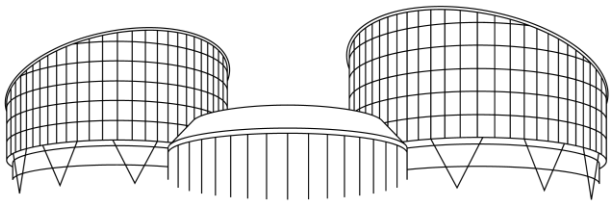

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KLEIN v. RUSSIA

(Application no. 24268/08)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

04/10/2010

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

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

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges*,
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 24268/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Israeli national, Mr Gal Yair Klein ("the applicant"), on 26 May 2008.

2. The applicant was represented by Mr D. Yampolskiy, a lawyer practicing in Moscow, and by Mr M. Tzivin, Mr M. Levin and Mr N. Tzivin, lawyers practising in Tel-Aviv. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 27 May 2008 the President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Colombia until further notice.

4. On 3 July 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

5. On 4 September 2008 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

6. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1943 and lives in Tel-Aviv. He is currently detained in remand prison IZ-77/4 in Moscow.

8. On 23 February 2001 the Criminal Court of the Manizales District, Colombia *("Juzgado Penal del Circuito de Manizales")* convicted the applicant of a crime provided for by Article 15 of Decree no. 180 (1988), acknowledged as permanent law of Colombia by Extraordinary Decree no. 2266 (1991), ("instruction in and teaching of military and terrorist tactics, techniques and methods, committed with mercenaries and accomplices") and sentenced him to fourteen years' imprisonment.

9. On 22 June 2001 the Superior Court of the Manizales District, Colombia *("Tribunal Superior de Manizales")* reduced the applicant's sentence on appeal to ten years and eight months' imprisonment, combined with a fine.

10. On 28 February 2001 the Criminal Court of the Manizales District issued an arrest warrant against the applicant on the basis of his conviction.

11. On 28 March 2007 Interpol issued Red Notice No. A-666/3-2007 for the applicant's provisional arrest with a view to extradition.

12. At 6.40 p.m. on 27 August 2007 a group of servicemen of the Russian Ministry of the Interior, assisted by Interpol officers, arrested the applicant in Domodedovo Airport, Moscow.

13. On 28 August 2007 the Moscow prosecutor's office with responsibility for supervision of the implementation of laws on marine and air-borne transport ordered the applicant's placement in custody, pursuant to Article 466 of the Russian Code of Criminal Procedure ("CCP"), until his transfer to the country which had requested extradition. The decision gave the following reasons for application of a measure of restraint:

> "Gal Klein Yair is a national of a third State, has no permanent place of residence and employment on the territory of the Russian Federation, and his extradition for the purpose of serving the sentence imposed by the judgment of the District Special Criminal Court of Manizales would be impossible without ensuring [his] placement in custody."

14. On 31 August 2007 Rossiyskaya Gazeta ("*Российская газета*"), a federal newspaper, published an article on its website entitled "The Mafia's Teacher Awaits Extradition" ("*Учитель мафии ждет экстрадиции*"), covering the applicant's story. The article read, in particular:

> "Having learned of the wanted mercenary's arrest in Moscow, the Vice-President of Colombia Francisco Santos Calderon, stated that 'it should be ensured that this gentleman rots in jail for [his] participation in the training of armed groups'..

The article did not contain any reference to the source of the information on the Vice-President's statement.

15. On 28 September 2007 the Ambassador of the Russian Federation in Bogota informed the Colombian Ministry of Foreign Affairs that the Russian Prosecutor General's Office had been examining the possibility of extraditing the applicant, on condition that they be provided with a copy of the judgment against the applicant and with certain guarantees.

16. On 4 October 2007 the Colombian Ministry of Foreign Affairs informed the Russian Minister of Foreign Affairs of the following:

> "Henceforth Colombia, acting on the basis of the reciprocity principle, shall transfer persons wanted by Russian law enforcement agencies to Russia for relevant criminal prosecution or execution of sentences against such persons. Mr Yair Gal Klein shall be provided with an opportunity to appeal against his conviction by the Colombian judicial bodies; Mr Yair Gal Klein shall not be subjected to capital punishment or tortures, inhuman or degrading treatment or punishment; Mr Yair Gal Klein shall be indicted only in respect of the acts mentioned in the [extradition] request."

