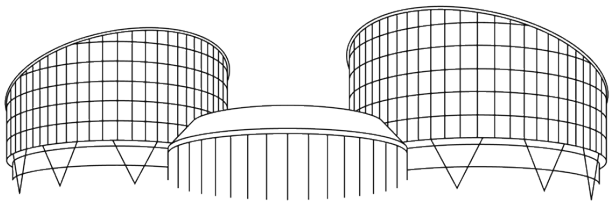

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YEFIMOVA v. RUSSIA

(Application no. 39786/09)

JUDGMENT

STRASBOURG

19 February 2013

FINAL

08/07/2013

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

In the case of Yefimova v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 29 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 39786/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Kazakhstani national, Ms Veronika Yefimova ("the applicant"), on 27 July 2009.

2. The applicant was represented by Mr K. Baranovskiy, Mr S. Brovchenko and Ms V. Bokareva, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that extradition to Kazakhstan would expose her to a risk of ill-treatment, that her detention pending extradition had been unlawful and she had been unable to obtain judicial review of it, that her appeals against the detention orders had not been examined speedily, and that she had not had effective remedies in respect of her grievance concerning the risk of ill-treatment in case of extradition. She relied on Articles 3, 5 §§ 1 and 4 and 13 of the Convention.

4. On 23 June 2010 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Kazakhstan until further notice, and granted priority treatment to the application under Rule 41 of the Rules of Court.

5. On 26 August 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

6. The Government and the applicant each submitted further written observations, in February and May 2012.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1966 and lived in Almaty, Kazakhstan. She currently resides in Moscow, Russia.

A. The background to the case, as submitted by the applicant, and her arrival in Russia

8. In 2005-08 the applicant occupied the post of head of the corporate business department of the TuranAlem Bank ("the BTA Bank"), a private bank established in Kazakhstan and chaired at the material time by Mr M. Ablyazov.

9. In 2001 Mr Ablyazov was involved in politics; he founded an opposition movement, Demokraticheskiy Vybor Kazakhstana (Democratic Choice for Kazakhstan) and in 2002 he was convicted of corruption, many international observers considering his trial to be politically motivated. In the applicant's submission, at the material time she had remained Mr Ablyazov's political supporter by replacing him as the head of a private company, Astana Holding, established by him. The applicant did not provide any further details of her alleged support for Mr Ablyazov. After his release following a presidential pardon in 2003, Mr Ablyazov had announced that he would devote his time to business and refrain from active participation in politics. In 2005 he had become the Chairman of the Board of Directors of the BTA Bank.

10. In February 2009 the BTA Bank was nationalised due to its difficult financial situation. In the applicant's submission, the nationalisation of the bank was a raider attack and a covert attempt to suppress the opposition movement. According to the applicant, bank employees, including herself, had denounced the nationalisation of the bank as unlawful.

11. On 23 February 2009, while the applicant was on inpatient treatment in a private hospital, the Deputy Prosecutor-General of Kazakhstan, Mr A.D., and the deputy head of the Committee on National Security ("the CNS") burst into the intensive care ward she was in, despite the objections of the medical staff, told her that criminal proceedings would be opened against Mr Ablyazov in connection with his opposition activities, and threatened her that they would prevent her from obtaining medical

assistance and would institute reprisals if she refused to follow their instructions in the forthcoming criminal proceedings. They also told her that the question of whether she would be found guilty in those proceedings would not depend on the courts but on the leaders of Kazakhstan.

12. On 1 March 2009 the applicant arrived in Russia with her minor daughter, who was, at the material time, two years old. On 15 May 2009 the applicant left for Azerbaijan and on 4 June 2009 she returned to Russia to receive medical treatment.

13. On 3 July 2009 the applicant was arrested with a view to her extradition.

14. In July 2011 Mr Ablyazov was granted asylum in the United Kingdom.

B. Criminal proceedings against the applicant in Kazakhstan

1. Criminal proceedings against the applicant

15. On 2 March 2009 the Prosecutor General's Office of Kazakhstan (hereinafter also "the Kazakhstan GPO") instituted criminal proceedings against Mr Ablyazov and over twenty other individuals, including the applicant, on suspicion of large-scale misappropriation of the property of the BTA Bank. The case file was given the number 095751701710001.

16. On 6 March 2009 the Kazakhstan GPO charged the applicant with large-scale misappropriation of BTA Bank financial assets, committed in an organised group under the direction of Mr Ablyazov and with the use of her position (Article 176 § 3 (a) and (b) of the Kazakhstani Criminal Code ("KCC"). The decision stated that between 2005 and 2008 the applicant, who had been head of the corporate business department of the BTA Bank and had "a relationship of trust" (*доверительные отношения*) with Mr Ablyazov owing to having previously worked with him, had taken an active part in the misappropriation of the bank's financial assets. In particular, in collusion with other bank employees she had been involved in registering, and had herself registered, numerous sham offshore companies affiliated to or controlled by Mr Ablyazov and his accomplices, and had approved those companies' loan requests on conditions obviously disadvantageous for the bank. She further supervised the implementation of the relevant decisions of the bank loan committee. The financial assets thereby transferred to the sham companies were then legalised through series of multi-step transactions and were deposited in foreign banks on accounts belonging to companies controlled by or affiliated with Mr Ablyazov and his accomplices; the loans were never paid back.

17. On 11 March 2009 the Medeuskiy District Court (Almaty) ordered the applicant's placement in custody, referring to the fact that she was fleeing to avoid criminal prosecution.

18. On 17 March 2009 the Kazakhstan GPO put the applicant's name on an international wanted list.

19. On 21 March and 17 July 2009 the Kazakhstan GPO charged the applicant with further counts of misappropriation of bank property, committed under the same scheme as described in the decision of 6 March 2009.

20. On an unspecified date the Kazakhstani investigating authorities severed the criminal case concerning misappropriation of BTA Bank property against a number of bank employees, gave it the number 0951701710002, and sent it for trial to the Almatinskiy District Court. The list of accused in those proceedings did not include the applicant.

21. On 15 September 2009 the Almatinskiy District Court dismissed an application by Ms K., a lawyer appointed by the applicant to represent her interests in criminal proceedings in Kazakhstan, to allow Ms K. to participate in the proceedings in case no. 0951701710002, on the ground that the applicant was not party to the criminal proceedings in the severed criminal case in question.

