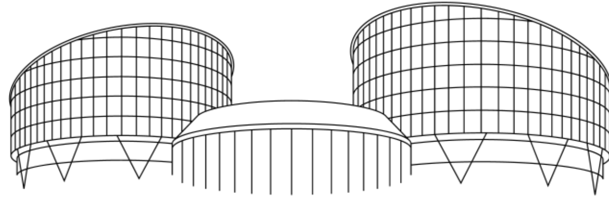

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GAFOROV v. RUSSIA

(Application no. 25404/09)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

11/04/2011

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

In the case of Gaforov v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*
and André Wampach, *Section Deputy Registrar,*

Having deliberated in private on 30 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 25404/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Tajikistani national, Mr Abdurazok Abdurakhmonovich Gaforov ("the applicant"), on 15 May 2009.

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

3. On 15 May 2009 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 priority treatment to the application under Rule 41 of the Rules of Court.

4. On 11 September 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lived before his arrest in the town of Khudzhand, Tajikistan. He is currently residing in Moscow.

A. Criminal proceedings against the applicant in Tajikistan

6. In 2005 the applicant lost his job at a telephone exchange in Khudzhand and started earning his living by printing various texts for people on his computer, including theses and extracts from the Koran.

7. In 2005 several persons were arrested in Khudzhand on suspicion of membership of Hizb ut-Tahrir ("HT"), a transnational Islamic organisation, banned in Russia, Germany and some Central Asian republics. Subsequently, the applicant learnt that some of the arrestees had testified before the prosecuting authorities that he was a member of HT and had printed various materials for it from the Internet. The applicant denies being a member of HT.

8. On 16 February 2006 the prosecutor's office of the Sogdiyskiy Region of Tajikistan ("the Sogdiyskiy prosecutor's office") instituted criminal proceedings against the applicant on suspicion of membership of an extremist organisation (Article 307 § 2 of the Tajikistani Criminal Code ("TCC")). In particular, the applicant was suspected of having actively worked with HT by printing out leaflets and religious literature for that organisation with a view to their dissemination. The case was assigned the number 9615.

9. On 19 February 2006 the Sogdiyskiy prosecutor's office ordered the applicant's placement in custody. Shortly thereafter the applicant was arrested and placed in the basement of the Ministry of National Security (MNS). According to the applicant, he was held there for about three months. He was systematically beaten up and was tortured at least six times with electricity. He was held in premises with nothing to rest on, was refused access to the toilet for lengthy periods of time and received no food.

10. On 6 May 2006 the prosecutor's office of the Bobodzhon-Gafurovskiy District ("the Bobodzhon-Gafurovskiy prosecutor's office") opened a further criminal case against the applicant in connection with his alleged activities within HT. In particular, the applicant was suspected of: having secretly studied extremist literature provided by other members of HT; having worked for the organisation as an IT specialist; having printed out the organisation's leaflets and other literature and secretly distributed it among non-members of the organisation; having paid membership fees to the organisation and trained another member to

work with the PC. On the same day the applicant was charged with membership of a criminal organisation banned owing to its extremist activities (Articles 187 § 2 and 307.2-3), incitement to religious and other hatred (Article 189 § 3) and public appeals to overthrow the constitutional order and to engage in extremist activities (Articles 307 and 307.1). The criminal case was joined with case no. 9615 and given the number 9431.

11. According to the applicant, in May 2006 he and other detainees were taken to a construction site for a recreation zone for officers of the MNS, where they were ordered to dig, working in a bending position. When they tried to straighten up, the guards beat them severely.

12. On 24 May 2006, fearing further beatings, the applicant escaped.

13. According to the applicant, his relatives told him that after his escape law enforcement officials had tortured his co-accused to find out where he had gone and whether they had helped him to make good his escape.

14. On 25 May 2006 the Bobodzhon-Gafurovskiy prosecutor's office instituted criminal proceedings against the applicant for escaping from custody. The decision stated that on 24 May 2006, "while in custody at a summer cottage [*дачный участок*] belonging to the MNS", the applicant had fled to an unknown destination.

15. On an unspecified date the criminal case against the applicant in connection with his alleged activities within HT was transferred for examination to the Bobodzhon-Gafurovskiy District Court of the Sogdiyskiy Region

16. By a decision of 6 June 2006 the Bobodzhon-Gafurovskiy District Court put the applicant's name on a wanted list and suspended the examination of the criminal case against him pending his arrest.

17. On 9 June 2006 the Bobodzhon-Gafurovskiy prosecutor's office charged the applicant with escape from custody.

B. The applicant's arrival in Russia

18. It appears that the applicant was hiding in Tajikistan until December 2006, when he moved to Kyrgyzstan. On an unspecified date in May 2007 the applicant arrived in Russia.

C. Extradition proceedings

19. On 5 August 2008 the applicant was arrested in Moscow as a person wanted by the Tajikistani authorities.

20. On 6 August 2008 the Nagatinskiy deputy prosecutor questioned the applicant about the circumstances of his arrival in Russia. According to the applicant's written explanation [*объяснение*] of the same date, in 2006 the Tajikistani authorities had opened a criminal case against him on suspicion of membership of an extremist organisation. For about three months in 2006

he had been held in custody. During that period he had been taken on a daily basis to work at a construction site, from where he had escaped. In 2007 the applicant had come to Russia to avoid criminal prosecution and to earn a living. He had not applied for Russian citizenship, refugee status or political asylum. The transcript bore the applicant's signature. In the applicant's submission, the explanation was compiled by the Russian authorities on the basis of material from his criminal case produced by the Tajikistani law enforcement authorities.

21. On 11 September 2008 the Tajikistani Prosecutor General's Office ("the TPGO") sent to the Russian Prosecutor General's Office a request for the applicant's extradition to Tajikistan in connection with the charges concerning his membership of HT. The letter stated that the applicant would be tried only on the charges for which his extradition was being sought, and that he would not be extradited to a third country without the consent of the Russian authorities.

22. On 5 December 2008 the TPGO sent their Russian counterpart an additional request for the applicant's extradition on the charge of escaping from custody.

23. By a letter of 19 December 2008 the applicant's lawyer informed the Russian Prosecutor General's Office that the applicant intended to challenge before the courts the refusal to grant him refugee status (see below) and requested them to take that fact into account when examining the extradition issue.

1. Decision to extradite the applicant

24. On 30 December 2008 the deputy Prosecutor General of the Russian Federation ordered the applicant's extradition to Tajikistan. The decision, in its relevant parts, read as follows:

> "... [Mr] Gaforov is charged with having actively participated in 2002-2006 in the activities of a criminal organisation "Hizb-ut-Tahrir al-Islam", aimed at the violent seizure of state power and the overthrow of the constitutional order and banned on the territory of Tajikistan by a court decision ...
>
> ...
>
> The [applicant's] actions are punishable under Russian criminal law and correspond to Article 210 of the Russian Criminal Code (membership of a criminal organisation); Article 278 (acts aimed at violent overthrowing of the constitutional order); Article 280 (public appeals in the media to engage in extremist activities); Article 282 § 2 (c) (incitement to hatred and degrading treatment via the mass media, carried out by an organised group); Article 282 § 2 (membership of an extremist organisation); Article 282 § 2 (membership of an organisation banned by a court decision because of its extremist activities); Article 205 § 1 (financing terrorism). The above-mentioned offences carry penalties of over one year's imprisonment. The time-limits for [the applicant's] prosecution under Russian and Tajikistani legislation have not expired.

> ...
>
> [The applicant] is charged with having absconded from custody ... on 24 May 2006 ...
>
> The [applicant's] actions are punishable under Article 313 § 1 of the Russian Criminal Code (escape from custody of a person detained on remand) and carry a penalty of over one year's imprisonment. The time-limits for [the applicant's] criminal prosecution under Russian and Tajikistani legislation have not expired."

25. Lastly, the decision stated that, according to the Federal Migration Service ("the FMS"), the applicant had not obtained Russian citizenship, and concluded that there were no other grounds for not extraditing him to Tajikistan.

26. On 21 January 2009 the applicant appealed against the decision of 30 December 2008, alleging that, if extradited, he would be subjected to torture in breach of Article 3 of the Convention. He averred, in particular, that he had described in detail the treatment to which he had been subjected while in custody in Tajikistan and that the Russian Prosecutor General's Office had disregarded those submissions and the relevant materials from international NGOs showing that the Tajikistani law enforcement authorities systematically tortured detainees. The applicant also submitted that the Tajikistani authorities were not able to provide effective guarantees against the risk of ill-treatment and unfair criminal proceedings. Lastly, he stated that the decision to extradite him had been taken despite the fact that his asylum application was pending.

27. By a letter of 10 February 2009 the TPGO guaranteed to their Russian counterpart that, if extradited, the applicant would not be persecuted on political, ethnic, linguistic, racial or religious grounds and that he would not be subjected to torture or inhuman or degrading treatment or punishment. The letter also noted that on 11 March 2008 the Supreme Court of Tajikistan had declared HT a terrorist organisation and had banned its activities on the territory of Tajikistan.

2. Hearing before the Moscow City Court

28. At a hearing on 16 February 2009 the Moscow City Court ("the City Court") examined the applicant's complaint about the decision to extradite him to Tajikistan.

29. According to the hearing transcript, the applicant submitted to the court that after his arrest in 2006 in Tajikistan he had been severely beaten and on six occasions tortured with electricity with a view to extracting a confession that he was a member of HT. He had been held in the MNS basement for about three months. During his detention there he had been systematically beaten and insulted and had been allowed access to the toilet only twice a day. While still in detention, he had been taken to a construction site for an MNS recreation zone. There he and other detainees

had worked laying the foundation for a sports centre; they had also been ordered to mow grass. The applicant and other detainees had been systematically subjected to beatings. Unable to stand the beatings and the lack of food, the applicant had escaped. The applicant further stressed that he feared returning to Tajikistan because after his escape several MNS officials had threatened his family. They had allegedly told his family members that if the applicant was caught, they would not leave him alive. An MNS officer who had beaten the applicant and who had been on duty on the day of his escape had allegedly told the applicant's sister that if he went to jail because of the applicant, he would kill the applicant's whole family, once released.

30. At the hearing the applicant's lawyer also stated that his client's detention was unlawful because the authorities had failed to extend it properly, in breach of the Code of Criminal Procedure ("CCrP") and the decisions of the Constitutional Court.

31. Having heard the applicant and his lawyer and granted their request to include in the case file reports from various NGOs and international organisations on the situation in Tajikistan in relation to torture, the City Court adjourned the examination of the complaint pending the outcome of the asylum proceedings.

32. By a faxed letter of 25 February 2009 the City Court informed the Russian Ministry of Foreign Affairs ("the MID") about the applicant's case and his allegations of the risk of torture were he to be extradited to Tajikistan. The City Court asked the MID to present their position and to assist the court in obtaining information from the Tajikistani Ministry of Foreign Affairs on the issues raised by the applicant.

33. By a letter of the same date the City Court asked the Tajikistani Ministry of Foreign Affairs to submit its position and any relevant information on the applicant's allegations concerning the risk of torture and inhuman and degrading treatment should he be extradited to Tajikistan, and to verify those allegations via the relevant State authorities.

34. On 13 March 2009 the MID replied to the City Court that Tajikistan had become party to almost all the international instruments on the protection of human rights and that it had thereby confirmed its intention to build a democratic and secular state based on respect for the rule of law. A post of ombudsman had been created. The MID did not have any information to indicate that "the applicant's civil rights would be violated if he was extradited". It does not appear that the Tajikistani Ministry of Foreign Affairs replied to the City Court's request.

3. The City Court decision of 20 April 2009

35. On 20 April 2009 the City Court examined the applicant's complaint about the decision of 30 December 2008. The applicant and his lawyer attended the hearing

36. According to the hearing transcript, the applicant reiterated before the court his submissions concerning his alleged torture while in custody in Tajikistan. He submitted that the fact of his previous torture and the threats to his family members proved that he ran a risk of being subjected to such treatment again, should the extradition decision be upheld. The applicant's lawyer asked the court to release the applicant, stressing that he had been detained for a long period of time and that his detention had not been extended despite clear instructions from the Constitutional Court in that respect.

