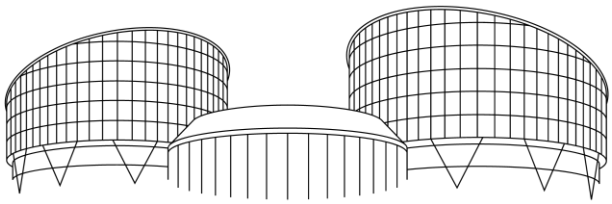

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHODZHAYEV v. RUSSIA

(Application no. 52466/08)

JUDGMENT

STRASBOURG

12 May 2010

FINAL

04/10/2010

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

In the case of Khodzhayev 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,
Dean Spielmann,
Giorgio Malinverni, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 52466/08) 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 Zikrullokhon Ismatulloyevich Khodzhayev ("the applicant"), on 31 October 2008.

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

3. On 3 November 2008 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.

4. On 17 December 2008 the President of the First Section decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Khunzhand, Tajikistan. He is currently residing in Moscow.

A. The applicant's account of events

1. Background to the case

6. The applicant is a practising Muslim. He states that he has not been a member of any political organisations, including Hizb ut-Tahrir ("HT"), an Islamic organisation banned in Russia, Germany and some Central Asian republics, but has nonetheless been persecuted by the Tajikistani authorities on account of presumed membership of that organisation.

7. By a decision of 22 June 2000 the Ministry of Security of Tajikistan instituted criminal proceedings against the applicant on account of his membership of "the illegal extremist-religious party 'Hizb ut-Tahrir'". The decision stated that the applicant had committed a number of serious and particularly serious crimes, namely, incitement to overthrow the political regime in Tajikistan and dissemination of material containing incitement to religious hatred. On the same date the Ministry of Security of Tajikistan placed the applicant on a search list, drew up an arrest warrant in his name and suspended the investigation because the applicant's whereabouts were unknown.

8. The applicant fled to Moscow in 2001.

9. Between 27 October and 7 December 2001 the applicant was kept in detention in Russia with a view to his extradition. He was subsequently released because no formal request for his extradition was received.

10. The applicant registered his place of residence in Russia with the relevant authorities.

2. Extradition proceedings

11. On 28 November 2007 the applicant was arrested by servicemen of the Moscow Department of the Federal Security Service and police of the Odintsovo District.

12. In the morning of 30 November 2007 the applicant was questioned in the absence of a lawyer. The servicemen who carried out the interview threatened to use violence against the applicant and his family unless he voluntarily agreed to leave Russia for Tajikistan. According to the applicant, he was not informed of the reasons for his arrest in the course of the interview. Neither did he have access to a lawyer during the two following weeks in detention.

13. On 30 November 2007 the Odintsovo Town Court of the Moscow Region ("the Town Court") ordered the applicant's placement in custody pending his extradition. The term of detention was not specified.

14. Between 30 November 2007 and 30 January 2008 the applicant was kept in a temporary detention facility of the Odintsovo District Department of the Interior. In the meantime his wife was expelled to Tajikistan.

15. On 21 December 2007 the Prosecutor General of Tajikistan sent a request for the applicant's extradition to the Prosecutor General of Russia and enclosed a copy of the decision of 22 June 2000 to charge the applicant with membership of a proscribed organisation and copies of the search and arrest warrants.

16. On 4 June 2008 the Deputy Prosecutor General of Russia ordered the applicant's extradition to Tajikistan to face criminal prosecution. The order stated that the applicant had been charged with membership of a proscribed religious-extremist organisation and dissemination of material containing incitement to religious hatred.

17. The applicant challenged the extradition order of 4 June 2008 in court.

18. On 22 August 2008 the Moscow City Court upheld the order of 4 June 2008. It reasoned that there were no legal grounds impeding the applicant's extradition to Tajikistan because the applicant was a Tajik national and his request for political asylum had been rejected. The applicant's claims that he was not guilty of the crimes of which he had been charged had been examined and dismissed "on the ground that issues of falsification of charges in his respect by law-enforcement agencies of Tajikistan [were] not subject to examination in the course of [that] court hearing". It further stated that allegations of persecution on religious grounds had not been confirmed by reliable evidence, and concluded as follows:

> "[Mr] Khodzhayev does not have refugee status in the Russian Federation, has not been and is not being persecuted on grounds of his race, religion, citizenship, nationality or association with a particular group [and] has not applied for Russian citizenship or political asylum."

19. On 28 October 2008 the Supreme Court of Russia examined an appeal by the applicant against the judgment of 22 August 2008 and dismissed it, reproducing the reasoning of the Moscow City Court verbatim.

3. Asylum proceedings

20. On 11 January 2008 the applicant lodged a request for political asylum with the Moscow Department of the Federal Migration Service ("the Moscow FMS").

21. On 11 January 2008 the applicant requested protection from the Russian Office of the United Nations High Commissioner for Refugees ("the UNHCR Office"). It appears that UNHCR Office staff were not allowed to visit the applicant over the following months.

22. On 16 May 2008 the Moscow FMS refused to grant the applicant political asylum. On an unspecified date the applicant was notified of that decision.

23. The applicant challenged the Moscow FMS's decision of 16 May 2008 in court. On an unspecified date the Zamoskvoretskiy District Court of

Moscow refused to admit the applicant's statement of claim because he had failed to pay the court fee. The applicant appealed.