2. Statements by some Kazakhstani public officials concerning the BTA Bank and the related criminal proceedings

22. On 10 August 2009, during a briefing for the media concerning the preliminary investigation in the criminal case against Mr Ablyazov and other employees of the BTA Bank, representatives of the Kazakhstan GPO made the following statement:

> "... Some of the individuals misled and threatened by [Mr Ablyazov] have left the country ...
>
> The investigating group wishes to inform those persons whose names were put on a wanted list that the investigation is prepared to consider their lawyers' applications for their return to Kazakhstan, so that they can be party to the continuing investigation ...
>
> At the same time the investigating group warns all those who are deliberately spreading unreliable information in the mass media , ... rumours aimed at creating a negative public attitude. The group considers such acts unlawful and creating a deliberate threat to social stability and the interests of the State."

23. According to an article published on 26 February 2010 at the site newskaz.ru, during a meeting with Kazakhstani businessmen President Nazarbayev allegedly made the following statement to businessman S., who, among other people, had in 2002 signed a petition to Mr Nazarbayev, asking for a pardon for Mr Ablyazov: "A group of his [Mr Ablyazov's] friends, including you, wrote me a letter, swearing ... that he would serve his fatherland. He [Mr Ablyazov] spat in your face and the faces of all those around here, I won't give [their] names, his friends, and you should bear responsibility".

24. It appears that the meeting and Mr Nazarbayev's statement were recorded and that the video recording was subsequently submitted by the applicant to the Russian courts in the extradition proceedings (see paragraph 52 below).

C. Asylum proceedings

25. In August 2009 the applicant applied to the Moscow branch of the Federal Migration service ("the Moscow branch of the FMS") for asylum. In her application she submitted that since 2005 she had been employed by the BTA Bank, headed by Mr Ablyazov, a prominent opposition figure in Kazakhstan, who, before his appointment as head of the BTA Bank had been persecuted in 2002 and had served a prison sentence in connection with his political activities. In February 2009 the bank was nationalised by the Kazakhstani Government, which in fact was a raider attack on it, following which she had left Kazakhstan, fearing persecution by the authorities. A criminal case had been opened against Mr Ablyazov and against over twenty other employees of the bank, including the applicant.

26. The applicant claimed that she feared that if returned to her home country she would be subjected to torture. In that connection she referred to an incident on 23 February 2009, in which two high-ranking Kazakhstani officials had told her that criminal proceedings against Mr Ablyazov would be opened, and threatened her with reprisals and with preventing her from access to medical assistance if she refused to cooperate with them and give statements incriminating Mr Ablyazov. They also claimed that the national courts would take a decision in the criminal case which was to be opened, and that that decision would be dictated to them by the leaders of the country. Hence, the applicant concluded that her criminal prosecution in Kazakhstan was politically motivated and that she would run a risk of ill-treatment and be denied a fair trial if she returned to her home country. She also referred to various reports from international organisations describing the problem of ill-treatment of detainees in Kazakhstan.

27. After she had made her asylum request, officers of the Moscow branch of the FMS interviewed the applicant on several occasions in the remand centre in the presence of her lawyers, and were provided with access to the materials of the extradition check (a series of enquiries and background checks made prior to taking a decision on an extradition) conducted by the Russian Prosecutor General's Office (hereinafter also "the Russian GPO").

28. On 4 December 2009 the Moscow branch of the FMS dismissed the applicant's asylum request. The authority reasoned that the analysis of the information and materials available to it indicated that the applicant had never been involved in any political or public activities in Kazakhstan. Referring to reports from Human Rights Watch and the US State

Department issued in 2008 and 2009 respectively the decision further stated that those bodies had noted that there had been some progress in Kazakhstan towards democratisation, although there were at the same time problems with freedom of expression and corruption. The authority stressed that the applicant had applied for asylum only after her arrest with a view to extradition, and concluded that her application had been motivated by her wish to avoid criminal prosecution for economic crimes.

29. The applicant appealed against the decision, stressing that the criminal prosecution was politically motivated and reiterating the arguments contained in her asylum application.

30. On 22 April 2010 the Zamoskvoretskiy District Court in Moscow ("the district court") upheld the decision of 4 December 2009. It noted that the applicant had not adduced any reasons to substantiate her fear of political persecution in Kazakhstan. She had applied for asylum only after her arrest in July 2009, whilst she had arrived in Russia on 1 March 2009. Hence, her application was prompted not by the fear of being persecuted in Kazakhstan but by the fact that she was facing criminal prosecution there.

31. On 15 June 2010 the Moscow City Court dismissed the applicant's appeal against the decision of 22 April 2010, reiterating the reasoning of the district court.

D. Extradition proceedings against the applicant

32. On 3 July 2009 the applicant was arrested in Moscow as a person wanted by the Kazakhstani authorities.

33. By a letter of 8 July 2009 the Kazakhstan GPO lodged with their Russian counterpart a formal request for the applicant's extradition. By the same letter it assured the Russian GPO that the applicant's criminal prosecution was not politically motivated or based on any discriminatory grounds, and that after the termination of the criminal proceedings and after serving any sentence she would be free to leave Kazakhstan.

34. On 27 July 2009 the Russian Ministry of Foreign Affairs informed the Russian GPO, in reply to their request, that they had no information on any circumstances which would preclude the applicant's extradition.

35. By a letter of 28 September 2009 the Kazakhstani GPO informed their Russian counterpart that they had examined the applicant's lawyer's complaint about an incident in the private hospital in February 2009 and had interviewed the hospital personnel. They enclosed copies of records of interviews with the head of the private clinic and three doctors who had been directly responsible for the applicant's treatment, dated 22 September 2009. According to those documents, the interviewees confirmed that the applicant had undergone inpatient treatment in the hospital between 12 and 26 February 2009 in connection with a stroke. They further stated that they had no information that she had received any visits from law-

enforcement authorities during her stay in the hospital, that the applicant had not told them about any such visits, and that they had not been contacted by such authorities in respect of the applicant while she was in hospital. They further stated that there was no intensive care ward in the hospital. Doctor B. also stated that in mid-March 2009 officials of the CNS had asked her whether the applicant had previously been treated in the hospital and whether B. had any information on her current whereabouts. B. further stated that she had informed her immediate superior, Doctor Zh., of that fact and that if the applicant had been visited earlier by law-enforcement officials in the presence of nurses while she was in the hospital they would have informed B. of that fact.

36. On 7 December 2009 the Moscow branch of the FMS informed the Russian GPO that on 4 December 2009 it had dismissed the applicant's request for asylum.

37. On 9 February 2010 the Kazakhstan GPO assured their Russian counterpart that if extradited the applicant would be provided with adequate medical assistance, account being taken of her state of health. The letter was signed by Deputy Prosecutor General Mr A.D.

