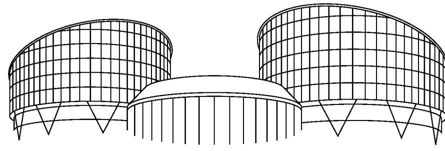

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHAMRAKULOV v. RUSSIA

(Application no. 68894/13)

JUDGMENT

STRASBOURG

16 April 2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khamrakulov v. Russia,

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

Elisabeth Steiner, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 24 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 68894/13) 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 Kyrgyz national, Mr Abdilaziz Makhmudzhanovich Khamrakulov (“the applicant”), on 4 November 2013.

2. The applicant was represented by Ms E.G. Davidyan and Ms Y.Z. Ryabinina, lawyers practising in Moscow. The Russian Government (“the Government”) were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his extradition to the Kyrgyz Republic (Kyrgyzstan) would subject him to the risk of ill-treatment and that the judicial review of his detention had been neither speedy nor effective.

4. On 5 November 2013 the President of the First Section decided to apply Rule 39 of the Rules of Court in the applicant’s case, indicating to the Government that he should not be extradited to Kyrgyzstan until further notice, to apply Rule 41 of the Rules of Court and to give the application priority treatment.

5. On 5 March 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1994 and currently resides in Moscow.

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

7. The applicant is a Kyrgyz national of Uzbek ethnic origin. He lived in the village of Osh in Kyrgyzstan together with his parents and sister. All of his relatives are Uzbek. After the mass disorder and inter-ethnic clashes that took place in the region in June 2010, he left Kyrgyzstan for Russia to study at a college. It appears that his next-of-kin remain in the country.

8. According to the applicant, he has lived in Russia since September 2010.

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

9. On 3 February 2011 the Kyrgyz authorities charged the applicant *in absentia* with violent crimes committed in June 2010, namely, participation in mass rioting, kidnapping, destruction of property and damage to property.

10. On 4 February 2011 the applicant was put on a wanted list.

11. On 25 January 2013 the applicant was arrested in Russia. The Kyrgyz authorities confirmed their intention to seek his extradition.

12. On 20 February 2013 the Deputy Prosecutor General of Kyrgyzstan sent his Russian counterpart a letter containing assurances that the applicant would benefit from legal assistance, and would not be tortured or subjected to inhuman or degrading treatment. He further asserted that the extradition request was related to ordinary criminal offences and was not aimed at persecuting the applicant on religious or political grounds, or grounds relating to his nationality.

13. On 22 April 2013 the applicant's lawyer submitted to the Prosecutor General of Russia a letter referring to reports of international organisations and the Court's case-law evidencing that there was a high risk that the applicant would be subjected to inhuman treatment if he were extradited.

14. On 3 May and 23 July 2013 the Deputy Prosecutor General of Kyrgyzstan supplemented the extradition request with an assurance that following the applicant's extradition, Russian diplomatic staff would be given an opportunity to visit him in the detention facility.

15. On 13 August 2013 the Deputy Prosecutor General of Russia granted the extradition request and ordered the applicant's extradition. He held that

there were no grounds in Russian or international law for refusing to extradite the applicant. The applicant challenged that decision before the courts.

16. On 9 September 2013 the Moscow City Court upheld the extradition order, finding as follows:

> "The court has not established any circumstances which, under paragraph 1 of Article 464 of the Criminal Procedure Code of Russia, would exclude the possibility of extraditing an individual residing on Russian territory to a foreign state ...
>
> ... judicial review proceedings in respect of the local migration authority's refusal to grant refugee status do not impede the decision-making process in respect of the extradition order ...
>
> The court takes into account the arguments of the defence with regard to information contained in reports of international organisations, judgments of the European Court of Human Rights, and other documents ... relating to the situation in the Republic of Kyrgyzstan, including deficiencies relating to the investigation of crimes and the conduct of judicial proceedings. However, this information cannot be regarded as sufficient grounds for refusing to extradite an Uzbek who was involved in the events that took place in Kyrgyzstan in June 2010 and has been charged with a criminal offence.
>
> The Ministry for Foreign Affairs of Russia stated that it had no information which could prevent the extradition of [the applicant] to Kyrgyzstan.
>
> Furthermore, ... in addition to the guarantees that [the applicant] will not be subjected to torture, inhuman, degrading treatment and punishment etc. ... the requesting party provided additional guarantees. The Kyrgyz authorities gave assurances that Russian diplomats would be allowed to visit [the applicant] ...
>
> ... the court notes that in the course of the refugee proceedings [the applicant] stated that his relatives (also Uzbek) lived in the Republic of Kyrgyzstan and had not been subjected to any persecution. The [applicant's] allegation that the law-enforcement authorities extort money from his relatives is groundless."

17. On 18 September 2013 the applicant lodged an appeal. On 6 November 2013 the Supreme Court of Russia dismissed the appeal, endorsing the reasoning of the first-instance court in the following wording:

> "... The available materials do not indicate that [the applicant] will be deprived of the guarantees provided by the Kyrgyz Republic and that if he is extradited his rights prescribed by international law and Kyrgyz legislation will be violated, that he will be persecuted on the grounds of race, sex, nationality, ethnic origin or political views, or that there will be some threat to his life or health."

18. It appears that the extradition order became enforceable on 6 November 2013.

C. The applicant's detention

19. On 26 January 2013 the Babushkinskiy District Court of Moscow ordered the applicant's detention with a view to extradition until 24 March 2013.

20. On 19 March 2013 the same court extended the applicant's detention until 25 May 2013. On 22 March 2013 the applicant and his lawyer lodged appeals against that decision. The Moscow City Court dismissed the appeals on 13 May 2013.

