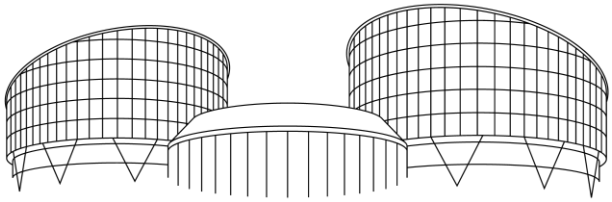

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GARAYEV v. AZERBAIJAN

(Application no. 53688/08)

JUDGMENT

STRASBOURG

10 June 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 Garayev v. Azerbaijan,

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 53688/08) against the Republic of Azerbaijan 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 Shaig Garayev ("the applicant"), on 7 November 2008.

2. The applicant was represented by Ms L. Madatli, Mr A. Aliyev and Mr M. Bakhishov, lawyers practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his extradition to Uzbekistan would entail a violation of Article 3 of the Convention and that he had no effective remedies available to him by which to challenge his extradition on the ground of risk of torture or ill-treatment. He also claimed that his detention pending extradition had been unlawful and that no judicial review had been available in respect of that detention, in breach of the provisions of Article 5 §§ 1 (f) and 4 of the Convention.

4. On 7 November 2008 the President of the Chamber indicated to the respondent Government that the applicant should not be extradited to Uzbekistan until further notice (Rule 39 of the Rules of Court).

5. On 8 June 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 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 in Bukhara, Uzbekistan and is currently detained in a remand facility in Baku awaiting extradition to Uzbekistan. He holds a valid Uzbek passport and is considered to be a national of Uzbekistan by both the Azerbaijani and Uzbek authorities. The applicant, however, also claims to be an Azerbaijani national (see below).

7. The applicant's father, Firudin Garayev, of Azerbaijani ethnic origin, was born in 1953 in Beylagan, Azerbaijan. The applicant's mother, Olima Garayeva, of Uzbek ethnic origin, was born in 1960 in Bukhara, Uzbekistan. The applicant had an elder brother, Jeyhun Garayev, and a younger sister, Nargiz Garayeva. The family was living in Bukhara, Uzbekistan at the time the events described below took place.

A. Earlier criminal proceedings in Uzbekistan concerning the applicant and his family

1. Initial arrest and ill-treatment

8. On 21 December 2000 the applicant's entire family, including himself and his then twelve-year-old sister, were arrested in Bukhara on suspicion of killing six persons and mutilating their corpses. It appears that prior to the arrest the Uzbek law-enforcement authorities found remains of mutilated human corpses inside the house of the applicant's family and in a rubbish dump near their house. The applicant's mother was the primary suspect, while all the other family members were suspected of being accomplices. The applicant claimed to have been out of town at the time the alleged crimes were committed.

9. It appears from the case file that their arrest generated much media coverage in Uzbekistan. The media reports also allegedly included false rumours that the applicant's family had been engaged in the trafficking of human organs and even cannibalism. The ethnic origin of the applicant's father and his children was also usually mentioned.

10. According to the applicant, while in detention he and all his family members had been constantly subjected to torture and other forms of ill-treatment with the aim of extracting confessions from them. They were kept in separate cells for most of the time. The applicant provided a very detailed account of the types of ill-treatment to which he had been subjected, which included, *inter alia*, various forms of beating, deprivation of food and drink, and suffocation.

11. It appears that, initially, no charges were brought against the applicant or most of his family members in connection with the murders and on various dates they were all released, with the exception of his mother, owing to lack of evidence. However, after the release all of the family (except the applicant's sister) were arrested again on various grounds.

2. The applicant's case

12. After a few days in detention, the applicant was released on 26 December 2000 owing to lack of evidence in connection with his involvement in the murder. However, only a few minutes after his release, the applicant was stopped on the street by other police officers, who asked him for identity documents. The applicant was then taken to a police station where, after a body search, the police allegedly found some heroin concealed in his shoes. The applicant argued that the drugs had been planted on him by the police, as he had been released from detention only a few minutes earlier and would not have been able to acquire any heroin and hide it in the soles of his shoes during this extremely short time period, especially while suffering from the effects of ill-treatment and having had nothing to eat or drink since his initial arrest.

13. On 30 April 2001 the Tokhuculug District Court of Bukhara convicted the applicant of possession of illegal drugs and sentenced him to four years' imprisonment. He was not provided with legal assistance during these proceedings.

14. The applicant was released on 2 August 2001 following a presidential pardon.

15. On 27 November 2001 he left Uzbekistan with his sister and has lived in Azerbaijan since then.

16. In the meantime, by a decision of the Bukhara Regional Court of 20 November 2001, the applicant was charged with the murder of six persons and the mutilation of their corpses, under Articles 97 § 2 (aggravated murder) and 134 (abuse of corpse) of the Criminal Code of Uzbekistan. Moreover, by the same decision, the Bukhara Regional Court ordered the application of the preventive measure of remand in custody in respect of the applicant without fixing any term for detention.

17. On 6 August 2002 the Bukhara Regional Prosecutor's Office suspended the pre-trial investigation, finding that the applicant was at large, and declared a search for him in order to secure his presence at the place of investigation.

