2007 until recently, after having examined the latest available information, the Court has found that there was no concrete evidence to demonstrate any fundamental improvement in that area (see, among many others, *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Abdulazhon Isakov v. Russia*, no. 14049/08, § 109, 8 July 2010; *Yuldashev v. Russia*, no. 1248/09, § 93, 8 July 2010; *Sultanov v. Russia*, no. 15303/09, § 71, 4 November 2010; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; and *Rustamov v. Russia*, no. 11209/10, § 125, 3 July 2012).

115. At the same time, it has consistently emphasised that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010, and *Shakurov*, cited above, § 135). Moreover, in the case of *Elmuratov v. Russia* (no. 66317/09, § 84, 3 March 2011) the Court considered the applicant's allegations that any criminal suspect in Uzbekistan ran a risk of ill-treatment to be too general and stated

that there was no indication that the human rights situation in the requesting country was serious enough to call for a total ban on extradition to it.

116. The Court is mindful of the fact that it has on several occasions found violations of Article 3 of the Convention in cases involving extradition or deportation to Uzbekistan. However, the applicants in those cases had been mostly charged with politically and/or religiously motivated criminal offences (see *Ismoilov and Others*, cited above, § 122; *Muminov*, cited above, § 94; and *Yuldashev v. Russia*, no. 1248/09, § 84, 8 July 2010). In the case of *Garayev* (cited above, § 72) the Court also found that the applicant ran a real risk of being subjected to treatment contrary to Article 3 of the Convention, although he was wanted for an offence which was not politically motivated. In that case, however, the Court noted that the applicant's family had been either arrested or prosecuted in Uzbekistan, that their accounts of ill-treatment were mutually consistent and appeared to be credible, and that the applicant himself had previously been arrested and convicted in suspicious circumstances. It therefore considered that the applicant's description of previous ill-treatment was detailed and convincing.

117. In the present case, the Court observes that the applicant is wanted by the Uzbekistani authorities on charges of fraud. In his submissions before the Court, the applicant clearly stated that he was not a member of any political or religious organisation (see paragraph 12 above). Moreover, as was noted by the Moscow City Court in its judgment of 19 October 2011, in the proceedings pending his extradition to Uzbekistan, the applicant denied having ever been subjected to any political persecutions in that country, and did not refer to any personal experience of ill-treatment at the hands of the Uzbekistani law-enforcement authorities. Similarly, he never alleged that his family, who, according to him, resided in Uzbekistan (see paragraph 33 above), had been politically or religiously active or persecuted (see, by contrast, *Garayev*, cited above, § 72).

118. It was in his court complaint against the extradition order of 2 September 2011 that the applicant alleged for the first time that he would face a risk of ill-treatment if extradited to Uzbekistan. The Court observes in this connection that, both at the domestic level and in his submissions before the Court, the applicant only broadly referred to the risk of being ill-treated. In fact, the only argument he employed in support of this allegation was his reference to the practice of human rights violations, including torture, which was common in Uzbekistan. The applicant made no attempts, either in the domestic proceedings or before the Court, to refer to any individual circumstances and to substantiate his fears of ill-treatment in Uzbekistan.

119. Having regard to the material in its possession, the Court is further satisfied that the domestic authorities, including the courts at two levels of jurisdiction, gave proper consideration to the applicant's arguments and

dismissed them as unsubstantiated in detailed and well-reasoned decisions. There is nothing in the case file to doubt that the domestic authorities made an adequate assessment of the risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. The Court can see no reasons to depart from the domestic courts' findings in the circumstances of the present case.

120. In the light of the foregoing, the Court concludes that the applicant has not corroborated the allegations of a personal risk of ill-treatment in Uzbekistan, and thus has failed to substantiate his allegations that his extradition there would be in violation of Article 3 of the Convention.

121. Accordingly, there would be no violation of that provision in the event of the applicant's extradition to Uzbekistan.

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

122. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had been unlawful. Article 5 § 1 reads in so far as relevant as follows:

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

A. The parties' submissions

1. The applicant

123. The applicant submitted that he had been unlawfully deprived of his liberty during the entire period of his detention pending extradition, that is, between 3 June 2010 and 1 June 2012.

