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

FIRST SECTION

CASE OF MUMINOV v. RUSSIA

(Application no. 42502/06)

JUDGMENT

STRASBOURG

11 December 2008

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

In the case of Muminov v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 42502/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Rustam Tulaganovich Muminov ("the applicant"), on 23 October 2006.

2. The applicant was initially represented by Ms O. Chumakova and subsequently by Ms I. Biryukova, lawyers practising in Moscow and Lipetsk, respectively. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 24 October 2006 the President of the Chamber indicated to the respondent Government that the applicant should not be removed from Russia until further notice and granted priority to the application (Rules 39 and 41 of the Rules of Court).

4. On 11 January 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. It also decided that the interim measure should remain in force.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it. The Court also dismissed the applicant's request for an oral hearing (Rule 59 § 3 of the Rules of Court). Finally, it decided to lift the interim measure imposed on 24 October 2006.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and is serving a sentence of imprisonment in Uzbekistan.

A. The applicant's arrival and residence in Russia

7. The applicant arrived in Russia in July 2000 and resided in the town of Michurinsk in the Tambov Region. It appears that until mid-2003 he returned to Uzbekistan for several short periods of time. In 2004 he was convicted by a Russian court and sentenced to six months' imprisonment for having used a false migration card. After his release, in October 2004 he moved to Usman, a provincial town in the Lipetsk Region, where he was employed as a cook. On 31 January 2005 the applicant sought a temporary residence authorisation (*разрешение на временное проживание*) and apparently applied for Russian citizenship. It appears that his application was rejected on 28 February 2006 (see paragraph 17 below). According to the applicant, he became aware of that refusal only on 29 September 2006.

8. Most recently, from 23 December 2005 to 23 March 2006 the applicant had a valid temporary residence registration (*временная регистрация*) in the Lipetsk Region. According to the applicant, on an unspecified date in 2006 the Chief Inspector of the Criminal Police of Usman in the Lipetsk Region refused to renew it. It appears, however, that no formal decision was issued.

B. The applicant's first arrest and the extradition proceedings

9. According to the Uzbek authorities, in April 2005 two Uzbek nationals complained to the Uzbek National Security Service (NSS) that the applicant had been engaged in anti-constitutional activities during an unspecified period of time. He left Uzbekistan after his accomplices had been apprehended.

10. On 29 April 2005 the NSS of the Surkhandarianskiy Region initiated criminal proceedings against the applicant under Article 159 § 3 (b) and Articles 216, 244-1 and 244-2 of the Uzbek Criminal Code (see paragraph 76 below). They accused him of membership of Hizb ut-Tahrir (HT), a transnational Islamic organisation, which is banned in Russia, Germany and some Central Asian states. On 8 May 2005 the Uzbek authorities issued an arrest warrant in respect of the applicant with reference to the charges under Articles 159 and 244-1 of the Uzbek Criminal Code.

11. On 2 February 2006 the applicant was apprehended in the town of Gryazi in Russia and taken into custody. On 4 February 2006 the Gryazi Town Court of the Lipetsk Region authorised his detention with a view to extradition to Uzbekistan, relying on Article 108 of the Code of Criminal Procedure (CCrP). It did not set a time-limit for which that detention was authorised. The detention order was amenable to appeal to the Regional Court within a three-day time-limit. The applicant did not appeal.

12. In March 2006 the Uzbek Prosecutor General's Office requested the applicant's extradition and provided assurances that he would not be surrendered to another State without Russia's consent and would not be prosecuted or punished for any offence committed prior to his extradition and for which extradition would have been refused; and that he would be able to leave Uzbekistan after being tried and serving his sentence.

13. On 12 April 2006 the Lipetsk regional prosecutor instructed the administration of the remand centre to keep the applicant in detention under Article 466 of the CCrP, the 1993 Minsk Convention and the Prosecutor General's Instructions of 20 June 2002 (see paragraphs 53, 54 and 66 below).

14. On 22 September 2006 the Prosecutor General's Office of the Russian Federation rejected the extradition request because some of the acts imputed to the applicant were not criminal offences in Russia, while the others had been committed before becoming punishable under the Russian Criminal Code, or prosecution for such offences had become time-barred.

15. On 26 September 2006 the Prosecutor General's Office informed the Prosecutor's Office of the Lipetsk Region that the applicant's extradition had been refused, and instructed that office to check the grounds for the applicant's presence in the territory of Russia and to decide whether he should be removed from Russia.

16. On 28 September 2006 the regional prosecutor instructed the Gryazi Prosecutor's Office to check the lawfulness of the applicant's stay in Russia and to institute proceedings against him under the Code of Administrative Offences, if appropriate. The prosecutor wrote as follows:

> "...if a judge does not order administrative expulsion and if legal grounds obtain, it is necessary to decide on Mr Muminov's deportation under section 25.10 of the Law on Entering and Leaving the Russian Federation and the Government's Decree no. 199 of 7 April 2003..."

On the same day, the Gryazi Prosecutor's Office ordered the applicant's release from custody.

17. The applicant was released on 29 September 2006. Immediately thereafter, the Gryazi Prosecutor's Office accused him of residing in the territory of Russia in breach of Article 18.8 of the Code of Administrative Offences. It found in particular that the applicant's application "for permission to temporarily reside in Russia" had been rejected by the Regional Office of the Federal Security Service ("FSB") on 28 February

2006 and that his residence registration had expired on 23 March 2006. On the same date, the administrative file was examined by a judge in the Gryazi Town Court who discontinued the case for lack of a *corpus delicti*. The judge held in essence that although the applicant's residence registration had expired on 23 March 2006, on that date and until 29 September 2006 he had been detained with a view to extradition. Having been released and charged on the same day, he could not have committed the offence imputed to him. The judgment became final after the expiry of the statutory time-limit for appeal.

C. Asylum and refugee applications

18. While in detention, in April 2006 the applicant submitted to the Lipetsk Regional Migration Authority applications for refugee status and temporary asylum in Russia. On 12 April 2006 migration officers interviewed him in the remand centre. As can be seen from the interview record, signed by the applicant, he denied membership of any proscribed organisation; having learnt from his wife about the criminal charges against him in Uzbekistan, he had been planning to go there in order to clarify the situation but could not buy a train ticket. He indicated his "fear of being prosecuted for serious offences which he had not committed" as the reason for refusing to return to Uzbekistan.

19. In a decision of 17 April 2006 the Migration Authority refused to examine the applicant's application for refugee status on the merits, concluding that he had left Uzbekistan for "economic reasons" falling outside the scope of an admissible refugee request and that he was refusing to return there because of the criminal prosecution against him. The Migration Authority also rejected his temporary asylum application on 2 May 2006, concluding that his fear of being prosecuted for offences could not be a valid reason for granting temporary asylum. The Authority found as follows:

> "...the applicant's explanations are contradictory... On 12 April 2006 he explained that he had arrived in Gryazi to purchase a train ticket, whereas on 20 April 2006 he contended that he had been in Gryazi to seek assistance from a friend in order to lodge a complaint with the Strasbourg court. The applicant probably means the *European* Court of Human Rights in Strasbourg, whereas he is a national of Uzbekistan, a Central Asian republic. Besides, a complaint before that court may be lodged after the applicant has exhausted all judicial remedies in his republic; in addition, he fled justice in Uzbekistan. Thus, the applicant is manifestly trying to hide his true intentions.
>
> All the reasons indicated by the applicant for not returning to Uzbekistan were examined together with his request for refugee status and did not justify granting such status. No other reasons were adduced in favour of granting such a status on the basis of humane considerations.

> According to information from the Russian Ministry of Foreign Affairs, '... there was no ascertainable information about instances of torture or the sentencing of expelled Uzbek nationals to the death penalty... During the last two years Uzbekistan has taken certain measures for reform in this field... In December 2003 the Supreme Court of Uzbekistan prohibited lower courts from using in evidence confessions obtained under torture or without counsel being present. In September 2004 the Plenary Session of the Supreme Court upheld the inadmissibility of unlawfully obtained evidence...'
>
> The seriousness of the charges against the applicant should be taken into account... The political and extremist activities of Hizb ut-Tahrir may represent a threat to national security..."

20. In August 2006 the applicant, with the help of the Civic Assistance Committee, a non-governmental organisation helping immigrants, retained Ms Biryukova to represent his interests in the domestic proceedings. On 15 September 2006 the applicant obtained a copy of the decision of 17 April 2006 and appealed against it. He pleaded that he had become a refugee "*sur place*"[1]; being a Sunnite, he feared that he would be tortured by the Uzbek authorities in order to make him admit to the extremist charges against him. He referred to reports by the UN and international non-governmental organisations about cases of ill-treatment against several persons in a similar situation.

21. On 24 October 2006 the applicant was expelled to Uzbekistan (for further details see section D below).

22. On 27 October 2006 the Sovetskiy District Court of Lipetsk upheld the decision of 17 April 2006. The court concluded that the applicant had failed to adduce any evidence that he had been or would be persecuted for "political reasons".

23. On 18 December 2006 the Lipetsk Regional Court set aside the judgment of 27 October 2006 and ordered a re-examination of the matter by the District Court. On 10 January 2007 the District Court again dismissed the applicant's complaint. It found as follows:

> "... [the applicant] failed to comply with Articles 56 and 57 of the Code of Civil Procedure requiring him to adduce evidence in support of his allegation of political persecution....
>
> [H]e has already been residing unlawfully in Russia for a long time ...
>
> He neither submitted any evidence that he had left Uzbekistan for political reasons, nor has it been averred that his fears of persecution for political reasons were justified. He did not apply for refugee status after his unlawful entry into Russian territory. Thus, there were no legal grounds for examining his 2006 refugee application on the merits."

[1] A person who is not a refugee when he or she left the country of origin, but who becomes a refugee at a later date as a result of sudden changes in the country of origin (for instance, a coup d'état) or as a result of the claimant's own activities abroad (for example, taking part in political activities against the government of the country of origin).

The applicant's representative did not appeal against that judgment.

D. The applicant's second arrest and expulsion

1. Proceedings resulting in an expulsion order

24. In the meantime, in early October 2006 the applicant obtained an appointment for an interview on 1 November 2006 at the Centre for Refugees in the Moscow Office of the United Nations High Commissioner for Refugees.

