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

FIRST SECTION

CASE OF ISMOILOV AND OTHERS v. RUSSIA

(Application no. 2947/06)

JUDGMENT

STRASBOURG

24 April 2008

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

In the case of Ismoilov and Others v. Russia,

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 2947/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twelve Uzbek nationals, Mr Ilhomjon Ismoilov, Mr Rustam Naimov, Mr Izzatullo Muhametsobirov, Mr Abdurrauf Muhamadsobirov, Mr Sardorbek Ulughodjaev, Mr Obboskhon Makhmudov, Mr Umarali Alimov, Mr Kabul Kasimhujayev, Mr Hurshid Hamzaev, Mr Iskanderbek Usmanov, Mr Shkrullo Sabirov, and Mr Mahmud Rustamhodjaev, and a Kyrgyz national, Mr Mamirgon Tashtemirov ("the applicants"), on 18 January 2006.

2. The applicants, who have been granted legal aid, were represented before the Court by Ms I. Sokolova, a lawyer practising in Ivanovo. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. On 7 August 2006 the President of the Chamber indicated to the respondent Government that the applicants should not be extradited to Uzbekistan until further notice (Rule 39 of the Rules of Court). On 12 December 2006 the Court decided that the interim measure should remain in force and granted priority to the application (Rule 41 of the Rules of Court).

4. On 12 December 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the applicants' complaints that their extradition to Uzbekistan would subject them to the risk of ill-treatment and of an unfair trial, that their detention pending

extradition was unlawful, that there had been no effective judicial review of their detention, and that their right to be presumed innocent had been violated. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The applicants and the Government each filed their observations. Observations were also received from the human-rights organisations Human Rights Watch and the AIRE Centre, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Situation in Uzbekistan: Events in Andijan on 13 May 2005 and their aftermath

7. According to reports by Amnesty International and Human Rights Watch 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, charged with criminal offences and committed for trial.

8. The Uzbek government claimed that Akramia was an extremist religious group. They maintained that in his writings the group's leader, Akram Yuldashev, had 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 had 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 had 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.

9. The verdict in respect of the twenty-three businessmen was expected on 11 May 2005. However, its pronouncement was postponed. A group of supporters who gathered in front of the court building to protest the businessmen's innocence and demand justice were arrested on 11 and 12 May 2005.

10. 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.

11. 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 Uzbek authorities deny responsibility for the deaths, blaming them on Islamic “extremist” organisations, such as Akramia and Hizb-ut-Tahrir, who were intent on overthrowing the government and creating an Islamic state in Uzbekistan.

12. 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 twelve and twenty-two 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 Organisation for Security and Co-operation in Europe (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. They noted that all the defendants pleaded guilty to charges of “terrorism” and asked for forgiveness, while 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 the defendants were found guilty, predominantly on the basis of their confessions, and sentenced to terms of imprisonment ranging from fourteen to twenty 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").

B. The applicants' background and their arrival in Russia

13. All the applicants stated that they were Muslims. They denied membership of any political or religious organisations.

14. In 2000 Mr Muhamadsobirov was arrested in Uzbekistan by the Uzbekistan National Security Service ("the SNB"). He stated that the SNB agents had repeatedly beaten him, threatened to rape his wife and demanded he confessed to planning a violent overthrow of the State. He was subsequently convicted for distributing Islamic leaflets. In prison Mr Muhamadsobirov was repeatedly beaten by the wardens and tortured with electric shocks. He was placed in a punishment cell if he prayed. Food was scarce and the inmates were starving. He was released in 2003. The SNB agents repeatedly threatened to re-arrest him and to fabricate new criminal charges. He left for Russia on 19 February 2004.

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

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

17. 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 authorities and the SNB launched an inquiry into the companies' tax affairs. The applicants were repeatedly questioned about business matters and 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.

18. Mr Naimov was arrested by the SNB in September 2004 and held in detention for fifteen days. He stated that he had been subjected to repeated beatings and questioned about his business and alleged membership of

Akramia. After his release he was summoned to the SNB office on several occasions where the SNB agents threatened him and his family.

19. 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 persecution.

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

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

22. 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 denied any involvement in the Andijan events.

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

C. The applicants' arrest and the request for their extradition to Uzbekistan

24. On 2 February 2005 the Tashkent prosecutor's office accused Mr Naimov of membership of Akramia, and charged him with organising a criminal conspiracy, attempting 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 it ordered his arrest.

25. On 17, 18 and 19 June 2005 the Uzbekistan prosecutor's office charged the other applicants with membership of 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, aggravated murder and organising mass disorders on 13 May 2005 in Andijan (offences under Articles 97 § 2 (a, d, j and m), 155 § 3 (a and 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, unlawful possession of firearms, and the dissemination of materials liable to undermine public security and public order, in conspiracy with others and with financial backing from religious organisations (Articles 161, 244-1 § 3, 244-2, and 247 § 3 of the Uzbek Criminal Code). On the same dates the Tashkent and Andijan prosecutor's offices ordered the applicants' arrest.

26. At the material time aggravated murder (Article 97 § 2 of the Criminal Code) and terrorism (Article 155 § 3 of the Criminal Code) were

capital offences in Uzbekistan. However, Uzbekistan abolished the death penalty with effect from 1 January 2008 and replaced it with life imprisonment. The remaining offences are punishable by terms of imprisonment ranging from five to twenty years.

27. The applicants said that on 18 June 2005 they had been arrested in Ivanovo. They had not been informed of the reasons for their arrest. On 20 June 2005 they had been questioned by SNB agents from Uzbekistan who had beaten them and threatened them with torture in Uzbekistan. They had been told that they would be forced to confess to various crimes and be sentenced to long prison terms or death.

28. The documents issued by various State authorities indicate inconsistent dates of, and reasons for, the applicants' arrest. Thus, on 6 December 2005 the officer in charge 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 obscenities in public and refusing to produce identity documents. A police report dated 20 June 2005 stated that the applicants had been arrested on that day because they were wanted by the Uzbek police. However, in a letter of 16 January 2006, the Ivanovo regional police department asserted that all the applicants had been arrested on 19 June 2005.

29. On 20 June 2005 the Ivanovo police informed the Tashkent police of 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.

30. 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's office gave an assurance that without Russia's consent the applicants would not be extradited to a third-party State, or prosecuted or punished for any offences committed before extradition and which were not mentioned in the extradition request. It also stated that after serving their sentences they would be free to leave Uzbekistan.

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

32. 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.

D. Complaint of unlawful detention

33. On 14 July 2005 counsel for the applicants complained to the Sovetskiy and Frunzenskiy District Courts of Ivanovo that their detention was unlawful. She submitted that the applicants had not been served with detention orders. On 15 July 2005 (the decisions are dated 15 May 2005, but this appears to be a misprint) the Sovetskiy and Frunzenskiy District Courts of Ivanovo returned the complaints because counsel had not indicated which acts or omissions of State officials she wished to challenge, which made it impossible to establish whether they had territorial jurisdiction to examine the complaints.

34. The applicants did not appeal.

E. Detention order

35. 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 (see paragraphs 85 and 87 below). They referred to the gravity of the charges, and to the risk of the applicants' absconding, re-offending or obstructing the investigation. It was also noted that the applicants had absconded from Uzbekistan to Russia. The courts held that it was not possible to apply a less restrictive measure and that only detention could secure their extradition and "the execution of any sentence that might be imposed". The courts did not set a time-limit on the detention.

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

F. Applications for release

37. On 20 June 2006 counsel for the applicants asked the director of the remand centre to release the applicants. In particular, she claimed that Article 109 of the Code of Criminal Procedure set the maximum period of detention at twelve months (see paragraph 85 below). A further extension was permitted only in exceptional circumstances. As the detention period had not been extended following the expiry of the twelve-month period on 20 June 2006, the applicants' subsequent detention was unlawful.

38. On 21 June 2006 the director of the remand centre replied that Article 109 did not apply to cases of detention pending extradition and refused to release the applicants.

39. Counsel challenged that refusal before a court, pursuant to Articles 254 and 258 of the Civil Code (see paragraph 89 below). On 26 and 28 June 2006 the Oktyabrskiy District Court of Ivanovo returned the complaint claiming that it had to be examined in criminal, not civil, proceedings. On 31 July, 7, 21, and 23 August 2006 the Ivanovo Regional Court upheld those decisions on appeal.

40. 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 their applications. They pointed out that domestic law did not set a maximum period for detention pending extradition or establish a procedure for the extension of such detention.

41. In July 2005 counsel lodged applications 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 acted unlawfully in refusing release.

42. On 1 August 2006 the Sovetskiy District Court refused to entertain the applications for release. It held, firstly, that they could not be examined in criminal proceedings because there were no criminal proceedings pending against the applicants in Russia. It further held that domestic law did not set a maximum period for detention pending extradition and added:

> "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] were held in detention pending the decisions by the Prosecutor General's office to extradite [them] to Uzbekistan. Those 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 Ivanovo Region Federal Migration Service and [their] challenges of the Federal Migration Service decisions before the courts. Therefore, the detention has not been excessive."

43. On 24 August 2006 the Ivanovo Regional Court upheld that decision on appeal. It endorsed the reasoning of the District Court and indicated that the applications were to be examined in civil proceedings.

