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

FIFTH SECTION

CASE OF F.N. AND OTHERS v. SWEDEN

(Application no. 28774/09)

JUDGMENT

STRASBOURG

18 December 2012

FINAL

18/03/2013

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

In the case of F.N. and Others v. Sweden,

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

Mark Villiger, *President,*
Angelika Nußberger,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 28774/09) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Uzbek nationals, Mr F.N., his wife and their two minor children (“the applicants”), on 28 May 2009.

2. The applicants, who had been granted legal aid, were represented by Mr K. Lewis, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Ms G. Isaksson, of the Ministry for Foreign Affairs.

3. The applicants alleged, in particular, that if deported from Sweden to Uzbekistan they would face a real risk of being arrested and subjected to treatment contrary to Article 3 of the Convention.

4. On 28 July 2009 the Acting President of the then Third Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicants should not be deported to Uzbekistan until further notice.

5. On 19 January 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) and to grant the applicants anonymity (Rule 47 § 3 of the Rules of Court).

6. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was assigned to the newly composed Fifth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are a family of four, all Uzbek nationals who were born in 1960, 1970, 1998 and 2006 and are currently in Sweden.

A. Background and proceedings before the national authorities

8. On 20 December 2005 the first three applicants arrived in Sweden and, on the following day, they applied for asylum and residence permits. The fourth applicant was born in January 2006 and joined the family's request for asylum. In interviews with the Migration Board (*Migrationsverket*) as well as in written submissions, the applicants claimed essentially the following. In 1995 the first applicant had been arrested when the authorities had raided a mosque while he was there. After three days in solitary confinement, he had been released with a travel ban. Before trial in 1998, he had been arrested and detained for six months, and was then convicted for being a Muslim separatist. He had been granted clemency because his lawyer had presented him as being handicapped. He had been put on the authorities' blacklist. On 13 May 2005 he had participated in a demonstration in Andijan as a member of *Akrami*, a non-political local organisation, when the police had opened fire against the demonstrators. He had been able to flee and to travel back to Tashkent by bus. Two days later the police had arrived at the applicants' home and had arrested him in a brutal manner. He had been taken to the police station where he had been threatened and tortured with the purpose of extorting a confession, but he had refused. After four days, his parents had been able to obtain his release through bribery. He had, however, been prohibited from travelling anywhere. Immediately after release he had been admitted to hospital due to the injuries he had sustained, but had left shortly afterwards as he had been warned against staying. He had been too afraid to return home and had, with the help of an acquaintance, gone into hiding for a period of six months. Subsequently, the same acquaintance had arranged the family's trip to Sweden.

9. Moreover, the second applicant had also been persecuted and summoned to appear at the prosecutor's office, where she had been questioned about the first applicant. During the interrogations she had been subjected to degrading treatment. Furthermore, her brother had been kept in prison for a long time and she had been informed that he would be released when he told the police where her family was hiding. After the arrest of the first applicant, the third applicant, who had been fragile from birth, had developed a fever and had stopped talking for several days. He had suffered

from headaches and difficulties in concentrating during his initial stay in Sweden.

10. The first applicant produced a copy of his driving licence, two employment books in original, belonging to him and the second applicant, issued by their employer in the Andijan region, and one summons in which he was called to appear as a witness. They also produced an undated copy of a medical certificate from the Clinic of Psychiatric Diseases in Tashkent which stated that the first applicant had been admitted to the hospital on 20 May 2005 complaining of headaches and dizziness, that he had been diagnosed with the after-effects of a head injury and that he had been released on 7 June 2005. The applicants further produced two posters of wanted persons issued by the Internal Affairs Administration in Tashkent. The posters showed photographs of persons wanted by the police after the events in Andijan on 13 May 2005. On the posters, the first applicant's photograph and name appeared among others.

11. On 25 March 2007 the Migration Board rejected the request. Although the applicants had not proved their identities, it accepted that it was probable that they were of Uzbek origin. It then considered that the first applicant did not risk persecution because of the incidents in 1995 and 1998, noting that he had been granted clemency. Next, the Board found the first applicant's claims about how he had left Andijan after the demonstration in 2005 remarkable, noting that he alleged that he had been able to travel home by bus after the demonstration despite the roads having been closed. Moreover, it noted that he had claimed that he had been arrested after the demonstration because he had been convicted in 1998. The Board did not find this credible as it questioned that the police would have arrested someone whom they had not identified as a participant in the demonstration. It further considered that his statement concerning police torture in order to obtain a confession that *Akrami* had been responsible for the demonstration was not consistent with independent sources on the event. Against this background, the Board found that it was not likely that he had been present in Andijan at the time of the demonstrations. Turning to the documents he had produced, the Board considered that the posters of persons wanted for the events in Andijan had very low evidentiary value as the applicant's photograph differed from the others in size, and the text and placing of the information about the applicant was inconsistent with that of the other wanted persons. Furthermore, it noted that the summons produced clearly stated that he had been called to appear before the authorities as a witness and not as a suspect. It also found it remarkable that the summons had been completed in Russian by an official Uzbek authority. Moreover, it noted that the authorities had not come for him in person but had sent the summons to him.

12. The Board found that the second applicant had failed to substantiate her story as she had produced no documents in support of it and as she had

been unable to recall, for example, how many times she had been interrogated. It found it questionable that she had not been aware of the first applicant's involvement with *Akrami*, or what had happened during the demonstration. Moreover, the Board found that the fourth applicant was healthy and that the third applicant, who had both physical and social difficulties, had improved significantly as from the autumn of 2006. It further noted that the applicants had not produced any medical certificates to show that the third applicant needed medical treatment. Hence, in conclusion, the Board found that the applicants had failed to show that they were at risk of being persecuted if returned to Uzbekistan and thus found no reason to grant them leave to remain.

