



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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 2947/06  
by Ilhomjon ISMOILOV and Others  
against Russia

The European Court of Human Rights (First Section), sitting on  
12 December 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 18 January 2006,

Having regard to the interim measure indicated to the respondent  
Government under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ilhomjon Ismoilov and 11 others listed in the  
schedule, are Uzbek nationals. Mr Mamirgon Tashtemirov is a Kyrgyz  
national. The applicants live in the town of Ivanovo, Russia. They are  
represented before the Court by Ms I. Sokolova, a lawyer practising in  
Ivanovo.

### A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

#### *1. Situation in Uzbekistan: Events in Andijan on 13 May 2005 and their aftermath*

It follows from the reports by Amnesty International and Human Rights Watch submitted by the applicants that between June and August 2004 twenty-three businessmen were arrested in Andijan (Uzbekistan). In September 2004 twenty of their employees were detained in Tashkent. Another group of thirteen businessmen were arrested in Andijan in February 2005. All of them were accused of involvement with an organisation by the name of Akramia<sup>1</sup>. The verdict in respect of the twenty-three businessmen was expected on 11 May 2005. However, the pronouncement was postponed. Some of the businessmen's supporters who gathered in front of the court building to protest their innocence and demand justice were arrested on 11 and 12 May 2005.

In the early hours of 13 May 2005 armed men attacked a number of military barracks and government buildings in Andijan, killing and injuring several guards, and seizing weapons and a military vehicle. They broke into the city prison, where they freed the businessmen and hundreds of remand and convicted prisoners, and later occupied a regional government building on the main square and took a number of hostages.

At the same time thousands of unarmed civilians gathered in the main square, where many spoke out to demand justice and an end to poverty. In the early evening, the security forces surrounded the demonstrators and started to shoot indiscriminately at the crowd. The demonstrators attempted to flee. According to witnesses, hundreds of people – including women and children – were killed. The Uzbekistan authorities deny responsibility for the deaths, blaming them on Islamic “extremist” organisations, such as

---

1. The Uzbekistan government claimed that Akramia was an extremist religious group. They maintained that in his writings the groups' leader, Akram Yuldashev, called for the formation of an Islamic state in Uzbekistan and for the ousting of the legitimately elected State representatives. They also claimed that Akramia was a branch of Hizb-ut-Tahrir, which was categorised as a terrorist organisation in Uzbekistan.

In contrast, Akram Yuldashev always insisted that he had no interest in politics. He maintained that he never called for the overthrow of the authorities or for the creation of an Islamic state. His writings did not touch upon political issues, but rather on general moral themes. A circle of sympathisers formed around him, who tried to follow his view of Islam in their own lives. Akram Yuldashev's supporters argued that there was no such thing as an organised group known as Akramia. The name “Akramia” was derived by an Uzbek court in 1999 from Akram Yuldashev's first name. Furthermore, Akram Yuldashev and his supporters denied having any links with Hizb-ut-Tahrir.

Akramia and Hizb-ut-Tahrir, who were intent on overthrowing the government and creating an Islamic state in Uzbekistan.

Hundreds of people suspected of involvement in the 13 May events were detained and charged. The charges included “terrorism” and premeditated, aggravated murder – capital offences – as well as attempting to overthrow the constitutional order and organising mass disturbances. At least 230 people were convicted and sentenced to between 12 and 22 years' imprisonment for their alleged participation in the unrest. All trials except one were closed to the public. The defendants' relatives and international observers were denied access to the courtroom. The OSCE and Human Rights Watch observers who were present at the only public trial from September to November 2005 were unanimous in their conclusion that the trial fell far short of international standards. The observers noted that all defendants pleaded guilty to charges of “terrorism”, asked for forgiveness, and several even requested that they be given the death penalty. Their confessions, which were obtained from them during incommunicado pre-trial detention, closely followed the wording of the indictment. The observers expressed concerns that the defendants could have been subjected to torture and that their confessions could have been extracted under duress. Retained lawyers were not allowed to the detention centres or in the courtroom and were barred from representing their clients. The defendants were represented by State-appointed counsel who did not mount an active defence of the accused. There was no cross-examination of defendants or witnesses, and contradictions in the testimonies were not addressed. No witnesses for the defence were called to testify. The prosecution did not introduce any forensic, ballistic, or medical reports, nor did it present any exhibits or call expert witnesses. All defendants were found guilty, predominantly on the basis of their confessions, and sentenced to terms of imprisonment ranging from 14 to 20 years (see Human Rights Watch report of 12 May 2006 “The Andijan Massacre: one year later, still no justice”; and the report of 21 April 2006 from the OSCE/ODIHR “Trial monitoring in Uzbekistan – September/October 2005”).