25. On 16 October 2006 the Civic Assistance Committee requested the migration authorities to confirm the lawfulness of the applicant's stay in Russia so that he could leave for another country that did not require a visa for Uzbek nationals.

26. The applicant was apprehended on 17 October 2006 on the premises of the Civic Assistance Committee, apparently because of his lack of a residence registration required under the Aliens Act (see paragraph 48 below). He was then taken to the Tverskoy District Office of the Federal Migration Authority. After an interview, he was brought before a judge of the Tverskoy District Court of Moscow, who found the applicant guilty of having resided in Russia in breach of the residence regulations. The judge imposed on him an administrative fine of 1,000 Russian roubles (RUB) and ordered his administrative expulsion from Russia, which is a subsidiary penalty under Article 18.8 of the Code of Administrative Offences. According to the text of the judgment, at the hearing the applicant conceded that he had been unlawfully resident in Russia and had no definite place of residence or source of income in Russia. According to the applicant, he was not allowed to contact the Civic Assistance Committee, to be represented by a lawyer retained by it or to speak during the hearing. In a separate decision given on the same date, the judge ordered the applicant's immediate placement in the Severnyy Detention Centre no. 1 for Aliens.

27. On 18 October 2006 the FSB asked the administration of the detention centre not to deport the applicant without its consent and to coordinate with it all visits to the applicant, receipt of parcels by him or his telephone calls.

28. On 19 October 2006 the applicant's counsel lodged a statement of appeal against the expulsion order with the Moscow City Court. A hearing was set down for 26 October 2006.

29. On 20 October 2006 the applicant issued Ms Chumakova with an authority form empowering her to institute proceedings before the European Court.

2. Enforcement of the expulsion order

30. On 23 October 2006 the applicant requested the Court, under Rule 39 of the Rules of Court, to prevent his expulsion to Uzbekistan. He feared immediate expulsion despite his pending appeal against the expulsion order and alleged that he would face a serious risk of ill-treatment and unfair prosecution if he were returned to Uzbekistan.

31. On 24 October 2006 the Court indicated to the Russian Government under Rule 39 that the applicant should not be expelled to Uzbekistan until further notice. The Russian Government were notified at 5.17 p.m. Strasbourg time (7.17 p.m. Moscow time) by e-transmission through the publication of the relevant letter on the secure website used for communication between the Registry of the Court and the Office of the Representative of the Russian Federation at the European Court of Human Rights.

32. According to the Government, the applicant left Russia at 7.20 p.m. (Moscow time) on 24 October 2006 from Domodedovo Airport for Tashkent on board flight no. E3-265. The applicant's representative submitted a letter dated 25 December 2006 issued by the Domodedovo Airlines Company, which read as follows:

> "Domodedovo Airlines cannot confirm that Mr P.T. Muminov was on board flight no. E3-265 from Domodedovo to Tashkent on 24 October 2006 since there is no boarding pass for that passenger."

As follows from a letter of 19 December 2006 from Uzbekistan Airways, Mr R. Muminov was on board flight no. HY-602 from Domodedovo to Tashkent on 24 October 2006. According to a copy of the log entries provided by the company and produced by the applicant's representative, that flight left Moscow at 11.50 p.m. on 24 October 2006.

33. According to a report allegedly issued by the FSB on 22 October 2006, the applicant was questioned on 20 October 2006 in relation to his alleged extremist activities; "in view of his insincerity and taking into account the pressure by the human-rights organisations which attempt to present him as a victim of political repression, [the applicant] was removed from Russia".

34. According to a press release issued by the FSB on 28 October 2006, the applicant was removed from Russia on 27 October 2006.

3. Subsequent events in Russia and Uzbekistan

35. On 2 November 2006 the Moscow City Court quashed the expulsion order of 17 October 2006 and remitted the case to the District Court. The City Court found that the district judge had not specified the nature of the applicant's allegedly unlawful conduct. The judge had not established the facts of the case, including the date of the applicant's arrival in Russia, whether he had complied with his obligation to register at the place of his

residence in Russia and when his registration had expired. Neither had the judge verified the authorities' allegation that the applicant had been residing unlawfully in Russia since December 2005.

36. On 29 November 2006 the District Court re-examined the case and found that "the applicant had been lawfully present in the territory of Russia when he was first apprehended and remanded in custody"; he had then arrived in Moscow on 5 October 2006 in order to apply for refugee status at UNHCR's Moscow office; he had stayed at the office of the Civic Assistance Committee until his arrest on 17 October 2006. The District Court also indicated that the applicant had appealed against the refusal to examine his application for refugee status and that a judgment had been given on 27 October 2006 and had not yet become final. The District Court concluded that the applicant had not committed the administrative offence of "breaching the residence regulations within the territory of the Russian Federation", and discontinued the proceedings.

37. On 15 January 2007 the Dzhankurganskiy Criminal Court in Uzbekistan convicted the applicant of unlawful actions against the constitutional order and participation in the activities of a proscribed organisation, and sentenced him to five years and six months' imprisonment. According to the text of the judgment, "[the applicant] pleaded not guilty at the trial, denied the charges against him and fully retracted the statement he had made during the preliminary investigation while indicating that he had been compelled to sign that statement, which he had done without reading it". With reference to statements from two witnesses and the applicant's pre-trial statement, the trial court found that in 1999 the applicant had become a member of HT in Uzbekistan and had engaged in propaganda concerning its activities aimed at subverting the constitutional regime and creating an Islamist state. The judgment indicated that the applicant had been represented by a lawyer. The trial judgment was amenable to appeal. It is unclear whether the applicant exercised his right to appeal against it.

38. According to the applicant's representative before the Court, the applicant had been refused permission to be represented by his privately retained counsel but legal-aid counsel had been appointed instead. Neither the applicant's representative nor his family members had been informed of the exact place of his detention in Uzbekistan.

39. The applicant's representative before the Court wrote to the Uzbek Prosecutor General's Office asking for information regarding the place of the applicant's detention and the conditions of access to him. Her request was forwarded to the prosecutor in the Surkhandaryinsk Region of Uzbekistan. On 17 January 2007 the prosecutor forwarded the request to the Surkhandaryinsk Regional Court. The applicant's representative also wrote to the Uzbek Ministry of the Interior and the Ministry of Foreign Affairs. No replies were received.

40. On an unspecified date, the Russian authorities sent a request concerning the applicant to the Uzbek authorities. On 6 March 2007 the Uzbek Ministry of the Interior replied and enclosed a letter in Russian from the applicant dated 20 December 2006 worded as follows:

> "... during my arrest and detention... the police and other law-enforcement officers did not violate my rights and did not exert any physical pressure upon me.
>
> I have no claims against the police officers in Moscow or Lipetsk or against any other law-enforcement authority in Russia.
>
> I confirm that this declaration is correct and written with my own hand."

41. According to a linguistic expert report, produced by the applicant's representative, the above letter did not contain any significant mistakes, whereas the applicant's personal letters contained numerous mistakes reflecting his Uzbek mother tongue's phonetics and grammar. The expert noted that the applicant would not have been able to acquire a sufficient command of the Russian language during the three months between the date of his sample letters (September 2006) and the letter in question (December 2006). The expert concluded that the letter of 20 December 2006 had not been written spontaneously by the applicant, who had transcribed the text from the original or written it from a letter-by-letter dictation by someone else.

E. Investigation into the circumstances of the applicant's expulsion

42. On 28 October 2006 the Prosecutor's Office of the Central Administrative District of Moscow initiated criminal proceedings on a complaint by the applicant's representative about his hasty expulsion.

43. On 12 February 2007 the Moscow military prosecutor refused to bring criminal proceedings against any FSB officers in relation to the applicant's hasty expulsion. The prosecutor stated:

> "... as a result of the joint operation by officials of detention centre no. 1, migration officers and FSB officers on 24 October 2006, [the applicant] was removed from Russia in breach of ... the Code of Administrative Offences...
>
> It transpires from the case file that the matter of his expulsion before the judgment ... acquired legal force was raised by the FSB before the migration authority and the administration of the detention centre...
>
> [I]t was established that the migration authority had purchased a flight ticket for [the applicant] but it had not been used ... thus, the exact time of his crossing the Russian border was not confirmed...
>
> According to Mr K., an FSB officer, Mr Muminov's departure was delayed pending the arrival of Uzbek officials, who purchased a new ticket for him..."

44. On 20 April 2007 Mr G., Director of the Detention Centre for Aliens, was charged with abuse of power. Mr G. pleaded guilty at the trial. On 24 May 2007 the Butyrskiy District Court of Moscow convicted him of abuse of power and sentenced him to a fine of RUB 35,000. It held, *inter alia*:

> "... being aware that the expulsion order in respect of Mr Muminov had not become final, Mr G. violated his defence rights and authorised the execution of the expulsion order at around 5 p.m. on 24 October 2006... As a result, Mr Muminov was put on flight no. HY-602 leaving for Tashkent...
>
> Besides, ... on 26 October 2006[1] the European Court of Human Rights indicated to the Russian authorities that he should not be removed from Russia. However, the Russian Federation was unable to comply with that decision as a result of Mr G.'s unlawful actions."

It appears that that judgment was not appealed against and became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Russian Constitution

45. No one may be subjected to torture, violence or any other inhuman or degrading treatment or punishment (Article 21 § 2). The decisions and actions (or inaction) of State authorities, local self-government, non-governmental associations and public officials may be challenged in a court of law (Article 46 § 2). In conformity with the international treaties of the Russian Federation, everyone has the right to turn to inter-State organs concerned with the protection of human rights and liberties after all domestic remedies have been exhausted (Article 46 § 3).

B. Residence regulations applicable to aliens

46. Pursuant to the Agreement between the Russian and Uzbek Governments signed in Minsk on 30 November 2000, as amended in 2005, citizens of one of the two States were not required to have a visa to enter and stay in the territory of the other State (section 1).

47. Under the Law on Legal Status of Aliens in the Russian Federation (no. 115-FZ of 25 July 2002 – "the Aliens Act"), as in force at the material time, a foreign national could temporarily stay in the territory of Russia, or temporarily or permanently reside in it. A foreign national had to obtain a temporary residence authorisation (*разрешение на временное проживание*) in order to temporarily reside in Russia or a residence permit

[1] The correct date, however, is 24 October 2006.

