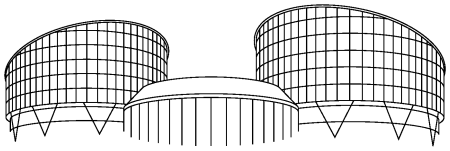

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF U.N. v. RUSSIA

(Application no. 14348/15)

JUDGMENT

STRASBOURG

26 July 2016

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

In the case of U.N. v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 5 July 2016,

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

PROCEDURE

1. The case originated in an application (no. 14348/15) 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 Kyrghyzstan national, Mr U.N. ("the applicant"), on 24 March 2015.

2. The applicant was represented by Ms N.V. Yermolayeva, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that his extradition to the Kyrgyz Republic (Kyrgyzstan) would be in breach of Article 3 of the Convention.

4. On 24 March 2015 the Acting President of the Section of the Court decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled or subjected to any other procedure entailing removal (involuntary return) of the applicant from Russia to Kyrgyzstan or another country until further notice, and to apply Rule 41 of the Rules of Court granting priority treatment to the application.

5. On 7 July 2015 the application was communicated to the Government. On 5 July 2016 the Chamber decided of its own motion to grant the applicant anonymity (Rule 47 § 4 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1991 and lives in Vladivostok.

A. Criminal proceedings against the applicant in Kyrgyzstan and his arrest and detention in Russia

7. The applicant is an ethnic Uzbek. He lived in the town of Osh in Kyrgyzstan. After the mass disorders and inter-ethnic clashes in the region in June 2010, he left Kyrgyzstan for Russia.

8. On 4 July 2010 the applicant arrived in Russia.

9. On 9 July 2010 the Kyrgyz authorities charged the applicant *in absentia* with violent crimes related to these clashes, including the kidnapping and murder of two law-enforcement officers.

10. On 10 July 2010 they ordered the applicant's arrest.

11. On 12 July 2010 the applicant's name was put on a national wanted list, and on 16 September 2010 on an international wanted list.

12. On 23 January 2014 the applicant was apprehended in Vladivostok, Primorsk Region, and placed in detention.

13. Shortly after his arrest, the applicant gave an explanation (*объяснение*) in which he admitted having participated in the beating of one of the law-enforcement officers in June 2010 but denied his involvement in other crimes for which he was to be prosecuted in Kyrgyzstan. He also indicated that although he had not been directly informed about the charges being brought against him in Kyrgyzstan, he knew that his father had been sentenced to life imprisonment for the murder of the same law-enforcement officers and suspected that he was himself also wanted by the Kyrgyz authorities.

14. On 24 January 2014 the Frunzenskiy District Court of Vladivostok decided to remand the applicant in custody. His detention was subsequently extended several times.

15. On 29 January 2014 the Russian Prosecutor's Office informed the Kyrgyz authorities about the applicant's arrest.

16. On 16 January 2015 a judge of the Primorsk Regional Court extended the applicant's detention until 23 July 2015. The applicant's lawyer appealed, arguing that the applicant would be deprived of judicial review of his detention for a long period of time.

17. On 11 February 2015 the Primorsk Regional Court upheld the extension order on appeal. It did not address the applicant's argument that he would be deprived of judicial review of his detention for a long period of time.

18. On 27 July 2015 the applicant was released. It appears that the applicant is currently at large.

B. Extradition proceedings

19. On 11 February 2014 the Kyrgyz General Prosecutor's Office requested the applicant's extradition. The request was accompanied by assurances that the applicant would not be subjected to torture or inhuman treatment and that Russian diplomats would be granted the opportunity to visit him.

20. On 17 October 2014 the Deputy Prosecutor General granted the extradition request submitted by the Kyrgyz authorities.

21. On 6 November 2014 the applicant appealed, arguing that as an ethnic Uzbek charged with serious crimes in relation to the mass disorders of June 2010 he would face a serious risk of torture and ill-treatment if extradited. He also referred to the principle of *non-refoulement* of asylum seekers pending the examination of his application for refugee status.

