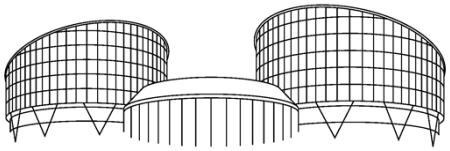

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF T.K. AND OTHERS v. LITHUANIA

(Application no. 55978/20)

JUDGMENT

Art 3 (procedural) • Expulsion (Tajikistan) • Refusal of asylum requests and intended removal of Tajik family without an adequate assessment of their claims as to the risks faced on their return given the first applicant's ordinary membership in a banned opposition political party • Failure to examine claims as to existence in Tajikistan of a practice of ill-treatment of ordinary party members • Removal without a fresh assessment of applicants' claims would entail a breach

STRASBOURG

22 March 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of T.K. and Others v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Diana Sârcu, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 55978/20) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Tajik nationals, Mr T.K. ("the first applicant"), Ms O.O. ("the second applicant") and their four children ("the remaining applicants"), on 23 December 2020;

the decision to give notice of the application to the Lithuanian Government ("the Government");

the decision not to have the applicants' names disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate interim measure to the respondent Government under Rule 39 of the Rules of Court;

the parties' observations;

Having deliberated in private on 22 February 2022,

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

INTRODUCTION

1. The case concerns the decisions by the Lithuanian authorities to refuse requests for asylum lodged by the applicants and to remove them to Tajikistan. The applicants complained that their removal would put them at a risk of ill-treatment because of the first applicant's membership in a banned opposition political party.

THE FACTS

2. The applicants' details are set out in the appendix. They were represented before the Court by Ms I. Ivašauskaitė, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

I. THE FIRST SET OF ASYLUM PROCEEDINGS

4. The applicants arrived in Lithuania in January 2019 and applied for asylum. They submitted that they faced a risk of persecution in their country of origin because of the first applicant's political activities – he was a member of the Islamic Renaissance Party of Tajikistan (hereinafter "the IRPT" or "the party"), an opposition political party that had been banned and declared a terrorist organisation in Tajikistan.

A. Procedure before the Migration Department

5. The first and second applicants were interviewed by an officer of the Migration Department under the Ministry of the Interior (hereinafter "the Migration Department") in the Tajik language, through an interpreter.

6. The first applicant was interviewed on 25 April and 23 May 2019. He stated that he had joined the IRPT in 2007, and that during the period of 2012-2014 he had been the chair of the party committee in his village. His duties had consisted of admitting new members and distributing the party newspaper, and he had received a monthly salary. However, there had been only one other party member in the village, and the applicant had not known him personally because the latter had been afraid to disclose his identity. In 2013 the authorities had intensified the pressure exerted against members of the IRPT, and many had left the party because of threats that they had received. Almost daily, police officers had ordered him to come to a school or a medical facility, where they had pressured him to leave the party; on many occasions they had also shown up at his workplace. In 2014 an acquaintance of the applicant, a police officer, had told him that if he did not leave the party the police might plant a gun on him and send him to prison. Soon after that he had decided to leave the village, and in 2014 he and his family had moved to Dushanbe.

7. The first applicant stated that, while living in Dushanbe, he had gone to a few party meetings but had not been particularly active. However, in 2015, at the request of the regional chairman, he had agreed to stand as a candidate in elections to the regional parliament. Soon after his candidacy had been announced, he and his relatives had started receiving calls from the regional mayor's office, trying to persuade him to withdraw his candidacy. He had also heard that the Tajik security services, to which he referred to as "the KGB", had been asking about him, and for several months he had stayed at home, in hiding. In September 2015 the IRPT had been declared a terrorist organisation, and the authorities had ordered all members to turn in their membership cards to the security services. The first applicant had submitted a resignation letter and had turned in his membership card to the village party chairman. He had also asked his wife, the second applicant, to go to their house in the village and burn all the documents related to his participation in

the party's activities. (The first applicant later stated that he had submitted the resignation letter only to protect himself and that the IRPT considered such forced resignations to be invalid – see paragraph 18 below). In January 2017 he had left Tajikistan for Russia, and the other applicants had joined him there some time later.

8. The first applicant further stated that, while living in Russia, he had not been in touch with any other party members and had not received any threats. However, he had read online that several members of the IRPT had been arrested in Russia and taken to Tajikistan. As a result, the applicants had changed their place of residence several times and had eventually decided to seek protection in Europe. In January 2019 they had gone to Belarus by bus, and from there they had taken another bus to the Lithuanian border, where they had lodged their asylum applications. The first applicant believed that, if they were returned to Tajikistan, he would be arrested and imprisoned because of his refusal to renounce the IRPT.

9. The second applicant was interviewed on 25 April and 28 June 2019. She asserted that she and her family had left Tajikistan because of her husband's political activities. However, he had not told her much about his activities or the threats that he had received; therefore, she was unable to give many details. The second applicant also stated that she did not wish to return to Tajikistan because she and her family were Muslims, and the authorities harassed women who wore the hijab; she added that on many occasions she and her daughters had been told by various officials to take off their hijabs or had been refused service for wearing them.

10. In April 2019 the Migration Department contacted the chairman of the IRPT, who was based in Austria, asking whether the first applicant had ever been a member of the party. The chairman replied that the first applicant had not been a member.

11. In June 2019 the Migration Department received another letter from the IRPT chairman, stating that the first applicant was indeed a member of the party. The letter explained that it was difficult for party leaders who were in exile to contact those who were still in Tajikistan and to obtain precise information about party members. However, the head of one regional branch had recently been released from prison and had confirmed that the first applicant had indeed been a member since 2007.

12. The applicants provided to the Migration Department statements from several individuals attesting that the first applicant was a member of the IRPT. They also submitted a photograph which allegedly showed him participating in a party meeting. It depicted two prominent members of the IRPT and many other men standing behind them in a meeting room – the applicants stated that the first applicant could be seen among them in the photograph.

13. In July 2019 the Migration Department adopted a decision refusing to grant the applicants asylum (refugee status or subsidiary protection). It accepted that the first applicant had probably joined the IRPT in 2007.

However, it did not appear that he had been particularly active – although he had stated that he had attended several party meetings, he had not made any speeches during those meetings and had been unable to indicate what issues had been discussed at them; he did not know the procedure for electing the head of the party, the address of the party headquarters in Dushanbe, or the name of the party chairman in his region. Moreover, in 2015 he had terminated his membership of the IRPT (see paragraph 7 above), and according to an announcement posted on the official website of the Ministry of Interior of Tajikistan, those who voluntarily left the party and ceased their cooperation with it no longer risked criminal liability.

14. The Migration Department found that there had been multiple reported cases where active or high-ranking members of the IRPT had been arrested, tried in unfair criminal trials and sentenced to life imprisonment or other excessive punishments, and that their families had been subjected to interrogations, imprisonment, or other unjustified restrictions. However, the statements given by the first applicant describing the threats that he had allegedly received (see paragraphs 6-8 above) had not corresponded to the typical actions of the Tajik authorities against political opponents. In particular, the first applicant had never been summoned to a police station or been charged with any crimes or arrested; nor had an official search for him ever been announced. His fear of persecution had been based essentially on rumours and publicly available information, but not on his personal experience or threats received directly from officials. The Migration Department also asserted that the first applicant's account had not been corroborated by the second applicant. Furthermore, it noted that, while living in their country of origin, the applicants had been able to work, their children had gone to school, and they all had obtained passports and left the country legally, without any obstacles, which demonstrated that the Tajik authorities had not been interested in their whereabouts.

15. Accordingly, the Migration Department concluded that the account given by the first applicant did not credibly demonstrate that the Tajik authorities had had any interest in him or had sought to arrest him; moreover, the available country-of-origin information did not give grounds to believe that an ordinary former member of the IRPT, who had not been active in the party and no longer participated in its activities, would be at risk of persecution.

16. Lastly, the Migration Department found that the second applicant's fear that she would not be able to freely manifest her religion and to wear the hijab in her country of origin (see paragraph 9 above) was well-founded; however, such restrictions did not attain the requisite threshold of severity to amount to persecution or inhuman or degrading treatment.

B. Court proceedings

1. The Vilnius Regional Administrative Court

17. The applicants lodged an appeal against the decision of the Migration Department. They argued that it was not clear on what criteria the latter had relied when deciding that the first applicant had not been an active member of the IRPT. They emphasised the fact that he had been the chair of the village party committee, had stood as a party candidate in regional elections, and had been paid for his work for the party (see paragraphs 6 and 7 above). They argued that his active and prominent role was also demonstrated by his participation in an event involving the leaders of the IRPT (see paragraph 12 above).

