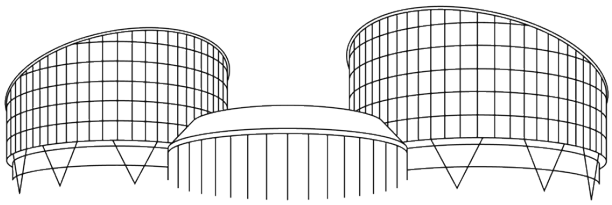

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AZIMOV v. RUSSIA

(Application no. 67474/11)

JUDGMENT

STRASBOURG

18 April 2013

FINAL

09/09/2013

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

In the case of Azimov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, Section Registrar,

Having deliberated in private on 26 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 67474/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Tajikistani national, Mr Ismon Sharofovich Azimov ("the applicant"), on 31 October 2011.

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

3. The applicant alleged, in particular, that extradition to Tajikistan would subject him to the risk of ill-treatment, that his detention pending expulsion had been unlawful, and that no effective judicial review of his continued detention had been available to him.

4. On 23 November 2011 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be removed to Tajikistan or any other country until further notice, and granted priority treatment to the application under Rule 41 of the Rules of Court.

5. On 31 January 2012 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in Tajikistan in 1979. In recent years he has lived most of the time in Russia, in the Moscow Region. He is currently detained in the Lukhovitsy Detention Centre for Aliens in the Moscow Region.

A. The applicant's background and his arrival in Russia

7. The applicant lived in Tajikistan. His family owned a fruit farm near the town of Isfara in Tajikistan and about 10 hectares of orchards. They dried fruits and exported them to Russia. In 2002 the applicant moved to Russia, where he sold dried fruit at a market near Moscow. Every year he returned for two or three months to Tajikistan and helped his relatives with the harvest. He also sent money to his home town. He states that he has two wives: his first wife lives in Tajikistan with his children; his second wife moved to Russia, but after the applicant's arrest (see paragraph 21 below) returned to Tajikistan.

8. According to the applicant, members of his family were victims of politically motivated persecution in Tajikistan. Thus, the applicant's elder brother, Barot, took part in the 1992-95 civil war in Tajikistan on the opposition side. In the applicant's words, Barot was one of the leaders of the United Tajik Opposition. He was arrested in 1995. Following his arrest, thousands of people, including members of the applicant's family, demonstrated on the streets of Isfara demanding his release. The police used firearms while dispersing the demonstration. In the years which followed, the applicant's brother was tried and sentenced for anti-constitutional conspiracy, first in 1997 and then again in 2003. According to the applicant, Barot told him that he had been tortured while in detention.

9. The applicant alleged that the Tajikistani authorities continued to persecute his family. On several occasions their family house was searched in the night; the applicant and his wife had to sleep fully dressed in fear of being apprehended. The authorities repeatedly and arbitrarily disconnected water and electricity supplies from his house. The local law-enforcement officers extorted money from him and forced the applicant to pay them part of his earnings in Russia. In addition, in 2007 the applicant had a quarrel with a local police officer.

10. According to the applicant's submissions, during his stays in Tajikistan he attended some opposition political gatherings.

11. In November 2009 (the exact date of his arrival was disputed in the domestic proceedings in Russia) he arrived in Moscow from Tajikistan for

the last time and started working at the Dorgomilovskiy food market in Moscow. In 2009 the applicant joined an opposition movement, Vatandor ("The Patriots"), which united Tajikistani nationals living abroad and wishing to see certain reforms in the country. The applicant took part in meetings of Vatandor members in Russia. The applicant's name was put on the membership list of that organisation; however, he was not given any documents confirming his membership of Vatandor.

B. Criminal proceedings in Tajikistan

12. On 26 March 2009 the Tajikistani authorities opened a criminal case against the applicant. He was accused of anti-government armed conspiracy. Specifically, the applicant was accused of being a member of several opposition movements responsible for armed riots – first, the "Bay'at" group and then the "Islamic Movement of Uzbekistan" ("the IMU"). His brother Barot was sentenced to imprisonment twice for membership of those groups and involvement in the riots. According to the Tajikistani authorities, in October 2007 the applicant took part in the construction of a military base in the mountains in Kyrgyzstan, near the border with Tajikistan, where the IMU kept firearms and ammunition. He took an oath of allegiance to the movement. The applicant was also involved in propagating the ideas of the movement amongst local youth.

13. On 30 March 2009 a formal statement of charges was issued against the applicant. He was additionally charged with supporting the IMU with the money he earned in Russia. The applicant was also accused of being involved in dealing in stolen cars in Moscow and the forgery of car documents. He sent the proceeds of this activity to Tajikistan to finance subversive activities there.

14. The applicant noted that there were two versions of the decision of 26 March 2009 to open a criminal case against him, as well as of the statement of charges of 30 March 2009. One version of the documents contained information apparently concerning another presumed member of the opposition, a Mr A. Abdulkhalikov. Furthermore, one version of the statement of charges against the applicant mentioned "stolen cars", "forged documents" and "financing terrorist activities", whereas another version did not contain that information.

15. On 30 March 2009 the Tajikistani authorities ordered the applicant's detention on remand in absentia. In the detention order personal data of the applicant contained information apparently concerning Mr Abdulkhalikov. The detention order did not mention stolen cars, forged documents, or financing of terrorist activities.

16. On 22 March 2010 the Tajikistani authorities placed the applicant's name on the international wanted list. In the international search request

thus created the Tajikistani authorities placed the applicant's own name in the column concerning his presumed accomplices.

17. On 3 September 2010, in the town of Khudjand, three police officers were killed and several people wounded in a terrorist attack. On 6 December 2010, in a press interview concerning the applicant's arrest in Russia (see paragraph 21 below), the Minister of Internal Affairs of Tajikistan mentioned the applicant as one of the perpetrators of that terrorist attack. The applicant was defined as amir (the leader) of a terrorist cell operating from Russian territory.

18. In 2009-10 other suspected participants in the conspiracy were arrested in Tajikistan and stood trial there. Fifty-three people were convicted. One of them, Mr. Ismanov, was convicted inter alia of setting up "criminal contacts" with the applicant, and of transmitting "prohibited information" from the applicant in Russia to Tajikistan.

19. During the trial several of the accused complained to the court of ill-treatment by law-enforcement officers in the course of the preliminary investigation. The applicant referred to the case of Mr I. Boboyev, who died during questioning at the police station in the applicant's home town, and who he stated was his cousin. The applicant also cited the case of Mr S. Marufov, a member of the Islamic Revival Party, who he said had been tortured to death by police officers in the applicant's home town. The applicant lastly stated that a Mr I. Ismanov had been tortured. The wife of Mr Ismanov had seen the traces of torture, and was prepared to testify to it before the national court, but the court refused to hear her.

20. On 8 December 2010 the Tajikistani authorities sent an extradition request to the Russian authorities. The extradition request was accompanied by assurances that the applicant would not be subjected to torture or cruel, inhuman, degrading treatment or punishment. He would have all opportunities to defend himself in Tajikistan, including the right to legal assistance. He would not be persecuted on political grounds, or because of his race, religion, nationality or political views. In addition, assurances were given that the applicant would be prosecuted only in relation to the crimes mentioned in the extradition request, that he would be able to leave Tajikistan freely after standing trial and serving a sentence, and that he would not be expelled, transferred or extradited to a third State without the Russian authorities' consent.

C. Proceedings in Russia

1. The applicant's arrest and detention pending extradition

21. On 3 November 2010 the applicant was arrested in the town of Dolgoprudniy in the Moscow Region, in connection with the international

search warrant against him. He was questioned by the officers of the anti-extremism department of the Russian police.

22. During the questioning he explained that he had come to Russia in November 2008 for work and that he had not applied for Russian nationality or sought political asylum. His documents were not in order; he claimed that he had lost his Tajikistani passport. The applicant alleged that his criminal prosecution in Tajikistan was politically motivated because of his membership of the Vatandor opposition movement.

23. On 4 November 2010 the Dolgoprudniy Town Court remanded the applicant in custody pending examination of the extradition request.

24. On 13 December 2010 the applicant requested the General Prosecutor's office not to extradite him to Tajikistan, referring to imminent risk of ill-treatment there. He relied on reported cases of torture by law-enforcement agencies in Tajikistan and the relevant case-law of the Court. The applicant argued that, being connected to the political opposition, he belonged to a vulnerable group and that his criminal prosecution in Tajikistan was politically motivated.

25. On 22 December 2010 the Dolgoprudniy Town Court extended the period of the applicant's detention pending extradition until 3 April 2011.

26. On 25 December 2010 the applicant appealed, claiming in particular, that his detention was not justified, because the asylum proceedings he had initiated earlier (see paragraph 38 below) had a suspensive effect and he could not have been extradited before the completion of those proceedings. Therefore, there was no reason to detain him.

27. On 28 December 2010 the Ministry of Foreign Affairs of Russia informed the General Prosecutor's Office that they did not see any obstacles to the extradition of the applicant to Tajikistan.

28. On 14 January 2011 the Moscow Regional Prosecutor wrote a letter to the immigration authority in connection with the applicant's request for asylum. In this letter he asked the Migration Authority to keep him informed of developments in the applicant's case, and indicated that the applicant's extradition was "under the control of the President of the Russian Federation".

29. On 27 January 2011 the Federal Security Service informed the General Prosecutor's Office that they did not object to the extradition of the applicant to Tajikistan.

30. On 8 February 2011 the applicant's appeal was examined and dismissed by the Moscow Regional Court.

31. On 29 March 2011 the Dolgoprudniy District Court extended the applicant's detention until 3 July 2011. On 1 April 2011 the applicant appealed against the extension. The applicant alleged, in particular, that if extradited he could be subjected to treatment contrary to Article 3 of the Convention. On 19 April 2011 the Moscow Regional Court confirmed the extension of the applicant's detention.

32. On 23 June 2011 the Deputy Prosecutor General of Russia decided to extradite the applicant to Tajikistan.

33. On 29 June 2011 the applicant was informed of that decision. On the same day the Dolgoprudniy Town Court decided to extend the applicant's detention pending extradition until 3 November 2011.

34. On 30 June 2011 the applicant appealed against the extradition order.

35. On 2 July 2011 the applicant appealed against the extension of his detention.

36. On 13 July 2011 Amnesty International issued a statement expressing concerns about the possible extradition of the applicant to Tajikistan.

