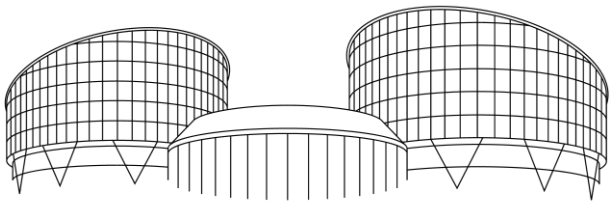

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF SIDIKOVY v. RUSSIA**

*(Application no. 73455/11)*

JUDGMENT

STRASBOURG

20 June 2013

**FINAL**

04/11/2013

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

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

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 May 2013,

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

## PROCEDURE

1. The case originated in an application (no. 73455/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Tajikistani nationals, Mr Farrukh Fazlidinovich Sidikov and Mrs Umedakhon Ganiyevna Sidikova ("the applicants"), on 29 November 2011 and 25 January 2012 respectively.

2. The applicants were represented by Ms Y.Z. Ryabinina and Ms N. Yermolayeva, lawyers 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 6 December 2011 the President of the First Section, acting upon the first applicant's request of 5 December 2011, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the first applicant should not be extradited to Tajikistan until further notice and granting priority treatment to the application.

4. On 22 March 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1972 and 1976 respectively and live in Moscow.

### A. Background events

6. The applicants are married and have three minor children. They are practising Muslims.

7. According to the applicants, in 2003 the first applicant started expressing an interest in the ideology of Hizb ut-Tahrir, a transnational Islamic organisation which is banned in Russia, Germany and some Central Asian republics. In 2004 the first applicant became a member of that organisation. According to the second applicant, she was influenced by Hizb ut-Tahrir's ideas until 2006 and then "voluntarily rejected" them.

8. In 2003 the Tajikistani authorities arrested the first applicant after finding leaflets published by Hizb ut-Tahrir in an outhouse belonging to him. According to the first applicant, the leaflets were planted there. During his detention, the authorities allegedly beat him in an attempt to extract a confession from him concerning his involvement in Hizb ut-Tahrir's activities. According to the first applicant, his left heel bone was broken as a result of those beatings.

9. Upon his release from detention, the first applicant went into hiding in Tajikistan and then, in 2005, he arrived and settled in Russia. The second applicant arrived in Russia with the children in 2006 and joined the first applicant.

10. On 4 January 2005 the Ministry of Security of the Republic of Tajikistan charged the first applicant with involvement in a criminal organisation (Article 187 § 2 of the Tajikistani Criminal Code), inciting racial, ethnic or religious hatred or hostility (Article 189 § 3 of the Tajikistani Criminal Code) and publicly calling for the overthrow of the political order or breach of the territorial integrity of the Republic of Tajikistan (Article 307 § 2 of the Tajikistani Criminal Code). The relevant decision stated, in particular, that the first applicant, being an active member of Hizb ut-Tahrir, had on numerous occasions disseminated extremist leaflets and literature for that organisation.

11. On the same date the Ministry of Security of the Republic of Tajikistan ordered the first applicant's arrest and put his name on a wanted list.

12. On 21 February 2006 the prosecutor's office for the Sogdiyskiy Region of Tajikistan ("the Sogdiyskiy prosecutor's office") instituted

criminal proceedings against the second applicant on suspicion of her membership and active involvement in the activities of Hizb ut-Tahrir.

13. On the same date she was charged under Article 307-3 § 8 of the Tajikistani Criminal Code with involvement in a banned extremist organisation, and her name was put on a wanted list.

14. On 23 February 2006 the Sogdiyskiy prosecutor's office ordered the second applicant's arrest.

15. On 18 April 2006 the second applicant was again placed on a wanted list.

### B. The first applicant's application for Russian nationality under a false name

16. On 21 April 2009 the first applicant applied to the Federal Migration Service for Russian nationality, having presented himself as Timur Muratovich Abdullayev, a national of Kyrgyzstan, and having submitted a passport and a birth certificate in the name of the latter. On 20 July 2009 his application was granted.

17. As later it became known to the migration authorities that the first applicant had used forged documents, they applied to the courts seeking to have this fact legally established.

18. On 5 April 2011 the Samarskiy District Court of Samara granted the application. The court noted, in particular, that when questioned as a witness in a criminal case, the first applicant had submitted that his name was Farrukh Fazlidinovich Sidikov. In 2007, having paid a certain sum of money, he had obtained, through an acquaintance of his, the passport and birth certificate of a Kyrgyz national, Mr Abdullayev. He had used those documents to apply for Russian nationality, which he had eventually acquired under the identity of Mr Abdullayev. The court further noted that the first applicant had informed the court in writing that he had no objections to the case being examined in his absence. He had also conceded that he had submitted forged documents with his application for Russian nationality, explaining that he had left his country using a false name as he was afraid of persecution for religious reasons. The court went on to find that the documents submitted by the first applicant had never been issued by the Kyrgyzstani authorities. The court thus established that when applying for Russian nationality the first applicant had provided false information and submitted forged documents.

19. On 11 May 2011 the Federal Migration Service, having regard to the above court findings, declared the decision to grant Russian nationality to Mr Timur Muratovich Abdullayev void *ab initio*.

### C. The first applicant's arrest and detention in Russia

20. On 7 December 2010, in the course of an investigation carried out in Russia into the activities of Hizb ut-Tahrir members in Moscow, officers of the Moscow Department of the Federal Security Service ("the Moscow Department of the FSB") searched the flat where the applicants were living.

21. On the same date the applicants were taken to the premises of the Moscow Department of the FSB and interviewed as witnesses in the aforementioned case. The first applicant stated, in particular, that he had taken an oath as a member of Hizb ut-Tahrir in 2004 in Tajikistan and that he had reproduced and disseminated literature published by that organisation.

22. Later that day the first applicant was taken to the Meshchanskiy District Office of the Interior, where his arrest was ordered by virtue of the relevant provisions of the Russian Code of Criminal Procedure, as it was established that his name was on a wanted list in connection with various criminal charges brought against him in Tajikistan.

23. On 9 December 2010 the Meshchanskiy District Court of Moscow, having regard to a request made by the Meshchanskiy Inter-District Prosecutor's Office and to the criminal proceedings instituted against the first applicant in Tajikistan and his placement on the wanted list, and with reference to Article 61 of the 1993 Minsk Convention and Article 108 of the Russian Code of Criminal Procedure (see paragraphs 94 and 116 below), authorised his detention until 16 January 2011 pending an extradition check in his respect. The first applicant did not appeal against that decision.

24. By a decision of 11 January 2011 the Meshchanskiy District Court of Moscow extended the first applicant's detention until 7 June 2011. It stated that there were no grounds to alter the preventive measure, as the extradition check in respect of the first applicant had not been completed, and therefore without extending the first applicant's detention it would not be possible to ensure his extradition to the Republic of Tajikistan. The court also noted that the first applicant was charged with serious criminal offences in Tajikistan which were also punishable under Russian criminal law, that he had no permanent or temporary place of residence or registration in Russia, that he had never been granted the status of refugee or forced migrant in Russia, and that there were sufficient reasons to believe that he might abscond if at liberty.

25. On 9 February 2011 the Moscow City Court dismissed the first applicant's appeal and upheld the first-instance decision.

26. On 3 June 2011 the Meshchanskiy District Court of Moscow further extended the first applicant's detention until 7 December 2011, stating that the extradition check in his respect had not yet been completed, that the grounds for the preventive measure remained unchanged and that, if released, he might try to abscond. This decision was upheld on appeal by

the Moscow City Court on 6 July 2011. The first applicant's lawyer was present at the hearing.

27. On 7 December 2011 the Meshchanskiy Inter-District Prosecutor's Office ordered the first applicant's release. The order stated that the first applicant had remained in detention for twelve months and that Article 109 of the Russian Code of Criminal Procedure provided that no extension of detention in excess of that period was permissible in respect of persons detained on suspicion of having committed offences such as those which the first applicant was charged with. The first applicant was released on the same day under a written undertaking not to leave his place of residence in Moscow and to appear at the Meshchanskiy Inter-District Prosecutor's Office every week.

### D. Extradition proceedings in respect of the first applicant

28. On 9 December 2010 the Ministry of the Interior of Tajikistan asked the Meshchanskiy District Office of the Interior to remand the first applicant in custody while the extradition request in his respect was pending with the Tajikistani Prosecutor General's Office.

29. On 29 December 2010 the Tajikistani Prosecutor General's Office asked the Russian Prosecutor General's Office to extradite the first applicant with a view to bringing him to justice in Tajikistan in connection with charges under Articles 187 § 2 (involvement in a criminal organisation), 189 § 3 (inciting racial, ethnic or religious hatred or hostility) and 307 § 2 (publicly calling for the overthrow of the political order or breach of the territorial integrity of the Republic of Tajikistan) of the Tajikistani Criminal Code.

30. The extradition request stated, in particular:

> "We guarantee that in accordance with the norms of international law [the first applicant] will be provided in the Republic of Tajikistan with all means of defence, including the assistance of counsel, he will not be subjected to torture, cruel, inhuman or degrading treatment or punishment ([see] the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the relevant Conventions of the United National and the Council of Europe and the Protocols thereto).
>
> The offences [the first applicant] is charged with are not subject to capital punishment under the Criminal Code of the Republic of Tajikistan.
>
> The Prosecutor General of the Republic of Tajikistan guarantees that the extradition request [in respect of the first applicant] does not pursue the goals of his persecution [on the grounds of] race, religion, ethnic origin or political views.
>
> On the basis of Article 66 [of the CIS Convention on legal aid and legal relations in civil, family and criminal cases], [we] undertake to prosecute [the first applicant] only for the offences in respect of which he is extradited to the Republic of Tajikistan. [The first applicant] will not be extradited to another State without the consent of the

> Russian [Federation] and after the criminal proceedings and serving of his sentence he will be free to leave the territory of the Republic of Tajikistan."

31. On 2 February 2011 the first applicant's lawyer asked the Russian Prosecutor General's Office to refuse the Tajikistani authorities' request for his extradition, stating that he ran a serious risk of being subjected to torture if extradited.

32. In a letter of 3 March 2011 the Russian Prosecutor General's Office replied to the first applicant's lawyer stating that the Tajikistani authorities had provided assurances that the first applicant would not be persecuted on political, racial, ethnic or religious grounds, that he would not be subjected to torture or inhuman or degrading treatment, that he would only be prosecuted for the offences of which he was accused and that he would be able to leave Tajikistan after he had served his sentence. The letter also stated that the first applicant's arguments would be taken into account when the Russian Prosecutor General's Office examined the extradition request in respect of the first applicant.

33. On 20 May 2011 the Prosecutor's Office for the Samara Region informed the Russian Prosecutor General's Office that by a decision of 5 April 2011 the Samarskiy District Court of Samara had established that when applying for Russian nationality the first applicant had provided false information and submitted forged documents in the name of Timur Abdullayev, a national of Kyrgyzstan, which had eventually served as a basis for granting him Russian nationality. Accordingly, the decision of the Federal Migration Service to grant him Russian nationality was void *ab initio* and his passport issued on 29 December 2009 was invalid and subject to seizure. The institution of criminal proceedings against the first applicant in this regard was refused on account of the expiry of the statutory limitation period.

34. On 23 May 2011 the Russian Federal Migration Service also informed the Russian Prosecutor General's Office that by a decision of 5 April 2011 the Samarskiy District Court of Samara had established that the first applicant had provided false information and submitted forged documents so as to acquire Russian nationality. Accordingly, the decision of 20 July 2009 to grant him Russian nationality had been annulled on 11 May 2011.

35. On 31 May 2011 the administration of remand prison IZ-77/4 of Moscow, where the first applicant was being held, informed the Moscow Prosecutor's Office that the first applicant had not lodged any requests to be granted refugee status through it.

36. On 15 June 2011 the Moscow Department of the Federal Migration Service informed the Meshchanskiy Inter-District Prosecutor's Office that the first applicant had neither registered his residence in Moscow nor applied for Russian nationality.

37. On an unspecified date after 14 June 2011 the Moscow Region Department of the Federal Migration Service also informed the Meshchanskiy Inter-District Prosecutor's Office that the first applicant had never registered his residence in the Moscow Region, nor had he ever acquired Russian nationality.

38. On 30 June 2011 the Russian Prosecutor General's Office granted the Tajikistani Prosecutor General's Office's request in part and ordered the first applicant's extradition in so far as he was charged with involvement in a criminal group or organisation under Article 187 § 2 of the Tajikistani Criminal Code. The extradition order stated that all the other offences imputed to the first applicant in Tajikistan were not criminal offences in Russia, and therefore that part of the extradition request could not be granted. The order also stated that the first applicant was a national of the Republic of Tajikistan, did not have Russian citizenship, and that there were no obstacles to his extradition.

39. The first applicant and his lawyer appealed against the extradition order. They pointed out that there was a serious risk that the first applicant would be ill-treated if extradited, as he had already been tortured when in detention in 2003 and because of his being charged with involvement in a proscribed religious organisation. In this connection they referred to, *inter alia*, the Court's judgments in the cases of *Gaforov v. Russia*, no. 25404/09, §§ 130-34, 21 October 2010, and *Khodzhayev v. Russia*, no. 52466/08, § 100, 12 May 2010, which cases concerned the possible extradition from Russia to Tajikistan of the applicants due to their presumed involvment in Hizb ut-Tahrir, and where the Court had found that extradition would be in breach of Article 3. The first applicant and his lawyer also referred to a number of reports of international organisations which outlined a number of areas of concern regarding the use of torture in Tajikistan.

*1. Decision of the Moscow City Court of 14 September 2011*

40. In a decision of 14 September 2011 the Moscow City Court upheld the extradition order. The court observed that since 4 January 2005 criminal proceedings had been pending against the first applicant in Tajikistan on a number of charges, that his detention had been ordered and that his name had been put on a wanted list as his whereabouts were unknown to the Tajikistani authorities. It also noted that the first applicant had been detained in Moscow on 7 December 2010 as a person wanted by the Tajikistani authorities. The court also observed that the first applicant was a Tajikistani national and did not have Russian citizenship or refugee status in Russia.