124. In particular, the applicant argued that his detention from 3 June 2010 until 2 June 2011 pending his extradition to Kyrgyzstan had been unlawful, given the annulment of the Russian Prosecutor General's decision to extradite him to that country.

125. The applicant further contended that the prosecutor's order of 2 June 2011 to detain him with a view to his extradition to Uzbekistan (see paragraph 46 above) could not serve as a sound legal basis for his detention, as under Article 466 § 2 of the Russian Code of Criminal Procedure a prosecutor was only entitled to detain a person with a view to extradition if an extradition request was accompanied by a detention order issued by a court of the requesting country. A copy of the decision of the

Gizhduvanskiy District Court of Uzbekistan of 14 September 2010, to which a Russian prosecutor had referred in his order of 2 June 2011, had not been duly signed by the judge who had issued that order or sealed with that court's official stamp, and therefore, in the applicant's view, could not be regarded as a valid court decision for the purposes of Article 466 § 2 of the Russian Code of Criminal Procedure. The applicant further pointed out that the prosecutor's order of 2 June 2011 had been set aside by a court decision of 30 August 2011 as unlawful and unjustified (see paragraph 48 above). Lastly, the applicant submitted that his detention pursuant to a prosecutor's order had been unlawful in any event as the Court had held in the case of *Dzhurayev v. Russia* (no. 38124/07, §§ 72-74, 17 December 2009) that only a Russian court's decision could form a proper legal basis for a person's detention pending extradition.

126. He further argued that since his initial placement in detention on the basis of the prosecutor's order of 2 June 2011 had been unlawful, all subsequent extensions of his detention by the Russian courts had been unlawful too. The applicant also submitted that Articles 108 and 109 of the Russian Code of Criminal Procedure could not be regarded as a proper legal basis for his detention pursuant to orders of Russian courts as those provisions were designed to be applicable in situations where criminal proceedings were pending; they were not suitable for extradition proceedings.

127. The applicant then insisted that once released on 31 August 2011, he had been immediately detained with reference to Article 91 of the Russian Code of Criminal Procedure in the absence of any grounds for that detention.

128. Lastly, the applicant alleged that the overall length of his detention pending extradition had been excessive, given that he had spent twelve months in detention pending his extradition to Kyrgyzstan and then another twelve months in detention pending his extradition to Uzbekistan. He argued, in particular, that although the Prosecutor General's Office of Russia had received an extradition request from the Uzbekistani authorities on 28 April 2011, no relevant checks had been carried out until 2 June 2011, the date on which the maximum possible term for the applicant's detention pending extradition to Kyrgyzstan had expired.

2. The Government

129. The Government insisted that the applicant's detention pending extradition had been lawful during its entire period, and that the domestic provisions governing detention pending extradition were sufficiently accessible and clear. They submitted that the provisions of Article 466 of the Russian Code of Criminal Procedure clearly established that a person whose extradition was sought could be detained pursuant to a Russian

prosecutor's order provided that an extradition request was accompanied by a detention order issued by a court of a requesting country.

130. Furthermore, in line with the Constitutional Court's decision of 4 April 2006 (see paragraph 81 above) and the Supreme Court's ruling of 29 October 2009 (see paragraph 86 above), Chapter 13 of the Russian Code of Criminal Procedure applied to all stages and forms of proceedings for the examination of extradition requests and, accordingly, the applicant had been able to foresee the overall duration of his detention pending extradition, since all the relevant periods were set out in Articles 108 and 109 of the Russian Code of Criminal Procedure applicable to his case. They also pointed out that, when extending his detention, the domestic courts had always clearly indicated the periods of detention in their decisions.

131. The Government further argued that the domestic authorities had conducted the extradition proceedings with due diligence and that the applicant's detention pending extradition had not been excessively long. They stressed in that connection that between 3 June 2010 and 2 June 2011 the applicant had been detained with a view to his extradition to Kyrgyzstan, whereas from 2 June 2011 until 1 June 2012 he had remained in detention pending his extradition to Uzbekistan. Each period had not exceeded twelve months – the maximum possible period of detention under Article 109 of the Russian Code of Criminal Procedure – and therefore had been lawful and in compliance with the requirements of Article 5 § 1 (f) of the Convention.

