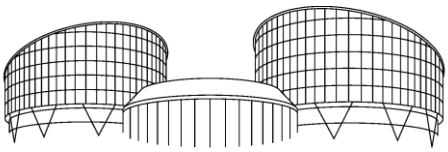

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NIZOMKHON DZHURAYEV v. RUSSIA

(Application no. 31890/11)

JUDGMENT

STRASBOURG

3 October 2013

FINAL

20/01/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Nizomkhon Dzhurayev v. Russia,

The European Court of Human Rights (First Section), 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 10 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 31890/11) 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 Tajik national, Mr Nizomkhon Khaydarovich Dzhurayev ("the applicant"), on 23 May 2011.

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

3. The applicant alleged, in particular, that in the event of his extradition to Tajikistan, he risked being subjected to ill-treatment and that the examination of his judicial appeals challenging the lawfulness of his detention pending extradition had not been conducted speedily.

4. On 26 May 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 extradited to Tajikistan until further notice, and granted the case priority under Rule 41 of the Rules of Court.

5. On 4 July 2011 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).

6. On 14 October 2011 the President of the First Section decided to refuse the request for intervention as a third party lodged by the Prosecutor General of Tajikistan on behalf of the Government of Tajikistan.

7. On 17 April 2012 the Chamber invited the parties to submit further written observations in respect of the applicant's alleged abduction and

transfer to Tajikistan. In consequence, the parties provided additional information about fresh developments in the case and further observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1967. The Court has no official information about his current whereabouts.

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

9. The applicant was an elected member of the Sughd Regional Assembly in Tajikistan from an unidentified date until his departure from the country. He was also a prominent businessman, owning several production plants, petrol stations, buildings and other property.

10. According to the applicant, in 2006 he accompanied the President of Tajikistan on an official visit to Iran and Turkey. During the trip a relative of the President of Tajikistan demanded that the applicant transfer title to one of his plants to him. The applicant agreed out of fear. In August 2006 the same person again demanded on behalf of the President that the applicant transfer title to another plant owned by him. The applicant submits that following his refusal to do so, the authorities began to interfere with his business and threatened him with reprisals. On 27 September 2006 the applicant survived an assassination attempt allegedly planned by the authorities. The next day the residents of the town of Isfara in the Sughd Region held a rally in support of the applicant, demanding that the authorities find those involved in the assassination attempt and criticising the authorities' conduct.

11. In June 2007, fearing for his life and liberty, the applicant fled to the United Arab Emirates.

12. On 30 July 2010 the applicant left the United Arab Emirates. After travelling through Turkey, Georgia, Ukraine and Belarus, he arrived in Russia, where his partner resided, on 13 August 2010.

B. Criminal proceedings against the applicant in Tajikistan

13. On 23 June 2007 the State Financial Control and Anti-Corruption Agency of Tajikistan ("the Agency") opened criminal proceedings against the applicant and eight other individuals on charges of misappropriation and

embezzlement of property, money laundering, tax evasion, forgery of documents and making threats of violence against a public official.

14. On 28 June 2007 the members of the Sughd Regional Assembly granted leave for the criminal prosecution and arrest of the applicant. On the same date an Agency investigator issued an arrest warrant in respect of the applicant and placed him on the international wanted list. He was also officially charged with the above-mentioned crimes on that day.

15. On 26 July 2007 the Sughd Regional Prosecutor opened another criminal case against the applicant and an unspecified number of other individuals, accusing them of forming an organised criminal group, and joined it to the criminal case opened previously.

16. On 29 October 2007 the Agency opened a new criminal case against the applicant and three other individuals accusing them of the assassination of the Deputy Prosecutor General of Tajikistan, Mr Boboyev, in 1999.

17. On 14 March 2008 the applicant was indicted *in absentia* on all of the above charges.

18. On 9 June 2009 the Supreme Court of Tajikistan, sitting as a trial court in Khujand, convicted the applicant's thirty-one co-accused of various offences and sentenced them to various terms of imprisonment ranging from ten to twenty-five years. At the trial, several of the defendants alleged that they had been forced through torture to falsely incriminate the applicant. The applicant submitted the following excerpts from the transcript of the court hearing on 16 July 2008:

> "[Statement of the accused O.]:
>
> In Khujand I was brought to the 6th division of the Sughd Region [of the Department for the Fight against Organised Crime] where I was pressured. The reason for the pressure and acts of violence was that they wanted me to testify that [the applicant] had been involved in the assassination of T. Boboyev. However, [the applicant] did not have anything to do with [it].
>
> ... I was made to sign an interview record with false statements. In December 2007 on the order of the investigator I was doused with cold water and tortured with electricity.
>
> [Statement of the accused I.]:
>
> When [certain police officers] brought me to the department's premises, [one of them] smashed my head against the wall. He and other people in an office on the second floor tortured me with electricity. They burnt my body with cigarettes to force me to testify against [the applicant].
>
> I could no longer resist the pressure and violence, and gave the evidence that they wanted.
>
> ... There is a forensic medical report that recorded the torture against me.
>
> [Statement of the accused M.R.]:

> ... [Certain police officers] took me to see the head of the 6th division of the Sughd Region [Department for the Fight against Organised Crime]. Officer K ... hit me two or three times ... Then I was taken to another office and beaten up. Afterwards I was asked about [the applicant's] whereabouts and questioned for about five hours. The next day I was [again] taken to see the head of the 6th division ... [whilst] there I was also tortured and electrocuted. Over the course of a few days they tortured me to make me show them a cache of ammunition in Chorkukh."

C. Witness statements submitted to the Court

19. In September 2010 the applicant's lawyer, Mr B., travelled to Tajikistan to collect information in respect of the ill-treatment of detainees and, specifically, of those who had been questioned in the criminal proceedings initiated against the applicant and his co-accused. Mr B. obtained a total of twelve statements, which were recorded by him on identical forms bearing the following information:

> "Pursuant to section 6(3.2) of the Federal Law "On the Activity of Legal Counsel and Bar Associations in the Russian Federation" as well as Articles 53 § 1 (2) and 86 § 3 (2) of the Russian Code of Civil Procedure, with the consent of the person with information pertinent to [my client's] case, counsel [belonging to] the Interregional Kaluga Bar Association interviewed:
>
> Name
>
> Date of birth
>
> Place of birth
>
> Place of recorded residence
>
> Place of actual residence
>
> Telephone number
>
> ID
>
> I agree to be interviewed (signature, date).
>
> I have been apprised of Article 51 of the Russian Constitution, which provides that no one can be obliged to testify against oneself, one's spouse and close family members (signature, date)."

20. Two witnesses, who alleged that they had had first-hand experience of torture being used against them in connection with the criminal case opened against the applicant and who were witnesses to such treatment of others, testified as follows:

1. Mr F.R.

"In June 2007 I was arrested ... Before [that], I used to work as a granary manager at a public company partly owned by [the applicant].

[After I was taken to a police station], the people who were in one of the offices there started asking me about the whereabouts of [the applicant] and my brother. [I said I did not know anything about that.] They started punching and kicking me, aiming the blows at my kidneys and torso. They avoided hitting my head so as to leave no bruises. Then they made me lift a chair and hold it, standing with my legs apart. When I was in this position, they also punched me in the kidneys.

[The deputy director of the Department for the Fight against Organised Crime] made me lie down facing the floor with my arms along my body. He put a foot on my waist and said that if I did not tell them the whereabouts of [the applicant] he would step on me and crush me ... [H]e stepped on my back and I fainted. The beatings and abuse went on for two days. They took turns questioning me. I did not have any sleep. They also did not give me any food or water.

...

They threatened to take me to the [premises of the] regional Department for the Fight against Organised Crime, where they would torture me with an electrical device ... Later I learned that such a device was used to torture my younger brother.

...

I did not complain about the torture. When they released me, they told me, 'Do not complain, or we will kill you.' "

2. Mr M.

"I am [the applicant's] nephew. On 29 June 2007 I was at home. Officers working for the Department for the Fight against Organised Crime came to see me ..., got into my car with me and we went to the Isfara police station. Officers of the regional Department for the Fight against Organised Crime were working there in two offices.

When I entered one of the offices, I asked why they had brought me there. They started punching me on the torso, avoiding my head so as to not leave bruises.

[I was later taken to the premises of the Khujand Department for the Fight against Organised Crime]. I was held there for five days. I was asked about [the applicant's] whereabouts. [Whilst] there they also beat me, and did not let me sleep. I heard M.R. screaming in an office nearby. Afterwards he told me that he had been tortured with electricity ... There I also saw [the applicant's former] driver. He had been beaten up badly, and was bleeding from a wound to his head. I also saw D.R. being tortured ... Five days later, without any record of my detention, I was released, after having been made to sign a paper stating that I had been treated well and not abused."

21. Fourteen individuals who had been convicted as the applicant's co-accused and who were serving prison sentences used the assistance of

their lawyers to give statements addressed to Ms Stavitskaya, the applicant's counsel. Four of them stated as follows:

3. Mr O.

"I ... was sentenced by a judgment of the Supreme Court of Tajikistan of 9 June 2009 to twenty-five years' imprisonment ... I had been arrested in the Russian Federation and extradited to Tajikistan. On the way there I was escorted by officers of the 6th division of the Department for the Fight against Organised Crime. Next to me on the plane sat the head of the Tajikistan Department for the Fight against Organised Crime. I told him the truth about the assassination of T. Boboyev. He said, 'We don't need you, we need [the applicant], tell me about him, it was him who ordered the assassination'. I denied [the applicant's] involvement but he did not like it.

When I was taken into the premises of the Department for the Fight against Organised Crime ... [my] torture began. Anyone who felt like it came in and beat me. I was electrocuted, I was in a lot of pain ... All they wanted from me was to testify that [the applicant] had ordered the assassination of T. Boboyev.

I had to give false evidence; for a month I was not allowed to see anyone, either a lawyer or my family, so that they would not see me in that state.

... During the trial I told the court everything that had happened during the arrest and pre-trial investigation. The court sympathised with me but interpreted my statements as a defence of [the applicant]."

4. Mr Mi.

"... The staff members of the Department for the Fight against Organised Crime ... imposed their views on me and demanded that I give evidence as dictated by them.

I refused and they began to torture me. First they insulted me, used foul language, then they started beating me ... when they could not obtain what they wanted they took me outside, that was in December 2007, and began pouring cold water on me, then brought me back inside and electrocuted me. They repeated this without a break for a few days.

... After a while I gave in and started giving false evidence.

For the first few months I was not allowed to see anyone as I was swollen, my hands bore traces of burns caused by the electrical current.

At the trial I told the court how I had been treated during the investigation and how I had been forced to give false evidence ... I renounced [the statements I gave during the investigation]."

5. Mr I.

"... I was arrested in May 2007. I used to work for [the applicant]. As I told them the truth, they got angry and started beating me, torturing me with electricity and scalding

me with hot water ... All this was just to make me give false evidence against [the applicant].”

6. Mr M.R.

“On 28 June 2007 I was arrested at my job – I worked as a security guard at a plant owned by [the applicant]. The police brought me to the [premises of the] Sughd Region Department for the Fight against Organised Crime where they questioned me in respect of [the applicant]. When they did not obtain the evidence they wanted from me, they beat me up brutally, at the same time electrocuting me, the pain was unbearable. As a result, when I urinated I had blood in my urine. During this treatment I screamed in pain, and to muffle the noise they put a gas mask on me.

As a result of the beatings, my appendix was ruptured and I underwent surgery for it. All this was done to make me testify that the ammunition they had shown me belonged to [the applicant].”

22. On 17 November 2010 Mr A. submitted the following statement addressed to the Russian Prosecutor General’s office:

“... In June 2007 I arrived in Russia. In Kolomna, Moscow Region, I was arrested by Russian and Tajik police officers ...

By a decision of the Kolomna Town Court of 25 December 2007 I was placed on remand in SIZO 50/4 in Kolomna ... [I stayed on remand] until 29 September 2008 when I was extradited to Tajikistan pursuant to a decision of the Supreme Court of Russia. On that date ... I was brought to the international airport in Vnukovo where I was handed over to Tajik police officers.

[Upon arrival] the Tajik police took me from the airport to the [premises of the] 6th division of the Department for the Fight against Organised Crime.

As far as I know, according to the decision of the Russian Supreme Court I should have been taken to SIZO 2 in Khujand. However, for a long time I was kept in [one of the offices] of the 6th division of the Department for the Fight against Organised Crime ... They beat me up and raped me ... Late at night two of the officers undressed me, and tied up my hands and legs. I was subjected to a brutal rape by these people ... One of them took photographs as the other one was raping me. They made me sign some papers, give evidence that I had committed certain crimes ...