3. The cases of the applicant's family members

18. The applicant's father was released from detention on 29 December 2000 but was arrested again on the same day for alleged possession of heroin, in circumstances similar to the applicant's second arrest. On

20 November 2001 the Bukhara Regional Court convicted him of possession of illegal drugs and certain other offences and sentenced him to eleven years' imprisonment.

19. On the same day, 20 November 2001, the Bukhara Regional Court convicted the applicant's mother and brother of murdering six persons and mutilating their corpses, and sentenced each of them to fifteen years' imprisonment under Articles 97 § 2 and 134 of the Criminal Code of Uzbekistan. The court found that the applicant's mother, with the assistance of her eldest son and with the purpose of enrichment at the expense of the victims, had invited a family of her acquaintance to her home, poisoned and killed them, and thereafter dismembered and otherwise mutilated the corpses so that it would be easier to dispose of them.

20. In April 2004 the applicant's father was also convicted under Articles 97 § 2 and 134 of the Criminal Code of Uzbekistan. It was found that he had aided and abetted his wife and eldest son in the killings and mutilation of the victims' corpses. After a series of appeals, his conviction under Article 97 § 2 was quashed and the conviction under Article 134 upheld, and taking into account his previous conviction he was sentenced to a combined sentence of twenty years' imprisonment.

21. The applicant's brother died in prison on 12 February 2008 from heart and lung failure. According to the applicant, his brother's death was a consequence of many years of ill-treatment.

22. The applicant's father was released from prison in May 2008 following a presidential pardon and moved to Azerbaijan.

23. The applicant's mother was released from prison in October 2008, also following a presidential pardon, and moved to Azerbaijan in November 2008.

B. Proceedings related to the applicant's extradition

24. As mentioned above, the applicant has been living in Azerbaijan since 27 November 2001. It appears from the case file that the applicant entered the territory of Azerbaijan legally with his Uzbek passport. However, he had been entitled to stay in Azerbaijan for ninety days only and it appears that after this period he continued to live there without a residence permit.

25. On 9 April 2008 the applicant was arrested by the police in Beylagan on the basis of a search warrant issued by the Uzbek authorities.

26. On 10 April 2008 the Beylagan District Court ordered the applicant's detention with a view to extraditing him. The Beylagan District Court relied on the Bukhara Regional Court's detention order of 20 November 2001 and confirmed its findings. No fixed term for detention was specified, and it was noted that the applicant would be detained until an extradition decision had been given. The decision of the Beylagan District

Court was subject to an appeal within three days of its delivery. However, the applicant did not appeal against that decision.

27. On 2 May 2008 the Deputy Prosecutor General of the Republic of Uzbekistan made a formal request for the applicant's extradition relying on the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993 ("the 1993 Minsk Convention").

28. On 18 June 2008 the Prosecutor General of the Republic of Azerbaijan issued a decision on the applicant's extradition to Uzbekistan under the 1993 Minsk Convention. *Inter alia*, the decision stated that, according to the information provided by the Uzbek authorities, the applicant was a national of Uzbekistan and that, according to the information received from the Ministry of Internal Affairs of the Republic of Azerbaijan, he was not considered to be an Azerbaijani national in accordance with the Law on Citizenship of the Republic of Azerbaijan.

29. By a letter of 29 July 2008 the Prosecutor General's Office of the Republic of Azerbaijan asked the Uzbek authorities to give assurances in respect of the applicant's criminal case. By a letter of 31 July 2008 signed by the Deputy Prosecutor General of the Republic of Uzbekistan, the Uzbek authorities gave assurance that the criminal case against the applicant did not have any political or racial motivation, that the applicant would not be subjected to torture or any other inhuman treatment and that the applicant's defence rights would be ensured. It stated that, by a law of 11 July 2007 which entered into force on 1 January 2008, the death penalty had been abolished in Uzbekistan. It also added that the applicant would be allowed to leave Uzbekistan after serving his sentence and that he would not be handed over to a third State without the consent of the Republic of Azerbaijan.

30. Subsequently, the applicant was involved in two separate sets of proceedings by means of which he attempted to have the extradition order quashed.

1. Civil proceedings concerning the applicant's citizenship

31. After the applicant's father returned to Azerbaijan, he applied for an Azerbaijani national's identity card on the basis of the fact that he had been born in Beylagan, in the Azerbaijan SSR, and had lived in the Azerbaijan SSR until 1975. On 9 August 2008 the applicant's father was issued with an identity card confirming his citizenship.

32. Following his arrest on 9 April 2008, the applicant attempted to apply, through his representative, for an identity card of a national of the Republic of Azerbaijan, on the basis that his father was an Azerbaijani national. His application was rejected as he was obliged to apply for this identity card in person.

33. On an unspecified date the applicant lodged an action with the Absheron District Court, requesting the court to order the Absheron District Police Department to issue him with an Azerbaijani national's identity card. On 26 September 2008 the Absheron District Court allowed the applicant's request, noting that under the domestic law the applicant qualified as an Azerbaijani national by right of blood and instructed the Absheron District Police Department to issue him with an identity card.

34. On the basis of this judgment, and pending its entry into force, on 2 October 2008 the applicant was issued with a temporary identity document valid until 2 November 2008. It appears that, following the appeals mentioned below, the term of validity of this temporary identity document was not extended and that the applicant was never issued with an identity card of an Azerbaijani national.