B. The Court's assessment

1. Lawfulness of the applicant's detention

(a) Admissibility

132. The Court reiterates at the outset that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

133. In the present case, the Court observes that the applicant raised his complaint under Article 5 § 1 for the first time on 14 December 2011. It further observes that after the applicant was arrested by the Russian authorities on 3 June 2010 pending his extradition to Kyrgyzstan, his detention was then prolonged on several occasions, including by a court order of 2 December 2010 which extended it until 2 June 2011. On the latter date the applicant's detention pending extradition to Kyrgyzstan came to an end upon the expiry of the statutory maximum period. Thus, in so far as the applicant's complaint concerned the formal lawfulness of his detention during the period between 3 June 2010 and 2 June 2011, the Court finds that

it was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

134. It further observes, as regards the applicant's detention pending extradition to Uzbekistan – which commenced on 2 June 2011, when the applicant's detention was ordered – that the events during the period from 31 August to 2 September 2011 are in dispute between the parties. According to the Government, on the former date the applicant had been released and he had remained at liberty until the latter date. The applicant argued that, once informed of a prosecutor's decision of 31 August 2011 to release him, he had immediately been detained as a suspect under Article 91 of the Russian Code of Criminal Procedure and placed in a temporary detention facility until 2 September 2011, when a prosecutor had ordered his detention under Article 466 § 2 pending extradition to Uzbekistan.

135. In that connection, the Court reiterates that it is for an applicant complaining of an interference with his rights under the Convention to provide *prima facie* evidence to this effect (see, among others, *Z.M. and K.P. v. Slovakia* (dec.), no. 50232/99, 18 November 2003). In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case.

136. In the present case, the applicant alleged that during the period under examination he had been kept in detention. The Court observes that the applicant never argued that he had been held in a legal vacuum. On the contrary, the applicant averred that the authorities had detained him with reference to Article 91 of the Russian Code of Criminal Procedure. The Court notes that under the relevant national legislation a formal record should be drawn up in respect of persons detained under that Article, who should sign it. Also, such persons should be questioned and a transcript of their interview should be drawn up (see paragraph 66 above). Therefore, assuming that the applicant was detained on the basis of the aforementioned legal provision, as alleged by him, he should, in principle, be in possession of copies of those documents and could have submitted them to the Court to corroborate that allegation. Moreover, the applicant submitted no documentary evidence to prove that he had made any attempts to appeal to a court against his alleged detention during the period under consideration, a possibility open to him under domestic law (see paragraph 72 above). The Court finds it important to note in this connection that, as is clear from the facts of the case, the applicant was represented by a lawyer throughout the proceedings pending his extradition to Uzbekistan, and he never alleged that he had been unable to contact that lawyer at any moment during his alleged detention between 31 August and 2 September 2011.

137. In such circumstances, leaving open the question whether the applicant exhausted domestic remedies in this regard, the Court notes the absence of any evidence capable of forming an arguable basis for his complaint on this subject. It therefore finds that this complaint has not been substantiated and must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

138. The Court further considers that, in so far as the applicant's complaint concerned the formal lawfulness of his detention pursuant to the prosecutor's orders of 2 June and 2 September 2011 and pursuant to the court orders of 29 July and 31 October 2011 and 22 February 2012, it 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

(i) General principles

139. The Court reiterates that it falls to it in the first place to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1, with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III).

140. The Court must therefore ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. Where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 does not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, it also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Nasrulloyev v. Russia*, no. 656/06, § 71, 11 October 2007, with further references).

(ii) Application in the present case

141. The Court has found admissible the applicant's complaint regarding the lawfulness of his detention pursuant to the prosecutor's orders of 2 June and 2 September 2011 and pursuant to the court orders of 29 July and 31 October 2011 and 22 February 2012. It will now address this issue.