24. On 18 November 2008 the Moscow City Court quashed the decision of the Zamoskvoretskiy District Court of Moscow and ordered it to admit the applicant's statement of claim with no court fee. It appears that the proceedings challenging the Moscow FSM's decision are now pending before the Zamoskvoretskiy District Court of Moscow.

25. On 26 November 2008 UNHCR Office staff interviewed the applicant.

B. The Government's account of events

1. Background to the case

26. On 22 June 2000 an investigator from the Tajik Ministry of Security, having obtained a prosecutor's approval, issued an arrest warrant in respect of the applicant.

27. In July 2001 the applicant arrived in Russia illegally looking for well-paid employment. During the following six years the applicant filed no request to register himself as a temporary resident with Russian migration offices. Neither did he lodge a request for asylum. The applicant did not have a migration card.

28. On 27 October 2001 the applicant was arrested in Moscow pursuant to Article 61 of the Minsk Convention as a person put on an international wanted list.

29. On 7 December 2001 the applicant was released from custody because no request for his extradition had been received.

30. On 19 February 2002 the Tajik Prosecutor General's Office requested the Russian Prosecutor General's Office to extradite the applicant.

31. On 27 February 2002 the Russian police were instructed to search for the applicant.

2. Extradition proceedings

32. On 28 November 2007 the applicant was arrested by servicemen of the Federal Security Service and the police.

33. On the same date the applicant was questioned by an official of the Odintsovo prosecutor's office. The written statement signed by the applicant certified that he was fluent in Russian and did not need an interpreter. The statement reads, in so far as relevant, as follows:

> "... I am aware of the fact that my name has been put on a wanted list in Tajikistan. I cannot give any details concerning the criminal case against me in Tajikistan. The investigative documents from Tajikistan that I have been provided with contain my personal data but I did not commit the crimes mentioned in them. I cannot submit more information on the substance of the criminal case against me.

> ... I am not being persecuted in Tajikistan for political reasons. I am a Tajik national and I have not applied for political asylum or refugee status to any agencies, consulates, embassies or representative offices."

34. On 30 November 2007 the Town Court held the hearing and examined the Odintsovo prosecutor's office's request to authorise the applicant's placement in custody pending extradition. The request that mentioned the fact that the applicant had been suspected of serious and particularly serious crimes in Tajikistan was read out in the courtroom. In the document entitled "Decision concerning the choice of custodial detention as a preventive measure" the Town Court observed that the applicant was suspected of creating a criminal organisation, inciting to racial and religious hatred and calling for the overthrow of the Tajik constitutional regime and ordered the applicant's placement in custody pursuant to the Minsk Convention and Article 108 of the CCP. The Town Court reasoned that the applicant was a foreign national, had no permanent employment or place of residence and, unless detained, might abscond, continue his illegal activities or interfere with the course of criminal proceedings. The applicant was advised of his right to appeal against the decision before the Moscow Regional Court within three days.

35. On 24 December 2007 the Tajik Prosecutor General's Office requested the Russian Prosecutor General's Office to extradite the applicant as a person charged with terrorism-related crimes.

36. On 28 December 2007 the Town Court ordered the applicant's placement in custody pending extradition pursuant to Articles 108 and 466 of the CCP. The document was entitled "Decision concerning the choice of custodial detention as a preventive measure". The applicant was advised of his right to appeal against the decision before the Moscow Regional Court within three days.

37. The applicant did not appeal against the Town Court's decisions of 30 November and 28 December 2007.

38. On 11 January 2008 the applicant argued for the first time that in Tajikistan he had been persecuted on political grounds in his letters to the UNHCR Office and the Moscow FMS.

39. On 4 June 2008 the Russian Deputy Prosecutor General granted the Tajik Prosecutor General's Office's request and ordered the applicant's extradition. The applicant was advised of his right to appeal against the order within ten days.

40. On 28 July 2008 the applicant appealed against the extradition order.

41. On 5 August 2008 the Moscow FMS received the applicant's request for temporary asylum.

42. On 22 August 2008 the Moscow City Court dismissed the applicant's appeal against the extradition order.

43. On 27 August 2008 the applicant appealed against the judgment of 22 August 2008.

44. On 28 October 2008 the Russian Supreme Court dismissed the applicant's appeal and upheld the judgment of 22 August 2008. On 13 November 2008 the applicant was served with the appeal court's decision.

3. Asylum proceedings

45. On 24 January 2008 the Russian Prosecutor General's Office received the applicant's counsel's request to allow UNHCR Office staff to visit the applicant. A request made by the UNHCR Office reached the Russian Prosecutor General's Office only on 23 July 2008. The request did not contain the personal details of the staff in question. As soon as those details had been communicated by the UNHCR Office, the Russian Prosecutor General's Office issued a permit to visit the applicant.

46. On an unspecified date the UNHCR Office informed the prosecutor's office of the Moscow Region that the applicant was eligible for international protection.

47. On 26 February 2008 the applicant requested the Moscow FMS to grant him refugee status.

48. On 20 March 2008 officials of the Moscow FMS visited the applicant in the remand prison and interviewed him.

49. The applicant was provided with ample opportunities to substantiate his fears of persecution in Tajikistan. He was interviewed by State officials in this respect on several occasions.

50. On 16 May 2008 the Moscow FMS, having thoroughly studied the applicant's request, dismissed it and refused to declare the applicant a refugee. The applicant appealed against that decision.