41. The court went on to note that, according to the extradition order of 30 June 2011, the first applicant was to be extradited to the Republic of Tajikistan in connection with his involvement in a criminal organisation founded with the aim of committing serious and particularly serious criminal offences, which corresponded to an offence punishable under

Article 210 of the Russian Criminal Code. It referred to the first applicant's statements made during his interview as a witness on 7 December 2010. In particular, it noted that "[the first applicant] did not deny his membership in [Hizb ut-Tahrir] and had confirmed his loyalty to its aims by taking an oath and regularly paying membership fees". The court stated that such actions were proscribed under Tajikistani criminal law and were punishable by fifteen to twenty years' imprisonment. The court also held that the first applicant had been aware that he had been engaged in a proscribed activity and that, if found out, he would be subjected to criminal prosecution, and therefore considered that he had left Tajikistan in order to avoid prosecution. In the light of the foregoing, the court concluded that the first applicant "had evaded criminal liability for a criminal offence which he had committed in the territory of the Republic of Tajikistan", and that "he was not a refugee persecuted on political or religious grounds".

42. The court went on to hold that the first applicant had not applied for refugee status in Russia, nor had he tried to obtain Russian citizenship with reference to persecution in the Republic of Tajikistan or the risk of torture for his views. Instead, he had acquired Russian citizenship on the basis of false information and documents, using a false identity. The decision to grant Russian citizenship to the first applicant had been annulled some time later on those grounds. In addition, from the first applicant's statements made during his interview on 7 December 2010, it was clear that he had been convicted of rape in Tajikistan, and that upon his release in 2004 after he had served a sentence of imprisonment, the Tajikistani law-enforcement authorities had stated that he was a person of interest and that they were seeking to verify whether he had been involved in any other criminal offences. The court also noted that the first applicant's allegations of ill-treatment in Tajikistan had not been corroborated by any evidence. In the court's opinion, the foregoing could not serve as a basis for finding that the first applicant belonged to a group of people who were being persecuted on the grounds of their political and religious convictions and who ran a risk of being subjected to inhuman treatment.

43. The court further pointed out that the Tajikistani authorities had provided the necessary assurances, in accordance with international law, which had been taken into account by the Russian Prosecutor General's Office when it had taken a decision on the first applicant's extradition. The court added that it had no reason to call these assurances into doubt.

44. The court also stated that the first applicant's argument to the effect that he had not committed the criminal offences imputed to him in Tajikistan could not be taken into account, as, under the relevant provisions of Russian criminal procedural law, during a review of the legality and validity of a decision of the Russian Prosecutor General's Office to extradite a person to a foreign State, the courts were not empowered to review the

issue of whether that person had committed the offences for which extradition was sought.

45. The court therefore held that, in the absence of any grounds to believe that the first applicant ran a risk of being subjected to torture or inhuman or degrading treatment and in view of the assurances provided by the Tajikistani authorities, the extradition order of 30 June 2011 was lawful and valid, and that the appeals of the first applicant and his lawyer against that order should be dismissed.

*2. Further appeal proceedings*

46. The first applicant and his lawyer appealed against the decision of 14 September 2011. They insisted that the first applicant ran a risk of being tortured if extradited, given that he was suspected of involvement in the activities of Hizb ut-Tahrir. The first applicant's lawyer also contended that the wording of the aforementioned decision had violated his right to be presumed innocent, as the court had noted, with reference to the first applicant's statements made during his interview as a witness on 7 December 2010 and at the hearing, that he had not denied his membership in Hizb ut-Tahrir.

47. On 6 December 2011 the Supreme Court of Russia ("the Supreme Court") upheld the decision of 14 September 2011 on appeal. In so far as the Moscow City Court's decision had upheld the decision to extradite the first applicant, the Supreme Court stated that it was well-reasoned and correctly decided. As regards the argument concerning the breach by the Moscow City Court of the presumption of innocence in respect of the first applicant, the Supreme Court stated as follows:

> "There is no evidence that the [first-instance] court considered the issue of [the first applicant's] guilt. On the contrary, in its decision the court pointed out that [the first applicant's] argument that he had not committed the offence imputed [to him] could not be taken into account, as in accordance with [the relevant provisions of Russian criminal procedural law], during a review of the legality and validity of a decision of the Russian Prosecutor General's Office to extradite a person to a foreign State, the courts are not [empowered to review the issue of whether] that person is guilty [of the offence in question] ...
>
> The fact that the [first-instance] court reflected in its decision [the first applicant's] explanations given at the hearing as regards his extradition in connection with his membership in Hizb ut-Tahrir cannot be regarded as consideration of the issue of his guilt."

## E. The second applicant's detention in Russia

### *1. Events of 19 May 2011 and the second applicant's subsequent complaints*

48. According to the second applicant, on 18 May 2011 investigator G. from the Moscow Department of the FSB telephoned her and informed her that she would have to appear for questioning as a witness the next day. The second applicant replied that she would appear with her lawyer upon receipt of a summons.

49. On 19 May 2011 at 9 a.m. officers from the Moscow Department of the FSB met the second applicant at the entrance door to the block of flats where she lived. According to her, the officers did not introduce themselves and she was only able to guess that they were FSB officers because they showed her a summons to appear before investigator G. for an interview. A copy of the summons submitted to the Court bears a hand-written note stating that the second applicant "refused to sign the summons without having given any explanations as to the reasons or motives" for that refusal.

50. According to the second applicant, the officers then forced her into a car and took her to the premises of the Moscow Department of the FSB, where she was held from 9.30 a.m. until 7.30 p.m. In her submission, no official record of her arrest was drawn up, no investigative actions were taken in respect of her and she was not allowed to contact her lawyer.

51. According to a transcript of a witness interview dated 19 May 2011, the second applicant was questioned as a witness on that date from 10.40 a.m. until 2.35 p.m. The transcript bears a hand-written note to the effect that the second applicant refused to sign it.

52. Later on 19 May 2011 the second applicant was taken to a police station operated by the Meshchanskiy District Office of the Interior, where an officer from that station drew up, in the presence of the second applicant's lawyer, a record stating that the second applicant had been arrested at that police station at 7.30 p.m. on that date in accordance with the relevant provisions of the Russian Code of Criminal Procedure as a person wanted by the Tajikistani authorities on suspicion of her having committed an offence punishable under Article 307 of the Tajikistani Criminal Code. The second applicant wrote down on that record that she did not agree with her arrest, that she had in fact been detained since 9.00 a.m. when she had been apprehended by the FSB officers and that she had been refused the opportunity to contact her lawyer.

53. On 20 May 2011 the second applicant lodged a complaint with the Meshchanskiy Inter-District Prosecutor's Office. She described the events of 19 May 2011 and requested that a review of the actions of the FSB officers taken in her respect be carried out.

54. By letter of 3 June 2011 the Meshchanskiy Inter-District Prosecutor's Office replied to the second applicant, stating that her

complaint had been examined and that an inquiry into the actions of the FSB officers complained of had not established any breaches of law or procedure, and there were therefore no grounds for the prosecutor's office to take any measures in that connection. The letter also invited the second applicant to challenge the response before a higher prosecutor.

55. On 7 June 2011 the first applicant provided the applicants' counsel with a written statement to the effect that during his questioning as a witness on 19 May 2011 State officials had shown him documents confirming the second applicant's placement on a wanted list. They had allegedly told him that in the event of his refusal to sign certain statements his wife would be arrested.

56. On 10 June 2011 the second applicant's lawyer lodged a court complaint against the FSB officers' actions under Article 125 of the Russian Code of Criminal Procedure. She complained that between 9 a.m. and 7.30 p.m. on 19 May 2011 the second applicant had been held in unacknowledged detention and that her right to legal assistance had been breached during the questioning session.

57. On 20 June 2011 FSB officer Z. submitted a report to his superior concerning the events of 19 May 2011. The report was also submitted to the Meshchanskiy District Court of Moscow. According to the report, on 7 and 13 December 2010 the second applicant had been questioned as a witness in a criminal case against a number of Tajikistani nationals. On 18 May 2011 officer Z. received an order to establish the whereabouts of the second applicant as she was absent from her registered place of residence and, if found, to hand her the summons for questioning on 19 May 2011 in connection with the same criminal case. On the latter date at approximately 9 a.m. officer Z. together with officer L. arrived at the second applicant's then current residence. They called her on the telephone, but as nobody answered they remained in the car waiting for her at the entrance to the block of flats. At approximately 9.12 a.m. the second applicant left the block of flats. The two officers then approached her, introduced themselves and presented their certificates attesting to their status as FSB officers. At the same time they explained that they were required to serve the summons for questioning on her and presented her with the summons. The second applicant refused to either take it or sign the document to that effect, stating that at a legal advice centre she had been advised not to sign any documents in the absence of her lawyer. Officer Z. then read out the summons, informing her that she had been summoned for questioning on 19 May 2011 at 9 a.m. and reminded the second applicant that she had previously been questioned in relation to this case and had the investigator's telephone number. Therefore, she could call him and verify the summons. He also reminded her that it was her duty to appear for questioning and that she could otherwise be subjected to coercive measures. She replied that she was not trying to avoid questioning, but she was not going to make it in time for

9 a.m. Officer Z. then suggested that she call the investigator and arrange another time. She agreed to do that; however, she again refused to accept the summons, explaining that she would appear on a different date and answer all questions put to her. In the second applicant's presence officer Z. then noted on the summons her refusal to accept it and the time of the refusal. After that he and officer L. got back into the car. However, the second applicant then approached them and said that she would not call the investigator to arrange another time if they could give her a lift to the questioning session. They agreed to do so. Officer Z. was driving, officer L. was in the front passenger seat while the second applicant was in the back seat by herself. Her freedom was not restricted in any way, and during the journey she was talking on a mobile phone and sending text messages. She did not show any anxiety concerning the questioning and did not make any requests, such as to contact her lawyer or her family. After they arrived at the FSB's premises, the second applicant reported to the investigator, who invited her for questioning. Later on that date they received additional information to the effect that the second applicant had been placed on an international wanted list. After the second applicant's questioning, some time after 2.45 p.m., officer Z. informed the investigator and the second applicant of that new information. The second applicant stated that she was aware of the fact. Officer Z. then contacted the Meshchanskiy District Office of the Interior, where he handed over procedural documents received from the Tajikistani authorities. The second applicant was escorted to the Office of the Interior in order for it to proceed with her detention. In the evening of 19 May 2011 officer Z. met with E., who presented herself as the second applicant's lawyer and said that she had submitted complaints concerning the FSB officers' actions before the Prosecutor's Office and the Meshchanskiy District Court.

58. On 20 June 2011 FSB officer L. also submitted a report to his superior concerning the events of 19 May 2011. The content of the report is similar to that of officer Z.

59. By a decision of 1 July 2011 the Meshchanskiy District Court of Moscow discontinued the proceedings as regards the complaint that the second applicant had been arrested and forcibly taken to the Moscow Department of the FSB's premises. The court noted in this respect that under Article 125 of the Russian Code of Criminal Procedure it was only possible to challenge before a court the actions of officers who had carried out operational and search activities if those officers had acted on the instructions of an investigator or investigating body. In the present case, according to the Meshchanskiy District Court of Moscow, investigator G. had never instructed the FSB officers to arrest the second applicant and take her to the Moscow Department of the FSB's premises, and therefore the lawfulness of their actions could not be reviewed under Article 125 of the Russian Code of Criminal Procedure. The court dismissed the complaint

concerning the alleged breach of the right to legal assistance during questioning, having found that the second applicant had not requested the assistance of a lawyer.

60. On 1 August 2011 the Moscow City Court upheld the decision of 1 July 2011 on appeal. It stated, in particular, that the court of first instance had been justified in discontinuing the proceedings, having established that the FSB officers had served the summons on the second applicant and then, upon her request, "had given her a lift in their car" to the Moscow Department of the FSB's premises.

*2. The second applicant's detention*

61. On 20 May 2011, upon the request of the Meshchanskiy Inter-District Prosecutor's Office, the Meshchanskiy District Court of Moscow ordered the second applicant's detention for a period of two months, that is until 19 July 2011. At the hearing the second applicant argued that the extension of her detention would be unlawful and unjustified, because: she had good character references; she had not been subject to criminal prosecution in Russia; she had a permanent place of residence which she had registered and three minor children; and because in her view she could not lawfully be extradited to Tajikistan. The court stated that her detention was necessary in order to ensure her extradition to Tajikistan, where she was charged with having committed a criminal offence under Article 307 of the Tajikistani Criminal Code.

62. The second applicant and her lawyer each lodged an appeal against the decision of the Meshchanskiy District Court of Moscow.

63. On 8 June 2011 the Moscow City Court examined the appeal lodged by the second applicant's lawyer and rejected it, holding that the decision of the Meshchanskiy District Court of Moscow was well-reasoned and correctly decided. It does not appear that the Moscow City Court examined the second applicant's appeal.

64. On 13 July 2011 the Meshchanskiy District Court of Moscow, with reference to Article 109 of the Code of Criminal Procedure, further extended the second applicant's detention until 19 November 2011. The court, referring to the second applicant's being placed on an international wanted list and the fact that the extradition check in her respect had not been completed, found that there were sufficient grounds to believe that she might "abscond or impede the proceedings in her criminal case and the establishment of the truth".