37. The City Court dismissed the applicant's complaint. The decision, in so far as relevant, read as follows:

> " [Mr] Gaforov is charged with having, in the period from August 2002 to February 2006 in the Sogdiyskiy Region of the Republic of Tajikistan, been an active member of the criminal organisation "Hizb ut-Tahrir al-Islami", founded with the aim of violent seizure of power and overthrowing the constitutional order, which [organisation] had been banned by a court from the territory of the Republic of Tajikistan because of its extremist activities; [the applicant] is also charged with having financed the above organisation. During the relevant time period, being a member of that organised group and using the mass media, [the applicant] disseminated materials containing public appeals for the violent overthrow of the existing state regime to take control of the territory of the Republic of Tajikistan and seize power there. [The applicant] recruited citizens to the extremist organisation with a view to disrupting the constitutional order of the Republic of Tajikistan; made public appeals to engage in extremist activities; disseminated leaflets and other printed materials aimed at incitement to ethnic, racial, ..., religious hatred, degrading treatment, propaganda proclaiming the superiority of certain citizens based on their religious ... convictions, and the founding of an Islamic state "Caliphate" on the territory of the Republic of Tajikistan.
>
> The [applicant's] actions are punishable under Russian criminal law and correspond to Article 210 § 2 [of the Russian Criminal Code] (participation in a criminal organisation); Article 278 (acts aimed at violent overthrow of the constitutional order); Article 280 § 2 (public appeals via the mass media to engage in extremist activities); Article 282 § 2 (c) (incitement to hatred and degrading treatment committed by an organised group through the mass media); Article 282-1 § 2 (membership of an extremist organisation); Article 282-2 § 2 (membership of an organisation banned by a final court decision because of its extremist activities); and Article 205-1 § 1 (financing terrorism). The above-mentioned offences carry penalties of over one year's imprisonment. The time-limits for [the applicant's] prosecution under Russian and Tajikistani law have not expired.

...

> Moreover ... [the applicant] is charged with having absconded from custody ... on 24 May 2006 ...
>
> The above-mentioned actions of [the applicant] are punishable under Article 313 § 1 of the Russian Criminal Code (escape from custody of a person detained on remand) and carry a penalty of over one year's imprisonment. The time-limits for [the applicant's] criminal prosecution under Russian and Tajikistani law have not expired ...

The decision of the Prosecutor General of the Russian Federation of 30 December 2008 is lawful and well-founded.

From the information submitted by the Russian FMS [Federal Migration Service] and its Moscow branch it follows that [the applicant] had not obtained Russian citizenship or applied for it in accordance with the law

At the court hearing [the applicant] explained that he had not applied for Russian citizenship; he had been arrested in Russia as a person whose name had been put on an international wanted list...; [he] had not applied for refugee status before his arrest because he thought that he would not be granted it as a wanted person; he was not a refugee, he had not been and was not being persecuted in the territory of the Republic of Tajikistan on political or any other grounds, except for his criminal prosecution; he had left his place of residence voluntarily, having fled from custody – [a fact] which proves that [the applicant] was deliberately hiding in the territory of the Russian Federation from the Tajikistani law enforcement bodies.

Thus, there are no grounds stipulated in international agreements or the legislation of the Russian Federation to prevent [the applicant's] extradition ...

...

The court has examined and dismissed [the applicant's] arguments, supported by his lawyer ... with reference to the opinion [*заключение*] of 13 March 2009 by specialist Ms Ryabinina and materials confirming, in their opinion, that he should not be extradited to Tajikistan on account of his possible persecution there. However, having applied to the FMS after his arrest pursuant to an international warrant, [the applicant] himself had explained that he feared extradition to Tajikistan because of the possibility of his conviction leading to a long term of imprisonment.

Hence, the court considers that there is no well-founded fear of [the applicant] becoming a victim of persecution in Tajikistan under Article 1 § 1-1 of the Refugees Act. Consequently, he does not satisfy the criteria to be granted refugee status because only a person who is not a Russian national and who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to avail himself of the protection of that country as a result of such events, can be recognised as a refugee.

Furthermore, the receiving country furnished an assurance that [the applicant] would be prosecuted only for the crimes with which he had been charged. Moreover, the Republic of Tajikistan is party to almost all international legal instruments on human rights, and has thereby reaffirmed its intention to build a secular democratic state based on the rule of law; a post of Ombudsman had been created there.

The issue of whether [the applicant] is guilty of the crimes in respect of which [the Tajikistani authorities] have requested his extradition can only be assessed by a court in the requesting country examining the merits of the criminal case against him. Hence, [the applicant's] and his lawyer's arguments that he is not guilty and that the charges against him are fabricated are not subject to this court's examination.”

38. The City Court decision was silent on the issue of the applicant's detention.

39. On 21 April 2009 the applicant appealed to the Supreme Court of the Russian Federation ("the Supreme Court"), submitting that the City Court had failed to take into account his arguments, supported by materials from various NGOs, that he would be subjected to torture in the event of extradition. He also averred that the City Court had disregarded that at the time of its examination of the case appeal proceedings against the FMS decision to refuse him refugee status had been pending.

40. On 8 June 2009 the applicant lodged an additional appeal statement with the Supreme Court submitting that the City Court had failed to assess Ms Ryabinina's opinion and materials from various NGOs attesting to the existence of systematic problems with torture in Tajikistan and had limited its assessment to the MID letter stating merely that "there was no indication that [the applicant's] civil rights would be violated in the event of his extradition". He stressed that the City Court had confused the risk of torture with the risk of criminal prosecution, although the applicant's position in that respect was unequivocal: he feared his extradition to Tajikistan because he had already been subjected to torture there and he had fled to Russia for that reason. The City Court's conclusion that he had voluntarily left Tajikistan was at odds with the fact that the applicant had fled from custody. Lastly, the City Court had exceeded its jurisdiction in finding that the applicant did not satisfy the criteria to be granted refugee status, as it was for the civil courts to rule on that matter.

4. The Supreme Court decision of 8 June 2009

41. On 8 June 2009 the Supreme Court of the Russian Federation ("the Supreme Court") examined the applicant's appeal against the City Court decision. The applicant's lawyer was present at the hearing, but the applicant did not attend. At the hearing the applicant's lawyer filed a written request for release with the Supreme Court. He submitted that his detention in the absence of a judicial decision had exceeded the two-month limit set in Article 109 of the CCrP. In that connection he referred to Article 466 of the CCrP, the Constitutional Court's decisions nos. 101-0 and 333-O-P (see below) and the fact that the latest court decision to place him in custody had been taken on 16 September 2008. He also complained that the Babushkinskiy District Court and the Moscow City Court had refused to examine his complaints about his detention.

42. By a decision of the same date the Supreme Court dismissed the complaint, reproducing verbatim the text of the decision of 20 April 2009. The Supreme Court decision was silent on the matter of the applicant's detention.

D. Asylum proceedings

43. On 23 October 2008 the applicant filed an application for asylum with the Moscow Department of the Federal Migration Service ("the Moscow FMS"), stating that he could not return to Tajikistan, where he had been subjected to ill-treatment. In particular, he submitted that in February 2006 he had been arrested by law enforcement officials who had tortured him with electricity and severely beaten him. Two days later he had been transferred to the MNS, where he had been kept in a damp basement together with eight other persons. He had not been fed and had been allowed access to the toilet only twice a day. The applicant and other detainees were systematically beaten up with a view to extracting confessions about their involvement with HT, to which they had finally had to confess because of the beatings. The MNS officers had forced the applicant and his fellow detainees to work on their construction site and had beaten them if they did not work properly. In May 2006, while at a construction site, he had escaped because he could no longer endure the violence.

44. In an interview with an official of the Moscow FMS on 28 November 2008, the applicant reiterated and confirmed his earlier submissions

45. On 15 December 2008 the Moscow FMS refused to grant the applicant asylum, finding that the reason for his request was his fear of being sentenced to a lengthy term of imprisonment if extradited. It further noted that when questioned by FMS officials, the applicant submitted that he had been unlawfully arrested by the Tajikistani law enforcement officials and that he had fled from custody because he had been severely ill-treated. The FMS concluded that the grounds referred to by the applicant did not constitute well-founded fear of being persecuted in his home country.

46. On 13 January 2009 the applicant appealed to the Zamoskvoretskiy District Court of Moscow ("the Zamoskvoretskiy District Court") against the decision of 15 December 2008, submitting that the Tajik authorities were persecuting him on religious grounds in connection with his alleged membership of HT, a banned religious organisation. Referring to Article 3 of the Convention, he stressed that the migration authority had disregarded his consistent and convincing submissions in respect of the ill-treatment to which he had been subjected. Knowing that the Code of Civil Procedure made no provision for a detainee's transportation to court hearings concerning their civil claims, the applicant did not request the Zamoskvoretskiy District Court to secure his presence.

47. On 7 April 2009 the Zamoskvoretskiy District Court examined the applicant's complaint in the presence of his lawyer and dismissed it. The applicant was not brought to the hearing. The court found that in examining the applicant's application the Moscow FMS had obtained from the Russian Prosecutor General's Office and their Tajikistani counterpart materials

concerning his criminal prosecution in Tajikistan. Those State bodies had not confirmed that the Tajikistani authorities were persecuting Tajikistani nationals because of their religious beliefs, or torturing them or treating them inhumanely in connection with criminal proceedings against them. Although the applicant had arrived in Russia in May 2007, he had applied for asylum only after his arrest with a view to extradition. In sum, the applicant had failed to adduce convincing reasons showing that he had well-founded fears of being persecuted in Tajikistan on political, racial, religious, national or ethnic grounds or because of his membership of a particular social group, and had only applied to the migration authorities because of his criminal prosecution.

48. On 20 April 2009 the applicant appealed against the decision of 7 April 2009, submitting that the Zamoskvoretskiy District Court had disregarded his detailed and consistent submissions concerning the ill-treatment to which he had been subjected while in custody in Tajikistan and his persecution on religious grounds. He also averred that the district court had disregarded a number of reports of UN bodies and NGOs attesting to the widespread practice of ill-treatment of detainees by law enforcement authorities in Tajikistan.

49. On 25 June 2009 the Moscow City Court set aside the decision of 7 April 2009 and remitted the case at first instance for fresh examination.

50. On 10 September 2009 the Zamoskvoretstkiy District Court upheld the migration authority's refusal to grant the applicant asylum, reproducing almost verbatim the reasoning of its decision of 7 April 2009. The court also noted that as the applicant only feared criminal prosecution and thus did not qualify for asylum it would not attach any weight to his submissions concerning the risk of ill-treatment in Tajikistan in the event of extradition and the general human rights situation in that country.

51. The applicant appealed against the decision. Referring to reports of various NGOs, he stressed that the problem of ill-treatment of detainees persisted in Tajikistan and that he feared his extradition not only because of the general situation in the country but also because of his own experience of ill-treatment at the hands of the Tajikistani State officials, who were persecuting him on religious grounds. However, the District Court had refused to take that information into account and limited its assessment to the information provided by the Russian State authorities.

52. On 26 January 2010 officers of the United Nations High Commissioner for Refugees (“the UNHCR”) interviewed the applicant in the remand facility in connection with his application for international protection.

53. On 28 January 2010 the City Court upheld the decision of 10 September 2009 in the presence of the applicant's lawyer. The City Court decision, in its relevant part, stated:

"On 28 November 2008 [Mr] Gaforov, a national of the Republic of Tajikistan, held in IZ-77/4 in Moscow, applied for refugee status.

In his questionnaire [*анкета*] and report form [*опросный лист*] [the applicant] stated that there was a real risk of his persecution by law enforcement officials who had arrested him in 2006 in Khudzhand and charged him with being a member of HT. Moreover, [the applicant] stated that he feared criminal prosecution and had been subjected to ill-treatment while in detention [in Tajikistan].

In arriving at its conclusions the [Moscow FMS] examined information submitted by the Russian Prosecutor General's Office and concerning [the applicant's] prosecution by the Tajikistani prosecutor's office on various charges under Articles of the Tajikistani Criminal Code.

There is no indication of [the applicant's] persecution on religious grounds in the Bobodzhon-Gafurovskiy prosecutor's office's decision of 6 May 2006 to charge the applicant [with his activities within HT].

From the impugned decision [of the Moscow FMS] it transpires that in arriving at its conclusions the authority took into account information from the [Russian] Prosecutor General's Office and their Tajikistani counterpart.

In examining [the applicant's] complaint, the [District] court correctly established that the applicant had not referred to any humanitarian reasons to be granted temporary asylum in the Russian Federation, such as precise details of his personal persecution by the Tajikistani authorities, [or stated] that in the event of his return there existed a real risk to his personal safety from the [Tajikistani] authorities. He had not justified his application for temporary asylum by his state of health or the need for medical assistance. He also failed to submit any evidence that there were obstacles to his returning to Tajikistan."

54. On 8 February 2010 the applicant applied to the Moscow FMS for temporary asylum. The outcome of those proceedings is unclear.

55. On 10 March 2010 the UNHCR office informed the applicant's lawyer that it had examined her client's application for international protection. The examination established that the applicant was "outside his country of nationality due to well-founded fear of being persecuted by the authorities of his country for reasons of imputed political opinions", that he was "unable to return to the Republic of Tajikistan" and thus "eligible for international protection under the UNHCR mandate".

