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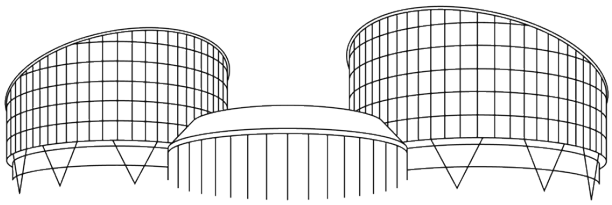

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAVRIDDIN DZHURAYEV v. RUSSIA

(Application no. 71386/10)

JUDGMENT

STRASBOURG

25 April 2013

FINAL

09/09/2013

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

TABLE OF CONTENTS

PROCEDURE 4
THE FACTS 5
I. THE CIRCUMSTANCES OF THE CASE 5
A. The applicant's background prior to his criminal prosecution 5
B. Criminal proceedings against the applicant in Tajikistan and the ensuing extradition proceedings in Russia 5
C. Application for refugee status and temporary asylum 8
D. Courts' decisions concerning the applicant's detention pending extradition 9
E. The applicant's alleged abduction and transfer to Tajikistan 9
1. The applicant's account of the events 9
2. Information provided by the Government 10
F. Requests to protect the applicant against the imminent risk of his forcible transfer to Tajikistan 11
G. Letter from the Registrar of the Court following the applicant's abduction and transfer to Tajikistan 12
H. Official inquiry and repeated refusals to institute criminal proceedings in respect of the impugned events 13
1. First refusal by the investigator to open a criminal investigation and its quashing by his superior 13
2. Second refusal by the investigator to open a criminal investigation and its quashing by his superior 14
3. Third refusal by the investigator to open a criminal investigation and its quashing by his superior 14
4. Fourth refusal by the investigator to open a criminal investigation 15
5. Subsequent inquiries 16
I. The applicant's criminal trial in Tajikistan 16
II. RELEVANT DOMESTIC AND INTERNATIONAL LAW 17
A. Extradition proceedings 17
1. Code of Criminal Procedure 17
2. Russian Supreme Court's Ruling of 14 June 2012 18
B. Detention pending extradition and its judicial review 18
1. Russian Constitution 18
2. CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 ("the Minsk Convention") 19
3. Code of Criminal Procedure 19
4. Case-law of the Constitutional and Supreme Courts of Russia 20
C. Status of refugees 22
1. Geneva Convention on the Status of Refugees of 1951 22
2. Refugees Act 22

3. Recommendation by the Committee of Ministers of the Council of Europe on the right of asylum seekers to an effective remedy 23
D. Criminal investigation 25
III. REPORTS ON THE SITUATION IN TAJIKISTAN 25
IV. COUNCIL OF EUROPE TEXTS ON THE DUTY TO COOPERATE WITH THE COURT, THE RIGHT TO INDIVIDUAL PETITION AND INTERIM MEASURES 29
A. Parliamentary Assembly 29
B. Committee of Ministers 32
V. COMMITTEE OF MINISTERS' DECISIONS UNDER ARTICLE 46 ON RELATED CASES CONCERNING RUSSIA 35
THE LAW 38
I. ESTABLISHMENT OF THE FACTS 38
II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION 42
A. Submissions by the parties 43
1. The Government 43
2. The applicant 43
B. The Court's assessment 44
1. Admissibility 44
2. Merits 45
(a) Whether the applicant's return to Tajikistan exposed him to a real risk of treatment contrary to Article 3 45
(i) General principles 45
(ii) Application to the present case 47
(α) Domestic proceedings 48
(ß) The Court's own assessment of the risk to the applicant 50
(b) Whether the authorities complied with their positive obligation to protect the applicant against the real and immediate risk of forcible transfer to Tajikistan 52
(c) Whether the authorities conducted an effective investigation 54
(d) Whether the respondent State is liable on account of the passive or active involvement of its agents in the applicant's forcible transfer to Tajikistan 57
(e) Conclusions 60
III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION 60
IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION 60
V. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION 64
A. Admissibility 64
B. Merits 64

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION.....66
VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION.....66
A. Damage.....66
B. Costs and expenses.....67
C. Default interest.....67
VIII. APPLICATION OF ARTICLE 46 OF THE CONVENTION.....68
A. General principles.....69
B. Measures to comply with the present judgment.....70
1. Payment of just satisfaction.....70
2. Other remedial measures in respect of the applicant.....70
3. General measures to prevent similar violations.....72
OPERATIVE PART.....75

In the case of Savriddin Dzhurayev v. Russia**,**

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 71386/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Tajikistan, Mr Savriddin Dzhanobiddinovich Dzhurayev ("the applicant"), on 6 December 2010.

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

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

4. On 7 December 2010 the President of the First Section indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Tajikistan until further notice. It was also decided to grant this case priority under Rule 41 of the Rules of Court.

5. On 16 December 2010 the Government informed the Court that the authorities had taken relevant steps to guarantee that the applicant would not be extradited to Tajikistan until further notice.

6. On 31 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

7. On 2 November 2011 the President of the First Section asked the Government, under Rule 54 § 2 of the Rules of Court, to provide additional

factual information to elucidate the circumstances of the applicant's alleged abduction in Moscow.

8. On 17 January 2012 the Chamber invited the parties to submit further written observations in respect of the applicant's alleged abduction and transfer to Tajikistan. In consequence, the parties provided the Court with several further submissions containing information about fresh developments in the case and further observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1985. He is presently serving a prison sentence in Tajikistan.

A. The applicant's background prior to his criminal prosecution

10. Until 2006 the applicant was living in his native village of Navgilem in the Sogdiskaya Region of Tajikistan. He was a merchant at the local food market.

11. The events preceding the applicant's departure from Tajikistan were described by him as follows.

12. From 2002 to 2005 the applicant attended a mosque, where he was studying the Quran under the tutorship of Mr S. Marufov. The latter was detained by local police and died in detention in May 2006. Before his death Mr Marufov had reportedly been ill-treated (see paragraph 102 below).

13. Following Mr Marufov's death, the Tajik authorities started targeting his followers. The applicant fled the country, fearing prosecution on grounds of his religious activities.

14. The applicant arrived in Russia in June 2006 and made a living from various low-skilled jobs in the Moscow suburbs.

B. Criminal proceedings against the applicant in Tajikistan and the ensuing extradition proceedings in Russia

15. On 7 November 2006 the Prosecutor's Office of Tajikistan brought criminal proceedings against the applicant and authorised his detention pending trial. The applicant was charged under Articles 186 § 2 and 187 § 2 of the Criminal Code of Tajikistan with forming, some time in 1992, together with several other individuals, a "criminal conspiracy" named "Bayat" (*Байъат*), which later joined a "criminal armed group" named "the

Islamic Movement of Uzbekistan" ("the IMU"). The second charge against the applicant concerned his alleged involvement in an armed attack carried out on 27 September 2006 on three members of the regional parliament.

16. On the same date the Tajik Prosecutor's Office issued a warrant for the applicant's arrest based on the charges mentioned above and put his name on the list of "wanted persons".

17. The Russian police apprehended the applicant on 21 November 2009 in Moscow pursuant to an international search warrant issued by the Tajik authorities. He remained in detention pending extradition until 21 May 2011 (see paragraphs 32-36 below).

18. On 21 December 2009 and 29 March 2010 the Deputy Prosecutor General of Tajikistan asked his Russian counterpart to order the applicant's extradition to Tajikistan.

19. On 17 June 2010 the Deputy Prosecutor General of Russia ordered the applicant's extradition. He found, *inter alia,* that the applicant had been charged in Tajikistan with involvement since 1992 in a criminal organisation, the IMU. The Deputy Prosecutor General also noted that at the end of 2005 the applicant had moved to Russia, where he had founded an armed cell of the IMU and that in 2006 he had transferred up to 5,000 United States dollars per month to the IMU leaders in Tajikistan, thus fuelling their terrorist activities, such as the murdering of State officials. The Deputy Prosecutor General considered that the applicant's acts were also punishable under the Russian Criminal Code and that his extradition could not be prevented by a crime he may have committed in Moscow, since no investigation or prosecution had been initiated in that respect. Nor did he find any obstacle to the applicant's extradition in either international treaties or legislation of the Russian Federation.

20. The applicant complained about the extradition order to the Moscow City Court ("the City Court"), stating that the Tajik authorities would subject him to torture with a view to making him confess to a crime he had not committed. He cited extensive case-law of the Court establishing the risk of torture to which certain applicants in a similar position would have been subjected in the event of extradition to that country (*Khodzhayev v. Russia*, no. 52466/08, 12 May 2010, and *Khaydarov v. Russia*, no. 21055/09, 20 May 2010). The applicant also emphasised the contradictions and even the absurdity of certain charges brought against him in Tajikistan, according to which he had been actively involved in terrorist activities since 1992 when he was still a small child.

21. The Deputy Prosecutor General provided the City Court with a letter signed by his counterpart in Tajikistan, which contained, *inter alia,* the following assurances:

> "We guarantee that in accordance with the norms of international law [the applicant] will be provided with all opportunities to defend himself in the Republic of Tajikistan, including through the assistance of a lawyer. He will not be subjected to torture or

cruel, inhuman or degrading treatment or punishment (European Convention for the Protection of Human Rights and Fundamental Freedoms, and relevant United Nations and Council of Europe conventions and protocols thereto).

The Criminal Code of Tajikistan does not provide for the death penalty in respect of the crimes imputed to [the applicant].

The Prosecutor General's Office of Tajikistan guarantees that the aim of the extradition request in respect of [the applicant] is not his persecution on political grounds, or for reasons of his race, religious beliefs, nationality or political opinions.

... Tajikistan undertakes to prosecute [the applicant] only for the crimes which constitute the basis of his extradition and that [the applicant] will not be handed over to a third State without the consent of the Russian Federation and will be free to leave the territory of the Republic of Tajikistan after having served his sentence."

22. On 29 October 2010 the City Court held a public hearing. It allowed the request by the defence to question Ms E. Ryabinina, in her capacity as expert of the Russian Human Rights Institute, about the situation in Tajikistan. The expert responded to the questions at the public hearing, explaining the details of four recent judgments delivered by the Court in connection with the prospective extradition to Tajikistan of the applicants concerned and the legal implications for the Russian Federation (*Khodzhayev*, cited above; *Khaydarov*, cited above; *Iskandarov v. Russia*, no. 17185/05, 23 September 2010; and *Gaforov v. Russia*, no. 25404/09, 21 October 2010).

23. By a judgment adopted on the same date, the City Court upheld the extradition order, finding no obstacle to the applicant's extradition to Tajikistan. The applicant's arguments, based on Russia's obligations under the Convention and the Court's case-law, were dismissed by the City Court in the following terms:

"... the arguments that the applicant might be persecuted on religious grounds and regarding a serious risk of torture in the course of criminal prosecution in Tajikistan ... are considered by the court to be unfounded since those arguments constitute assumptions that are in no way corroborated; quite to the contrary, they are completely rebutted by the case materials, which have been examined by the court, and in particular by the written guarantees provided by the Deputy Prosecutor General of the Republic of Tajikistan ...

The arguments ... that torture and persecution on religious and political grounds take place in the Republic of Tajikistan as confirmed by documents of the European Court of Human Rights and other organisations for the defence of human rights ... are considered by the court to be unfounded, as those documents relate to other persons, but not to [the applicant]; moreover, those arguments are negated by the aforementioned written guarantees of the Tajik Prosecutor's Office."

24. On 9 December 2010 the Supreme Court upheld the City Court's decision. The applicant's argument that his extradition would violate Article 3 of the Convention was dismissed by the Supreme Court by sole

reference to the text of the written guarantees provided by the Tajik Prosecutor's Office.

C. Application for refugee status and temporary asylum

25. On 22 December 2009 the applicant applied to the Moscow City branch of the Russian Federal Migration Service ("the FMS") for refugee status. He argued that he had been persecuted in Tajikistan on the grounds of his religious beliefs and that he would be subjected to torture in the event of extradition.

26. On 26 April 2010 the Moscow City branch of the FMS dismissed the application. The applicant was notified of the decision on 12 May 2010.

27. On 26 August 2010 the Deputy Director of the FMS dismissed an appeal lodged by the applicant against that decision. He reminded the applicant that the IMU was considered by the supreme courts of both Tajikistan and Russia as an organisation carrying out terrorist activities. While noting the extensive international criticism of the use of torture and the impunity of the State officials responsible in Tajikistan, the Deputy Director of the FMS found no well-founded reason for fearing that the applicant would be persecuted on religious grounds. Noting that the great majority of the population of Tajikistan were Muslims, he found it unlikely that the applicant would be persecuted solely on the basis of his Islamic beliefs. As to the authorities' attempt to strengthen control over religious beliefs, this was considered to be pursuing the understandable aim of limiting the influence of radical Islam, including the IMU. He concluded that the applicant was not eligible for refugee status and that his application had been motivated by his intention to escape criminal liability in Tajikistan. He noted at the same time that the existence of a well-founded fear of becoming a victim of torture or ill-treatment might be a ground for granting the applicant temporary asylum in Russia under section 12 of the Refugees Act.

28. On 1 October 2010 the applicant appealed against the FMS's decision to the Basmanniy District Court of Moscow. He argued that the FMS had not made a thorough and adequate analysis of the situation in Tajikistan and taken due account of the information provided by various international sources in that connection. He further submitted that the FMS had presumed him guilty of the offences that had been imputed to him by the Tajik authorities and had in effect upheld the version of the facts as presented by the Tajikistan Prosecutor's Office.

29. On 10 November 2010 the Basmanniy District Court upheld the FMS's decision of 26 August 2010. It referred to the arguments contained in that decision, finding them convincing and considering that the applicant had failed to provide evidence to the contrary. On 6 December 2010 the court's decision was upheld on appeal by the Moscow City Court.

30. On 24 May 2011 the applicant applied to the FMS for temporary asylum in Russia. On 2 June 2011 the UNHCR Office in Russia informed the applicant's representative that he met the criteria established by its statute and was eligible for international protection under its mandate.

31. On 6 September 2011 the Moscow City branch of the FMS granted the applicant temporary asylum in Russia and issued a certificate to that effect. The certificate was recorded under reference *BV* № 0004219 and delivered to the applicant on 8 September 2011 in his lawyer's presence.

D. Courts' decisions concerning the applicant's detention pending extradition

32. Following the applicant's apprehension in Moscow (see paragraph 17 above), on 23 November 2009 the Meshchanskiy District Court of Moscow ordered his detention pending extradition.

33. On 15 January 2010 the same court extended the applicant's detention until 21 May 2010. The applicant lodged an appeal against that decision on 1 February 2010. It was dismissed by the City Court on 22 March 2010.

34. On 17 May 2010 the Meshchanskiy District Court further extended the applicant's detention until 21 November 2010. The applicant appealed against that decision on 19 May 2010. The City Court dismissed the appeal on 12 July 2010.

35. On 19 November 2010 the City Court further extended the applicant's detention until 21 May 2011. On 22 November 2010 the applicant lodged an appeal against that decision, which was dismissed by the Supreme Court of Russia on 21 December 2010.

36. On 20 May 2011 the Meshchanskiy District Prosecutor ordered the applicant's release under a personal guarantee provided by his lawyer in accordance with Article 103 of the Code of Criminal Procedure.

E. The applicant's alleged abduction and transfer to Tajikistan

1. The applicant's account of the events

37. According to the applicant's written testimony and the complementary information collected by his representatives from witnesses and other available sources, his abduction and transfer to Tajikistan took place as follows.

38. At around 9 or 10 p.m. on 31 October 2011 the applicant and a friend were driving in the south-west district of Moscow when their car was blocked by a mini-van in Michurinskiy avenue. According to the details provided by the applicant's lawyer to the police and investigative

authorities, the incident took place between 11.30 and 11.45 p.m. at 15, Vernadskiy avenue in Moscow. The applicant and his friend got out of the car and tried to escape. They were followed by three or four unidentified men who fired two shots. The applicant's friend managed to escape, while the applicant was stopped, beaten up with a truncheon and forced into the mini-van by the same men, who did not identify themselves.

39. The applicant was kept in the mini-van for a night and a day. The individuals who had apprehended him subjected him to torture and ill-treatment. They beat him up, put a gun to his head and threatened to kill him unless he agreed to return to his home country. The applicant showed them the temporary asylum certificate delivered by the FMS, but they just laughed at him in response. The person who put questions to the applicant was of Tajik origin.

40. In the evening of the following day the applicant was taken by his kidnappers directly to the airfield of Moscow's Domodedovo airport, without going through the usual border and customs formalities and security checks. The applicant was handed over to a Tajik patrol, who forced him into a nearby aircraft without presenting a ticket or any travel documents.