17. On 29 January 2008 the Prosecutor General's Office of Russia ordered the applicant's extradition to Colombia. It was mentioned that the acts for which the applicant had been sentenced were punishable under Russian law and corresponded to the crime provided for by Article 205 § 1 of the Russian Criminal Code ("assistance to terrorist activities"). The sanction established for that crime stipulated imprisonment for a term exceeding one year. The statute of limitations for the execution of sentences established by both Russian and Colombian legislation had not expired. The differences in classification of the crime in the two countries could not be a reason for a refusal to extradite. The applicant had not obtained Russian nationality. The Colombian Government guaranteed that the applicant would not be subjected to ill-treatment.

18. On 6 February 2008 the applicant appealed to the Moscow City Court against the order of 29 January 2008. He contended that, once in Colombia, he might be subjected to ill-treatment. In support of this assertion he stated as follows:

> "[A]ccording to the UN General Assembly Resolution of 15 March 2006, the human rights situation in Colombia remains extremely tense. As it is stated during the hearing of the UN Human Rights Committee of 20 October 2005, there is a serious escalation of violence directly linked to actions of members of governmental forces. The report contains allegations of those violations by [the] State prosecutor's office".

He also referred to the unstable internal situation in Colombia, caused by the civil war, and claimed that, as a result, the guarantees given by the Colombian Government were insufficient; that the five-year statute of limitation for the execution of sentences under Colombian law, as well as the ten-year statute of limitations for criminal prosecution established by Russian law, had expired in his case; that the Prosecutor General's Office wrongfully relied on the Russian Criminal Code of 1996, which had not

been in force at the time of the crime in question; and that there was no extradition agreement between Russia and Colombia. No copies of the General Assembly's Resolution or minutes of the Human Rights Committee's meeting were enclosed with the appeal submissions.

19. On 11 March 2008 the Moscow City Court dismissed the applicant's complaint and upheld the order of 29 January 2008. The ruling stated that the applicant had not been convicted of political crimes and that the statute of limitation under both Russian and Colombian laws had not expired. It was also stated that the Colombian Government had guaranteed that the applicant would have a right to appeal against his conviction and would not be transferred to a third country without the Russian authorities' consent or subjected to ill-treatment. The *in absentia* criminal proceedings against the applicant had been carried out respecting the principle of a fair trial. Despite the absence of an extradition agreement between the two States, the applicant could have been transferred to the Colombian authorities on the basis of the reciprocity principle. As to the alleged risk of ill-treatment in Colombia, the ruling stated:

> "It follows from the materials submitted by the requesting State that the crime the applicant had been convicted of is not included in the category of political crimes and that he [the applicant] has not been persecuted for political reasons.
>
> Therefore, [the applicant's] allegations that he has been persecuted for political reasons, are unsubstantiated."

20. On 17 March 2008 the applicant appealed to the Supreme Court of Russia against the first-instance ruling, on the grounds that that the statutes of limitations had expired, that the Russian law had been wrongfully interpreted and that there was no extradition agreement between Russia and Colombia. He also referred to a media statement by the Colombian Vice-President in which he had suggested that the sentence against the applicant had been too mild and thus "shameful", and that it had to be ensured that the applicant would rot in jail. The applicant further alleged that the civil war in Colombia had been ongoing since 1948 and that it had caused widespread violations of human rights, including those of prisoners. He did not provide any details of the alleged violations. The applicant also claimed that the purpose of his extradition was to have him rot in jail.

21. On 22 May 2008 the Supreme Court of Russia dismissed the appeal for the following reasons. The Colombian Government had given diplomatic assurances that the applicant would not be ill-treated if extradited. They had also stated that conditions of detention in Colombian penitentiary institutions were decent and that Russian officials would have a right to visit those institutions for regular checks. There were no grounds to suspect that the applicant would be ill-treated if extradited. The applicant had not been persecuted on political grounds. According to the Colombian Embassy, officials' media statements could not affect decisions already

taken by the judiciary. The Colombian Vice-President was not a hierarchical superior of the judiciary, the Ministry of Justice or the penitentiary service. The applicant's actions were punishable under Russian law in force in 1989-90, which laid down a severer sanction than Article 205 § 1 of the Russian Criminal Code. The appeal ruling read, in particular:

> "There are no grounds to believe that in the event of extradition Gal Klein Yair would be subjected to torture in Colombia and that the guarantees established by law, including Article 14 of the ICCPR, would not be respected in respect of him.
>
> It follows from the materials of an extradition inquiry carried out by the Russian Prosecutor General's Office that no facts of application to Gal Klein Yair of cruel, inhuman or degrading treatment in the requesting State have been established. There is no basis to suppose that the person to be extradited would be subjected to such treatment or punishment in Colombia in the future or that he would be subjected to the death penalty.
>
> ... The [applicant's] allegations that he was persecuted on political grounds were justifiably considered by [the Moscow City Court] as unsubstantiated."

