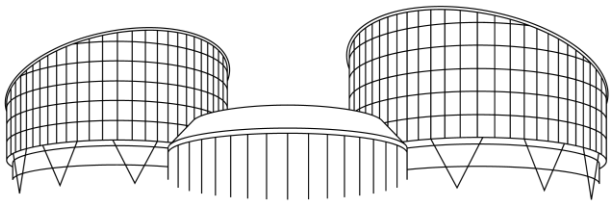

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ELMURATOV v. RUSSIA

(Application no. 66317/09)

JUDGMENT

STRASBOURG

3 March 2011

FINAL

15/09/2011

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 66317/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbekistani national, Mr Ziyadullo Khuzhayarovich Elmuratov ("the applicant"), on 17 December 2009.

2. The applicant was represented by the lawyers of the NGO EHRAC/Memorial Human Rights Centre. 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 18 December 2009 the President of the First Section decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Uzbekistan until further notice and granting priority treatment to the application.

4. On 15 January 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in St Petersburg.

A. Background events

6. On several occasions (in 1988, 1992, 1994 and 1999) the applicant was convicted in Uzbekistan of disorderly conduct and attempted escape. In the applicant's submission, in 1988, 1992, 1994, 1998, 1999, 2003 and 2004, while in the hands of Uzbek officials, he was subjected to ill-treatment.

7. On 7 June 2004, in Uzbekistan, the applicant inflicted numerous cuts on himself and was placed in a hospital. He was discharged from the hospital on 16 June 2004.

8. In February 2008 the applicant arrived in Russia to look for work. He was registered as a migrant in St Petersburg.

9. On 28 March 2008 the Kumkurgan District Court of Uzbekistan ordered the applicant's placement in custody under suspicion of having committed aggravated theft of cattle.

10. On 10 April 2008 an Uzbek investigator placed the applicant's name on a wanted list.

B. Extradition proceedings

11. On 27 April 2009 the applicant was arrested by Russian police at his place of residence in St Petersburg.

12. On 25 May 2009 the Uzbek Prosecutor General's Office requested the applicant's extradition. On 4 June 2009 the request was received by the Russian Prosecutor General's Office.

13. On 28 September 2009 the Russian Prosecutor General's Office decided to extradite the applicant to Uzbekistan.

14. On 12 October 2009 the applicant's counsel lodged an appeal against the extradition order, arguing the following: proceedings concerning the applicant's request for temporary asylum were still pending (see paragraphs 18-21 below); the applicant's extradition would entail a breach of Article 3 of the Convention because the Court had already found violations in the cases of *Ismoilov and Others v. Russia* and *Muminov v. Russia* involving extradition to Uzbekistan; according to independent international observers ill-treatment was widespread in the Uzbek prison system and fair trial guarantees were not respected. No reference was made to the applicant's alleged previous experience while in detention in Uzbekistan.

15. On 10 November 2009 the St Petersburg City Court dismissed the applicant's appeal against the extradition order. It reasoned, in particular, that the applicant's references to possible ill-treatment in Uzbekistan had been unsubstantiated and that the applicant had not argued that he might be persecuted on racial, religious, social or political grounds.

16. The applicant appealed against the decision of 10 November 2009, arguing that his submission that he would face ill-treatment in Uzbekistan

had not been examined by the court. Again no reference was made to the applicant's alleged previous experience while in detention in Uzbekistan.

17. On 24 December 2009 the Supreme Court of Russia upheld the decision of 10 November 2009. It reasoned as follows: the applicant had absconded from the Uzbek authorities; the decision to arrest the applicant had been taken by a competent Uzbek court; the applicant was not a Russian national; the Uzbek Prosecutor General's Office had guaranteed that the applicant would not be extradited to a third State or punished for another crime, and that he would be free to leave Uzbekistan when he had served his sentence; there were no reasons to reject the extradition request; the applicant's allegations that torture of detainees was a widespread practice in Uzbekistan had not been substantiated; the applicant had not proved that he might be persecuted on the grounds of race, religion, membership of a social group, political convictions or anything else.

C. Asylum proceedings

18. In July and September 2009 the applicant applied for asylum to the Federal Migration Service of St Petersburg Region ("the FMS"). In his application, dated 23 September 2009, he claimed that all detainees in Uzbekistan were kept in poor conditions. On 15 October 2009 he was interviewed by FMS officials.