E. Proceedings concerning the applicant's detention

1. First detention order

56. On 7 August 2008 the Nagatinskiy District Court of Moscow ordered the applicant's placement in custody pending extradition, with reference to Articles 97, 99, 101 and 108 of the Russian CCrP and Article 61 of the Convention on Legal Assistance and Legal Relations in

Civil, Family and Criminal Matters ("the Minsk Convention" – see the Relevant Domestic Law below). The court stated, in particular, that the applicant was charged under the Tajikistani Criminal Code with a crime carrying a sentence of imprisonment, that he had fled from custody, did not have a permanent place of residence or registration in Russia and might, consequently, again abscond to avoid prosecution. It further stated that the need to place the applicant in custody was also justified by his eventual extradition to Tajikistan, and that the related proceedings had been instituted following the Tajik authorities' petition under Article 61 of the Minsk Convention. The decision did not specify the term of the applicant's detention and stated that it was open to appeal before the Moscow City Court within three days after its delivery. There is no indication that the applicant challenged the decision on appeal.

2. Second detention order

57. On 16 September 2008, the Simonovskiy District Court of Moscow ordered the applicant's placement in custody pending extradition, referring to Article 466 § 1 of the CCrP and Article 60 of the Minsk Convention. The court stated that the Russian Prosecutor General's Office was verifying the materials in respect of the applicant's extradition and that no grounds preventing it had been established. On 7 August 2008 the Nagatinskiy District Court had ordered the applicant's placement in custody pending receipt of the formal request for his extradition under Article 61 of the Minsk Convention. By the time of the examination of the case by the Simonovskiy District Court, that request had been received. The applicant was charged with having escaped from custody which, under the Tajikistani Criminal Code, was punishable with over two years' imprisonment. Furthermore, the applicant had absconded, he did not have a permanent place of residence or a permanent job in Russia and his name was on the international list of wanted persons. Hence, the applicant's requests for application of a non-custodial preventive measure were unfounded and he was to be remanded in custody. The decision did not set a time-limit for the applicant's detention and stated that it was open to appeal before the Moscow City Court within three days after its delivery. There is no indication that the applicant challenged the decision on appeal.

3. The applicant's complaints about detention

58. On 21 January 2009 the applicant complained to the Babushkinsky District Court of Moscow that his detention in the absence of a judicial decision had exceeded the two-month term set in Article 109 of the CCrP. He referred to Article 466 of the CCrP, Constitutional Court decisions nos. 101-0 and 333-O-P (see the section on Relevant Domestic Law below)

and the fact that the latest court decision to place him in custody had been taken on 16 September 2008. He requested his immediate release.

59. On 27 January 2009 the Babushkinskiy District Court disallowed the applicant's complaint, finding that he had failed to comply with the formal requirements for lodging a civil claim, laid down in the Code of Civil Procedure. The applicant was invited to rectify the shortcomings and informed of his right to appeal against the decision.

60. On 14 September 2009 the applicant complained about his detention to the Nagatinskiy District Court. In particular, he averred that the latest detention order authorising his placement in custody was dated 16 September 2008 and that neither that decision nor the previous one dated 7 August 2008 specified the term of his detention. In any event, since 16 September 2008 the Nagatinskiy prosecutor's office had not requested the courts to extend his detention pursuant to Article 109, so it had become unlawful after the expiry of the two initially authorised two-month terms; that is to say that out of the thirteen months the applicant had spent in custody, nine months of that detention had been unlawful. Furthermore, the Babushkinskiy District Court had refused to examine the applicant's complaint about detention and the City Court had likewise disregarded his request for release submitted at the hearing of 20 April 2009. Relying on Articles 5 §§1 and 4 of the Convention, the Court's case-law, Articles 109 and 110 of the CCrP and the practice of the Constitutional Court, the applicant insisted that his detention had been unlawful, that he had not been provided with an effective remedy to complain about it and that the applicable legislation did not meet the requisite standards of quality of the law. Lastly, he argued that the extradition check against him had been finalised on 30 December 2008 and that after that date no action was taken with a view to extraditing him.

61. On 21 September 2009 the Nagatinskiy District Court refused to examine the applicant's complaint. It held firstly that the applicant had failed to appeal against the decision of 7 August 2008 within the required time-limits. As to the alleged inaction of the prosecutor's office, it was open to the applicant to complain about it under Article 125 of the CCrP to the Simonovskiy District Court, which had territorial jurisdiction over the matter.

62. On 21 October 2009 the applicant appealed against that decision to the Moscow City Court.

63. On the same date the applicant complained to the Simonovskiy District Court, reiterating his submissions made in the complaint of 14 September 2009.

64. By a letter of 29 October 2009 the Simonovskiy District Court returned the applicant's complaint of 21 October 2009, stating that in the Russian Federation criminal proceedings were conducted in accordance

with the provisions of the CCrP and that the applicant had failed to refer to any provisions of the CCrP in his submissions.

65. On 8 December 2009 the applicant complained to the Prosecutor General's Office about his detention, averring that he had been held in custody for sixteen months and that twelve months of that detention had been unlawful because the prosecutor's office had failed to request the courts to extend it. He also stressed that the decision to extradite him had become final in June 2009, after which date no action had been taken with a view to extraditing him.

66. On 21 December 2009 the Moscow City Court dismissed the applicant's appeal against the decision of 21 September 2009. It held, in particular, that it was open to the applicant to complain about his detention to a court having territorial jurisdiction or to an appeal court.

67. On 30 December 2009 the Prosecutor General's Office replied to the applicant that his detention had been authorised first by the Nagatinskiy and then by the Simonovskiy District Court, pursuant to Article 466 § 1 of the CCrP. According to Article 109 of the CCrP, the maximum term of detention of persons charged with particularly serious crimes was up to eighteen months. The Prosecutor General's Office had decided on the applicant's extradition on 30 December 2008, that is within the required time-limit. The applicant's ensuing detention was prompted by his appeals to the courts against the extradition order and by the decision of the European Court of Human Rights to apply Rule 39 of the Rules of Court. As to the Supreme Court Ruling of 29 October 2009 (see below), it was applicable only to persons in respect of whom the Russian authorities were carrying out an extradition check, and not to those in respect of whom the Prosecutor General's Office had already issued an extradition order. In the applicant's case the Prosecutor General's Office had decided on 30 December 2008 to extradite him and that decision was to be enforced.

4. *Letter of the ombudsman*

68. On 22 January 2010 the Ombudsman to the President of the Russian Federation (“the ombudsman”) wrote to the Prosecutor General of the Russian Federation stating, in particular, that the European Court of Human Rights had recently found a breach of Article 5 of the Convention on account of the unsatisfying quality of the law in several cases involving persons detained pending extradition. Yet the practice continued, in breach of the applicable Russian legislation, of keeping in custody foreign nationals whose detention on remand had not been extended. The ombudsman opined that the problem lay in the domestic authorities' inconsistent practice in applying the relevant legislation, and had persisted even after the Constitutional Court's Ruling no. 101-O and the Supreme Court's Ruling no. 22 (see Relevant Domestic Law below). The ombudsman referred to the Yuldashev, Isakov, Khaydarov and Sultanov cases, which

were pending before the Court, in which the term of the applicants' detention pending extradition had exceeded the eighteen-month maximum term laid down in Article 109 of the CCrP.

69. The ombudsman further stressed that on 5 February 2010 the eighteen-month maximum detention term was about to expire for the applicant in the present case and that the domestic courts had twice authorised his remand in custody without setting any time-limit for his detention. He also stated that the Government were justifying the detention on remand of the applicants in the above-mentioned cases by the fact that the Strasbourg Court had indicated to them under Rule 39 to suspend their extradition. However, nothing in the Strasbourg Court's Rules provided for the respondent State's obligation to hold detainees whose extradition was suspended in custody in breach of the Russian legislation. Lastly, the ombudsman asked the Prosecutor General to carefully examine the situation of the persons mentioned in his letter, in particular with regard to the extension of their detention for an unlimited period of time, and to further improvement of the legislation and its correct application in order to prevent possible violations of the Convention.

5. Reply of the Prosecutor General's Office

70. By a letter of 8 February 2010 the Deputy Prosecutor General of the Russian Federation replied to the ombudsman. The letter, in so far as relevant, read as follows:

> “...
>
> ...the decisions to extradite the applicants in the cases mentioned [*in your letter*] were taken within the time-limits established by Article 109 of the CCrP, the lawfulness of those decisions was verified by the courts and those decisions are bound to be executed. To release the above-mentioned persons from custody would entail breach by the Russian Federation of its international obligations concerning extradition.
>
> The possibility to apply the provisions of the CCrP in respect of the time-limits for the detention of persons held in custody pending extradition was first mentioned in Constitutional Court Ruling no. 101-O ... In its Ruling... no. 158-O the Constitutional Court stated that in its previous Ruling no. 101-O it had not, and could not have, established what particular provisions of the CCrP were to regulate the procedures and time-limits for the detention of persons in custody pending extradition ... as it had no jurisdiction in the matter ...
>
> The Supreme Court, in its replies of 9 August and 6 October 2008 to the Prosecutor General's requests for clarification, explained that in deciding on procedures and time-limits for the detention of persons detained pending extradition, the authorities were to apply the provisions of the CCrP. However, this issue had never been examined by the Plenary of the Supreme Court and the practice of the domestic authorities in this respect had not been studied or summarised.

Until 29 October 2009 there was no uniform judicial practice on this category of cases in different regions of the Russian Federation. Some judges requested that the time-limits for detention be extended, others refused to extend those time-limits, considering it unnecessary.

On 26 November 2009, following the Supreme Court's Ruling no. 22 ..., the Prosecutor General's office sent out to prosecutors in all regions of the Russian Federation an information letter explaining the order on extending the time-limits for the detention of persons in respect of whom the extradition check was pending and the decision to extradite was not yet final... Further time-limits for the detention of a person pending extradition are regulated by Article 467 of the CCrP.

The lengthy detention of Mr Yuldashev, Mr Isakov, Mr Khaydarov, Mr Sultanov and [the applicant] Mr A.Gaforov ... is at the present moment a consequence of the European Court's application of Rule 39 of the Rules of Court pending the examination of their cases [by the Strasbourg Court]."

F. The applicant's release

71. On 23 April 2010 the Babushkinskiy district prosecutor ordered the applicant's release from custody, finding that the time-limits for his detention under Article 109 of the CCrP had expired and that there was no reason to extend his detention.

72. On the same date the Babushkinskiy District Court dismissed the prosecutor's request to confine the applicant to the detention centre for foreign nationals [*центр содержания иностранных граждан ГУВД по г. Москве*]. The court held that only persons charged with administrative offences could be held in the above-mentioned centre and that, in any event, the maximum time-limits for the applicant's detention had expired pursuant to Articles 107-109 of the CCrP.

73. It appears that the applicant was released shortly thereafter.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure (CCrP)

74. Chapter 13 of the CCrP governs the application of preventive measures. Preventive measures may be applied to a suspect or a person charged with an offence where it is probable that the person in question might abscond, continue to engage in criminal activities, threaten witnesses or hinder the investigation (Article 97). When deciding on the necessity to apply a preventive measure, it is necessary to take into account the gravity of the charges and the various personal details of the person concerned (Article 99). Placement in custody is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a crime

punishable with at least two years' imprisonment where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for placement in custody should be lodged by a prosecutor (or an investigator or inquirer with a prosecutor's prior approval) (Article 108 § 3). The request should be examined by a judge of a district court or a military court of a corresponding level (Article 108 § 4). A judge's decision on placement in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime cannot exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level, further to a request lodged by a prosecutor (or an investigator or inquirer with a prosecutor's prior approval) (Article 109 § 2). Further extensions up to twelve months may be granted at the request of an investigator, with the approval of a prosecutor of the Russian Federation, only if the person is charged with a serious or particularly serious criminal offence or offences (Article 109 § 3).

75. Chapter 16 of the CCrP lays down the procedure by which acts or decisions of a court or public official in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of the inquiry, an investigator, a prosecutor or a court may be challenged by “parties to criminal proceedings” or by “other persons in so far as the acts and decisions [in question] touch upon those persons' interests” (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of “parties to criminal proceedings” or of “hindering an individual's access to court” may be subject to judicial review (Article 125).

76. Under Article 466 § 1, upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the Prosecutor General or his or her deputy is to decide on the preventive measure in respect of the person whose extradition is sought “in accordance with the established procedure”. If a foreign court's decision to place a person in custody is appended to the extradition request, a prosecutor is entitled to place that person under house arrest or remand him or her in custody without the Russian courts validating his decision (Article 466 § 2).

B. Custody Act

77. The Custody Act (Law no. 103-FZ of 15 July 1995) lays down the procedure and conditions for the detention of persons arrested under the CCrP on suspicion of criminal offences; it also applies to persons suspected or accused of criminal offences who are remanded in custody (Article 1). Persons suspected or accused of criminal offences have a right to lodge

complaints with a court or another authority concerning the lawfulness and reasonableness of their detention (Article 17(7)).

C. Decisions of the Constitutional Court

1. Decision of the Constitutional Court no. 101-O of 4 April 2006

78. The Constitutional Court examined the compatibility of Article 466 § 1 of the CCrP with the Russian Constitution and reiterated its constant case-law that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

79. In the Constitutional Court's view, the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution, as well as the legal norms of Chapter 13 of the CCrP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP, or in excess of the time-limits fixed therein.

