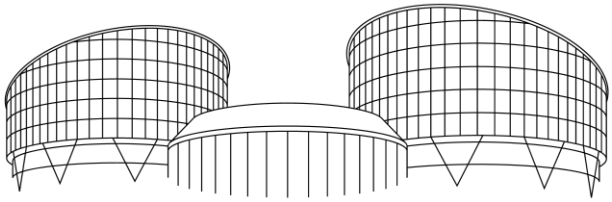

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ISKANDAROV v. RUSSIA

(Application no. 17185/05)

JUDGMENT

STRASBOURG

23 September 2010

FINAL

21/02/2011

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

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

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

ChristosRozakis, *President,*
NinaVajić,
AnatolyKovler,
DeanSpielmann,
Sverre ErikJebens,
GiorgioMalinverni,
GeorgeNicolaou, *judges,*
andSørenNielsen, *Section Registrar*,

Having deliberated in private on 2 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 17185/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Tajikistani national, Mr Mukhamadruzi (also spelled Mahmadruzi) Iskandarov ("the applicant"), on 6 May 2005.

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

3. On 30 May 2008 the President of the First Section decided to give notice of the applicationto the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Dushanbe.

A. The applicant's account of events

1. Background of the case

5. In May 1992 a civil war erupted in Tajikistan when ethnic groups under-represented in the ruling elite rose up against the national government of President Nabiyev. Politically, the discontented groups were represented by liberal democratic reformists and Islamists, who fought together and later organised themselves under the banner of the United Tajik Opposition ("UTO"). By June 1997 fifty to one hundred thousand people had been killed.

6. During the civil war in Tajikistan, the applicant was one of the leaders of the UTO.

7. On 27 June 1997 a peace agreement was signed by President Rakhmonov and the UTO leader. The applicant was appointed as the head of the State Committee for Extraordinary Situations and Civic Defence of Tajikistan. While in office, he was awarded the rank of Major-General.

8. In 1999 the President of Tajikistan appointed the applicant as the director of the unitary enterprise Tajikkommunservis.

9. On 13 September 1999 the applicant was elected chairman of the Democratic Party of Tajikistan.

10. On 4 June 2001 the applicant was appointed as the director of the unitary enterprise Tajikgaz.

11. At some point the applicant openly criticised the President of Tajikistan.

12. On 1 December 2004 the applicant moved to Russia.

2. Charges against the applicant and extradition proceedings

13. On 25 November 2004 the Tajik Prosecutor General's Office charged the applicant in his absence with terrorism, gangsterism, unlawful possession of firearms and embezzlement.

14. On 26 November 2004 the Tajik authorities chose placement in custody as a preventive measure to be imposed on the applicant.

15. On 29 November 2004 the applicant was put on an international "wanted" list.

16. On 1 December 2004 the Russian Prosecutor General's Office received a request for the applicant's extradition from the Tajik Prosecutor General's Office.

17. On 9 December 2004 the Russian authorities arrested the applicant on the basis of the request for his extradition.

18. On an unspecified date the applicant was placed in remand prison no. IZ-77/4 inMoscow.

19. On 23 December 2004 the Babushkinskiy District Court of Moscow authorised the applicant's detention pending extradition.

20. On 24 December 2004 the applicant appealed against the first-instance decision. On an unspecified date the Moscow City Court dismissed the appeal.

21. On 29 December 2004 and 18 January 2005 the applicant requested the Russian Prosecutor General's Office not to extradite him, arguing that the request for his extradition had been filed for purely political reasons.

22. In January 2005 the applicant requested the Department for Migration Affairs of the Moscow Department of the Interior to grant him political asylum.

23. On 1 April 2005 the Russian Prosecutor General's Office dismissed the extradition request by the Tajik authorities for the reason that the applicant had filed an asylum application.

24. On 4 April 2005 the prosecutor's office of the Babushkinskiy District of Moscow ordered the applicant's release from custody.

3. The applicant's abduction and transfer to Tajikistan

25. Upon his release on 4 April 2005 the applicant stayed at his friend's flat in the town of Korolev, in the Moscow Region, awaiting examination of his asylum application.

26. In the evening of 15 April 2005 the applicant and his friend, Mr L., were walking a dog. At some point the applicant saw two persons wearing uniforms of the Russian State Inspectorate for Road Safety (*«ГИБДД»*, "GIBDD"). He assumed that those men intended to arrest him and told his friend to go home. Then the applicant noticed that the area had been surrounded by twenty-five or thirty men with Slavic features wearing civilian clothes.

27. Without identifying themselves or giving any explanations, the two men in GIBDD uniforms, assisted by several men in civilian clothes, handcuffed the applicant. One of the men hit the applicant on the head and placed him in a car; it drove off. After 400 or 500 metres the car stopped; the men in the GIBDD uniforms took the applicant out and placed him in a minivan.

28. They drove for a while. Eventually the minivan stopped and the applicant was taken outside. The surroundings were unknown to him. The applicant was escorted to a sauna and detained there. The guards beat the applicant. He asked for a lawyer, but in vain.

29. On 16 April 2005 the applicant was taken to a forest. The men who had apprehended him met a group of people and conversed with them there. Having listened to them talking, the applicant assumed that the newly arrived people were servicemen of theRussian law-enforcement agencies.

30. At some point the servicemen put a mask on the applicant's face. They did not identify themselves, nor did they give any explanations of their actions. They spoke unaccented Russian.

31. Later they took the applicant with them and escorted him to an airport. The applicant's identity papers were not checked. While boarding the plane, the applicant heard the servicemen talking to a woman who apparently knew them. During the flight the applicant, still blindfolded, heard no instructions or other information usually conveyed in a civil aircraft.

32. On the morning of 17 April 2005 the aircraft landed at DushanbeAirport and the applicant was handed over to the Tajik law-enforcement agencies.

