THIRD SECTION

CASE OF TADZHIBAYEV v. RUSSIA

(Application no. 17724/14)

JUDGMENT

STRASBOURG

1 December 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.

In the case of Tadzhibayev v. Russia,

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

Luis López Guerra, *President*,
George Nicolaou,
Helen Keller,
Helena Jäderblom,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 10 November 2015,

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

PROCEDURE

1. The case originated in an application (no. 17724/14) 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 Mirodin Akhmatovich Tadzhibayev ("the applicant"), on 27 February 2014.

2. The applicant was represented by Ms O. Tseytlina, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged that his extradition to the Kyrgyz Republic (Kyrgyzstan) would subject him to a risk of ill-treatment and that his claims had not received a thorough examination on the part of the Russian authorities, including the courts.

4. On 28 February 2014 the acting President of the Section to which the case has been allocated 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 or otherwise involuntarily removed from Russia to Kyrgyzstan or another country for the duration of the proceedings before the Court, to apply Rule 41 of the Rules of Court and to give the application priority treatment.

5. On 15 May 2014 the application was communicated to the Government.

THE FACTS

Article I. I. THE CIRCUMSTANCES OF THE CASE

Section 1.01 A. The applicant's background prior to his criminal prosecution

6. The applicant is a Kyrgyz national of Uzbek ethnic origin. He was born on 1 September 1988 and resided in the town of Osh in Kyrgyzstan. After mass disorder and inter-ethnic clashes in the region in June 2010, he fled to Russia, together with many other ethnic Uzbeks, for fear of ethnic-motivated violence. It appears that his next of kin remain in Kyrgyzstan.

7. In August 2010 the applicant arrived in Russia and received a temporary residence permit for the period from 3 December 2010 to 3 December 2013.

Section 1.02 B. Criminal proceedings against the applicant in Kyrgyzstan and the ensuing extradition proceedings in Russia

8. After the applicant's departure from Kyrgyzstan, on 25 June 2010 the Kyrgyz authorities charged him *in absentia* with involvement in riots accompanied by violence, inter-ethnic clashes, arson, use of firearms and destruction of property on 17 June 2010 in the city of Osh, Kyrgyz Republic. The applicant was also alleged to have kidnapped someone.

9. On an unspecified date in 2010 the applicant was put on a list of fugitives in Kyrgyzstan; on 12 February 2011 he was put on a list of fugitives in Russia as well.

10. On 29 October 2012, while travelling by train in Russia, the applicant was arrested by the transport police. He denied his involvement in the 2010 events. On 31 October 2012, the Krasnogvardeyskiy District Court of St Petersburg ordered the applicant's detention for a month. His detention was subsequently extended numerous times.

11. The Kyrgyz authorities confirmed their intention to seek the applicant's extradition. On 23 November 2012, the Prosecutor General's Office of the Russian Federation received a request from the Kyrgyz Republic seeking the applicant's extradition. On 13 August 2013 it granted the request.

12. The applicant and his counsel appealed against the extradition order claiming, in particular, that he would face a risk of torture and ill-treatment since ethnic Uzbeks were a particularly vulnerable group following the June 2010 violence in the southern regions of Kyrgyzstan. On 26 November 2013 the St Petersburg City Court quashed the extradition order, finding it

unlawful, and released the applicant. It appears that the applicant is currently at large.

13. On 25 February 2014 the Supreme Court of Russia quashed the ruling of the St Petersburg City Court of 26 November 2013 and upheld the extradition order. In its decision of 25 February 2014 the Supreme Court held, in particular, as follows:

> "... the conclusion of the lower court that the prosecutor's office failed to examine the question of the risk of unacceptable treatment in the Kyrgyz Republic in the event of [the applicant's] extradition does not fit the case-file materials. The Prosecutor General's office of the Kyrgyz Republic has given guarantees to the effect that [the applicant] would only be prosecuted in respect of the crimes indicated in the initial extradition request and the behaviour of a general criminal character. They guaranteed that he would not be prosecuted on the basis of political or discriminatory reasons, including motives based on his origins, social background, the office he may have occupied, the pecuniary situation, gender, race, ethnicity, language, convictions and relations to religion, that [the applicant] would be given all possibilities to defend himself, that he would not be subjected to torture, cruel, inhuman or degrading treatment or punishment, and that if he was convicted and after having served the sentence he would be able to leave the territory of the Kyrgyz Republic freely. The materials submitted by the defence ... do not undermine the real guarantees provided by the Kyrgyz Republic in respect of [the applicant] and are sufficient to exclude any risk of his cruel treatment ..."

