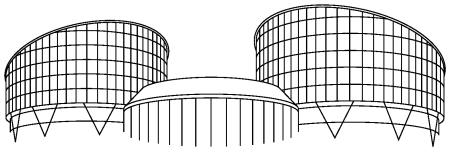

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHALIKOV v. RUSSIA

*(*Application no. 66373/13*)*

JUDGMENT

STRASBOURG

26 February 2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khalikov v. Russia,

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

Isabelle Berro, *President*,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 February 2015,

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

PROCEDURE

1. The case originated in an application (no. 66373/13) 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 Sokhib Umarovich Khalikov ("the applicant"), on 22 October 2013.

2. The applicant was represented by Ms Y. Ryabinina and Ms D. Trenina, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that in the event of his extradition or administrative removal to Uzbekistan he risked being subjected to torture and ill-treatment, that there was no effective remedy for that complaint, and that his detention pending administrative removal had been unlawful and not subject to periodic judicial review.

4. On 23 October 2013 the Acting President of the First Section decided to indicate to the Russian Government, under Rule 39 of the Rules of Court, that the applicant should not be expelled and/or extradited to Uzbekistan for the duration of the proceedings before the Court. The Acting President also decided to grant the case priority under Rule 41 of the Rules of Court

5. On 19 March 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1983 and is currently detained in Moscow.

A. Criminal proceedings against the applicant in Uzbekistan

7. Until 2011 the applicant lived with his wife and three children in Urgut in the Republic of Uzbekistan.

8. According to the applicant, in July 2011 a friend with whom he used to "discuss religious topics" was arrested. Shortly thereafter several plain-clothed officers searched the applicant's apartment, taking away a number of his books. Shortly afterwards the applicant left Uzbekistan and moved to Moscow, where he apparently lost his passport soon after arriving.

9. On 1 February 2012 the Uzbek authorities charged the applicant with attempting to overthrow the constitutional order and membership of Hizb ut-Tahrir, a radical Islamic organisation banned both in Uzbekistan and Russia which calls for the overthrow of non-Islamic governments and the establishment of an Islamic Caliphate. On the same day the applicant was put on the wanted list.

10. On 2 February 2012 the Samarkand Town Criminal Court issued an arrest warrant *in absentia* against the applicant, citing the above charges.

B. The applicant's arrest and detention pending extradition

11. On 17 April 2013 the Russian police, acting pursuant to the warrant of 2 February 2012, arrested the applicant in Moscow.

12. The next day a public prosecutor interviewed the applicant regarding his background and the circumstances of his arrival in Moscow. The applicant submitted that he was aware of the charges laid against him by the Uzbek authorities and had crossed into Russia in order to avoid prosecution and find a job. It was specifically noted in the interview record that the applicant had no passport on him.

13. On 19 April 2013 the Cheremushkinskiy District Court of Moscow, referring to the charges against the applicant in Uzbekistan and the absence of a registered residence and a job in Russia, authorised the applicant's detention pending extradition until 17 May 2013. No appeal was lodged against that detention order.

14. On 13 May 2013 the Deputy Prosecutor General of Uzbekistan submitted an extradition request. It included diplomatic assurances that the applicant would not be charged with any further crimes or handed over to a third State without the Russian authorities' consent. It also contained

assurances that the applicant would be afforded a fair trial and provided with legal aid and the necessary medical assistance, and that he would not be subjected to torture or inhuman or degrading treatment.

15. Following receipt of the above request, on 17 May 2013 the Cheremushkinskiy District Court extended the applicant's detention pending extradition until 17 October 2013 referring to the same grounds as in the order of 19 April 2013, and noting in addition that the applicant had absconded from the Uzbek authorities. The applicant did not appeal against the extension order.

16. It appears that the extradition proceedings are still pending before the competent Russian authorities.

C. The administrative removal (expulsion) proceedings

17. On 17 October 2013 a deputy prosecutor requested the Moscow police to check whether the applicant's stay in Russia complied with the relevant legislation. Among other things he enquired as to "the date of the actual expulsion [of the applicant] from [the territory of] the Russian Federation and the date of his actual handing over to the competent authorities of the Republic of Uzbekistan".