51. On 3 July 2008 the Zamoskvoretskiy District Court of Moscow refused to admit the applicant's appeal against the Moscow FMS's decision of 16 May 2008 and invited the applicant to eliminate the discrepancies in his appeal by 18 July 2008.

52. On 25 August 2008 the Zamoskvoretskiy District Court of Moscow ruled that the applicant's appeal against the Moscow FMS's decision should not be examined because the applicant had failed to eliminate the discrepancies referred to in the ruling of 3 July 2008.

53. On 26 November 2008 the applicant's request for temporary asylum was dismissed.

54. On 18 November 2008 the Moscow City Court quashed the ruling of 25 August 2008 and remitted the matter for fresh examination at first instance.

55. On 12 March 2009 the Zamoskvoretskiy District Court of Moscow dismissed the applicant's appeal against the Moscow FMS's decision of 16 May 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure (CCP)

56. Chapter 13 of the CCP governs the application of preventive measures. 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 (Article 109 § 2). Further extensions up to twelve months may be granted on an investigator's request approved by a prosecutor of the Russian Federation only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3).

57. Chapter 16 of the CCP lays down the procedure by which acts or decisions of a court or public official involved 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).

58. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the Prosecutor General or his deputy is to decide on the measure of restraint in respect of the person whose extradition is sought. The measure of restraint is to be applied in accordance with the established procedure (Article 466 § 1).

B. Decisions of the Constitutional Court

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

59. The Constitutional Court examined the compatibility of Article 466 § 1 of the CCP 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.

60. 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 CCP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCP, or in excess of the time-limits fixed therein.

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

61. 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.

62. The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific criminal-law provisions 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 of the Constitutional Court no. 333-O-P of 1 March 2007

63. In this decision the Constitutional Court reiterated that Article 466 of the CCP 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.

C. Decision of the Supreme Court

64. 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 activity in the territory of Russia. It held in

relation to HT that it 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.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. Council of Europe

65. Recommendation No. R (98) 13 of the Council of Europe Committee of Ministers to Member States on the rights 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:

> "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...,
>
> 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."

66. 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."

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

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

68. 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).

69. 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).

70. 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).

71. The 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

72. Conclusions and Recommendations: Tajikistan, issued by the UN Committee Against Torture on 7 December 2006 (CAT/C/TJK/CO/1), refer to 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."

73. Amnesty International in its document "Central Asia: Summary of Human Rights Concerns: March 2007 – March 2008" describes the situation regarding freedom of religion in Tajikistan as follows:

"Members of religious minorities and human rights defenders were concerned that decisions taken by the authorities restricted freedom of religion and belief. During the second half of 2007 unregistered mosques were closed down or demolished in the capital, Dushanbe. ... A proposed new law on religion raised fears that unregistered religious activity would be banned. The draft law proposed stringent registration requirements which would make it very difficult for religious minorities to apply or re-apply for legal status. It also proposed to limit the number of registered places of worship and to ban missionary activity. Pending the adoption of the new law the government was not accepting new applications for legal status from religious groups.

...

In November [2007] the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, published a report on her visit to Tajikistan earlier in the year. The

report's conclusions emphasized the "need to devise educational policies aimed at strengthening the promotion and protection of human rights and eradicating prejudices, which are incompatible with the freedom of religion or belief". The conclusions also stressed that registration procedures for religious groups should be straightforward and that "[r]egistration should not be a precondition for practising one's religion". The Special Rapporteur recommended that the Tajikistani authorities ensure that "any measure taken to combat acts of terrorism complies with their obligations under international law, in particular international human rights law, refugee law and humanitarian law." She stressed that "an independent, neutral and impartial judiciary and prompt access to a lawyer [were] vital to safeguarding also the freedom of religion or belief of all individuals and religious communities".

74. The World Report Chapter: Tajikistan by Human Rights Watch, released in January 2009, describes the human-rights situation in the country as follows:

"**Religious Freedom**

At this writing, the government had not yet sent to parliament a controversial draft law on religion that had been sharply criticized in 2007. Under the draft law, all religious groups must reregister and meet such onerous conditions as providing the address of any person who, at any point during the past 10 years, has been a member. The draft also prohibits foreigners from chairing religious organizations.

...

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*)".

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

"Tajikistan ... is an authoritarian state, and political life is dominated by President Emomali Rahmon and his supporters...

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; threats and abuse by security forces; impunity of security forces; lengthy pretrial detention; denial of right to fair trial; harsh and life-threatening prison conditions; prohibited international monitor access to prisons; ... restrictions on freedom of religion, including freedom to worship; ...

The law prohibits ... practices [of torture and other cruel, inhuman, or degrading treatment or punishment]; however, security officials reportedly employed them. Officials did not grant sufficient access to information to allow human rights organizations to investigate claims of torture.

Security officials, particularly from the Ministry of Interior (MOI), continued to use beatings or other forms of coercion to extract confessions during interrogations. Beatings and other mistreatment were common also in detention facilities. A 2008 study by the Bureau for Human Rights and Rule of Law, a local NGO, credibly found a bias in the criminal justice system toward law enforcement officials exacting confessions from those who are arrested. Articles in the criminal code do not specifically define torture, and the country's law enforcement agencies have not developed effective methods to investigate possible violators.

...

The Ministry of Justice (MOJ) continued to refuse 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 they were accompanied by ministry of justice personnel. The government has not signed an agreement with the International Committee for the Red Cross (ICRC) to allow free and unhindered access to prisons and detention centers, and ICRC's international monitoring staff has not returned to the country since departing in 2007.