I draw your attention to the fact that during the torture described above there was some talk about ... [the applicant], in whose respect the authorities had opened a criminal case in 2007. I knew that in this case a Tajik court had convicted thirty-three people ... I was forced to testify against [the applicant] that he had given me money in 2004 ... Despite the torture, rape and other inhuman treatment, I refused to sign those papers and to testify against [the applicant] and other people.

In this manner I was tortured and beaten up daily, until 3 October 2008.

On 3 October 2008 I was taken to a remand centre in Dushanbe. [A police officer] started visiting me there in order to obtain my confessions by using torture and

psychological pressure. I could not handle this any longer and complained to the Prosecutor General of Tajikistan ...

As a result, in October 2008 the authorities opened a criminal case against [the two officers who had raped me]. They fled and were on the wanted list for over two years ..."

23. A letter from the Prosecutor General's Office of Tajikistan dated 18 November 2010 (see paragraph 35 below) enclosed the statements of nine individuals who had previously given statements to Mr B. or to Ms Stavitskaya. Some of those statements were recorded by Mr R., an investigator from the Sughd Regional Department of Internal Affairs, while others were handwritten, allegedly by the interviewees. Among those statements were those allegedly given by Mr M.R., Mr O., Mr Mi. and Mr I. quoted above. The statements given by Mr M.R. and Mr O. did not contain any reference to, or renouncement of, their previous statements. As to the others, the relevant part of the statement by Mr Mi. read as follows:

"I did not write the statement presented to me, nor do I know any counsel by that name. I did not make the signature shown on the statement."

24. The statement by Mr I., as far as relevant, read:

"... I do not know any counsel by that name ..., nor did I write any statements for her, the handwriting in the statement is not mine."

25. All of the above four individuals stated that the authorities had not carried out any unlawful actions against them – either at the remand centres where they had been detained pending trial or at the correctional facilities where they were serving their sentences.

26. The Government also submitted written records drawn up by the heads of the correctional facilities where the above-mentioned fourteen individuals, including Mr O., Mr Mi., Mr I. and Mr M.R., were serving their sentences. The wording of the records is almost identical, as they state that upon arrival at the correctional facility their state of health was satisfactory, the detainee did not present with any particular complaints, nor were any superficial injuries detected. It was further submitted that the earlier medical records either had not indicated any problems or had mentioned medical monitoring of the detainees in connection with their chronic ailments.

27. The applicant's counsel subsequently submitted statements addressed to the Court by ten individuals who had previously written to give an account of the use of torture against them by the Tajik authorities. Among them were statements by Mr O., Mr Mi., Mr I. and Mr M.R. Mr M.R.'s two statements were dated 15 April and 30 November 2011; the rest of them were undated. The authors of the statements confirmed their previous statements collected by Mr B. and Ms Stavitskaya and reiterated their accounts of the events. Mr O., Mr Mi, and Mr I. also averred that after their sending their statements to Ms Stavitskaya they had been visited by

staff members of the Prosecutor General's Office of Tajikistan, who had coerced them by way of threats to state in writing that they had never made such statements.

D. Arrest and extradition proceedings in Russia

1. Arrest and extradition order

28. On 27 August 2010 the applicant was apprehended in Moscow pursuant to an international search warrant issued by the Tajik authorities. A record of detention of the same date contains a handwritten statement by the applicant expressing his disagreement with the apprehension and claiming that he was a Russian citizen being persecuted by the government of Tajikistan for political reasons. A form (*лист экспресс-опроса*) of the same date recorded the applicant's refusal to give any statements.

29. On 31 August 2010 the Khamovnicheskiy District Court of Moscow ("the District Court") remanded the applicant in custody.

30. On 1 September 2010 the Prosecutor General's Office of Tajikistan requested that the applicant be extradited following his apprehension in Moscow. The request for extradition contained the following assurances:

> "...
>
> [We] guarantee that in accordance with international law [the applicant] will have access to all means of defence, including the assistance of legal counsel; he will not be subjected to torture, inhuman or degrading treatment or punishment ([within the meaning of] the European Convention on Human Rights and Fundamental Freedoms and pertinent treaties of the United Nations and the Council of Europe and the protocols thereto).
>
> Pursuant to the Law of the Republic of Tajikistan "On a Moratorium for Capital Punishment" of 30 April 2004, the implementation and execution of capital punishment and related activities in the Republic of Tajikistan have been suspended; accordingly, the Prosecutor General of Tajikistan guarantees that ... [the applicant] would not be subjected to capital punishment.
>
> The Prosecutor General of Tajikistan guarantees that [this] extradition request is not aimed at prosecuting [the applicant] for political reasons, in connection with his race, religious faith, nationality or political affiliations.
>
> Pursuant to Article 66 of the [Minsk] Convention [for Legal Assistance and Legal Relations in Civil, Family and Criminal Matters] Tajikistan pledges to prosecute [the applicant] only on those charges for which he would be extradited. [The applicant] will not be extradited to a third State without the consent of the Russian Federation and will be free to leave Tajikistan after the trial and completion of sentence."

31. On the same date the extradition prosecutor at the Moscow Prosecutor's Office issued an opinion (*заключение*) stating that there was nothing to prevent the applicant's extradition, based on the fact that Russian

law also qualified the charges brought against him in Tajikistan as criminal. The opinion also referred to information provided by the Federal Migration Service to the effect that the applicant was not registered as resident in Moscow, nor had he applied for Russian citizenship.

32. On 10 September 2010 Human Rights Watch's Russian office petitioned the Russian Prosecutor General's Office to refuse the extradition request, referring to the deplorable human rights situation in Tajikistan.

33. On 19 September and 29 November 2010 the Russian Prosecutor General's Office received replies to its inquiries from the Federal Security Service ("the FSB") and the Ministry of Foreign Affairs, respectively, stating that those authorities did not have any information preventing the applicant's extradition and that his extradition would not prejudice Russia's security and national interests.

34. On 27 September 2010 the applicant's counsel petitioned the Russian Prosecutor General's Office to refuse the extradition request and release the applicant from detention. The petition referred to a widespread practice of torture and poor treatment of detainees in Tajikistan, as reported by various sources. It further quoted the statements of Mr F.R. and Mr Mi. as conveyed above (see paragraphs 20 and 21 above), as well as those of several other people who had experienced torture or whose family members had been tortured at the hands of the authorities, albeit not in connection with the criminal proceedings against the applicant and his co-accused. Reference was made to the public statements of a defence lawyer who had taken part in the criminal proceedings in question to the effect that both the applicant's convicted co-accused and witnesses had been tortured and that the convictions had been handed down as a result of pressure from the authorities. Finally, the petition cited the Court's judgments concerning extradition or expulsion to Tajikistan where a violation of Article 3 had been found.

35. In their letter of 7 October 2010 the Russian Prosecutor General's Office dismissed that petition, adding that a copy of the part of the record concerning the alleged unlawful actions of the Tajik authorities had been forwarded to the Prosecutor General's Office of Tajikistan for investigation.

36. On 17 November, 7 December 2010 and 20 January 2011 the applicant's counsel supplemented the original petition to the Russian Prosecutor General's Office to refuse the applicant's extradition with new witness statements and excerpts from the transcripts of the trial of the applicant's co-accused (see paragraph 18 above).

37. In letters of 18 November 2010 and 4 March 2011 the Prosecutor General's Office of Tajikistan informed its Russian counterpart that their inquiry in respect of the alleged ill-treatment by the Tajik authorities cited by the applicant's counsel in her petition of 27 September 2010 had not discovered any proof thereof. They also enclosed the statements of some of the witnesses who had previously claimed to have been tortured by the

authorities and of the records submitted by the heads of the correctional facilities where those witnesses were serving their sentences (see paragraphs 23-26 above).

38. On 19 January 2011 Amnesty International petitioned the Russian Prosecutor General not to extradite the applicant, citing the statements obtained by the applicant's counsel and reports in the media concerning the allegedly political motives of the prosecution and the unfair trial in the "Isfara case" involving the applicant (which was named after the town where most of the criminal activities had allegedly been carried out). Amnesty International also referred to the overall problems of unlawfulness and impunity of State officials in Tajikistan.

39. In a letter of 27 December 2010 addressed to the Russian Prosecutor General's Office, the Special Representative of the Russian President for international cooperation in the fight against terrorism and transnational organised crime endorsed the request for additional assurances from the Tajik authorities in respect of the applicant, namely the opportunity for members of the Russian diplomatic corps in Tajikistan to visit him in detention. Such assurances were, apparently, subsequently provided by the Tajik Prosecutor General's Office on 26 January 2011 as follows:

> "The staff members of the Russian Prosecutor General's Office and the Russian embassy in Tajikistan [will be able to] visit [the applicant] during the investigation and after conviction at any time and to see the conditions of his detention on remand and at a correctional facility."

40. On 16 February 2011 the Deputy Prosecutor General granted the extradition request in respect of the applicant. The decision, in its relevant parts, reads as follows:

> "...
>
> [The applicant] is charged with the following crimes committed on the territory of the Sughd Region of the Republic of Tajikistan.
>
> In 1998, while serving as the deputy director of Spirtzavod plc based in Isfara, [he] created a criminal group from among his subordinates, family members, friends and employees of law-enforcement authorities in Tajikistan with a view to committing serious and particularly serious criminal activities. [He] unlawfully acquired, transferred and stored large quantities of arms and ammunitions [for the group]. In December 2008 [he] merged [this] criminal group with another criminal group headed by A.B., thereby creating a criminal organisation which [he], along with A.B., also unlawfully armed.
>
> Following the establishment of the criminal organisation, together with A.B. in Chkalovsk on 2 January 1999 [he] arranged the assassination of the then deputy Prosecutor General of Tajikistan, T. Boboyev, by Mr O. and Mr M. [in exchange] for 6,000 United States dollars, in the presence of his under-age nephew S.G., with particular cruelty and in a manner that put the lives of many people in danger.

From 2004 to 2007, with a view to arming the members of the criminal organisation, as part of an organised group [he] unlawfully acquired, stored and shipped large quantities of arms and ammunitions, which were confiscated by law-enforcement authorities during an investigation on 30 June 2007.

From 31 March 2004 to 6 July 2007, in his official capacity as Director General of Khimzavod plc, [he] committed theft by way of embezzlement and misappropriation, in concert with a group of people, of State property of a particularly high value totalling over 37,000,000 somoni.

From 2001 to 2004, serving as a deputy of the Sughd Regional Assembly (*Majlis*) in Tajikistan and working as the Director of Spirtzavod plc, [he] abused his power by organising theft from the State Treasury through misappropriation and embezzlement by [certain employees] of a particularly large sum totalling 368,532 somoni.

In 2001 [the applicant] established Sharaf plc. From August to December 2004, he laundered funds by way of unlawful property and monetary transactions, inflicting significant damage in the sum of 262,035.50 somoni.

On 1 March 2006, in concert with a group of people, [he] forged a deed concerning [intercompany] reconciliation between Sharaf plc and ORS Khimzavod Limited based in Isfara.

Between April 2004 and November 2005 [the applicant], in his capacity as the Director General of Khimzavod plc, Sharaf plc and Spirtzavod plc based in Isfara [and acting] as part of an organised group, shipped a large amount of wheat with a value of 2,625,745 somoni over the border of Tajikistan by forging freight customs declarations and other documents.

In the same period, in concert with a group of people, [the applicant] evaded customs payments in the particularly large sum of 707,544.30 somoni.

Working as Director General of Spirtzavod plc and Sharaf plc based in Isfara and acting in concert with a group of people, in 2005 and 2006 [he] evaded a particularly large amount of taxes and levies totalling 2,562,751.41 somoni by forging documents.

On 3 October 2006 [he] groundlessly accused M.Y., the Mayor of the town of Isfara [and a] member of the *Milli Majlis* of Tajikistan, of ordering his assassination and threatened [her] and her family with violence.

[The applicant's] actions are punishable under Russian criminal law ... The above-mentioned offences carry penalties of over one year's imprisonment. The time-limits for [the applicant's] prosecution under Russian and Tajik legislation have not expired.

...

The request for [the applicant's] extradition should not be granted as far as the criminal prosecution for money-laundering is concerned ... since the amount of the funds is not qualified as large under Russian law; therefore his actions in this regard do not constitute a *corpus delicti* ...

[The applicant] should also not be extradited for criminal prosecution for forgery of an official document ... since the forged document is not qualified as official on the territory of the Russian Federation ... [A]ccordingly, his actions in this regard do not constitute a *corpus delicti* ...

[The applicant] should also not be extradited for the evasion of customs payments ... since his actions in this regard were aimed at smuggling goods across the Tajikistani border, for which he is to be extradited, and do not require additional qualification.

[The applicant] should not be extradited for criminal prosecution for violence against a public official ... since under Russian law his actions do not constitute a *corpus delicti* ... as ... [the applicant] did not threaten M.Y. in connection with her official duties.