19. On 21 October 2009 the FMS dismissed the applicant's request; he was notified of the decision on 23 October 2009.

20. The applicant then applied for temporary asylum. On 24 December 2009 the FMS dismissed his request.

21. On 10 February 2010 the applicant appealed against the FMS decision, arguing for the first time before the Russian authorities that he had been ill-treated in Uzbek prisons while serving his previous sentences.

D. The applicant's detention

22. Following the applicant's arrest on 27 April 2009 (see paragraph 11 above), on 28 April 2009 the prosecutor's office of the Krasnogvardeyskiy District of St Petersburg ("the district prosecutor's office"), relying on Article 61 of the Minsk Convention, ordered the applicant's placement in custody pending extradition on the basis of the decision of 28 March 2008 by the Kumkurgan District Court of Uzbekistan (see paragraph 9 above).

23. On 16 June 2009 the district prosecutor's office, referring to Article 466 § 2 of the CCP, issued a new decision authorising the applicant's placement in custody pending extradition on the basis of the Uzbek court decision of 28 March 2008.

24. On 28 June 2009 the applicant complained to a court, referring to Decision no. 333-O-P of 1 March 2007 of the Constitutional Court and the

Court's case-law, that he had been unlawfully detained for more than two months and that the term of his detention had not been extended.

25. On 24 August 2009 the Krasnogvardeyskiy District Court of St Petersburg ("the district court") examined the complaint about unlawfulness of detention. It reasoned that, pursuant to Article 466 § 2 of the CCP, a prosecutor could place a person in custody where a foreign court's arrest warrant and a request for extradition existed. However, in the applicant's case, the district prosecutor's office had applied the preventive measure before the extradition request had been sent and thus had breached Article 466 § 2 of the CCP. At the same time, the second district prosecutor's office's decision to remand the applicant in custody had been taken after the extradition request had been received. The district court concluded that the district prosecutor's office's decision of 28 April 2009 was unlawful. Nonetheless, it refused to release the applicant, arguing that the decision of 16 June 2009 was compatible with domestic law and thus served as a legitimate ground for the applicant's detention. It also noted that "[t]he provisions of the CCP do not establish terms for deciding on extradition issues and procedure for extension of the term of detention of persons in respect of which an extradition request has been received from a foreign State".

26. Both the applicant and the district prosecutor's office appealed against the decision of 24 August 2009.

27. On 19 October 2009 the St Petersburg City Court quashed the decision of 24 August 2009 for procedural defects and remitted the case for a fresh examination at the first level of jurisdiction. It also stated that the preventive measure applied to the applicant should remain unvaried, without citing any legal grounds for his detention or specifying its term.

28. On 10 November 2009 the St Petersburg City Court, while upholding the extradition order, extended the applicant's detention for three months, that is until 9 February 2010.

29. On 8 December 2009 the district court discontinued the proceedings concerning the applicant's complaint that his detention was unlawful, for the reason that the St Petersburg City Court had extended the term of detention until 9 February 2010.

30. On 24 December 2009 the Supreme Court of Russia, while dismissing the applicant's appeal against the extradition request, touched upon the issue of lawfulness of the applicant's detention in one sentence: "There are no reasons to doubt the lawfulness of Mr Elmuratov's custodial detention pending his extradition".

31. On 29 January 2010 the district prosecutor's office requested a court to extend the term of the applicant's detention for two months.

32. On 8 February 2010 the district court granted the prosecutor's request in part. It reasoned that the applicant had been charged with very serious crimes, such as theft of cattle, and that Rule 39 of the Rules of Court

had been applied in his case and concluded that there were no grounds for varying the preventive measure. The term of the applicant's detention was extended until 9 April 2010.

33. On 27 February 2010 the St Petersburg City Court dismissed the applicant's appeal against the decision of 8 December 2009, for the reason that the Supreme Court of Russia had ruled on 24 December 2009 that his detention pending extradition was lawful.

34. On 18 March 2010 the St Petersburg City Court dismissed the applicant's appeal against the decision of 8 February 2010.

35. On 6 April 2010 the district court extended the term of the applicant's detention until 27 April 2010, for the reason that he had been charged with serious crimes, did not have a permanent place of residence and thus could abscond or continue his criminal activities.

36. On 27 April 2010 the district prosecutor's office ordered the applicant's release from custody, for the reason that the maximum period of his detention had expired.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation of 1993

37. Everyone has a right to liberty and security (Article 22 § 1). Arrest, placement in custody and custodial detention are permissible only on the basis of a court order. The term during which a person may be detained prior to obtaining such an order must not exceed forty-eight hours (Article 22 § 2).