18. On the same day the applicant was taken to a prosecutor's office, where the deputy prosecutor ordered his release as the time-limit for his detention pending extradition had expired. Immediately upon release the applicant was brought to a police station, where he was charged with an infringement of the Russian immigration legislation (an administrative offence punishable by expulsion) and arrested again. An administrative detention order and an administrative violation report were drafted there and then. In addition to those documents, the applicant gave a written statement entitled "Explanations", which reads as follows:

> "In 2011 I left the Republic of Uzbekistan because I was being prosecuted on grounds of my religious beliefs. I consider that the opening of this administrative case is unlawful because ... an administrative violation report must be drafted immediately after an infringement has been established. That infringement was established [by the authorities] at the time of my arrest on 17 April 2013.
>
> ...
>
> My [administrative] removal to Uzbekistan would mean that I would be handed over to the authorities of that country, which would infringe my right not to be subjected to torture and violate the absolute prohibition of expulsion of persons who are at risk of torture. Furthermore, I consider the opening of the administrative case to be unlawful as the proceedings regarding my extradition to Uzbekistan are pending at the present time... The purpose of the administrative detention is to hand me over to the Uzbek authorities and in the event of my expulsion I would actually end up in Uzbekistan. Accordingly, my deprivation of liberty does not serve a legal aim. I would like to point out that the decision to return me to the Republic of Uzbekistan would irreparably infringe my rights as guaranteed by Article 3 of the Convention for the

> Protection of Human Rights and Fundamental Freedoms. I am being prosecuted in Uzbekistan on grounds of my [religious] beliefs, [therefore] I am a member of a vulnerable group for whom the risk of torture is particularly high."

19. On 18 October 2013 the Zyuzinskiy District Court of Moscow examined the above charges. During the hearing the applicant acknowledged that he had violated the immigration rules, but claimed that an administrative removal would amount to an actual extradition in the present case, because he would be handed over to the Uzbek authorities in any event. He referred to the high risk of ill-treatment and cited international reports (in particular, a report which was submitted to the District Court by the Russian office of the UNHCR and specifically stated that the applicant's return to the country of his origin would violate his rights under international law) and the Article 3 case-law of the Court regarding extraditions to Uzbekistan. Without any assessment of these allegations, the District Court found the applicant guilty of infringing the immigration legislation, sentenced him to a fine and ordered his administrative removal from Russia. Pending expulsion, he was to be detained in the Moscow Centre for Detention of Foreign Nationals. The applicant appealed, reiterating his allegations of the risk of ill-treatment, noting that his expulsion would be unlawful as the examination of his application for refugee status (see below) was still under way, and that his detention pending expulsion would violate Article 5 of the Convention as the expulsion order had set no time-limits and no periodic judicial review of his detention was possible.

20. On 22 November 2013 the Moscow City Court upheld the first-instance judgment. Like the District Court, it did not analyse the applicant's arguments about the risk of ill-treatment. As to the refugee-status proceedings, the City Court noted:

> "Notwithstanding the applicant's position, his application for asylum in Russia and the examination of his request [for refugee status] under the relevant legal procedure do not affect [the existence of] the *actus reus* of the administrative offence [committed by the applicant].
>
> Besides, as can be seen from the reply to the Moscow City Court judge's request on 14 October 2013 Mr Khalikov's request for asylum was rejected."

D. The refugee-status proceedings

21. On 1 July 2013 the applicant lodged a request seeking refugee status. In the same terms as in the aforementioned expulsion proceedings, he referred to the risk of being tortured and cited international reports and the Article 3 case-law of the Court regarding extraditions to Uzbekistan.

22. On 14 October 2013 the Moscow branch of the Federal Migration Service rejected the application and on 9 December 2013 the Federal

Migration Service upheld that decision. On 18 January 2014 the applicant challenged the refusal before the courts.

23. On 20 March 2014 the Basmanniy District Court of Moscow found that the applicant had not produced sufficient evidence of the risk of persecution and dismissed his appeal. The court found that the applicant "was not being prosecuted, had no criminal record and did not hold membership of any political, religious, [or] military organisations". It further observed that the acts the applicant was charged with were also criminal under Russian criminal law. The District Court observed that the applicant had applied for asylum only after his arrest in Russia rather than immediately after arriving in Russia. The applicant appealed to the Moscow City Court.