44. 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. It

also pointed out that Article 109 of the Code of Criminal Procedure did not apply to detention pending extradition. On 17 October 2006 the Ivanovo Regional Court upheld those decisions on appeal.

45. Mr Tashtemirov's applications were disallowed in decisions of 28 July and 4 September 2006 by the Oktyabrskiy District Court, which held that domestic law did not set a maximum period for 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.

46. Mr Alimov contested the refusal to release him under Article 125 of the Code of Criminal Procedure (see paragraph 86 below). On 18 September 2006 the Leninskiy District Court refused to entertain his application. It found that such complaints were to be filed with a court having jurisdiction for the place where the preliminary investigation was carried out. Since Mr Alimov was not the subject of any investigation in Russia, his application for release could not be examined in Russian criminal proceedings. It indicated that the application for release should be examined in civil proceedings. On 17 October 2006 the Ivanovo Regional Court quashed that decision as unlawful. On 7 November 2006 the Leninskiy District Court refused to entertain the application for the same reasons as before. On 5 December 2006 the Ivanovo Regional Court upheld the decision on appeal.

47. The applicants again challenged the refusal to release them in civil proceedings. By separate decisions of 22 January 2007 the Oktyabrskiy District Court refused to hear the applications because they could not be examined in civil proceedings. It held that the applications had to be examined in criminal proceedings. On 12 and 19 March 2007 the Ivanovo Regional Court upheld the decisions on appeal.

48. In January 2007 the applicants unsuccessfully petitioned prosecutors at different levels for their release.

49. By separate decisions of 2 and 5 March 2007 the Sovetskiy, Leninskiy, Frunzenskiy and Oktyabrskiy District Courts ordered, of their own motion, the applicants' release. They found that Article 109 of the Code of Criminal Procedure was applicable to detention pending extradition and established a maximum period for detention at eighteen months. As the applicants had been detained for more than twenty months, they had to be released immediately.

50. On 5 March 2007 the applicants were released.

51. On 27 March 2007 the Ivanovo Regional Court upheld the decisions of 2 and 5 March 2007 on appeal.

G. Applications for refugee status

52. 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 persecution in connection with their business activities. They claimed that some of the applicants or their relatives had a history of unlawful prosecution. They denied membership of Akramia or any involvement in the events in Andijan. They maintained that the accusations against them were groundless and that their prosecution was arbitrary and politically motivated.

53. On 25 January 2006 the United Nations High Commissioner for Refugees ("the UNHCR") intervened in support of their applications. The Commissioner 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 of such religious organisations to people who have 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]."

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

55. On 10 February 2006 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."

56. On 16 March 2006 a deputy head of the Ivanovo Regional Department of the FMS rejected the applications by reference to sections 1 § 1 (1) and 2 § 1 (1 and 2) of the Refugees Act (see paragraphs 92 and 93 below). He found that the applicants had not been persecuted for their political or religious beliefs, or their social status. They had been prosecuted for the commission of serious criminal offences which were punishable under Russian criminal law. In particular, they had been charged with supporting Hizb-ut-Tahrir and the Islamic Movement of Turkestan, which had been 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.

57. The applicants challenged the refusals before the Oktyabrskiy District Court of Ivanovo. They maintained that the real motives behind their prosecution were political and that they were in fact being 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.

58. On 8, 9, 13, 15, and 16 June 2006 the Oktyabrskiy District Court 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 it 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 had come to Russia long before they occurred."

59. 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. However, it struck down the reference in the decisions of 16 March 2006 to section 2 § 1 (1 and 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.

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

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

62. On 14 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.

63. On 14 November 2006 the acting head of the Ivanovo Regional Department of the FMS rejected their applications. He found that there were no humanitarian grounds warranting temporary asylum. The applicants were in good health, there was no military conflict in Uzbekistan and the situation with regard to human rights had been improving. In particular, according to the FMS report on the situation in Uzbekistan more than 300 human-rights laws had been adopted. The Supreme Court had issued a circular warning against convictions based on confessions extorted under duress or in incommunicado detention. The death penalty had been abolished as from 1 January 2008.

64. The applicants challenged the refusals before the Oktyabrskiy District Court of Ivanovo, repeating their fears of ill-treatment and an unfair trial in Uzbekistan. They submitted reports by the UN General Assembly, the UN Special Rapporteur on Torture and Human Rights Watch in support of their allegations.

65. By separate decisions of 30 November, 1, 4 and 11 December 2006 the Oktyabrskiy District Court annulled the decisions of 14 November 2006. It found that the reports submitted by the applicants contained well-documented evidence of widespread torture in Uzbekistan. The acting head of the Ivanovo Regional Department of the FMS had disregarded those reports. He had also disregarded the fact that the applicants had been granted mandate refugee status by the UNHCR. The conclusion that the applicants did not run any risk of ill-treatment if returned to Uzbekistan had been hypothetical and had not been supported by evidence. The FMS report on the situation in Uzbekistan could not be admitted in evidence because it was generic and did not contain any reference to its sources of information. The Court remitted the applicants' request for temporary asylum for a fresh examination by the Ivanovo Regional Department of the FMS.

66. The Ivanovo Regional Department of the FMS appealed. On 29 February 2007 the Ivanovo Regional Court upheld the decisions of the Oktyabrskiy District Court in respect of Mr Makhmudov, Mr Ulughodjaev and Mr Hamzaev. On 30 January 2007 the Ivanovo Regional Department of the FMS withdrew their appeals in respect of the remainder of the applicants.

67. It appears that no decision on the applicants' request for temporary asylum has been taken to date.

H. Decisions to extradite the applicants and subsequent appeal proceedings

68. 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 the following offences in aggravating circumstances: attempted overthrow of 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."

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

> "[An applicant] has been a member of an extremist organisation; he disseminated materials liable to undermine public security and public order, in conspiracy with others and with financial backing from 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 the following offences in aggravating circumstances: the attempted overthrow of the constitutional order of the Uzbekistan Republic, murder, terrorism, subversive activities, and organised mass disorders in Andijan with the aim of destabilising the socio-political situation in Uzbekistan."

70. Extradition orders were granted in respect of aggravated murder, terrorism, the establishment and membership of an illegal organisation, the illegal possession of arms, and participation in mass disorders. However, the prosecutor refused to extradite the applicants for the attempted overthrow of the constitutional order of Uzbekistan and dissemination of materials liable to undermine public security and public order in conspiracy with others and with financial backing from religious organisations, because these were not offences under Russian criminal law.

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

72. On 29 and 30 August, 1, 4, 5, 12, 13, 14, 15 and 21 September 2006 the Ivanovo Regional Court upheld the extradition decisions. It held that the

applicants were charged with offences punishable under Uzbek and Russian criminal law, that the Uzbek authorities had given assurances that the applicants would not be tortured or sentenced to death, and that the Uzbek and Russian authorities had followed the extradition procedure set out in the applicable international and domestic law. The court rejected the suggestion that the applicants would be subjected to inhuman treatment and that their rights would be violated in Uzbekistan. It further held that the issue of the applicants' guilt or innocence was not within the scope of the review by the extraditing authorities. The extradition decision only described the charges against the applicants, and did not contain any findings as to their guilt. Therefore, the presumption of innocence had not been violated.

73. The applicants appealed. On 28 November 2006 the Supreme Court of the Russian Federation upheld the decisions on appeal, finding that they were lawful and justified.

I. Reports on Uzbekistan by the UN Institutions and NGOs

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

> “66. The combination of a lack of respect for the principle of presumption of innocence despite being guaranteed by the Constitution (art. 25) and [the Code of Criminal Procedure] (art. 23), the discretionary powers of the investigators and procurators with respect to access to detainees by legal counsel and relatives, as well as the lack of independence of the judiciary and allegedly rampant corruption in the judiciary and law enforcement agencies, are believed to be conducive to the use of illegal methods of investigation. The excessive powers in the overall criminal proceedings of procurators, who are supposed at the same time to conduct and supervise preliminary criminal investigations, to bring charges and to monitor respect for existing legal safeguards against torture during criminal investigations and in places of detention, make investigations into complaints overly dependent on their goodwill.
>
> 67. The Special Rapporteur regrets the absence of legal guarantees such as the right to habeas corpus and the right to prompt and confidential access to a lawyer and relatives. He further observes that pre-trial detainees are held in facilities which are under the same jurisdiction as investigators in the case...
>
> 68. The Special Rapporteur believes, on the basis of the numerous testimonies (including on a number of deaths in custody) he received during the mission, not least from those whose evident fear led them to request anonymity and who thus had nothing to gain personally from making their allegations, that torture or similar ill-treatment is systematic as defined by the Committee against Torture. Even though only a small number of torture cases can be proved with absolute certainty, the copious testimonies gathered are so consistent in their description of torture techniques and the places and circumstances in which torture is perpetrated that the pervasive and persistent nature of torture throughout the investigative process cannot

be denied. The Special Rapporteur also observes that torture and other forms of ill-treatment appear to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others."