B. Code of Criminal Procedure

38. The term "court" is defined by the Code of Criminal Procedure (CCP) of 2002 as "any court of general jurisdiction which examines a criminal case on the merits and delivers decisions provided for by this Code" (Article 5 § 48). The term "judge" is defined by the CCP as "an official empowered to administer justice" (Article 5 § 54).

39. A district court has the power to examine all criminal cases except for those falling within the respective jurisdictions of a justice of the peace, a regional court or the Supreme Court of Russia (Article 31 § 2).

40. Chapter 13 of the CCP governs the application of preventive measures. Placement in custody is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a crime punishable with at least two years' imprisonment where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for placement in custody should be examined by a judge of a district court or a

military court of a corresponding level (Article 108 § 4). A judge's decision on placement in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime must not exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level (Article 109 § 2). Further extensions may be granted only if the person has been charged with serious or particularly serious criminal offences (Article 109 § 3).

41. Chapter 16 of the CCP lays down the procedure by which acts or decisions of a court or public official involved in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of the inquiry, an investigator, a prosecutor or a court may be challenged by "parties to criminal proceedings" or by "other persons in so far as the acts and decisions [in question] touch upon those persons' interests" (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of "parties to criminal proceedings" or of "hindering an individual's access to court" may be subject to judicial review (Article 125).

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

43. Upon receipt of a request for extradition accompanied by an arrest warrant issued by a foreign judicial body, a prosecutor may place the person whose extradition is being sought under house arrest or in custodial detention without prior approval of his or her decision by a court of the Russian Federation (Article 466 § 2).

44. Extradition may be denied if the act that gave grounds for the extradition request does not constitute a crime under the Russian Criminal Code (Article 464 § 2 (1)).

C. Decisions of the Russian Constitutional Court

1. Decision of 17 February 1998

45. Verifying the compatibility of Article 31 § 2 of the Law on Legal Status of Foreign Nationals in the USSR of 1982[1], the Constitutional Court

1. Repealed by Federal Law on Legal Status of Foreign Nationals in the Russian Federation of 25 July 2002 No. 115-FZ

ruled that a foreign national liable to be expelled from the Russian territory could not be detained for more than forty-eight hours without a court order.

2. Decision no. 101-O of 4 April 2006

46. Assessing the compatibility of Article 466 § 1 of the CCP with the Russian Constitution, the Constitutional Court reiterated its settled case-law to the effect that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

47. In the Constitutional Court's view, the absence of specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 1993 Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, that is the procedure laid down in the CCP. That procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Preventive measures"), which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests.

48. The Constitutional Court emphasised that the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCP or in excess of the time-limits fixed in the Code.

3. Decision no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

49. The Prosecutor General asked the Constitutional Court for an official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person's detention with a view to extradition.

50. The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific provisions of the criminal law governing the procedure and time-limits for holding a person in custody with a view to extradition. That matter was within the competence of the courts of general jurisdiction.

4. Decision no. 333-O-P of 1 March 2007

51. The Constitutional Court reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability

was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention as such, in that it required a court to examine whether the arrest was lawful and justified.

52. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure established in the Russian Code of Criminal Procedure and within the time-limits fixed in the Code.

5. Decision no. 383-O-O of 19 March 2009

53. The Constitutional Court dismissed as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the CCP, stating that this provision "does not establish time-limits for custodial detention and does not establish the reasons and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign state to detain an accused. Therefore the disputed norm cannot be considered to violate constitutional rights of [the claimant] ..."

D. Decisions of the Russian Supreme Court

1. Directive Decision no. 1 of 10 February 2009

54. By a Directive Decision No.1 adopted by the Plenary Session of the Supreme Court of the Russian Federation on 10 February 2009, ("Directive Decision of 10 February 2009") the Plenary Session issued several instructions to the courts on the application of Article 125 of the CCP. The Plenary reiterated that any party to criminal proceedings or other person whose rights and freedoms were affected by actions or the inaction of the investigating or prosecuting authorities in criminal proceedings could invoke Article 125 of the CCP to challenge a refusal to institute criminal proceedings or a decision to terminate them. The Plenary stated that whilst the bulk of decisions amenable to judicial review under Article 125 also included decisions to institute criminal proceedings, refusals to admit defence counsel or to grant victim status, a person could not rely on Article 125 to challenge a court's decision to apply bail or house arrest or to remand a person in custody. It was further stressed that in declaring a

specific action or inaction on the part of a law-enforcement authority unlawful or unjustified, a judge was not entitled to quash the impugned decision or to oblige the official responsible to quash it, but could only request him or her to rectify the shortcomings indicated. Should the impugned authority fail to comply with the court's instructions, an interested party could complain to a court about the authority's inaction and the latter body could issue a special decision [*частное определение*], drawing the authority's attention to the situation. Lastly, the decision stated that a prosecutor's decision to place a person under house arrest or to remand him or her in custody with a view to extradition could be appealed against to a court under Article 125 of the CCP.