65. The second applicant and her lawyer each lodged an appeal against the decision of the Meshchanskiy District Court of Moscow. The second applicant's counsel submitted a four-page statement of appeal on 15 July 2011. It was received by the court on the same date. She argued that in the decision of 13 July 2011 the court had failed to indicate the progress of the extradition proceedings, that the grounds for the extension of detention had

not been sufficiently specific, that the court had not attached due weight to the second applicant's being the mother of three minor children, and that overall the decision was unlawful and unjustified. The second applicant also submitted an appeal statement on 15 July 2011 via the administration of the remand prison she was being held in. According to the Government, it was received by the court "shortly" before the hearing on appeal. According to the second applicant, it was received by the court on 26 July 2011. In her statement of appeal, which was one-and-a-half pages long, the second applicant pointed out that deprivation of liberty should be applied as a preventive measure only exceptionally, and that she had to take care of her three minor children.

66. On 1 August 2011 the Moscow City Court upheld the decision of 13 July 2001 as lawful and valid. The court examined the appeal lodged by the second applicant's lawyer but not that lodged by the applicant. The second applicant's lawyer was present at the hearing but did not draw the court's attention to the fact that the second applicant had also brought an appeal. The Moscow City Court, in particular, agreed with the Meshchanskiy District Court of Moscow that the extension of detention as a preventive measure was justified by the second applicant's being placed on a wanted list and by the pending extradition check in respect. The Moscow City Court also noted that the second applicant's children had been placed in the care of social services.

### F. Extradition proceedings in respect of the second applicant

67. On 23 May 2011 the Moscow Region Department of the Federal Migration Service informed the Meshchanskiy Inter-District Prosecutor's Office that the second applicant had never registered her residence in the Moscow Region, nor had she ever acquired Russian nationality.

68. On 24 May 2011 the Moscow Department of the Federal Migration Service informed the Meshchanskiy Inter-District Prosecutor's Office that the second applicant had been registered in the migration register (*миграционный учет*) as a foreign national living in Moscow from 16 April to 12 July 2011 and that she had not applied for Russian nationality.

69. It appears that the Russian Prosecutor General's Office received a request for the second applicant's extradition from the Tajikistani Prosecutor General's Office on 6 July 2011.

70. On 18 October 2011 the second applicant's lawyer asked the Russian Prosecutor General's Office to refuse the Tajikistani authorities' request for her extradition, stating that she ran a serious risk of being subjected to torture if extradited.

71. By letter of 16 November 2011 the Russian Prosecutor General's Office stated that it had refused the Tajikistani's authorities request to

extradite the second applicant owing to the expiry of the statutory limitation period in respect of the offence she was charged with.

72. On 16 November 2011, pursuant to an order of the Meshchanskiy Inter-District Prosecutor's Office of the same date, the second applicant was released.

### G. The first applicant's application for temporary asylum in Russia

73. On 15 December 2011 the first applicant applied to the Moscow Department of the Russian Federal Migration Service for temporary asylum.

74. On 15 March 2012 the Moscow Department of the Federal Migration Service refused the first applicant's application for asylum. The decision referred to the following: (i) Tajikistan was a party to numerous international instruments concerning the protection of human rights; (ii) it had adopted a number of legislative measures in compliance with such instruments; (iii) by a decision of the Supreme Court of Russia of 14 February 2003 Hizb ut-Tahrir had been declared a terrorist organisation and its activity was prohibited in Russia; (iv) in the course of the proceedings neither the first applicant nor his representative, although it had been open to them, had provided any evidence to corroborate the assertion that the first applicant had been or would be subjected in Tajikistan to inhuman treatment; (v) the first applicant had conceded that he was a member of Hizb ut-Tahrir; (vi) although he had been in Russia since 2004 the first applicant had never applied for either asylum or a temporary residence permit, but had used forged documents in order to acquire Russian nationality; (vii) the Tajikistani authorities had provided the Russian authorities with assurances that the first applicant would not be persecuted on the grounds of his political views, race, religion or ethnic origin, he would not be subjected to inhuman treatment, he would be provided with legal assistance, he would only be prosecuted for the offences in respect of which the extradition request was granted and he would be free to leave Tajikistan upon the termination of the proceedings. The Moscow Department of the Russian Federal Migration Service thus concluded that there were no humanitarian reasons that would justify granting the first applicant temporary asylum.

75. On 24 April 2012 the first applicant appealed against the refusal. He referred to the high risk of ill-treatment if extradited to Tajikistan since he was charged with involvement in Hizb ut-Tahrir. In this connection he referred to relevant international reports and the Court's judgments.

76. On 18 May 2012 the Russian Federal Migration Service quashed the decision of the Moscow Department of the Federal Migration Service of 15 March 2012. It stated that the latter had carried out an appropriate analysis of the relevant issues and had reached reasonable conclusions. However, in view of the fact that, following the first applicant's request, the

Court had indicated a measure under Rule 39 so as to prevent his extradition to Tajikistan, it was necessary to re-examine the possibility of providing him with temporary asylum so as to settle his legal status in Russia and provide additional guarantees that he would not be extradited to Tajikistan until the Court had delivered a final decision in his case.

77. On 17 August 2012 the Moscow Department of the Federal Migration Service granted the first applicant temporary asylum until 17 August 2013.

### H. The second applicant's application for refugee status and temporary asylum in Russia

78. On 24 May 2011 the second applicant asked the Moscow Department of the Russian Federal Migration Service to grant her refugee status.

79. By a decision of 29 July 2011 the Moscow Department of the Federal Migration Service refused the second applicant's request, stating that she had not met the criteria established by applicable law.

80. The second applicant challenged that decision before the Russian Federal Migration Service. In a decision of 29 November 2011 that authority dismissed her complaint and upheld the decision of 29 July 2011.

81. On 29 December 2011 the second applicant challenged the decision of 29 November 2011 before the courts.

82. On 22 February 2012 the Basmanniy District Court of Moscow upheld the decision of the Federal Migration Service.

83. On 18 June 2012 the Moscow City Court upheld the decision of the Basmanniy District Court on appeal.

84. Meanwhile, on 21 November 2012 the second applicant asked the Moscow Department of the Federal Migration Service to grant her temporary asylum in Russia.

85. On 17 February 2012 the Moscow Department of the Federal Migration Service refused the second applicant's request on account of a lack of humanitarian reasons that would justify granting her asylum. The decision noted that the second applicant and her representatives had failed to corroborate the alleged risk of ill-treatment in Tajikistan and concluded that the sole purpose of the application had been to legalise the second applicant's residence in Russia.

86. The second applicant challenged the refusal before the Russian Federal Migration Service.

87. On 21 August 2012 the Russian Federal Migration Service dismissed her complaint and upheld the decision of 17 February 2012. The Russian Federal Migration Service noted that, although the applicants had been living in Russia since 2005, they only applied for refugee status in 2011 after they had been placed in custody. It further noted that the second

applicant had submitted in writing, certified by a notary, that she had consented to her brother taking her children to Tajikistan so as to prevent them from being placed in in the care of social services in either Russia or Tajikistan and thereby preventing the Tajikistani authorities from putting pressure on her. The Russian Federal Migration Service observed that this statement was self-contradictory: the second applicant had thus voluntarily arranged for her children to be sent to the very State which she was allegedly afraid of being pressured by, whereas in Russia her children had been outside the jurisdiction of the Tajikistani authorities. They considered that it further proved that the second applicant's allegations of there being a risk of ill-treatment in Tajikistan were unsubstantiated and agreed with the Moscow Department of the Federal Migration Service that the sole purpose of the application had been to legalise the second applicant's residence in Russia.

88. On 22 September 2012 the second applicant brought a complaint against the decision of 21 August 2012 before the Federal Migration Service's Nationality Department. It appears that the complaint is pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Russian Code of Criminal Procedure

89. Article 5 § 15 of the Russian Code of Criminal Procedure defines "the actual time of arrest" as the time at which a person is actually deprived of his or her freedom of movement, performed in accordance with the procedure established by the Code.

90. Chapter 13 ("Arrest of a suspect") regulates arrest (*задержание*). Article 91 sets out the grounds for the arrest of a suspect. Article 91 § 1 provides that an investigator or a prosecutor have the right to arrest a suspect on suspicion of his/her having committed a crime punishable by deprivation of liberty on one of the following grounds:

(1) the person is caught while the crime is being committed or immediately afterwards;

(2) the victim or witnesses identify the person as the perpetrator of the crime;

(3) clear evidence of a crime is discovered on the person, his/her clothing or in his/her place of residence.

91. Article 91 § 2 provides that a suspect can also be arrested if he or she has tried to flee, or does not have a permanent residence, or if his/her identity has not been established, or if the prosecutor or the investigator have applied to the court seeking the individual's detention as a preventive measure.

92. Article 92 sets out the procedure for the arrest of a suspect. A record of arrest must be drawn up within three hours of the time the suspect is

brought to the investigating authorities or the prosecutor. The record of arrest must include the date, time, place, grounds and reasons for the arrest. It should be signed by the suspect and the person who carried out the arrest. Within twelve hours of the time of the arrest the investigator must notify the prosecutor of it in writing. The suspect must be questioned in accordance with established questioning procedure and a lawyer must be provided for him/her at his/her request. Before questioning the suspect has the right to a confidential two-hour meeting with a lawyer.

93. Under Article 94, if a judge does not order remand of the suspect in custody as a preventive measure within forty-eight hours of arrest, the suspect should be immediately released.

94. Chapter 13 ("Measures of restraint") governs the use of measures of restraint, or preventive measures (*меры пресечения*), which include, in particular, remand in custody. Custody may be ordered by a court on an application by the investigator or the prosecutor if the person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive measure of restraint cannot be used (Article 108 §§ 1 and 3). The period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period up to six months (Article 109 § 2). Further extensions of up to twelve months, or in exceptional circumstances, up to eighteen months, may only be granted if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

95. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the prosecutor must decide on the preventive measure in respect of the person whose extradition is sought. The measure must be applied in accordance with established procedure (Article 466 § 1). If a request for extradition is accompanied by an arrest warrant issued by a foreign court, the prosecutor may impose house arrest on the person or place him/her in custody "without seeking confirmation of the validity of that order from a Russian court" (Article 466 § 2).

96. Article 125 sets out the judicial procedure for the examination of complaints. Orders of an investigator or prosecutor refusing to institute criminal proceedings or terminating a case, and other orders and acts or omissions which are liable to infringe upon the constitutional rights and freedoms of the parties to criminal proceedings or to hinder citizens' access to justice, may be appealed against to a local district court, which is competent to check the lawfulness and grounds of the impugned decisions.

97. Article 133 provides for the right to redress with respect to unlawful criminal prosecution. Redress includes compensation of pecuniary damage,

"remedying the consequences" of non-pecuniary damage and the reinstatement of labour, pension, housing and other rights. Damage is to be compensated by the State in full, regardless of the liability of the law-enforcement bodies. Paragraph 2 endows the right to redress to any person who was acquitted or against whom criminal proceedings have been discontinued. Paragraph 3 extends the right to compensation to any person unlawfully subjected to preventive measures in the course of criminal proceedings.

98. Article 167 § 1 states that, if a person participating in an investigative action refuses to sign a record of the investigative action, the investigator shall note this refusal down in the record and certify it with his or her signature, as well as with the signature of the person's lawyer if he or she has participated in the investigative action. Under Article 167 § 2 the person who refused to sign the record must be given the chance to provide reasons for the refusal, which should be reflected in the record.

99. Under Article 190, which regulates the transcription of questioning sessions, the person questioned must certify with his or her signature that all statements have been accurately reproduced in the transcript (Article 190 § 8). Should the person refuse to sign the transcript of questioning, the refusal must be certified in accordance with Article 167 (Article 190 § 9).

100. Article 389, which was in force until 1 January 2013, provided that an appeal court should re-examine the case if the statement of appeal lodged by the convicted person or his or her counsel reached the court after the case had been examined on appeal lodged by the other party to the proceedings.

## B. Case-law of the Constitutional Court

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

101. On 4 April 2006 the Constitutional Court examined an application by Mr N., who had submitted that the lack of any limitation in time on the detention of a person pending extradition was incompatible with the constitutional guarantee against arbitrary detention. The Constitutional Court declared the application inadmissible. In its view, the absence of any specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 1993 Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, that is, the procedure laid down in the Russian Code of Criminal Procedure. Such procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Measures of restraint") which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests. Accordingly, Article 466 of the

Code of Criminal Procedure did not allow the authorities to apply a custodial measure without complying with the procedure established in the Code of Criminal Procedure or the time-limits fixed in the Code.

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

102. The Prosecutor General asked the Constitutional Court for an official clarification of 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.

103. The Constitutional Court dismissed the request on the grounds 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*

104. The Constitutional Court reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention, in that it required a court to examine whether an arrest had been lawful and justified.

105. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure established in the Russian Code of Criminal Procedure and within the time-limits fixed in the Code.

*4. Decision no. 383-O-O of 19 March 2009*

106. By this decision the Constitutional Court dismissed as inadmissible a request for constitutional review of Article 466 § 2 of the Code of Criminal Procedure, stating that this provision "does not establish time-limits for custodial detention and does not establish the reasons and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign state to detain an accused. Therefore the disputed

norm cannot be considered to violate the constitutional rights of [the claimant] ...”

*5. Decision no. 149-O-O of 17 January 2012*

107. The Constitutional Court examined “conveying” (*доставление*) in administrative proceedings. It noted that conveying is a coercive administrative measure which consists of the short-term restriction of a person’s freedom of movement and the person’s being taken from the place where an administrative offence has been committed and brought before a competent authority.

108. The Constitutional Court observed that the relevant legislation provides that conveying should be performed as quickly as possible. It does not set any precise time-limit, as it would be impossible either to foresee or to take into account particular circumstances which might affect its duration, such as distance, the availability and state of repair of the means of transport used, traffic, meteorological conditions, the person’s state of health and other factors. The Constitutional Court stated that: the application of this measure may not be arbitrary; the restriction of the person’s rights should be proportionate to the real necessity in view of the circumstances of the case; and the duration of the measure must be reasonable.