35. The Absheron District Police Department lodged an appeal against the judgment of 26 September 2008, noting that the applicant was a national of Uzbekistan and that the only reason for his application for an identity card of an Azerbaijani national was to avoid extradition.

36. On 28 November 2008 the Sumgait Court of Appeal quashed the Absheron District Court's judgment of 26 September 2008, finding that the applicant was a foreign national and that he could not be issued with an Azerbaijani national's identity card unless he was granted Azerbaijani citizenship by the President of the Republic, under the Law on Citizenship of the Republic of Azerbaijan.

37. On 19 January 2009 the applicant lodged a cassation appeal against the Sumgait Court of Appeal's judgment of 28 November 2008. On 11 March 2009 the Supreme Court dismissed his appeal and upheld the judgment of 28 November 2008.

2. Appeals against the extradition order of 18 June 2008 and the applicant's detention pending extradition

38. On 1 August 2008 (with an addendum on 11 August 2008), the applicant appealed to the Sabail District Court against the detention order of 10 April 2008 and the extradition order of 18 June 2008. In his appeal he argued, *inter alia*, that (a) his detention had no basis under the domestic law and the detention order of 10 April 2008 had unlawfully authorised his detention for an indefinite period; (b) he faced an imminent risk of torture and other forms of ill-treatment if extradited to Uzbekistan; (c) despite the authorities' unlawful refusals to issue him with citizenship documents, under the domestic law he was an Azerbaijani national by right of blood (as the son of an Azerbaijani national) and that therefore his extradition to a foreign country would be contrary to Azerbaijani law and the Minsk Convention.

39. On 3 October 2008 the Sabail District Court quashed the Prosecutor General's extradition order of 18 June 2008, having had regard to the

Absheron District Court's judgment of 26 September 2008 which confirmed the applicant's claim to Azerbaijani citizenship (although the Absheron District Court's judgment never entered into force, by this time it had not yet been quashed by the Sumgait Court of Appeal). The Sabail District Court noted that the Prosecutor General's Office could appeal against this decision within a three-day period and, in order to allow time for such an appeal, ordered the applicant's release seven days from the delivery of the decision (on 10 October 2008).

40. The applicant was not released on 10 October 2008, seven days after the delivery of the decision of 3 October 2008.

41. On 10 October 2008 the Prosecutor General's Office lodged an appeal against the Sabail District Court's decision of 3 October 2008. Accompanying the appeal was a request to restore the three-day appeal period owing to the fact that the Prosecutor General's Office did not receive the decision until 8 October 2008. The applicant protested, arguing that the law on criminal procedure did not allow for restoration of the missed three-day period for appeals by the prosecution against court decisions concerning remand in custody. The applicant also claimed that the request for restoration of the three-day appeal period was unsubstantiated, because the representative of the Prosecutor General's Office had been present in the courtroom at the time the decision of 3 October 2008 was announced.

42. On 13 October 2008 the request to restore the appeal period was granted and the appeal of the Prosecutor General's Office was accepted.

43. On 23 October 2008 the Baku Court of Appeal quashed the Sabail District Court's decision of 3 October 2008. The Baku Court of Appeal held that the applicant was a national of Uzbekistan and that he had not been formally granted Azerbaijani citizenship. It noted that in upholding the applicant's citizenship claims the lower court had incorrectly relied on the Absheron District Court's judgment of 26 September 2008, which had not entered into force. Therefore, the Baku Court of Appeal upheld the validity of the extradition order of 18 June 2008 and quashed the Sabail District Court's decision on the applicant's release. However, the Court of Appeal's decision was silent as to the existence of the risk of torture or ill-treatment in the event of the applicant's extradition and as to the lawfulness of his detention with a view to extradition.

44. No appeals are available under domestic law against the Baku Court of Appeal's decision of 23 October 2008.

45. It appears from the case file that on 28 November 2008 the applicant applied for refugee status to the United Nations High Commissioner for Refugees in Azerbaijan. However, it appears that he did not receive any reply to his request.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

46. Article 46 (III) of the Constitution of the Republic of Azerbaijan reads as follows:

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

B. The Code of Criminal Procedure ("CCrP")

1. The general provisions of the CCrP concerning the preventive measure of remand in custody applied in respect of defendants in criminal proceedings, and appeals against the prosecuting authorities' acts and decisions

47. The preventive measure of remand in custody (*həbs qətimkan tədbiri*) is ordered by a court. The court's decision on remand in custody can be challenged before the court of appeal and the latter court's decision on this matter is final (Article 157.6). Pre-trial detention of defendants in criminal proceedings is subject to automatic review and may not exceed specific time-limits, set out depending on the gravity of charges (Articles 158-159).

48. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings could challenge acts or decisions of the prosecuting authorities before a court. Article 449 provides that the accused (or the suspected) person or his counsel can challenge acts or decisions of the prosecuting authorities concerning, *inter alia*, his or her arrest or detention. The judge examining the legality of the prosecuting authorities' acts and decisions can quash them if found to be unlawful (Article 451).