## *2. The applicants' background and their arrival in Russia*

All applicants are Muslims. They do not belong to any political or religious organisations.

In 2000 Mr Muhamadsobirov was arrested in Uzbekistan by the Uzbekistan National Security Service (“the SNB”). The SNB agents repeatedly beaten him, threatened to rape his wife and urged him to confess to planning a violent overthrow of the State power. He was subsequently convicted for distribution of Islamic leaflets. In prison Mr Muhamadsobirov was repeatedly beaten up by the wardens and tortured with electricity. He was placed to a punishment cell each time he prayed. Food was scarce and the inmates were starving. Mr Muhamadsobirov was released in 2003. The

SNB agents repeatedly threatened to arrest him again and to fabricate new criminal charges. He left for Russia on 19 February 2004.

His brother, Mr Muhametsobirov, moved to Russia in 2000. He has been living in Russia ever since.

Mr Kasimhujayev and Mr Rustamhodjaev have been living in Russia since 2001.

Mr Usmanov, Mr Naimov, Mr Makhmudov, and Mr Alimov were partners in private companies in Tashkent or Andijan. Mr Ismoilov, Mr Ulughodjaev, and Mr Sabirov were employees of private companies. In autumn 2004 the tax agencies together with the SNB launched an inquiry into the companies' tax affairs. The applicants were repeatedly questioned about business matters, as well as about their or their relatives' alleged participation in Akramia's activities. The SNB agents threatened to arrest Mr Ulughodjaev and Mr Sabirov. In January 2005 business partners of Mr Usmanov, Mr Makhmudov, and Mr Alimov were arrested.

Mr Naimov was arrested by the SNB in September 2004 and held in detention for fifteen days. He was repeatedly beaten up and questioned about his business and his alleged membership in Akramia. After his release he was on several occasions summoned to the SNB office where the SNB agents threatened him and his family.

Mr Usmanov, Mr Naimov, Mr Makhmudov, Mr Alimov, Mr Ismoilov, Mr Ulughodjaev, and Mr Sabirov left Uzbekistan for Russia between January and March 2005 for fear of being persecuted.

Mr Hamzaev owned a company in the town of Kokanda (Uzbekistan). He has never been in Andijan. He came to Russia on 23 April 2005 on business.

Before 2003 Mr Tashtemirov lived in Kyrgyzstan. In 2003 he moved to Turkey. He has never been to Uzbekistan. In June 2005 he came to Russia on a business trip.

On 13 May 2005 all the applicants, except Mr Tashtemirov and Mr Kasimhujayev, were in Russia. Mr Tashtemirov was in Turkey and Mr Kasimhujayev in Andijan. However, he denies any involvement in the Andijan events.

After the May events two of Mr Ismoilov's brothers were arrested. Their fate remains unknown.

### *3. The applicants' arrest and request for their extradition to Uzbekistan*

On 2 February 2005 the Tashkent prosecutor's office accused Mr Naimov of membership in Akramia, and charged him with organisation of a criminal conspiracy, attempt to overthrow the constitutional order of Uzbekistan, membership of an illegal organisation and the possession and distribution of subversive literature (Articles 159 § 4, 242 § 1, 244-1 § 3, and 244-2 § 1 of the Uzbekistan Criminal Code). On 25 May 2005 the prosecution ordered his arrest.

On 17, 18 and 19 June 2005 the Uzbekistan prosecution charged the other applicants with membership in extremist organisations, such as Akramia, Hizb-ut-Tahrir and the Islamic Movement of Turkestan, financing terrorist activities, attempting a violent overthrow of the constitutional order of Uzbekistan, committing aggravated murders, and organising mass disorders on 13 May 2005 in Andijan (offences under Articles 97 § 2 (a, d, j, m), 155 § 3 (a, b), 159 § 3 (b), 242 § 2, and 244 of the Uzbekistan Criminal Code). Some of the applicants were also charged with involvement in subversive activities, illegal possession of arms, and dissemination of materials containing threat to public security and public order, committed in conspiracy and with financial means provided by religious organisations (Articles 161, 244-1 § 3, 244-2, and 247 § 3 of the Uzbekistan Criminal Code)<sup>1</sup>.

On the same dates the Tashkent and Andijan prosecutor's offices ordered their arrest.