22. The appeal ruling of 22 May 2008 became final on the same date.

23. On 26 May 2008 the applicant requested the Court, under Rule 39 of the Rules of Court, to prevent his expulsion to Colombia. He alleged that he would face a serious risk of ill-treatment if he were extradited.

24. On 27 May 2008 the Court indicated to the Russian Government under Rule 39 that the applicant should not be extradited to Colombia until further notice.

25. On 5 June 2008 the Reuters news agency reported that "Colombia [had] attacked as insulting and flippant on Thursday a decision by the European Court of Human Rights to block the extradition of an Israeli ex-army officer convicted of training illegal paramilitaries."

II. RELEVANT DOMESTIC LAW

A. Russian Constitution

26. 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. Russian Code of Criminal Procedure

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

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

29. The Russian Prosecutor General or his or her Deputy decides upon the extradition request (Article 462 § 4). The decision by the Russian Prosecutor General or his or her Deputy may be appealed against before a regional court within ten days of receipt of the notification of that decision (Article 463 § 1).

30. The regional court, sitting in a composition of three judges, verifies the lawfulness and well-foundedness of the extradition decision within one month of the receipt of the appeal, in a public hearing at which the prosecutor, the person whose extradition is sought and his or her counsel (if the latter has participated in the earlier proceedings) may participate (Article 463 § 4). The court does not examine issues of the individual's guilt and is limited to verifying the compatibility of the extradition decision with Russian laws and treaties (Article 463 § 6). The court decides either to declare the extradition decision unlawful and to quash it or to dismiss the appeal (Article 463 § 7). The regional court's decision can be appealed against before the Russian Supreme Court within seven days of its delivery (Article 463 § 9).

III. RELEVANT INTERNATIONAL MATERIALS

31. The Conclusions and Recommendations of the Committee Against Torture with regard to Colombia (CTAS/C/CR/31/1), dated 4 February 2004, read as follows:

"7. The Committee reiterates its concern at the numerous acts of torture and ill-treatment reported widely and systematically committed by the State security forces and organs in the State party both during and outside armed operations. It also expresses its concern at the high number of forced disappearances and arbitrary executions ...

8. The Committee expresses its concerns that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture...

9. The Committee also expresses its concern at ... (a) the climate of impunity that surrounds human rights violations by State security forces and organs and, in particular, the absence of prompt, impartial and thorough investigation of the numerous acts of torture or other cruel, inhuman or degrading treatment or punishment and the absence of redress and adequate compensation for the victims; ... (e) the overcrowding and poor conditions in penal establishments, which could be considered inhuman or degrading treatment."

32. The Concluding Observations of the Human Rights Committee: Colombia (CCPR/CO/80/COL), of 26 May 2004, read as follows:

"11. The Committee is concerned about the fact that a significant number of arbitrary detentions, abductions, forced disappearances, cases of torture, extrajudicial executions and murders continue to occur in the State party... The Committee is also disturbed about the participation of agents of the State party in the commission of such acts, and the apparent impunity enjoyed by their perpetrators."

33. On 29 November 1996 a mandate for activities of a field office of the UN High Commissioner for Human Rights (OHCHR) in Colombia was established by an agreement between the Government of Colombia and the ONCHR. On 9 September 2007 the parties agreed to extend the mandate, in its entirety, until 30 October 2010. The Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia (A/HRC/7/39), dated 29 February 2008, reads as follows:

"4. ...[I]t must be recognized that Colombia has made progress in restoring security throughout the country in recent years, and the visibility given to human rights in the public agenda is a solid achievement.

...

31. The office [of the OHCHR] in Colombia has received information on cases of torture, cruel, inhuman and degrading treatment and the excessive use of force by members of the security forces. ... [I]n some extrajudicial executions attributed to Army personnel, the victims had been tortured.

...

34. Complaints were made about illegal or arbitrary detentions in which warrants were exclusively based on the testimony of former guerrillas, which was not properly corroborated by other evidence...

35. Some judicial decisions have questioned the impartiality of witnesses, such as former guerrillas or paramilitaries who receive economic benefits for their testimonies...

36. According to official data, overcrowding in prisons has reached an average of 20.6 per cent, and the situation is much worse in some establishments... The current situation requires additional efforts and measures to meet the basic needs of prisoners, such as health, food, sanitation, legal advice and expert assistance...”

34. The Annual Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia (A/HRC/10/32), of 9 March 2009, reads as follows:

“The High Commissioner acknowledges the spirit of cooperation existing between the Government and her Office in Colombia. She also notes the openness of the Government to addressing human rights challenges, as demonstrated during the universal periodic review process.