2. The provisions of the CCrP concerning extradition

49. Chapter LVII of the CCrP deals with legal assistance in criminal matters. Article 495.1 provides that upon receipt of a request for extradition and a copy of a detention order from the competent authority of a foreign State, the prosecuting authority of the Republic of Azerbaijan to which the request is addressed may, if necessary, take measures to have the person arrested and detained before the decision on extradition is taken. Article 496.1 provides that a person who is in the territory of the Republic of Azerbaijan shall be extradited by the prosecuting authority with a view to criminal prosecution or enforcement of a sentence, taking into consideration the requirements of Article 496.2-496.7 of the Code, on the basis of an

official request for his extradition from the competent authority of the foreign State concerned.

50. A person detained with a view to extradition can challenge the prosecuting authorities' acts before courts. This action is examined under the procedure established in Articles 442-454 (Chapter LII; see above) of the CCrP (Article 495.5). Article 497.2 provides that a person detained "until the adoption of the decision on extradition" shall be immediately released if the prosecuting authority decides that the extradition is impossible or refuses to extradite him.

C. Law on Extradition of 15 May 2001

51. The Law on Extradition of 15 May 2001 deals with the questions concerning extradition of a person to a foreign State. According to this Law, the Assize Court examines the question of extradition of a person at the request of a foreign State (Article 8.1). The Assize Court's decision on extradition can be challenged in accordance with the provisions of the criminal procedural legislation (Article 8.2).

III. RELEVANT INTERNATIONAL DOCUMENTS

A. The CIS Convention on Legal Assistance and legal Relations in Civil, Family and Criminal Matters 1993 ("the 1993 Minsk Convention")

52. This Convention was signed on 22 January 1993 in Minsk and both Azerbaijan and Uzbekistan are parties to it.

53. Article 58 of the 1993 Minsk Convention provides that a request for extradition must be accompanied by, among other documents, a detention order (Article 58 § 2). Upon receipt of a request for extradition the requested State should immediately take measures to search for and arrest the person whose extradition is sought, except in cases where no extradition is possible (Article 60).

54. The person whose extradition is sought may be arrested before receipt of a request for extradition, if there is a related petition. The petition must contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested before receipt of the extradition request, the requesting State must be informed immediately (Article 61 § 3).

55. 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).

56. The chief prosecutors of the contracting States are responsible for dealing with matters concerning extradition and criminal prosecution (Article 80).

B. Relevant documents concerning the situation of human rights in Uzbekistan

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

> "68. The Special Rapporteur believes, on the basis of the numerous testimonies (including on a number of deaths in custody) he received during the mission, not least from those whose evident fear led them to request anonymity and who thus had nothing to gain personally from making their allegations, that torture or similar ill-treatment is systematic as defined by the Committee against Torture. Even though only a small number of torture cases can be proved with absolute certainty, the copious testimonies gathered are so consistent in their description of torture techniques and the places and circumstances in which torture is perpetrated that the pervasive and persistent nature of torture throughout the investigative process cannot be denied. The Special Rapporteur also observes that torture and other forms of ill-treatment appear to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others."

58. In March 2005 the UN Human Rights Committee considered the second periodic report of Uzbekistan under the International Covenant on Civil and Political Rights and adopted the following observations (CCPR/CO/83/UZB):

> "11. The Committee is concerned about allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts. It is a matter of further concern that no independent inquiries are conducted in police stations and other places of detention to guarantee that no torture or ill-treatment takes place, apart from a small number of inquiries with external participation quoted by the delegation...
>
> 15. The Committee notes that while under domestic law individuals have access to a lawyer at the time of arrest, this right is often not respected in practice...
>
> 16. The Committee remains concerned that the judiciary is not fully independent and that the appointment of judges has to be reviewed by the executive branch every five years..."

59. In his 2006 report "Situation of human rights in Uzbekistan" (A/61/526) the UN Secretary General expressed his concern about the fate of individuals extradited or expelled to Uzbekistan:

> "48. The Human Rights Committee, in its concluding observations of 31 March 2005 (CCPR/OP/83/UZB), remained concerned about the high number of convictions

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

60. In November 2007 the UN Committee Against Torture considered the third periodic report of Uzbekistan (CAT/C/UZB/3) and adopted, *inter alia*, the following conclusions (CAT/C/UZB/CO/3):

"6. The Committee is concerned about:

(a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;

(b) Credible reports that such acts commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;

(c) The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention...

9. The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention...

11. The Committee remains concerned that despite the reported improvements, there are numerous reports of abuses in custody and many deaths, some of which are alleged to have followed torture or ill-treatment..."

61. In its report of November 2007 entitled "Nowhere to Turn: Torture and Ill-treatment in Uzbekistan", the Human Rights Watch provides the following analysis:

"Prolonged beatings are one of the most common methods used by the police and security agents to frighten detainees, break their will, and compel them to provide a confession or testimony. They often start beating and kicking detainees with their hands, fists, and feet and then continue using truncheons, filled water bottles and various other tools...

Several individuals reported that they were either tortured with electric shocks or forced by police to watch as others were tortured with it...

> Police and security officers sometimes use gas masks or plastic bags to effect near asphyxiation of detainees. After forcing an old-fashioned gas mask over the head of the victim, who in some cases is handcuffed to a chair, the oxygen supply is cut...”