18. The applicants further submitted that many members had left the IRPT in 2015 because they had come under pressure from the State authorities, but that the party leadership considered the forced withdrawals of membership to be null and void. Therefore, the first applicant continued to be a member of the IRPT, which had been declared a terrorist organisation in Tajikistan, and risked persecution and ill-treatment solely by virtue of his membership.

19. The applicants submitted that the Tajik authorities committed systematic violations of human rights and persecuted real or perceived political opponents and their families. According to publicly available information, even former and non-active members of the IRPT were persecuted, subjected to criminal prosecution and threatened with torture; to that effect, the applicants relied on various press articles and reports published by non-governmental organisations (see paragraph 20 below) – they complained that the Migration Department had not collected and had not assessed that information. They compared the situation of the first applicant to that of several other individuals who had been mentioned in news articles and had been members of the party, had stood as candidates in local elections, and had been forced to leave the party in 2015, but who had subsequently been detained or otherwise persecuted.

20. The applicants referred to the annual reports issued by Freedom House in 2017, 2018 and 2019, according to which former members of the IRPT continued to be harassed, and to the 2019 annual report of the National Committee for the Release of Political Hostages and Prisoners of Tajikistan, which listed multiple cases of persecution, abduction and torture of former members of the IRPT. They also referred to several news articles, including the following:

Tajikistan's banned Islamic party claims former members hit by "wave of arrests" (online article by Radio Free Europe/Radio Liberty, 11 June 2018)

> "The Islamic Renaissance Party (IRPT) says it halted its activities in Tajikistan nearly three years ago, when it was outlawed by the Supreme Court. What hasn't stopped, the Islam-rooted party claims, is the government's persecution of its followers.

In a statement released on June 11, the IRPT accused Tajik authorities of targeting "the opposition and especially the IRPT members" with a "new wave of arrests and retaliation," a claim swiftly rejected by Dushanbe.

The IRPT statement said that more than 100 former party members have been detained since the beginning of 2017 – two of them, it added, died in custody "due to pressure and torture." ...

According to the statement, 27 of the detained were given prison sentences ranging from three to 25 years. Most were charged with affiliation with the outlawed Salafi movement or for having links to the IRPT, which was banned in 2015, the statement said.

Among the 27 listed was Alijon Sharipov, a 32-year-old man with no party affiliation who in May was sentenced to nine-and-half years in prison for watching, liking, and sharing information about IRPT gatherings on social media. Sharipov was found guilty of "calling for extremism, calling for the overthrow of the government, and working for banned political parties."

Most of the more than 100 allegedly detained were released, the IRPT statement said, and five remain in custody in Dushanbe's police detention center while their cases are being processed ..."

"We Have Succeeded in Surviving": An Interview With Exiled Tajik Islamic Party Leader Muhiddin Kabiri (online article by Radio Free Europe/Radio Liberty, 27 January 2019)

"...

[Question]: The IRPT was banned toward the end of 2015 and declared an extremist group in Tajikistan. You and some others were not in the country at that time, but thousands of IRPT supporters remain there. What can you say about their situation? Are you able to maintain communication with some of them? ...

Kabiri: Immediately after the banning of the party, we issued a statement about halting our activities not only in Tajikistan but across the post-Soviet space. We stated that no one has the right to act in the name of our party in these countries until the next decision. That way, we helped thousands of our members and supporters who did not succeed in getting out to avoid investigations and pressure from the authorities.

...

[The Tajik authorities] often detained people and, after receiving a certain sum of money, released them. And the more intractable or influential figures were thrown in prison on the basis of fictitious charges and forced to make statements against the party. Some of those who were investigated had stopped their political activities before the ban on the party.

The most recent example is Naimjon Samiev, the former head of the party's branch in the Sughd region, who left for Russia in 2014 and ceased his activities. In November 2018, they arrested him in Chechnya at the request of Tajik authorities and secretly, without a trial, brought him to Tajikistan.

Many migrants who earlier cooperated with us in Russia were forced to sign a statement at the embassy in Moscow in 2015 that they were ceasing their activities for the party. But this did not save them, and just the other day several people were forced to post video statements in which they said they were not members of our party. This shows that the repressive mechanism is still working ..."

21. On 11 November 2019 the Vilnius Regional Administrative Court dismissed the applicants' appeal and upheld the decision of the Migration Department. It found that the Migration Department had carried out a thorough assessment of the risks that the applicants might face in their country of origin, but that their assertions regarding the risk of persecution had been only hypothetical and not substantiated by any evidence.

2. The Supreme Administrative Court

22. The applicants lodged an appeal against the decision of the Vilnius Regional Administrative Court. They contended that the first applicant had provided a consistent and detailed account of his participation in the activities of the IRPT, and that therefore, under the relevant law, his active role had to be considered as an established fact (see paragraph 45 below). Moreover, they argued that neither the Migration Department nor the first-instance court had clarified the criteria that had been used to assess whether the first applicant's role in the party had been sufficiently active. In addition, they submitted that the Migration Department and the first-instance court had failed to properly assess the country-of-origin information, which showed that even former and non-active members of the IRPT were at risk of persecution (see paragraph 20 above).

23. The applicants provided to the Supreme Administrative Court a written statement by the office of the chairman of the IRPT, issued in January 2020, which reiterated that the first applicant was a party member. It also stated that Tajikistan's human rights record had deteriorated dramatically over the previous three years, and that numerous international human rights organisations had expressed their concern over the actions of the Tajik government against the IRPT. The applicants asked the court to add the document to the case file as evidence, since they had not had a possibility to submit it earlier.

24. On 26 February 2020 the Supreme Administrative Court dismissed the applicants' appeal and upheld the decision of the lower court in its entirety. It found that the new evidence submitted by the applicants (see paragraph 23 above) did not change that court's conclusion because it had not been demonstrated that the first applicant had been an active member of the party or one of its leaders.

II. THE SECOND SET OF ASYLUM PROCEEDINGS

25. Following the decision of the Supreme Administrative Court, the applicants were ordered to leave Lithuania. However, they did not do so, and in May 2020 they lodged new asylum applications.

A. Procedure before the Migration Department

26. The first and second applicants were interviewed on 3 June 2020, in the Tajik language, through an interpreter. They were asked to indicate any new circumstances which had not been mentioned during the first set of asylum proceedings or which had occurred subsequently.

27. The first applicant stated that, in addition to his previously described activities with the party committee in his home village (see paragraph 6 above), he had campaigned on behalf of an opposition candidate in the presidential election of 2013 and had collected signatures in support of her in several villages. He and others involved in the campaign had been subject to surveillance by the police and the security services. That same year he had been summoned to the local "KGB office", where he had been questioned about his political activities and pressured to leave the party – an incident which, he stated, he had forgotten to mention during the previous interviews. He also gave the names of several other party members who might be able to confirm his active role in the party. He further stated that, for reasons of security, he had not told anyone much about his political activities – not even his wife.

28. During the interview, on several occasions the first applicant stated that other opposition activists and his former colleagues in the party – including those who had left the party after receiving threats from the authorities – had been imprisoned and ill-treated. He believed that he would suffer the same fate if he were to be returned to Tajikistan because they had all been involved in similar activities. However, the interviewing officer told him that the Migration Department did not need information concerning other persons – only information concerning the applicant himself, because each situation was different.

29. In addition, both the first and second applicants submitted that they might be at a higher risk of ill-treatment in Tajikistan because they had lived in Europe for some time. They stated that several opposition activists had been taken to Tajikistan from Russia, and that those who had left Tajikistan and had subsequently returned had been given long prison sentences.

30. In June 2020 the Migration Department refused to grant the applicants asylum. It held that they had not provided any significant new information that had not been known when their first asylum applications had been examined. It also deemed that the accounts that the applicants had given during the two sets of proceedings had been inconsistent and that they had been unable to explain the discrepancies – particularly that concerning the extent of the first applicant's activities within the party and the circumstances surrounding his encounters with law-enforcement officials. Be that as it may, the fact that the applicants had allegedly remembered some new details did not warrant the Migration Department reaching a different conclusion than it had before (see paragraphs 13-15 above). Moreover, even though the first

applicant had provided more detailed information regarding the persecution of other members of the IRPT, that information was publicly available and it did not concern him; therefore, it could not constitute grounds for granting the applicants asylum.