4. The applicant's detention in Tajikistan

33. On 17 April 2005 the applicant was placed in the remand prison of the Tajik Ministry of Security. He was kept in a cell measuring 2.3 x 2 metres. There was an iron bed with dirty bedding.

34. For the first ten days of his detention the applicant was registered under a false last name, "Sobirov". During that period officers of the remand prison regularly beat the applicant. He had no food except for two pieces of bread per day and some water. He was allowed to use the lavatory only once a day. The applicant was not permitted to go for a walk or to wash himself.

35. On the tenth day of the applicant's detention, officers of the Tajik Prosecutor General's Office told him that he would be killed unless he confessed. The applicant made a self-incriminating statement under pressure. He was given some pills, allegedly of a psychotropic nature.

36. On 25 April 2005 the Tajik Prosecutor General gave a press conference and announced that the applicant had been arrested in Tajikistan on 22 April 2005.

37. On 30 April 2005 the applicant was allowed to see his lawyers for the first time since his arrest. He explained them that for thirteen days he had been kept incommunicado and had lived on bread and water. The lawyers' visits took place in the presence of the prison officials. Unsupervised visits were not permitted.

38. On 5 October 2005 the Supreme Court of Tajikistanconvicted the applicant and sentenced him to twenty-three years' imprisonment.

39. On 18 January 2006 the Appeals Board of the Supreme Court of Tajikistan upheld the judgment of 5 October 2005.

5. Complaints to the Russian authorities

40. On 2 May 2005 the Presidium of the Democratic Party of Tajikistan requested the President of Russia, the Russian Prosecutor General's Office and the Russian Ombudsman to clarify the circumstances of the applicant's unlawful extradition.

41. On 3 May 2005 the applicant's relatives requested the Russian Prosecutor General's Office to explain how the applicant had been transferred to Tajikistan. No reply was given.

42. On 30 May 2005 the applicant's lawyers enquired of the Russian Prosecutor General's Office whether any measures had been taken in relation to the letter of 3 May 2005.

43. On 14 June 2005 the applicant's lawyers complained to the Russian Prosecutor General's Officethat the applicant's abduction and extradition had been unlawful.

44. On 22 June 2005 the applicant's lawyers complained to the Tverskoy District Court of Moscowabout the inaction of the Russian Prosecutor General's Office. The court left the complaint unexamined.

45. On 15 June 2005 the applicant's lawyers complained to the Russian Prosecutor General's Office about the allegedly ineffective investigation into the circumstances of the applicant's unlawful extradition.

46. On 20 June 2005 the Korolev town prosecutor's office refused to institute criminal proceedings in relation to the applicant's kidnapping.

47. On 6 July 2005 the Korolev town prosecutor's office quashed the decision of 20 June 2005 and instituted an investigation under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

48. On 8 September 2005 the applicant's representatives lodged a second complaint with the Tverskoy District Court of Moscow. The complaint was dismissed on 28 September 2005.

49. On 16 September 2005 the applicant's lawyer requested the Korolev town prosecutor's office to demand the Tajik authorities to transfer the applicant to Russia for questioning. On 19 September 2005 the request was dismissed. The applicant's lawyers challenged the prosecutor's decision before the prosecutor's office of the Moscow Region, but to no avail.

50. The applicant himself requested the Korolev town prosecutor's office to question him as a victim in Russian territory.

51. On 6 October 2005 the Korolev town prosecutor's office dismissed the applicant's request. The applicant's lawyers challenged the refusal before a court.

52. On 24 April 2006 the Korolev Town Court dismissed the complaint on the ground that the applicant had not been permitted to join the proceedings as a victim. That decision was quashed. On 25 September 2006 the Moscow Regional Court dismissed the complaint at final instance on the ground that the applicant's rights had not been breached.

53. On 12 December 2005 the Moscow City Court dismissed at final instance the complaint about the Russian Prosecutor General's inaction.

54. On 27 March 2006 the Tverskoy District Court of Moscow dismissed at first instance the applicant's complaint about the Russian Prosecutor General's Office's inaction.On 23 May 2006 the Moscow City Court upheld the decision.

55. On 6 April 2006 the applicant's lawyers challenged in court the investigators' decision. On 25 September 2006 their complaint was dismissed at final instance by the Moscow Regional Court.

6. The proceedings before the UNHCHR

56. In November 2004 two Tajik lawyers filed a complaint with the United Nations High Commissioner for Human Rights (UNHCHR) concerning alleged violations of the applicant's rights in the course of the criminal proceedings against him in Tajikistan.

57. On 20 October 2005 the Working Group on Arbitrary Detention of the Office of the UNHCHR put questions on the applicant's detention to the Tajik Government.

58. On 24 November 2005 the Tajik Ministry of Foreign Affairs, in reply to the request by the Office of the UNHCHR, submitted a seventeen-page document in Russiandescribing the charges against the applicant and the proceedings against him. The document read, in so far as relevant, as follows:

> "...[i]n accordance with the Minsk Convention, Mr Iskandarov was arrested by the Russian law-enforcement agencies in Moscow in December 2004.
>
> In reply to the Russian Prosecutor General's Office's requests, the Tajik Prosecutor General's Office produced the necessary documents concerning Iskandarov's extradition to the Tajik authorities within the time-limits laid down by the Minsk Convention, as well as comprehensive proof of Iskandarov's guilt in respect of the crimes he had been charged with. After that, the Russian Prosecutor General's Office informed the Tajik authorities that a favourable solution would be found to the question of Iskandarov's extradition.
>
> It is noteworthy that on 4 April 2005 the Russian law-enforcement agencies released Mr Iskandarov from custody prior to deciding on his extradition but did not officially notify the Tajik Prosecutor General's Office of the grounds and reasons for the release under the Minsk Convention.
>
> Mr Iskandarov was officially extradited to the Tajik authorities by the Russian law-enforcement agencies and on 17 April 2005 he was placed in the remand prison of the Tajik Ministry of Security."