(α) The applicant's detention from 2 June to 28 July 2011 and from 2 September to 30 October 2011

142. The Court observes that on 2 June and 2 September 2011 the Kuzminskiy Inter-District Prosecutor of Moscow remanded the applicant in custody, relying on the Uzbekistani authorities' extradition request of 18 April 2011 and the arrest warrant of 14 September 2010 issued by an Uzbekistani court. Subsequently, the applicant's detention was extended on 29 July and on 31 October 2011 by the Kuzminskiy District Court. The Court must ascertain whether the prosecutor's detention orders constituted a sufficient legal basis for the applicant's detention between 2 June and 28 July 2011 as well as between 2 September 2011 and 30 October 2011.

143. In the above connection, the Court notes that in both orders the prosecutor relied on Article 466 § 2 of the Russian Code of Criminal Procedure (see paragraph 80 above) – a provision which enabled him to place the applicant in detention without seeking confirmation of the validity of his order from a Russian court, in view of the receipt by him of a request for the applicant's extradition, accompanied by a foreign court's order to place the applicant in custody.

144. The Court doubts that the aforementioned legal provision, in itself, satisfies the "quality of law" requirements mentioned in paragraph 140 above. Indeed, the provision remains silent on the procedure to be followed when ordering or extending the detention of a person whose extradition is sought; nor does it set any time-limits for that detention.

145. The Court notes the Government's arguments that Article 466 § 2 of the Russian Code of Criminal Procedure should be interpreted in the light of the Constitutional Court's decision of 4 April 2006 (see paragraph 81 above) and the Supreme Court's ruling of 29 October 2009 (see paragraph 86 above), which made it clear that detention pending extradition was to be applied in accordance with the procedure and within the time-limits established in Chapter 13 of the Russian Code of Criminal Procedure, and, more specifically, Articles 108 and 109.

146. In this connection, the Court notes that the Constitutional Court's decision relied on by the Government contained no findings relating to situations covered by Article 466 § 2 of the Russian Code of Criminal Procedure, and that the Supreme Court's ruling of 29 October 2009 did not clarify the matter, or refer to any domestic legal provisions establishing, in particular, under which conditions and by a prosecutor of which hierarchical level and territorial affiliation the issue of detention was to be examined

after the receipt of an extradition request. Moreover, the Court has already found that Article 108 of the Russian Code of Criminal Procedure could not serve as a suitable legal basis for a prosecutor's decision to place an applicant in custody on the ground that an arrest warrant had been issued against him by a foreign court (see *Dzhurayev*, cited above, §§ 73-74, and *Elmuratov*, cited above, §§ 108-109).

147. Furthermore, it is significant that, in any event, the prosecutor's orders under examination in the present case (those of the Kuzminskiy Inter-District Prosecutor) did not refer to any domestic legal provision, be it a provision of Chapter 13 of the Russian Code of Criminal Procedure or otherwise, confirming the competence of that particular prosecutor to order the applicant's detention. Nor did the orders set any time-limit on the applicant's detention or refer to a domestic legal provision establishing such a time-limit.

148. It is true that, as pointed out by the Government, the Supreme Court's ruling of 29 October 2009 established that the detention ordered by a prosecutor in accordance with Article 466 § 2 of the Russian Code of Criminal Procedure should not exceed two months, as required by Article 109 § 1 of that Code, and that subsequently such detention should be extended in compliance with the time-limits established by this latter provision (see paragraph 86 above). However, the Court is not persuaded that the maximum time-limit provided for in Article 109 of the Russian Code of Criminal Procedure should be applied implicitly each time when an individual's placement in custody is being authorised. Indeed, the Russian Constitutional Court emphasised on several occasions that the national courts were under an obligation to set a time-limit each time they were taking decisions under, *inter alia*, Articles 108 and 109 of the Russian Code of Criminal Procedure on the placement of an individual into detention or on the extension of a period of an individual's detention (see paragraph 84 above). Although the period under examination, in itself, does not appear unreasonably long and might be justified by the need for the authorities to ensure the proper conduct of various measures in the context of an extradition check in the applicant's respect, the Court agrees with the Russian Constitutional Court that, however short a period of detention may be, it should be clearly defined in a detention order, this being an essential guarantee against arbitrariness (see, *mutatis mutandis*, *Fedorenko v. Russia*, no. 39602/05, § 50, 20 September 2011).