24. On 28 July 2014 the Moscow City Court, relying on essentially the same reasons as the District Court, upheld the first-instance judgment on appeal. The text of the appeal judgment did not mention the applicant's arguments regarding the risk of ill-treatment or assess that risk, but rather stated that the applicant was afraid of being "subjected to a[n] [allegedly] fabricated prosecution for the religious convictions imputable to him" in the event of his return to Uzbekistan.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. Pursuant to section 34(5) of the Foreigners Act (Law no. 115-FZ of 25 July 2002), foreign nationals subject to administrative removal who have been placed in custody pursuant to a court order are detained in special facilities pending execution of the decision on administrative removal.

26. Article 3.10 § 1 of the Code of Administrative Offences defines administrative removal as the forced and controlled removal of a foreign national or a stateless person across the Russian border. Under Article 3.10 § 2, administrative removal is imposed by a judge or, in cases where a foreign national or a stateless person has committed an administrative offence upon entry to the Russian Federation, by a competent public official. Under Articles 3.10 § 5, 27.1 § 1 and 27.19 § 2 of that Code, for the purposes of execution of the decision on administrative removal a judge may order the placement of the foreign national or the stateless person in a special facility which they are not allowed to leave at will.

27. Under Article 31.9 § 1, a decision imposing an administrative penalty ceases to be enforceable after the expiry of two years from the date on which the decision became final.

28. Article 3.9 provides that an administrative offender can be punished with administrative detention only in exceptional circumstances, and for a maximum term of thirty days.

29. In decision no. 6-R of 17 February 1998 the Constitutional Court stated, with reference to Article 22 of the Constitution concerning the right

to liberty and personal integrity, that a person subject to administrative removal could be placed in detention without a court order for a term not exceeding forty-eight hours. Detention for over forty-eight hours was permitted only on the basis of a court order and provided that the administrative removal could not be effected otherwise. The court order was necessary to guarantee protection not only from arbitrary detention of over forty-eight hours, but also from arbitrary detention as such, while the court assessed the lawfulness of and reasons for the placement of the person in custody. The Constitutional Court further noted that detention for an indefinite term would amount to an inadmissible restriction on the right to liberty as it would constitute punishment not provided for in Russian law and which was contrary to the Constitution.

III. REPORTS ON UZBEKISTAN BY INTERNATIONAL HUMAN RIGHTS ORGANISATIONS

30. For the most recent relevant reports on Uzbekistan by international human rights NGOs, see *Egamberdiyev v. Russia*, no. 34742/13, §§ 31-34, 26 June 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant alleged that if he were returned to Uzbekistan he would run a real risk of being subjected to torture and ill-treatment in breach of Article 3 of the Convention, which provides as follows:

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

A. Submissions by the parties

1. The Government

32. The Government submitted that in the course of the extradition proceedings the competent Russian authorities had duly examined the applicant's situation with regard to his return to Uzbekistan, where he would be prosecuted. In the Government's opinion, the diplomatic assurances given by the Uzbek authorities were sufficient and compatible with the relevant provisions of international law.

33. The Government further submitted that the applicant's allegations about the risk of ill-treatment in the event of execution of the expulsion

order of 18 October 2013 were speculative and "could not be considered by the [domestic] court during the administrative proceedings". Nevertheless, they had been thoroughly reviewed and found to be unsubstantiated by the Moscow City Court. In any event, the expulsion order did not specify that the applicant was to be expelled to Uzbekistan, but merely stated that he was to be removed from the territory of the Russian Federation. The Government concluded that a risk of treatment contrary to Article 3 of the Convention had not been convincingly established.

2. The applicant

34. Firstly, the applicant submitted that he had raised the issue of the risk of his being subjected to ill-treatment if returned to Uzbekistan in the extradition, expulsion and refugee-status proceedings, advancing a number of specific arguments, such as an increased risk of ill-treatment of persons who, like the applicant, were accused of participation in a banned religious activity and those who were suspected of crimes against State security, as had been reliably demonstrated by the international organisations' reports on the situation in Uzbekistan and the Court's judgments regarding that matter. However, the Russian courts had failed to analyse the nature of the charges against the applicant, had disregarded the link between the charges and the risk of ill-treatment and had not examined the information from various international organisations or the Court's case-law.