59. On 29 September 2006 the Office of the UNHCHR forwarded the letter fromthe Tajik Ministry of Foreign Affairs to the applicant's Tajik counsel and notified her that, in order to consider the applicant's case during its 47th session, its Working Group expected to receive her comments on it.

60. It appears that the proceedings before the UNHCHR concerning the alleged violations of the applicant's rights in Tajikistan are still pending.

B. The Government's account of events

61. On 1 December 2004 the Russian Prosecutor General's Office received a petition for the applicant's extradition from the Tajik Prosecutor General's Office.

62. On 9 December 2004 the applicant was arrested in Moscow.

63. On 17 December 2004 the Russian Prosecutor General's Office received an official request for the applicant's extradition, citing the charges of terrorism, gangsterism, unlawful possession of arms, embezzlement and unlawful hiring of bodyguards.

64. On 1 April 2005 the Russian Prosecutor General's Office refused to extradite the applicant on the basis of Article 19 of the Minsk Convention owing to the fact that he had applied for asylum.

65. On 4 April 2005 the applicant was released from custody.

66. On 6 July 2005 the Korolev town prosecutor's office instituted criminal proceedings in relation to the applicant's abduction under Article 126 § 2 of the Russian Criminal Code (“aggravated kidnapping”). The case was assigned number 27807.

67. The investigation established that at about 11 p.m. on 15 April 2005 the applicant had been walkingalong a street in the vicinity of the house at 14 Sovetskaya Street, Korolev, and had presumably been kidnapped by unidentified persons.

68. Later it became known that the applicant had been arrested in Dushanbe by the Tajik authorities.

69. The investigators questioned Mr L. and his son and daughter, as well as police officers who had been on duty on the night of 15 April 2005 in the vicinity of Sovetskaya Street and the applicant's son.

70. On 8 July 2005 Mr L. stated that the applicant, a friend of his daughter, had been staying in their home since 12 April 2005. On 15 April 2005 Mr L. had gone outside to walk his dog; the applicant had accompanied him to have a cigarette. Mr L., a non-smoker, had walked in the opposite direction to the applicant. At some point he had stumbled upon two men wearing police uniforms and talked to them for some fifteen minutes. Then he had returned home; the applicant was not there. MrL. and his daughter, Ms L., had searched for the applicant and checked with police stations but in vain. After a while Ms L. had read on the Internet that the applicant had been arrested in Tajikistan.

71. Ms L. and Mr L.'s son made identical depositions.

72. The investigators checked whether the applicant had been taken away by plane from ChkalovskiyAirport. No proof of this hypothesis was found.

73. On 20 June 2005 the Korolev prosecutor's office granted the applicant victim status in criminal case no. 27807.

74. On 18 July 2005 the Korolev prosecutor's office, pursuant to Articles 4, 5, 7 and 8 of the Minsk Convention, requested the Tajik Prosecutor General's Office to establish the applicant's whereabouts and to question him about his abduction and transfer from Russia.

75. On 24 August 2005 the Russian authorities requested the Tajik Prosecutor General's Office to question the applicant and to allow him to study the decision to grant him victim status. On 29 December 2005 Mr Kh., an investigator of the Tajik Prosecutor General's Office, replied that on several occasions he had visited the applicant in the remand prison of the Tajik Ministry of Security in connection with criminal case no. 27807 but that the applicant had refused to make any statements or to study the decision to grant him victim status.

76. The investigation did not establish that any officers of the Russian law-enforcement agencies had been involved in the applicant's kidnapping.

77. On 3 October 2008 the investigation was suspended for failure to identify those responsible.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation of 1993

78. Everyone has theright to liberty and security (Article 22 § 1). Arrest, placement in custody and custodial detention are permissible only on the basis of a court order. The term during which a person may be detained prior to obtaining such an order cannot exceed forty-eight hours (Article 22 § 2).

B. Code of Criminal Procedure (CCP)

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

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. Council of Europe

80. Recommendation No. R (98) 13 of the Council of Europe Committee of Ministers to Member States on the right of rejected asylum

seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights reads as follows:

> "...
>
> Without prejudice to the exercise of any right of rejected asylum seekers to appeal against a negative decision on their asylum request, as recommended, among others, in Council of Europe Recommendation No. R (81) 16 of the Committee of Ministers...
>
> 1. An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.
>
> 2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when: ...
>
> 2.2. that authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief; ...
>
> 2.4. the execution of the expulsion order is suspended until a decision under 2.2 is taken."

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

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

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

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

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

84. Upon receipt of a request for extradition, the requested country should immediately take measures to search for and arrest the person whose

extradition is sought, except in cases where no extradition is possible (Article 60).

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

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

C. Reports on the general human-rights situation in Tajikistanissued prior to 15 April 2005

87. Amnesty International, in its document "Tajikistan – Impunity; Fear for Safety" describing alleged ill-treatment of three Tajikistani residents and released on 4 November 2004, stated as follows:

> "Amnesty International receives reports about torture and ill-treatment by police in Tajikistan on a regular basis. Those targeted have included alleged Islamists as well as suspects charged with ordinary crimes. Allegations persisted that in the large majority of cases no thorough and impartial investigations were conducted and the perpetrators enjoyed impunity."