...

2. ...In compliance with [its] mandate, OHCHR Colombia continues to assist the authorities in developing policies and programmes to promote and protect human rights, to advise civil society on human rights issues, to observe the situation of human rights and international humanitarian law in the context of the internal armed conflict, and to submit its reports and analyses to the High Commissioner.

...

3. The High Commissioner visited Colombia from 27 October to 1 November 2008. She met with the President, ministers, and senior public officials in charge of protecting and promoting human rights. She also met with representatives of civil society organizations, including human rights and women's NGOs, victims' associations and trade unions. The High Commissioner travelled to Arauca, where she learnt about the regional human rights challenges, meeting with community leaders and civilian and military authorities. The High Commissioner expressed to all her interlocutors her gratitude for the support that OHCHR Colombia has been receiving. She also highlighted the Government's efforts to promote accountability and respect for human rights within the Armed Forces and to demobilize paramilitary groups. While the High Commissioner noted the increased attention given to victims' right to truth, justice and reparation, she also expressed concern at the persistence of entrenched human rights challenges.

4. The Special Representative of the Secretary-General for Children and Armed Conflict visited Colombia from 12 to 14 May 2008. The Working Group on Arbitrary Detention also visited the country from 1 to 10 October 2008.

5. On 10 December, Colombia was reviewed by the United Nations Human Rights Council, in the context of the universal periodic review.

...

10. ...[T]he President initiated discussions with senior military commanders to address complaints of extrajudicial executions.

11. However, the number of complaints about extrajudicial executions and the number of victims reported showed that institutional policies adopted by the Ministry of Defence and the army High Command to combat this practice have not, as of October 2008, led to a significant decrease in such violations. Renewed efforts are needed to guarantee the effectiveness of and strict compliance with institutional policies to prevent and punish extrajudicial executions.

12. By late November 2008, the Attorney-General's Office had initiated investigations into 112 cases of alleged extrajudicial executions which occurred in 2008. In addition, 473 additional cases, most of which occurred in 2006 and 2007, were referred to the Attorney-General's National Human Rights and International Humanitarian Law Unit in 2008. This Unit is currently investigating nearly 716 cases related to over 1,100 victims. These figures confirm that extrajudicial executions are not isolated events, but a widespread practice committed by a large number of military units throughout the country...

...

18. OHCHR Colombia was informed of cases of cruel, inhuman and degrading treatment or punishment attributed to members of the security forces in Antioquia, Cauca and Chocó...

...

20. In early 2008 OHCHR Colombia noted cases of serious inhuman and degrading treatment of inmates at the prison of Valledupar (Cesar), as well as excessive use of force by prison guards to put down protests."

35. 2008 Country Reports on Human Rights Practices – Colombia, issued by the United States Department of State on 25 February 2009, reads as follows:

"Colombia is a constitutional, multiparty democracy... In May 2006 independent presidential candidate Alvaro Uribe was reelected in elections that were considered generally free and fair. The 44-year internal armed conflict continued between the government and terrorist organizations, particularly the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). While civilian authorities generally maintained effective control of the security forces, there were instances in which elements of the security forces acted in violation of state policy.

Although problems remained, the government's respect for human rights continued to improve, which was particularly evidenced by progress in implementing the Justice and Peace Law.

...

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

Although the law prohibits such practices, there were reports that the police, military, and prison guards sometimes mistreated and tortured detainees. Members of the military and police accused of torture were tried in civilian rather than military courts. CINEP asserted that, during the first six months of the year, government security forces were involved in 74 incidents of torture, a 46 percent increase

compared with the first six months of 2007. CINEP also reported that, during the first six months of the year, there were 66 victims of torture by the armed forces.

...

Prison and Detention Center Conditions

With the exception of new facilities, prison conditions were poor, particularly for prisoners without significant outside support. The National Prison Institute (INPEC) runs the country's 139 national prisons and is responsible for inspecting municipal jails.

Overcrowding, lack of security, corruption, and an insufficient budget remained serious problems in the prison system. As of year's end, more than 69,000 prisoners were held in facilities designed to hold fewer than 50,000; overcrowding rates exceeded 27 percent in 139 installations. Many of INPEC's 13,000 prison guards and administrative staff were poorly trained. The NGO Committee in Solidarity with Political Prisoners noted that improved training, increased supervision, and more accountability for prison guards has helped, but expressed fear that greater privatization of the prisons system may lead to further corruption.

Constrained budgets adversely affected prison conditions. INPEC spent 4,941 pesos ($2.00) per day on each inmate for food. Private sources continued to supplement food rations of many prisoners.