35. As to the Russian Government's reliance on the diplomatic assurances provided by Uzbekistan in the context of the extradition proceedings, the applicant considered them to be insufficient. He referred, in particular, to *Abdulkhakov v. Russia*, no. 14743/11, §§ 149-50, 2 October 2012, in this connection.

36. Lastly, the applicant contested the Government's argument that the decision on administrative removal did not necessarily mean that he would be expelled to Uzbekistan. He stated that the expulsion proceedings had been initiated by the Moscow deputy prosecutor's request of 17 October 2013 which mentioned "the date of his actual handing over to the competent authorities of the Republic of Uzbekistan", and that no other possibility had ever been discussed in the course of those proceedings. The applicant further submitted that there existed an administrative practice of substituting expulsion for extradition which was based on an unpublished order of the Moscow Region prosecutor, no. 86/81 of 3 July 2009, which provided that whenever a detained individual was released on the grounds that his extradition was impossible, it was mandatory to decide on his administrative expulsion from Russia. The applicant therefore maintained that his expulsion had been ordered to secure his rendition to the Uzbekistani authorities and thus to prevent him from being released and to secure either his expulsion or his extradition.

B. The Court's assessment

1. Admissibility

37. The Court observes firstly that as Uzbekistan's extradition request is pending before the competent Russian authorities, it is only called upon to examine the applicant's complaint under Article 3 of the Convention in relation to the expulsion proceedings.

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

2. Merits

39. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles set out in, among others, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

40. In the recent cases against the Russian Federation examined under Article 3 concerning the extradition of applicants to Uzbekistan and Tajikistan, the Court has identified the critical elements to be subjected to searching scrutiny (see, among many other authorities, *Savriddin Dzhurayev v. Russia*, no. 71386/10, ECHR 2013 (extracts); *Kasymakhunov v. Russia*, no. 29604/12, 14 November 2013; *Abdulkhakov v. Russia*, cited above; and *Iskandarov v. Russia*, no. 17185/05, 23 September 2010). Consideration must first be given to whether an applicant has provided the national authorities with substantial grounds for believing that he faces a real risk of ill-treatment in the destination country. Secondly, the Court will examine whether the claim was adequately assessed by the competent national authorities, discharging their procedural obligations under Article 3 of the Convention, and whether their conclusions were sufficiently supported by relevant material. Lastly, having regard to all the substantive aspects of a case and the available relevant information, the Court will assess the existence of a real risk of suffering torture or treatment incompatible with the Convention standards.

(a) Existence of substantial grounds for believing that the applicant faced a real risk of ill-treatment

41. At the outset, the Court reiterates that for more than a decade the United Nations human rights bodies and relevant agencies and international non-governmental organisations have issued alarming reports concerning the situation in the criminal justice system in Uzbekistan, the use of torture and ill-treatment techniques by law-enforcement agencies, severe conditions

in detention facilities, systemic persecution of political opposition, and harsh treatment of certain religious groups.

42. The Court has previously had the task of examining many cases concerning the forced return from Russia to Uzbekistan of persons accused by the Uzbek authorities of criminal, religious and political activities (see, most recently, *Egamberdiyev* cited above; *Akram Karimov v. Russia*, no. 62892/12, 28 May 2014; and *Nizamov and Others v. Russia*, nos. 22636/13, 24034/13, 24334/13 and 24528/13, 7 May 2014, with further references). It has been the Court's constant position that individuals whose extradition was sought by the Uzbek authorities on charges of religiously or politically motivated crimes constituted a vulnerable group, running a real risk of treatment contrary to Article 3 of the Convention in the event of their transfer to Uzbekistan.

43. In the present case, the applicant consistently and specifically argued – in the extradition, expulsion and refugee-status proceedings – that he had been prosecuted for religious extremism and crimes against the State and therefore was a member of the above-mentioned vulnerable group. This was borne out by the extradition documents which were produced by the requesting Uzbekistani authority. The basis for the arrest warrant and extradition request submitted by the Uzbek authorities was clear: the applicant was wanted for prosecution in Uzbekistan on charges of religious and political extremism. These allegations regarding his criminal conduct and its nature remained unchanged throughout the relevant proceedings in the Russian Federation.