62. The 2008 US Department of State Country Report on Human Rights Practice, released on 25 February 2009, provides the following information in relation to Uzbekistan:

> “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. Informants reported several cases of medical abuse, including forced psychiatric treatment.
>
> November 2007 reports by Human Rights Watch (HRW) and the UN Committee Against Torture (CAT) concluded that torture and abuse were systemic throughout the investigative process and had not improved since a 2003 UN Special Rapporteur on torture report drew the same conclusions. The CAT report stated that despite an amendment to Article 235 of the criminal code addressing elements of the definition of torture, punishment for violations was rare and did not reflect the severity of the crimes...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained that, if extradited, he would face a risk of being subjected to torture and inhuman or degrading treatment by the Uzbek law-enforcement authorities, which would constitute a violation of Article 3 of the Convention. Article 3 reads as follows:

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

A. Admissibility

64. 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 the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

65. The Government alleged that there were no substantial grounds for believing that, if extradited, the applicant would be exposed to a real risk of being subjected to torture or inhuman or degrading treatment. The Government also stated that they had obtained assurances from the Uzbek authorities that the applicant would not be subjected to torture or inhuman or degrading treatment or sentenced to death. They considered that those assurances were reliable. Moreover, the Government submitted that the Uzbek authorities had provided all necessary guarantees stipulated in the relevant international treaties. The Government argued that torture and ill-treatment were prohibited by the domestic Uzbek law and the UN International Covenant on Civil and Political Rights, to which Uzbekistan is a party.

66. The applicant maintained that he faced a real risk of torture and ill-treatment if extradited to Uzbekistan, arguing that this kind of practice was widely used by the Uzbek law-enforcement authorities. In this regard, he relied on different reports of the UN institutions and international NGOs. The applicant contested the reliability of the Uzbek authorities' assurances. The applicant also submitted that he and all the members of his family had been previously persecuted and subjected to torture and inhuman and degrading treatment by the Uzbek authorities. In support of this claim, he submitted his family members' detailed accounts of their alleged ill-treatment in Uzbekistan.

2. The Court's assessment

67. The Court's established case-law indicates that extradition by a Contracting State may give rise to an issue under Article 3, thereby engaging the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91, Series A no. 161).

68. In determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu* (see *Cruz Varas and Others v. Sweden*, 20 March 1991, § 75, Series A no. 201). In cases such as the present, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108 *in fine*, Series A no. 215). To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from the United Nations human rights institutions or independent international human-rights protection associations (see, for example, *Chahal v. the United Kingdom*, 15 November 1996, §§ 99-100, *Reports of Judgments and Decisions* 1996-V; *Saadi v. Italy* [GC], no. 37201/06, §§ 143-146, ECHR 2008-; and *Ismoilov and Others v. Russia*, no. 2947/06, §§ 117-123, 24 April 2008).

69. The Court reiterates that it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts raised by it (see *Nnyanzi v. the United Kingdom*, no. 21878/06, § 53, 8 April 2008).

70. In line with its case-law as set out above, the Court needs to establish whether there exists a real risk of ill-treatment of the applicant in the event of his extradition to Uzbekistan with reference to the facts which are known.

71. In the present case the Court has had regard, firstly, to the reports of the UN human rights institutions and other documents on the situation of human rights in Uzbekistan (see paragraphs 57-62 above). According to these materials, there have been numerous credible reports of torture, routine beatings and use of force against criminal suspects or prisoners by the Uzbek law-enforcement authorities in order to obtain confessions. It has also been reported that allegations of torture and ill-treatment are not investigated by the competent Uzbek authorities. Bearing in mind the authority and reputation of the authors of these reports, the seriousness of the investigations by means of which they were compiled, and the fact that on the points in question their conclusions are consistent with each other, the Court does not doubt their reliability.

72. As to the personal situation of the applicant, the Court notes that there is no evidence in the available materials to suggest that criminal suspects of non-Uzbek ethnic origin are treated differently from ethnic Uzbek criminal suspects. However, it appears that any criminal suspect held in custody faces a serious risk of being subjected to torture or inhuman or

degrading treatment both in order to extract confessions and as punishment for being a criminal. Moreover, the Court cannot lose sight of the fact that the applicant's entire family had been either arrested or prosecuted in Uzbekistan, that their accounts of ill-treatment are mutually consistent and appear to be credible, and that the applicant personally had been previously arrested and convicted in suspicious circumstances. The Court notes that the applicant's description of previous ill-treatment in 2000-2001 is very detailed and convincing. Despite the fact that the applicant is wanted for an offence which is not politically motivated, the Court considers that there are sufficient reasons for a fear that a criminal suspect in such a situation would be at serious risk of being subjected to treatment contrary to Article 3 of the Convention (compare *Soldatenko v. Ukraine*, no. 2440/07, § 72, 23 October 2008).

73. Moreover, the respondent Government have not adduced any evidence or reports capable of rebutting the assertions made in various international reports concerning the human-rights situation in Uzbekistan. No evidence has been produced of any fundamental improvement in the protection against torture in Uzbekistan in recent years. As for the Government's argument that torture and ill-treatment were prohibited by Uzbekistan's domestic law and the relevant international treaties, the Court reiterates that the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, § 147, and *Muminov v. Russia*, no. 42502/06 , § 96, 11 December 2008).