During the year detainees and inmates complained of harsh and life-threatening conditions, including overcrowding and lack of sanitary conditions. Disease and hunger were serious problems, but outside observers were unable to assess accurately the extent of the problems because of lack of access. Organizations that work on prison issues reported that infection rates of tuberculosis and HIV was significant, and that the quality of medical treatment was low.

...

The government has not substantially altered the Criminal Procedure Code (CPC) since the Soviet period, and the criminal justice system failed to protect individuals from arbitrary arrest or detention. There were few checks on the power of prosecutors and police to make arrests**.**

...

Victims of police abuse may submit a formal complaint in writing to the officer's superior. However, most victims chose to remain silent rather than risk retaliation by the authorities.

...

Prosecutors are empowered to issue arrest warrants, and there is no requirement for judicial approval of an order for pretrial detention. The law allows police to detain a suspect without a warrant in certain circumstances, but a prosecutor must be notified within 24 hours of arrest. Pretrial detention may last up to 15 months in exceptional circumstances. Local prosecutors may order pretrial detention for up to two months; subsequent detentions must be ordered by progressively higher level prosecutors. A defendant may petition for judicial review of a detention order. However, judges rarely questioned detention decisions, and observers regarded this review as a formality.

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 did not always provide attorneys, and those it did provide generally served the government's interest, not the client's. There is no bail system, although criminal case detainees may be released conditionally and restricted to their place of residence pending trial. According to the law, family members are allowed access to prisoners only after indictment; officials occasionally denied attorneys and family members access to detainees. The authorities held many detainees incommunicado for long periods without formally charging them.

...

Although the law provides for an independent judiciary, in practice the executive branch and criminal networks exerted pressure on prosecutors and judges. Corruption and inefficiency were significant problems.

The C[ode of Criminal Procedure] gives the prosecutor a disproportionate degree of power in relation to judges and defense advocates. This power includes control of the formal investigation and oversight of the entire case proceedings. "Supervisory powers" provided by law allow prosecutors to protest a court decision outside of normal appeal procedures. Prosecutors effectively can cause court decisions to be

annulled and reexamined by higher courts indefinitely after appeal periods have expired. These powers are an impediment to establishing an independent judiciary.

The president is empowered to appoint and dismiss judges and prosecutors with the consent of parliament. Judges at all levels often were poorly trained and had extremely limited access to legal reference materials. Low wages for judges and prosecutors left them vulnerable to bribery, which remained a common practice. Judges were subject to political influence.

Trials are public, except in cases involving national security. The authorities have denied access to monitoring organizations to trials without cause. A panel consisting of a presiding judge and two "people's assessors" determines guilt or innocence. Qualifications of the assessors and how they are determined is unclear, but their role is passive, and the presiding judge dominates the proceedings.

According to the law, cases should be brought before a judge within 28 days after indictment; however, most cases were delayed for months. Under the law, courts appoint attorneys at public expense; however, in practice authorities often denied arrested persons access to an attorney.

Those who were indicted were invariably found guilty. Judges often gave deference to uncorroborated testimony of law enforcement officers, especially members of the [Ministry of Security], and often discounted the absence of physical evidence.

According to the law both defendants and attorneys have the right to review all government evidence, confront and question witnesses**,** and present evidence and testimony. No groups are barred from testifying, and, in principle, all testimony receives equal consideration. The law provides for the right to appeal. The law extends the rights of defendants in trial procedures to all citizens.

...

The constitution provides for freedom of religion; however, in practice the government continued to impose restrictions and respect for religious freedom continued to deteriorate.

The Council of Ulamo, a committee of Islamic clergy, provides interpretations of religious practice that imams throughout the country are required to follow. While the council is officially an independent religious body, in practice it is heavily influenced by the government. The Department of Religious Affairs (DRA) at the Ministry of Culture is responsible for general regulation of all religious organizations. The DRA, in consultation with local authorities, registers and approves all religious places of worship. For Muslims, the DRA controls all aspects of participation in the hajj, including choosing participants. President Rahmon established a Center for Islamic Studies during the year to guide religious policy.

The government continued to impose limitations on personal conduct and to restrict activities of religious groups that it considered "threats to national security." ... Government officials visited mosques on a regular basis to monitor activities, observe those who attended the mosques, and examined audio and video materials for evidence of extremist and antigovernment material. The DRA continued to test imams on their religious knowledge and to ensure they followed official positions on religious issues.

...

Government concerns about foreign influence resulted in restrictive measures against minority religious groups. The government continued its ban on HT [Hizb ut-Tahrir], which it classified as an extremist Islamic political movement, and authorities introduced restrictive measures against another Islamic group, the Salafis. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant alleged that, if extradited to Tajikistan, he would be subjected to ill-treatment in breach of Article 3 of the Convention. He also claimed that the Russian authorities had failed to assess risks of ill-treatment that he would run in the requesting country. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

1. The Government

77. The Government contested the applicant's arguments.

78. In their submissions, the Tajik authorities had argued that in 1998 - 2000 the applicant had participated in an illegal criminal group created in order to violently overthrow the Tajik constitutional regime and, as a member of Hizb ut-Tahrir, had disseminated information aimed at inspiring racial and religious hatred and had recruited new members of the illegal group.

79. On 14 February 2003 the Russian Supreme Court had proclaimed Hizb ut-Tahrir a terrorist organisation and declared its activities prohibited on the territory of the Russian Federation.