2. Decision no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

80. The Prosecutor General asked the Constitutional Court for an official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person's detention with a view to extradition.

81. The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific provisions of the criminal law governing the procedure and time-limits for holding a person in custody with a view to extradition. That was a matter for the courts of general jurisdiction.

3. Decision no. 333-O-P of 1 March 2007

82. In this decision the Constitutional Court reiterated that Article 466 of the CCrP did not imply that detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

D. Decisions of the Supreme Court

1. Decision of 14 February 2003

83. By a decision (*решение*) of 14 February 2003 the Supreme Court of the Russian Federation granted the Prosecutor General's request and classified a number of international and regional organisations as terrorist organisations, including HT (also known as the Party of Islamist Liberation), and prohibited their activities on Russian soil. It held that HT aimed to overthrow non-Islamist governments and to establish "Islamist governance on an international scale by reviving a Worldwide Islamist Caliphate", in the first place in the regions with predominantly Muslim populations, including Russia and other members of the Commonwealth of Independent States.

2. Directive Decision no. 1 of 10 February 2009

84. By a Directive Decision No.1 adopted by the Plenary Session of the Supreme Court of the Russian Federation on 10 February 2009, ("Directive Decision of 10 February 2009") the Plenary Session issued several instructions to the courts on the application of Article 125 of the CCrP. The Plenary reiterated that any party to criminal proceedings or other person whose rights and freedoms were affected by actions or the inaction of the investigating or prosecuting authorities in criminal proceedings could invoke Article 125 of the CCrP to challenge a refusal to institute criminal proceedings or a decision to terminate them. The Plenary stated that whilst the bulk of decisions amenable to judicial review under Article 125 also included decisions to institute criminal proceedings, refusals to admit a defence counsel or to grant victim status, a person could not rely on Article 125 to challenge a court's decision to apply bail or house arrest or to remand a person in custody. It was further stressed that in declaring a specific action or inaction of a law enforcement authority unlawful or unjustified, a judge was not entitled to annul the impugned decision or to oblige the official responsible to annul it but could only request him or her to rectify the indicated shortcomings. Should the authority concerned fail to comply with the court's instructions, an interested party could complain to a court about the authority's inaction and the latter body could issue a special decision [*частное определение*], drawing the authority's attention to the situation. Lastly, the decision stated that a prosecutor's decision to place a person under house arrest or to remand him or her in custody with a view to extradition could be appealed against to a court under Article 125 of the CCrP.

3. Directive Decision no. 22 of 29 October 2009

85. In a Directive Decision No. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 (“Directive Decision of 29 October 2009”), it was stated that, pursuant to Article 466 § 1 of the CCrP, only a court could order placement in custody of a person in respect of whom an extradition check was pending and the authorities of the country requesting extradition had not submitted a court decision to place him or her in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the CCrP and following a prosecutor's petition to place that person in custody. In deciding to remand a person in custody a court was to examine if there existed factual and legal grounds for applying the preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor was entitled to remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCrP.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. Council of Europe

86. Recommendation No. R (98) 13 of the Council of Europe Committee of Ministers to Member States on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights reads as follows:

> “The Committee of Ministers...
>
> Without prejudice to the exercise of any right of rejected asylum seekers to appeal against a negative decision on their asylum request, as recommended, among others, in Council of Europe Recommendation No. R (81) 16 of the Committee of Ministers,
>
> Recommends that governments of member states, while applying their own procedural rules, ensure that the following guarantees are complied with in their legislation or practice:
>
> 1. An effective remedy before a national authority should be provided for any asylum seeker whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.
>
> 2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when: ...

> 2.2. that authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief; ...
>
> 2.4. the execution of the expulsion order is suspended until a decision under 2.2 is taken."

87. The Council of Europe Commissioner for Human Rights issued a Recommendation (CommDH(2001)19) on 19 September 2001 concerning the rights of aliens wishing to enter a Council of Europe Member State and the enforcement of expulsion orders, part of which reads as follows:

> "11. It is essential that the right of judicial remedy within the meaning of Article 13 of the ECHR be not only guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be guaranteed to anyone wishing to challenge a refoulement or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged."

88. For other relevant documents, see the Court's judgment in the case of *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 36-38, ECHR 2007 V.

B. The CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the Minsk Convention)

89. When performing actions requested under the Minsk Convention, to which Russia and Tajikistan are parties, a requested official body applies its country's domestic laws (Article 8 § 1).

90. Upon receipt of a request for extradition, the requested country should immediately take measures to search for and arrest the person whose extradition is sought, except in cases where no extradition is possible (Article 60).

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

92. A person detained pending extradition pursuant to Article 61 § 1 of the Minsk Convention must be released if the requesting country fails to submit an official request for extradition with all requisite supporting documents within forty days from the date of placement in custody (Article 62 § 1).

C. Reports on Tajikistan

93. The "Conclusions and Recommendations: Tajikistan", issued by the UN Committee against Torture on 7 December 2006 (CAT/C/TJK/CO/1), pointed out the following areas of concern regarding the human rights situation in the country:

> "The definition of torture provided in domestic law ... is not fully in conformity with the definition in article 1 of the Convention, particularly regarding purposes of torture and its applicability to all public officials and others acting in an official capacity.
>
> ...
>
> There are numerous allegations concerning the widespread routine use of torture and ill-treatment by law enforcement and investigative personnel, particularly to extract confessions to be used in criminal proceedings. Further, there is an absence of preventive measures to ensure effective protection of all members of society from torture and ill-treatment.
>
> ...
>
> The Committee is also concerned at:
>
> (a) The lack of a legal obligation to register detainees immediately upon loss of liberty, including before their formal arrest and arraignment on charges, the absence of adequate records regarding the arrest and detention of persons, and the lack of regular independent medical examinations;
>
> (b) Numerous and continuing reports of hampered access to legal counsel, independent medical expertise and contacts with relatives in the period immediately following arrest, due to current legislation and actual practice allowing a delay before registration of an arrest and conditioning access on the permission or request of officials;
>
> (c) Reports that unlawful restrictions of access to lawyers, doctors and family by State agents are not investigated or perpetrators duly punished;
>
> (d) The lack of fundamental guarantees to ensure judicial supervision of detentions, as the Procuracy is also empowered to exercise such oversight;
>
> (e) The extensive resort to pretrial detention that may last up to 15 months; and
>
> (f) The high number of deaths in custody.
>
> ...
>
> There are continuing and reliable allegations concerning the frequent use of interrogation methods that are prohibited by the Convention by both law enforcement officials and investigative bodies.
>
> ...

There are reports that there is no systematic review of all places of detention, by national or international monitors, and that regular and unannounced access to such places is not permitted.”

94. The report by Amnesty International entitled “The State of The World's Human Rights”, released in 2007, in so far as relevant, reads as follows:

“...

There were continuing reports of unlawful arrests and widespread and routine torture or other ill-treatment by law enforcement officers, several of whom were sentenced to prison terms.

...

Sadullo Marufov, a member of the Islamic Renaissance Party (IRP), died in police custody in May after he was detained for questioning by law enforcement officers in Isfara. Initially the officers claimed that he had committed suicide by jumping from a third floor window. The IRP claimed that an autopsy report indicated that he had been beaten and ill-treated, and alleged that he had been pushed from the window. The general prosecutor's office subsequently announced that following an investigation three officers had been detained.”

95. In its “World Report 2008 – Tajikistan” of 31 January 2008 the Human Rights Watch stated as follows:

“Tajikistan's human rights situation continues to be characterized by lack of access to justice, due process violations, incommunicado detention, and ill-treatment in custody. The government interferes with opposition political parties. Government harassment of non-traditional religious groups and Muslim groups that are independent of state-controlled religious bodies has intensified.

...

Torture and Ill-treatment in Custody

Human rights organizations and lawyers continue to receive reports of arbitrary arrests, violations of detention procedures and fair trial standards, and credible, serious allegations of ill-treatment and torture in detention. Defense lawyers themselves are subject to threats and harassment if they insist on effective assistance of counsel.

Tajikistan has not amended its law on torture to comply fully with the UN Committee Against Torture's recommendations to the country in December 2006. Law enforcement officials can be charged with "abuse of professional competency" (criminal code article 314), but not with torture. National legislation does not prohibit torture evidence from being admitted at trial.

Impunity for ill-treatment in detention continues to be widespread. There were, however, at least two cases in 2007 in which law enforcement officers were prosecuted for ill-treatment. In April police lieutenant Nurullo Abdulloev was sentenced to seven years' imprisonment by a court in Kulyab for the unlawful detention and ill-treatment of two detainees. In another case in April, two police

officers were each sentenced to two years' imprisonment for beating and torturing with electrical shock a 15-year-old boy in the capital, Dushanbe. All three men were convicted under article 314.

...

Actions in the Name of Countering Terrorism and Extremism

In 2007 law enforcement bodies continued to arrest individuals simply because they were accused of possessing leaflets of Hizb ut-Tahrir, a banned Islamic organization, and at least three alleged Hizb ut-Tahrir members were sentenced to more than 10 years' imprisonment each for "incitement of ethnic and religious hatred" and "membership in extremist organizations." In the first case of a child being imprisoned for membership in Hizb ut-Tahrir, Muminbek Mamedov, a 17-year-old boy, was sentenced to eight years' imprisonment.

In January the Supreme Court banned another 10 organizations, including the Islamic Movement of Turkestan, as "extremist." In August a small Islamist group, Mavlavi, was banned on the grounds that it holds "unsanctioned gatherings."

Uzbek and Tajik citizens continue to be arrested for alleged membership in the Islamic Movement of Uzbekistan. In these highly political cases involving terrorism charges, the suspects are frequently denied procedural protection and the right to a fair trial, and routinely suffer from inhumane treatment in detention.

...

Visiting Tajikistan in April, United Nations High Commissioner for Human Rights Louise Arbour called on the government to ensure better access to justice and to allow local and international monitors, including the International Committee of the Red Cross, to visit detention places. Asma Jahangir, the UN special rapporteur on freedom of religion or belief, visited Tajikistan in February, concluding that religious communities and individuals faced "challenges," and underscoring the importance of the government's ensuring that "especially vulnerable individuals" be protected "from harassment by non-State actors in the name of religion."

In March the UN Human Rights Committee issued two decisions on applications alleging abuses by Tajik authorities. It found that in both *Ashurov v. Tajikistan*, and *Karimov and Nursatov v. Tajikistan* the victims had been subjected to torture and unfair trial. The decisions urge Tajik authorities to ensure effective remedy to the applicants, including compensation, and in the *Ashurov* case to immediately release the victim. At this writing the government has not implemented the decisions.”

96. In its monthly report of November 2008 the Bureau on Human Rights and the Rule of Law, an NGO established in Tajikistan, provided the following information on the situation regarding torture in detention in that country:

“In Tajikistan only 2% of victims of torture are able to prove that fact and have the perpetrators punished... This conclusion is based on the findings of the research of practice of ill-treatment by law enforcement officials at arrest and during the preliminary investigation carried out by the League of lawyers and the public

foundation “Panorama”. Having interviewed the victims, the researchers came to the following conclusions.

The detainees stated that they had been subjected to the following methods of ill-treatment: psychological pressure – 24%; being hit, kicked and beaten with truncheon on different parts of the body – 32,5%; threats of physical violence – 12,5%. 32% of victims stated that they had been simultaneously subjected to various forms of torture, in particular, torture with electricity, threats and beatings.

57% of victims of torture and ill-treatment suffered from psychological disorder, one third of the interviewed had bodily injuries. 3% of victims of torture or ill-treatment had grave bodily injuries. There were also fatal cases [among those examined by the researchers]. There were suspiciously many cases of suicides committed in custody.

The research showed that the perpetrators were mostly unpunished. The main reason for this was that the majority of victims of torture were not complaining to law enforcement bodies. Only 24% [of the interviewed] submitted such complaints. The main reasons for failure to complain were fear of reprisals (44,5%), lack of trust towards the law enforcement officials (29%), lack of knowledge of the relevant procedures (6,7%)....”

97. The World Report chapter on Tajikistan by Human Rights Watch released in January 2009, in so far as relevant, reads as follows:

“**Actions in the Name of Countering Terrorism and Extremism**

Following a recommendation by the prosecutor general, the Supreme Court of Tajikistan designated Hizb ut-Tahrir, a group that supports the reestablishment of the Caliphate, or Islamic state, by peaceful means, an "extremist" organization. The government continued to arrest alleged Hizb ut-Tahrir members and convict them either of sedition or incitement to racial, ethnic, or religious hatred, often simply for possessing the organization's leaflets.

...

Torture and Deaths in Custody

Tajikistan's definition of torture does not comply fully with the UN Committee Against Torture's recommendations to the country in December 2006. In a positive move, in March 2008 the Criminal Procedure Code was amended to make evidence obtained under torture inadmissible in court proceedings.