(*вид на жительство*) in order to permanently reside in Russia (sections 6 and 8, respectively). A temporary residence authorisation or a residence permit could be refused, *inter alia*, if an alien advocated a violent change of the constitutional foundations of the Russian Federation, otherwise created a threat to its security or citizens or supported terrorist (extremist) activities (sections 7 and 9).

48. A foreign national had to register his or her residence within three days of his or her arrival in Russia (section 20(1)). Foreign nationals had to obtain residence registration at the address where they were staying in the Russian Federation. Should their address change, such change was to be re-registered with the police within three days (section 21(3)).

C. Penalties for breaches of the residence regulations

49. A foreign national who breached the regulations on staying or residing in the Russian Federation, including failure to register his or her residence, was liable to an administrative fine with or without administrative expulsion from Russia (Article 18.8 of the Code of Administrative Offences). A decision on the administrative offence was enforced once it had become final (Article 31.2 § 2 of the Code).

50. Pursuant to the Instructions on deportation or administrative expulsion of an alien, adopted by the Ministry of the Interior on 26 August 2004, the authority in charge of the execution of an expulsion order which had become final was to determine the country of destination and make arrangements for the alien's departure (point 22).

51. Under the Law on the Procedure for Entering and Leaving the Russian Federation (no. 114-FZ of 15 August 1996), as amended in 2006, a competent authority could decide that a foreign national's presence in Russian territory was undesirable – even if it was lawful – if, for example, it created a real threat to the defence capacity or security of the State, to public order or health (section 25.10 of the Law). If such a decision was given, the foreign national had to leave Russia or else be removed from the country. The procedure for such removal was detailed in the Government's Decree no. 199 of 7 April 2003.

D. Detention pending extradition proceedings

1. Code of Criminal Procedure

52. Under the Russian Code of Criminal Procedure (CCrP), the period of detention pending investigation could not exceed two months (Article 109 § 1) and could be extended by a judge up to six months (Article 109 § 2). Further extensions could only be granted if the person was charged with

serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months was permissible and the detainee was to be released immediately (Article 109 § 4).

53. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the Prosecutor General or his deputy was to decide on the measure of restraint in respect of the person whose extradition was sought. The measure of restraint was to be applied in accordance with the established procedure (Article 466 § 1).

54. Pursuant to the Instructions issued by the Prosecutor General on 20 June 2002, the procedure for the arrest and extension of detention of persons pending extradition was determined by international treaties to which the Russian Federation was a party. Chapter 54 of the CCrP was applicable in the parts complying with those treaties. Detainees' release could be ordered by the Prosecutor General's Office or by a court decision (point 2.9).

55. In a decision of 4 April 2006 the Constitutional Court held that the general provisions governing measures of restraint applied to all forms and stages of criminal proceedings, including proceedings on extradition. The Constitutional Court reiterated its settled case-law to the effect that excessive or arbitrary detention, unlimited in time and without judicial review, was not compatible with the Constitution in any circumstances, including in the context of extradition proceedings. It appears that the decision was published in July 2006. On 11 July 2006 the Constitutional Court declined jurisdiction in relation to a request by the Prosecutor General for clarification of that decision and indicated that courts of general jurisdiction were competent to decide on the procedure and time-limits which should apply for detention in extradition proceedings.

56. Chapter 16 of the CCrP laid down the procedure by which parties to criminal proceedings could challenge the acts or omissions of an inquirer, investigator, prosecutor or court (section 123). Those acts or omissions could be challenged before a prosecutor or a court. Article 125 provides for judicial review of a decision taken by inquirers, investigators, prosecutors not to initiate criminal proceedings, a decision to discontinue them or any other decision or omission which was capable of impinging upon the rights of persons involved in the proceedings (section 125).

2. Custody Act

57. The Custody Act laid down the procedure and conditions for the detention of persons who were apprehended under the CCrP on suspicion of criminal offences; it also applied to persons who were suspected or accused of criminal offences and who were remanded in custody (section 1). Persons suspected or accused of criminal offences had a right to lodge complaints with a court or another authority in relation to the lawfulness and reasonableness of their detention (section 17(1)(7)).

E. Refugees Act

58. The Refugees Act (Law no. 4258-I of 19 February 1993) defines a refugee as a person who is not a Russian national and who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (section 1(1)(1)). The migration authority may refuse to examine the application for refugee status on the merits if the person concerned has left the country of his nationality in circumstances falling outside the scope of section 1(1)(1), and does not want to return to the country of his nationality because of a fear of being held responsible for an offence (*правонарушение*) committed there (section 5(1)(6)).

59. Persons who have applied for or been granted refugee status cannot be returned against their will to the State of which they are a national where their life or freedom would be imperilled on account of their race, religion, nationality, membership of a particular social group or political opinion (sections 1 and 10(1)).

60. Having received a refusal to examine an application for refugee status on the merits and having decided not to exercise the right of appeal under section 10, the person concerned must leave the territory of Russia within one month of receiving notification of the refusal if he or she has no other legal grounds for staying in Russia (section 5(5)). Under section 10(5), having received a refusal to examine the application for refugee status on the merits or a refusal of refugee status and having exercised the right of appeal against such refusals, the person concerned must leave the territory of Russia within three days of receiving notification of the decision on the appeal if he or she has no other legal grounds for staying in Russia. If, after the appeal has been rejected, the person concerned still refuses to leave the country, he or she is to be deported (section 13(2)).

61. If the person satisfies the criteria set out in section 1(1)(1), or if he or she does not satisfy such criteria but cannot be expelled or deported from Russia for humanitarian reasons, he or she may be granted temporary asylum (section 12(2)). Persons who have been granted temporary asylum cannot be returned against their will to the country of which they are a national or to the country of their former habitual residence (section 12(4)).

F. Ban on the activities of terrorist organisations in Russia

62. By a decision (*решение*) of 14 February 2003 the Supreme Court of the Russian Federation granted the Prosecutor General's request and

classified a number of international and regional organisations as terrorist organisations, including HT (also known as the Party of Islamist Liberation), and prohibited their activity in the territory of Russia. It held in relation to HT that it aimed to overthrow non-Islamist governments and to establish "Islamist governance on an international scale by reviving a Worldwide Islamist Caliphate", in the first place in the regions with predominantly Muslim populations, including Russia and other members of the Commonwealth of Independent States.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. Council of Europe

63. Recommendation No. R (98) 13 of the Council of Europe Committee of Ministers to Member States on the rights of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights, reads as follows:

> "Without prejudice to the exercise of any right of rejected asylum seekers to appeal against a negative decision on their asylum request, as recommended, among others, in Council of Europe Recommendation No. R (81) 16 of the Committee of Ministers...,
>
> 1. An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.
>
> 2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when:...
>
> 2.2. that authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief;...
>
> 2.4. the execution of the expulsion order is suspended until a decision under 2.2 is taken."

64. The Council of Europe Commissioner for Human Rights issued on 19 September 2001 a Recommendation (CommDH(2001)19) concerning the rights of aliens wishing to enter a Council of Europe Member State and the enforcement of expulsion orders, part of which reads as follows:

> "11. It is essential that the right of judicial remedy within the meaning of Article 13 of the ECHR be not only guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be guaranteed to anyone wishing to challenge a refoulement or expulsion order. It must be capable of

suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged."

65. For other relevant documents, see the Court's judgment in the case of *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 36-38, ECHR 2007-...

B. The 1993 Minsk Convention

66. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993 and amended on 28 March 1997), to which both Russia and Uzbekistan are parties, provides that an extradited person cannot be subject to criminal prosecution or punished for a criminal offence committed prior to extradition and in respect of which extradition was refused, without the consent of the extraditing State (Article 66 § 1). The extradited person cannot be surrendered to a third State without the consent of the extraditing State (Article 66 § 2).

C. Reports on Uzbekistan

67. In his report (E/CN.4/2003/68/Add.2) submitted in accordance with Resolution 2002/38 of the United Nations (UN) Commission on Human Rights, the Special Rapporteur on the question of torture, Theo van Boven, described the situation in Uzbekistan as follows:

"40. According to the information received from non-governmental sources, torture is being used in virtually all cases in which articles 156, 159 and 244 CC [Criminal Code] ... are invoked, in order to extract self-incriminating confessions and to punish those who are perceived by public authorities to be involved in either religious, or political, activities contrary to State interests (so-called security crimes). These provisions, which are rather vaguely worded and whose scope of application may be subject to various interpretations, are said to have been used in numerous allegedly fabricated cases and to have led to harsh prison sentences. The four crimes that, following recent amendments, are now the only capital offences are said to lead to a death sentence only if they are combined with aggravated murder charges. Evidence gathering in such cases is said to rely exclusively on confessions extracted by illegal means. It is reported that religious leaflets as well as weapons or bullets have been planted as evidence that a person belongs to banned groups such as Hizb-ut-Tahrir, a transnational Islamic movement which calls for the peaceful establishment of the Caliphate in Central Asia. It is also reported that torture and ill-treatment continue to be used against inmates convicted on such charges, *inter alia* to force them to write repentance letters to the President of the Republic or to punish them further...

66. The combination of a lack of respect for the principle of presumption of innocence despite being guaranteed by the Constitution (art. 25) and [the Code of Criminal Procedure] (art. 23), the discretionary powers of the investigators and procurators with respect to access to detainees by legal counsel and relatives, as well as the lack of independence of the judiciary and allegedly rampant corruption in the

judiciary and law enforcement agencies, are believed to be conducive to the use of illegal methods of investigation. The excessive powers in the overall criminal proceedings of procurators, who are supposed at the same time to conduct and supervise preliminary criminal investigations, to bring charges and to monitor respect for existing legal safeguards against torture during criminal investigations and in places of detention, make investigations into complaints overly dependent on their goodwill.

67. The Special Rapporteur regrets the absence of legal guarantees such as the right to habeas corpus and the right to prompt and confidential access to a lawyer and relatives. He further observes that pre-trial detainees are held in facilities which are under the same jurisdiction as investigators in the case...

68. The Special Rapporteur believes, on the basis of the numerous testimonies (including on a number of deaths in custody) he received during the mission, not least from those whose evident fear led them to request anonymity and who thus had nothing to gain personally from making their allegations, that torture or similar ill-treatment is systematic as defined by the Committee against Torture. Even though only a small number of torture cases can be proved with absolute certainty, the copious testimonies gathered are so consistent in their description of torture techniques and the places and circumstances in which torture is perpetrated that the pervasive and persistent nature of torture throughout the investigative process cannot be denied. The Special Rapporteur also observes that torture and other forms of ill-treatment appear to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others."