INPEC reported that during the year there were 40 violent deaths among inmates related to fighting and riots. From January to September 30, there were 14 riots at various penal institutions. The Prosecutor General's Office continued to investigate allegations that some prison guards routinely used excessive force and treated inmates brutally. According to the Superior Judicial Council (CSJ), there were four judgments for excessive force made against prison guards during the year.

...

Political Prisoners

The government stated that it did not hold political prisoners. Some human rights advocacy groups characterized as political detainees some detainees held on charges of rebellion or terrorism in what the groups claimed were harassment tactics by the government against human rights advocates. During the year there were 3,336 prisoners accused of rebellion or aiding and abetting insurgence, 2,263 of whom were accused of supporting the FARC. The government provided the ICRC access to these prisoners."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that if extradited to Colombia, he would most probably be subjected to ill-treatment contrary to Article 3 of the Convention, which provides:

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

37. The Government contested that argument. They claimed that Colombia was party to the majority of international legal human rights instruments, including the International Covenant on Civil and Political Rights and its Optional Protocol, as well as the UN Convention Against Torture. The Colombian authorities had provided written assurances that the applicant would not be subjected to the death penalty or ill-treatment, that he would be punished only for the crime referred to in the extradition request, that he would not be persecuted on the grounds of his race, ethnic origin, religion, nationality or political views and that upon serving his sentence he would be free to leave Colombia and would not be expelled or extradited to a third State without the Russian authorities' consent. The Colombian penitentiary facilities allowed for decent conditions of detention. The statement by the Colombian Vice-President referred to by the applicant could not be regarded as the official position of the Colombian Government. An inquiry carried out by the Russian Prosecutor General's Office had not obtained from Colombian official sources any information on possible ill-treatment of the applicant. Media statements by public officials could not affect judgments already adopted by the judiciary.

38. In sum, the Government insisted that the applicant would not be subjected to any ill-treatment or punishment contrary to Article 3 of the Convention if extradited to Colombia.

39. The applicant submitted that recent reports by the UN Committee Against Torture, the UN Human Rights Committee, the UN High Commissioner for Human Rights, the U.S. State Department and Amnesty International showed a questionable human rights situation in Colombia and provided "compelling evidence about overcrowding, insecurity, corruption, and insufficient budget in the prison system and detention conditions, and deadly violence amongst inmates as well as excessive force and brutality by prison guards. Torture and other cruel, inhuman, or degrading treatment or punishment by police, military and prison guards continued to be reported."

40. In the applicant's submissions, "according to the International Relations and Security Network website, Vice-President Santos was quoted by local papers as stating: 'Hopefully they'll hand Klein over to us so [that]

he can rot in jail for all the damage he's caused [to] Colombia"'. He claimed that the statement in question illustrated the serious risk of ill-treatment that he would face once extradited, given that the Vice-President was the second most influential official of the executive branch. The applicant further asserted that diplomatic assurances given by the Colombian Government did not suffice to guarantee him against such risk.

41. Lastly, the applicant emphasised that the Russian authorities had not conducted a serious investigation into possible ill-treatment.

A. Admissibility

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

B. Merits

1. General principles

43. The Court reiterates at the outset that in order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

44. The Court further reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international

law, under the Convention or otherwise (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

45. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports of Judgments and Decisions* 1997-III). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports* 1996-V).

46. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

47. As regards the general situation in a particular country, the Court considers that it can attach certain importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department (see, for example, *Chahal*, cited above, §§ 99-100, *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005, *Said v. the Netherlands*, no. 2345/02, § 54, 5 July 2005, and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other

evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I).

2. Application of the above principles to the present case

48. In line with its case-law cited above, it is necessary to examine whether the foreseeable consequences of the applicant's extradition to Colombia are such as to bring Article 3 of the Convention into play. Since he has not yet been extradited, owing to an indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case.

49. In the applicant's submissions, his fears of possible ill-treatment in Colombia are justified by two factors. First, referring to a number of reports, the applicant argues that the general human rights situation in the receiving country is deplorable. Secondly, he claims that he personally would run an even greater risk of ill-treatment than any other person serving a sentence in Colombia since the Vice-President had publicly threatened to have him "rot in jail".

50. The Court will therefore first consider whether the general political climate in Colombia could give reasons to assume that the applicant would be subjected to ill-treatment in the receiving country. It notes in this respect that, in the Government's submissions, Colombia, a party to major international treaties, respected basic human rights. Reiterating that in cases concerning aliens facing expulsion or extradition the Court is entitled to compare materials made available by the Government with materials from other reliable and objective sources (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, ECHR 2007-... (extracts), and *Saadi v. Italy* [GC], no. 37201/06, § 131, 28 February 2008), it observes that in 2009 the UN High Commissioner for Human Rights and the U.S. Department of State reported a considerable number of human rights violations that have recently taken place in Colombia (see paragraphs 33-35 above).

