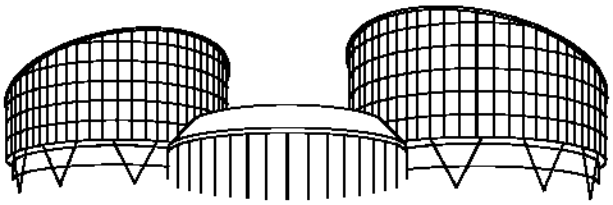

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SULTANOV v. RUSSIA

(Application no. 15303/09)

JUDGMENT

STRASBOURG

4 November 2010

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 Sultanov 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,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 14 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 1248/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Nabi Sultanov ("the applicant"), on 20 March 2009.

2. The applicant was represented 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 the Russian authorities with a view to extraditing him to Uzbekistan, where he faced politically motivated persecution by the local authorities, gave rise to violations of his rights under Articles 3, 5 and 6 of the Convention.

4. On 20 March 2009 the President of the Chamber to which the case was allocated decided, in the interests of the parties and of 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 October 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

A. Proceedings in Uzbekistan

6. The applicant was born in Uzbekistan in 1979. In March 2008 he left Uzbekistan and moved to Russia.

7. On 4 June 2008 the Main Investigations Department of the Uzbek Ministry of the Interior charged the applicant *in absentia* with organisation of a criminal group, attempts to

overthrow the State's constitutional order and dissemination of the views of a radical extremist movement. The applicant's name was put on the wanted list.

8. On 5 June 2008 Namangan Criminal Court authorised the applicant's arrest.

9. On 9 July 2008 the Uzbek Prosecutor General's Office requested the Russian Prosecutor General's Office to extradite the applicant to Uzbekistan for prosecution.

B. Proceedings in Russia

1. Extradition proceedings

10. On 18 September 2008 the Russian Prosecutor General's Office decided to extradite the applicant to Uzbekistan. The extradition order stated, *inter alia*, the following:

> "... the Main Investigations Department of the Uzbek Ministry of the Interior is investigating a criminal case against N.N. Sultanov ...
>
> The charges against N.N. Sultanov state that between 2000 and 2008, in the Namangan region of Uzbekistan, with the aim of overthrowing the State's constitutional order, he organised a criminal group... directed its units...actively participated in the criminal activities of the supporters of an extremist religious movement ... publicly called for the overthrow of the constitutional order of the Republic of Uzbekistan by carrying out "jihad" holy war and for the creation of an Islamic state ...
>
> ... The actions of N.N. Sultanov are punishable under Russian criminal law and correspond to part 1 of Article 210 (organisation of a criminal group), Article 278 (actions aimed at violent change of the constitutional order), part 1 of Article 280 (public calls for extremist activities) of the Russian Criminal Code; the penalties envisaged under those Articles exceed one year of deprivation of liberty. The limitation period for the above crimes under Russian and Uzbek law has not expired ..."

11. On 25 September 2008 the applicant was informed about the extradition order. According to him, he signed the documents certifying that he had been familiarised with the extradition order and refused to appeal against it without being aware of the contents of the document owing to his lack of Russian.

12. On 10 November 2008 the applicant's lawyer requested Moscow City Court to reinstate the statutory time-limits for the appeal procedure against the extradition order. On 20 November 2008 Moscow City Court refused the request. The applicant appealed, and on 9 February 2009 the Russian Supreme Court granted his request and reinstated the time-limits.

13. On 17 March 2009 Moscow City Court rejected the applicant's complaint against the extradition order and upheld his extradition to Uzbekistan.

14. On 19 March 2009 the applicant appealed against this decision to the Supreme Court of the Russian Federation.

15. On 20 March 2009 the European Court of Human Rights granted the applicant's request for application of interim measures under Rule 39 of the Rules of Court to suspend his extradition to Uzbekistan.

16. On 7 May 2009 the Supreme Court upheld the Moscow City Court decision and the extradition order became final. Referring to the applicant's complaints that he risked ill-treatment and torture in Uzbekistan, the court stated:

> "... the [applicant's] references to human rights violations in Uzbekistan... are of a general nature and there is no objective information in the case file indicating that these methods [of ill-treatment] would be applied to N.N. Sultanov ...
>
> ... the initiator of the search provided certain guarantees in respect of N.N. Sultanov. Failure to comply with these guarantees would provide the authorities of the Russian Federation with grounds to refuse future extradition requests [from Uzbekistan] in respect of other persons ..."