74. As to the Government's arguments that specific assurances were obtained from the Uzbek authorities in the applicant's case, the Court notes that the Deputy Prosecutor General of Uzbekistan wrote in his letter of 31 July 2008 that the applicant would not be subjected to torture, inhuman or degrading treatment or punishment after extradition. The Court observes, however, that it is not at all established that the Deputy Prosecutor General or the institution which he represented was empowered to provide such assurances on behalf of the State (compare *Soldatenko*, cited above, § 73). In any event, even if such assurances were obtained, they were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment and would not have absolved the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Saadi*, cited above, § 148). Given that the practice of torture is described by reputable international human rights reports as being systematic, the Court is not persuaded that the

assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.

75. The foregoing considerations, taken together, are sufficient to enable the Court to conclude that the applicant's extradition to Uzbekistan would be in violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

76. The applicant complained that he had had no effective remedy by which to challenge his extradition on the ground of the existence of a risk of torture or ill-treatment in the event of his extradition. Article 13 reads as follows:

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

A. Admissibility

77. 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 the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

78. The Government submitted that the applicant had had effective remedies under Articles 449-451 of the CCrP, according to which any decision of the prosecuting authorities could be challenged before the domestic courts.

79. The applicant submitted that, despite his numerous requests, none of his complaints concerning the risk of torture or ill-treatment had been examined by either the Prosecutor General's Office or the domestic courts. He alleged that this highlighted the ineffectiveness of the domestic remedies in Azerbaijan in respect of this kind of complaint.

2. The Court's assessment

80. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. As a general rule, if a single remedy

does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). For Article 13 to be applicable, the complaint under a substantive provision of the Convention must be arguable. The Court considers that the applicant's claim under Article 3 was "arguable" and, thus, Article 13 was applicable in the instant case.

81. The remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports of Judgments and Decisions* 1996-VI). However, the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

82. The Court further points out that the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. In the context of extradition, given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialised and the importance which the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires (i) independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant's extradition to the country of destination, and (ii) the provision of an effective means of suspending the enforcement of measures whose effects are potentially irreversible (see *Muminov,* cited above, § 101, with further references).

83. Turning to the circumstances of the present case, the Court notes that the extradition order of 18 June 2008 was delivered by the Prosecutor General of the Republic of Azerbaijan. In this connection, the Court observes that the Azerbaijani domestic law and the practice of the Azerbaijani law-enforcement authorities are not clear in the field of the procedure of delivery of an extradition order. Under Article 8.1 of the Law on Extradition, the authority to order extradition is vested with the Assize Court, which should deliver a reasoned decision (see paragraph 51 above), while Article 496.1 of the CCrP empowers the prosecution authority to decide on extradition (see paragraph 49 above). This inconsistency has not been explained in the present case. In any event, the Court is not called upon to review *in abstracto* the compatibility of the relevant law and practice with the Convention, but to determine whether there was a remedy compatible with Article 13 of the Convention available to grant the applicant appropriate relief as regards his substantive complaint (see, among other authorities, *G.H.H. and Others v. Turkey*, no. 43258/98, § 34, ECHR 2000-VIII).

84. The Court reiterates that judicial review proceedings constitute, in principle, an effective remedy within the meaning of Article 13 of the Convention in relation to complaints in the context of expulsion and extradition, provided that the courts can effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 99, ECHR 2002-II (extracts)). In the present case, the Court observes that the applicant challenged the Prosecutor General's extradition order before the Sabail District Court and the Baku Court of Appeal. However, the Court notes that, despite the fact that the applicant had explicitly complained of the risk of torture or ill-treatment and that his allegations in this regard were sufficiently serious, the domestic courts ignored his arguments. The decisions of the domestic courts were silent as to the risk of torture and ill-treatment in Uzbekistan and it does not appear that the courts ever took these considerations into account when they examined the question of the applicant's extradition.

85. In such circumstances, the Court finds that the applicant has been denied an effective domestic remedy by which to challenge his extradition on the ground of the risk of torture or ill-treatment. Consequently, there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (f) AND 4 OF THE CONVENTION

86. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had been unlawful. 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."

87. He also complained under Article 5 § 4 of the Convention that he had been unable to challenge the lawfulness of his detention before a court. 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. Admissibility

88. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

89. The Government contested the applicant's allegations. They noted that the Beylagan District Court's detention order of 10 April 2008 had been lawful and that it had relied on the Bukhara Regional Court's decision of 20 November 2001. The Government argued that the gravity of the offence of which the applicant had been accused and the risk of the applicant's absconding justified the application of the preventive measure of remand in custody.

90. Regarding Article 5 § 4 of the Convention, the Government submitted that the applicant had had effective remedies under Articles 449-451 of the CCrP by which to challenge the lawfulness of his detention. The Government noted that, according to these provisions, any decision of the prosecuting authorities could be challenged before the domestic courts.

91. The applicant disagreed with the Government and pointed out that his detention did not comply with the requirements of Article 5 § 1 (f) of the Convention. In particular, the applicant submitted that the detention order had not specified any term for detention. The applicant noted that, in ordinary criminal proceedings, the detention period could not exceed twelve months in respect of persons charged with serious criminal offences (Articles 157-159 of the CCrP). However his detention period had exceeded that time-limit.