44. This fact alone, taken in the context of the international reports regarding the systemic ill-treatment of those accused of religious and political crimes, was sufficient to place the applicant definitively within the group of individuals at a severe risk of ill-treatment in the event of their removal to Uzbekistan.

45. In the light of the above considerations, the Court is satisfied that the Russian authorities had before them a sufficiently corroborated claim that the applicant faced a real risk of ill-treatment if returned to Uzbekistan.

(b) Duty to assess adequately claims of a real risk of ill-treatment relying on sufficient relevant material

46. The Court will next examine whether the Russian authorities discharged their obligation to undertake an adequate assessment of the applicant's claim that he risked being subjected to ill-treatment in the event of his return.

47. As regards the refugee-status proceedings, the Court observes that the decisions by the immigration authorities and the courts appear to give preponderant weight to the fact that the applicant had waited for too long before applying for refugee status, and that he had failed to substantiate his claim that he risked political or religious persecution. On the first point the

Court reiterates that, whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, the domestic authorities' findings as regards the failure to apply for refugee status in due time do not, as such, refute his allegations under Article 3 of the Convention (see *Ermakov v. Russia*, no. 43165/10, § 196, 7 November 2013). On the second point, the Court emphasises that the criteria laid down for granting refugee status are not identical to those that are used for assessing the risk of treatment contrary to Article 3 of the Convention. The applicant made detailed submissions about the risk of being subjected to ill-treatment if he were returned to his home country, relying on information from various international organisations and on the judgments of this Court. However, the domestic decisions only mentioned those submissions in passing and did not analyse them in any detail.

48. As to the proceedings concerning the applicant's administrative expulsion, the Court notes that the scope of the review by the domestic courts was largely confined to establishing the fact that the applicant's presence in Russia had been illegal. In this connection the Court reiterates that, in view of the absolute nature of Article 3, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). Therefore, the domestic courts' findings as regards the applicant's failure to abide by Russian laws do not, as such, refute his allegations under Article 3 of the Convention.

49. Having regard to the foregoing, the Court is not persuaded that the applicant's allegations that he risked ill-treatment were duly examined by the domestic authorities. It must, accordingly, assess whether there exists a real risk that the applicant would be subjected to treatment proscribed by Article 3 if he were to be removed to Uzbekistan.

(c) Existence of a real risk of ill-treatment

50. The Court notes that the Government pointed out in their observations that the decision on the applicant's expulsion did not specify that he was to be expelled to Uzbekistan, but merely stated that he was to be removed from the territory of Russia. However, they did not provide information regarding any other country willing to accept him. The Court observes, moreover, that the expulsion proceedings were initiated by the prosecutor's request directly referring to the "date of [the applicant's] actual handing over to the competent authorities of the Republic of Uzbekistan" (see paragraph 17 above). In such circumstances, the Court cannot but accept the applicant's argument that no possibility of his expulsion to another country was discussed in the course of the expulsion proceedings. Accordingly, it concludes that the decision on the applicant's administrative removal presupposed that he would be expelled to Uzbekistan.

51. The Court has had occasion to deal with a number of cases raising the issue of a risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, with reference to material from various sources, that the general situation with regard to human rights in Uzbekistan is alarming, that reliable international material has demonstrated the persistence of a serious issue of ill-treatment of detainees, the practice of torture against those in police custody being described as "systematic" and "indiscriminate", and that there is no concrete evidence to demonstrate any fundamental improvement in that area (see *Egamberdiyev*, *Akram Karimov*, *Kasymakhunov*, *Ermakov*, *Umirov*, all cited above; see also *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008; and *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008).

52. As regards the applicant's personal situation, the Court notes that he was wanted by the Uzbek authorities on charges related to his alleged membership of a Muslim extremist movement and threats to State security. Those charges constituted the basis for the extradition request and the arrest warrant issued in respect of the applicant. Thus, his situation is no different from that of other Muslims who, on account of practising their religion outside official institutions and guidelines, are charged with religious extremism or membership of banned religious organisations and, on that account, as noted in the reports and the Court's judgments cited above, are at an increased risk of ill-treatment (see, in particular, *Ermakov*, cited above, § 203).