... According to the information provided by the Department for Citizenship Issues of the FMS, the Moscow FMS and the FMS of the Republic of Bashkortostan, [the applicant] has not acquired Russian citizenship.

International treaties and Russian legislation do not bar [the applicant's] extradition.

..."

2. Challenge to the extradition order in court

41. The applicant and his counsel challenged the extradition order in court, arguing in particular that his extradition would put him at risk of treatment proscribed by Article 3 of the Convention. Their submissions contained all of the information previously provided to the Russian Prosecutor General's Office. The Russian offices of Human Rights Watch and the United Nations High Commissioner for Refugees, as well as Civic Assistance (*Комитет «Гражданское содействие»*), a charitable organisation, also made submissions to the Moscow City Court ("the City Court") against the extradition order, citing the high risk of torture in the event of the applicant's forced return to Tajikistan.

42. Following a request by the defence, on an unidentified date the City Court heard several witnesses. Mr Ol., who had studied the criminal case against the applicant and his co-accused as a staff member of the Tajik Prosecutor General's Office and who had been present in the courtroom during the trial, testified that many of the accused, and in particular, Mr O., Mr I. and Mr Mi., had claimed that their pre-trial statements had been obtained under duress and had renounced them, giving new testimonies. Mr Kh., who had participated in the trial on an anonymous basis, stated the following:

"[They] arrested 500 people and instituted criminal proceedings against thirty-three of them. To extract false confessions in respect of [the applicant], they were tortured with electricity, doused with cold water outside in the winter ... In the courtroom they renounced their statements. When [Mr M.R.] was interrogated he was kicked in the stomach [and] was taken to an intensive-care unit following an intestinal rupture ...

> When they interrogated [Mr. A.] they coerced him to testify against [the applicant] about drugs. He did not want to do it because that had not happened, and they raped him in the office.
>
> ...
>
> At the trial [Mr M.R.] showed a medical record [noting] that he had been tortured."

43. The court also heard Mr B.; Mr N., who had provided legal assistance to Mr O. at the trial; Mr Kh.A., the brother of Mr A. (see paragraph 22 above); and Ms Ryabinina, who worked for Civic Assistance. The court refused to admit in evidence the written statements of the applicant's co-accused concerning their torture by the authorities on the grounds that it was impossible to establish who had in fact written them or, as was the case with the statement by Mr A., on the grounds that it had been addressed to the Prosecutor General of Russia.

44. On 12 April 2011 the City Court considered the applicant's challenge to the extradition order. As noted in the text of the decision, the applicant's lawyer "argued with reference to the Court's case-law concerning extradition to Tajikistan that the applicant should not be extradited because he risked being subjected to treatment proscribed by Article 3 of the Convention". The rest of the defence's argument was based on claims that the criminal proceedings against the applicant were politically motivated and that it would be impossible for him to receive a fair trial in Tajikistan.

45. The City Court dismissed the applicant's complaint. It firstly noted that the Constitution of Tajikistan enshrined the principle of the separation of powers and held human rights and fundamental freedoms in the highest esteem, with the prosecutor's office overseeing compliance with the law. It observed that Tajikistan was a member of the United Nations and party to the most prominent international instruments for the protection of human rights, including the Convention against Torture, the International Covenant for Civil and Political Rights and the Optional Protocol thereto, and others. It further observed that Tajikistan had established the post of national ombudsman and a human rights commission headed by the Prime Minister, and had amended its Code of Criminal Procedure to exclude admission by the courts of evidence obtained under duress. On the basis of the above, the City Court concluded that Tajikistan "had recognised the fundamental documents concerning the protection of human rights and had taken measures to create mechanisms for their implementation".

46. In respect of the risk of being subjected to ill-treatment faced by the applicant, the City Court reasoned as follows:

> "Assessing [the applicant's] fear of becoming a victim of inhuman treatment, the court takes into consideration the following circumstances: firstly, the issue of the criminal prosecution of [the applicant], who was a member of a representative body, was considered not only by the law-enforcement authorities but also by the

representative body itself; secondly, being aware of the criminal charges against him, [the applicant] left the territory of Tajikistan ...

The arguments [that the applicant must not be extradited to Tajikistan on account of his well-founded fears of torture and ill-treatment contrary to Article 3 of the Convention] are unfounded since they constitute assumptions that are in no way corroborated, having been rebutted by the aforementioned credible assurances of the Tajik authorities in respect of [the applicant], which the court has no reason to distrust.

The court does not consider well-founded the statements of any of the defence witnesses, as none of them indicate that in the event of extradition [the applicant] will personally be subjected to torture or other unlawful methods of interrogation. On the contrary, as follows from the assurances furnished by the Tajik authorities, in line with international legal norms [the applicant] will be provided with all means of defence, including legal assistance. He will not be subjected to torture, cruel, inhuman or degrading treatment or punishment, in compliance with the [Convention] and the relevant treaties of the United Nations and the Council of Europe and the protocols thereto.

...

The Republic of Tajikistan provided the Russian Federation with ... assurances which cannot be questioned in the view of the fact that the trial of the other individuals indicted in the same criminal case was held in public for a lengthy period of time; the accused gave their statements freely; the witnesses heard during the examination of the present complaint also claimed that he had not been forced to give certain statements; and it was guaranteed that the competent representatives of the Russian authorities would have access to [the applicant] at any time during the proceedings.

As to the documents submitted by the defence, the court notes that the report of the United Nations Committee against Torture on the situation in Tajikistan is dated 6-24 November 2006 and contains information relevant for the period from 2000 to 2004; the recommendations of the [United Nations] Committee for Human Rights, which remark on positive developments in the observance of common human rights norms, were issued on 22 July 2004 and 13-14 July 2005; the report of the [non-governmental organisation] on compliance by Tajikistan with the Convention against Torture is based on information obtained in October 2006 and covers the situation before that date.

In addition, the defence submitted the information of the Bureau for Human Rights for 2007, 2008 and 2009, the review of the human rights situation in Tajikistan dated June 2010 and the national review dated January 2011.

The above documents are generic and do not contain any statements [that it would be inappropriate] for foreign states to extradite Tajikistani nationals to the authorities of Tajikistan.

...

Contrary to the argument of the defence made with reference to the statements of the witnesses, the reply from the Russian Prosecutor General’s Office demonstrates that

> the competent Russian authorities are not in possession of any information concerning the use of unlawful methods of interrogation on the individuals accused of crimes committed in complicity with [the applicant] and extradited by the Russian Federation for criminal prosecution, including Mr O. The office of the representative of the Russian Federation at the European Court of Human Rights is also not in possession of any such data.
>
> ..."

47. On 2 June 2011 the Supreme Court of Russia found the decision of the City Court of 12 April 2011 lawful and reasoned and upheld it on appeal, without adding any further reasoning.

E. Applications for refugee status and asylum

48. On 23 September 2010 the applicant applied for refugee status with the Moscow City branch of the Federal Migration Service ("the FMS"). On 8 October 2010 he was interviewed in the presence of his counsel in respect of his application. The applicant stated that he had arrived in Russia in search of refuge, as the authorities of Tajikistan had persecuted him and had threatened to take his life.

49. On 7 December 2010 the Moscow City branch of the FMS refused to grant the applicant refugee status, finding that the reason for his request was his fear of criminal liability.

50. On 31 January 2011 the applicant applied to the Moscow City branch of the FMS for temporary asylum, citing the same grounds as in the refugee application. On 5 March 2011 his application was dismissed for lack of humanitarian grounds warranting the granting of temporary asylum. On the same date the Deputy Director of the FMS rejected an appeal lodged by the applicant against the decision of the Moscow City branch of the FMS to refuse him refugee status.

51. On 16 September 2011 the Basmanniy District Court of Moscow examined the applicant's appeal against the final decision of the FMS to refuse him refugee status. The applicant averred that in Tajikistan he had been persecuted for his political convictions and for belonging to a certain social group. The court dismissed the appeal, considering that the applicant had failed convincingly to demonstrate the well-foundedness of his fears of persecution in Tajikistan and that his request for refugee status had been prompted by his intention to escape criminal liability in his home country. It is not clear whether that decision was appealed against to a higher court.

F. Courts' decisions concerning the applicant's detention pending extradition and his subsequent detention in connection with a fresh criminal charge in Russia

52. On 3 September 2010 the applicant and his counsel submitted an appeal to the District Court against its decision of 31 August 2010 (see paragraph 29 above). On 6 September 2010 the District Court returned the note of appeal for amendment because it had been signed with a facsimile of counsel B.'s signature. The decision to return the note of appeal was sent to the defence on 17 September 2010. The amended note of appeal arrived at the District Court on 21 September 2010.

53. On an unspecified date the District Court submitted the file to the City Court, which decided on 6 October 2010 to uphold the applicant's detention.

54. On 18 October 2010 the District Court further extended the applicant's term of detention. The applicant lodged an appeal against that decision, which reached the District Court on 25 October 2010. On an unspecified date the District Court submitted the file to the City Court. On 8 November 2010 the City Court upheld the District Court's decision on appeal.

55. On 21 February 2011 the District Court again extended the applicant's detention pending extradition. The applicant again lodged an appeal, which arrived at the District Court on 28 February 2011. On an unspecified date the District Court submitted the file to the City Court. A hearing of the appeal scheduled for 21 March 2011 was adjourned to 23 March 2011 to allow for further examination of the case file. On 23 March 2011 the City Court upheld the District Court's decision on appeal.

56. The final decision to extend the applicant's detention was taken by the District Court on 16 August 2011 and upheld on appeal on 8 September 2011.

57. The applicant's term of detention pending extradition expired on 27 February 2012.

58. On the same date, at the premises of the Moscow Khamovnicheskiy District Prosecutor's Office, the applicant and his lawyer were served with a decision to change the applicant's custodial measure to an undertaking not to leave town. The applicant was served immediately afterwards with a warrant to appear as a witness, signed on 24 February 2012 by investigator A. S. of the Shchelkovo Town Investigation Division, Moscow Region (*Следственный отдел по г. Щелково ГСУ СК РФ по Московской области*, hereinafter referred to as "the Shchelkovo Investigation Division"). The warrant stated that the applicant was wanted as a witness in a criminal case opened on 10 March 2010 concerning two attempts to assassinate a Mr K. in 2009 and 2012. According to the document, the

applicant had been repeatedly summoned to take part in investigative actions but had failed to appear, and his whereabouts had not been known to the authorities.

59. The applicant was immediately taken to the premises of the Shchelkovo Investigation Division, where he was interviewed and made to take part in a confrontation with Mr K., who allegedly identified him as a possible perpetrator. At 12.40 a.m. on 28 February 2012 the applicant was arrested as a suspect in that criminal case.

60. By a fax message of 29 February 2012 the Sughd regional prosecutor of Tajikistan, Sh.K., asked A.K., an investigator of the Shchelkovo Investigation Department, to postpone the applicant's release from custody, citing the Tajik authorities' suspicions of his involvement in planning the assassination of another person which had allegedly taken place after the applicant's arrest in Moscow on 27 August 2010.

61. On 2 March 2012 the Shchelkovo Town Court, Moscow Region, decided to remand the applicant in custody as a criminal suspect until 28 April 2012.

G. The applicant's disappearance from SIZO-50/12 on 29 March 2012 and the underlying context

62. On 25 January 2012 the Registrar of the Court addressed a letter to the Russian Government on behalf of the President of the Court, expressing his profound concern at the repeated allegations of applicants' secret transfers from Russia to Tajikistan in breach of the interim measures issued under Rule 39 of the Rules of Court. Qualifying this situation as worrying and unprecedented, the letter invited the Russian Government to provide the Court with exhaustive information about any follow-up given to the incidents in Russia. It also drew the authorities' attention to the fact that the interim measures continued to apply in twenty-five other cases concerning extradition and expulsion, including the present case. As an indication of the seriousness with which he viewed this turn of events, the President asked that the Chairman of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General of the Council of Europe be informed immediately (see the full text of the letter quoted in *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 52, 25 April 2013).

63. According to the Government, all bodies with competence to secure the applicant's forcible transfer to Tajikistan were informed of the prohibition of such an action: on 3 February 2012 the Office of the Representative of the Russian Federation at the Court informed the Prosecutor's General's Office, the Ministry of the Interior, the FMS and the the FSB of the interim measures issued by the Court, *inter alia*, in respect of the applicant.