68. In March 2005 the UN Human Rights Committee considered the second periodic report of Uzbekistan under the International Covenant on Civil and Political Rights and adopted the following observations (CCPR/CO/83/UZB):

"10. The Committee is concerned about the continuing high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the Covenant. It also notes that, while on 24 September 2004 the Plenum of the Supreme Court held that no information obtained from a detained individual in violation of the criminal procedure requirements (including in the absence of a lawyer) may be used as evidence in court, this requirement is not reflected in a law...

11. The Committee is concerned about allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts. It is a matter of further concern that no independent inquiries are conducted in police stations and other places of detention to guarantee that no torture or ill-treatment takes place, apart from a small number of inquiries with external participation quoted by the delegation...

15. The Committee notes that while under domestic law individuals have access to a lawyer at the time of arrest, this right is often not respected in practice...

16. The Committee remains concerned that the judiciary is not fully independent and that the appointment of judges has to be reviewed by the executive branch every five years..."

The applicant also referred to the 2001 report (CCPR/CO/71/UZB, § 14) by the UN Human Rights Committee and the 2002 report (CAT/C/CR/28/7, § 5 (e)) by the UN Committee against Torture.

69. The UN Special Rapporteur on Torture, Manfred Nowak, stated at the Session of the UN Human Rights Council on 20 September 2006:

> "The practice of torture in Uzbekistan is systematic, as indicated in the report of my predecessor Theo van Boven's visit to the country in 2002. Lending support to this finding, my mandate continues to receive serious allegations of torture by Uzbek law enforcement officials... Against such significant, serious and credible evidence of systematic torture by law enforcement officials in Uzbekistan, I continue to find myself appealing to Governments to refrain from transferring persons to Uzbekistan..."

70. In his 2006 report "Situation of human rights in Uzbekistan" (A/61/526) the UN Secretary General expressed his concern about the fate of individuals extradited or expelled to Uzbekistan:

> "20. UNHCR continues to be concerned about the fate of an increasing number of Uzbek asylum-seekers and refugees, some of whom fled the Andijan events, who have been detained in countries of the Commonwealth of Independent States and forcibly returned to Uzbekistan despite a real risk of mistreatment in breach of international standards. In February 2006, 11 Uzbek asylum-seekers were forcefully returned from Ukraine to Uzbekistan. In a press statement of 16 February 2006, UNHCR said that it was appalled by this forceful deportation. Thus far, the Office of the United Nations High Commissioner for Refugees (UNHCR) has not had access to the 11 individuals... According to information received by OHCHR, no access has been granted to these individuals since their return to Uzbekistan.
>
> 21. OHCHR is concerned about other individuals who have fled since the Andijan events and who are under pressure from the Government of Uzbekistan or the host country to return despite a real risk of mistreatment in breach of international standards...
>
> 46. In an interview of 10 April 2006, the Special Rapporteur on the question of torture said that 'there is ample evidence that both police and other security forces have been and are continuing to systematically practise torture, in particular against dissidents or people who are opponents of the regime'...
>
> 48. The Human Rights Committee, in its concluding observations of 31 March 2005 (CCPR/OP/83/UZB), remained concerned about the high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the International Covenant on Civil and Political Rights. The Committee expressed concern at the definition of torture in the Criminal Code of Uzbekistan. In addition, the Committee pointed to the allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts. The Government of Uzbekistan was due to submit follow-up information by 26 April 2006 on these issues in accordance with the request of the Committee. So far, no such information has been submitted to the Human Rights Committee."

71. In November 2007 the UN Committee against Torture considered the third periodic report of Uzbekistan (CAT/C/UZB/3) and adopted, *inter alia*, the following conclusions (CAT/C/UZB/CO/3):

> "6. The Committee is concerned about:
>
> (a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;
>
> (b) Credible reports that such acts commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;
>
> (c) The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention;...
>
> 9. The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention...
>
> 11. [T]he Committee remains concerned that despite the reported improvements, there are numerous reports of abuses in custody and many deaths, some of which are alleged to have followed torture or ill-treatment..."

72. In support of his allegation of the risk of ill-treatment in Uzbekistan, the applicant also submitted a copy of the third-party submissions by Human Rights Watch (HRW) and the AIRE Centre in the cases of *Ismoilov and Others v. Russia* (no. 2947/06, judgment of 24 April 2008) and in *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, ECHR 2005-I); the 2005 report by the Memorial Human Rights Centre in cooperation with the International League for Human Rights in relation to the Second Periodic Report of Uzbekistan to the UN Human Rights Committee; the 2005 HRW Briefing Paper "Torture Reform Assessment: Uzbekistan's Implementation of the Recommendations of the Special Rapporteur on Torture" and other documents from that organisation; and various news items available on Internet sites such as www.centrasia.ru. The above documents described a disquieting human-rights situation in Uzbekistan with reference to diverse examples and indicated a lack of ascertainable progress in this field.

D. Hizb ut-Tahrir (HT) in Uzbekistan

73. In a comprehensive 2004 report entitled "Creating Enemies of the State: Religious Persecution in Uzbekistan", Human Rights Watch provides the following analysis (internal footnotes omitted):

"Members of Hizb ut-Tahrir, like Muslims labeled 'Wahhabi' by the state, are overwhelmingly self-defined Hanafi Sunnis, as are most Muslims in Uzbekistan, and not adherents of Wahabbism as it is understood in the Saudi Arabian context...

Hizb ut-Tahrir members form a distinct segment of the independent Muslim population by virtue of their affiliation with a separate and defined Islamic group with its own principles, structure, activities, and religious texts.

Hizb ut-Tahrir is an international Islamic organization with branches in many parts of the world, including the Middle East and Europe. Hizb ut-Tahrir propagates a particular vision of an Islamic state. Its aims are restoration of the Caliphate, or Islamic rule, in Central Asia and other traditionally Muslim lands, and the practice of Islamic piety, as the group interprets it... Hizb ut-Tahrir renounces violence as a means to achieve reestablishment of the Caliphate. However, it does not reject the use of violence during armed conflicts already under way and in which the group regards Muslims as struggling against oppressors, such as Palestinian violence against Israeli occupation. Its literature denounces secularism and Western-style democracy. Its anti-Semitic and anti-Israel statements have led the government of Germany to ban it. The government of Russia has also banned the group, classifying it as a terrorist organization.

Some in the diplomatic community, in particular the U.S. government, consider Hizb ut-Tahrir to be a political organization and therefore argue that imprisoned Hizb ut-Tahrir members are not victims of religious persecution. But religion and politics are inseparable in Hizb ut-Tahrir's ideology and activities, and one of the chief reasons Uzbek authorities arrest members is the religious ideas Hizb ut-Tahrir promotes: the reestablishment of the Caliphate and strict observance of the Koran. Even if one accepts that there is a political component to Hizb ut-Tahrir's ideology, methods, and goals, this does not vitiate the right of that group's members to be protected from religion-based persecution.

Hizb ut-Tahrir in Uzbekistan

Hizb ut-Tahrir is not registered in Uzbekistan and is therefore illegal. It is referred to as a 'banned' organization, though in contrast to the means used by German authorities to ban Hizb ut-Tahrir, no single Uzbek administrative or judicial decision has ever prohibited the organization.

Members meet in small groups of about five people, referred to as 'study groups' by members and as 'secret cells' by Uzbek government officials. Both sides acknowledge that the primary activity of these small groups is the teaching and study of Hizb ut-Tahrir literature, as well as traditional Islamic texts such as the Koran and hadith. Membership in the group is solidified by taking an oath, the content of which has been given variously as: being faithful to Islam; being faithful to Hizb ut-Tahrir and its rules; and spreading the words of the Prophet and sharing one's knowledge of Islam with others. Law enforcement and judicial authorities generally considered both those who had and had not taken the oath as full-fledged members.

In Human Rights Watch interviews and in court testimony, Hizb ut-Tahrir members have overwhelmingly cited an interest in acquiring deeper knowledge of the tenets of Islam as their motivation for joining the group. Hizb ut-Tahrir members in Uzbekistan, and likely elsewhere, regard the reemergence of the Caliphate as a practical goal, to be achieved through proselytism.

Members in Uzbekistan distribute literature or leaflets produced by the organization which include quotations from the Koran, calls for observance of the basic tenets of Islam, and analysis of world events affecting Muslims, including denunciation of the mass arrest of independent Muslims in Uzbekistan...

Human Rights Watch has documented 812 cases of arrest and conviction of the group's members in Uzbekistan. The group itself estimated in June 2000 that police had arrested some 4,000 of its members in Uzbekistan during the government's campaign against independent Islam since 1998. By November 2002 the German section of Hizb ut-Tahrir estimated that the government of Uzbekistan had imprisoned as many as 10,000 of the group's followers. The Russian rights group Memorial reported 2,297 religiously and politically motivated arrests it had documented as of August 2001; the group estimated that more than half of the Muslims arrested for nonviolent crimes were those accused of Hizb ut-Tahrir membership. In addition to being arrested for membership and gathering to study, adherents of Hizb ut-Tahrir have been arrested, sometimes en masse, for possession or distribution of the group's literature or, in some cases, because of simple, accidental proximity to those proselytizing for Hizb ut-Tahrir...

Torture and Mistreatment in Pre-trial Detention

Widespread torture of detainees is common in criminal investigations in Uzbekistan. In the campaign against independent Islam, police have systematically employed torture to coerce confessions and statements incriminating others.

In the past two years, the international community has taken notice of the pervasive and serious nature of torture in Uzbekistan and its use in the campaign against independent Islam...

... Police and security agents torture independent Muslim suspects during the investigative phase to compel confessions or testimony against others. The interrogation of an independent Muslim generally centers on questions about the detainee's beliefs, affiliation with Islamic groups, or association with well-known independent imams. The end product the police are seeking is a statement – prepared by police, signed by the detainee – that describes the detainee's religious belief, practice, and affiliation rather than a criminal act. Because many of those detained on religion-related charges are held incommunicado, the interrogation may last up to six months.