88. The US Department of State 2004 Country Report on Human Rights Practices: Tajikistan, released on 28 February 2005, readsas follows:

> "The [Tajik] Government's human rights record remained poor; although there were some improvements in a few areas, serious problems remained. ... Security forces tortured, beat, and abused detainees and other persons and were also responsible for threats, extortion, and abuse of civilians. Prison conditions remained harsh and life threatening. A few prisoners died of hunger.
>
> Impunity and lengthy pre-trial detention remained problems. Authorities used torture to obtain confessions, which were routinely accepted as evidence in trials without qualification.
>
> The law prohibits such practices; however, there were reports that government security officials employed them.
>
> Torture occurred during the year, though to a lesser extent than in 2003. Security officials, particularly from the Ministry of Interior (MOI), continued to use systematic beatings to extort confessions, torture, sexual abuse, and electric shock during interrogations.
>
> Beatings and mistreatment were also common in pre-trial detention facilities, and the Government took minimal action against those responsible for the abuses

Prison conditions remained harsh and life threatening for an estimated 7,000 to 10,000 incarcerated persons. Prisons were generally overcrowded, unsanitary, and disease-ridden. The spread of tuberculosis was a serious problem, and there were reports that a few prisoners died of hunger.

...

Arbitrary arrest and detention remained serious problems. The law, which is an amended holdover from the Soviet era, allows for lengthy pre-trial detention, and there are few checks on the power of prosecutors and police to make arrests.

Impunity remained a serious problem, and officers who committed abuses were rarely prosecuted. The Government acknowledged that police and security forces were corrupt and that most citizens who were abused chose to remain silent rather than risk retaliation by authorities.

...

The Constitution provides for an independent judiciary; however, courts and judges were subject to political pressure from the executive branch and criminal networks, and corruption and inefficiency were problems.

There was little official information about criminal court procedures and the number of political prisoners; however, credible international and local sources estimated that approximately 100 former opposition fighters of the United Tajik Opposition remained in prison after the civil war despite two general amnesties in 1998. Controversy over which crimes the amnesties covered delayed resolution of the cases. However, following a government review of the cases, most were determined to be appropriately jailed for grave crimes; others were released.

In January, following a partially closed trial, a closed session of the Military Board of the Supreme Court sentenced Shamsiddin Shamsiddinov, a deputy chair of the opposition IRP, to 16 years in prison for organizing an armed group and illegally crossing the border. Both crimes were covered under the 1998 post-war amnesties. While in pre-trial detention, he was allegedly abused and denied access to counsel (see Section 1.c.). The IRP maintained that the trial and sentencing were politically motivated to discredit the party."

89. The Human Rights Watch World Report 2005–Tajikistan, issued on 12 January 2005, reads as follows:

"The human rights situation in Tajikistan is fragile. Despite reforms on paper – including a new election law and a moratorium on capital punishment – the government continues to put pressure on political opposition, independent media, and independent religious groups. The political climate has deteriorated as President Emomali Rakhmonov attempts to consolidate power in advance of 2005 parliamentary and presidential elections. Hizbi Demokrati-Khalkii Tojikston (the People's Democratic Party of Tajikistan), led by President Rakhmonov, dominates political life. Under 1997's power-sharing arrangement, opposition parties are guaranteed 30 percent of top government posts. In January 2004, Rakhmonov replaced senior government officials from other political parties with members of his own party, reducing the other parties' share of top posts to 5 percent.

Rakhmonov's opponents are vulnerable to prosecution on politically-motivated charges. In January 2004, the Supreme Court sentenced Shamsuddin Shamsuddinov, deputy chairman of Nahzati Islomi Tojikiston (the Islamic Renaissance Party, IRP) – which participates in the power-sharing government - to sixteen years in prison on charges of polygamy, organizing an armed criminal group during the civil war, and illegally crossing the border. Three other IRP members were given lengthy prison terms for alleged complicity in Shamsuddinov's armed group. Shamsuddinov, who has maintained his innocence since his arrest in May 2003, alleges he was beaten and tortured with electric shocks while awaiting trial."

D. Reports concerning the applicant's case

90. The Ambassador of the United States to the Permanent Council of the OSCE delivered on 16 June 2005 a statement on the detention of Mahmadruzi Iskandarov in Dushanbe, which reads as follows:

"The United States wishes to express its concern regarding the case of Mahmadruzi Iskandarov, the Chairman of the Democratic Party of Tajikistan, who was involuntarily returned to Dushanbe from Moscow on April 17, and who has been held in detention by Tajikistan's Ministry of Security since that date.

We further note that Mr. Iskandarov has been denied regular and unobserved access to his legal counsel, and that his family has been unable to meet with him.

The United States calls on the Tajik authorities to permit Mr. Iskandarov access to his legal counsel in accordance with Tajikistan's own laws and with international standards, and to pursue any court process in accordance with international law. Both local and international observers should be allowed to witness those proceedings.

Once again, [the United States] urge[s] the Government of Tajikistan to demonstrate its commitment to comply with OSCE principles and with international law. The United States stands ready to provide whatever assistance might be required in helping Tajikistan to meet its obligations in that regard."

91. The Human Rights Watch World Report 2006 –Tajikistan, issued on 18 January 2006, reads as follows:

"In December 2004, Russian police arrested Mahmudi Iskandarov in Moscow at the request of Tajik authorities. The government had implicated Iskandarov – a vociferous critic of President Rakhmonov, presidential hopeful, and leader of the Tajik Democratic Party – in an attack on two government offices in Tojikobod in August 2004. Russian authorities released him on April 3, 2005, but he disappeared just two days later and eventually turned up in custody in Tajikistan. Iskandarov claimed that he had applied for refugee status after his initial release from Russian custody, but said that Russian police had kidnapped him off the street and transferred him to agents who flew him to Dushanbe. On October 5, 2005, after a trial that lasted more than two months, Iskandarov was found guilty on six counts, including terrorism and illegal possession of weapons. He was sentenced to twenty-three years in prison and fined 1.5 million soms (approximately U.S.$ 470,000)."

92. The US Department of State 2005 Country Report on Human Rights Practices: Tajikistan, released on 8 March 2006, readsas follows:

"Beatings and mistreatment were also common in pre-trial detention facilities, and the government took minimal action against those responsible for the abuses (see Section 1.d.). Yoribek Ibrohimov 'Shaykh' and Muhammadruzi Iskandarov both stated police beat them and subjected them to electric shocks while they were in custody. The International Committee of the Red Cross (ICRC) monitors were unable to investigate claims of torture against them and their associates and the government did not launch an official investigation.