The applicants submit that on 18 June 2005 they were arrested in Ivanovo. They were not informed about the reasons for their arrest. On 20 June 2005 they were questioned by the SNB agents from Uzbekistan who threatened that they would be tortured in Uzbekistan, would confess to various crimes and would be sentenced to long prison terms or death penalty.

It follows from conflicting documents issued by various State authorities that the applicants were arrested on 19 or 20 June 2005. Thus, on 6 December 2005 the head of the Oktyabrskiy District police station affirmed that Mr Ismoilov, Mr Usmanov, and Mr Tashtemirov had been arrested on 19 June 2005 and charged with administrative offences for uttering obscene words in public and refusing to show identity documents. It follows from the police report dated 20 June 2005 that the applicants had been arrested on that day because they had been wanted by the Uzbek police. However, by letter of 16 January 2006, the Ivanovo regional police department asserted that all the applicants had been arrested on 19 June 2005.

On 20 June 2005 the Ivanovo police informed the Tashkent police about the applicants' arrest. On the same day the Tashkent prosecutor's office requested the Ivanovo prosecutor's office to keep the applicants in detention pending extradition.

In July 2005 the Prosecutor General's Office of the Russian Federation received requests for the applicants' extradition from the Prosecutor General of Uzbekistan. The Uzbek prosecutor guaranteed that without Russia's consent the applicants would not be extradited to a third State, prosecuted or punished for any offences committed before extradition and which were not

---

1. Aggravated murder (Article 97 § 2 of the Criminal Code) and terrorism (Article 155 § 3 of the Criminal Code) are capital offences in Uzbekistan. The remaining offences are punishable by terms of imprisonment ranging from five to twenty years.

mentioned in the extradition request. After serving their sentences they would be free to leave Uzbekistan.

On 21 July 2005 further assurances were given by the First Deputy Prosecutor General of Uzbekistan. He undertook that the applicants would not be subjected to the death penalty, torture, violence or other forms of inhuman or degrading treatment or punishment. Their right of defence would be respected and they would be provided with counsel. He also assured that the Uzbek authorities had no intention of persecuting the applicants out of political motives, for their race, ethnic origin, religious or political beliefs. Their intention was to prosecute the applicants for commission of particularly serious crimes.

The Ivanovo prosecutor's office carried out an inquiry and established that none of the applicants, except Mr Kasimhujayev, had left Russia in May 2005. Mr Kasimhujayev had been in Andijan from 10 to 25 May 2005. Mr Tashtemirov had arrived in Russia from Turkey in June 2005. None of the applicants had made money transfers to Uzbekistan in 2005.

#### *4. Complaint about unlawful detention*

On 14 July 2005 the applicants' counsel complained to the Sovetskiy and Frunzenskiy District Courts of Ivanovo about unlawfulness of the applicants' detention. She submitted that the applicants had not been served with detention orders. On 15 July 2005 (the decisions are dated 15 May 2005, apparently due to a misprint) the Sovetskiy and Frunzenskiy District Courts of Ivanovo returned the complaints because counsel had not indicated what acts or omissions of State officials she challenged making it impossible to establish whether the Sovetskiy and Frunzenskiy District Courts had territorial jurisdiction to examine the complaints.

The applicants did not appeal.

#### *5. Detention order*

By separate decisions of 20, 25, 27, 28, and 29 July 2005, the Sovetskiy, Oktyabrskiy, Frunzenskiy, and Leninskiy District Courts of Ivanovo ordered the applicants' detention pending extradition on the basis of Articles 108 and 466 of the Russian Code of Criminal Procedure. They referred to the gravity of charges, risk of absconding, re-offending or hampering the investigation. They also noted that the applicants had absconded from Uzbekistan to Russia. The courts held that it was not possible to apply a more lenient preventive measure and that only detention could secure their extradition and execution of the sentences. The courts did not set a time-limit for detention.

On 9 or 11 August 2005 the Ivanovo Regional Court upheld the decisions on appeal.

### *6. Applications for release*

On 20 June 2006 the applicants' counsel asked the director of the remand centre to release the applicants. In particular, she claimed that Article 109 of the Criminal Procedure Code set the maximum detention period at twelve months. A further extension was permitted only in exceptional circumstances. As the detention period had not been extended following the expiry of twelve-month period on 20 June 2006, the applicants' subsequent detention was unlawful. She asked for the applicants' immediate release.

On 21 June 2006 the director of the remand centre replied to her that Article 109 found no application in cases of detention pending extradition. He refused to release the applicants.