38. On 21 April 2010 the Deputy Prosecutor General of Russia decided to extradite the applicant to Kazakhstan. The decision stated, in particular, that the applicant was charged with large-scale repeated embezzlement committed in an organised group and with the use of her position, which was an offence under Article 160 of the Russian Criminal Code ("the CC") and carried a penalty of over one year's imprisonment. The limitation period for criminal prosecution had not expired. The applicant had not acquired Russian citizenship and there were no circumstances precluding her extradition.

39. The applicant appealed against the extradition order, submitting that her criminal prosecution was politically motivated; that she ran a risk of being tortured by the investigating authorities in Kazakhstan with a view to obtaining statements incriminating Mr Ablyazov, with whom they considered she enjoyed a "relationship of trust"; that high-ranking Kazakhstani officials had already threatened to prevent her from getting access to medical assistance if she refused to cooperate; and that one of those officials was Mr A.D., who subsequently assured the Russian authorities that she would be provided with medical assistance. She also asserted, with reference to reports from various international organisations, that the requesting country had a poor human rights record, especially as regards torture of detainees and conditions of detention and medical care provided to detainees, and that the latter fact was particularly alarming because of her health problems.

40. In the extradition proceedings the applicant was represented by four lawyers of her choosing.

1. First round of court proceedings

41. On 27 May 2010 the Moscow City Court informed the Kazakhstan Ministry of Foreign Affairs that it was examining the applicant's appeal against the extradition order and, referring to her arguments, requested to verify those submissions. A copy of the letter was forwarded to the Russian Ministry of Foreign Affairs.

42. By a letter of 4 June 2010 the Kazakhstani GPO assured their Russian counterpart that in the event of her extradition the applicant would not be subjected to torture or ill-treatment, and that she would be secured a right to a fair and public trial respecting the principle of adversarial proceedings.

43. By a letter of 16 June 2010 the Deputy Minister of Foreign Affairs of Kazakhstan informed the Russian GPO and the Moscow City Court that, in addition to the assurances previously given in respect of the applicant, the relevant Kazakhstani authorities guaranteed that in the event of her extradition the applicant would not be subjected to ill-treatment or torture; that her prosecution was not politically motivated; and that she would be guaranteed the right to a fair trial respecting the principles of a public hearing and adversarial proceedings. If extradited, the applicant would be held in a detention facility under the authority of the Ministry of Justice. Lastly, at any stage of criminal proceedings against the applicant the competent representatives of the Russian authorities would be granted access to her in detention with a view to verifying whether the Kazakhstani authorities complied with their undertakings.

44. On 18 June 2010 the Moscow City Court ("the City Court") dismissed the applicant's complaint about the extradition order. It found that her allegations of political persecution, risk of torture and denial of fair trial were unsubstantiated and speculative, and had already been examined and dismissed as unfounded in the asylum proceedings. It further held that the assurances provided by the Kazakhstani authorities, and concerning specifically the applicant's situation, negated the risk of ill-treatment, as well as refuted her submissions that her criminal prosecution was politically motivated.

45. On 20 October 2010 the Supreme Court of Russia ("the Supreme Court") allowed the applicant's complaint and set aside the City Court decision, finding, among other things, that the first-instance court had unlawfully dismissed the applicant's request to append to the case file a number of materials adduced by her and her lawyers and concerning the human rights situation in Kazakhstan, including several articles from newspapers on the adoption of the law proclaiming President Nazarbayev "leader of the nation". The case was remitted at that level of jurisdiction for a fresh examination and with a new panel of judges. The City Court was instructed to examine thoroughly the applicant's arguments against

extradition, in particular in light of the case-law of the European Court of Human Rights.

2. The second round of court proceedings

46. By a letter of 3 December 2010 the Kazakhstan GPO reiterated to their Russian counterpart the assurances given in respect of the applicant in their previous letters of 8 July 2009 as well as 9 February and 4 and 16 June 2010.

47. On 8 December 2010 the City Court upheld the extradition order. The court noted that the applicant's submissions concerning the risk of ill-treatment and the political motivation behind her criminal prosecution had already been checked and dismissed in the asylum proceedings. Furthermore, they were speculative. It further observed that the European Court's judgments in the cases of *Klein v. Russia* and *Baysakov v. Ukraine*, as well as the report of the US State Department issued in 2009 about torture in Kazakhstan, did not concern the applicant's specific situation, whilst her submissions concerning the risk of ill-treatment and denial of fair trial were refuted by extensive assurances issued not only by the appropriate Kazakhstani authorities but specifically in respect of the applicant.

48. On 2 February 2011 the Supreme Court allowed the applicant's appeal, quashed the City Court decision and remitted the case for a fresh examination with a different panel of judges. The court found that the City Court had failed to conduct a thorough examination of the applicant's allegations concerning the human rights situation in Kazakhstan, and that in dismissing them it had relied on the assurances given by the Kazakhstani authorities. However, the City Court had failed to assess the reliability of those assurances in the light of the requirements of the case-law of the European Court of Human Rights.

3. The third round of proceedings

49. On 2 March 2011 the Kazakhstan GPO assured their Russian counterpart that in the event of her extradition it would be open to the applicant to challenge the Kazakhstani court detention order in the courts.

50. On 24 March 2011 the City Court upheld the extradition order in respect of the applicant. It reiterated that the FMS had already checked and dismissed the applicant's arguments regarding political persecution. It further noted that, after examining numerous reports from NGOs on the situation in Kazakhstan, the relevant judgments of the European Court, and articles and publications in the media adduced by the applicant in support of her submissions, it was not persuaded that she had furnished convincing evidence to substantiate her fear of ill-treatment and denial of fair trial. It also considered that those submissions had been effectively refuted by the extensive assurances provided by duly authorised Kazakhstani authorities.

51. On 20 July 2011 the Supreme Court set aside the decision of the City Court on the applicant's appeal and remitted the case for examination at first instance with a different panel of judges. The Supreme Court noted that the Kazakhstani authorities had given an assurance that the applicant would not be subjected to torture after the Russian GPO had already approved the extradition order in respect of the applicant, and that the City Court was to examine more thoroughly the applicant's submissions concerning the risk of ill-treatment and the political motivation behind her prosecution.