53. The Court is bound to observe that the existence of domestic laws and international treaties guaranteeing respect for fundamental rights is not in itself sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities that are manifestly contrary to the principles of the Convention (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 128, ECHR 2012). It has also been the Court's established position that the diplomatic assurances are likewise incapable, on their own, to prevent the risk of ill-treatment from materialising and that the national authorities need to treat with caution the assurances against torture given by a State where torture is endemic or persistent (see *Yuldashev v. Russia*, no. 1248/09, § 85, 8 July 2010, with further references). Furthermore, the domestic authorities, as well as the Government in their submissions before the Court, used summary and non-specific reasoning in an attempt to dispel the allegations of a risk of ill-treatment on account of the above considerations.

54. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant would face a real risk of

treatment proscribed by Article 3 of the Convention if deported to Uzbekistan.

55. The Court therefore concludes that the enforcement of the expulsion order against the applicant would give rise to a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 3

56. The applicant contended under Article 13 of the Convention that no effective remedies were available to him in respect of his allegations of possible ill-treatment in the event of his return to Uzbekistan. Article 13 reads as follows:

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

57. The Court considers that the gist of the applicant's claim under Article 13, which it finds admissible, is that the domestic authorities failed to carry out a rigorous scrutiny of the risk of ill-treatment that the applicant would face in the event of his forced removal to Uzbekistan. The Court has already examined that submission in the context of Article 3 of the Convention. Having regard to its findings above, the Court considers that there is no need to examine this complaint separately on its merits (see, for a similar approach, *Gaforov v. Russia*, no. 25404/09, § 144, 21 October 2010; *Azimov v. Russia*, no. 67474/11, § 145, 18 April 2013; and, most recently, *Akram Karimov*, cited above, § 137).

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

58. The applicant complained that his detention pending expulsion after 17 October 2013 had been in breach of Article 5 § 1 (f) of the Convention. He further complained, under Article 5 § 4 of the Convention, that he had been unable to obtain a judicial review of that detention. The relevant parts of Article 5 provide as follows:

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

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

A. Admissibility

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

B. Merits

60. The Court will consider firstly whether there existed a possibility of effective supervision of the applicant's detention and secondly whether the applicant's detention was compatible with the requirements of Article 5 § 1 (f) (see *Kim v. Russia*, no. 44260/13, § 38, 17 July 2014, and *Azimov*, cited above, § 146 et seq.)

1. Compliance with Article 5 § 4 of the Convention

61. The Government submitted that the applicant had been able to take part in all the hearings concerning his detention and to put forward his arguments about alleged violations of Article 5 of the Convention.

62. The applicant emphasised that both the Zyuzinskiy District Court and the Moscow City Court had failed to consider his arguments relating to Article 5 of the Convention and that no time-limit for his detention had been stipulated in the expulsion order. With reference to the Court's previous findings (in particular, in the case of *Azimov*, cited above, §§ 153-54), he maintained that Russian law did not provide for a periodic review of the lawfulness of detention following a decision on administrative expulsion.

63. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, 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 *Muminov*, cited above, § 113, and *Ismoilov and Others v. Russia*, cited above, § 145, with further references).

64. The Court notes at the outset that a judicial review of the kind required under Article 5 § 4 cannot be said to be incorporated in the initial expulsion order of 18 October 2013. The thrust of the applicant's complaint

under Article 5 § 4 was not directed against the initial decision placing him in custody but rather against his inability to obtain a judicial review of his detention after a certain lapse of time. Detention under Article 5 § 1 (f) lasts, as a rule, for a significant period and depends on circumstances which are subject to change over time. Given that since the delivery of the City Court's appeal judgment of 22 November 2013 the applicant has spent more than a year in custody, new issues affecting the lawfulness of the detention might have arisen during that period. In such circumstances the Court considers that the requirement under Article 5 § 4 was neither incorporated in the initial detention order of 18 October 2013 nor fulfilled by the appeal court (see *Rakhimov v. Russia*, no. 50552/13, § 147).