64. At the 1136th meeting of the Ministers' Deputies held on 8 March 2012, the Committee of Ministers adopted the following decision on that issue (CM/Del/Dec(2012)1136/19):

> "The Deputies
>
> ...
>
> 4. as regards the Iskandarov case, recalled that the violations of the Convention in this case were due to the applicant's kidnapping by unknown persons, whom the Court found to be Russian State agents, and his forcible transfer to Tajikistan after his extradition had been refused by the Russian authorities;
>
> 5. noted with profound concern the indication by the Court that repeated incidents of this kind have recently taken place in respect of four other applicants whose cases are pending before the Court where it applied interim measures to prevent their extradition on account of the imminent risk of grave violations of the Convention faced by them;
>
> 6. took note of the Russian authorities' position that this situation constitutes a source of great concern for them;
>
> 7. noted further that the Russian authorities are currently addressing these incidents and are committed to present the results of the follow-up given to them in Russia to the Court in the framework of its examination of the cases concerned and to the Committee with regard to the Iskandarov case;
>
> 8. urged the Russian authorities to continue to take all necessary steps to shed light on the circumstances of Mr. Iskandarov's kidnapping and to ensure that similar incidents are not likely to occur in the future and to inform the Committee of Ministers thereof."

65. On 26 March 2012 members of the Moscow Region Public Commission for Monitoring the Protection of Human Rights in Detention («*Общественная наблюдательная комиссия по осуществлению общественного контроля за обеспечением прав человека в местах принудительного содержания в Московской области*») visited the applicant and held a conversation with him in the SIZO-50/12 remand centre located in Zelenograd, Moscow Region. In a letter dated 8 April 2012, two members of the Commission, Mr N. D. and Mr I. Sh., stated that the applicant had unambiguously confirmed that he had no intention of returning to Tajikistan where he feared torture and an unlawful criminal conviction. He had also declared that he was doing everything in his power to remain in Russia and pursuing his fight for release.

66. The applicant's nephew, Mr I. D., testified in writing that in his last telephone conversation with the applicant on 27 March 2012, the latter had confirmed his intention to stay in Russia, while voicing fears that the new charge had been brought against him with a view to ensuring his subsequent abduction and transfer to Tajikistan. According to both the applicant's

representative and his nephew, the fear of abduction had prompted the applicant to arrange for them immediately to meet him at the remand centre in case he was suddenly released.

67. On 29 March 2012 the applicant left the premises of the SIZO-50/12 remand centre in Zelenograd. According to information provided by the Federal Service for the Execution of Sentences ("the FSIN") and transmitted by the Government to the Court, the applicant was released at 1 p.m., having signed an undertaking not to leave town. Neither the applicant's lawyer nor his next-of-kin were notified of the decision to release him. In the morning of the same day the lawyer received a phone call from one of the applicant's cellmates informing her that the applicant was about to leave the remand centre. However, by the time she reached the remand centre the applicant had disappeared without leaving any trace.

68. Subsequently, the applicant's lawyer received a letter from the Shchelkovo Investigation Division dated 23 March 2012 informing her that the applicant would be served with new charges at SIZO-50/12 at 9 a.m. on 29 March 2012 and inviting her to attend. The postmark on the letter showed that it had been posted on 31 March 2012.

H. Official version of the applicant's voluntary return to Tajikistan

69. The respondent Government submitted a letter of 6 June 2012 from the Prosecutor General's Office of Tajikistan to its Russian counterpart according to which the applicant had gone to the State Committee for National Security of Tajikistan on 5 April 2012 and had been arrested. The letter stated that the applicant had been released on 9 April 2012 having signed an undertaking not to leave town.

70. On 7 April 2012 Tajik State television broadcast a video of the applicant reading out a statement that immediately following his release from the remand centre, feeling guilty and worrying about his children and elderly mother, he had decided to return to Tajikistan and to turn himself in to the authorities. With that goal in mind, he had walked to the nearest market in Zelenograd, where he had borrowed 15,000 Russian roubles (RUB) (approximately 370 Euro (EUR)) from his compatriots. Without specifying the means of travel, he stated that he had subsequently arrived in Orenburg; crossing the Russian-Kazakh border, he had arrived in Almaty, Kazakhstan; crossing the Kazakh-Kyrgyz border, he had arrived in Bishkek. Then he had travelled to Osh, crossed the Kyrgyz-Tajik border and arrived in Kistakuz, a town near the northern border of Tajikistan. From there he had travelled to Dushanbe, the capital city of Tajikistan, where he had turned himself in to the State Committee for National Security.

I. Requests to protect the applicant against the imminent risk of his forcible transfer to Tajikistan

71. Following the applicant's disappearance on 29 March 2012, his representative immediately addressed the Russian law-enforcement authorities seeking the applicant's urgent protection. On the same date she sent letters to the Russian Prosecutor General, the Head of the State border service and the Representative of the Russian Federation at the Court, asking them to take urgent measures to prevent the applicant's forced repatriation to Tajikistan.

72. On the same date the Court forwarded the complaint about the applicant's disappearance to the Government, asking them to comment on the alleged risk of the applicant's being transferred to Tajikistan in breach of the interim measures issued by the Court.

73. On the next day, the applicant's representative addressed the prosecutor of Shchelkovo, informing him of the emergency and reporting alleged gross irregularities in the proceedings conducted by the Shchelkovo Investigation Division. She referred in particular to their failure to notify her about their intention to modify the charges against the applicant. She also referred to the Shchelkovo Investigation Division's direct contacts with the Prosecutor's Office of Tajikistan, which had asked them not to release the applicant from detention pending a new request for his extradition. She alleged that the deputy head of the Shchelkovo Investigation Division, A.K., was responsible for those events and asked the prosecutor to inquire into this situation.

74 On 2 April 2012 the Government informed the Court that they were not aware of the applicant's whereabouts.

75. On 4 April 2012 the above complaints by the applicant's representative were transmitted to the Shchelkovo Prosecutor's Office and the Shchelkovo Investigation Division. On 17 April 2012 the Shchelkovo Prosecutor's Office replied to the applicant's lawyer's complaint, suggesting that she ask the police to search for the applicant as the prosecutor's office was not competent to conduct any investigative or search activities.

76. The Court has received no further information about any follow up given by the authorities to the requests seeking the applicant's urgent protection against his alleged abduction and forcible transfer to Tajikistan.

J. Official inquiry in Russia and repeated refusals to open a criminal investigation

77. On 3 April 2012 the applicant's representative wrote to the director of SIZO-50/12 in Zelenograd requesting details of the circumstances surrounding the applicant's release and the preservation of footage possibly

captured by closed-circuit cameras at the remand centre on 29 March 2012. She also wrote on the same date to the head of the Zelenograd Investigation Division of Moscow (*Зеленоградский следственный отдел ГСУ СК РФ по г. Москве*, hereinafter referred to as "the Zelenograd Investigation Division") to inform it of the applicant's disappearance and ask for a criminal investigation to be opened. She referred in particular to the recurrence of similar incidents with regard to Tajikistan and to possible involvement of the deputy head of the Shchelkovo Investigation Division, A.K., in the incident at issue.

78. On 17 April 2012 the Court put additional questions to the Government (see paragraph 7 above), inviting them in particular to comment on the assertion by the applicant's representative that Russian State agents had been involved in the applicant's abduction and forcible transfer to Tajikistan. They were further requested to inform the Court of all decisions and actions taken by the investigation authorities in response to the request for the opening of criminal proceedings, which had been lodged by the applicant's representative on 3 April 2012 with the Zelenograd Investigation Division.

79. On 13 November 2012 the Government submitted, without providing any decision or document, that an investigator of the Investigative Committee of the Russian Federation had conducted a preliminary inquiry under Articles 144-145 of the Code of Criminal Procedure and issued several decisions refusing to open a criminal investigation on the grounds of absence of *corpus delicti*. According to the Government, all those decisions had been repeatedly quashed, *inter alia*, by the Zelenograd District Prosecutor's Office.

80. On 25 February 2013 the Government submitted, again without providing any decision or document, that the inquiry into the applicant's abduction and transfer to Tajikistan was still being pursued by the Zelenograd Investigation Division. On an unidentified date, a decision was taken not to open a criminal investigation in view of the failure to identify the offender to be prosecuted. On 14 January 2013 the deputy head of the Zelenograd Investigation Division quashed that decision and remitted the case for further inquiry. The State border service of the FSB was asked to check information about the illegal crossing of the Russian State border by the applicant or his crossing the border against his will.

81. The Government expressed the view, nonetheless, that the applicant's forcible removal from Russia to Tajikistan was an uncorroborated assumption by the applicant's representatives. Referring to the version of the applicant's voluntary surrender to the Tajik authorities (see paragraph 69 above), they informed the Court that the Prosecutor General's Office of Tajikistan had made a detailed examination of the arguments submitted by the applicant's representatives and had found them unsubstantiated. The Government also informed the Court that the State

border service had not kept a record of the persons crossing the border. They submitted that the CCTV footage captured in SIZO-50/12 on 29 March 2012, which had been requested by the applicant's lawyer and the Court in the wake of the impugned events, had not been preserved "due to a shortage of server memory".

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND MATERIALS

82. The relevant domestic and international law is summarised in the Court's recent judgments concerning extradition and expulsion from Russia to Tajikistan and Uzbekistan (see *Abdulkhakov v. Russia*, no. 14743/11, §§ 71-98, 2 October 2012; *Zokhidov v. Russia*, no. 67286/10, §§ 77-106, 5 February 2013; and *Savriddin Dzhurayev*, cited above, §§ 70-101). The reports on the situation in Tajikistan are summarised in *Khodzhayev v. Russia* (no. 52466/08, §§ 72-74, 12 May 2010), and *Gaforov v. Russia* (no. 25404/09, §§ 93-100, 21 October 2010), and the most recent ones appear in *Savriddin Dzhurayev* (cited above, §§ 104-07). The latter also contains an extensive summary of Council of Europe texts on the duty to cooperate with the Court, the right to individual petition and interim measures (ibid., §§ 108-20), and the Committee of Ministers' decisions under Article 46 on related cases concerning Russia (ibid., §§ 121-26).

THE LAW

I. ESTABLISHMENT OF THE FACTS

83. The Court observes that the parties disagree about the events that took place between 29 March 2012 when the applicant unexpectedly left the SIZO-50/12 remand centre in Zelenograd, and 7 April 2012 when Tajik television showed him to be in the hands of the law-enforcement authorities in Tajikistan (see paragraphs 67 and 70 above). They disagree in particular about how the applicant made his way to Tajikistan.

84. The applicant's representatives contended that the applicant had been abducted and transferred to Tajikistan against his will. Referring to the latest contacts with the applicant prior to his unexpected release from detention on 29 March 2013 and the underlying context (see paragraphs 62-68 above), they found it implausible that the applicant had willingly travelled through four national borders without any identity document and without having said a word to his lawyers and next-of-kin in Moscow. They also argued that the Russian authorities' conduct, both prior to and after the

applicant's disappearance, demonstrated their knowledge of and involvement in the applicant's abduction and forced repatriation. They referred in particular to the way in which the applicant had been kept in detention on what they considered as an obviously contrived charge of attempted murder (see paragraphs 58-61 above), and the subsequent lack of any investigative actions in that respect until the date on which that extremely serious charge had, for no apparent reason, been replaced with a less serious one, allowing the applicant to be released from custody. They further submitted that the authorities deliberately delayed notifying the applicant's lawyer that a new charge had been served on the applicant in order to prevent her attendance at this event on the day of the applicant's disappearance. Lastly, the authorities had not undertaken a single investigative action in the wake of the applicant's disappearance, but had merely shuffled the complaints between offices.

85. The Government denied any link between the extradition proceedings and the criminal charges brought against the applicant in Russia. They also denied having any knowledge of or responsibility for the applicant's fate following his release on 29 March 2012 and affirmed that the applicant had not been handed over to Tajikistan through the extradition procedure. For the rest, they essentially referred to the version of the applicant's "voluntary surrender" provided by the Tajik authorities (see paragraphs 69 and 81 above), without providing the Court with details of the domestic inquiries or related documents.

86. In view of the parties' diverging positions, the Court has to start its examination of the case by establishing the relevant facts. In so doing, it is inevitably confronted with the same difficulties as those faced by any first-instance court (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 151, 13 December 2012). The Court is sensitive to the subsidiary nature of its role and 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. Nonetheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place (see, with further references, *El Masri*, cited above, § 155).

87. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In

the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, with further references, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Iskandarov v. Russia*, no. 17185/05, § 107, 23 September 2010; and *El Masri*, cited above, § 151).

88. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation). In certain circumstances, where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 179, ECHR 2007-XII; and *Iskandarov*, cited above, § 108). Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate (Rule 44C § 1 of the Rules of Court).

89. Turning to the circumstances of the present case, the Court has first to examine the version of events narrated by the applicant in a video broadcast on 7 April 2012 by Tajik television. According to that story, motivated by feelings of guilt and worrying about his children and elderly mother, the applicant left Russia voluntarily and travelled across several national borders to turn himself in to the Tajik authorities.

