



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

THIRD SECTION

CASE OF T.K. AND S.R. v. RUSSIA

(Applications nos. 28492/15 and 49975/15)

JUDGMENT

Art 3 • Extradition • No real risk of ill-treatment in case of extradition of ethnic Uzbeks to Kyrgyzstan • Improvement of human-rights situation in Kyrgyzstan in terms of relevant ethnic-based risks • Applicants' individual circumstances duly considered • Quality and reliability of assurances provided by Kyrgyz authorities

STRASBOURG

19 November 2019

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE
ON 29/04/2022**

This judgment may be subject to editorial revision.

In the case of T.K. and S.R. v. Russia,

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

Paul Lemmens, *President*,

Helen Keller,

Dmitry Dedov,

Alena Poláčková,

María Elósegui,

Gilberto Felici,

Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 15 October 2019,

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

PROCEDURE

1. The case originated in two applications (nos. 28492/15 and 49975/15) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Kyrgyz nationals, Mr T.K. and Mr S.R. (“the applicants”), on 15 June 2015 and 11 October 2015 respectively.

2. The applicants were represented by Ms N. Yermolayeva, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants alleged that in the event of their removal to Kyrgyzstan, they risked being subjected to treatment contrary to Article 3 of the Convention.

4. On 16 June 2015 and 12 October 2015 respectively the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicants should not be extradited or otherwise involuntarily removed from Russia to Kyrgyzstan or another country for the duration of the proceedings before the Court. It was also decided to grant the cases priority under Rule 41 of the Rules of Court.

5. On 16 June 2015 and 10 March 2016 respectively the Government were given notice of the applications.

6. On 22 September 2016 the Court granted a request for third-party intervention lodged by the International Commission of Jurists in the case of the second applicant.

7. The Court further decided to grant the applicants anonymity and the case files confidentiality under Rules 33 and 47 § 4 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are Kyrgyz nationals of Uzbek ethnic origin, born in 1957 and 1986 respectively. Before being arrested, the first applicant lived in Verkhneye Mukhanovo, Oryol Region and the second applicant lived in Elektrogorsk, Moscow Region.

A. June 2010 events in Kyrgyzstan

9. According to various international reports, in June 2010 inter-communal violence in the cities of Osh and Jalal-Abad in southern Kyrgyzstan left more than 400 people dead, 2,000 wounded, thousands displaced internally and externally, and extensive damage to property. Those cities are home to substantial Uzbek minority communities – around 14% of Kyrgyzstan's overall population – living in their historic centres, and growing numbers of Kyrgyz residents who have migrated from rural areas. Social and political tensions created by the ethno-territorial structure of post-Soviet Central Asia, and a lack of economic opportunity, provided a backdrop to the political instability following the overthrow of President Kurmanbek Bakiyev in April 2010.

B. Application no. 28492/15 (*T.K. v. Russia*)

10. Until 2010 the applicant had been living in Osh, Kyrgyzstan. He arrived in Russia in July 2010.

11. On 13 September 2010 the applicant was charged *in absentia* with aggravated misappropriation of approximately 18,500 euros (EUR), since as a director of a private company he received money from four other companies in business transactions, but spent them on his personal needs. The Kyrgyz authorities ordered his pre-trial detention and issued an international search-and-arrest warrant bearing his name.

12. On 11 July 2013 the applicant was apprehended in Russia; subsequently, his detention was ordered and extended by the Russian courts. He was released on 2 April 2014 and currently resides in Verkhneye Mukhanovo, Oryol Region.

1. *Extradition proceedings*

13. On 30 July 2013 the Kyrgyz prosecution authorities requested the applicant's extradition on the above-mentioned charges. The request contained various assurances that he would be treated properly, including (a) guarantees against torture, cruel, inhuman or degrading treatment or

punishment; (b) no political or discriminatory grounds for prosecution; and (c) every opportunity to defend himself and have access to a lawyer. On 5 February 2014 the Kyrgyz authorities extended the assurances by adding that the applicant would receive visits from Russian diplomatic staff at the places of detention after the transfer.

14. On 21 February 2014 the applicant's extradition was authorised by the Deputy Prosecutor General of the Russian Federation. On the same day the Deputy Prosecutor General sent a letter to the Russian Ministry of Foreign Affairs about the pending extradition proceedings and requested cooperation in monitoring the assurances provided by the Kyrgyz authorities. The relevant parts of the letter read as follows:

"The Prosecutor General's Office of the Kyrgyz Republic has provided necessary assurances in respect of [the applicant's] rights, including the absence of persecution on ethnic grounds, and guarantees against torture and other cruel treatment and punishment.

At the same time, the recent practice of the European Court of Human Rights demonstrates the critical attitude of the Court to the extradition of individuals of 'non-title' (*нетитульная*) ethnic origin to Kyrgyzstan due to their vulnerability and risk of cruel treatment.

In the case *Mahmudzhan Ergashev v. Russia*, the European Court ruling in favour of the applicant indicated that [the assurances] given by the authorities of the Kyrgyz Republic by themselves and in the absence of a monitoring mechanism were insufficient to protect [an individual] from cruel treatment.

Given this practice, the Prosecutor General's Office of the Kyrgyz Republic has provided extended assurances that [in the event of the applicant's transfer] the competent authorities of the Kyrgyz Republic will ensure that Russian diplomatic staff have access to the detention facility [where the applicant is going to be detained] in order to monitor respect for his rights."

It appears from the text that similar letters were sent to the Russian Ministry of Foreign Affairs in all cases where the Kyrgyz authorities had provided similar extended assurances.

15. The applicant challenged the extradition decision in court, referring to the fact that he belonged to a vulnerable ethnic group and thus ran a real risk of persecution and ill-treatment.

16. On 2 April 2014 the Oryol Regional Court ruled in favour of the applicant's complaint and set aside the extradition decision as unlawful. Referring to the case-law of the Court, the Regional Court concluded that the applicant belonged to a vulnerable ethnic group which ran the risk of treatment contrary to Article 3 of the Convention, and that the assurance of the Kyrgyz authorities might be insufficient to mitigate that risk, given doubts about how they functioned in practice. It further considered that according to the migration authorities' report, the political, social and economic situation in Kyrgyzstan remained "complex". The applicant was immediately released from detention.

17. The prosecutor's office appealed, referring to, among other arguments, the following three points. First, the applicant was suspected of financial crimes and accordingly there had been no issue of political or ethnic persecution as such. Secondly, referring to the judgment *Latipov v. Russia* (no. 77658/11, 12 December 2013), they claimed that the applicant could not rely only on the general situation in the country, but had to present evidence of individualised risks. Thirdly, while acknowledging the Court's conclusions on the persecution of ethnic Uzbeks involved in the 2010 clashes in the judgment *Makhmudzhan Ergashev v. Russia* (no. 49747/11, 16 October 2012), they argued that the Kyrgyz authorities' assurances in the applicant's case were sufficient and contained extensive guarantees that Russian diplomatic staff would have access to detention facilities.

18. On 28 May 2014 the Supreme Court of the Russian Federation dismissed the appeal and upheld the judgment of the Regional Court. The prosecutor's office lodged an application for a supervisory review.

19. On 4 February 2015 the Presidium of the Supreme Court of the Russian Federation, sitting as a supervisory court, annulled the previous judgments and remitted the case for reconsideration. The Presidium noted that the Regional Court had relied on the Court's case-law and the migration authorities' characterisation of the situation in Kyrgyzstan as "complex", but considered that the lower courts' conclusions were based on a general description of the situation without any individualisation of the risks. The relevant part of its decision read as follows:

"It is not possible to agree with the conclusions based [only] on the judgments of the European Court of Human Rights [without] consideration and assessment of the materials of the [individual] case.

A court assessing the risk of a human rights' violation must not only study the general human-rights situation in the requesting State, but also weigh the specific circumstances of the case, which might in their totality demonstrate the presence or absence of serious grounds to believe that a person might be subjected to [cruel] treatment or punishment.

The law should be interpreted as prescribing that a court assessing extradition-related issues needs to consider the statements of the individual [concerned], information from the Ministry of Foreign Affairs on the human-rights situation in the requesting State, the assurances provided by the requesting State, as well as other documents and materials.

...

The materials of the case demonstrate that [the applicant] is accused of a crime that did not have an ethnic or political character and was committed in 2008-2009, which is well before the events of June 2010.

[In his statements to the Russian authorities on 11 July 2013 the applicant did not claim persecution on political or other grounds and did not claim that he had arrived in Russia with a view to seeking asylum.]

These statements, which could have influenced the [Regional Court's] conclusions, were not examined.

Moreover, [the Regional Court] did not duly assess the information from the Prosecutor General's Office ... on the assurances provided by the competent authorities of the Kyrgyz Republic that Russian diplomatic staff would have access to the place of [the applicant's] detention.

The trial court, in annulling the extradition decision, referred to the migration authorities' report, but only to the part describing the political, social and economic situation in Kyrgyzstan as 'complex', and neglected the other part, which listed the measures adopted by the government of Kyrgyzstan in order to enhance respect for human rights and secure the rights of ethnic minorities."

20. On 8 April 2015 the Oryol Regional Court, reconsidering the applicant's complaint against the extradition decision, followed the reasoning of the Presidium of the Supreme Court and dismissed the complaint. It specifically highlighted that in line with this Court's case-law, the general situation in a given country might not justify a total ban on extraditions. The Regional Court concluded that the applicant did not face individualised risks given the assurances provided by the Kyrgyz authorities, the possibility of their monitoring by Russian diplomatic staff, the fact that certain progress had been made in respect of human rights in Kyrgyzstan, the financial nature of the crime, and the refusal of his asylum application by the migration authorities.

21. On 17 June 2015 the Supreme Court of the Russian Federation upheld the lower court's judgment by a final decision.

2. Refugee status and other relevant proceedings

22. On 14 August 2013 the applicant applied for refugee status, referring to risks of persecution in Kyrgyzstan on ethnic grounds.

23. On 15 January 2014 the migration authorities rejected the application by a final administrative decision. The applicant challenged that decision in the courts, referring to the fact that he belonged to a vulnerable ethnic group and thus ran a real risk of persecution and ill-treatment.

