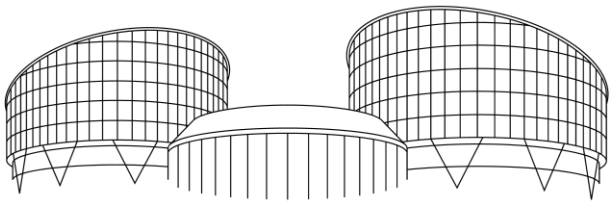

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABDULAZHON ISAKOV v. RUSSIA

(Application no. 14049/08)

JUDGMENT

STRASBOURG

8 July 2010

FINAL

22/11/2010

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

In the case of Abdulazhon Isakov v. Russia**,**

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

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

Having deliberated in private on 11 May and 17 June 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 14049/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Abdulazhon (also spelled as Abdullazhon) Isakov ("the applicant"), on 21 March 2008.

2. The applicant was represented by Ms S. Gannushkina and Ms E. Ryabinina, who were assisted by lawyers of the EHRAC/Memorial Human Rights Centre, an NGO with offices in London and Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his detention by Russian authorities in view of his extradition to Uzbekistan where he faced politically-based persecution by the local authorities gave rise to violations of his rights under Articles 3, 5 and 13 of the Convention.

4. On 10 November 2008 the President of the Chamber to which the case was allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Russia, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Uzbekistan until further notice.

5. On 1 April 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and is currently detained in Tyumen.

7. The facts of the case, which were partially disputed by the parties, may be summarised as follows.

A. Information submitted by the applicant

1. Background information

(a) General information

8. In 1981 the applicant, who was born and lived in Uzbekistan, received an Uzbek passport. In 1989 he moved from Uzbekistan to Russia. From 1989 to 1995 the applicant resided on Shishkova Street, Tyumen, Russia.

9. It appears that in June 1995 the applicant officially informed the Uzbek authorities that he had changed his permanent residency from Uzbekistan to Russia. From 1995 to 2001 the applicant was officially registered as residing in Chikcha, the Tyumen Region. Since 13 March 2001 the applicant has been officially registered as residing on Doronina Street in Tyumen.

(b) Proceedings concerning the validity of the applicant's Russian passport

10. In December 2000 the applicant exchanged his USSR passport for a Russian passport in Department of the Interior no. 6 in the Tsentralniy district of Tyumen (*ГОМ-6 УВД Центрального района Тюмени*).

11. On 13 July 2005 the Passport and Visa Service of the Tyumen Regional Department of the Interior (the UVD) examined the validity of the applicant's Russian passport and stated that the document had been issued unlawfully, that it should be confiscated as invalid and that the applicant was not a Russian citizen.

12. On 14 March 2008 the Department of the Federal Migration Service of the Tyumen Region (the FMS) informed the Tyumen regional prosecutor's office that "... in 2005 the issuance of the Russian passport to A.M. Isakov was declared unsubstantiated as he was not a Russian citizen ... the passport was declared invalid and it was supposed to be confiscated. However, as it has been impossible to establish A.M. Isakov's whereabouts, at the time of writing the passport has not been confiscated..."

13. On 15 August 2008 (the document is also dated 15 August 2005) the applicant complained to the Tsentralniy district court of Tyumen and

requested that the decision of 13 July 2005 be overruled as unlawful. The applicant stated, among other things, that he was a Russian citizen and that he had not been informed about the decision concerning the invalidity of his passport until the hearing conducted on 27 March 2008 by the Tsentralniy district court on the issue of his detention pending extradition to Uzbekistan (see part 3,-"*Extradition proceedings*", below).

14. On 22 August 2008 the Tsentralniy district court refused to examine the applicant's complaint. The applicant appealed and on 29 September 2008 the Tyumen regional court overruled that decision and remitted the case for a fresh examination.

15. On 15 October 2008 the Tsentralniy district court again refused to examine the applicant's complaint.

16. The applicant lodged a civil claim challenging the validity of the decision of 13 July 2005. On 25 February 2009 the Tsentralniy district court rejected the claim, stating that the applicant had failed to substantiate his allegation that he had been a legal resident of Russia since 6 February 1992 and that therefore he could not be a Russian citizen.

17. On 20 April 2009 this decision was upheld on appeal by the Tyumen Regional Court.

2. Proceedings in Uzbekistan

18. On 12 June 1998 the Namangan regional prosecutor's office of Uzbekistan (the Namangan prosecutor's office) opened a criminal case against the applicant under Article 159 § 4 of the Uzbek Criminal Code (attempt to violently overthrow the State's constitutional order). The applicant was accused of "... actively participating in the subversive activities of an extremist movement ... by conducting the holy war "jihad" ... to create an Islamic state".