*6. Decision no. 1902-O of 18 October 2012*

109. The Constitutional Court dismissed a complaint that Articles 5 § 15, 91 and 92 of the Code of Criminal Procedure were unconstitutional because they did not include the time taken to bring (*доставление*) a suspect before a competent authority into the overall duration of arrest. The Constitutional Court found that Article 92 expressly provides for the actual time of arrest as defined in Article 5 § 15 to be indicted in the record of arrest, which rules out arbitrary deprivation of liberty outside the set time-limits.

## C. Case-law of the Supreme Court

*1. Decision of 14 February 2003*

110. By a decision of 14 February 2003 the Supreme Court of the Russian Federation granted an application made by the Prosecutor General and classified a number of international and regional organisations as terrorist organisations, including Hizb ut-Tahrir (also known as the Party of Islamist Liberation), and prohibited their activities on Russian soil. It held that Hizb ut-Tahrir 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 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*

111. By Directive Decision No.1 adopted by the Plenary Session of the Supreme Court of the Russian Federation on 10 February 2009, the Plenary Session issued several instructions to the courts on the application of Article 125 of the Code of Criminal Procedure. The Plenary reiterated that any party to criminal proceedings or other person whose rights and freedoms were affected by the actions or inaction of the investigating or prosecuting authorities in criminal proceedings could use Article 125 of the Code of Criminal Procedure 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 ask him or her to rectify the shortcomings indicated. 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 court could issue a special ruling (*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/her in custody with a view to extradition could be appealed against to a court under Article 125 of the Code of Criminal Procedure.

*3. Directive Decision no. 22 of 29 October 2009*

112. On 29 October 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No. 22, stating that, pursuant to Article 466 § 1 of the Code of Criminal Procedure, only a court could order the remand in custody of a person in respect of whom an extradition check was pending and where the authorities of the country requesting extradition had not submitted a court decision to place him/her in custody. The judicial authorisation of remand in custody in that situation was to be carried out in accordance with Article 108 of the Code of Criminal Procedure and following a prosecutor's petition to place that person in custody. In deciding to remand the person in custody the 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,

the prosecutor was competent to remand the person in custody without the authorisation of a Russian court (Article 466 § 2 of the Code of Criminal Procedure) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the Code of Criminal Procedure. When extending the person's detention with a view to extradition the court was to apply Article 109 of the Code of Criminal Procedure.

## III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

### A. Council of Europe

113. 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, adopted on 18 September 1998, 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."

114. 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."

115. 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 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention")

116. The following provisions of the Minsk Convention govern extradition proceedings:

**Article 8. Carrying out of requests for assistance**

"1. When carrying out a request [*поручение*] for legal assistance the requested agency shall apply the laws of its country. Upon a demand of the requesting agency it may apply the procedural rules of the requesting Contracting Party, unless they contradict the legislation of the requested Contracting Party."

**Article 60. Search for and arrest for [the purpose of] extradition**

"Upon receipt of an extradition request the requested Contracting Party shall immediately take measures to search for and arrest the person whose extradition is sought, except for cases where the extradition is not possible."

**Article 61. Remand in custody or arrest before the receipt of an extradition request**

"1. The person whose extradition is sought may be remanded in custody before the receipt of an extradition request if there is a related petition. The petition must contain reference to a detention order or a judgment [*приговор*] that has entered into legal force and indicate that an extradition request will follow. A petition for remand in custody before the receipt of an extradition request may be transmitted by post, telegraph, telex or telefax.

2. The person may be arrested without the petition provided for in paragraph 1 of the present Article if there are grounds prescribed by law to suspect that the person has committed a crime which may give rise to extradition in the territory of the other Contracting Party.

3. The other Contracting Party must be immediately informed of remand in custody or arrest carried out before the receipt of the extradition request."

**Article 62. Release of the person arrested or remanded in custody**

"1. A person remanded in custody pursuant to Article 61 § 1 and Article 61-1 must be released upon receipt of notification from the requesting Contracting Party [that] it is necessary to release the person, or if the requesting Contracting Party fails to submit an extradition request with all requisite supporting documents provided for in Article 58 within forty days from the date of remand in custody.

2. A person arrested under Article 61 § 2 must be released if the petition for detention in accordance with Article 61 § 1 is not received within the time-limit provided for by legislation governing detention matters."

## C. Reports on Tajikistan

117. The Concluding Observations on the Second Periodic Report on Tajikistan, issued by the UN Committee against Torture on 20 November 2012 (CAT/C/TJK/2), pointed out the following areas of concern regarding the human rights situation in the country:

"While the Committee welcomes the incorporation of article 143-1 into the Criminal Code to bring the definition of torture fully in line with article 1 the Convention, it expresses concern that the sanctions envisaged of five years imprisonment or less for first-time offenders of torture are not commensurate with the gravity of the crime[.]

...

The Committee is deeply concerned that the 2011 Law on Amnesty grants a rather wide discretion to prosecutorial bodies to commute, reduce or suspend sentences of persons convicted of torture, including the case of three police officers convicted for their involvement in death in custody of Mr. Ismoil Bachajonov[.]

...

The Committee takes note of the procedural safeguards introduced in the 2010 Code of Criminal Procedure (CPC), including the registration of detainees within three hours of arrival at the police station (art.94.1), the right to have a lawyer (art.22.1 and art.49.2), and the right not to be detained for more than 72 hours from the moment of arrest (art.92.3). However, the Committee expresses concern that the lack of clarity on when the person is considered to be detained under this law (article 91.1) leaves detainees without basic legal safeguards for the period between arrest and official acknowledgement of detention. It has been reported that, in practice and in the majority of cases, detainees are not afforded the rights of timely access to a lawyer and an independent doctor, notification of family members, and other legal guarantees to ensure their protection from torture. In particular, the Committee is concerned by numerous allegations regarding the failure of police officials to keep accurate records of all periods of deprivation of liberty; to register suspects within three hours of arrival at the police station; to adhere to the 72-hour time limit for releasing or transferring suspects from a police station to pre-trial detention facilities; and to notify family members of transfers of detainees from one place of deprivation of liberty to another. Furthermore, it is concerned that article 111-1 of the CPC allows judges to authorize pre-trial detention solely based on the gravity of the alleged crime committed, and that it can be extended up to 18 months[.]

...

The Committee is seriously concerned by numerous and consistent allegations, corroborated by various sources, of routine use of torture and ill-treatment of suspects, principally to extract confessions to be used in criminal proceedings, primarily during the first hours of interrogation in police custody as well as in temporary and pre-trial detention facilities run by the State Committee of National Security and the Department for the Fight against Organized Crime[.]

...

The Committee is concerned at reports from the State party and non-governmental organizations on several instances of deaths in custody, including the deaths of Messrs. Ismonboy Boboev, Usman Boboev, Khurshed Bobokalonov, Alovuddin Davlatov, Murodov Dilshodbek, Hamza Ikromzoda, Khamzali Ikromzoda, Safarali Sangov, Bahromiddin Shodiev and at the lack of effective and impartial investigations into these cases[.]

...

The Committee is deeply concerned that allegations of torture and ill-treatment are not promptly, impartially or effectively investigated and prosecuted, thus creating a climate of impunity. The Committee is further concerned that under article 28(1) of the Criminal Procedural Code (CPC), a court, judge, prosecutor, or an investigator may terminate criminal proceedings and exempt the person in question from criminal liability. Such actions can be taken on the basis of repentance, conciliation with the victim, change of circumstances, or expiration of the period of statute of limitation for criminal prosecution[.]

...

While welcoming the inclusion of article 88(3) to the Criminal Procedural Code in March 2008, which provides that evidence obtained through "physical force, pressure, cruelty, inhumanity and by other illegal methods" may not be used as evidence in a criminal case, as well as the June 2012 decree of the Supreme Court clarifying the concept of inadmissibility of evidence obtained under illegal methods, the Committee expresses concern at the lack of effective enforcement mechanisms and implementation in practice. It is also concerned by reports that judges frequently dismiss allegations of torture when raised by defendants, and that unless a formal complaint is submitted, the prosecutor will not launch an investigation[.]

...

While welcoming current efforts by the State party to improve conditions of detention in prisons and pre-trial detention facilities, the Committee is concerned by:

(a) Reports of lack of hot water supply; inadequate sanitary conditions; poor ventilation; lack of means to dry clothes, which leads to respiratory infections and sickness; lack of personal hygiene products; and inadequate food and health care;

(b) Unnecessarily strict regimes for inmates serving life imprisonment, who are reportedly confined in virtual isolation in their cells for up to 23 hours a day in small, airless cells; do not have access to lawyers; are only permitted visits by family members once a year; and are denied various activities in prison;

(c) Continued lack of systematic and independent review of all places of detention by national or international monitors, including the International Committee of the Red Cross (ICRC). While noting that the Ombudsman may undertake visits to places of detention, the Committee is concerned that the findings are not made public;

(d) The lack of a complaints mechanism for detainees. Despite the information provided by the State party that complaints of torture or ill-treatment can be submitted in sealed envelopes, they reportedly do not reach the relevant authorities and prisoners often do not have access to pens and paper; and

(e) The fact that the number, location, capacity, and the number of detainees in penitentiary institutions in Tajikistan are considered as "state secrets".

...

> The Committee is concerned by reports that victims of and witnesses to torture and ill-treatment do not file complaints with the authorities for fear of reprisals and lack of adequate follow-up. Additionally, while noting the removal of libel and insult from the Criminal Code in July 2012, the Committee remains concerned by reports of harassment and intimidation of journalists and human rights defenders who report on torture and ill-treatment. In particular, the Committee is concerned by the information received that families and victims of alleged torture, journalists, lawyers, medical experts and human rights defenders who raised concerns with the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment during his visit to Tajikistan in May 2012 have subsequently faced harassment and intimidation from authorities. Furthermore, while the Committee takes note of the information provided by the delegation, it is nevertheless concerned by the recent closure of the Association of Young Lawyers of Tajikistan (Amparo), a member of the Coalition Against Torture that engaged with the Special Rapporteur during his visit, pursuant to a motion filed by the Ministry of Justice to dissolve the organization on administrative grounds and a decision taken by the Khujand City Court on 24 October 2012 to this effect[.]
>
> ...
>
> The Committee is concerned that the Criminal Procedure Code does not contain any provision on the absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture, and that there are no clear procedures in legislation for challenging the legality before a court in extradition and deportation proceedings. It is also concerned by reports of extradition requests made by the State party of persons alleged to be members of banned Islamic groups, who, upon return to Tajikistan, are reportedly held in incommunicado detention and in solitary confinement, and subjected to torture and/or ill-treatment by law enforcement officials. It is further concerned by allegations that persons facing risk of torture upon their return and have applied for interim measures at the European Court of Human Rights have been abducted by Tajikistani security forces in a neighbouring country and forcibly returned to Tajikistan, and subsequently subjected to torture and/or ill-treatment. Additionally, the Committee is concerned by reports that Abdulvosi Latipov, former member of the United Tajik Opposition, has allegedly been abducted from the Russian Federation to Tajikistan in October 2012 and is being held incommunicado[.]
>
> ...
>
> The Committee is concerned that there is no explicit provision in domestic legislation that provides for the right of victims of torture to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention. The Committee also regrets the lack of data provided by the State party regarding the amount of any compensation awards made by the courts to victims of violations of the Convention, including those who were subjected to torture and/or ill-treatment during the period of 1995 to 1999 and 35 victims of trafficking who were returned to Tajikistan in 2007 from other countries. The Committee also notes the lack of information on any treatment and social rehabilitation services provided to victims, including medical and psychosocial rehabilitation[.]"

118. The chapter on Tajikistan in the World Report released by Human Rights Watch in January 2012, in so far as relevant, reads as follows:

"The human rights situation in Tajikistan remains poor. The government persisted with enforcing a repressive law on religion and introduced new legislation further restricting religious expression and education. Authorities continued to restrict media freedoms and journalists—including BBC correspondent Urunboy Usmonov—were targeted for their work. Domestic violence against women remains a serious problem in Tajik society. The judiciary is neither independent nor effective.

...

**Criminal Justice and Torture**

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

While torture is practiced with near impunity, authorities took a few small steps to hold perpetrators accountable. In an unprecedented ruling in September two law enforcement officers were sentenced to eight years in prison (reduced to six years under amnesty) on charges of "deliberate infliction of bodily harm carelessly resulting in the death of a victim" and "abuse of powers," after Ismoil Bachajonov, 31, died in police custody in Dushanbe, the capital, in January. A third officer was sentenced to three years in prison on charges of "negligence," but was released under amnesty.

NGOs and local media also reported on the deaths of Safarali Sangov, 37, who was detained on March 1 on alleged drug-related charges and died in a hospital several days later, and of Bahromiddin Shodiev, 28, who was detained on October 14 and died in a hospital on October 30. Police claim that Sangov and Shodiev each tried to commit suicide at the police station, but their respective families insist that each died after sustaining injuries during beatings while in custody. In early November a Ministry of Internal Affairs spokesperson announced that there would be a "thorough investigation" into Shodiev's death and that three officers had been dismissed. Following Sangov's death two policemen were charged with "negligence." Soon after the trial began in September the judge ordered that the case undergo further investigation.

In July Ilhom Ismanov and 52 other defendants were put on trial in Khujand for alleged membership in the Islamic Movement of Uzbekistan. Amnesty International reported that during a pre-trial detention hearing on November 12, 2010, the judge ignored Ismanov's testimony that he had been tortured, including with electric shocks and boiling water, and that other defendants have since made similar allegations of torture and ill-treatment in pre-trial detention.

**Freedom of Religion**

Tajik authorities further tightened restrictions on religious freedoms, and pursuant to newly adopted legislation, the government now extends far reaching controls over religious education and worship. According to a June statement by Forum 18, authorities continue "to try to suppress unregistered Muslim education throughout the country" and "have brought administrative charges against at least fifteen Muslim teachers in three different regions." Authorities have also closed unregistered mosques.