41. At around 4 a.m. the next day, the aircraft arrived at the airport of Khujand in Tajikistan, where the applicant was handed over to the Tajik authorities. His requests for a lawyer were refused. According to the written testimony of the applicant's father, the applicant was detained and questioned for an unspecified period of time at Khujand police station. The applicant's father testified in writing that police officers, one of whom was identified as S. M., had severely ill-treated the applicant in order to make him confess to crimes he had never committed and state that he had come back to Tajikistan voluntarily. He further testified that on 20 December 2012 the investigator, R.R., had refused to allow him to meet with his son in detention, referring to the father's failure to help the authorities apprehend the applicant and bring him back to the country.

2. Information provided by the Government

42. The Government's submissions in respect of the applicant's account of the facts were limited to the following.

43. Following enquiries from the Court, letters received from the Government dated 18 November 2011 and 29 February 2012 contained no information about the applicant's whereabouts or his crossing of the State border. The Government further submitted that the applicant's rights and freedoms had not been restricted in any way after his release on 20 May 2011, that the law had not obliged the authorities to ensure any surveillance over the applicant, that his extradition or expulsion had been suspended pursuant to the interim measures ordered by the Court and that he had not, therefore, been handed over to Tajikistan through the extradition procedure.

44. On 5 April 2012 the Government retransmitted the official information provided on 26 March 2012 by the Prosecutor General of Tajikistan to his Russian counterpart, according to which the applicant had "voluntarily surrendered" on 3 November 2011 to the Sogdiyskiy Regional Department for the Fight against Organised Crime (*РОБОП*) and had been detained in temporary detention facility no. 2 (*СИЗО №2*) of Khujand.

45. According to the latest information received from the Government on 25 February 2013, the inquiry into the applicant's abduction and transfer was still pending.

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

46. Once informed of the applicant's abduction on the evening of 31 October 2011, his representatives immediately contacted the competent Russian authorities, asking them to take urgent measures to prevent the applicant's forcible removal from Russian territory.

47. Between 3 and 5 a.m. on 1 November, Ms E. Ryabinina faxed four formal requests to that effect to the head of the Moscow City Police Department, the Director of the FMS, the Prosecutor General and the Representative of the Russian Federation at the Court, respectively. She also solicited the assistance of the Commissioner for Human Rights of the Russian Federation.

48. In her letter to the head of the Moscow City Police Department, the applicant's representative stated the circumstances of the applicant's abduction. She also reminded him of the applicant's legal status as a person to whom temporary asylum had been granted by the FMS and interim measures had been applied by the Court to prevent his extradition. The letter concluded as follows:

> "In view of [those circumstances] there are weighty reasons to fear that an abduction attempt has been made in respect of [the applicant] with a view to his subsequent illegal transfer from Russia to Tajikistan, whose authorities have requested his extradition for criminal prosecution.
>
> The situation is aggravated by the fact that the applicant's brother [Sh. T.] disappeared on 8 September in Moscow and, according to the information provided by his wife, was remanded in custody on 13 September in Khujand, the Republic of Tajikistan, where he is still being detained. Some time earlier, on 23 August of this year, two other asylum seekers who had been protected against forcible transfer by [the interim measures decided by] the European Court, disappeared in Moscow: a Tajik national, S.K., and an Uzbek national, M. A. They were both transferred to Tajikistan and remanded in custody. Any claim that they left voluntarily must be excluded as they did not have any documents permitting them to cross the State border of the Russian Federation: M. A.'s national passport was being held by the Moscow branch of the FMS, while S.K. had lost his passport several years previously. ..."

49. On the same day, the Commissioner for Human Rights of the Russian Federation also sent a letter to the head of the Moscow City Police Department, which read as follows:

> "... There are well-founded reasons to fear that an attempt might be made illegally to transfer [the applicant] to Tajikistan, where his life is threatened.
>
> Today, 1 November 2011, [the applicant's representative] asked you to take urgent measures in order to prevent [the applicant's] forcible transfer from the territory of the Russian Federation, and above all, through the airports of Moscow.
>
> I ask you to consider the [above] request as soon as possible and to take all possible measures with a view to finding [the applicant] and preventing his forcible transfer from the territory of the Russian Federation.
>
> I ask you to inform me of the results following your consideration of the request."

50. There is no information about any protective measure taken by the authorities concerned in response to any of those requests.

51. On 7 November 2011 the Office of the Representative of the Russian Federation at the Court replied to the applicant's representative that pursuant to the interim measures taken by the Court, the Russian authorities were abstaining from his extradition and that the relevant instruction had been sent to the Federal Service for the Execution of Sentences (*ФСИН*), the Prosecutor General and the Ministry of the Interior.

G. Letter from the Registrar of the Court following the applicant's abduction and transfer to Tajikistan

52. Following the applicant's complaint about his abduction in the present case and similar events in certain other cases, on 25 January 2012 the Registrar of the Court sent a letter to the Representative of the Russian Federation at the Court. The letter read as follows:

> "The President of the Court, Sir Nicolas Bratza, has instructed me to express on his behalf his profound concern at the applicant's disappearance in Russia and his subsequent transfer to Tajikistan notwithstanding the interim measures indicated under Rule 39 of the Rules of Court.
>
> The President has noted that since the Court's judgment in the *Iskandarov* case (no. 17185/05, 23 September 2010) where it held the Russian Federation responsible for a violation of Article 3 on account of the applicant's unexplained abduction and transfer to Tajikistan by unidentified persons, the Court has been confronted with repeated incidents of that kind in four other cases, including the above-mentioned case (the other three cases are: *Abdulkhakov v. Russia*, no. 14743/11; *S.K. v. Russia*, no. 58221/10; and *Zokhidov v. Russia*, no. 67286/10). The explanations so far provided by the Government do not clarify how applicants could against their will be moved across the Russian State border notwithstanding the Government's official assurances that no extradition would be effected pending examination of their cases by the Court.

> The President is deeply disturbed at those developments. He is particularly concerned about their implications for the authority of the Court and possible continuation of such unacceptable incidents in cases of other applicants to whom the interim measures still apply on account of the imminent risk of violation of their rights under Articles 2 and 3 of the Convention in the countries of destination. As an indication of the seriousness with which he views this turn of events, the President has asked that the Chairman of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General of the Council of Europe be informed immediately.
>
> The President also notes that the Court's Chamber has requested additional observations from the Government to address this worrying and unprecedented situation and expects the Russian competent authorities to provide the Court with exhaustive information about the follow-up given to the incidents in the Russian Federation. In the meantime, your authorities' attention is drawn to the fact that interim measures continue to apply under Rule 39 in twenty-five other Russian cases concerning extradition or expulsion. Those cases are listed in appendix to the present letter."

53. On 5 March 2012 the Representative of the Russian Federation at the Court informed the Registrar in response that appropriate information would be submitted "upon receiving the necessary data from the relevant authorities".

H. Official inquiry and repeated refusals to institute criminal proceedings in respect of the impugned events

54. On 30 November and 2 December 2011 the Ministry of the Interior informed the applicant's representative that her complaint about the applicant's abduction had been sent to the Moscow South-West Police Department (*УВД по Юго-Западному АО ГУ МВД России по г. Москве*) and then to the Gagarinskiy Inter-District Investigation Division of the South-West Administrative Circuit of Moscow (*Гагаринский МСО СУ по ЮЗАО ГСУ СК РФ*). On 30 December 2011 the latter decided to transmit the file to the Nikulinskiy Inter-District Investigation Division of the South-West Administrative Circuit of Moscow (*Никулинский МСО СУ по ЮЗАО ГСУ СК РФ по г. Москве* – hereinafter referred to as "the Nikulinskiy Investigation Division").

1. First refusal by the investigator to open a criminal investigation and its quashing by his superior

55. Under Article 144 of the Code of Criminal Procedure, the senior investigator of the Nikulinskiy Investigation Division, P.K., conducted a pre-investigation inquiry (*проверка сообщения о преступлении* – "the inquiry").

56. On 21 March 2012 P. K. refused to open a criminal investigation in respect of the applicant's alleged abduction on the grounds of absence of

corpus delicti. After a brief recapitulation of the facts, as presented by the applicant's representative, the senior investigator concluded as follows:

> "... having analysed the materials of the inquiry, the investigating authority finds at present no evidence of crime under Articles 126 and 127 of the Criminal Code of the Russian Federation, because it has not been objectively established whether the applicant remains on the territory of the Russian Federation or has crossed the border of the Russian Federation. Information has also been received in the course of the inquiry that no shootings or abductions of persons have been reported on the territory where [the applicant] was allegedly abducted. The investigating authority does not exclude the possibility that following [the applicant's] release from detention he might have staged his abduction with a view to escaping criminal liability for crimes he had committed on the territory of the Republic of Tajikistan."

57. On the same day the head of the Nikulinskiy Investigation Division, S.K., quashed the above decision and sent the case back to the same senior investigator for a further inquiry. His decision was reasoned as follows:

> "The investigator's refusal to institute criminal proceedings is unfounded and must be quashed. In the course of a further inquiry it is necessary to obtain replies to all requests for information that were sent on the matter and to proceed to an additional interview of [the applicant's representative]."

58. On 27 March 2012 the head of the First Division for Procedural Supervision of the Moscow Directorate General of Investigation (*ГСУ СК России по г. Москве*) also requested a further inquiry into the matter. Furthermore, on 30 March 2012, the deputy to the Nikulinskiy Inter-District Prosecutor (*заместитель Никулинского межрайонного прокурора*) asked the investigator to ascertain whether the Russian authorities had been involved in the applicant's alleged abduction.

2. *Second refusal by the investigator to open a criminal investigation and its quashing by his superior*

59. On 20 April 2012 the senior investigator, P.K., again refused to open a criminal investigation by a new decision, which repeated word for word his earlier decision of 21 March 2012 (see paragraph 56 above).

60. On 23 April 2012 the deputy head of the Nikulinskiy Investigation Division, A.N., quashed that decision, also repeating word for word the previous decision by the head of the Nikulinskiy Investigation Division of 21 March 2012, which had quashed P. K.'s first decision of the same date (see paragraph 57 above).

3. *Third refusal by the investigator to open a criminal investigation and its quashing by his superior*

61. On 23 May 2012 the senior investigator, P.K., yet again refused to open a criminal investigation in respect of the applicant's abduction. The text of that decision was not submitted to the Court.

62. On 9 June 2012 the deputy head of the Nikulinskiy Investigation Division, A.N., again quashed that decision and demanded that the following procedural steps be taken:

> "In the course of a further inquiry a second request must be sent to the law-enforcement bodies of the Republic of Tajikistan in order to elucidate the following questions: has [the applicant] crossed the border of Tajikistan; is [the applicant] being detained in a pre-trial detention facility; and have criminal proceedings been brought against [the applicant]?
>
> A separate set of proceedings needs to be instituted on the basis of the materials concerning the possible unlawful crossing of the Russian border by the applicant ... and the materials sent to the FSB with a view to carrying out an inquiry under Article 151 of the Code of Criminal Procedure.
>
> ... [the applicant's representative] needs to be questioned on the following points: is she still a representative of [the applicant] and can she clarify anything about [his] crossing of the border? A number of other verification measures need to be taken with a view to adopting a lawful and well-founded decision."

4. Fourth refusal by the investigator to open a criminal investigation

63. On 9 July 2012 an investigator of the Nikulinskiy Investigation Division, A.Z., refused to bring criminal proceedings in respect of the applicant's abduction. After a brief statement of facts, the decision read as follows:

> "According to information received from the Border Control Department of the Federal Security Service of Russia ("the FSB"), the law of the Russian Federation does not provide for the names of persons crossing the State border of the Russian Federation to be recorded. In accordance with section 30(15) of the State Border of the Russian Federation Act, only the number of persons crossing the border is monitored.
>
> It is therefore impossible to confirm or refute the information about the crossing of the State border by [the applicant].
>
> Following a request for information about [the applicant], a national of the Republic of Tajikistan, the Prosecutor General's Office of the Republic of Tajikistan answered that the aforementioned request could not be satisfied as it had been made in breach of the Convention of 22 January 1993 for legal assistance and legal relations in civil family and criminal cases.
>
> The police authorities in charge of the relevant territory have not received any information during the relevant period about unlawful acts involving either the use of a weapon or the abduction of persons in the circumstances indicated in the application.
>
> The Moscow City and Regional branch of the FSB has in its possession material relating to verifications of the possible unlawful crossing of the border of the Russian Federation by [the applicant].

> Given that [the applicant] is subject to an international search warrant for the commission of crimes under Articles 186 § 2 and 187 § 2 of the Criminal Code [of Tajikistan], he might have staged his abduction with a view to escaping criminal liability for crimes he had committed on the territory of the Republic of Tajikistan.
>
> Thus, the preliminary inquiry has established no objective data indicative of [the applicant's] abduction."

The investigator sent the above decision to the applicant's representatives on 16 August 2012.

5. Subsequent inquiries

64. On 25 February 2013 the Government informed the Court that similar inquiries had continued and were still pending. No further decisions by the investigation authorities or documents were provided to the Court. According to the Government's information, the inquiry found that the applicant had illegally crossed the Russian State border, surrendered to the Tajik authorities and had been placed in detention. The investigator's decision of 9 July 2012 refusing to open a criminal investigation was again quashed by his superior on an unspecified date. According to the Government, the latest decision refusing to open a criminal investigation had been issued on 29 November 2012 by the head of the Nikulinskiy Investigation Division but had yet again been quashed. As a result, the file had been sent back to the investigators for an additional inquiry.

65. The Government also specified that the FSB had been asked to check the information about the applicant's illegal crossing of the State border. Another request had been sent to Tajik authorities to identify the applicant's whereabouts in Tajikistan. However, as of 23 January no responses had been received to either request.

I. The applicant's criminal trial in Tajikistan

66. The applicant's representatives informed the Court that on 30 November 2011 the Sogdiyskiy Regional Court of Tajikistan had started its examination of a criminal case against thirty-four individuals, including the applicant. The applicant had been charged with various crimes under Articles 185 § 1, 186 § 1, 187 §§ 1 and 2, 189 § 3 (a), 244 § 4 (c), 306 and 307 § 3 of the Criminal Code of Tajikistan.

67. Public hearings were held by the court as from 29 January 2012. Lawyer R.T., who took part in the trial, provided the applicant's representatives with a written testimony showing that the applicant had not pleaded guilty at the trial. According to R. T., the applicant submitted that he had been abducted in Moscow, forcibly transferred to Tajikistan and tortured in order to make him confess to the crimes.

68. In March and April 2012 eleven relatives of the co-accused repeatedly asked the Sogdiyskiy Regional Prosecutor, Sh.K., and the President of the Sogdiyskiy Regional Court, N.M., to order a forensic medical examination of the thirty-four co-accused in order to verify their allegations that they had been tortured by the authorities during the criminal proceedings. Their written request referred to the relevant provisions of the Constitution and the Code of Criminal Procedure of Tajikistan, which prohibit the use of torture and exclude any evidence obtained under duress. The applicant's mother made a similar request in respect of the applicant. There is no information regarding the authorities' response to those requests.

69. On 19 April 2012 the Sogdiyskiy Regional Court found the applicant guilty and sentenced him to twenty-six years' imprisonment. His thirty-three co-accused were also found guilty and sentenced to various terms of imprisonment, ranging from eight to twenty-eight years.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Extradition proceedings

1. Code of Criminal Procedure

70. Chapter 54 of the Code of Criminal Procedure ("the CCrP") of 2002 governs the procedure to be followed in the event of extradition.

71. An extradition decision made by the Prosecutor General may be challenged before a court (Article 463 § 1). In that event, the extradition order should not be enforced until a final judgment has been delivered (Article 462 § 6).

72. A court must review the lawfulness and validity of a decision to extradite within a month of receipt of a request for review. The decision should be taken in open court by a panel of three judges in the presence of a prosecutor, the person whose extradition is sought and the latter's legal counsel (Article 463 § 4).

73. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in applicable international and domestic law (Article 463 § 6).

74. Article 464 § 1 lists the conditions under which extradition cannot be authorised. Thus, the extradition of the following should be refused: a Russian citizen (Article 464 § 1 (1)) or a person who has been granted asylum in Russia (Article 464 § 1 (2)); a person in respect of whom a conviction has become effective or criminal proceedings have been

terminated in Russia in connection with the same act for which he or she has been prosecuted in the requesting State (Article 464 § 1 (3)); a person in respect of whom criminal proceedings cannot be launched or a conviction cannot become effective in view of the expiry of the statutory time-limit or for other valid grounds in Russian law (Article 464 § 1 (4)); or a person in respect of whom extradition has been blocked by a Russian court in accordance with the legislation and international treaties of the Russian Federation (Article 464 § 1 (5)). Lastly, extradition must be refused if the act that serves as the basis for the extradition request does not constitute a criminal offence under the Russian Criminal Code (Article 464 § 1 (6)).