19. On 29 June 1998 the applicant was charged *in absentia* and his name was put on the wanted list.

20. On 20 October 2003 the Namangan prosecutor's office brought additional charges against the applicant under Article 242 of the Uzbek Criminal Code (organisation of a criminal group and subversive activities). The applicant was charged *in absentia*. The decision also stated that the applicant should be arrested and his name should remain on the wanted list. The Uzbek courts did not issue orders for his arrest.

3. Extradition proceedings

21. On 6 March 2008 the applicant was arrested by officers of the Tyumen town department of the interior (the GUVD) on unknown grounds.

22. On 7 March 2008 the applicant was placed in FBU/IZ-72/1 ("the detention centre"). The decision to arrest the applicant and detain him in the detention centre was not authorised by a court.

23. On 27 March 2008 the Tsentralniy district court of Tyumen authorised the applicant's detention in view of extradition. The decision did not provide any time-limits for his detention.

24. On 7 April 2008 the Uzbek Prosecutor General's office officially requested the Russian Prosecutor General's office to extradite the applicant to Uzbekistan to be prosecuted as charged by the local authorities.

25. On 12 August 2008 the Russian Prosecutor General's office decided to extradite the applicant.

26. On 19 August 2008 the applicant was informed about the extradition order.

27. On 25 August 2008 (in the document the date was also stated as 25 August 2006) the applicant appealed against the extradition order to the Tyumen regional court. He stated, *inter alia*, that he was sought by the Uzbek authorities for alleged commission of political crimes and participation in an extremist religious movement. The applicant denied the accusations and stated that under Russian law the alleged religious activity was not prohibited.

28. On 30 September 2008 the Tyumen regional court rejected the applicant's complaint, stating, *inter alia*, the following:

> "... in their extradition request the Uzbek authorities guarantee that the applicant will be prosecuted only for the crimes his extradition is requested for and that after the trial and the completion of his sentence he will be able to freely leave Uzbekistan and that he won't be extradited to a third country without the consent of the Russian Federation.
>
> In addition, the Uzbek authorities guarantee that the applicant will not be subjected to torture in Uzbekistan and his constitutional rights will be respected....
>
> ... There are no circumstances precluding the applicant's extradition to the law-enforcement agencies of Uzbekistan or any grounds for its suspension ...
>
> ... from the case file it follows that the Russian Ministry of Foreign Affairs and the Federal Security Service possess no information either concerning the applicant's persecution in Uzbekistan on political grounds or any other data which would preclude his extradition to Uzbekistan ..."

29. On 5 October 2008 the applicant appealed against this decision to the Supreme Court of the Russian Federation (the Supreme Court). The applicant stated, *inter alia*, that the Tyumen regional court had ignored his allegations of a risk of ill-treatment in Uzbekistan; that his detention from 6 March to 27 March 2008 had not been authorised by a court; that the court order of 27 March 2008 authorising his detention pending extradition had not provided any time-limits; that the detention had been excessively long and its extensions had not been authorised by court orders.

30. On 10 November 2008 the European Court of Human Rights granted the applicant's request for the application of interim measures under Rule 39 of the Rules of Court to suspend his extradition to Uzbekistan.

31. On 22 December 2008 the Supreme Court upheld the decision of the Tyumen regional court and the extradition order. The ruling, *inter alia*, referred to the assurances provided by the Uzbek authorities that "... the Republic of Uzbekistan guarantees that A.M. Isakov will not be subjected to torture and that his constitutional rights in Uzbekistan will be protected". The Supreme Court did not examine any of the applicant's complaints concerning the lawfulness and the length of his detention pending extradition.

4. The applicant's asylum request

32. On 5 May 2009 the applicant applied to the Tyumen FMS requesting asylum, stating that the extradition order against him had been finalised, that the authorities had declared his Russian citizenship invalid and that he was being persecuted in Uzbekistan for his religious beliefs.

33. On 10 September 2009 the Tyumen FMS informed the applicant that on 7 September 2009 they had rejected his asylum request as it had been motivated by "...fear of lawful prosecution for a committed crime".

34. On 5 October 2009 the applicant appealed against that decision to the Russia FMS.

35. On 8 December 2009 the Russia FMS dismissed the applicant's appeal and upheld the decision of the Tyumen FMS.

36. On 21 January 2010 the applicant appealed against the decision of the Russia FMS to the Basmanniy district court of Moscow. The proceedings are still pending.