149. In such circumstances, the Court does not consider that the prosecutor's orders of 2 June and 2 September 2011 formed a sufficient legal basis for the applicant's detention in the periods from 2 June to 28 July 2011 and from 2 September to 30 October 2011. It therefore concludes that during these periods the applicant was kept in detention without a specific legal basis. This is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the

Convention and the rule of law (see, *mutatis mutandis*, *Yudayev v. Russia*, no. 40258/03, § 59, 15 January 2009, and *Baranowski v. Poland*, no. 28358/95, § 56, ECHR 2000-III). The deprivation of liberty to which the applicant was subjected during those periods was not circumscribed by adequate safeguards against arbitrariness. The national system failed to protect the applicant from arbitrary detention, and his detention cannot be considered "lawful" for the purposes of Article 5 § 1 (f) of the Convention.

150. Accordingly, there has been a violation of Article 5 § 1 on that account.

(β) The applicant's detention from 29 July to 31 August 2011 and from 31 October 2011 to 1 June 2012

151. In contrast to some previous cases concerning Russia (see, among others, *Dzhurayev*, cited above, § 68), the applicant's detention between 29 July and 31 August 2011 as well as between 31 October 2011 and 1 June 2012 was extended by the Russian courts. The extension orders contained time-limits that were in compliance with the requirements of Article 109 of the Russian Code of Criminal Procedure. The applicant faced serious charges in Uzbekistan in connection with offences which were also punishable under Russian criminal law by a term of imprisonment exceeding one year, on the basis of which his detention was extended in accordance with Article 109 § 2 of the Russian Code of Criminal Procedure.

152. It is true that the first-instance court decision of 29 July 2011, by which the applicant's detention was extended until 2 December 2011, was then quashed on appeal. However, the Court reiterates in this connection that the mere fact that the order was set aside on appeal did not in itself affect the lawfulness of the detention in the preceding period. For the assessment of compliance with Article 5 § 1 of the Convention a basic distinction has to be made between *ex facie* invalid detention orders – for example, given by a court acting in excess of jurisdiction or where the interested party did not have proper notice of the hearing – and detention orders which are *prima facie* valid and effective unless and until they have been overturned by a higher court (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 129, ECHR 2005-X).

153. It has not been alleged that on 29 July 2011 the Kuzminskiy District Court of Moscow acted in excess of its jurisdiction, or in bad faith, or that it neglected to apply the relevant legislation correctly. Furthermore, the applicant's detention on the basis of that court order cannot be said to have been arbitrary as the court gave certain grounds justifying his continued detention pending extradition and fixed a time-limit for the detention (see paragraph 49 above). The fact that certain flaws in the procedure were found on appeal does not in itself mean that the detention on the basis of the court order of 29 July 2011 was unlawful (see *Khudoyorov*, cited above, § 132).

154. Overall, the Court notes that the applicant did not put forward any serious argument either before the domestic courts or before it prompting the Court to consider that his detention during the periods under examination was in breach of the lawfulness requirement in Article 5 § 1 of the Convention. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, including rules of a procedural nature. No evidence has been submitted to the Court to indicate that there were any failures by the domestic courts in this respect or that the applicant's detention during the periods under examination was not in compliance with the procedure and time-limits established under domestic law.

155. The Court finds therefore that there has been no violation of Article 5 § 1 as regards the lawfulness of the applicant's detention from 29 July until 31 August 2011 and from 31 October 2011 until 1 June 2012.

2. Length of the applicant's detention with a view to extradition

(a) Admissibility

156. The Court observes at the outset that it is common ground between the parties that from 3 June 2010 until 31 August 2011 and from 2 September 2011 until 1 June 2012 the applicant was detained as a person "against whom action [was] being taken with a view to deportation and extradition" and that Article 5 § 1 (f) is therefore applicable in the present case.

157. It further reiterates that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent that person's committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national law or the Convention (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal*, cited above, § 112). Deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008).