75. The United Nations High Commissioner for Human Rights also stated in his report of 1 February 2006 entitled "Report of the United Nations High Commissioner for Human Rights and follow-up to the World conference on human rights. Report of the mission to Kyrgyzstan by the Office of the United Nations High Commissioner for Human Rights (OHCHR) concerning the events in Andijan, Uzbekistan, 13-14 May 2005" (E/CN.4/2006/119):

"42. The main relevant concerns identified by the United Nations human rights treaty bodies and the special procedures of the Commission can be summarized as follows: violations of the right to life, in particular the execution of prisoners under sentence of death despite requests for interim measures by the Human Rights Committee; violations of the principle of prohibition of torture, in particular the systematic and widespread use of torture, the high numbers of convictions based on confessions extracted by torture and the use of 'solved crimes' as a criterion for the promotion of law enforcement personnel; violations of fair trial provisions, in particular the lack of access to legal counsel, the lack of independence of the judiciary and of the respect of the principle of 'equality of arms'; the lack of a definition of 'terrorist acts'; and violations of freedom of opinion and expression, of the press and media and of freedom of association and freedom of religion...

55. There is an urgent need for a stay of deportation to Uzbekistan of the Uzbek asylum-seekers and eyewitnesses of the Andijan events who would face the risk of torture if returned."

76. 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 Uzbek authorities, while their cases were pending before the Human Rights Committee."

77. 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. ... [I]ndividual[s] 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."

J. Information on the fate of the asylum-seekers extradited to Uzbekistan

78. In his report of 18 October 2006 "Situation of human rights in Uzbekistan" (A/61/526) the UN Secretary General expressed his concern about the fate of individuals extradited to Uzbekistan after the Andijan events:

"18. On 9 August 2006, the Government of Kyrgyzstan extradited four Uzbek refugees and one asylum-seeker to Uzbekistan... Back in Uzbekistan, the five Uzbek citizens face a series of charges, including terrorism, the attempted overthrow of the constitutional order of the Republic of Uzbekistan, and the establishment of an illegal organization. As per information received by OHCHR, no one has been granted access to the five since their return.

19. The fate of four other Uzbek individuals, who fled the Andijan events to Kyrgyzstan and were forcibly returned to Uzbekistan in June 2005, remains unclear. Though the Government of Uzbekistan informed OHCHR about their whereabouts, no international body has been granted access to them thus far.

20. UNHCR continues to be concerned about the fate of an increasing number of Uzbek asylum-seekers and refugees, some of whom fled the Andijan events, who have been detained in countries of the Commonwealth of Independent States and forcibly returned to Uzbekistan despite a real risk of mistreatment in breach of international standards. In February 2006, 11 Uzbek asylum-seekers were forcefully returned from Ukraine to Uzbekistan. In a press statement of 16 February 2006, UNHCR said that it was appalled by this forceful deportation. Thus far, the Office of the United Nations High Commissioner for Refugees (UNHCR) has not had access to the 11 individuals... According to information received by OHCHR, no access has been granted to these individuals since their return to Uzbekistan.

21. OHCHR is concerned about other individuals who have fled since the Andijan events and who are under pressure from the Government of Uzbekistan or the host country to return despite a real risk of mistreatment in breach of international standards...

46. In an interview of 10 April 2006, the Special Rapporteur on the question of torture said that 'there is ample evidence that both police and other security forces have been and are continuing to systematically practise torture, in particular against dissidents or people who are opponents of the regime'...

48. The Human Rights Committee, in its concluding observations of 31 March 2005 (CCPR/OP/83/UZB), remained concerned about the high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the International Covenant on Civil and Political Rights. The Committee expressed concern at the definition of torture in the Criminal Code of Uzbekistan. In addition, the Committee pointed to the allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts. The Government of Uzbekistan was due to submit follow-up information by 26 April 2006 on these issues in accordance with the request of the Committee. So far, no such information has been submitted to the Human Rights Committee."

79. 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 Uzbek 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 Uzbek authorities who were tortured to extract 'confessions', sentenced to death after unfair trials and executed."

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

A. Detention pending extradition and judicial review of detention

1. The Russian Constitution

80. The Constitution guarantees the right to liberty (Article 22):

> "1. Everyone has the right to liberty and personal integrity.
>
> 2. Arrest, placement in custody and detention are only permitted on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

2. The European Convention on Extradition

81. Article 16 of the European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

> "1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
>
> ...
>
> 4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

3. The 1993 Minsk Convention

82. 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).

83. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest containing a reference to the detention order and indicating that a

request for extradition will follow must 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 must be immediately informed of the arrest (Article 61).

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

4. The Code of Criminal Procedure

85. Chapter 13 of the Russian Code of Criminal Procedure ("Measures of restraint") governs the use of measures of restraint, or preventive measures (*меры пресечения*), which include, in particular, placement in custody. Custody may be ordered by a court on an application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive measure of restraint cannot be used (Article 108 §§ 1 and 3). 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 of up to twelve months, or in exceptional circumstances, up to eighteen months, may only be granted if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

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

87. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. 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 the person whose extradition is sought. The measure 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)).

88. An extradition decision made by the Prosecutor General may be challenged before a court. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the

extradition order was made in accordance with the procedure set out in the relevant international and domestic law (Article 463 §§ 1 and 6).

5. Code of Civil Procedure

89. A person may apply for judicial review of decisions and acts or failures to act by a State body or a State official that are capable of violating his/her rights or freedoms, hindering the realisation of his or her rights and freedoms, or imposing an obligation or liability unlawfully (Articles 254 § 1 and 255). If the court finds the application well-founded, it must order the State body or State official concerned to remedy the violation or remove the obstacle to the realisation of the rights and freedoms in question (Article 258 § 1).

6. Case-law of the Constitutional Court

90. On 4 April 2006 the Constitutional Court examined an application by Mr Nasrulloyev, who had submitted that the lack of any limitation in time on the detention of a person pending extradition was incompatible with the constitutional guarantee against arbitrary detention. The Constitutional Court declared the application inadmissible. It reiterated its settled case-law 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. However, in the Constitutional Court's view, the absence of any specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 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 Russian Code of Criminal Procedure. Such procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 (“Measures of restraint”) 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.

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 Code of Criminal Procedure did not allow the authorities to apply a custodial measure without complying with the procedure established in the Code of Criminal Procedure or the time-limits fixed in the Code.

B. Status of refugees

1. The 1951 Geneva Convention on the Status of Refugees

91. Article 33 of the UN Convention on the Status of Refugees of 1951, which was 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.”

2. Refugees Act

92. 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 the 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 a well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, 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, unwilling to return to it (section 1 § 1 (1)).

93. The Act does not apply to anyone believed on reasonable grounds to have 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)).

94. A person who has applied for refugee status or who has been granted refugee status cannot be returned to a 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).

95. 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. Relevant United Nations' and Council of Europe's documents concerning the use of diplomatic assurances

96. The UN General Assembly resolution of 16 November 2005 “Torture and other cruel, inhuman or degrading treatment or punishment” (UN Doc.:A/C.3/60/L.25/Rev.1) reads as follows:

> “The General Assembly
>
> ...
>
> 8. *Urges* States not to expel, return ('refouler'), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement...”

97. In his interim report submitted in accordance with Assembly resolution 59/182 (UN Doc.: A/60/316, 30 August 2005), the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reached the following conclusions:

> “51. It is the view of the Special Rapporteur that diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated. The Special Rapporteur is therefore of the opinion that States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.
>
> 52. The Special Rapporteur calls on Governments to observe the principle of non-refoulement scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognized as refugees.”

98. Specifically referring to the situation of torture in Uzbekistan and returns to torture effected in reliance upon diplomatic assurances from the Uzbek authorities, the UN Special Rapporteur on Torture Manfred Nowak has stated to the Session of the UN Human Rights Council on 20 September 2006:

> “The practice of torture in Uzbekistan is systematic, as indicated in the report of my predecessor Theo van Boven's visit to the country in 2002. Lending support to this finding, my mandate continues to receive serious allegations of torture by Uzbek law enforcement officials... 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."

99. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows:

22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases.

23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that 'unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel'. The Supreme Court of Canada addressed the issue in its decision in *Suresh v. Canada (Minister of Citizenship and Immigration)*, contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling

'...the difficulty in relying too heavily on assurances by a state that it will refrain from torture in the future when it has engaged in illegal torture or allowed others to do so on its territory in the past. This difficulty becomes acute in cases where torture is inflicted not only with the collusion but through the impotence of the state in controlling the behaviour of its officials. Hence the need to distinguish between assurances regarding the death penalty and assurances regarding torture. The former are easier to monitor and generally more reliable than the latter.'

24. In his report to the UN General Assembly of 1 September 2004, the special Rapporteur of the UN Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment examined the question of diplomatic assurances in light of the *non-refoulement* obligations inherent in the absolute and nonderogable prohibition of torture and other forms of ill-treatment. Noting that in determining whether there are substantial grounds for believing that a person would be in danger of being subjected to torture, all relevant considerations must be taken into account, the Special Rapporteur expressed the view that:

'in circumstances where there is a consistent pattern of gross, flagrant or mass violations of human rights, or of systematic practice of torture, the principle of *nonrefoulement* must be strictly observed and diplomatic assurances should not be resorted to.'”