2. Directive Decision No. 22 of 29 October 2009

55. In a Directive Decision No. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 ("Directive Decision of 29 October 2009"), it was stated that, pursuant to Article 466 § 1 of the CCP, only a court could order the placement in custody of a person in respect of whom an extradition check was pending and where the authorities of the country requesting extradition had not submitted a court decision remanding him or her in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the CCP and following a prosecutor's request for that person to be placed in custody. In deciding to remand a person in custody a court was to examine if there were factual and legal grounds for the application of that preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor was entitled to remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCP. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCP.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

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

56. When carrying out actions requested under the Minsk Convention, to which Russia and Uzbekistan are parties, an official body applies its country's domestic laws (Article 8 § 1).

57. Upon receipt of a request for extradition, the requested country should immediately take measures to search for and arrest the person whose extradition is sought, except in cases where no extradition is possible (Article 60).

58. The person whose extradition is sought may be arrested before receipt of a request for extradition if there is a related petition. The petition must contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested or placed in detention before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

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

B. Reports on general human-rights situation in Uzbekistan

60. The UN Special Rapporteur on Torture stated to the 2nd Session of the UN Human Rights Council on 20 September 2006 the following:

> "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... Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. 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. The prohibition of torture is absolute, and States risk violating this prohibition - their obligations under international law - by transferring persons to countries where they may be at risk of torture. I reiterate that diplomatic assurances are not legally binding, undermine existing obligations of States to prohibit torture, are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States."

61. In November 2007 Human Rights Watch issued a report entitled "Nowhere to Turn: Torture and Ill-Treatment in Uzbekistan", which provides the following analysis:

> "Prolonged beatings are one of the most common methods used by the police and security agents to frighten detainees, break their will, and compel them to provide a confession or testimony. They often start beating and kicking detainees with their hands, fists, and feet and then continue using truncheons, filled water bottles and various other tools ...

Several individuals reported that they were either tortured with electric shocks or forced by police to watch as others were tortured with it ...

Police and security officers sometimes use gas masks or plastic bags to effect near asphyxiation of detainees. After forcing an old-fashioned gas mask over the head of the victim, who in some cases is handcuffed to a chair, the oxygen supply is cut ..."

62. The UN Special Rapporteur on Torture stated to the 3rd Session of the UN Human Rights Council on 18 September 2008 the following:

"741. The Special Rapporteur ... stressed that he continued to receive serious allegations of torture by Uzbek law enforcement officials ...

743. Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, and any independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. Even more so, given that no independent monitoring of human rights is currently being conducted.

744. In light of the foregoing, there is little evidence available, including from the Government that would dispel or otherwise persuade the Special Rapporteur that the practice of torture has significantly improved since the visit which took place in 2002 ..."

63. Amnesty International issued on 1 May 2010 a document entitled "Uzbekistan: A Briefing on Current Human Rights Concerns", stating the following:

"Amnesty International believes that there has been a serious deterioration in the human rights situation in Uzbekistan since the so-called Andizhan events in May 2005. ...

Particularly worrying in the light of Uzbekistan's stated efforts to address impunity and curtail the use of cruel, inhuman and degrading treatment have been the continuing persistent allegations of torture or other ill-treatment by law enforcement officials and prison guards, including reports of the rape of women in detention. ...

Despite assertions by Uzbekistan that the practice of torture has significantly decreased, Amnesty International continues to receive reports of widespread torture or other ill-treatment of detainees and prisoners.

According to these reports, in most cases the authorities failed to conduct prompt, thorough and impartial investigations into the allegations of torture or other ill-treatment. Amnesty International is concerned that impunity prevails as prosecution of individuals suspected of being responsible for torture or other ill-treatment remains the exception rather than the rule. ...

Allegations have also been made that individuals returned to Uzbekistan from other countries pursuant to extradition requests have been held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated and have been subjected to unfair trial. In one case in 2008, for example, a man who was

returned to Uzbekistan from Russia was sentenced to 11 years' imprisonment after an unfair trial. His relatives reported that, upon his return to Uzbekistan, he was held incommunicado for three months during which time he was subjected to torture and other ill-treatment in pre-trial detention. He did not have access to a lawyer of his own choice and the trial judge ruled evidence reportedly adduced as a result of torture admissible. ...