4. Fourth round of proceedings

52. On 21 September 2011 the City Court upheld the extradition order. It reiterated that the applicant's submissions concerning the risk of ill-treatment and denial of fair trial, as well as political persecution, had already been assessed and dismissed in the asylum proceedings. It went on to note that, after examining those arguments itself, as well as the abundant materials submitted by her, which included reports from various governmental and non-governmental organisations on the human rights situation in Kazakhstan, judgments of the European Court, articles published in the media, and relevant public statements by Kazakhstani officials, as well as video materials, it considered that the applicant had failed to produce convincing evidence to substantiate her submissions that she would be at risk of ill-treatment and denial of fair trial. With reference to the *Dzhaksybergenov* judgment (no. 12343/10, 10 February 2011) it pointed out that the European Court had recently refused to take the view that a total ban on extradition to Kazakhstan was called for, and that the Court had mentioned that the proceedings against the management of the BTA Bank had nowhere been referred to as politically motivated.

53. The City Court further dismissed as unfounded and unconvincing the applicant's submissions concerning the threats she had allegedly received in Kazakhstan and in Russia and the statements of public officials she referred to, relying, among other things, on the materials of the extradition check conducted by the Russian GPO and other materials, including the video record examined by the court. The court noted that none of the statements it had examined was addressed specifically to the applicant. It also found that her state of health was not such as to bar her extradition and that the fact that Mr Ablyazov had been granted political asylum in the United Kingdom and opined that the criminal proceedings against the applicant were politically motivated was not such as to call into question the lawfulness of the extradition order in respect of the applicant.

54. The court further considered that the applicant's allegations that she was at risk of ill-treatment and denial of a fair trial were, moreover, effectively refuted by the extensive assurances given by the relevant Kazakhstani authorities, and found that her argument that in the event of her extradition the Russian authorities would not take any action to monitor

their Kazakhstani counterpart's compliance with their undertakings was speculative.

55. On 12 January 2012 the Supreme Court upheld the extradition order, endorsing the reasoning of the City Court. It held that the applicant had not put forward any convincing arguments suggesting that she would be subjected to mistreatment or denied a fair trial in the receiving country, and that the City Court's conclusions had been correctly supported, among other things, by the recent findings of the European Court in the *Dzhaksybergenov* case.

E. Proceedings for temporary asylum

56. On 10 January 2012 the Moscow branch of the FMS granted the applicant and her daughter temporary asylum for one year, until 10 January 2013. None of the parties provided a copy of the decision or indicated the grounds on which it had been based.

F. The applicant's state of health and the medical assistance available to her in detention

1. The applicant's state of health prior to her detention

57. In 2005 the applicant underwent eye surgery (vitrectomy) on the right eye in a private hospital in Moscow. She did not specify whether the surgery had been a medical necessity, nor did she provide any specific information in that respect.

58. The applicant has been suffering from diabetes and hypertension since 2006.

59. In February 2009 the applicant underwent inpatient treatment in a private hospital in Astana. According to her discharge record dated 26 February 2009, she was diagnosed with progressing cardiovascular disease, hypertension, left-side hemiparesis and Type II non-insulin-dependent diabetes at the subcompensation stage. Her discharge recommendations included supervision by a neurologist and an endocrinologist and sugar level checks twice a day.

60. On 11 March 2009 the applicant was examined by a neurologist at public hospital no. 180 in Moscow. He diagnosed her with cerebrovascular disease; after-effects of a stroke in February 2009; hypertension; left-side hemiparesis and Type II diabetes at the subcompensation stage and recommended that she take nootropic and hypotensive drugs and undergo unspecified inpatient treatment in August-September 2009.

2. The applicant's condition and treatment while in detention

(a) Submissions by the applicant

61. Following her arrest on 3 July 2009 the applicant was placed in remand prison IZ-77/6 (hereinafter "the remand prison") in Moscow. On the same date an ambulance was called to treat her for hypertension.

62. On 1 August 2009 the applicant was transferred to prison hospital no. IZ-77/1 in Moscow (hereinafter "the prison hospital") for inpatient treatment.

63. On 8 August 2009 the applicant's lawyers obtained from a neurologist at public hospital no. 180 a certificate to the effect that her condition required inpatient treatment and administration of nootropics and hypotensive medication. The neurologist's conclusions were based on the applicant's discharge record of 26 February 2009 from the private hospital in Kazakhstan and the certificate of 11 March 2009 (see paragraph 60 above).

64. On 22 August 2009, following a hypertensive crisis, the applicant had a burst blood vessel in the right eye, of which she complained to prison hospital staff on 24 August 2009.

65. On 26 August 2009 the applicant was due to be discharged from the prison hospital. On that day she allegedly fainted on three occasions and was treated with 60 drops of phenobarbital, nifedipine and intramuscular injections of magnesia and metamizole sodium. At about midnight she was placed in a prison van which took her to the remand prison. The trip took about two hours because the van had to pick up another detainee.

66. At about 4 a.m. on 27 August 2009 the applicant arrived at the remand prison and at 4 p.m. she was examined by the head of the remand prison medical unit, N.K., who promised her to secure her an examination by an ophthalmologist. According to the applicant, all her ensuing requests to be examined by an ophthalmologist were disregarded by the remand prison medical staff.

67. In the applicant's submission, in September 2009 the sight in her left eye started deteriorating and on an unspecified date in October 2009 she complained about it to a gynaecologist, but to no avail.

68. On 8 and 18 December 2009 the applicant, through her lawyers, requested the head of the remand prison to allow Mr Sh.A., an ophthalmologist with whom she had concluded a private treatment agreement, to examine her in the remand prison.

69. On 5 January 2010 the head of the remand prison informed her that the facility medical unit did not have ophthalmologists on its staff, and that she could be examined by that specialist in the prison hospital in accordance with her treatment plan.

70. On 28 January 2010 the head of the remand prison requested the Moskovsko-Ryazanskiy transport prosecutor's office (hereinafter also "the transport prosecutor's office") to authorise Sh.A.'s access to the applicant to examine her on the prison premises. On the same date the latter authority turned down the request.

71. On 3 March 2010 the applicant was examined by an ophthalmologist at public hospital no. 72 in Moscow and diagnosed with after-effects of vitrectomy, diabetic retinopathy and cataract with complications.

72. On 3 July 2010 the applicant was released from custody and placed under house arrest.

73. The applicant furnished a written statement to her lawyers dated 1 September 2009 in which she submitted that the medical assistance provided to her in detention was "superficial" and of "unsatisfactory quality". The remand prison lacked specialist doctors. The applicant was made to walk every day, although she had difficulty walking. Her personal medication was better than that provided by the detention facilities. Although her request for medication to be supplied by her lawyers was approved by the authorities, some of the drugs were allegedly excluded from that list by unidentified persons. She felt that the medication and injections she received were administered chaotically. On some occasions the administration of the remand prison put a person of unsound mind in her cell. At the same time the applicant emphasised that she had never been categorically refused medical assistance while in detention.