21. On 21 May 2013 the Babushkinskiy District Court further extended the applicant's detention pending extradition until 25 July 2013. Fresh appeals by the applicant and his lawyer were lodged accordingly on 22 and 24 May 2013. On 10 July 2013 the Moscow City Court dismissed the appeals.

22. On 23 July 2013 the same District Court extended the applicant's detention until 25 September 2013. On 24 July 2013 the applicant lodged an appeal against that decision. On 18 September 2013 the Moscow City Court dismissed the appeal.

23. On 23 September 2013 the District Court examined the matter of the applicant's continued detention and extended it until 24 November 2013. On 24 September 2013 the applicant lodged an appeal against that decision. The Moscow City Court upheld the extension order on 13 November 2013.

24. On 21 November 2013 the same District Court extended the applicant's detention until 24 January 2014. On 25 November 2013, the applicant's lawyer lodged an appeal against that decision.

25. On 22 January 2014 the applicant was released from custody because the Court had applied interim measures pursuant to Rule 39 of the Rules of Court.

D. Refugee proceedings

26. On 25 March 2013 the applicant applied for refugee status. He had not lodged any such applications between 2010 and 2012.

27. On 9 July 2013 the Moscow migration authority refused to grant refugee status to the applicant. It stated that the applicant had claimed that he could not return to Kyrgyzstan because he would be prosecuted for a crime he had not committed on the grounds of his Uzbek origin.

28. The Moscow migration authority also stated that, according to the applicant, after the ethnic conflict in June 2010 in Osh, he had been oppressed by Kyrgyz nationals and had had to leave Kyrgyzstan for Russia, where he had been living since 24 September 2010. According to the applicant, he enrolled in the Rzhev college in September 2010 without any exams or payment under an agreement concluded between the Osh town council and the college. However, he left the college without pursuing his studies because he had to find work to earn money and support himself. The applicant asserted that he was not a member of any political party or religious organisation.

29. The Moscow migration authority rejected the applicant's request on the ground that he had not presented any evidence that there was a real risk

of such persecution. First, all of his family members were Uzbek and they were not being persecuted but were living in Kyrgyzstan safely. Second, it was doubtful that the applicant had been persecuted because of his ethnic origin given that the Osh town council had arranged his studies on favourable terms, free of charge, without requiring any qualifications or documents. Therefore the applicant had no grounds to fear for his life. The Moscow migration authority concluded that his submissions as to why he was unwilling to return to Kyrgyzstan did not amount to a well-founded fear of being persecuted in his country of origin on the grounds of religion, nationality, membership of a particular social group or political opinion, as he had not put forward any valid reasons as to why he was afraid of becoming a victim of persecution on the said grounds.

30. The applicant appealed to the Federal Migration Service ("the FMS"). He stated that the Rzhev college had been opened by the Uzbek expatriate community for young people who had had to leave Kyrgyzstan after the disorder in June 2010. He was not aware of any agreement with the town council, which was headed by a mayor with xenophobic views. The only reason for such an agreement might be, according to him, the intention to expel young Uzbeks from Osh. He also mentioned that the peaceful life of his relatives in Kyrgyzstan referred to by the Moscow migration authority presupposed only that they had not been arrested on absurd grounds. They had been constantly subjected to discrimination on the ground of their origin and the Kyrgyz authorities had extorted money from them on account of the crimes of which he had been accused. The fact that his family members were still alive did not reduce the threat to his own life if he were to return to Kyrgyzstan.

31. On 6 September 2013 the FMS upheld the refusal decision. It reiterated that the applicant's relatives were not being persecuted. It also found that the accusation against him was not politically motivated.

32. On 10 September 2013 the applicant's lawyer lodged a request with the Russian Representative's Office of the United Nations High Commissioner for Refugees ("the UNHCR") to clarify whether there was a real risk of the applicant being subjected to ill-treatment if he were extradited to Kyrgyzstan. On 12 September 2013 the UNHCR replied that after the events of 2010 the Kyrgyz authorities had continued to prosecute and arrest ethnic Uzbeks. The only conviction against an ethnic Kyrgyz had been quashed recently by a higher court. Thus, there was a real threat that ethnic Uzbeks accused of offences during the mass disorder in June 2010, including the applicant, would be subjected to torture and other inhuman treatment and punishment in the event of extradition to Kyrgyzstan.

33. On 22 October 2013 the applicant sought judicial review of the decision of 6 September 2013.

34. On 22 January 2014 the Basmannyy District Court of Moscow upheld the decision to refuse the applicant's application for refugee status.

The District Court considered that the applicant had failed to substantiate his fears of persecution in Kyrgyzstan and that his allegations of unlawful criminal charges against him fell outside the scope of the refugee status proceedings. The District Court pointed out that his application for refugee status contained no indications that he had been previously accused or convicted of a criminal offence, or that he had been a member of any political, religious or military organisations. It also took into account the fact that the applicant had not applied for refugee status until after his placement in detention.

35. In his appeal against the judgment of 22 January 2014 the applicant requested a rigorous examination of his arguments related to the risk of ill-treatment. He again referred to various reports of international organisations and reputable NGOs to support his position, including the UNHCR's letter of 12 September 2013 in respect of himself and four other individuals of Uzbek ethnic origin.

36. On 20 May 2014 the Moscow City Court upheld that decision on appeal, reiterating the conclusions of the migration authorities and the first-instance court.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

37. For a summary of relevant international and domestic law and practice see *Abdulkhakov v. Russia*, no. 14743/11, §§ 71-98, 2 October 2012.

III. RELEVANT INTERNATIONAL MATERIALS CONCERNING KYRGYZSTAN

38. For a number of relevant reports and items of information, see *Makhmudzhan Ergashev v. Russia* (no. 49747/11, §§ 30-46, 16 October 2012).