31. The Migration Department again stated that only active or high-ranking members of the IRPT were at risk of persecution in Tajikistan. It observed that the first applicant was not sought by the Tajik authorities – his name was not included in the list of wanted persons published on the websites of the Ministry of the Interior or the Financial Monitoring Department of the National Bank of Tajikistan, nor had the Tajik authorities requested, via Interpol, the initiation of an international search for the first applicant Therefore, in view of his limited participation in the IRPT's activities, and in the absence of any demonstrable interest on the part of the authorities in his whereabouts, the Migration Department concluded that his fear of persecution could not be considered well-founded.

32. The Migration Department further noted that Tajik law did not provide any penalties in respect of Tajik nationals who left the country to live abroad. Although the Tajik government sought to extradite opposition activists or journalists living in other countries, that was motivated by their active and public criticism of the government, and not by the mere fact of them living abroad. Accordingly, the Migration Department considered that such a risk did not arise in the applicants' case. Although it was likely that, upon their return, the applicants would be questioned by the authorities in order to find out "where they had been and with whom they had had contacts", there were no grounds to believe that that in itself would amount to persecution or to a violation of their rights.

33. The decision included an order to remove the applicants to Tajikistan.

B. Court proceedings

1. The Vilnius Regional Administrative Court

34. The applicants lodged an appeal against the decision of the Migration Department. They argued that the Migration Department had failed to properly assess the relevant country-of-origin information: under the law, it had to take into account, *inter alia*, information about persons who were in a similar situation to that of the first applicant (see paragraph 45 below), but during the first set of asylum proceedings the information provided by the applicants had been disregarded; therefore, they raised and cited that information again (see paragraph 20 above). The applicants submitted that the aforementioned international reports and press articles clearly demonstrated that the Tajik authorities persecuted anyone who had links to the IRPT, and that the first applicant therefore belonged to a systematically persecuted group.

35. On 6 October 2020 the Vilnius Regional Administrative Court dismissed the applicants' appeal and upheld the decision of the Migration Department. It agreed with the latter's conclusion that the applicants had not provided any information that might demonstrate that, since the first applicant had left the IRPT in 2015 (albeit, according to him, only "formally" – see paragraph 18 above), the Tajik authorities had been looking for him, had tried to arrest him, or had shown any interest in his whereabouts. Thus, there were no grounds to believe that the applicants would be persecuted should they be returned to Tajikistan. The court also stated that the country-of-origin information on which the applicants had relied (see paragraph 34 above) had already been submitted during the first set of asylum proceedings, and in any event, it concerned the period of 2018-2019 and thus could not be considered to constitute up-to-date information about persons who were in a similar situation to the first applicant; as a result, the court refused to examine it.

2. The Supreme Administrative Court

36. The applicants lodged an appeal against the decision of the Vilnius Regional Administrative Court, arguing that the Migration Department and the first-instance court had failed to assess the available information properly and thoroughly.

37. On 16 December 2020 the Supreme Administrative Court dismissed the applicants' appeal and upheld the decision of the lower court in its entirety. It held that the first applicant's activities (see paragraphs 6 and 27 above) showed that he had been an ordinary member of the IRPT, and that he had not demonstrated that he had been an active or high-ranking member of the party. The court reiterated that the available country-of-origin information did not give grounds to believe that an ordinary member of the IRPT, who had not been very involved in its activities and who no longer participated in them at all, would be at risk of persecution by the Tajik authorities.

III. INTERIM MEASURE INDICATED BY THE COURT

38. On 23 December 2020 the duty judge granted the applicants' request for an interim measure under Rule 39 of the Rules of Court and indicated to the Lithuanian Government that they should not be removed to Tajikistan for the duration of the proceedings before the Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Law on the Legal Status of Aliens

39. Article 86 § 1 of the Law on the Legal Status of Aliens (hereinafter "the Aliens Act") provides, *inter alia*, that refugee status must be granted to an individual who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country.

40. Article 87 § 1 provides that subsidiary protection must be granted to an individual who is outside the country of his or her nationality and is unable to return to it owing to a well-founded fear of torture or inhuman or degrading treatment or punishment; the death penalty or execution; or a serious and individual threat to his or her life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

41. Article 130 § 1 provides that an alien cannot be removed to a country in which there is a risk to his or her life or liberty; or where he or she may be persecuted on the grounds of his or her race, religion, nationality, membership in a social group, or political beliefs; or from which he or she may be removed to another such country. Article 130 § 2 provides that an alien cannot be removed to a country in which he or she may be subjected to torture or cruel, inhuman or degrading treatment or punishment.

42. Article 83 § 1 states that an asylum application and any information submitted by an asylum seeker in support of his or her application must be assessed in cooperation with the asylum seeker.

43. Under Article 83 § 2, if during the assessment of an asylum application it is established that, despite the genuine efforts of the asylum seeker, the veracity of information relevant for the determination of his or her status cannot be proved by written evidence, such information must be interpreted to the benefit of the asylum seeker and the asylum application must be considered well-founded, if all the following conditions are met: (1) the asylum application was lodged as soon as possible, unless the asylum seeker provided a good reason why that had not been done; (2) the asylum seeker submitted all the information at his or her disposal and provided a good explanation for why other important information had not been submitted; and (3) the statements given by the asylum seeker are consistent and do not contradict the available general and specific information related to the case.

44. Under Article 83 § 5, the benefit of the doubt provided in Article 83 § 2 (see paragraph 43 above) will not be applied if the asylum seeker misleads the authorities or attempts to protract the asylum procedure

by his or her actions or inactivity, or tries to cheat (*sukčiauti*), or if contradictions are established in his or her account and those contradictions have a decisive impact on the granting of asylum.

B. Order on Granting and Withdrawing Asylum

45. The Order on Granting and Withdrawing Asylum in the Republic of Lithuania was issued by the Minister of Interior on 24 February 2016 and was subsequently amended several times. At the material time, its relevant parts provided:

> "99. An official of the Migration Department, when examining the merits of an asylum application, must:
>
> 99.1. conduct an interview with the asylum seeker, the goal of which is to give the latter an opportunity to provide a detailed account of the grounds on which the asylum application is based, and to allow the interviewing officer to collect the information that is necessary in order to assess whether the asylum seeker meets the criteria provided in Article 86 § 1 or Article 87 § 1 of the Aliens Act ...
>
> ...
>
> During the interview the asylum seeker is firstly given an opportunity to freely present the grounds on which the asylum application is based, providing as much detail as possible. In order to determine the reasons for the asylum seeker leaving his or her country of origin and being afraid to return to it, the interviewing officer must ask additional and clarifying questions, including questions related to the asylum seeker's life story and living conditions in the country of origin, the itinerary of his or her journey from the country of origin to Lithuania, and any previous persecution, violence or other threats to which the asylum seeker fears he may be subjected if returned to the country of origin. The asylum seeker must be given an opportunity to provide explanations regarding any missing information and (or) discrepancies or contradictions in his or her account.
>
> ...
>
> 115. ... An officer of the Migration Department ... shall assess each case individually, objectively and impartially, taking account of:
>
> 115.1. accurate and up-to-date information about the asylum seeker's country of origin, including its laws and other legal instruments and the manner in which they are applied;
>
> 115.2. the statements made and the documents provided by the asylum seeker ... ;
>
> 115.3. the individual situation and the personal circumstances of the asylum seeker, including such factors as his or her, or his or her relatives', biographical details, sex and age, as well as the treatment, in the country of origin, of persons who are in a similar situation to the asylum seeker, in order to assess, in the light of the asylum seeker's personal circumstances, whether the actions that have been taken, or may have been taken, against him or her may be deemed to constitute persecution ...
>
> ...
>
> 116. When carrying out the assessment in line with point 115, an officer of the Migration Department must follow, *inter alia*, the criteria provided in Article 83 of the

Aliens Act ... When assessing the credibility of the information provided by an asylum seeker, an officer of the Migration Department must follow the principle of the balance of probabilities – that is to say [the officer should] assess whether each important circumstance which is indicated by the asylum seeker, but which is not supported by written evidence, is more likely than unlikely. All the statements made by the asylum seeker are to be assessed rationally, comprehensively and objectively ... ; declaring them to be unreliable cannot be based on subjective assumptions or intuition. If all or some of the assertions made by the asylum seeker are refuted or found to be unreliable, they are dismissed and not assessed any further. Statements that are supported by written evidence are considered to be established facts. If the asylum seeker's account is essentially consistent and credible, the benefit of the doubt is applied – that is to say any doubts regarding statements made by [the asylum seeker] that have not been dismissed must be interpreted in the asylum seeker's favour. Relying on the established facts and other information collected in respect of the case, an officer of the Migration Department must determine whether:

116.1. the asylum seeker has a well-founded fear of being persecuted in his or her country of origin on the grounds of race, religion, nationality, or membership of a particular social group or political opinion. This assessment must follow the principle of reasonable probability – that is to say the threat does not have to be certain or more likely than unlikely, but it cannot be merely hypothetical or theoretical, or based on a slight or unlikely possibility ..."

II. UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)

46. The UNHCR Note on Burden and Standard of Proof in Refugee Claims, issued in 1998, provides, in its relevant parts:

"...

IV. Standard of Proof in Establishing the Well-Foundedness of the Fear of Persecution

...

Threshold

16. The Handbook states that an applicant's fear of persecution should be considered well-founded if he "can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable ...".

17. A substantial body of jurisprudence has developed in common law countries on what standard of proof is to be applied in asylum claims to establish well-foundedness. This jurisprudence largely supports the view that there is no requirement to prove well-foundedness conclusively beyond doubt, or even that persecution is more probable than not. To establish "well-foundedness", persecution must be proved to be reasonably possible ...

Indicators for assessing well-foundedness of fear

18. While by nature, an evaluation of risk of persecution is forward-looking and therefore inherently somewhat speculative, such an evaluation should be made based on factual considerations which take into account the personal circumstances of the applicant as well as the elements relating to the situation in the country of origin.

19. The applicant's personal circumstances would include his/her background, experiences, personality and any other personal factors which could expose him/her to persecution. In particular, whether the applicant has previously suffered persecution or other forms of mistreatment and the experiences of relatives and friends of the applicant as well as those persons in the same situation as the applicant are relevant factors to be taken into account. Relevant elements concerning the situation in the country of origin would include general social and political conditions, the country's human rights situation and record; the country's legislation; the persecuting agent's policies or practices, in particular towards persons who are in similar situation as the applicant, etc. While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor. By the same token, the fact of past persecution is not necessarily conclusive of the possibility of renewed persecution, particularly where there has been an important change in the conditions in the country of origin ..."

RELEVANT COUNTRY INFORMATION

I. UN HUMAN RIGHTS COMMITTEE

47. The UN Human Rights Committee deliberated on the third periodic report of Tajikistan at its 3,611th and 3,612th meetings, held on 2 and 3 July 2019. At its 3,635th meeting, held on 18 July 2019, it adopted the concluding observations, which provide, in the relevant part:

"31. While noting the measures taken to combat torture, including legislative reforms such as the amendments to the Code of Criminal Procedure in 2016 and the increase in the penalty for torture, the Committee remains concerned about: (a) continued reports of torture or ill-treatment of persons deprived of their liberty, particularly for the purposes of extracting confessions, including against human rights defenders and political opponents, such as in the cases of members of the banned Islamic Renaissance Party Mahmadali Hayit and Rahmatullo Rajab, and of Zayd Saidov; (b) admission of evidence obtained under torture by domestic courts, despite such evidence being inadmissible in law; (c) the absence of an independent mechanism to investigate all allegations of torture or ill-treatment and the low number of investigations and prosecutions ...

...

53. The Committee notes with concern that the ban on religious and ethnicity-based political parties, introduced by the constitutional amendments of 2016, raises issues of compatibility with the [International Covenant on Civil and Political Rights]. It remains concerned ... about politically motivated harassment of opposition members that undermines genuine political pluralism and notably about: (a) the harassment and lengthy prison sentences handed down in respect of the leaders of the Islamic Renaissance Party after unfair and closed trials ... and the imprisonment of party members following the designation of the party in 2015 as "terrorist" for their alleged involvement in the attempted violent seizure of [power]; ... and (c) serious harassment, and often imprisonment, of family members of opposition groups or of individuals associated with such groups ..."

II. HUMAN RIGHTS WATCH

48. In its 2016 annual World Report, Human Rights Watch reported on the banning of the IRPT and the actions taken by the Tajik authorities against its members:

> "Tajikistan's already poor rights record dramatically worsened in 2015, as authorities declared the country's leading opposition party a terrorist organization and banned it, imprisoned approximately 200 opposition activists, extradited and kidnapped government critics abroad, arrested several lawyers and at least one journalist, and harassed workers at nongovernmental organizations (NGOs) with onerous checks.
>
> ...
>
> In the run-up to Tajikistan's parliamentary elections, the government sought to suppress the activities of the Islamic Renaissance Party of Tajikistan (IRPT), the country's leading opposition party. In March, for the first time in Tajikistan's modern history, the party was unable to win any seats in parliamentary elections. Monitors from the Organization for Security and Co-operation in Europe said the vote was marred by ballot-stuffing and government intimidation.
>
> In June, IRPT's leader, Muhiddin Kabiri, went into exile, fearing prosecution on bogus charges. That same month, 20 videos appeared online of IRPT members saying they were "voluntarily" abandoning the party. Mahmadali Hayit, the IRPT deputy head, said members were acting under pressure from officials. In public statements and sermons, some officials and state-controlled imams have also tried to link the IRPT to Islamic terrorism.
>
> The Justice Ministry banned the party in August.
>
> In September, following clashes between government forces and militants loyal to Abduhalim Nazarzoda, the deputy defense minister, which left at least 17 fighters and 9 police officers dead, authorities arrested dozens of IRPT members, accusing them of involvement in the violence, despite a lack of evidence.
>
> By November, authorities had arrested or detained approximately 200 IRPT members as well as at least 3 lawyers – Buzurgmehr Yorov, Nouriddin Mahkamov, and Dilbar Dodadzhonova – who sought to represent the detained IRPT members. The charges brought against them for fraud appeared to be trumped-up and retaliatory for their attempts to represent the detained IRPT members ..."

49. In 2021, in its annual World Report, Human Rights Watch reported on the continued harassment of political opponents in Tajikistan:

> "In 2020, Tajik authorities continued to jail government critics, including opposition activists and journalists, for lengthy prison terms on politically motivated grounds. They also intensified harassment of relatives of peaceful dissidents abroad and continued to forcibly return political opponents from abroad using politically motivated extradition requests ...
>
> Conditions in Tajik prisons remain abysmal, activists regularly report on torture and ill-treatment.
>
> ...
>
> The European Union raised a range of concerns during its annual human rights dialogue with Tajikistan in November 2019 ... The EU noted that 'there is a shrinking

space for human rights in Tajikistan, whereby political opponents are imprisoned, and members of their families and their lawyers harassed,' ..."

50. In 2021 Human Rights Watch provided submissions for the UN Universal Periodic Review, to be held at the thirty-ninth session of the UPR Working Group on 1-12 November 2021. They read, in so far as relevant:

"... In 2016, Tajikistan's [Universal Periodic Review] took place amid a government's massive crackdown against members and supporters of a banned opposition party. Since then, the country's human rights record worsened, with the authorities continuing to harass critics and dissidents both inside and outside the country, as well as their families ...

...

In September 2018, a Dushanbe court sentenced Rajabali Komilov, the brother of Germany-based IRPT member Janatullo Komilov, to ten years in prison for alleged party membership and unspecified crimes allegedly committed during Tajikistan's 1992-1997 civil war. Komilov told Human Rights Watch that the case against his brother was brought to coerce his return to the country.

...

In March 2020, Austrian authorities extradited Hizbullo Shovalizoda to Tajikistan after denying him asylum. Shovalizoda was arrested upon arrival in Dushanbe and accused of being an IRPT member and participating in an attempt to overthrow the government. The party reported that Shovalizoda had never been a member. In June 2020 he was sentenced to 20 years in prison on vague charges of "organizing activity of an extremist organization" and "treason."

In December 2020, the Tajik authorities sentenced an 80-year old man, Doniyor Nabiev, to seven years in prison for materially helping families of political prisoners. He was charged with and found guilty of "organizing activity of extremist organization" on grounds of his previous membership in the banned IRPT.

...