65. The Court reiterates that, since its *Azimov* judgment, which concerned a similar complaint (see *Azimov*, cited above, § 153), it has found a violation of Article 5 § 4 in a number of cases against Russia on account of the absence of any domestic legal provision which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion (see *Kim*, cited above, §§ 39-43; *Rakhimov*, cited above, §§ 148-150; *Akram Karimov*, cited above, §§ 199-204; and also *Egamberdiyev*, cited above, § 64). In the *Kim* case, the Government acknowledged a violation of Article 5 § 4 and, having regard to the recurrent nature of the violation, the Court directed that the Russian authorities should "secure in [their] domestic legal order a mechanism which allows individuals to institute proceedings for the examination of the lawfulness of their detention pending removal in the light of the developments in the removal proceedings" (see *Kim*, cited above, § 71).

66. As the applicant has not had at his disposal a procedure for a judicial review of the lawfulness of his detention, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

2. Compliance with Article 5 § 1 (f) of the Convention

(a) The parties' submissions

67. The Government submitted that the applicant's detention pending both extradition and expulsion conformed to the relevant domestic provisions and the guarantees of Article 5 § 1 of the Convention.

68. The applicant did not question before the Court the lawfulness of his detention in the extradition proceedings from 17 April to 17 October 2013. As regards the detention imposed in the expulsion proceedings, he admitted that he had violated the immigration rules and failed to register his residence in Russia within the statutory time-limit, but claimed that the authorities had become aware of that fact on 17 April 2013, when he was arrested and found not to have a passport. However, it was not until six months later that the prosecutor instituted expulsion proceedings against him. The applicant claimed that the real purpose of the expulsion proceedings was to keep him

under the authorities' control in order to organise by any means his return to the country which sought his extradition. Other than the requirement that the expulsion order be executed within the two-year time-limit, the Code of Administrative Offences did not contain any provisions governing the length of detention pending expulsion and therefore lacked legal certainty. Moreover, the relevant provisions were open to the interpretation that by the expiry of that two-year time-limit the applicant would again be liable to expulsion and, consequently, to detention on that ground. Lastly, the applicant claimed that such a long stay in detention significantly exceeded the maximum custodial sentence permissible under the Code of Administrative Offences and that his detention pending expulsion was of a punitive, rather than preventive, nature.

(b) The Court's assessment

69. The Court observes that the applicant's complaint refers to the period from 18 October 2013 to the present day, in which he has been detained with a view to his administrative removal ("expulsion") from Russia (see paragraphs 17-20 above). Since administrative removal amounts to a form of "deportation" within the meaning of Article 5 § 1 (f) of the Convention, that provision is applicable in the instant case.

70. The Court reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. The notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention must be appropriate; and the length of the detention must not exceed that reasonably required for the purpose pursued (see *Azimov*, cited above, § 161, and *Rustamov v. Russia*, no. 11209/10, § 150, 3 July 2012, with further references).

71. It is common ground between the parties that the applicant had been residing illegally in Russia before his arrest and, therefore, had committed an administrative offence punishable by expulsion. The Court is satisfied that on 18 October 2013 his detention pending expulsion was ordered by a court with jurisdiction in the matter and in connection with an offence punishable by expulsion. On 22 November 2013 the City Court upheld that decision on appeal. The Court accordingly concludes that the authorities acted in compliance with the letter of the national law.

72. In so far as the applicant claimed that the real purpose of the expulsion proceedings was to keep him in custody pending the outcome of the extradition proceedings, the Court reiterates that detention may be unlawful if its stated purpose differs from the real one (see *Khodorkovskiy v. Russia*, no. 5829/04, § 142, 31 May 2011; *Čonka v. Belgium*, no. 51564/99, § 42, ECHR 2002-I: and *Bozano v. France*, 18 December 1986, Series A no. 111, § 60). The Court reiterates that in *Azimov* it found that a decision ordering the applicant's detention pending expulsion had served to circumvent the maximum time-limits laid down in the domestic law for detention pending extradition (see *Azimov*, cited above, § 165). However, it does not need to determine whether the same is true in the instant case because even where the purpose of detention is legitimate, its length should not exceed that reasonably required for the purpose pursued (see *Azimov*, cited above, § 166, and *Shakurov v. Russia*, no. 55822/10, § 162, 5 June 2012).