24. On 17 June 2014 the applicant's complaint was dismissed by the Basmannyy District Court of Moscow. The applicant did not lodge an appeal.

C. Application no. 49975/15 (S.R. v. Russia)

25. Until 2010 the applicant had been living in Suzak, Jalal-Abad Region, Kyrgyzstan. He arrived in Russia in January 2011.

26. On 24 July 2012 the applicant was charged *in absentia* with violent crimes related to the June 2010 events (see paragraphs 9 above). Specifically, it was stated that the applicant in conspiracy with two other persons on several occasions blocked a highway, stopped passing cars and

burnt at least eight of them, robbed their passengers, and murdered six persons, including two women, using firearms and bladed weapons. According to the charges the crimes were ethnically motivated and directed against people of Kyrgyz ethnic origin. The Kyrgyz authorities ordered his pre-trial detention and issued an international search-and-arrest warrant bearing his name.

27. On 15 April 2014 the applicant was apprehended in Russia; subsequently, his detention was ordered and extended by the Russian courts. He was released on 15 October 2015 as the maximum period for his lawful detention had expired. He currently resides in Elektrogorsk, Moscow Region.

1. Extradition proceedings

28. On 13 May 2014 the Kyrgyz prosecution authorities requested the applicant's extradition on the above-mentioned charges. The request contained various assurances that he would be treated properly, including (a) guarantees against torture, cruel, inhuman or degrading treatment or punishment; (b) no political or discriminatory grounds for prosecution; (c) every opportunity to defend himself and have access to a lawyer; and (d) visits from Russian diplomatic staff at places of detention after the transfer.

29. On 8 July 2015 the applicant's extradition was authorised by the Deputy Prosecutor General of the Russian Federation.

30. The applicant challenged that decision in the courts, referring to the fact that he belonged to a vulnerable ethnic group and thus ran a real risk of persecution and ill-treatment at the hands of the Kyrgyz authorities.

31. On 31 August 2015 the Belgorod Regional Court dismissed the applicant's complaint, disregarding his allegations of risk of ill-treatment. Referring to the practice of this Court and the UN Human Rights Committee, the Regional Court stressed that apart from the general characterisation of a situation in a given country, an individual alleging the existence of a real risk of ill-treatment had to substantiate it with regard to his personal circumstances. The Regional Court took due note of the international reports presented by the applicant's representative, but concluded that the applicant had failed to prove the existence of any individualised risks. It considered it relevant that the applicant had travelled several times from Russia to Kyrgyzstan in 2011-14 without any hindrance; that in his statements to the migration authorities he had expressly stated that he had not taken part in any inter-ethnic clashes in 2010 and that he had not been persecuted on political grounds; that he had never participated in any political or social activities; that the general situation in Kyrgyzstan was not such as to prevent all extraditions; and that the applicant's transfer was secured by relevant assurances from the Kyrgyz authorities.

32. On 14 October 2015 an appeal lodged by the applicant was dismissed by a final decision of the Supreme Court of the Russian Federation. The Supreme Court observed that the Kyrgyz authorities had provided relevant assurances regarding the applicant's proper treatment (see paragraph 28 above) and that the lower court had been correct in considering those assurances to be a reliable mechanism against treatment prohibited by international law.

2. *Refugee status proceedings*

33. On 26 May 2014 the applicant applied for refugee status, referring to the risk of persecution in Kyrgyzstan on ethnic grounds.

34. On 23 September 2014 the application was rejected by a final administrative decision of the migration authorities. The applicant challenged that decision in the courts, referring to the fact that he belonged to a vulnerable ethnic group and thus ran a real risk of persecution and ill-treatment.

35. On 8 June 2015 his appeal was dismissed by a final decision of the Moscow City Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. A summary of the domestic law and practice concerning extraditions was previously provided in the case of *Mukhitdinov v. Russia* (no. 20999/14, §§ 29-31, 21 May 2015 with further references).

III. REPORTS ON THE SITUATION IN KYRGYZSTAN

37. The Court has in the past reviewed the relevant information on the situation in Kyrgyzstan, and summaries were provided in *Tadzhibayev v. Russia* (no. 17724/14, §§ 19-26, 1 December 2015, with further references) and *Turgunov v. Russia* (no. 15590/14, § 32, 22 October 2015).

38. In its assessment, the Court will also consider the following information and material submitted by the parties and obtained *proprio motu*. In respect of material obtained *proprio motu*, the Court considers that it would be too narrow an approach under Article 3 of the Convention, in cases concerning aliens facing expulsion or extradition, if the Court, as an international human-rights court, were only to take into account material made available by the parties, without comparing it with material from other reliable and objective sources (see, *mutatis mutandis*, *J.K. and Others v. Sweden* [GC], no. 59166/12, § 90, ECHR 2016).

A. United Nations human-rights bodies

39. Following the accession of Kyrgyzstan to the Optional Protocol to the Convention against Torture (“the OPCAT” hereinafter) in 2008, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment carried out its first regular visit to Kyrgyzstan in September 2012 (SPT, CAT/OP/KGZ/1, 28 February 2014). The report noted the cooperation of the authorities and the unrestricted access to places of detention. It concluded that despite the recurrence of ill-treatment driven by certain structural and systemic problems, certain positive measures had been taken by the authorities to tackle the issue, including the establishment of a national preventive mechanism.

40. Following the visit to Kyrgyzstan on 11-22 September 2018 the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued a report (CAT/OP/KGZ/2). It commended the national preventive mechanism for its will, and its dedication to the goal of preventing torture and other cruel, inhuman or degrading treatment or punishment and noted that the law on the mechanism is rather solid (§ 86). It recommended *inter alia* that the mechanism focus on its internal working methods and practices, following the recommendations of the Subcommittee. Specifically the report mentioned the following:

“ ...

14. The national preventive mechanism ... issues reports and recommendations following each visit, some of which are accessible to the public. An annual report is sent to the parliament by 1 March each year and should be accompanied by the financial statements of the National Centre. In general, there seems to be a lack of interest by the parliament in considering those reports, since the hearing for the 2016 report was largely delayed and the hearing for the 2017 report remained pending at the time of drafting the present report. The recommendations of the national preventive mechanism are generally taken lightly by high-ranking governmental authorities but seem to bear some weight at the operational level.

15. The Subcommittee notes that there are general misconceptions about the role of the mechanism, especially expectations regarding the investigation of cases of torture and ill-treatment. The efficiency of the mechanism tends to be assessed by the number of complaints it receives and the number of criminal cases initiated by the authorities, which is contrary to the spirit of the Optional Protocol and the preventive mandate of the national preventive mechanism envisaged therein.

...

17. The Subcommittee observes that funding for the National Centre and its activities has been sustainable and timely, although further adjustments to the mechanism’s budget would enhance the mechanism’s capacity to better implement its mandate. The National Centre has developed a need for additional staff to cover geographic and thematic areas that are not already covered by its current composition.

18. As a general observation, the Subcommittee believes that the Government of Kyrgyzstan should enhance its efforts in supporting the mandate of the national

preventive mechanism, by first and foremost understanding its mandate as envisaged in the Optional Protocol, and thereafter strengthening financial and strategical support for the mechanism, including by giving visibility to its recommendations and enforcing their implementation...”

41. In April 2015 the UN Human Rights Council adopted the Report of the Working Group on the Universal Periodic Review for Kyrgyzstan (HRC, A/HRC/29/4, 9 April 2015), including a review of the authorities’ actions in combating torture, and inhuman and degrading treatment and punishment.

42. Multiple national delegations in the course of the review noted with approval the special attention given in Kyrgyzstan to the prevention of torture, the ratification of the OPCAT, the establishment of the National Plan to Combat Torture and the National Centre for the Prevention of Torture. The delegations issued a recommendation for an improvement in funding of the national preventive mechanism and further facilitation of its activities. The report also stated:

“69. ... [T]he occurrence of torture in Kyrgyzstan had been [publicly] recognized at all levels since 2010. Consequently, a number of measures had been undertaken to combat torture and ill-treatment since 2010, in particular the inclusion of anti-torture provisions in the Constitution and the adoption of the National Plan to Combat Torture. Monitoring by the Prosecutor’s Office to uncover cases of torture and ill-treatment had been strengthened and the Prosecutor’s Office now conducted systematic and unannounced visits to places of deprivation of liberty. A harsher penalty had been established for torture, which had become a serious crime in law. Methodology and instructions had been developed on how to investigate effectively cases of torture and ill-treatment. Almost all temporary detention sites and investigation cells had been equipped with cameras for internal monitoring.

70. An important means of combating torture was the Memorandum on Cooperation in Protecting Human Rights and Freedoms, signed in 2012 by the Ombudsman, the Procurator-General, the Ministry of Internal Affairs, the Ministry of Health, the Ministry of Justice, the State Penal Correction Service, the Organization for Security and Cooperation in Europe and human rights organizations. The signatories of the memorandum were entitled to carry out joint visits to places of deprivation of liberty throughout the country without prior authorization. The preventive measures had resulted in a decrease in reported cases of torture and ill-treatment in 2013 and in 2014 as compared to previous years.”

43. In 2016-2019 the UN Human Rights Committee considered a number of individual complaints about allegations of torture in 2010-2012 (*Ulan Nazaraliev v. Kyrgyzstan*, CCPR/C/126/D/2697/2015; *Fakhrudin Ashirov v. Kyrgyzstan*, §§ 3.4 and 6.4, CCPR/C/120/D/2435/2014; *Zhakhangir Bazarov v. Kyrgyzstan*, §§ 3.4-5.4, CCPR/C/118/D/2187/2012, *Azimjan Askarov v. Kyrgyzstan*, §§ 3.1, 3.3. and 7.5, CCPR/C/116/D/2231/2012). Having considered these cases, where all material events pre-date 2013, the Human Rights Committee decided, in particular, that there had been violations of the complainants’ rights not to be subjected to torture and to have the relevant allegations effectively

investigated. At the same time, the Committee dismissed as unsubstantiated the complaints concerning alleged targeting and discrimination on the basis of their ethnic origin (*Ashirov, cited above*, §§ 3.4 and 6.4; *Bazarov, cited above*, §§ 3.4-5.4, *Askarov, cited above*, §§ 3.1, 3.3. and 7.5).