100. The European Committee for the Prevention of Torture's (the CPT) 15th General Report of 22 September 2005 on their activities covering the period from 1 August 2004 to 31 July 2005 expressed concern about reliance on diplomatic assurances in light of the absolute prohibition against torture:

“38. Reference was made in the Preface to the potential tension between a State's obligation to protect its citizens against terrorist acts and the need to uphold fundamental values. This is well illustrated by the current controversy over the use of 'diplomatic assurances' in the context of deportation procedures. The prohibition of torture and inhuman or degrading treatment encompasses the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to such methods. In order to avoid such a risk in given cases, certain States have chosen the route of seeking assurances from the country of destination that the person concerned will not be ill-treated. This practice is far from new, but has come under the spotlight in recent years as States have increasingly sought to remove from their territory persons deemed to endanger national security. Fears are growing that the use of diplomatic assurances is in fact circumventing the prohibition of torture and ill-treatment.

39. The seeking of diplomatic assurances from countries with a poor overall record in relation to torture and ill-treatment is giving rise to particular concern. It does not necessarily follow from such a record that someone whose deportation is envisaged personally runs a real risk of being ill-treated in the country concerned; the specific circumstances of each case have to be taken into account when making that assessment. However, if in fact there would appear to be a risk of ill-treatment, can diplomatic assurances received from the authorities of a country where torture and ill-treatment is widely practised ever offer sufficient protection against that risk? It has been advanced with some cogency that even assuming those authorities do exercise effective control over the agencies that might take the person concerned into their custody (which may not always be the case), there can be no guarantee that assurances given will be respected in practice. If these countries fail to respect their obligations under international human rights treaties ratified by them, so the argument runs, why should one be confident that they will respect assurances given on a bilateral basis in a particular case?

40. In response, it has been argued that mechanisms can be devised for the post-return monitoring of the treatment of a person deported, in the event of his/her being detained. While the CPT retains an open mind on this subject, it has yet to see convincing proposals for an effective and workable mechanism. To have any chance of being effective, such a mechanism would certainly need to incorporate some key guarantees, including the right of independent and suitably qualified persons to visit the individual concerned at any time, without prior notice, and to interview him/her in private in a place of their choosing. The mechanism would also have to offer means of ensuring that immediate remedial action is taken, in the event of it coming to light that assurances given were not being respected.”

THE LAW

I. ADMISSIBILITY OF THE APPLICATION

101. The Government submitted that the applicants had been charged with serious and especially serious crimes, including terrorism and aggravated murder, committed in Uzbekistan. They had intended to avoid prosecution for those offenses by lodging their application with the Court. They had claimed that before their departure from Uzbekistan they had been persecuted and ill-treated by the Uzbek authorities, without submitting any evidence in support of their allegations. The Government invited the Court to declare the application inadmissible as an abuse of the right of application.

102. The Court will examine the Government's request to declare the application inadmissible from the standpoint of Article 35, which provides, in the relevant parts, as follows:

> "3. The Court shall declare inadmissible any individual application ... which it considers ... an abuse of the right of application.
>
> 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

103. The Court reiterates that a finding of abuse might be made in such circumstances if it appears that an application was clearly unsupported by evidence or outside the scope of the Convention, or if the application is based on untrue facts in a deliberate attempt to mislead the Court (see *G. J. v. Luxembourg*, no. 1156/93, Commission decision of 22 October 1996). The Court is unable to find any indication of abuse in the present application. The applicants complained that their extradition to Uzbekistan would expose them to a risk of ill-treatment, that their detention pending extradition was unlawful and that the presumption of innocence had been violated by the wording of the extradition orders. They supported their allegations by considerable documentary evidence. The Government did not contest the veracity of their factual submissions, nor did they claim that any of their allegations had been based on untrue facts.

104. Accordingly, the Court does not consider the application to be an abuse of the right of petition. It dismisses the Government's request to declare the application inadmissible on that ground. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. The applicants complained under Article 3 of the Convention that their extradition to Uzbekistan would expose them to a threat of torture or capital punishment. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

106. The applicants maintained that they had argued before the Russian authorities that there existed a real risk of their ill-treatment and political persecution in Uzbekistan. They had submitted reports on Uzbekistan by the UN institutions and international NGOs, confirming that torture was widespread in detention facilities and that individuals charged in connection with the Andijan events were at an increased risk of ill-treatment. That information had not received proper assessment from the Russian authorities. They had rejected the applicants' arguments without giving any reasons except a reference to the assurances given by the Uzbek authorities. The applicants submitted that the Uzbek authorities had given the same assurances in the extradition proceedings of four Uzbek nationals from Kyrgyzstan and that those assurances had proved to be ineffective (see paragraph 78 above). As the Uzbek authorities refused to give representatives of the international community access to the extradited individuals, it was not possible to monitor their compliance with the assurances. Given the administrative practice of ill-treatment in Uzbekistan, the assurances by the Uzbek authorities were not reliable.

107. The applicants further asked the Court not to limit its examination to the establishment of the Government's failure to assess properly the risk of ill-treatment before taking the extradition decision. They argued that they had submitted sufficient information for the Court to rule that their extradition to Uzbekistan would be incompatible with Article 3 of the Convention. As additional proof of an increased risk of ill-treatment, they had produced a list of their relatives and business partners who had been convicted to long terms of imprisonment in connection with the Andijan events. They also maintained that the Uzbek authorities knew about their application for asylum and their application before the Court, which had further intensified the risk of torture.

108. Referring to the case of *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, ECHR 2005-I), the Government argued that they had the right to control the entry, residence and expulsion of aliens. The applicants had been charged with serious and particularly serious criminal offences, including terrorism, in Uzbekistan. The Uzbek authorities

had made a request for their extradition. Under the Minsk Convention, to which both Russia and Uzbekistan were parties, the Government had an obligation to abide by that request. They further referred to the judgments of the International Court of Justice in the Lockerbie cases (Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v. United States of America and Libyan Arab Jamahiriya v. United Kingdom*), Preliminary Objections, Judgment, I. C. J. Reports 1998, pp. 9 and 115)), confirming the right of States to prosecute those involved in terrorist activities, and to the UN Security Council's resolution 1373 (2001), adopted on 28 September 2001. The resolution had called upon all States to take appropriate measures before granting refugee status, for the purpose of ensuring that the asylum seeker had not planned, facilitated or participated in the commission of terrorist acts; and to ensure that refugee status was not abused by the perpetrators, organisers or facilitators of terrorist acts.

109. The Government further maintained that the applicants had not submitted any documentary evidence in support of their allegations that they had been politically persecuted before their departure from Uzbekistan or that they would be ill-treated if extradited there. The reports by the UN institutions and international NGOs produced by the applicants described the general situation in Uzbekistan, without any reference to the applicants' particular situation. The mere fact that the applicants' relatives and business partners had been convicted did not prove that the convictions had been unfair or that their rights had been violated. Nor did it prove that the applicants would suffer any violation of their rights, if extradited. The Uzbek authorities had given assurances that they had no intention of persecuting the applicants out of political motives, or on account of their race, ethnic origin, religious or political beliefs. The Government had also obtained assurances that the applicants would not be ill-treated or subjected to the death penalty in Uzbekistan. They considered that those assurances were reliable, given the recent improvement in the situation with regard to human rights in Uzbekistan. In particular, the death penalty had been abolished as from 1 January 2008; the Uzbekistan Supreme Court had instructed the lower courts not to rely on confessions obtained under duress; and a monitoring group had been set up to monitor, in cooperation with the Ombudsman, the situation with human rights in detention facilities.

110. The Government submitted, finally, that although the applicants had been granted mandate refugee status by the UNHCR, that decision was not binding on the Russian authorities. The Russian authorities had thoroughly examined the applications for refugee status and established that there was no risk of the applicants' political persecution in Uzbekistan. They did not meet the requirements of section 1 § 1 (1) of the Refugees Act and were, therefore, not eligible for refugee status.

111. The third party, Human Rights Watch and the AIRE Centre, submitted that there was a growing consensus among governments and international experts that diplomatic assurances were an inadequate safeguard against torture and other ill-treatment. They referred to reports by the UN Special Rapporteur on Torture, the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, the UN Human Rights Committee and the European Committee for the Prevention of Torture (see paragraphs 96 to 100 above), who unanimously stated that diplomatic assurances were unreliable and ineffective. All the governments offering diplomatic assurances had long histories and continuing records of employing torture. Governments with poor records on torture routinely denied that torture was used and failed to initiate investigations when allegations of torture were made. It was highly unlikely that those governments, which persistently breached the international ban on torture, would keep their promises not to torture a single individual. Given that the receiving states were already under a duty not to torture or ill-treat detainees, and most had ratified legally binding treaties promising to refrain from such abuse, the diplomatic assurances, which were not legally binding, did not provide any additional protection to the deportees. Moreover, there was no mechanism inherent in the assurances themselves that would enable the person subject to the assurances to enforce them or to hold the sending or receiving government accountable. The person subject to extradition based on assurances had no legal recourse if the assurances were breached.

112. The third party also referred to the decision of the UN Human Rights Committee in the *Alzery v. Sweden* case (CCPR/C/88/D/1416/2005, 10 November 2006). The Committee had found that the transfer of the applicant to Egypt had breached the absolute ban on torture, despite the assurances of humane treatment provided by the Egyptian authorities prior to the rendition. The UN Committee against Torture had also found that the procurement of diplomatic assurances, which provided no mechanism for their enforcement, did not suffice to protect against a manifest risk of ill-treatment (UN Committee against Torture, Decision: *Agiza v. Sweden*, CAT/C/34//D/233/2003, 20 May 2005). In both cases, the applicants had been ill-treated after their extradition to Egypt, despite the assurances of humane treatment provided by the Egyptian authorities.