(b) Information submitted by the Government

74. The Government provided a complete copy of the applicant's medical record, copies of her discharge records from the hospitals where she had had inpatient treatment while in detention, as well as the medical logbooks of the remand prison and the prison hospital for the relevant dates. The information contained in those documents can be summarised as follows.

75. Upon admission to the remand prison on 3 July 2009 the applicant underwent a series of tests, including for HIV, a Wasserman test and a chest X-ray. She also had an entry examination by a doctor on duty, who took her blood pressure and heart rate and noted in her health record that her medical history included Type II diabetes; hypertension; an ischaemic stroke on 12 February 2009, and hepatitis B in 2000. She was diagnosed as "somatically healthy".

76. On 6 July 2009 the applicant had an in-depth examination by medical staff, during which she complained of headaches, hypertension and body numbness. Her diagnosis set out in the record of 3 July 2009 was confirmed and she was prescribed blood sugar testing, which was carried out on 7 and 13 July 2009.

77. On 30 July 2009 the applicant complained to medical staff of permanent headaches, numbness in the left side, weakness and mouth dryness. She was examined by doctors, her blood pressure was taken and recorded as varying from 130/90 to 160/100 and 170/100. On the last two occasions she was provided with emergency treatment. Her diagnosis at the material time included the after-effects of a stroke on February 2009 with progressing angioencephalopathy accompanied by cerebrovascular crises; hypertension; Type II diabetes at the subcompensation stage, and 3rd to 4th degree obesity. She was prescribed hospitalisation in the prison hospital for inpatient treatment, and certified fit for the transfer.

78. On 31 July 2009 the applicant was admitted to the prison hospital and on 1 August 2009 she had an entry examination by duty medical personnel.

79. On 4 August 2009 the applicant underwent an ultrasound of the abdominal region and kidneys, which showed diffuse changes of the liver and pancreas but no pathologies.

80. On 5 August 2009 the applicant had a general blood test and was examined by a neurologist, who diagnosed her with decompensated encephalopathy of mixed origin and prescribed her cinnarizine, phenibut and sedative medication, as well as injections of cerepro (*choline alfoscerate*).

81. On 11 August 2009 the applicant had a biochemical blood analysis and a urine test and on 13 August 2009 she underwent a blood sugar test.

82. On 19 August 2009 the applicant had an electrocardiography ("ECG") and an ultrasonic cardiogram, which showed no abnormalities. On the same date she underwent an ultrasound of the mammary glands and was again examined by a neurologist. The latter confirmed the diagnosis of 4 August 2009 and noted an improvement in her condition as a result of following the prescribed treatment, which included lessening headaches and weakness, better walking and absence of negative dynamics in neurological status. The applicant was recommended to continue with the treatment prescribed during her first examination. She refused to take the antidepressants offered her.

83. On 20 August 2009 the applicant had a further blood glucose test.

84. While she was in the prison hospital the applicant received the following hypotensive, antihyperglycaemic, nootropic, vasodilator and spasmolytic drugs and sedatives: metformin, nicotinic acid, enalapril, phenibut, enam, indapamide, betacerc, coxtral, panangin, corvalol, B group vitamins; injections of 25% magnesia, cinnarizine, phenibut, bendazol, papaverine and cerepro. The record states that this treatment produced positive clinical effects.

85. The entry dated 24 August 2009 states that the applicant's discharge from the hospital was planned; her condition was assessed as satisfactory; and she was considered fit for the transfer. The discharge recommendations

included: continuing intake of nootropics, antihyperglycaemics and hypotensives, including enalapril, coronal, metformin, phenibut, tioctacid, lipoic acid, trental and sedatives; blood pressure and glycaemic profile checkups; supervision by a neurologist and dynamic weight and glycaemia profile control.

86. The entry dated 26 August 2009 indicates that the applicant's examination by the prison hospital staff on that date revealed arterial tension measuring 190/100. She was then administered 40 drops of corvalol and an injection of magnesia, after which she was assessed as being fit for transfer.

87. On 27 August 2009 the applicant was examined by the remand prison doctor, to whom she complained of headaches, weakness in the left side and unsteadiness while walking. The applicant's heart rate was taken and her blood pressure measured at 160/100 and 150/90. She was instructed to continue taking etam, metformin, thrombo ASS and cinnarizine and to undergo further blood tests and arterial blood pressure checkups.

88. According to the entry of 15 September 2009, the applicant complained of headaches, back pain and tachycardia, following which she was examined by a duty medical officer and her heart rate and arterial blood pressure measured, the latter being recorded as 180/110 and 160/100. She was prescribed concor, metformin, thrombo ASS and a series of blood and urine tests, which were carried out on the same day.

89. The entry of 12 October 2009 stated that the applicant's admission to the prison hospital for inpatient treatment was planned, her diagnosis including diabetes, 3rd stage hypertension and discirculatory encephalopathy.

90. On 14 October 2009 the applicant was admitted to the prison hospital.

91. On 15 October 2009 she was examined by a neurologist, to whom she complained of headaches, dizziness and general weakness in the left side of the body. Upon examination he prescribed her vinpotropile and injections of cerepro.

92. On the same date she had an ECG, with no particular pathologies identified.

93. On 21 October 2009 the applicant had an ultrasonic cardiogram and an ultrasound of the abdominal region and kidneys, with no acute conditions found.

94. According to the applicant's discharge record, during her stay in the prison hospital she received hypotensive, antihyperglycaemic, nootropic, vasodilator and spasmolytic treatment, including injections of nicotinic acid, cerepro, dibazol, papaverine, B group vitamins (B1 and B6), as well as enam, coronal, indopamide, trental, vinpotropile and metformin. The treatment produced positive effects; the applicant's condition was considered satisfactory and she was found to be fit for transfer back to the remand prison. The discharge recommendations for the applicant included

supervision by a neurologist; arterial blood pressure monitoring; control of the glycaemic profile and weight; limitations on consumption of salt and continued intake of hypotensive, antihyperglycaemic, nootropic and vasoactive drugs and sedatives prescribed by the hospital doctors.

95. On 25 October 2009 the applicant was admitted to the remand prison medical unit. The relevant entry noted that she had no complaints and no epidemiological diseases.

96. On 28 November 2009 the doctors of the remand prison medical unit examined the applicant of their own motion. The related entry states that she had no specific complaints besides headaches, hypertension and weakness in the left side of the body; that she was permanently taking metformin for diabetes and the hypotensive drugs prescribed to her; her blood sugar and arterial blood pressure levels were checked using a personal glucometer and sphygmomanometer. Following the examination, the applicant was recommended to continue the prescribed treatment including intake of the concor, thrombo ASS, cinnarezine and metformin drugs and to carry out regular checks of her blood pressure and blood sugar.