39. In April 2012 Kyrgyzstan submitted its Second report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the period from 1999 to 2011 (CAT/C/KGZ/2). It reads as follows:

> "6. The concept of 'torture' was introduced into the Criminal Code in 2003, when the Code was amended with article 305-1, entitled 'Torture', which reads as follows:
>
> > 'The deliberate infliction of physical or mental suffering on any person for the purpose of extracting information or a confession, punishing a person for an act the person has committed or of which he or she is suspected, as well as for the purpose of intimidating or coercing the person to commit certain actions, when such acts are committed by an official or by any other person with the knowledge or consent of an

official, shall be punishable by deprivation of liberty of 3 to 5 years, with or without disqualification to hold certain posts for 1 to 3 years.’

...

15. Under article 24 of the Constitution, everyone has the right to freedom and security of person. No one may be arrested for more than 48 hours without a judicial order, and every person under arrest must urgently, and in any case within 48 hours of the arrest, be presented before a court so as to ascertain whether the arrest is legal. Every arrested person has the right to verify the legality of the arrest in accordance with the procedures and time frames established by law. In the absence of justification for an arrest, the person in question must be released immediately.

16. In all cases, arrested persons must be informed immediately of the reasons for their arrest. Their rights must be explained to them and ensured, including the right to a medical examination and to receive the assistance of a physician. From the actual moment of arrest, the security of arrested persons is ensured; they are provided with the opportunity to defend themselves on their own, to have the qualified legal assistance of a lawyer and to be defended by a defence lawyer ...”

40. The UN Committee on the Elimination of Racial Discrimination considered the fifth to seventh periodic reports of Kyrgyzstan and in February 2013 made the following concluding observations (CERD/C/KGZ/CO/5-7):

“6. The Committee notes with concern that, according to the State party’s report (CERD/C/KGZ/5-7, para. 12) and other reports, Uzbeks were the main victims of the June 2010 events but were also the most prosecuted and condemned. While noting that the State party itself has recognized this situation and is considering ways to correct it, the Committee remains deeply concerned about reports of biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on those charged and convicted in relation to the June 2010 events, who were mostly of Uzbek origin. The Committee is also concerned about information provided in the State party’s report relating to evidence of coercion to confess to crimes that the persons did not commit, pressure on relatives by representatives of law enforcement agencies, denial of procedural rights ..., violations of court procedures, threats and insults to the accused and their counsel, attempts to attack the accused and his relatives which according to the State party resulted in a violation of the right to a fair trial ...

[T]he Committee recommends that the State party in the context of the reform of its judicial system:

(a) Initiate or set up a mechanism to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial;

(b) Investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status; ...

7. While noting information provided by the State party, the Committee remains concerned at reports that a great number of persons, mostly from minority groups, in particular Uzbeks, have been detained and have been subjected to torture and other forms of ill-treatment on the basis of their ethnicity following the June 2010 events. The Committee is also concerned at information that women from minority groups

were victims of acts of violence, including rape, during, and in the aftermath of the June 2010 events. The Committee is particularly concerned that all such acts have not yet been investigated and those responsible have not been prosecuted and punished (arts. 5 and 6).

In line with its general recommendation No. 31 (2005), the Committee recommends that the State party, without any distinction based on the ethnic origin of the victims, take appropriate measures to:

(a) Register and document all cases of torture, ill-treatment and violence against women from minority groups, including rape;

(b) Conduct prompt, thorough and impartial investigations;

(c) Prosecute and punish those responsible, including police or security forces; ...”

41. The UN Committee against Torture considered Kyrgyzstan’s second periodic report and in December 2013 issued concluding observations (CAT/C/KGZ/CO/2), which read, in so far as relevant, as follows:

“Impunity for, and failure to investigate, widespread acts of torture and ill-treatment

5. The Committee is deeply concerned about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty, in particular while in police custody to extract confessions. These confirm the findings of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/61/Add.2, paras. 37 et seq.), and of the United Nations High Commissioner for Human Rights (A/HRC/20/12, paras. 40–41). While the Kyrgyz delegation acknowledged that torture is practised in the country, and affirmed its commitment to combat it, the Committee remains seriously concerned about the substantial gap between the legislative framework and its practical implementation, as evidenced partly by the lack of cases during the reporting period in which State officials have been prosecuted, convicted and sentenced to imprisonment for torture (arts. 2, 4, 12 and 16).

6. The Committee is gravely concerned at the State party’s persistent pattern of failure to conduct prompt, impartial and full investigations into the many allegations of torture and ill-treatment and to prosecute alleged perpetrators, which has led to serious underreporting by victims of torture and ill-treatment, and impunity for State officials allegedly responsible (arts. 2, 11, 12, 13 and 16).

In particular, the Committee is concerned about:

(a) The lack of an independent and effective mechanism for receiving complaints and conducting impartial and full investigations into allegations of torture. Serious conflicts of interest appear to prevent existing mechanisms from undertaking effective, impartial investigations into complaints received;

(b) Barriers at the pre-investigation stage, particularly with regard to forensic medical examinations, which in many cases are not carried out promptly following allegations of abuse, are performed by medical professionals who lack independence, and/or are conducted in the presence of other public officials, leading to the failure of the medical personnel to adequately record detainees’ injuries, and consequently to investigators’ failure to open formal investigations into allegations of torture, for lack of evidence;

(c) The apparent practice by investigators of valuing the testimonies of individuals implicated in torture over those of complainants, and of dismissing complaints summarily; and

(d) The failure of the judiciary to effectively investigate torture allegations raised by criminal defendants and their lawyers in court. Various sources report that judges commonly ignore information alleging the use of torture, including reports from independent medical examinations.

...