2. The applicant's detention pending extradition and his applications for release

17. On 17 June 2008 the applicant was detained at Perm-2 railway station.

18. On 18 June 2008 the Perm transport prosecutor's office decided to arrest the applicant in accordance with the decision of Namangan Criminal Court in Uzbekistan and placed him in pre-trial detention facility no. 1 in Perm (SIZO-1). The decision did not provide time-limits for the applicant's detention.

19. On 6 August 2008 the Perm transport prosecutor's office again issued a decision to place the applicant in custody pursuant to the extradition order *de facto* extending the applicant's initial arrest of 17 June 2008. The decision did not provide time-limits for the applicant's detention.

20. On 18 September 2008 the Russian Prosecutor General's Office decided to extradite the applicant to Uzbekistan.

21. On an unspecified date between August and November 2008 the applicant was transferred from Perm to detention facility no. IZ-77/4 in Moscow.

22. On 21 January 2009 the applicant complained about his detention to Babushkinskiy District Court in Moscow. The complaint was submitted to the administration of the detention facility for further transmission to the court on 26 January 2009 and registered with the number C-12. However, on 16 June 2009 Babushkinskiy District Court informed the applicant that they had not received this complaint.

23. On 24 June 2009 the applicant complained to Tverskoy District Court in Moscow that his detention pending extradition was unlawful. He stated firstly that he had been detained pending extradition for more than a year without any legal extension of the detention, secondly that he had not had any opportunity to challenge the lawfulness of his detention, in violation of Article 5 § 4 of the Convention, and thirdly that the provisions of Russian criminal procedure legislation concerning detention pending extradition did not meet the 'quality of law' standard prescribed by Article 5 § 1(f) of the Convention.

24. On 21 July 2009 Tverskoy District Court rejected the applicant's complaint, stating the following:

> "... Chapter 13 of the Code of Criminal Procedure [concerning measures of restraint] regulates the procedure for the extension of pre-trial detention only in respect of those suspects and the accused against whom the Russian authorities have initiated criminal proceedings ...
>
> The procedure concerning the imposition of the measure of restraint in respect of the applicant is regulated by Article 466 of the Code of Criminal Procedure, which does not provide for an extension of detention with a view to extradition.
>
> At the same time it should be noted that the maximum term of detention of eighteen months, as prescribed by Article 109 of the Criminal Procedure Code ... has not been violated ...
>
> Therefore, the court finds that the applicant's complaint is unsubstantiated and should be rejected ..."

25. The applicant appealed against this decision to Moscow City Court. On 7 October 2009 the latter upheld the decision of 21 July 2009 and left the applicant's complaint that his detention was unlawful unexamined.

26. The applicant further appealed to Moscow City Court through the supervisory review procedure. On 17 November 2009 his appeal was dismissed by the City Court as unsubstantiated.

27. On 8 December 2009 the applicant complained to the Prosecutor General's Office and the Moscow Prosecutor that his detention was unlawful and requested to be released. He stated that his detention had not been extended by domestic courts and that the application of

the interim measures by the Court (see paragraph 15 above) could not serve as the basis for his continued detention.

28. On 8 December 2009 the applicant lodged a supervisory appeal with Moscow City Court concerning unlawfulness and excessive length of his detention. This appeal was dismissed on 9 February 2010.

29. On 21 December 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.

30. On 23 April 2010 Babushkinskiy District Court rejected the prosecutor's request for the applicant's house arrest.

31. On 23 April 2010 the Babushkinskiy inter-district prosecutor's office ordered the applicant's release from detention. On 26 April 2010 the prosecutor's office ordered the applicant to sign an undertaking not to leave the area.

3. The applicant's requests for refugee status and temporary asylum

32. On 6 November 2008 the applicant lodged a request with the Moscow Department of the Federal Migration Service (the FSM) for refugee status in Russia. On 5 December 2008 he was interviewed in the detention facility by an officer of the FMS, in the presence of his lawyer.