97. On 28 January 2010 remand prison doctors examined the applicant of their own motion and measured her heart rate and blood pressure, those being recorded as 88 beats per minute and 170/100 and 170/90 respectively. The related entry noted that the applicant reiterated her complaints of headaches, hypertension and weakness; that her diagnosis of diabetes and hypertension was confirmed; that she was permanently taking metformin, noliprel, concor, magneB6 vitamins complex and thrombo ASS. She was prescribed the hypotensives nifedipine and normodipine, if her arterial blood pressure exceeded 150; she had a blood sugar test on the same day.

98. On 28 January 2010 the applicant was offered admission to the prison hospital with a view, among other things, to being examined by an ophthalmologist and an endocrinologist, which she refused. The entry in the record contains a handwritten statement by the applicant dated 1 February 2010, to the effect that she requested not to be sent to the prison hospital because the remand prison authorities had turned down her request for access to an ophthalmologist preferred by her, because she considered the quality of the medical assistance provided in the prison hospital unsatisfactory and the conditions of detention and transfer there inhumane.

99. On 16 February 2010 doctors of the remand prison medical unit examined the applicant of their own motion. The related entry notes that she was complaining of pain in the lumbar region and periodic pulsating pain in the left side of the head, and that she was able to walk around on her own, though slowly. Following the examination and the taking of her arterial blood pressure and heart rate, the doctor recommended that she undergo a general urine test and a biochemical blood test; prescribed her injections of magnesia 25%, mildronate (with a view to enhancing the microcirculation in the brain blood vessels and the eye socket), cerebrolysin and B group

vitamins. The entry also noted that the applicant was receiving and taking her personal medication.

100. On 17 February 2010 the applicant underwent chemical blood tests and urine tests in accordance with the doctors' prescription on the previous day.

101. On 3 March 2010 the applicant was examined by an ophthalmologist and a neurologist from Moscow public hospital no. 72. The former specialist diagnosed her with after-effects of eye surgery and diabetic proliferating retinopathy with a cataract with complications, and prescribed her 4% taufon (taurine) and 1% emoxipine eyedrops into both eyes and flobinzime. The neurologist confirmed diagnosis of the applicant with diabetes, encephalopathy and polyneuropathy; instructed her to have regular arterial blood pressure and blood sugar checks and prescribed her cavinton, betocerc, mexidol and injections of mexidol and kordexin.

102. On 22 March 2010 in the remand prison the applicant had a blood sugar test and on the next day the medical staff checked her arterial blood pressure and carried out further blood sugar tests. The entry in the medical record noted, among other things, that the applicant was taking her private medication.

103. On 29 March 2010 the applicant refused to be examined by remand prison doctors.

104. On 1 April 2010 she was admitted to Moscow State hospital no. 20 with the following diagnosis: hypertensive crisis, 3rd degree 3rd stage arterial hypertension, Type II diabetes of medium gravity, encephalopathy of mixed origin, and obesity. Her condition on admission was considered to be of medium gravity.

105. In the hospital the applicant underwent general and biochemical blood tests; urine tests; a chest X-ray; several rounds of ECG; an ultrasonic cardiography and a magnetic resonance tomography ("MRT"). She was examined by a neurologist on two occasions, an endocrinologist, an orthopaedist, an otolaryngologist and a psychotherapist. Those specialists diagnosed her with encephalopathy; a lacunar cyst in the brain stem connected to the stroke of 2009; cardiovascular disease; Type II diabetes of medium gravity at the subcompensation stage; osteochondrosis; and astheno-depressive syndrome.

106. The applicant was also examined by an ophthalmologist, who diagnosed her with the after-effects of eye surgery and thrombosis of the central retinal vein, as well as an early cataract in the right eye and diabetic hypertensive retinopathy in the left eye. The applicant was prescribed 4% taurine eye drops and anti-vascular drugs and B group vitamins.

107. While in that hospital the applicant was prescribed and received hypoglycaemic, vasodilator, hypotensive and nootropic treatment, including metformin; injections of actovegin, papaverine, platyphylline, B1 and B6

vitamins; atenolol, indapamide, thioridazine and sonapax. She was also prescribed, and followed, a strict diet.

108. On 14 April 2010 the applicant was discharged from the hospital, with the treatment having produced positive clinical effects and her condition being assessed as "relatively satisfactory". Her recommendations upon discharge included: a strict diet; blood tests; monitoring of arterial blood pressure and heart rate; continued intake of hypoglycaemic, vasodilator, hypotensive and nootropic drugs, including indapamide, capoten and thioridazine and metformine, as well as supervision by a generalist, an endocrinologist and a neurologist.

109. On 12 May 2010 the applicant requested a consultation with the medical staff of the remand prison, with a view to coordinating her treatment as regards her intake of medication.

110. On 13 May 2010 the applicant was examined by medical staff, who also took her arterial blood pressure and heart rate. Her main diagnosis was confirmed and she was also diagnosed with tonsillitis. The related entry states that at the time of examination the applicant was taking on a permanent basis metformine, concor, nomiprel and normoderpine and was having regular arterial blood pressure and blood sugar checks. Following the examination she was prescribed taurine and emoxipine drops in both eyes, and a mouthwash.

111. On 21 May 2010 the applicant was examined by a stomatologist and received treatment for dental problems.

112. By a letter of 28 May 2010 the remand prison informed the head of the Federal Service for the Execution of Sentences about the medical treatment the applicant had been receiving in detention. The letter stated, among other things, that, owing to the applicant's interrelated chronic illnesses, the remand prison authorities had prepared an information letter for the transport prosecutor's office, indicating "an unfavourable prognosis" for the applicant's condition and "a serious prognosis for her life".

3. The applicant's complaints about medical assistance in detention and the related proceedings

113. In November 2009 and in January 2010 the applicant brought two sets of civil proceedings complaining about the medical assistance available to her in detention.

(a) First set of proceedings

114. On 25 November 2009 the applicant complained to the Preobrazhenskiy District Court in Moscow that the remand prison authorities had failed to provide her with adequate medical assistance between 3 July and 25 August 2009 and 14 and 25 October 2009, seeking compensation for non-pecuniary damage. She also requested that the District Court instruct the head of the remand prison to secure her placement

in a private ophthalmological clinic, as well as in the Scientific Research Institute for Neurology of the Russian Academy of Medical Sciences for rehabilitation treatment in connection with the after-effects of the stroke.

