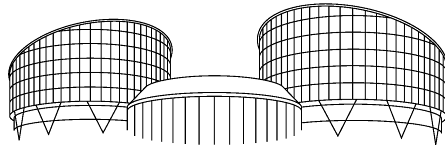

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GAYRATBEK SALIYEV v. RUSSIA

(Application no. 39093/13)

JUDGMENT

STRASBOURG

17 April 2014

FINAL

08/09/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Gayratbek Saliyev v. Russia,

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

Isabelle Berro-Lefèvre, *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 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 39093/13) 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 Gayratbek Khayrillayevich Saliyev ("the applicant"), on 17 June 2013.

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

3. The applicant alleged that his extradition to the Kyrgyz Republic (Kyrgyzstan) would subject him to the risk of ill-treatment, that he did not have effective remedies available to him in this respect and that there had been no effective judicial review of his detention.

4. On 17 June 2013 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Kyrgyzstan until further notice, to also apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

5. On 17 July 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1988 and lives in the village of Suzak, situated in the Jalal-Abad Region of Kyrgyzstan. He is currently staying in Krasnoarmeysk, the Moscow Region, Russia, where he is subject to a measure of restraint applied in the course of extradition proceedings.

7. The applicant is an ethnic Uzbek.

8. In June 2010 inter-ethnic violence between Kyrgyz and Uzbek groups broke out in the southern areas of Kyrgyzstan, including the city of Osh and the Jalal-Abad Region. The applicant claimed not to have taken part in any violent actions. He left Kyrgyzstan for Russia, allegedly fleeing ethnically motivated violence. It appears that his next-of-kin remain in the country.

9. In July 2010 the applicant arrived in Russia. In 2010 and 2011 he did not lodge any applications for refugee status or temporary asylum. By a final judgment of 16 September 2011 the Moscow Meshchanskiy District Court ("the Meshchanskiy court") convicted the applicant of robbery. The applicant served a prison term and was released on 19 January 2012.

10. In the meantime, on 24 August 2010 the Osh Region Prosecutor's Office (Kyrgyzstan) charged the applicant *in absentia* with a number of serious violent offences committed in June 2010 in the course of inter-ethnic rioting in the village of Suzak.

11. On 25 August 2010 the Suzak District Court, the Jalal-Abad Region of Kyrgyzstan, ordered the applicant's remand in custody. On an unspecified date the applicant's name was placed on an international wanted list.

12. On 25 March 2012 the applicant was arrested by the Russian police while he was travelling by train in the Moscow region, on the basis that he was wanted in Kyrgyzstan.

13. On 26 March 2012 the transport prosecutor's office for the Moscow-Yaroslavl railway ("the transport prosecutor's office") ordered the applicant's remand in custody pending receipt of an extradition request pursuant to Article 61 of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 and on the basis of the Kyrgyz court's decision of 25 August 2010.

14. On 18 April 2012 the Prosecutor General's Office of Kyrgyzstan sent an official extradition request to their Russian counterparts.

15. On 25 April 2012 the transport prosecutor's office again ordered the applicant's remand in custody.

16. On 28 April 2012 the applicant sought refugee status in Russia. He claimed, among other things, that the criminal case against him had been opened exclusively because of his ethnic origin and that he would face a

real risk of ill-treatment in Kyrgyzstan if returned there. He referred to reports by Human Rights Watch and Amnesty International.

17. On 10 May 2012 the applicant's lawyer wrote to the Prosecutor General's Office of Russia, indicating that extradition should be refused on account of the substantiated risk of ill-treatment in respect of the applicant in Kyrgyzstan. On 14 June 2012 the Prosecutor General's Office of Russia replied that the above submissions would be taken into account in the decision-making process on the extradition request.

18. On 22 May 2012 the Meshchanskiy court extended the term of the applicant's detention up to six months, that is to say, until 25 September 2012. On 4 June 2012 the Moscow City Court dismissed an appeal brought by the applicant and upheld the detention order.