7. The Committee remains seriously concerned by the State party's response to the allegations of torture in individual cases brought to the attention of the Committee, and particularly by the State party's authorities' refusal to carry out full investigations into many allegations of torture on the grounds that preliminary enquiries revealed no basis for opening a full investigation. The Committee is gravely concerned by the case of Azimjan Askarov, an ethnic Uzbek human rights defender prosecuted on criminal charges in connection with the death of a police officer in southern Kyrgyzstan in June 2010, which has been raised by several Special Rapporteurs, including the Special Rapporteur on the situation of human rights defenders (A/HRC/22/47/Add.4, para. 248; A/HRC/19/55/Add.2, para. 212). Mr. Askarov has alleged that he was beaten severely by police on numerous occasions immediately following his detention and throughout the course of the criminal proceedings against him, and that he was subjected to repeated violations of procedural safeguards such as prompt access to a lawyer and to an effective, independent medical examination. The Committee notes that independent forensic medical examinations appear to have substantiated Mr. Askarov's allegations of torture in police custody, and have confirmed resulting injuries including persistent visual loss, traumatic brain injury, and spinal injury. Information before the Committee suggests that Mr. Askarov's complaints of torture have been raised on numerous occasions with the Prosecutor's office, as well as with the Kyrgyz Ombudsman's office, and with Bazar-Korgon District Court, the Appeal Court and the Supreme Court. To date, however, the State party's authorities have declined to open a full investigation into his claims, relying on allegedly coerced statements made by Mr. Askarov while in police custody that he had no complaints. The Committee understands that the State party is presently considering the possibility of further investigating these claims. The Committee is concerned by the State party's refusal to undertake full investigations into allegations of torture regarding other cases raised during the review, including those of Nargiza Turdieva and Dilmurat Khaidarov (arts. 2, 12, 13 and 16).

...

8. The Committee remains concerned at the lack of full and effective investigations into the numerous allegations that members of the law enforcement bodies committed torture and ill-treatment, arbitrary detention and excessive use of force during and following the inter-ethnic violence in southern Kyrgyzstan in June 2010. The Committee is concerned by reports that investigations, prosecutions, condemnations and sanctions imposed in relation to the June 2010 events were mostly directed against persons of Uzbek origin, as noted by sources including the Committee on the Elimination of Racial Discrimination, in 2013 (CERD/C/KGZ/CO/5-7, paras. 6–7). The Committee further regrets the lack of information provided by the State party on the outcome of the review of 995 criminal cases relating to the June 2010 violence (arts. 4, 12, 13 and 16).

...

Coerced confessions

13. The Committee is seriously concerned at numerous, consistent and credible reports that the use of forced confessions as evidence in courts is widespread. While noting that the use of evidence obtained through unlawful means is prohibited by law, it is deeply concerned that in practice there is a heavy reliance on confessions within the criminal justice system. The Committee is further concerned at reports that judges have frequently declined to act on allegations made by criminal defendants in court, or to allow the introduction into evidence of independent medical reports that would tend to confirm the defendant's claims of torture for the purpose of obtaining a confession. The Committee regrets the lack of information provided by the State party on cases in which judges or prosecutors have initiated investigations into torture claims raised by criminal defendants in court, and is alarmed that no official has been prosecuted and punished for torture even in the single case brought to its attention in which a conviction obtained by torture was excluded from evidence by a court – that of Farrukh Gapiurov, who was acquitted by the Osh Municipal Court of involvement in the June 2010 violence (arts. 2 and 15)."

42. The Kyrgyzstan chapter of the 2013 Annual Report by Amnesty International, in so far as relevant, reads as follows:

"Torture and other ill-treatment remained pervasive throughout the country and law enforcement and judicial authorities failed to act on such allegations. The authorities continued to fail to impartially and effectively investigate the June 2010 violence and its aftermath and provide justice for the thousands of victims of serious crimes and human rights violations, including crimes against humanity. Ethnic Uzbeks continued to be targeted disproportionately for detention and prosecution in relation to the June 2010 violence.

...

The Osh City Prosecutor stated in April that out of 105 cases which had gone to trial in relation to the June 2010 violence, only two resulted in acquittals. Only one of those cases involved an ethnic Uzbek, Farrukh Gapirov, the son of human rights defender Ravshan Gapirov. He was released after the appeal court found his conviction had been based on his confession which had been obtained under torture. However, no criminal investigation against the police officers responsible for his torture was initiated.

By contrast, the first – and, to date, the only – known conviction of ethnic Kyrgyz for the murder of ethnic Uzbeks in the course of the June 2010 violence was overturned."

43. Human Rights Watch's "World Report 2013: Kyrgyzstan" contains the following findings concerning the situation in Kyrgyzstan in 2012:

"Kyrgyzstan has failed to adequately address abuses in the south, in particular against ethnic Uzbeks, undermining long-term efforts to promote stability and reconciliation following inter-ethnic clashes in June 2010 that killed more than 400 people. Despite an uneasy calm in southern Kyrgyzstan, ethnic Uzbeks are still subjected to arbitrary detention, torture, and extortion, without redress.

...

Local human rights non-governmental organizations reported that the overall number of reported incidents of arbitrary detention and ill-treatment in police custody continued to decrease in 2012 in the south, although they still document new cases.

Groups also reported the growing problem of law enforcement extorting money, in particular from ethnic Uzbeks, threatening criminal prosecution related to the June 2010 events. Victims of extortion rarely report incidents for fear of reprisals.

Investigations into the June 2010 violence have stalled. Trials of mostly ethnic Uzbeks connected to the violence continued to take place in violation of international fair trial standards, including the trials of Mahamad Bizurukov and Shamshidin Niyazaliev, each of whom was sentenced to life in prison in October 2012.