51. The information from various reliable sources, including those referred to by the applicant (see paragraphs 31-35 above), undoubtedly illustrates that the overall human-rights situation in Colombia is far from perfect. For instance, State agents are presumed liable for a number of extrajudicial killings of civilians, forced disappearances and arbitrary detentions.

52. The findings above that attest to the general situation in the country of destination should be supported by specific allegations and require collaboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73). In the same context, the Court should examine whether the authorities assessed the risks of ill-treatment prior to taking the decision on extradition (see *Ryabikin*, cited above, § 117).

53. The main argument raised by the applicant under Article 3 is the danger of ill-treatment in Colombia, exacerbated by the nature of the crime

that he had been convicted of. The Court observes in this respect that the Committee Against Torture expressed its concerns that measures adopted or being adopted by Colombia against terrorism and illegal armed groups could encourage the practice of torture (see paragraph 31 above). The Court further notes that the evidence before it demonstrates that problems still persist in Colombia in connection with the ill-treatment of detainees.

54. Furthermore, turning to the applicant's personal situation, the Court observes that the applicant fears that he would be singled out as a target of ill-treatment when in Colombia because Vice-President Santos reportedly stated that the applicant should "rot in jail". It considers that, regrettably, it is unable to assess fully the nature of the statement and the connotations it might have had in the original language, i.e. Spanish, since the applicant has not indicated the source of the information concerning the statement in question. However, it appears that the statement expressing the wish of a high-ranking executive official to have a convicted prisoner "rot in jail" may be regarded as an indication that the person in question runs a serious risk of being subjected to ill-treatment while in detention.

55. The Court notes that the Government invoked assurances from the Colombian Ministry of Foreign Affairs to the effect that the applicant would not be subjected to ill-treatment there (see paragraph 16 above). However, the Court observes that the assurances in question were rather vague and lacked precision; hence, it is bound to question their value. The Court also reiterates that diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, §§ 147-148).

56. Lastly, the Court will examine the applicant's argument that the Russian authorities did not conduct a serious investigation into possible ill-treatment in the receiving country. It notes in this respect that the applicant informed the Russian courts about poor human-rights situation in Colombia referring to the fact that there had been a lengthy internal armed conflict between State forces and paramilitaries and citing the UN General Assembly's Resolution and the materials of the meeting of the Human Rights Committee (see paragraph 18 above). Furthermore, the applicant brought to the authorities' attention the fact that the Colombian Vice-President had threatened to have him rot in jail. The Supreme Court of Russia limited its assessment of the alleged individualised risk of ill-treatment deriving from Vice-President Santos's statement to a mere observation that the Colombian judiciary were independent from the executive branch of power and thus could not be affected by the statement in question (see paragraph 21 above). The Court is therefore unable to conclude that the Russian authorities duly addressed the applicant's concerns with regard to Article 3 in the domestic extradition proceedings.

57. The Court finds therefore that, in the particular circumstances of the present case, implementation of the extradition order against the applicant would breach Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

58. The applicant complained that in Colombia he would not have a fair trial, which would amount to a flagrant denial of justice. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

A. The parties' submissions

59. The Government submitted that the Colombian authorities had guaranteed that the applicant would have an opportunity to appeal against the judgment in his criminal case. Furthermore, the criminal proceedings against the applicant had been carried out in compliance with the Colombian constitutional and legal safeguards.

60. The applicant maintained his complaint and claimed that the Colombian judicial system was overburdened and inefficient.

B. The Court's assessment

61. The Court recalls its finding that the extradition of the applicant to Colombia would constitute a violation of Article 3 of the Convention (see paragraph 57 above). Having no reason to doubt that the respondent Government will comply with the present judgment, it considers that, whilst the complaint under Article 6 of the Convention is admissible, it is not necessary to decide the hypothetical question whether, in the event of extradition to Colombia, there would also be a violation of Article 6 of the Convention (see *Saadi*, cited above, § 160).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. The applicant complained that Russian law provided no effective remedies in relation to his complaint of the risk of ill-treatment in the event of his extradition to Colombia. He relied on Article 13 of the Convention, which provides:

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

63. The Government contested that argument and insisted that the applicant had had effective remedies available to him and had made use of them when challenging the lawfulness of the extradition decision before the Russian courts, pursuant to Article 463 of the CCP.