92. As to the complaint under Article 5 § 4 of the Convention, the applicant submitted that it was impossible to have the judicial review of his detention pending extradition and that his detention continued for an unlimited period of time without any judicial review or decision.

2. The Court's assessment

(a) Article 5 § 1 (f) of the Convention

93. The Court reiterates that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy*, cited above, § 76).

Article 5 § 1 sub-paragraphs (a) to (f) contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008-...). In the present case, 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.

94. The Court notes that Article 5 § 1 (f) does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka*, cited above, § 38, and *Chahal*, cited above, § 112).

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

96. The Court must therefore ascertain whether domestic law itself is in compliance with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all laws be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail, in order to avoid all risk of arbitrariness (see *Ječius v. Lithuania*, no. 34578/97, § 56,

ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

97. The Court observes that the decision to detain the applicant was based on a detention order issued on 20 November 2001 by the Bukhara Regional Court which did not set any time-limit for this detention. On 10 April 2008 the Beylagan District Court confirmed the Bukhara Regional Court's decision of 20 November 2001 and ordered the applicant's detention until an extradition decision had been given. The Beylagan District Court did not set any time-limit for the application's detention.

98. The Court observes that the main issue of the present complaint relates to the fact that the court decision was sufficient for holding the applicant in custody for any period of time until his extradition had been made (see, *mutatis mutandis*, *Nasrulloyev v. Russia*, no. 656/06, § 73, 11 October 2007, and *Muminov*, cited above, § 120). In this regard, the applicant maintained that the provisions of the CCrP (see paragraph 47 above) concerning the general terms of pre-trial detention in criminal proceedings should have been applicable in his situation. The Court notes that the Government have not provided any information as to specific legal provisions governing the applicant's indefinite detention pending extradition.

99. The Court observes that the domestic law regulated in detail "detention pending investigation" in ordinary criminal proceedings and set specific time-limits for the pre-trial detention of criminal defendants. However, there was no provision in the domestic law concerning a time-limit specifically applying to detention "with a view to extradition". The Court notes that in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting time-limits for such detention, the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness.

100. The Court further notes that, even assuming that the provisions governing the general terms of pre-trial detention (Article 158 of the CCrP) in criminal proceedings could be considered applicable to the detention pending extradition, it appears that the national system failed to protect the applicant from arbitrary detention. The CCrP provided for periodic review of detention at specific intervals and required the courts to issue extension orders to justify a detainee's continued detention. None of this was done in the present case. In other words, the applicant's detention was not accompanied by any of the safeguards and guarantees that ordinary suspects or defendants enjoyed (see, *mutatis mutandis*, *Nasrulloyev,* cited above, § 76).

101. The foregoing considerations are sufficient to enable the Court to conclude that the provisions of the Azerbaijani 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.

102. There has accordingly been a violation of Article 5 § 1 (f) of the Convention.

(b) Article 5 § 4 of the Convention

103. The Court reiterates that the purpose of Article 5 § 4 is to secure 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)).

104. Turning to the circumstances of the present case, the Court points out that the 1993 Minsk Convention does not contain any rules on the procedure for challenging a decision on placement in custody pending extradition. Accordingly the applicant had no remedies deriving from that Convention by which to challenge the lawfulness of his detention (see *Dzhurayev v. Russia*, no. 38124/07, § 58, 17 December 2009).

105. The Court cannot accept the Government's argument that Articles 449-451 of the CCrP provided for an opportunity for the applicant to initiate proceedings for an examination of the lawfulness of his continued detention. Having regard to these provisions, the Court observes that they provided for a general right of appeal to domestic courts against acts and decisions of prosecuting authorities. However, in the applicant's situation, while the prosecuting authority decided whether to extradite the applicant or not, his detention pending that decision on extradition could be (and was) ordered only by a court. In such circumstances, the Court does not see how the applicant could have used the procedure under Articles 449-451 of the CCrP to obtain the review of lawfulness of his continued detention, for the simple fact that the order of his detention was not an "act or decision of a prosecuting authority". For these reasons, the Court cannot find that the provisions referred to by the Government provided for the type of judicial supervision required by Article 5 § 4 of the Convention.

106. The Court observes that the applicant challenged his initial placement in custody before the Sabail District Court and the Baku Court of Appeal. However, the thrust of the applicant's complaint under Article 5 § 4 did not concern the review of the initial decision on his placement in

custody but rather his inability to obtain judicial review of his continued detention after a certain lapse of time (see, *mutatis mutandis*, *Ismoilov and Others*, cited above, § 146). The Government have not shown that he had the opportunity to initiate proceedings with that purpose. The Court further refers to its findings under Article 5 § 1 of the Convention about the lack of foreseeable legal provisions governing the procedure for detention pending extradition. It considers that, in the circumstances of the case, these findings are also pertinent to the applicant's complaint under Article 5 § 4 of the Convention, as the Government failed to demonstrate that the applicant had had at his disposal any clearly and foreseeably defined procedural framework through which the lawfulness of his continued detention could have been examined by a court.