37. On 16 July 2011 the Moscow Regional Court upheld the extension of the applicant's detention.

2. Asylum proceedings

38. On 10 November 2010 the applicant applied for asylum in Russia. In the application form he indicated that he belonged to the Vatandor opposition political movement. During the asylum interview he specified that he was not an active member of Vatandor and did not attend their gatherings, but simply "shared their political views".

39. On 2 December 2010 he supplemented his application for asylum and put forward the same arguments as in the extradition proceedings.

40. On 23 March 2011 his application for asylum was refused by the Migration Authority ("the MA"), on the ground that the applicant's fears of persecution on political grounds in his home country were unfounded. He was formally notified of that decision on 5 April 2011. The MA concluded that the applicant had committed crimes on the territory of Tajikistan. The applicant belonged to organisations which had been banned by a decision of the Supreme Court of Tajikistan in 1993; therefore, his presence at the demonstration in 1995 in support of his arrested brother had been of itself a criminal act. The applicant's allegation that one-third of the population of the town of Isfara had been prosecuted for their political views was, in the view of the MA, absurd, since there were not enough police officers in Tajikistan to prosecute so many people. The MA also concluded that the applicant's membership of Vatandor was merely passive, and therefore that he was not at risk of ill-treatment in this connection. The MA found, in particular, that "it was certain that the applicant did not belong to any political, religious or civic organisations".

41. On 25 April 2011 the applicant appealed, putting forward the same arguments as in the extradition proceedings.

42. On 17 June 2011 the applicant's appeal against that decision was rejected by the Federal Migration Service.

43. On 9 September 2011 the Basmanniy District Court of Moscow dismissed the applicant's appeal against the decision of the MA not to grant him the refugee status in Russia.

44. The District Court noted, in particular, that in the previous ten years he had been travelling freely between Russia and Tajikistan, and that every year he returned to Tajikistan to visit his relatives in Isfara. The applicant had applied for asylum only after his arrest in Russia and not immediately at border control. The applicant's closest relatives lived in Tajikistan undisturbed and did not leave the country. The court concluded that this demonstrated that the applicant had not been a victim of political persecution as he alleged.

45. As regards the applicant's membership of Vatandor and his brother being a former leader of the United Tajik Opposition, the court noted that the applicant's political involvement was not official, that he only shared their political opinions and did not attend meetings, nor did he engage in agitation. The mere fact that he had political views which were different from the government's official position did not give him the right to claim asylum.

46. The court further noted that Tajikistan was a member of many international conventions, had an ombudsman, and respected human rights. As regards the references to other sources which cast doubt in Tajikistan's human rights record, that information had been obtained from the mass media, was opinionated, and was therefore not objective.

47. The court held that he had not produced sufficient evidence of the risk of persecution for political reasons at home, and that Tajikistan complied with its international obligations in the human rights area.

48. The applicant appealed. On 30 November 2011 the Moscow City Court upheld the judgment on appeal in a summary fashion.

3. Judicial review of the extradition order

49. On 16 September 2011 the Moscow Regional Court examined the applicant's appeal against the extradition order. At the hearing the applicant was represented by a lawyer of his choice. The applicant denied committing the offences imputed to him and presented an alibi. The defence also claimed that if extradited to Tajikistan the applicant would be tortured, as many others accused of "religious extremism" had been. The defence referred in this respect to the relevant case-law of the Court and to numerous reports of international human rights NGOs and UN bodies competent in the field. The applicant also claimed that he had learned about the criminal prosecution against him only at the moment of his arrest in Russia. He also referred to numerous inconsistencies in the documents submitted in support of the extradition request by the Tajikistani authorities (see paragraphs 14-16 above).

50. The prosecution did not contest that the applicant belonged to the opposition movement and had been present at political gatherings. However, they drew the court's attention to numerous inconsistencies in his submissions, cast doubt on the reliability of the sources of information relied on by the applicant, and stressed that the applicant was involved in a terrorist organisation.

51. Having heard the parties, the Regional Court upheld the extradition order. The Moscow Regional Court's reasoning can be summarised as follows. The court observed that the applicant faced serious criminal accusations and that the acts imputed to him would in principle qualify as "crimes" under Russian law. It was not the task of the Russian court to establish whether the applicant was guilty of the impugned crimes. The court held that the inconsistencies in the Tajikistani documents were "technical errors" and did not affect the validity of the extradition request.

52. It was impossible for the court to establish when exactly the applicant had entered the territory of Russia for the last time, since the applicant's own submissions in this respect were inconsistent, and there was no official information on the matter. However, the court found that it certainly had not been in November 2009, as the applicant had alleged. According to his original statement to the prosecutor, the applicant had been residing permanently in Russia since 2008. He had not applied for political asylum in Russia before his arrest. Although the applicant had lost his passport in 2010, he did not contact the embassy of Tajikistan to obtain a new one. During the interview the applicant was unable to indicate his exact address in Russia.

53. The applicant had a family in Tajikistan, which included his brother's family and his first wife and children. They all lived in their family house. He regularly spoke to them on the telephone, and it was impossible that they would not tell him about the criminal prosecution. The court concluded that the applicant had been living in Russia permanently since 2008, that he had been aware of the criminal proceedings against him in Tajikistan, and that he had been hiding from the Tajikistani authorities in Russia.

54. The court did not find any evidence that the applicant's case was "political". At the first questioning he mentioned that he had come to Russia to find work, not out of fear of persecution. At the hearing the applicant stated that he had attended a political gathering in 1995, but that his role had been limited to giving a lift in a car to his relatives and taking them to the venue of the gathering. He denied having been involved in any political anti-governmental activity in Tajikistan. His activity in the Vatandor political movement was minimal: he simply shared their political opinions. The court observed that the applicant's brother, Mr B. Azimov, was serving a prison sentence in Tajikistan; however, other members of his family, including his elder brother Mr R. Azimov, were all living in Tajikistan. The

applicant's first wife lived in Tajikistan with their five children and his second wife had been able to leave Tajikistan freely and come to Russia. His family owned ten hectares of orchards near a recreational zone. He was able for many years to maintain himself and his family with his earnings from selling dried fruit in Russia. The authorities thus did not interfere with his business interests or those of his family, despite the allegedly political underpinning of the case against him. His own testimony about the political nature of the prosecution was inconsistent. He first stated that the criminal case against him resulted from personal animosity between him and the chief of the local police following a quarrel in a café. Later in the court proceedings the applicant suggested that the criminal prosecution had been instituted so that his family's land could be taken away.

55. The court also examined letters received from Amnesty International in support of the applicant's cause, and noted that they did not contain anything which would point to the existence of a risk of ill-treatment to him personally.

56. The court finally analysed the institutional and legislative guarantees against ill-treatment which existed in Tajikistan, as well as its international obligations, and concluded that they were sufficient to guarantee that the applicant would not be subjected to any ill-treatment.

57. On 1 November 2011 the Moscow Regional Court ruled that the applicant's detention would not be extended pending extradition, because the period of the applicant's detention had reached the maximum established by law (twelve months). At the same time, the court indicated that since the applicant had been residing in Russia without papers, he could have been subjected to expulsion (administrative removal) proceedings and detained on that ground.

58. On 9 November 2011 the Supreme Court confirmed the validity of the extradition order and upheld the reasoning of the lower court.

4. Expulsion (administrative removal) proceedings and the applicant's detention pending expulsion

59. On 2 November 2011 the prosecutor's office forwarded the relevant documents in respect of the applicant to the police, who drew up a report on his illegal stay in Russia, which amounted to an administrative offence under Article 18.8 of the Code of Administrative Offences ("the CAO").

60. On the same day, the Dolgoprudniy Town Court of the Moscow Region examined the case against the applicant and found him guilty. The court established that the applicant had unlawfully resided in Russia from February 2010 until his arrest on 3 November 2010 with a view to extradition. The court imposed an administrative fine on the applicant, ordered his expulsion (administrative removal) from Russia and placed him in detention pending expulsion because of the gravity of the offence and because the applicant had no stable income in Russia. No specific time-limit

for the applicant's detention was given by the court. The court did not address his arguments about the risk of ill-treatment in the event of his deportation to Tajikistan.

61. On 3 November 2011 the public prosecutor ordered the applicant's release from detention pending extradition, because the maximum term prescribed by law had expired. In the release order the prosecutor noted that an extradition check was in progress. The applicant was not released but was transferred to the Serpukhov Detention Centre for Aliens in the Moscow Region, according to the detention order issued in the course of the expulsion proceedings.

62. On 6 November 2011 the applicant's lawyers appealed against this order to the Moscow Regional Court. They submitted that the court had refused to consider the applicant's arguments concerning the possibility of ill-treatment in Tajikistan.

63. According to the applicant, during the night of 17 November 2011 he was visited in the detention centre by two police officers from the anti-extremism department of the Ministry of Interior. They offered the applicant the opportunity to leave Russia for Tajikistan voluntarily, with a plane ticket provided by them. He was also photographed. It appears that the Dolgoprudniy Town prosecutor in charge of his case was not informed of that visit. Nor were the applicant's lawyers informed thereof. The applicant declined the offer and was returned to his cell.

64. On 22 November 2011 the Moscow Regional Court adjourned the hearing concerning the expulsion order due to the failure of one of the witnesses, a police officer who had issued the administrative offence report, to appear.

65. On 6 December 2011 the Moscow Regional Court examined the appeal. The police officer did not appear at the hearing, but the court decided to proceed with the case. The applicant was not present at the hearing either, since the police had not arranged for him to be transferred from the detention centre to the court; however, his lawyer was present. According to the applicant's lawyer, the judge told her that the court had no obligation to arrange for the applicant to attend in person. The court confirmed the validity of the expulsion and detention orders. The court did not address the arguments concerning the risk of the applicant being ill-treated in Tajikistan. The court did not specify the period of the applicant's detention with a view to expulsion.