75. In the event that a foreign national whose extradition is being sought is being prosecuted or is serving a sentence for another criminal offence in Russia, his extradition may be postponed until the prosecution has been terminated, the penalty has been lifted on any valid ground or the sentence has been served (Article 465 § 1).

2. Russian Supreme Court's Ruling of 14 June 2012

76. In its ruling no. 11 of 14 June 2012, the Plenum of the Russian Supreme Court indicated, with reference to Article 3 of the Convention, that extradition should be refused if there were serious reasons to believe that the person might be subjected to torture or inhuman or degrading treatment in the requesting country. Extradition could also be refused if exceptional circumstances disclosed that it might entail a danger to the person's life and health on account of, among other things, his or her age or physical condition. Russian authorities dealing with an extradition case should examine whether there were reasons to believe that the person concerned might be sentenced to the death penalty, subjected to ill-treatment or persecuted because of his or her race, religious beliefs, nationality, ethnic or social origin or political opinions. The courts should assess both the general situation in the requesting country and the personal circumstances of the person whose extradition was being sought. They should take into account the testimony of the person concerned and that of any witnesses, any assurances given by the requesting country, and information about the country provided by the Ministry of Foreign Affairs, by competent United Nations institutions and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

B. Detention pending extradition and judicial review

1. Russian Constitution

77. The Constitution guarantees the right to liberty (Article 22):

"1. Everyone has the right to liberty and personal integrity.

2. Arrest, placement in custody and detention are only permitted on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

78. Article 46 of the Constitution provides, among other things, that everyone should be guaranteed judicial protection of his or her rights and freedoms and stipulates that decisions, actions or inaction of State bodies, local authorities, public associations and officials may be challenged before a court.

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

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

80. A request for extradition must be accompanied by a detention order (Article 58 § 2). Upon receipt of a request for extradition, measures should be taken immediately to find and arrest the person whose extradition is sought, except in cases where that person cannot be extradited (Article 60).

81. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest containing a reference to the detention order and indicating that a request for extradition will follow must be sent (Article 61 § 1). A person may also be arrested in the absence of such a request if there are reasons to suspect that he or she has committed, in the territory of the other Contracting Party, an offence for which extradition may be requested. The other Contracting Party must be informed immediately of the arrest (Article 61 § 2).

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

3. Code of Criminal Procedure ("CCrP")

83. Article 1 § 3 of the CCrP provides that general principles and norms of international law and international treaties of the Russian Federation are a constituent part of its legislation concerning criminal proceedings. Should an international treaty provide for rules other than those established in the CCrP, the former are to be applied.

84. Chapter 13 of the CCrP ("Measures of restraint") governs the use of measures of restraint, or preventive measures (*меры пресечения*), while criminal proceedings are pending. Such measures include placement in custody. Custody may be ordered by a court following an application by an

investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive measure of restraint cannot be used (Article 108 §§ 1 and 3). The judicial decision to place a person in custody may be appealed against to a higher court within three days. The higher court must decide the appeal within three days of the date on which the appeal is lodged (Article 108 § 11).

85. A period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period up to six months (Article 109 § 2). Further extensions of up to twelve months, or in exceptional circumstances, up to eighteen months, may only be granted if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

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

4. Case-law of the Constitutional and Supreme Courts of Russia

87. By decision no. 101-O of 4 April 2006 the Constitutional Court held that the absence of any specific regulation of detention matters in Article 466 § 1 did not create a gap in the law that was incompatible with the constitutional guarantee against arbitrary detention. Article 8 § 1 of the Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, which in the case of Russia was the procedure laid down in the CCrP. Such procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Measures of restraint") which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests. Accordingly, Article 466 § 1 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP or the time-limits fixed in the Code.

88. By decision no. 333-O-P of 1 March 2007, the Constitutional Court held that while Articles 61 and 62 of the Minsk Convention did not govern the procedure for detention pending the receipt of an extradition request, the applicable procedures and time-limits were to be established by domestic

legal provisions in accordance with Article 8 of the Minsk Convention. It further reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention, in that it required a court to examine whether the arrest was lawful and justified. The Constitutional Court held that Article 466 § 1 of the CCrP, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure and within the time-limits established in Chapter 13 of the CCrP.

89. By decision no. 383-O-O of 19 March 2009 the Constitutional Court upheld the constitutionality of Article 466 § 2 of the CCrP, stating that this provision "does not establish time-limits for custodial detention and does not establish the grounds and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign state to detain an accused. Therefore the disputed norm cannot be considered to violate the constitutional rights of [the claimant] ..."

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

91. In its recent ruling no. 11 of 14 June 2012 cited above, the Plenum of the Russian Supreme Court held that a person whose extradition was sought could be detained before the receipt of an extradition request only in

cases specified in international treaties to which Russia was a party, such as Article 61 of the Minsk Convention. Such detention should be ordered and extended by a Russian court in accordance with the procedure, and within the time-limits, established by Articles 108 and 109 of the CCrP. The detention order should mention the term for which the detention or extension was ordered and the date of its expiry. If the request for extradition was not received within a month, or forty days if the requesting country was a party to the Minsk Convention, the person whose extradition was sought should be immediately released.

C. Status of refugees

1. Geneva Convention on the Status of Refugees of 1951

92. Article 33 of the UN Convention on the Status of Refugees of 1951, which was ratified by Russia on 2 February 1993, provides as follows:

> "1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."

2. Refugees Act

93. The Refugees Act (Law no. 4258-I of 19 February 1993), as in force at the material time, incorporated the definition of the term "refugee" contained in Article 1 of the 1951 Geneva Convention, as amended by the 1967 Protocol relating to the Status of Refugees. The Act defines a refugee as a person who is not a Russian national and who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, or membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it (section 1(1)(1)).

94. The Act does not apply to anyone believed on reasonable grounds to have committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime outside the country of refuge prior to his admission to that country as a person seeking refugee status (section 2(1)(1) and (2)).

95. A person who has applied for refugee status or who has been granted refugee status cannot be returned to a State where his life or freedom would be imperilled on account of his race, religion, nationality, membership of a particular social group or political opinion (section 10(1)).

96. If a person satisfies the criteria established in section 1(1)(1), or if he does not satisfy those criteria but cannot be expelled or deported from Russia for humanitarian reasons, he may be granted temporary asylum (section 12(2)). A person who has been granted temporary asylum cannot be returned against his will to the country of his nationality or to the country of his former habitual residence (section 12(4)). The person loses temporary asylum if the underlying circumstances cease to exist or if he is granted a permanent residence permit in Russia or establishes his place of residence outside Russian territory (section 12(5)). The person is deprived of temporary asylum, *inter alia*, if he is found guilty of a crime committed on Russian territory or is found to have submitted false information or documents that had justified the authorities' decision to grant him temporary asylum (section 12(6)).

97. According to the Procedure for Granting Temporary Asylum adopted by Decree no. 274 of 9 April 2001, as in force at the material time, a competent FMS body delivers a certificate for temporary asylum to any person to whom it has been granted (§ 8). The certificate constitutes an identity document in the Russian Federation (§ 9). When a certificate for temporary asylum is delivered to a person, his other identity documents are withheld by the FMS on a temporary basis. Temporary asylum is granted for a period of up to one year, which may be renewed for each consecutive year upon request by the person concerned, provided that the underlying circumstances continue to exist (§ 12). The person to whom temporary asylum is granted enjoys all rights and obligations provided for by the Refugees Act except the right to receive a lump-sum allowance (§ 13).

3. Recommendation by the Committee of Ministers of the Council of Europe on the right of asylum seekers to an effective remedy

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

> "The Committee of Ministers ...
>
> Without prejudice to the exercise of any right of rejected asylum seekers to appeal against a negative decision on their asylum request, as recommended, among others, in Council of Europe Recommendation No. R (81) 16 of the Committee of Ministers,
>
> Recommends that governments of member states, while applying their own procedural rules, ensure that the following guarantees are complied with in their legislation or practice:

1. An effective remedy before a national authority should be provided for any asylum seeker whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.

2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when: ...

2.2. that authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief; ...

2.4. the execution of the expulsion order is suspended until a decision under 2.2 is taken."

99. On a more general level, Recommendation Rec (2004) 6 of the Committee of Ministers to member States on the improvement of domestic remedies states as follows:

The Committee of Ministers ...

Emphasising that it is for member states to ensure that domestic remedies are effective in law and in practice, and that they can result in a decision on the merits of a complaint and adequate redress for any violation found;

Noting that the nature and the number of applications lodged with the Court and the judgments it delivers show that it is more than ever necessary for the member states to ascertain efficiently and regularly that such remedies do exist in all circumstances ...

Considering that the availability of effective domestic remedies for all arguable claims of violation of the Convention should permit a reduction in the Court's workload as a result, on the one hand, of the decreasing number of cases reaching it and, on the other hand, of the fact that the detailed treatment of the cases at national level would make their later examination by the Court easier;

Emphasising that the improvement of remedies at national level, particularly in respect of repetitive cases, should also contribute to reducing the workload of the Court;

Recommends that member states, taking into account the examples of good practice appearing in the appendix:

I. ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found;

II. review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court; ..."

D. Criminal investigation

100. The Code of Criminal Procedure establishes that every report of a crime must be accepted, verified and decided upon within three days by an inquiry officer, inquiry agency, investigator or prosecutor. They may proceed, with experts' assistance or on their own, to documentary verifications, checks, and the examination of documents, objects or dead bodies, and may issue compulsory orders for operational search activities (Article 144 § 1). The aforementioned period of three days may be extended to ten and thirty days in certain circumstances (Article 144 § 3). A criminal investigation may be initiated by an investigator or a prosecutor following a complaint by an individual or on the investigating authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147).

101. Orders by an investigator or a prosecutor refusing to institute criminal proceedings or terminating a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice, may be appealed against to a district court, which is empowered to check the lawfulness and grounds of the impugned decisions (Article 125).

III. REPORTS ON THE SITUATION IN TAJIKISTAN

102. A report released by Amnesty International in 2007 contained the following information on the death of Sadullo Marufov in police custody (see paragraph 12 above):

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

103. The reports by the United Nations and non-governmental organisations on the situation in Tajikistan at the material time appear in several judgments of the Court cited above (see, among others, *Khodzhayev*, §§ 72-74, and *Gaforov*, §§ 93-100). More recently, the situation was further reported upon as follows.

104. Concluding his visit to Tajikistan in May 2012, the UN Special Rapporteur on Torture, Mr Juan E. Méndez, stated that "pressure on detainees, mostly as a means to extract confessions, is practiced in Tajikistan in various forms, including threats, beatings and sometimes by applying electric shock". He stressed that "confessions extracted by violence remain the main investigatory tool of law enforcement and

prosecutorial bodies". He also expressed his concerns at the lack of safeguards against illegal extradition or rendition from and to other countries, as "there seems to be no meaningful opportunity for judicial review of these measures that are generally conducted by the law enforcement bodies under the direction of the Prosecutor General. The Minsk Convention on Legal Assistance in civil and criminal matters of 1993, other agreements between CIS countries ... offer general language about protection against abuse, but they operate more meaningfully as international cooperation in law enforcement. The result is that international law prohibitions on refoulement to places where a person may be subjected to torture or cruel, inhuman or degrading treatment are not guaranteed in fact" (End-of-mission Statement by the UN Special Rapporteur on Torture, Juan E. Méndez. Preliminary findings on his country visit to the Republic of Tajikistan, 10-18 May 2012).

105. On 27 June 2011 a group of non-governmental organisations including international NGOs (Amnesty International, the International Federation for Human Rights (FIDH), Penal Reform International (PRI) and the World Organisation Against Torture (OMCT)), as well as Tajikistani NGOs (the Bureau of Human Rights and Rule of Law, the Centre for Children's Rights, the Collegium of Advocates of the Soghd Region, the Sipar Collegium of Advocates of the Republic, and several others) released a joint statement. It was headed "Tajikistan: A coalition of non-governmental organisations is calling on the government to end torture and fulfil its international obligations" and, in so far as relevant, reads as follows:

> "In Tajikistan police have in many cases been accused of torturing or beating detainees to extract money, confessions or other information incriminating the victim or others. This abuse has mostly taken place in the early stages of detention; in many cases victims are initially detained without contact with the outside world ...
>
> Torture practices reported in Tajikistan include the use of electric shocks; attaching plastic bottles filled with water or sand to the detainee's genitals; rape; burning with cigarettes. Beating with batons, truncheons and sticks, kicking and punching are also believed to be common.
>
> ... [S]afeguards against torture enshrined in domestic law are not always adhered to. For example, while the new Criminal Procedure Code stipulates that detainees are entitled to a lawyer from the moment of their arrest, in practice lawyers are at the mercy of investigators, who can deny them access for many days. During this period of incommunicado detention, the risk of torture or other ill-treatment is particularly high. The new Criminal Procedure Code also introduced remand hearings within 72 hours of a suspect's arrest. However, they often take place with a delay, and judges in many cases ignore torture allegations and the injuries presented to them in the courtroom. Usually they rely on the version of events given by [those] accused of the torture.

> There are no routine medical examinations when detainees are admitted to police stations and temporary detention facilities. Upon transfer to pre-trial detention facilities under the jurisdiction of the Ministry of Justice they undergo a medical examination. However, when medical personnel suspect that a detainee [has undergone] torture or other ill-treatment they ... usually return them to the temporary detention facility until the signs of injury have faded.
>
> Victims rarely lodge complaints ... for fear of repercussions, and impunity for abusive officers is the norm. Often relatives and lawyers are reluctant to file complaints, so as not to worsen the situation for the detainee.
>
> Prosecutor's offices are tasked with investigating allegations of torture. Sometimes close personal and structural links between prosecutor's offices and police undermine the impartiality of prosecutors. The authorities have not published comprehensive statistics on prosecutions of law-enforcement officers relating specifically to torture or other ill-treatment, rather than broader charges such as "abuse of power" or "exceeding official authority".
>
> Judges [regularly] base verdicts on evidence allegedly extracted under duress ...
>
> Tajikistan has not given the International Committee of the Red Cross access to detention facilities to carry out monitoring since 2004. It has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which provides for a system of regular visits to places of detention carried out by independent international and national bodies."

106. In January 2012 Human Rights Watch released its World Report 2012, in which the relevant chapter on Tajikistan states:

> "Torture remains an enduring problem within Tajikistan's penitentiary system and is used to extract confessions from defendants, who are often denied access to family and legal counsel during initial detention. Despite discussions with the International Committee of the Red Cross (ICRC) in August, authorities have not granted ICRC access to places of detention. With rare exceptions, human rights groups are also denied access.
>
> While torture is practiced with near impunity, authorities took a few small steps to hold perpetrators accountable ...
>
> Under the pretext of combating extremist threats, Tajikistan continues to ban several peaceful minority Muslim groups... Local media continued to report on prosecutions of alleged members of Hizb ut-Tahrir and the Jamaat Tabligh movement."

107. The report by Amnesty International entitled "Shattered Lives: Torture and other ill-treatment in Tajikistan", released on 12 July 2012, reads, in so far as relevant, as follows:

> "... Amnesty International's research shows that practices of torture and other ill‑treatment remain widespread in all types of detention facilities in Tajikistan. Detainees at the early stages of detention were found to be at particular risk, subjected to torture or other ill-treatment by law enforcement officers in order to "solve" crimes by obtaining confessions of guilt and also to obtain money from torture victims or

their relatives. The general climate of impunity keeps police abuse virtually unchecked ...

2. The scale of torture and other ill-treatment in Tajikistan

In Tajikistan torture and ill-treatment occur in a climate of secrecy. [T]he perpetrators are rarely brought to justice ... [T]orture and other ill-treatment occur particularly in pre-trial detention ... Domestic law has significant shortcomings when it comes to safeguards against torture. In addition, those crucial safeguards that do exist in law, such as access to a lawyer immediately after apprehension, are rarely applied in practice ...

2.1. Torture and other ill-treatment by police

[T]he routine use of torture results from the lack of technical capacity to investigate crimes... A local independent human rights observer told Amnesty International that: "people may get away without beatings in less serious cases, but in cases involving grave crimes – if they don't confess, they get beaten", adding that police "won't hesitate to resort to violence ...

2.2. Torture and other ill-treatment used in the context of national security and counter-terrorism

The fight against terrorism and threats to national security are often invoked by the Tajikistani authorities as key to securing national and regional stability. However, ... frequently human rights are violated in the pursuit of groups perceived as a threat to national security ...