14. According to the Russian Government, the Prosecutor General's Office of the Kyrgyz Republic gave all necessary guarantees that the applicant's criminal prosecution would be carried out in strict compliance with the national law and the international obligations of the Kyrgyz Republic. Among other things, it guaranteed that the applicant would not be subjected to torture or other cruel, humiliating or degrading treatment; he would be guaranteed the right to defence, and Russian diplomatic staff would be given an opportunity to visit him in the detention facility.

Section 1.03 C. Temporary asylum proceedings

15. On 7 November 2012, while in detention, the applicant applied to the Federal Migration Service for refugee status. He claimed, among other things, that a criminal case had been opened against him exclusively because of his ethnic origin and that he would face a real risk of ill-treatment if he were sent back to Kyrgyzstan.

16. Following the examination of the applicant's asylum request, by its decision of 19 March 2013 the Department of the Federal Migration Service for St Petersburg and Leningrad region refused to grant refugee status to the applicant as he did not meet the necessary criteria defined by the national law. The Federal Migration Service of Russia took a final administrative decision on the matter on 7 October 2013, stating as follows:

> "... the basic criterion for granting a person temporary asylum is the presence of a well-founded suspicion that if returned to his/her home country, that person could

become a victim of torture or other cruel, inhuman or degrading treatment or punishment.

The analysis of the decision of the migration authorities in charge of St Petersburg and the Leningrad Region, the materials of the applicant's personal case file, the information communicated by the applicant, as well as the available information from the Ministry of Foreign Affairs of Russian and the Federal Migration Service of Russia concerning the situation in Kyrgyzstan has shown that the migration authorities in charge of St Petersburg and the Leningrad Region have fully examined all the circumstances of the case and lawfully concluded that there were no humanitarian reasons compelling the authorities to grant the applicant a possibility to remain temporarily on the territory of the Russian Federation.

According to the information submitted by the Prosecutor General's office, an agreement has now been reached with the Kyrgyz authorities which enables officials at the Embassy of the Russian Federation to monitor the compliance by the authorities of Kyrgyzstan with the standards of international law in respects of persons extradited to the Kyrgyz Republic.

The monitoring has established that the decision of the UFMS in charge of St Petersburg and the Leningrad Region to refuse to grant the applicant temporary asylum on the territory of the Russian Federation did not breach the legislation on refugees. The decision ... is lawful, justified and should be upheld."

17. The applicant's representatives appealed against the decision of 7 October 2013. By a final decision of 28 July 2014 the Moscow City Court rejected the applicant's appeal.

Article II. II. RELEVANT DOMESTIC LAW AND PRACTICE

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

Article III. III. RELEVANT INTERNATIONAL MATERIALS

Section 3.01 The documents concerning Kyrgyzstan

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

20. 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 ..."

21. 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; ..."

22. 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)."

23. 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."

24. 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."

25. 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."

26. 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

Article IV. I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

27. The applicant complained that, due to his Uzbek ethnic origin, he would face a real risk of ill-treatment if extradited to Kyrgyzstan. He argued that he belonged to a specific group, namely, ethnic Uzbeks suspected of involvement in the violence of June 2010, the members of which were systematically tortured by the Kyrgyz authorities. He also complained that his arguments concerning the risk of being subjected to ill-treatment in the requesting country had not received genuine and thorough consideration by the Russian authorities.

The applicant relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

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

Section 4.01 A. Admissibility

28. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and they are not inadmissible on any other grounds. They must therefore be declared admissible.

Section 4.02 B. Merits

(a) The parties' submissions

29. The Government 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.

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

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.

31. The Kyrgyz Republic had also amended its legislation, including the Constitution, to ensure respect for human rights and protection from discrimination. It had abolished the death penalty and introduced 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 had been enacted.

32. The Government argued that, even if some international reports still voiced concerns about 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.

33. 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 had issued assurances that there were no political grounds for his 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.

34. 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.

35. 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 2012-13 out of 109 extradited individuals, fifty-five had been sentenced to imprisonment, including seventeen suspended sentences, and fifty-four cases had been 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.

36. The Government claimed that the applicant had failed to provide substantial evidence that he would face a 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 asylum 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.

37. 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 (see *Makhmudzhan Ergashev*, 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.