In June [2021] the Khujand city court sentenced former member of the banned Islamic Renaissance Party of Tajikistan, Mirzo Hojimuhammad, also known as Mirzoqul Hojimatov, to 5 years in prison for "membership in a banned extremist organization." Hojimuhammad had moved to Russia in 2019, having quit IRPT in 2015, and upon his return to Tajikistan in February 2021 was ordered not to leave the country. In May he was arrested ..."

III. AMNESTY INTERNATIONAL

51. In 2021 Amnesty International provided submissions for the UN Universal Periodic Review, to be held at the thirty-ninth session of the UPR Working Group on 1-12 November 2021. They read, in so far as relevant (references omitted):

"18. In the period under review, dozens of members and associates of banned opposition groups, and their families sought protection abroad. IRPT and Group 24 activists in exile reported that in retaliation for their actions abroad, such as peaceful protests at international meetings and conferences, police and security services in Tajikistan threatened, detained, questioned and in some cases beat family members,

including elderly relatives and children. Local authorities publicly shamed relatives branding them as "traitors" and "enemies of the state".

19. In July 2019, at the end of their first visit to Tajikistan, the UN Working Group on Enforced or Involuntary Disappearances (WGEID), expressed concern about numerous allegations of forcible returns and enforced disappearances of IRPT and Group 24 members living in exile. At least eight were forcibly returned from Turkey, Russia and Europe to Tajikistan in 2019 and 2020 ..."

IV. FREEDOM HOUSE

52. According to a report by Freedom House entitled "Nations in Transit 2021", Tajikistan is a consolidated authoritarian regime with a democracy rating of 2/100. The relevant parts of the report read (references omitted):

"Tajikistan's authoritarian government further consolidated its 30-year grip on power in 2020 ... [President Emomali Rahmon] and his family members keep a tight rein on the economy, and politics is closed off and dangerous for the majority of citizens.

...

Critics of the regime and dissidents remain the principal targets of Tajikistan's security services, both inside and outside the country. In March, Ilhomjon Yusupov, an Islamic Renaissance Party activist, was beaten in Lithuania where he holds political asylum status. Additionally, the opposition organization Group 24 reported the kidnapping and illegal extradition to Tajikistan of its activist Shobuddin Badalov, then living in Russia. Another activist, Hizbullo Shovalizoda, was extradited from Austria following an unsuccessful asylum application. In June, he was sentenced to 20 years in prison. The trial took place behind closed doors, and Shovalizoda's relatives learned about the decision by phone from the investigator ..."

V. US DEPARTMENT OF STATE

53. The US Department of State's 2020 country report on human rights practices in Tajikistan reads, in its relevant parts:

"Significant human rights issues included: kidnapping and forced repatriation of the country's citizens in foreign countries, only to reappear in custody in the country; forced disappearances; torture and abuse of detainees by security forces; harsh and life-threatening prison conditions; arbitrary detention; political prisoners ...

...

Arbitrary Arrest: The government generally provided a rationale for arrests, but detainees and civil society groups frequently reported that authorities falsified charges or inflated minor incidents to make politically motivated arrests. According to Human Rights Watch, the country has arbitrarily detained and imprisoned more than 150 individuals on politically motivated charges since 2015.

...

Jannatullo Komil, the head of the bureau of IRPT in Germany, one of the hundreds of members who live in exile in Europe, wrote in a July 8 Facebook post that local law enforcement bodies arrested five members of his family and detained them for a week without charges. According to Komil, his brother, sister, daughter-in-law, and two

nieces were interrogated by the GKNB and Ministry of Internal Affairs. The interrogators demanded that the family hand over their sons who were living abroad in exile, largely in Europe.

...

While authorities claimed there were no political prisoners or politically motivated arrests, opposition parties and local and international observers reported the government selectively arrested and prosecuted political opponents. Although there was no reliable estimate of the number of political prisoners, in 2018 the government reported 239 prisoners who were members of banned political parties or movements.

...

During the year there were credible reports of attempted misuse of international law enforcement tools, such as law enforcement systems (for example, INTERPOL red notices), for politically motivated reprisals against specific individuals located outside the country. The government used INTERPOL notices in an effort to locate and forcibly repatriate Tajik dissidents targeted by the government. The Central Bank of Tajikistan keeps a public list of over 2,400 names of suspected terrorists as defined by authorities. The list also includes names of opposition journalists and activists ... Other dissidents were frequently harassed or detained on politically motivated charges of extremism ..."

VI. OTHER RELEVANT MATERIAL

54. In May 2021 the Foreign Policy Centre, a think tank based in the United Kingdom, published a report entitled "Retreating Rights: Examining the pressure on human rights in Tajikistan", which read, in its relevant parts (references omitted):

"... By September 29th, 2015, the Supreme Court approved the ban making all materials relating to the [IRPT] (including its website and party newspaper) illegal (and illegal to be accessed) on the grounds of extremism ...

... By summer 2018, over 100 people had been arrested in connection with the IRPT with around 27 receiving prison sentences of between three to 25 years. They included a person – Alijon Sharipov – not previously known as a member who was sentenced to nine and half years for simply liking and sharing party materials on social media ...

Such repression has not been restricted to the borders of Tajikistan with opposition activists targeted for harassment, intimidation, and violence well beyond the country's borders, whilst enormous pressure can be placed on relatives back home to further silence dissidents in exile and urge activists to return home. The Central Asian Exiles database compiled by the University of Exeter has identified 68 cases where citizens of Tajikistan have been targeted whilst abroad. This is the second highest figure for Central Asia, making it by far the most egregious offender by proportion of population ... The close security service cooperation and the narrative frame of combatting Islamic terrorism (conflating genuine issues with radicalisation in the diaspora, including support for groups much more radical that the IRPT, with the ongoing efforts to eliminate the political opposition) have enabled multiple cases of extradition from Russia, Turkey and elsewhere in Central Asia, breaching interim measures against extradition passed by the European Court of Human Rights in a number of cases. Those targeted include supporters of both the IRPT and Group 24 ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

55. The applicants complained that removal to Tajikistan would expose them to a real risk of inhuman or degrading treatment and that the Lithuanian authorities had failed to properly assess that risk. They relied on Articles 3 and 13 of the Convention.

56. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the case falls to be examined solely under Article 3 of the Convention, which reads as follows:

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

A. Admissibility

57. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

58. The applicants submitted that if they were removed to Tajikistan, the first applicant would face a real risk of being subjected to torture, degrading or inhuman treatment or punishment as a result of his membership in the IRPT, whereas the other applicants would be at risk of ill-treatment by the authorities on the grounds of their family links with him.

59. They pointed out that it had not been disputed that the first applicant had joined the IRPT in 2007, and that he had remained a member of the party to the present day, as attested by the office of the party's chairman (see paragraphs 11 and 23 above). They submitted that the first applicant had provided to the domestic authorities a detailed and consistent account of his activities within the IRPT, as well as of the risks that he would face in his country of origin by virtue of his being a member of a banned political party. The applicants contended that their core story had not changed throughout the two sets of asylum proceedings, and that any inconsistencies had been minor and had not undermined their overall credibility. Moreover, they had been willing to explain any alleged contradictions, but the authorities had not asked them to do so. In addition, the Migration Department had not allowed

the first applicant to provide all the information that he had considered relevant (see paragraph 28 above).

60. The applicants disputed the conclusion reached by the domestic authorities that only the leaders or active members of the IRPT were persecuted in Tajikistan. They argued that up-to-date information from various reliable sources indicated that even former or non-active members of the IRPT were at risk of torture and other forms of ill-treatment (see paragraph 20 above).

61. The applicants also provided to the Court two letters from the National Committee for the Release of Political Hostages and Prisoners of Tajikistan, dated June 2020 and August 2021, in which it was stated that the first applicant had been subjected to constant pressure by the Tajik authorities and that if he were sent back, he would be subjected to torture and long-term imprisonment, as had been the case with other Tajik dissidents.

62. Furthermore, the applicants pointed out that the Migration Department had acknowledged that they would probably be questioned by the Tajik authorities in the event of their removal (see paragraph 31 above). They argued that that would put the first applicant at direct risk of being identified as a member of the IRPT, which would lead to the ill-treatment of him and his family.

63. Lastly, the applicants contended that the Lithuanian authorities had failed to properly consider the documents which they had submitted and the available country-of-origin information. According to the applicants, the authorities had required them to present indisputable evidence that they would be at risk of ill-treatment, such as the issuance of wanted notices, arrest warrants, indictments, or evidence of past ill-treatment or torture. However, such a requirement was not in conformity with the well-established practice of the Strasbourg Court; moreover, it was impossible in practice and had imposed a disproportionate burden on them.