The applicants' counsel challenged the refusal before a court. On 26 and 28 June 2006 the Oktyabrskiy District Court of Ivanovo returned the complaint claiming it could not be examined in civil proceedings. It held that the complaint was to be examined in criminal proceedings. On 31 July, 7, 21, and 23 August 2006 the Ivanovo Regional Court upheld the decisions on appeal.

On 30 June 2006 counsel for the applicants petitioned the Sovetskiy, Oktyabrskiy, Frunzenskiy, and Leninskiy District prosecutors for the applicants' release. On 3 and 10 July 2006 the prosecutors rejected the applications. They pointed out that the domestic law did not set the maximum period of detention pending extradition or establish the procedure for extension of such detention.

In July 2005 counsel lodged an application for release with the Sovetskiy, Oktyabrskiy, Frunzenskiy, and Leninskiy District Courts of Ivanovo. She reiterated the arguments set forth in her complaint of 20 June 2006 and submitted that the director of the detention centre and the prosecutors had unlawfully refused release.

On 1 August 2006 the Sovetskiy District Court of Ivanovo rejected the applications for release. It firstly held that the applications for release could not be examined in criminal proceedings because there were no criminal proceedings against the applicants in Russia. It further held that the domestic law did not set the maximum period of detention pending extradition and continued as follows:

“The Russian law in substance prohibits impermissibly excessive, unlimited and uncontrolled detention.

[The applicants'] detention cannot be said to be impermissibly excessive, unlimited or uncontrolled, because it has not exceeded the time-limit set in Article 109 of the Criminal Procedure Code.

[The applicants] have been held in detention pending the decisions by the Prosecutor General's office to extradite [them] to Uzbekistan. The decisions were only taken on [27, 31 July, or 1 August 2006].

Moreover, [the applicants'] detention was prolonged as a result of [their] application for refugee status to the Federal Migration Service of the Ivanovo Region and [their]

challenges to the decisions of the Federal Migration Service before courts. Therefore, the detention has not been excessive.”

On 24 August 2006 the Ivanovo Regional Court upheld the decisions on appeal. It endorsed the reasoning of the District Court and indicated that the application was to be examined in civil proceedings.

On 26 July, 7 and 8 September 2006 the Frunzenskiy District Court returned the applications of Mr Rustamhodjaev and Mr Kasimhujayev because their applications could not be examined in criminal proceedings. The court also pointed out that Article 109 of the Code of Criminal Procedure did not apply to the detention pending extradition. On 17 October 2006 the Ivanovo Regional Court upheld those decisions on appeal.

Mr Tashtemirov's applications were rejected on 28 July and 4 September 2006 by the Oktyabrskiy District Court. The court considered that the domestic law did not set the maximum period of detention pending extradition and that there was no reason to vary the preventive measure. On 22 August and 28 September 2006 the Ivanovo Regional Court upheld those decisions on appeal.

#### *7. Applications for refugee status*

On 5 August 2005 the applicants applied to the Russian Federal Migration Service (“the FMS”) for refugee status. In particular, they submitted that they had left Uzbekistan for fear of being persecuted in connection with their business activities. They claimed that a few applicants or their relatives had had a history of unlawful prosecution. They denied membership in Akramia and any involvement in the Andijan events. They maintained that the accusations against them were groundless and that their prosecution was arbitrary and politically motivated.

On 25 January 2006 the United Nations High Commissioner for Refugees (“the UNHCR”) intervened in support of their applications. The UNHCR submitted that Akramia was a peaceful non-violent group of followers of the teachings of Akram Yuldashev. In his writings Akram Yuldashev called on Muslim businessmen to cooperate and help the poor. There was no evidence of the group's involvement in any extremist activities. It was believed that successful Muslim businessmen were persecuted in Uzbekistan because of their popularity and influence over the local population. It further continued:

“In the UNHCR's opinion, in Uzbekistan criminal prosecution of people accused of involvement in the activities of extremist religious organisations can be arbitrary in nature and can result in violations of inalienable human rights, including arbitrary arrest, torture, violations of fair trial guarantees, imposition of penalty unproportionate to the committed crime. Moreover, as the Uzbek authorities do not tolerate any forms of opposition, there is a high risk of attributing membership in such religious organisations to people who has been noticed for their opposition views or who are perceived by the authorities as supporters of opposition groups. Therefore, there is a great risk that people involved in the activities of such religious organisations, or to whom such an involvement is attributed by the authorities, can be persecuted for the



reasons enumerated in the 1951 Convention relating to the status of refugees which was ratified by the Russian Federation in 1993, especially taking into account the lack of an effective mechanism of legal guarantees in [Uzbekistan].”