...

Muhammadruzi Iskandarov, head of the Democratic Party of Tajikistan and former chairman of Tajikgaz, was returned to the country in April after his December 2004 detention in Moscow, under circumstances that appeared to be an extrajudicial rendition; Iskandarov was charged with violating eight articles of the criminal code including: banditry, terrorism, illegal possession of weapons, having an unauthorized bodyguard, and embezzlement. At the request of the Tajikistan General Prosecutor's Office, Russian authorities had taken Iskandarov into custody on an international arrest warrant, but found insufficient evidence to extradite him. On April 3, the Russian general prosecutor turned down an extradition request and released Iskandarov. He was subsequently kidnapped by unknown forces and on April 26, the Tajik prosecutor general announced Iskandarov was in pre-trial detention in Dushanbe. Iskandarov was denied immediate access to his family and an attorney (see section 1.e.). Iskandarov reported that he was tortured, injected with drugs, and electrocuted while in detention. He was sentenced to 23 years in prison. He is appealing to the Supreme Court. No date was set for the appeal trial by year's end."

93. The Declaration by the Presidency of the Council of the European Union on behalf of the European Union on the case of Mr Iskandarov in Tajikistan, done in Brussels on 22 March 2006 (7656/06 (Presse 86) P 050), reads as follows:

"The EU has closely followed the legal proceedings against Mr Mahmadruzi Iskandarov, leader of the opposition Democratic Party of Tajikistan, since his arrest in Moscow in December 2004.

The EU has taken note of his conviction and sentence to 23 years in prison on multiple charges by Tajikistan's Supreme Court on 5 October 2005, and the rejection of his appeal by the Collegium on Criminal Cases on 18 January 2006.

The EU is particularly concerned about the circumstances of Mr Iskandarov's transfer to and arrest in Tajikistan in April 2005, which remain unclear, and about the treatment Mr Iskandarov received during his pre-trial detention. Concerns were also raised by Mr Iskandarov's defence team about some aspects of the court proceedings themselves, and about the fact that the recent appeal procedure was not open to the press. The EU wishes to receive further information on these matters.

The EU asks the Tajik authorities to ensure regular access of Mr Iskandarov's family and lawyers in accordance with Tajik law.

The unclear circumstances of Mr Iskandarov's arrest and some aspects of his detention and trial send a mixed message about democratic reform and the respect of Human Rights in Tajikistan with respect to its OSCE and other international commitments."

94. The US Department of State 2006 Country Report on Human Rights Practices: Tajikistan, released on 6 March 2007, reads as follows:

> "There was no official investigation into the 2005 beating and electric shocks police allegedly administered to Yoribek Ibrohimov 'Shaykh' and Muhammadruzi Iskandarov while they were in custody.
>
> ...
>
> Muhammadruzi Iskandarov, head of the Democratic Party of Tajikistan and former chairman of Tojikgaz, the country's state-run gas monopoly, remained in detention following his April 2005 kidnapping and return to the country from Moscow by unknown forces. In October 2005 the Supreme Court sentenced Iskandarov to 23 years in prison as well as other penalties, including restitution of $434,782 (1.5 million somoni) allegedly embezzled from Tojikgaz. While most observers believed allegations of corruption and embezzlement were well-founded, local observers, human rights activists, and the political opposition charged that Iskandarov's arrest, trial, and verdict were politically motivated to intimidate future political challengers. Although Iskandarov was convicted, he remained in a pre-trial detention facility at year's end."

95. Amnesty International, in adocument entitled "Central Asia: Summary of Human Rights Concerns, January 2006-March 2007", released on 26 March 2007, described the applicant's situation as follows:

> "In June 2006, the opposition Democratic Party of Tajikistan (DPT) expressed concern that its leader, Mamadruzi Iskandarov, continued to be held in incommunicado detention in the Ministry of National Security. In 2005, Mamadruzi Iskandarov was abducted from Moscow, Russia, where he lived in exile, after the Russian authorities refused to extradite him to Tajikistan. He was sentenced to 23 years' imprisonment by the Supreme Court in October 2005 on charges of terrorism and corruption, which he denied. He should have been moved to a prison camp shortly after the verdict but this did not happen. Supporters claimed that he was not allowed to receive parcels or newspapers and that visits of relatives and his lawyers had been obstructed. An appeal against his sentence had been turned down in a closed hearing in January 2006. At the beginning of February 2007, Mamadruzi Iskandarov was finally moved to a high security prison camp to serve the remainder of his sentence."

96. The US Department of State 2009 Country Report on Human Rights Practices: Tajikistan, released on 11 March 2010, reads as follows:

> "...Muhammadruzi Iskandarov, head of the Democratic Party of Tajikistan and former chairman of Tojikgaz, the country's state-run gas monopoly, remained in prison following his unlawful extradition from Russia and 2005 conviction for corruption."

THE LAW

I. ESTABLISHMENT OF THE FACTS

A. The parties' submissions

1. The Government

97. The Government insisted that the Russian authorities had not been involved in the applicant's kidnapping. The applicant had been released from custody following his detention pending extradition on 4 April 2005 and had never been detained in Russian territory again.

98. The applicant's allegations that he had been arrested by State agents had been disproved in the course of the domestic investigation into his kidnapping.

99. The witnesses questioned had not seen exactly how the applicant had been kidnapped. Mr L. had not informed the domestic investigation that the area in the vicinity of his home had been surrounded by twenty-five or thirty men in civilian clothes. The policemen, Mr T. and Mr S., had stated to the investigators that they had not arrested anyone on the night of 15 April 2005 and had not seen any men surrounding the building at 14 Sovetskaya Street.