13. The applicants appealed to the Migration Court (*Migrationsdomstolen*), maintaining their claims and adding that during a search of their home in 2005 the police had taken most identification documents from them. However, their identities could be established through the documents produced. The first applicant then submitted that his detention in 1995 had primarily been invoked to explain how he had been placed on the authorities' blacklist of suspected Islamists. Due to that he had also had difficulties finding a job in Tashkent for which reason he had started commuting to Andijan. Moreover, after the events in Andijan in 2005, the Uzbek regime's persecution of suspected Islamic extremists had increased. The first applicant claimed that the police had been able to identify him after the demonstration because friends who had been arrested had given his name under torture. The police had also accused him of having encouraged people to demonstrate and of having been armed during the demonstration. He had only been released because he had bribed the police. As regards the posters of people wanted for the Andijan events, the first applicant claimed that they had probably been issued by the local police after he had left the country. Moreover, several names were not in alphabetical order. Since the summons had also been issued after he had left Uzbekistan, he had reason to believe that the authorities continued to have a special interest in him. The fact that they were in Russian was simply because many officials still preferred to use that language. He stressed that the family had left the country illegally, that he was sought by the authorities on suspicion of extremist crimes and risked 20 years' imprisonment and torture. Furthermore, there were impediments to his deportation since the Uzbek authorities would arrest him upon arrival because he had applied for asylum in Sweden.

14. The second applicant alleged that the police had suspected her of having been involved in the first applicant's political activities, but she had only known that he had participated in several demonstrations and political meetings. In 1997 they had moved to Andijan because of their work there but they had kept their house in Tashkent, where they were registered, and went there once a week. After she had received a summons to appear before

the prosecutor, she had been forced to sign a travel ban. Her brother had been sentenced to eight years' imprisonment, convicted of the same crime of which the first applicant had previously been accused. The third applicant stated that he visited a psychologist on a regular basis and that he was stressed and anxious.

15. The first applicant produced a copy of a decision by the Ministry for Interior Affairs of Uzbekistan, dated 20 June 2005 and signed by two military officers. It stated that a search of the first applicant's house in the city of Tashkent had resulted in the discovery of extremist religious material and six Kalashnikov cartridges and that he was considered to promote separatist opinions in order to destabilise the situation in the region. It further stated that he had disappeared and that he was wanted.

16. The third applicant produced two medical certificates. The first, dated 23 November 2007, by a psychologist and a counsellor at the Child and Youth Psychiatric Centre ("BUP") stated that the family had been in contact with the Centre since August 2007 and that the third applicant suffered from headaches, anxiety and learning and concentration difficulties. The second, dated 28 May 2008, by a child neurologist and assistant senior physician at a Neuropediatric Clinic, stated that the neurological examination of the third applicant showed evidence of a brain injury from birth and low learning ability and that his difficult situation both at school and at home had caused his headaches.

17. On 12 December 2008 the Migration Court, after having held an oral hearing, rejected the applicants' appeal. It first stated that, although the applicants had not presented proof of identification, they were most likely from Uzbekistan. However, due to the lack of identification documents, their identity could not be determined and for that reason, it could not be established whether the documents produced referred to the applicants. Moreover, due to the poor quality of the documents, they could not be regarded as having any significant value as evidence. The court then considered that the first applicant's story about the events before and after the demonstration in 2005 had been vague and did not appear to show first-hand experience. It also noted that, contrary to information that the first applicant had given, the second applicant had stated that he had participated in several demonstrations. Moreover, it observed that during the hearing before the court, the applicants had changed their story as regards, for example, how the first applicant had been identified by the police after the demonstration, details concerning his activities with *Akrami*, for how long the family had been persecuted and in which part of Uzbekistan the family had been living. The court found this to be an escalation of their asylum story in order to try to strengthen it and it also considered their stories to be marked by inconsistencies and contradictory information. Thus, they were not credible. As concerned the third applicant, the court found that his anxiety and learning disabilities had not improved much while in Sweden.

Taking into account that he would be able to receive medical care in his home country, it considered that his psychosocial development and state of health were not such that the applicants could be granted residence permits on this ground. Having regard to all circumstances of the case, the court concluded that the applicants had failed to show that they were at risk of being persecuted or killed if returned to Uzbekistan and that there were no other grounds on which to grant them leave to remain.

18. The applicants appealed against the judgment to the Migration Court of Appeal (*Migrationsöverdomstolen*), maintaining their claims and adding that, according to international sources, failed asylum seekers needed luck to avoid being discovered upon return and their situation was very uncertain. Thus, there was a presumption that failed asylum seekers risked persecution if returned to Uzbekistan. The applicants further stressed that they had been ill-treated in Uzbekistan and still suffered from this. Moreover, the Migration Court had not properly examined all of their written evidence.

19. On 15 April 2009 the Migration Court of Appeal refused leave to appeal.

20. The second, third and fourth applicants requested the Migration Board to re-examine their case and added to their earlier claims that the third applicant was suffering from severe depression and had been very sensitive and had shown symptoms of post-traumatic stress disorder. They also alleged that they had been informed that the first applicant had been accused of having started the disturbances that occurred on 13 May 2005 in Andijan and that charges had been brought against him. Thus, their need for protection had become even greater.

21. On 28 May 2009 the Migration Board decided not to re-examine the applicants' grounds for residence permits as they had not invoked any new circumstances of importance. Moreover, it found that there were no impediments to their deportation.

22. The applicants lodged a new request for re-examination to the Migration Board and added to their previous claims that the first applicant had been a supervisor at a cotton plant in Andijan. He had taken his workers to the demonstration on 13 May 2005 where two of them had been badly injured and died. The deceased persons' parents had reported the first applicant to the police, claiming that he had forced their children to attend the demonstration and that he had also organised secret meetings against the President and threatened to dismiss their children unless they participated in his actions against the President. Due to this, the first applicant alleged that he had been charged and a criminal case was pending against him. His brother-in-law, who had worked with him, had already been sentenced to eight years' imprisonment despite being innocent. The first applicant was also suspected of other crimes and had only just escaped being imprisoned. If returned, he would be killed immediately.

23. On 16 June 2009 the Migration Board decided not to re-examine the applicants' grounds for residence permits as the grounds invoked had in essential parts already been considered and the applicants had failed to give any reasons for why they had not invoked the new information before. Thus, there were no impediments to their deportation.

B. Application of Rule 39 of the Rules of Court and further developments in the case

24. On 28 July 2009, upon request by the applicants, the Acting President of the Third Section applied Rule 39 of the Rules of Court until further notice. On the following day, the Migration Board stayed the enforcement of the deportation order of the applicants until further notice.