33. On 11 March 2009 the FMS refused the applicant's request for refugee status, stating "... there are no substantiated concerns that he would become a victim of persecution in Uzbekistan". The applicant appealed against this refusal to Zamoskvoretskiy District Court in Moscow.

34. On 2 June 2009 Zamoskvoretskiy District Court upheld the refusal, stating that the applicant had failed to provide sufficient evidence that he risked ill-treatment if extradited to Uzbekistan, and that he had applied for refugee status only after his arrest, which demonstrated that he was trying to avoid lawful criminal prosecution in Uzbekistan.

35. The applicant appealed to Moscow City Court. On 3 November 2009 the City Court dismissed the appeal as unsubstantiated and upheld the decision of 2 June 2009.

36. On 18 January 2010 the applicant lodged a request with the FSM for temporary asylum in Russia.

37. On 3 March 2010 the Russian Department of the UN High Commissioner for Refugees informed the FMS that the applicant's fear of politically motivated ill-treatment in Uzbekistan was well-founded and that he was eligible for international protection under their mandate.

38. On 12 April 2010 the FMS refused the applicant's request for temporary asylum and informed the applicant about it on 16 April 2010 without providing a copy of this decision.

39. On 30 April 2010 the applicant appealed against this refusal to the Russian FMS. The proceedings are pending.

II. RELEVANT INTERNATIONAL AND DOMESTIC LEGAL MATERIAL

A. Detention pending extradition and judicial review of detention

1. The Russian Constitution

40. 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 permitted only 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

41. 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 eighteen days of 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 forty days from the date of that 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

42. 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).

43. 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 a request if there are reasons to suspect that he or she 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).

44. A person arrested under 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

45. Chapter 13 of the Russian Code of Criminal Procedure ("Preventive measures") governs the use of 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 preventive measure 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 to six months (Article 109 § 2). Further extensions to twelve months, or in exceptional circumstances eighteen months, may be granted only 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).

46. 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 parties to criminal proceedings (Article 125 § 1). The court must examine the complaint within five days of its receipt.

47. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. On receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to 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)).

48. 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 Code of Civil Procedure

49. 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 or her rights or freedoms, hindering the exercise 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 exercise of the rights and freedoms in question (Article 258 § 1).

6. Case-law of the Constitutional Court

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

50. On 15 July 2003 the Constitutional Court issued decision no. 292-O concerning a complaint by Mr Khudoyorov of *ex post facto* extension of his "detention during judicial proceedings" by the Vladimir Regional Court decision. It held as follows:

> "Article 255 § 3 of the Code of Criminal Procedure of the Russian Federation provides that the [trial court] may ... once six months has passed since the case was sent to it, extend a 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 a defendant's detention 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) Constitutional Court decision no. 101-O of 4 April 2006

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

52. 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 laid down in 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 abiding by the procedure established in the CCP, or in excess of the time-limits fixed therein.

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

53. 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 the aim of extradition.

54. 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 on the keeping of a person in custody with the aim of extradition. That was a matter for the courts of general jurisdiction.

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

55. 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.

(e) Ruling of the Plenary Session of the Supreme Court of the Russian Federation no. 22 of 29 October 2009

56. In this ruling the Supreme Court reiterated that the arrest and detention of a person with the aim of extraditing him or her under Article 466 of the CCP should comply with the requirements of Article 108 of the CCP, and that detention pending extradition could be extended only in compliance with the requirements of Article 109 of the CCP.

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

57. 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 ..."

58. 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 recognised as refugees."

59. Specifically referring to the situation regarding torture in Uzbekistan and returns to torture effected in reliance upon diplomatic assurances from the Uzbek authorities, the UN Special Rapporteur on Torture 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."

60. Further referring to the situation regarding torture in Uzbekistan, the UN Special Rapporteur on Torture 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..."

61. 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 non-derogable 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 *non-refoulement* must be strictly observed and diplomatic assurances should not be resorted to.'"

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

"... 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 Center 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."