100. The applicant had refused to study the decision to grant him victim status and to be questioned as a victim.

101. The Government commented on the letter from the Tajik Ministry of Foreign Affairs, a copy of which had been submitted by the applicant's representative, that its contents "[had] not correspond[ed] to the facts". They also argued that the copy submitted was barely legible. They were later provided with other copies but made no further comments on the document.

102. In sum, the Government asserted that the applicant's kidnapping had not been imputable to the State authorities.

2. The applicant

103. The applicant claimed that his allegation of State involvement in his transfer to Tajikistan had been proved by the following. The applicant had arrived in Tajikistanwithout a passport, which would be impossible unless he had been accompanied by State agents. The Tajik authorities had publicly confirmed that he had been extradited via official channels. Mr L.'s statements before the Russian investigators and the Court had not beencontradictory.

104. The applicant had indeed been unwilling to be questioned by the Tajik investigators in relation to criminal case no.27807; however, he had requested the Russian investigators to question him in Russian territory.

B. The Court's assessment

105. Given that the parties are in strong disagreement in their respective accounts of the circumstances of the present case, it is necessary for the Court to establish the facts concerning the applicant's transfer to Tajikistan.

106. The Court notes at the outset that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Altun v. Turkey*, no. 24561/94, § 42, 1 June 2004). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularlythoroughscrutinyeven if certaindomesticproceedings and investigations have already taken place (see*Mathew v. the Netherlands*, no. 24919/03, § 155, ECHR 2005-IX).

107. The Court further reiterates that, in assessing evidence, it applies the standard of proof "beyond reasonable doubt". However, 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).

108. 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 in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proofmay be regarded as restingon the authorities to provide a satisfactory and convincingexplanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *D.H. and Others v. the CzechRepublic*[GC], no. 57325/00, § 179, ECHR 2007-XII).

109. Turning to the circumstances of the present case, the Court points out that the applicant provided agenerally clear and coherent description of the events relating to his transfer from Russia to Tajikistan. His allegation

that he was*de facto* unlawfully extradited by the Russian authorities is supported by the reports by the US Department of State (see paragraph 96above).

110. Furthermore, the Court observes that the Tajik Ministry of Foreign Affairs officially informed the Office of the UNHCHR that the applicant had been "officially extradited to the Tajik authorities by the Russian law-enforcement agencies" (see paragraph 58 above). The Government provided no explanation as to the nature of the statement in question, merely asserting that it "did not correspond to the facts [of the case]".

111. Lastly, the Court points out that the Government provided no version capable of explaining how the applicant, last seen in the Moscow Region in the evening of 15 April 2005 andadmitted to the Tajik prison on 17 April 2005, had arrived in Tajikistan. They merely stated that the investigators in charge of the proceedings relating to the applicant's kidnapping had not obtained any information supporting the hypothesis that the applicant had taken a flight from ChkalovskiyAirport (see paragraph 72 above). However, they did not produce any evidence from the investigation capable of showing what measures had been taken to disprove the applicant's allegations.

112. The Court points out that the shortest road between Korolev and Dushanbe is 3,660 kilometres long. It passes though Kazakhstan and Uzbekistan, sovereign States with their own border controls. In such circumstances the Court considers it implausible that the applicant could have been clandestinely transferred by his kidnappers to Tajikistan in less than two days by any means of transport other than aircraft.

113. It is obvious that, to be able to board a plane, the applicant must have crossed the RussianState border and thus should have undergone passport and customs checks carried out by the Russian authorities. The Court seriously doubts that unidentified kidnappers could havetransferred the applicant from Korolev to Dushanbe against his will without having to account for the cross-border movement to anyofficials. In such circumstances the Court considers that the applicant's allegation that he was boarded on a plane by RussianState agents who were allowed to cross the border without complying with the regular formalities appears credible.The Government did not produce any border or customs registration logs showing where and when the applicant had left Russian territory. Neither did they provide any plausible explanation as to how the applicant could have arrived in Dushanbeunless accompanied by Russian officials.

114. In view of the above, the Court considers that, whereas the applicant made out a *prima facie*case that he had been arrested and transferred to Tajikistan by Russian officials, the Government failed to persuasively refute his allegations and toprovide a satisfactory and convincingexplanation as to how the applicant arrived in Dushanbe.

115. The Court accordingly finds it established that on 15 April 2005 the applicant was arrested by RussianState agents and that he remained under their control until his transfer to the Tajik authorities.

116. On the basis of these findings, the Court will proceed to examine the applicant's complaints under Articles 3 and 5 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

117. The applicant complained that as a result of his unlawful removal to Tajikistan he had been exposed to ill-treatment and persecution for his political views, in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

118. The Government contested that argument and claimed that the applicant's abduction of 15 April 2005 had not been imputable to the respondent State. The Government argued that the Russian authorities could not bear responsibility for any ill-treatment that the applicant might sustain in Tajikistan and that his complaint was therefore incompatible *ratione loci*.In the Government's submission, the issue of exhaustion of domestic remedies was irrelevant in the present case, given that the alleged violation had not been imputable to the respondent State.

119. The applicant maintained his claims. He stated that by 15 April 2005 there had been substantial grounds for fearing that he would be subjected to treatment in breach of Article 3 of the Convention on his return toTajikistan. Furthermore, he stated that he had in fact been ill-treated while detained in Tajikistan. The applicant further alleged that the Russian authorities had failed to carry out an effective investigation into his unlawful transfer to Tajikistan and to ensure his return to Russia.He also asserted that he had exhausted all available domestic remedies in relation to his complaint.

B. The Court's assessment

1. Admissibility

120. As to the Government's argument that the complaint should be declared inadmissible *ratione loci*, the Court reiterates thatthe Convention does not govern the actions of States not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention

standards on other States (see *Soering v. the United Kingdom*, 7 July 1989, § 86, Series A no. 161). It emphasises, however, that liability of an extraditing Contracting State under the Convention arises not from acts which occur outside its jurisdiction, but from actions imputable to that State which haveas a direct consequence exposure of an individual to ill-treatment proscribed by Article 3 (see *Soering*, cited above, § 91, and *Cruz Varas and Others v. Sweden*, 20 March 1991, § 69, Series A no. 201). The Court thus dismisses the Government's objection concerning the respondent State's lack of territorial jurisdiction.