113. The third party further submitted that there was ample evidence to show that diplomatic assurances could not protect people at risk of torture from such treatment on return, whether by extradition or otherwise. Human Rights Watch and other NGOs had documented several cases of individuals extradited on the basis of diplomatic assurances who were subsequently tortured by the officials of the receiving state. In particular, a Russian man transferred from the US to Russia had been unlawfully detained, severely beaten and denied necessary medical care, despite assurances from the Russian authorities that he would be treated humanely in accordance with

Russia's domestic law and international obligations. The European Court of Human Rights, in the case of *Shamayev and Others v. Georgia and Russia*, (no. 36378/02, ECHR 2005-III), had experienced directly that diplomatic assurances were ineffective. In that case Georgia had extradited five applicants to Russia, despite an indication by the Court of interim measures requiring that none of them be extradited. The Russian Government had offered diplomatic assurances, including guarantees of humane treatment and unhindered access of the applicants to appropriate medical treatment, to legal advice and to the European Court of Human Rights. However, when the Court subsequently declared the application admissible and decided to send a fact-finding mission to visit the applicants, the Russian authorities had refused access to them. The applicants' lawyers had also been unable to obtain permission to visit them. That case had proved the total failure of diplomatic assurances to provide those who received them with any real power to react meaningfully where those who had proffered such assurances chose to ignore them.

114. With respect to Uzbekistan, the third party argued that it was notorious for practicing systematic torture. Torture was condoned, if not encouraged, by senior authorities and occurred with impunity. Individuals deported or extradited to Uzbekistan had been routinely detained incommunicado and ill-treated. In particular, nine Uzbek nationals extradited from Kazakhstan in November 2005 had been ill-treated by the Uzbek authorities. In June and August 2005 nine Uzbek nationals had been extradited from Kyrgyzstan to Uzbekistan, ten more Uzbek nationals had been extradited from Ukraine in February 2006. The men had been held in incommunicado detention ever since and their whereabouts had remained unknown. No independent actor or organisation had been granted access to them. In recognition of the numerous credible sources on the routine use of torture in Uzbekistan, governments in North America, Europe, and Central Asia had acknowledged that extradition to Uzbekistan of persons who were wanted by the Uzbek authorities – either because of their alleged association with the May 2005 events in Andijan or because they were perceived to be independent Muslims – would violate their international obligations. Several European governments, including the Czech Republic, Germany, Norway, Romania and Sweden, had granted full refugee status or UNHCR-mandated resettlement to Uzbek nationals fleeing persecution by the Uzbek authorities pursuant to the Andijan events or as a result of their religious or political affiliations.

B. The Court's assessment

1. General principles

115. The Court reiterates the relevant general principles emerging from its case-law, as summarised in the *Mamatkulov and Askarov* case (cited above):

> “66. The Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. The right to political asylum is not contained in either the Convention or its Protocols (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, p. 34, § 102).
>
> 67. It is the settled case-law of the Court 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 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 89-91).
>
> 68. It would hardly be compatible with the 'common heritage of political traditions, ideals, freedom and the rule of law' to which the Preamble refers, were a Contracting State knowingly to surrender a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment or punishment (see *Soering*, cited above, pp. 34-35, § 88).
>
> 69. In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu*. 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; the Court is not precluded, however, from having regard to information which comes to light subsequent to the extradition. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party of the well-foundedness or otherwise of an applicant's fears (see *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, pp. 29-30, §§ 75-76, and *Vilvarajah and Others*, cited above, p. 36, § 107).
>
> 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*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1856, §§ 85-86).

This situation typically arises when deportation or extradition is delayed as a result of an indication by the Court of an interim measure under Rule 39 of the Rules of Court. Such an indication means more often than not that the Court does not yet have before it all the relevant evidence it requires to determine whether there is a real risk of treatment proscribed by Article 3 in the country of destination.

70. Furthermore, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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 and its physical or mental effects (see *Vilvarajah and Others*, cited above, p. 36, § 107).

Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30).”

2. Application to the present case

116. The Court observes that most of the applicants are natives of the town of Andijan in Uzbekistan. They arrived in Russia at various dates between 2000 and the beginning of 2005. They fled persecution on account of their religious beliefs and successful businesses. Some of them had earlier experienced ill-treatment at the hands of the Uzbek authorities, others had seen their relatives or business partners arrested and charged with participation in illegal extremist organisations. Two applicants arrived in Russia on business: one from the town of Kokand in Uzbekistan, the other from Turkey.

117. After the unrest in Andijan in May 2005 the applicants were arrested in Russia at the request of the Uzbek authorities, who suspected them of financing the insurgents. Although the applicants denied any involvement in the Andijan events and the inquiry conducted by the Russian authorities seemed to corroborate their statements (see paragraph 32 above), the extradition proceedings commenced against them. The applicants claimed that their extradition to Uzbekistan would expose them to a danger of ill-treatment and capital punishment. They also lodged applications for asylum, reiterating their fears of torture and persecution for political motives. They supported their submissions with reports prepared by UN institutions and international NGOs describing the ill-treatment of detainees in Uzbekistan. The Russian authorities rejected their applications for refugee status and ordered their extradition to Uzbekistan.

118. In line with its case-law cited above, the Court is called upon to establish whether there exists a real risk of ill-treatment in case of the applicants' extradition to Uzbekistan. Since they have not yet been

extradited owing to an indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case. It follows that, although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 86).

119. As regards the applicants' first argument that their extradition would expose them to a risk of the death penalty, as they had been charged with capital offences, the Court observes that they were charged with terrorism and aggravated murder. At the time when the extradition decisions were issued against the applicants those offences were classified as capital under the Uzbek Criminal Code. The applicants therefore ran the risk of a death sentence. However, capital punishment was abolished in Uzbekistan as from 1 January 2008 (see paragraph 26 above). The Court considers that the risk of the imposition of the death penalty on the applicants was thereby eliminated so that no issue arises under Article 3 in this respect.

120. The Court will next examine the applicants' second argument that they would suffer ill-treatment in Uzbekistan. It takes note of the Government's account of recent improvements in the protection of human rights in Uzbekistan (see paragraph 109 above) which, in the Government's opinion, negated the risk of ill-treatment. It reiterates, however, that in cases where the applicant – or a third party within the meaning of Article 36 of the Convention – provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations. In its supervisory task under Article 19 of the Convention, it would be too narrow an approach under Article 3 in cases concerning aliens facing expulsion or extradition if the Court, as an international human rights court, were only to take into account materials made available by the domestic authorities of the Contracting State concerned, without comparing these with materials from other reliable and objective sources (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, ECHR 2007-... (extracts); and *Saadi v. Italy* [GC], no. 37201/06, § 131, 28 February 2008).

121. The evidence from a number of objective sources demonstrates that problems still persist in Uzbekistan in connection with the ill-treatment of detainees. In particular, in 2002 the UN Special Rapporteur on Torture described the practice of torture upon those in police custody as "systematic" and "indiscriminate". His successor in this post announced in

2006 that his mandate continued to receive serious allegations of torture by Uzbek law enforcement officials (see paragraphs 74 and 98 above). At the end of 2006 the UN Secretary General also drew attention to the continuing problems of the widespread mistreatment of prisoners and complained that inadequate measures were taken to bring those responsible to justice (see paragraph 78 above). Moreover, no concrete evidence has been produced of any fundamental improvement in the protection against torture in Uzbekistan in recent years. Although the Uzbek government adopted certain measures designed to combat the practice of torture (see the Government's submissions in paragraph 109 above), there is no evidence that those measures returned any positive results. The Court is therefore persuaded that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan.

122. These findings describe the general situation in Uzbekistan. As to the applicants' personal situations, the Court observes that they were charged in connection with the Andijan events. Amnesty International considered such individuals to be at an increased risk of ill-treatment (see paragraphs 76 and 77 above). The UN High Commissioner for Human Rights and the UN Special Rapporteur on Torture both urged the governments to refrain from transferring persons accused of involvement in the Andijan unrest to Uzbekistan where they would face the risk of torture (see paragraphs 75 and 98 above).

123. The third party alleged, and the allegation was corroborated by the UN Secretary General's and Amnesty International's reports, that most of the men forcibly returned to Uzbekistan after the events in May 2005 in Andijan were held in incommunicado detention (see paragraphs 78, 79 and 114 above). Given that arrest warrants were issued in respect of the applicants, it is most likely that they will be directly placed in custody after their extradition and that no relative or independent observer will be granted access to them, thus intensifying the risk of ill-treatment.

124. The Court also notes that after their arrest in Russia the applicants received threats from Uzbek officials that they would be tortured after their extradition to Uzbekistan to extract confessions (see paragraph 27 above).

125. Finally, the Court finds it significant that the office of the UN High Commissioner for Refugees granted the applicants mandate refugee status after determining they each had a well founded fear of being persecuted and ill-treated, if extradited to Uzbekistan. A Russian court also found that, given well-documented evidence of widespread torture in Uzbekistan, the applicants' extradition would expose them to the risk of torture (see paragraph 65 above). Against this background the Court is persuaded that the applicants would be at a real risk of suffering ill-treatment if returned to Uzbekistan.