44. On 30 May 2018 the Committee on the Elimination of Racial Discrimination issued Concluding observations on the combined eighth to tenth periodic reports of Kyrgyzstan (CERD/C/KGZ/CO/8-10). They stated in particular:

“... ”

17. The Committee is concerned about the prevalence of stereotyping and stigmatization of ethnic minorities, including Uzbeks, Turks, Uighurs and Mugat, and the incidence of the use of hate speech against them in the media and by public and political figures. The Committee is also concerned at the ethnic profiling by law enforcement officers of these communities, in particular of Uzbeks (arts. 2 and 4–6).

...

19. The Committee notes that the State party adopted some measures during the period under review to address inter-ethnic tensions, such as the Policy Framework on Strengthening National Unity and Inter-Ethnic Relations in the Kyrgyz Republic. It notes, however, with concern the persistence of such tensions, notably between the Kyrgyz majority and the Uzbek minority. The Committee is concerned that the Policy Framework focused on creating a national identity that is not explicitly inclusive of all ethnicities and may tend to reignite past conflicts. National identity must be built on recognition of all communities in the nation. The Committee is also concerned at the fact that ethnic minorities are underrepresented in the State Agency for Local Government Affairs and Inter-Ethnic Relations, and at the reported ineffectiveness of the Agency.

...

21. The Committee is concerned that investigations into the human rights violations that occurred during and in the aftermath of the June 2010 ethnic violence in the south of Kyrgyzstan were not effective, and were marred by ethnic bias and lack of respect for fair trial and due process guarantees. The Committee is particularly concerned that, while the majority of victims of human rights violations were of Uzbek origin, most of those who faced criminal prosecutions were also Uzbek. Moreover, according to the information provided during the dialogue, no compensation was provided to Uzbek victims of miscarriages of justice relating to those events. The Committee reiterates its concern about the reported use of torture by law enforcement officials and the reliance on forced confessions in courts, particularly against Uzbeks implicated in the 2010 violence, combined with the State party’s failure to bring the alleged perpetrators to justice and to compensate victims.

...”

B. The European Union

45. The European Union Annual Reports on Human Rights and Democratisation mentioned, until 2014, that ethnic Uzbeks were running a heightened risk of discriminatory and harsh treatment by the Kyrgyz

authorities. However, after 2014 no similar concerns were reported. Between 2016 and 2018 the annual reports mark the overall human-rights situation as stable and indicate consistent positive changes in combating torture (despite certain current challenges). The 2016 and 2017 reports state that “the authorities were endeavouring, including through cooperation with international bodies, to establish mechanisms to prevent torture and other forms of cruel and inhuman treatment” and that “Kyrgyzstan continued its effort to prevent torture and other cruel, inhuman and degrading treatment, including through the work of the National Centre for Prevention of Torture”.

C. International non-governmental human-rights organisations

46. Amnesty International’s 2015/16 report “The State of the World’s Human Rights”, which was mirrored by its 2016/17 report, stated:

“Torture and other ill-treatment, and impunity for these violations, remained commonplace despite the introduction, in late 2014, of a programme of monitoring of places of detention under the National Preventive Mechanism and instructions on how to document torture issued by the Ministry of Health to medical personnel based on the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

...

Kyrgyzstan accepted the recommendations of the [Universal Periodic Review] of Kyrgyzstan ... aimed at combating torture and other ill-treatment. These concerned the investigation of allegations, particularly those by members of ethnic minorities, relating to the June 2010 violence and ensuring that the National Centre for the Prevention of Torture be adequately resourced and remained independent.

...

The NGO Coalition against Torture in Kyrgyzstan documented 79 cases of torture and other ill-treatment in the first half of 2015. A specialist investigation unit created by the Prosecutor General’s Office in June started criminal investigations into three cases of torture. By October [2015], 35 criminal cases in relation to over 80 law enforcement officers accused of acts of torture were under consideration by the courts. However, only in four cases dating back to 2011 did courts hand down a guilty verdict.

...

[In relation to June 2010 events], ethnic Uzbeks have been targeted disproportionately for prosecution.”

At the same time Amnesty International’s 2017/18 report did not include any reporting relevant to the matter.

47. Human Rights Watch’s “World Report 2016”, which was mirrored by its 2017 report, stated:

“Unaddressed human rights problems and new setbacks marred Kyrgyzstan’s rights record in 2015. Authorities targeted and harassed some human rights groups,

journalists, and lawyers. Impunity for ill-treatment and torture persist, and there is still no justice for victims of interethnic violence in 2010.

...

The authorities continue to deny justice to victims of the June 2010 interethnic violence in southern Kyrgyzstan ... In April, Mahamad Bizurukov, an ethnic Uzbek on trial since 2011 in connection with the 2010 violence, was sentenced to 13 years' imprisonment for murder. He was released in August on parole ...

...

On the fifth anniversary of the violence in June, the OSCE high commissioner on national minorities noted that 'a sense of insecurity is still prevalent among the ethnic Uzbek community' and 'little progress' has been made in investigating cases related to the June 2010 violence.

...

Authorities acknowledge that torture is a problem and, in May [2015], created a specialized investigative unit in the Prosecutor General's Office. Nevertheless, the National Center for the Prevention of Torture, an independent, specialized anti-torture body, reported that 'measures are not being taken to prevent and eradicate torture'.

...

Human rights groups and lawyers say that criminal investigations into allegations of ill-treatment and torture are rare, often delayed, and ineffective, as are trials ... According to information provided by the Prosecutor General's Office to the Coalition Against Torture, a group of NGOs working on torture prevention, [the] authorities declined to open criminal investigations into 146 of 180 registered complaints of torture between January and June."

The World Reports for 2018 and 2019, however, marked the progress that had been made with the human-rights situation in Kyrgyzstan, while noting the following challenges:

World Report 2018

"Eight years after the June 2010 interethnic violence, victims continued to wait for justice. Ethnic Uzbeks were disproportionately affected by the violence, which left more than 400 dead and destroyed thousands of homes, and was followed by numerous cases of arbitrary detention, ill-treatment, and torture. Authorities did not review torture-tainted convictions delivered in the aftermath of the June 2010 events.

...

In its May 2018 concluding observations, the UN Committee on the Elimination of Racial Discrimination (CERD) noted with concern 'the persistence of ... tensions, notably between the Kyrgyz majority and the Uzbek minority' in Kyrgyzstan, and cautioned that the government's official inter-ethnic relations policy 'focused on creating a national identity that is not explicitly inclusive of all ethnicities and may tend to reignite past conflicts.'

...

Impunity for ill-treatment and torture remains the norm, with criminal cases into allegations of ill-treatment or torture rare, and investigations and trials delayed or ineffective. On June 25, at national anti-torture consultations hosted by the National

Center for the Prevention of Torture, on the occasion of the International Day to Support Victims of Torture, the prosecutor general's office reported that it had registered 418 cases of torture in 2017, and brought charges of 'torture' against 15 law enforcement officers.

After a visit to Kyrgyzstan in September, the UN Subcommittee on Prevention of Torture found that most of its recommendations from 2012 had yet to be implemented and that safeguards against torture 'are not protecting [apprehended people] appropriately ...'"

World Report 2019

"Impunity for torture remains the norm, and investigations into ill-treatment and torture allegations remain rare, delayed, and ineffective. Kyrgyzstan's Coalition Against Torture, a group of 16 nongovernmental organizations working on torture prevention, reported in February that the prosecutor's office had registered 435 complaints of ill-treatment in 2016, but declined to open investigations into 400 cases. Sardar Bagishbekov, a representative of the coalition, noted that, on average, the prosecutor's office declines to investigate torture allegations in over 90 percent of cases ..."

48. The International Partnership for Human Rights and the Helsinki Foundation for Human Rights, in their statement on "Key concerns and recommendations on torture and ill-treatment in Kyrgyzstan" of April 2016, stated:

"According to the Prosecutor General's Office, 265, 220 and 199 complaints involving allegations of torture or other ill-treatment were recorded in 2013, 2014 and 2015 respectively. A total of 18 (in 2013), 16 (in 2014) and 62 (in 2015) criminal proceedings were opened ... In very few cases were the perpetrators adequately punished. In 2013 and 2014 only five police officers were sentenced to prison terms. One of them was sentenced to four years' imprisonment while the others were given suspended sentences.

...

In a positive move intended to address ongoing impunity the Prosecutor General of Kyrgyzstan set up the Special Prosecutors Unit (SPU) in May 2015, which is tasked with coordinating and overseeing the work of all prosecutors who conduct torture investigations in Kyrgyzstan. The SPU is also authorized to conduct preliminary inquiries, open criminal cases and refer cases to local prosecutors for investigation. While the criminal cases opened into allegations of torture/ill-treatment in 2013 and 2014 coincided with the cases that the NGO Coalition against Torture actively supported, the higher proportion of criminal procedures instigated in 2015 is partly due to the SPU's work."

D. National and regional human rights organisations

49. In their submission "Torture and ill-treatment in Kazakhstan, Kyrgyzstan and Tajikistan" (OSCE Human Dimension Implementation Meeting, 23 September 2016), the NGO Coalitions against Torture stated:

“Torture and ill-treatment ... continue to be reported from ... Kyrgyzstan ... Since January 2016 the [NGO Coalition against Torture] registered ... 86 [new cases] in Kyrgyzstan ...

...

At the same time, each of the three Central Asian countries has taken some steps in the right direction in recent years. For example, Kazakhstan and Kyrgyzstan ratified the Optional Protocol to the Convention Against Torture (OPCAT) and set up national preventive mechanisms (NPMs) ... the Ministries of Health in Kyrgyzstan and Tajikistan obliged medical personnel to examine detainees in line with the standards of the United Nations (UN) Istanbul Protocol ...

...

While courts in Kyrgyzstan have ... ruled in favour of providing compensation to victims in several cases, to date none of the victims has actually received any payment. This includes several cases involving victims of torture from Kyrgyzstan where the UN Human Rights Committee decided under its individual complaints procedure that compensation should be provided ...”