Through torture and threats – on which we present details below – agents have coerced detainees to name members of religious organizations, people who have attended mosque with them, or even friends and neighbors who may not in fact have shared their religious beliefs or affiliation. They also have forced detainees to admit to associations with individuals unknown to them. Police then arrested those named, or brought them in as witnesses, often coercing them into testifying for the prosecution. This coercive strategy produces a perpetual flow of names for the police and security services to pursue. Police sometimes arrest a suspect and torture individuals unknown to him into testifying against him...”

The report summarises a number of cases of torture documented by Human Rights Watch, describing methods of torture used against Muslim detainees, including beatings by fist and with truncheons or metal rods, rape

and sexual violence, electric shock, use of lit cigarettes or newspapers to burn the detainee, and asphyxiation with plastic bags or gas masks. The report also seeks to reveal the role torture plays in coercing testimony; judicial refusal to investigate victims' allegations; and the courts' practice of admitting as evidence testimony obtained under torture.

The report also indicates that although Uzbek law provides for access to legal counsel from the moment of arrest, the investigating police frequently pressure detainees not to seek counsel. When detainees or their families attempt to engage an independent defence lawyer, authorities often refuse requests from the lawyer for access to his or her client, until the police have secured a confession from the accused. Police frequently pressure detainees or their families to accept the services of State-appointed lawyers who do not defend their client's interests, and who are unlikely to lodge complaints against ill-treatment. Judges have ignored defendants' court testimony about the torture they endured and have admitted as evidence confessions and other testimony obtained through torture during the investigation.

74. The 2005 US Department of State Country Report on Human Rights Practice, released on 8 March 2006, provides the following information in relation to Uzbekistan:

> "Although the law prohibits such practices, police and the NSS [National Security Service] routinely tortured, beat, and otherwise mistreated detainees to obtain confessions or incriminating information... Defendants in trials often claimed that their confessions, on which the prosecution based its cases, were extracted as a result of torture... During the year the government took a few steps towards reform confined to education and outreach, while in large part it showed little will to address UN conclusions...
>
> Authorities treated individuals suspected of extreme Islamist political sympathies, particularly alleged members of HT [Hizb ut-Tahrir], more harshly than ordinary criminals. There were credible reports that investigators subjected pretrial detainees suspected to be HT members to particularly severe interrogation. After trial, authorities reportedly used disciplinary and punitive measures, including torture, more often with prisoners convicted of extremism than with ordinary inmates. Local human rights workers reported that common criminals were often paid or otherwise induced by authorities to beat HT members. As in previous years there were numerous credible reports that officials in several prisons abused HT members to obtain letters of repentance, which are required for a prisoner to be eligible for amnesty. According to prisoners' relatives, amnestied prisoners, and human rights activists, inmates who refused to write letters disavowing their connection to HT were often beaten or sent into solitary confinement. During the year inmates and a guard at one prison corroborated reports that prison guards systematically beat suspected HT members following the March and April 2004 terrorist attacks...
>
> Authorities continued to arbitrarily arrest persons on charges of extremist sentiments or activities, or association with banned religious groups... Authorities made little distinction between actual members and those with marginal affiliation with the group, such as persons who had attended Koranic study sessions with the group.

As in previous years, there were reports that authorities arrested and prosecuted persons based on the possession of HT literature. Coerced confessions and testimony were commonplace. Even persons generally known to belong to HT stated that the cases against them were built not on actual evidence, which would have been abundantly available, but on planted material or false testimony...

Defense attorneys had limited access in some cases to government-held evidence relevant to their clients' cases. However, in most cases a prosecution was based solely upon defendants' confessions or incriminating testimony from state witnesses... During the year the BBC quoted a former Interior Ministry official who claimed that investigators often used beatings, psychotropic drugs, or threats against family members to obtain confessions from defendants...In many cases, particularly those involving suspected HT members, when the prosecution failed to produce confessions it relied solely on witness testimony, which was reportedly often also coerced..."

E. Relevant provisions of Uzbek law

1. Criminal Code

75. The Uzbek Criminal Code states that the Uzbek criminal law is based on the Constitution and recognised principles of international law such as the principle of legality, equality of citizens before the law, humanism and fairness (Articles 1 and 3).

76. Article 159 of the Uzbek Criminal Code, entitled "Attacks against the constitutional order of the Republic of Uzbekistan", refers to public calls for unconstitutional change of the existing State structure, for the seizure of power or removal from power of legally elected or designated authorities or for the unconstitutional violation of the unity of the territory of the Republic of Uzbekistan, as well as the dissemination of materials having such content. Such acts are punishable by a fine or up to three years' imprisonment. When committed by an organised group or in its interest, they are punishable by up to ten years' imprisonment (§ 3 (b)).

Article 216 of the Code, entitled "Establishing Proscribed Non-governmental and Religious Organisations", refers to establishing or resuming the activities of proscribed non-governmental and religious organisations, as well as active participation in their activities. Such acts are punishable by a fine or a term of imprisonment of up to five years.

Article 244-1 of the Code, entitled "Preparation or dissemination of materials constituting a threat to public safety and public order", refers to the preparation or dissemination of materials expressing the ideology of religious extremism, separatism or fundamentalism, incitement to riot or the forced eviction of citizens or materials intended to cause public panic, after an official warning. Such acts are punishable by a fine or a term of imprisonment up to three years.

Article 244-2 of the Code, entitled “Establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organisations”, refers to the offence of establishing, leading or participating in religious extremist, separatist, fundamentalist or other prohibited organisations. Such acts are punishable by a term of imprisonment of up to fifteen years and, if they cause serious damage, up to twenty years.

2. Code of Criminal Procedure

77. The Uzbek Code of Criminal Procedure states that the administration of justice is based on the principles of equality of citizens before the law and the courts, irrespective of their gender, race, nationality, language, religion, social origin, beliefs or personal or social status (Article 16). Judges, prosecutors and investigators must respect the reputation and honour of persons participating in the proceedings (Article 17). No one may be subjected to torture, violence and other forms of cruel or degrading treatment. Actions or decisions which are degrading, lead to the dissemination of a person's private information, damage his or her health, or unjustifiably cause physical or moral suffering are prohibited.

State authorities and public officers in charge of criminal proceedings must protect the rights and freedoms of the persons participating in those proceedings (Article 18). No one may be arrested or detained unless ordered by a court or prosecutor. A court or prosecutor must promptly release each person who is unlawfully detained beyond the time-limit authorised by the law or a court decision. A person's private life, inviolability of his or her home, correspondence and telephone conversations are protected by the law. Damage caused to the person as a result of a violation of his or her rights or freedoms in the course of criminal proceedings must be compensated for in compliance with the provisions of the Code.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

78. The applicant alleged that his expulsion to Uzbekistan had breached Article 3 of the Convention, which reads as follows:

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

He also contended that he had had no effective remedy in respect of his above grievance and that he had been removed from Russia despite his

pending appeal against the expulsion order. The Court will examine that complaint under Article 13, which reads as follows:

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

A. The parties' submissions

1. The Government

79. The Government submitted that the allegation of religious persecution against the applicant had been checked by the migration authorities when examining his refugee application and had been rejected as unfounded. The migration authorities had relied on the statement from the Russian Ministry of Foreign Affairs that there was no risk of ill-treatment for persons who committed criminal offences in Uzbekistan. The Government noted, however, that the applicant had not raised his complaint under Article 3 before the district judge who had ordered his expulsion. With reference to assurances from the Uzbek authorities and Uzbek legislation (see paragraphs 75 and 77 above), the Government argued that the applicant would not be subjected to any ill-treatment or punishment contrary to Article 3 of the Convention.

80. Regarding Article 13, the Government submitted that the applicant had had effective remedies under Article 21 § 2 and Article 46 §§ 2 and 3 of the Russian Constitution (see paragraph 45 above).

2. The applicant

81. The applicant's representative argued that his allegations of a risk of ill-treatment had not been examined by the Russian authorities. She relied on several reports by United Nations agencies and international and regional organisations and argued that the applicant had run and continued to run a risk of torture in Uzbekistan on account of his religious beliefs. She gave examples of cases when Muslim detainees had been ill-treated, and in certain cases killed, because of their religious beliefs, or unjustifiably subjected to disciplinary penalties such as placement in punishment cells without food or water, in particular because of their attempts to pray. She also referred to recent reports on the allegedly appalling conditions of detention and the lack of monitoring of detention facilities in Uzbekistan. The applicant's representative also relied on the third-party interveners' submissions before the Court in the cases of *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, ECHR 2005-I) and *Ismoilov and Others v. Russia* (no. 2947/06, 24 April 2008). According to the applicant's representative, the applicant's expulsion had been in fact "an

extradition in disguise", as a result of which the applicant had been convicted of the offences in respect of which the Russian authorities had refused extradition. The applicant had been expelled in flagrant violation of Russian law before his appeals against the expulsion order and the dismissal of his refugee application could be examined. Besides, no diplomatic assurances had been obtained from the Uzbek authorities in the present case and, even if they had been obtained, they could not have been effective in the context of an administrative expulsion formally unrelated to any pending criminal proceedings against an applicant. With reference to the Court's judgment in the case of *Shamayev and Others v. Georgia and Russia* (no. 36378/02, ECHR 2005-III), it was argued that the respondent Government's failure to comply with an indication under Rule 39 should not necessarily prevent the Court from examining on the merits a complaint under Article 3. Otherwise, it would be less burdensome for a respondent State to remove an applicant from its territory in cases in which Rule 39 was applied and to be held in violation of Article 34 of the Convention than to comply with Rule 39 and to be found to have breached Article 3 and/or Article 6.

82. With reference to Article 13, the applicant's representative argued that the applicant had been expelled before the expulsion order had become final. Neither the decision of 2 November 2006 to quash it nor the criminal proceedings against Mr G. could be regarded as effective remedies since they had occurred after the applicant had been removed from Russia.

B. The Court's assessment

1. Admissibility

83. The Government contended that the applicant had not exhausted domestic remedies in that he had omitted to raise in substance his grievance under Article 3 before the district judge on 17 October 2006. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 3 of the Convention. Thus, the Court finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 3 of the Convention. No other ground for declaring it inadmissible has been established. This complaint must therefore be declared admissible.

84. The Court reaches the same conclusion in respect of the applicant's complaint under Article 13 of the Convention. As is permissible under Article 29 § 3 of the Convention, the Court will now consider the merits of the applicant's complaints under Article 3 and then Article 13 of the Convention.