The government continued its strict control over religious communities, compromising the enjoyment of their right to freedom of religion. Those most affected were members of unregistered groups such as Christian Evangelical congregations and Muslims worshipping in mosques outside state control."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant complained that if extradited he would be ill-treated in Uzbekistan in breach of Article 3 of the Convention, which reads as follows:

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

A. Arguments by the parties

1. The Government

65. The Government claimed at the outset that the applicant could not claim to be a victim of the alleged violation of Article 3 of the Convention. In their view, the fact that the Court had indicated under Rule 39 of the Rules of Court that "the applicant should not be extradited to Uzbekistan until further notice" meant that the applicant ran no proximate or imminent risk of being removed from the country.

66. The Government further asserted that the Uzbek Prosecutor General's Office had given diplomatic assurances that the applicant would be prosecuted only for the crime for which he would be extradited, that he would be able to freely leave Uzbekistan when he had stood trial and served his sentence, and that he would not be expelled or extradited to a third State without the consent of the Russian authorities.

67. The applicant was not facing any risks of being sentenced to capital punishment. Uzbekistan ratified the UN Convention Against Torture 1984. The Federal Security Service of Russia had concluded that it had no information which would confirm that the applicant had been persecuted in

Uzbekistan on political grounds. The Russian courts had concluded that there had been no reason to believe that the applicant had been persecuted on political grounds, and had thus examined in detail the applicant's allegations of possible ill-treatment.

2. The applicant

68. The applicant claimed that he could not be regarded to have lost victim status as regards his complaint under Article 3 of the Convention as his extradition had not been cancelled but simply postponed pending examination of his application by the Court.

69. The applicant further submitted that the Russian authorities had failed to properly examine his submission that he risked ill-treatment in Uzbekistan. Referring to a number of international reports on the general human rights situation in the requesting country, he asserted that detainees in Uzbek prisons were regularly beaten.

70. The applicant also emphasised that he had sustained injuries while in the hands of the Uzbek authorities. In support of his claims he referred to the fact that he had been admitted to hospital on 7 June 2004, substantiating this by an extract dated 12 September 2009 from the medical record.

71. The applicant enclosed a medical examination report drawn up on 8 June 2010 with his observations on the admissibility and merits of the case of 24 June 2010. The report stated that when examined by an expert the applicant had claimed that numerous scars on his head, neck, upper body, arms and hands were the result of ill-treatment exercised by Uzbek prison officers in December 1998 and in 2001 and by Uzbek police officers in 2004. He had also submitted that in 2005 while in detention he had inflicted injuries on himself. The medical expert had concluded that the applicant had numerous scars which were the result of injuries sustained at least eighteen months before the examination; the expert had stated that it was impossible to establish the date the injuries had been incurred more precisely.

B. The Court's assessment

1. Admissibility

72. As to the Government's claim that the applicant was not a victim of the alleged violation, the Court notes the exceptional nature of the application of the "victim" notion in Article 3 cases involving extradition, namely, "by reason of foreseeable consequences" (see *Soering v. the United Kingdom*, 7 July 1989, § 90 Series A no. 161). The Court further notes that the decision of the Prosecutor General's Office of 16 December 2008 to extradite the applicant was upheld on appeal by the Supreme Court and

remains in force. The Court accordingly dismisses this objection (see *Galeyev v. Russia*, no. 19316/09, § 51-52, 3 June 2010).

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

2. Merits

(a) General principles

74. Turning to the thrust of the applicant's complaint, namely to his submission that he risked ill-treatment in Uzbekistan, the Court reiterates the following principles established in its constant case-law.

75. 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).

76. 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 that responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

77. 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).

78. 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).

79. 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 organisations such as Amnesty International, or governmental sources (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, ECHR 2005-VI; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007).

80. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I).

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

81. In line with the case-law cited above, it is necessary to examine whether the foreseeable consequences of the applicant's extradition to Uzbekistan are such as to bring Article 3 of the Convention into play. Since he has not yet been extradited, owing to the 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.

82. The Court does not lose sight of the disquieting reports on human rights situation in Uzbekistan (see paragraphs 60-63 above), which, admittedly, is far from being perfect. Nonetheless, it emphasises that reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010).