126. The Court is not convinced by the Government' argument that they had an obligation under international law to cooperate in fighting terrorism

and had a duty to extradite the applicants who were accused of terrorist activities, irrespective of a threat of ill-treatment in the receiving country. It is not necessary for the Court to enter into a consideration of the Government's untested allegations about the applicants' terrorist activities because they are not relevant for its analysis under Article 3. The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. The prohibition provided by Article 3 against ill-treatment is equally absolute in expulsion and extradition cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion or extradition. In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration (see, *mutatis mutandis*, *Chahal,* cited above, §§ 79 to 81; and *Saadi*, cited above, §§ 138 to 141).

127. Finally, the Court will examine the Government's argument that the assurances of humane treatment from the Uzbek authorities provided the applicants with an adequate guarantee of safety. In its judgment in the *Chahal* case the Court cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent (see *Chahal*, cited above, § 105). In the recent case of *Saadi v. Italy* the Court also found that diplomatic assurances were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources had reported practices resorted to or tolerated by the authorities which were manifestly contrary to the principles of the Convention (see *Saadi*, cited above, §§ 147 and 148). Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic (see paragraph 121 above), the Court is not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.

128. Accordingly, the applicants' forcible return to Uzbekistan would give rise to a violation of Article 3 as they would face a serious risk of being subjected to torture or inhuman or degrading treatment there.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Compliance with Article 5 § 1

129. The applicants complained under Article 5 § 1 (f) of the Convention that they were unlawfully held in custody. In particular, they alleged that the domestic provisions setting the maximum period of detention were not respected. The relevant parts of Article 5 § 1 read as follows:

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

1. The parties' submissions

130. The applicants submitted that Article 109 of the Code of Criminal Procedure set the initial time-limit for detention at two months. As no extension of the applicants' detention had been ordered after the expiry of the two-month time-limit, the applicants' subsequent detention had been unlawful. The applicants referred in that respect to the Government's submissions in which it had been confirmed that the detention pending extradition was to be extended following the procedure established by Russian law for the extension of detention during the investigation and that that procedure had not been respected in the applicants' case (see paragraph 133 below).

131. The applicants further noted that the Russian courts had denied the applicability of Article 109 of the Code of Criminal Procedure to detention pending extradition and had ruled that Russian law did not establish any time-limits for such detention or any procedure for its extension. The applicants argued that the absence of such a procedure had rendered their detention arbitrary and unlawful.

132. The applicants finally claimed that their detention had been unnecessarily prolonged because the Russian authorities had procrastinated in the examination of their applications for refugee status.

133. The Government maintained that the applicants had been detained pending extradition to Uzbekistan pursuant to a court order issued in accordance with Article 466 of the Code of Criminal Procedure. Their detention had therefore been lawful. The Government further noted that on 4 April 2006 the Constitutional Court had issued a decision in which it

declared that the general provisions of Chapter 13 of the Code of Criminal Procedure were to apply to all forms and stages of criminal proceedings, including proceedings for extradition (see paragraph 85 above). The Supreme Court had noted in that respect that not only initial placement in custody, but also extensions of detention were to be ordered by a court on application by a prosecutor. However, no application for extension of detention had been made by the prosecutor in the applicants' case.

134. The Government insisted that Article 109 of the Code of Criminal Procedure, which established time-limits for detention during a criminal investigation, was not applicable to persons held in custody with a view to extradition. There was no other legal provision that established time-limits for detention pending extradition. In the applicants' case, the custodial measure had been applied for the period which had been necessary for a decision on extradition to be taken. The applicants themselves had contributed to the prolongation of their detention by filing applications for refugee status and subsequently contesting the refusals before the Russian courts. During that entire period the applicants had enjoyed refugee status and their extradition had been prohibited by Russian law.

2. The Court's assessment

135. It is common ground between the parties that the applicants were detained with a view to their extradition from Russia to Uzbekistan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 112).

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

137. The Court must therefore ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 does not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, it also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-... (extracts); *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Amuur*, cited above).

138. The Court has already found that the provisions of the Russian law governing detention of persons with a view to extradition were neither precise nor foreseeable in their application and fell short of the "quality of law" standard required under the Convention. It noted with concern the inconsistent and mutually exclusive positions of the domestic authorities on the issue of provisions applicable to detainees awaiting extradition, in particular on the issue whether Article 109 of the Code of Criminal Procedure (see paragraph 85 above), which instituted a procedure and specific time-limits for reviewing detention, was applicable to detention with a view to extradition (see *Nasrulloyev v. Russia*, no. 656/06, § §§ 72 and seq., 11 October 2007).

139. The inconsistency of domestic law is likewise apparent in the instant case. Thus, the Supreme Court opined that the initial judicial decision on the applicants' placement in custody did not furnish a sufficient legal basis for the entire duration of their detention. The detention should have been extended by a court on application by a prosecutor, that is in accordance with the procedure and time-limits established by Article 109. It conceded that the requisite procedure had not been followed in the applicants' case (see paragraph 133 above). When the applicants asked for release, arguing that the authorised period of their detention had expired and no extension had been ordered in accordance with the procedure prescribed by Article 109, the domestic courts held that Article 109 found no application in their situation and that domestic law did not set any time-limits for detention with a view to extradition or any procedure for its extension (see paragraphs 44 and 45 above). However, on 2 and 5 March 2007 the same courts ordered the applicants' release with reference to

Article 109 on the ground that the maximum detention period had already expired (see paragraph 49 above).

140. In the present case, the Court comes to the same conclusion as in the *Nasrulloyev* case (*loc. cit.*) that the provisions of the Russian law governing detention pending extradition were neither precise nor foreseeable in their application and did not meet the "quality-of-law" requirement. It finds that in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting up time-limits for such detention, the deprivation of liberty to which the applicants were subjected was not circumscribed by adequate safeguards against arbitrariness. The national system failed to protect the applicants from arbitrary detention, and their detention cannot be considered "lawful" for the purposes of Article 5 of the Convention. In these circumstances, the Court does not need to consider separately whether the extradition proceedings were conducted with due diligence.

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

B. Compliance with Article 5 § 4

142. The applicants complained under Articles 5 § 4 and 13 of the Convention that they were unable to obtain effective judicial review of their detention. Given that Article 5 § 4 is a *lex specialis* in relation to the more general requirements of Article 13 (see *Dimitrov v. Bulgaria* (dec.), no. 55861/00, 9 May 2006), the Court will examine the complaint under Article 5 § 4, which reads as follows:

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

1. *The parties' submissions*

143. The applicants argued that their attempts to obtain judicial review of the detention had failed. The director of the remand centre had been under an obligation to release the applicants after the expiry of the authorised period of detention. However, he had refused to do so. Counsel for the applicants had filed several applications for judicial review of the refusal. The applications had been disallowed because they could not be examined in criminal proceedings. The applicants had been advised to file an application for release in civil proceedings. They had followed that advice but the civil courts had also refused to hear their applications. The applicants had therefore been unable to obtain judicial review of their detention either in criminal, or in civil proceedings.

144. The Government submitted that the applicants had appealed against the detention order. They had also lodged applications for release under Article 109 of the Code of Criminal Procedure. Their applications had been examined by courts at two levels of jurisdiction. They had therefore been able to obtain a review of their detention

2. The Court's assessment

145. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII (extracts)). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka*, §§ 46 and 55, cited above).

146. The Court is not persuaded by the Government's argument that the applicants had obtained judicial review of their detention by appealing against the initial detention order. The thrust of the applicants' complaint under Article 5 § 4 was not directed against the initial decision on their placement in custody but rather against their inability to obtain judicial review of their detention after a certain lapse of time. Given that the applicants spent more than twenty months in custody, new issues affecting the lawfulness of the detention might have arisen during that period. In particular, the applicants sought to argue before the courts that their detention had ceased to be lawful after the expiry of the time-limit established by Article 109 of the Code of Criminal Procedure. By virtue of Article 5 § 4 they were entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not their deprivation of liberty had become "unlawful" in the light of new factors which emerged subsequently to the decision on their initial placement in custody (see, *mutadis mutandis, Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, §§ 55-59).

147. The Court notes with concern the contradictory decisions of the domestic courts on the issue of avenues of judicial review to be followed by those detained with a view to extradition. Thus, on 24 August 2004 the Ivanovo Regional Court found that the applicants' applications for release

could not be examined in criminal proceedings and indicated that they were to be examined in civil proceedings. However, on 12 and 19 March 2007 the same court upheld on appeal a diametrically opposed decision of 22 January 2007 indicating that the applications for release were to be examined in criminal, rather than civil, proceedings (see paragraphs 43 and 47 above). The Court concludes that the applicants were caught in a vicious circle of shifted responsibility where no domestic court, whether civil or criminal, was capable of reviewing the alleged unlawfulness of their detention.

148. The Court will now examine in detail whether the applicants could obtain judicial review of the lawfulness of their detention in civil or criminal proceedings.

149. As regards the possibility of initiating civil proceedings, the Court observes that the applicants sought judicial review of their detention pursuant to Articles 254 § 1 and 255 of the Code of Civil Procedure (see paragraph 89 above). However, their applications were disallowed by the domestic courts which found that the applicants' detention fell within the province of criminal rather than civil procedural law (see paragraphs 39 and 47 above).