2. Merits

(a) Article 3 of the Convention

85. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles, as recently reiterated in *Saadi v. Italy* ([GC], no. 37201/06, §§ 124-136, ECHR 2008-...).

(i) Domestic proceedings

86. The Court will first determine whether the applicant's grievance received any reply at national level. In that connection, it notes that the applicant was removed from Russia to Uzbekistan by way of administrative expulsion on account of an alleged breach of the residence regulations and after the Russian authorities had refused to extradite him on charges of involvement in subversive activities in Uzbekistan.

87. Having regard to the material in its possession, the Court considers that the national authorities did not make an adequate assessment of the risk of torture or ill-treatment if the applicant were expelled to Uzbekistan. The Court has, first, had regard to the findings made by the domestic authorities in relation to his application for refugee status. It was dismissed because, in the migration authorities' view, he did not fall within the scope of the definition of a “refugee” under the Refugees Act. It does not transpire from the record of the applicant's interview with the migration officer that the applicant made any specific allegations of a risk of ill-treatment in the event of his being returned to Uzbekistan. It also appears that, having learnt about the accusations against him in November 2005, the applicant intended to return to Uzbekistan in order to obtain further particulars. The Court observes, however, that, when appealing against the refusal of his refugee application, the applicant put forward specific and detailed arguments pertaining to a risk of torture in Uzbekistan (see paragraph 20 above). It is noted that the Russian authorities, including the courts, dismissed the applicant's arguments with reference to his failure to prove that he had left Uzbekistan for “political reasons” and that his fears of persecution for such reasons were justified. The Court reiterates that 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). The national authorities did not give any consideration to the applicant's argument relating to persecution for religious rather than purely “political” reasons (see also paragraphs 19 and 23 above). The Court is satisfied that the applicant's application for judicial review of the refusal to examine his application for refugee status was substantiated by the reference

to reports by international organisations on the human-rights situation in Uzbekistan, in particular as regards the risk of persons being persecuted on account of their religious beliefs. In such circumstances, it was for the Russian authorities to dispel any doubts about that risk. That did not happen since the applicant was expelled before a Russian court could take cognisance of his application for judicial review.

88. The migration authority also referred to the fact that the applicant had not applied for refugee status immediately after his arrival in Russia (see paragraph 23 above). It is not in dispute that the applicant left Uzbekistan voluntarily and arrived in Russia in 2000 seeking employment. The main thrust of his grievance was, however, his persecution by the Uzbek authorities from April 2005 onwards in connection with allegations of serious criminal offences punishable by long terms of imprisonment. In such a situation it would be appropriate to consider whether the applicant fell within the definition of a refugee "*sur place*". It does not appear from the domestic decisions that any consideration was given to that aspect of the case.

89. The Court also emphasises that the conduct of the person concerned, however undesirable or dangerous, cannot be taken into account, with the consequence that the protection afforded by Article 3 of the Convention is broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see *Saadi*, cited above, § 138). Thus, the Court considers that the argument based on the balancing of the risk of harm if the person is sent back against the dangerousness he or she represents to the community if not sent back is misconceived (see the domestic findings in paragraph 19 *in fine* above). The concepts of "risk" and "dangerousness" in this context do not lend themselves to a balancing test because they are notions that can only be assessed independently of each other. Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he or she may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill treatment that the person may be subject to on return (*Saadi*, cited above, § 138).

90. As to the court proceedings which resulted in the expulsion order against the applicant, the Court deplores the fact that the applicant was not given any reasonable time and opportunity to prepare his defence and secure his own representation at the hearing on 17 October 2006 (see paragraph 26 above). It does not transpire from the case file that any verbatim record was drawn up at that hearing, although such a possibility existed under Russian law. Therefore, it is not possible to establish with any certainty the contents of the applicant's submissions to the district judge. The Court reiterates in that connection that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see, *mutatis mutandis*,

Matthews v. the United Kingdom [GC], no. 24833/94, § 34, ECHR 1999-I). As the Court held in *Čonka v. Belgium* (no. 51564/99, § 46, ECHR 2002-I) the requirement of accessibility of a remedy within the meaning of Article 35 § 1 of the Convention implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford an applicant a realistic possibility of using the remedy. In the same vein, the applicant was not afforded a reasonable opportunity to plead his case. Besides, the Court is inclined to consider that the district judge should have been made sufficiently aware of the facts preceding the applicant's apprehension on 17 October 2006, as those facts were relevant to the examination of the case before it. The Government's objection as to non-exhaustion of domestic remedies must therefore be dismissed.

(ii) The Court's assessment of risk

91. The Court has now to establish whether at the time of his removal from Russia a real risk existed that the applicant would be subjected in Uzbekistan to treatment proscribed by Article 3.

92. In the light of the materials in its possession (see paragraphs 32, 43 and 44 above), the Court finds that the applicant left the territory of Russia on 24 October 2006. It is therefore that date that must be taken into consideration when assessing whether there was a real risk of his being subjected in Uzbekistan to treatment proscribed by Article 3. Thus, the Court will assess Russia's responsibility under Article 3 with reference to the situation that obtained on that date.

93. The Court has had regard, firstly, to the reports by the United Nations agencies, which describe the disturbing situation in Uzbekistan (see paragraphs 67-70 above). In 2002 the UN Special Rapporteur described the practice of torture against those in police custody as “systematic” and “indiscriminate”. His successor in this post announced in 2006 that his mandate continued to receive serious allegations of torture by Uzbek law-enforcement officials. In 2006 the UN Secretary General also drew attention to the continuing problems of the widespread mistreatment of prisoners and complained that inadequate measures were taken to bring those responsible to justice. The evidence before the Court, which it considers reliable, discloses that during the period under consideration problems persisted in Uzbekistan in connection with the ill-treatment of detainees.

94. The Court observes that the applicant was accused of involvement in the activity of Hizb ut-Tahrir (HT), a transnational Islamic organisation. Charges were brought against him under Articles 159, 216, 244-1 and 244-2 of the Uzbek Criminal Code, which concerned, respectively, unlawful actions against the constitutional order and dissemination of subversive materials; establishment of a proscribed organisation; production and dissemination of subversive materials calling for religious extremism, separatism and fundamentalism and participation in the activities of a

proscribed organisation (see paragraph 18 above). After his forced return to the country, an Uzbek court convicted the applicant of unlawful actions against the constitutional order and participation in the activities of HT, and sentenced him to five years and six months' imprisonment. The court found that in 1999 the applicant had engaged in propaganda concerning HT's activities aimed at subverting the constitutional regime and creating an Islamist state.

95. As the Court has recently held in *Saadi* (cited above, § 132), in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the information contained in recent reports from independent international human-rights-protection associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3 (see *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008). The above findings apply to the applicant in the present case, who was persecuted on account of his alleged involvement in the activities of HT, which he consistently denied. Regard being had to the materials submitted by the applicant and obtained by the Court *proprio motu* (see, *inter alia*, paragraphs 73 and 74 above), the Court considers that there are serious reasons to believe in the existence of the practice of persecution of members or supporters of that organisation, whose underlying aims appear to be both religious and political. In that connection, the Court refers to the above-mentioned UN Special Rapporteur's Report, which affirmed the existence of a persisting practice of torture against persons who, like the applicant, were accused under Articles 159 and 244 of the Uzbek Criminal Code, with a view to extracting self-incriminating confessions and to punishing those who were perceived by public authorities to be involved in religious or political activities contrary to State interests (see paragraph 67 above). It was reported that evidence-gathering in such cases relied on confessions extracted by unlawful means and that ill-treatment continued to be used against inmates convicted on such charges.

96. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant faced a real risk of treatment proscribed by Article 3. That risk cannot be ruled out on the basis of other material available to the Court. The Court takes note of the Government's reference to the relevant provisions of Uzbek law and their indication of certain improvements in the protection of human rights in Uzbekistan which, in the Government's opinion, negated the risk of ill-treatment. The Court reiterates, however, that the existence of domestic

laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, § 147 *in fine*). No concrete evidence has been produced of any fundamental improvement in the protection against torture in Uzbekistan (see, by contrast, a recent UN report cited in paragraph 71 above).

97. As to the Government's argument that assurances were obtained from the Uzbek authorities, firstly, the Government did not submit a copy of any diplomatic assurances indicating that the applicant would not be subject to torture or ill-treatment. The only document produced by the Government contained the assurances issued by the Uzbek Prosecutor General's Office under the Minsk Convention relating to the extradition proceedings (see paragraphs 12 and 66 above). Secondly, the Court has already warned that even if such assurances were obtained, that would not have absolved it from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Saadi*, cited above, § 148). The weight to be given to assurances from the receiving State depends, in each case, on the circumstances obtaining at the material time.

98. In the light of the above considerations, the Court considers that the applicant's expulsion to Uzbekistan gave rise to a violation of Article 3. The absence of any reliable information as to the situation of the applicant after his expulsion to Uzbekistan, except for the fact of his conviction, remains a matter of grave concern for the Court.

(b) Article 13 of the Convention

99. The Court reiterates that Article 13 guarantees the availability at the national level of a remedy to enforce – and hence to allege non-compliance with – the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order and bearing in mind that Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Shamayev and Others*, cited above, § 444). For Article 13 to be applicable, the complaint under a substantive provision of the Convention must be arguable. The Court considers that the applicant's claim under Article 3 was “arguable” and, thus, Article 13 was applicable in the instant case. Indeed, there was no dispute between the parties on this point.

100. As to the merits of the complaint, the Court reiterates that the remedy required by Article 13 must be effective both in law and in practice, in particular in the sense that its exercise must not be unjustifiably hindered

by the acts or omissions of the authorities of the respondent State (ibid., § 447). The Court is not called upon to review *in abstracto* the compatibility of the relevant law and practice with the Convention, but to determine whether there was a remedy compatible with Article 13 of the Convention available to grant the applicant appropriate relief as regards his substantive complaint (see, among other authorities, *G.H.H. and Others v. Turkey*, no. 43258/98, § 34, ECHR 2000-VIII). Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among other authorities, *Čonka*, cited above, § 75). The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (ibid.).