22. On 12 December 2014 the Primorsk Regional Court rejected his appeal in the light of the diplomatic assurances given by the Kyrgyz authorities and the improvement of the situation in Kyrgyzstan. As to the *non-refoulement* principle, the Regional Court noted that the applicant's application for refugee status had been refused by the migration authority.

23. On 25 March 2015 the Supreme Court rejected the applicant's appeal and the extradition order became final. It noted in particular that in addition to the diplomatic assurances provided in writing by the Kyrgyz authorities, the representatives of the General Consulate of the Russian Federation in this country were able to monitor the situation of persons already extradited to Kyrgyzstan, including those held in relation to the mass disorders. For instance, on 30 and 31 July 2014 Russian diplomats had visited some such detainees, who had made no complaints in relation to their transfer, detention, prosecution or treatment. In the Supreme Court's view, such a monitoring mechanism was effective in observing compliance by the Kyrgyz authorities with their obligations to ensure the rights of the extradited persons, including the right not to be subjected to torture and inhuman treatment.

24. The Supreme Court noted that the applicant belonged to a vulnerable group whose members were at risk of being subjected to torture by the law-enforcement agencies, according to international reports. It considered, however, that in the absence of specific evidence submitted by the applicant that he would personally be subjected to torture or inhuman and degrading treatment, these circumstances were not in themselves enough to reject an extradition request, since he had been charged with ordinary criminal offences to some of which he had confessed on 23 January 2014.

C. Refugee status proceedings

25. On 7 February 2014 the applicant applied to the Primorsk Region Department of the Federal Migration Service (*Управление Федеральной миграционной службы по Приморскому краю*) (hereinafter the "Primorsk Region FMS") seeking refugee status.

26. On 23 April 2014 the Primorsk Region FMS refused the applicant's application for refugee status. Although it referred in its decision to inter-ethnic conflicts existing in Kyrgyzstan, it considered that the applicant's arrival in Russia had rather been motivated by the unemployment situation existing in his country of origin and his wish to escape from criminal prosecution.

27. The applicant appealed to the Federal Migration Authority, (*Федеральная миграционная служба (ФМС*)) (hereinafter the "FMS"). He claimed that he was being persecuted on the grounds of his ethnic origin and, if extradited, would be subjected to torture.

28. On 18 July 2014 the FMS dismissed his appeal on account of his prolonged failure to apply for refugee status and in view of the opportunity offered to the Russian diplomats to monitor the compliance by the Kyrgyz authorities with international standards as regards persons extradited from Russia.

29. On 13 November 2014 the Basmannyy District Court of Moscow upheld the refusal of the FMS to grant the applicant refugee status, referring in particular to his protracted failure to apply for refugee status. It also indicated that the applicant was not a member of any political, religious, military or public organisation, had neither served in the army nor taken part in any military activities, had never been prosecuted or threatened by the authorities, and had not been involved in any violent incidents.

30. On 8 April 2015 the Moscow City Court upheld this judgment on appeal. The City Court endorsed the reasoning of the District Court, referring in addition to several international sources demonstrating positive developments in the human rights situation in Kyrgyzstan during the period 2011-2012.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. For a summary of relevant domestic law and practice see *Abdulkhakov v. Russia* (no. 14743/11, §§ 71-78, 83-93, and 95-98, 2 October 2012).