The UNHCR further submitted that the risk of persecutions had increased after the Andijan events.

On 10 February 2006 the Human Rights Watch also supported the applicants' request for refugee status. They submitted as follows:

“We are deeply concerned about [the applicants'] fate if their application is dismissed and they are extradited to Uzbekistan. It would be a breach of the prohibition against returning individuals to a country where they will face the risk of being subjected to torture... In Uzbekistan... torture is systematic. People accused of participation in the Andijan events are at an increased risk of torture: we have documented tens of cases of extraction of confessions by means of torture and other forms of inhuman and degrading treatment.

Confessions obtained under duress serve as a basis for criminal prosecution. Trials of people charged in connection with the May massacre in Andijan fell far short of international procedural standards. Courts in Uzbekistan are not independent, the defendants are deprived of their right to effective defence, and convictions are based exclusively on doubtful confessions of defendants and statements by prosecution witnesses. In breach of Uzbek and international law cases of tens of defendants are examined in closed trials. Serious doubts as to fairness of the Andijan trials were expressed by the UN High Commissioner for Human Rights.”

On 16 March 2006 a deputy head of the Ivanovo Regional Department of the FMS rejected the applications with reference to sections 1 § 1 (1) and 2 § 1 (1, 2) of the Refugees Act. He found that the applicants were not persecuted for their political or religious beliefs, or their social status. They were prosecuted for commission of serious criminal offences which were punishable under the Russian criminal law. In particular, they had been charged with supporting Hizb-ut-Tahrir and the Islamic Movement of Turkestan which were recognised by the Russian Supreme Court as terrorist organisations and whose activities were banned in Russia. He further noted that the Uzbek authorities had undertaken not to impose the death penalty on the applicants and to ensure that they would not be subjected to torture or ill-treatment and would be provided with defence counsel.

The applicants challenged the refusals before a court. They maintained that the real motives behind their prosecution were political and that they were in fact persecuted for their successful business activities. They also submitted that there was a great risk that they would be tortured and unfairly tried in Uzbekistan.

On 8, 9, 13, 15, and 16 June 2006 the Oktyabrskiy District Court of Ivanovo confirmed the decisions of 16 March 2006. It found that the applicants had come to Russia to find employment. They had not proved that they had left Uzbekistan for fear of being persecuted on account of their religious or political beliefs, or social status. In the decisions concerning certain applicants the court also added:

“The court considers that the Ivanovo Regional Department of the Federal Migration Service ... correctly disregarded the Andijan events and their aftermath because [the applicants] denied ... involvement in those events and [they] had come to Russia long before the events occurred.”

The court concluded that the applicants did not meet the requirements of section 1 § 1 (1) of the Refugees Act and were, therefore, not eligible for refugee status. It struck down the reference to section 2 § 1 (1, 2) of the Refugees Act because the Uzbek authorities had not proved beyond reasonable doubt that the applicants had committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime.

On 5 July 2006 the UNHCR granted the applicants mandate refugee status.

On 12, 17, 19, 24 and 26 July 2006 the Ivanovo Regional Court upheld the decisions of the Oktyabrskiy District Court on appeal.

On 10 and 11 August 2006 the applicants applied to the Ivanovo Regional FMS for temporary asylum on humanitarian grounds. They claimed that there was a risk of ill-treatment and unfair trial in Uzbekistan.

*8. Decision to extradite the applicants and subsequent appeal proceedings*

On 27, 31 July, and 1 August 2006 the first deputy Prosecutor General of the Russian Federation decided to extradite the applicants to Uzbekistan. The decisions in respect of certain applicants read as follows:

“On the night of 12-13 May 2005 [an applicant], acting in criminal conspiracy and being a member of the religious extremist party Hizb-ut-Tahrir al-Islami, committed, in aggravating circumstances, an attempt to overthrow the constitutional order of the Uzbekistan Republic, murder, terrorism, and organised mass disorders in Andijan with the aim of destabilising the socio-political situation in Uzbekistan.”

The decisions in respect of the other applicants read as follows:

“[An applicant] has been a member of an extremist organisation; he disseminated materials containing threat to public security and public order, acting in conspiracy with others and using financial means provided by religious organisations. On the night of 12-13 May 2005 [the applicant], acting in criminal conspiracy and being a member of the religious extremist party Hizb-ut-Tahrir al-Islami, unlawfully obtained weapons and ammunition and committed, in aggravating circumstances, an attempt to overthrow the constitutional order of the Uzbekistan Republic, murder, terrorism, conducted subversive activities, and organised mass disorders in Andijan with the aim of destabilising the socio-political situation in Uzbekistan.”