50. In 2015, the report “Torture in Kyrgyzstan: Current concerns and recommendations” was issued jointly by the NGO Coalition against Torture in Kyrgyzstan (consisting of nineteen non-governmental organisations), the Helsinki Foundation for Human Rights (Poland), the Coalitions against Torture in Kazakhstan and Tajikistan, International Partnership for Human Rights (Belgium) and the World Organisation against Torture. The report provided a comprehensive overview of the situation in Kyrgyzstan, highlighted the progress achieved by the authorities, identified the existing points of concern and put forward a set of relevant recommendations.

51. The above-mentioned report stressed that in recent years the authorities of Kyrgyzstan had taken several concrete steps to address the persistence of torture and other forms of ill-treatment, most notably by (1) establishing a national preventive mechanism (see paragraph 52 below) and endowing it with the necessary powers to carry out its functions, and (2) introducing some positive legislative changes, including giving defence lawyers easier access to detained individuals, ensuring that detainees received a medical examination in compliance with the most recent international standards, and increasing criminal liability for perpetrators. However, the authors of the report stated that those efforts had not led to the complete eradication of torture, which was still being used by the law-enforcement agencies and in multiple instances with the impunity of the perpetrators.

E. National Centre for the Prevention of Torture

52. The National Centre for the Prevention of Torture (“the NPM”) is an independent body established by an act of parliament of Kyrgyzstan in 2012, funded by the State and supervised by the Coordinating Council,

which comprises the Ombudsman, two members of parliament and eight representatives of human-rights NGOs (including representatives of ethnic minorities). Since 2014 it has been fully operational and functions as a national preventive mechanism within the meaning of the OPCAT. As such, the NPM assists the anti-torture efforts of the Kyrgyz authorities, acts as a liaison between international and non-governmental organisations, issues recommendations, makes unannounced visits to places of detention, and informs prosecution authorities about all identified cases of ill-treatment. The NPM issues annual reports, which are around one hundred pages long, containing detailed information of the yearly activities. Reports are submitted for review to and endorsed by the Kyrgyz Parliament.

53. According to the annual reports of 2015 to 2018, the NPM conducted between 700 and 1,100 preventive monitoring visits per year. The visits were carried out across the whole country and covered between 500 and 900 institutions and facilities, ranging from temporary detention facilities in police stations to private orphanages. Each visit necessarily included individual interviews with persons detained in a specific facility, and the number of interviews rose from 1,283 in 2015 to 1,829 in 2018. During the visits the NPM staff examined documents justifying detention, medical records and records of sanctions imposed by the facility management. After each notification concerning alleged ill-treatment (via a hotline, from an NGO, or following the death of a detainee), the NPM visited the relevant facilities, issued recommendations and made follow-up visits monitoring the progress achieved. The reports also include information on the number of torture and ill-treatment complaints received (around 120 in 2018), statistics on the criminal inquiries into those cases, as well as individual tracking of open criminal investigations.

54. Lastly, the reports list specific recommendations for the Parliament, the Government, the Human Rights Coordination Council, the Supreme Court, the Prosecutor General's Office, the Ministries of the Interior and of Health, and the State Service for the Execution of Sentences, and for monitoring the implementation of investigations.

IV. OTHER RELEVANT INFORMATION

55. The Government provided the Court with information on the functioning of the mechanism set up to monitor the assurances provided by the Kyrgyz authorities. They stated that the mechanism had been created through cooperation between the Prosecutor General's Office of the Russian Federation, the Ministry of Foreign Affairs of the Russian Federation, Russian diplomatic staff in Kyrgyzstan and the Prosecutor General's Office of the Kyrgyz Republic. It appears from the available material that the creation of the mechanism was triggered by the Court's conclusions in a number of cases concerning the expulsion of ethnic Uzbeks to Kyrgyzstan,

specifically concerning (1) the risk of ill-treatment faced by the Uzbeks as a vulnerable ethnic minority; (2) the adequacy of the assurances provided by the Kyrgyz authorities; and (3) the absence of a monitoring mechanism for those assurances. According to the Government, the Russian authorities actively cooperate with their Kyrgyz counterparts. In 2017-18 the Russian and the Kyrgyz prosecution and diplomatic authorities had addressed the issues during at least five relevant meetings.

56. The Russian Government stated that the Kyrgyz authorities provided, through the cooperation mechanism, statistical data on the prosecution of extradited individuals. According to those data, in 2012-13 out of 130 extradited individuals of all ethnicities, sixty-nine had been convicted (twenty of whom had been released on parole). In respect of the remainder, the criminal proceedings had been discontinued on various grounds.

57. In 2014-15 the Prosecutor General's Office of the Russian Federation sent at least five letters to the Representative of the Russian Federation to the European Court of Human Rights providing updates on the functioning of the above-mentioned mechanism.

58. According to the information in those letters, the progress in criminal investigations and/or trials of extradited persons had been monitored in at least twelve cases. Russian diplomatic staff visited three pre-trial detention facilities in Osh on various dates in 2014-15 and talked to at least eight previously extradited persons (six of whom were ethnic Uzbeks). On each occasion those individuals were asked about the presence or absence of psychological duress or ill-treatment, the conditions of their detention, the adequacy of medical treatment, as well as whether their defence and other procedural rights had been respected. All of them were found to be satisfied with the treatment by the Kyrgyz authorities. On one occasion Russian diplomatic staff informed the management of a detention facility about the need to improve medical treatment provided to a detainee. Furthermore, in 2015-17 sixteen previously extradited persons were visited in various penal facilities by Russian diplomatic staff. In 2017 eighteen previously extradited persons were released from detention on various grounds.

59. The information obtained through the above-mentioned mechanism also included specific examples of proceedings against four persons (three of whom were ethnic Uzbeks), who had been extradited prior to the creation of the mechanism. They had been either released on parole or granted an amnesty following their transfer to Kyrgyzstan; in one case, the criminal prosecution had been discontinued.

60. The monitoring mechanism extends to all persons extradited to Kyrgyzstan, irrespective of whether an application has been submitted to the Court or whether an interim measure has been indicated under Rule 39 of the Rules of Court.

THE LAW

I. JOINDER OF THE APPLICATIONS AND ISSUE BEFORE THE COURT

61. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

62. The applicants complained that in the event of their removal to Kyrgyzstan they would face a real risk of treatment contrary to Article 3 of Convention because they belonged to the Uzbek ethnic minority. Article 3 of the Convention, reads as follows:

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

63. The Government contested that argument.

A. Admissibility

64. The Court notes that the applicants' complaints raised under Article 3 of the Convention as set out above are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) Observations of the Russian Government

65. The Government submitted that before taking the extradition decisions, the competent domestic authorities had satisfied themselves – mostly with regard to the assurances from the Kyrgyz authorities – that the applicants had not been prosecuted on political or discriminatory grounds and would not face a risk of ill-treatment, and that adequate legal and medical assistance was available.

66. Among the relevant factors substantiating the validity of the assurances provided by the Kyrgyz authorities, the Government referred to: (a) the significant change of situation since the ethnic clashes of June 2010; (b) the participation of Kyrgyzstan in various UN torture-prevention

mechanisms and its cooperation with international bodies; (c) constitutional guarantees of equality and prohibition of ill-treatment; (d) the reclassification of torture and cruel, inhuman or degrading treatment as criminal offences; (e) the establishment of the National Centre for the Prevention of Torture; and (f) the consistent public commitment of Kyrgyz officials to respect for human rights.

67. The Government highlighted that in 2008 Kyrgyzstan had ratified the Optional Protocol to the UN Convention Against Torture, which provided for a system of regular visits to places of detention by international experts. They also mentioned the proceedings of the Independent International Commission of Inquiry into the events in southern Kyrgyzstan in June 2010. They submitted that although international reports voiced serious concerns as to respect for human rights in Kyrgyzstan, those reports were based on information received at the time of the ethnic clashes. At the present, many years after the events, the human rights situation in the country did not call for a total ban on extraditions.

68. In their observations the Government informed the Court that the Prosecutor General's Office and the Ministry of Foreign Affairs had put in place a diplomatic visits mechanism for monitoring respect for human rights after extradition. The Kyrgyz authorities had provided additional assurances, securing access by Russian diplomatic staff to the places of detention in which extradited applicants were being held.

69. Lastly, in their submissions in Mr T.K.'s case, the Government stressed that the guarantees given by the Kyrgyz authorities were not mere "assurances", but confirmation of the obligations undertaken by Kyrgyzstan under various international instruments. Those assurances had been given by the Prosecutor General's Office, a body that supervised law enforcement. The Government also stressed that the Government of Russia could not be reasonably expected or required to exercise any kind of "control" over the observance by Kyrgyzstan of such guarantees, as it would be contrary to the basic principles of international law prohibiting the interference in domestic affairs of sovereign States. On the other hand, "monitoring" was possible and the evidence presented to the Court showed that it had been conducted effectively (see paragraphs 55-59 above).

(b) The applicants' observations

70. Mr S.R. (application no. 49975/15) stated in his observations that, as an ethnic Uzbek, he faced a real risk of ill-treatment at the hands of the Kyrgyz authorities. Contrary to the Government's allegations, there was nothing to indicate any change in the situation in Kyrgyzstan, and all of his claims before the Russian authorities had been based on recent material. He doubted the validity of the information provided by the Offices of the Prosecutors General of Russia and of Kyrgyzstan, as it had not been verified by independent and reliable international sources. In his further submissions

of 9 February 2018 he maintained that he continued to face risks in the event of removal to his country of origin. In support of his argument he referred to the above-mentioned reports of Amnesty International and Human Rights Watch, as well as to the US Department of State Annual Report of 2016 and this Court's case-law. The applicant further submitted a letter of 1 February 2018 by the UNHCR Representative in Russia, which maintained, with reference almost exclusively to the international reports from 2012-13, that the applicant might face a risk of ill-treatment and denial of justice on the basis of his ethnic origin. Lastly, the applicant provided examples of the Russian judicial and administrative practice, which, relying on this Court's case-law, stated that ethnic Uzbeks might face a risk of ill-treatment if they were removed to Kyrgyzstan.