150. As regards the possibility of seeking judicial review of detention under criminal procedural law, the Court notes that Article 125 of the Code of Criminal Procedure provided, in principle, for judicial review of complaints about alleged infringements of rights and freedoms which would presumably include the constitutional right to liberty. That provision conferred standing to bring such a complaint solely on "parties to criminal proceedings". The Russian authorities consistently refused to recognise the applicants' position as a party to criminal proceedings on the ground that there was no criminal case against them in Russia (see paragraphs 42, 44 and 46 above). That stance obviously negated their ability to seek judicial review of the lawfulness of their detention.

151. Finally, the Court will examine the Government's argument that the applicants had been able to obtain a review of their detention under Article 109 of the Code of Criminal Procedure. It has already found that Article 109 did not entitle a detainee to initiate proceedings for examination of the lawfulness of his detention (see *Nasrulloyev,* cited above, § 88). The Court observes that Article 109 sets specific time-limits by which the prosecutor must solicit the court for an extension of the custodial measure. In examining the application for an extension, the court must decide whether continuation of the custodial measure is lawful and justified and, if it is not, release the detainee. Admittedly, the detainee has the right to take part in these proceedings, make submissions to the court and plead for his or her release. There is nothing, however, in the wording of either Article 108 or Article 109 to indicate that these proceedings could be taken on the initiative of the detainee, the prosecutor's application for an extension of the

custodial measure being the required element for institution of such proceedings. No application for extension of detention had been made by the prosecutor in the applicants' case. In these circumstances, the Court cannot find that Article 109 secured the applicants' right to take proceedings by which the lawfulness of their detention would be examined by a court.

152. The Court concludes that all of the applicants' attempts to have their applications for release examined in civil or criminal proceedings failed. It follows that throughout the term of the applicants' detention they did not have at their disposal any procedure for judicial review of its lawfulness.

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

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

153. The applicants complained under Article 6 § 1 of the Convention that on their return to Uzbekistan they would face an unfair trial. The relevant parts of Article 6 § 1 read as follows:

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

154. The applicants did not file any submissions under Article 6 § 1.

155. The Government submitted that the Uzbek authorities had guaranteed that the applicants would not be prosecuted or punished for any offences committed before extradition which were not mentioned in the extradition request, and that they would not be ill-treated in order to obtain confessions or sentenced to death. The Government had also received assurances that the applicants' rights of defence would be respected and that they would be provided with counsel.

156. The Court reiterates that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, § 113). However, in view of the Court's conclusion that the applicants' extradition to Uzbekistan would give rise to a violation of Article 3 of the Convention (see paragraph 128 above), it is not necessary to examine separately whether their extradition would also infringe Article 6 § 1 of the Convention (compare *Saadi*, cited above, § 160).

V. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

157. Under Article 6 § 2 of the Convention the applicants complained that the wording of the extradition decisions violated their right to be presumed innocent. Article 6 § 2 reads as follows:

" Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. The parties' submissions

158. The applicants submitted that in his decisions to extradite the applicants the First Deputy Prosecutor General of the Russian Federation had unambiguously stated that the applicants had "committed" certain criminal offences. The extradition decision had been sent to the Prosecutor General's Office of Uzbekistan and had been included in the applicants' criminal files. The prosecutor's statements might influence the Uzbek courts and serve as evidence of the applicants' guilt. Therefore, their right to be presumed innocent had been violated.

159. The Government claimed that Article 463 § 6 of the Criminal Code prohibited the courts from assessing the applicants' guilt or innocence (see paragraph 88 above). The courts had only reviewed the lawfulness of the extradition orders, without considering whether the applicants were guilty of the imputed offences.

B. The Court's assessment

160. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. Where no such proceedings are, or have been in existence, statements attributing criminal or other reprehensible conduct are relevant rather to considerations of protection against defamation and adequate access to court to determine civil rights and raising potential issues under Articles 8 and 6 of the Convention (see *Zollmann v. the United Kingdom* (dec.), no. 62902/00, 20 November 2003).

161. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 35). It prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, where the Assize Court hearing the criminal case found the prosecution time-barred but went on nonetheless to decide whether, if it had continued, the applicant would probably have been found guilty for the purposes of costs orders). It also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, § 41, where remarks were made

by a minister and police superintendent to the press naming without qualification the applicant, arrested that day, as an accomplice to murder; see also *Daktaras v. Lithuania*, no. 42095/98, §§ 41 to 43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II (extracts)).

162. The Court will first examine whether the applicants may be regarded in the circumstances of this case as “charged with a criminal offence” for the purposes of Article 6 § 2 when the impugned extradition decisions in respect of them were issued. It observes that the applicants were not charged with any criminal offence within Russia. The extradition proceedings against them did not concern the determination of a criminal charge, within the meaning of Article 6 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). Accordingly, at the time when the extradition decisions were made there was no criminal prosecution against the applicants in Russia of which the prosecutor's statements might be regarded as prejudging the outcome.

163. In the case of *Zollmann* (cited above) the Court did not confine itself to the finding that no criminal proceedings were pending against the applicant within the United Kingdom, it went on to examine whether the statements of a State official were linked to any criminal investigations instigated against the applicant abroad. In the present case, the Court must also ascertain whether there was any close link, in legislation, practice or fact, between the impugned statements made in the context of the extradition proceedings and the criminal proceedings pending against the applicants in Uzbekistan which might be regarded as sufficient to render the applicants “charged with a criminal offence” within the meaning of Article 6 § 2 of the Convention (compare *Zollmann,* cited above).

164. The Court observes that the applicants' extradition was ordered for the purpose of their criminal prosecution. The extradition proceedings were therefore a direct consequence, and the concomitant, of the criminal investigation pending against the applicants in Uzbekistan. The Court therefore considers that there was a close link between the criminal proceedings in Uzbekistan and the extradition proceedings justifying the extension of the scope of the application of Article 6 § 2 to the latter. Moreover, the wording of the extradition decisions clearly shows that the prosecutor regarded the applicants as “charged with criminal offences” which is in itself sufficient to bring into play the applicability of Article 6 § 2 of the Convention. The Court also notes that in the case of *P. and R.H. and L.L. v. Austria* (no. 15776/89, Commission decision of 5 December 1989, Decisions and Reports (DR) 64, p. 269) the Commission considered the applicants awaiting extradition from Austria to the United States as “charged with a criminal offence” within the meaning of Article 6 § 2 of the Convention. The Court therefore concludes that Article 6 § 2 was applicable in the present case.

165. The Court will next examine whether the reasoning contained in the First Deputy Prosecutor General's decisions to extradite the applicants amounts in substance to a determination of the applicants' guilt contrary to Article 6 § 2.

166. The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002; and *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007).

167. The decision to extradite the applicants does not in itself offend the presumption of innocence (see, *mutadis mutandis*, *X. v. Austria*, no. 1918/63, Commission decision of 18 December 1963, Yearbook 6, p. 492). However, the applicants' complaint is not directed against the extradition as such, but rather against the reasoning contained in the extradition decisions. The Court considers that an extradition decision may raise an issue under Article 6 § 2 if supporting reasoning which cannot be dissociated from the operative provisions amounts in substance to the determination of the person's guilt (see, *mutadis mutandis, Lutz v. Germany*, judgment of 25 August 1987, Series A no. 123, § 60; and *Minelli,* cited above, § 34).

168. The extradition decisions declared that the applicants should be extradited because they had “committed” acts of terrorism and other criminal offences in Uzbekistan (see paragraphs 68 and 69 above). The statement was not limited to describing a “state of suspicion” against the applicants, it represented as an established fact, without any qualification or reservation, that they had been involved in the commission of the offences, without even mentioning that they denied their involvement. The Court considers that the wording of the extradition decisions amounted to a declaration of the applicants' guilt which could encourage the public to believe them guilty and which prejudged the assessment of the facts by the competent judicial authority in Uzbekistan.

169. As regards the Government's argument that the domestic courts had not assessed the applicants' guilt as they were prohibited from doing so by domestic law, the Court notes that the applicants complained about the prosecutor's statements contained in the extradition decisions, not about the

judicial decisions or any statements made by the courts. The Ivanovo Regional Court found that the extradition decisions only described the charges against the applicants, and did not contain any findings as to their guilt (see paragraph 72 above). However, that interpretation was at odds with the unambiguous wording of the extradition decisions, namely that the applicants had "committed" the imputed offences. By upholding the extradition decisions without altering their wording the courts failed to rectify the defects of the extradition orders (compare *Minelli*, cited above, § 40, *Hammern v. Norway*, no. 30287/96, § 48, 11 February 2003; and *Y v. Norway*, no. 56568/00, § 45, ECHR 2003-II (extracts)).

170. Accordingly, there has been a violation of Article 6 § 2 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

171. 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

172. Each applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

173. The Government submitted that no compensation for non-pecuniary damage should be awarded to the applicants because their rights had not been violated. In any event, a finding of a violation would constitute sufficient just satisfaction.