37. At the beginning of March 2010 the applicant applied to the Tyumen FMS with a request for temporary asylum.

38. On 17 March 2010 the Tyumen FMS granted the applicant temporary asylum in Russia for one year, stating, *inter alia*, that the measure had been applied in view of the examination of the applicant's case by the Court.

5. Proceedings concerning to the applicant's requests for release

(a) The applicant's complaints to the administration of FBU/IZ-72/1

39. On 23 June 2008 the applicant complained about his detention to the head of the detention centre and requested to be released. He stated that his detention was unlawful as it had been neither authorised nor extended by court orders.

40. On 23 or 24 June 2008 the head of the detention centre refused to release the applicant and informed him that under Article 109 of the Criminal Procedure Code his detention pending extradition "would not exceed 18 months".

(b) The applicant's complaints to domestic courts

41. On 14 March 2008 the applicant complained to the Kalininskiy district court of Tyumen that his detention pending extradition was unlawful and requested to be released.

42. On 27 March 2008 the Tsentralniy district court of Tyumen decided to detain the applicant in view of his extradition to Uzbekistan. In its decision the court referred to Article 466 § 1 of the Russian Criminal Procedure Code ("the Criminal Procedure Code"). The decision did not provide time-limits for the detention.

43. On 1 April 2008 the Kalininskiy district court rejected the complaint, stating that the decision to detain the applicant did not contravene the regulations concerning detention on remand (Article 108 of the Criminal Procedure Code) and that it had already been authorised on 27 March 2008 by the Tsentralniy district court. The applicant appealed against this decision, stating, *inter alia*, that between 6 and to 27 March 2008 he had been detained without a court order.

44. On 6 May 2008 (in the submitted documents the date was also referred to as 15 April 2008) the Tyumen regional court dismissed his appeal. The court did not examine the issue of the lawfulness of the applicant's detention between 6 and 27 March 2008; it rejected the appeal for the same reasons as the ones stated in the decision of 1 April 2008.

45. On 28 August 2008 the applicant again lodged a complaint with the Kalininskiy district court challenging the lawfulness of his detention pending extradition. He pointed out that it had been more than five months since his arrest, but his detention had not been extended by domestic courts, in violation of Article 109 of the Criminal Procedure Code. The applicant further stated that his complaint to the head of the detention centre of 23 June 2008 had been rejected without a proper legal basis and requested the court to overrule the decision of the head of the detention centre.

46. On 4 September 2008 the Kalininskiy district court rejected the applicant's complaint, stating that the applicant should have appealed against the decision of 23 June 2008 through civil proceedings. On the same date the applicant appealed against the court's decision to the Tyumen regional court.

47. On 30 September 2008 the Tyumen regional court rejected the applicant's appeal and upheld the decision of the district court.

48. On 5 October 2008, in his appeal against the extradition order, the applicant lodged a detailed complaint with the Supreme Court challenging the lawfulness and the length of his detention pending extradition (see paragraph 29 above). In its decision of 22 December 2008 the Supreme Court did not examine the applicant's complaints concerning the lawfulness and length of his detention pending extradition (see paragraph 31 above).

49. On 18 November 2008 the applicant again complained to the Kalininskiy district court stating that for more than eight months his detention pending extradition had not been extended by court orders.

50. On 20 November 2008 the Kalininskiy district court refused to examine the applicant's complaint stating that the applicant had failed to specify "... whether any criminal proceedings had been pending against him in Tyumen and by which local authority they had been initiated...".

51. On 27 January 2009 the applicant again complained to the Kalininskiy district court, stating that for more than ten months his detention had not been extended by court orders.

52. On 6 February 2009 the district court left the applicant's complaint without examination as he was supposed to use a different procedure to appeal against the alleged unlawfulness of his detention.

53. On 3 August 2009 that decision was upheld by the Tyumen regional court through the supervisory review procedure.

54. On 6 September 2009 the maximum eighteen-month detention period laid down in Article 109 of the Russian Code of Criminal Procedure expired, but the applicant remained in detention.

55. On 17 December 2009 the applicant again complained to the Kalininskiy district court that his detention pending extradition was unlawful and requested to be released.

56. On 14 January 2010 the district court refused to order the applicant's release and stated that his detention was warranted by the application of the interim measure by the Court. The applicant appealed against this decision to the Tyumen regional court.

57. On 16 February 2010 the Tyumen regional court held that the applicant's detention had exceeded the maximum detention period prescribed by the Code of Criminal Procedure and ordered his release.

58. On 5 March 2010 the applicant was released from detention.

B. Information submitted by the Government

59. The Government disagreed with the statement of facts as presented by the applicant and, without referring to any specific documents and/or submitting copies of them, they stated the following.