71. Mr S.R. further submitted that the Russian authorities had failed to adequately assess his consistent allegations regarding the risk of ill-treatment, despite the evidence adduced from international sources. In his opinion, they had not scrutinised the reliability of the assurances provided by the Kyrgyz authorities, despite previous pronouncements in the Court's case-law. He further argued that international organisations had not yet reported on the functioning of that mechanism and that, in his opinion, the Kyrgyz legislation did not provide a sufficient basis for diplomatic visits. Repeatedly referring to examples of the Russian judicial practice based on this Court's case-law, the applicant stressed that there were doubts about the effectiveness of the assurances.

72. Mr T.K. (application no. 28492/15) submitted essentially the same observations as Mr S.R. He also stressed that the assurances provided by the Kyrgyz authorities could not be considered reliable, since they had been obtained from the Prosecutor General's Office of Kyrgyzstan, which, in the applicant's opinion, was not an independent body. Referring to various judgments of the Court, he highlighted the alleged deficiencies of the assurances and the monitoring mechanism that had been set up.

(c) Third-party observations

73. The International Commission of Jurists ("the ICJ"), in their third-party observations in the case of the second applicant, addressed, *inter alia*, the issues of (a) the judicial review of extradition requests in Russia; (b) the use of diplomatic assurances in cases of extradition to CIS States; and (c) the existence of a risk of ill-treatment and torture for suspects extradited to Kyrgyzstan.

74. The ICJ submitted that the judicial review of extradition requests in Russia was usually limited to an assessment of compliance with applicable international and domestic law; the courts neither reviewed evidence nor ordered judicial investigative measures, but rather deferred to the decision of the Prosecutor General's Office on the issue of the risks and routinely

relied on diplomatic assurances made by the requesting State, without scrutinising their adequacy.

75. The ICJ submitted, with reference to the practice of the UN treaty bodies, that it could not be presumed that diplomatic assurances made permissible transfers that would otherwise be prohibited. It observed that the use of diplomatic assurances had become common among States in the CIS region, in particular as regards ill-treatment of certain categories of persons accused of serious offences in Central Asian States. Although there was no official format for diplomatic assurances in the region, a mutually accepted and somewhat uniform format appeared to exist. The assurances often contained guarantees against the risk of ill-treatment, securing fair trial rights, and declarations on the absence of political grounds for prosecution. Sometimes they provided for a monitoring mechanism, but in practice it was usually limited to monitoring by diplomatic staff and did not provide for any independent system.

76. The ICJ referred to the concluding observations and individual decisions of the UN treaty bodies, stating that the Kyrgyz authorities had failed to respect the prohibition on torture or other ill-treatment with regard to persons of Uzbek ethnic origin charged with serious offences allegedly committed in the course of the violence of June 2010. They drew the Court's attention to a recent decision of the UN Human Rights Committee in the case of *Azimjan Askarov v. Kyrgyzstan* (CCPR, CCPR/C/116/D/2231/2012, 11 May 2016), which established a violation of the prohibition on torture by failing to properly investigate in 2010-13 the alleged ill-treatment in 2010, as well as violations of the right to a fair trial, right to an effective remedy, and right to liberty. In the opinion of the third party, that demonstrated the gravity of the human-rights violations against ethnic Uzbek defendants charged with offences related to the June 2010 events.

2. General principles

77. The relevant general principles concerning the application of Article 3 have been summarised recently by the Court in the judgments *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, ECHR 2016), and *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, ECHR 2016); and, in the context of extraditions from Russia to Central Asian States, in *Mamazhonov v. Russia* (no.17239/13, §§ 127-35, 23 October 2014).

3. Application of those principles to the present case

78. The Court reiterates at the outset that Contracting States have the right, as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*,

28 May 1985, § 67, Series A no. 94). However, it is the Court's settled case-law that expulsion or extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3 (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

(a) General situation in Kyrgyzstan

79. The Court must start its inquiry by examining the general situation in Kyrgyzstan, having regard to the complaints submitted by the applicants and related grounds for believing that they face a real risk of being subjected to treatment in breach of Article 3 of the Convention (see, *mutatis mutandis*, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). However, a general problem concerning human-rights observance in a particular country cannot alone serve as a basis for refusal of extradition and even a general situation of violence will not normally in itself entail a violation of Article 3 in the event of removal to the country in question (see *H.L.R. v. France*, 29 April 1997, § 41, *Reports of Judgments and Decisions* 1997-III), save "in the most extreme cases" (see *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 216 and 218, 28 June 2011).

80. Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence, with reference to the individual circumstances substantiating his fears of ill-treatment (see *Dzhaksybergenov v. Ukraine*, no. 12343/10, § 37, 10 February 2011). The Court has repeatedly made it clear that a general situation of violence would be of sufficient intensity to create such a risk only "in the most extreme cases" where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (see, among other authorities, *Sufi and Elmi*, cited above, §§ 216 and 218, and *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 108, 15 October 2015).

81. In assessing whether there is a risk of ill-treatment in the requesting country, the Court assesses the general situation in that country, taking into account any indications of improvement or worsening of the human-rights situation in general or in respect of a particular group or area that might be relevant to the applicant's personal circumstances (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 337, ECHR 2005-III). Previously the Court has examined the way in which the situation in certain countries had developed and reassessed its position regarding the existence of general or individual risks (see, for example, *Dzhaksybergenov*, cited above, §§ 36-38).

82. The Court is aware of various reports on the situation concerning protection of detained individuals against torture and ill-treatment in Kyrgyzstan (see paragraphs 39-54 above). Despite the common accord of the UN human-rights bodies, international, regional, and national NGOs, and the National Centre for the Prevention of Torture that instances of ill-treatment remain a recurrent issue, there appears to be a consensus that since 2010 many significant steps have been taken to eradicate it (see paragraphs 55-58, 61 and 65 above). Among those steps are the Kyrgyz authorities' public acknowledgment of the issue and their commitment to resolve it; establishment of the NPM, an independent monitoring and prevention body created in compliance with international treaties, and endowed with the necessary powers and funding; legislative changes ensuring that defence lawyers have easier access to detained individuals; medical examination of detainees in compliance with the most recent international standards; and increased criminal liability for perpetrators.

83. In the present case, while it is aware of reports that incidents of ill-treatment persist, the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if the applicants were returned to Kyrgyzstan (see, similarly, *F.G. v. Sweden* [GC], cited above, § 130). On the contrary, it is the consensual position of the available international reports that the Kyrgyz authorities are taking specific and practical steps to eradicate torture and that the situation in this regard appears to be improving.

84. The Court is mindful that in certain contexts it cannot be excluded that if an individual belongs to a certain targeted group, this provides substantial grounds for believing that he or she faces a real risk of treatment contrary to Article 3 of the Convention (see, for example, *S.H. v. the United Kingdom*, no. 19956/06, §§ 69-71, 15 June 2010, or *Mamazhonov*, cited above, § 141).

85. In a number of judgments concerning extradition to Kyrgyzstan of ethnic Uzbeks charged with crimes allegedly committed during the 2010 events, the Court similarly established that the applicants faced a real risk of ill-treatment in connection with their ethnic origin (see, for example, *Makhmudzhan Ergashev v. Russia*, no. 49747/11, §§ 69-73, 16 October 2012; *Gayratbek Saliyev v. Russia*, no. 39093/13, §§ 61-62, 17 April 2014; and *Turgunov v. Russia*, no. 15590/14, § 32, 22 October 2015). In this regard, the Court once again reiterates that it will take into account in its assessment any indications of improvement or worsening of the human-rights situation in general or in respect of a particular group or area that might be relevant to the applicant's personal circumstances (see *Shamayev and Others*, cited above, § 337).

86. The Court notes that previously it has not considered that the general situation in Kyrgyzstan was such as to create a real risk of ill-treatment for individuals of Kyrgyz or other ethnic origin. Nor are such generalised risks

established in the present judgment. In respect of ethnic Uzbeks, the Court's conclusions regarding specific risks of treatment contrary to Article 3 of the Convention were based on the international reports prepared in the wake of the 2010 events. Similarly, the third-party intervener in the present case and the UN Human Rights Committee decision in the case of *Azimjan Askarov v. Kyrgyzstan* also rely mostly on the information available in 2010-13.

87. Turning to the recently available reports dealing with the situation in Kyrgyzstan in 2015-19 (see paragraphs 39-54 above), the Court emphasises that they do not find that ethnic Uzbeks constitute a vulnerable group facing a specific targeted risk of ill-treatment. In this regard, the Court attaches particular weight to the fact that no such risks were established by national and regional human-rights organisations or the NPM, which are staffed with independent experts and deal exclusively with reporting and combating torture in the region and/or in the country (see paragraphs 49-54 above). It therefore appears that the positive steps taken by the Kyrgyz authorities, including setting up of the NPM, have resulted in a significant improvement in terms of relevant ethnic-based risks.

88. Accordingly, the Court concludes that ethnic Uzbeks facing extradition to Kyrgyzstan no longer constitute a vulnerable group running a real risk of ill-treatment solely in connection with their ethnic origin. The Court reiterates the conclusion that in the light of the available information, the general situation in Kyrgyzstan is not such as to show, on its own, that there would be a violation of the Convention in the event of the applicants' return.

(b) The particular circumstances of the applicants' situation

89. Having regard to the above conclusions regarding the general situation in Kyrgyzstan, the Court will proceed to ascertain whether the applicants' personal situation is such that their return would contravene Article 3 of the Convention.

i. The applicants' claims before the domestic authorities

90. The Court observes that the applicants in the present cases consistently and specifically argued that they ran a heightened risk of ill-treatment in Kyrgyzstan because, as ethnic Uzbeks, they belonged to a vulnerable ethnic group. In support of their allegations they referred to international reports and the case-law of this Court. Despite the fact that those allegations are of a rather general nature and largely devoid of reference to the applicants' individual circumstances, the claims were considered by the domestic authorities, notably the courts, to be worthy of close consideration on the merits. In this connection the Court reiterates that the domestic courts, as a general rule, are best placed to assess evidence presented to them (see *F.G. v. Sweden*, cited above, § 118, with further references).

ii. Assessment of claims by the Russian authorities

91. The Court must also examine whether the authorities discharged their duty to assess the applicants' claims adequately through reliance on sufficient relevant material (see *F.G. v. Sweden*, cited above, §§ 119-27).