115. By a judgment of 16 July 2010 the Preobrazhenskiy District Court dismissed the applicant's complaint. Referring, among other things, to her medical record, it established that she had been provided with medical assistance in the remand prison and transferred to hospital for inpatient treatment on two occasions. It also found no indications to suggest that the applicant had been refused medical assistance at any time and held that, contrary to her submissions, she had been examined by an ophthalmologist in a public hospital.

116. On 12 October 2010 the Moscow City Court rejected the applicant's appeal against the first-instance judgment.

(b) Second set of proceedings

117. On 28 January 2010 the applicant complained to the Lyublinskiy District Court in Moscow that she had not received medical assistance for her eye problems in detention and that her eyesight was deteriorating and needed an eye surgery. She requested to be examined by ophthalmologist Sh.A., with whom she had concluded a treatment agreement, or any other independent ophthalmologist and endocrinologist; that she be transferred to a hospital specialising in eye treatment and in rehabilitation treatment for patients with stroke history, though not the prison hospital where she had previously been treated, alleging that the treatment she had received there had caused her condition to deteriorate. The applicant also complained about the circumstances of her transfer from the prison hospital to the remand prison on 26-27 August 2009; that she had not received any medication or treatment for her condition; and that the remand prison authorities had disregarded her related requests and complaints.

118. On an unspecified date in March 2010 the applicant supplemented her claims, seeking admission to a private ophthalmological hospital and to the Scientific Research Institute for Neurology of the Russian Academy of Medical Sciences for rehabilitation treatment in relation to the after-effects of the stroke.

119. On 14 April 2010 the Lyublinskiy District Court held a hearing in the applicant's case. The transcript of the hearing indicates that the court examined the applicant's medical record and a number of further documents concerning her state of health and interviewed as a witness Ms E.I., a doctor from the medical unit of the remand prison. E.I. stated, among other things, that she had been present when the applicant was examined by the ophthalmologist, and that the latter had not recommended urgent surgery for her eye problems. She also submitted that the remand prison had not furnished the applicant with the eye drops prescribed by the ophthalmologist because the facility did not have a supply of them. She

further stated that in the remand prison the applicant was under the constant supervision of the medical staff, who examined her regularly, even when she had not made specific requests to that effect; the applicant received the metformin drug for her diabetes and a special diet; had regular blood sugar level checkups, and took other medication provided by the facility and by her lawyers.

120. By a judgment of 14 April 2010 the Lyublinskiy District Court dismissed the applicant's claims. It found that the applicant had turned down the remand prison authorities' offer of hospitalisation with a view to being examined by an ophthalmologist and that shortly thereafter they had secured for her an examination by an ophthalmologist in a public hospital. The latter had at no point indicated that her condition required an urgent intervention. Contrary to the applicant's submissions, her medical record contained no entries confirming that she had complained about her eyesight on each of the occasions she had undergone inpatient treatment in the prison hospital; the issue was first raised by her lawyers in December 2009. The court went on to note that the applicant had been placed in a prison hospital, where she had received the medical assistance required for her condition. This included examination by various specialist doctors, relevant tests and checkups, and medication. She was likewise provided with a special diet for her diabetes and was allowed to have her own medication in addition to the drugs available in the remand prison and the prison hospital.

121. On 1 July 2010 the Moscow City Court dismissed the applicant's appeal against the first-instance court judgment, endorsing its findings.

4. Relevant information concerning the applicant's state of health after release

122. From 9 to 29 August 2009 the applicant underwent inpatient treatment in the private hospital of the Moscow Institute of Cybernetic Medicine. She did not submit the entire record of that treatment, but only a short excerpt from it, which indicates that the clinic doctors confirmed her diagnosis as regards Type II diabetes at the subcompensation stage; hypertension; vascular disease; diabetic angiopathy of the main arteries and of the retina; left-side hemiparesis, obesity, osteochondrosis and a number of concomitant conditions. As to her eyesight, the applicant was diagnosed with the after-effects of eye surgery, partial intraocular haemorrhage and slight diabetic retinopathy in the right eye and with angiopathy in the left eye. The excerpt from the medical record submitted by the applicant was silent on whether her eye condition required any urgent medical intervention, as well as on the doctors' recommendations or prescriptions in respect of her ailments, and also said nothing about whether her health had deteriorated, and if so whether this was connected to any defects in her previous treatment.

G. Proceedings concerning the applicant's detention pending extradition

123. On 3 July 2009 the Moskovsko-Ryazanskiy Transport Prosecutor ordered the applicant's detention, referring to the detention order issued by the Kazakhstani court and Article 61 of the 1993 Minsk Convention. The decision did not set any time-limits for the applicant's detention.

124. On 16 July 2009 the transport prosecutor again ordered the applicant's detention. He referred to the extradition request received from the Kazakhstani authorities, Article 60 of the Minsk Convention and Article 466 § 2 of the Russian Code of Criminal Procedure (hereinafter "the CCrP").

125. On 19 August 2009 the Meshchanskiy District Court (hereinafter also "the District Court") dismissed the applicant's complaint about the detention order of 16 July 2009. That decision was set aside on 14 September 2009 and the case remitted for a fresh examination at the first level of jurisdiction.

126. On 16 September 2009 the District Court dismissed the applicant's complaint about the detention order of 16 July 2009, finding that the prosecutor had acted in compliance with the requirements of Article 466 § 2, which authorised him to place a person in custody with a view to extradition on the basis of an extradition request accompanied by a foreign court's detention order. The decision also noted that the complaint was examined in the applicant's presence, and that her lawyers, who had been duly notified of the time and venue of the hearing, had left the court building before it had started examining the complaint. According to written statements by the applicant's lawyers dated 16 September 2009, they had left the court at 4.30 p.m. because the hearing on the applicant's complaint had not yet started and they "could not waste their time waiting". Their statements also contained a request that the hearing be postponed.

127. On 25 September 2009 the applicant complained to the District Court under Article 125 of the CCrP that the term of her detention authorised by the transport prosecutor on 3 July 2009 had expired on 3 September 2009 and that after that date, and in the absence of any extensions of her detention by domestic courts pursuant to Article 109 of the CCrP, she had been held in custody unlawfully. She requested to be released.

128. On 1 October 2009 the Meshchanskiy District Court refused to entertain the above complaint; that decision was set aside by the Moscow City Court on 11 November 2009, and the case was remitted to the district court for a fresh examination.

129. On 14 October 2009 the Moscovsko-Ryazanskiy Transport Prosecutor's Office, in reply to the applicant's request for her release, informed her that she was being held in custody under the detention order of

16 July 2009 issued pursuant to Article 466 § 2 of the CCrP, and that her detention following the receipt of the extradition request was governed by the rules of criminal procedure of the requesting State, namely Kazakhstan.