38. In the applicant's view, the diplomatic assurances relied on by the Government did 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 its 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.

39. 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. He claimed that the migration authorities and domestic courts either examined such risks formally or failed to address them at all.

Section 4.03 C. The Court's assessment

(a)1. Article 3 of the Convention

(i) (a) General principles

40. 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 reiterated in, among other cases, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references) and *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I).

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

41. 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 it could be reasonably said that 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).

42. Turning to the general human rights climate in the requesting country, the Court observes the following. 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, which had increased in the aftermath of the events of June 2010 and remained widespread, 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 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 reports by UN bodies and reputable non-governmental organisations, in 2012-13 the situation in the southern part of Kyrgyzstan had not improved. In particular, various reports are consistent 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 of June 2010. The reports also describe a 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 21-26). Accordingly, the Court concludes that the current overall human rights situation in Kyrgyzstan remains highly problematic (see *Gayratbek Saliyev v. Russia*, no. 39093/13, § 61, 17 April 2014).

43. The Court will now examine whether there are any individual circumstances substantiating the applicant's fears of ill-treatment (see *Mamatkulov and Askarov* [GC], cited above, § 73). It reiterates in this respect that where an applicant alleges that he or she is a member of a group that is 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 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 June 2010, which has been reported by both UN bodies (see paragraphs 21-22 above) and reputable NGOs (see paragraphs 23-26 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.

44. The Court further observes that the above circumstances were brought to the attention of the Russian authorities (see paragraphs 12 and 15 above). The applicant's application for refugee status was rejected as inadmissible by the migration authorities, which found – and that finding was subsequently confirmed by the domestic courts – that he was not eligible for refugee status because there was no evidence that he was being persecuted on the grounds of his ethnic origin (see paragraph 16 above). In view of the above, the Court considers that the applicant's arguments in respect of the risk of ill-treatment were not addressed properly at the domestic level. As for the extradition proceedings, the Court notes the reasoning put forward by the Supreme Court and its failure to take into account materials originating from reliable sources, such as reports by international NGOs (see paragraph 13 above). In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the asylum or extradition proceedings (see *Abdulkhakov*, cited above, § 148).

45. It remains to be considered whether the risk to which the applicant would have been exposed if extradited was 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 paragraph 14 above).

46. 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 Party to the European Convention on

Human Rights, 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 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 assessment 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).

47. In view of the above, 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.

48. 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.

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

(b)2. Article 13 in conjunction with Article 3

50. The Court has already examined the substance of this complaint in the context of Article 3 of the Convention (see paragraph 44 above). Having regard to the finding relating to Article 3 (see paragraph 49 above), the Court considers that it is not necessary to examine this complaint separately on the merits (see, with further references, *Makhmudzhan Ergashev*, cited above, § 79).

Article V. II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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."

Section 5.01 A. Damage

52. The applicant relied on the Court to determine the exact amount of the financial award for non-pecuniary damage.

53. 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.

54. The Court considers that its finding under Article 3 amounts in itself to adequate just satisfaction for the purposes of Article 41.

Section 5.02 B. Costs and expenses

55. Under the head of costs and expenses the applicant claimed RUB 155,000 (approximately EUR 3,523 at the material time) in respect of his representation by Ms Tseytlina and Mr Golubok before the domestic authorities and EUR 600 in respect of the legal assistance before the Court provided by these lawyers. He also claimed RUB 13,000 (approximately EUR 310) for various postal and administrative expenses in the proceedings before the Court.

56. The Government contended that the lawyers' fees and other expenses were exaggerated.

57. 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. The applicant did not submit any documents confirming the payment of postal expenses. The Court therefore rejects this part of the claim.

58. As regards the legal fees, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 3,523 in respect of the applicant's representation in the domestic proceedings and EUR 600 in respect of the legal assistance provided by Mr Golubok and Ms Tseytlina before the Court, plus any tax which may be chargeable to the applicant on that amount.

Section 5.03 C. Default interest

59. 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.

Article VI. III. RULE 39 OF THE RULES OF COURT

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

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

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 is no need to examine the complaint under Article 13 taken in conjunction with Article 3 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, 4,123 EUR (four thousand one hundred and twenty three euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement plus any tax that may be chargeable;
   (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. *Holds* that its finding under Article 3 of the Convention amounts in itself to adequate just satisfaction for the purposes of Article 41;

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

7. *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 or otherwise involuntarily remove him from Russia to Kyrgyzstan or another country until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 1 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President