The extradition was granted in respect of aggravated murder, terrorism, establishment of, and membership in, an illegal organisation, illegal possession of arms, and organising mass disorders. However, the prosecutor refused to extradite the applicants for the attempt to overthrow the constitutional order of Uzbekistan and dissemination of materials containing threat to public security and public order, committed in conspiracy and with financial means provided by religious organisations, because those offences were not punishable under the Russian criminal law.

The applicants' counsel challenged the decisions before a court. In particular, she submitted that on 13 May 2005 the applicants had been in Russia and that they denied any involvement in the Andijan events. The accusations against them were unfounded and they were in fact persecuted by the Uzbek authorities for their political and religious beliefs and for their successful businesses. The applicants were charged with capital offences and there was a risk of their being sentenced to death penalty following an unfair trial. There was also a danger of torture and other forms of ill-treatment because torture was widespread in Uzbekistan and confessions were often extracted from defendants under duress. She also indicated that the documents submitted by the Uzbekistan prosecution to support their extradition requests had been flawed. Finally, she submitted that the wording of the extradition decisions violated the applicants' presumption of innocence.

On 29 and 30 August, 1, 4, 5, 12, 13, 14, 15, and 21 September 2006 the Ivanovo Regional Court confirmed the extradition decisions. It held that the applicants were charged with offences punishable under the Uzbekistan and Russian criminal law, that the Uzbekistan authorities had given assurances, and that the Uzbek and Russian authorities had followed the extradition procedure set out in the international and domestic law. The issue of the applicants' guilt or innocence was out of scope of review of the extraditing authorities. The court rejected the argument that the applicants would be subjected to inhuman treatment and that their rights would be violated in Uzbekistan. The extradition decision only described the charges against the applicants, and did not contain any findings as to their guilt. Therefore, their presumption of innocence was not violated.

The applicants appealed to a higher court. The appeal proceedings are pending.

## **B. Relevant international and domestic law and practice**

### *1. The 1993 Minsk Convention*

The CIS Convention on legal aid and legal relations in civil, family and criminal cases (the 1993 Minsk Convention), to which both Russia and Uzbekistan are parties, provides that a request for extradition must be accompanied by a detention order (Article 58 § 2).

A person whose extradition is sought may be arrested before receipt of a request for extradition. In that case a special request for arrest containing a reference to the detention order and indicating that a request for extradition will follow shall be sent. A person may also be arrested in the absence of such request if there are reasons to suspect that he has committed, in the territory of the other Contracting Party, an offence entailing extradition. The other Contracting Party shall be immediately informed about the arrest (Article 61).

A person arrested pursuant to Article 61 shall be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

### *2. The Code of Criminal procedure*

The Russian Code of Criminal Procedure (Law no. 174-FZ of 18 December 2001 in force from 1 July 2002, the “CCrP”) establishes that detention may be ordered by a court if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive measure of restraint cannot be applied (Article 108 § 1).

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

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

A person who has been granted asylum in Russia because of possible political persecution in the State seeking his extradition, may not be extradited to that State (Article 464 § 1 (2)).

### *3. Case-law of the Constitutional Court*

On 4 April 2006 the Constitutional Court examined an application by Mr Nasrulloev who claimed that the legal situation where detention of a person pending extradition was not limited in time was incompatible with the constitutional guarantee against arbitrary detention. The Constitutional Court declared the application inadmissible. It pointed out that there was no ambiguity in the contested provisions because the general provisions governing measures of restraints should apply to all forms and stages of criminal proceedings, including proceedings on extradition. The Constitutional Court reiterated its constant case-law that excessive or arbitrary detention, unlimited in time and without judicial review, is not compatible with the Constitution in all cases, including extradition proceedings.

### *4. The 1951 Geneva Convention*

Article 33 of the UN Convention on the Status of Refugees of 1951, ratified by Russia on 2 February 1993, provides as follows:

“1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened

on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”

### *5. Refugees Act*

The Refugees Act (Law no. 4258-I of 19 February 1993) incorporated the definition of the term “refugee” contained in Article 1 of the 1951 Geneva Convention as amended by 1967 Protocol relating to the Status of Refugees. The Act defines a refugee as a person who is not a Russian national and who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (section 1 § 1 (1)).