60. According to the Government's submissions, the Uzbek Prosecutor General's office provided the Russian authorities with the following assurances; "... the applicant will be prosecuted only for the crimes listed in the extradition request; after the trial and the completion of sentence he will be able to leave Uzbekistan without restraint. The applicant will not be deported or extradited to a third country without the consent of the Russian Federation".

61. They further stated that the sanctions for the crimes with which the applicant had been charged by the Uzbek authorities did not extend to the death penalty.

62. The Russian Prosecutor General's office requested that the Russian Ministry of Foreign Affairs and the Russian Federal Security Service provide information concerning the applicant's alleged persecution in Uzbekistan. According to their replies, there were no circumstances preventing the applicant's extradition to Uzbekistan; no information had been received confirming that the persecution had been politically motivated.

63. During the examination of the applicant's allegations "... the Russian courts of the first and the second instances noted that the Uzbek authorities had guaranteed that the applicant would not be subjected to unlawful treatment in Uzbekistan and that his constitutional rights would be respected. In addition, the Russian courts noted the absence in the case file of any information confirming the applicant's persecution by the law-enforcement bodies of Uzbekistan on account of his political beliefs ..."

64. The Government further stated that "... the authorities of the Russian Federation are informing [the Court] that the applicant's detention between 6 and 27 March 2008 was not based on a court order. However, the applicant was arrested on 6 March 2008 and detained in SIZO-1 in Tyumen as a person who had been put on the international wanted list ... as a result of the decision to arrest him which had been taken by the Namangan prosecutor's office on 29 June 1998. In accordance with Article 466 of the Russian Criminal Procedure Code, upon receipt of the extradition request and [after] the subsequent checks [had been carried out], on 27 March 2008... the Tsentralniy district court of Tyumen ordered the applicant's detention ..."

65. On 25 March 2008 the Tyumen regional prosecutor's office requested the Tsentralniy district court to order the applicant's detention in the view of his extradition to Uzbekistan.

66. On 27 March 2008 the district court granted the request and ordered the applicant's detention in accordance with Articles 97-101, 108 and 466 § 1 of the Criminal Procedure Code. The applicant was informed about his right to appeal against this decision to the Tyumen regional court. The applicant exercised this right and appealed against the detention order.

67. On 15 April 2008 the Tyumen regional court dismissed the applicant's appeal and upheld the detention order.

II. RELEVANT INTERNATIONAL AND DOMESTIC LEGAL MATERIALS

A. Detention pending extradition and judicial review of detention

1. The Russian Constitution

68. 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

69. 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

70. 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).

71. 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).

72. 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 Criminal Procedure Code

73. 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).

74. 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 court should examine the complaints within five days from its receipt.

75. 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)).

76. 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. The Civil Procedure Code

77. 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

(a) Decision of the Constitutional Court no. no. 292-O of 15 July 2003

78. On 15 July 2003 the Constitutional Court issued decision no. 292-O on the complaint of Mr Khudoyorov about the *ex post facto* extension of his "detention during trial" by the Vladimir Regional Court's decision. It held as follows:

> "Article 255 § 3 of the Code of Criminal Procedure of the Russian Federation provides that the [trial court] may... upon the expiry of six months after the case was sent to it, extend the defendant's detention for successive periods of up to three months. It does not contain, however, any provisions permitting the courts to take a decision extending the defendant's detention on remand once the previously authorised time-limit has expired, in which event the person is detained for a period without a judicial decision. Nor do other rules of criminal procedure provide for such a possibility. Moreover, Articles 10 § 2 and 109 § 4 of the Code of Criminal Procedure expressly require the court, prosecutor, investigator... to immediately release anyone who is unlawfully held in custody beyond the time-limit established in the Code. Such is also the requirement of Article 5 §§ 3 and 4 of the European Convention... which is an integral part of the legal system of the Russian Federation, pursuant to Article 15 § 4 of the Russian Constitution..."

(b) Decision of the Constitutional Court no. 101-O of 4 April 2006

79. Verifying the compatibility of Article 466 § 1 of the CCP with the Russian Constitution, the Constitutional Court reiterated its constant 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.

80. In the Constitutional Court's view, the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution, as well as the legal norms of Chapter 13 of the CCP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the

authorities to apply a custodial measure without respecting the procedure established in the CCP, or in excess of the time-limits fixed therein.

(c) Decision of the Constitutional Court no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

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

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

(d) Decision of the Constitutional Court no. 333-O-P of 1 March 2007

83. In this decision the Constitutional Court reiterated that Article 466 of the CCP did not imply that detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

B. Status of refugees

1. The 1951 Geneva Convention on the Status of Refugees

84. 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

85. 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)).