63. The European Committee for the Prevention of Torture ("the CPT"), in its 15th General Report of 22 September 2005 on its activities covering the period from 1 August

2004 to 31 July 2005, expressed concern about reliance on diplomatic assurances in the light of the absolute prohibition on 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant complained that extradition to Uzbekistan would expose 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' submissions

65. The Government submitted that the allegation that the applicant would suffer political 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 authorities that there would be no risk of ill-treatment for the

applicant if he were extradited to Uzbekistan. With reference to assurances from their Uzbek counterparts the Government argued that the applicant would not be subjected to ill-treatment or punishment contrary to Article 3 of the Convention.

66. The applicant maintained that he had argued before the Russian courts that there was a real risk that he would be ill-treated and persecuted politically 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

67. 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

68. 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).

69. From the materials submitted by the parties it follows 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 constitutional order and dissemination of the views of a radical extremist movement. The Russian authorities commenced extradition proceedings against him. Throughout the proceedings the applicant claimed that his extradition to Uzbekistan would expose him to danger of ill-treatment. He also lodged an application for refugee status, 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.

70. 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, *Reports of Judgments and Decisions* 1996-V, § 86).

71. 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 this country for

several years. Given these circumstances, the Court considers that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan.

72. 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 placed in custody directly after his extradition and would therefore run a serious risk of ill-treatment.

73. As to the Government's argument that assurances were obtained from the Uzbek authorities (see paragraph 16 above), it should be pointed out that even if the Uzbek authorities had given the diplomatic assurances requested by Russia, which were not submitted to the Court, that would not have absolved the Court from the obligation to examine whether such assurances provided, in practical terms, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Saadi v. Italy* [GC], no. 37201/06, § 148, ECHR 2008-...). Given that the practice of torture in Uzbekistan is described by reputable international sources as systematic (see paragraphs 59, 60 and 62 above), the Court is not persuaded that assurances from the Uzbek authorities offer a reliable guarantee against the risk of ill-treatment.

74. 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.

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

75. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had been unlawful and indefinite in its duration, in violation of the relevant provisions of the domestic law. The relevant parts of Article 5 § 1 (f) 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."

76. He also complained under Article 5 § 4 of the Convention that the domestic courts had failed to review the lawfulness of his detention. 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' submissions

77. The Government insisted that the applicant's detention pending extradition had been lawful as it had been based on the Namangan Criminal Court decision of 5 June 2008, and that it fully complied with the provisions of Article 466 of the Criminal Procedure Code.

78. 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 complaining to Tverskoy District Court and Moscow City Court.

79. The applicant disagreed with the Government. He submitted that neither of the extension orders of 18 June and 6 August 2008 had provided any time-limits for his detention and that the length of his detention was excessive, in violation of all relevant provisions of the Russian criminal procedure regulations.

80. The applicant further submitted that Tverskoy District Court had not reviewed the lawfulness of his detention by failing to recognise him as a party to any relevant criminal proceedings (see paragraph 24 above).

B. The Court's assessment

1. Admissibility

81. The Court 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

82. 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.

83. The Court observes that the applicant was detained in Russia under an arrest warrant issued by an Uzbek court. His detention was initially authorised by the Perm transport prosecutor's office on 18 June and subsequently on 6 August 2008. Neither of the decisions provided time-limits for the applicant's detention.

84. As for the Government's reference that the applicant's detention with a view to extradition to Uzbekistan had complied with the requirements of Article 466 of the Criminal Procedure Code, the Court notes that according to the decisions of the Constitutional Court no. 158-O of 11 July 2006 and no. 333-O-P of 1 March 2007 and the Ruling of the Plenary Session of the Supreme Court of the Russian Federation no. 22 of 29 October 2009, when dealing with matters concerning detention pending extradition Russian courts should comply with the requirements of Article 108 of the CCP and that detention with a view to extradition could be extended only in compliance with the requirements of Article 109 of the CCP (see paragraphs 53-56 above).

85. In a number of its recent judgments the Court has already found that the provisions of 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).

86. The Court upholds the findings made in the above-mentioned cases and finds that, in spite of the Government's references to the contrary, 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 neither of the detention orders to which the applicant referred set any time-limit for his detention (see paragraphs 18 and 19 above). Under the provisions governing the general terms of detention (Article 108 of the CCP), the time-limit for detention pending investigation was fixed at two months. A judge could extend that period to 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 CCP), no extension was granted by a court in the present case. The applicant was detained pending extradition from 17 June 2008 until 23 April 2010, that is for more than twenty-two months. During that period neither any decisions concerning his detention were taken by the prosecutor's office nor were any requests for extension of his detention lodged with domestic courts. Thus, the national system 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.