On August 2 President Rahmon signed the highly controversial Parental Responsibility Law, stipulating that parents must prevent their children from

participating in religious activity, except for state-sanctioned religious education, until they reach 18-years-old. Human rights groups, religious groups, and international bodies criticized the adoption of the law. In June the government passed amendments to the already restrictive 2009 religion law requiring students who wish to study at religious institutions abroad to first obtain state permission.

Under the pretext of combating extremist threats, Tajikistan continues to ban several peaceful minority Muslim groups. Christian minority denominations, such as Jehovah's Witnesses, are similarly banned. Local media continued to report on prosecutions of alleged members of Hizb ut-Tahrir and the Jamaat Tabligh movement."

119. The first applicant referred to a report by Amnesty International entitled *Shattered Lives: Torture and Other Ill-treatment in Tajikistan*, released in 2012, which reads, in so far as relevant:

"...

Amnesty International is extremely concerned at a number of cases in recent years where people who were extradited or forcibly returned to Tajikistan by the authorities of other countries have been tortured or ill-treated by law enforcement officers in Tajikistan ...

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

..."

120. The first applicant further referred to the United States Department of State's report on Tajikistan for 2011, which reads, insofar as relevant:

**"c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution prohibits the use of torture, but there is no specific definition of torture in the law or a provision of criminal liability for committing an act of torture. An article in the criminal procedure code (CPC) states that evidence acquired through torture is inadmissible. Some security officials reportedly continued to use beatings or other forms of coercion to extract confessions during interrogations. General Prosecutor Sherkhon Salimzoda stated during a press conference that only 13 of the 48 complaints filed in 2010 had evidence of torture. Officials did not grant sufficient access to information to allow human rights organizations to investigate claims of torture.

Urunboy Usmonov, a BBC journalist arrested and detained on June 13, claimed in a court hearing on August 18 that he was tortured while in custody. The judge refused to acknowledge Usmonov's claims of torture during the trial. A BBC official on a visit to the country reported that Usmonov's treatment was far worse than he alleged in court and included beatings, electrical shocks, and cigarette burns. According to the BBC official, Usmonov's abridged testimony occurred because he feared reprisals against him and his family."

121. The first applicant also referred to the End-of-mission Statement by the UN Special Rapporteur on Torture, Juan E. Méndez, giving his preliminary findings following his country visit to the Republic of

Tajikistan from 10 to 18 May 2012. The UN Special Rapporteur on Torture stated:

> "...
>
> In this preliminary finding let me say that pressure on detainees, mostly as a means to extract confessions is practiced in Tajikistan in various forms, including threats, beatings (with fists and kicking but also with hard objects) and sometimes by applying electric shock. I am unable to say whether the practice is less prevalent or systematic in recent times; I am, however, persuaded that it happens often enough and in a wide variety of settings that it will take a very concerted effort to abolish it or to reduce it sharply.
>
> ..."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

122. The first applicant complained that his extradition to Tajikistan would subject him to a real risk of torture and ill-treatment in breach of Article 3 of the Convention, which reads as follows:

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

123. The first applicant also complained that he had had no effective remedies, as required by Article 13 of the Convention, in respect of his complaint under Article 3 of the Convention, as the Russian authorities had failed to properly examine his argument that he could be ill-treated if extradited. Article 13 reads as follows:

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

### A. The parties' submissions

#### *1. The Government*

124. The Government contested the first applicant's arguments. They noted that, in the first place, the extradition request of 29 December 2010 had contained assurances that in Tajikistan the first applicant would not be subjected to inhuman treatment or punishment or persecuted on political or religious grounds and that he would only be prosecuted for the offences in respect of which the extradition request was granted. The Russian courts had examined the first applicant at the hearing and had studied the relevant

materials; the first applicant's lawyer had also been given an opportunity to present his position in the case. Furthermore, the first applicant had been living in Russia illegally for a long period of time. He had never applied for either a resident permit or a work permit, had not been in gainful employment, had not registered as a taxpayer and had only applied for temporary asylum on 15 December 2011. According to the Government, when deciding on the applicant's extradition to Tajikistan all his arguments concerning the risk of ill-treatment had been duly examined by the Russian authorities and courts and found to be unsubstantiated. Therefore, his extradition would not be in breach of Article 3 of the Convention.

125. The Government further pointed out that the first applicant had availed himself of the opportunity to appeal before a court, under Article 463 of the Code of Criminal Procedure, against the Prosecutor's Office's decision to extradite him. Under that provision a court must examine an appeal within one month and either declare the extradition decision unlawful and quash it or dismiss the appeal. In the latter case a cassation appeal could be lodged against the decision. The fact that the first applicant's appeal had eventually been dismissed did not mean that the remedy had been ineffective, as the requirement of effectiveness did not mean that the outcome of the proceedings should be favourable to the applicant (relying upon *Kaijalainen v. Finland* (dec.), no. 24671/94, 12 April 1996). The Government also noted that the effectiveness of the remedy was further corroborated by the fact that in the cases of *Soliyev v. Russia*, no. 62400/10, § 27, 5 June 2012; *Khodzhamberdiyev v. Russia*, no. 64809/10, § 19, 5 June 2012; and *Abidov v. Russia*, no. 52805/10, §§ 26-27, 12 June 2012, the Russian court had annuled extradition orders issued by the Prosecutor's Office. Therefore, the first applicant had had an effective remedy in respect of his complaint under Article 3 as required by Article 13 of the Convention.

*2. The first applicant*

126. The first applicant maintained his complaint. He insisted that, if extradited to Tajikistan, he would be exposed to the risk of torture. He referred to the reports on Tajikistan issued by Amnesty International in 2012 (see paragraph 119 above), the United States Department of State in 2011 (see paragraph 120 above) and the End-of-mission Statement by the UN Special Rapporteur on Torture, Juan E. Méndez (see paragraph 121 above). The first applicant further reiterated that he had been subjected to torture in Tajikistan in 2003 and pointed out that it had been the Court's practice to rely on diplomatic assurances from the Tajikistani authorities with caution.

127. The applicant further argued that the Russian authorities had failed to properly examine his arguments about the risk of his being subjected to ill-treatment if extradited to Tajikistan. He pointed out that the Prosecutor's

Office's extradition order had failed to address the issue, and stated that in his view the analysis performed by the courts and the Federal Migration Service had been superficial and insufficient.

## B. The Court's assessment

### *1. Admissibility*

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

### *2. Merits*

#### (a) Article 3 of the Convention

##### *(i) General principles*

129. 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.

130. 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). The Court has stated before that the same principles apply to proceedings concerning extradition (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161). 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 (ibid.).

131. The assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of Article 3 inevitably requires that the Court assess the conditions in the 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).

132. 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).

133. 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).

134. As regards the general situation in a particular country, the Court has held on several occasions that it can attach a certain importance to the information contained in recent reports from independent international human-rights-protection bodies and 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.). 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).

135. Concerning its own scrutiny, the Court reiterates that, in view of the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a case. The Court has held in various contexts that where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among others, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (ibid.).

136. At the same time, as already mentioned, in accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. With reference to extradition or deportation, 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 and by materials originating from other reliable sources (see *Salah Sheekh*, cited above, § 136).

137. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi*, cited above, § 143). Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination and their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do (see *NA. v. the United Kingdom*, no. 25904/07, § 121, 17 July 2008).

138. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Ultimately, the Court's own assessment of the human rights situation in a country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be returned to that country. Thus the weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3 (ibid., § 122).

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

(α) Domestic proceedings

139. The Court will first assess whether the first applicant's complaint received an adequate response at the national level. Having regard to the materials in its possession, the Court notes that he complained of the risk of being subjected to ill-treatment in breach of Article 3 in both extradition and asylum proceedings.

140. As regards the extradition proceedings, the Court is satisfied that the first applicant 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. In particular, he referred to his alleged previous ill-treatment and the fact that the authorities had persecuted him on religious grounds. The first 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 people being ill-treated and persecuted for their religious beliefs (see paragraph 39 above), as well as to the Court's jurisprudence.

141. Having regard to the material in its possession, the Court notes that the domestic authorities, including the courts at two levels of jurisdiction, gave consideration to the applicant's arguments and dismissed them as unsubstantiated. In particular, they found the first applicant's allegations of having been ill-treated in Tajikistan uncorroborated by any evidence. They further referred to the fact that despite having arrived in Russia in 2005 the first applicant had never applied for asylum or refugee status as a person persecuted for religious or political reasons. What he had done though was to apply for Russian nationality, submitting false information and documents in doing so. Furthermore, the extradition request was only granted in respect of the charge of involvement in a criminal group or organisation and refused in respect of the charges of inciting racial, ethnic or religious hatred or hostility and publicly calling for the overthrow of the political order or breach of the territorial integrity of the Republic of Tajikistan. The domestic authorities took into account the assurances provided by the Tajikistani authorities that, if extradited, the first applicant would not be subjected to ill-treatment and would only be prosecuted for the offences in respect of which the extradition request was granted.

142. As regards the asylum proceedings, the Court points out that the first applicant lodged a request for temporary asylum and refugee status with the regional Federal Migration Service on 15 December 2011, that is to say only after the order for his extradition had been finally upheld by the domestic courts. He raised the same arguments as in the course of the extradition proceedings. In the first round of the proceedings they were initially dismissed as unfounded with reference to: the lack of evidence of

the alleged previous ill-treatment; the fact that since 2004 the first applicant had never applied for either asylum or a residence permit; the assurances provided by the Tajikistani authorities that, if extradited, the first applicant would only be prosecuted for the offences in respect of which the extradition request was granted and would not be subjected to ill-treatment nor prosecuted for his political views or religious beliefs. The Court cannot disregard that temporary asylum was eventually granted to the first applicant until 17 August 2013.

(β) The Court's assessment of the risk

143. The Court now has 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 first 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.

144. In the first applicant's submission, his fears of possible ill-treatment in Tajikistan are justified by three factors. First, he was allegedly subjected to ill-treatment in Tajikistan. Second, according to a number of reports, the general human rights situation in the receiving country is deplorable. Thirdly, 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 the activities of Hizb ut-Tahrir.

145. As regards the first argument, the Court notes that the domestic authorities dismissed the first applicant's allegations of having been subjected to ill-treatment in Tajikistan as unsubstantiated by any evidence. The first applicant submitted no materials that would enable the Court to depart from these findings.

146. The Court will further consider whether the general political climate in Tajikistan could give reason to assume that the applicant would be subjected to ill-treatment in the receiving country. It 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 concern. For instance, the UN Committee Against Torture pointed out the numerous and consistent allegations of routine use of torture and ill-treatment of suspects, corroborated by various sources, and the lack of prompt and effective investigation into such allegations (see paragraph 117 above). It also referred to insufficient procedural and practical safeguards against arbitrary detention and poor conditions of detention (*Id*.). The UN Committee Against Torture specifically mentioned that alleged members of banned Islamic groups, when extradited to Tajikistan, were reportedly held in *incommunicado* detention and subjected to ill-treatment (*Id*.). According to the UN Special Rapporteur on Torture, pressure on detainees with a view to extracting confessions was practiced in Tajikistan in various forms,

including threats, beatings and through the application of electric shock (see paragraph 121 above). Human Rights Watch observed that torture used to extract confessions from suspects remained an ongoing problem and noted local media reports on the prosecution of alleged members of Hizb ut-Tahrir (see paragraph 118 above). According to the United States Department of State report on Tajikistan for 2011, referred to by the first applicant, some security officials reportedly continued to use coercion to extract confessions (see paragraph 120 above). Amnesty International in its 2012 report, also referred to by the first applicant, expressed its concern at a number of cases in recent years where people extradited to Tajikistan had been ill-treated by law-enforcement officers upon their return. They specifically noted that this included alleged members of banned Islamic groups (see paragraph 119 above).

147. Having regard to the sources cited above, the Court concedes that the reports on the human rights situation in Tajikistan are disquieting. Nonetheless, it emphasises that reference to a general situation concerning the observation of human rights in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010, and *Shakurov v. Russia*, no. 55822/10, § 135, 5 June 2012).

148. As regards the specific allegations concerning the first applicant, his main argument is the danger of ill-treatment in Tajikistan due to the nature of the offences he has been charged with. The Court notes that the first applicant is wanted by the Tajikistani authorities on account of his alleged active involvement in Hizb ut-Tahrir, a religious organisation which the Tajikistani Supreme Court has banned because of its extremist activities. The comprehensive list of charges against the applicant include, besides incitement to religious hatred and involvement in a criminal organisation, appeals to overthrow the constitutional order, which undoubtedly belongs to the category of crimes against national security.

149. Regard being had to the reports from various international bodies (see paragraph 146 above), and in line with its recent judgments, the Court considers that there are serious reasons to believe in the existence of the practice of persecution of members or supporters of Hizb ut-Tahrir, whose underlying aims appear to be both religious and political (see *Khodzhayev*, cited above, §§ 94-105, and *Gaforov*, cited above, §§ 128-40). The Government's reference to the fact that the first applicant did not apply for political asylum until the order for his extradition had been finally upheld by the domestic courts does not necessarily refute the first applicant's allegations of the risk 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 *Khodzhayev*, cited above, § 101).

150. The Court notes that the Government relied upon assurances from the Tajik Prosecutor General's Office to the effect that the first applicant

would not be subjected to ill-treatment there (see paragraph 124 above). In this connection the Court observes 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 *Gaforov*, cited above, § 138).

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

152. 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

153. Having regard to the first applicant's submissions, the Court considers that the gist of his complaint under Article 13, which it deems "arguable" (see *Muminov v. Russia*, no. 42502/06, § 99, 11 December 2008), is that the domestic authorities failed to carry out rigorous scrutiny of the risk of him being subjected to ill-treatment in the event of his extradition to Tajikistan.