19. By a decision of 21 August 2012 the Moscow Department of the Federal Migration Service of Russia ("Moscow migration authority") refused to grant refugee status to the applicant. It held, in so far as relevant, as follows:

> "Mr Saliyev has based his refugee application in Russia on the allegations that in his country of nationality he would be persecuted by State agencies on [the basis of] fabricated criminal charges [brought] because of his ethnic origin. ...
>
> It is evident from the available materials that Mr Saliyev left his country of nationality for reasons which fall outside the scope of section 1(1)(1) of the Refugee Act, and that he does not wish to return to his country, fearing lawful prosecution for a criminal offence ...
>
> During his interview Mr Saliyev failed to refer to any facts capable of proving his persecution on the grounds of his ethnic origin.
>
> The Kyrgyz law-enforcement agencies ... do not have the specific purpose of persecuting Mr Saliyev because of his belonging to a particular social group, ethnic origin, religion or political views."

20. On 21 September 2012 the Kyrgyz authorities issued an amended list of charges against the applicant, which included illegal use of firearms and other weapons, murder, robbery, destruction of property and involvement in rioting aggravated by ethnic hatred.

21. On 24 September 2012 the Meshchanskiy court extended the applicant's detention until 25 December 2012 for the reason that an extradition check was underway. On 24 October 2012 the Moscow City Court dismissed the applicant's appeal against the detention order of 24 September 2012.

22. On 4 October 2012 the Prosecutor General's Office of Kyrgyzstan submitted a letter to their Russian counterparts, containing assurances that the applicant would benefit from legal assistance; would not be tortured or subjected to inhuman or degrading treatment; and the extradition request was related to ordinary criminal offences and was not aimed at persecuting the applicant on religious, political grounds or grounds relating to his ethnic origin.

23. On 22 October 2012 the Federal Migration Service of Russia ("FMS") upheld the refusal to grant refugee status of 21 August 2012, without providing any detailed reasons.

24. On 25 December 2012 the Meshchanskiy court extended the applicant's detention with a view to extradition until 25 March 2013. The applicant appealed on 27 December 2012. On the same date the case was transferred to the Moscow City Court, which received it on 25 January 2013. On 13 February 2013 the Moscow City Court upheld the detention order.

25. On 18 February 2013 the Moscow Basmannyy District Court ("the Basmannyy court") upheld the FMS's decision of 22 October 2012. The applicant appealed.

26. On 20 February 2013 the Deputy Prosecutor General of Kyrgyzstan amended the extradition request, stating that following the applicant's extradition Russian diplomatic staff would be given an opportunity to visit him in the detention facility and that the applicant would not be subjected to torture, cruel, inhuman or degrading treatment or punishment, as prohibited by the 1984 UN Convention against Torture.

27. On 27 February 2013 the Deputy Prosecutor General of Russia granted the extradition request and ordered the applicant's extradition, without making any findings on the issue of the risk of ill-treatment in the event of the applicant's extradition.

28. The applicant appealed against the extradition order, claiming, in particular, that he would face risks of torture and ill-treatment since, according to various international reports, ethnic Uzbeks were a particularly vulnerable group following the June 2010 violence in the southern regions of Kyrgyzstan.

29. On 21 March 2013 the Moscow City Court examined the matter of the applicant's continued detention and extended it until 25 September 2013. The applicant appealed on 25 March 2013. On the same date the case was transferred to the appeal section of the Moscow City Court, which received it on 29 April 2013. On 16 May 2013 the appeal section upheld the extension order.

30. In the meantime, on 28 March 2013 the Moscow City Court upheld the Basmannyy court's judgment of 18 February 2013.

31. On 16 April 2013 the Moscow City Court examined the applicant's appeal against the extradition order. The court heard Ms Ryabinina, the applicant's representative before the Court, as a witness, and refused to examine a number of pieces of evidence adduced by the applicant in relation to his arguments regarding the risk of ill-treatment in Kyrgyzstan, in particular a number of reports from international organisations. By a judgment of the same date, the Moscow City Court upheld the extradition order in the following terms:

"... The applicant's arguments relating to persecution by the Kyrgyz authorities on the grounds of his nationality were examined and dismissed by the decision of 22 October 2012 concerning his application for refugee status.