Lawyers in southern Kyrgyzstan continued to be harassed in 2012 for defending ethnic Uzbek clients who were charged with involvement in the June 2010 violence, perpetuating a hostile and violent environment that undermined defendants' fair trial rights. On January 20, a group of persons in Jalalabad verbally and physically attacked a lawyer defending the ethnic Uzbek owner of an Uzbek-language television station. No one has been held accountable for such violence against lawyers.

...

In hearings related to the June 2010 violence, judges continue to dismiss, ignore, or fail to order investigations into torture allegations. In a rare exception, four police officers were charged with torture after the August 2011 death of Usmonzhon Kholmirzaev, an ethnic Uzbek, who succumbed to internal injuries after he was beaten by police in custody. Repeated delays in proceedings have meant that over a year later, the trial has yet to conclude. In June, after Abdugafur Abdurakhmanov, an ethnic Uzbek serving a life sentence in relation to the June 2010 violence, died in prison, authorities did not open an investigation, alleging he committed suicide."

44. In its report "Kyrgyzstan: 3 Years After Violence, a Mockery of Justice" issued in June 2013, Human Rights Watch observed, among other things, the following:

"Criminal investigations into the June 2010 violence have been marred by widespread arbitrary arrests and ill-treatment, including torture. Unchecked courtroom violence and other egregious violations of defendants' rights have blocked the accused from presenting a meaningful defense. Human Rights Watch has documented how investigations disproportionately and unjustly targeted ethnic Uzbeks, and how this group has a heightened risk of torture in custody.

...

The ethnic clashes erupted in southern Kyrgyzstan on June 10, 2010. The violence, which lasted four days, left more than 400 people dead and nearly 2,000 houses destroyed. Horrific crimes were committed against both ethnic Kyrgyz and ethnic Uzbeks. However, while ethnic Uzbeks suffered the majority of casualties and destroyed homes, the majority of those prosecuted for homicide have been ethnic Uzbeks.

...

Human Rights Watch's research from 2010-2013 in southern Kyrgyzstan found that prosecutorial authorities have repeatedly refused to investigate serious and credible allegations of torture. Courts have relied heavily on confessions allegedly extracted under torture to sentence defendants to long prison terms."

45. The Kyrgyzstan chapter of the 2014 World Report published by Human Rights Watch reads, in so far as relevant, as follows:

“Shortcomings in law enforcement and the judiciary contribute to the persistence of grave abuses in connection to the ethnic violence in southern Kyrgyzstan in June 2010. Ethnic Uzbeks and other minorities remain especially vulnerable. Courtroom attacks on lawyers and defendants, particularly in cases related to the June 2010 events, occur with impunity.

Government officials and civil society representatives formed a national center for the prevention of torture in 2013. In practice, ill-treatment and torture remain pervasive in places of detention, and impunity for torture is the norm.

...

Three years on, justice for crimes committed during the ethnic violence in southern Kyrgyzstan in June 2010 remains elusive. The flawed justice process has produced long prison sentences for mostly ethnic Uzbeks after convictions marred by torture-tainted confessions and other due process violations. Authorities have not reviewed convictions where defendants alleged torture or other glaring violations of fair trial standards. At least nine ethnic Uzbeks continue to languish in pretrial detention, some for a third year. New convictions in August 2013 of three ethnic Uzbeks in Osh, and pending extradition orders of at least six others in Russia again point to judicial bias against ethnic Uzbeks.

The authorities failed to tackle the acute problem of courtroom violence by audiences in trials across Kyrgyzstan, including at the trial of three opposition members of parliament in June, perpetuating an environment that undermines defendants’ fair trial rights. Lawyers were harassed or beaten in court in 2013, including for defending ethnic Uzbek clients in June 2010 cases. Mahamad Bizurukov, an ethnic Uzbek defendant, and his lawyers have been subjected to repeated threats, harassment, and physical attacks for two years, most recently in September 2013, with no accountability for perpetrators.

...

Despite the adoption of a national torture prevention mechanism in 2012, and the organization of a related National Center for the Prevention of Torture in 2013, authorities often refuse to investigate allegations of torture and perpetrators go unpunished. On rare occasions when charges are filed against police, investigations, and court proceedings are unduly protracted.

A telling example is the criminal case against four police officers following the August 2011 death of an ethnic Uzbek detained on charges related to the June 2010 ethnic violence. Usmonjon Kholmirzaev died several days after his release without charge, apparently from injuries he sustained from beatings in custody. The prosecution has been subjected to repeated delays over the last two years and no one has yet been held accountable for his death.

In July 2013, Nurkamil Ismailov was found dead in a temporary detention facility in southern Kyrgyzstan after police detained him for disorderly conduct. Authorities alleged he committed suicide by hanging himself with his t-shirt. The Jalalabad-based human rights group *Spravedlivost* intervened after which authorities opened a criminal investigation on charges of negligence. In September, Ismailov’s relative and the police settled out of court for an undisclosed sum, with no admission of liability.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained that because of his Uzbek ethnic origin, he was – and would remain, if removed to Kyrgyzstan – at a real risk of ill-treatment. He argued that he belonged to an ethnic group whose members were systematically tortured by the Kyrgyz authorities and convicted in connection with the June 2010 mass disorder. He relied on 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. Submissions by the parties

1. The Government

(a) Admissibility of the application

47. The Government pleaded that the applicant had failed to exhaust available effective domestic remedies in respect of his complaint under Article 3 of the Convention. In particular, they submitted that the examination of the applicant's refugee status application by the migration authorities and domestic courts, including at the appeal stage, had had "an automatic suspensive effect" in respect of the extradition order. If the applicant had applied for and been granted temporary asylum, his extradition would have been suspended. Examination of an application for temporary asylum would also have had "an automatic suspensive effect" *vis-à-vis* the extradition order.