87. 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

88. 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*, 18 June 1971, § 76, Series A no. 12). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of 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*, cited above, §§ 46 and 55).

89. The Court is not persuaded by the Government's argument that the applicant had obtained judicial review of his detention by complaining on 24 June 2009 that his detention was unlawful and he was able to obtain judicial review (see paragraph 23 above). The applicant sought to argue before the courts that his 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 he was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not his 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*, 2 March 1987, §§ 55-59, Series A no. 114).

90. The applicant's complaint concerning the review of his detention was rejected by the domestic courts as incompatible with Chapter 13 of the Criminal Procedure Code, which provided for judicial review of complaints against measures of restraint conferring the standing to bring such a complaint solely to "the suspects and the accused against whom the Russian authorities initiated criminal proceedings". Tverskoy District Court refused to recognise the applicant's position as a party to criminal proceedings on the ground that there was no criminal case against him in Russia and that the maximum terms of his detention pending extradition had not expired (see paragraph 24 above).

91. The Court notes that in their observations the Government did not suggest any avenues for the judicial examination of the applicant's requests for the review of his detention other than vaguely referring to Chapter 16 of the Code of Criminal Procedure which regulated judicial complaints by parties to the criminal proceedings against unlawful actions of officials (see paragraph 46 above). However, in this regard Court would like to stress, leaving aside the vagueness of the Government's reference to these provisions, that it has already found in a number of cases that Article 125 of the Code of Criminal Procedure cannot be considered as providing an avenue for judicial complaints by persons detained pending extradition (see *Nasrulloyev*, cited above, §§ 88-89, and *Ryabikin v. Russia*, no. 8320/04, § 139, 19 June 2008). In these cases the applicants were in similar situations, and it was established that they had no formal status under national criminal law because there was no criminal case against them in Russia, and they could not therefore have judicial review of the lawfulness of their detention pending extradition.

92. It follows that throughout the term of the applicant's detention he did not have at his disposal any procedure through which the lawfulness of his detention could have been examined by a court. There has therefore been a violation of Article 5 § 4 of the Convention.

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

93. The applicant alleged that the wording of the extradition decision of 18 September 2008 taken by the Russian Prosecutor General's Office and the District Court's refusal of 23 April 2010 to impose house arrest on him violated the presumption of his innocence.

94. The Government contested that argument.

95. The Court notes that the decision of 18 September 2008 to extradite the applicant and the court decision of 23 April 2010 clearly referred to the documents submitted by the Uzbek authorities by which he had been charged with the imputed offences and it was construed so as to describe the charges pending against the applicant in Uzbekistan (see paragraph 10 above). In such circumstances the Court does not consider that the statements by the Russian prosecutor's office and the District Court amounted to a declaration of the applicant's guilt, but rather described the "state of suspicion" which had served as the basis for the extradition request and the subsequent decision to extradite him (in contrast to *Ismoilov*, cited above, § 168; see also *Kolesnik v. Russia*, no. 26876/08, § 92, 17 June 2010 (not yet final)).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

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

99. The Government submitted that the amount claimed was excessive and stated that finding a violation of the Convention would be an adequate just satisfaction in the applicant's case.

100. The Court, making an assessment on an equitable basis, awards EUR 15,000 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

101. Relying on fee agreements and lawyers' time sheets, the applicant claimed 5,137 pounds sterling (GBP) (approximately EUR 6,220) for the work of London-based lawyers Mr W. Bowring and Ms J. Evans together with administrative and translation costs, and EUR 1,200 for the work of Ms E. Ryabinina as his representative before the domestic authorities and the Court and 90,000 Russian roubles (RUB, approximately EUR 2,360) for the work of Mr A. Gaytayev and Ms R. Magomedova as his representatives before the domestic authorities. The total amount claimed amounted to EUR 9,780.

102. The Government did not dispute the justification for the amounts claimed but stated that they were excessive.

103. 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 7,500 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 5 of the Convention admissible and the remainder of the application inadmissible;

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*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros) plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
President

Christos Rozakis
Registrar