154. In this respect, the Court notes that it has already examined that issue in the context of Article 3 of the Convention. Having regard to its findings in paragraphs 139-42 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 VIOLATION OF ARTICLE 5 § 1 (f) OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

155. The first applicant further complained that his arrest and ensuing detention with a view to extradition had been in breach of Article 5 § 1 (f) of the Convention. In particular, he claimed that, when authorising his detention in the decision of 9 December 2010, the Meshchanskiy District Court of Moscow had breached the requirements of Article 61 of the 1993 Minsk Convention, as there had not been any documents submitted by the Tajikistani authorities confirming their intention to seek his extradition in the case file. Moreover, neither the aforementioned initial order nor the extension orders of 11 January and 3 June 2011 had indicated whether any measures with a view to the first applicant's extradition were being taken. Article 5 § 1 (f) reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. ..."

## A. The parties' submissions

156. The Government contested that argument. They stated that the first applicant's detention with a view to extradition had been fully in accordance with domestic law. The first applicant had been present at all first-instance hearings on his detention, and when he had requested to participate in the appeal hearings, this had been ensured by means of a video-conference. The length of his detention had not exceeded that permitted by domestic law, and he had been released when the maximum duration was reached. Accordingly, the first applicant's detention had been fully in compliance with both domestic law and Article 5 § 1 (f) of the Convention.

157. The first applicant argued that his detention for twelve months had not been in compliance with Article 5 § 1 (f) of the Convention, as none of the decisions ordering the extension of his detention had contained reference to specific measures being taken in the furtherance of the extradition check. Furthermore, he reiterated that on 9 December 2010 his arrest had been ordered by the Meshchanskiy District Court of Moscow in the absence of a request for his detention on the part of Tajikistani authorities or of any confirmation from them that they would subsequently seek his extradition.

## B. The Court's assessment

### *1. Admissibility*

158. The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

159. Thus, the Court observes at the outset that the complaint relating to the lawfulness of the first applicant's detention after 7 December 2010 was first raised before the Court on 25 January 2012. Given that the latest decision authorising the first applicant's detention had been taken on 3 June 2011 and upheld on appeal on 6 July 2011, which is more than six months before the complaint was brought before the Court, the Court is not competent to examine the complaint regarding the formal legality of the first applicant's detention pending extradition (see, in a similar context, *Solovyev v. Russia*, no. 2708/02, § 83, 24 May 2007; *Savenkova v. Russia*,

no. 30930/02, § 62, 4 March 2010; *Vladimir Krivonosov v. Russia*, no. 7772/04, § 109, 15 July 2010; and *Shakurov*, cited above, § 152).

160. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

161. As regards the length of the uninterrupted period of the applicant's detention during the extradition proceedings from 7 December 2010 to 7 December 2011, the Court considers that this period of detention constitutes a continuing situation in so far as the issue of diligence under Article 5 § 1 (f) of the Convention is concerned. Therefore, the Court will assess this period of detention in its entirety (see, *mutatis mutandis*, *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009; *Gubkin v. Russia*, no. 36941/02, § 134, 23 April 2009; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007, in the context of Article 5 § 3 of the Convention). The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

*2. Merits*

162. The Court observes that Article 5 § 1 (f) of the Convention 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 that person's committing an offence or absconding. In this connection, 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". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national law or the Convention (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal*, cited above, § 112). Deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008).

163. The Court reiterates that the period complained of lasted twelve months. It started running on 7 December 2010, when the first applicant was detained with a view to extradition, and ended on 7 December 2011, when he was released. For the reasons presented below, the Court does not consider this period to be excessive.

164. The Court notes that the Tajikistani Ministry of Security placed the first applicant on a wanted list on 4 January 2005. The Tajikistani Prosecutor General's Office asked the Russian Prosecutor General's Office to extradite the first applicant on 29 December 2010. Between December

2010 and December 2011 the first applicant was interviewed; the Russian Prosecutor General's Office received the extradition request and the diplomatic assurances from its Tajikistani counterpart; the Federal Migration Service confirmed that the first applicant did not have Russian citizenship and that he had never registered his residence; and remand prison IZ-77/4 confirmed that the first applicant had not lodged any requests to be granted refugee status through it. After the extradition order had been granted by the Russian Prosecutor General's Office on 30 June 2011, it was reviewed by courts at two levels of jurisdiction, the final decision being delivered by the Supreme Court of Russia on 6 December 2011.

165. Having regard to the above, the Court concludes that throughout the period between 7 December 2010 and 7 December 2011 the extradition proceedings were in progress and in compliance with domestic law (see *Shakurov*, cited above, § 170).

166. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the present case.

167. There has therefore been no violation of Article 5 § 1 (f) of the Convention on this account.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

168. The first applicant complained under Article 5 § 4 of the Convention that he had been unable to obtain effective judicial review of his detention pending extradition. In particular, he alleged that he had had no opportunity to initiate such review of his own motion and that in its decisions of 9 February and 6 July 2011 the Moscow City Court had not duly addressed his lawyer's main arguments. Article 5 § 4 reads as follows:

> "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

169. According to the Government, it had been open to the first applicant to lodge a complaint under Article 125 of the Code of Criminal Procedure and he had availed himself of this opportunity. Such a complaint had constituted an effective remedy, as it had been within the competence of the court to order release should the detention have been found to be unlawful. The Government referred to an example from domestic practice where a court had ordered the release of a person detained pending extradition because the prosecutor's detention order had been found to be unlawful. Therefore, in their view the remedies available had complied with Article 5 § 4 of the Convention.

170. The first applicant averred that his lawyer's arguments had not been properly examined by the Moscow City Court in its decisions of 9 February and 6 July 2011. He also maintained that Chapter 13 of the Code of Criminal Procedure had not provided him with the ability to seek release between reviews of his detention which were instigated upon the request of the Prosecutor's Office.

## B. The Court's assessment

### *1. Admissibility*

171. As regards the complaint concerning the Moscow City Court's alleged failure to address the first applicant's lawyer's arguments in the decisions of 9 February and 6 July 2011, the Court notes that the relevant complaint was first raised before the Court on 25 January 2012, after the expiry of the six-month time-limit. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

172. As regards the complaint concerning the availability of effective judicial review of the first applicant's detention pending extradition, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### *2. Merits*

#### (a) General principles

173. The Court reiterates that the Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance given the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness (see *Varbanov v. Bulgaria*, no. 31365/96, § 58, ECHR 2000-X).

174. Article 5 § 4 of the Convention entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of their deprivation of liberty. The notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, so that a detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 202, 19 February 2009, with further references).

175. Article 5 § 4 guarantees a remedy that must be accessible to the person concerned (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 174-177,

17 January 2012, and *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 45, Series A no. 107).

176. Where the decision depriving a person of his liberty is one taken by an administrative body, Article 5 § 4 obliges the Contracting States to make available to the person detained a right of recourse to a court. When the decision is made by a court at the close of judicial proceedings, the supervision required by Article 5 § 4 is incorporated in the decision; this is so, for example, where a sentence of imprisonment is pronounced after "conviction by a competent court" under Article 5 § 1 (a) of the Convention; or where detention of a vagrant, provided for in Article 5 § 1 (e), is ordered by a "court" within the meaning of paragraph 4 (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12).

177. In order to constitute such a "court" an authority must provide the fundamental guarantees of procedure applied in matters of deprivation of liberty. If the procedure of the competent authority does not provide them, the State cannot be dispensed from making available to the person concerned a second authority which does provide all the guarantees of judicial procedure. The intervention of one organ satisfies Article 5 § 4, but on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (ibid.).

178. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the detention of a person to be "lawful" according to Article 5 § 1. The reviewing "court" must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful (see *A. and Others*, cited above, § 202).

179. The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. It is not the Court's task to enquire into what the most appropriate system in the sphere under examination would be. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4 (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A).

180. In a number of cases under Article 5 § 1 (e) concerning "persons of unsound mind" the Court has stated that a person detained for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention (see *Stanev*, cited above, § 171, with further references). Long intervals in the context of automatic

periodic review may give rise to a violation of Article 5 § 4 (see, among others, *Herczegfalvy v. Austria*, 24 September 1992, § 77, Series A no. 244).

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

181. Turning to the present case, the Court observes that unlike in some previous Russian cases concerning detention with a view to extradition (see, among many others, *Nasrulloyev v. Russia*, no. 656/06, §§ 87-89, 11 October 2007, and *Dzhurayev*, cited above, § 68), the first applicant's detention was ordered by a Russian court rather than a foreign court or a non-judicial authority. There is no doubt that this court satisfied the requirement of a "court" mentioned in Article 5 § 4 of the Convention (see *Khodzhamberdiyev v. Russia*, no. 64809/10, § 108, 5 June 2012).

182. It is also observed that the initial detention order was issued at the request of a prosecutor's office and that in that order the court set a time-limit on the first applicant's detention, which was amenable to extension. Unlike in previous cases concerning Russia (see, among others, *Muminov*, cited above, § 114), before the expiry of the time-limit, that detention was subsequently subject to extension requests from a prosecutor's office, and was extended on 11 January and 3 June 2011, also for specific periods of time.

183. The Court considers that the above proceedings amounted to a form of periodic review of a judicial character (see *Stanev*, cited above, § 171, and *Khodzhamberdiyev*, cited above, §110). It appears that the first-instance court was able to assess the conditions which, according to paragraph 1 (f) of Article 5, are essential for "lawful detention" with a view to extradition (see paragraphs 174 and 178 above).

184. In addition, while Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007), it was open to the first applicant under Russian law to appeal against the detention orders to a higher court, which were empowered to review them on various grounds. The Court observes in that connection that, for unspecified reasons, the first applicant chose not to appeal against the initial detention order of 9 December 2010. However, he did appeal against the detention orders of 11 January and 3 June 2011. The appeals were examined on 9 February and 6 July 2011 respectively. The mere fact that the first applicant's appeals were dismissed is not sufficient to conclude that the remedy was devoid of any prospects of success. As with the proceedings before the court of first instance, it appears that the proceedings before the appeal court were such as to allow an assessment of the lawfulness of the first applicant's detention with a view to extradition to be made.

185. The first applicant has not adduced any specific argument contesting the effectiveness of the proceedings made available to him or

substantiating any unfairness in those proceedings. As previously mentioned by the Court, where detention is authorised by a court, subsequent proceedings are less concerned with arbitrariness, but provide guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court would not be concerned, to the same extent, with the proceedings before the court of appeal if the detention order under review had been imposed – like in the present case – by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees (ibid.). The first applicant was able to raise on appeal various arguments relating to his detention, including those relating to the requirement of diligence in the conduct of extradition proceedings and the length of the authorised period, when a court examined the prosecutor's renewed request for extension of detention or on appeal against the detention order (see *Khodzhamberdiyev*, cited above, §112).

186. In the Court's view, the applicant was thereby enabled to "take proceedings" by which the lawfulness of his detention could be effectively assessed by a court.

187. There has therefore been no violation of Article 5 § 4 of the Convention in this respect.

## IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

188. Lastly, the first applicant complained under Article 6 § 2 of the Convention that his right to be presumed innocent had been breached by the Moscow City Court in its decision of 14 September 2011, because when upholding the order of the Russian Prosecutor General's Office to extradite him the court had pointed out that he had not denied his membership in Hizb ut-Tahrir at the hearing; and it had also based its conclusions on information incriminating the first applicant which had been obtained as a result of the investigation of a criminal case in Russia, and more specifically on his statements made during his interview on 7 December 2010. Article 6 § 2 reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

### A. The parties' submissions

189. The Government contested this argument. They stated that on 14 September 2011 the Moscow City Court had not pronounced on the first applicant's guilt. The first applicant's complaint of a breach of the presumption of innocence had been further dismissed by the Supreme Court

of Russia on 6 December 2011. Accordingly, there had been no violation of Article 6 § 2 of the Convention.

190. The first applicant insisted that the reference in the Moscow City Court's decision of 14 September 2011 to his membership in Hizb ut-Tahrir had constituted a breach of the presumption of innocence enshrined in Article 6 § 2 of the Convention.

### B. The Court's assessment

191. 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).

192. 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).

193. 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.

194. 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).

195. 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).

196. Turning to the circumstances of the present case, the Court notes that the first applicant specifically complained about the Moscow City Court's statement that he "did not deny his membership in Hizb ut-Tahrir". The Court observes that this statement was made with reference to the first applicant's interview on 7 December 2010 conducted in the course of an investigation into Hizb ut-Tahrir's members' activities in Moscow. According to the transcript of that interview, the first applicant had clearly stated that he had taken an oath as a member of Hizb ut-Tahrir in 2004 in Tajikistan. The Court further notes that the Moscow City Court specifically stated that when deciding on the first applicant's extradition it would not discuss the issue of his guilt. When the issue was brought up on appeal before the Supreme Court of Russia, in its decision of 6 December 2011 it found no evidence that the first-instance court had considered the issue of the first applicant's guilt and emphasised that the latter court had expressly stated that this had not been its task. The Supreme Court thus held that the Moscow City Court's having reflected the first applicant's previously given explanations concerning his membership in Hizb ut-Tahrir in its decision could not be regarded as consideration of the issue of his guilt.

197. In the Court's view, the Moscow City Court's reference to the first applicant's interview on 7 December 2010 constituted no more than an assessment of the circumstances relevant to a decision on his extradition. It notes that both the first-instance and appeal courts specifically emphasised that the issue of the first applicant's guilt in respect of the offences he had been charged with in Tajikistan was not within their competence. The Court is thus satisfied that the Moscow City Court was referring not to the question of whether the first 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 first applicant to the requesting country (see *Gaforov*, cited above, § 213). In the Court's opinion, the same holds true for the first applicant's more general allegations concerning the Moscow City Court's taking into consideration his interview on 7 December 2010.

198. In these circumstances, the Court considers that the wording of the Moscow City Court's decision of 14 September 2011 did not amount to a

declaration of the first applicant's guilt in breach of the presumption of innocence (see *Gaforov*, cited above, § 215).

199. 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.