83. The Court is mindful of the fact that it has on several occasions found violations of Article 3 of the Convention in cases involving extradition to Uzbekistan. However, the applicants in those cases had been charged with political crimes (see *Ismoilov and Others v. Russia*, no. 2947/06, § 122, 24 April 2008; *Muminov v. Russia*, no. 42502/06, § 94, 11 December 2008; and *Yuldashev v. Russia*, no. 1248/09, § 84, 8 July 2010) and thus were members of a group systematically exposed to a practice of ill-treatment (see *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008-...) as confirmed by reports by reliable independent international sources.

84. The applicant in the present case, however, is charged in Uzbekistan with aggravated theft, an ordinary crime against property. He does not assert that he is being persecuted for political reasons. Nor does he claim to belong to any proscribed religious movement. It does not follow from the materials at the Court's disposal that the applicant belongs to any other vulnerable groups susceptible of being ill-treated in the requesting country. The applicant's allegations that any criminal suspect in Uzbekistan runs a risk of ill-treatment are too general and there is no indication that the human rights situation in the requesting country is serious enough to call for a total ban on extradition to it. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment (see *Puzan v. Ukraine*, no. 51243/08, § 34, 18 February 2010).

85. As to the applicant's reference to previous instances of ill-treatment while in the hands of the Uzbek authorities (see paragraphs 6, 7 and 70 above), the Court notes the following.

86. In his submissions before the Court the applicant has not produced any details related to the alleged beatings. The applicant's hospitalisation between 7 and 16 June 2004 (see paragraph 7 above) was necessitated by self-inflicted wounds and was not a result of police abuse. The medical expert examination report enclosed with his observations on the admissibility and merits of the application (see paragraph 71 above) is not conclusive as to the date the injuries were inflicted and cannot in itself serve as evidence of ill-treatment. The Court is thus unable to conclude that the applicant's description of previous ill-treatment in 1994-2004 is very detailed or convincing (see, by contrast, *Garayev v. Azerbaijan*, no. 53688/08, § 72, 10 June 2010).

87. More importantly, in the course of extradition proceedings in Russia the applicant never referred to ill-treatment by Uzbek officials. In their appeals against the extradition order the applicant and his counsel merely cited the Court's case-law, which is clearly distinguishable from the applicant's personal situation (see paragraph 83 above), and referred to the overall poor human rights situation in the receiving country, as described by international observers (see paragraphs 14 and 16 above). He raised an issue of his experience of ill-treatment for the first time when complaining about refusal to grant him temporary asylum on 10 February 2010 (see paragraph 21 above), that is when the extradition order had already become final. In such circumstances the Court is disinclined to find that the applicant has substantiated allegations of an individualised risk of ill-treatment in the requesting country.

88. Having regard to the above, the Court considers that the applicant has failed to substantiate his allegations that his extradition to Uzbekistan would be in violation of Article 3 of the Convention.

89. There has accordingly been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

90. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had been "unlawful". He also complained under Article 5 § 4 of the Convention that he could not challenge in the Russian courts the lawfulness of his detention pending extradition.

91. Article 5 of the Convention reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Arguments by the parties

1. The Government

92. The Government contested the applicant's arguments.

93. They claimed that the applicant's detention had been repeatedly extended by competent prosecutors and courts in full conformity with domestic procedural laws. The latest extension, to twelve months, had been authorised, in accordance with Article 109 of the CCP and the Directive Decision of 29 October 2009 of the Russian Supreme Court, on 6 April 2010. On 27 April 2010 the applicant had been released from custody because the maximum period of detention under Article 109 of the CCP had expired.

94. The applicant's detention had not been arbitrary, as the provisions of Chapter 13 of the CCP, pursuant to the decisions of the Russian Constitutional Court, were fully applicable to persons detained with a view to extradition under Article 466 § 1 of the CCP. In their submission, Article 466 § 1 of the CCP read in the light of the decision of the Constitutional Court of 17 February 1998 did not allow to detain a foreign national in the Russian territory without a court order for more than forty-eight hours. They concluded that the applicant's right had not been violated by Article 466 § 1 of the CCP. In their view, Russian domestic legal provisions governing detention pending extradition met the criteria of "quality of law".

95. The applicant had had an opportunity to challenge lawfulness of his detention in Russian courts pursuant to the Constitutional Court's decision of 1 March 2007.

2. The applicant

96. The applicant reiterated his complaint that his detention between 27 April 2009 and 27 April 2010 had been unlawful. He claimed that the initial decision of 28 April 2009 authorising his placement in custody had not been compatible with domestic laws. Further, he emphasised that the first court's decision to extend his detention was taken more than six months after the original remand in custody, in breach of domestic law. In sum, he claimed that his detention was incompatible with Article 5 § 1 (f).