(b) The Government

64. The Government submitted that neither the information provided by the applicants during the two sets of asylum proceedings nor the available country-of-origin information indicated that they would face the risk of being subjected to treatment contrary to Article 3 of the Convention if they were to be removed to Tajikistan. The Migration Department had assessed the country-of-origin information and on the basis thereof had concluded that only active members and leaders of the IRPT were at risk of persecution or life imprisonment, but that the first applicant did not fit that profile. He had been an ordinary member of the party, had not occupied a high-level position, and had not been particularly active. Moreover, he had officially left the IRPT and had ceased to engage in any IRPT-related activities in 2015, and there was no evidence that the Tajik authorities had subsequently shown any interest in him and his whereabouts.

65. The Government submitted that the latest available country-of-origin information did not lead to a different conclusion than that reached by the domestic authorities. Moreover, none of the documents provided by the applicants (see paragraphs 11, 23 and 61 above) confirmed that any person who was somehow linked to the IRPT risked persecution.

66. They contended that the present case differed from other cases decided by the Court concerning removal to Tajikistan. In particular, *K.I. v. Russia* (no. 58182/14, 7 November 2017) concerned an individual who had been accused of politically and religiously motivated crimes and in respect of whom the Tajik authorities had issued an international search and arrest warrant – by contrast with the applicants in the present case.

67. The Government further contended that the domestic authorities had carried out a proper assessment of the alleged risk of persecution and that they had examined not only the information provided by the applicants but had also collected additional information on their own motion. Contrary to the applicants' assertion, they had not been required to provide "indisputable" evidence of the risk of persecution (see paragraph 63 above). Their asylum applications had been dismissed because the information that they had provided had not been detailed and consistent, there had been discrepancies within their respective accounts, and none of the available evidence had corroborated their argument that they would risk being ill-treated were they to be returned to their country of origin. The Government submitted that the interviewing officers had provided the applicants with plenty of opportunities to explain the inconsistencies in their respective accounts, but that the applicants had failed to provide an adequate explanation.

68. Lastly, the Government pointed out that the Migration Department had previously decided to grant asylum to several opposition activists from Tajikistan, in respect of whom it had been established that they had been active members of the IRPT or had occupied high positions in its leadership, or were family members of such persons. However, those cases were not comparable to the applicants' situation.

2. The Court's assessment

(a) General principles

69. The relevant general principles have been summarised in *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, 23 March 2016) and *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016).

70. In particular, the Court reiterates that in cases concerning the expulsion of asylum-seekers, it does not itself examine the actual asylum applications or verify how the States honour their obligations under the Refugee Convention. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled. By virtue of Article 1 of the

Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention. The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic material as well as by material originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see *F.G. v. Sweden*, cited above, § 117, and the cases cited therein).

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

71. The issue before the Court is whether the applicants, if removed to Tajikistan, would face a real risk of being tortured or subjected to inhuman or degrading treatment or punishment, as prohibited by Article 3 of the Convention.

72. According to the Court's established case-law, the existence of a risk of ill-treatment must be assessed primarily with reference to those facts that were known or ought to have been known to the Contracting State at the time of expulsion. However, if the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *J.K. and Others v. Sweden*, cited above, § 106, and the cases cited therein). Since the applicants in the present case have not yet been removed (see paragraph 38 above), the question of whether they would face a real risk of persecution upon their return to Tajikistan must be examined in the light of the present-day situation.

73. The reports describing the general situation in Tajikistan do not lead to the conclusion that the situation there, as it stands, is such that the removal of any Tajik national to the country would contravene Article 3 of the Convention (see paragraphs 47-53 above). Thus, the Court must assess whether the applicants would face a real risk of treatment contrary to Article 3 of the Convention, if they were to be expelled to Tajikistan, in view of their personal circumstances.

74. The applicants submitted that they were at risk of persecution in their country of origin because of the first applicant's membership in the IRPT, a political party that had been banned and declared a terrorist organisation in Tajikistan. They argued that current and former members of that party constituted a group that was systematically exposed to a practice of ill-treatment.

75. According to the Court's case-law, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary

on the basis of recent reports from independent international human rights protection associations or governmental sources, that there are serious reasons to believe in the existence of the practice in question and his or her membership in the group concerned. In those circumstances, the Court will not then insist that the applicant demonstrate the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3. This will be determined in the light of the applicant's account and the information on the situation in the country of destination in respect of the group in question (ibid., §§ 103-05, and the cases cited therein).

76. It has not been disputed that the first applicant joined the IRPT in 2007 (see paragraph 13 above). Although he officially resigned his membership in 2015, in the domestic proceedings he argued that that resignation had been coerced and that the IRPT considered it to be invalid (see paragraph 18 above); he provided to the domestic authorities certain documents from the IRPT chairman which stated that he was still, at the time of the domestic proceedings, a member of the party (see paragraphs 11 and 23 above). The domestic authorities did not reject that assertion, nor did they challenge the authenticity of the documents presented by the applicant; the Government in their submissions to the Court did not do so either. The Court also takes note of the 2016 annual report by Human Rights Watch, which stated that IRPT members had been coerced into resigning from the party (see paragraph 48 above). In the light of all these circumstances, it is satisfied that the first applicant joined the IRPT in 2007 and that he remained a member of the party, despite his being coerced into officially resigning in 2015.

77. Accordingly, the Court must ascertain whether there are serious reasons to believe that in Tajikistan there is a practice of ill-treatment of IRPT members.

78. In the two sets of asylum proceedings, the domestic authorities rejected the applicants' assertions that they feared persecution on the grounds that, firstly, they had not presented a consistent and credible account of any threats that they had allegedly received in their country of origin, and secondly, the publicly available information showed that only active or high-ranking members of the IRPT were at risk of persecution.

79. As concerns the applicants' account of the threats that they had allegedly received, the Migration Department found that that account had been based essentially on rumours – the applicants had submitted that they had heard about Tajik officials' interest in them from third persons, rather than directly from those officials themselves (see paragraph 14 above). Moreover, the first applicant's account of his alleged encounters with law enforcement authorities was inconsistent: during the first set of proceedings he did not mention ever having been summoned by the security services, whereas during the second set of proceedings he stated that he had been called to their local office on one occasion but had forgotten to mention it earlier (see paragraphs 27 and 30 above).

80. The Court has no grounds to question the conclusion reached by the Lithuanian authorities that the applicants did not present a credible and consistent account of past threats or persecution (see *M.O. v. Switzerland*, no. 41282/16, § 73, 20 June 2017, and the cases cited therein). Nonetheless, it observes that, even when some of an applicant's statements are found not to be credible, that does not necessarily constitute grounds to doubt his or her overall credibility, or to dismiss all of his or her statements (see *N. v. Finland*, no. 38885/02, §§ 154-56, 26 July 2005). Indeed, the domestic authorities accepted certain other statements given by the applicants as being true (see paragraphs 13 and 16 above).

81. Moreover, the Court points out that, while past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor (see the UNHCR Note on Burden and Standard of Proof in Refugee Claims, referred to in paragraph 46 above; see also *A.S.N. and Others v. the Netherlands*, nos. 68377/17 and 530/18, § 119, 25 February 2020, and the cases cited therein).

82. Therefore, the fact that it has not been credibly established that the applicants were ill-treated or threatened in their country of origin in the past is not decisive for the Court when assessing whether there is a real risk of them being subjected to ill-treatment in the event of their removal (see, for a similar situation, *B and C v. Switzerland*, nos. 889/19 and 43987/16, §§ 58-62, 17 November 2020).