66. On 4 May 2012 the applicant was transferred to the Lukhovitsy Detention Centre for Aliens in the Moscow Region.

5. Opinion of the UNHCR Representation in the Russian Federation

67. On 1 August 2012, at the applicant's representative's request, the Russian Office of the United Nations High Commissioner for Refugees

(UNHCR) expressed the following opinion on the risk of ill-treatment the applicant faces in Tajikistan:

> "In accordance with numerous reports of international organisations as well as generally accessible information on the Republic of Tajikistan, because of mass violations of human rights and basic principles of international law by the Tajikistani authorities, including the principle of prohibition of torture, in particular, widespread practices of torture and ill-treatment by law-enforcement bodies, especially to extract confessions in criminal proceedings, violations of fair trial provisions, such as denial of access to legal counsel and lack of an independent judiciary, taking into account the fact that in Tajikistan the applicant is to be prosecuted in connection with criminal offences, the UN Refugee Agency considers that there exists a real risk of torture for the applicant in the event of his expulsion to Tajikistan."

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Extradition proceedings

1. The Code of Criminal Procedure

68. Chapter 54 of the Code of Criminal Procedure ("the CCrP") of 2002 governs the procedure to be followed in the event of extradition.

69. An extradition decision made by the Prosecutor General may be challenged before a court (Article 463 § 1). In that case the extradition order should not be enforced until a final judgment is delivered (Article 462 § 6).

70. A court is to review the lawfulness and validity of a decision to extradite within a month of receipt of a request for review. The decision should be taken in open court by a panel of three judges in the presence of a prosecutor, the person whose extradition is sought and the latter's legal counsel (Article 463 § 4).

71. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in applicable international and domestic law (Article 463 § 6).

72. Article 464 § 1 lists the conditions under which extradition cannot be authorised. Thus, the following should be refused extradition: a Russian citizen (Article 464 § 1 (1)) or a person who has been granted asylum in Russia (Article 464 § 1 (2)); a person in respect of whom a conviction has become effective or criminal proceedings have been terminated in Russia in connection with the same act for which he or she has been prosecuted in the requesting State (Article 464 § 1 (3)); a person in respect of whom criminal proceedings cannot be launched or a conviction cannot become effective in view of the expiry of the statute of limitations or under another valid ground

in Russian law (Article 464 § 1 (4)); or a person in respect of whom extradition has been blocked by a Russian court in accordance with the legislation and international treaties of the Russian Federation (Article 464 § 1 (5)). Finally, extradition should be refused if the act that serves as the basis for the extradition request does not constitute a criminal offence under the Russian Criminal Code (Article 464 § 1 (6)).

73. Article 109 of the CCrP regulates, inter alia, periods of detention with a view to extradition (Directive Ruling of the Plenary Session of the Russian Supreme Court no. 22 of 29 October 2009, § 34). The maximum statutory period of detention in connection with serious offences is twelve months (Article 109 § 2).

2. Supreme Court Directive Ruling of 14 June 2012

74. In its Directive Ruling no. 11 of 14 June 2012, the Plenary Session of the Russian Supreme Court indicated, with reference to Article 3 of the Convention, that extradition should be refused if there were serious reasons to believe that the person might be subjected to torture or inhuman or degrading treatment in the requesting country. Extradition could also be refused if exceptional circumstances disclosed that it might entail a danger to the person's life and health on account of, among other things, his or her age or physical condition. Russian authorities dealing with an extradition case should examine whether there were reasons to believe that the person concerned might be sentenced to the death penalty, subjected to ill-treatment or persecuted because of his or her race, religious beliefs, nationality, ethnic or social origin or political opinions. The courts should assess both the general situation in the requesting country and the personal circumstances of the person whose extradition was sought. They should take into account the testimony of the person concerned and that of any witnesses, any assurances given by the requesting country, and information about the country provided by the Ministry of Foreign Affairs, by the relevant United Nations institutions and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

B. Expulsion (administrative removal) proceedings

1. Code of Administrative Offences

75. Article 18.8 of the CAO provides that a foreign national who infringes residence regulations of the Russian Federation, including by residing on the territory of the Russian Federation without a valid residence permit or by failing to comply with the established procedure for residence registration, is liable to punishment by an administrative fine of 2,000 to 5,000 Russian roubles (RUB) with or without administrative removal from

the Russian Federation. Under Article 28.3 § 2 (1) a report on the offence described in Article 18.8 is drawn up by a police officer. Article 28.8 requires such a report to be transmitted within one day to a judge or to an officer competent to examine administrative matters. Article 23.1 § 3 provides that the determination of any administrative charge that may result in removal from the Russian Federation shall be made by a judge of a court of general jurisdiction. The statute of limitations for administrative offences listed in Article 18.8 is one year from the date the relevant offence was committed (Article 4.5 § 1).

76. Article 3.10 provides for two types of administrative removal, namely "controlled independent exit" and controlled forced removal.

77. Article 32.10 § 5, as in force at the material time, allowed domestic courts to order a foreign national's detention with a view to administrative removal.

78. Article 27.3 § 1 provides that administrative detention can be authorised in exceptional cases if it is necessary for the fair and speedy determination of the administrative charge or for execution of the penalty. Federal Law no. 410-FZ of 6 December 2011, which amends certain provisions of the CAO, introduced Article 27.19, which specifies that administrative detention can be authorised in the case of controlled forced removal.

79. Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or a higher court. Article 30.5 § 3 provides that an appeal against an administrative removal order must be examined within one day of submission of the appeal.

80. Article 31.9 § 1 provides that a decision imposing an administrative penalty may not be enforced after the expiry of a two-year period from the date on which this decision became final.

81. Article 3.9 provides that an administrative offender can be penalised with administrative arrest only in exceptional circumstances, with a maximum term of thirty days.

2. Federal Law no. 109-FZ of 18 July 2006

82. Section 20 § 2 (2) of Federal Law no. 109-FZ of 18 July 2006 provides that a foreign national temporarily residing in Russia must register with a local migration authority within seven days.

3. Constitutional Court Judgment no. 6-P of 17 February 1998

83. In judgment no. 6-P of 17 February 1998 the Russian Constitutional Court held, with reference to Article 22 of the Russian Constitution, that detention of a person with a view to removing him from Russia requires a court decision if that detention exceeds forty-eight hours. That decision must establish whether the detention is necessary for the purposes of

enforcing the removal. The court should also assess the lawfulness and reasons for detention. Detention for an indefinite period of time is not acceptable, since it may become a form of punishment, which does not exist in Russian law and which is incompatible with the provisions of the Constitution.

4. Russian NGOs' report

84. In October 2012 a group of Russian NGOs (including the Public Verdict Foundation, the Civic Assistance Committee, the Memorial Human Rights Centre, Soldiers' Mothers of Saint Petersburg, the Independent Psychiatric Association, and several others) prepared a 'Shadow Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2006 to 2012'. Paragraph 133 of that Shadow Report reads as follows:

> "In recent years, the Russian authorities have increasingly relied on administrative expulsion in its efforts to transfer persons to states requesting their extradition. Expulsion decisions are taken by courts of general jurisdiction ... Courts ... refuse to examine arguments concerning the person's risk [of being] subjected to torture in the country of destination, assuming that these arguments are not relevant in cases dealing with a foreigner's violation of immigration rules in Russia. The government claims that such arguments cannot be considered by courts in ... administrative proceedings since their duration is very short and "... the alleged risk of ill-treatment ... [is] not a legally relevant fact, [so there is] no obligation to ascertain it" ... They fail to take into account the fact that the consequences of administrative expulsion and extradition are identical for the applicant, since in both cases s/he falls into the hands of the state requesting his/her return. It is important to note that in some cases such attempts [have been] made by explicit instructions from the Prosecutor General's Office, indicating that the latter ignores the risk of the deportee's [being subjected to] prohibited treatment in the country of destination ..."

C. Refugee status and asylum proceedings

1. The Geneva Convention on the Status of Refugees of 1951

85. Article 33 of the UN Convention on the Status of Refugees of 1951, which was ratified by Russia on 2 February 1993, provides as follows:

> "1. No Contracting State shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."

2. Refugees Act

86. The Refugees Act (Law no. 4258-I of 19 February 1993) defines a refugee as a person who is not a Russian national and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such a fear, is unwilling to return to it (Article 1 § 1 (1)). The migration authority may refuse to examine the application for refugee status on the merits if the person concerned has left the country of his nationality in circumstances falling outside the scope of Article 1 § 1 (1), and does not want to return to the country of his nationality because of a fear of being held responsible for an offence (правонарушение) committed there (Article 5 § 1 (6)).

87. Persons who have applied for or been granted refugee status cannot be returned against their will to the State of which they are a national where their life or freedom would be imperilled on account of their race, religion, nationality, membership of a particular social group or political opinion (Article 1 § 1 (1) in conjunction with Article 10 § 1).

88. Having received a refusal to examine an application for refugee status on the merits, and having decided not to exercise the right of appeal under Article 10, the person concerned must leave the territory of Russia within one month of receiving notification of the refusal if he has no other legal grounds for staying in Russia (Article 5 § 5). Under Article 10 § 5, having received a refusal to examine the application for refugee status on the merits or a refusal of refugee status, and having exercised the right of appeal against such refusals, the person concerned must leave the territory of Russia within three days of receiving notification of the decision on the appeal if he has no other legal grounds for staying in Russia. If, after the appeal has been rejected, the person concerned still refuses to leave the country, he is to be expelled (Article 13 § 2).

89. If the person satisfies the criteria set out in Article 1 § 1 (1), or if he does not satisfy the criteria but cannot be expelled or deported from Russia for humanitarian reasons, he may be granted temporary asylum (Article 12 § 2). Persons who have been granted temporary asylum cannot be returned against their will to the country of which they are a national or to the country of their former habitual residence (Article 12 § 4).

D. Reports on Tajikistan

1. The situation regarding ill-treatment and religious persecution in Tajikistan

(a) United Nations Institutions

90. The conclusions and recommendations of the UN Committee against Torture in respect of Tajikistan issued in 2006 were cited in *Gaforov v. Russia*, no. 25404/09, § 93, 21 October 2010.