The above decision was upheld by the now final judgment of 18 February 2013 ... This court dismisses the argument concerning the issuing of the extradition order before the examination of the refusal to grant refugee status. As is clear from the materials concerning the extradition check procedure, [the applicant] lodged an application for refugee status after his arrest in Russia. Judicial review proceedings in respect of a refusal to grant such status do not impede the issuing of an extradition order ...

The Prosecutor General's Office of Kyrgyzstan guarantees that [the applicant] would be given all opportunities to defend himself, including legal assistance; that he would not be subjected to torture, cruel, inhuman or degrading treatment or punishment... In addition, the requesting country guarantees that following [the applicant's] extradition Russian diplomatic officers would be afforded an opportunity to visit him in the detention facility in order to be satisfied that his rights are being respected, [and] that the principles of the equality of arms and the adversarial nature of court proceedings are being respected... The court dismisses as unfounded the arguments relating to inability for [the applicant to undergo] a medical examination or [have] confidential meetings with diplomatic officers ...

It follows from Ms Ryabinina's witness statement that she has not visited Kyrgyzstan since 2006 and was not present during the events of June 2010. Her knowledge of the current situation in Central Asia is based on reports by foreign human-rights organisations describing an imprecise group of people. ...

The court dismisses as unproven the references to the findings made by the Russian Supreme Court and the European Court in individual cases or the references to the reports of international organisations assessing the general human-rights situation in Kyrgyzstan. The above references are refuted by the real guarantees from the Kyrgyz authorities, such guarantees relating directly to [the applicant] and being sufficient to exclude the risk of cruel treatment in respect of him ..."

32. On 22 April 2013 the applicant appealed to the Supreme Court of Russia against the decision of 16 April 2013.

33. On 19 June 2013 the Supreme Court of Russia, sitting as an appeal court, examined the applicant's appeal against the judgment of 16 April 2013 upholding the extradition order. The appeal court admitted to the file a number of documents, including international reports regarding Kyrgyzstan. By a judgment of the same date, the Supreme Court of Russia dismissed the appeal, endorsing the reasoning of the first-instance court. It held as follows:

"... Judicial review proceedings in respect of a local migration authority's refusal to grant refugee status do not impede the decision-making process in respect of an extradition request ... The available materials do not disclose that [the applicant] is being persecuted on political grounds by law enforcement agencies in Kyrgyzstan ... The prosecution against [the applicant] concerns ordinary criminal offences and does not contain indications of any political motivation or discrimination on the grounds of ... social origin, nationality or race ... The Kyrgyz Prosecutor General's Office submitted guarantees that [the applicant] would be provided with all [necessary] facilities for [preparing] his defence, including legal assistance; that he would not be

> subjected to torture, cruel, inhuman or degrading treatment or punishment ... Thus, the court accepts as correct the conclusion that the Republic of Kyrgyzstan has fully complied with the requirements of Article 462 § 3 of the Code of Criminal Procedure and Article 14 of the European Convention on Extradition, as regards the provision of the required guarantees ...”

34. The text of the appeal decision did not contain any reference to any avenues of further appeal. It appears that the extradition order became enforceable on 19 June 2013.

35. On 28 June 2013 the Moscow migration authority dismissed the applicant’s application for temporary asylum. The applicant appealed to the FMS, which informed him on 8 October 2013 that the decision of 28 June 2013 had been quashed and that his application would be re-examined. It remains unknown whether the re-examination in question has taken place.