97. The applicant further asserted that no procedure to challenge the lawfulness of the prosecutor's decisions authorising his detention was available to him, as Article 125 of the CCP did not provide for an opportunity for immediate release. Moreover, the applicant claimed that his appeals against decisions to extend his term of detention had not been examined speedily.

B. The Court's assessment

1. *Admissibility*

98. The Court notes that the complaints under Article 5 §§ 1 and 4 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It considers that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. *Merits*

(a) Article 5 § 1 of the Convention

99. The Court reiterates at the outset that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports* 1996-VI). The text of Article 5 makes it clear that the guarantees it contains apply to "everyone" (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 162, ECHR 2009-...). Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (ibid., § 163).

100. It is common ground between the parties that the applicant was detained as a person "against whom action is being taken with a view to ... extradition" and that his detention fell under Article 5 § 1 (f). The parties disagreed, however, as to whether the detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

101. 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 thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports* 1998-VI, and *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII).

102. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should therefore review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III; *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX; and *Ladent v. Poland*, no. 11036/03, § 47, ECHR 2008-...).

103. Turning to the circumstances of the present case, the Court observes that the applicant's initial placement in custody was ordered, on 28 April 2009, by the district prosecutor's office on the basis of Article 61 of the Minsk Convention. The Court also notes that, although the decision of 28 April 2009 contained no reference to Article 466 § 2 of the CCP, the prosecutor's authority under domestic law to decide on the applicant's placement in custody without a Russian court order must have derived from that provision (see paragraph 43 above).

104. The Court points out that neither Article 61 of the Minsk Convention nor Article 466 § 2 of the CCP stipulate any rules on procedure to be followed when choosing a preventive measure in respect of a person whose extradition is sought, or any time-limits for his or her detention pending extradition.

105. The Court observes in this respect that by the time of the applicant's placement in custody the Russian Constitutional Court had already proclaimed that in extradition proceedings the right to liberty should be attended by the same guarantees as in other types of criminal proceedings. It unambiguously indicated that the application of preventive measures with a view to extradition should be governed not only by Article 466 but also by the norms on preventive measures contained in Chapter 13 of the CCP (see paragraph 46 above).

106. Furthermore, the Government confirmed that the applicant's detention pending extradition had been governed by Chapter 13 of the CCP, among other provisions.

107. In such circumstances the Court considers that, in order to be "lawful" within the meaning of Article 5 § 1 (f) of the Convention, the applicant's detention should be compatible not only with the requirements of Article 466 § 2 but also with the provisions governing application of a preventive measure in the form of placement in custody, namely Articles 108 and 109, which are included in Chapter 13 of the CCP.

108. Article 108 § 4 of the CCP expressly provides that an issue of placement in custody is to be decided upon by a judge of a district or military court in the presence of the person concerned. It follows from the wording of Articles 5 § 48 and 31 § 2 of the CCP (see paragraphs 38 and 39 above) that a district court is a court authorised to act on the basis of the Russian Code of Criminal Procedure, which implies that the term "district court" refers to a court established and operating under Russian law. Accordingly, a judge of a district court is an official authorised to administer justice on the territory of the Russian Federation. Nothing in the wording of Article 108 § 4 of the CCP suggests that a foreign court may act as a substitute for a Russian district court when deciding on a person's placement in custody.

109. Accordingly, the fact that the applicant's placement in custody was not authorised by a Russian court is clearly in breach of Article 108 § 4 of the CCP (see *Dzhurayev v. Russia*, no. 38124/07, § 74, 17 December 2009).

110. Furthermore, even assuming that the applicant's initial placement in custody was compatible with domestic legal provisions, it would have ceased to be "lawful" after the lapse of the two-month period provided for by Article 109 § 1 of the CCP. Article 109 § 2 of the CCP unequivocally stipulates that the two-month term of custodial detention can be extended to six months only on the basis of a decision by a judge of a district court or a military court at an equivalent level. However, in the present case the Russian courts failed to extend the term of the applicant's detention after two months. The first judicial extension of the applicant's detention took place as late as 19 October 2009, when the St Petersburg City Court merely stated that the applicant should remain in custody for an unspecified period of time (see paragraph 27 above). In such circumstances the Court is bound to conclude that after 27 June 2009, that is, over two months after the date of his remand in custody, the applicant was detained in breach of domestic law.

111. The Court thus finds that the applicant's detention pending extradition cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. In these circumstances, the Court does not need to consider the applicant's additional arguments separately.