64. The applicant reiterated his complaint.

65. The Court observes that the complaint made by the applicant under this Article has already been examined in the context of Article 3 of the Convention in paragraph 56 above. In such circumstances the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 3 is admissible, there is no need to make a separate examination of this complaint on its merits (see, *mutatis mutandis*, *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008; *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI; and *Anık and Others v. Turkey*, no. 63758/00, § 86, 5 June 2007).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. In his application form of 23 July 2008 the applicant relied on Article 2, rephrasing in substance his complaint under Article 3 of the Convention, and on Article 7, complaining that he had been convicted of a crime which, at the time it was committed, had not been punishable under both Russian and Colombian law.

67. In his observations on the admissibility and merits of the case of 18 March 2009 the applicant merely referred to Article 5 of the Convention, without making any complaints under this head. He also alleged that the Vice-President's statement that he should rot in jail, as well as the Reuters news report that Colombian authorities regarded the indication of interim measures as "insulting and flippant" were in breach of Article 6 § 2 of the Convention.

68. Having regard to all the material in its possession, the Court finds that they do not disclose any appearance of violations 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

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

A. Damage

70. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government considered the amount claimed to be excessive.

72. The Court considers that its finding that the applicant's extradition to Colombia, if carried out, would breach Article 3 of the Convention constitutes sufficient just satisfaction (see *Saadi*, cited above, § 188).

B. Costs and expenses

73. The applicant claimed reimbursement of EUR 160,000 for costs and expenses incurred in the proceedings before domestic authorities and before this Court. He submitted a note stipulating that Mr D. Yampolskiy had received in fees 2,401,180 Russian roubles (approximately EUR 53,450) and a note stating that Mr M. Tzivin had received 125,000 United States dollars and EUR 60,000 in fees for fees of four attorneys, travel costs, translation costs and advisors' fees. No further documents justifying the costs and expenses claims were submitted.

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

75. The Court reiterates that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Nielsen and Johnson v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). It observes that the expenses allegedly incurred by the applicant in connection with the Strasbourg proceedings were not itemised or supported by any documentary evidence except for two notes of a general nature. In the absence of any itemised bill it is difficult to assess the reasonableness and necessity of the costs made by the applicant. In such circumstances the Court dismisses the applicant's claims under this head in total.

VI. RULE 39 OF THE RULES OF COURT

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

77. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 3 above) must continue in force until the present judgment becomes final or until the Panel of the Grand Chamber of the Court accepts any request by one or both of the parties to refer the case to the Grand Chamber under Article 43 of the Convention (see *F.H. v. Sweden*, no. 32621/06, § 107, 20 January 2009).

FOR THESE REASONS, THE COURT:

1. *Declares* unanimously the complaints under Articles 3 and 13 of the Convention, as well as the complaint under Article 6 § 1 of the Convention regarding flagrant denial of justice in Colombia admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that implementation of the extradition order against the applicant would give rise to a violation of Article 3 of the Convention;

3. *Holds* by five votes to two that it is not necessary to examine whether, in the event of extradition to Colombia, there would also be a violation of Article 6 of the Convention;

4. *Holds* by five votes to two that there is no need to make a separate examination of the complaint under Article 13 of the Convention on its merits;

5. *Holds* unanimously that the finding of a violation constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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

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

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Christos Rozakis
Deputy Registrar	President

In accordance with Article 45 § 2 f the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Kovler and Mr Hajiyev is annexed to this judgment.

C.L.R.
A.W.

JOINT DISSENTING OPINION OF JUDGES KOVLER AND HAJIYEV

We cannot agree with the conclusion of the Court that the implementation of the extradition order against the applicant would give rise to a violation of Article 3 of the Convention. We share the general approach of the Court concerning this delicate matter of extraditions on the basis of respect for the elementary rights of extradited persons. It is significant that the Court concludes that "the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 ... Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence" (see paragraph 47 of the judgment).

We agree that the information from various reliable sources, including those referred to by the applicant (see paragraphs 31-35), undoubtedly illustrates that the overall situation in Colombia is far from perfect. At the same time we could not find in these reports any indication of the existence of a situation comparable to that of the applicant. It is improbable that the applicant would be subjected to coercion in order to make a self-incriminating statement after his conviction. Given that he would presumably be detained in order to serve his sentence once in Colombia, the risks of his being killed by the military under the pretence of a fight with paramilitaries would be virtually non-existent. The applicant has never claimed to be a member of any targeted group such as human-rights advocates. Moreover, he did not apply for refugee status on account of his alleged persecution on political or any other grounds, as is the case in many other applications to the Strasbourg Court. The materials before the Court do not provide accounts of instances of ill-treatment of persons convicted by a court of terrorism-related activities. Although on 4 February 2004 the Committee against Torture expressed its concerns that measures adopted or being adopted by Colombia against terrorism and illegal armed groups could encourage the practice of torture, no further details describing such practices were given either in the Committee's Conclusions and Recommendations of that date or in any other reports.