86. 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)).

87. 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).

88. 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 documents concerning the use of diplomatic assurances and the situation in Uzbekistan

89. The UN General Assembly resolution 62/148 of 18 December 2007 "Torture and other cruel, inhuman or degrading treatment or punishment" (UN Doc.:A/RES/62/148) reads as follows:

> "The General Assembly...
>
> 12. 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*..."

90. 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."

91. 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 has stated to the 2nd 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."

92. Further referring to the situation of torture in Uzbekistan, the UN Special Rapporteur on Torture has stated to the 3rd Session of the UN Human Rights Council on 18 September 2008:

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

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

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

93. 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."'

94. United States Department of State, 2009 Country Reports on Human Rights Practices - Uzbekistan, 11 March 2010.

"**C. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

Although the constitution and law prohibit such practices, law enforcement and security officers routinely beat and otherwise mistreated detainees to obtain confessions or incriminating information. Torture and abuse were common in prisons, pretrial facilities, and local police and security service precincts. Prisoners were subjected to extreme temperatures. Observers reported several cases of medical abuse, and one known person remained in forced psychiatric treatment....

Authorities reportedly gave harsher than normal treatment to individuals suspected of extreme Islamist political sympathies, notably pretrial detainees who were alleged members of banned extremist political organizations Hizb ut-Tahrir (HT) or Nur. Local human rights workers reported that authorities often paid or otherwise induced common criminals to beat suspected extremists and others who opposed the government. Two human rights defenders who were arrested reported beatings in pretrial detention facilities.

There were reports of politically motivated medical abuse. Victims could request through legal counsel that their cases be reviewed by an expert medical board. In practice, however, such bodies generally supported the decisions of law enforcement authorities....

Prison and Detention Centre Conditions

Prison conditions remained poor and in some cases life threatening. There continued to be reports of severe abuse, overcrowding, and shortages of food and medicine. Tuberculosis and hepatitis were endemic in the prisons, making even short periods of incarceration potentially life-threatening. Family members frequently reported that officials stole food and medicine that were intended for prisoners.

There were reports that authorities did not release prisoners, especially those convicted of religious extremism, at the end of their terms. Instead, prison authorities contrived to extend inmates' terms by accusing them of additional crimes or claiming the prisoners represented a continuing danger to society. These accusations were not subject to judicial review.

95. 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. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

96. The Government contended that the application should be declared inadmissible as incompatible *ratione personae*. They submitted that the applicant had not been extradited by the Russian authorities to Uzbekistan, the measure at issue had not been applied to him, his extradition had been suspended and therefore he could not claim to be a victim of a violation of Article 3.

97. The applicant contested the objection and submitted that there was a high risk of his ill-treatment if extradited to Uzbekistan, that the decision to extradite him had been finalised by the Russian authorities and that his extradition had been suspended only due to the application of the interim measures by the Court.

B. The Court's assessment

98. The Court reiterates that an individual may no longer claim to be a victim of a violation of the Convention where the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see, among many authorities, *Achour v. France* (dec.), no. 67335/01, 11 March 2004, where the authorities annulled the expulsion order against the applicant, and *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

99. As to the specific category of cases involving expulsion measures, the Court has consistently held that an applicant cannot claim to be the "victim" of a measure which is not enforceable (see *Vijayanathan and Pusparajah v. France*, § 46, 27 August 1992, Series A no. 241-B; see also *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005, and *Etanji v. France* (dec.), no. 60411/00, 1 March 2005). It has adopted the same stance in cases where execution of the deportation or extradition order has been stayed indefinitely or otherwise deprived of legal effect and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (see *Kalantari v. Germany* (striking out), no. 51342/99, §§ 55-56, ECHR 2001-X, and *Mehemi v. France (no. 2)*, no. 53470/99, § 54, ECHR 2003-IV; see also *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 355, ECHR 2005-III; *Andrić v. Sweden* (dec.), no. 45917/99, 23 February 1999; *Benamar and Others v. France* (dec.), no. 42216/98, 14 November 2000; and *Djemailji v. Switzerland* (dec.), no. 13531/03, 18 January 2005).

100. The present application concerns the applicant's extradition to Uzbekistan where, according to him, he would face a serious risk of ill-treatment by the authorities on account of his political and religious beliefs. The Court observes, firstly, that the decision concerning the applicant's extradition was finalised by the Russian authorities in December 2008; and secondly, that the decision not to extradite the applicant until further notice from the European Court was taken by the Russian authorities in November 2008 only because of the application of Rule 39 of the Rules of Court. Clearly, the fact that the applicant had not been handed over to the Uzbek authorities did not constitute any acknowledgment, whether explicit or implicit, on the part of the Russian authorities that there had been or would have been a violation of Article 3 or that the applicant's extradition order had been deprived of its legal effect.