121. The Court further notes that it is not called upon to decide whether the applicant exhausted the effective domestic remedies available to him in the present case, given that the Government did not raise a non-exhaustion plea (see *Mechenkov v. Russia*, no. 35421/05, § 78, 7 February 2008).

122. Lastly, the Court considers that applicant's complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Itis not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) General principles

123. The Court reiterates at the outset that in order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999).

124. It is the Court's settled case-law that as a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens (see, for example, *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI, and *N.v. the United Kingdom* [GC], no. 26565/05, § 30, 27 May 2008). In addition, neither the Convention nor its Protocols confer the right to political asylum (see*Ahmed v. Austria*, 17 December 1996, § 38, *Reports* 1996-VI).

125. However, extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to treatment contrary to Article 3 (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). In such

a case Article 3 implies an obligation not to extradite the person in question to that country (see, *mutatis mutandis*,*Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215, and *Said v. the Netherlands*, no. 2345/02, § 46, ECHR 2005-VI).

126. When establishingwhether, if extradited, the applicant would run a real risk of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports* 1997-III). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others*, cited above, §§ 75-76, and *Vilvarajah and Others*, cited above, § 107).

127. In order to determine whether, at the time of extradition, there existed a risk of ill-treatment, the Court must examine the then foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see, *mutatismutandis*, *Nnyanzi v. the United Kingdom*, no. 21878/06, § 54, 8April 2008). As regards the general situation in a particular country, the Court considers that it can attach certain importance to the information contained in reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US Department of State (see, for example, *Said*, cited above, § 54, and *Al-Moayad v.Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

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

128. The Court has now to establish whether by the time of his removal from Russia, that is, 15 April 2005,a real risk had existed that the applicant would be subjected in Tajikistan to treatment proscribed by Article 3 of the Convention (see *Muminov v. Russia*, no. 42502/06, § 91, 11 December 2008).

129. The Court will first consider whether the general political climate prevailing at the material time in Tajikistancould have given reasons to assume that the applicant would be subjected to ill-treatment in the

receiving country. The Court points out in this connection that the evidence from a number of objective sources undoubtedly illustrates that in 2005 the overall human-rights situation in Tajikistan gave rise to serious concerns. For instance, Amnesty International observed that torture by State officials was common practice in Tajikistan and that perpetrators enjoyed immunity (see paragraph87above). The US Department of State also reported frequent use of torture by security officials and pointed out that prison conditions remained harsh and life-threatening, to the extent that a number of detainees had died of hunger (see paragraph 88above).Given that the Government failed to counter the allegations made in the aforementioned reports by reputable organisations, the Court is ready to accept that in 2005 ill-treatment of detainees was an enduring problem in Tajikistan.

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

131. The Court will therefore now examine whether the applicant's personal situation gave reasons to suggest that he would run a serious risk of ill-treatment in Tajikistan. It points out in this connection that the applicant had been one of the possible challengers to President Rakhmonov in the presidential race. By the time of his removal from Russian territory reports concerning the political persecution and ill-treatment of MrShamsiddinov, another opposition leader and critic of the regime, had already been issued (see paragraphs 89and 92above). In such circumstances the Court considers that there existed special distinguishing features in the applicant's case which could and ought to have enabled the Russian authorities to foresee that he might be ill-treated in Tajikistan (see, by contrast, *Vilvarajah and Others*, cited above, § 112).

132. The fact that it is impossible to establish whether the applicant was actually subjected to ill-treatment following his return to Dushanbe, as he alleged both before the Court and before other international organisations, has no bearing on the Court's findings.

133. Lastly, the Court points out that itis particularly struck by the fact that the Russian authorities blatantly failed to assess the risks of ill-treatment the applicant could face in Tajikistan. In the absence of an extradition order the applicant was deprived of an opportunity to appeal to a court against his removal– a very basic procedural safeguard against being subjected to proscribed treatment in the receiving country.

134. In the light of the above considerations, the Court considers that the applicant's removal to Tajikistanwas in breach of the respondent State's obligation to protect him against risks of ill-treatment.

135. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

136. The applicant complained that on 15 April 2005 he had been arrested by Russian officials in breach of domestic law. He invoked Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

137. The Government contested that argument.They claimed that between 9 December 2004 and 4 April 2005 the applicant had been lawfully detained with a view to his extradition and that he had not been detained by the Russian authorities after 4 April 2005. They reaffirmed that State agents had not been involved in the applicant's kidnapping and transfer from Russia to Tajikistan.

138. The applicant reiterated his complaint.

A. Admissibility

139. The Court reiterates that Article 5 – paragraph 1 of which proclaims the "right to liberty" – is concerned with a person's physical liberty. Its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. In order to determine whether someone has been

"deprived of his liberty" within the meaning of Article 5 the starting-point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see *Amuur v. France*, 25 June 1996, § 42, *Reports* 1996-III). The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance (see *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, and *Medvedyev and Othersv. France* [GC], no. 3394/03, § 73, ECHR 2010-...).

140. The Court points out at the outset that, in this particular case, owing to the extreme scarcity ofinformation at its disposal and the lack of any official records concerning the applicant's removal from Russian territory, the Court is unable to establish in detail allthe circumstances surrounding the applicant's transfer from Korolev to Dushanbe. In particular, it remains unknown whether at some point in time during that journey the applicant was confined to a cell or locked up in any premises. However, the Court has established that he was accompanied by RussianState agents and was brought to Tajikistan against his will (see paragraph 115above). In the Court's view, this could not be considered to be a mere restriction of his freedom of movement as his journey was imposed on him by State agents (see, *mutatis mutandis*, *Medvedyev and Others*, cited above, § 79).The relatively short duration of the period during which the applicant was under the control of the Russian authorities is not decisive for determining whether there was a deprivation of liberty in the circumstances of the case (see *X and Y v. Sweden*, no. 7376/76, Commission decision of 7October 1976, Decisions and Reports (DR) 7, p. 123, and *X v. Austria*, no.8278/78, Commission decision of 13 December 1979, DR 18, p. 154).