83. Turning to the situation in Tajikistan, the Court observes that, according to the most recent reports from various reputable sources, the harassment and persecution of political opponents and their families remain widespread, and there are no grounds to believe that the situation in the country might be improving. In July 2019, when considering the third periodic report of Tajikistan, the UN Human Rights Committee expressed its concern about politically motivated harassment of opposition members, including the harassment of and lengthy prison sentences handed down to IRPT leaders after unfair and closed trials, and the imprisonment of party members following the designation in 2015 of the party as "terrorist" (see paragraph 47 above). In its 2021 annual report Human Rights Watch stated that the Tajik authorities had continued to subject critics of the government, including opposition activists and journalists, to lengthy prison terms on politically motivated grounds; they had intensified the harassment of relatives of peaceful dissidents living abroad and continued to forcibly return political opponents from abroad using politically motivated extradition requests (see paragraph 49 above). Amnesty International, in its 2021 submissions for the UN Universal Periodic Review, reported allegations of forcible returns and of enforced disappearances of IRPT members living in exile, and the harassment of their family members in Tajikistan (see paragraph 51 above). Freedom House in its 2021 report stated that dissidents and critics of the

regime remained the principal targets of the Tajik security services, both inside and outside the country (see paragraph 52 above). There were also reports of torture and ill-treatment in custody and beatings of political opponents (see paragraphs 47, 49, 51 and 53 above). Many of the aforementioned reports contained examples of politically motivated prosecution or ill-treatment of specific individuals – mainly leaders and prominent members of the IRPT and other opposition groups (see, for example, paragraphs 50 and 53 above).

84. The Lithuanian authorities did not dispute that political opponents of the Tajik government – including members of the IRPT – were harassed and persecuted in Tajikistan (see paragraph 14 above). Nonetheless, they asserted that the country-of-origin information did not give grounds to believe that an ordinary party member who had not played a particularly active role in the IRPT, such as the first applicant, would be at risk of persecution (see paragraphs 15 and 31 above). The applicants disputed that assertion and argued that any person having links with the IRPT was a potential target of persecution by the Tajik authorities (see paragraph 60 above).

85. The Court observes that, while the aforementioned reputable sources do not explicitly state that any person with any links to the IRPT, however remote, would necessarily be at risk of persecution, they do describe the widespread harassment of political opponents and contain reports of hundreds of members of banned political parties being arbitrarily detained and imprisoned on politically motivated charges, as well as of thousands being included in international search lists (see the report of the US Department of State referred to in paragraph 53 above). Another source also reported on the arrests of hundreds of opposition supporters (see paragraph 54 above). In addition, there are some accounts of politically motivated arrests of both former members of the IRPT and of individuals with only tenuous links to the political opposition, such as individuals who had provided help to families of political prisoners or who had "liked" and shared opposition-related material on social media (see paragraphs 50 and 54 above). In the Court's view, the available information does not lead to an unequivocal conclusion that only leaders and high-ranking members of the IRPT are singled out for persecution by the Tajik authorities, and that so-called "ordinary members" are safe from risk. While the authors of the international reports and other publications may prefer, for various reasons, to draw attention to the fate of particularly prominent individuals, that in itself neither confirms nor denies the existence of any ill-treatment of persons falling under other categories.

86. The Court notes that it has never been alleged that the first applicant was only nominally a member of the IRPT, or that he never took part in any activities that may have brought his political views to the attention of the Tajik authorities (compare and contrast *Latipov v. Russia*, no. 77658/11, § 92, 12 December 2013). The Migration Department and the administrative courts did not question the key details of his account concerning his role in the party

– namely, that he had been the chair of the village party committee in 2012-2014, had distributed the party's newspaper, had collected signatures in support of a presidential candidate in 2013, and had himself been a candidate in local elections in 2015 (see paragraphs 6, 7 and 27 above). The Lithuanian authorities did not explain in any of their decisions the basis on which they had concluded that that level of participation in the party's activities had been insufficient to put the first applicant at risk of ill-treatment, despite the applicants' arguments to the contrary (see paragraphs 17 and 22 above).

87. Furthermore, in the domestic proceedings the applicants contended that persons in a similar situation to the first applicant had been subjected to ill-treatment in Tajikistan. They cited various reports and publications which, in their view, described the persecution of ordinary and former members of the IRPT (see paragraph 20 above). Moreover, the first applicant asserted during an interview that some of his fellow former party members had been detained and ill-treated (see paragraph 28 above). However, the authorities did not assess any of the information provided by the applicants. The reports and articles that they had cited were not examined during the first set of proceedings, without any explanation being given as to why the authorities may have considered such examination to be unnecessary (see paragraphs 20-24 above); in the second set of proceedings, which took place in 2020, the first-instance court discounted the sources, which had been published in 2017-2019, as not being up-to-date (see paragraph 35 above). As to the information which the first applicant wished to provide during the interview, he was explicitly told by the interviewing officer that the Migration Department did not need him to provide information concerning other persons (see paragraph 28 above).

88. It is not for the Court to determine whether the information which the applicants submitted in the domestic proceedings was accurate and reliable or whether the sources that they cited could be considered reputable – the domestic authorities are, as a general rule, better placed to carry out such an assessment (see *F.G. v. Sweden*, cited above, § 118). Nonetheless, it reiterates that an assessment of the existence of a real risk must necessarily be a rigorous one and it must focus on the foreseeable consequences of the applicant's removal to the country of destination (ibid., §§ 113-14). The Court emphasises that the existence of a practice of ill-treatment of ordinary party members was at the core of the applicants' asylum claims. According to the relevant UNHCR guidelines (see paragraph 46 above) and under the domestic law (see paragraph 45 above), information about the treatment in the country of origin of persons who are in a similar situation to the applicants is one of the factors to be considered when assessing whether an applicant's fear of persecution can be considered well-founded. Therefore, the information on which the applicants wished to rely in the domestic proceedings did not appear, on the face of it, to be irrelevant. Taking into account the fact that the available country-of-origin information did not lead

to an unequivocal conclusion as to the existence of a practice of ill-treatment of ordinary IRPT members (see paragraph 85 above), the Court finds it particularly disconcerting that the domestic authorities failed to assess the information provided by the applicants, and even explicitly told the first applicant to refrain from supplying it (see, *mutatis mutandis*, *M.D. and M.A. v. Belgium*, no. 58689/12, § 64, 19 January 2016).

89. Accordingly, the Court finds that the Lithuanian authorities did not carry out an adequate assessment of the existence in Tajikistan of the practice of ill-treatment of persons who were in a similar situation to the applicants. Instead, they focused on the lack of any past threats or persecution directed against the applicants, or the lack of other special distinguishing features (see paragraphs 15, 31 and 35 above), which is not in line with the approach established in the Court's case-law (see *J.K. and Others v. Sweden*, cited above, §§ 103-05). The failure to carry out such an assessment is all the more concerning in view of the fact that, as acknowledged by the Migration Department, the applicants would probably be interviewed by the Tajik authorities upon their return to the country (see paragraph 32 above), which could lead to the first applicant's links with the IRPT being brought to the authorities' attention.

90. In the light of the foregoing, and emphasising the absolute nature of the rights guaranteed under Article 3 of the Convention, the Court finds that there would be a violation of that provision if the applicants were removed to Tajikistan without a fresh assessment of their claims that their return would expose them to a risk of ill-treatment.

II. RULE 39 OF THE RULES OF COURT

91. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if 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.

92. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 38 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicants submitted that they suffered fear, stress and anxiety as a result of the threat of their being returned to Tajikistan. They asked to be awarded compensation in respect of non-pecuniary damage, leaving the exact amount at the Court's discretion.

95. The Government submitted that the finding that there would be a violation of Article 3 of the Convention in the event of the applicants' removal to Tajikistan would constitute in itself sufficient just satisfaction in respect of any non-pecuniary damage which they may have sustained.

96. The Court, relying on its established case-law, considers that its finding in the present judgment constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants (see *F.G. v. Sweden*, cited above, § 160, and the cases cited therein).

B. Costs and expenses

97. The applicants did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that in view of the domestic authorities' failure to sufficiently assess the existence in Tajikistan of a practice of ill-treatment of persons who were in a similar situation to the applicants, returning them to Tajikistan without a fresh assessment of that aspect would breach Article 3 of the Convention;

3. *Decides*, by five votes to two, 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 expel the applicants until such time as the present judgment becomes final or until further notice;

4. *Holds*, unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

Done in English, and notified in writing on 22 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Jon Fridrik Kjølbro President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Kjølbro and Koskelo is annexed to this judgment.

J.F.K.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES KJØLBRO AND KOSKELO

1. Regretfully, we are unable to subscribe to the majority's conclusion that the Lithuanian authorities failed "*to sufficiently assess the existence in Tajikistan of a practice of ill-treatment of persons who were in a similar situation to the applicants*", and, consequently, that "*returning the applicants to Tajikistan without a fresh assessment of that aspect would breach Article 3 of the Convention*" (point two of the operative provisions). Therefore, and for the reasons explained below, we have voted against points two and three of the operative provisions.