90. The Court finds it beyond dispute that the relevant text was read out by the applicant and aired on Tajik television while he was under the total control of the Tajik authorities. According to the official information provided by the Tajik Prosecutor General's Office to its Russian counterpart, the applicant was detained in police custody at least two days before and two days after his statement. The applicant's situation should thus be viewed as extremely vulnerable, given notably the risk of ill-treatment he was running in connection with the criminal prosecution in his home country (see paragraphs 122-135 below). That fact alone, taken in conjunction with the applicant's history, compels the Court to regard that account of events with great caution. It would not, therefore, give credence

to the information contained in the text read out by the applicant unless it were corroborated by other evidence. Yet, the respondent Government have not provided any element to support that account, while a wealth of material at the Court's disposal casts serious doubt on the veracity of the story presented on Tajik television.

91. In the Court's view, both the arguments made and the evidence provided by the applicant's representatives contradict that version of events. The Court has no reason to distrust the witnesses who testified that two or three days prior to his disappearance, the applicant had had the firm intention to do everything in his power to avoid extradition to Tajikistan (see paragraphs 65-66). Indeed, their statements sit well with the applicant's previous story. The Court also observes that the respondent Government did not refute the submissions by the applicant's representatives that the applicant had had ample opportunities to make a quicker and safer trip to Tajikistan without undergoing a highly risky and clandestine journey in a manifestly unlawful manner through four national borders without any identity document. As they argued, nothing had prevented the applicant from asking the Tajik Embassy in Moscow to assist him for that purpose.

92. The puzzling circumstances of the applicant's release on 29 March 2012 raise further suspicions about the veracity of the account presented on Tajik television (see paragraph 70 above). According to the story broadcast, the first thing the applicant did following his release was to go to the local market in order to borrow RUB 15,000 (EUR 370) from unknown persons without contacting his lawyers and next-of-kin in accordance with their prearranged plan (see paragraph 66 above). That the applicant's release was deliberately organised without his lawyer and next-of-kin being present (see paragraphs 67-68 above) strengthens those suspicions, and the Government have done nothing to allay them. For example, they could have provided CCTV footage captured in SIZO-50/12 of Zelenograd and the surrounding area to prove at least that the applicant left the remand centre of his own free will and without any hindrance by the authorities or third persons. The authorities were explicitly requested shortly after the applicant's release to preserve that valuable evidence but failed to do so (see paragraph 81 above), thus prompting the Court to draw further inferences against the version that the applicant left Russia for his home country voluntarily.

93. Moreover, the Government chose not to refute with any degree of substantiation other allegations made by the applicants' representatives or to put forward their own version of events, even though they had ample opportunities and resources to do so. On 17 April 2012 they were explicitly asked by the Court (see paragraph 7 above) to explain how the applicant had managed to travel to Tajikistan without his passport and without complying with border and other formalities. They were also asked to submit a list of investigative actions undertaken in respect of the applicant's reported disappearance and forced repatriation to Tajikistan, including any decision

to open or not to open criminal proceedings. The Government's reply to those detailed questions was belated and perfunctory (see paragraphs 79-80 above), making it evident that no effective investigation had so far been conducted at the domestic level (see paragraph 144 below). The Court attaches great significance to – and draws further strong inferences from – the Government's continuing failure to explain or elucidate the circumstances of the grave incident at issue in the present case.

94. Lastly, the Court should consider the present case in its context, having regard in particular to the recurrent disappearances of individuals subject to extradition from Russia to Tajikistan or Uzbekistan, and their subsequent resurfacing in police custody in their home countries (see paragraph 62 above). The regular recurrence of such unlawful incidents, to which the authorities have not provided any adequate response, lends further support for the version of facts presented to the Court by the applicant's representatives.

95. The Court finds the above elements sufficient to conclude beyond reasonable doubt that the applicant did not travel from Russia to Tajikistan of his own free will but was secretly and unlawfully transferred there by unknown persons following his release from SIZO-50/12 of Zelenograd on 29 March 2012 and handed over to the Tajik authorities before 7 April 2012, when he was shown on Tajik television.

96. As to the allegation that the Russian authorities were involved in the applicant's forcible transfer to Tajikistan, the Court considers that it closely relates to all other aspects of his complaint under Article 3 and should be assessed in connection with other issues arising under that provision.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The applicant originally complained that, if extradited to Tajikistan, he would run a real risk of being subjected to ill-treatment in breach of Article 3 of the Convention. Following the subsequent developments, his representatives supplemented the complaint, submitting that the applicant was forcibly transferred from Moscow to Tajikistan in violation of Article 3 for which the Russian authorities were responsible. The Court consequently requested that the parties provide additional observations in that respect, insisting in particular on the need to provide exhaustive information on the investigation conducted by the authorities into the impugned events. Article 3 of the Convention provides as follows:

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

A. Submissions by the parties

1. The Government

98. The Government argued that, while deciding on the applicant's extradition, the domestic authorities had carefully examined the possibility of his being subjected to torture and various forms of ill-treatment. They referred to the extradition request and the letter of 26 January 2011 from the Prosecutor General's Office of Tajikistan, which had contained various assurances to that effect. They further referred to the letter of 18 November 2010 rebutting the allegations of torture made by the applicant's co-accused. The Government emphasised Tajikistan's various international obligations in respect of the prevention and punishment of torture and the fact that it had created the post of ombudsman as proof of its good faith in making genuine efforts to protect human rights. They pointed out that the court reviewing the extradition order had heard the applicant and his counsel, the prosecutor and numerous witnesses. It had admitted to the case file the opinion of Ms Ryabinina, the reports by various human-rights organisations and the relevant case-law of the Court. The court had carefully examined the available material and had rightfully arrived at the conclusion that the applicant's arguments had been ill-founded. Lastly, the Government forwarded a statement by the Tajik Prosecutor General's Office, the relevant part of which reads as follows:

> "In the first years after Tajikistan gained independence, starting from 1992 the country witnessed a civil war; [in that period] the law was sometimes disregarded and violations of human rights and freedoms occurred.
>
> In June 1997 an Agreement on National Reconciliation was signed by the Government and the United Tajik Opposition. Gradually peace, security and the rule of law were established in the country and all necessary conditions for ensuring that human rights and freedoms were protected were created. Since 2000 there have been radical developments in the protection of human rights. In 2003 important amendments were introduced to the Constitution, eighty per cent of which concerned human rights and freedoms.
>
> Thus, Tajikistan has created a legal basis and important organisational, legal and other conditions for the genuine implementation and protection of human rights and freedoms.
>
> ...
>
> The criminal law and criminal procedural law provide for a ban on torture ... Four provisions of the Criminal Code recognise various forms of torture as a crime. The provisions of the Criminal Code set down a definition of torture (Article 117 of the Criminal Code) and establish criminal liability for abuse of power manifested in torture (Article 316 of the Criminal Code), extraction of confessions by way of

debasing an individual, torture and other violent actions on the part of officials of the investigative authorities (Article 354 of the Criminal Code).

...

The Code of Criminal Procedure gives no legal force to evidence that was obtained via the use of torture, force or pressure (Article 88 of the Code of Criminal Procedure).

...

Every allegation of the use of force or unlawful methods on the part of law-enforcement authorities ... is thoroughly investigated and the persons responsible are held liable. In 2010 and the first three quarters of 2011 prosecutors' offices received sixty-six complaints of the use of unlawful methods of interrogation, beatings and torture by the employees of law-enforcement authorities. In sixteen cases the allegations were confirmed, and criminal cases were opened. Of those, twelve cases reached the courts, which convicted the accused. Many of these instances of the use of force were of a general character and did not purport to extract confessions to crimes.

... Since the beginning of 2011 [the issue of torture and other breaches of the law during criminal investigations] has been raised at meetings of the State Security Council headed by the President.

The Ombudsman may also consider [this issue] and take preventive measures."

99. Subsequently, the Government contested the assertion that the applicant had been abducted and forcibly transferred to Tajikistan, considering that it was not corroborated by any evidence (see paragraph 81 above).

2. The applicant

100. The applicant disagreed with the assertion that the Russian authorities had made a thorough assessment of the risk of ill-treatment in breach of Article 3 of the Convention in his case, pointing out that the authorities' conclusions in that respect had been based on the scant information obtained from a handful of official sources. He asserted that both the Russian Prosecutor General's Office and the Moscow City Court had adopted an excessively formalistic approach towards the assessment of the evidence in his case. He referred to the general situation in Tajikistan, as reported by numerous sources, and highlighted the testimonies of the witnesses in support of his argument that he would undoubtedly be tortured if he were extradited to that country. He added that the statements of the witnesses allegedly renouncing their previous statements had been recorded by a law-enforcement officer in the absence of a lawyer. In addition, the prison records which the Government presented in respect of the detainees did not refute the witness statements, but only recorded the lack of marks of

torture on the bodies of the individuals concerned in 2010, whereas the pre-trial investigation had been carried out in 2007 and 2008. The applicant argued that his situation had been further endangered by the Russian authorities' decision to divulge information to their counterparts in Tajikistan concerning his application for refugee status and asylum, as well as the statements of the witnesses with regard to the use of torture by Tajik investigative bodies (see paragraph 35 above).

101. The applicant also questioned the value and credibility of the assurances put forward by the Tajik authorities. In particular, he drew attention to the fact that they had only provided for the possibility of the Russian Ministry of Foreign Affairs examining the conditions of his detention but had not pointed to any specific mechanism that would allow monitoring of the treatment received by the applicant, nor had they established any form of responsibility on the part of the authorities of the requesting country for a potential breach of their obligations. Furthermore, he referred to the Court's position in the case of *Saadi v. Italy* ([GC] no. 37201/06, ECHR 2008) and the cases concerning extradition to Tajikistan: *Khodzhayev*, cited above; *Khaydarov v. Russia* (no. 21055/09, 20 May 2010); and *Gaforov*, cited above, to the effect that diplomatic assurances were not sufficient to conclude that a State would refrain from subjecting the individual extradited to torture when various independent sources pointed to the existence of such practice in that State.

102. Following the applicant's disappearance in Moscow, his representatives argued that the Russian authorities had been responsible for his forcible transfer to Tajikistan and for the failure to conduct an effective investigation of the matter. They found it particularly unacceptable that the complaint about the applicant's disappearance had eventually been sent for examination to the Shchelkovo Investigation Division, whose servicemen could have been involved in the applicant's abduction. They referred in this connection to a request to postpone the applicant's release from custody faxed directly by the Sughd regional prosecutor of Tajikistan, Sh. K., to the investigator of the Shchelkovo Investigation Division, A. K., on 29 February 2012. They also doubted that the Russian border control service did not keep a record of persons crossing State borders, citing as proof of the availability of such information the Government's statement in another case pending consideration by the Court. Lastly, they cast doubt on the Government's allegation that the remand centre's CCTV footage, which would have been capable of shedding light on the circumstances of the applicant's disappearance, had not been preserved as a result of a shortage of server memory.

B. The Court's assessment

1. Admissibility

103. 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

104. The Court has already found beyond reasonable doubt that the applicant was secretly and unlawfully transferred from Russia to Tajikistan by unknown persons in the wake of his release from SIZO-50/12 of Zelenograd on 29 March 2012. The issue of Russia's responsibility under Article 3 of the Convention for the applicant's transfer to Tajikistan is contingent on the existence at the material time of a well-founded risk that the applicant might be subjected to ill-treatment in that country. The parties disagreed on the latter point. The Court will therefore start its examination by assessing whether the applicant's forcible return to Tajikistan exposed him to such a risk.

(a) Whether the applicant's return to Tajikistan exposed him to a real risk of treatment contrary to Article 3

(i) General principles

105. It is the settled case-law of the Court that expulsion or extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3 (see *Saadi v. Italy* [GC], cited above, § 125, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

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

107. In determining whether it has been shown that the applicant runs a real risk of suffering treatment proscribed by Article 3 if extradited, the Court will examine the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Saadi*, cited above, § 128). Since in cases of this kind the nature of the Contracting States' responsibility under Article 3 lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known, or ought to have been known, to the Contracting State at the time of the extradition; the Court is not precluded, however, from having regard to information which comes to light subsequent to the extradition. This may be of value in confirming or refuting the assessment that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215; and *Mamatkulov and Askarov*, cited above, § 69).

108. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

109. As regards the general situation in a particular country, the Court can attach a certain importance to the information contained in recent reports from independent international human-rights-protection associations or governmental sources (see *Saadi*, cited above, § 131, with further references). Furthermore, in assessing whether there is a risk of ill-treatment in the requesting country, the Court assesses the general situation in that country, taking into account any indications of improvement or worsening of the human-rights situation in general or in respect of a particular group or area that might be relevant to the applicant's personal circumstances (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 337, ECHR 2005-III).