91. In May 2012 the UN Special Rapporteur on torture, Mr Juan E. Méndez, visited Tajikistan. In his preliminary findings of 18 May 2012, he noted that "pressure on detainees, mostly as a means to extract confessions is practiced in Tajikistan in various forms, including threats, beatings and sometimes by applying electric shock". He underscored that "confessions extracted by violence remain the main investigatory tool of law enforcement and prosecutorial bodies". He also expressed his concerns at the lack of safeguards against illegal extradition or rendition from and to other countries, as "there seems to be no meaningful opportunity for judicial review of these measures that are generally conducted by the law enforcement bodies under the direction of the Prosecutor General. The Minsk Convention on Legal Assistance in civil and criminal matters of 1993, other agreements between CIS countries ... offer general language about protection against abuse, but they operate more meaningfully as international cooperation in law enforcement. The result is that international law prohibitions on refoulement to places where a person may be subjected to torture or cruel, inhuman or degrading treatment are not guaranteed in fact" (End-of-mission Statement by the UN Special Rapporteur on Torture, Juan E. Méndez. Preliminary findings on his country visit to the Republic of Tajikistan 10-18 May 2012).

(b) Other Institutions

92. The report by Amnesty International entitled "Shattered Lives: Torture and other ill-treatment in Tajikistan", released on 12 July 2012, in so far as relevant, reads as follows:

> "... Amnesty International's research shows that practices of torture and other ill-treatment remain widespread in all types of detention facilities in Tajikistan. Detainees at the early stages of detention were found to be at particular risk, subjected to torture or other ill-treatment by law enforcement officers in order to "solve" crimes by obtaining confessions of guilt and also to obtain money from torture victims or their relatives. The general climate of impunity keeps police abuse virtually unchecked ...

2. The scale of torture and other ill-treatment in Tajikistan

In Tajikistan torture and ill-treatment occur in a climate of secrecy. [T]he perpetrators are rarely brought to justice... [T]orture and other ill-treatment occur particularly in pre-trial detention... Domestic law has significant shortcomings when it comes to safeguards against torture. In addition, those crucial safeguards that do exist in law, such as access to a lawyer immediately after apprehension, are rarely applied in practice ...

2.1 Torture and other ill-treatment by police

[T]he routine use of torture results from the lack of technical capacity to investigate crimes... A local independent human rights observer told Amnesty International that: "people may get away without beatings in less serious cases, but in cases involving grave crimes – if they don't confess, they get beaten", adding that police "won't hesitate to resort to violence ...

2.2 Torture and other ill-treatment used in the context of national security and counter-terrorism

The fight against terrorism and threats to national security are often invoked by the Tajikistani authorities as key to securing national and regional stability. However, ... frequently human rights are violated in the pursuit of groups perceived as a threat to national security ...

[The] research indicates that particular targets are Islamic movements and Islamist groups or parties, and that people accused of being Islamist extremists are at particular risk of torture and other ill-treatment in Tajikistan ...

In September 2010 an explosion occurred at the office of the [police] in Khujand, resulting in several deaths and injuries to over two dozen people. Following this the Tajikistani authorities redoubled their efforts to find members of Islamic movements and Islamist groups or parties who they alleged were responsible. Law enforcement officers came under increased pressure to solve cases with national security implications ...

8. Torture and other ill-treatment upon return to Tajikistan

... Amnesty International is concerned at a series of recent cases where the Tajikistani authorities have made extradition requests based on unreliable information for people alleged to be members of banned Islamic groups, who have subsequently alleged being tortured on their return. Many of these extradition requests have been issued for people in the Russian Federation."

93. In January 2012 Human Rights Watch released its World Report 2012, in which the relevant chapter on Tajikistan states:

"Torture remains an enduring problem within Tajikistan's penitentiary system and is used to extract confessions from defendants, who are often denied access to family and legal counsel during initial detention. Despite discussions with the International Committee of the Red Cross (ICRC) in August, authorities have not granted ICRC access to places of detention. With rare exceptions, human rights groups are also denied access.

> While torture is practiced with near impunity, authorities took a few small steps to hold perpetrators accountable...
>
> Under the pretext of combating extremist threats, Tajikistan continues to ban several peaceful minority Muslim groups... Local media continued to report on prosecutions of alleged members of Hizb ut-Tahrir and the Jamaat Tabligh movement."

94. On 27 June 2011 a group of non-governmental organisations including international NGOs (Amnesty International, the International Federation for Human Rights (FIDH), Penal Reform International (PRI) and the World Organisation Against Torture (OMCT)) as well as Tajikistani NGOs (the Bureau of Human Rights and Rule of Law, the Centre for Children's Rights, the Collegium of Advocates of the Soghd Region, the Sipar Collegium of Advocates of the Republic, and several others) released a joint statement: "Tajikistan: A coalition of non-governmental organisations is calling on the government to end torture and fulfil its international obligations" which, in so far as relevant, reads as follows:

> "In Tajikistan police have in many cases been accused of torturing or beating detainees to extract money, confessions or other information incriminating the victim or others. This abuse has mostly taken place in the early stages of detention; in many cases victims are initially detained without contact with the outside world ...
>
> Torture practices reported in Tajikistan include the use of electric shocks; attaching plastic bottles filled with water or sand to the detainee's genitals; rape; burning with cigarettes. Beating with batons, truncheons and sticks, kicking and punching are also believed to be common.
>
> ... [S]afeguards against torture enshrined in domestic law are not always adhered to. For example, while the new Criminal Procedure Code stipulates that detainees are entitled to a lawyer from the moment of their arrest, in practice lawyers are at the mercy of investigators, who can deny them access for many days. During this period of incommunicado detention, the risk of torture or other ill-treatment is particularly high. The new Criminal Procedure Code also introduced remand hearings within 72 hours of a suspect's arrest. However, they often take place with a delay, and judges in many cases ignore torture allegations and the injuries presented to them in the courtroom. Usually they rely on the version of events given by [those] accused of the torture.
>
> There are no routine medical examinations when detainees are admitted to police stations and temporary detention facilities. Upon transfer to pre-trial detention facilities under the jurisdiction of the Ministry of Justice they undergo a medical examination. However, when medical personnel suspect that a detainee [has undergone] torture or other ill-treatment they ... usually return them to the temporary detention facility until the signs of injury have faded.
>
> Victims rarely lodge complaints ... for fear of repercussions, and impunity for abusive officers is the norm. Often relatives and lawyers are reluctant to file complaints, so as not to worsen the situation for the detainee.
>
> Prosecutor's offices are tasked with investigating allegations of torture. Sometimes close personal and structural links between prosecutor's offices and police undermine

> the impartiality of prosecutors. The authorities have not published comprehensive statistics on prosecutions of law-enforcement officers relating specifically to torture or other ill-treatment, rather than broader charges such as "abuse of power" or "exceeding official authority".
>
> Judges [regularly] base verdicts on evidence allegedly extracted under duress...
>
> Tajikistan has not given the International Committee of the Red Cross access to detention facilities to carry out monitoring since 2004. It has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which provides for a system of regular visits to places of detention carried out by independent international and national bodies."

2. Reports on ill-treatment of alleged members of the IMU in Tajikistan

95. The joint statement of a group of NGOs of 27 June 2011 (see paragraph 94 above) also reported particular cases of unpunished torture of several individuals, including Mr Abdumuqit Vohidov, Mr Ruhniddin Sharopov and Mr Ilhom Ismonov, all of them accused of IMU membership.

96. The Annual Report 2012 by Amnesty International in respect of Tajikistan, in so far as relevant, reads as follows:

> "The trial against Ilhom Ismonov and 52 co-defendants began on 11 July [2011] at Soghd Regional Court in northern Tajikistan. All were accused of membership of the Islamic Movement of Uzbekistan and of participating in organized crime. On 19 July [2011], he and several others told the judge that they had been tortured in pre-trial detention. On 16 September [2011], Ilhom Ismonov told the judge that he had been pressurized by officials to retract his earlier allegations of torture and other ill-treatment. He had not dared speak out earlier, fearing retaliation from law enforcement agencies. The judge ignored his statement. His confession, allegedly obtained under torture, was used as evidence against him ..."

97. A research paper by Christian Bleuer entitled "Instability in Tajikistan? The Islamic Movement of Uzbekistan and the Afghanistan Factor", published in *Central Asia Security Policy Brief* No. 7 (15 February 2012), in so far as relevant, reads as follows:

> "In terms of government actions related to the IMU, during 2011 the Tajik government arrested 86 IMU suspects, and sentenced 53 to jail terms. In December 2011 the Tajik courts were particularly busy, sentencing 43 accused IMU members to prison for a September 2010 suicide car-bombing in northern Tajikistan – claims of torture being used to extract confessions notwithstanding. Indeed, the systematic practice of torture being used to ensure confessions by police and security officers casts doubt on the actual affiliations – if any – of suspects in custody. In regards to the suicide bombing – a September 2010 attack on a police station in Khujand that left two dead – a new group called Jamaat Ansarullah claimed responsibility. However, the government charged 53 accomplices to the bombing with being members of the IMU – all of whom confessed during the investigation amidst allegations of torture being used to secure confessions."

98. On 12 October 2012 the Coalition against Torture and Impunity (a group of Tajikistani NGOs) prepared a report on Tajikistan's implementation

of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It contains a detailed description of the case of Ilhom Ismonov and fifty-two co-defendants:

"**Criminal case number # 23578 on the accusation of terrorism and extremism**

... On 3 September 2011 there was a massive explosion ... in the building ... of the Regional Office for Combating Organised Crime (ROCOP) ... The blast killed the ... [purported] suicide bomber ... three employees of ROCOP, 26 officers of ROCOP and five residents of Khujand Region [suffered] injuries of various degrees.

On 3 September 2010 the Soghd Regional Prosecutor's Office ... initiated a criminal case under Part 3 of Article 179 (Terrorism) of the Criminal Code of the Republic of Tajikistan ...

[On the basis of] the results of ... blood tests the suicide bomber was identified as Mr. Akmal Karimov ... Later, the brothers and close relatives of the alleged suicide bomber ... were arrested.

[The trial] in the criminal case was opened on 9 July 2011. There were 53 people in the dock, mostly residents of [the] Isfara, Spitamen, and Istravshan regions ...

... 10 defendants are charged [with the terrorist attack] in the building [of the] Soghd Regional Office for Combating Organised Crime, the rest were charged with membership [of] the Islamic Movement of Uzbekistan and other extremist organisations (Dzhamiyati Tablig etc) ...

All of them were [charged with] ... terrorism, [running a criminal organisation], forcible seizure of power, forgery, unlawful possession of firearms, murder, abuse of authority, illegal crossing of state borders, etc. There were also those who are accused of failing to report the crime or its concealment.