80. When asked whether he had been persecuted for political reasons during the first interview with the Odintsovo prosecutor's office on 28 November 2007, the applicant had replied in the negative and stated that he had come to Russia to find employment.

81. On 20 March 2008 the applicant had stated that he had fled Tajikistan because he had been persecuted by the Tajik Ministry of Security but had not furnished any evidence in support of his statement. Instead, he

had claimed that his brother had been sentenced to nine years' imprisonment because he had been a Hizb ut-Tahrir member. In the Government's view, the applicant had been bound to be aware of Hizb ut-Tahrir activities.

82. The applicant could not be persecuted for his religious practices because Islam was the official religion of Tajikistan. Moreover, none of the numerous religious groups in Tajikistan had been persecuted.

83. The applicant had not applied for refugee status upon his arrival to Russia or during the following six years. The Moscow FMS had reached the conclusion, upon careful examination of his case, that the applicant did not satisfy the refugee criteria. They had studied the political and economic situation in Tajikistan with particular emphasis on the functioning of the judicial and penitentiary systems and the Tajik authorities' attitude towards Muslims.

84. The Tajik Prosecutor General's Office had given diplomatic assurances to the effect that the applicant would be prosecuted only in relation to the crimes mentioned in the extradition request, that he would be able to leave Tajikistan freely after standing trial and serving a sentence and that he would not be expelled, transferred or extradited to a third State without the Russian authorities' consent. According to the Tajik Criminal Code, its task was to protect human rights; and a sentence applied to a criminal could not pursue an aim of causing him or her physical suffering or humiliating the person in question.

85. The Russian Ministry of Foreign Affairs had informed the Russian Prosecutor General's Office that there had been no reasons not to extradite the applicant because Tajikistan, a UN member, had undertaken to comply with the Universal Declaration of Human Rights and that a Tajik ombudsman's office had been created. Tajikistan had ratified the ICCPR of 1966, the Refugee Convention of 1989, the Convention Against Torture of 1984 and other treaties. The Russian authorities officially recognised that Tajikistan was a secular democratic State.

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

2. The applicant

87. The applicant had informed the Russian authorities that he had feared persecution because of his alleged involvement in Hizb ut-Tahrir's activities. In particular, on 22 August 2008 he had informed the Moscow City Court that in 2001 he had been told that upon his return to Tajikistan he would be arrested. The applicant had been on a wanted list since 2001, which was proven by the fact that on 27 October 2001 he had been detained with a view to extradition as a person wanted in Tajikistan. The applicant stated that when questioned by the Moscow City Court on 22 August 2008 he had not been assisted by a lawyer and thus could not understand the legal

consequences of his statement that he had arrived in Russia to look for employment. He also asserted that he had had a right to apply for refugee status at any time, not necessarily immediately upon his arrival in Russia. The applicant doubted the validity of the diplomatic assurances given in his case. In sum, the applicant claimed that his extradition to Tajikistan would be in breach of Article 3 of the Convention.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

89. The Court reiterates at the outset that in order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

90. The Court further reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international

law, under the Convention or otherwise (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

91. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports of Judgments and Decisions* 1997-III). 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 *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports* 1996-V).

92. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). 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).

93. As regards the general situation in a particular country, the Court considers 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, for example, *Chahal*, cited above, §§ 99-100, *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005, *Said v. the Netherlands*, no. 2345/02, § 54, 5 July 2005, and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). 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 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). 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 v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I).

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

94. In line with its case-law cited above, it is necessary to examine whether the foreseeable consequences of the applicant's extradition to Tajikistan are such as to bring Article 3 of the Convention into play. Since he has not yet been extradited, owing to an indication by the Court 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.

95. In the applicant's submission, his fears of possible ill-treatment in Tajikistan are justified by two factors. First, referring to a number of reports, the applicant argues that the general human-rights situation in the receiving country is deplorable. Secondly, he claims that he would personally run an even greater risk of ill-treatment than any other person detained in Tajikistan because the Tajik authorities suspect him of involvement in activities of Hizb-ut-Tahrir.

96. The Court will accordingly first consider whether the general political climate in Tajikistan could give reasons to assume that the applicant would be subjected to ill-treatment in the receiving country. It notes in this respect that, in the Government's submission, Tajikistan respected basic human rights. However, the Court reiterates that in cases concerning aliens facing expulsion or extradition it is entitled to compare materials made available by the Government with materials from other reliable and objective sources (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, ECHR 2007-... (extracts), and *Saadi v. Italy* [GC], no. 37201/06, § 131, 28 February 2008).

97. The Court points out in this respect that the evidence from a number of objective sources undoubtedly illustrates that the overall human-rights situation in Tajikistan gives rise to serious concerns. For instance, the Committee Against Torture pointed out that the Tajik law regarding prohibition of torture was not fully in conformity with the text of the Convention Against Torture, which in itself might raise suspicions as to the degree of protection accorded to those alleging ill-treatment. The Committee also emphasised that detainees were often kept in unrecorded detention without access to a lawyer or medical assistance and that interrogation methods prohibited by the Convention Against Torture were frequently used (see paragraph 72 above). Amnesty International reported that religious freedom in Tajikistan was subject to restrictions imposed by State authorities (see paragraph 73 above). Human Rights Watch observed that granting impunity to State officials for acts of rampant torture was a common practice (see paragraph 74 above). The US Department of State also reported frequent use of torture by security officials and pointed out that the State bodies denied unhindered access to independent observers,

including employees of the International Committee for the Red Cross, to detention facilities (see paragraph 75 above).