110. At the same time, reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition (see *Dzhaksybergenov v. Ukraine*, no. 12343/10, § 37, 10 February 2011). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence, with reference to the individual circumstances substantiating his fears of ill-treatment (see *Mamatkulov* and *Askarov*, cited above, § 73, and *Dzhaksybergenov*, cited above, ibid.). The Court would not require evidence of such individual circumstances only in the most extreme cases where the general situation of violence in the

country of destination is of such intensity as to create a real risk that any removal to that country would necessarily violate Article 3 (see *N.A. v. the United Kingdom*, no. 25904/07, §§ 115-16, 17 July 2008, and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 217, 28 June 2011).

111. In a case where assurances have been provided by the receiving State, those assurances constitute a further relevant factor which the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Saadi*, cited above, § 148, and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 187, ECHR 2012 (extracts)).

(ii) Application to the present case

112. Having regard to the material in its possession (see paragraphs 48-51 above), the Court firstly notes that the applicant does not appear to have expressed, in a clear and unequivocal manner, his fear of ill-treatment in his applications for refugee status and asylum. Nor did he do so while challenging the relevant decisions before a higher FMS authority and in court. Instead, before those authorities he chose to rely on the allegation that the criminal proceedings against him were politically motivated. In contrast, in the extradition proceedings the risk of ill-treatment was one of the primary arguments put forward by the defence. The Government submitted that the applicant's arguments had been adequately considered by the domestic courts and rejected.

113. The Court reiterates that, where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among others, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011). This should not lead, however, to abdication of the Court's responsibility and a renunciation of all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance (see *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, § 69, Series A no. 246-A, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 192, ECHR 2006-V). In accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention.

114. With reference to extradition or deportation, this means that in cases where an applicant provides reasoned grounds which cast doubt on the

accuracy of the information relied on by the respondent Government, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources, such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007, and *Ismoilov and Others v. Russia*, no. 2947/06, § 120, 24 April 2008). Accordingly, the Court will first assess in detail the relevant arguments raised by the applicant in the extradition proceedings and the consideration given to them by the competent authorities.

(α) Domestic proceedings

115. The Court observes that between September 2010 and January 2011 the applicant's lawyers addressed the Russian Prosecutor General's Office on four occasions, setting out detailed arguments against his extradition, supported with evidence from numerous witness statements, trial records, reports of NGOs and United Nations agencies and, not least, reference to the Court's recent case-law concerning expulsion or extradition to Tajikistan having been found to be in breach of Russia's obligations under Article 3 of the Convention. In addition, the Prosecutor General's Office received letters from Human Rights Watch and Amnesty International about the applicant's case, setting out specific reasons against his extradition. The fact that the Prosecutor General's Office sent the witness statements to its Tajik counterpart for investigation and requested additional diplomatic assurances demonstrates that the Prosecutor General's Office took heed of that material. Against that background, it is difficult for the Court to understand that the extradition order signed on 16 February 2011 by the Deputy Prosecutor General neither made an assessment of the risk of ill-treatment faced by the applicant, nor mentioned the existing allegations of such a risk (see paragraph 40 above). Given that no such assessment was made in line with the requirements of the Convention, the Deputy Prosecutor General's conclusion that the international treaties to which the Russian Federation was a party did not prevent the applicant's extradition appears to be unsubstantiated.

116. The Court acknowledges that in the proceedings for judicial review of the extradition order, a more thorough approach was adopted by the City Court. It is noted that in response to the applicant's allegations the City Court heard several witnesses for the defence, admitted to the case file some of the NGO reports which had been submitted to it and did not leave unanswered the defence's motions for the examination of other evidence. In addition, the Court acknowledges that in its ruling of 12 April 2011 the City Court took care to give some reasoning to its decision to reject the evidence

submitted by the defence (compare *Gaforov*, cited above, §§ 123-26, and *Khodzhayev*, cited above, § 104, where the domestic courts failed to mention the submissions of the defence or dismissed such submissions without giving any reasons). Notwithstanding those positive developments, the Court is unable to accept that the City Court conducted a proper assessment of the risks faced by the applicant in Tajikistan, as required by the Convention.

117. The Court notes at the outset that the City Court mainly based its assessment of the general situation in Tajikistan on the latter's Constitution, certain domestic laws, and the fact that it was a member of the United Nations and party to certain UN treaties, including the Convention against Torture and the International Covenant on Civil and Political Rights and the Optional Protocol thereto. The court thereby reached the conclusion that Tajikistan was a democracy abiding by the rule of law and respectful of human rights. While the importance of the aforementioned national texts and international instruments should not be understated, scarce attention was paid to the question of their effectiveness and practical implementation in Tajikistan. Indeed, the court's conclusion that Tajikistan "had taken measures to create mechanisms for the implementation [of the human rights instruments]" appears to be rather vague and supported only by summary references to the existence of the national ombudsman, a human rights commission headed by the Prime Minister and the supervisory functions exercised by the Office of the Prosecutor General.

118. The Court further notes the City Court's failure to take account of any information coming from independent sources, including the reports by reputable international institutions. While the reports produced by the UN agencies and an unidentified non-governmental organisation covering the years before 2006 were rejected as out of date, no effort was made to consider the available up-to-date information or to obtain further information that might have allowed the court to verify whether the improvements reported in the texts were reflected in reality. For example, no consideration was given to the information contained in the recent reports by the Tajik Republican Bureau for Human Rights and the Rule of Law, which were summarily rejected as being "generic" (see paragraph 46 above). Nor did the City Court duly consider the pertinent information included in the Court's own judgments to which the applicant had referred in the domestic proceedings. As a result, the court ignored the consistent accounts exposing systematic violations of basic human rights in Tajikistan, including torture in detention, and the specific examples of such violations.

119. By contrast, the City Court readily accepted the assurances provided by the Tajik authorities as a firm guarantee against any risk of the applicant being subjected to ill-treatment after his extradition. The Court reiterates that it is incumbent on the domestic courts to examine whether such assurances provide, in their practical application, a sufficient guarantee

that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Saadi*, cited above, § 148). Yet the City Court did not assess the assurances from that perspective (compare with the Court's own assessment of those assurances in paragraphs 131-135 below).

120. Lastly, considering that the applicant made a prima facie case in respect of the risk of his being subjected to ill-treatment in Tajikistan, the Court is not satisfied that the City Court carried out an adequate scrutiny of his personal circumstances. For example, the court did not consider the nature and scale of the charges brought against the applicant, which could put him in the same category as those in political opposition to the Tajik authorities and, therefore, expose him to similar risks. The court also limited its assessment of the witness statements to finding that "none of them had indicated that the applicant would personally be subjected to torture". In so doing, the court confined itself to a formal examination of the witness statements, failing to elaborate on one of the most critical aspects of the case (see, *mutatis mutandis*, *C.G. and Others v. Bulgaria*, no. 1365/07, § 47, 24 April 2008).

121. Having regard to the above and, in particular, to the lack of adequate examination of the general human-rights situation in Tajikistan, the unqualified reliance on the assurances provided by the Tajik authorities and the failure to give meaningful consideration to the applicant's personal circumstances, the Court finds that the authorities did not carry out an independent and rigorous scrutiny of the applicant's claim that there existed substantial grounds for fearing a real risk of treatment contrary to Article 3 in his home country (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 82, 13 December 2012). The Court finds nothing in the decision of the Supreme Court of 2 June 2011 that would have cured the above shortcomings on appeal.

(ß) The Court's assessment of the risk to the applicant

122. The Court now has to conduct its own scrutiny of whether, on the facts submitted to it, the applicant's return to Tajikistan subjected him to treatment in breach of Article 3 of the Convention.

123. The Court takes cognisance of the information submitted by the respondent Government concerning the involvement of Tajikistan in the major international instruments for the protection of human rights. According to that information, some of which was transmitted to the Russian Government by the Tajik authorities themselves, Tajikistan was increasing that protection, in particular by giving priority to human-rights issues at the State level, by setting up the post of ombudsman and by strengthening criminal sanctions against perpetrators of torture. On the other hand, the material provided to the Court contained little to show that the declared principles and legal norms were being effectively implemented in practice.

124. By contrast, the Court notes the continued and overwhelming criticism expressed in both domestic and international reports which, for the past few years, have consistently demonstrated the widespread, systematic use of torture by law-enforcement authorities of Tajikistan and the impunity of State officials. It has already examined the situation in several cases in which the applicants were extradited or forcibly returned to that country, and noted that it gave rise to serious concerns (see *Khodzhayev*, § 97; *Gaforov*, §§ 130-31; *Khaydarov*, § 104; and *Iskandarov*, § 129, all cited above). In deciding all those cases in 2010, the Court concluded that at the material time the applicants had faced a serious risk of torture or ill-treatment on account of criminal charges connected with their political or religious views or activities in Tajikistan.

125. While the Tajik authorities suggested that such human-rights violations remained in the past, the materials submitted in the present case and those otherwise available to the Court do not hint at any tangible progress over the last two years. The most recent reports dating from 2011 and 2012 tend to corroborate a continued practice of torture and other ill-treatment by law-enforcement officers (see various sources cited in paragraph 82 above). The Court finds nothing in the respondent Government's submissions to refute those recent reports or otherwise to attest to any perceptible improvement of the situation in Tajikistan.

126. However, as the Court has already stated above, the mere reference to a general problem concerning observance of human rights in a particular country cannot alone serve as a basis for refusal of extradition, save in the most extreme circumstances. The applicant's specific allegations in a particular case require corroboration by other evidence with reference to the individual circumstances substantiating his fears of ill-treatment. In the Court's view, the need for such evidence is all the greater in a case such as the present one, given that the charges pending against the applicant in Tajikistan appear to be of a common criminal nature (see *Sharipov v. Russia*, no. 18414/10, §§ 36-37, 11 October 2011). In the absence of any meaningful assessment of the applicant's circumstances by the Russian authorities, the Court has no other choice than to examine the facts which corroborate the applicant's account, including the statements of the witnesses (see paragraphs 19-27 above).

127. The Court notes firstly that the witnesses were consistent in their statements over time. Similarly, the way in which those statements were reported by hearsay witnesses and the media was also consistent. Having regard to their substance and the manner in which they were written and collected, the Court has no reason to doubt their authenticity. It also finds the accounts of brutality contained in those statements to be in line with the picture painted in the above-mentioned reports on the situation in Tajikistan, including those dating back to the time when the investigation of the "Isfara case" took place.

128. The Court notes secondly that the applicant was charged with large-scale economic crimes and organising criminal group activity, crimes that are considered to be serious or particularly serious in the majority of States, including Tajikistan. He was also the principal figure in a criminal case that had already resulted in the conviction of more than thirty individuals, many of whom had claimed in one form or another that they had been tortured to falsely incriminate the applicant. The Court considers that risk to have been further raised by the applicant's exposure of the malpractice of the Tajik investigative bodies by making public the witnesses' accounts of torture (see *Kolesnik*, cited above, § 70, and *N. v. Finland*, cited above, § 165).

129. The Tajik authorities' obvious stake in a favourable outcome of the proceedings in this case heightened the risk of the applicant being subjected to torture with a view to extracting confessions from him. The persistent requests of the Tajik Prosecutor General's Office to keep the applicant in detention in Russia on new grounds and the latter's ensuing forcible transfer to Tajikistan support the argument that the Tajik authorities had high stakes in the applicant's prosecution, which have put him in a particularly vulnerable position.

130. Considering the above, the Court takes the view that the applicant's personal circumstances, coupled with the general situation in Tajikistan, were sufficient to infer that the risk of ill-treatment faced by him was real and comparable to the risk the Court had previously found in respect of the applicants who were prosecuted in Tajikistan on account of their political or religious activities (see *Khodzhayev*; *Gaforov*; *Khaydarov*; and *Iskandarov*, all cited above; and compare *Sharipov*, cited above).

131. It remains to be considered whether the risk to which the applicant would have been exposed if extradited was alleviated by the diplomatic assurances provided by the Tajik authorities to the Russian Federation. It is noteworthy that the diplomatic assurances contained in the letters of 1 September 2010 and 26 January 2011 (see paragraphs 30 and 39 above) were more specific than those the Court had considered in the previous cases regarding extradition to Tajikistan. The assurances stated that the applicant would not be subjected to torture, inhuman or degrading treatment or punishment and that staff members of the Russian diplomatic corps and Prosecutor General's Office would be able to visit him at any time during the trial and after conviction and to see the conditions of his detention (compare also with the more general assurances provided by other States in the cases of *Saadi*, cited above, § 55, and *Klein v. Russia*, no. 24268/08, § 16, 1 April 2010).