## V. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

200. The second applicant complained under Article 5 of the Convention that on 19 May 2011, between 9 a.m. and 7.30 p.m., she had been held in unacknowledged detention. She insisted, with reference to the absence of her signature on either the summons or the transcript of her witness interview of that day, that the FSB officers had put her in their car and taken her to the Moscow Department of the FSB's premises against her will. Article 5 § 1 reads:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

### A. The Parties' submissions

201. The Government submitted that on the morning of 19 May 2011 the second applicant had herself asked the FSB officers to give her a lift to the Moscow Department of the FSB's premises. While in the car her liberty had not been restricted, she had been talking on her mobile phone and had not made any requests, such as to call her lawyer or her family. As regards her refusal to sign the transcript of the questioning session, under Russian

law such a refusal did not entail the inadmissibility of the transcript as a piece of evidence.

202. The second applicant contended that the Government's position was unconvincing and inconsistent. She averred that the fact of her unacknowledged detention was corroborated by the following: (i) the absence of her signature on either the summons or the transcript of the questioning session on 19 May 2011; (ii) the lack of any explanation next to her refusal to sign these documents, whereas according to domestic law the person refusing to sign the transcript should be given an opportunity to give reasons for their refusal; (iii) the wording of the transcript of the questioning session conducted on 19 May 2011 was identical to that of the transcript of the questioning session performed on 13 December 2010, which in the second applicant's view proved that no questioning had actually taken place on 19 May 2011; (iv) the first applicant's statement to the effect that during his questioning as a witness on 19 May 2011 he had been told that in the event of his refusal to sign certain statements his wife would be put in jail (see paragraph 55 above). The second applicant also pointed out certain alleged inconsistencies in the reports of the FSB officers (see paragraphs 57-58 above). In the first place, in her view it would have been illogical for her to have refused to sign the summons and have then asked the FSB officers to give her a lift. In addition, the reference to the provisions on coercive measures made no sense if the authorities claimed that she had gotten into the car of her own free will. Furthermore, in any event the summons had not been handed out to her in advance, as required by the applicable procedural rules. Moreover, assuming that she had been put on a wanted list in 2006, she considered it implausible that the authorities were not aware of this in December 2010 when the first questioning of her had taken place. The second applicant maintained that the above constituted irrefutable evidence that between 9 a.m. and 7.30 p.m. she had been under the control of the authorities, and that her detention had been arbitrary and in breach of Article 5 § 1.

### B. The Court's assessment

203. The Court notes that, according to the second applicant, on the morning of 19 May 2011 at around 9 a.m., she was forcibly put into a car by FSB agents and taken to the premises of the Moscow Department of the FSB. In her view, this is corroborated by her refusal to sign the summons for questioning on the same date and by the transcript of the subsequent questioning session. According to the Government, although the second applicant had initially refused to come in for questioning, she then changed her mind and asked the officers to give her a lift. The FSB officers concerned provided statements to this effect dated 20 June 2011.

204. The Court observes that it is not disputed between the parties that at around 9 a.m. on 19 May 2011 two FSB officers arrived in a car at the entrance of the building where the second applicant was living. Nor is it disputed that they tried to serve the summons for questioning on her, as had been agreed during a telephone conversation the day before. As to the second applicant's refusal to sign the summons and the transcript of the subsequent questioning session, in either case no reasons were indicated next to the refusal, whereas the refusals do not in themselves corroborate in any way the use of force by the FSB officers. Furthermore, although the domestic courts left the second applicant's complaint of her having been forcibly brought to the premises of the Moscow Department of the FSB on 19 May 2011 without examination on procedural grounds, the Moscow City Court in its decision of 1 August 2011 established that the FSB officers had served the summons on the second applicant and then, upon her request, "had given her a lift in their car" to the Moscow Department of the FSB's premises. The Court finds no evidence that would enable it to depart from the findings of the domestic courts in this respect.

205. However, it is in any event not disputed between the parties that from approximately 9 a.m. to 10.40 a.m. on 19 May 2011 the second applicant was in a car being escorted by the FSB officers for questioning at the premises of the Moscow Department of the FSB.

206. The Court further notes that, according to the second applicant, no actual questioning took place on that date and that she was arbitrarily detained within the premises of the Moscow Department of the FSB. However, from the transcript of questioning submitted to the Court it is clear that she was questioned between 10.40 a.m. and 2.35 p.m. on 19 May 2011. There is no indication that the transcript was not drawn up in accordance with applicable procedural requirements. The fact that the second applicant refused to sign it does not entail its invalidity, since the possibility of refusal is directly provided for by Article 190 of the Code of Criminal Procedure. The second applicant's argument that the way her statements were reproduced in the transcript resembled that of a previous questioning session does not suffice to call into question the authenticity of the transcript either. The Court is therefore unable to detect any irregularity that would cast doubt on the authenticity or validity of the transcript of questioning.

207. Accordingly, the Court finds it established that between 10.40 a.m. and 2.35 p.m. on 19 May 2011 the second applicant was questioned at the premises of the Moscow Department of the FSB.

208. The next question is whether the second applicant was "deprived of her liberty" while she was escorted in the car and questioned at the Moscow Department of the FSB's premises and thus whether Article 5 is applicable. The Court reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the actual situation of the

individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance. Although the process of classification into one or the other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 depends (see *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, §§ 92 and 93, and *H.L. v. the United Kingdom*, no. 45508/99, § 89, ECHR 2004-IX). Article 5 of the Convention may apply to deprivations of liberty of even of a very short length (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts); *X. v. Austria*, no. 8278/78, Commission decision of 3 December 1979; *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 71, 22 May 2008 and *Creangă v. Romania* [GC], no. 29226/03, § 91, 23 February 2012).

209. However, the Court does not need to resolve this issue in the present case, as even assuming that the second applicant was deprived of her liberty, and that Article 5 was thus applicable, it is satisfied that this deprivation of liberty was justified under paragraph 1 (b) of this provision.

210. Under the second leg of sub-paragraph (b) of Article 5 § 1, an individual may be arrested and detained to secure "the fulfilment of any obligation prescribed by law". The Convention organs have held that this obligation should not be given a wide interpretation. It has to be specific and concrete, and the arrest and detention must be truly necessary for the purpose of ensuring its fulfilment. Moreover, in assessing whether the deprivation of liberty is justified, a fair balance has to be drawn between the significance in a democratic society of securing the fulfilment of the obligation in issue and the importance of the right to liberty. The relevant factors in drawing this balance are the nature and the purpose of the obligation, the detained person, the specific circumstances which led to his or her detention, and the length of the detention (see *Engel and Others v. the Netherlands*, 8 June 1976, § 69 *in limine*, Series A no. 22; *McVeigh and Others v. the United Kingdom*, nos. 8022/77, 8025/77 and 8027/77, Commission's report of 18 March 1981, DR 25, pp. 37-43, §§ 168-96; *Vasileva v. Denmark*, no. 52792/99, §§ 36 and 37, 25 September 2003; and *Epple v. Germany*, no. 77909/01, § 37, 24 March 2005).

211. The Court observes that between approximately 9 a.m. and 10.40 a.m. on 19 May 2011 the second applicant was escorted for questioning by FSB officers in a car and then between 10.40 a.m. and 2.35 p.m. on 19 May 2011 she was questioned as a witness in a criminal case. It is a normal feature of law enforcement for the authorities to be able to ensure the attendance of witnesses in criminal investigations (see *Iliya Stefanov*, cited above, § 71). Therefore, even assuming that the second

applicant was not free to leave either the car or the Moscow Department of the FSB's premises during this period of time, the Court does not find that it was contrary to Article 5 § 1 (b) for the FSB officers to deprive the second applicant of her liberty for a limited amount of time for the purpose of taking her statement (ibid., § 75). The Court does not perceive anything to suggest that the deprivation of the second applicant's liberty was unlawful and does not consider that by keeping her in custody for a period totalling approximately five hours and thirty-five minutes the authorities failed to strike a reasonable balance between the need to question her and her right to liberty.

212. The Court further notes that, according to the reports of the FSB officers dated 20 June 2011, during the second applicant's questioning on 19 May 2011 they received information that she had been placed on an international wanted list. Upon completion of the questioning at 2.35 p.m., they informed the second applicant and the investigator accordingly, contacted the Meshchanskiy District Office of the Interior and transferred procedural documents received from the Tajikistani authorities to it. The second applicant was then escorted to the Department of the Interior's premises so that it could proceed with her detention (see paragraphs 57-58 above).

213. It is therefore not disputed by the parties that after 2.35 p.m. on 19 May 2011 the second applicant remained detained by the Moscow Department of the FSB and was then escorted to the premises of the Meshchanskiy District Office of the Interior.

214. The Court further notes that according to the record of arrest of 19 May 2011 the second applicant was arrested at 7.30 p.m. on that date by officers of the Meshchanskiy District Office of the Interior. The second applicant wrote down on the record that she disagreed with her detention because she had been deprived of her liberty since 9 a.m.

215. Accordingly, the Court finds it established that between 2.35 p.m. and 7.30 p.m. on 19 May 2011 the second applicant was deprived of her liberty. It further observes that her detention after 2.35 p.m. was no longer justified under Article 5 § 1 (b) of the Convention because it did not concern any "obligation prescribed by law". Rather, it concerned her being placed on an international wanted list as a suspect and thus fell under Article 5 § 1 (f) of the Convention, while under domestic law her deprivation of liberty was regulated by Articles 91 and 92 of the Code of Criminal Procedure.

216. The Court observes that under Article 92 of the Code of Criminal Procedure a record of arrest must be drawn up within three hours of the time at which the suspect has been conveyed to the investigating authorities or the prosecutor. The Court observes that the term "conveying" (*доставление*) employed in the Code of Criminal Procedure means measures related to forced escorting of the suspect to the authority

competent to formalise the arrest, which therefore effectively constitutes deprivation of liberty as part of arrest. It notes that the information about the second applicant's being placed on the international wanted list came to light during her questioning in the FSB premises, and the Court is prepared to accept that her deprivation of liberty after 2.35 p.m. constituted her being conveyed to the Meshchanskiy District Office of the Interior, which in this case was a competent authority for the purposes of Article 92.

217. Neither party provided the Court with information as to the exact time at which the second applicant was brought to the Meshchanskiy District Office of the Interior's premises. At the same time, it was not alleged that the record of arrest of 19 May 2011 was not drawn up within three hours of the relevant time. Accordingly, she must have been brought there between 4.30 p.m. and 7.30 p.m. The overall duration of her being conveyed to the competent authority was thus between one hour and fifty-five minutes and four hours and fifty-five minutes.

218. The Court notes that the Constitutional Court pronounced on the duration of conveying within the framework of administrative proceedings in decision no. 149-O-O of 17 January 2012 (see paragraphs 107-108 above). It stated that no precise time-limits for conveying were provided in the relevant legislation as it would be impossible to either foresee or take into account the particular circumstances likely to affect its duration, including such factors as distance, the availability of transport, traffic, meteorological conditions and the person's state of health. The Constitutional Court concluded that the duration of the measure must be reasonable overall, as the restriction of the person's rights imposed by conveying should be proportionate to the real necessity of such a restriction in view of the circumstances of the case.

219. In the Court's view, similar considerations are applicable to conveying in the course of criminal proceedings. Accordingly, in the absence of precise time-limits in the Code of Criminal Procedure, whether the duration of conveying was proportionate should be established on the basis of the particular circumstances of the case.

220. In the case at hand the FSB officers had to contact the Meshchanskiy District Office of the Interior, provide information about the situation and transmit the relevant documents, arrange for the second applicant's transportation and actually ensure her being taken to the Department of the Interior's premises. Even assuming that the conveying took the maximum length of time outlined above, namely four hours and fifty-five minutes, the Court is unable to find it disproportionate given the number of tasks the FSB officers had to perform and the inherent constraints related to transportation in a city as big and busy with traffic as Moscow. Accordingly, the Court does not find any irregularities in this respect.

221. The Court further notes, however, that the actual time of the second applicant's detention was indicated in the record of arrest as 7.30 p.m. on 19 May 2011, the time when the record was drawn up. However, taking into account the provisions of Articles 5 § 15 and 92 of the Code of Criminal Procedure and decision no. 1902-O of the Constitutional Court of 18 October 2012, the actual time of arrest is the time at which a person is actually deprived of his or her liberty. In the present case this was 2.35 p.m., when the second applicant's questioning as a witness was completed and her detention ceased to be justified by Article 5 § 1 (b) of the Convention, but she became deprived of her liberty as a suspect.

222. The Court must therefore establish whether the failure of the domestic authorities to indicate the correct time of the second applicant's arrest in the record of arrest gives rise to issues under Article 5 of the Convention.

223. The Court observes that the requirement to indicate the actual time at which the individual was deprived of his or her liberty in a record of arrest constitutes an important safeguard against arbitrariness. Not only does it serve the purpose of recording the fact of deprivation of liberty, but it is of direct relevance to Article 94 § 3 of the Code of Criminal Procedure, which provides that a suspect can only be detained for up to forty-eight hours without a court order.

224. Turning to the circumstances of the present case, the Court observes, firstly, that while still at the FSB premises the second applicant was clearly apprised by the authorities of their intention to arrest her on the ground of her being placed on the international wanted list. Furthermore, from the fact that her lawyer was present at the drawing up of the record of arrest, it follows that she was able to contact the latter (see, by contrast, *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 165, 9 November 2010). Secondly, the second applicant's detention as a preventive measure was ordered by the Meshchanskiy District Court of Moscow on 20 May 2011. Therefore, in any event, less than forty-eight hours elapsed between the actual time of the second applicant's arrest at 2.35 p.m. on 19 May 2011 and the court's ordering her detention (see, by contrast, *Farhad Aliyev*, cited above, § 166). Taking into account the above elements, the Court considers that, regrettable as it is, the authorities' failure to accurately indicate the time of the second applicant's deprivation of liberty in the record of arrest did not entail a breach of procedural guarantees against arbitrary detention.

225. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 5 § 1 (f) OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

226. The second applicant complained that her arrest and ensuing detention with a view to extradition had been in breach of Article 5 § 1 (f) of the Convention.

### A. The parties' submissions

227. The Government contested this argument. They stated that the second applicant's detention with a view to extradition had been fully in accordance with the procedure and time-limits provided in domestic law. The second applicant and her lawyer had been present at all court hearings concerning her detention. Accordingly, the second applicant's detention had been in compliance with both domestic law and Article 5 § 1 (f) of the Convention.

228. She alleged that, when authorising her detention on 20 May 2011, the Meshchanskiy District Court of Moscow had breached the requirements of Article 61 of the 1993 Minsk Convention, as no documents had been submitted by the Tajikistani authorities confirming their intention to seek her extradition. In addition, neither this order nor the extension order of 13 July 2011 had indicated whether any measures with a view to her extradition were being taken. The second applicant also averred that her detention from 27 June to 6 July 2011 had been in breach of Article 62 of the 1993 Minsk Convention, and therefore unlawful under Article 5 § 1 (f) of the Convention. She pointed out that she had been detained on 19 May 2011, and therefore the forty-day period during which an extradition request should have been received by the Russian authorities, as provided in Article 62 of the 1993 Minsk Convention, had expired on 27 June 2011. However, the Government had not submitted any information as to when the extradition request had actually been received. She had only learned of the request upon receiving the Prosecutor's Office's letter of 6 July 2011, in which the date of receipt of the request had not been indicated.

### B. The Court's assessment

#### *1. Admissibility*

229. The Court observes at the outset that the complaint relating to the lawfulness of the second applicant's detention after 19 May 2011 was first raised before the Court on 25 January 2012.

230. Thus, as regards formal legality, the Court is only competent to examine the period of detention ordered by the district court on 13 July

2011 and reviewed on appeal on 1 August 2011 (see *Shakurov*, cited above, § 152).

231. Therefore, the Court will examine the lawfulness of the second applicant's detention from 13 July 2011 to 16 November 2011, when she was released. The Court considers that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

232. As regards the length of the uninterrupted period of the second applicant's detention during the extradition proceedings from 19 May to 16 November 2011, the Court considers that this period of detention constitutes a continuing situation in so far as the issue of diligence under Article 5 § 1 (f) of the Convention is concerned. Therefore, the Court will assess this period of detention in its entirety (see, *mutatis mutandis*, *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009; *Gubkin v. Russia*, no. 36941/02, § 134, 23 April 2009; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007, in the context of Article 5 § 3 of the Convention). The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

*2. Merits*

**(a) As regards the lawfulness of the second applicant's detention from 13 July to 16 November 2011**

*(i) General principles*

233. 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*, cited above, § 162). Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which people may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (ibid, § 163).

234. The Court also reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006). The words "in accordance with a

procedure prescribed by law" in Article 5 § 1 do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV). Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see, among others, *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II).

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

235. The Court observes at the outset that, unlike in a number of previous Russian cases concerning detention with a view to extradition (see, among many others, *Dzhurayev v. Russia*, no. 38124/07, § 68, 17 December 2009), the second applicant's detention was ordered by a Russian court rather than by a foreign court or a non-judicial authority, similarly to the recent case of *Shakurov*, cited above, §§ 157-61. As to the period under review, the Court points out that from 13 July to 16 November 2011 the second applicant's detention was regularly extended by a competent court, in compliance with the time-limits set in Article 109 of the Russian Code of Criminal Procedure, and in conformity with the ruling of the Supreme Court of Russia (see paragraph 112 above, and, for comparison, *Nasrulloyev v. Russia*, no. 656/06, §§ 73-75, 11 October 2007). The lawfulness of such detention was reviewed and confirmed by the appeal court.

236. The Court also observes that the district court specified a time-limit in the detention orders, relying on Article 109 of the Code of Criminal Procedure. Both the district and the regional courts assessed the lawfulness of the second applicant's detention and various circumstances which were considered to be relevant to it, including the progress of the extradition proceedings.

237. Neither before the domestic courts nor before this Court did the second applicant put forward any other argument that would prompt the Court to consider that her detention was in breach of Article 5 § 1 of the Convention. Under such circumstances, the Court does not find that the domestic courts acted in bad faith, that they neglected to apply the relevant legislation correctly or that the second applicant's detention during the relevant period of time was unlawful or arbitrary.

238. There has therefore been no violation of Article 5 § 1 (f) of the Convention as regards the lawfulness of the second applicant's detention from 13 July to 16 November 2011.

**(b) As regards the length of the second applicant's detention with a view to extradition**

239. The Court notes that the period complained of lasted five months and twenty-nine days. It started running on 19 May 2011, when the second

applicant was detained with a view to extradition, and ended on 16 November 2011, when she was released. For the reasons presented below, the Court does not consider this period to be excessive.

240. The Court notes that between 19 May and 16 November 2011 the second applicant was interviewed; the Federal Migration Service confirmed that she neither had Russian citizenship nor had ever sought to register her residence, but that she was registered in the migration register as a foreign national living in Moscow; and the Russian Prosecutor General's Office received the extradition request from its Tajikistani counterpart. Furthermore, the second applicant's asylum and refugee claims were examined by the Federal Migration Service. As it has not been alleged that these proceedings were not a genuine part of the extradition process, they should be taken into account when assessing whether the extradition proceedings were in progress (see *Shakurov*, cited above, § 165).

241. Having regard to the above, the Court concludes that throughout the period between 19 May and 16 November 2011 the extradition proceedings were in progress and in compliance with domestic law (see *Shakurov*, cited above, § 170).

242. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the present case.

243. There has therefore been no violation of Article 5 § 1 (f) of the Convention on this account.

## VII. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

244. The second applicant further complained under Articles 5 § 4 and 13 of the Convention that she had been deprived of effective remedies by which she could have challenged her detention. The Court shall examine the complaint under Article 5 § 4, as it is *lex specialis* of Article 13 as regards detention.

### A. The Parties' submissions

245. The Government submitted that, as regards the availability of effective judicial review of detention pending extradition, it had been open to the second applicant to lodge a complaint under Article 125 of the Code of Criminal Procedure and she had availed herself of this opportunity. Such a complaint had constituted an effective remedy, as it had been within the competence of the court to order her release should her detention have been found to be unlawful. The Government referred to an example from domestic practice where a court had ordered the release of a person detained pending extradition because the prosecutor's detention order had been found to be unlawful. Accordingly, in the Government's view, the remedies

available had complied with Article 5 § 4 of the Convention. Furthermore, according to the Government, if it had been established that the second applicant had been unlawfully subjected to preventive measures on 19 May 2011, she would have been entitled to compensation under Article 133 of the Code of Criminal Procedure. The second applicant's appeal against the order of 20 May 2011 had been examined by the Moscow City Court during the hearing on 8 June 2011, which was clear from the transcript of the hearing. That court's examination of her appeal had not been mentioned in the decision of 8 June 2011 due to a clerical mistake. The second applicant's appeal against the order of 13 July 2011 had only reached the Meshchanskiy District Court shortly before the appeal hearing, and the Moscow City Court had not had any information about it having been submitted. Accordingly, the court had only examined the appeal submitted by the second applicant's lawyer. Her lawyer, who had been present at the hearing, had not informed the court of the existence of another statement of appeal.

246. The second applicant maintained the complaint. She averred that the domestic courts had failed to properly examine her complaint concerning her allegedly unacknowledged detention between 9 a.m. and 7.30 p.m. on 19 May 2011. She also argued that Article 133 of the Code of Criminal Procedure could not be considered an effective remedy as it only provided for the right to redress, including compensation of pecuniary damage, in respect of those either charged with a criminal offence or unlawfully subjected to measures of restraint. However, in her case both the Prosecutor's Office and the Meshchanskiy District Court of Moscow had found that there had been no breaches of the law. Furthermore, the second applicant insisted that she had not had the opportunity to challenge her detention between 27 June and 6 July 2011, which she alleged to have been in breach of domestic law. She further contested the Government's submissions that her appeal against the arrest order of 20 May 2011 had been examined, as there had been no reference to it whatsoever in the Moscow City Court's decision of 8 June 2011. As for the Government's comments on the Moscow City Court's failure to examine her appeal against the decision of 13 July 2011 ordering the extension of her detention, she claimed, firstly, that the assertion that the statement of appeal had been belatedly received was unfounded as, according to the postal stamp on the envelope, it had been received by the Meshchanskiy District Court of Moscow on 26 July 2011, four days prior to the appeal hearing. Secondly, even assuming that the appeal statement had indeed reached the appeal court with delay, Article 389 of the Code of Criminal Procedure specifically provided that in such a situation the appeal court was to examine the case again. The second applicant finally noted that her lawyer's submissions had not been duly examined by the appeal court during the hearing on 1 August 2011. Consequently, in her view, Article 5 § 4 of the Convention had been violated on numerous accounts.

## B. The Court's assessment

### *1. Admissibility*

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

### *2. Merits*

#### (a) General principles

248. See paragraphs 174-81 above.

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

249. The Court observes that, similarly to the first applicant, the second applicant's detention was ordered by a Russian court rather than by a foreign court or a non-judicial authority. There is no doubt that this court satisfied the requirement of a "court" mentioned in Article 5 § 4 of the Convention (see paragraph 181 above).

250. It further observes that the initial detention order was issued at the request of a prosecutor's office and that in that order the court set a time-limit on the second applicant's detention, which was amenable to extension. Before the expiry of the time-limit, that detention was subsequently subject to extension requests from a prosecutor's office, and was extended on 13 July 2011, also for a specific period. The second applicant was eventually released upon the refusal of the extradition request, having spent five months and twenty-nine days in detention.

251. As it appears that the first-instance court was able to conduct an assessment of the conditions which, according to paragraph 1 (f) of Article 5, are essential for detention with a view to extradition to be "lawful" (see paragraphs 174 and 178 above), the Court considers that the above proceedings amounted to a form of periodic review of a judicial character (see paragraph 179 above).

252. Furthermore, it was open to the second applicant under Russian law to appeal against the detention orders to a higher court, which were empowered to review them on various grounds. She appealed against the detention orders of 20 May and 13 July 2011. The appeals were examined on 8 June and 1 August 2011 respectively. The mere fact that the second applicant's appeals were dismissed is not sufficient to conclude that the remedy was devoid of any prospects of success. As with the proceedings before the court of first instance, it appears that the appellate court was empowered to assess the lawfulness of the second applicant's detention with a view to extradition.

253. Having regard to the foregoing, as well as to the considerations set out in paragraph 186 above with respect to the similar complaint made by the first applicant which are likewise relevant, the Court finds that the second applicant was thereby enabled to "take proceedings" by which the lawfulness of her detention could be effectively assessed by a court.

254. As regards particular procedural defects alleged by the second applicant, the Court is unable to detect any procedural irregularities that would call into question the effectiveness of judicial review available to her.

255. There has therefore been no violation of Article 5 § 4 of the Convention in this respect.

## VIII. RULE 39 OF THE RULES OF COURT

256. The Court recalls that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until: (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

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

## IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

258. 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

259. The applicants claimed 30,000 euros (EUR) in respect of non-pecuniary damage caused by the first applicant's feelings of fear, frustration, distress and anguish as a result of the high risk of torture if extradited to Tajikistan, the continuing period of allegedly unlawful detention, the wording of the courts' decisions, and the second applicant's mental distress in connection with the arbitrary deprivation of her liberty and allegedly unlawful continued detention.

260. The Government considered the amount claimed to be excessive. They stated that, should the Court find that the applicants' rights had been

violated, the fact of finding a violation would in itself constitute sufficient just satisfaction. The Government referred to cases of *Silin v. Russia*, no. 3947/03, 24 April 2008, and *Ryakib Biryukov v. Russia*, no. 14810/02, ECHR 2008.

261. As regards the first applicant, the Court notes that no breach of Article 3 of the Convention has as yet occurred. Therefore, it considers that its finding regarding Article 3 in itself amounts to adequate just satisfaction for the purposes of Article 41.

262. As regards the second applicant, since no violation of the Convention was found in respect of her, the Court makes no award of just satisfaction.

### B. Costs and expenses

263. The applicants also claimed EUR 6,800 for costs and expenses incurred before the domestic courts and the Court. The amount claimed covers fifty-two hours of work by Ms N. Yermolayeva at the hourly rate of 100 EUR, in total EUR 5,200, for representing the applicants before the Court and sixteen hours of work by Ms Y.Z. Ryabinina at the hourly rate of 100 EUR, in total EUR 1,600, for representing the applicants before the domestic courts and the Court. The applicants enclosed an agreement for legal representation dated 13 July 2011 and invoices for the amounts claimed.

264. The Government stated that the amounts claimed were excessive. They pointed out that in order for costs and expenses to be included in an award under Article 41 of the Convention it must be established that they were actually and necessarily incurred and reasonable as to quantum (relying upon *Rotaru v. Romania* [GC], no. 28341/95, § 86, ECHR 2000-V).

265. The Court notes that, should it find a violation of the Convention in respect of an applicant, it may make an award for costs and expenses. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, taking into account that no violation of the Convention had been found in respect of the second applicant and regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the first applicant the sum of EUR 3,400 covering costs under all heads, plus any tax that may be chargeable to him on that amount.

### C. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the first applicant's complaints under Articles 3 and 13, Article 5 § 1 (f) concerning the overall length of his detention pending extradition and Article 5 § 4 concerning the availability of effective judicial review of his detention pending extradition and the second applicant's complaints under Article 5 § 1 (f) and § 4 concerning the lack of effective judicial review of her detention pending extradition admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention in respect of the first applicant;

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention in respect of the first applicant;

6. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention in respect of the second applicant;

7. *Holds* that there has been no violation of Article 5 § 4 of the Convention in respect of the second applicant;

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

9. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, EUR 3,400 (three thousand four hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 20 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President