25. On 30 July 2009, the Migration Board sent a request to the Uzbek Embassy in Riga for the issue of travel documents for the applicants to facilitate their return. In its letter to the Embassy, the Migration Board stated that the applicants' request for residence permits had been rejected and that they were obliged to leave Sweden. Since they did not have their passports, the Embassy was asked to assist in facilitating their return. Copies of the first applicant's driving licence and employment book, the second applicant's employment book and the third and fourth applicants' birth certificates were appended as were three photos of each applicant. It would appear that no reply was received from the Uzbek Embassy.

26. In June 2010 the applicants again lodged a request with the Migration Board for re-examination of their case due to new circumstances. While maintaining their earlier grounds, they referred to numerous international sources which indicated that failed asylum seekers who returned to Uzbekistan were at real risk of being arrested and interrogated, possibly also ill-treated. Moreover, since it was a criminal act according to Article 223 of the Uzbek Criminal Code to leave the country without an exit visa, as they had done, they would risk imprisonment on this basis as well. Since the first applicant had been involved in the demonstrations in Andijan and was wanted for crimes in connection to this, he was at even greater risk. He was also suspected of religious extremist crimes. Another new circumstance was that the first applicant had become a member of the opposition party *Birdamlik* in Sweden and had participated in three demonstrations in Sweden during 2010 against the Uzbek regime. He was registered on the party's membership list in Sweden. Since there were Uzbek spies in Sweden, they were sure that the Uzbek authorities knew about his membership. They added that the second applicant's brother was still imprisoned in Uzbekistan and that relatives of the applicants were still today visited by the authorities and asked about the applicants' whereabouts.

27. In December 2010 the applicants submitted to the Migration Board that the first applicant was no longer a member of *Birdamlik*. The party had started to publish information on internet, including photos of demonstrations, which worried the applicants. The applicants submitted a certificate from *Birdamlik*, dated 10 December 2010, which stated that the applicant had been a member since 2009 but had now left the party. Moreover, the applicants claimed that the first applicant's parents had been visited by the authorities in Uzbekistan three to four times during the previous two months and been informed that the authorities knew about the first applicant's activities and that he risked life-time imprisonment. However, if he returned voluntarily the sentence could be reduced to less than 20 years. The first applicant no longer dared to have any contact with his parents.

28. On 21 December 2010 the Migration Board rejected the application for re-examination. It first noted that the first applicant's activities in *Birdamlik* were unclear as he had not specified what he had done and that it was thus also unclear whether the Uzbek authorities knew about this. The first applicant's claim that there were Uzbek spies in Sweden was his own speculation. Moreover, he had not been politically active before leaving Uzbekistan and he had now left the party. As concerned the information from international sources, the Board noted that the applicants could have invoked this earlier in the proceedings. In any event, it noted that the applicants had not shown that they had left their country illegally and that their credibility had previously been questioned by the Board and the Migration Court. In the Board's view, it was more likely that the applicants had left the country legally with their own passports. Moreover, the Board considered it possible to return to Uzbekistan from Sweden, for example, via Russia or Kazakhstan from where Uzbeks did not need visas, without attracting the attention of the Uzbek authorities. Furthermore, the Board noted that it had not informed the Uzbek Embassy that the applicants were former asylum seekers. Since there were other reasons why the applicants might be in Sweden, such as for studies, work or family reasons, and the Migration Board was the central authority in Sweden for all migration issues, it was not unusual for persons to need the Migration Board's help to obtain travel documents from their home country's embassy. Also, due to Schengen cooperation, the fact that a Swedish authority assisted the applicants did not necessarily mean that they had been in Sweden all the time. The Board further observed that it was common for Uzbeks to work outside their country, even for long periods of time, and that this was accepted by the authorities. Thus, the Board concluded that no such new circumstances which could entail an impediment to the enforcement of the deportation order had been invoked.

29. The applicants appealed to the Migration Court, maintaining their claims and adding that *Birdamlik* was prohibited in Uzbekistan and that its

members were harassed. The first applicant had, among other things, participated in a demonstration in central Stockholm where he had been on hunger strike for three days. As concerned the invoked information from international sources, this dated from after March 2009 when their deportation order had gained legal force. Moreover, in their view, it was evident that the Uzbek authorities knew that the family had been asylum seekers in Sweden now that the Migration Board had contacted the Embassy. To assume otherwise was far-fetched, in particular as the family had left the country illegally in 2005 and having regard to relevant international country information.

30. On 22 March 2011 the Migration Court rejected the appeal. It did not question that the first applicant had been a member of *Birdamlik* for a period of time but found that his activities in the party had been very limited and that he had not shown that it had come to the Uzbek's authorities' knowledge. The court then reviewed the international sources invoked and concluded that they showed that people who returned to Uzbekistan could be exposed to pressure and, in some case, serious abuse. However, they did not support the contention that all returnees risked such serious abuse that they should be granted residence permits. The court further considered that the fact that the Migration Board had contacted the Uzbek Embassy for travel documents did not necessarily mean that the embassy now knew that the applicants had applied for asylum in Sweden. It further noted that the applicants had not plausibly proved their identities. Thus, the court could not assume that the applicants' correct identity information had been given to the Embassy. Furthermore, the court considered that the applicants could arrange for their return themselves, which they were actually responsible for doing, and that in such a case the Uzbek authorities need not find out where they had been or what they had done. In conclusion, the court found that the applicants had failed to show that they were of special interest to the Uzbek authorities or that they would risk serious abuse upon return.

31. The applicants appealed to the Migration Court of Appeal which, on 13 May 2011, refused leave to appeal.

32. To the Court, the applicants produced three more medical certificates, two dated September 2011, by a psychologist at BUP, and one by a family counsellor. The two by the psychologist stated that the applicants were suffering from their uncertain situation and were in poor health. The third applicant showed symptoms of Post-Traumatic Stress Disorder and depression. The fourth applicant had been diagnosed as reacting to severe stress and problems in relation to her upbringing.

33. The medical certificate by the family counsellor stated that the family had received counselling at a Family Care Centre between March/April 2006 and the end of 2007 due to concerns for the children because both parents were very stressed and depressed. The first applicant had a deep feeling of guilt due to what he had exposed his family to and was

worried for his parents in Uzbekistan. He had recounted, in a very fragmented way, his imprisonment in his home country and the time before they had fled. The counsellor had felt that it had been too difficult for him to remember everything. The second applicant had suffered hair loss due to the stress, was very worried about the family's situation, in particular the children, and was depressed. Both parents had been very afraid that someone from Uzbekistan would find out that they were in Sweden. They did not feel safe.