107. It follows that throughout the applicant's detention pending extradition he did not have at his disposal any procedure for a judicial review of its lawfulness. There has therefore been a violation of Article 5 § 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 6 of the Convention

108. The applicant complained that the proceedings concerning his appeal against the extradition order of 18 June 2008 had been unfair and that the domestic courts had misinterpreted the relevant law. The relevant part of Article 6 provides, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

109. The Court reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 82, ECHR 2005-I, and *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X).

110. Accordingly, Article 6 § 1 of the Convention is not applicable in the instant case.

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

B. Article 1 of Protocol No. 7 to the Convention

112. Without prejudice to his claim to Azerbaijani citizenship, the applicant complained that the domestic proceedings concerning his extradition lacked sufficient procedural safeguards stipulated in Article 1 § 1 (a) and (b) of Protocol No. 7 to the Convention, which reads as follows:

> "An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> a to submit reasons against his expulsion,
>
> b to have his case reviewed, ..."

113. The Court notes that Article 1 of Protocol No. 7 to the Convention concerns "expulsion of aliens lawfully resident in the territory of a State". However, the notion of "expulsion" for the purpose of this Article covers any measures compelling an alien's departure from the territory where he was lawfully resident, with the exception of extradition (see *Bolat v. Russia*, no. 14139/03, § 79, ECHR 2006-XI (extracts)). In the present case, as the applicant was subject to extradition, no issue arises under Article 1 of Protocol No. 7.

114. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Article 3 of Protocol No. 4 to the Convention

115. The applicant complained that his expulsion from the territory of the Republic of Azerbaijan of which he was national would be in breach of Article 3 of Protocol No. 4. The relevant part of Article 3 of Protocol No. 4 reads as follows:

> "1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national..."

116. The Court observes that the applicant raised this complaint before the Court for the first time in his observations of 2 November 2009 in reply to the Government's observations. Taking into consideration that the final domestic decision in the proceedings concerning the applicant's citizenship was the Supreme Court's decision of 11 March 2009, the Court notes that this complaint was lodged with the Court out of time and does not comply with the requirement of the six-month rule.

117. Accordingly, this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

1. Pecuniary damage

119. The applicant claimed a total of 9,000 New Azerbaijani manats (AZN) in respect of pecuniary damage for lost earnings. In support of his claim, the applicant produced copies of some payment checks that allegedly indicated the amount of his average monthly salary prior to his detention.

120. The Government contested the claim noting that the applicant had failed to substantiate his allegations. In particular, the Government argued that the produced checks had not been issued in the applicant's name.

121. Even assuming that there is a causal link between the damage claimed and the violations found, the Court observes that the payment checks submitted by the applicant were made in another person's name and nothing indicates that they had any connection with the applicant's alleged salary. The Court notes that the applicant did not submit any other evidence supporting this claim. In particular, he has not submitted any employment contract or other documents certifying his income. Therefore, the Court rejects the applicant's claim in respect of pecuniary damage.

2. Non-pecuniary damage

122. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage. The applicant further asked the Court to order the respondent Government to release him from detention and to amend the Azerbaijani law governing detention with a view to extradition.

123. The Government contested the claimed amount as unsubstantiated and excessive. They considered that, in any event, a finding of a violation would constitute sufficient just satisfaction.

124. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations and that the compensation has thus to be awarded. However, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 16,000 under this head, plus any tax that may be chargeable on this amount.

125. As regards the applicant's request concerning amendment of the domestic law and the applicant's release, the Court reiterates that its judgments are essentially declaratory in nature. In general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention (see *Nasrulloyev*, cited above, § 95). By finding a violation of Article 5 §§ 1 and 4 in the present case, the Court has established the Government's obligation to take appropriate general and individual measures to remedy the existing legal deficiencies. Whether such measures would involve amending the domestic law, issuance of binding clarifications by the domestic courts, or a combination of these and other measures, is a decision that falls to the respondent State. The Court, however, emphasises that any measures adopted must be compatible with the conclusions set out in the Court's judgment (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II, with further references).

B. Costs and expenses

126. The applicant also claimed AZN 4,627 and 2,524 United States dollars (USD) for various types of costs and expenses incurred in the domestic proceedings and in the proceedings before the Court (including AZN 3,600 and USD 2,524 for legal fees for legal services provided by different lawyers, AZN 655 for translation expenses, AZN 364 for postal expenses and AZN 8 for domestic court fees).

127. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government submitted that the applicant had failed to produce documents proving the payment of all legal fees alleged by him and that a contract submitted to the Court was not signed between the applicant and his lawyer, but between two lawyers. The Government also noted that the postal and translation expenses were excessive.

128. 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, the Court observes that not all the documents submitted by the applicant were relevant to his case and some of them were not clear in their substance so as to clearly show that the relevant expenses were reasonably and necessarily incurred. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads.

C. Default interest

129. 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, 13 and 5 §§ 1 and 4 admissible and the remainder of the application inadmissible;

2. *Holds* that the applicant's extradition to Uzbekistan would be in violation of Article 3 of the Convention;

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

4. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;

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

6. *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, EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage and EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on those amounts, which are to be converted into New Azerbaijani manats at the rate applicable on the date of settlement;
   (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;

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

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President