In our view, the applicant has not submitted evidence permitting the unequivocal conclusion that he would be serving his sentence in an overcrowded cell or otherwise poor conditions. Nor, on the basis of the evidence at its disposal, can it conclude that this is a case where "extremely poor conditions of detention, as well as ill-treatment and torture, remain a great concern for all observers of the situation" (see *Ryabikin v. Russia*, no. 8320/04, § 116, 19 June 2008). Lastly, the Colombian authorities have not refused to allow monitoring of places of detention of persons convicted of terrorism-related activities. Therefore, the Court could have considered

that the mere risk of the applicant's being detained in poor conditions, in the event of his extradition to Colombia, would not in itself reach the minimum level of severity.

Turning to the applicant's personal situation, the Court observes in its judgment that the reason why he fears that he would be singled out as a target of ill-treatment when in Colombia is that Vice-President Santos reportedly stated that the applicant should "rot in jail". But the applicant has not indicated the source of the information concerning the statement in question! The Russian newspaper article, a copy of which was submitted by the applicant, merely cited the Colombian Vice-President without any reference to the circumstances under which the statement in question had been made. Furthermore, the applicant has not provided the Court with any evidence from the International Relations and Security Network website, which allegedly reproduced the statement in question. In such circumstances the Court is usually unable to assess fully the nature of the statement and the connotations it might have had in the original language. In any event, we are not prepared to conclude that a statement expressing the wish of an executive official to have a convicted prisoner "rot in jail" could in itself amount to a serious threat of ill-treatment, given its vague and hyperbolic wording. Thus, we consider that the applicant has failed to demonstrate any individualised risk of ill-treatment to which he would be subjected in Colombia if extradited.

Further, the Colombian authorities provided their Russian counterparts with diplomatic assurances stating, in particular, that the applicant would not be subjected to ill-treatment (see paragraph 16 of the judgment). In examining the lawfulness of the extradition decision, the Russian courts relied on those assurances (see paragraphs 19 and 21). However, the Court observes that the assurances in question "were rather vague and lacked precision; hence, it is bound to question their value" (see paragraph 55).

The Court examines whether diplomatic assurances in expulsion and extradition cases provide, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Chahal v. the United Kingdom*, 15 November 1996, § 105, *Reports of Judgments and Decisions* 1996-V). The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Saadi v. Italy* [GC], no. 37291/06, § 148, ECHR 2008-...). We note that Colombia is a party to the International Covenant on Civil and Political Rights (ICCPR) and voluntarily cooperates with international human rights institutions (see paragraph 34 of the judgment). A field office of the United Nations High Commissioner for Human Rights (UNHCHR) operates in the country. The Government of Colombia allows access by international observers to the country, in particular, to places of detention (see paragraph 35 of the judgment). Accordingly, fulfilment of the diplomatic

assurances that the applicant would not be subjected to torture or other ill-treatment could be subject to independent and objective monitoring.

The Court does not have valid reasons to foresee with any degree of certainty that Colombia would fail to comply with its obligations arising from international law (see, *mutatis mutandis*, *Einhorn v. France* (dec.), no. 71555/01, § 33, ECHR 2001-XI).

In such circumstances the Court is not in a position to conclude that the diplomatic assurances given by the Colombian authorities concerning the applicant's freedom from ill-treatment should be disregarded on the ground that they provide insufficient guarantees of protection against treatment proscribed by Article 3.

As to the applicant's argument that the Russian authorities did not conduct a serious investigation into possible ill-treatment, his allegations to the Russian courts about the risk of ill-treatment were rather vague. He did not inform the Russian courts of the particular grounds on which he feared ill-treatment, merely referring to the fact that there had been a lengthy internal armed conflict between State forces and paramilitaries. His references to the General Assembly's Resolution and the meeting of the Human Rights Committee were not supported by copies of the documents in question (see paragraph 18 of the judgment). Furthermore, the applicant only indirectly implied that his personal situation as a prisoner would be deplorable. The vague reference to widespread violations of prisoners' rights (see paragraph 20), unsupported by any evidence, was hardly sufficient.

Having regard to all of the above, we conclude that substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if extradited to Colombia have not been shown in the present case. Accordingly, the implementation of the extradition order against the applicant would not give rise to a violation of Article 3 of the Convention.