158. Turning to the present case, the Court notes that, despite the fact that the applicant's release was ordered on 2 June 2011, upon the expiry of the statutory maximum period of his detention with a view to extradition to Kyrgyzstan, the applicant remained in custody on the basis of a prosecutor's

decision of the same date ordering his detention pending extradition to Uzbekistan (see paragraph 46 above). The Court, however, is not convinced that the applicant's detention between 3 June 2010, when he was detained pending extradition to Kyrgyzstan, and 31 August 2011, when, according to the Government, he was released for the first time in the proceedings pending his extradition to Uzbekistan, constituted a continuing situation for the purposes of the assessment of its length, in so far as the issue of due diligence under Article 5 § 1 (f) is concerned.

159. In this connection, the Court reiterates that from 3 June 2010 until 2 June 2011 the applicant was detained with a view to extradition to Kyrgyzstan, whereas between 2 June 2011 and 1 June 2012 – excluding the period between 31 August and 2 September 2011 – he remained in custody pending extradition to Uzbekistan. It is thus clear that the applicant was detained in the context of two separate sets of extradition proceedings. Thus, in order to establish whether the Russian authorities complied with the requirements of Article 5 § 1 (f) as regards the length of the applicant's detention with a view to extradition, the Court considers it reasonable to assess their conduct in respect of each set of extradition proceedings separately. Indeed, it cannot be ruled out in a situation such as the one in the present case that the authorities might display due diligence in one set of extradition proceedings, whilst remaining totally passive in another set of proceedings; this may lead the Court to reach different findings as to their compliance with Article 5 § 1 (f) in respect of the periods of detention in issue, even if such periods, being consecutive, form, on the face of it, one uninterrupted period of detention.

160. In the light of the foregoing, the Court finds that the applicant's complaint under Article 5 § 1 (f), in so far as it concerned the length of his detention with a view to extradition to Kyrgyzstan, which ended on 2 June 2011, was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

161. It further considers that the applicant's complaint concerning the length of his detention pending extradition to Uzbekistan it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

162. The Court has found it established that the applicant remained in custody with a view to his extradition to Uzbekistan from 2 June until 31 August 2011 and from 2 September 2011 until 1 June 2012. The Court has been unable to establish, in the absence of any evidence, that the applicant also remained in detention between 31 August and 2 September 2011. However, even assuming that the applicant was kept in detention

uninterruptedly from 2 June 2011 until 1 June 2012, that is, for twelve months, this period does not appear excessive for the following reasons.

163. The Court observes first of all that between 2 June 2011, when the applicant was detained pending his extradition to Uzbekistan, and 19 December 2011, when his appeal against the extradition order was rejected by a court in the final instance, the extradition proceedings were pending. During that period the applicant was interviewed (see paragraph 33 above), additional diplomatic assurances were submitted by the Uzbekistani authorities (see paragraph 37 above), the Prosecutor General's Office of Russia issued an extradition order in respect of the applicant (see paragraph 35 above), and the latter had it reviewed by the Russian courts at two levels of jurisdiction (see paragraphs 36 and 38-40 above).

164. The Court further notes that, as stated above, on 19 December 2011 the lawfulness of the extradition order was confirmed on appeal. Although the domestic extradition proceedings were thereby terminated, the applicant further remained in custody for more than five months, until 1 June 2012. During this time the Government refrained from extraditing him in compliance with the interim measure indicated by the Court under Rule 39 of the Rules of Court. The question thus arises as to whether the extradition proceedings remained in progress between 19 December 2011 and 1 June 2012, such as to justify the applicant's detention with a view to extradition during that period.

165. In accordance with the Court's well-established case-law, this latter period of the applicant's detention should be distinguished from the earlier period (see *Chahal*, cited above, § 114; *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011; and *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012). As a result of the application of the interim measure, the respondent Government could not remove the applicant to Uzbekistan without being in breach of their obligation under Article 34 of the Convention. During that time the extradition proceedings, although temporarily suspended pursuant to the request made by the Court, were nevertheless in progress for the purpose of Article 5 § 1 (f) (see, for similar reasoning, *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 73 and 74, ECHR 2007-II; *Al Hanchi*, cited above, § 51; and *Al Husin*, cited above, § 69). The Court has previously found that the fact that expulsion or extradition proceedings are provisionally suspended as a result of the application of an interim measure does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, and on condition that the detention is not unreasonably prolonged (see *Keshmiri v. Turkey (no. 2)*, no. 22426/10, § 34, 17 January 2012, and *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011).