36. On 4 September 2013 the transport prosecutor’s office ordered the applicant’s release from custody for the reason that the Court had applied interim measures pursuant to Rule 39 of the Rules of Court in respect of the applicant, and applied a different measure of restraint on the basis that the applicant’s lawyer, Ms Biryukova, had provided a personal guarantee that the applicant would be available for questioning and other actions related to the extradition check once released.

37. The applicant was then released from remand.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

38. 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

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

40. 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 ..."

41. The UN Committee on the Elimination of Racial Discrimination considered the fifth to seventh periodic reports of Kyrgyzstan and in February 2013 adopted 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; ...”

42. 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)."

43. 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."

44. 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."

45. In their 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."

46. 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 VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

47. 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 belongs to a specific group, namely, ethnic Uzbeks suspected of involvement in the violence of June 2010, the members of which are 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. He 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."

A. Submissions by the parties

1. The Government

(a) Admissibility of the application

48. In their written observations of 30 September 2013 the Government claimed that the applicant had failed to exhaust available effective domestic remedies in respect of his complaints under Article 3 of the Convention, as he had not lodged a cassation appeal pursuant to Chapter 41 of the Russian Code of Civil Procedure ("CCP") against the Moscow City Court's appeal judgment of 28 March 2013 upholding the refusal to grant him refugee status. Nor had he initiated cassation appeal proceedings pursuant to Chapters 47.1 and 48.1 of the Code of Criminal Procedure (CCrP) against the Supreme Court's appeal judgment of 19 June 2013 upholding the extradition order.

49. However, in their additional observations of 10 December 2013 the Government asserted that, since cassation appeals pursuant to Chapters 41 and 41.1 of the CCP and Chapters 47.1 and 48.1 of the CCrP did not have "automatic suspensive effect", the applicant had not been under an obligation to exhaust these remedies, thus withdrawing their objection.

(b) The merits of the application

50. The Government submitted that the applicant's allegations concerning the risk of ill-treatment in Kyrgyzstan had been subject to examination in the course of the refugee status and temporary asylum proceedings. Moreover, the Russian Prosecutor General's Office, the Moscow City Court and the Supreme Court of Russia had thoroughly examined the allegations in the course of the extradition proceedings. For instance, in the course of the hearing before the Moscow City Court on 16 April 2013 the applicant and Ms Ryabinina, an expert on refugee law, had made submissions regarding possible ill-treatment in Kyrgyzstan. However, the claims had been dismissed, as the applicant had only referred to the general human rights situation in Kyrgyzstan and had thus failed to demonstrate any individualised risk of ill-treatment. The courts' decisions upholding the extradition order had been fully and properly reasoned.

51. The Government further emphasised that the Kyrgyz authorities had provided detailed and personalised assurances guaranteeing the applicant's freedom from ill-treatment once in Kyrgyzstan and allowing Russian diplomatic staff access to his place of detention in the requesting country. They claimed that Russian diplomatic staff had already visited individuals previously extradited to Kyrgyzstan.

52. In order to demonstrate the existence of effective domestic remedies capable of assessing the risks of ill-treatment, the Government further referred to two cases in which the Supreme Court of Russia had refused to uphold extradition orders: the cases of Mr M. and Mr Zokhidov. In the case of Mr M., an Azerbaijani national, the Supreme Court of Russia had on 3 November 2010 quashed a court decision upholding an extradition order is his respect and remitted the case for fresh consideration, for the reason that by the time of the first-instance court hearing Mr M.'s political asylum application had not yet been examined. The Government did not provide any information on the outcome of the extradition proceedings in Mr M.'s case. In the case of Mr Zokhidov the Supreme Court of Russia had, in the final instance, quashed an extradition order in his respect on 8 June 2011 for the reason that ill-treatment in prisons had been identified as a widespread problem in Uzbekistan.

53. In sum, the Government claimed that the applicant was not facing risks of ill-treatment in Kyrgyzstan and that he had had effective domestic remedies allowing an examination of the said risks available to him in Russia and had made use of them by appealing against the decision of the Moscow City Court of 16 April 2013.