174. The Court considers that sufficient just satisfaction would not be provided solely by the finding of a violation and that compensation has thus to be awarded. Making an assessment on an equitable basis, it awards EUR 15,000 to each of the applicants in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

175. Relying on the fee agreements and the lawyer's timesheets, the applicants claimed the following amounts for their representation by Ms Sokolova before the domestic courts and the Court until 1 May 2007:

- Mr Alimov: EUR 1,051;
- Mr Ismoilov: EUR 1,200;
- Mr Kasimhujayev: EUR 765;

- Mr Rustamhodjaev: EUR 671;
- Mr Makhmudov: EUR 887;
- Mr Usmanov: EUR 810;
- Mr Muhamadsobirov: EUR 810;
- Mr Muhametsobirov: EUR 741;
- Mr Ulughodjaev: EUR 876;
- Mr Sabirov: EUR 798;
- Mr Naimov: EUR 727;
- Mr Hamzaev: EUR 873;
- Mr Tashtemirov: EUR 883.

176. In addition, the applicants claimed EUR 494 each for their representation by Ms Sokolova which was paid on their behalf by the Human Rights Centre Memorial. The applicants submitted that their representation after 1 May 2007 had been paid out of money received from the Court by way of legal aid. Mr Alimov also claimed EUR 195 for postal expenses.

177. The Government submitted that the applicants had not submitted any proof that the payments had actually been made. The articles of association of the Human Rights Centre Memorial did not provide for the rendering of financial services to citizens. Therefore their financial help to the applicants had been voluntary and was not recoverable.

178. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court is satisfied that the lawyer's rate and the number of hours claimed were not excessive. The fact that part of the legal fees was settled on the applicants' behalf by the Human Rights Centre Memorial is not material for the purposes of Article 41. The legal costs may be regarded as having been incurred by the applicants in the sense that they, as clients, made themselves legally liable to pay their lawyer on an agreed basis (compare *Dudgeon v. the United Kingdom* (Article 50), judgment of 24 February 1983, Series A no. 59, § 21). The Court further notes that the applicants submitted receipts showing the amount of postal expenses. Having regard to the information in its possession, the Court considers it reasonable to award the following amounts to the applicants for their legal representation by Ms Sokolova, plus any tax that may be chargeable to the applicants on them:

- Mr Alimov: EUR 1,545;
- Mr Ismoilov: EUR 1,694;
- Mr Kasimhujayev: EUR 1,259;
- Mr Rustamhodjaev: EUR 1,165;
- Mr Makhmudov: EUR 1,381;
- Mr Usmanov: EUR 1,304;

- Mr Muhamadsobirov: EUR 1,304;
- Mr Muhametsobirov: EUR 1,235;
- Mr Ulughodjaev: EUR 1,370;
- Mr Sabirov: EUR 1,292;
- Mr Naimov: EUR 1,221;
- Mr Hamzaev: EUR 1,367;
- Mr Tashtemirov: EUR 1,377.

179. The Court also awards Mr Alimov EUR 195 for postal expenses, plus any tax that may be chargeable on that amount.

C. Default interest

180. 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

1. *Declares* the remainder of the application admissible unanimously;

2. *Holds* by six votes to one that in the event of the extradition orders against the applicants being enforced, there would be a violation of Article 3 of the Convention;

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

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

5. *Holds* unanimously that there is no need to examine the complaint under Article 6 § 1 of the Convention;

6. *Holds* by six votes to one that there has been a violation of Article 6 § 2 of the Convention;

7. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros) to each of the applicants in respect of non-pecuniary damage;

(ii) the following amounts in respect of the legal representation:

- Mr Alimov: EUR 1,545 (one thousand five hundred and forty-five euros);
- Mr Ismoilov: EUR 1,694 (one thousand six hundred and ninety-four euros);
- Mr Kasimhujayev: EUR 1,259 (one thousand two hundred and fifty-nine euros);
- Mr Rustamhodjaev: EUR 1,165 (one thousand one hundred and sixty-five euros);
- Mr Makhmudov: EUR 1,381 (one thousand three hundred and eighty-one euros);
- Mr Usmanov: EUR 1,304 (one thousand three hundred and four euros);
- Mr Muhamadsobirov: EUR 1,304 (one thousand three hundred and four euros);
- Mr Muhametsobirov: EUR 1,235 (one thousand two hundred and thirty-five euros);
- Mr Ulughodjaev: EUR 1,370 (one thousand three hundred and seventy euros);
- Mr Sabirov: EUR 1,292 (one thousand two hundred and ninety-two euros);
- Mr Naimov: EUR 1,221 (one thousand two hundred and twenty-one euros);
- Mr Hamzaev: EUR 1,367 (one thousand three hundred and sixty-seven euros);
- Mr Tashtemirov: EUR 1,377 (one thousand three hundred and seventy-seven euros);

(iii) EUR 195 (one hundred ninety-five euros) to Mr Alimov in respect of postal expenses;

(iv) any tax that may be chargeable to the applicants on the above amounts;

(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.

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

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

C.L.R.

S.N.

PARTLY DISSENTING OPINION OF JUDGE KOVLER

I share the conclusions of the Chamber as to the admissibility of the remainder of the application, in view of the seriousness of the applicants' allegations. I also concur with its conclusions concerning the violation of Article 5 §§ 1 and 4 of the Convention, as the reasoning of the Chamber follows the approach established in the case of Nasrulloyev v. Russia (no. 656/06, 11 October 2007), in which the Court found that the legal provisions on detention pending extradition did not meet the "quality of law" requirement, in breach of Article 5 § 1, and did not provide for judicial review of such detention, contrary to Article 5 § 4 of the Convention.

My dissent concerns some of the other conclusions.

1. In my opinion, the finding of a potential violation of Article 3 of the Convention "in the event of the extradition orders against the applicants being enforced" constitutes a radical reading of the recent judgment in *Saadi v. Italy* (no. 37201/06, [GC], judgment of 28 February 2008), and especially of the following conclusion: "The weight to be given to assurances from the receiving State depends, in each case, on the circumstances obtaining at the material time" (see *Saadi*, cited above, § 148). It will be recalled that in the Grand Chamber's judgment in the case of *Mamatkulov and Askarov v. Turkey* concerning extradition to the same country – Uzbekistan – the Court concluded as follows, taking into account an assurance obtained from the Uzbek Government before the extradition date: "In the light of the material before it, the Court is not able to conclude that substantial grounds existed at the aforementioned date for believing that the applicants faced a real risk of treatment proscribed by Article 3" (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 77, ECHR 2005-I).

The Chamber justified this departure from Mamatkulov by assessing the current position of the applicants in the light of the evolution of the situation in the receiving country, as stipulated by our case-law (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 86). I could agree with this approach if I were persuaded that the extradition of the applicants was inevitable or was even carried out. But the Chamber's analysis of the facts of this extremely sensitive and constantly evolving case stops with the applicants' release on 5 March 2007 (that is, more than one year before adoption of the judgment!) (§ 50) and with the ruling of the Ivanovo Regional Court of 27 March 2007 upholding the decisions releasing them (§ 51). According to the Russian media the applicants left Russian territory for "third countries"; however, this information was not confirmed or refuted by the parties and the Court did not take the trouble to obtain information concerning the applicants' current situation (the application of Rules 39 and 41 of the Rules of Court

provides such an opportunity). As my colleague Judge Zupančič stressed in his concurring opinion in *Saadi*, speaking about the "Chahal test", *"one cannot prove a future event to any degree of probability because the law of evidence is a logical rather than a prophetic exercise. It is therefore an understatement to say that the application of the Chahal test is 'to some degree speculative'"* (see *Saadi*, cited above, concurring opinion of Judge Zupančič). Accordingly, I favoured a clear position of non-violation over a "prophetic exercise" or "some degree of speculation", precisely because of the lack of specific information concerning the current situation of the applicants.

2. The second point of my disagreement concerns the alleged violation of Article 6 § 2 on the ground of a breach of the presumption of innocence owing to the wording of the prosecutor's decision on extradition. I agree with the Ivanovo Regional Court's position that the extradition decision simply described the charges against the applicants, as received from the Uzbek authorities, and did not contain any findings as to their guilt.

I would recall that in its decision in *Zollmann v. the United Kingdom* the Court stated: "Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. Where no such proceedings are, or have been in existence, statements attributing criminal or other reprehensible conduct are relevant rather to considerations of protection against defamation and adequate access to court to determine civil rights and raising potential issues under Articles 8 and 6 of the Convention" (see *Zollmann v. the United Kingdom* (dec.), no. 62902/00, 27 November 2003).

In the present case the applicants were not charged with any criminal offence in Russia, nor was there any pending or intended criminal investigation against them in Russia, the outcome of which might have been said to be prejudged by the statements of the First Deputy Prosecutor General of the Russian Federation. Moreover, I cannot consider that any close link, in legislation, practice or fact, was established between the statements by the Russian prosecutor and the criminal proceedings pending against the applicants in Uzbekistan. I saw no need to speculate as to how the prosecutor's statements (despite their strictly professional wording) might have unduly influenced the judicial authorities of another sovereign State competent to decide on the applicants' guilt or innocence.

3. As I voted only on the violation of Article 5 § 1 and § 4 of the Convention, it is logical that the amounts in respect of non-pecuniary damage could be reduced. As to the costs of legal representation, I recall that in other comparable and no less complicated cases the Court awarded the lawyers much more modest amounts (EUR 1,400 in *Nasrulloyev* and EUR 790 in *Garabayev*): a simple arithmetical multiplication by the number of applicants is not fair in my view.