Experts agree that in most cases there is impunity for rampant torture in Tajikistan. In one of the few cases that reached the courts, two policemen in Khatlon province were convicted in August 2008 for ill-treating minors; one of the two received a four-year prison sentence, and the other a suspended sentence.

NGOs and local media reported at least three deaths in custody in 2008, including the death from cancer of the ex-deputy chair of the Party of Islamic Revival Shamsiddin Shamsiddinov. The party alleged his arrest in 2003 was politically motivated and claimed that his life could have been saved had he been allowed to undergo surgery.

> In an April 1, 2008 decision (*Rakhmatov et al. v. Tajikistan*) the UN Human Rights Committee found that Tajikistan violated the rights, including freedom from torture, of five applicants, two of them minors when they were arrested. Tajikistan failed to cooperate with the committee's consideration of the complaint. Similar violations were established in an October 30, 2008 decision (*Khuseynov and Butaev v. Tajikistan)*".

98. In January 2010 the Human Rights Watch released its World Report 2010, where the chapter on Tajikistan, in so far as relevant, states:

> "Torture is routinely used by law enforcement officials, and the Tajik government continues to deny human rights groups access to places of detention.
>
> ...
>
> **Torture**
>
> Torture is practiced by law enforcement officers and within the penitentiary system in a culture of near-impunity. It is often used to extract confessions from defendants, who during initial detention are often denied access to family and legal counsel. To date the Tajik government has refused all requests from human rights groups to visit detention sites, interrogation rooms and prisons.
>
> Tajikistan's definition of torture does not fully comply with recommendations made to the country by the United Nations Committee against Torture in November 2006. In a small sign of a progress, local and international human rights groups recently completed a campaign to document instances of torture in Tajikistan, as part of a two-year project funded by the European Union. That project, which was run in Tajikistan by the Bureau on Human Rights and the Rule of Law, determined that over the past two years there had been more than 90 cases of torture.
>
> **Freedom of Religion**
>
> ...
>
> There continued to be reports of the Tajik authorities prosecuting alleged members of Hizb ut-Tahrir, an international Islamic organization that is banned in several countries in the region, and sentencing them to long prison terms on questionable evidence."

99. The 2009 US Department of State Country Report on Human Rights Practices, released on 11 March 2010, in so far as relevant, reads as follows:

> "The government's human rights record remained poor, and corruption continued to hamper democratic and social reform. The following human rights problems were reported: ... torture and abuse of detainees and other persons by security forces; impunity of security forces; denial of right to fair trial; harsh and life-threatening prison conditions; prohibition of international monitor access to prisons; ...
>
> The law prohibits [cruel, inhumane or degrading treatment or punishment], but some security officials used beatings or other forms of coercion to extract confessions during interrogations, although the practice was not systematic. Officials did not grant sufficient access to information to allow human rights organizations to investigate claims of torture.

In Sughd region, four suspects arrested in a murder case claimed investigators tortured them seeking to extract confessions. One suspect claimed an investigator threatened to 'ruin' his daughter if he did not confess to a crime. The same individual stated he lost toenails as a result of torture while in custody. The courts dismissed the individual's claim of torture, and he was convicted of murder and other crimes and sentenced to 30 years in prison. Several individuals held in Dushanbe city jails also claimed they were beaten while in custody. Articles in the criminal code do not specifically define torture, and the country's law enforcement agencies have not developed effective methods to investigate allegations of torture. According to a report during the year by Human Rights Watch, 'Experts agreed that in most cases there is impunity for rampant torture in Tajikistan'.

In an April 2008 court decision (*Rakhmatov et al. v. Tajikistan*) the UN Human Rights Committee found that the government violated the human rights, including freedom from torture, of three adults and two minors. The committee also noted that the government failed to cooperate with the committee and that similar allegations were substantiated in an October 2008 court decision (*Khuseynov and Butaev v. Tajikistan*). Denial of access to detention centres impeded efforts to determine if any improvements had occurred since then.

...

The Ministry of Justice (MOJ) continued to deny access to prisons or detention facilities to representatives of the international community and civil society seeking to investigate claims of harsh treatment or conditions. Some foreign diplomatic missions and NGOs were given access to implement assistance programs or carry out consular functions, but their representatives were limited to administrative or medical sections, and MOJ personnel accompanied them. The government did not sign an agreement with the International Committee of the Red Cross (ICRC) to allow free and unhindered access to prisons and detention centres, and the ICRC's international monitoring staff has not returned to the country since 2007.

Detainees and inmates described harsh and life-threatening prison conditions, including extreme overcrowding and unsanitary conditions. Disease and hunger were serious problems, but outside observers were unable to assess accurately the extent of the problems because authorities did not allow access to prisons. Organizations such as the UN Human Rights Council reported that infection rates of tuberculosis and HIV were significant and that the quality of medical treatment was poor.

...

The government placed few checks on the power of prosecutors and police to make arrests. The criminal justice system operated under the criminal procedure code based on a 1961 Soviet law. Individuals reported that some prosecutors and courts pressed questionable criminal charges and that some officials influenced judges inappropriately to get convictions. In December the government approved a new criminal procedure code to replace the existing code in April 2010.

...

Victims of police abuse may submit a formal complaint in writing to the officer's superior or the Office of the Ombudsman. Most victims chose to remain silent rather than risking retaliation by the authorities.

...

By law prosecutors are empowered to issue arrest warrants, and there is no requirement for judicial approval of an order for pre-trial detention. Police may detain a suspect without a warrant in certain circumstances, but a prosecutor must be notified within 24 hours of arrest. After a warrant is issued, the police may hold a suspect 72 hours before arraignment. Defence advocates alleged that prosecutors often held suspects for longer periods and only registered the initial arrest when the suspect was ready to confess. Pre-trial detention may last as long as 15 months in exceptional circumstances.

...

Prosecutors oversee pre-trial investigation and have the right to initiate criminal proceedings. Individuals have the right to an attorney upon arrest and the government must appoint lawyers for those who cannot otherwise afford one. In practice the government provided few attorneys for public defence, and these attorneys were generally ineffective. There is no bail system, although criminal detainees may be released conditionally and restricted to their place of residence pending trial. The typical length of pre-trial detention was two to three months.

According to the law, family members are allowed access to prisoners only after indictment; officials occasionally denied attorneys and family members access to detainees. Authorities held detainees charged in crimes related to national security incommunicado for long periods without formally charging them. In January, after relatives of former citizen Muhammadi Salimzoda sought his whereabouts for five months, the SCNS admitted that Salimzoda had been in state custody the entire period. Salimzoda was sentenced to 29 years' imprisonment for espionage and attempting to overthrow the government, but he claimed security personnel obtained his confession to the crimes under physical and psychological duress.

The government generally provided a rationale for arrests, although some detainees claimed that authorities falsified charges or inflated minor problems to make politically motivated arrests. Some police and judicial officials regularly accepted bribes in exchange for lenient sentencing or release.

...

Authorities claimed that there were no political prisoners and that they did not make any politically motivated arrests. Opposition parties and local observers claimed the government selectively prosecuted political opponents. There was no reliable estimate of the number of political prisoners, but former opposition leaders claimed there were several hundred such prisoners held in the country, including former fighters of the UTO.

In February Rustam Fayziev, deputy chairman of the unregistered Party of Progress, died in prison after four years of confinement for insulting and defaming President Rahmon in a 2005 unsent, unpublished letter. The government claimed his death was the result of natural causes. Muhammadruzi Iskandarov, head of the Democratic Party of Tajikistan and former chairman of Tojikgaz, the country's state-run gas monopoly, remained in prison following his unlawful extradition from Russia and 2005 conviction for corruption. Former interior minister Yakub Salimov remained in prison

serving a 15-year sentence for crimes against the state and high treason following his 2005 closed trial."

100. The chapter "Tajikistan" in the Amnesty International report "The State of the World's Human Rights", released in May 2010, states, in so far as relevant:

"The Government continued to exert tight control over the exercise of religion. Reports of torture and other ill-treatment by law enforcement officers continued.

...

Torture and ill-treatment

Report of torture and ill-treatment by law enforcement officials continued, in particular, to extract confessions during the first 72 hours, the maximum period suspects could be held without charge.

On 27 June, Khurshed Bobokalonov, a specialist in the Tajikistani Oncology Centre, dies after being arrested by the police. He had been walking along the street when the police stopped him and accused him of being drunk. He protested, and some 15 policemen bundled him into a police car. The Ministry of the Interior claimed that he died of a heart attack on the way to the police station. His mother reported injuries on her son's face and body, and on 22 July the Minister of the Interior announced an investigation into possible "death through negligence". There was no public information about the progress of the investigation by the end of the year."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

101. The applicant 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, which provides:

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

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

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

A. The parties' submissions

1. The Government

103. The Government argued that the domestic authorities, including the FMS and the courts, had carefully examined the applicant's allegations that he would be subjected to a risk of ill-treatment if extradited to Tajikistan and had correctly dismissed them as unfounded. The information obtained from "official sources" had not confirmed that the Tajikistani authorities were persecuting their citizens on political or religious grounds or subjecting citizens under criminal prosecution to inhuman or degrading treatment. The courts also examined the information produced by various NGOs. However, their reports were not official documents and were not binding for the courts. In any event, the applicant had come to Russia in 2007 to earn money. He had not legalised his status upon arrival and, until his arrest in 2008, had not applied for Russian citizenship, asylum or temporary asylum. Nor had he notified the authorities of his fears of being persecuted in Tajikistan, as proved by his explanation of 6 August 2008 and the hearing transcript of 20 April 2009.

104. The Government further submitted that the applicant had not requested the authorities to secure his presence at the hearing of 20 April 2009. In any event, his lawyer attended the hearing, but the prosecutor did not.

105. They further argued that the applicant had had at his disposal a number of effective remedies in respect of his grievances under Article 3. In particular, under Article 462 § 6 of the Code of Criminal Procedure, a person challenging an extradition order could not be extradited until such time as the order became final. Furthermore, under Article 464 § 5 of the CCrP a person was not to be extradited if there was a final court decision prohibiting extradition. Lastly, Article 12 of the Refugees Act provided for a possibility to grant a person temporary asylum even if he or she did not qualify for refugee status.

2. The applicant

106. The applicant submitted that there were substantial grounds for believing that he would be exposed to a real risk of ill-treatment in breach of Article 3 if extradited to Tajikistan. Relying on reports by various NGOs, such as Human Rights Watch and Amnesty International, the applicant stated that torture continued to be applied to detainees in Tajikistan to extract their confessions and that persons prosecuted for their presumed membership in HT were particularly targeted by the authorities. The applicant further referred to his own experience of ill-treatment at the hands of the authorities and his relatives' reports that they had been threatened and that his co-accused had been severely ill-treated after his escape. According

to the applicant, after the City Court had asked the Tajikistani authorities to comment on his accusations concerning the Tajikistani law enforcement system, the risk of the applicant being subjected to ill-treatment in retaliation for his criticism and also for his escape, was all the higher. With reference to the Court's *Saadi* judgment, the applicant also affirmed that the assurances given by the Tajikistani authorities were not sufficient to safeguard him against the alleged risk of ill-treatment.

107. The applicant further argued that in examining his case the Russian authorities had disregarded his specific submissions concerning his religious and political persecution and relevant reports by independent NGOs, and had relied solely on "official sources of information". The courts' conclusion that the applicant had voluntarily left Tajikistan was at variance with his consistent submissions that he had fled because of his persecution on religious grounds and the ill-treatment sustained in custody. Referring to other cases against Russia concerning expulsion and extradition and pending before the Court, the applicant insisted that the Russian courts consistently adopted the same formalistic approach in dealing with such complaints, which showed that the remedies suggested by the Government were ineffective in practice.

108. Lastly, he claimed that the asylum legislation did not unequivocally prohibit extradition of an asylum seeker, that the outcome of the asylum proceedings had been prejudged in the extradition proceedings and that his absence from the hearing on 7 April 2009 had deprived him of an opportunity to effectively challenge the Moscow FMS refusal to grant him asylum.

B. The Court's assessment

1. Admissibility

109. The Court notes that the applicant's complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) Article 3 of the Convention

(i) General principles

110. The Court reiterates at the outset that Contracting States have the right as a matter of international law and subject to their treaty obligations,

including the Convention, to control the entry, residence and expulsion of aliens (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94), and the right to political asylum is not explicitly protected by either the Convention or its Protocols (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, ECHR 2007-I (extracts)). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3.

111. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008-...). Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

112. The assessment 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 receiving 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). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (see *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

113. 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 the nature of the Contracting States' responsibility under Article 3 in cases of this kind 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 (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215).

114. 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).

115. As regards the general situation in a particular country, the Court has held on several occasions that it can attach certain importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department (see, *Saadi*, cited above, § 131, with further references). At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (ibid).

116. Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

(ii) Application of the above principles to the present case

117. The Government argued that "official sources" had not confirmed the applicant's allegation that he would run a real risk of ill-treatment and torture if extradited to Tajikistan. With reference to various reports of international and local NGOs and his own experience, the applicant disputed the Government's argument.

118. The Court reiterates 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*, cited above, § 136, and *Ismoilov and Others v. Russia*, no. 2947/06, § 120, 24 April 2008).

119. The Court will first assess whether the applicant's grievance received any reply at the national level (see *Muminov v. Russia*, no. 42502/06, § 86, 11 December 2008).

(α) Domestic proceedings

120. Having regard to the materials in its possession, the Court notes that the applicant complained about the risk of being subjected to treatment in breach of Article 3 in both the asylum and the extradition proceedings and that in both those sets of proceedings the domestic authorities took cognisance of his submissions. Hence, in assessing whether the applicant's grievance received an adequate reply, the Court will have regard to both sets of proceedings.

121. Referring to the applicant's explanation of 6 August 2008 and the hearing transcript of 20 April 2009, the Government argued that the applicant had failed to inform the authorities of his fear of being persecuted

in Tajikistan. In this respect the Court notes that the information contained in the written explanation was, indeed, not particularly detailed. However, on 19 December 2008 the applicant's lawyer notified the Russian Prosecutor General's Office that the applicant was challenging before the courts the refusal to grant him asylum and requested it to take that fact into account when examining the extradition issue (see paragraph 23 above). Furthermore, according to the impugned hearing transcript of 20 April 2009 and contrary to the Government's assertion, the applicant addressed to the City Court detailed submissions on the risk of his being subjected to treatment in breach of Article 3 (see paragraph 29 above).

122. Having regard to the applicant's submissions to the courts in extradition and asylum proceedings, the Court is satisfied that he consistently raised before the domestic authorities the issue of the risk that he would be subjected to treatment in breach of Article 3 of the Convention, advancing a number of specific and detailed arguments. Among other things, he referred to his alleged previous ill-treatment, the systematic practice of ill-treatment inflicted on detainees in Tajikistan and the fact that the authorities had persecuted him on religious grounds. The applicant substantiated his allegations by reference to reports by international organisations on the human rights situation in Tajikistan, in particular as regards the risk of persons being detained and persecuted for their religious beliefs (see paragraphs 26, 29, 36, 39-43, 46, 48 and 51 above). However, the Court is not persuaded that the domestic authorities made an adequate assessment of the risk of torture or ill-treatment if the applicant were to be extradited to Tajikistan.

123. As regards the extradition proceedings, the Court cannot but note that the domestic authorities involved in the decision-making process in fact disregarded the applicant's submission that he would run a risk of treatment proscribed by Article 3 in his home country. In particular, they failed to address his allegations of previous ill-treatment while in detention in Tajikistan and his submission that he ran a particular risk of torture as a person charged with active membership of a proscribed religious organisation (see paragraphs 37 and 41 above). Nor did they give any consideration to his allegation that he had fled from custody because of the beatings inflicted on him (ibid.).

124. The Court finds particularly striking the City Court's statement that the applicant "had not been and was not being persecuted in the territory of the Republic of Tajikistan on political or other grounds" (see paragraph 37 above), although a copy of the related hearing transcript clearly contained information to the contrary (see paragraph 29 above).

125. Furthermore, neither the City Court nor the Supreme Court gave any consideration to a body of relevant information from independent NGOs, relied on by the applicant and enclosed by those courts in the case file materials (see paragraphs 29, 37 and 42 above). It transpires that the

courts chose to rely solely on the scant information contained in the letter of the MID (ibid.).

126. In the Court's opinion, the asylum proceedings were tainted by the same defects as those enumerated above (see paragraphs 47-48 above). In particular, in its decision of 10 September 2009 the Zamoskvoretskiy District Court explicitly refused to examine the information from non-governmental sources and assess the issue of the risk for the applicant of being subjected to treatment in breach of Article 3 (see paragraph 50 above). The same court stated that the applicant "only feared criminal prosecution", which was at variance with the applicant's submission, cited earlier in the same decision, that he feared his return to Tajikistan because of the risk of torture (ibid.). This holds true also for the appeal decision of 28 January 2010 (see paragraph 53above).

127. In sum, for the reasons stated in paragraphs 123-126 above, the Court considers that the domestic authorities failed to make an adequate assessment of the risk of the applicant being subjected to torture or ill-treatment if he were to be extradited to Tajikistan.

(β) The Court's assessment of the risk

128. The Court has now to assess whether there is a real risk that, if extradited to Tajikistan, the applicant would be subjected to treatment proscribed by Article 3. In line with its case-law and bearing in mind that the applicant has not yet been extradited, owing to the indication of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case.

129. In the Government's submission, the applicant's allegation of risk of ill-treatment or torture remained unconfirmed by "official sources". Assuming that the Government had in mind the letter of the Russian MID used in the extradition proceedings, the Court nonetheless reiterates that in cases concerning aliens facing expulsion or extradition it is entitled to compare materials made available by the Government with information from other reliable and objective sources (see *Salah Sheekh*, cited above, § 136; and *Saadi*, cited above, § 131).

130. In this connection the Court points out that evidence from a number of objective sources describes a disturbing situation in Tajikistan. In particular, the UN Committee against Torture, the US Department of State, Amnesty International and Human Rights Watch described the practice of torture against those in police custody as "systemic", "widespread" and "routine" (see paragraphs 93, 94 and 98 above). The Committee also pointed out that detainees were often kept in unrecorded detention, and prevented from having access to legal counsel and medical expertise following their arrest, and that interrogation methods prohibited by the Convention Against Torture were frequently used (see paragraph 93 above).

131. Human Rights Watch referred to the issue of incommunicado detention (see paragraph 95 above) and the US Department of State specifically stated that the Tajik authorities held detainees charged with crimes related to national security incommunicado for long periods of time (see paragraph 99 above). It is also noted that several independent observers stated that granting impunity to State officials for acts of rampant torture was common practice (see paragraphs 96, 98 and 99 above).

132. Turning to the applicant's personal situation, the Court points out that he was wanted by the Tajikistani authorities on account of his alleged active participation in Hizb ut-Tahrir, a religious organisation which the Tajikistani Supreme Court had banned because of its extremist activities. The comprehensive list of charges against the applicant included, besides incitement to religious hatred and participation in a criminal organisation, appeals to overthrow the constitutional order, which undoubtedly belongs to the category of crimes against national security.

133. The Court further observes that, according to Human Rights Watch, the Government's harassment of non-traditional religious groups and Muslim groups that were independent of state-controlled religious bodies had intensified in 2007 (see paragraph 95 above) and it appears that that trend, in particular in respect of alleged members of Hizb ut-Tahrir, continued after 2008 and throughout 2010 (see paragraphs 97 and 98 above).

134. It was stated, among other things, that law enforcement authorities continued arresting individuals simply because they were accused of possessing leaflets of Hizb ut-Tahrir, and sentencing them to lengthy imprisonment terms on questionable evidence (see paragraphs 95, 97 and 98 above). Against this background it is highly significant for the Court that the Tajikistani authorities have consistently refused to allow independent observers access to detention facilities (see paragraphs 93, 95 and 99 above, and compare *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 81, ECHR 2009-... (extracts)). It is also noted that in a recent judgment against Russia the Court has found that there were serious reasons to believe in the existence of the practice of persecution of members and supporters of Hizb ut-Tahrir, whose underlying aims appear to be both religious and political (see *Khodzhayev v. Russia*, no. 52466/08, § 101, 12 May 2010).

135. As regards the applicant's submission that he had already experienced ill-treatment at the hands of Tajikistani law enforcement officials, the Court observes that he did not adduce certain evidence, such as, for example, his relatives' statements, to support his submission Nonetheless, it considers that the applicant's account of events is consistent and detailed (see *Garayev v. Azerbaijan*, no. 53688/08, § 72, 10 June 2010). In this respect the Court finds peculiar that the decision of 25 May 2006 issued by the Tajik authorities explicitly stated that the applicant had escaped from the "summer cottage" of the MNS, which, in the Court's view,

lends further credibility to his submissions concerning the events following his arrest in Tajikistan in 2006 (see paragraph 14 above).

136. Regard being had to the climate of impunity for law enforcement officials practising torture (see paragraphs 93, 95, 98 and 99 above) and the fact that, if extradited, the applicant will likely be held in the same detention facility pending trial, the Court considers that his allegation that he would run a greater risk of being subjected to treatment in breach of Article 3 in retaliation for his escape from custody cannot be discarded as completely without foundation. In this connection it takes note of the applicant's submission that his relatives were approached by law enforcement officials who threatened them and the applicant with reprisals (see paragraphs 13, 29 and 106 above, see also *Ismoilov and Others*, cited above, § 124).

137. It is also significant for the Court that the office of the UNHCR, after having interviewed the applicant and carefully examined his case, found that he was unable to return to Tajikistan as a person persecuted for his imputed political opinions and that he was eligible for international protection under its mandate (see paragraph 55 above).

138. Lastly, in so far as the domestic authorities relied on diplomatic assurances from the Tajikistani Prosecutor General's Office, the Court would note that they are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, §§ 147-48).

139. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant would face a real risk of treatment proscribed by Article 3 if extradited to Tajikistan.

140. The Court concludes therefore that implementation of the extradition order against the applicant would give rise to a violation of Article 3 of the Convention.

(b) Article 13 of the Convention

141. The applicant complained that he had had no effective remedies in respect of his complaints under Article 3 of the Convention, in breach of Article 13.

142. The Government contested the applicant's submission.

143. Having regard to the applicant's submissions, the Court considers that the gist of his claim under Article 13, which it considers "arguable" (see *Muminov*, cited above, § 99), is the domestic authorities' alleged failure to carry out a rigorous scrutiny of the risk of him being subjected to ill-treatment in the event of his extradition to Tajikistan (see paragraphs 106-108 and, in particular, paragraph 107 above).

144. In this respect the Court notes that it has already examined that allegation in the context of Article 3 of the Convention. Having regard to its

findings in paragraphs 123-127 above, the Court considers that there is no need to examine this complaint separately on its merits (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI).

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

145. The applicant complained under Article 5 § 1 (f) of the Convention that his detention had been unlawful in that it had not been extended after 16 November 2006 and the related court decisions mentioned no time-limits for it. He also stated that the applicable legal provisions lacked clarity and precision and thus did not satisfy the "quality of the law" requirements under Article 5 of the Convention. He also submitted, under Article 5 § 4, that he had been deprived of the right to have the lawfulness of his detention reviewed by a court, referring to the courts' refusal to examine his complaints about detention and requests for release.

146. Article 5 of the Convention reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

1. The Government

147. The Government argued that the applicant had not exhausted the domestic remedies in respect of his complaints under Article 5. In particular, he had failed to challenge the detention orders of 7 August and 16 September 2008 on appeal or by way of supervisory review pursuant to Articles 108 § 11 and 109 § 8 of the CCrP, despite the fact that he had been advised of the time-limits and procedures for doing so. The applicant had likewise failed to appeal against the refusal of 27 January 2009 to examine his release request and had failed to rectify the shortcomings indicated in

that decision. Bearing in mind that, pursuant to Article 466 of the CCrP, a prosecutor was to petition a court to remand the applicant in custody, it was also open to the applicant to complain about the inactivity of the prosecutors under Articles 124 and 125 of the CCrP. Whilst the City Court had, indeed, disregarded the applicant's request for release filed on 20 April 2009, the applicant had not complained about it in his appeal statement. Furthermore, the applicant had failed to appeal by way of supervisory review against the Supreme Court's failure to examine his written request for release lodged on 8 June 2009. Moreover, the applicant could have complained to the courts about his detention under Article 17 of the Custody Act, or challenged the acts or omissions of the administration of the remand centre under Chapter 25 of the CCP.

148. In the alternative, the Government argued that the latest decision concerning the applicant's detention had been issued on 16 September 2008, and that the applicant had therefore failed to comply with the six-month requirement in respect of his complaints under Article 5 § 1.

149. The Government further submitted that the domestic authorities had been obliged to hold the applicant in custody because the Strasbourg Court had applied Rule 39 and indicated to them to suspend his extradition. Referring to the *Chahal* case (see *Chahal v. the United Kingdom*, 15 November 1996, *Reports of Judgments and Decisions* 1996-V), they stressed that paragraph 1 (f) of Article 5 of the Convention provided for a level of protection different from paragraph 1 (a)-(e), requiring only that extradition proceedings be pending. Hence, it was immaterial for that provision whether there existed sufficient grounds for holding the person in custody. Accordingly, the applicant's detention from 5 August 2008 onwards had been “lawful” within the meaning of the above provision.