92. The Court reiterates that with regard to the assessment of evidence, it has been established in the case-law that the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time (see *J.K. and Others*, cited above, § 87 with further references).

α. Assessment of the individual risks to the applicants

93. Turning to the present cases, the Court observes that the applicants were charged in Kyrgyzstan with aggravated misappropriation (the first applicant) and several counts of aggravated robbery, destruction of property and murder (the second applicant). These charges were of common criminal nature and were not *prima facie* related to the applicants' Uzbek ethnic origin or political persecution on that ground. Their claims of a real risk of ill-treatment on the basis of their ethnic origin were assessed and dismissed by the Russian courts and by the prosecution and migration authorities in the relevant proceedings. Acknowledging the existence of international reports expressing concerns about the human rights situation in Kyrgyzstan, the Russian courts, referring, *inter alia*, to the Court's practice, maintained that the general situation in the country did not as such create a real risk of treatment contrary to Article 3 of the Convention and that the applicants were required to prove the existence of such a real risk with regard to their personal circumstances.

94. In both cases, the domestic courts found that the applicants had failed to meet the required evidentiary standard and had essentially relied only on their ethnic origin and a characterisation of the general human rights situation in Kyrgyzstan. The courts referred to the assurances given by the Kyrgyz authorities as an overall factor capable of mitigating the possible risks of ill-treatment in connection with the applicants' ethnic origin (see paragraphs 20 and 32 above). Beyond those general considerations, in their assessment of the existence of real individualised risks, the courts relied on the applicants' personal circumstances.

95. In respect of the first applicant the courts considered the possibility of monitoring by Russian diplomatic staff, the fact that certain progress had been made in respect of human rights in Kyrgyzstan, the refusal of his asylum application by the migration authorities, the financial nature of the crime with which he had been charged and the fact that the alleged crime pre-dated the 2010 events (see paragraphs 19-20 above). In respect of the second applicant, his claims were weighed against the fact that he had travelled several times from Russia to Kyrgyzstan in 2011-14 without any hindrance; that in his statements to the migration authorities he had

expressly stated that he had not taken part in any inter-ethnic clashes in 2010 and that he had not been persecuted on political grounds; that he had never participated in any political or social movement; and the efficiency of the monitoring mechanism (see paragraphs 31-32 above). It appears that the Russian courts considered significant that the applicants had been charged with common crimes, unrelated to their ethnicity, that their claims had had certain inconsistencies and there had been no evidence of any ulterior political motives behind their prosecution in Kyrgyzstan.

96. Having regard to the reasoning provided by the domestic courts, the Court is satisfied that the assessment of the claims of a real risk of ill-treatment in connection with the applicants' ethnic origin was based not only on the general reporting on the human-rights situation in Kyrgyzstan, but also on the applicants' individual circumstances. The Russian courts having examined the particulars of the applicants' situations found no proof that their ethnic origin alone could expose them to the risk of treatment contrary to Article 3 of the Convention. In absence of any further individual claims their allegations were dismissed.

β. Significance of the assurances provided by the Kyrgyz authorities

97. The above finding that the domestic courts assessed both the general situation in Kyrgyzstan and the applicants' individual circumstances through reliance on sufficient relevant material is in itself determinative for finding that they complied with the duty to adequately assess the claims of a real risk of ill-treatment.

98. However, it must be noted that the domestic courts, in analysing the risk of ill-treatment in Kyrgyzstan, attached significant weight to the assurances provided by the authorities of the requesting State. In their opinion the assurances, complemented by the existing monitoring mechanism consisting of visits by Russian diplomatic staff, mitigated individualised risks, if any. Accordingly, the Court finds it instructive to examine the significance of the assurances in consideration of the applicants' cases by the Russian courts.

99. In this regard, the Court stresses that assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment (see *Saadi*, cited above, § 148). While in assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human-rights situation in the receiving State excludes accepting any assurances whatsoever, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 188, 17 January 2012).

100. Generally, the Court will assess first the quality of assurances given and, secondly, whether, in the light of the receiving State's practices, they can be relied upon. In its analysis the Court has previously had regard to various factors, including among many others the following: (a) whether the assurances are specific or are general and vague; (b) who has given the assurances and whether that person can bind the receiving State; (c) if the assurances have been issued by the central Government of the receiving State, whether local authorities can be expected to abide by them; (d) the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances, (e) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers; (f) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible; and (g) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (see *Othman (Abu Qatada)*, cited above, § 189, with further references).

101. However, the Court has never considered that any of the above, or other factors taken alone or in combination, are in themselves required or sufficient for a conclusion on the quality or reliability of assurances. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Saadi*, cited above, § 148).

102. The Court notes that the relevant assurances were given by the Prosecutor General of the Kyrgyz Republic. They relate to matters within the competence of the prosecution authorities and appear to be formally binding on them. There is nothing in the material available to the Court that provides reasonable grounds to conclude that the local authorities will fail to abide by them in practice.

103. The Court is mindful that the initial assurances provided by the Kyrgyz authorities in the applicants' cases were drafted in line with the customary format and are rather general (see paragraphs 13 and 28 above). However, that in itself does not attest to their inadequacy, since in any event they include the core undertakings of protection against torture, ensuring access to a lawyer and respect for defence rights. Subsequently, the assurances were strengthened by explicit guarantees that Russian diplomatic staff would carry out monitoring visits to places of detention after the transfer (*ibid.*).

104. The Court considers important the information provided by the Government on the functioning of the mechanism for visits by Russian diplomatic staff to the detention centres holding the extradited persons. This

information addresses the concerns about the effectiveness of that arrangement expressed by the Court in a number of previous judgments (see, for example, *Kadirzhanov and Mamashev v. Russia*, nos. 42351/13 and 47823/13, §§ 96-97, 17 July 2014, and *Khamrakulov v. Russia*, no. 68894/13, § 69, 16 April 2015). According to the Russian Government in response to the problems identified by this Court, the monitoring mechanism was created through cooperation between the Prosecutor General's Office of the Russian Federation, the Ministry of Foreign Affairs of the Russian Federation, Russian diplomatic staff in Kyrgyzstan and the Prosecutor General's Office of the Kyrgyz Republic. Information exchanged through the mechanism has revealed that in up to 45% of cases, the criminal proceedings against extradited individuals of all ethnicities have been discontinued on various grounds. Individuals whose criminal prosecution had been pursued by the authorities in the south of the country were visited by Russian diplomatic staff, who questioned them about possible duress, ill-treatment and conditions of detention, as well as respect for their defence rights. The individuals visited appeared to have been satisfied with their treatment by the Kyrgyz authorities, while in one case the Russian diplomats recommended that the medical assistance provided to the detainee be improved (see paragraphs 55-59 above).

105. The domestic courts in the relevant proceedings, having considered the applicants' arguments, gave due consideration to the available assurances as well as the existing monitoring mechanism, and satisfied themselves as to their quality and reliability. The Court notes that the sceptical assessment of the assurances and the monitoring mechanism made by the applicants and the third party rests on generalised claims without providing specific examples of instances where the existing arrangements had allegedly failed.

106. Having regard to the above evidence, the Court finds that the monitoring mechanism created through the cooperation of the Russian and Kyrgyz authorities provides, in principle, an avenue capable of monitoring the compliance of the requesting State with the assurances provided. In this connection, the Court notes that there is nothing in the present cases giving reason to doubt that, in the event of the applicants' removal to Kyrgyzstan, they would benefit from the monitoring mechanism.

107. In reaching the above conclusion, it is relevant that the available evidence indicates that the applicants would further benefit from the protection and specialised expertise of the National Centre for the Prevention of Torture (see paragraphs 52-54 above). The Centre, which conducts between 700 and 1,100 monitoring visits and more than 1,200 interviews a year, is, in principle, well equipped to deal with allegations of torture. According to independent sources, it has also demonstrated an ability to react rapidly and appropriately to specific complaints.

108. Therefore, the Court, giving due consideration to the applicants' individual circumstances and the prevailing situation in Kyrgyzstan, finds no reason to disagree with the Russian courts that the relevant assurances, in their practical application, are capable of providing a sufficient guarantee that the applicants will be protected against the risk of ill-treatment.

iii. Conclusion

109. Having regard to its findings as outlined above, the Court concludes that the Russian courts complied with their duty to adequately assess the claims of a real risk of ill-treatment through reliance on sufficient relevant material. The applicants' allegations received attentive consideration and were reasonably dismissed with reference to the absence of specific individualised risks, as well as to the sufficiency of the assurances provided by the Kyrgyz authorities.

110. However, the Court reiterates that it is assessing the applicants' situation from the present-day point of view, so the main question is whether the applicants would still face a real risk of persecution for the above-mentioned reasons if removed to Kyrgyzstan (see *J.K. and Others*, cited above, § 113 with further reference). Considering the above conclusion that neither the general situation in Kyrgyzstan, nor the fact that an individual belonged to the Uzbek ethnic minority creates a real risk of ill-treatment, the Court has no grounds to doubt the position of the Russian courts and sees no reason to conduct any further independent assessment.

111. Accordingly, having regard to all the available material, the arguments presented by the parties and the above conclusions, the Court finds that there would be no violation of Article 3 of the Convention in the event of the applicants' extradition to Kyrgyzstan.

III. RULE 39 OF THE RULES OF COURT

112. 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.

113. The Court considers that the indications 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

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the applications admissible;
3. *Holds*, by five votes to two, that there would be no violation of Article 3 of the Convention in the event of the applicants' extradition to Kyrgyzstan;
4. *Decides*, by six votes to one, 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 or otherwise involuntarily remove the applicants from Russia to Kyrgyzstan until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 19 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Keller and Elósegui are annexed to this judgment.

P.L.
J.S.P.

PARTLY DISSENTING OPINION OF JUDGE KELLER

Introduction

1. With all due respect to my colleagues, I must dissent from the majority's untenable conclusion as to Article 3 of the Convention.

2. Moreover, I am writing this opinion to highlight the serious questions concerning the application of the Convention that the majority's approach raises. What evidence is sufficient to justify a reassessment of the Court's findings in a well-established line of cases concerning the human-rights situation in a State that is not a party to the Convention? And even if that evidential standard is met, is the reassessment to be done by a Chamber, or should this in principle be left to the Grand Chamber?