101. In these circumstances, the Court considers that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The applicant complained that his extradition to Uzbekistan would subject him to a real risk of torture and ill-treatment prohibited by Article 3 of the Convention, which reads as follows:

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

A. The parties' arguments

103. The Government submitted that the allegation of the applicant's politically-based persecution had been checked by the Russian courts when examining his appeals against the extradition order and had been rejected as unfounded. The Russian courts had relied on the statement from the Uzbek Prosecutor General's office that there would be no risk of ill-treatment for the applicant if he were extradited to Uzbekistan. With reference to assurances from the Uzbek authorities the Government argued that the applicant would not be subjected to ill-treatment or punishment contrary to Article 3 of the Convention.

104. The applicant maintained that he had argued before the Russian courts that there was a real risk of his ill-treatment and political persecution in Uzbekistan. He had submitted reports on Uzbekistan by the UN institutions and international NGOs, confirming that torture was widespread in detention facilities and that this information had not been properly assessed by the Russian authorities. He pointed out that the courts had rejected his arguments without giving any reasons other than the reference to the assurances given by the Uzbek authorities. Finally, he referred to a number of cases examined by the Court in which it had been established that extradition to Uzbekistan of a person sought for political crimes would constitute a violation of Article 3.

B. The Court's assessment

1. Admissibility

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

2. Merits

106. For a summary of the relevant general principles emerging from the Court's case-law see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 66-70, ECHR 2005-I.

107. From the materials submitted by the parties it appears that the applicant was arrested in Russia and subsequently detained at the request of the Uzbek authorities, who suspected him of a number of crimes, including an attempt to overthrow the Constitutional order and membership of an extremist organisation. The Russian authorities commenced extradition proceedings against him. Throughout the proceedings the applicant claimed that his extradition to Uzbekistan would expose him to a danger of ill-treatment. He also lodged an application for asylum, reiterating his fears of torture and persecution for political motives. He supported his submissions with reports prepared by UN institutions and international NGOs describing the ill-treatment of detainees in Uzbekistan. The Russian authorities rejected his application for refugee status and ordered his extradition to Uzbekistan.

108. The Court's task is to establish whether there is a real risk of ill-treatment in the event of the applicant's extradition to Uzbekistan. Since he has not yet been extradited owing to the application 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*, 15 November 1996, § 86, *Reports* 1996-V).

109. As to the applicant's allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that this general problem still persists in the country (see for example, *Ismoilov and Others v. Russia*, no. 2947/06, §§ 120-121, 24 April 2008, and *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008). No concrete evidence has been produced to demonstrate any fundamental improvement in this area in Uzbekistan in the last several years. Given these circumstances, the Court considers that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan.

110. As to the applicant's personal situation, the Court observes that he was charged with politically motivated crimes. Given that an arrest warrant was issued in respect of the applicant, it is most likely that he would be directly placed in custody after his extradition and would therefore run the serious risk of ill-treatment.

111. As to the Government's argument that assurances were obtained from the Uzbek authorities, firstly, the Government did not submit a copy of any diplomatic assurances indicating that the applicant would not be subjected to torture or ill-treatment. Secondly, the Court has already

cautioned against reliance on diplomatic assurances against torture from a State where torture is endemic or persistent (see *Chahal*, cited above, and *Saadi v. Italy* [GC], no. 37201/06, §§ 147-148, ECHR 2008). Given that the practice of torture in Uzbekistan is described by reputable international experts as systematic (see paragraphs 91, 92 and 94 above), the Court would not be persuaded that assurances from the Uzbek authorities could offer a reliable guarantee against the risk of ill-treatment.

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

III. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

113. The applicant complained under Article 5 § 1 of the Convention that his detention pending extradition between 6 and 27 March 2008 had been unlawful as it had not been based on a court order and that the court order authorising his detention as of 27 March 2008 had not set any time-limits for the duration of the detention, in violation of the relevant provisions of the domestic law. 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 to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

114. He also complained under Article 5 § 4 of the Convention that the domestic courts had failed to review the lawfulness of his detention pending extradition. Article 5 § 4 of the Convention reads as follows:

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

A. The parties' arguments

115. The Government insisted that the applicant's detention between 6 and 27 March 2008 had been lawful as it had been based on the decision of the Namangan prosecutor's office of 29 June 1998. They submitted that the detention after 27 March 2008 had been authorised by a domestic court and fully complied with the provisions of Article 466 of the Criminal

Procedure Code and that the length of the detention had been conditioned by the necessity to verify the guarantees provided by the Uzbek authorities and to examine the issue of the applicant's citizenship. In addition, they submitted that the duration of the detention had lengthened owing to the application of the interim measure by the Court.