150. They further claimed that the applicable domestic provisions were sufficiently clear and foreseeable and permitted the applicant to estimate the likely length of his detention. In this respect they referred to Articles 108 and 109 of the CCrP, the Constitutional Court Ruling of 4 April 2006 and the Supreme Court Ruling of 29 October 2009, which had, in their opinion, given a comprehensive interpretation of the application of those provisions to extradition proceedings. Consequently, the lack of time-limits in the detention orders of 7 August and 16 September 2008 was compatible with the requirements of Article 5 § 1 (f). Lastly, the Government stated that the Prosecutor General's Office had displayed due diligence in conducting the extradition proceedings.

2. The applicant

151. The applicant argued that if his detention term were calculated in accordance with Article 109 of the CCrP, the period of his detention authorised by the decision of 16 September 2008 would have expired on 16 November 2008, that is two months later. Accordingly, having

complained to the Court on 15 May 2009, he had complied with the six-month requirement.

152. He further claimed that he had exhausted domestic remedies. In particular, he submitted that he had no need to avail himself of applications for supervisory review because that remedy was not effective.

153. Furthermore, he argued that, contrary to the Government's submissions, he had consistently attempted to obtain review of his detention but his complaints had been discarded without consideration - first by the Babushkinskiy District Court, which had substituted his complaint for a civil action and then by the City Court and the Supreme Court, which had disregarded his oral and written submissions. The applicant's attempts to raise the issue before the Nagatinskiy and Siminovskiy district courts also met with a refusal to examine his complaints. Moreover, the Simonovskiy District Court replied to the applicant's complaint by letter, thereby depriving him of the possibility of challenging it through normal procedures. The applicant's lawyer's attempts to complain about his detention to the prosecutor's office also produced no results, which showed that that remedy was not effective either.

154. The applicant stressed that the thrust of his complaint under Article 5 § 1 (f) was not the unlawfulness of the initial decisions to remand him in custody but the authorities' failure to extend his detention after the expiry on 16 November 2008 of the two-month period under the detention order of 16 September 2008, which omission had been in breach of the domestic law.

155. According to the applicant, the lack of time-limits for his detention in the detention order of 7 August 2008 left him in a state of uncertainty as to the length of his detention. Moreover, the decision of 16 September 2008 must have been aimed at extending the term of the applicant's detention because he was already in custody. However, it was termed as an initial detention order and, again, failed to set any time-limit, which enabled the authorities to hold him in custody for an unlimited period of time.

156. The applicant further argued that the domestic provisions regulating detention pending extradition were unclear and unforeseeable. In particular, the reply of the Prosecutor General's Office to the ombudsman acknowledged the lack of uniform judicial approach to the detention of persons pending extradition and clearly demonstrated that the domestic provisions did not satisfy the "quality of the law" requirement under the Convention. The uncertainty of the law was further demonstrated by the Prosecutor General's Office's statement that the maximum detention term of eighteen months, fixed by Article 109 of the CCrP, applied exclusively to persons detained pending extradition while the extradition check was in progress, and not to those persons in respect of whom the Prosecutor General's Office had already issued an extradition order. In the same vein, while the Government argued that Chapter 13 of the CCrP on preventive

measures was to be applied to detention pending extradition, they did not take into acocunt the fact that his detention was in breach of the relevant provisions. The unsatisfactory quality of the law had made it impossible for the applicant to estimate the likely duration of his detention, which had in any event exceeded the maximum period of 18 months authorised by Article 109 of the CCrP.

157. He further stated that the Prosecutor General's Office had concluded its extradition check on 30 December 2008, and that on 8 June 2009 that decision had become final and the extradition proceedings against him had been terminated. After that no action with a view to extraditing him had been taken, so his further detention was in breach of Article 5 § 1 (f). In the applicant's submission, the fact that he had challenged the extradition order before the courts did not necessitate his further detention or relieve the authorities from their obligation to authorise it in accordance with the law. In the same vein, nowhere did the Asylum Act contain a requirement for asylum seekers to be held in custody, and the Government's statement that the authorities had to hold him in custody because of the Strasbourg Court's application of Rule 39 was misconceived.

158. Relying on the Court's judgments in the cases of *Ismoilov and Others* and *Nasrulloyev*, the applicant argued that the Government's reference to Articles 108 and 109 of the CCrP was misconceived. In particular, it was obvious from the wording of those provisions that it was possible to challenge an extension of detention only if there was a decision to extend the detention. However, no such decisions had been taken in his case. Article 124 of the CCrP secured a possibility to complain to a prosecutor or an investigative body but did not provide for access to judicial review of detention, as required by Article 5 § 4 of the Convention. Article 125 of the CCrP contained an exclusive list of decisions a court could take in examining a complaint. However, there was no indication that a court could instruct an investigating authority to release the detainee. On the contrary, according to the Supreme Court Directive Decision of 10 February 2009, although a court examining a complaint under Article 125 could order a law enforcement official whose acts it considered unlawful to set matters right, it could not annul the decisions which it had qualified as unlawful.

159. As to Article 17 of the Custody Act, although that provision mentioned the detainee's right to challenge his detention before the courts, it did not lay down the relevant procedures. According to Supreme Court decision no. 2 (see Relevant Domestic Law above), the applicant could not complain about his detention under Chapter 25 of the Civil Code.

160. Lastly, the applicant argued that he had on several occasions attempted to obtain review of his detention but his attempts had not produced any meaningful results.

B. The Court's assessment

1. Admissibility

161. The Government submitted that the applicant had failed to exhaust domestic remedies and had not complied with the six-month requirement in respect of his complaints under Article 5 of the Convention.

162. The Court considers that issues of exhaustion of domestic remedies and compliance with the six-month rule are closely linked to the merits of the applicant's complaint under Article 5 of the Convention. Therefore, it finds it necessary to join the Government's objection to the merits of those complaints.

163. The Court further notes that the complaints under Article 5 §§ 1 and 4 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It considers that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) Article 5 § 4 of the Convention

164. The Court will first examine the applicant's complaint under Article 5 § 4 of the Convention.

165. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Talat Tepe v. Turkey*, no. 31247/96, § 72, 21 December 2004).

166. The Government argued, without providing any further details, that the applicant had not challenged, by way of supervisory review, the detention orders of 7 August and 16 September 2008 and the failure of the Supreme Court to examine his written request for release lodged on 8 June 2009. In this connection the Court reiterates that, according to its constant practice, an application for supervisory review is not a remedy to be used for the purposes of Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004; *Shulepov v. Russia*, no. 15435/03, § 23, 26 June 2008; and, in the context of Article 5, *Nazarov v. Russia*, no. 13591/05, § 94, 26 November 2009). Given that the

Government did not specify how the remedy referred to could have provided the applicant with adequate preventive or compensatory redress for the alleged breach of Article 5, the Court finds that they failed to substantiate their claim that it was effective (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004; *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003; and *Nazarov,* cited above, ibid.).

167. As regards the Government's submission concerning the applicant's failure to appeal against the refusal to examine his complaint of 21 January 2009, the Court is surprised that the Babushkinskiy District Court considered a complaint that was clearly termed as a request for release and contained explicit and numerous references to the Code of Criminal Procedure (see paragraph 58 above) to be a civil claim and invited the applicant to rectify shortcomings in order to lodge a civil action, which clearly had not been the applicant's intention. In any event, the Government failed to demonstrate how an appeal against that decision could have provided the applicant with a possibility to obtain judicial review of his detention or secured him adequate redress in respect of the alleged breach of Article 5. The same holds true for their argument that the applicant had failed to complain on appeal about the City Court's failure to examine his oral request for release in the extradition proceedings (see paragraph 38 above).

168. The Government further stated that the applicant could have complained to the courts about his detention under section 17 of the Custody Act, but they failed to elaborate on that assertion. In any event, the Court has already held that the Custody Act derives from the Code of Criminal Procedure and concerns persons suspected or accused of criminal offences in Russia, and there is no indication that this Act applied at the material time to persons detained pending extradition. Hence, the Court is not certain that the remedy suggested by the Government bore any relation to the breaches alleged (see *Muminov,* cited above, § 115).

169. The Government also argued that the applicant could have challenged unspecified acts or omissions of the authorities in charge of the remand centre under Chapter 25 of the CCP. Yet here again, they failed to specify which alleged acts or omissions of the remand centre the applicant was supposed to have challenged and under which provisions of that Chapter of the CCP, and with what redress such a complaint could have provided him.

170. In the Government's submission, it was also open to the applicant to complain about the inaction of the prosecutors to other prosecutors or courts under Articles 124 and 125 of the CCrP, respectively.

171. In this connection the Court notes that it has already stated that Articles 124 and 125 of the CCrP conferred standing to complain about the alleged infringements of rights and freedoms within criminal proceedings

solely on parties to those proceedings (see *Ismoilov and Others* and *Muminov*, both cited above, §§ 150, 115 and 127, respectively).

172. Moreover, as correctly stated by the applicant, Article 124 provides for the possibility to complain to an investigator or a prosecutor, but this does not secure him an opportunity to obtain "judicial review" of his detention, as required by Article 5 § 4. The Court also does not lose sight of the fact that in its decision no. 1 the Supreme Court explicitly excluded court-issued detention orders from the bulk of decisions amenable to judicial review under Article 125 of the CCrP (see paragraph 84 above). Against this background and in the absence of any examples of domestic court practice furnished by the Government demonstrating that persons in situations similar to that of the applicant could rely on Articles 124 and 125 of the CCrP to obtain judicial review of their detention, the Court is unable to consider the remedies suggested by the Government to be effective.

173. Lastly, referring to Articles 108 § 11 and 109 § 8 of the CCrP, the Government stated that it had been open to the applicant to appeal against the detention orders of 7 August and 16 September 2008 but he had failed to do so.

174. As regards the Government's reference to Article 109 of the CCrP, the Court emphasises that this provision does not entitle a detainee to initiate proceedings for examination of the lawfulness of his detention in the absence of a prosecutor's request for an extension of a custodial measure (see *Nasrulloyev v. Russia*, no. 656/06, § 88, 11 October 2007, and *Ismoilov and Others*, cited above, § 151). In this connection the Court cannot but observe that the applicant's attempt to obtain review of his detention with reference to Article 109 of the CCrP was met with a refusal to examine the issue by the Simonovskiy District Court, which body, for unspecified reasons, not only stated that the applicant had not grounded his complaint with any provisions of the CCrP, but also replied to the applicant's complaint by a letter, thereby preventing him from appealing against its refusal to examine the complaint through the normal channels (see paragraph 64 above).

175. As to Article 108 § 11 and assuming that it provided the applicant with an opportunity to appeal against the initial decision – that of 7 August 2008 – to place him in custody, the Government offered no explanation whatsoever for the fact that the decision of 16 September 2008 did not extend the term of the applicant's detention but authorised the preventive measure *de novo*, despite the fact that the previous detention order of 7 August 2008 had never been quashed and the preventive measure had not been varied. Bearing in mind that the domestic law appears to remain silent on possible avenues of appeal against a second consecutive decision to place in custody, the Court considers that the applicant could not be required to have appealed against the decision of 16 September 2008 (ibid).

176. In any event, as follows from the applicant's submissions to the Court, the thrust of his complaint under Article 5 § 4 is not the issue of his initial placement in custody but rather his inability to obtain judicial review of his detention after a certain lapse of time (see paragraph 154 above, and compare *Ismoilov and Others*, cited above, § 146). Given that the applicant spent more than twenty months in custody, new issues affecting the lawfulness of his detention might have arisen during that period. In particular, the applicant sought to argue before the courts that his detention had ceased to be lawful after the expiry of the time-limits set in Article 109 of the CCrP. By virtue of Article 5 § 4 he was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in the light of new factors which emerged subsequent to the initial decision to place him in custody (ibid). However, it follows from the considerations above that the applicant was not afforded such an opportunity.

177. In these circumstances, the Court is not satisfied that the provisions of domestic law secured the applicant's right to take proceedings by which the lawfulness of his detention would be examined by a court.

178. Accordingly, the Court concludes that the Government failed to show that the existence of the remedies invoked was sufficiently certain both in theory and in practice and, hence, that these remedies lack the requisite accessibility and effectiveness (see *A. and E. Riis v. Norway*, no. 9042/04, § 41, 31 May 2007, and *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). The Government's objection concerning non-exhaustion of domestic remedies must therefore be rejected.

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

180. There has therefore been a violation of Article 5 § 4 of the Convention.

(b) Article 5 § 1 of the Convention

181. The Court reiterates at the outset that Article 5 enshrines a fundamental human right, namely, the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports* 1996-VI). The text of Article 5 makes it clear that the guarantees it contains apply to "everyone" (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 162, ECHR 2009 -...). Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *A. and Others*, cited above, § 163).

182. It is common ground between the parties that the applicant was detained as a person "against whom action is being taken with a view to ...

extradition" and that his detention fell under Article 5 § 1 (f). This provision does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or fleeing. In this respect, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition" (see *Ismoilov and Others*, cited above, § 135, with further references).

183. Whilst it is not in dispute between the parties that the applicant's detention was covered by Article 5 § 1 (f), their positions differ on the issue of whether it was "lawful" within the meaning of that provision.

184. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Mooren v. Germany* [GC], no. 11364/03, § 72, ECHR 2009-..., and *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports* 1998-VI).

185. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should therefore review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III; *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000 IX; and *Ladent v. Poland*, no. 11036/03, § 47, ECHR 2008-... (extracts)).

186. Turning to the circumstances of the present case, the Court takes note at the outset of the Government's claim that the applicant had failed to comply with the six-month requirement in respect of his submissions under Article 5 § 1. Referring to its findings to the effect that the applicant had no effective remedies to exhaust (see, in particular, paragraphs 174-177 above), the Court observes that the detention orders of 7 August and 16 September 2008 were, indeed, issued more than six months prior to the applicant's application to the Court, that is 15 May 2009. At the same time it notes that the gist of his submissions under Article 5 § 1 is not the initial decisions to place him in custody but the alleged unlawfulness of his ensuing continued detention (see paragraph 154 above). Hence, the issue before the Court is not whether those initial detention orders were lawful, but whether the applicant's detention as of 13 November 2008 and onwards was "lawful" within the meaning of Article 5 § 1 of the Convention, that is whether it had legal basis in the domestic law and "was carried out in accordance with a procedure prescribed by law" (see *Mooren*, cited above, §§ 76 and 82, and *Eminbeyli v. Russia*, no. 42443/02, §§ 43 and 46, 26 February 2009).

187. Accordingly, the Court dismisses the Government's objection concerning the applicant's alleged failure to comply with the six-month requirement in respect of his complaints under Article 5 § 1.

188. It will next examine whether the requirements of Article 5 § 1 were complied with in the present case.

189. The Court observes that the applicant's complaint is threefold. He submitted, in particular, not only that his detention was unlawful under the domestic law, but that the quality of the law itself did not satisfy the Convention requirements to protect him against arbitrariness. He also claimed that the authorities had failed to display due diligence in conducting the extradition proceedings.

190. As regards the applicant's argument concerning the "quality of the law" in the provisions governing detention of persons pending extradition, the Court cannot but observe that in a series of judgments it has held that those provisions were neither precise nor foreseeable in their application and fell short of the "quality of law" standard required under the Convention (see, among other authorities, *Nasrulloyev*, cited above, §§ 76-78; *Ismoilov and Others*, cited above, §§ 138-140; *Ryabikin*, cited above, §§ 128-130; *Muminov*, cited above, §§ 121-123, and *Khudyakova v. Russia*, no. 13476/04, §§ 68-74, 8 January 2009).

191. It is a matter of concern for the Court that, as transpires from the correspondence between the Ombudsman and the Prosecutor General's Office, the domestic authorities involved in the control and supervision of the detention pending extradition, and, in particular, the national courts, appear to remain in a state of uncertainty as regards the application of the relevant legislation (see paragraphs 68 - 70 above). The Court also doubts that the Supreme Court's latest Directive Decision of 29 October 2009 clarified the situation in respect of persons who are in the applicant's position since, in the submission of the Deputy Prosecutor General, it concerned only persons in respect of whom the extradition check was pending, which was not the applicant's case (see paragraph 67 above). In any event, the Court will not dwell upon this issue because it considers that there has been a violation of Article 5 § 1 for the following reasons.

192. Having regard to the circumstances of the present case, the Court observes that the applicant was arrested on 5 August 2008 pursuant to an arrest warrant issued by a Tajik court (see paragraphs 16 and 19 above). On 7 August 2008, following the Tajik authorities' request for his extradition, the Nagatinskiy District Court of Moscow ordered the applicant's placement in custody, with reference, among other things, to Article 108 of the CCrP and Article 61 of the Minsk Convention (see paragraph 91 above).

193. It is further noted that on 11 September 2008, that is within the forty-day time-limit laid down in Article 62 § 2 of the Minsk Convention, the Tajikistani General Prosecutor's Office submitted a formal request for the applicant's extradition. Lastly, on 16 September 2008, the Simonovskiy

District Court of Moscow ordered, yet again, the applicant's placement in custody pending extradition, referring to Article 466 § 1 of the CCrP and Article 60 of the Minsk Convention and the fact that the Tajik authorities had meanwhile submitted a formal extradition request. No further extensions of the applicant's detention followed until his release on 23 April 2010, that is twenty months and seventeen days after he was placed in custody.

194. Accordingly, as the Court has outlined in paragraph 186 above, the issue which arises in the present case is whether, from 13 November 2008 onwards, the applicant's detention had a basis in domestic law and was carried out "in accordance with a procedure prescribed by law". In other words, the question is whether the initial judicial authorisation of his detention was sufficient to hold him in custody for any period of time – no matter how long – until a decision on the extradition request had been reached, or whether the detention was to be reviewed at regular intervals (see *Nasrulloyev*, cited above, § 73).

195. The Government argued that the term of the applicant's detention was governed by Article 109 of the CCrP, which permits up to twelve months' detention in cases concerning serious crimes. At the same time, to be considered "lawful" within the meaning of Article 109 § 2 of the CCrP, detention exceeding two months necessitates judicial authorisation.

196. In this connection the Court notes that, although in the time span from 7 August to 16 September 2008 the applicant was not released and the preventive measure in respect of him was not varied, both detention orders were termed as "decisions to place the applicant in custody". In this respect the Court is, moreover, perplexed by the fact that, whilst both sets of proceedings concerned the issue of the applicant's detention pending extradition, the first detention order referred to Article 108 of the CCrP, regulating detention of suspects and accused persons pending criminal proceedings against them, and the second, to Article 466 § 1, specifically concerning persons detained pending extradition. Even assuming that the Nagatinskiy District Court applied Article 108 of the CCrP, as construed by the Constitutional Court's decision of 4 April 2006 (see paragraph 78 above), it remains not entirely clear why the subsequent detention order contained no reference to the provisions of Chapter 13 of the CCrP and was based solely on Article 466 § 1.

197. It is therefore unclear whether the decision of 16 September 2008 extended the applicant's detention but failed to mention Article 108 of the CCrP or, in the alternative, chose this preventive measure *de novo*, following the receipt of the formal extradition request, which appears, to some extent, to be supported by the court's reasoning (see paragraph 57 above). In the absence of any explanation by the Government on this matter and bearing in mind their submission that the applicant's detention was covered by Articles 108 and 109 of the CCrP, the Court is uncertain how the

time-limits mentioned in Article 108 of the CCrP (see paragraph 74 above) were to be calculated in the applicant's case – an issue which is capital for determining whether, as of 13 November 2008, his detention was compatible with the requirements of Article 5.

198. In any event, even assuming that the second detention order extended the applicant's detention before it exceeded two months, as required by Article 109 of the CCrP, – a hypothesis which is favourable to the Government –, there was no further judicial decision on extension of the term of detention from then on, that is for the following nineteen months and 6 days.

199. In the absence of any domestic court decision extending the applicant's detention, the Court is bound to conclude that after 4 February 2009, that is six months after the date of the applicant's placement in custody, the applicant was detained in breach of the provisions of Article 109 § 2 of the CCrP. Accordingly, the applicant's detention pending extradition cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention.

200. Lastly, the Court would like to stress that it is perplexed by the Government's assertion that the domestic authorities had been obliged to hold the applicant in custody because it had indicated to them under Rule 39 of the Rules of Court to suspend his extradition. It emphasises that it has already held that this argument cannot be employed as a justification for the indefinite detention of persons without resolving their legal status (see *Ryabikin*, cited above, § 132). It also notes that the Russian ombudsman took the same position when drawing the Prosecutor General's attention to the irregularities in the legal basis of the applicant's detention (see paragraph 69 above).

201. Having regard to these findings, the Court does not consider it necessary to examine the remainder of the parties' submissions under Article 5.

202. There has therefore been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

203. The applicant complained under Article 6 § 2 of the Convention that the wording of the Prosecutor General's and the Moscow City Court's decisions on his extradition violated his right to be presumed innocent. Article 6 § 2 reads:

> " Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Submissions by the parties

204. The Government argued that the impugned decisions clearly stated that the applicant was charged with having committed certain crimes and that his extradition was sought with a view to prosecuting him on those charges. Moreover, the authorities explicitly stated that the issue of the applicant's criminal responsibility for the crimes for which his extradition was being sought was to be decided only by the courts of the requesting country.

205. The applicant submitted that in stating that his actions were "punishable under the Russian criminal legislation" the Russian authorities had declared him guilty before trial, which was further proved by the reply of the Russian Prosecutor General's Office of 30 December 2009, stating that it "had granted their Tajikistani counterpart's request for the applicant's extradition with a view to prosecuting him in connection with his participation in a prohibited religious organisation". In the applicant's opinion, the wording used by the Russian authorities was even capable of influencing the Tajik courts.

B. The Court's assessment

206. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. Where no such proceedings are, or have been in existence, statements attributing criminal or other reprehensible conduct are relevant rather to considerations of protection against defamation and adequate access to court to determine civil rights and raising potential issues under Articles 8 and 6 of the Convention (see *Zollmann v. the United Kingdom* (dec.), no. 62902/00, 20 November 2003).

207. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62) but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41, and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

208. The Court has already found that Article 6 § 2 of the Convention is applicable where extradition proceedings are a direct consequence, and the

concomitant, of the criminal investigation pending against an individual in the receiving State (see *Ismoilov and Others*, cited above, § 164) and sees no reason to depart from this approach in the present case.

209. The Court further reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law (see *Garycki v. Poland*, no. 14348/02, § 66, 6 February 2007).

210. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002; *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007; and *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras v. Lithuania*, no. 42095/98, § 43, ECHR 2000-X, and *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005).

211. Turning to the circumstances of the present case, the Court notes at the outset that the applicant specifically complained about the statements that his "actions were punishable" under the Russian criminal legislation and it will accordingly focus its analysis on those particular statements.

212. It is pointed out that the extradition order of 30 December 2008, as well as the ensuing court decisions, stated that "[t]he actions of [Mr] A. Gaforov are punishable under the Russian criminal law and correspond to Articles 210 ..., 278 ..., 280 ..., 282 § 2 (c) ..., ... 205 § 1" (see paragraphs 24, 37 and 41 above). At the same time, the Court notes that in all of the impugned decisions this phrase was preceded by statements clearly saying that the applicant was charged with those crimes, relating to his alleged participation in Hizb ut-Tahrir and his escape from custody, in respect of which his extradition was being sought (ibid.). Moreover, both the City Court and the Supreme Court specifically emphasised that the issue of the applicant's guilt in respect of the crimes with which he had been charged in Tajikistan could only be assessed by the courts of the requesting country (ibid.).

213. In sum, although the wording employed by the Prosecutor General's Office and the courts may be considered rather unfortunate, the Court is satisfied that those authorities were referring not to the question whether the applicant's guilt had been established by the evidence – which was clearly not the issue to be determined in the extradition proceedings –

but to whether there were legal grounds for extraditing the applicant to the requesting country.

214. In the Court's opinion, the same holds true for the phrase in the Prosecutor General Office's letter of 30 December 2009 referred to by the applicant (see paragraph 205 above).

215. In these circumstances, the Court considers that the wording of the extradition order, the ensuing court decisions and the letter of 30 December 2009 did not amount to a declaration of the applicant's guilt in breach of the presumption of innocence (see, by contrast, *Ismoilov and Others*, cited above, § 168).

216. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

217. 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

218. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

219. The Government submitted that the applicant's claims were excessive. In the alternative, they argued that, should the Court find a breach of the Convention, the finding of a violation would be sufficient.

220. The Court notes that it has found a combination of violations in the present case and accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. The Court therefore finds it appropriate to award the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

221. The applicant also claimed 90,000 Russian roubles (RUB) (approximately EUR 2,225) in respect of his representation by Mr A. Gaytayev and Ms R. Magomedova in the domestic proceedings, submitting, among other things, copies of the related agreements and invoices confirming that the sum in question had been paid. He further claimed, with reference to Mr A. Gaytayev's and Ms E. Ryabinina's timesheets, EUR 1,800 for his representation by Mr A. Gaytayev before the

Court, as well as EUR 2,800 for his representation by Ms E. Ryabinina, each lawyers' hourly rate being set at EUR 100. Lastly, the applicant claimed postal and administrative costs in the amount of EUR 477.

222. The Government submitted that the costs and expenses claimed by the applicant were unnecessary and unreasonable, without providing any further details.

223. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 6,825 in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and non-compliance with the six-month requirement regarding the applicant's complaints under Article 5 of the Convention, and rejects it;

2. *Declares* the complaints under Articles 3, 5 §§ 1 and 4 and Article 13 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that, if the order to extradite the applicant to Tajikistan were to be enforced, there would be a violation of Article 3 of the Convention;

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

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

6. *Holds* that no separate issue arises under Article 13 of the Convention in respect of the alleged violation of Article 3 of the Convention;

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, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, and

(ii) EUR 6,825 (six thousand eight hundred and twenty-five euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andre Wampach	Christos Rozakis
Deputy Registrar	President