48. The Government also submitted that the applicant had failed to lodge cassation appeals pursuant to Chapters 47.1 and 48.1 of the Russian Code of Criminal Procedure ("CCrP") against the Supreme Court's appeal judgment of 6 November 2013 upholding the extradition order.

(b) The merits of the application

49. The Government contested the applicant's allegations. They argued that the general human rights situation in Kyrgyzstan had improved since the events of June 2010. International and national commissions of inquiry into the conflict of June 2010 had been established. The Government referred in particular to the work of the Independent International Commission of Inquiry into the events in Southern Kyrgyzstan in June 2010.

50. The Government pointed out that Kyrgyzstan had enhanced its cooperation with the UN and other international organisations, and ratified

all fundamental international conventions on human rights. In particular, Kyrgyzstan had been a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 since 5 September 1997, and to its Optional Protocol of 18 December 2002 since 29 December 2008. In accordance with that Protocol, international experts regularly visited detention facilities in Kyrgyzstan to monitor the situation in respect of torture and other cruel, inhuman or degrading treatment or punishment.

51. The Kyrgyz Republic also reformed its legislation, including the Constitution, to ensure respect for human rights and protection from discrimination. Kyrgyzstan abolished the death penalty and introduced the prohibition of torture and ill-treatment into its Constitution and Criminal Code. On 7 June 2012 a law establishing a National Centre for the prevention of torture, abuse or any other kind of inhuman or degrading treatment was enacted.

52. The Government argued that, even if some international reports still voiced concerns as to the human rights situation in Kyrgyzstan, reference to a general problem concerning human rights observance in a particular country could not alone serve as a basis for refusing extradition in accordance with the Court's case-law.

53. The Government further indicated that the Prosecutor General's Office of the Kyrgyz Republic had provided the applicant with adequate guarantees against the risk of ill-treatment. It issued assurances that there were no political grounds for the applicant's prosecution, which was not connected with his ethnic origin or religion, that he would not suffer torture or other cruel or degrading treatment, and that his rights to defence would be protected. The Government also referred to additional guarantees developed by the Russian and Kyrgyz authorities which would allow Russian diplomatic staff visiting the place of the applicant's detention to make sure that his rights were being respected.

54. The Government asserted that there were no reasons to doubt the guarantees provided by the Prosecutor General's Office of the Kyrgyz Republic, as it had been acting within its competence and the relations between the two countries were based on long and stable cooperation.

55. The Government pointed out that in the course of their cooperation on extradition matters there had been no instances of violations of the guarantees provided by Kyrgyzstan. They referred to information from the Kyrgyz Republic regarding the outcomes of criminal prosecution of extradited persons. According to that information, in 2012-2013 out of 109 extradited individuals, fifty-five were sentenced to imprisonment, including seventeen suspended sentences, and fifty-four cases were closed on various grounds. The Government cited examples of three individuals of Uzbek ethnic origin who had received a suspended sentence, had been released on parole or whose criminal case had been dismissed.

56. The Government claimed that the applicant had failed to provide substantial evidence that he would face the risk of ill-treatment if extradited to Kyrgyzstan. They submitted that the domestic authorities and courts had thoroughly examined his allegations concerning the risk of ill-treatment in Kyrgyzstan in the course of the refugee status and extradition proceedings. The applicant had been able to attend those proceedings and to present his position, and had used his right to appeal against the judgments.

2. The applicant

(a) Admissibility

57. The applicant submitted that he had exhausted all effective domestic remedies. In addition to challenging the extradition order, he had applied for refugee status, even though in practice such applications did not impede the enforcement of extradition orders. He further claimed that the Government had failed to adduce any arguments showing that the remedies under Chapters 47.1 and 48.1 of the CCrP were effective. In particular, cassation appeals pursuant to Chapters 47.1 and 48.1 of the CCrP did not have an "automatic suspensive effect". The applicant further submitted that an application for temporary asylum was not an effective remedy to exhaust on account of its discretional and temporary nature.

(b) Merits

58. The applicant maintained that he was still at a serious and real risk of ill-treatment in Kyrgyzstan. He claimed that the general human rights situation in Kyrgyzstan had not improved since the examination of the *Makhmudzhan Ergashev* case (cited above), referring to reports by the UN Committee on the Elimination of Racial Discrimination and respected international NGOs, as well as to the Court's case-law.

59. In the applicant's view, the diplomatic assurances relied on by the Government could not suffice to protect him against the risks of ill-treatment in the light of the criteria established in the case of *Othman (Abu Qatada) v. the United Kingdom* (no. 8139/09, § 189, ECHR 2012 (extracts)). There was no evidence that Russian diplomatic staff actually visited individuals extradited to Kyrgyzstan. Moreover, no independent monitoring procedure by an independent body had been set up and Russian diplomatic staff could not be considered sufficiently independent to ensure effective follow-up of Kyrgyzstan's compliance with their undertakings. The applicant submitted that the Government's example of three individuals of Uzbek ethnic origin released after their extradition to Kyrgyzstan was not indicative, as none of those individuals had been accused of crimes related to the events of June 2010.

60. The applicant further submitted that the Russian authorities had failed to assess the risks of ill-treatment in the course of the extradition and

refugee status proceedings. In the domestic proceedings he had relied on reports by the UN Committee on the Elimination of Racial Discrimination and respected international NGOs, which had demonstrated that, in Kyrgyzstan, ethnic Uzbeks who, like him, were suspected of involvement in the violence of June 2010 in the Jalal-Abad area, were at an increased risk of ill-treatment while detained and that it was common practice not to investigate instances of torture or inhuman treatment in the requesting country. The applicant claimed that the migration authorities and domestic courts either examined such reports formally or failed to address them at all. He argued that the migration authorities and domestic courts had placed on him a disproportionate burden to prove with indisputable evidence that he would be persecuted if extradited to Kyrgyzstan.