The Act does not apply to the person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime outside the country of refuge prior to his admission to that country as a person seeking refugee status (section 2 § 1 (1, 2)).

A person who has applied for refugee status or who has been granted refugee status cannot be returned to the State where his life or freedom would be imperilled on account of his race, religion, nationality, membership of a particular social group or political opinion (section 10 § 1).

If a person satisfies the criteria established in section 1 § 1 (1), or if he does not satisfy such criteria but cannot be expelled or deported from Russia for humanitarian reasons, he may be granted temporary asylum (section 12 § 2). A person who has been granted temporary asylum cannot be returned against his will to the country of his nationality or to the country of his former habitual residence (section 12 § 4).

### **C. Reports on Uzbekistan by Amnesty International**

In its report of 20 September 2005, “Uzbekistan: lifting the siege on the truth about Andijan”, Amnesty International remarked:

“Amnesty International is concerned by reports of alleged torture and other ill-treatment by law enforcement officials in the aftermath of the events in Andijan. Individuals, who have been detained and subsequently released, claimed that the detainees were being subjected to various forms of torture and other ill-treatment including beatings, beating of the heels with rubber truncheons, and the insertion of needles into gums and under fingernails. Torture and other ill-treatment have

reportedly been used to force detainees to “confess” to being involved in religious extremism. A senior policeman who spoke anonymously to IWPR claimed to have witnessed law enforcement officials threatening to rape a detainee's female relative if he did not confess to being involved in the events in Andijan. Amnesty International has also received reports that the detainees have been sexually assaulted with truncheons...

Amnesty International considers individuals charged in connection with the events in Andijan to be at serious risk of being tried in a manner that violates even the most basic international fair trial standards. In April 2005 the UN Human Rights Committee expressed its concern about continuing violations of the right to a fair trial in Uzbekistan... In particular, the Committee expressed concern that the judiciary is not fully independent and pointed to the high number of convictions based on “confessions” made in pre-trial detention that were allegedly obtained by torture or other ill-treatment. The Committee also expressed concern that the right of access to a lawyer from the time of arrest is often not respected in practice...

On 1 August 2005 the government announced that it would abolish the death penalty as of 1 January 2008. Amnesty International welcomes this development but is concerned that unless fundamental changes are introduced immediately then scores of people are likely to be sentenced to death and executed before January 2008. In previous reports Amnesty International has documented that Uzbekistan's flawed criminal justice system provides fertile ground for miscarriages of justice and executions due to judicial error or grossly unfair trials. Amnesty International is also concerned that the August 2005 announcement may come too late to protect those people who have been charged with capital crimes – premeditated aggravated murder and terrorism – in connection with the events in Andijan. Amnesty International considers that these individuals are at great risk of suffering a violation of their right to life as a result of the likely imposition of the death penalty following what would likely be an unfair trial. The death penalty has played an important role in the clampdown on “religious extremism” in Uzbekistan and dozens of alleged “Islamists” have been sentenced to death and executed without being granted the right to effective assistance of counsel and to prepare a defence... In April 2005 the Human Rights Committee deplored the fact that at least 15 individuals have been executed by the Uzbekistani authorities, while their cases were pending before the Human Rights Committee.”

In conclusion, Amnesty International stated:

“Amnesty International is concerned for the safety of all those individuals who have been detained in connection with the events in Andijan. These concerns are based on Uzbekistan's well-documented history of human rights violations in the name of national security. Amnesty International considers all such detained individuals to be at serious risk of being subjected to torture and other ill-treatment. Amnesty International also considers those individuals who have been charged with criminal offences to be at risk of being tried in a manner that violates international fair trial standards. The individual who have been charged with capital offences are at great risk of suffering a violation of their right to life, as a result of likely imposition of the death penalty following an unfair trial.”

In the report of 11 May 2006, entitled “Uzbekistan: Andijan – impunity must not prevail”, Amnesty International claimed:

“Scores of people suspected of involvement in the Andijan events have been sentenced to long terms, in vast majority in closed secret trials, in violation of

international fair trial standards. Most had been held incommunicado for several months in pre-trial detention...

The Uzbekistani authorities have also continued to actively – and often successfully – seek the extradition of members or suspected members of banned Islamic parties or movements, such as Hizb-ut-Tahrir and Akramia, whom they accuse of participation in the Andijan events, from neighbouring countries, as well as Russia and Ukraine. Most of the men forcibly returned to Uzbekistan continue to be held in incommunicado detention, thus increasing fears that they are at risk of being tortured or otherwise ill-treated. Over the years Amnesty International has documented many cases of people forcibly returned or extradited to Uzbekistan at the request of the Uzbekistani authorities who were tortured to extract “confessions”, sentenced to death after unfair trials and executed.”