2. The applicant

54. The applicant first insisted that he had exhausted all effective domestic remedies available, since cassation appeals pursuant to Chapter 41

of the CCP and Chapters 47.1 and 48.1 of the CCrP did not have "automatic suspensive effect", and thus he could have been extradited while his cassation appeals were pending before Russian courts.

55. The applicant 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 further claimed that the general human rights situation in Kyrgyzstan had not improved since the examination of the *Makhmudzhan Ergashev* case (cited above). 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 a common practice not to investigate instances of torture or inhuman treatment in the requesting country.

56. The diplomatic assurances relied on by the Government could not, in the applicant's view, 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)). The Government's claim that other individuals extradited to Kyrgyzstan had been visited by Russian diplomatic staff had not been supported by any evidence. 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.

57. The Government's reference to Mr M.'s case had been, in the applicant's view, irrelevant, while their reference to the case of Mr Zokhidov, who had been deported to Uzbekistan after the quashing of the extradition order (*Zokhidov v. Russia*, no. 67286/10, 5 February 2013), could not be interpreted as evidence of a "well-established practice" of protection from torture in the extradition area.

B. The Court's assessment

1. Article 3 of the Convention

(a) Admissibility

58. The Court observes that the Government have withdrawn their non-exhaustion plea (see paragraphs 48 and 49 above) and thus does not deem it necessary to examine it. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

(i) General principles

59. 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).

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

60. 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).

61. 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 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 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 Jalal-Abad Region, as well as 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 41-46 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).

62. 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 41-42 above) and reputable NGOs (see paragraphs 43-46 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.

63. The Court further observes that the above circumstances were brought to the attention of the Russian authorities (see paragraphs 16 and 28). The applicant's refugee application was rejected as inadmissible by the migration authorities, which found – and that 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 19 and 28 above). As for the extradition proceedings, the Court is struck by the summary reasoning put forward by the domestic courts and their refusal to take into account materials originating from reliable sources, such as reports by international NGOs, or an expert opinion based on them. Moreover, it is noteworthy that the Moscow City Court, when upholding the extradition order for the reason that the applicant had failed to substantiate his allegations of risks of ill-treatment, mainly referred to the decisions on the applicant's application for refugee status that had clearly failed to touch upon the issue of such risks (see paragraph 31 above). The Supreme Court of Russia, in turn, dismissed the applicant's allegations for the reason that

Kyrgyzstan had provided diplomatic assurances against ill-treatment (see paragraph 33 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 refugee status or extradition proceedings (see *Abdulkhakov*, cited above, § 148).

64. Moreover, the Court notes that the Government may be understood as arguing that the applicant did not bring a sufficiently reasoned argument with regard to the risk of ill-treatment in the event of his extradition to Kyrgyzstan to the attention of the authorities, referring to two other cases. The Government have not informed the Court of the outcome of the extradition proceedings in Mr M.'s case, thus making it impossible to use that case as an example of any domestic practice. As for the case of *Zokhidov*, in which the extradition order in respect of the applicant was set aside, the Court observes that the same example has been quoted by the Government in other similar cases (see, for instance, *Ermakov v. Russia*, no. 43165/10, § 185, 7 November 2013). Nonetheless, even leaving aside the subsequent developments in the *Zokhidov* case (cited above, § 62 et seq.), the Court observes that the main reason for the domestic authorities' refusal to extradite the applicant in that case was of a more "technical" nature, namely the fact that his prosecution had become time-barred under Russian law (see *Zokhidov*, cited above, § 129). Therefore, the Court is not persuaded by the Government's argument in so far as it is based on the Z*okhidov* case.

65. 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 paragraphs 22 and 26 above).

66. 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). The Government's claim that unnamed individuals have been visited in Kyrgyzstan after their extradition has not been supported by any evidence and thus 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).

67. 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.

68. 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.