III. RELEVANT INTERNATIONAL DOCUMENTS AND MATERIAL CONCERNING KYRGYZSTAN

32. For relevant international documents see *Abdulkhakov*, cited above, §§ 79-82 and 94).

33. For a number of relevant reports and items of information concerning Kyrgyzstan, in particular, the human rights situation in 2011-2015, see *Tadzhibayev v. Russia* (no. 17724/14, §§ 19-26, 1 December 2015, with further references) and *Turgunov v. Russia* (no. 15590/14, § 32, 22 October 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that if extradited to Kyrgyzstan he would be subjected to torture or inhuman or degrading treatment or punishment because he belonged to the Uzbek ethnic minority. 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

35. The Government contested the applicant's allegations, arguing that the human rights situation in Kyrgyzstan had improved dramatically since 2010, that the Kyrgyz authorities had provided the Government with adequate assurances against the risk of ill-treatment, and finally that the applicant had not submitted convincing evidence that he would risk ill-treatment if extradited to Kyrgyzstan (for more details see *Gayratbek Saliyev v. Russia*, no. 39093/13, §§ 50-52, 17 April 2014; *Kadirzhanov and Mamashev v. Russia*, nos. 42351/13 and 47823/13, §§ 80-83, 17 July 2014; *Khamrakulov v. Russia*, no. 68894/13, §§ 49-56, 16 April 2015; *Nabid Abdullayev v. Russia*, no. 8474/14, §§ 52-53, 15 October 2015; *Turgunov*, cited above , §§ 38-44, 22 October 2015, and *Tadzhibayev*, cited above, §§ 29-36, 1 December 2015).

2. The applicant

36. The applicant maintained that he was still at serious and real risk of ill-treatment in Kyrgyzstan. He relied firstly on the Court's recent case-law

and international reports about the human rights situation in Kyrgyzstan in 2014-2015 and argued that no substantial change in the situation in Kyrgyzstan had occurred. He furthermore considered that the diplomatic assurances provided by the Kyrgyz authorities could not suffice to protect him against the risks of ill-treatment in the light of the criteria established in the Court's case-law. Finally, he submitted that the domestic authorities had not carried out an independent and rigorous examination of his claims concerning the existence of substantial grounds for fearing the risk of being subjected to ill-treatment if extradited to Kyrgyzstan.

B. The Court's assessment

1. Admissibility

37. The Court notes that the 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

38. The Court notes at the outset that it has already examined on several occasions the situation of ethnic Uzbeks whose extradition was sought by the Kyrgyz authorities in relation to a number of serious offences they allegedly committed in the course of the violent inter-ethnic clashes between Kyrgyz and Uzbek nationals in June 2010. In those cases it consistently held that, given 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, the impunity of law-enforcement officers, and the absence of sufficient safeguards for the applicants in the requesting country, there were substantial grounds for believing that the applicants would face a real risk of exposure to treatment proscribed by Article 3 of the Convention if returned to Kyrgyzstan (see *Khamrakulov*, cited above, § 65; *Mamadaliyev v. Russia*, no. 5614/13, § 60, 24 July 2014; *Kadirzhanov and Mamashev*, cited above, § 91; *Gayratbek Saliyev*, cited above, § 61; and *Makhmudzhan Ergashev v. Russia*, no. 49747/11, §§ 71-73, 16 October 2012). It is undisputed that the applicant belongs to the same category of persons.

39. As in previous similar cases, the applicant unsuccessfully brought the above circumstances to the attention of the Russian authorities in the course of the extradition and refugee proceedings (see paragraphs 19-30 above). The Court is mindful of the fact that the domestic courts' reasoning in the applicant's case was more detailed (see, by contrast, *Kadirzhanov and Mamashev*, cited above, § 94; *Khamrakulov*, cited above, § 67; *Turgunov*, cited above, §§ 52-53; *Gayratbek Saliyev*, cited above, § 63; and compare to

Nabid Abdullayev, cited above, § 65). However, their arguments justifying rejection of the applicant's claims have already been addressed by the Court in its previous judgments and found insufficient by it (see in particular as regards the insufficiency of diplomatic assurances and of the monitoring mechanism *Nabid Abdullayev*, cited above, § 53 and §§ 65-69). As to the last argument relied upon by the Supreme Court and based on the fact that the applicant's extradition was sought for ordinary criminal offences, to some of which he had initially confessed (see paragraph 24 above), the Court can only reiterate that the applicant's conduct – however undesirable or dangerous it might have been – cannot overturn the absolute prohibition of ill-treatment under Article 3 of the Convention (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 79-80, *Reports of Judgments and Decisions* 1996-V). In this respect, the Court recalls that the applicant is an ethnic Uzbek, whose extradition was sought by the Kyrgyz authorities for crimes allegedly committed in the course of the violence of June 2010 (see paragraph 9 above). He is thus a member of a group that is systematically exposed to a practice of ill-treatment (see paragraph 30 above).