II. RELEVANT DOMESTIC LAW

A. The Aliens Act

34. The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as "the Aliens Act"), as amended on 1 January 2010. The following refers to the Aliens Act in force at the relevant time.

35. Chapter 5, Section 1, of the Aliens Act stipulates that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, Section 1, of the Aliens Act, the term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2, of the Aliens Act).

36. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) to allow him or her to remain in Sweden (Chapter 5, section 6 of the Aliens Act).

37. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special

provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, Section 1, of the Aliens Act). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, Section 2, of the Aliens Act).

38. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, Section 18, of the Aliens Act, where new circumstances have emerged that mean there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced. If a residence permit cannot be granted under this provision, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, Sections 1 and 2, of the Aliens Act, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, Section 19, of the Aliens Act).

39. Under the Aliens Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3, and Chapter 16, Section 9, of the Aliens Act).

B. Comments by the Head of the Legal Department of the Migration Board concerning the situation in Uzbekistan

40. On 6 May 2011 the Head of the Legal Department of the Migration Board issued a comment on the situation in Uzbekistan which, *inter alia*, noted that Uzbekistan was a closed country which rendered it difficult to obtain information about what happened there. International organisations were not allowed to work in the country and foreign representations were more or less isolated in Tashkent. However, on the basis of information collected by the Migration Board during 2010, the Head of the Legal Department noted that it was possible to identify some vulnerable groups in Uzbekistan, which ran a high risk of being persecuted, *inter alia*, political opponents, certain religious groups, all persons having any connection to the Andijan massacre in 2005, and relatives of persons from these groups. He further observed that the level on which an activity was carried out

appeared to be less important in attracting the authorities' attention. In this respect, he stressed that torture was systematic at police stations, in detention and prisons. Thus, he stated that an individual risk assessment had to be made in each case and that great care should be taken when assessing whether an asylum seeker's story, in itself, was enough to fulfil the criteria for international protection.

41. As concerned *sur place* activities, the Head of the Legal Department observed that through the *Mahalla* system in Uzbekistan (local neighbourhood committees), the authorities received continuous reports on who moved in and out of each neighbourhood, where they went or where they came from. Moreover, the Uzbek National Security Bureau (SNB) was very active and influential also outside the country's borders. The Head of the Legal Department further noted that there was information to the effect that the Uzbek authorities considered Sweden to be a safe haven for political opponents and religious extremists. In his view, this did not mean that it was impossible to enforce removal decisions to Uzbekistan but that a careful evaluation had to be made in each case of the *sur place* activities invoked.

42. Lastly, the Head of the Legal Department considered that the fact that the Migration Board contacted Uzbek foreign representations in order to obtain travel documents to enable Uzbek nationals to return, would generally not create an impediment to the enforcement of the removal order. However, which measures could be taken would depend on the circumstances of the individual case, keeping in mind the information about systematic violations of human rights against persons in a vulnerable situation in Uzbekistan and the lack of access to information concerning returns to the country. This information should also be taken into account when deciding on the manner in which a removal should be enforced.

III. RELEVANT INFORMATION ON UZBEKISTAN

A. General country information

43. In its Concluding Observations upon Uzbekistan of 26 February 2008, the United Nations Committee against Torture set out its concerns about, *inter alia*, "numerous, ongoing and consistent" allegations concerning the 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. Furthermore, after setting out information about the numerous allegations of excessive use of force and ill-treatment by Uzbek military and security forces during the May 2005 events in Andijan (when at least several hundred protesters were killed by the Uzbek authorities), the Committee reported that it had received credible

reports that some persons who had sought refuge abroad and had been returned to the country had been kept in detention in unknown places and possibly subjected to treatment in breach of the Convention.

44. In its Concluding Observations upon Uzbekistan of 7 April 2010, the United Nations Human Rights Committee set out various concerns, including, *inter alia*:

> "the continued reported occurrence of torture and ill-treatment, the limited number of convictions of those responsible, and the low sanctions generally imposed, including simple disciplinary measures, as well as indications that individuals responsible for such acts were amnestied and, in general, the inadequate or insufficient nature of investigations on torture/ill-treatment allegations."

The Committee also concluded that it remained "concerned about the need for individuals to receive an exit visa in order to be able to travel abroad".

45. In January 2012, Human Rights Watch issued its "World Report 2012: Uzbekistan" which stated, *inter alia*, the following:

> "Uzbekistan's human rights record remains appalling, with no meaningful improvements in 2011. Torture remains endemic in the criminal justice system. Authorities continue to target civil society activists, opposition members, and journalists, and to persecute religious believers who worship outside strict state controls. ... Freedom of expression remains severely limited. ... Reacting to the pro-democracy Arab Spring movements, the Uzbek government increased the presence of security forces across the country and widened its already-tight control over the internet. ... Authorities continue to persecute anyone suspected of having participated in, or witnessed, the atrocities [in Andijan]. The Uzbek government also continued to intimidate families of Andijan survivors who have sought refuge abroad. Police subject them to constant surveillance, call them for questioning, and threaten them with criminal charges or home confiscation. ...
>
> Torture remains rampant in Uzbekistan and continues to occur with near-total impunity. Rights of detainees are violated at each stage of investigations and trials, despite habeas corpus amendments that went into effect in 2008. The Uzbek government has persistently failed to meaningfully implement steps to combat torture that the United Nations special rapporteur in 2003 and other international bodies have recommended."

46. On 21 May 2012 the Swedish Migration Board published its report "Vulnerable Groups in Uzbekistan – Report from Investigation Missions" (*Utsatta grupper i Uzbekistan – rapport från utredningsresor*)[1]. The report noted that none of the consulted sources foresaw any positive developments regarding the human rights situation in Uzbekistan. The widespread use of torture continued to be reported, the justice system was not independent and police abused their powers, *inter alia*, by calling suspects to interview as witnesses in order then to accuse them of crimes. Unanimous sources confirmed the vulnerability of those risk categories previously indentified

[1] It is based upon information collected during missions to Kyrgyzstan and the Russian Federation in November/December 2011 and February/March 2012, respectively.

by the Board (namely political opponents, independent journalists, Human Rights activists, certain religious groups, all persons with any connection to the Andijan event, relatives of persons from these groups and women from these groups). It was further noted that the Uzbek regime was repressive and had strong control over its population and several sources described the Uzbek exercise of authority as arbitrary and unpredictable. It was observed that Andijan, and the remainder of Fergana Valley, was particularly strictly controlled whereas the authorities' control in Tashkent was somewhat lower. The report further stated that it was clear that the SNB was well-financed and influential both inside and outside Uzbekistan and that its infiltration into the *Mahalla* system made it possible for the authorities to know what citizens did and how they moved.