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

2. *Article 13 in conjunction with Article 3*

70. The Court notes that the complaint under Article 13 in conjunction with Article 3 of the Convention of the Russian authorities' failure to rigorously assess the risk that the applicant would be ill-treated if he were extradited is linked to the complaint examined above and must therefore likewise be declared admissible.

71. It further notes that it has already examined the substance of this complaint in the context of Article 3 of the Convention (see paragraph 63 above). Having regard to the finding relating to Article 3 (see paragraph 69 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).

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

72. The applicant complained that the appeal proceedings in respect of the detention orders of 25 December 2012 and 21 March 2013 had not been speedy and effective. He further complained that he had not had a legal remedy at his disposal enabling him to apply for judicial review of his detention on his own initiative following new developments in his extradition case, in particular, following the indication of interim measures

by the Court on 17 June 2013. He cited 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

73. The Government claimed that the applicant's complaints were manifestly ill-founded. They asserted, without providing any details or explanation, that the Moscow City Court had made all reasonable efforts to examine the applicant's complaints against the detention orders speedily, that is to say, in less than a month. They further insisted, referring to situations covered by Article 110 of the CCrP, that the applicant had had the opportunity to complain under Article 125 of the CCrP about prosecutors' decisions to a reviewing court empowered to declare prosecutors' actions or decisions unlawful, but had not made use of it. Lastly, they alleged that the applicant could have claimed damages at the national level if his detention were to have been found unlawful by the domestic courts.

74. The applicant asserted that the Government had not provided any detailed explanations regarding the alleged violation of this provision. He insisted 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 25 December 2012 and 25 March 2013 of forty-seven and fifty-six days, respectively. Furthermore, he alleged that Article 125 of the CCrP did not provide a reviewing court with the competence to order the release of a detainee, as required by Article 5 § 4 of the Convention. Lastly, the applicant claimed that Articles 108-10 of the CCrP did not allow him to apply for release on his own initiative and pointed out that he had been detained for two-and-a-half months after the final decision upholding the extradition order in his respect had been issued on 19 June 2013, which he asserted had amounted to a breach of his right to judicial review of his detention at "reasonable intervals".

B. The Court's assessment

1. Admissibility

75. 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

76. 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).

77. 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).

78. Turning to the circumstances of the present case, the Court notes that the applicant's appeal against the extension order of 25 December 2012 lodged on 27 December 2012 was examined by the Moscow City Court on 13 February 2013 (see paragraph 24 above), in other words, forty-seven days after it had been filed. It took the Moscow City Court fifty-one days to examine the appeal against the decision of 21 March 2013, which was lodged on 25 March 2013 and examined on 16 May 2013 (see paragraph 29 above).

79. 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 capable of justifying such delays put forward by the Government, 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, forty-seven and fifty-one 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).

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

81. Having regard to this finding and to the particular circumstances of the present case, the Court does not deem it necessary to examine the remainder of the applicant's complaint under Article 5 § 4 concerning the alleged inability to obtain judicial review of his detention pending extradition.

III. RULE 39 OF THE RULES OF COURT

82. The Court recalls that, 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. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) 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

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 any 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 EUR 5,000 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

88. Relying on lawyers' timesheets, the applicant also claimed EUR 6,100 in legal fees and EUR 427 in postal expenses for costs and expenses incurred before the Court.

89. The Government contended that the lawyers' fees and other expenses were not shown to have been actually 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. The applicant did not submit any documents confirming the payment of postal expenses. The Court therefore rejects this part of the claim.

91. As regards the legal fees, 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 6,100, plus any tax which may be chargeable to the applicant on that amount.

C. Default interest

92. 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 is no need to examine the complaint under Article 13 taken in conjunction with Article 3 of the Convention;

4. *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 25 December 2012 and 21 March 2013;

5. *Holds* that it is not necessary to examine the other issues raised under Article 5 § 4 of the Convention;

6. *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 6,100 (six 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;

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

8. *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.

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President