According to the materials of the criminal case, 38 of those on trial declined the services of an advocate, however in the course of the [appeal] hearing ... they state[d] that all [their] refusals of legal representation had been written under duress and dictated by officials from law-enforcement agencies.

According to [the] lawyers [as well as] relatives of the defendants and [the defendants'] statements ... during the trial almost all the defendants [were subjected to] various kinds of physical [torture] ([such as] beating, pulling out nails and beards, electric current, [and] rape ...) and psychological [torture] ([such as] threat[s] to rape wi[ves], sister[s], ... mother[s], ... the torture of others in [their] presence, ... and other methods) ... [Various] methods were used not to allow lawyers to see their defendants ... The lawyers met ... their clients in the presence of the investigating authorities.

Statements [relating to] torture have been made in the course of the trial, where the defendants described ... the torture [in detail] and [identified the officers] who ... tortured them[: these were stated to be officers] of the Interior Ministry, of the State Committee of National Security, and of the Prosecutor's Office. However, neither the court nor the prosecutor [took those statements into consideration] ...

The first few hearings were [public], but then at the request of the prosecution the judge [decided to conduct proceedings in camera]. It is assumed (according to lawyers and relatives) that the reason [for closing the proceedings was the allegations of torture] ...

On 27 July 2011 relatives of the defendants [made a written representation] to the Chairman of Soghd District Court, Mr. Mansurov ..., but [received no response].

On 23 December 2011 in [Khujand prison no. 2 the court rendered its judgment sentencing some of the defendants to life imprisonment] ...

On 6 August 2012 [an appeal hearing took place at] ... Investigative Detention Centre no. 9/1 [in Dushanbe] ... [In their statements of appeal the defendants complained of the] use of torture ... during interrogation and preliminary investigation ...

Advocates S. Romanov and A. Sharipov, who [were] representing [Mr] Dodoev, made several attempts to meet ... their client, however ... the head of [the Detention Centre Mr] Rakhmonov, refused to [allow a meeting without authorisation from] the Main Administration of the Implementation of Criminal Punishment (Prison Administration) ... The actions of the head of [the Detention Centre] ... were appealed [against] to the Prison Administration, however no answer was received.

The advocates and defendants drew the attention of the [appeal court] to the presence of ... traces [of torture] on the defendants' bodies, presented [information on] medical treatment at the medical unit of the Detention Centre ... in Khujand. The advocates requested [that] each defendant [be subjected to a medical examination].

The advocates [submitted requests for the] testimony of the defendants [which had been obtained] ... through the use of torture [to be excluded] ... [These requests were left] ... without consideration ...

[On] 17 August 2012 the [appeal court ruled that there should be an] investigation [of] the use of torture, [charged] the General Prosecutor's Office with carrying out this investigation, and announced [an adjournment in the proceedings].

[On examination of] the testimony of the defendants the following should be highlighted:

All defendants during the [trial] complained about ... [the] use of torture ..., however in the [judgment all complaints were dismissed with the following] formulation[:] "complaints of defendants made during judicial proceedings about the use of torture were unconfirmed".

In relation to 19 persons, administrative arrest was applied for a period of 5 to 15 days, during which they were held in ... buildings [belonging to] the security services and ... subjected to torture. As a result, they confessed to ... crimes ...

The majority of defendants declined to use the services of advocates in the first days following [the] arrest[s], though ... their refusals were [written] without the presence of an advocate, in [contravention of] part 1, Article 52 of the Criminal Procedure Code of the Republic of Tajikistan. 38 persons signed documents refusing the services

of advocates, and approximately 10 people did not see their court-appointed advocates during [the] entire period of their detention ... [the proceedings concerning their detention pending trial], and the preliminary investigation. [The remaining defendants met] their lawyers periodically, however, many investigative actions were conducted without the participation of advocates. 10 court-appointed advocates asked their defendants to sign procedural documents without reading them ...

On 27 September 2012, the [appeal court] ... resumed consideration of the criminal case. The state prosecutor had announced that ... [there was] no evidence of crime in the actions of members of [the] investigation group who [had carried out the criminal investigation] ... [According to the defence] ... the medical examination [during the trial had been] carried out by [an] expert who [had not] been trained on the standards of the Istanbul Protocol, [did] not know what the "torture" means, and who ... admitted that in the course of the examination he [had seen signs of a] fracture, but [that it was outside] his competence to identify timing and ... [circumstances in which] the injury [had been] received. The defendants claimed that medical records [in the prison] contain[ed] information [that some detainees had] arrived [at the prison] with injuries. The lawyers demanded ... the medical records of all [the] prisoners ... Lawyers were provided with [the prisoners'] medical records; however the [pages] were not numbered; [furthermore, some pages were missing – they had been] torn out of medical records.

The defence lawyer Sharipov ... [contested the results of the official investigation of the allegations of ill-treatment]. Lawyers requested [access to the materials of the prosecutor's case file concerning that investigation]. The prosecutor agreed, and [the appeals panel] ... granted the lawyers [access] to the documents. [It appears from the documents that] the defendants ... had no complaints of torture; [this however] contradicted their testimony ... during the trial. According to the five defendants sentenced to ... life imprisonment, during the investigation they [informed the] medical [experts] and prosecutors about ... methods of torture ... however [their detailed testimony was not reflected in the conclusions of the expert and the prosecution]. The records also include explanations [by employees who were] members of the investigative task force, who claim that they [had respected the law] and that] no one [had been] tortured. On September 28, 2012 during the trial [the] lawyers requested [a fresh investigation] and appointment of a [mixed investigative] commission [which would include] ... the lawyers. The court left [that] request unanswered.

[The appeal proceedings before the Supreme Court of the Republic of Tajikistan are currently pending.]"

E. Relevant documents concerning the use of diplomatic assurances

99. Concluding observations on the fifth periodic report of the Russian Federation, issued by the UN Committee against Torture on 11 December 2012 (CAT/C/RUS/CO/5), in so far as relevant, reads as follows:

"**Non-refoulement and diplomatic assurances**

17. The Committee is concerned about reports of extraditions and expulsions of foreign nationals by the State party to members of the Commonwealth of Independent States in Central Asia, when those extraditions or expulsions expose the individuals concerned to a substantial risk that they will be subjected to torture in their countries of origin. The Committee is also concerned by the reliance of the State party on diplomatic assurances in such cases ..."

100. Other Relevant United Nations' and Council of Europe's documents concerning the use of diplomatic assurances were summarised in *Ismoilov and Others v. Russia*, no. 2947/06, § 25, §§ 96-100, 24 April 2008 and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 141 et seq., and §§ 188-89, ECHR 2012).

F. Ban on activities of terrorist organisations in Russia

101. By a decision of 14 February 2003 the Supreme Court of Russia classified as terrorist a number of organisations, including the Islamic Party of Turkestan (also known as the Islamic Movement of Uzbekistan). The Supreme Court prohibited the activity of these organisations on the territory of Russia. It held that the Party aimed to overthrow non-Islamist governments and to establish "Islamist governance on an international scale by reviving a Worldwide Islamist Caliphate", in the first place in the regions with predominantly Muslim populations, including Russia and other members of the Commonwealth of Independent States.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The applicant complained that, if returned to Tajikistan, he would run a real risk of being subjected to ill-treatment in breach of Article 3 of the Convention, which provides:

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

A. The parties' submissions

1. The Government

103. The Government argued that the domestic authorities, including the migration authority and the courts, had carefully examined the applicant's allegations that he would risk ill-treatment if returned to Tajikistan and had correctly dismissed them as unfounded. The information obtained from "official sources" had not confirmed that the Tajikistani authorities were persecuting their citizens on political or religious grounds or subjecting citizens under criminal prosecution to inhuman or degrading treatment. The courts also examined the information produced by various NGOs. However, their reports were not official documents and so were not binding on the courts. With reference to the Court's judgment in the case of *Puzan v. Ukraine* (no. 51243/08, 18 February 2010) the Government considered that the reports describing the general human rights situation in Tajikistan were insufficient to rule out extradition, and that the applicant had not produced any evidence of being at risk of ill-treatment in Tajikistan.

104. The Russian Ministry of Foreign Affairs had informed the Russian Prosecutor General's Office that there were no reasons not to extradite the applicant, because Tajikistan, a UN member, had undertaken to comply with the Universal Declaration of Human Rights. Tajikistan had ratified the ICCPR of 1966, the Refugee Convention of 1951, the Convention against Torture of 1984 and other treaties. A Tajikistani Ombudsman's Office had been set up.

105. The Government referred to the assurances provided by the Office of the Prosecutor General of Tajikistan (see paragraph 20 above) and stated that, according to the Tajikistani Criminal Code, its task was to protect human rights and a sentence applied to a criminal could not pursue an aim of causing him or her physical suffering or humiliating the person in question.

106. The applicant's allegations of risks of ill-treatment in Tajikistan had not been substantiated. Accordingly, his extradition would not amount to treatment proscribed by Article 3 of the Convention.

2. The applicant

107. The applicant submitted that he had consistently cited the risk of ill-treatment in Tajikistan during the extradition, expulsion and asylum proceeding, advancing a number of specific arguments. He had relied on reports by UN agencies and trustworthy international NGOs. He had referred to the cases of alleged ill-treatment in Tajikistan of persons he was linked to, namely Mr B. Azimov, his brother, Mr I. Boboyev, his cousin and especially Mr I. Ismanov. Those individuals had been convicted of the same offences the applicant was charged with. All of them had been tortured with

a view to, inter alia, extracting testimony against the applicant. The applicant argued that the wording of the charges brought against him showed that they were motivated by political considerations and religious hatred. He also referred to discrepancies in the documents describing the charges against him, and argued that the criminal case had been fabricated. However, the Russian authorities had not taken into account the evidence submitted by the applicant, and had dismissed his arguments as to the risk of ill-treatment as unsubstantiated, without a thorough assessment of the general situation in Tajikistan or his personal situation.