98. The Court is not persuaded by the Government's argument that the mere fact of ratification by Tajikistan of major human-rights instruments excludes the possibility that the applicant would run a risk of ill-treatment in the requesting country. The existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi*, cited above, § 147 *in fine*). Given that the Government failed to convincingly show that the human-rights situation in Tajikistan had drastically improved when compared to the one described in the aforementioned reports by reputable organisations, the Court is ready to accept that ill-treatment of detainees is an enduring problem in Tajikistan.

99. Nonetheless, the Court points out that the above-mentioned findings attest to the general situation in the country of destination and should be supported by specific allegations and require collaboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73). In the same context, the Court should examine whether the authorities assessed the risks of ill-treatment prior to taking the decision on extradition (see *Ryabikin*, cited above, § 117).

100. The main argument raised by the applicant under Article 3 is the danger of ill-treatment in Tajikistan, exacerbated by the nature of the crime that he had been charged with. The Court observes in this respect that he was accused of involvement in the activities of Hizb ut-Tahrir, a transnational Islamic organisation. It reiterates that in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the information contained in recent reports from independent international human-rights-protection associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned (see *Saadi*, cited above, § 132). In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3 (see *Muminov v. Russia*, no. 42502/06, § 95, 11 December 2008, and *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008).

101. The applicant was wanted by the Tajik authorities on account of his alleged involvement in the activities of Hizb ut-Tahrir, which he consistently denied. Regard being had to the reports by reputable organisations (see, in particular, paragraphs 73 and 75 above), the Court

considers that there are serious reasons to believe in the existence of the practice of persecution of members or supporters of that organisation, whose underlying aims appear to be both religious and political. The Government's reference to the fact that the applicant did not apply for political asylum immediately after his arrival to Russia does not necessarily refute the applicant's allegations of risks of ill-treatment since the protection afforded by Article 3 of the Convention is in any event broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see, *mutatis mutandis*, *Saadi*, cited above, § 138).

102. 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 of the Convention if extradited to Tajikistan.

103. The Court notes that the Government invoked assurances from the Tajik Prosecutor General's Office to the effect that the applicant would not be subjected to ill-treatment there (see paragraph 84 above). In this connection it emphasises that it is entitled to examine whether diplomatic assurances provide, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention. The Court observes that the assurances given in the present case were rather vague and lacked precision; hence, it is bound to question their value. It also reiterates that diplomatic assurances 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).

104. Lastly, the Court will examine the applicant's allegation that the Russian authorities did not conduct a serious investigation into possible ill-treatment in the requesting country. The Government accepted that on 11 January 2008, that is, almost five months before the request for extradition was granted, the applicant had informed the Russian migration authority that he had been persecuted in Tajikistan on political grounds (see paragraph 38 above). However, when examining the appeals against the extradition order, the Moscow City Court and the Supreme Court of Russia merely stated that the applicant's request for asylum had been rejected and that his allegations of persecution on religious grounds in Tajikistan had been unsubstantiated (see paragraphs 18 and 19 above). The Court is therefore unable to conclude that the Russian authorities duly addressed the applicant's concerns with regard to Article 3 in the domestic extradition proceedings.

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

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

106. The applicant complained under Article 5 § 1 (f) of the Convention that his ongoing detention pending extradition had been "unlawful": first, until 21 December 2007 he had been detained in the absence of an official request for extradition; secondly, the term of his detention had not been extended by the domestic courts. He also invoked Article 5 § 2, complaining that he had not been promptly informed of the reasons for his arrest. Lastly, he relied on Article 5 § 4 arguing, first, that his detention had not been subject to any judicial control and, secondly, that he had been deprived of the right to have the lawfulness of his detention reviewed by a court owing to lack of access to a lawyer during the first two weeks of his detention.

107. 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.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> ...
>
> 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. The parties' submissions

1. The Government

108. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaints under Article 5 of the Convention as he had not complained about either the alleged unlawfulness or the length of his detention pending extradition to a prosecutor's office or a court. They also submitted that the applicant had not appealed against the decisions of 30 November and 28 December 2007.

109. The Government further argued that the applicant's detention had been necessary to ensure his extradition to Tajikistan and lawful under both

Russian legal provisions and international legal standards. The issue of extradition had been examined promptly and properly.

110. On 28 November 2007 the official of the Odintsovo prosecutor's office had notified the applicant of the reasons for his arrest; during the interview the applicant had clearly stated in writing that he had not been persecuted on political grounds and had not been a refugee. During the following two weeks the applicant had not requested a lawyer.

111. The term of the applicant's detention pending extradition had been compatible with the requirements of Article 109 of the CCP, which had been applicable in the applicant's case by virtue of the Constitutional Court's ruling of 4 April 2006. The period of custodial detention for those accused of serious offences could not exceed twelve months; the applicant's detention pending extradition had lasted ten months. The term of the applicant's detention, although not specified in the Town Court's decision of 28 December 2007, had been established by Article 62 of the Minsk Convention and Article 109 of the CCP; therefore, in the Government's submission, the applicant could have been detained for forty days prior to receipt of the extradition request and for up to twelve months pending examination of the extradition request. The applicant had had the benefit of a procedure enabling him to challenge lawfulness of his detention.

2. The applicant

112. The applicant asserted that his placement in custody was unlawful as it had never been extended by the domestic courts. He also maintained his complaints under Article 5 §§ 2 and 4.