[The] research indicates that particular targets are Islamic movements and Islamist groups or parties, and that people accused of being Islamist extremists are at particular risk of torture and other ill-treatment in Tajikistan ...

In September 2010 an explosion occurred at the office of the [police] in Khujand, resulting in several deaths and injuries to over two dozen people. Following this the Tajikistani authorities redoubled their efforts to find members of Islamic movements and Islamist groups or parties who they alleged were responsible. Law enforcement officers came under increased pressure to solve cases with national security implications ...

8. Torture and other ill-treatment upon return to Tajikistan

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

IV. COUNCIL OF EUROPE TEXTS ON THE DUTY TO COOPERATE WITH THE COURT, THE RIGHT TO INDIVIDUAL PETITION AND INTERIM MEASURES

A. Parliamentary Assembly

108. In Resolution 1571 (2007) on member States' duty to cooperate with the Court, adopted on 2 October 2007, the Parliamentary Assembly stated, *inter alia*:

> "13. The Court has also used the instrument of interim measures (Article 39 of the Rules of the Court) in order to prevent irreparable damage. The Assembly commends the Court for finding that such interim measures are binding on states parties. It considers that this instrument may have still wider potential uses for protecting applicants and their lawyers who are exposed to undue pressure. The Court may find it useful in this respect to examine the practice of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, which have used interim measures to enjoin the authorities to place applicants under special police protection in order to shield them from criminal acts by certain non-state actors."

109. The explanatory memorandum adopted by the Assembly's Committee of Legal Affairs and Human Rights (Doc. 11183 of 9 February 2007, § 48) referred in this connection to the practice developed under Article 63 § 2 of the American Convention on Human Rights, which empowers the Inter-American Court of Human Rights to order positive action by states. For example, in the *Aleman-Lacayo* case, the Inter-American Commission of Human Rights asked the Court to adopt a measure requesting that the Government of Nicaragua adopt effective security measures to protect the life and personal integrity of Dr Aleman-Lacayo, including providing him and his relatives with the "name and telephone number of a person in a position of authority" who would be responsible for providing them with protection. The Court granted the Commission's request and called upon the Nicaraguan Government to adopt "such measures as are necessary to protect the life and personal integrity of Dr Aleman-Lacayo" (see *Aleman-Lacayo* case, Inter-American Court of Human Rights, Order of 2 February 1996).

110. The Assembly's Resolution 1571 (2007) further called upon the competent authorities of all member States to:

> "17.1. refrain from putting pressure on applicants, potential applicants, their lawyers or family members, aimed at obliging them to refrain from submitting applications to the Court or withdrawing those applications which have already been submitted;
>
> 17.2. take positive measures to protect applicants, their lawyers or family members from reprisals by individuals or groups including, where appropriate, allowing applicants to participate in witness protection programmes, providing them with

special police protection or granting threatened individuals and their families temporary protection or political asylum in an unbureaucratic manner;

17.3. thoroughly investigate all cases of alleged crimes against applicants, their lawyers or family members and to take robust action to prosecute and punish the perpetrators and instigators of such acts so as to send out a clear message that such action will not be tolerated by the authorities; ..."

111. The Assembly further stated:

"18. The Assembly is of the view that member states' co-operation with the European Court of Human Rights would benefit if the Court were to continue to develop its case law to ensure full implementation of the member states' duty to co-operate with the Court, in particular by:

18.1. taking appropriate interim measures, including new types thereof, such as ordering police protection or relocation of threatened individuals and their families;

18.2. urgently notifying applications to respondent states in cases where the Court is informed of credible allegations of undue pressure on applicants, lawyers or family members;

18.3. granting priority to such cases;

18.4. taking up cases of alleged unlawful pressure on applicants and lawyers with the representatives of the state concerned and, as appropriate, alerting the Committee of Ministers to any persistent problems."

112. Lastly, the Assembly invited "national parliaments to include all aspects of states' duty to co-operate with the Court in their work aimed at supervising the compliance of governments with obligations under the Convention, and to hold the executive or other authorities accountable for any violations."

113. In Recommendation 1809 (2007) the Assembly proposed that the Committee of Ministers address a recommendation to all member States inviting them to take the necessary measures in order to prevent applicants who had initiated proceedings before the Court, their lawyers, members of their families, or the NGOs assisting them from being subjected to unlawful pressure or reprisals, and to ensure that perpetrators and instigators of such acts were brought to account.

114. The Assembly's more recent Recommendation 1956 (2011) of 26 January 2011 specifically dealing with the question of interim measures under Rule 39 reads as follows:

"3. A major concern of the Assembly is the growing number of member states that have recently ignored interim measures ordered by the Court under Rule 39. This emphasises the need for the Committee of Ministers to reinforce its role in the execution of the Court's judgments.

4. The Assembly therefore invites the Committee of Ministers to:

4.1. consider extending its mandate under Article 46 of the European Convention on Human Rights ("the Convention", ETS No. 5) by introducing a competence to monitor compliance with the letter and spirit of Rule 39 measures of which notice has been given under Rule 39.2 of the Rules of Court;

4.2. fully use its competence pursuant to Article 46 of the Convention in resolving the cases of non-compliance in a way which fully and effectively upholds the Convention; ensure, in collaboration with the Court, that a mechanism or working method is established for follow-up in cases of non-compliance, and investigate cases and/or publish statements in this connection;

4.3. give priority to judgments finding violations of Article 34 of the Convention in cases concerning expulsion and extradition of aliens, while supervising their execution by respondent states according to Article 46 of the Convention;

4.4. seek to adopt an interim resolution calling for member states to take individual and/or general measures, in those cases where an individual has been expelled to a state which has no wish to return him or her;

4.5. co-operate with the Court and other relevant actors in order to publish up-to-date Rule 39 statistics as well as information on the extent of compliance by contracting parties; ..."

115. In its Resolution 1788 (2011) adopted on the same date, the Assembly also stated:

"10. While still relatively rare, the growing number of breaches is of grave concern given the harm to the individuals concerned and the impact on the integrity of the Convention system as a whole. The Assembly condemns any disrespect of legally binding measures ordered by the Court, and in particular disrespect for the right of individual application as guaranteed by Article 34 of the Convention, as a blatant disregard for this unique system of protection of human rights.

...

15. The Assembly therefore urges the member states of the Council of Europe to:

15.1. guarantee the right of individual petition to the Court under Article 34, neither hinder nor interfere with the exercise of that right in any manner whatsoever and fully comply with the letter and spirit of interim measures indicated by the Court under Rule 39, in particular by:

15.1.1. co-operating with the Court and Convention organs, by providing full, frank and fair disclosure in response to requests for further information under Rule 39(3), and facilitating to the highest degree any fact-finding requests made by the Court;

...

16. The Assembly recognises the primary role of the Court in finding solutions for dealing with interim measures under Rule 39 and in this context expresses the hope that the Court will:

...

16.8. require, in more cases, the adoption of specific measures by states to remedy harm caused, in order that the Committee of Ministers may more effectively monitor the execution of judgments ..."

B. Committee of Ministers

116. In Resolutions ResDH(2001)66 and ResDH(2006)45 the Committee of Ministers emphasised that the principle of cooperation with the Court embodied in the Convention was of fundamental importance for the proper and effective functioning of the Convention system and called on the governments of the Contracting States to ensure that all relevant authorities strictly complied with that obligation.

117. The Committee of Ministers' Interim Resolution CM/ResDH(2010)83 concerning the Court's judgment in the case of *Ben Khemais v. Italy* (no. 246/07, 24 February 2009) reads as follows:

"The Committee of Ministers ...

Recalling that the applicant in the present case was expelled to Tunisia on 2 June 2008 despite the Court's interim measure under Rule 39 of the Rules of the Court requiring the Italian authorities not to do so until further notice;

Noting that the Court consequently found that the applicant's expulsion amounted to violations of Article 3 and of Article 34 of the Convention;

Recalling that, in the context of the examination of the present case, the Committee noted, at its 1078th meeting (March 2010), that the Italian authorities were fully committed to complying with the interim measures indicated by the Court under Rule 39;

Deploring that, despite this commitment, the Italian authorities expelled another applicant, Mr. Mannai, to Tunisia on 1 May 2010 in breach of an interim measure indicated on 19 February 2010 by the Court requiring the Italian authorities not to do so until further notice;

Noting with concern that in at least two other cases the Italian authorities have expelled applicants to Tunisia although the Court had previously indicated not to do so under Rule 39 ;

Recalling firmly that, according to the Court's well-established case-law, Article 34 of the Convention entails an obligation to comply with interim measures indicated pursuant to Rule 39 of the Rules of the Court since the Grand Chamber's judgment of 4 February 2004 in the case of Mamatkulov and Askarov against Turkey,

Stressing once again the fundamental importance of complying with interim measures indicated by the Court under Rule 39 of the Rules of Court;

Expressing confidence however that the Italian authorities will finally take the necessary measures to ensure that interim measures indicated by the Court are strictly complied with, to prevent similar violations in the future;

FIRMLY RECALLS the obligation of the Italian authorities to respect interim measures indicated by the Court;

URGES the Italian authorities to take all necessary steps to adopt sufficient and effective measures to prevent similar violations in the future;

DECIDES to examine the implementation of this judgment at each human rights meeting until the necessary urgent measures are adopted."

118. Responding to Recommendation 1809 (2007) of the Parliamentary Assembly (see paragraph 113 above), the Committee of Ministers adopted Resolution CM/Res(2010)25 on member States' duty to respect and protect the right of individual application to the Court, the relevant parts of which read as follows:

"... Emphasising that the right of individuals to apply to the European Court of Human Rights (hereinafter referred to as 'the Court') is a central element of the convention system and must be respected and protected at all levels;

Stressing that respect for this right and its protection from any interference are essential for the effectiveness of the Convention system of human rights protection;

Recalling that all States Parties to the Convention have undertaken not to hinder in any way the effective exercise of this right, as stipulated by Article 34 of the Convention;

Recalling that positive obligations, including to investigate, form an essential characteristic of the Convention system as a whole;

Recalling also that the Court's case law has clearly established that Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures made under Rule 39 of the Rules of Court and that non-compliance may imply a violation of Article 34 of the Convention;

Noting therefore with concern that there have been isolated, but nevertheless alarming, failures to respect and protect the right of individual application (such as obstructing the applicant's communication with the Court, refusing to allow the applicant to contact his lawyer, bringing pressure to bear on witnesses or bringing inappropriate proceedings against the applicant's representatives), as found in recent years by the Court;

Deploring any interference with applicants or persons intending to apply to the Court, members of their families, their lawyers and other representatives and witnesses, and being determined to take action to prevent such interference;

Recalling the 1996 European Agreement relating to persons participating in proceedings of the European Court of Human Rights (ETS No. 161);

Recalling its Resolutions ResDH(2001)66 and ResDH(2006)45 on the states' obligation to co-operate with the European Court of Human Rights,

Calls upon the States Parties to:

1. refrain from putting pressure on applicants or persons who have indicated an intention to apply to the Court, members of their families, their lawyers and other representatives and witnesses aimed at deterring applications to the Court, having applications which have already been submitted withdrawn or having proceedings before the Court not pursued;

2. fulfil their positive obligations to protect applicants or persons who have indicated an intention to apply to the Court, members of their families, their lawyers and other representatives and witnesses from reprisals by individuals or groups including, where appropriate, by allowing applicants and witnesses to participate in witness protection programmes and providing appropriate forms of effective protection, including at international level;

3. in this context, take prompt and effective action with regard to any interim measures indicated by the Court so as to ensure compliance with their obligations under the relevant provisions of the Convention;

4. identify and appropriately investigate all cases of alleged interference with the right of individual application, having regard to the positive obligations already arising under the Convention in light of the Court's case law;

5. take any appropriate further action, in accordance with domestic law, against persons suspected of being the perpetrators and instigators of such interference, including, where justified, by seeking their prosecution and the punishment of those found guilty;

6. if they have not already done so, ratify the 1996 European Agreement relating to persons participating in proceedings of the European Court of Human Rights,

Decides also to examine urgently, particularly in the context of its supervision of the execution of judgments finding a violation of Article 34, to any incident of interference with the right of individual application and encourages the Secretary General to consider exercising his powers under Article 52 of the Convention where justified by the circumstances."

119. In its Final Declaration, the High Level Conference on the Future of the Court held in Izmir on 26-27 April 2011 reiterated the requirement for the States Parties to comply with the interim measures in the following terms:

"[The Conference] stresses the importance of States Parties providing national remedies, where necessary with suspensive effect, which operate effectively and fairly and provide a proper and timely examination of the issue of risk in accordance with the Convention and in light of the Court's case law; and, while noting that they may challenge interim measures before the Court, reiterates the requirement for States Parties to comply with them."

120. Replying to the Assembly's Recommendation 1956 (2011) (see paragraph 114 above), the Committee of Ministers assured the Assembly that "it fully uses its competence under Article 46 in all cases establishing violations of Article 34, whether in order to ensure that urgent individual measures are rapidly adopted, or repetitions of violations prevented through

the introduction of necessary domestic safeguards." The Committee reminded the Assembly that the new working methods applied since January 2011 had fixed as indicators for classification under enhanced supervision all cases calling for urgent individual measures or revealing major structural problems (see Doc. 12836).

V. COMMITTEE OF MINISTERS' DECISIONS UNDER ARTICLE 46 ON RELATED CASES CONCERNING RUSSIA

121. Following the information received from the Court about repeated complaints of Russia's disregard for interim measures in the present case and several other cases (see paragraph 52 above), the Committee of Ministers examined that issue in connection with the execution of the Court's judgment in the *Iskandarov* case (cited above).

122. The Committee of Ministers' decision (CM/Del/Dec(2012)1136/19), adopted on 8 March 2012 at the 1136th meeting of the Ministers' Deputies, reads, in so far as relevant, as follows:

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

123. During its subsequent examination of the issue, the Committee of Ministers, confronted with yet another case of alleged disappearance of an applicant notwithstanding the interim measures indicated by the Court,

reiterated its previous concerns at the repetition of such incidents and continued as follows (see decision adopted on 6 June 2012 at the 1144th meeting - CM/Del/Dec(2012)1144/18):

"The Deputies

...

3. deplored the fact that, notwithstanding the serious concerns expressed in respect of such incidents by the President of the Court, the Committee of Ministers and by the Russian authorities themselves, they were informed that yet another applicant disappeared on 29 March 2012 in Moscow and shortly after found himself in custody in Tajikistan;

4. took note of the Russian authorities' position according to which the investigation in the Iskandarov case is still ongoing and had not at present established the involvement of the Russian State in the applicant's kidnapping;

5. regretted however that up to now, neither in the Iskandarov case nor in any other case of that type have the authorities been able to make tangible progress with the domestic investigations concerning the applicants' kidnappings and their transfer, nor to establish the responsibility of any state agent;

6. noted that, according to the information given by the Russian authorities, following the dissemination in April 2012 of the Committee of Ministers' decision adopted at the 1136th meeting to the Prosecutor General's Office, to the Investigative Committee, the Ministry of the Interior, the Federal Migration Service and to the Federal Baliffs' Service, no other incidents of this kind had taken place, and invited the Russian authorities to clarify whether they consider that this measure is sufficient to effectively put an end to such an unacceptable practice."

124. By a decision adopted at the 1150th meeting of the Ministers' Deputies on 26 September 2012 (CM/Del/Dec(2012)1150), the Committee of Ministers made the following findings and assessment:

"The Deputies

...

4. noted with regret that to date no-one responsible for the applicant's illegal transfer to Tajikistan has been identified in the Iskandarov case;

...

6. noted that no incidents similar to those described in the Iskandarov case took place since the last examination of this case by the Committee and invited the Russian authorities to continue to take all necessary measures in order to ensure that such incidents no longer occur in the future;

7. welcomed the adoption on 14 June 2012 by the Supreme Court of the Russian Federation of a Ruling providing important guidelines on how to apply domestic legislation in the light of the Convention requirements, in particular with regard to Articles 3 and 5 of the Convention;

8. noted further with satisfaction that the measures adopted by the Russian authorities in response to the judgments of this group (the Constitutional Court's decision, instructions issued by the Prosecutor General and the Decisions of the Plenum of the Supreme Court) have already resulted in a number of judgments of the Court finding no violations of the Convention;

9. encouraged the Russian authorities to ensure rapid progress with regard to the preparation and adoption of the legislative reform required by these judgments."