B. The situation for Uzbeks returning to their country

47. In 2007 the Migration Board posed questions to the United Nations High Commissioner for Refugees (UNHCR) concerning the situation of failed asylum seekers being returned to Uzbekistan. In its reply of 6 August 2007, the UNHCR stressed that they were not present in the country and had no specific information on the treatment of either asylum seekers returned after their cases were properly rejected or with regard to Uzbeks who returned after departing illegally or overstaying their visa. However, they stated that to avoid repercussions based on imputed political opinion, returns should be implemented in a way that avoided identifying claimants as rejected asylum seekers. This was particularly important with regard to potential asylum countries, for example Sweden or Norway, where many opposition leaders were based, rather than from neighbouring countries to which there was a mixed migratory movement. The UNHCR added that reports indicated that the Uzbek justice system was arbitrary, corrupt and subject to political manipulation and that beatings and torture were widespread, thus asylum decisions should err on the side of caution.

48. The Country of Origin Information Centre (*Landinfo*), an independent human rights research body set up to provide the Norwegian immigration authorities with relevant information, has produced a thematic note concerning the situation for Uzbek asylum seekers returning to Uzbekistan, dated 20 May 2011. It starts by observing that detailed, concrete information is scarce, due to the lack of international presence in the country, but that most sources claim that the situation upon return for Uzbeks who have applied for asylum in Western countries is problematic. It notes that the UNCHR has recommended that Uzbek Embassies should not be informed that a return concerns an asylum seeker and that returns to Uzbekistan should be weighed with extreme caution and care. With reference to the UNHCR and Human Rights Watch, *Landinfo* further observes that Uzbeks who left the country after the events in Andijan still

faced risks, such as detention, torture, threats and interrogation, upon return. Moreover, their relatives in Uzbekistan were harassed in various ways to pressure them to return to the country. All sources also stressed that Uzbekistan was a "surveillance society" where the authorities closely watch over its citizens. The surveillance is carried out both by the SNB and through the *Mahalla* system. The fact of having been outside the country, and applied for asylum would attract the attention of the authorities and would be considered negative, some would even see such persons as traitors. The person might not necessarily risk being tortured but could be interrogated and exposed to pressure of various sorts. In this respect, it was noted that if attempts were made to verify the identity of asylum seekers at an Uzbek embassy, the Uzbek authorities would be informed.

49. In the Swedish Migration Board's report from May 2012, it was noted that its sources unambiguously stated that former asylum seekers who returned to Uzbekistan might be suspected and have serious allegations brought against them, as the asylum application as such was significant to the Uzbek authorities. However, while some sources stated that applying for asylum was looked upon as an act of treachery and that returning former asylum seekers were therefore severely punished, other sources stated that persons who had applied for asylum for social or economic reasons were not targeted, with the exception of persons who were already blacklisted by the authorities, and that there were no known cases where such persons had been punished. Thus, although there was not enough evidence to conclude that returning former asylum seekers who had not previously come to the attention of the Uzbek authorities risked being subjected to reprisals due to their asylum application upon return, a high degree of caution in return procedures was still urged. In addition, it was noted that the Uzbek regime's negative view of Sweden appeared reasonable and relevant to consider in this context.

50. In its submissions to the United Nations Human Rights Committee dated 28 April 2009 and January 2010, Amnesty International set out that illegal exit abroad or illegal entry into Uzbekistan, including overstaying permission to travel abroad or failure to renew it, were punishable under Article 223 of the Criminal Code by imprisonment from three to five years or in aggravated circumstances by up to ten years' imprisonment. Returned asylum seekers were considered to be particularly vulnerable to being charged under Article 223, as many would not have renewed their permission to travel abroad.

51. In its submissions to the United Nations Human Rights Committee of June 2009 and February 2010, Human Rights Watch stated that a distinct concern relating to torture and ill-treatment was that of Uzbek refugees and asylum seekers forcibly returned by neighbouring countries, despite the risk of torture and ill-treatment that they faced upon return.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. The applicants complained that if they were deported from Sweden to Uzbekistan they would be persecuted, arrested, ill-treated and maybe even killed, primarily because the first applicant had participated in the demonstration in Andijan in May 2005 and was still sought by the Uzbek authorities. They also claimed that the third applicant was in very poor health and would not receive proper medical treatment in Uzbekistan. They invoked Article 3 of the Convention, which reads as follows:

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

A. Admissibility

53. The Court notes that 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

1. The parties' submissions

(a) The applicants

54. The applicants maintained that they faced a real and personal risk of being persecuted and ill-treated, contrary to Article 3 of the Convention, if forced to return to Uzbekistan. They stressed that they had invoked their need for protection since their arrival in Sweden and throughout the national proceedings as well as before the Court. The risks against them emanated from the first applicant's participation in the events in Andijan in 2005, where he had been arrested and tortured by the Uzbek authorities. He was now suspected of crimes in relation to this. Moreover, the applicants had left Uzbekistan illegally and they had been in Sweden as asylum seekers since December 2005 and the Uzbek authorities were aware of this since the Migration Board had contacted the Uzbek Embassy in Riga. Furthermore, and although for a limited time, the first applicant had been involved politically in *Birdamlik* in Sweden and the Uzbek authorities knew about this since they had approached the first applicant's parents in Uzbekistan

about his activities. The authorities had probably been informed by an Uzbek spy in Sweden who had met the first applicant.

55. Noting that their credibility had been questioned by the domestic authorities and the Government, the applicants pointed out that the protocols from the Migration Board's interviews with the first and second applicants had never been communicated to them. Thus, they had been prevented from reviewing, and commenting on errors, in these protocols before the Migration Board's decision. Moreover, as appeared from medical certificates submitted to the Court, the applicants suffered from both physical and psychological trauma following their experiences in Uzbekistan and their ill-health had deteriorated further due to their stressful and uncertain situation in Sweden. Thus, the counsellor, who had met with the first applicant over almost two years (see above § 33), had observed that he had problems with his memory and concentration due to the stress. She also had the impression that the first applicant had lacked the strength to remember everything that had happened to him and his family in Uzbekistan. To the applicants, this was already evidence of what they had suffered in their home country but also that their specific mental health issues should be taken into account when assessing the credibility of their asylum story.