166. The Court observes that, after the extradition order in respect of the applicant became enforceable, he remained in detention for over five

months. That period does not appear to be unreasonably prolonged (see, in respect of detention pending deportation on the grounds of a threat to national security, *Al Hanchi* and *Al Husin*, both cited above, where the periods of detention following the indication of an interim measure by the Court, which lasted one year and ten months and slightly more than eleven months respectively, were also found to be compatible with Article 5 § 1 (f); and, by contrast, *Keshmiri*, cited above, § 34, where the applicant's detention continued for more than one year and nine months after the interim measure was applied, during which time no steps were taken to find alternative solutions). It is also relevant that, as the Court has established in paragraph 154 above, the applicant's detention during that period was in compliance with the procedure and time-limits established under domestic law and that after the expiry of the maximum detention period permitted under Russian law the applicant was immediately released (see, for similar reasoning, *Gebremedhin*, cited above, §§ 74 and 75).

167. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the present case and the overall length of the applicant's detention was not excessive.

168. Accordingly, there has been no violation of Article 5 § 1 (f) of the Convention on that account.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

169. Lastly, the applicant complained under Article 6 § 1 of the Convention that the proceedings by which he sought to challenge the lawfulness of the extradition order had been unfair.

170. The Court reiterates that proceedings concerning the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (see, among other authorities, *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X).

171. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, and must be rejected in accordance with Article 35 §§ 3 (a) and 4 thereof.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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

173. The applicant claimed 2,330,000 euros (EUR) in respect of non-pecuniary damage.

174. The Government contested that amount as excessive and suggested that the finding of a violation would constitute sufficient just satisfaction in the present case.

175. The Court has found violations of Article 5 § 1 of the Convention in the present case on account of the unlawfulness of the applicant's detention from 2 June to 28 July 2011 and from 2 September to 30 October 2011. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Therefore, the Court awards the applicant EUR 5,000 under that head.

B. Costs and expenses

176. The applicant also claimed EUR 23,063.25 for the costs and expenses incurred before the domestic courts and before the Court. He submitted an invoice listing actions taken by his lawyer and indicating the corresponding amounts for those actions. The invoice did not mention the applicant's representative's hourly rate, or the overall number of hours spent on each particular action. The applicant also submitted invoices from translators for the total amount of 23,000 Russian roubles (approximately EUR 600).

177. The Government contested this claim as unsupported by relevant documents, except for the invoices from translators.

178. 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 3,000 covering costs under all heads.

C. Default interest

179. 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.

V. RULE 39 OF THE RULES OF COURT

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

181. It considers that the interim measure indicated to the Government under Rule 39 of the Rules of Court on 18 May 2011 (see paragraph 4 above) must be lifted, whereas the interim measure indicated to the Government under Rule 39 on 16 December 2011 (see paragraph 7 above) must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint that his extradition to Uzbekistan would expose him to a risk of ill-treatment, his complaint about the lawfulness of his detention between 2 June and 31 August 2011 and between 2 September 2011 and 1 June 2012, and his complaint about the duration of his detention with a view to extradition to Uzbekistan admissible and the remainder of the application inadmissible;

2. *Holds* that the applicant's extradition to Uzbekistan would not give rise to a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 2 June to 28 July 2011 and from 2 September to 30 October 2011;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 29 July until 31 August 2011 and from 31 October 2011 until 1 June 2012;

5. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention as regards the applicant's detention with a view to extradition to Uzbekistan;

6. *Decides* to lift the interim measure indicated to the Government under Rule 39 of the Rules of the Court on 18 May 2011;

7. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant to Uzbekistan until such time as the present judgment becomes final or until further notice;

8. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President