125. The Committee of Ministers resumed examination of the issue at the 1157th meeting of the Ministers' Deputies held on 6 December 2012 and adopted the following decision (CM/Del/Dec(2012)1157):

"The Deputies

1. recalled that in abiding by a Court's judgment, the State party has an obligation to take all measures to prevent violations similar to those found by the Court;

2. consequently deeply regretted that, notwithstanding the serious concerns expressed by the Court and by the Committee of Ministers in respect of incidents allegedly similar to that in the Iskandarov judgment, they were informed that yet another applicant, who was subject to an interim measure indicated by the Court under Rule 39 in connection with his planned extradition to Tajikistan, would have disappeared from Volgograd on 20 October 2012 (*Latipov v. Russian Federation*, No. 77658/11);

3. noted that such incidents, if confirmed, and lack of appropriate response thereto by the authorities would raise a more general issue as to the compatibility of this situation with the obligations of the Russian Federation under the Convention;

4. reiterated their regret expressed in their earlier decision that up to now, neither in the Iskandarov case nor in any other case of that type have the authorities been able to make tangible progress with the domestic investigations concerning the applicants' kidnappings and their transfer, nor to establish the responsibility of any state agent;

5. consequently called upon the Russian authorities to address without further delay this worrying and unprecedented situation, notably by adopting protective measures in respect of other persons who may be subject to an interim measure indicated by the Court under Rule 39 in connection with their removal from the Russian territory and ensuring that all such incidents are effectively investigated in strict compliance with their Convention obligations;

6. invited the Russian authorities to provide information on the applicant's current situation in the Iskandarov case, in particular as far as guarantees against ill-treatment are concerned."

126. The Committee of Ministers' latest decision on the matter (CM/Del/Dec(2013)1164), which was adopted on 7 March 2013 at the 1164th meeting of the Ministers' Deputies, reads as follows:

"The Deputies

1. took note of the Russian authorities' position according to which the measures taken so far can prevent further abductions and forced transfers of persons in whose respect the Court indicated an interim measure under Rule 39 of its Rules of Procedure;

2. noted however with serious concern that at present several complaints of foreign nationals are pending before the Court concerning alleged violations of their rights and the non-observance of interim measures indicated by the Court with regard to their forced transfer from the territory of the Russian Federation;

3. invited the Russian authorities to clarify the relevance of the measures already taken in circumstances similar to those described in the Iskandarov and Abdulkhakov judgments;

4. reiterated their call upon the Russian authorities to adopt without further delay the necessary measures to put an end to such incidents by taking further special protective measures in respect of the applicants and a set of measures to ensure rapid and effective investigations into disappearances and forced transfers, and to inform the Committee of Ministers accordingly;

5. in view of the persistence of this alarming situation and having regard to the obligations of the Russian Federation under the Convention, invited the President of the Committee of Ministers to address a letter to his Russian counterpart in order to draw his attention to the serious concern of the Committee of Ministers as well as its repeated calls to adopt the above-mentioned measures;

6. decided to resume consideration of these questions at the latest at their 1179th meeting (September 2013) (DH) however agreeing, in the event that a new, similar incident is brought to the Committee's attention, to return to this issue at their first meeting following notification of such an incident."

THE LAW

I. ESTABLISHMENT OF THE FACTS

127. Given the absence of the parties' agreement about the events that took place from 31 October to 3 November 2011 (see paragraphs 37-43 above), the Court has to start its examination by establishing the relevant facts.

128. In cases in which there are conflicting accounts of events, the Court is inevitably confronted, when establishing the facts, with the same difficulties as those faced by any first-instance court (see *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 151, 13 December 2012). The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a

particular case. Nonetheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, with further references, *El Masri*, cited above, § 155).

129. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, with further references, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Iskandarov v. Russia*, cited above, § 107; and *El Masri*, cited above, § 151).

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

131. Turning to the circumstances of the present case, the Court notes that the applicant has provided a detailed, specific and consistent account of the events that took place from the evening of 31 October 2011 onwards. That description of facts was made through the applicant's coherent

depositions to the Russian authorities, his statement in a public hearing in Tajikistan and the written submissions to the Court signed by the applicant and various witnesses. The Court is satisfied that the applicant has produced *prima facie* evidence in favour of his version of the events.

132. As for the Government, the Court observes, to the contrary, that their responses to the applicant's submissions and the Court's detailed questions were summary and evasive, being essentially limited to denials of the authorities' knowledge about – and their responsibility for – the applicant's fate. At the same time, the Government have neither upheld nor refuted the applicant's account of the facts. The scarce information provided by the Government has consisted of general statements and neutral references to the information transmitted by the Tajik authorities, without any qualified assessment of that information or the Government's own findings of fact. For example, as regards the crucial aspect of the incident, the Government merely retransmitted the official information provided on 26 March 2012 by the Prosecutor General of Tajikistan to his Russian counterpart that the applicant had "voluntarily surrendered" to the Tajik authorities on 3 November 2011 (see paragraph 44 above). The Government's failure to carry out their own fact finding in the present case compels the Court to establish the facts, drawing such inferences as it deems appropriate from that attitude (see Rule 44C § 1, cited in paragraph 130 above).

133. The Court finds it undisputed by the parties that the applicant was a person to whom the Russian Federation had granted temporary asylum on 6 September 2011 following his insistent attempts to avoid returning to Tajikistan (see paragraph 31 above). It is also undisputed that the applicant's freedom was not restricted in Russia after his release from detention on 20 May 2011. Nor is it disputed that on 3 November 2011 at the latest the applicant was placed in detention by the Tajik law-enforcement authorities at Khujand.

134. In view of the above, and having examined the parties' submissions together with the information otherwise available, the Court must critically assess the Tajik official version of the applicant's "voluntary surrender" to the authorities of that country (see paragraph 44). Although anyone may, in theory, decide to voluntarily surrender, the official version appears unsubstantiated and totally inconsistent with all the other material submitted to the Court. First of all, a "confession statement" which the applicant allegedly made to the Tajik authorities has never been submitted to the Court. Furthermore, the official version of the applicant's "confession" and "voluntary surrender" is clearly contradicted by his own written testimony before the Court, his reported statement in a public hearing in Tajikistan and the detailed and coherent account of the events reported by his representatives on the basis of the information collected from various sources. Moreover, the idea of "voluntary surrender" sits ill with the written

testimony by the applicant's father, who was refused a meeting with the applicant on the ground that he had failed to cooperate with the Tajik authorities in their effort to bring the applicant back to the country (see paragraph 41). Moreover, while referring to the Tajik official version the respondent Government failed to support it with any tangible element, let alone explain in any way how and when the applicant managed to undertake such a long trip across various State borders in such a short time without either his passport or any official record of crossing the Russian border. Lastly, the Court finds it difficult to reconcile the Tajik official version of "voluntary surrender" with the applicant's insistent claims to the Russian authorities and the Court over the two preceding years with the sole motive of preventing his return to Tajikistan.

135. The Court therefore does not accept the Tajik official version, retransmitted by the Russian Government, that the applicant "voluntarily surrendered" to the Tajik authorities. Given the coherence of the applicant's version of events, the vague and unconvincing position of the respondent Government and the lack of any evidence produced by the latter, the Court concludes that the applicant was forcibly returned on 3 November 2011 at the latest to Tajikistan, where the authorities immediately placed him in detention pending a criminal trial.

136. Furthermore, the Court considers, in connection with its finding above, that the applicant's account of his abduction on 31 October 2011 by unidentified persons in Moscow is coherent and corroborated by various inferences. Indeed, a forcible transfer would in any event have started by restricting the liberty of the person concerned. That the applicant was apprehended in Moscow and detained incommunicado shortly before his forcible transfer to Tajikistan does not appear implausible. The Court draws strong inferences in support of the applicant's account from the Government's failure to present any alternative version of what happened to the applicant between 31 October and 2 November 2011 and, most importantly, from the authorities' deliberate and persistent refusal to conduct a meaningful investigation into those events (see paragraphs 193-196 below). The Court is particularly struck by the explanation given for the investigators' refusal to open a criminal investigation into the incident: that the applicant had purportedly attempted to stage his abduction with a view to escaping criminal liability in Tajikistan (see paragraphs 56 and 63 above). The Court finds that assumption to be devoid of any sense, as the investigators already knew, or ought to have known by that time (March-July 2012), that the applicant's disappearance from Moscow had resulted in his arrest, detention, criminal trial and conviction in Tajikistan.

137. Lastly, since the Government have not rebutted the applicant's account of the events, the Court can only uphold the version that the applicant was forcibly transferred from Moscow to Tajikistan by air, as he asserted in his submissions. Indeed, given the short time that elapsed

between the applicant's abduction in Moscow and his sudden emergence in the hands of the police in Khujand, and in view of the long distance between the two cities (approximately 3,500 km by road), there is nothing to counter the applicant's assertion that he was transported there by air. Again, the Court draws very strong inferences in support of this version from the Russian authorities' persistent refusal to conduct a meaningful investigation and their ensuing failure to refute the applicant's version or provide a plausible alternative explanation.

138. In conclusion, the Court finds it established beyond reasonable doubt that the applicant was kidnapped by unidentified persons in Moscow on the evening of 31 October 2011, detained by his kidnappers in Moscow for one to two days, then forcibly taken by them to an airport and put onboard a flight to Khujand in Tajikistan, where he was immediately placed in detention by the Tajik authorities.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

140. The applicant initially complained under Article 3 of the Convention that his extradition to Tajikistan would lead to his ill-treatment. He later supplemented his complaint, submitting that there had been a violation of Article 3, as his abduction in Moscow and illegal transfer to Tajikistan could only have been possible with the active or passive involvement of the Russian authorities.

141. Following those developments the Court asked the Government to submit additional observations on the merits with regard to two further issues arising under Article 3 of the Convention. The first concerned the authorities' possible failure to comply with their positive obligation to do all that could be reasonably expected of them to protect the applicant against a real and immediate risk of transfer to Tajikistan. The second concerned their procedural obligation to conduct a thorough and effective investigation into the applicant's abduction and transfer to Tajikistan. Article 3 reads as follows:

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

A. Submissions by the parties

1. The Government

142. The Government initially submitted that the applicant did not have victim status, since his extradition had been suspended following the interim measures ordered by the Court. They further argued that the applicant's extradition to Tajikistan would not, in any event, have subjected him to a risk of ill-treatment. In the Government's view, the present application differed from several previous cases decided by the Court in relation to Tajikistan, since the applicant had been charged with common criminal offences and not prosecuted on any political grounds. In addition, they found the assurances provided by the Prosecutor General's Office of Tajikistan to constitute an adequate safeguard against the applicant's ill-treatment or political persecution. The Government referred to the absence of any incident involving a violation by Tajikistan of assurances given in extradition matters. They also submitted that, after a detailed examination of all the alleged risks and the evidence submitted by the applicant at a public hearing, the Russian courts had found no obstacle to the applicant's extradition.

143. Following the applicant's forcible transfer to Tajikistan and additional questions raised by the Court, the Government denied any responsibility for what had happened to the applicant. They submitted that the applicant's freedom of movement had not been restricted in any way after his release on 20 May 2011 and that the authorities had had no obligation to conduct any surveillance in his regard. The Government informed the Court about the pre-investigation inquiries conducted by the investigative authorities and their repeated refusals to open a criminal investigation on grounds of lack of *corpus delicti*.

2. The applicant

144. The applicant initially submitted that he remained a victim since he had unsuccessfully exhausted all domestic remedies by which to challenge the extradition order. The latter remained valid and enforceable at the relevant time and no further appeal lay against it. He referred to the Court's established case-law acknowledging the victim status of applicants in similar situations. He further argued that the authorities had failed to assess the risk of ill-treatment that he ran in Tajikistan and that his repeated and detailed submissions in that respect had received no substantive response. Instead, the authorities had assessed possible obstacles to extradition from the perspective of the State's interests and had ruled out any such risk on the basis of the diplomatic assurances given by the Tajik authorities, which were unsupported by any evidence and therefore unreliable. The applicant concluded that the approach taken by the domestic authorities and upheld by

the Government before the Court was too formalistic. Lastly, the applicant submitted that those suspected of involvement in the IMU, as he was, were being targeted by the Tajik authorities and therefore put at particular risk of ill-treatment in Tajikistan. He concluded that there was sufficient evidence that his extradition would subject him to a real risk of treatment incompatible with Article 3 of the Convention.

145. The applicant submitted that following his abduction the authorities had been immediately informed and requested to protect him against forcible transfer to Tajikistan. However, they had failed to take any immediate and effective action, while the applicant's complaints were transmitted from one body to another. Nor had the authorities conducted any investigation into those events. The applicant considered the Government's prolonged failure to identify his whereabouts to be indicative of the authorities' direct involvement in his abduction and forcible transfer to Tajikistan. The applicant insisted that he could not have lawfully crossed the State border without his passport, being in possession of only a temporary asylum certificate. Moreover, any unauthorised transfer across the State border against his will was impossible, since at the relevant time Domodedovo airport was subject to heightened security measures following the terror attacks of January 2011 at that airport. In support of his submission that Russia had played a role in his abduction and transfer, the applicant referred to the Court's findings in a similar case (*Iskandarov,* cited above, § 113). The applicant also submitted that his removal from Russian territory had resulted from either a joint operation of the security services of the two countries or an operation of the security service of Tajikistan conducted with the assistance of the Russian authorities.

B. The Court's assessment

1. Admissibility

146. The Court notes that the applicant's extradition was upheld by a final domestic judicial decision that remained in force and could not be overruled by the interim measures ordered by the Court, which merely led to a temporary stay of the extradition. As a result, the authorities' declared compliance with the interim measures does not in itself deprive the applicant of his victim status under the Convention. The Government's objection, which they did not appear to maintain at a later stage of the proceedings, is in any event devoid of purpose in view of the applicant's forcible transfer to Tajikistan at the beginning of November 2011. The Court further notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

147. The Court notes at the outset that the present case raises three distinct issues under Article 3 of the Convention, namely the authorities' possible failure to comply with their positive obligations to protect the applicant against a real and immediate risk of forcible transfer to Tajikistan; their failure to comply with a procedural obligation to conduct a thorough and effective investigation into his abduction and transfer; and, lastly, their alleged liability for the involvement of State agents in the impugned events. The Court also notes that its determination of those issues will bear upon, notably, the existence at the material time of a well-founded risk that the applicant might be subjected to ill-treatment in Tajikistan. The parties disagreed on the latter point. The Court will therefore start its examination by assessing whether the applicant's forcible return to Tajikistan exposed him to such a risk. It will subsequently examine, one by one, the three different issues arising under Article 3, as mentioned above.

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

(i) General principles

148. It is the settled case-law of the Court that expulsion or extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3 (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

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

150. In determining whether it has been shown that the applicant runs a real risk of suffering treatment proscribed by Article 3 if extradited, the Court will examine the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Saadi,* cited above, § 128). Since the nature of the Contracting States' responsibility under

Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition; the Court is not precluded, however, from having regard to information which comes to light subsequent to the extradition. This may be of value in confirming or refuting the assessment that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215; and *Mamatkulov and Askarov*, cited above, § 69).

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

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

153. At the same time, reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition (see *Dzhaksybergenov v. Ukraine*, no. 12343/10, § 37, 10 February 2011). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence, with reference to the individual circumstances substantiating his fears of ill-treatment (see *Mamatkulov and Askarov*, cited above, § 73, and *Dzhaksybergenov*, cited above, ibid.). The Court would not require evidence of such individual circumstances only in the most extreme cases where the general situation of violence in the country of destination is of such intensity as to create a real risk that any removal to that country would necessarily violate Article 3 (see *N.A. v. the United Kingdom*, no. 25904/07, §§ 115-16, 17 July 2008, and *Sufi and Elmi v. the United Kingdom,* nos. 8319/07 and 11449/07, § 217, 28 June 2011). In a case where assurances have been provided by the

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

(ii) Application to the present case

154. The Court notes that the applicant argued before the domestic courts that his extradition would expose him to a real risk of being subjected to treatment contrary to Article 3. In his applications for refugee status and asylum he further raised, in a clear and unequivocal manner, his fear of ill-treatment. The Government submitted that the applicant's arguments had been adequately considered by the domestic courts and rejected.

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

156. With reference to extradition or deportation, this means that in cases where an applicant provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources, such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007, and *Ismoilov and Others v. Russia*, no. 2947/06, § 120, 24 April 2008). Accordingly, the Court will first assess

whether the applicant's complaint received an adequate reply at the national level.

(α) Domestic proceedings

157. The applicant disagreed with the Government's assessment of the domestic proceedings, arguing that his repeated and detailed submissions concerning the risk of ill-treatment that he ran in Tajikistan had been examined by the courts in a formalistic manner without being substantively answered.