132. The Court observes in this respect, however, that Tajikistan is not a Contracting State to the Convention (compare, among others, *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009), nor did its authorities demonstrate the existence of an effective system of legal protection against torture that could act as an equivalent to the system required of the

Contracting States. Quite the contrary, as demonstrated above, the Tajik authorities are reluctant to investigate allegations of torture and to punish those responsible. The Court's concerns about the Tajik authorities' willingness to abide by domestic and international law are further aggravated by the recurrent incidents of disappearance of Tajik nationals in Russia and their subsequent secret repatriation to Tajikistan by circumvention of the existing extradition procedure in both those countries (see *Iskandarov*, cited above, § 113; *Abdulkhakov*, cited above, §§ 124-27; and *Savriddin Dzhurayev*, cited above, §§ 133-38 and 203-04). The applicant's forcible repatriation in the present case confirms the persistence of this manifestly unlawful pattern. In these circumstances the Tajik authorities' assurances that the applicant would be treated in accordance with the Convention cannot be given any significant weight.

133. Moreover, it has not been demonstrated before the Court that Tajikistan's commitment to guaranteeing access to the applicant by Russian diplomatic staff and the staff of the Russian Prosecutor General's Office would lead to effective protection against torture and ill-treatment in practical terms. Indeed, no argument was presented that the aforementioned staff enjoyed the necessary independence and were in possession of the expertise required for effective follow-up of the Tajik authorities' compliance with their undertakings. Nor was there any guarantee that they would be able to speak to the applicant without witnesses (compare *Chentiev and Ibragimov v. Slovakia* (dec.), nos. 21022/08 and 51946/08, 14 September 2010). In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, the procedure for lodging complaints by the applicant or for their unfettered access to detention facilities (compare *Othman (Abu Qatada)*, cited above, § 204).

134. The Russian authorities did not seek to clarify the assurances on those points (compare *Gasayev*, cited above), nor did they refer to any precedents that would have allowed the Court to establish that Russian officials had been allowed to visit detainees in Tajikistan in similar circumstances and that such visits had been effective in addressing any complaints. The weakness of the assurances on those points is further demonstrated, in the Court's view, by the absence to date of any information that the designated Russian officials have taken steps to visit the applicant following his transfer to Tajikistan or otherwise to ascertain that he is being treated in accordance with Article 3 of the Convention.

135. In view of all those elements, the Court cannot accept the Government's assertion that the assurances provided by the Tajik authorities in respect of the applicant's treatment in Tajikistan were sufficient to exclude the risk of his exposure to ill-treatment in that country (compare to the conclusion reached by the Court in *Othman (Abu Qatada)*, cited above, § 207). The Court therefore concludes that the applicant's forcible return to

Tajikistan exposed him to a real risk of treatment contrary to Article 3 of the Convention.

(b) Whether the Russian authorities are responsible for a breach of Article 3 on account of the applicant's forcible transfer to Tajikistan

(i) General principles

136. The Court reiterates that the obligation on Contracting Parties, under Article 1 of the Convention, to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see *El Masri*, cited above, § 198, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 115, ECHR 2000-III). Those measures should provide effective protection, in particular, of vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V, and, *mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, pp. 3159-60, § 115).

137. Furthermore, the above provisions require by implication that there should be an effective official investigation into any arguable claim of torture or ill-treatment by State agents. Such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII, and *El Masri*, cited above, § 182).

138. The investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions (see *Assenov and Others*, cited above, § 103; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); and *El Masri*, cited above, § 183). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104, ECHR 1999-IV; *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000; and *El Masri*, cited above, § 183). The investigation should be independent from the executive in both institutional and practical terms (see *Ergi v. Turkey*, 28 July 1998,

§§ 83-84, *Reports* 1998-IV; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004) and allow the victim to participate effectively in the investigation in one form or another (see, *mutatis mutandis*, *Oğur*, cited above, § 92, and *El Masri*, cited above, §§ 184-85).

139. In the Court's view, all the above principles logically apply to the situation of an individual's exposure to a real and imminent risk of torture and ill-treatment through his transfer by any person to another State. Where the authorities of a State party are informed of such a real and immediate risk, they have an obligation under the Convention to take, within the scope of their powers, such preventive operational measures that, judged reasonably, might be expected to avoid that risk (see, *mutatis mutandis*, *Osman*, cited above, § 116), and to conduct an effective investigation into any such incident in accordance with the principles set out in paragraphs 137-138 above.

(ii) Application to the present case

140. The applicant's representatives argued that the highly suspicious events surrounding the applicant's disappearance in Russia and his ensuing return to Tajikistan demonstrated that Russian State officials had been passively or actively involved in that operation. They concluded that Russia should be found responsible for a violation of Article 3 of the Convention on that account.

141. The Court agrees with the applicant's representatives that the dubious grounds invoked for holding the applicant in continuous detention after 27 February 2012, the equally suspicious circumstances of his release in Zelenograd on 29 March 2012, which immediately led to his forcible transfer to Tajikistan, and the authorities' flagrant failure to elucidate the incident may be held to infer that the applicant was transferred to Tajikistan in accordance with a plan involving Russian State officials.

142. At the same time, the Court notes that the possible involvement of State agents is not easily traceable in the circumstances of the present case, given in particular the time that elapsed between the applicant's disappearance and his arrest in Tajikistan, and the lack of a specific credible account of his forcible transfer to that country (compare *Iskandarov*, *Abdulkhakov* and *Savriddin Dzhurayev*, cited above, in which the applicants were forcibly transferred to Tajikistan by aircraft from Moscow or the surrounding region). The applicant's movements after he left the remand centre in Zelenograd on 29 March 2012 and resurfaced in the hands of the Tajik authorities a week later are unknown. Having found the official version of the applicant's return implausible (see paragraphs 89-95 above), the Court has never been provided with an alternative credible account of how and when he returned to Tajikistan and the role which Russian State officials might have played in that respect. While the applicant cannot be

blamed for not providing further elements, being under the total control of the Tajik authorities, the alleged involvement of Russian State officials in the operation needs nonetheless to be corroborated by specific information from other sources.

143. Bearing in mind its natural limits, as an international court, when it comes to conducting effective fact-finding, the Court reiterates that its proceedings in the present case were largely contingent on Russia's cooperation, in line with its undertaking, under Article 38 of the Convention, to furnish all necessary facilities for the establishment of the facts. The Government's failure to comply with their obligations in that respect (see paragraphs 162-165 below) have made it difficult for the Court to elucidate the exact circumstances of the applicant's forcible return to Tajikistan. While the authorities' attitude allows it to draw additional inferences in favour of the assertion made by the applicants' representatives, the Court does not find it necessary to establish whether and by what means Russian State agents were involved in the impugned operation, since in any event the respondent State has to be found responsible for a breach of its positive obligations under Article 3 for the following reasons.

144. First, the Court finds it indisputable that the Russian authorities failed to protect the applicant against the real and immediate risk of forcible transfer to Tajikistan and ill-treatment in that country. It goes beyond any doubt that the Russian authorities were well aware – or ought to have been aware – of such a risk when they decided to release the applicant from SIZO-50/12 of Zelenograd. The applicant's background, the Tajik authorities' behaviour in his case, and not least the recurrent similar incidents of unlawful transfers from Russia to Tajikistan to which the Russian authorities had been insistently alerted by both the Court and the Committee of Ministers (see paragraphs 62 and 64 above) were worrying enough to trigger the authorities' special vigilance and require appropriate measures of protection corresponding to this special situation. The Government confirmed that the warning message mentioning, *inter alia*, the present case had been duly conveyed to all competent law-enforcement authorities on 3 February 2012 (see paragraph 63 above). The authorities nonetheless failed to take any measure to protect the applicant at the critical moment of his unexpected release from the remand centre on 29 March 2012. Even more striking is the fact that the authorities' deliberate failure to inform the applicant's representative in due time about the sudden modification of the criminal charges and the planned release from detention (see paragraphs 67-68 above) deprived him of any chance of being protected by his representative and next-of-kin. Nor did the competent authorities take any measures to protect the applicant after having received insistent official requests to that effect by the applicant's representatives immediately after his disappearance on 29 March 2012 (see paragraph 71 above). As a result, the applicant was withdrawn from the Russian

jurisdiction and the Tajik authorities' aim of having him extradited to Tajikistan was achieved in a manifestly unlawful manner.

145. Secondly, the authorities did not conduct an effective investigation into the applicant's disappearance and unlawful transfer from Moscow to Tajikistan. The Government's submissions in that respect were limited to the information that the Investigative Committee of the Russian Federation was continuing consecutive rounds of preliminary inquiries, while repeatedly refusing to open a criminal investigation into the case for absence of *corpus delicti* and quashing their own decisions time and again. The investigation thus appears to be stalled in the Zelenograd Investigation Division without having produced any tangible result. A year after the incident, the only investigative measure the Court has been informed of was a request to check the information about the illegal crossing of the Russian State border by the applicant or his crossing the border against his will. According to the Government, that request was sent by the Zelenograd Investigation Division to the State Border Service of the FSB in January 2013, that is, nine months after the impugned events (see paragraph 80 above). The authorities also gave every appearance of wanting to withhold valuable evidence – CCTV footage from the remand centre – satisfying themselves with an uncorroborated reference to a technical failure (see paragraph 81 above). Given the Government's attitude on those points and the scarce information they provided, the Court accepts the view of the applicants' representatives that the authorities made no attempt at investigating their arguable complaint as required by Article 3 of the Convention.

146. The Court therefore concludes that the Russian Federation has breached its positive obligations to protect the applicant against his exposure to a real and immediate risk of torture and ill-treatment in Tajikistan and to conduct an effective domestic investigation into his unlawful and forcible transfer to that country. In the Court's view, Russia's compliance with those obligations was of particular importance in the present case, as it would have disproved an egregious situation that so far tends to reveal a practice of deliberate circumvention of the domestic extradition procedure and the interim measures issued by the Court (see paragraphs 62 and 64 above). The Court reiterates that the continuation of such incidents in the respondent State amounts to a flagrant disregard for the rule of law and entails the most serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court (see *Savriddin Dzhurayev*, cited above, § 257).

147. In view of the foregoing, there has been a violation of Article 3 of the Convention in respect of the applicant's forced repatriation to Tajikistan.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

148. The applicant complained under Article 13 of the Convention of a lack of effective domestic remedies in Russia in respect of his complaint under Article 3 of the Convention. Article 13 reads as follows:

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

149. While considering this complaint admissible, the Court notes that it raises the same issues as those already examined under Article 3 of the Convention. In view of its reasoning and findings made under the latter provision (see notably paragraphs 115-121 above), the Court does not consider it necessary to deal separately with the applicant's complaint under Article 13 of the Convention.

IV. ALLEGED BREACH OF ARTICLE 34 OF THE CONVENTION

150. The applicant's representatives complained that by repatriating the applicant or by aiding his repatriation to Tajikistan despite the interim measure issued by the Court under Rule 39 of the Rules of Court, Russia had failed to comply with its undertaking under Article 34 of the Convention not to hinder the applicant in the exercise of his right of individual application.

151. Article 34 of the Convention provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

152. The Government argued that the applicant's undertaking not to leave town, which he had signed on 29 March 2012, had not restricted his movement and had allowed him to make use of the right guaranteed by Article 34 of the Convention.

153. The applicant's representatives maintained the complaint.

154. The Court reiterates that, by virtue of Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, which has been consistently reaffirmed as a cornerstone of the Convention system. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of that right (see *Mamatkulov and Askarov*, cited above, §§ 102 and 125, and *Abdulkhakov*, cited above, § 222).

155. The Court cannot emphasise enough the special importance attached to interim measures in the Convention system. Their purpose is not only to carry out an effective examination of the application but also to ensure that the protection afforded to the applicant by the Convention is effective; such indications subsequently allow the Committee of Ministers to supervise execution of the final judgment. Interim measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (see *Mamatkulov and Askarov*, cited above, § 125; *Shamayev and Others v. Georgia and Russia*, cited above, § 473; *Aoulmi v. France*, no. 50278/99, § 108, ECHR 2006-I (extracts); and *Ben Khemais v. Italy*, no. 246/07, § 82, 24 February 2009).

156. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, in truly exceptional cases on the basis of a rigorous examination of all the relevant circumstances. In most of these, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. This vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands the utmost importance to be attached to the question of the States Parties' compliance with the Court's indications in that respect (see, *inter alia*, the firm position on that point expressed by the States Parties in the Izmir Declaration and by the Committee of Ministers in its Interim Resolution CM/ResDH(2010)83 in the above-mentioned case of *Ben Khemais*). Any laxity on this question would unacceptably weaken protection of the core rights in the Convention and would not be compatible with its values and spirit (see *Soering*, cited above, § 88); it would also be inconsistent with the fundamental importance of the right of individual application and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order (see *Mamatkulov and Askarov*, cited above, §§ 100 and 125, and, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310).