108. The authorities relied on diplomatic assurances provided by the Tajikistani authorities. However, those assurances were unreliable, due to the absence of any mechanism of compliance monitoring or any accountability for their breach. The applicant challenged the credibility of diplomatic assurances provided by the Tajikistani authorities, referring to two cases pending before the Court in which the applicants had allegedly been kidnapped and transferred to Tajikistan. They were then allegedly convicted by the Tajikistani courts of crimes not mentioned in the extradition requests. Furthermore, one of the applicants claims that he was subjected to ill-treatment during the pre-trial investigation to extract self-incriminating statements.

109. The applicant pointed out that the Minister of Internal Affairs of Tajikistan, in an interview given in the course of extradition proceedings, had described him as the leader of a terrorist group and one of the perpetrators of the terrorist attack of 3 September 2010 who had been arrested during the criminal investigation of the attack. However, the only statements of charges accompanying the extradition request were dated 26 and 30 March 2009 and did not mention involvement in this attack. No additional charges were brought against him afterwards. The applicant argued that the Minister's statement had violated his presumption of innocence and called into question the credibility of the assurances that he would enjoy a fair trial in Tajikistan. He insisted that the accusations against him had been "fabricated", which intensified the risk that he would be subjected to torture in Tajikistan in order to extract self-incriminating testimonies. Finally, the applicant referred to the conclusion reached by the UNHCR, namely that he faced a real risk of torture in Tajikistan.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

111. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles, as reiterated in *Saadi v. Italy* [GC], (no. 37201/06, §§ 124-136, ECHR 2008), and *Shakurov v. Russia* (no. 55822/10, §§ 118-128, 5 June 2012).

(b) Whether the applicant's case under Article 3 was sufficiently made out

112. The Court notes that in the proceedings concerning his extradition, expulsion and asylum the applicant consistently cited the risk of ill-treatment in Tajikistan. He developed arguments in support of his contention under Article 3 (see paragraphs 24, 39, 41, 49 and 62 above) and referred to specific facts related to his personal situation, his own political affiliations and those of his relatives, their occupations, their previous encounters with law-enforcement bodies in Tajikistan, and so on. He also referred to the systematic practice of ill-treatment inflicted on detainees suspected of membership of banned religious and political organisations in Tajikistan. He supported his submissions with reports prepared by UN institutions and international NGOs, and referred to the relevant case-law of the Court. The Court concludes that the applicant satisfied the requirement "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" (see N. v. Finland, no. 38885/02, § 167, 26 July 2005). The question of possible inconsistencies in his submissions or inferences from his behaviour may be left open for the time being.

113. In such circumstances the Russian authorities, and in particular the courts, were under an obligation to address his arguments and carefully assess the risk of ill-treatment if the applicant was to be extradited to Tajikistan, in order to "dispel any doubts" about possible ill-treatment (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

(c) Reasons adduced by the courts in the extradition and asylum proceedings and the Court's assessment thereof

114. The Court notes that in the expulsion (administrative removal) proceedings the police and the courts did not address the applicant's arguments concerning the risk of ill-treatment in Tajikistan (see paragraphs 60 and 65 above). However, that issue was addressed in the extradition proceedings before the Moscow Regional Court and the Supreme Court. In addition, the Russian courts assessed risks of ill-treatment in the asylum proceedings. In both sets of proceedings the Russian courts concluded that the applicant's fears of ill-treatment were

unsubstantiated. The Court will now analyse whether the domestic court's conclusions on this point (in both sets of proceedings) were sound.

115. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Altun v. Turkey*, no. 24561/94, § 42, 1 June 2004). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place (see *Mathew v. the Netherlands*, no. 24919/03, § 155, ECHR 2005-IX). Consequently, the Court must examine whether the conclusion reached by the Russian courts in the present case, namely that the applicant did not face any risk of ill-treatment if returned to Tajikistan, was based on a reasonable assessment of the evidence, whether all relevant factors were assessed, and whether inferences made by the domestic courts from the facts of the case were compatible with the letter and spirit of Article 3 of the Convention and the Court's case-law (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007).

116. The Court observes that the reasoning of the decisions of 9 September 2011 (asylum proceedings) and of 16 September 2011 (extradition proceedings) was somewhat haphazard (see paragraphs 43-47 and 49-56 respectively). Having analysed the text of two decisions, together with other materials in the case file, the Court detected the following main arguments the domestic courts relied on for their rejection of the applicant's claim under Article 3.

(i) Whether the criminal case against the applicant was fabricated

117. The applicant claimed that all the accusations put forward against him in Tajikistan were false. The courts in the extradition proceedings replied that they were not called upon to decide whether the accusations were well founded or to check the applicant's alibi.

118. The Court acknowledges that within the extradition proceedings the Russian authorities and the courts were not required by law or by the Convention to investigate each and every element of the criminal case against the applicant. The scope and depth of the courts' review of extradition requests by foreign authorities may be somewhat limited (see *Al-Moayad v. Germany* (dec.), no. 35865/03, § 93, 20 February 2007). That being said, the fact that the accusations against the applicant were on the face of them serious does not in itself mean that he could be extradited to Tajikistan. The Court emphasises that the conduct of the person concerned, however undesirable or dangerous, is not a decisive factor. The protection afforded by Article 3 of the Convention allows no balancing of the risk of harm if the person is sent back against the danger he or she may represent to

the community if not sent back and is, therefore, broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see *Saadi*, cited above, § 138, and *Muminov v. Russia*, no. 42502/06, § 89, 11 December 2008). Article 3 of the Convention protects everyone, even those who have committed serious crimes, and it was incumbent on the Russian courts to establish whether the applicant faced a serious risk of ill-treatment despite the existence of a criminal case against him in Tajikistan.

(ii) Flaws in the applicant's story

119. The Russian courts listed certain flaws in the applicant's story, in particular concerning the exact date and purpose of his arrival in Russia, the loss of his Tajikistani passport, his occupation and the history of his relations with the Tajikistani authorities, the level of his political involvement, and others. The Court acknowledges that the applicant's story as presented to the authorities in Russia may have had some lacunae and inconsistencies. Arguably, this could have undermined his credibility.

120. That being said, the Court observes that possible flaws in the applicant's story could have had an innocent explanation. The Court notes in this connection that the official extradition requests by the Tajikistani authorities were also flawed (see paragraphs 14-16 above). Thus, those requests occasionally referred to the name of another person in place of that of the applicant. The list of offences imputed to the applicant varied in different versions of the extradition requests. The Russian courts conceded that those inconsistencies were "technical errors" on the part of the Tajikistani authorities and did not affect the validity of the requests (see paragraph 51 above). At the same time, the courts were much less forgiving of the flaws in the applicant's own account.

121. More importantly, the Court emphasises that the task of the domestic courts in such cases is not to search for flaws in the alien's account (see paragraphs 52-54 above) or to trip him up, but to assess, on the basis of all the elements in their possession, whether the alien's fears as to the possible ill-treatment in the country of destination are objectively justified. The mere fact that the applicant failed to submit accurate information on some points did not mean that his central claim, namely that he faces a risk of ill-treatment in Tajikistan, is unsubstantiated.

122. The Court stresses that the Russian courts in the present case failed to explain how the flaws detected by them undermined the applicant's central claim. For example, the fact that the applicant should have learned about his criminal case in 2009 and not in 2011 did not refute his allegation that he would risk ill-treatment if extradited to Tajikistan. Similarly, the fact that the applicant was unable to indicate his exact address in Russia was irrelevant to the establishment of whether or not he belonged to an

opposition political group whose members were regularly subjected to ill-treatment.

123. The Court concludes that the flaws detected by the Russian courts in the applicant's story were inconsequential and did not, as such, refute his allegations under Article 3 of the Convention.

(iii) Interpretation of the applicant's own behaviour after his arrival to Russia

124. Next, the Russian courts (both in the extradition and in the asylum proceedings) referred to the applicant's own behaviour, namely his failure to ask for asylum immediately after he had learned about the opening of the criminal case, and his failure to come to the Tajikistani embassy to get a new passport. In their opinion, his behaviour indicated that he had been hiding in Russia from criminal prosecution on terrorism charges in Tajikistan.

125. The Court is prepared to accept the courts' conclusion that the applicant had been hiding in Russia from the Tajikistani authorities. But, again, this argument is beside the point. The fact that the applicant was "hiding" did not mean that he could be extradited (see *Gaforov*, cited above, §§ 37 and 140). His behaviour was legitimate if it was assumed that there was a high risk that criminal proceedings against him in Tajikistan would be accompanied by torture or other forms of ill-treatment. The Court reiterates that the Russian courts had to establish the truth of that assertion, and not concentrate on the applicant's alleged criminal profile.

(iv) Situation of the applicant's relatives

126. The Russian courts observed that the applicant's two wives, his children, elder brother and other members of his family were still living in Tajikistan and had kept their land and their family business. The Court agrees that the situation of the applicant's family in the home country is a relevant factor in assessing the risk of ill-treatment of the applicant. However, the reasoning of the Russian courts in the present case does not convince the Court.

127. It was not disputed that at least one of the brothers of the applicant, Barot Azimov, was a prominent opposition leader and had been convicted several times of anti-governmental activities (see paragraph 8 above). Nor was it disputed that the house where the applicant's family lived had been searched several times (see paragraph 9 above).

128. The Russian courts seemed to consider the case of Barot as an isolated episode. However, the Court's case-law under Article 3 of the Convention does not require domestic courts to establish with certitude that the asylum-seeker would be tortured if returned home – it needs only establish that there is a "real risk" of ill-treatment (see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, § 173, 10 April 2012, with further references). The

Court reiterates that "requesting an applicant to produce "indisputable" evidence of a risk of ill-treatment in the requesting country would be tantamount to asking him to prove the existence of a future event, which is impossible, and would place a clearly disproportionate burden on him" (see *Rustamov v. Russia*, no. 11209/10, § 117, 3 July 2012). Any such allegation always concerns an eventuality, something which may or may not occur in the future. Consequently, such allegations cannot be proven in the same way as past events. The applicant must only be required to show, with reference to specific facts relevant to him and to the class of people he belonged to, that there was a high likelihood that he would be ill-treated.

129. Still, the Court admits that the case of Barot of itself might not be sufficient to substantiate the applicant's fears. The Court must therefore look at other factors which might have affected the risk of ill-treatment.