B. The Court's assessment

1. Admissibility

61. The Court considers it unnecessary to examine whether the refugee status proceedings have "an automatic suspensive effect" in respect of the extradition order because the applicant resorted to that procedure, including a judicial review by first-instance and appellate courts. As for the Government's argument that the applicant should have lodged cassation appeals pursuant to Chapters 47.1 and 48.1 of the "CCrP", the Court observes that they have previously accepted that such cassation appeals did not have an "automatic suspensive effect" and, thus, there was no obligation to exhaust that remedy (see *Gayratbek Saliyev v. Russia*, no. 39093/13, §§ 49 and 58, 17 April 2014). As for temporary asylum, the Court reiterates that the rule of exhaustion of domestic remedies requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged. Given that the applicant's refugee status application was rejected, there is nothing to suggest that an application for temporary asylum would have been more successful. Even if such an application were granted, the remedy would be only temporary and thus could not afford redress in respect of the applicant's complaint under Article 3 of the Convention.

62. The Court concludes that this 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

(a) General principles

63. The Court will examine the merits of this part of the applicant's complaint under Article 3 in the light of the applicable general principles set

out in, among other cases, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

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

64. The Court observes that the Russian authorities ordered the applicant's extradition to Kyrgyzstan. The extradition order has not been enforced as a result of an indication by the Court of an interim measure under Rule 39 of the Rules of Court. The Court will therefore assess whether the applicant faces a risk of treatment contrary to Article 3 in the event of his extradition to Kyrgyzstan – the material date for the assessment of that risk being that of the Court's consideration of the case – taking into account the assessment made by the domestic courts (see, *mutatis mutandis*, *Bakoyev v. Russia*, no. 30225/11, § 113, 5 February 2013).

65. Turning to the general human rights climate in the requesting country, the Court makes the following observations. In a previous case concerning extradition to Kyrgyzstan it found that in 2012 the situation in the south of the country was characterised by torture and other ill-treatment of ethnic Uzbeks by law-enforcement officers. Such incidences had increased in the aftermath of the events of June 2010 and remained widespread and rampant, being aggravated by the impunity of law-enforcement officers. Moreover, the Court established that the issue ought to be seen in the context of the rise of ethno-nationalism in the politics of Kyrgyzstan, particularly in the south, the growing inter-ethnic tensions between Kyrgyz and Uzbeks, continued discriminatory practices faced by Uzbeks at the institutional level and the under-representation of Uzbeks in, amongst others, law-enforcement bodies and the judiciary (see *Makhmudzhan Ergashev*, cited above, § 72). As is clear from the reports by UN bodies and reputable NGOs, in 2012-13 the situation in the southern part of Kyrgyzstan had not improved. In particular, various reports are consistently in agreement when describing biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on ethnic Uzbeks charged and convicted in relation to the events in the Jalal-Abad Region. They also agree about the lack of full and effective investigations into the numerous allegations of torture and ill-treatment imputable to Kyrgyz law-enforcement agencies, arbitrary detention and excessive use of force against Uzbeks allegedly involved in the events of June 2010 (see paragraphs 40-45 above). Accordingly, the Court concludes that the current overall human rights situation in Kyrgyzstan remains highly problematic (see, *mutatis mutandis*, *Klein v. Russia*, no. 24268/08, § 51, 1 April 2010).

66. The Court will now examine whether there are any individual circumstances substantiating the applicant's fears of ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I). It reiterates in this respect that where an applicant

alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the protection of Article 3 enters into play when the applicant establishes, where necessary on the basis of information contained in recent reports by independent international human rights protection bodies or non-governmental organisations, that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned. In those circumstances the Court will not then insist that the applicant show the existence of further special distinguishing features (see *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008, and *NA. v. the United Kingdom*, no. 25904/07, § 116, 17 July 2008). The Court considers that this reasoning is of particular relevance in the present case, where the applicant, an ethnic Uzbek, is charged with a number of serious offences allegedly committed in the course of the violence of June 2010 (see, by contrast, *Makhmudzhan Ergashev*, cited above, § 73). Given the widespread use by the Kyrgyz authorities of torture and ill-treatment in order to obtain confessions from ethnic Uzbeks charged with involvement in the inter-ethnic riots in the Jalal-Abad Region, which has been reported by both UN bodies (see paragraphs 40-41 above) and reputable NGOs (see paragraphs 42-45 above), the Court is satisfied that the applicant belongs to a particularly vulnerable group, the members of which are routinely subjected to treatment proscribed by Article 3 of the Convention in the requesting country.

67. The Court further observes that the above circumstances were brought to the attention of the Russian authorities (see paragraphs 13 and 35 above). The applicant's refugee application was rejected as inadmissible by the migration authorities, which found – and their finding was subsequently confirmed by the domestic courts – that the applicant was not eligible for refugee status because there was no evidence that he was being persecuted on the grounds of his ethnic origin. The applicant's arguments in respect of the risk of ill-treatment were not addressed at all (see paragraphs 34 and 36 above). As for the extradition proceedings, the Court is struck by the summary reasoning put forward by the domestic courts in respect of materials originating from reliable sources, such as reports by international organisations and respected NGOs. In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to a rigorous scrutiny in the refugee status or extradition proceedings (see *Abdulkhakov*, cited above, § 148).

68. It remains to be considered whether the risk to which the applicant would have been exposed if extradited had been alleviated by the diplomatic assurances provided by the Kyrgyz authorities to the Russian Federation. According to the assurances given, the applicant would not be subjected to torture, cruel, inhuman or degrading treatment or punishment and Russian diplomatic staff would be given an opportunity to visit him in the detention facility (see paragraphs 12 and 14 above).