157. On 26 May 2011 the Court asked the respondent Government, in the interests of the parties and the proper conduct of the proceedings before the Court, not to extradite the applicant to Tajikistan until further notice. On 3 February 2012 the Office of the Representative of the Russian Federation at the Court informed the Prosecutor's General's Office, the Ministry of the Interior, the FMS and the FSB of the interim measures issued by the Court, *inter alia*, in respect of the applicant (see paragraph 63 above). Notwithstanding that request, the applicant was forcibly repatriated to Tajikistan between 29 March and 7 April 2012. As a result, the Tajik authorities' aim of extraditing the applicant, which the interim measure had sought to prevent pending the Court proceedings, was fully achieved. Although that was done by circumvention of the domestic extradition procedure, the applicant's forced repatriation to Tajikistan nonetheless frustrated both the spirit and the purpose of the interim measure indicated in the present case (see *Paladi v. Moldova* [GC], no. 39806/05, § 91, 10 March 2009, and *Zokhidov v. Russia*, cited above, § 205).

158. The Court has already found the Russian authorities responsible for their failure to protect the applicant against his exposure to a real and immediate risk of torture and ill-treatment in Tajikistan, which made possible his forced repatriation (paragraphs 144-147 above). This brings the Court to conclude that the responsibility for the breach of the interim measure also lies with the Russian authorities. Indeed, the Court cannot conceive of allowing the respondent State to circumvent an interim measure such as the one indicated in the present case by using another domestic procedure for the applicant's removal to the country of destination or, even more alarmingly, by allowing him to be arbitrarily removed to that country in a manifestly unlawful manner (see *Savriddin Dzhurayev*, cited above, § 217). By failing to comply with their positive obligation to protect the applicant, the Russian authorities rendered themselves responsible for his exposure to a real risk of ill-treatment in Tajikistan and for preventing the Court from securing to him the practical and effective benefit of his right under Article 3 of the Convention.

159. The Court therefore concludes that Russia is responsible for the breach of the interim measure indicated by the Court in the present case. Accordingly, there has been a breach of Article 34 of the Convention.

V. OBSERVANCE OF ARTICLE 38 OF THE CONVENTION

160. When requesting new factual information and observations on the applicant's disappearance and forced repatriation to Tajikistan (see paragraph 7 above), the Court asked the Government of its own motion whether they considered that a lack of conclusive investigation of – and effective reaction to – the incidents at issue in the present case and other similar cases (see paragraphs 62 and 64 above) amounted to a failure on the

part of Russia to cooperate with the Court under Article 38 of the Convention. Article 38 of the Convention provides:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

161. The Government provided no specific answer to that question beyond some limited information about the on-going domestic inquiries (see paragraphs 79-80 above).

162. The Court reiterates that under Article 38 of the Convention the Contracting States undertake to furnish all necessary facilities to the Court to make possible a proper and effective examination of applications. The Convention organs have repeatedly emphasised that obligation as being of fundamental importance for the proper and effective functioning of the Convention system (see, among others, *Tanrıkulu*, cited above, § 70, and Committee of Ministers' Resolutions ResDH(2001)66 and ResDH(2006)45). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Medova v. Russia*, no. 25385/04, § 76, 15 January 2009, and *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

163. The Court has already noted that the present case involved controversial factual questions which could only be elucidated through the genuine cooperation of the respondent Government in line with Article 38 of the Convention (see paragraphs 89-96 and 141-143 above). On 17 April 2012 the Court put a number of detailed factual questions and requested the relevant domestic documents, including the decisions to open or refuse to open criminal proceedings on account of the applicant's disappearance and alleged forcible transfer to Tajikistan. However, the Government submitted only cursory answers referring to pending inquiries and containing virtually no element of substance. They also failed to provide the Court with any of the domestic decisions refusing to open a criminal investigation or quashing such decisions by a higher authority. Moreover, they failed to advance before the Court any reasons for not sending the information requested.

164. The Court reiterates that Article 38 commands the respondent State to submit the requested material in its entirety, if the Court so requests, and properly to account for any missing elements (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, §§ 299-300, 26 April, and *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, § 167 et seq., 1 July 2010). The

Government did not comply with that obligation, thus further complicating the examination of the present case by the Court. In the Court's view, the Government's failure to cooperate on such a crucial point, viewed in the context of their evasive answers to specific factual questions and coupled with the severe investigative shortcomings at the domestic level, highlighted the authorities' unwillingness to uncover the truth regarding the circumstances of the case (see *El Masri*, cited above, §§ 191-93).

165. The Court concludes that the Russian Federation's failure to provide it with the relevant information and documents amounts to a disregard for its duty to cooperate with the Court under Article 38 of the Convention.

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

166. The applicant complained that the appeal court, which had reviewed the first three decisions of the Khamovnicheskiy District Court to detain him and to extend the term of his detention, had not been sufficiently prompt in examining his complaints. He relied on Article 5 § 4 of the Convention, which 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."

167. The Government contested that argument.

168. The applicant maintained his complaint. He added that the delay in the examination of his appeal against the decision of 31 August 2010 had not been justified, as the Russian Code of Criminal Procedure did not prohibit using facsimile signatures on notes of appeal (see paragraph 52 above).

A. Admissibility

169. The above complaint was first raised in substance before the Court on 23 May 2011. Bearing in mind the six-month requirement laid down in Article 35 § 1, the Court considers that it is not competent to examine the complaint concerning the extension orders upheld on 6 October and 8 November 2010.

170. At the same time, the Court observes that the applicant complied with the six-month rule in respect of his complaint relating to the appeal proceedings concerning the detention order of 21 February 2011, which was upheld on 23 March 2011. The Court considers that the complaint in that respect 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. It must therefore be declared admissible.

B. Merits

171. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review in appeal proceedings. At the same time, the standard of "speediness" is less stringent when it comes to proceedings before a court of appeal (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007, and *Abdulkhakov*, cited above, § 198).

172. Although the number of days taken by the relevant proceedings is obviously an important element, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Merie v. the Netherlands* (dec.), no. 664/05, 20 September 2007). What is taken into account is the diligence shown by the authorities, the delay attributable to the applicant and any factors causing delay for which the State cannot be held responsible (see *Jablonski v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000, and *G.B. v. Switzerland*, no. 27426/95, §§ 34-39, 30 November 2000). The question whether the right to a speedy decision has been respected must thus be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII, and *Abdulkhakov*, cited above, § 199).

173. Turning to the present case, the Court observes that the note of appeal of the extension order of 21 February 2011 arrived at the District Court on 28 February 2011 and was examined by the City Court after two hearings on 23 March 2011, that is, twenty-three days after its receipt by the District Court (see paragraph 55 above).

174. The Court notes at the outset that the impugned delay is very close to those which it has already found to be in violation of the "speediness" requirement in similar cases against Russia (see, among the most recent authorities, *Niyazov v. Russia*, no. 27843/11, §§ 155-64, 16 October 2012, and *K. v. Russia*, no. 69235/11, §§ 100-01, 23 May 2013). It further notes that neither the applicant nor his counsel contributed to the length of the appeal proceedings (contrast *Lebedev*, cited above, §§ 99-100, and *Fedorenko v. Russia*, no. 39602/05, § 81, 20 September 2011).

175. It appears, to the contrary, that the major part of the delay – some twenty-one days – related to the period of time in which the case file was

being transferred from the first-instance court to the appeal court. It therefore follows that the entire length of the appeal proceedings is attributable to the domestic authorities, for which the Government did not provide any explanation. The Court notes in that respect that the District Court and the City Court were geographically very close, which should, in principle, have contributed to swifter communication between them – in particular, as far as the transfer of the case materials or the scheduling of appeal hearings were concerned.

176. It does not appear, furthermore, that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the appeal court (compare *Lebedev*, cited above, § 102). Nor was it argued that proper review of the applicant's detention had required, for instance, the collection of additional observations and documents.

177. Having regard to the above circumstances and to its case-law mentioned above, the Court considers that the delay of twenty-three days in examining the applicant's appeal against the detention order of 21 February 2011 was incompatible with the "speediness" requirement of Article 5 § 4.

178. There has accordingly been a violation of Article 5 § 4 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

179. The applicant also complained under Article 5 § 1 of unlawful detention and under Article 6 § 1 about the City Court's refusal to admit certain evidence in the proceedings for judicial review of the extradition order.

180. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the application in this part is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. 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

182. In his claim for just satisfaction submitted before his repatriation to Tajikistan, the applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage. He argued that he had suffered severe distress as a result of being held in detention and facing a real risk of being extradited to Tajikistan once the extradition order had been upheld by the courts. After the applicant's repatriation to Tajikistan that claim was supplemented by his representatives, who requested that the award be raised to EUR 50,000 to include compensation for the breach of the applicant's rights under Articles 3 and 34 of the Convention.

183. The Government disputed the initial claim for EUR 25,000 as excessive and suggested that in the event of finding a violation, such a finding would constitute sufficient just satisfaction.

184. The Court reiterates that Article 41 empowers it to afford the injured party such just satisfaction as appears to be appropriate. It observes that it has found several violations of the Convention in the present case, most of which should be viewed as extremely serious. As a result, the applicant undeniably suffered non-pecuniary damage which cannot be made good by the mere finding of a violation. Making its assessment on an equitable basis, the Court grants the applicant's claim in part and awards him EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

185. Noting the attempts made by the applicant's representatives to resume contact with the applicant and having regard to his extremely vulnerable situation in Tajikistan, the Court considers it appropriate that the amount awarded to him by way of just satisfaction be held for him in trust by his representatives.

B. Costs and expenses

186. The applicant also claimed 600,000 Russian roubles (RUB) (approximately EUR 15,000 at the material time) for representation in the domestic proceedings and before the Court by Ms Stavitskaya and EUR 1,900 for the costs and expenses arising from his representation by Ms Ryabinina before the Court. In support of the claim, the applicant

submitted an agreement for legal assistance with Ms Stavitskaya for the above amount dated 31 August 2010 and a lawyer's bill for EUR 1,900 signed by Ms Ryabinina on 6 December 2011, representing nineteen hours of work at an hourly rate of EUR 100.

187. The Government contested the claim as unsubstantiated. In particular, they submitted that there was no proof in the case file that the expenses had indeed been paid by the applicant.

188. 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 (see, among many other authorities, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). It also observes that costs and expenses incurred in the domestic proceedings with a view to preventing the alleged violations of the Convention from occurring are also recoverable under Article 41 (see, for example, *I.J.L. and Others v. the United Kingdom* (just satisfaction), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001).

189. The Court observes that the applicant was represented by Ms Stavitskaya at every stage in the domestic proceedings, including those determining his refugee status and right to asylum, and the extradition proceedings. He was also represented by Ms Stavitskaya and Ms Ryabinina before the Court. It further notes that the case involved a great amount of work by the legal representatives, including the collection of evidence and, subsequently, several rounds of observations before the Court following the applicant's disappearance and forcible repatriation to Tajikistan. At the same time, the Court has not received an itemised bill of costs for the applicant's representation by Ms Stavitskaya, making it difficult to ascertain the necessity and reasonableness of the expenditure in that respect. It also notes that certain complaints have been declared inadmissible.

190. Having regard to its case-law and deciding on an equitable basis, the Court considers it appropriate to award EUR 12,000 to cover the cost of the applicant's representation by Ms Stavitskaya and EUR 1,900 to cover the cost of his representation by Ms Ryabinina, together with any value-added tax that may be chargeable to the applicant on those amounts.

C. Default interest

191. 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 concerning the applicant's exposure to the real and immediate risk of torture and ill-treatment in Tajikistan, the lack of an effective domestic remedy in this respect and the lack of speedy judicial review in respect of the detention order of 21 February 2011 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's forced repatriation to Tajikistan;

3. *Holds* that there is no need for separate examination of the complaint under Article 13 of the Convention;

4. *Holds* that the respondent State has breached its obligations under Article 34 of the Convention on account of its failure to comply with the interim measures issued by the Court;

5. *Holds* that the respondent State failed to comply with its duty under Article 38 of the Convention to furnish all necessary facilities for effective examination of the application by the Court;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the delay in examining the applicant's appeals against the detention order of 21 February 2011;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is to be held by the applicant's representatives before the Court in trust for the applicant;

(ii) EUR 12,000 (twelve thousand euros) and EUR 1,900 (one thousand nine hundred euros), plus any tax that may be chargeable to the applicant on those amounts, in respect of the costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and paid to the bank accounts of the applicant's representatives, Ms Stavitskaya and Ms Ryabinina, respectively;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Isabelle Berro Lefèvre
President