116. The Government contended that the applicant's complaint concerning the alleged failure of the domestic courts to review the lawfulness of his detention was manifestly ill-founded as he had challenged the lawfulness of his detention by unsuccessfully appealing against the court order of 27 March 2008 to the Tyumen regional court.

117. The applicant disagreed with the Government. He submitted that the domestic legislation required that his detention with a view to extradition should have been authorised by a domestic court within 48 hours of the arrest. Referring to the Court's case-law, he asserted that Russian laws concerning detention pending extradition did not comply with the Convention criteria of quality of law; that the length of his detention had been excessive as he had spent more than nineteen months in custody whereas the maximum length of detention under the domestic legislation could not exceed eighteen months. He further emphasised that the application of the interim measure by the Court had implied the suspension of his extradition to Uzbekistan, but it had not obliged the Russian authorities to prolong his detention. The applicant reiterated that his detention between 6 and 27 March 2008 had been unlawful as it had not been based on a court order and pointed out that at the time of his arrest the proceedings concerning his Russian passport had been pending and the issue of his nationality had not been clarified and that his arrest and detention in view of extradition had therefore been unlawful from the outset.

118. The applicant further submitted that his complaint of 14 March 2008 challenging the lawfulness of his detention pending extradition had been examined by the Kalininskiy district court only on 1 April 2008 and rejected solely on the basis that this detention had already been authorised by the Tsentralniy district court on 27 March 2008. Therefore, he had been deprived of the opportunity to challenge his detention between 6 and 14 March 2008 and the domestic courts had failed to speedily examine his detention. Finally, the applicant submitted that the domestic courts had refused to recognise him as a party to any relevant criminal proceedings and left his complaints without examination (see paragraphs 49-52 above).

B. The Court's assessment

1. Admissibility

119. The Court further notes that the applicant's complaints under Article 5 §§ 1 and 4 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 5 § 1 of the Convention

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

121. The Court observes that the applicant was detained in Russia pursuant to an arrest warrant issued by a prosecutor's office in Uzbekistan. His detention was not confirmed by a Russian court, contrary to the provisions of Article 466 of the Criminal Procedure Code, which requires such authorisation unless the detention in the country seeking extradition has been ordered by a court. Therefore, the applicant's detention pending extradition between 6 and 27 March 2008 was not in accordance with a "procedure prescribed by law" as required by Article 5 § 1.

122. As to the Government's argument that the applicant's situation was remedied by the decision of 27 March 2008, the Court notes that, apart from authorising his detention as of that date, the domestic court did not order or take steps to ensure his release or otherwise remedy the violation of his right to liberty and security for the period between 6 and 27 March 2008.

123. In a number of its recent judgments 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 (see, for example, *Nasrulloyev v. Russia*, no. 656/06, § 72, 11 October 2007, *Ismoilov and Others*, cited above § 142, *Muminov*, cited above, § 122, and *Khudyakova v. Russia*, no. 13476/04, § 73, 8 January 2009).

124. The Court upholds the findings made in the above-mentioned cases and finds that in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting time-limits for such detention, the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. In particular, the Court observes that the

detention order of 27 March 2008 did not set any time-limit for the applicant's detention. Under the provisions governing the general terms of detention (Article 108 of the Criminal Procedure Code), the time-limit for detention pending investigation was fixed at two months. A judge could extend that period up to six months. Further extensions could only be granted by a judge if the person was charged with serious or particularly serious criminal offences. However, upon the expiry of the maximum initial detention period of two months (Article 109 § 1 of the Criminal Procedure Code), no extension was granted by a court in the present case. The applicant has been in detention pending extradition for over two years. During that period no requests for extension of his detention have been lodged. Thus, the national system has failed to protect the applicant from arbitrary detention, and his detention cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention.

125. The Court also takes note of the Government's reference to the effect that at the time of the applicant's arrest and his subsequent detention between 6 March 2008 and 20 April 2009 (see paragraphs 12-17 above) the authorities had been fully aware of the fact that the issue of his Russian citizenship had not been finally resolved and that the Russian legislation excludes, in non-ambiguous terms, the extradition of Russian nationals (see, *mutatis mutandis, Garabayev v. Russia*, no. 38411/02, § 89, ECHR 2007-VII (extracts)).