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

(b) 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*, 18 June 1971, § 76, Series A no. 12). 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, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Talat Tepe v. Turkey*, no. 31247/96, § 72, 21 December 2004).

114. The Court observes that it is not disputed between the parties that the applicant spent one year in detention pending extradition. It considers that new issues affecting the lawfulness of the detention might have arisen during that period and that, accordingly, by virtue of Article 5 § 4, he was entitled to apply to a "court" with jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in the light of new

factors which emerged after the decision on his initial placement in custody (see *Ismoilov and Others*, cited above, § 146).

115. The Court emphasises that it has already found on numerous occasions that the provisions of Articles 108 and 109 of the CCP did not allow those detained with a view to extradition to initiate proceedings for examination of the lawfulness of the detention in the absence of a request by a prosecutor for an extension of the custodial measure (see *Nasrulloyev*, cited above, § 88; *Ismoilov and Others*, cited above, § 151; and *Muminov*, cited above, § 114).

116. Furthermore, in the present case the applicant's attempt to complain about the lack of judicial authorisation of his detention proved to be futile, as the district court expressly stated that "[t]he provisions of the CCP do not establish procedure for extension of the term of detention of persons in respect of which an extradition request has been received from a foreign State" (see paragraph 25 above). This decision was subsequently quashed. However, the applicant could not obtain a final decision on the merits of his complaint, as the proceedings were discontinued on 8 December 2009 (see paragraph 29 above).

117. The Government have not put forward any detailed explanation as to how the applicant could challenge the lawfulness of his detention pursuant to the Constitutional Court's decision of 1 March 2007. In the absence of any examples of domestic court practice furnished by the Government demonstrating that persons in situations similar to that of the applicant could rely on that decision to obtain judicial review of their detention, the Court is unable to conclude that the domestic law and practice at the material time enabled the applicant to effectively challenge the lawfulness of his detention pending extradition.

118. In these circumstances the Court is not satisfied that the provisions of the domestic law secured the applicant's right to bring proceedings by which the lawfulness of his detention would be examined by a court.

119. It follows that throughout the term of the applicant's detention pending extradition he did not have at his disposal any procedure for a judicial review of its lawfulness.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. The applicant contended that he had had no effective remedies in respect of his complaint under Article 3 of the Convention, in breach of Article 13 of the Convention, 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."

122. The Government contested the applicant's arguments and claimed that he had had effective domestic remedies as regards his grievances.

123. The applicant maintained his complaint.

124. The Court reiterates that the remedy required by Article 13 must be effective both in law and in practice. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

125. The Court further reiterates that, 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 in the context of extradition and expulsion cases 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 country of destination, and (ii) the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible (see, with further references, *Muminov*, cited above, § 101).

126. In the present case, the applicant's appeal against the extradition order was examined by the Russian courts in two levels of jurisdiction. The Court reiterates that 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, and *Muminov*, cited above, § 102). It is not disputed between the parties that the Russian courts have a power to quash an extradition order. It follows that the applicant has at his disposal a remedy with automatic suspensive effect (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 66 *in fine*, ECHR 2007-...).

127. However, the Court has already established above that the applicant failed to refer to any individualised risks of ill-treatment in the requesting country in the course of these proceedings (see paragraph 87 above). Accordingly, it cannot be said that the Russian courts disregarded his arguments that there existed substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the requesting country thus depriving him of effective remedies in respect of the alleged violation of this provision.

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

IV. RULE 39 OF THE RULES OF COURT

129. 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.

130. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must continue in force until the present judgment becomes final.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. 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

132. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

133. The Government considered the amount claimed excessive.

134. The Court notes that it has found violations of Article 5 §§1 and 4 of the Convention in the present case and accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. The Court therefore awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

135. The applicant also claimed the following amounts for costs and expenses incurred before the domestic courts and the Court: EUR 1,800 and 1,650 pounds sterling (GBP) for lawyers' fees; GBP 175 in administrative expenses; GBP 2,651.90 in translation fees; and 3,200 Russian roubles (RUB) for medical check-ups. He submitted his lawyers', translators' and doctors' invoices as evidence.

136. The Government claimed that not all invoices for translation fees submitted by the applicant bore stamps or signatures, and asserted that it was not proven that the sums in question had actually been paid.

137. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, to the above criteria and to the fact that no violation was found in part of the application, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

C. Default interest

138. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3, 5 §§ 1 (f) and 4 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

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

6. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement:

      (i) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage; and

      (ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;

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

7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 3 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President