3. These questions merit the attention of the Grand Chamber. By maintaining the interim measure in this case, the Chamber has given the applicants a precious opportunity to request referral under Article 43 § 1 of the Convention. For the reasons set out at the end of this opinion, I concur in this invocation of Rule 39 of the Rules of Court. I wish to emphasise that this decision means that the Russian Government cannot yet remove the applicants involuntarily to Kyrgyzstan without violating the Convention.

The majority's mistaken approach

4. The Court has repeatedly held that the removal of ethnic Uzbeks from Russia to Kyrgyzstan would violate Article 3 (see, for example, *U.N. v. Russia*, no. 14348/15, 26 July 2016; *R. v. Russia*, no. 11916/15, 26 January 2016; *Tadzhibayev v. Russia*, no. 17724/14, 1 December 2015; *Turgunov v. Russia*, no. 15590/14, 22 October 2015; *Nabid Abdullayev v. Russia*, no. 8474/14, 15 October 2015; *Khamrakulov v. Russia*, no. 68894/13, 16 April 2015; *Mamadaliyev v. Russia*, no. 5614/13, 24 July 2014; *Kadirzhanov and Mamashev v. Russia*, nos. 42351/13 and 47823/13, 17 July 2014; *Gayratbek Saliyev v. Russia*, no. 39093/13, 17 April 2014; and *Makhmudzhan Ergashev v. Russia*, no. 49747/11, 16 October 2012). The applicants, as ethnic Uzbeks, relied on this case-law. Yet the majority conclude that it is of no avail to them.

5. What has inspired such a startling departure? First, the majority consider that the risk of ill-treatment of detainees in Kyrgyzstan in general is insufficient to show that Article 3 would be violated by removal to that State (see paragraphs 82-83 of the judgment). This is a reference to the Court's case-law concerning generalised, intense violence, which everyone can agree does not obtain in Kyrgyzstan (see paragraph 7 of Judge Elósegui's dissenting opinion and contrast *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 248, 28 June 2011).

6. Acknowledging that “in certain contexts it cannot be excluded that if an individual belongs to a certain targeted group, this provides substantial grounds for believing that he or she faces a real risk of treatment contrary to Article 3”, the majority turn to the risk to ethnic Uzbeks that has been long recognised by the Court (see paragraphs 84-88 of the judgment). According to the majority, this recognition was based on evidence that is no longer relevant. The majority understand more recent reports on the human-rights situation in Kyrgyzstan to suggest that ethnic Uzbeks are no longer targeted for ill-treatment. This understanding is bolstered, in the majority’s view, by the silence as to the risk to ethnic Uzbeks on the part of national and regional human-rights organisations as well as the national preventative mechanism against torture (“NPM”).

7. The majority then express the opinion that the charges laid in Kyrgyzstan against the applicants are of a “common criminal nature” and do not relate to their ethnicity (see paragraph 93 of the judgment). It is also said that the domestic courts properly examined the applicants’ claims and dismissed them (see paragraphs 93-96). This is found to have been justified in part by the assurances provided to the Russian Government by officials in Kyrgyzstan, which in the eyes of the majority “appear to be formally binding on them” and cannot be presumed to be ineffective in practice (see paragraphs 98-106 of the judgment).

8. Like Judge Elósegui (see paragraph 6 of her dissenting opinion), I am unconvinced by this reasoning. It cannot be right for the consistent case-law of the Court to be abandoned on the basis of limited reports that are in fact much more equivocal than the majority suggest (see paragraphs 39-54 of the judgment).

9. For example, the majority refer to a report of the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The majority neglect to quote paragraphs 13 and 16 of this report, in which the Subcommittee lamented that the coordination council of the NPM, which manages its work, is “currently paralysed and unable to exercise its important functions” and noted “with concern” that criminal liability for obstruction of the NPM’s work had been eliminated. But there is enough to provoke disquiet even in paragraphs 14 and 15 of the report, which are quoted in the judgment. There one reads that the legislature in Kyrgyzstan lacks interest in the NPM and that the NPM itself misunderstands its function, being more concerned with *ex post* accountability than prevention.

10. The significance of this criticism of the NPM to the present case is obvious. On the one hand, it may explain the silence of the NPM as to the risk to ethnic Uzbeks, which the majority find so significant. Another explanation may lie in the bias against the Uzbek minority in Kyrgyzstan identified by the United Nations Committee on the Elimination of Racial Discrimination in the report quoted by the majority at paragraph 44 of the

judgment. On the other hand, a risk of torture or ill-treatment is not mitigated by the possibility that a perpetrator may, at some later stage, be prosecuted. Thus, such a possibility cannot in itself mean that a removal that would otherwise violate Article 3 can be carried out in compliance with the Convention.

11. In any event, it is unclear that accountability for torture or ill-treatment is a real possibility in Kyrgyzstan. Human Rights Watch's most recent World Report, which the majority describe (at paragraph 47 of the judgment) as celebrating the progress that has been made in Kyrgyzstan, grimly observes that "[i]mpunity for torture remains the norm" in Kyrgyzstan. The majority quote this language, but do not truly grapple with it. In particular, they do not acknowledge that evidence of this kind tends to confirm that the applicants would be at real risk if removed to Kyrgyzstan.

12. The majority's circumscribed and selective approach to the evidence is as unnecessary as it is unfortunate. Fact-finding is admittedly more difficult in respect of States that are not parties to the Convention and so are under no obligation to cooperate, but the Court has in the past had recourse to Rule A1 of the Annex to the Rules of Court in cases concerning such States (see, for example, *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 1-19, 31 May 2018). The majority's failure to take similar steps in these proceedings means that the evidence before the Court is so insufficient that, whatever the applicable standard, it cannot justify abandoning the Court's well-established case-law.

13. In addition, it is clear that this aspect of the majority's reasoning is inconsistent with the Court's judgments to date concerning the removal of ethnic Uzbeks. For this reason, and because the human-rights situation in Kyrgyzstan is a factor highly relevant to other cases, it raises a serious question about the application of Article 3. In the light of Articles 30 and 43 § 2 of the Convention, it is therefore in my view for the Grand Chamber to adopt such reasoning rather than for the Chamber.

14. Turning to the remainder of the majority's reasoning, one can only marvel at their willingness to dismiss Kyrgyzstan's allegation that the second applicant murdered six people as a "common criminal" charge. In their eagerness to deny any link between the charges against both applicants and their ethnicity, the majority appear to overlook their own recognition (at paragraph 26 of the judgment) of the relationship drawn by the authorities in Kyrgyzstan between these alleged murders and the very events of June 2010 that were triggered by the inter-ethnic tension in Kyrgyzstan and gave rise to the judgments from which the majority now depart.

15. As for the assurances given by the authorities in Kyrgyzstan, in determining the weight to be given to them it is necessary for the Court to have regard to whether they are binding (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 189, ECHR 2012 (extracts)). The majority decide that they "appear" to be so, without explaining why. Are

they binding under the domestic law of Kyrgyzstan? Do they represent international obligations (compare *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, ICJ judgment of 1 October 2018, § 146, and *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, *Provisional Measures, Order of 3 March 2014*, ICJ Reports 2014, p. 158, § 44)? Although the respondent Government recognised the importance of this issue in their observations, the majority do not say.

16. These faults reflect the flawed analysis of the domestic courts. Those courts similarly approached the charges against the applicants as concerning merely “common crimes” and ignored the obvious link between the alleged offences of the second applicant, in particular, and the events of June 2010 (see paragraph 95 of the judgment). They also approached the assurances of the authorities in Kyrgyzstan uncritically. This is in keeping with the broadly deferential approach of the domestic courts identified in the third-party observations of the International Commission of Jurists (see paragraph 74 of the judgment). That such deference is inappropriate is evident from the majority’s discussion of the relevant case-law at paragraphs 99 and 100 of the judgment. It is unfortunate that in these proceedings both the national courts and the majority failed to properly bring to bear the scrutiny required by that case-law.

The interim measure

17. Although I am in disagreement with the majority as to Article 3, I do concur with their approach to the interim measure in this case. I do so for the following reasons.

18. The Court possesses certain features by its nature as a court of law (compare *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion*, ICJ Reports 1954, p. 61). Among these features is “an inherent jurisdiction enabling it to take such action as may be required ... to ensure that the exercise of its jurisdiction over the merits ... shall not be frustrated” (see *Nuclear Tests (Australia v. France)*, *Judgment*, ICJ Reports 1974, p. 259, § 23). This inherent jurisdiction encompasses the power to indicate interim measures (see *Northern Cameroons (Cameroon v. United Kingdom)*, *Preliminary Objections, Judgment*, ICJ Reports 1963, p. 103 (separate opinion of Judge Fitzmaurice)).

19. Under Article 43 § 1, the Court retains the ability to address the merits of a case for a period of up to three months from the date of a Chamber’s judgment. It follows that the Court can indicate interim measures during this period in accordance with Rule 39. It is appropriate to do so when there is a risk of irreparable damage to the enjoyment by the applicant(s) of a core right under the Convention (see *Mamatkulov and*

Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, § 108, ECHR 2005-I). That there is such a risk in the present case is evident from the judgments and reports to which I have already referred.

20. Judge Elósegui considers that the interim measure can be maintained even after the judgment becomes final (see paragraph 3 of her dissenting opinion). I regretfully disagree. The interim measure must lapse when the judgment becomes final, for the Court's jurisdiction as to the merits of the case will end at that point (compare *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*, *Preliminary Objection, Judgment, ICJ Reports* 1952, p. 114). If that jurisdiction is revived, however, then the incidental power to indicate interim measures will be also.

21. For now, it is vital that the parties bear in mind that a “failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34” of the Convention (see *Mamatkulov and Askarov*, cited above, § 128).

Conclusion

22. The majority have endangered the applicants with their approach to Article 3. In so doing, they have also raised questions about the Court's fidelity to its case-law. For these reasons, it is to be hoped that today's judgment is not the final word in this case.