B. The Court's assessment

1. Admissibility

(a) Article 5 § 2 of the Convention

113. The Court takes note of the Government's plea of non-exhaustion as regards the applicant's complaint under Article 5 § 2 of the Convention. However, it does not deem it necessary to examine this matter for the following reason.

114. The Court reiterates that Article 5 § 2 of the Convention contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in

accordance with paragraph 4. Whilst this information must be conveyed promptly, it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182).

115. The Court further reiterates that when a person is arrested on suspicion of having committed a crime, Article 5 § 2 neither requires that the necessary information be given in a particular form, nor that it consists of a complete list of the charges held against the arrested persons (see *Bordovskiy v. Russia*, no. 49491/99, § 56, 8 February 2005). While it is true that insufficiency of information of the charges held against an arrested person may be relevant for the right to a fair trial under Article 6 of the Convention for persons arrested in accordance with Article 5 § 1 (c), the same does not apply to arrest with a view to extradition, as these proceedings are not concerned with the determination of a criminal charge (see *K. v. Belgium*, no. 10819/84, Commission decision of 5 July 1984, Decisions and Reports (DR) 38, p. 230).

116. The Court observes in this connection that, as can be seen from the written statement signed by the applicant, on the day of his arrest he studied at least some investigative documents concerning the criminal case instituted against him in Tajikistan and claimed that he had not committed the crimes he had been charged with (see paragraph 33 above). In such circumstances the Court considers that the information provided to the applicant by the Russian authorities was sufficient to satisfy their obligation under Article 5 § 2 of the Convention (see *Eminbeyli v. Russia*, no. 42443/02, § 57, 26 February 2009, and *Bordovskiy*, cited above, § 57).

117. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

(b) Article 5 §§ 1 and 4 of the Convention

118. As regards the Government's plea of non-exhaustion, the Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 5 § 4 of the Convention and finds it necessary to join the Government's objection to the merits.

119. The Court further notes that the complaints under Article 5 §§ 1 and 4 of the Convention 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

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

121. 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).

122. The Court notes at the outset that the Government did not provide detailed information on the avenues available for challenging the lawfulness of the applicant's detention pending extradition but merely referred to the possibility of complaining to either a prosecutor or a court. They also claimed that the applicant could have appealed against the decisions of 30 November and 28 December 2007.

123. The Court observes that the decisions of 30 November and 28 December 2007 were both entitled "Decision concerning the choice of custodial detention as a preventive measure" and mentioned Article 108 of the CCP as their legal basis. It was also indicated that the decisions were appealable before the Moscow Regional Court within three days of the date of their delivery (see paragraphs 34 and 36 above).

124. The Court readily accepts that Article 108 § 11 of the CCP provided the applicant with an opportunity to appeal against the initial decision to place him in custody, that is, the decision of 30 November 2007. However, the Government offered no explanation whatsoever for the fact that the decision of 28 December 2007 did not extend the term of the applicant's detention but authorised the preventive measure *de novo* despite the fact that the decision of 30 November 2007 had never been quashed and the prevention measure applied to the applicant had not been varied. The Court observes that the domestic law remains silent on possible avenues of appeal against a second consecutive decision to place in custody and considers that in such circumstances the applicant could not be required to have appealed against the decision of 28 December 2007.

125. In any event, assuming that the applicant did indeed fail to exhaust available domestic remedies regarding the decisions of 30 November and 28 December 2007, the Court observes that it is not disputed between the

parties that the applicant spent more than ten months in detention pending extradition proceedings. It considers that new issues affecting the lawfulness of the detention might have arisen during that period and that, accordingly, 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 subsequently to the decision on his initial placement in custody (see *Ismoilov and Others v. Russia*, no. 2947/06, § 146, 24 April 2008).

126. The Government merely stated that the applicant could have applied to a court or a prosecutor for review of the lawfulness of his detention, without referring to specific provisions of domestic law. In this connection the Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

127. In any event, leaving aside the issue whether the Government have shown which particular type of complaint to a prosecutor or a court could have offered preventive or compensatory redress for alleged violations of Article 5 of the Convention, the Court emphasises that it has already found on numerous occasions that the provisions of Articles 108 and 109 of the CCP did not allow those detained with a view to extradition to initiate proceedings for examination of the lawfulness of the detention in the absence of a prosecutor's request for an extension of the custodial measure (see *Nasrulloyev v. Russia*, no. 656/06, § 88, 11 October 2007, *Ismoilov and Others*, cited above, § 151, and *Muminov*, cited above, § 114). Moreover, the Court doubts that the provisions of Chapter 16 of the CCP for the possibility for "parties to criminal proceedings" to challenge decisions taken in the course of a preliminary investigation before a prosecutor (Article 124 of the CCP) or a court (Article 125 of the CCP) could have been applicable in the applicant's case since there is no indication that he was a party to criminal proceedings within the meaning given to that phrase by the Russian courts (see *Muminov*, cited above, § 115).

128. 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.

129. 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, accordingly, 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.

130. 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. In such circumstances the Court does not need to consider separately the applicant's additional argument concerning lack of access to a lawyer during the first two weeks of his detention.

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

(b) Article 5 § 1 of the Convention

132. 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).

133. 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). The parties dispute, however, whether this detention was "lawful" within the meaning of Article 5 § 1 of the Convention,

134. 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 *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports* 1998-VI, and *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII).