158. Having regard to the applicant's submissions to the domestic courts in both the extradition and asylum proceedings, the Court is satisfied that he consistently raised before the relevant authorities the issue of the risk that he would be subjected to treatment in breach of Article 3 of the Convention, advancing a number of specific and detailed arguments.

159. As regards the asylum proceedings, the decision taken on 26 August 2010 by the Deputy Director of the FMS failed to consider whether the applicant would risk being tortured or ill-treated in Tajikistan. His decision mainly dealt with another question: whether the applicant would be persecuted in Tajikistan on political or religious grounds. The FMS concluded by the negative, noting at the same time that the existence of a well-founded fear of becoming a victim of torture or ill-treatment might be a ground for granting the applicant temporary asylum in Russia. The courts, finding the FMS's decision convincing, simply upheld it on all points, without further considering the existence of any risk for the applicant (see paragraph 29 above).

160. As regards the extradition proceedings, the Court notes that the Moscow City Court took cognisance of the applicant's claim that he risked being ill-treated and addressed it, albeit very summarily, in its decision of 29 October 2010. It also admitted to the file the applicant's submissions containing the Court's judgments in similar cases, the expert's submissions and various reports about the human-rights situation in Tajikistan (see paragraph 22 above).

161. Nevertheless, the City Court made no use of those materials and dismissed in a most cursory and even perfunctory manner all the arguments that the applicant had drawn from them. Thus, the court found the applicant's arguments unfounded, qualifying them as "assumptions" that were "in no way corroborated" and as being "completely rebutted", *inter alia*, by the written guarantees provided by the Deputy Prosecutor General of the Republic of Tajikistan (see paragraph 23 above). The blanket terms used by the City Court to reject the applicant's complaint left no room for any qualified assessment of his underlying personal circumstances and the ensuing risk for his safety in the light of the Convention requirements. Instead, the City Court confined itself to a formalistic recollection of the charges brought against the applicant in Tajikistan, thus failing to develop

one of the most critical aspects of the case (see, *mutatis mutandis*, *C.G. and Others v. Bulgaria*, no. 1365/07, § 47, 24 April 2008). The Court finds it particularly surprising in that context that the City Court likewise ignored the applicant's objection to some charges that concerned activities in 1992 which could not be imputed to him owing to his very young age at the relevant time (see paragraphs 20 and 23 above).

162. As to the extensive references to the Court's case-law dealing with previous recent instances of extradition from Russia to Tajikistan, they were discarded by the City Court as irrelevant on the ground that the four judgments cited by both the applicant and the expert related to "other persons but not to the applicant" (see paragraphs 22-23 above). Yet, in reaching that conclusion, the City Court did not attempt to contemplate possible parallels between the four cases cited by the defence and the applicant's situation, let alone apply the general principles established in those judgments in order to apply the Convention requirements to the present case.

163. The above deficiencies in the City Court's examination of the applicant's claim were aggravated by its unexplained and unconditional reliance on the assurances provided by the Prosecutor's Office of Tajikistan. The City Court readily accepted those assurances as a firm guarantee against any risk of the applicant being subjected to ill-treatment after his extradition. Notwithstanding the applicant's and the expert's emphasis on the dubious value of those assurances and, in particular, the impossibility of ensuring that they would be implemented, the City Court did not address any such issue in its decision, using the assurances as an ultimate argument for upholding the decision to extradite the applicant. The City Court's blanket reliance on the Tajik authorities' assurances was at variance with the obligation to examine whether such assurances provide, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Saadi*, cited above, § 148).

164. Lastly, the Court finds nothing in the decision of the Russian Supreme Court of 9 December 2010 whereby the above-mentioned failings were redressed on appeal (see paragraph 24 above).

165. Having regard to the above, the Court finds that the domestic authorities did not carry out an independent and rigorous scrutiny of the applicant's claim that there existed substantial grounds for fearing a real risk of treatment contrary to Article 3 in his home country (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 82, 13 December 2012). Although the FMS's subsequent decision granting the applicant temporary asylum (see paragraphs 31 and 96-97 above) may have remedied to a certain extent the consequences of the impugned decisions upholding the applicant's extradition, the Court does not find it appropriate to speculate on that matter, given that the later developments erased any benefit of the

temporary protective measure taken by the FMS in the applicant's favour. The Government have not expressed a different view on the latter point (see paragraphs 142-143 and 146 above).

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

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

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

168. Having examined the materials submitted in the present case and those otherwise available to it, the Court does not find any tangible element that would alleviate those serious concerns at the present stage. Indeed, nothing indicates that the situation has radically improved in Tajikistan over the last two years. On the contrary, the recent reports dating from 2011 and 2012 tend to corroborate a continued practice of torture and other ill-treatment by law-enforcement officers (see paragraphs 104-107 above). The risk of torture appears to be further increased by a common police practice of incommunicado detention before formally opening a criminal case, and confessions extracted under duress were still reported to be used as evidence in court (ibid.). The Court finds nothing in the respondent Government's submissions to refute those recent reports or otherwise attest to any perceptible improvement of the situation in Tajikistan. It notes at the same time that the decision taken by the Deputy Director of the FMS himself on 26 August 2010 acknowledged the existence of extensive international criticism of the use of torture and the impunity of the officials responsible in Tajikistan, without reporting any major improvement in that respect (see paragraph 27 above).

169. However, as the Court has already stated above, the mere reference to a general problem concerning observance of human rights in a particular country cannot alone serve as a basis for refusing extradition, save in the most extreme circumstances. The applicant's specific allegations in a particular case require corroboration by other evidence with reference to the individual circumstances substantiating his fear of ill-treatment. The latter should be assessed by the Court having regard, where appropriate, to

information which came to light subsequent to the applicant's forcible return to Tajikistan.

170. Turning to the applicant's personal situation, the Government argued that he did not run any risk of ill-treatment, as he had been charged with common criminal offences and was not being prosecuted on any political ground. The Court notes, however, that one of the main charges against the applicant directly related to his involvement in a "criminal conspiracy", and later in the IMU, which the Tajik Prosecutor's Office categorised as a "criminal armed group". It was explicitly acknowledged by the Russian authorities that the IMU advocated "radical Islam" and that the Tajik authorities were attempting to limit its influence (see paragraph 27 above). The Court cannot therefore readily adopt the Government's view that the applicant's alleged involvement in the IMU was a criminal charge with no links to his religious or political activities.

171. The Court also notes in that connection that the applicant fled Tajikistan shortly after the alleged ill-treatment and death in custody of his religious tutor, Mr Marufov (see paragraph 12 above). The latter events were also reported by a reputable international NGO (see paragraph 102 above) and have never been refuted before the Court. Those circumstances tend to support the applicant's fear that the criminal proceedings brought against him were related to his religious views and activities. That the applicant was considered eligible for international protection under the UNHCR mandate and eventually granted temporary asylum in Russia likewise corroborates the reality of the risk to which he was exposed in his home country (see paragraphs 30-31 above).

172. It is common ground, furthermore, that the IMU's activities were banned by law in Tajikistan and that the Tajik authorities regarded it as a terrorist organisation. Consequently, the applicant's alleged involvement in the IMU and the corresponding criminal charges against him inevitably raised, in the Court's view, an important issue of national security. From that perspective, the applicant's situation was similar to that examined by the Court in the case of *Gaforov* (cited above, §§ 132-33). The Court does not share the position of the City Court, which considered the aforementioned judgment irrelevant to an assessment of the applicant's personal situation in the present case. In the Court's view, the applicant's prosecution for his involvement in the IMU, viewed in the context of harassment of non-traditional religious groups by the Tajik authorities, heightened the risk of his being subjected to ill-treatment in detention with a view to extracting confessions relating to his religious activities.

173. Having regard to the above factors, the Court takes the view that the applicant's personal circumstances, coupled with the general human-rights situation in the requesting country, provided a sufficient basis from which to infer that he was facing a real risk of ill-treatment in Tajikistan.

174. Unlike the Government, the Court does not see how the risk to which the applicant was exposed in Tajikistan could be alleviated by the diplomatic assurances provided by the Tajik authorities to the Russian Federation. The assurances were vague and contained no guarantee that they would be applied in practice (see *Saadi*, cited above, § 148). They could not therefore alter in any way the risk of the applicant's exposure to ill-treatment in the receiving State (see, by contrast, *Othman*, cited above, § 207, and *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009). Indeed, those assurances proved totally unreliable, given the way in which the applicant was subsequently treated by the Tajik authorities in the context of his forcible transfer to that country, which circumvented all legal procedures, including the interim measures ordered by the Court.

175. Both the applicant's forcible return to Tajikistan and the following events doubtlessly confirmed the well-foundedness of his fears and demonstrated that the risk of ill-treatment was not theoretical and far-fetched. According to the written testimony of the lawyer who took part in the applicant's trial, the latter had complained in a public hearing of his abduction, forcible transfer and torture with a view to extracting a confession. However, there is no information that a forensic medical examination of the applicant and his co-accused was carried out, despite their relatives' official request to that effect (see paragraphs 67-68 above). The Court notes that the situation, as described, is in line with the concerns voiced by the UN Committee against Torture as to the hampered access of victims to independent medical expertise (see the Committee's report quoted in *Khodzhayev*, § 72, and *Gaforov*, § 93, both cited above).

176. In view of the foregoing, the Court concludes that the applicant's forcible return to Tajikistan exposed him to a real risk of treatment contrary to Article 3 of the Convention.

(b) Whether the authorities complied with their positive obligation to protect the applicant against the real and immediate risk of forcible transfer to Tajikistan

177. The applicant argued that the Russian authorities had failed to protect him against a real and immediate risk of forcible transfer to Tajikistan of which they were aware.

178. The Court has found it established that on the evening of 31 October 2011 the applicant was kidnapped in Moscow by unidentified persons who detained him for one or two days in an unknown location before transferring him by aircraft to Tajikistan, where he was exposed to a real risk of treatment contrary to Article 3 (see paragraphs 138 and 176 above).

179. The Court reiterates that the obligation on Contracting Parties, under Article 1 of the Convention, to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in

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

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

181. Turning to the circumstances of the present case, the Court notes at the outset that the applicant's representative immediately informed the head of the Moscow City Police Department, the Director of the FMS, the Prosecutor General and the Representative of the Russian Federation at the Court of the applicant's abduction on 31 October 2011 and asked them to protect him from the ensuing immediate risk of his forcible transfer to Tajikistan (see paragraphs 46-48 above). The Court is satisfied that the applicant's representative addressed the relevant State authorities in a timely manner, provided sufficient evidence of the applicant's vulnerable situation and advanced weighty reasons warranting extraordinary measures of protection against the real and immediate risk he was facing.

182. Importantly, the claim by the applicant's representative was immediately upheld by the Russian Commissioner for Human Rights, who also sent an official request to the head of the Moscow City Police Department to take all possible measures, as a matter of urgency, to prevent the applicant's transfer from Moscow to Tajikistan, in particular through a Moscow airport (see paragraph 49 above).

183. The Court is therefore convinced that the competent authorities and, in particular, the Moscow City Police Department, were well aware – or ought to have been aware – of the real and immediate risk of the applicant being transferred to Tajikistan by his kidnappers through one of the Moscow airports. Indeed, the circumstances in which the applicant was abducted and the background to his abduction should have left no doubt about the existence of that risk and should have prompted the competent authorities to take preventive operational measures to protect him against

unlawful acts by other individuals, whoever they might have been (see, *mutatis mutandis*, *Koku v. Turkey*, no. 27305/95, § 132, 31 May 2005, and *Osmanoğlu v. Turkey*, no. 48804/99, § 76, 24 January 2008). The Court is equally convinced that among the authorities contacted by the applicant's representatives, the police, more than anyone else, were under a statutory duty to ensure security and law enforcement in the city of Moscow and its airports, and were vested with the necessary powers to ensure that urgent and effective measures were put in place to protect the applicant.

184. The Government failed nonetheless to inform the Court of any timely preventive measure taken by the police or any other authority to avert that risk. Their response was limited to a general statement that the applicant's freedom of movement had not been restricted at the relevant time and that the authorities had been under no obligation to conduct any surveillance in his regard.

185. The Government's failure to adduce any information in that connection leads the Court to accept the applicant's view that no such measure was taken by any authority. The Court is mindful of the inevitable difficulties the police may have faced in dealing with a case such as the present one, the objective obstacles inherent in that task and the limited time available. Those difficulties cannot, however, absolve the relevant authorities of their obligation, under Article 3 of the Convention, to take, within the scope of their powers, such preventive operational measures as might have been reasonably expected of them for the applicant's protection against his forcible transfer to Tajikistan, in particular through a Moscow airport. The authorities' failure to take any such action in the present case amounts to a violation of the State's positive obligations under Article 3 of the Convention.

(c) Whether the authorities conducted an effective investigation

186. The applicant argued that his complaint of abduction and forcible transfer to Tajikistan, with the ensuing exposure to ill-treatment, had not been followed by a thorough and effective investigation in the respondent State, as required by Article 3 of the Convention.

187. The Court reiterates that Article 3, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation into any arguable claim of torture or ill-treatment by State agents. Such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see

Assenov and Others v. Bulgaria, 28 October 1998, § 102, *Reports* 1998-VIII, and *El Masri*, cited above, § 182).

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

189. The investigation should be independent from the executive in both institutional and practical terms (see *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004) and allow the victim to participate effectively in the investigation in one form or another (see, *mutatis mutandis*, *Oğur*, cited above, § 92, and *El Masri*, cited above, §§ 184-85).

190. The Court considers that these well-established requirements of the Convention fully apply to the investigation that the authorities should have conducted into the applicant's abduction and his ensuing exposure to ill-treatment and torture in Tajikistan. Indeed, as highlighted above, the relevant information and complaints were brought to the authorities' attention immediately after the applicant's abduction on 31 October 2011 and resulted in pre-investigation inquiries, which have lasted for more than a year.

191. It became obvious at a certain stage that the applicant had a prima facie case under Article 3 of the Convention that warranted an effective investigation at the domestic level. While there may have been some doubt immediately after the applicant's abduction in Moscow by unidentified persons as to the role played by Russian State agents in the incident, the complaint about his ensuing transfer to Tajikistan through a Moscow airport in breach of all legal procedures should have triggered the authorities' utmost attention, inasmuch as the applicant's representatives claimed that State agents had been actively or passively involved in that operation. On 30 March 2012, the deputy to the Nikulinskiy Inter-District Prosecutor expressly asked the investigator to ascertain whether the Russian authorities had been involved in the applicant's alleged abduction (see paragraph 58 above).

192. Moreover, the same issue was clearly raised on 17 January 2012 by the Court (see paragraph 8 above), which specifically asked the Government

to elucidate the crucial aspect of the incident, namely the alleged complicity between those who abducted the applicant and transferred him to Tajikistan and the Russian authorities, including the police, security and border control services (with reference, *mutatis mutandis*, to *Tsechoyev v. Russia*, no. 39358/05, § 151, 15 March 2011). The request for an exhaustive investigation of the incident was vigorously reiterated in the letter of 25 January 2012 which the Registrar sent to the Russian Government on behalf of the President of the Court (see paragraph 52 above).

193. Against this background, the results produced in response by the domestic investigation, as outlined in paragraphs 55-65 above, are incomprehensible. First, the investigators strictly limited their action to "pre-investigation inquiries" under Article 144 of the Code of Criminal Procedure, while persistently refusing to open criminal proceedings, which would have constituted the best, if not the only, tool to meet the Convention requirements of effective investigation as set out in paragraphs 187-190 above. Given, notably, the limited procedural framework provided for by Article 144 and the failure to ensure the victim's or his representatives' effective participation in the investigation, the Court has serious doubts that a pre-investigation inquiry was capable of complying with the above-mentioned requirements in a situation where an individual had lodged an arguable complaint of torture or ill-treatment, as in the present case (see, *mutatis mutandis*, *Kleyn and Aleksandrovich v. Russia*, no. 40657/04, §§ 56-58, 3 May 2012).

194. Secondly, the procedural strategy used by the investigative authorities in the applicant's case gives rise to further concerns. In fact, the decisions by which the investigators concluded their inquiries and refused to open a criminal investigation were immediately quashed by their superiors on at least four occasions, only to be repeated a few weeks later in either identical or very similar terms (see paragraphs 55-63 above). For example, the second decision by the senior investigator, P.K., of 20 April 2012 refusing to initiate a criminal investigation repeated word for word his first decision of 21 March 2012. Both decisions were quashed by two equally identical decisions taken by the head of the Nikulinskiy Investigation Division or his deputy on 23 April and 21 March 2012 respectively. They were followed by two further consecutive decisions of the investigators, also refusing to open a criminal investigation without adding any new relevant element of substance. The Court is bound to conclude that the process of repeated quashing and renewal of identical decisions by the investigation division resulted in the proceedings being stalled in a manner that was incompatible with the Convention requirement of effective investigation. Not only was valuable time lost, but also the vicious circle within the investigation division deprived the applicant of any reasonable opportunity to challenge the investigators' decisions in court under Article 125 of the Code of Criminal Procedure. In those circumstances, the

Court sees no value for the applicant in obtaining such judicial review, as it would only have prompted the investigators to repeat yet another cycle of their futile inquiries.