40. Considering that the applicant belongs to the same vulnerable group and in the absence of any new element or fact demonstrating a fundamental improvement in that area in the receiving country (see recently for the assessment of the latest available information *Turgunov*, cited above, § 50), the Court finds the argument that the applicant would face a real risk of treatment proscribed by Article 3 of the Convention if returned to Kyrgyzstan well-founded.

41. Accordingly, the Court finds that the applicant's forced return to Kyrgyzstan, in the form of extradition or otherwise, would be in violation of Article 3 of the Convention.

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

42. The applicant further complained that there were no avenues whereby to obtain judicial review of the lawfulness of his detention. 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. Admissibility

43. 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.

B. Merits

44. In their observations on just satisfaction submitted on 15 February 2016, the Government referred only to the possibility open to the applicant under the Russian criminal legislation to lodge an application for release either with a court or with a prosecutor without further details.

45. The Court notes that it has already found a violation of Article 5 § 4 of the Convention where an applicant was not able to bring about a judicial review of the lawfulness of his detention during a fixed period of detention, notwithstanding changes in the circumstances in the course of that period which were capable of affecting the lawfulness of the detention (see *Kadirzhanov and Mamashev,* cited above §§ 134-39). In the present case, the applicant's detention was authorised for a fixed period from 16 January 2015 to 23 July 2015. The changed circumstances which might have had an impact on the lawfulness of the detention were the Court's interim measure on 24 March 2015 and the extradition order becoming final on 25 March 2015. There was therefore a period of a little short of four months during which it was not open to the applicant to bring about a judicial review of the lawfulness of his detention.

46. In the absence of any new arguments or facts which would enable the Court to reach a different conclusion from that in the previous cases, for example as regards an application for release (see *Kadirzhanov and Mamashev,* cited above §§ 131-32, and *Nabid Abdullayev,* cited above, § 87), the Court finds that there has been a violation of Article 5 § 4 of the Convention.

III. RULE 39 OF THE RULES OF COURT

47. 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.

48. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above paragraph 4) must continue 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

49. 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

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

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

52. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the decision to extradite the applicant would, if implemented, give rise to a violation of that provision. It considers that its finding regarding Article 3 in itself amounts to adequate just satisfaction for the purposes of Article 41 (see *Turgunov*, cited above, § 65, and *Tadzhibayev*, cited above, § 54). Nonetheless, considering the above finding of a violation of Article 5 § 4 of the Convention, the Court awards EUR 5,000 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount (see *Kadirzhanov and Mamashev*, cited above § 146).

B. Costs and expenses

53. The applicant also claimed EUR 4,600 for the costs and expenses in respect of his representation by Ms Yermolayeva and Ms Davidyan before the Supreme Court and the Court. He submitted his lawyers' time sheets.

54. The Government disagreed.

55. Having regard to the Court's case-law, especially in similar cases, and to the documents in its possession, the Court considers it reasonable to award the sum as claimed, plus any tax which may be chargeable to the applicant on that amount, to be paid into his representative's bank account (see *Gayratbek Saliyev*, cited above, § 91).

C. Default interest

56. 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;

4. *Holds*
   (a) that the respondent State is to pay, 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 the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable:
      (i) EUR 5,000 (five thousand euros) to the applicant in respect of non-pecuniary damage;
      (ii) EUR 4,600 (four thousand six hundred euros) to the applicant's representatives 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 claim for just satisfaction;

6. *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 remove the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 26 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Luis López Guerra
Registrar	President