73. In the present case, before the authorities ordered the applicant's detention pending expulsion he had already been in detention with a view to extradition for six months. When deciding to keep the applicant in custody pending expulsion, the courts did not set a specific time-limit for his detention. Under Article 31.9 § 1 of the Code of Administrative Offences, an expulsion decision must be enforced within two years (see paragraph 27 above). Thus, after the expiry of such a period, a detainee should be released. This may happen in the present case; however, the possible implications of Article 31.9 § 1 of the Code of Administrative Offences for the applicant's detention are a matter of interpretation, and the rule limiting the duration of detention of an illegal alien is not set out clearly in the law. It is also unclear what will happen after the expiry of the two-year time-limit, since the applicant will clearly remain in an irregular situation in terms of immigration law and will again be liable to expulsion and, consequently, to detention on that ground (see *Egamberdiyev*, § 62, and *Azimov*, § 171, both cited above).

74. The Court further notes that the maximum penalty in the form of deprivation of liberty for an administrative offence under the Code of Administrative Offences in force is thirty days (see paragraph 28 above), and that detention with a view to expulsion should not be punitive in nature and should be accompanied by appropriate safeguards, as established by the Russian Constitutional Court (see paragraph 29 above). In the present case the "preventive" measure was, paradoxically, much heavier than the "punitive" one (see *Azimov*, cited above, § 172).

75. Lastly, the Court reiterates that there are no provisions of Russian law which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion, and no automatic review of his detention at regular intervals (see *Azimov*, cited above, § 153).

76. In view of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 (f) of the Convention.

IV. RULE 39 OF THE RULES OF COURT

77. The Court notes that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

78. The Court notes that the applicant is currently detained in Russia and is still formally liable to administrative removal pursuant to the final judgments of the Russian courts in this case. Having regard to the finding that he would face a serious risk of being subjected to torture or inhuman or degrading treatment in Uzbekistan, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must remain in force until the present judgment becomes final or until further notice.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage on account of distress and frustration caused by his detention pending expulsion, as well as on account of anxiety in view of the prospect of being returned to a country where he would be exposed to a risk of ill-treatment.

81. The Government pointed out that, in so far as the applicant's claim concerns the risk of ill-treatment upon return to Uzbekistan, Article 41 of the Convention does not allow for just satisfaction to be awarded for violations that have not yet been committed. Therefore, in their view, no compensation should be awarded to him. As regards the other issues in the present case, the Government considered that the fact of finding a violation would in itself constitute sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

82. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the applicant's forced return to Uzbekistan would, if implemented, give rise to a violation of that provision. The Court considers that its finding regarding Article 3 amounts in itself to adequate just satisfaction for the purposes of Article 41.

83. The Court has found other violations of the Convention in the present case. It accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It therefore awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

84. The applicant also claimed EUR 7,440 for the costs and expenses incurred before the domestic courts and the Court. This included Ms Trenina's and Ms Ryabinina's work in representing the applicant in the domestic proceedings and before the Court. According to the table submitted by the applicant, Ms Trenina's work consisted of forty-nine hours of work at an hourly rate of EUR 120, amounting to EUR 5,880, whereas Ms Ryabinina worked for thirteen hours at the same hourly rate, amounting to EUR 1,560.

85. The Government noted that the applicant had provided a breakdown of the work performed by his representatives, but had submitted no agreement concerning legal assistance, or other documents setting out their hourly rates.

86. 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 5,000, covering costs under all heads plus any tax that may be chargeable to the applicant, and rejects the remainder of the claims under this head.

C. Default interest

87. The Court considers it appropriate that the default interest rate 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 the forced return of the applicant to Uzbekistan would give rise to a violation of Article 3 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 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 5 § 1 (f) of the Convention in respect of the applicant's detention in the context of the expulsion proceedings;

6. *Decides* to maintain the indication to the Government under Rule 39 of the Rules of Court until such time as the present judgment becomes final, or until further notice;

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro
Registrar	President