141. Accordingly, the Court concludes that the applicant's situation while under the control of Russian State agents following his abduction on 15 April 2005 amounted in practice to a deprivation of liberty, and that Article 5 § 1 applies to his case*ratione materiae*.Furthermore, the Court reiterates that it has already found that deprivation of liberty effected in a moving vehicle may be regarded as "detention" (see *Bozano v. France*, 18 December 1986, § 59, Series A no.111) and sees no reason not to accept that the applicant was in fact placed in detention within the meaning attributed to this term in its case-law.

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

B. Merits

143. The Court reiterates that Article 5 of the Convention protects the right to liberty and security. This right is of primary importance "in a

democratic society" within the meaning of the Convention (see, amongst many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12;*Assanidze v. Georgia* [GC], no. 71503/01, § 169, ECHR 2004-II; and *Ladent v. Poland*, no. 11036/03, § 45, ECHR 2008-...).

144. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 (see *Medvedyevand Others*, cited above, § 77).Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentiallyto national law. It requires at the same time that any deprivation of liberty be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Bozano*, cited above, § 54, and *Kafkaris v. Cyprus*[GC], no. 21906/04, § 116, ECHR 2008-...).

145. No detention which is arbitrary can be compatible with Article 5 § 1, the notion of "arbitrariness" in this context extending beyond the lack of conformity with national law. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *Mooren v. Germany*[GC], no. 11364/03, § 77, ECHR 2009-...).

146. For example, the Court has already established that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *Bozano*, cited above, § 59); where the domestic authorities have neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports* 1996-III); or wherejudicial authorities have authorised detention for a prolonged period of time without giving any grounds for doing so in their decisions (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002).

147. The Court will now examine whether the applicant's detentionwas free from arbitrariness.

148. Referring to its above findings as to the establishment of the facts of the present case (see paragraph 115above), the Court considers that it is deeply regrettable that such opaque methods were employed by State agents as these practices could not only unsettle legal certainty and instil a feeling of personal insecurity in individuals, but could also generally risk undermining public respect for and confidence in the domestic authorities (see, *mutatis mutandis*, *Giorgi Nikolaishviliv. Georgia*, no. 37048/04, § 56, ECHR 2009-...).

149. The Court further emphasises that the applicant'sdetention was not based on adecision issued pursuant to national laws. In its view, it is inconceivable that in a State subject to the rule of law a person may be deprived of his liberty in the absence of any legitimate authorisation for it (see, *mutatis mutandis*, *Assanidze*, cited above, § 173). The applicant's deprivation of liberty on 15 April 2005was in pursuance of an unlawful removal designed to circumvent the Russian Prosecutor General's Office's dismissal of the extradition request, and not to "detention" necessary in the ordinary course of "action ... taken with a view to deportation or extradition" (see*Bozano*, cited above, § 60).

150. Moreover, the applicant's detention was not acknowledged or logged in any arrest or detention records and thus constituted a completenegation of the guarantees of liberty and security of person contained in Article 5 of the Convention and a most grave violation of that Article (see*Cyprus v. Turkey* [GC], no. 25781/94, § 147, ECHR 2001-IV).

151. In such circumstances the Court cannot but conclude that from the moment of his arrest on 15 April 2005 until his transfer to the Tajik authorities the applicant was arbitrarily deprived of his liberty by RussianState agents.

152. In the light of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

153. Referring to Article 41 of the Convention, the applicant claimed 300,000 euros (EUR) in respect of the non-pecuniary damage caused by his mental and physical suffering after his unlawful extradition to Tajikistan. He further claimed EUR 4,140 for the costs and expenses incurred before the Court. In support of his claims he submitted invoices showing his two lawyers' fees. Lastly, the applicant submitted that the respondent Government should be required to ensure his release from the Tajik prison and his return to the Russian Federation.

154. The Government asserted that the amount claimed in respect of non-pecuniary damage was excessive and unreasonable and did not correspond to the Court's practice. They further stated that it had not been shown that the applicant had actually paid the sums indicated in the lawyers' invoices. The Government did not comment on the applicant's request to return him to the Russian Federation.

A. Article 41

155. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

156. The Court has found violations of Articles 3 and 5 of the Convention on account of the applicant's unlawful extradition to Tajikistan and his unlawful detention by State agents. It accepts that the applicant must have sustainednon-pecuniary damage which cannot be compensated for solely by the findings of violations. It finds it appropriate to award him EUR 30,000 in respect of non-pecuniary damage.

157. Furthermore, according to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regardbeing had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000, covering costs for the proceedings before the Court.

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

B. Article 46

159. The Court considers that the applicant's non-monetary claims relate primarily to Article 46 of the Convention, which reads as follows:

"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."

160. The Court points out that under Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not only to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects thereof (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and*Nasrulloyev v. Russia*, no. 656/06, § 95, 11 October 2007). In exceptional cases, the nature of the violation found may be such that an individualmeasure required to remedy it may be indicated by the Court (see, for example, *Assanidze*, cited above,§§ 202-203).

161. The Court observes that the individual measure sought by the applicant would require the respondent Government to interfere with the internal affairs of a sovereign State.

162. Having regard to the circumstances of the present case, the Court does not find it appropriate to indicate any individual measures to be adopted in order to redress the violations found (see, *mutatis mutandis*, *Muminov*, cited above, § 145).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR30,000(thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 23 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President