195. Thirdly, the Court notes that the substance of the investigators' decisions closely reflects the flawed investigative process highlighted above. Their decisions represent a mere compilation of general statements of fact, meaningless procedural requests and references to unreliable assumptions. For example, as late as 9 June 2012 the deputy head of the Nikulinskiy Investigation Division requested a second verification of whether the applicant had crossed the Tajikistan border and been remanded in custody in that country (see paragraph 62 above). Yet, the authorities must have been aware of the official letter of 28 March 2012 from the Prosecutor General of Tajikistan informing his Russian counterpart that the applicant had been detained in Tajikistan at the relevant time (see paragraph 44 above). Notwithstanding that obvious fact, the decision taken by the investigator on 9 July 2012 incomprehensibly concluded that it had been impossible to confirm or refute the information about the crossing of the State border by the applicant (see paragraph 63 above). Likewise, from March to July 2012, the investigators persistently relied on the hypothesis that the applicant might have staged his abduction in order to escape criminal liability in Tajikistan. The Court has already found that that hypothesis was devoid of any sense, in view of the obvious causal link between the applicant's abduction in Moscow and his arrest in his home country (see paragraph 136 above). At the same time, the investigators failed to take some elementary and straightforward investigative steps, such as finding out which airlines had operated flights from Moscow to Khujand between 1 and 3 November 2011 and questioning the security and administrative staff of Domodedovo airport, where the applicant had reportedly boarded an aircraft. Instead, the investigator referred only to "verification" by the FSB of the possible unlawful crossing of the Russian State border by the applicant and readily reproduced the general statement that Russian law did not provide for the "recording of names of persons crossing the border".

196. In the Court's view, the numerous flaws in the investigation identified above, both in nature and extent, are manifestly inconsistent with the respondent State's obligations under Article 3 of the Convention.

(d) Whether the respondent State is liable on account of the passive or active involvement of its agents in the applicant's forcible transfer to Tajikistan

197. On the basis of the facts already established to the required standard of proof, the Court must now examine whether the respondent State is also responsible under the Convention on account of the alleged involvement of State agents in the applicant's transfer to Tajikistan.

198. Although the applicant was unable to provide any witness statements to that effect, he argued that his transfer to Tajikistan through Moscow's Domodedovo airport could not have happened without the knowledge and either passive or active involvement of the Russian authorities.

199. The Court asked the Government to explain in response how and by whom the applicant had been transferred from Moscow to Tajikistan against his will without complying with border, customs and other formalities in the Russian Federation. However, they did not provide any explanation (see paragraphs 42-45 and 124 above). As a result, the Court received no hard evidence either in favour of or against the applicant's allegation.

200. The Court finds it appropriate in this connection to emphasise once again its natural limits as an international court when it comes to conducting effective fact-finding, which should, as a matter of principle and effective practice, be the domain of domestic authorities (see, in addition to the numerous authorities cited above, *Demopoulos and Others v. Turkey* (dec.), nos. 46113/99 et al., § 69, ECHR 2010). The Court's proceedings in respect of such controversial issues as those raised by the present case are all the more contingent on respondent States' cooperation, in line with their undertaking under Article 38 of the Convention, to furnish all necessary facilities for the establishment of the facts. The Convention organs have repeatedly emphasised that obligation as being of fundamental importance for the proper and effective functioning of the Convention system (see, among others, *Tanrıkulu v. Turkey* [GC], cited above, § 70, and Committee of Ministers Resolutions ResDH(2001)66 and ResDH(2006)45). In the Court's view, the only genuine way for Russia to honour its undertaking in the present case was to ensure that an exhaustive investigation of the incident was carried out and to inform the Court of its results. However, the Russian authorities manifestly failed to do so (see paragraphs 193-196 above), thus prompting the Court to examine the highly controversial issues at stake in the place of the domestic authorities. Such a failure by the State Party to adduce crucial information and evidence compels the Court to draw strong inferences in favour of the applicant's position (Rule 44C § 1 of the Rules of Court). In this connection, the Court also attaches great weight to the way in which the official inquiries were conducted, as the authorities did not appear to want to uncover the truth regarding the circumstances of the case (see *El Masri*, cited above, §§ 191-93).

201. The Court is also mindful of the objective difficulties for the applicant to provide evidence in support of his allegation, since the events at issue lay within the exclusive knowledge of the authorities. His allegation was largely supported by the unrebutted presumption, which was upheld by the Court in the *Iskandarov* judgment (cited above, §§ 113-15), that his forcible transfer to Tajikistan could not have happened without the

knowledge and either passive or active involvement of the Russian authorities. More recently, the Court came to the same conclusion in yet another similar case (see *Abdulkhakov v. Russia*, no. 14743/11, §§ 125-27, 2 October 2012). Both cases disclosed very similar circumstances in which the applicants were forcibly transferred to Tajikistan by aircraft from Moscow or the surrounding region.

202. The Court does not discern any reason to reach a different conclusion in the present case. Indeed, it cannot be disputed that any airport serving international flights is subject to heightened security measures, remaining under the permanent control of the respondent State's authorities and notably the State border service. This fact alone tends to exclude, under ordinary circumstances, the possibility that a physical person could be forcibly taken directly to the airfield and put on board a plane for a foreign country without having to account to any State agents. Accordingly, any such action requires the authorisation, or at least acquiescence, of the State agents in charge of a given airport and, in particular, those who effectively control the checkpoints of access to the airfield.

203. As in the two previous similar cases mentioned above, the Government have adduced no evidence to rebut that presumption in the present case. Nor have they provided any plausible explanation of how the applicant could have been taken on board an aircraft and flown from Moscow to Khujand without accounting to any Russian State official. Moreover, the authorities manifestly failed to elucidate the circumstances of the incident through an effective investigation at the domestic level. Those elements are sufficient for the Court to conclude that the respondent State is to be held responsible under the Convention for the applicant's forcible transfer to Tajikistan on account of State agents' involvement in that operation.

204. The Court's finding is all the more disturbing given that the impugned actions by State agents were characterised by manifest arbitrariness and abuse of power with the aim of circumventing the FMS's lawful decision granting the applicant temporary asylum in Russia (see section 12(4) of the Refugee Act) and the steps officially taken by the Government to prevent the applicant's extradition in accordance with the interim measures decided by the Court (see paragraph 5 above and paragraph 209 below). While the operational procedures involved here differed in many respects from those of the so-called "extraordinary renditions" examined in some recent cases, the Court's findings convincingly show that the operation involving State agents in the present case was likewise conducted "outside the normal legal system" and, "by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention" (see, *mutatis mutandis*, *Babar Ahmad and Others v. the United Kingdom* (dec.) nos. 24027/07, 11949/08 and 36742/08, §§ 113-14, 6 July 2010, and *El Masri*, cited above, § 239).

(e) Conclusions

205. Consequently, the Court concludes that there has been a violation of Article 3 of the Convention under each of the three different heads examined above, namely the authorities' failure to protect the applicant against forcible transfer to Tajikistan, where he faced a real and imminent risk of torture and ill-treatment; the lack of effective investigation into the incident; and the involvement, either passive or active, of State agents in that operation.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

207. While considering this complaint admissible, the Court notes that it raises the same issues as those already examined under Article 3 of the Convention. In view of its reasoning and findings made under the latter provision (see notably paragraphs 159-165 above), the Court does not consider it necessary to deal separately with the applicant's complaint under Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

208. The applicant complained that his forcible transfer to Tajikistan had been in breach of the interim measure indicated by the Court under Rule 39 and had thus violated his right of individual application. He relied on Article 34 of the Convention, which reads as follows:

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

Rule 39 of the Rules of Court provides:

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

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

209. The Government asserted that the applicant was able to exercise his rights without any obstacle, including the right to lodge an application under Article 34 of the Convention. They also referred to their letter of 16 December 2010 informing the Court about the steps taken in accordance with the interim measures indicated by the Court under Rule 39 to prevent the applicant's extradition to Tajikistan (see paragraph 5 above). The relevant letters were forwarded to the Prosecutor's Office of Moscow and to the Federal Service for the Execution of Sentences asking them to suspend any action to expel or extradite or otherwise forcibly remove the applicant to Tajikistan. As a result, the applicant was not handed over to Tajikistan through the extradition procedure.

210. The applicant submitted that the respondent State's responsibility on account of the involvement of State agents in his removal from the Russian territory – notwithstanding the interim measures indicated by the Court – necessarily entailed a violation of his right of individual application.

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

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

213. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, in truly exceptional cases on the basis of a rigorous examination of all the relevant circumstances. In most of these, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. This vital role played by interim measures in the Convention system not only underpins their binding legal

effect on the States concerned, as upheld by the established case-law, but also commands the utmost importance to be attached to the question of the States Parties' compliance with the Court's indications in that respect (see, *inter alia*, the firm position on that point expressed by the States Parties in the Izmir Declaration cited in paragraph 119 above and by the Committee of Ministers in its Interim Resolution CM/ResDH(2010)83 in the case of *Ben Khemais* cited in paragraph 117 above). Any laxity on this question would unacceptably weaken the protection of the Convention core rights and would not be compatible with its values and spirit (see *Soering*, cited above, pp. 34-35, § 88); it would also be inconsistent with the fundamental importance of the right of individual application and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order (see *Mamatkulov and Askarov,* cited above, §§ 100 and 125, and, *mutatis mutandis*, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310).

214. Considering the present case in the light of the above principles, the Court notes that it disclosed such exceptional circumstances warranting indication of interim measures to the respondent Government. On 7 December 2010 the latter were requested, in the interests of the parties and the proper conduct of the proceedings before the Court, not to extradite the applicant to Tajikistan until further notice. On 16 December 2010 the Government informed the Court that the authorities had taken relevant steps to guarantee that the applicant would not be extradited to Tajikistan until further notice (see paragraphs 5 and 209 above). Notwithstanding the steps taken, in November 2011 the applicant was forcibly transferred by aircraft from Moscow to Khujand by means of a special operation in which State agents were found to be involved (see paragraphs 202-203 above).

215. The Government did not accept that those circumstances disclosed a breach of the interim measure, submitting that the applicant's transfer to Tajikistan had not taken place through the extradition procedure, which had been immediately stayed following the Court's decision of 7 December 2010. The Court is not convinced by the Government's argument. While the measures taken to stay extradition may be indicative of the Government's initial willingness to comply with the interim measures, they cannot, in the Court's view, relieve the State of its responsibility for subsequent events in the applicant's case. Nor could the Government legitimately claim, as their argument may suggest, that the applicant's forcible return to Tajikistan was not prevented by the interim measures which were formulated by the Court in the present case.

216. The Court concedes that the interim measure in the present case, as requested by the applicant and formulated in the Court's decision of 7 December 2010, aimed at preventing his extradition, which was the most imminent legal way in which the applicant was about to be removed from Russia to Tajikistan at the relevant time. Whilst the formulation of the

interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34, the Court must have regard not only to the letter but also to the spirit of the interim measure indicated (see *Paladi v. Moldova* [GC], no. 39806/05, § 91, 10 March 2009) and, indeed, to its very purpose. The sole purpose of the interim measure, as indicated by the Court in the present case – and the Government did not claim to be unaware of it – was to prevent the applicant's exposure to a real risk of ill-treatment at the hands of the Tajik authorities. There could have remained no doubt about either the purpose or the rationale of that interim measure after the case had been communicated to the Government and given priority by the Court, on 30 January 2011. The Government's understanding of the spirit and purpose of the interim measure is also demonstrated by the instructions that they sent to various domestic authorities to suspend "any action to expel, extradite or otherwise forcibly remove the applicant to Tajikistan" (see paragraph 209 above). The fact that the authorities strictly complied with the interim measure for almost eleven months until the unexpected events of 31 October 2011 also shows that its purpose and legal consequences did not raise any doubts.

217. In view of the vital role played by interim measures in the Convention system, they must be strictly complied with by the State concerned. The Court cannot conceive, therefore, of allowing the authorities to circumvent an interim measure such as the one indicated in the present case by using another domestic procedure for the applicant's removal to the country of destination or, even more alarmingly, by allowing him to be arbitrarily removed to that country in a manifestly unlawful manner. Yet, the latter is exactly what the Court has found the respondent State to be responsible for in the present case (see paragraphs 202-203 above). In so doing, the State frustrated the purpose of the interim measure, which sought to maintain the status quo pending the Court's examination of the application. As a result, the applicant was exposed to a real risk of ill-treatment in Tajikistan and the Court was prevented from securing to him the practical and effective benefit of his right under Article 3 of the Convention.

218. The Government did not demonstrate that there was any objective impediment preventing compliance with the interim measure (see *Paladi*, cited above, § 92). More seriously, they did not offer any explanation for the arbitrary behaviour by the State agents who allowed the applicant to be forcibly put on a flight from Moscow to Khujand; still less did they bring those responsible to account (see, by contrast, *Muminov v. Russia*, no. 42502/06, § 44, 11 December 2008). The authorities unacceptably persisted in refusing to investigate the matter even after the Court had addressed the relevant issues, specifically drawing the Government's attention to the

worrying and unprecedented situation created by the repetition of such unacceptable incidents (see paragraph 52 above).

219. Consequently, the Court concludes that Russia disregarded the interim measure indicated by the Court in the present case under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention.

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

220. The applicant further complained, under Article 5 § 4, of the excessive delays in the judicial review by the Moscow City Court of his appeals against the detention orders issued on 15 January and 17 May 2010 by the Meshchanskiy District Court. He lodged the same complaint in respect of the judicial review by the Supreme Court of his appeal against the detention order issued on 19 November 2010 by the Moscow City Court. The relevant provision reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

221. The Court notes that the applicant's appeal against the detention order of 15 January 2010 was dismissed in the final instance on 22 March 2010, while his application was not lodged with the Court until 6 December 2010. It follows that the complaint about the length of those proceedings was lodged after the expiry of the six-month time-limit and should therefore be declared inadmissible, pursuant to Article 35 § 1 of the Convention. The Court further notes that the remainder of the applicant's complaint under Article 5 § 4 is neither manifestly ill-founded within the meaning of Article 35 § 3 (a), nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

222. The Government did not contest the applicant's argument, but merely confirmed the dates of the decisions by which the Moscow City Court and the Supreme Court had dismissed the applicant's appeals against the detention orders. The Government also referred in this connection to the strict time-limits provided for by Articles 108 and 109 of the Code of Criminal Procedure, which stipulate, *inter alia*, that an appeal to a higher court against an order concerning placement in custody must be considered within three days (Article 108 § 11).

223. The applicant maintained his complaint.

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

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

226. Turning to the present case, the Court notes that the applicant's appeal against the detention order of 17 May 2010 was lodged on 19 May 2010 and dismissed by the Moscow City Court on 12 July 2010, that is, within 54 days. The applicant's appeal against the decision of the City Court of 19 November 2010 further extending his detention was lodged on 22 November 2010 and dismissed by the Supreme Court on 21 December 2010, that is, within 29 days.

227. The Court notes at the outset that the impugned delays of 29 and 54 days go beyond what it has already found to be in violation of the "speediness" requirement in certain similar cases against Russia (see, for comparison, *Abidov v. Russia*, no. 52805/10, §§ 60-63, 12 June 2012, and *Niyazov v. Russia*, no. 27843/11, §§ 155-64, 16 October 2012). The Government gave no explanation for such prolonged delays, while referring to the domestic-law requirement that an appeal against an order concerning placement in custody must be considered within three days.

228. The Court finds nothing to indicate that the applicant or his counsel contributed to the length of the appeal proceedings (contrast *Lebedev*, cited above, §§ 99-100, and *Fedorenko v. Russia*, no. 39602/05, § 81,

20 September 2011). It therefore follows that the entire length of the appeal proceedings is attributable to the domestic authorities. The Court observes that the District Court, the City Court and the Supreme Court were geographically very close, which should, in principle, contribute to swifter communication between them – in particular, as far as the transfer of the case materials or the scheduling of appeal hearings were concerned.

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

230. Having regard to the above circumstances and to its case-law in the similar cases mentioned above, the Court considers that the delays in examining the applicant's appeals against the detention orders were incompatible with the "speediness" requirement of Article 5 § 4.