126. In view of the above, the Court finds that the applicant's detention during the period in question was unlawful and arbitrary, in violation of Article 5 § 1.

(b) Article 5 § 4 of the Convention

127. The Government argued that the applicant had made use of the opportunity to challenge the lawfulness of his detention by lodging an appeal against the court order of 27 March 2008, which had been rejected by the Tyumen regional court on 6 May 2008.

128. The applicant argued that his detention pending extradition had never been reviewed by a court, despite his numerous complaints. He had thus been unable to obtain judicial review of his detention pending extradition, in violation of Article 5 § 4.

129. 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 *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). The remedies must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. 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 *Čonka v. Belgium*, no. 51564/99, § 46 and 55, ECHR 2002-I).

130. The applicant was detained in Russia pursuant to an arrest warrant issued by a prosecutor's office in Uzbekistan. As the Court has found above, the applicant's detention was not authorised by a Russian court, in violation of the relevant domestic provisions. The Tyumen regional court and subsequently the Supreme Court did not examine the complaints concerning the lawfulness of the applicant's detention pending extradition (see paragraphs 44 and 48 above). Thus, the lawfulness of the applicant's detention during the period in question was not examined by any court, despite his appeals to that effect.

131. There has therefore been a violation of Article 5 § 4 of the Convention on account of the absence of judicial review of the applicant's detention pending extradition.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

132. The applicant alleged that he had had no effective remedies against the above violations. He referred to Article 13, which provides:

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

A. The parties' arguments

133. The Government contended that the applicant had had access to domestic courts in respect of his complaints about the risk of ill-treatment. He had appealed against the extradition order to the Tyumen regional court and subsequently to the Supreme Court. They contended that this remedy was effective and the absence of a desirable outcome of the applicant's appeals did not demonstrate its ineffectiveness.

134. The applicant reiterated his complaint.

B. The Court's assessment

1. Admissibility

135. The Court further notes that the applicant's complaint under Article 13 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

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

137. Judicial review proceedings constitute, in principle, an effective remedy within the meaning of Article 13 of the Convention in relation to complaints in the context of expulsion and extradition, provided that the courts can effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 99, ECHR 2002-II). Turning to the circumstances of the present case, the Court observes that the decision of the Prosecutor General's office to extradite the applicant was upheld on appeal by the Tyumen regional court and the Supreme Court. In their decisions the domestic courts did not conduct a detailed examination of the applicant's allegation of the risk of ill-treatment in Uzbekistan and only referred in general terms to the assurances provided by the Uzbek authorities (see paragraphs 28 and 31 above). Consequently, the courts failed to rigorously scrutinise the applicant's claims of the risk of ill-treatment in the event of his extradition to Uzbekistan.

138. It should also be noted that the Government did not refer to any provisions of domestic legislation which could have afforded redress in the applicant's situation or had a suspensive effect on his extradition (see, *mutatis mutandis*, *Muminov*, cited above, §§ 102-104).

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

140. As regards the applicant's complaints under Article 5 of the Convention, in the light of the Court's established case-law stating that the more specific guarantees of Article 5, being a *lex specialis* in relation to

Article 13, absorb its requirements (see *Dimitrov v. Bulgaria* (dec.), no. 55861/00, 9 May 2006) and in view of its above findings of violations of Article 5 of the Convention, the Court considers that no separate issue arises in respect of Article 13 in connection with Article 5 of the Convention in the circumstances of the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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

142. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

143. The Government submitted that the amount claimed was excessive and that if the Court found any violation of the Convention the amount of the award should be decreased.

144. The Court, making an assessment on an equitable basis, awards EUR 20,000 to the applicant in respect of non-pecuniary damage as requested plus any tax that may be chargeable on that amount.

B. Costs and expenses

145. Relying on the fee agreements and the lawyers' timesheets, the applicant claimed EUR 3,700 or 3,239 pounds sterling (GBP) for the work of London-based lawyers Mr W. Bowring and Ms J. Evans together with administrative and translation costs and EUR 2,000 for the work of Ms Ryabinina for his representation before the domestic authorities and the Court.

146. The Government submitted that the applicant had not submitted any proof that the payments had actually been made and that the amounts were reasonable.

147. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,500 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that in the event of the extradition order against the applicant being enforced, there would be a violation of Article 3 of the Convention;

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

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

5. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

6. *Holds* that there is no need to examine the alleged violation of Article 13 in connection with Article 5 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,500 (five thousand five hundred euros) for costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and paid into the bank account in London indicated by the applicant;
   (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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President