(v) The level of the applicant's involvement in the opposition movement

130. The Russian courts noted that the applicant's involvement in the Vatandor party had been passive, and that his role in the public gathering in 1995 had been insignificant. This was probably the case. However, the Russian courts overlooked another very important aspect of the case, namely the substance of the accusations against the applicant. The story presented by the applicant to the Russian authorities was substantially different from the one contained in the extradition requests from Tajikistan and public statements of the Tajikistani authorities. The applicant was wanted in Tajikistan not for being a member of Vatandor but on charges of aiding the IMU, deemed to be a terrorist organisation (see paragraphs 12-13 above). The applicant was arrested on the basis of the extradition request accompanied by the indictments dated 26 and 30 March 2009. Some time later the Minister of Internal Affairs of Tajikistan stated that the applicant was the leader of a terrorist cell who had been arrested in Russia in connection with the terrorist attack of 3 September 2010 in Khudjand (see paragraph 17 above).

131. During the domestic proceedings the applicant denied being a member of the IMU and the other accusations. It is hard to say whether he was wrongly accused or simply tried to present himself as a "low-profile" opponent of the current regime who was not involved in the activities of a "terrorist organisation". It is, however, to be expected that the applicant would not want to acknowledge his affiliation with the IMU in the Russian courts: in the event of successful extradition such an acknowledgment might be used against him in Tajikistan. Therefore, the Russian courts had to consider carefully not only the risks related to the applicant's presumed membership of Vatandor and his role in the events of 1995, but also the risks related to his alleged (and more recent) affiliation with the IMU and involvement in their activities, real or imaginary. In the Court's opinion, this aspect of the case was not addressed in the domestic judgments at all.

(vi) Reference to "official sources" and diplomatic assurances

132. Lastly, the Russian courts referred to information obtained from "official sources" and to assurances provided by the Tajikistani authorities. They found that the institutional and legislative guarantees against the ill-treatment existing in Tajikistan and its international obligations were sufficient to guarantee that the applicant would not be subjected to any ill-treatment. The applicant's reference to other sources, such as reports by various NGOs, did not persuade the courts.

133. The Court notes that the mere reference to diplomatic assurances, to membership of international treaties prohibiting torture, and to the existence of domestic mechanisms set up to protect human rights, is insufficient (see *Rustamov*, cited above, § 131, with further references). In the modern world there is virtually no State that would not proclaim that it adheres to the basic international human rights norms, such as the prohibition of torture, and which would not have at least some protecting mechanisms at the domestic level. Those elements are important, but they should not be assessed formalistically. Where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, §§ 147-48, and *Gaforov*, § 138, both cited above), the domestic courts should have a somewhat critical approach to diplomatic assurances and other similar "information from official sources".

134. The Court is concerned about reported cases of ill-treatment of persons who have been extradited or forcibly returned to Tajikistan, apparently in breach of diplomatic assurances given by the Tajikistani authorities as reported by Amnesty International (see paragraph 92 above). The Court also notes that the assurances provided by the Tajikistani authorities did not include any monitoring mechanism.

135. In sum, the Court finds unconvincing the Russian authorities' unconditional reliance on assurances by the Tajikistani authorities, with no detailed assessment against the standards elaborated by the Court (see *Othman (Abu Qatada)*, cited above, §§ 188-89 (extracts)).

(vii) Reports on the human rights situation in Tajikistan; specific situation of other presumed members of the IMU

136. In the Court's opinion, a number of important aspects of the case which gave support to the applicant's case was either not analysed at all by the Russian courts or was rejected in a summary manner. Thus, in the extradition proceedings the Russian courts did not attach any weight to the reports by the international organisations and NGOs, qualifying them as mere "opinions".

137. The Court disagrees with this approach. The reports at issue are consistent, credible and come from various sources which are usually regarded as reputable. The Russian courts did not explain why those

opinions should be disregarded in the present case. The Court emphasises that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010), but the current human rights record of Tajikistan, which is not a Council of Europe member State, adds credibility to the applicant's assertion that, if extradited, he might be subjected to ill-treatment (see paragraphs 90-98 above).

138. The Court reiterates that in assessing the general situation in a particular country it attached certain weight to the information contained in recent reports from independent international human rights protection bodies and organisations or governmental sources (see, for example, *Chahal v. the United Kingdom*, 15 November 1996, §§ 99-100, Reports 1996-V; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, ECHR 2005-VI, and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). The Court further stresses that in many previous cases concerning Central Asian republics it has considered reports from UN bodies and certain NGOs worthy of attention. Thus, the Court has already examined cases involving extradition to Tajikistan of persons charged with politically and/or religiously motivated criminal offences (see *Khodzhayev v. Russia*, no. 52466/08, 12 May 2010; *Khaydarov v. Russia*, no. 21055/09, 20 May 2010; and *Gaforov*, cited above). The Court has found that such persons were at an increased risk of ill-treatment and that their extradition would give rise to a violation of Article 3. In the case of *Iskandarov v. Russia*, no. 17185/05, 23 September 2010, the Court found that the forced removal to Tajikistan of the applicant, who had been charged, inter alia, with terrorism and gangsterism in a religious context, was in breach of Russia's obligation to protect him against ill-treatment.

139. As regards the extradition of alleged members of the Islamic Movement of Uzbekistan (also known as the Islamic Party of Turkestan/Islamic Movement of Turkestan) to Tajikistan, the Court has not yet had an opportunity to examine the issue. However, on two occasions the Court has found that extradition of individuals suspected of membership of that group and those accused of religious extremism to Uzbekistan would be in breach of Article 3 of the Convention (see *Ismoilov and Others*, cited above, § 25, §§ 116-28, and *Umirov v. Russia*, no. 17455/11, § 7, §§ 117-22, 18 September 2012).

140. In deciding those cases the Court relied, inter alia, on reports by the same international organisations and NGOs as those which have been rejected by the Russian courts in the present case as "opinionated". These reports pointed out that alleged members of Islamic movements and Islamist groups or parties including the IMU are still at particular risk of ill-treatment in Tajikistan (see paragraphs 90-96 above).

141. The Court admits that being a member of an opposition party or group does not by itself justify a fear of ill-treatment. It is necessary to examine the specific situation of the applicant. In this respect the Court stresses that the applicant was described as one of the "leaders" of the IMU, which is characterised as an extremist/terrorist organisation and prohibited in Tajikistan, Uzbekistan, Russia and some other countries. It is particularly important that the office of the UNHCR, the most authoritative international organisation in the field of refugee law, after examining the applicant's specific case, found that there is a real risk of torture for the applicant in case of his expulsion to Tajikistan.

142. Furthermore, the Court takes note of the reported allegations of torture in respect of the applicant's alleged accomplices who had recently been tried in Tajikistan (see paragraphs 95-98 above). In particular, it is concerned by the allegations of torture in respect of the applicant's presumed accomplice, Mr Ismanov, who had been convicted of being in contact with the applicant. The Court admits that such allegations cannot be verified beyond reasonable doubt, but this is mainly due to the reluctance of the Tajikistani authorities to allow independent investigations of such events, international or domestic (see paragraphs 92-98 above). In the Court's opinion, those allegations should have been considered seriously by the Russian courts, together with the reports of the reputable international organisations and NGOs.

(viii) Summary of the Court's conclusions

143. The Court is aware that there is no strict test for deciding such cases, and that where the domestic courts are called to evaluate the probability of a future event there is always room for uncertainty. This is why the Court is in principle prepared to defer to the national authorities in borderline cases, provided that they have addressed all relevant aspects of the case and have given a reasonable interpretation of evidence and facts. However, the present case is not borderline, and the domestic court's analysis was deficient in many respects. In such circumstances the Court is prepared to disagree with their findings. It concludes that the applicant's forced return to Tajikistan (in the form of extradition, expulsion or otherwise) would give rise to a violation of Article 3 of the Convention.

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

144. The applicant contended under Article 13 of the Convention that he had had no effective remedies in respect of his allegations of possible ill-treatment in Tajikistan. Article 13 reads:

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

145. The Court considers that the gist of the applicant's claim under Article 13, which it considers admissible, is the domestic authorities' alleged failure to carry out rigorous scrutiny of the risk of ill-treatment in the event of his forces removal to Tajikistan. The Court has already examined that submission in the context of Article 3 of the Convention. Having regard to its findings in paragraph 143 above, the Court considers that there is no need to examine this complaint separately on its merits (see, for a similar approach, *Gaforov*, cited above, § 144, and *Khodzhayev*, cited above, § 151, with further references).

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

146. Under Article 5 § 4 of the Convention the applicant complained that there had been no effective procedure by which he could have challenged his continued detention pending administrative removal. Article 5 § 4 reads as follows:

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

A. The parties' submissions

147. The Government submitted that the applicant brought appeal proceedings against the removal order of 1 November 2011. Thus, the appeal court had provided a full judicial review of the impugned measures. The administrative removal proceedings had been subject to rigorous procedural safeguards.

148. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

149. The Court finds that the complaint under Article 5 § 4 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

150. The Court reiterates that the purpose of Article 5 § 4 is to ensure for individuals 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 a speedy judicial review of the legality 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 *Ismoilov and Others*, cited above, § 145, with further references).

151. The Court is not persuaded by the Government's argument that the applicant had obtained judicial review of his detention by appealing against the initial detention order issued in the expulsion proceedings. The thrust of the applicant's complaint under Article 5 § 4 was not directed against the initial decision on his placement in custody, but rather against his inability to obtain judicial review of his detention after a certain lapse of time. The Court notes that detention under Article 5 § 1 (f) lasts, as a rule, for a significant period and depends on circumstances which are subject to change over time (compare *Waite v. the United Kingdom*, no. 53236/99, § 56, 10 December 2002, with further references). Given that the applicant spent about fourteen months in custody after the relevant appeal decision of 6 December 2011 had been given, new issues affecting the lawfulness of the detention might have arisen during that period. Under such circumstances the Court considers that the requirement of Article 5 § 4 was neither incorporated in the initial detention order of 2 November 2011 nor fulfilled by the appeal court.

152. The Court reiterates that by virtue of Article 5 § 4 the applicant was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not their deprivation of liberty had become "unlawful" in the light of new factors which emerged subsequently to the decision on his initial placement in custody (see, for example, *Khodzhayev*, cited above, §§ 125-31, where the applicant spent more than ten months in detention pending extradition proceedings, being unable to apply for release, which was in breach of Article 5 § 4).