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

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

232. Lastly, the Court has examined the other complaints submitted by the applicant, and, having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

233. 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

234. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. He justified the high amount of his claim by the ill-treatment inflicted on him in Tajikistan following his forcible transfer to that country and by reference to the award made by the Court in similar circumstances in the *Iskandarov* case (cited above, § 156).

235. The Government submitted that any non-pecuniary damage would be compensated by the finding of a violation by the Court.

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

B. Costs and expenses

237. The applicant also claimed 25,000 Russian roubles (EUR 620) in compensation for the costs of his legal representation in the domestic proceedings and EUR 5,300 in compensation for the legal costs incurred before the Court. He also claimed EUR 414 for administrative and postal expenses.

238. The Government contested the claim. In their view, the applicant had failed to show that the expenses were reasonable, necessary and actually incurred.

239. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. As the applicant did not submit any documents attesting to the administrative and postal expenses, the Court rejects this part of the claim.

240. As regards the legal fees, regard being had to the documents in its possession and the above criteria, the Court grants the applicant's claim and awards a total sum of EUR 5,920 covering costs and expenses in the domestic proceedings and before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

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

VIII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

242. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

243. The Court notes that the present case disclosed several violations of one of the core rights protected by the Convention – prohibition of torture and ill-treatment – which were not prevented either through domestic legal remedies or the interim measures indicated by the Court. It further observes that similar violations by the respondent State were found in the recent past and that alarming complaints about the disappearance and forcible transfer of applicants to Tajikistan and Uzbekistan continue to be regularly lodged with the Court, notwithstanding the indication of interim measures and the Government's assurances that those measures would be complied with.

244. The Court is fully aware of the difficulties that may arise in the process of executing the judgments concerned, not least by reason of the applicants' being under the jurisdiction of a State that does not abide by the Convention. Issues may thus arise with regard to various aspects of execution, such as the payment of just satisfaction awards and the adoption of other remedial measures in respect of the applicant. Nor does the Court underestimate the importance of general measures to prevent further similar violations and of possible questions regarding identification and adoption of such measures.

245. The Court also points out in this context that over the last ten years it has been consistently encouraged by the Contracting States to seize the opportunity to provide indications helping the State concerned to identify underlying problems and the necessary measures to implement the judgment (see in particular the Committee of Ministers Resolution Res(2004)3 of 12 May 2004 and the Declarations adopted by the High Contracting Parties at the Interlaken, Izmir and Brighton conferences). The Court has thus been developing its case-law in that direction through the pilot-judgment procedure and in other forms, thus assisting the Contracting States and the Committee of Ministers for the sake of the proper and effective application of Article 46 of the Convention. In the Court's view, the need for its input in this area remains acute in certain types of cases.

246. Having regard to the above considerations and bearing in mind, in particular, the nature of the violations found by the present judgment, the recurrence of similar violations in other recent cases and the questions that

may arise in the execution of the judgment, the Court finds it appropriate to examine the present case under Article 46 of the Convention.

A. General principles

247. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings. This obligation has been consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 125, ECHR 2009, with further references).

248. As regards the individual measures to be taken in response to the judgment, their primary aim is to achieve *restitutio in integrum*, that is, to put an end to the breach of the Convention and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 11, Series A no. 85, and *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B). This obligation reflects the principles of international law whereby a State responsible for a wrongful act is under an obligation to make restitution, consisting in restoring the situation that existed before the wrongful act was committed, provided that restitution is not "materially impossible" and "does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation" (Article 35 of the Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts). In other words, while restitution is the rule, there may be circumstances in which the State responsible is exempted – fully or in part – from this obligation, provided that it can show that such circumstances obtain (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, § 86, ECHR 2009). The States should organise their legal systems and judicial procedures so that this result may be achieved (see ibid., § 97, and Recommendation (2000)2 of the Committee of Ministers).

249. It falls to the Committee of Ministers, acting under Article 46 of the Convention, to assess, in the light of the above principles of international law and the information provided by the respondent State, whether the latter has complied in good faith with its obligation to restore as far as possible the situation existing before the breach. While the respondent State in principle remains free to choose the means by which it will comply with this

obligation, it is also for the Committee of Ministers to assess whether the means chosen are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta*, cited above, § 249, and *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, §§ 241-42). The same is true for the assessment of the respondent State's compliance with its obligation to take general measures in order to solve the problem that led to the violation found by the Court's judgment.

B. Measures to comply with the present judgment

1. Payment of just satisfaction

250. In view of the applicant's continuing detention in Tajikistan, the Court is concerned, at the outset, about how the respondent State will discharge its obligation of payment of just satisfaction. The Court has already been confronted with similar situations involving applicants who were out of reach after their removal from the respondent State. In some of those cases the Court indicated that the respondent State was to secure payment of the just satisfaction by facilitating contacts between the applicants, their representatives and the Committee of Ministers (see *Muminov v. Russia* (just satisfaction), no. 42502/06, § 19 and point (c) of the operative part, 4 November 2010, and *Kamaliyevy v. Russia* (just satisfaction), no. 52812/07, § 14 and point 1(c) of the operative part, 28 June 2011). In other cases the Court has ordered the awards to be held by the applicants' representatives in trust for the applicants (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 215, and point 12 of the operative part, ECHR 2012, and *Labsi v. Slovakia*, no. 33809/08, § 155 and point 6 of the operative part, 15 May 2012).

251. Turning to the present case, the Court observes that after the applicant's transfer to Tajikistan, certain, albeit indirect, contacts occurred between him and his representatives before the Court. In view of that fact and given the applicant's extremely vulnerable situation in Tajikistan, the Court considers it appropriate that the amount awarded to him by way of just satisfaction be held for him in trust by his representatives.

2. Other remedial measures in respect of the applicant

252. The Court is of the view, however, that the obligation to comply with the present judgment cannot be limited to payment of the monetary compensation awarded under Article 41, which is only designed to make reparation for such consequences of a violation that cannot otherwise be remedied (see *Scozzari and Giunta*, cited above, § 250). The obligation to take further individual measures in addition to the payment of just satisfaction has already been upheld by the Convention organs in similar

cases where applicants' rights were violated by their removal from the area protected by the Convention (see, for example, *Hirsi Jamaa and Others*, cited above, § 211; *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 171, ECHR 2010 (extracts); and the Committee of Ministers Resolution CM/ResDH(2012)68 in the latter case and its decisions cited in paragraphs 121-124 above).

253. The fact that the applicant remains outside the respondent State's jurisdiction arguably makes it more difficult for the latter to reach him and take remedial measures in his favour. However, these are not circumstances that in themselves exempt the respondent State from its legal obligation to take all measures within its competence in order to put an end to the violation found and make reparation for its consequences. While specific necessary measures may vary depending on the specificity of each case, the obligation to abide by the judgment commands the respondent State, subject to supervision of the Committee of Ministers, to find out and use in good faith such legal, diplomatic and/or practical means as may be necessary to secure to the maximum possible extent the applicant's right which the Court has found to have been violated.

254. In the Court's view, the findings of the present judgment require such action to be taken. The current state of development of international law and international relations does not make it impossible for the respondent State to take tangible remedial measures with a view to protecting the applicant against the existing risks to his life and health in a foreign jurisdiction (see, by way of example, *Al-Saadoon and Mufdhi*, cited above, § 171, and the Committee of Ministers Resolution CM/ResDH(2012)68 of 8 March 2012; *Othman (Abu Qatada)*, cited above, §§ 23-24 and 194-205; see also the measures taken by Russia to secure the applicant's return from Turkmenistan in *Garabayev v. Russia*, no. 38411/02, §§ 34-35, 7 June 2007). The need for such measures is all the greater in the present case, given that the applicant had been granted temporary asylum by the Russian authorities themselves. It remains *a fortiori* open to the respondent State to take those individual measures that lie totally within its own jurisdiction, such as carrying out an effective investigation into the incident at issue in order to remedy the procedural violations found by the Court (see, by way of example, the proceedings taken against a State official for failure to comply with the interim measures indicated by the Court in *Muminov v. Russia*, cited above, § 44).

255. The Court is therefore convinced that it is incumbent upon the Russian Federation to avail itself of the necessary tools and procedures in order to take such measures in respect of the applicant. Given the variety of means available to achieve this aim and the nature of the issues involved, the Committee of Ministers is better placed than the Court to assess the specific measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the

respondent State and with due regard to the applicant's evolving situation, the adoption of such measures that are feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court.

3. General measures to prevent similar violations

256. Viewing the matter under Article 46 of the Convention, the Court finds it of particular importance to emphasise the need for general measures to prevent new violations similar to those found. In that connection the Court notes with great concern that the events under examination in the present case cannot be considered as an isolated incident. The Court reiterates that since its judgment in the *Iskandarov* case (cited above), in which it found the Russian Federation responsible for a violation of Article 3 on account of the applicant's unexplained abduction and transfer to Tajikistan by unidentified persons, it has been confronted with repeated incidents of that kind. The Court has already found a violation of both Article 3 and Article 34 in the *Abdulkhakov* case, in which the applicant was abducted in Moscow and forced to board a plane for Tajikistan in identical circumstances (see *Abdulkhakov*, cited above, §§ 124-27). More recently, albeit in different circumstances, it found the same violations on account of another applicant's deportation from St Petersburg to Uzbekistan (see *Zokhidov v. Russia*, no. 67286/10, §§ 128-42 and 201-11, 5 February 2013, not yet final). The Court has more complaints of that kind on its list and, even more worryingly, has received some of them on account of similar incidents that occurred after a cautionary message conveyed by the Court's President to the Russian Government (paragraph 52 above), and even after the recent decisions taken by the Committee of Ministers on that issue (see paragraphs 121-124 above).

257. The findings of the present judgment support the view that the repeated abductions of individuals and their ensuing transfer to the countries of destination by deliberate circumvention of due process – notably in breach of the interim measures indicated by the Court – amount to a flagrant disregard for the rule of law and suggest that certain State authorities have developed a practice in breach of their obligations under the Russian law and the Convention. Such a situation has the most serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court.

258. It can be seen from the Committee of Ministers' decisions that the situation was also "a source of great concern" for the Government and that they were addressing the incidents. The Committee of Ministers' relevant decisions were, for instance, circulated to the Prosecutor General's Office, the Investigative Committee, the Ministry of the Interior, the Federal Migration Service and the Federal Bailiff Service. The Government also declared that they were "committed to presenting the results of the

follow-up" given to the incidents in Russia to both the Committee of Ministers and the Court in the context of the relevant cases (see paragraphs 122-123 above). The Court's findings above amply demonstrate, however, that no satisfactory follow-up was given in the present case and, more generally, that decisive general measures still remain to be taken by the State authorities concerned. These should include further improving domestic remedies in extradition and expulsion cases, ensuring the lawfulness of any State action in this area, effective protection of potential victims in line with the interim measures indicated by the Court and effective investigation into every breach of such measures or similar unlawful acts.

259. The Court acknowledges the recent significant development of the domestic jurisprudence undertaken by the Supreme Court of the Russian Federation in its Ruling no. 11 of 14 June 2012 (see paragraph 76 above). This development is in line with the Court's case-law and perfectly supports the idea of improving domestic remedies in extradition and expulsion cases, which has long been promoted by the Convention organs in respect of all Contracting States (see, among the most recent authorities, the Grand Chamber's stand in *De Souza Ribeiro v. France*, cited above, § 82; see also the Committee of Ministers Recommendation Rec(2004)6 on the improvement of domestic remedies and Recommendation R(98)13 on the right of rejected asylum seekers to an effective remedy). The Court trusts that the meticulous application of the Supreme Court's ruling by all Russian courts would allow the judiciary to avoid such failings as those criticised in the present judgment (see paragraphs 161-165) and further develop emerging domestic case-law that directly applies the Convention requirements through judicial practice (see, among the most recent examples, the domestic courts' decisions examined in *Kulevskiy v. Russia* (dec), no. 20696/12, §§ 18 and 36, 20 November 2012). The Court notes that the steps being taken by the courts of general jurisdiction echo the important case-law developed by the Russian Constitutional Court on extradition matters and the positive measures taken at other levels, as reflected in the Committee of Ministers' decisions (see paragraphs 123-124 above). Against this background, it is all the more disturbing for the Court to face situations in which domestic legal mechanisms are blatantly circumvented as a result of the unlawful transfer of applicants to States that seek to prosecute them. The recurrence of such lawlessness is capable of wiping out the effectiveness of domestic remedies on which the Convention system totally relies (compare *Al-Saadoon and Mufdhi*, cited above, § 166). In the Court's view, the State's obligations under the present judgment require the resolution of this recurrent problem without delay.

260. The lack of an effective domestic investigation into such unacceptable incidents raises further grave concerns, as demonstrated by the present judgment. The Convention requirement of an effective and prompt

investigation into each incident of that kind stems directly from the Court's abundant case-law and finds support in the consistent position of the Committee of Ministers and the Parliamentary Assembly, which have insisted, notably, that the perpetrators of such incidents be brought to account in order to send a clear message that such actions would not be tolerated (see the Assembly's Resolution 1571 (2007), and the Committee of Ministers Resolution CM/Res(2010)25, cited above). The Court observes that no such message has been sent either in the present case or in other similar cases that have arisen in the last eighteen months.

261. The above-mentioned considerations lead the Court to conclude that the obligation arising from Article 46 requires urgent and robust action to be taken by the respondent State, including all such measures as may be needed to resolve the problems revealed by the present judgment. Besides the above-mentioned need to further improve domestic remedies and to prevent their unlawful circumvention in extradition matters, the adoption of general measures in response to the present judgment should address two other important concerns and pursue two corresponding aims.

262. First, in view of their particularly vulnerable situation, applicants in respect of whom the Court has indicated interim measures must be granted effective protection by the State not only in law, but also in practice. Given that the general protection provided for by the ordinary legal framework regularly fails in cases such as the present one, an appropriate mechanism, tasked with both preventative and protective functions, should be put in place to ensure that such applicants benefit from immediate and effective protection against unlawful kidnapping and irregular removal from the national territory and the jurisdiction of the Russian courts. The need for such a mechanism is particularly pressing in respect of applicants wanted by those States to which unlawful forcible transfers or deportations have already taken place. In view of the exceptional purpose pursued by the interim measures and the likelihood of grave irreparable damage being caused by any breach thereof, any special mechanism thus introduced should be subject to close scrutiny by a competent law-enforcement officer at an appropriate level capable of intervening at short notice to prevent any sudden breach of interim measures that may occur on purpose or by accident. Applicants and their legal representatives should be allowed easy access to the State officers concerned in order to inform them of any emergency and seek urgent protection.

263. Secondly, given the vital role of interim measures in the Convention system and, accordingly, the utmost importance attached to the States Parties' compliance with them (see paragraphs 211-213 above), the State should avail itself of appropriate procedures and institutional arrangements to ensure effective investigation into every case of breach of such measures, inasmuch as the existing procedures fail to produce the results required. Close scrutiny of such investigations at an appropriate

official level is also called for in order to ensure that they are conducted with the necessary diligence and to the required standard of quality.

264. While emphasising the above areas of particular concern, the Court does not exclude other avenues for adoption of general measures, some of which have already been outlined in Council of Europe texts (see paragraphs 108-114 above). However, a thorough assessment of all such matters goes beyond the Court's judicial function in view of the numerous legal, administrative, practical and security issues involved. The Court will therefore abstain at this stage from formulating specific orders, considering that the indications provided above will help to ensure the proper execution of the present judgment under the supervision of the Committee of Ministers (see, *mutatis mutandis*, *Burdov (no. 2)*, cited above, § 137, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 194, 10 January 2012). It is for the Russian authorities to propose to the Committee of Ministers concrete steps to secure the Convention rights concerned, and for the latter to assess the effectiveness of the measures proposed and to follow up their subsequent implementation in line with the Convention requirements, as highlighted by the present judgment.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the risk of the applicant's ill-treatment in Tajikistan, the lack of effective remedies in that respect and the delays in the judicial review of his detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to protect the applicant against the real and imminent risk of torture and ill-treatment by preventing his forcible transfer from Moscow to Tajikistan, the lack of an effective investigation into the incident, and the involvement of State agents in that operation;

3. *Holds* that there has been a violation of Article 34 of the Convention on account of the respondent State's failure to comply with the interim measures indicated by the Court;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the delays in examining the applicant's appeals against the detention orders of 17 May and 19 November 2010;

5. *Holds* that there is no need for separate examination of the complaint about the lack of effective remedies under Article 13 of the Convention;

6. *Holds*

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

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

(ii) EUR 5,920 (five thousand nine hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and paid to the bank account of the applicant's representatives;

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

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

Done in English, and notified in writing on 25 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro Lefèvre
President