101. The Court further points out that the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialised and the importance which the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires (i) independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination, and (ii) the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible (or "a remedy with automatic suspensive effect" as it is phrased in *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 66 *in fine*, ECHR 2007-..., which concerned an asylum seeker wishing to enter the territory of France; see also *Jabari v. Turkey*, no. 40035/98, § 50, ECHR 2000-VIII; *Shamayev and Others*, cited above, § 460; *Olaechea Cahuas v. Spain*, no. 24668/03, § 35, ECHR 2006-X; and *Salah Sheekh v. the Netherlands*, no. 1948/04, § 154, ECHR 2007-...).

102. Judicial review proceedings constitute, in principle, an effective remedy within the meaning of Article 13 of the Convention in relation to complaints in the context of expulsion and extradition, provided that the courts can effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 99, ECHR 2002-II). Turning to the circumstances of the present case, the Court observes, however, that the applicant's expulsion was ordered in the first instance by a district judge as a subsidiary penalty under the Code of Administrative Offences. The Court has already found that the proceedings before the district judge were defective (see paragraph 90 above). Thus, an adequate opportunity to lodge an appeal against the judge's decision and to obtain suspension of the enforcement of the expulsion order pending its review was particularly important in the circumstances of the present case. As regards the availability of suspension, the Court reiterates that it is inconsistent with

Article 13 for measures having potentially irreversible effects to be executed before the national authorities have examined whether they are compatible with the Convention, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Gebremedhin*, cited above, § 58). The necessity for a remedy with suspensive effect has also been indicated by the Council of Europe's Committee of Ministers and Commissioner for Human Rights (paragraphs 63 and 64 above). As was confirmed by the Butyrskiy District Court of Moscow in its judgment of 24 May 2007 (see paragraph 44 above), the applicant's expulsion before the examination of his appeal against the expulsion order was unlawful. Thus, the applicant was denied an effective opportunity to suspend the enforcement of the expulsion order against him.

103. The Court also observes that the Refugees Act (paragraphs 59 and 60 above) provides that if an unsuccessful asylum seeker chooses to exercise the right of appeal, he or she may be required to leave the territory of Russia within three days of receiving notification of the decision on the appeal if he or she has no other legal grounds for staying in Russia. However, those provisions of the Refugees Act were not complied with in the applicant's case, thus failing to afford him "in practice" an effective remedy.

104. Finally, the Court considers that the Government did not demonstrate what redress could have been afforded to the applicant by relying on Articles 21 and 46 of the Russian Constitution.

105. Accordingly, the Court concludes that there has been a violation of Article 13 of the Convention because in the circumstances of the case the applicant was not afforded an effective and accessible remedy in relation to his complaint under Article 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

106. The applicant complained under Article 3 and Article 5 § 1 (f) of the Convention that his detention from 2 February to 29 September 2006 had been unlawful and that the extradition proceedings had not been conducted with due diligence. The Court will examine those complaints under Article 5 § 1 (f) of the Convention, the relevant parts of which read as follows:

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

He also complained under Article 5 § 1 (f) and Article 13 of the Convention that his detention pending extradition had not been subject to judicial review. The Court will examine this complaint under Article 5 § 4 of the Convention, which reads as follows:

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

A. The parties' submissions

107. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaints under Article 5 of the Convention. The Government argued that the applicant had several remedies at his disposal, including Article 108 of the Code, which provided for a procedure for challenging a measure of restraint, and Chapter 16 of the Code of Criminal Procedure, which laid down the procedure for challenging decisions taken in the course of criminal proceedings. Finally, a suspect or accused could lodge applications or complaints with a court or another public authority under section 17(1)(7) of the Custody Act.

108. The Government also submitted that the length of the applicant's detention was accounted for by the pending requests for asylum and refugee status, the court proceedings challenging the refusal to grant him refugee status; the ongoing "extradition check" in order to verify his citizenship and legal basis for residing in Russia; and the fact that, before deciding on the extradition request, certain additional documents and clarifications as to the charges against the applicant had been requested from the Uzbek authorities. The Russian migration authority had had to carry out an inquiry into the applicant's allegation of possible persecution on religious grounds in the event of his being returned to Uzbekistan. The migration officer had had several interviews with the applicant in order to fill in the asylum application. During those interviews the applicant had not complained about the conditions of his detention in the Russian remand centre. Having regard to the medical report in respect of the applicant, the migration authority had refused the asylum request as unfounded.

109. The applicant submitted that Russian courts did not apply Articles 108 and 109 of the Code to extradition proceedings and normally refused to review the lawfulness of detention pending extradition, with reference to Article 466 of the Code. The applicant argued that the delay of eight months had been unreasonable in view of the fact that the request had been rejected on formal grounds and showed that the proceedings had not been conducted with due diligence. His detention pending extradition had served other purposes than that of being "with a view to extradition" (for example, examination of his applications for asylum and refugee status). Lastly, in his

observations he raised a new argument, alleging that his continued detention after the decision of 22 September 2006 until 29 September 2006 had also violated Article 5 § 1 of the Convention.

B. The Court's assessment

1. Admissibility

110. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaints under Article 5 of the Convention.

111. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 5 § 4 of the Convention. Thus, the Court finds it necessary to join the Government's objection to the merits of this complaint. The Court further notes that the applicant's complaints under Article 5 §§ 1 and 4 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 5 § 4 of the Convention

112. The Court will first examine the applicant's complaint under Article 5 § 4 of the Convention.

113. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII).

114. As to the Government's argument based on Articles 108 and 109 of the Code of Criminal Procedure (CCrP), the Court has already found that the wording of those provisions does not suggest that a detainee has a right to take proceedings for examination of the lawfulness of his or her detention, the prosecutor's application for an extension of the custodial

measure being the required element for institution of such proceedings (see *Nasrulloyev v. Russia*, no. 656/06, § 88, 11 October 2007). No application for extension of the applicant's detention was made by the prosecutor in the instant case.

115. The Government have not elaborated on their assertion in relation to Chapter 16 of the CCrP and section 17(1)(7) of the Custody Act (see paragraphs 56 and 57 above). In any event, the Court observes that Chapter 16 of the CCrP concerns the possibility for "parties to the criminal proceedings" to challenge decisions taken in the course of a preliminary investigation, such as a decision not to initiate criminal proceedings or a decision to discontinue them. There is no indication that the applicant was a party to criminal proceedings within the meaning given to that phrase by the Russian courts (see *Nasrulloyev*, cited above, § 89). Thus, the Court is not satisfied that the provisions of this Chapter afforded an effective remedy for challenging detention pending extradition. As regards the Custody Act, the Court notes that it derives from the Code of Criminal Procedure and concerns persons suspected or accused of criminal offences in Russia. There is no indication that this Act applied at the material time to persons who were detained pending extradition. Thus, the Court is uncertain that the remedies suggested by the Government related to the breaches alleged. In such circumstances, the Government was required, but failed, to show that the existence of the above remedies was sufficiently certain both in theory and in practice, failing which they lack the requisite accessibility and effectiveness (see, among other authorities, *A. and E. Riis v. Norway*, no. 9042/04, § 41, 31 May 2007, and *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, § 27). Thus, the Government's argument under this head should be also dismissed.

116. It follows that throughout the term of the applicant's detention he did not have at his disposal any procedure for a judicial review of its lawfulness. There has therefore been a violation of Article 5 § 4 of the Convention.

(b) Article 5 § 1 of the Convention

117. The Court notes that it is common ground between the parties that from 2 February to at least 22 September 2006 the applicant was detained with a view to his extradition from Russia to Uzbekistan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case.

118. The Court observes that the main thrust of the applicant's grievance is the length of his detention, allegedly without valid reasons. However, the Court does not have to determine this issue since it considers that there has been a violation of that provision for a different reason.

119. The Court reiterates that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), 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*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 50).

120. The Court observes that the request for the applicant's extradition was accompanied by an arrest warrant issued by an Uzbek prosecutor rather than by a decision of an Uzbek court. The applicant's initial placement in custody was ordered, on 4 February 2006, by a Russian court on the basis of the provisions of Chapter 13 of the CCrP, which governed measures of restraint including custodial measures (see paragraph 11 above). It is not in dispute that the applicant's initial arrest and placement in custody were lawful. The issue that the Court has to determine is whether that court decision was sufficient for holding the applicant in custody for more than seven months until the decision on the extradition request had been given (see *Nasrulloyev*, cited above, §§ 73 et seq.).

121. The Court has not been provided with any information as to whether the applicant made any attempts to challenge his continued detention at national level. However, it has already found that the applicant did not have an effective remedy available in that respect. Besides, it refers to its findings in the *Nasrulloyev* case concerning the divergent approaches taken by the Russian authorities on the issue of provisions applicable to detainees awaiting extradition, in particular on the issue whether Article 109 of the CCrP, which lays down the procedure and specific time-limits for reviewing detention, was applicable (see also *Ryabikin v. Russia*, no. 8320/04, § 129, 19 June 2008, and *Ismoilov and Others v. Russia* (dec.), no. 2947/06, 12 December 2006). The Court held in that case that the provisions of Russian law in force at the material time governing the detention of persons with a view to extradition were neither precise nor foreseeable in their application and fell short of the "quality-of-law" standard required under the Convention.

122. The Court upholds the findings made in the *Nasrulloyev* case and finds that in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting time-limits for such detention, the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. In particular, the Court observes that the detention order of 4 February 2006 did not set any time-limit for the applicant's detention. Under the provisions governing the general terms of detention (Article 108 of the CCrP), to which the domestic court referred when ordering the applicant's detention, the time-limit for detention pending

investigation was fixed at two months. A judge could extend that period up to six months. Further extensions could only be granted by a judge if the person was charged with serious or particularly serious criminal offences. However, upon the expiry of the maximum initial detention period of two months (Article 109 § 1 of the CCrP), no extension was granted by a court in the present case. The applicant spent over seven months in detention pending extradition. During that period no requests for extension of his detention were lodged. Neither could the prosecutor's instructions to the administration of the remand centre be regarded as a valid authorisation for the applicant's continued detention (see paragraph 13 above). Thus, the national system failed to protect the applicant from arbitrary detention, and his detention cannot be considered “lawful” for the purposes of Article 5 of the Convention. In these circumstances, the Court does not need to consider separately the applicant's additional argument concerning his delayed release.