2. The applicants are failed asylum-seekers from Tajikistan facing expulsion from Lithuania. In such situations, the Court has two options. It may assess the complaint concerning the alleged risk of ill-treatment in Tajikistan on the merits and find either a violation or no violation of Article 3 of the Convention. In the alternative, the Court may find a procedural violation of that provision. The latter option, adopted by the majority in the present case, would normally be taken in situations where the Court is unable to assess the alleged risk on the merits but has identified serious shortcomings in the domestic proceedings, thereby giving the domestic authorities a chance to reassess the alleged risk in the light of the Court's finding.

3. In our view, based on the relevant principles established in its case-law, the Court has a sufficient evidentiary basis to assess the alleged risk on the merits and to reach the conclusion that there will be no violation of Article 3 of the Convention in the event of expulsion. In addition, we consider it necessary to distance ourselves from the majority's findings to the effect that there were shortcomings in the domestic proceedings. These conclusions are difficult, if not impossible, to reconcile with ordinary practice in asylum proceedings at the domestic level.

Review of the assessment conducted by the domestic authorities

4. At the outset, we note that there is no basis for criticising the domestic asylum proceedings. The applicants benefited from two sets of asylum proceedings, and their requests were assessed by administrative and judicial authorities. The applicants were assisted by interpreters during questioning, several times, and they were also assisted by lawyers and had ample opportunity to present arguments and evidence. Furthermore, it transpires from the reasoning that the domestic authorities, administrative as well as judicial, assessed the available general background information about the country of origin as well as the applicants' individual circumstances.

5. When rejecting the applicants' asylum request, the domestic authorities, in both sets of proceedings, relied on several arguments, on which we will briefly comment.

6. The authorities dismissed the applicants' account of problems and threats which they had personally experienced from the Tajik authorities (see paragraphs 14 and 30 of the judgment). The majority accept this part of the assessment (see paragraph 80 of the judgment), to which conclusion we can subscribe.

7. As for their membership of the Islamic Renaissance Party (IRPT), the authorities adopted a more cautious approach. They proceeded on the basis that the first applicant had been an IRPT member, but at the same time they found that he had not been particularly active, that his participation in its activities had been limited, and that he was no longer active, an assessment partly based on the absence of evidence to the contrary (see paragraphs 13, 24, 31 and 37 of the judgment).

8. In this context, the authorities considered the available background information and country reports and found that they documented a risk of ill-treatment in respect of high-ranking, leading and active members of IRPT or critics and dissidents, but not all IRPT members (see paragraphs 14, 31 and 37 of the judgment).

9. Furthermore, the authorities relied on the fact that it had not been demonstrated that the applicants were of any interest to the authorities; they had not been sought by the authorities and there had been no attempt to arrest them (see paragraphs 14, 15, 31 and 35 of the judgment).

10. Without going into details on the numerous available country reports and materials, some of which are quoted in the judgment (see paragraphs 47 to 54 of the judgment), we take the view that the authorities' reading of the available sources is reasonable and is sufficiently supported by the relevant materials.

11. We consider that the available country materials do not support the conclusion that *any* member of IRPT, irrespective of the nature, the scope and the level of their political activities, past and present, would run a risk of ill-treatment. Therefore, inevitably, the risk assessment must comprise an assessment of the individual circumstances of the person seeking asylum, and that is exactly what the domestic authorities did.

Our position

12. In the light of the foregoing considerations, we find it necessary to distance ourselves from the way in which the majority presents and reads the relevant country reports and materials (see paragraphs 83 to 86 of the judgment).

13. More specifically, with regard to our difficulties with the reasoning adopted by the majority on the substantive assessment of the situation in the country of origin (see paragraphs 83 to 86 of the judgment), we find it important to note the following.

14. The applicants have argued, before both the domestic authorities and the Court, that they belong to a group that is being systematically targeted by the Tajik authorities and, consequently, that there is a real risk that they will be ill-treated in the event of expulsion. In that context, we find it important to recall the general principles on the burden of proof in cases concerning Article 3 of the Convention.

15. 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, for example, *F.G. v. Sweden* [GC], no. 43611/11, §§ 113 and 127, 23 March 2016; *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 91 and 116-17, 23 August 2016).

16. More specifically, it is for the applicant to substantiate any allegation to the effect that he or she is a member of a group systematically exposed to a practice of ill-treatment, and after that has been sufficiently demonstrated, the protection of Article 3 of the Convention comes into play when the applicant establishes, where necessary on the basis of the relevant sources, that there is serious reason to believe in the existence of the practice in question and his or her membership of the group concerned (see, for example, *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008, and *J.K. and Others,* cited above, §§ 103-05).

17. In the present case, the first applicant was unable to demonstrate that he was a high-ranking or leading or active IRPT member. On the contrary, the domestic authorities reached the conclusion that the applicant had been a member of the IRPT, but that he had not been particularly active and that he was no longer active.

18. In our view the Court has no grounds for calling into question the facts as established by the domestic authorities. On that basis, and having regard to the available background information about Tajikistan, the first applicant has failed to demonstrate that he is a member of a group systematically exposed to a practice of ill-treatment.

19. What the majority does in the present case is actually to reverse the burden of proof, requiring the domestic authorities, despite the absence of evidence in available and reputable sources, to provide proof that ordinary members are not exposed to a real risk of ill-treatment in case of expulsion.

20. More importantly, the majority identify three concrete shortcomings in the domestic assessment of the applicant's arguments (see paragraphs 87 to 89 of the judgment), but here again we cannot follow the majority in their criticism of the domestic authorities on these points.

21. In this regard we recall that before the domestic authorities, the applicants had relied on (1) specific country reports, (2) press articles and (3) information on other individuals who had experienced problems (see paragraphs 20, 28 and 34 of the judgment).

22. Regarding the first aspect (country reports relied on by the applicants), we would like to point out the following: the domestic authorities were fully aware and took account of the relevant country reports and materials. In our experience, it is not common practice in domestic asylum proceedings for domestic authorities to engage in detailed discussion and analysis of each and every relevant country report. The amount of such background information concerning countries of origin is simply too vast and voluminous and, asylum authorities therefore often refer to the available country reports without reproducing their content in detail. In other words, the fact that the authorities did not expressly discuss the relevance of the reports mentioned by the applicants cannot in itself be taken to imply that the authorities failed to conduct a sufficiently thorough assessment of all the relevant reports on Tajikistan. In our view they did.

23. Regarding the second aspect (news articles relied on by the applicant), we note that the press articles concern interviews with representatives of the IRPT and their account of the situation in Tajikistan. In processing asylum requests, it is important to base the assessment on objective and impartial information from national and international authorities and organisations. The Court would normally do the same (see *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 230-33, 28 June 2011). Therefore, we fail so see how this aspect can in any shape or form be characterised as a shortcoming in the domestic assessment of the alleged risk.

24. Regarding the third aspect (other individuals' experiences referred to by the applicants), we would emphasise the following: at the domestic level, the examination of requests for asylum or subsidiary protection is, in general, based on an assessment of the account given by the individual asylum-seeker, as well as on evidence or documents presented by and relied on by the applicant, reviewed in the light of available information about the country of origin, an approach that is similar to the approach adopted by the Court in such cases (see, for example, *F.G. v. Sweden*, cited above, § 114, and *A.M. v. France*, no. 12148/18, § 117, 29 April 2019). Expecting the domestic asylum authorities to inquire into, and seek information about, other individuals unrelated to the asylum-seeker's request would, in our view, place the domestic authorities in an impossible position by expecting them to conduct investigations into the circumstances and fate of third parties mentioned by an asylum-seeker during an interview. It is common practice in asylum cases to rely on publicly available material, in particular country reports, as well as statements by the individual asylum seeker and any evidence presented in support thereof.

25. Therefore, concerning the alleged procedural shortcomings, we would take the view that neither separately nor in combination can they justify the finding of a procedural violation in the present case, and more importantly, they impose excessive and unjustified burdens on domestic authorities in asylum proceedings, disregarding both the standards set out in the Court's

established case-law and the ordinary practice in asylum proceedings at the domestic level.

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	T.K.	1981	Tajik	Vilnius (Lithuania)
2.	O.O.	1985	Tajik	Vilnius (Lithuania)
3.	H.T.	2005	Tajik	Vilnius (Lithuania)
4.	F.T.	2006	Tajik	Vilnius (Lithuania)
5.	S.T.	2008	Tajik	Vilnius (Lithuania)
6.	A.K.	2013	Tajik	Vilnius (Lithuania)