153. The Court observes that the applicant did not attempt to bring any proceedings for judicial review of his detention pending expulsion. However, the Government did not rely on any provision in domestic law which could have allowed the applicant to do so. The Court further notes that no automatic periodic extension of the applicant's detention or any judicial review thereof took place in the above period.

154. It follows that throughout the term of the applicant's detention pending expulsion he did not have at his disposal any procedure for a judicial review of its lawfulness.

155. There has therefore been a violation of Article 5 § 4.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

156. The applicant complained under Article 5 § 1 of the Convention that his continued detention pending expulsion from 3 November 2011 had been in breach of Article 5 § 1 of the Convention. It reads, in its relevant parts, 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 ..."

A. The parties' submissions

157. The applicant argued that the Russian law on detention pending expulsion was not sufficiently clear and foreseeable. In particular, the applicant complained that his arrest for the purposes of expulsion had been ordered to circumvent the requirements of the domestic law, which established a maximum time-limit for detention pending extradition. On the contrary, detention pending expulsion was not limited in time under Russian law. He noted that administrative removal proceedings had been initiated only when the authorities faced the need to release the applicant. In addition, since the application of Rule 39 by the Court, the applicant's detention pending expulsion had no legitimate purpose and was therefore arbitrary, since he could no longer be expelled.

158. The Government submitted that the applicant's detention pending expulsion had been lawful within the meaning of Article 5 § 1 (f). The applicant was detained with a view to enforcement of the court order for his administrative removal from the country under Article 18.8 § 1 of the CAO. Referring to the reasons given by the courts for the applicant's expulsion and detention, the Government argued that the expulsion proceedings had nothing to do with the extradition proceedings. The law on detention pending expulsion was sufficiently clear and foreseeable.

B. The Court's assessment

1. Admissibility

159. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it should be declared admissible.

2. Merits

160. The applicant was detained on 3 November 2011 with a view to his expulsion (administrative removal) from Russia, and remains in detention. This expulsion amounted to a form of "deportation" in terms of Article 5 § 1 (f) of the Convention. Article 5 § 1 (f) of the Convention is thus applicable in the instant case.

161. The Court reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must be "lawful". 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. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, with further references). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *Rustamov*, cited above, § 150, with further references).

162. It is common ground between the parties that the applicant resided illegally in Russia at least for some months before his arrest and, therefore, committed an administrative offence punishable by expulsion. The Court reiterates that a period of detention will in principle be lawful if carried out under a court order (see *Alim v. Russia*, no. 39417/07, § 55, 27 September 2011). The Court is satisfied that the applicant's detention pending expulsion was ordered by a court having jurisdiction in the matter and in connection with an offence punishable with expulsion. Furthermore, the Court notes that the Russian court referred to grounds justifying the

applicant's detention pending expulsion (the gravity of the offence and the lack of any stable income by the applicant in Russia, see paragraph 60 above). The Court thus concludes that the authorities acted in compliance with the letter of the national law.

163. The applicant, however, argued that the real purpose of that last detention order had been to keep him detained after the maximum period of detention pending extradition had expired, and that the authorities had used expulsion proceedings as a pretext to circumvent the requirements of the law. The first question before the Court is therefore whether or not the authorities acted in good faith when detaining the applicant within the expulsion proceedings.

164. The Court reiterates that a detention may be unlawful if its outer purpose differs from the real one (see *Bozano v. France*, 18 December 1986, Series A no. 111, § 60; *Čonka v. Belgium*, no. 51564/99, § 42, ECHR 2002-I; and *Khodorkovskiy v. Russia*, no. 5829/04, § 142, 31 May 2011). The circumstances of the present case surrounding the applicant's detention pending expulsion may be reasonably interpreted as suggesting that the real intention of the authorities was to keep the applicant in prison with a view to extradition after the maximum period set by the law for that purpose had expired.

165. Thus, the authorities were aware of the applicant's irregular immigration status from the moment of his arrest on 3 November 2010 (see paragraph 31 above). Nevertheless, they did not cite that ground for detaining him until the time-limit provided for the detention pending extradition had expired. It was the Moscow Regional Court examining the applicant's extradition case which recommended that the law-enforcement authorities re-detain the applicant on this new ground (see paragraph 57 above). Most importantly, the applicant was detained "with a view to expulsion" while the extradition proceedings were still going on (see paragraph 61 above). The Court is aware that the Russian authorities have occasionally used the expulsion (administrative removal) procedure instead of extradition (see paragraph 84 above). The applicant's extradition was "under the control of the President of the Russian Federation" (see paragraph 28 above), which implies that handing him over to the Tajikistani authorities (no matter whether as a result of expulsion or extradition) must have been regarded as a top priority. All this supports the applicant's claim that the authorities abused their power to order the "expulsion detention", and that the new ground for detention was cited primarily to circumvent the requirements of the domestic law, which set a maximum time-limit for "extradition detention". The Court reiterates in this respect "detention under Article 5 § 1 (f) must be carried out in good faith" and "must be closely connected to the ground of detention relied on by the Government" (see *Rustamov*, cited above, § 150). It appears that those two conditions were not met in the present case, at least during the short period when the applicant's

extradition proceedings were still pending, and probably even after they were over.

166. The Court further observes that even where the purpose of the detention is legitimate, its length should not exceed that reasonably required for the purpose pursued (see *Shakurov*, cited above, § 162). In the present case the applicant had already been in detention with a view to extradition for one year before the authorities ordered his detention pending expulsion. His detention pending expulsion lasted for over seventeen months. In total, the applicant has been in detention for over two years and five months. The question is whether that duration is reasonable.

167. The Court considers that the overall length of the applicant's detention may be divided into two periods. The first period lasted more than one year – between 3 November 2010, the date of the applicant's arrest, and 6 December 2011, the date of the last domestic judicial decision in this case. That period can mostly be attributed to the three sets of proceedings which took place simultaneously: extradition, expulsion and asylum proceedings. Those proceedings were pursued by the authorities with proper diligence, and the Court cannot detect any long periods of inactivity imputable to the State during that time.

168. It is the period from 6 December 2011 onwards which is a source of concern for the Court. The applicant's detention during that time was mainly attributable to the temporary suspension of the enforcement of the extradition and expulsion orders due to the indication made by the Court under Rule 39 on 23 November 2011.

169. The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I). However, the implementation of an interim measure indicated by the Court does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subjected complies with Article 5 § 1 (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). Detention should still be lawful and not arbitrary.

170. In a number of cases where the respondent States refrained from deporting applicants in compliance with a request made by the Court under Rule 39, the Court was prepared to accept that expulsion proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1 (f) had occurred (see *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011; *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012; and *Umirov*, cited above, §§ 138-42).

171. That being said, suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation

were the applicant languishes in prison for an unreasonably long period. The Court observes in the present case that no specific time-limits for the applicant's detention pending expulsion were expressly set by the courts (see paragraphs 60 and 65 above). According to Article 31.9 § 1 of the CAO the expulsion decision must be enforced within two years (see paragraph 80 above). It appears that after the expiry of that period the applicant should be released. This will admittedly be done; however, the possible implications of Article 31.9 § 1 of the CAO for the applicant's detention are a matter of interpretation, and the rule limiting duration of the detention of an illegal alien is not set clearly in the law. It is also unclear what would happen after the expiry of the two-year time-limit, since the applicant would clearly remain in an irregular situation in terms of immigration law and would again be liable to expulsion and, consequently, to detention on this ground.

172. The Court also notes in this regard that the maximum penalty in form of deprivation of liberty for an administrative offence under the CAO in force is thirty days (see paragraph 81 above) and that detention with a view to expulsion should not be punitive in nature and also should be accompanied by appropriate safeguards, as established by the Russian Constitutional Court (see paragraph 83 above). In this case the "preventive" measure, in terms of its gravity, was much more serious than the "punitive" one, which is not normal. The Court also reiterates that throughout the whole period of the applicant's detention, when the interim measure applied by the Court was in force, the authorities did not re-examine the question of the lawfulness of the applicant's continuous detention in breach of Article 5 § 4 (see paragraph 154 above),

173. Finally, although the authorities knew that the examination of the case before the Court can take some time, they did not try to find "alternative solutions" which would secure the enforcement of the expulsion order in the event of the lifting of the interim measure under Rule 39 (see *Keshmiri v. Turkey* (no. 2), no. 22426/10, § 34, 17 January 2012; see also, mutatis mutandis, *Mikolenko v. Estonia*, no. 10664/05, §67, 8 October 2009).

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

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

175. The Court has examined the other complaints submitted by the applicant under Article 5 § 4. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set forth in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. RULE 39 OF THE RULES OF COURT

176. 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 reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

178. 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

179. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. He argued that he had suffered severe distress as a result of being held in detention for twenty-seven months so far and facing a real risk of being returned to Tajikistan following the extradition and administrative removal orders being upheld by the courts. He noted that his detention pending administrative removal was not limited in time. He had no remedies against that detention and did not know when he would be released.

180. The Government contested the claim.

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

182. The Court further observes that it has dismissed certain grievances and found a violation of Article 5 § 1 and a violation of Article 5 § 4 of the

Convention in the present case. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. The Court therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

183. The applicant also claimed EUR 6,600 for costs and expenses incurred before the domestic courts and the Court. He submitted an agreement for legal assistance dated 30 October 2011 and a breakdown of the expenses incurred, which included forty-six hours of work by Ms Trenina and twenty hours of work by Ms Ryabinina at the hourly rate of EUR 100.

184. The Government considered that, in addition to being excessive, the lawyers' fees were not shown to have been actually paid or incurred.

185. 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, and to the fact that no violation was found in respect of part of the application, the Court considers it reasonable to award the sum of EUR 6,000 covering costs under all heads (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3, 13, 5 § 1 of the Convention and the complaint and 5 § 4 of the Convention in as far as the latter concerns the lack of judicial review of the detention pending expulsion admissible, and the remainder of the complaints inadmissible;

2. *Holds* that the forced return of the applicant to Tajikistan would give rise to a violation of Article 3 of the Convention;

3. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the unavailability of any procedure for a judicial review of the lawfulness of the applicant's detention pending expulsion;

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

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

8. *Decides* to maintain the indication to the Government under Rule 39 of the Rules of Court that the applicant should not be removed to Tajikistan or any other country until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 18 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President