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

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 7

A. Expulsion proceedings in Russia

124. The applicant complained that the proceedings before the Tverskoy District Court of Moscow on 17 October 2006 had been unfair. In particular, he alleged that he had not been given an opportunity to present reasons against his expulsion, to be represented by a lawyer and to call witnesses on his behalf.

125. In so far as this part of the application should be examined under Article 1 of Protocol No. 7 to the Convention, assuming it is applicable in the present case, the Court considers in view of its above findings under Articles 3 and 13 of the Convention that there is no need to examine the complaint separately under Article 1 of Protocol No. 7.

126. In so far as the complaint should be examined under Article 6 of the Convention, the Court reiterates that decisions relating to the 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 *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Criminal proceedings in Uzbekistan

127. The applicant complained prior to his expulsion under Article 6 § 1 of the Convention that, if returned to Uzbekistan, he would not be afforded a fair trial. The relevant parts of Article 6 § 1 read as follows:

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

128. The Government submitted that the applicant could have raised his first complaint before the district judge on 17 October 2006. The Government also submitted that the Uzbek authorities had given assurances that the applicant would not be surrendered to a third State, subjected to criminal prosecution or punished for the offence committed prior to his extradition and in respect of which that extradition had been refused, and that after the completion of the proceedings and having served his sentence, he would be allowed to leave Uzbekistan (paragraph 12 above). The Uzbek authorities had also provided assurances that the applicant would not be persecuted on the basis of his nationality or religious beliefs, and would not be subjected to torture, inhuman or degrading treatment or the death penalty.

129. In his Rule 39 request, the applicant alleged that he would not receive a fair trial in Uzbekistan because he would be convicted solely on the basis of admissions made under torture; defendants in similar cases had been convicted by courts which could not be considered independent and impartial. In the observations submitted after the applicant's expulsion, his representative further argued with reference to the UN reports (see paragraph 68 above) that the Uzbek judiciary lacked independence from the executive in that judges were appointed only for a five-year term and could be subject to pressure through disciplinary penalties, and that the right to legal advice from the moment of arrest had not been respected in many cases. Lastly, she alleged that at his trial in Uzbekistan the applicant had been refused permission to be represented by privately retained counsel but legal-aid counsel had been appointed instead, and that neither the applicant's representative nor his family members had been informed of the exact place of his detention in Uzbekistan.

130. The Court reiterates that it cannot be ruled out that an issue might exceptionally arise under Article 6 of the Convention by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 45, § 113). Although the applicant's complaint concerns expulsion as opposed to a decision to extradite, the Court considers that the above statement may in principle apply to expulsion decisions (see, *mutatis mutandis*, *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, p. 28,

§ 70, and *Tomic v. the United Kingdom* (dec.), no. 17837/03, 14 October 2003).

131. The Court finds that the Government did not assert that the applicant had failed to exhaust domestic remedies, unlike in respect of his complaint under Article 3. The Court will therefore not consider that possibility. Besides, it has already expressed doubts that the applicant was afforded a reasonable opportunity to plead his case before the district judge. However, the Court does not have to make any further findings in that respect since the applicant's complaint under Article 6 is, in any event, inadmissible. The Russian authorities refused to extradite the applicant. However, he was expelled from Russia as a result of the court proceedings under the Code of Administrative Offences for breaching the residence regulations for foreigners. In January 2007 an Uzbek court convicted him of unlawful actions against the constitutional order and participation in the activities of a proscribed organisation, and sentenced him to five years and six months' imprisonment (see paragraph 37 above). In the light of the materials in its possession, the Court considers that there is not sufficient evidence to show that any possible irregularities in the trial were liable to constitute a flagrant denial of justice. The Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

132. The applicant's representative complained that, by expelling the applicant before the examination of his appeal against the removal order, and despite the measure indicated by the Court on 24 October 2006 under Rule 39 of the Rules of Court, Russia had failed to comply with its obligations under the Convention. The Court considers that that complaint gives rise to an issue of whether the respondent State is in breach of its undertaking under Article 34 of the Convention not to hinder the applicant in the exercise of his right of individual application.

Article 34 of the Convention provides:

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

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Notice of these measures shall be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

133. The Government submitted that immediately after they had been notified of the Court's indication under Rule 39, they had informed "the prosecutor's office and the authorities under the Ministry of the Interior" accordingly. However, by that time the applicant had already been removed from Russia. The applicant had left Russia by plane at 7.20 p.m. (Moscow time) on 24 October 2006, whereas the information under Rule 39 had been published on the secure website at 7.17 p.m. Moscow time (5.17 p.m. Strasbourg time) on that date; no copy of that letter had been sent by facsimile.

134. The applicant's representative submitted that Russia had disregarded the Court's indication under Rule 39. The applicant had been put on board a plane leaving for Tashkent at 11.50 p.m. on 24 October 2006. Thus, the Russian authorities had been afforded sufficient time to comply with the Court's indication under Rule 39. She contended that urgent notification could be made "by any appropriate means" such as publication of the relevant information on the secure website. With reference to the Court's judgment in the case of *Shamayev and Others* (cited above, §§ 5-12 and 475), the applicant's representative argued that even a short delay in transmission and execution of the Court's indication under Rule 39 would violate Article 34 of the Convention. Finally, she deplored the Russian authorities' failure to assist her in re-establishing contact with the applicant in Uzbekistan.

135. The Court observes that the parties disagreed as to whether the applicant had been expelled before or after the Russian authorities had learnt about a Rule 39 request, as well as about the actual time of his departure from the territory of Russia. The Court confirms that the information concerning the application of Rule 39 in the applicant's case was published on its secure website at 7.17 p.m. (Moscow time) on the same date. In the light of the materials in its possession (see paragraphs 43 and 44 above), the Court finds that the applicant most likely left the territory of Russia shortly before midnight (Moscow time) on 24 October 2006. The Government did not specify, however, when they had first learnt about the application of Rule 39 in the present case and whether the administration of the detention centre and other competent authorities had been notified of it, if at all.

136. The Court does not exclude the possibility that a respondent State's failure to make practical arrangements for receiving and processing information from the Court regarding the examination of a Rule 39 request or the Court's decision to apply it in a given case may raise an issue under Article 34 of the Convention. However, in the present case the Court cannot

establish with sufficient certainty that having been put on notice about the Court's decision to apply Rule 39, the respondent Government deliberately omitted to comply with it.

137. Neither does it appear that any act or omission by the Russian authorities was intended to prevent the Court from taking a decision on a Rule 39 request or notifiying the Government thereof in a timely manner (compare *Al-Moayad v. Germany* (dec.), no. 35865/03, 20 February 2007). It is unclear whether the applicant's lawyer – assisted by members of a non-governmental organisation helping asylum-seekers – informed the Office of the Representative of the Russian Federation at the European Court, the detention centre or another competent authority that the applicant had already lodged a request for interim measures under Rule 39 of the Rules of Court. Accordingly, the Court cannot consider that the respondent State was duly informed that a request under Rule 39 had already been made. Against this background, the Court's assessment of the material before it leads it to find that there is an insufficient factual basis for it to conclude that the respondent State deliberately prevented the Court from taking its decision on the applicant's Rule 39 request or notifying it of that decision in a timely manner, in breach of its obligation to cooperate with the Court in good faith.

138. Consequently, there has been no violation of Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

139. The Court has also examined the remainder of the applicant's complaints under Articles 6 and 13 of the Convention as submitted by him, including a complaint about the alleged violation of the presumption of innocence. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

140. The applicant's representative claimed, on her client's behalf, monetary compensation in respect of non-pecuniary damage, leaving the amount to be awarded to the Court's discretion. She also invited the Court “to recognise the detriment to the applicant's 'life plan'... caused by his unlawful removal from Russia in violation of the Convention”. She further claimed that the respondent Government be required to undertake, via their diplomatic contacts in Uzbekistan, measures aimed at re-establishing contact with the applicant and his relatives, commuting the applicant's

sentence by way of amnesty or pardon, securing his eventual release and facilitating his departure for a country which would be ready to accept him.

141. The Government contested the applicant's claim in respect of non-pecuniary damage.

A. Article 41

142. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

143. As to the claim for compensation in respect of non-pecuniary damage, the Court observes that the applicant is currently serving a sentence of imprisonment in an unspecified location in Uzbekistan. His representative's attempts to re-establish contact with him were to no avail. Thus, the Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it should be reserved and the subsequent procedure fixed, having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

B. Article 46

144. The Court considers that the applicant's non-monetary claims relate primarily to Article 46 of the Convention, which reads as follows:

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

The Court points out that under Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not only to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects thereof (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Nasrulloyev*, cited above, § 95). Exceptionally, with a view to helping the

respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be taken in order to put an end to a systemic situation it has found to exist (see *Abbasov v. Azerbaijan*, no. 24271/05, § 37, 17 January 2008). In such circumstances, it may propose various options and leave the choice of measure and its implementation to the discretion of the State concerned (see, for example, *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V). In other exceptional cases, the nature of the violation found may be such as to leave no real choice as to the measures required to remedy it and the Court may decide to indicate only one such measure (see, for example, *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II).

145. Having regard to the circumstances of the present case, the Court does not find it appropriate to indicate measures to be adopted in order to redress the violations found.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objections as to the exhaustion of domestic remedies in respect of the applicant's complaints about a risk of ill-treatment in the event of his being expelled to Uzbekistan and the unlawfulness of his deprivation of liberty and *rejects* them;

2. *Declares* the complaints concerning the alleged risk of ill-treatment in Uzbekistan, the alleged inefficiency of the domestic remedies in respect of the applicant's complaint of a risk of ill-treatment, the unlawfulness of the applicant's deprivation of liberty and the unavailability of judicial review of his detention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's expulsion to Uzbekistan;

4. *Holds* that there has been a violation of Article 13 of the Convention on account of the authorities' failure to afford the applicant an effective and accessible remedy in relation to his complaint under Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the unavailability of any procedure for a judicial review of the lawfulness of the applicant's detention with a view to his extradition to Uzbekistan;

6. *Holds* that there has been a violation of Article 5 § 1 of the Convention in relation to his detention with a view to his extradition to Uzbekistan;

7. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 7;

8. *Holds* that there has been no breach of the respondent State's obligation under Article 34 of the Convention;

9. *Holds* that the question of the application of Article 41 is not ready for decision;

accordingly,

(a) *reserves* the question;

(b) *invites* the Russian Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President