56. As concerned their asylum story, the applicants clarified that the fact that the first applicant had a criminal record from his conviction in 1998 was an aggravating circumstance which increased the risks for the applicants if returned. Moreover, they noted that the Government had not questioned the authenticity of their employment books and they maintained that they had worked at the factory in Andijan until 2005. The first applicant also submitted that his account of what had happened during the demonstration in Andijan was not vague or inconsistent but that he had provided the Swedish authorities with more details as the proceedings progressed, to give a full picture. Hence, some of his friends had been arrested during the demonstration and had later told the authorities about his participation. Relatives of his killed co-workers had also told police about his involvement and the police had indicated that they had a video from the demonstration in which he featured. The fact that he had previously been convicted could have been a further contributing factor to his arrest. According to the applicants, this was a credible explanation for how the police had identified the first applicant.

57. The applicants further maintained that they had commuted between their home in Tashkent and a rented apartment in Andijan between 1998 and 2005, when they were working in Andijan. Moreover, the first applicant had been involved with *Akrami* during these years and had helped the organisation in various ways and participated in their meetings. Furthermore, they had left Uzbekistan illegally, bribing a conductor on the train to Russia to avoid passport controls.

58. As concerned the written evidence invoked, the applicants first stressed that they had done all they could to prove their identities. They had, *inter alia*, submitted the originals of their employment books and the third applicant's birth certificate. To their knowledge all the documents submitted by them were authentic. The decision by the Uzbek Ministry for Interior Affairs had been sent to them by the second applicant's father who had obtained it from his lawyer who, in turn, had obtained it from the Ministry. The medical certificate from Tashkent stated that the first applicant had been beaten by unknown men, since the doctor would himself have been at risk of ill-treatment had he written that the injuries had been caused by the authorities.

59. Thus, the applicants held that there were many factors, including the written evidence in their case, to support their claim that they would risk ill-treatment upon return to Uzbekistan. In this respect, they were convinced that the Uzbek authorities were well aware of whom they were and that they had been asylum seekers in Sweden because the Swedish Migration Board had contacted the Uzbek Embassy in Riga. The Government's submissions to the contrary were not convincing, in particular as the first applicant was already wanted in Uzbekistan due to his involvement in the demonstrations in Andijan.

(b) The Government

60. The Government submitted that the applicants had not substantiated their claims and, thus, the application did not reveal a violation of Article 3 of the Convention. They stressed that the Swedish authorities applied the same kind of test when considering applications for asylum as the Court does when it examines complaints under Article 3. Moreover, the national authorities had made a thorough examination of the applicants' case and great weight should therefore be attached to their findings. This was in particular so since they were specialised bodies with expertise in the field of asylum law and practice.

61. In the Government's view, the applicants' submissions to the Court did not give reason to alter the domestic authorities' conclusions. To begin with, the applicants had not proved their identities, which reduced their general credibility and vastly reduced the value of the evidence submitted by them since it could not be concluded that those documents actually related to them. In any event, there were reasons to question the authenticity of the document said to be a decision by the Uzbek Ministry for Interior Affairs since it was of a simple nature and did not contain any information about which court or which judge had ordered the alleged search of the applicants' house. Moreover, it did not state which police district was responsible for handling the matter and the letterhead lacked the telephone and fax numbers of the issuing authorities. According to the Migration Board, documents of this kind issued by Uzbek authorities normally

contained more detailed information regarding both the suspect and the issuing authority. Likewise, the Government observed that the medical certificate issued by a hospital in Tashkent did not contain an assessment regarding the cause of the injuries or when they had been sustained. It also stated that the first applicant had been beaten by unknown men. Thus, the Government considered that the certificate did not substantiate that he had been tortured under interrogation by the police.

62. Turning to the applicants' credibility, the Government held the general view that the first applicant's account was not coherent, contained inconsistencies and had been altered in certain regards. Thus, he had given various explanations for why he had been arrested two days after the demonstration in Andijan and the Government did not find his explanation of having been in a poor state upon arrival in Sweden to be convincing or sufficient to explain all inconsistencies. They therefore strongly questioned whether he had participated in the event. The Government also questioned that the first applicant had been hired by the largest state-owned factory in 1997 if, as he claimed, he had been prosecuted in 1995. Moreover, they found the applicants' account of how they had left Uzbekistan not to be credible, considering the rigorous Russian border controls. They also questioned the first applicant's involvement with *Akrami* as he had submitted nothing to substantiate his membership. As concerned his membership in *Birkamlik*, the Government considered this to be a minor activity which was, in any event, finished. Furthermore, they held that the first and second applicants had given accounts which were partially inconsistent with one another, weakening their general credibility further. This had also been observed by the Migration Court during the oral hearing.

63. As concerned the possibility to enforce the deportation order against the applicants, the Government noted that 95% of all asylum seekers in Sweden lacked a valid passport and that therefore arrangements for obtaining a valid travel document had to be made. However, in no instance would the authorities of an asylum seeker's home country be informed that the person had applied for asylum in Sweden, which was also true in the applicants' case. According to the Government, there could be many reasons for Uzbek citizens to be in Sweden, such as for studies, work, family reasons or visits, and which in turn could require help by the Migration Board to obtain travel documents from an Uzbek embassy. This was particularly so since there was no Uzbek embassy in Sweden and the Migration Board was the central migration authority, handling all sorts of migration issues. In relation to the applicants, the Government stressed that the Migration Board, Migration Court and Migration Court of Appeal had considered the applicants' claims concerning the risks involved in returning them to Uzbekistan following the contact with the Uzbek Embassy but found that there was no real risk of treatment contrary to Article 3 of the Convention upon return. The Government relied on these findings.