## COMPLAINTS

1. The applicants complained under Articles 3 and 6 § 1 of the Convention that their extradition to Uzbekistan would subject them to a real risk of torture and ill-treatment and that they would face an unfair trial there. In particular, there was a danger that they would be tortured to obtain confessions and that they would be convicted on the basis of those confessions. There was also a danger of a violation of their right to effective defence through legal assistance of their choice. Moreover, the Uzbek courts were not independent. The applicants finally alleged that they would serve their sentences in inhuman conditions.

2. The applicants complained under Article 5 §§ 1 (f) and 2 of the Convention about unlawfulness of their arrest and detention. They had allegedly been arrested in breach of the procedure prescribed by law, they had not been promptly informed about the reasons for their arrest and had not been provided with counsel immediately after the arrest. Their detention up to the end of July 2005 had not been based on a court order. The domestic provisions setting the maximum period of detention had not been respected. Under Articles 5 § 4 and 13 of the Convention, the applicants complained that they could not obtain an effective judicial review of their detention.

3. Under Article 6 § 2 of the Convention the applicants complained that the wording of the extradition decisions violated their presumption of innocence.

4. Under Article 13 of the Convention, read in conjunction with Article 3, the applicants complained about unfairness of the proceedings in which their applications for refugee status had been examined. The applicants had not been brought into the courtroom and the courts had disregarded their arguments and their evidence.

## THE LAW

1. The applicants alleged that their extradition to Uzbekistan would breach Articles 3 and 6 § 1 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

2. The applicants complained under Article 5 §§ 1 (f), 2, 4 and Article 13 of the Convention about unlawfulness of their arrest and detention.

(a) Insofar as the applicants complained about the circumstances of their arrest, the failure to inform them promptly about the reasons for the arrest, and the lack of a legal basis for their detention from 18 June to, at the latest, 29 July 2005, the Court notes that the applicants could have appealed to the Ivanovo Regional Court against the judicial decisions of 15 July 2005 rejecting their complaints about unlawful arrest and detention. However, they did not do it.

It follows that those complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) Insofar as they complained about disrespect of the domestic provisions setting the maximum period of detention and the absence of an effective judicial review, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

3. The applicants complained under Article 6 § 2 about a violation of their presumption of innocence.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

4. Under Article 13 of the Convention, read in conjunction with Article 3, the applicants complained about unfairness of the proceedings in which their applications for refugee status had been examined.

The Court observes that the applicants have been lawfully residing on the Russian territory. The rejection of their application for refugee status did not have the effect of excluding them from Russia, the applicants facing return to Uzbekistan in the context of separate extradition proceedings. Therefore, the asylum proceedings did not engage the responsibility of the Russian Federation under Article 3 of the Convention (see, by contrast, *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, §§ 121-127). It follows that the applicants do not have an “arguable claim” and their complaint does not attract the guarantees of Article 13.



It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

*Decides* to grant priority to the application under Rule 41 of the Rules of Court;

*Decides* to adjourn the examination of the applicants' complaints that their extradition to Uzbekistan would subject them to the risk of ill-treatment and unfair trial, and their complaints about unlawfulness of their detention and the absence of an effective judicial review, and a violation of their presumption of innocence;

*Declares* the remainder of the application inadmissible.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President

**SCHEDULE****List of applicants**

No.	Name	Nationality	Date of birth
1.	Mr Ilhomjon Ismoilov	Uzbekistan	1972
2.	Mr Rustam Naimov	Uzbekistan	1974
3.	Mr Izzatullo Muhametsobirov	Uzbekistan	1979
4.	Mr Abdurrauf Muhamadsobirov	Uzbekistan	1975
5.	Mr Sardorbek Ulughodjaev	Uzbekistan	1979
6.	Mr Obboskhon Makhmudov	Uzbekistan	1973
7.	Mr Umarali Alimov	Uzbekistan	1965
8.	Mr Kabul Kasimhujayev	Uzbekistan	1960
9.	Mr Hurshid Hamzaev	Uzbekistan	1975
10.	Mr Iskanderbek Usmanov	Uzbekistan	1966
11.	Mr Shkrullo Sabirov	Uzbekistan	1963
12.	Mr Mahmud Rustamhodjaev	Uzbekistan	1961
13.	Mr Mamirgon Tashtemirov	Kyrgyzstan	1976