69. Even accepting for the sake of argument that the assurances in question were not couched in general terms, the Court observes that Kyrgyzstan is not a Contracting State to the Convention, nor have its authorities demonstrated the existence of an effective system of legal protection against torture that could act as an equivalent to the system required of the Contracting States. Moreover, it has not been demonstrated before the Court that Kyrgyzstan's commitment to guaranteeing access to the applicant by Russian diplomatic staff would lead to effective protection against proscribed ill-treatment in practical terms, as it has not been shown that the aforementioned staff would be in possession of the expertise required for effective follow-up of the Kyrgyz authorities' compliance with their undertakings. Nor was there any guarantee that they would be able to speak to the applicant without witnesses. In addition, their potential involvement was not supported by any practical mechanism setting out, for instance, a procedure by which the applicant could lodge complaints with them or for their unfettered access to detention facilities (see, *mutatis mutandis*, *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, §§ 132-33, 3 October 2013). There is no evidence that Russian diplomatic staff have visited any individuals in Kyrgyzstan after their extradition. Therefore the assurance provided cannot be considered as an illustration of the existence of a monitoring mechanism in the requesting country (see, by contrast, *Othman (Abu Qatada)*, cited above, §§ 203-04).

70. In view of the above considerations, the Court cannot accept the Government's assertion that the assurances provided by the Kyrgyz authorities were sufficient to exclude the risk of his exposure to ill-treatment in the requesting country.

71. Considering the attested widespread and routine use of torture and other ill-treatment by law-enforcement agencies in the southern part of Kyrgyzstan in respect of members of the Uzbek community, to which the applicant belongs, the impunity of law-enforcement officers and the absence of sufficient safeguards for the applicant in the requesting country, the Court finds it substantiated that the applicant would face a real risk of treatment proscribed by Article 3 if returned to Kyrgyzstan.

72. Accordingly, the Court finds that the applicant's extradition to Kyrgyzstan would be in violation of Article 3 of the Convention.

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

73. The applicant complained that the appeal proceedings in respect of the extension orders of 19 March, 21 May, 23 July and 23 September 2013 had not been speedy and effective. He relied on Article 5 § 4 of the Convention which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

74. The Government claimed that in accordance with Chapter 45.1 of the CCrP (Article 389.10) appeal hearings should take place within thirty days of transfer of the case to the appellate instance. As the domestic courts had complied with those time-limits, the Government submitted that they had satisfied the requirement of speedy examination under Article 5 § 4 of the Convention.

75. The applicant asserted that he had been deprived of "speedy" judicial review of the lawfulness of his detention on account of the delays in examining his appeals against the extension orders of 19 March, 21 May, 23 July and 23 September 2013. It took the domestic courts fifty-one, forty-six, fifty-five and forty-nine days respectively to examine his appeals against the detention orders. Furthermore, he claimed that Article 389.10 of the CCrP applied only to appeal hearings in criminal proceedings and that Article 108 § 11 of the CCrP set a limit of three days for the examination of appeals against extension orders.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

77. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention, and to an order terminating it if proved 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 an 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. Accordingly, in order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the

proceedings have been conducted at more than one level of jurisdiction (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). 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).

78. Although the number of days taken by 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). 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).

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

79. Turning to the circumstances of the present case, the Court notes that the applicant's appeal against the extension order of 19 March 2013, lodged on 22 March 2013, was examined by the Moscow City Court on 13 May 2013 (see paragraph 20 above), in other words, fifty-one days after it had been lodged. It took the Moscow City Court forty-six days to examine the appeal against the decision of 21 May 2013, which was lodged on 22 and 24 May 2013 and examined on 10 July 2013 (see paragraph 21 above). The applicant appealed against the extension order of 23 July 2013 on the next day, 24 July 2013, and fifty-five days later, on 18 September 2013, the Moscow City Court dismissed his appeal (see paragraph 22 above). The applicant's appeal of 24 September 2013 against the extension order of 23 September 2013 was dismissed forty-nine days later, on 13 November 2013 (see paragraph 23 above).

80. The Government have not argued, and the Court does not find any indication to suggest, that any delays in the examination of the applicant's appeals against the detention orders mentioned above can be attributable to his conduct. In the absence of any explanation from the Government capable of justifying such delays, the Court considers that the amount of time it took the Moscow City Court to examine the applicant's appeals against the first-instance detention orders in the present case, namely, fifty-one, forty-six, fifty-five and forty-nine days, can only be characterised as inordinate. This is not reconcilable with the requirement of "speediness", as set out in Article 5 § 4 of the Convention (see *Yefimova v. Russia*, no. 39786/09, § 292, 19 February 2013).

81. The Court thus finds that there has been a violation of Article 5 § 4 of the Convention.

III. RULE 39 OF THE RULES OF COURT

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

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government suggested that, were the Court to find a violation of the Convention in the applicant's case, such a finding in itself would constitute sufficient just satisfaction.

87. The Court, making an assessment on an equitable basis, awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

88. The applicant also claimed EUR 3,100 for the costs and expenses incurred before the Court. He submitted his lawyer's time sheets.

89. The Government contended that the applicant had not submitted proof that the lawyer's fees and other expenses had actually been paid or incurred.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria (see *Fadeyeva v. Russia*, no. 55723/00,

§ 147, ECHR 2005-IV), the Court considers it reasonable to award the sum of EUR 3,100 for the proceedings before the Court, plus any tax which may be chargeable to the applicant on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the applicant's extradition to Kyrgyzstan would amount to a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the length of the proceedings in the applicant's appeals against the detention orders of 19 March, 21 May, 23 July and 23 September 2013;

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

5. *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 amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,100 (three thousand one hundred 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;

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

Done in English, and notified in writing on 16 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Elisabeth Steiner President