64. The Government further noted that according to international sources, returnees from the Russian Federation were seldom of interest to the authorities, but that the situation might be different for someone returning from a Western European country. However, simply having been in the West was not likely to incur consequences for returnees. About three million of Uzbekistan's 27 million citizens were abroad and the authorities were hardly interested in persecuting all of them. The Government also referred to the case of *N.M. and M.M. v. the United Kingdom* (decision, nos. 38851/09 and 39128/09, 25 January 2011), where the Court had found that unless there was a substantiated risk upon return, an expulsion to Uzbekistan was not of itself contrary to Article 3. Thus, since the applicants had not substantiated that they would be of particular interest to the Uzbek authorities upon return, there was no obstacle to their deportation. Lastly, the Government emphasised that it was not unreasonable to demand that the applicants abide by Swedish law and cooperate with the Migration Board to facilitate their safe return to Uzbekistan.

2. The Court's assessment

(a) General principles

65. The Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, *inter alia*, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102 Series A no. 215, p. 34). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 of the Convention implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008).

66. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (see *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

67. The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when

information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, *inter alia*, *N. v. Sweden*, no. 23505/09, § 53, 20 July 2010 and *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007). In principle, the applicant has 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 of the Convention. Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *NA. v. the United Kingdom*, no. 25904/07, § 111, 17 July 2008).

68. As regards the general situation in a particular country, the Court has held on several occasions that it can attach a certain importance to information contained in recent reports from independent international human rights protection associations or governmental sources. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3. Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see, for example, *Saadi*, cited above, § 131, with further references).

69. Thus, in order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicants to Uzbekistan, bearing in mind the general situation there and their personal circumstances (see *Vilvarajah and Others*, cited above, § 108).

(b) The applicants' case

70. The Court observes, from the outset, that the Government have questioned the applicants' credibility, as did the national authorities in Sweden, whereas the applicants have maintained that they have given a coherent and true account of what happened to them in Uzbekistan. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one and it accepts that, as a general principle, the national authorities are best placed to assess the credibility of the applicants if they have had an opportunity to see, hear and assess the demeanour of the individuals concerned (see, *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010). In this respect, the Court observes that the applicants' case was examined on the merits by the Migration Board, which interviewed the first and second applicants, and by the Migration Court, which held an oral hearing. Moreover, the Migration Court of Appeal considered their appeal but found no grounds on which to grant leave to appeal. Furthermore, after the Court's decision to apply Rule 39 of the Rules of Court, the applicants requested a re-examination of their case on

the basis of new information. Thus, the new information invoked by them was considered by the Migration Board and the Migration Court and, in the last instance, the Migration Court of Appeal which refused leave to appeal. The Court notes that the applicants were represented throughout both sets of proceedings by legal counsel who filed several detailed submissions on their behalf. Thus, the Court finds no indications that the domestic proceedings lacked effective guarantees to protect the applicants against arbitrary *refoulement* or were otherwise flawed. Against this background, it will therefore continue by examining whether the information presented before this Court leads it to depart from the domestic authorities' conclusions.

71. In this respect, the Court first notes that the Swedish authorities and Government have found most of the documents from Uzbekistan invoked as evidence by the applicants to be of poor quality and thus of low evidentiary value. Noting that the national authorities have seen some of these documents in original, the Court, which has only seen copies, does not find itself to be in a position to question the findings in this regard. However, it does consider that the applicants' responses to some of the Swedish authorities' grounds for questioning the documents appear credible and are, moreover, supported by information from international sources. Hence, the explanation that the medical certificate from a Tashkent hospital does not state that the first applicant had been tortured by the Uzbek authorities because the doctor would then be at risk of repercussions from the authorities seems reasonable. Thus, although the certificate cannot be considered as proof of ill-treatment by the authorities, it is an indication that the first applicant was hospitalised at that time. Moreover, the Swedish authorities' arguments that the first applicant had been called as a witness, not a suspect, and that the police had not come for him in person, was explained by the applicants as being a method used by the Uzbek authorities. They would call persons as witnesses to get them to present themselves at the police station where they would then be accused of having committed crimes. The Court notes that this explanation is supported by the report published by the Migration Board itself (see § 46) and consequently should not be dismissed as being improbable, although it does not prove the authenticity of the summons.

72. Here the Court notes that the national authorities have not questioned the first and second applicants' employment books or the third applicant's birth certificate which were all presented in original. However, they have stated that since the applicants have failed to establish their identity, these documents cannot be given much value as evidence. Although the Court agrees that the best way for asylum seekers to prove their identity is by submitting a passport in original, this is not always possible due to the circumstances in which they may find themselves and for which reason other documents might be used to make their identity probable. In the present case, the employment books contain photographs of the applicants

which have been stamped and other documents, such as a copy of the first applicant's driving license and the original of the third applicant's birth certificate, have been presented. All of these documents state the same names for the applicants and some contain their photographs. The Court further notes that the fourth applicant was born in Sweden and has been registered there in accordance with the personal details furnished by her parents. Against this background, the Court considers that the documents submitted by the applicants, in particular those in original not questioned *per se* by the Swedish authorities, cannot be ignored simply on the ground that the applicants have failed adequately to prove their identities.

73. As concerns the applicants' asylum story, the Court, like the Swedish authorities and Government, finds that the applicants have given certain contradictory and inconsistent information about what happened to them in Uzbekistan and that they seem to have added to their accounts. Still, it notes that they have maintained the essentials of their story concerning the first applicant's conviction in 1998, his participation in the demonstration in Andijan in 2005 and his subsequent arrest, ill-treatment and hospitalisation as well as their claim to have left the country illegally. As set out above, they have also presented written evidence, of which at least some must be taken to support their story. Consequently, the Court considers that, while the applicants cannot be said to have comprehensively substantiated their story, there are elements which call for caution when evaluating whether they can safely return to Uzbekistan. This is particularly so in view of the unanimous recommendation of all international sources, including the Head of the Migration Board's Legal Department, that great care must be taken when assessing Uzbek asylum seekers' stories (see above § 40) and the UNHCR (see above § 47) that decisions should err on the side of caution.