DISSENTING OPINION OF JUDGE ELÓSEGUI

1. With all due respect for the judgment approved by the majority of my colleagues in the Chamber, I voted against the conclusion that there would be no violation of Article 3 of the Convention by the Russian Government. In my humble opinion, I cannot support with my vote any remote possibility or risk of someone being “subjected to torture or to inhuman or degrading treatment or punishment”, caused by an expulsion or an extradition. I will attempt to explain the reasons for my position in the present case.

2. In sum, it is not possible for me, as a matter of conscience, to contribute to such a possible danger. Going into the concrete facts of the case related to the situation of the ethnic Uzbeks in Kyrgyzstan, it can be seen that, according to the majority of the reports by international organisations, this minority is still suffering from discrimination. The judgment refers to United Nations human-rights bodies, such as a 2018 report of the UN Committee on the Elimination of Racial Discrimination (CERD); to the European Union’s Annual Reports on Human Rights and Democratisation of 2014, 2016, 2017 and 2018; to the OSCE Human Dimension Implementation Meeting of 2016; and also to international non-governmental human rights organisations, such as Amnesty International’s report of 2015, which documented 79 cases of torture and other ill-treatment in the first half of 2015; and Human Rights Watch’s World Report of 2016. After considering all this evidence, the majority in the Chamber conclude that in the last four or five years there has been a significant and stable improvement in the human rights situation in Kyrgyzstan in general. In my view, there is a clear contradiction and a lack of legal reasoning in paragraphs 84 and 85, in relation to all the above-mentioned sources. By contrast, I would refer to my concurring opinion in the case of *Kislov v. Russia* (no. 3598/10, 9 July 2019), where I readily accepted, based on the facts, that the applicant’s extradition to Belarus would not be in breach of Article 3 of the Convention.

3. I cannot share the affirmative conclusion of the judgment when the Court emphasises that it does not find that ethnic Uzbeks nowadays constitute a vulnerable group facing a specific targeted risk of ill-treatment (paragraph 87). It is for that reason that, again somewhat unusually, but being fully aware of the implications, I also voted differently on point 4 of the operative part. In my view the application of Rule 39 of the Rules of the Court has to be maintained even after the time at which the present judgment becomes final, because the expulsion of the two applicants would be incompatible with the Convention in any event. The purpose of Rule 39 in such cases is to indicate measures in order to avoid risks for life (Article 2) and risks of ill-treatment and torture (Article 3).

4. The Chamber may therefore consider that the judgment could have benefited from applying a methodology by which to assess the probative

value of those reports. Where the Court has been confronted with similar situations in the past, it has articulated certain principles (most recently in *J.K. and Others v. Sweden* [GC], no. 59166/12, 23 August 2016, §§ 88-89):

“In assessing the weight to be attached to country material, the Court has found in its case-law that consideration must be given to the sources of such material, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations ... Considerations must be given to the presence and reporting capacities of the author of the material in the country in question. The Court appreciates the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations. It accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on”.

5. In the case of UNHCR reports, the Court has observed that these reports may be highly relevant given the possibilities for the UN agencies to have direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do (see *NA. v. the United Kingdom*, no. 25904/07, § 121, 17 July 2008, and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 231, 28 June 2011). Also in this connection, the Court has confirmed that greater importance is attached to reports which directly address the alleged risk of ill-treatment and are couched in terms similar to those of Article 3 of the Convention (see *NA. v. the United Kingdom*, cited above, § 122).

6. In the present situation, I do not see any serious reasons to depart from the former case-law of the Court related to the extradition of ethnic Uzbeks to Kyrgyzstan (see among other authorities those cited in paragraph 85 of the judgment: *Makmudzhani Ergashev v. Russia*, no. 49747/11, §§ 69-73, 16 October 2012; *Garyratbek Saliyev v. Russia*, no. 39093/13, §§ 61-62, 17 April 2014; and *Turgunov v. Russia*, no. 15590/14, § 32, 22 October 2015).

7. In relation to the former principles of the case-law, I agree with the general idea that the assessment of Article 3 risks must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (see *F.G. v. Sweden* [GC], no. 43611/11, § 114, 23 March 2016).

I also share the idea that a general situation in itself would only be of sufficient intensity to create such a risk “in the most extreme cases” where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on his or her return (see in the context of raging civil wars, *Sufi and Elmi*, cited above, §§ 216 and 218; and, among other

authorities, *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 108, 15 October 2015).

8. In fact, in the Third Section, the Chamber has examined cases related to extraditions from Russia to Uzbekistan. As I recalled in my concurring opinion in *Kislov* (cited above):

“More concretely, in the decision of the 3rd Section case *B.T. v. Russia*, no. 40755/16 (dec.), of 11 January 2019, the Court examined the general principles and applied them to the above concrete case. The application also concerned an order by the Russian authorities for the extradition of the applicant to Uzbekistan. In the case of *B.T. v. Russia* the Court concluded as follows: ‘... beyond a broad reference to ill-treatment in the light of the general practice in the criminal justice system of Uzbekistan, the applicant, both at domestic level and in his submissions before the Court, failed to refer to any individual circumstances and to substantiate his fears of ill-treatment in the event of his extradition to Uzbekistan. He did not refer to any personal experience of ill-treatment at the hands of the Uzbek law-enforcement authorities, neither did he allege that members of his family had been politically or religiously active or persecuted’ (see *B.T. v. Russia*, cited above, § 29). See by contrast, *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Mamazhonov v. Russia* no. 17239/13, § 141, 23 October 2014; and *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008).”

9. Moreover, it is a clear principle that applicants must convincingly demonstrate to the Court that the combination of the general situation and the personal circumstances justify a conclusion that there is a real risk of ill-treatment. As has been pointed out, the mere possibility of ill-treatment on account of the situation in the receiving country does not in itself give rise to a breach of Article 3. That is why the Court went on to examine the applicant’s specific allegations and the Russian domestic authorities’ responses to the latter. However, in my view, it is not only for the applicant to prove the allegations and for the Government to refute them, it is also the Court’s responsibility if the fact of sending a person to a given country is deemed to entail a risk of ill-treatment or torture.

10. In relation to the facts of the present case, the judgment reflects several contradictions which have not been clarified enough for me to characterise the two applicants as presumed criminals, due to presumed crimes committed in Kyrgyzstan. In paragraph 11 it is said that the first applicant was charged *in absentia* with misappropriation of approximately 18,500 euros. Although I have asked for more information about this fact, I have not received any convincing proof that would justify the necessity of extradition. Of course, it is for the domestic Russian courts to look into this information. However, I do not see in the domestic legal reasoning or in the facts before the domestic courts any available material that would enable me to vote in favour of the extradition. There is even a lack of coherence between the findings of the different domestic courts. The applicant T.K. applied for refugee status, referring to risks of persecution in Kyrgyzstan on ethnic grounds, whilst the migration authorities and courts rejected the application (see paragraphs 22-24).

11. Furthermore, the narrative of the facts is full of contradictions between what the Russian Government said in their observations and what the applicants alleged. Concretely, in relation to the content of T.K.'s allegations, the applicant responded to the Government's observations by saying that there was a strategy to take away the property of Uzbeks in the relevant area on the basis of false accusations. The domestic courts did not weigh up the concrete circumstances or address this argument in their reasoning. In relation to the second applicant S.R., the Chamber judgment also contains many contradictions. It is said that the applicant was charged *in absentia* with violent crimes related to the June 2010 events, including the murder of law-enforcement officers (paragraph 26). But later the Regional Court of Belgorod found that "in his statements to the migration authorities he had expressly stated that he had not taken part in any inter-ethnic clashes in 2010 and that he had not been persecuted on political grounds" (see paragraph 31). That is what the Russian court said, but it contradicts what the applicant said in his observations before the Court, according to which he had been persecuted on account of belonging to an ethnic group and the discrimination against this group. On the other hand, the reason why the Kyrgyzstan Government applied for his extradition was indeed because he had participated in the events of 2010.

12. For me the principle of non-contradiction is a logical first premise. Contradictory propositions cannot both be true in the same sense at the same time. That is why the Court has to be clear about the party to which it should attribute credibility, but it is not logical to describe everything without a final evaluation of the real facts. Consequently, if we are not able to know the facts we cannot derive a conclusion of no violation. Even though we are not a fourth-instance court, we need to base our decisions on reliable evidence, established beyond reasonable doubt.

13. For these reasons I cannot follow the judgment's proposal that there is a new era in Kyrgyzstan and that the present case bears no relation to the 2010 events. In fact for the Kyrgyzstan Government, in the case of the second applicant, the accusation is indeed related to the events of 2010.

14. In a different connection, the Court usually asks the authorities of the Contracting Parties for guarantees in each concrete case that respect for the Convention rights will be ensured, indicating to them not to remove persons to countries where there are real risks of ill-treatment. In relation to diplomatic assurances and the criteria of our case-law in *Othman (Abu Qatada) v. the United Kingdom* (no. 8139/09, 17 January 2012), I find that in the case of Kyrgyzstan the relevant guarantees are not satisfied at all at present, more specifically under points (e), (f) and (g) in paragraph 100 of the judgment, which contains the following summary of the *Othman* case-law in this connection:

"Generally, the Court will assess first the quality of assurances given and, secondly, whether, in the light of the receiving State's practices, they can be relied upon. In its

analysis the Court has previously had regard to various factors, including among many others the following: (a) whether the assurances are specific or are general and vague; (b) who has given the assurances and whether that person can bind the receiving State; (c) if the assurances have been issued by the central Government of the receiving State, whether local authorities can be expected to abide by them; (d) the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances; (e) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers; (f) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible; and (g) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (see *Othman (Abu Qatada)*, cited above, § 189, with further references)."

Among the available material we have been able to read, the report of the third party ICJ (International Commission of Jurists), which has a serious and professional reputation, comments on the lack of real monitoring and submits that the domestic courts "relied on diplomatic assurances made by the requesting State, without scrutinising their adequacy", also bearing in mind that Kyrgyzstan is not a party to the Convention (see paragraphs 74-75 and also the dissenting opinion of Judge Keller, paragraph 2).

15. On the basis of all these facts, in my view, there would be a violation of Article 3 of the Convention in the event of the applicants' extradition to Kyrgyzstan.