135. 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)).

136. Turning to the circumstances of the present case, the Court observes that the request for the applicant's extradition was accompanied by an arrest warrant issued by a Tajik investigator rather than by a decision of a Tajik court. The applicant's initial placement in custody was ordered, on 30 November 2007, by a Russian court pursuant to Article 108 of the CCP and the provisions of the Minsk Convention governing custodial measures.

137. The Court takes note of the Government's claim that the applicant's placement in custody was governed by Article 62 § 1 of the Minsk Convention and observes that this provision allows for up to forty days' custodial detention pending receipt of the official request for extradition from the requesting country (see paragraph 71 above). The period that elapsed between the date of the applicant's arrest and the date of issue of the Tajik request for extradition amounts to twenty-four days. In such circumstances the Court has no grounds on which to conclude that the applicant's detention prior to receipt of the Tajik authorities' official request for his extradition, that is, between 27 November and 21 December 2007, was "unlawful" merely owing to the lack of an official request for extradition.

138. However, an issue arises as to whether the judicial authorisation of the applicant's detention given by the Town Court on 30 November 2007 was sufficient to hold the applicant in custody for any period of time – no matter how long – until the decision on the extradition request had been made, or whether the detention was to be reviewed at regular intervals (see *Nasrulloyev v. Russia*, no. 656/06, § 73, 11 October 2007).

139. In the Government's submission, the term of the applicant's custodial detention was governed by Article 109 of the CCP, which permits up to twelve months' detention in cases concerning serious crimes. The Court notes at the same time that, in order to be considered "lawful" within the meaning of Article 109 § 2 of the CCP, custodial detention exceeding two months necessitates further judicial authorisation (see paragraph 56 above).

140. According to the Government, the applicant's placement in custody was authorised by the Town Court, pursuant to Article 108 of the CCP, on 30 November 2007 and then again on 28 December 2007 (see paragraphs 34 and 36 above). The Court is perplexed by the fact that the same town court chose the same preventive measure in respect of the applicant on two occasions within twenty-eight days, although the applicant had not been released from custody during that period. Nonetheless, even assuming that on 28 December 2007 the Town Court erroneously referred to Article 108 of the CCP governing the initial placement in custody, and not extension of the term of detention, and in fact extended the term of the applicant's detention before it had exceeded two months as required by Article 109 § 2

of the CCP, there was no further judicial decision on extension of the term of detention from then on.

141. In the absence of any domestic court decision extending the applicant's detention, the Court is bound to conclude that after 29 May 2008, that is, six months after the date of his placement in custody, the applicant was detained in breach of the provisions of Article 109 § 2 of the CCP. It thus finds that the applicant's detention pending extradition cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

143. The applicant further complained that the criminal proceedings against him in Tajikistan would not be fair and that his extradition would expose him to the risk of a flagrant denial of justice. He relied on Article 6 of the Convention, the relevant parts of which provide:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal..."

144. The Government rejected that argument.

145. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

147. The Court refers to its finding that the extradition of the applicant to Tajikistan would constitute a violation of Article 3 of the Convention (see paragraph 105 above). Having no reason to doubt that the respondent Government will comply with the present judgment, it considers that it is not necessary to decide the hypothetical question whether, in the event of extradition to Tajikistan, there would also be a violation of Article 6 § 1 of the Convention (see *Saadi*, cited above, § 160).

IV. ALLEGED VIOLATIONS OF ARTICLE 13 OF THE CONVENTION

148. The applicant contended that he had had no effective remedies in respect of his complaints under Articles 3 and 5 of the Convention in breach of Article 13 of the Convention, which reads as follows:

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

149. The Government contested the applicant's arguments and claimed that he had had effective domestic remedies as regards his grievances.

150. The applicant maintained his complaint.

151. As regards the complaint concerning lack of effective remedies regarding the risk of ill-treatment that the applicant would run in Tajikistan, the Court observes that the complaint made by the applicant under this Article has already been examined in the context of Article 3 of the Convention. Having regard to its above findings (see paragraph 104 above), the Court considers that, whilst the complaint under Article 13 taken in conjunction with Article 3 is admissible, there is no need to make a separate examination of this complaint on its merits (see, *mutatis mutandis*, *Shaipova and Others v. Russia*, no. 10796/04, § 124, 6 November 2008, and *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI).

152. As regards the complaint under Article 13 taken in conjunction with Article 5 of the Convention, the Court reiterates that, according to its established case-law, the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements. In view of the above finding of a violation of Article 5 § 4 of the Convention, the Court considers that no separate issue arises under Article 13 in conjunction with Article 5 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

153. Relying on Article 6 § 2 of the Convention, the applicant complained that in the decision of 4 June 2008 the Russian Deputy Prosecutor General had stated in affirmative terms that the applicant had committed crimes before any tribunal had proved him guilty.

154. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicant's submissions disclose no appearance of violations of the rights and freedoms set out in the Convention or its Protocols. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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

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

157. The Government considered the amount claimed to be excessive.

158. 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. Default interest

159. 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 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, 6 § 1 and 13 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 it is not necessary to examine whether the applicant's extradition to Tajikistan would also be in breach of Article 6 § 1 of the Convention;

7. *Holds* that no separate issues arise under Article 13 of the Convention in respect of the alleged violations of Articles 3 and 5 of the Convention;

8. *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, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to be converted into Russian roubles at the rate applicable at the date of settlement;

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

Done in English, and notified in writing on 12 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President