74. In considering whether the applicants would be able to return to Uzbekistan without attracting the attention of the Uzbek authorities, the Court notes that, on 30 July 2009, the Migration Board sent a request to the Uzbek Embassy in Riga for the issue of travel documents for the applicants which included photos of the applicants as well as the third and fourth applicants' birth certificates and the first and second applicants' employment books. Thus, it must be assumed that this information has come to the Uzbek authorities' knowledge (see above § 48). In this respect, and contrary to the Migration Court's judgment of 22 March 2010 in which it considered that the applicants could arrange for their own trip home without the Uzbek authorities knowing where they had been or what they had done, the Court considers it unlikely that the applicants would be able to enter the country without being noticed. This is especially so having regard to the information about the high level of control that the Uzbek authorities exert both within and outside the country. Even assuming that the applicants have given false information about their identities, the Court notes that the Uzbek authorities are now in possession of their photographs

and their Swedish identities, on which their travel documents would be issued by the Migration Board, and thereby making it easy for the border authorities to identify them upon entry into the country.

75. Furthermore, the Migration Court, and the Government, considered that the Uzbek Embassy did not necessarily know that the applicants had applied for asylum in Sweden. In relation to this, the Court observes that the Migration Board informed the Uzbek Embassy in their request that the applicants' application for residence permits in Sweden had been rejected and that they were obliged to leave Sweden. By submitting the fourth applicant's Swedish birth certificate to the Uzbek Embassy, the Uzbek authorities were also made aware that the applicants had been in Sweden at least since January 2006. It is thus likely that the Uzbek authorities drew the conclusion that the applicants were not just visiting or studying. In these circumstances, the Court does not find the Migration Court's reasoning convincing but is of the opinion that the Uzbek authorities would, at least, be interested in questioning the applicants about what they had done in Sweden. This is in particular so, having regard to the Uzbek authorities' view about Sweden as a safe haven for political opponents from Uzbekistan (see above §§ 41 and 47). Moreover, the applicants arrived in Sweden in December 2005, about seven months after the events in Andijan, and the first and second applicants' employment cards, which the Uzbek Embassy has received, state that they were employed at a factory in the Andijan region. Having regard to the undisputed information from all international sources that the Uzbek authorities still have a special interest in those whom they suspect of having had any connection to the Andijan events and persecute them, it is not far-fetched to believe that they would be particularly interested in the applicants. Noting the surveillance system in place in Uzbekistan through the *Mahalla* system and the SNB (see above §§ 41, 46 and 48), it cannot be ruled out that the authorities would also know roughly when the applicants left the country.

76. Moreover, also contrary to the conclusion of the Migration Court, the Court considers that international sources, including the Head of the Migration Board's Legal Department (see above § 40), support the applicants' claim that the Uzbek authorities might have found out about the first applicant's membership in *Birdamlik*, since the SNB show interest not only in high profile political opponents but in people at all levels, and since the first applicant was a member until December 2010, that is after the Uzbek authorities were informed that he was in Sweden, a country where there are many Uzbek political opponents. Having regard to all of the above, the Court finds that it is probable that, if returned to Uzbekistan, the applicants would be detained and interrogated about their activities during their time outside the country.

77. However, the main issue before the Court is not whether the applicants would be detained and interrogated by the Uzbek authorities

upon return since this would not, in itself, be in contravention of the Convention. The Court's concern is whether or not the applicants would be ill-treated or tortured, contrary to Article 3 of the Convention, if returned. In examining this matter, the Court observes that it has already in previous cases (see, *Rustamov v. Russia*, no. 11209/10, §§ 124-125, 3 July 2012, with further sources) found that the practice of torture of those in police custody was systematic and indiscriminate and concluded that ill-treatment of detainees remained a pervasive and enduring problem in Uzbekistan. Moreover, having regard to the information from international sources (see above §§ 40 and 45-46), the Court cannot but conclude that the situation in Uzbekistan has not improved in this respect but that torture and other cruel, inhuman and degrading treatment by law enforcement and investigative officials remain widespread and endemic. In these circumstances, the risk of the applicants being subjected to treatment contrary to Article 3 of the Convention must be considered a real one if they were to be detained and interrogated by the Uzbek authorities.

78. Here, the Court observes that the Government have referred to the case of *N.M. and M.M. v. the United Kingdom* (cited above), where the Court found that "the applicants have failed to adduce evidence capable of establishing substantial grounds for believing that they would be exposed to a real risk of being subjected to treatment contrary to Article 3 upon return solely on the basis of their status as failed asylum seekers without any further distinguishing features to bring them to the attention of the Uzbek authorities" (§ 66). The Court further noted, in that case, that the individual profiles of the applicants were highly significant in its assessment of the risk of arrest by the Uzbek authorities upon return (§ 69). To the Court, the present case is clearly distinguishable from that case in that the applicants in the case now before the Court have invoked various grounds for fear and the Court has found reasons to believe that the Uzbek authorities may have a special interest in the applicants, as set out above, both in relation to the events in Andijan and the first applicant's membership in *Birdamlik*.

79. Reiterating the need expressed by international sources to weigh returns to Uzbekistan with extreme caution and care (see above § 48), the Court finds that all of the above considerations are sufficient to enable it to conclude that the applicants would face a real and personal risk of being detained and subjected to ill-treatment contrary to Article 3 of the Convention if returned to Uzbekistan. There would accordingly be a violation of Article 3 of the Convention if the applicants were expelled to their home country.

80. Having regard to the Court's finding above, it considers that it is not necessary to examine separately the applicants' complaint concerning the third applicant's poor health and his possibilities to receive medical treatment in Uzbekistan.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicants claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

83. The Government contested that claim.

84. The Court considers that its finding of a violation regarding Article 3 amounts of itself to sufficient just satisfaction. It therefore dismisses the applicants' claim for non-pecuniary damage.

B. Costs and expenses

85. The applicants also claimed 52,162 Swedish kronor (SEK), approximately EUR 6,000, for the costs and expenses incurred before the Court as well as before the domestic courts in the last procedure for re-examination. The sum granted as legal aid by the Court had been deducted from the sum claimed above.

86. The Government argued that the sum was excessive and considered a sum of EUR 3,000, including VAT and after deduction of the legal aid already paid by the Court, to be reasonable.

87. 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 4,500 covering costs under all heads, in addition to the legal aid already paid by the Court.

C. Default interest

88. 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.

III. RULE 39 OF THE RULES OF COURT

89. The Court reiterates 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, or (b) three months after the date of the judgment, if referral 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.

90. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that the deportation of the applicants to Uzbekistan would give rise to a violation of Article 3 of the Convention;

3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to deport the applicants until such time as the present judgment becomes final or further order;

4. *Holds*

   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President