130. On an unspecified date in October 2009 the applicant lodged with the Tverskoy and Meshchanksiy district courts further complaints under Article 125 of the CCrP, submitting that the period of her detention, unlawfully authorised by the prosecutor on 3 July 2009, had expired on 3 September 2009, and that her detention after that date, in the absence of any extensions by Russian courts pursuant to Article 109 of the CCrP, had become unlawful. Despite this, the prosecuting authorities had refused to release her. She requested to be released by the court.

131. On 6 November 2009 the applicant complained to the Tverskoy District Court under Article 125 of the CCrP, reiterating her submissions that her detention after 3 September 2009 had been unlawful and seeking release.

132. On 11 November 2009 the Moscow City Court on appeal upheld the decision of 16 September 2009, endorsing the district court's reasoning and observing that the applicant's lawyers, duly apprised of the hearing, had chosen to leave the court and not to attend and that in those circumstances the district court's decision to pursue the examination of the complaint in their absence was justified.

133. On 16 November 2009 the Tverskoy District Court refused to entertain the applicant's complaint of 6 November 2009, finding that she had failed to articulate its subject matter clearly. It further held that, in any event, it had no powers under Article 125 of the CCrP to order the release of detainees or to order State officials "to carry out any procedural acts".

134. On 17 November 2009 the applicant brought civil proceedings against the head of the detention facility because she had not been released after the expiry on 3 September 2009 of the authorised period of her detention.

135. On 18 November 2009 the Meshchanskiy District Court extended the applicant's detention until 3 February 2010 with reference to Article 109 of the CCrP, following a request by the transport prosecutor. It noted that the transport prosecutor had adduced evidence showing that the extradition check conducted in respect of the applicant was under way and that it was necessary for further steps to be taken to investigate the issues she had cited in her arguments against extradition.

136. The applicant appealed to the Moscow City Court against that detention order. The stamped copies of her appeal statements indicate that they were received by the District Court on 19 November and 1 and 25 December 2009. On an unspecified date the District Court sent the case file on the detention order to the Moscow City Court.

137. On 9 and 25 December 2009 the Meshchanskiy District Court dismissed the applicant's complaint lodged in September and October 2009 under Article 125 of the CCrP (see paragraphs 127 and 130 above).

138. On 1 February 2010 the Meshchanskiy District Court extended the applicant's detention until 3 April 2010 with reference to Article 109 of the CCrP and the pending extradition proceedings, at the prosecutor's request. At the hearing the applicant was represented by counsel B., appointed for her by the district court. The applicant appealed to the city court against the detention order. It transpires that the district court received her appeal statements on 3, 4 and 15 February 2010.

139. On 31 March 2010 the City Court set aside the district court's detention order of 1 February 2010 on the ground that the applicant's privately appointed lawyers had not been duly notified of the hearing at the first level of jurisdiction, and remitted the case for a fresh examination. By the same decision the City Court extended the applicant's detention until 9 April 2010.

140. On 31 March 2010 the City Court upheld the Tverskoy District Court's decision of 16 November 2009 dismissing the applicant's complaint under Article 125 of the CCrP. It held that that legal provision did not empower a court to order a detainee to be released or to order State officials to carry out any procedural acts.

141. On 1 April 2010 the Meshchanskiy District Court extended the applicant's detention until 3 July 2010, with reference to Article 109 of the CCrP. The documents at the Court's disposal indicate that the applicant's appeal statements were submitted to the district court on 2 April 2010.

142. On 8 April 2010 the District Court re-examined and granted the prosecutor's request for extension of the applicant's detention until 3 April 2010. The court noted that by its decision of 31 March 2010 the city court had already extended the applicant's detention until 9 April 2010 and that on 1 April 2010 the district court had approved a further extension of the applicant's detention until 3 July 2010. The court also referred, among other things, to the fact that the extradition proceedings against the applicant were under way. It appears that the district court received the applicant's appeal statements against the detention order of 8 April 2010 on 26 April and 4 May 2010.

143. By a final decision of 12 April 2010 the City Court dismissed the applicant's complaint under Article 125 of the CCrP, lodged in October 2009, upholding the Tverskoy District Court's finding that a court had no authority under that provision to order her release.

144. On 19 April 2010 the City Court upheld the decisions of 9 and 25 December 2009 concerning the applicant's complaints under Article 125 of the CCrP and her requests for release, noting, among other things, that the Meshchanskiy Court had already extended her detention on 18 November 2009.

145. By a final decision of 25 May 2010 the City Court dismissed the applicant's civil claim of 17 November 2009 against the head of the detention facility in which she had been held, for failure to release her.

146. By a decision of 9 June 2010 the City Court dismissed the applicant's appeal against the district court detention order of 18 November 2009. On the same date the City Court upheld the detention order of 8 April 2010.

147. On 2 July 2010 the transport prosecutor's office ordered the applicant's release from custody under house arrest.

148. By a decision of 14 July 2010 the City Court dismissed the applicant's appeal against the District Court detention order of 1 April 2010.

II. RELEVANT INTERNATIONAL MATERIALS AND DOMESTIC LAW AND PRACTICE

A. Detention pending extradition and judicial review of detention

1. The Russian Constitution

149. The Constitution guarantees the right to liberty (Article 22):

> "1. Everyone has the right to liberty and personal integrity.
>
> 2. Arrest, placement in custody and detention are only permitted on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

2. The 1993 Minsk Convention

150. The CIS Convention on legal assistance and legal relations in civil, family and criminal cases ("the Minsk Convention"), to which both Russia and Kazakhstan are parties, provides that in executing a request for legal assistance, the requested party applies its domestic law (Article 8 § 1).

151. A request for extradition must be accompanied by a detention order (Article 58 § 2). Upon receipt of a request for extradition, measures should be taken immediately to find and arrest the person whose extradition is sought, except in cases where that person cannot be extradited (Article 60).

152. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest, containing a reference to the detention order and indicating that a request for extradition will follow, must be sent (Article 61 § 1). A person may also be arrested in the absence of such a request if there are reasons to suspect that he has committed, in the territory of the other Contracting Party, an offence for which extradition may be requested. The other

Contracting Party must be immediately informed of the arrest (Article 61 § 2).

153. A person arrested pursuant to Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

3. The Code of Criminal Procedure

154. The term "court" is defined by the CCrP as "any court of general jurisdiction which examines a criminal case on the merits and delivers decisions provided for by this Code" (Article 5 § 48). The term "judge" is defined by the CCrP as "an official empowered to administer justice" (Article 5 § 54).

155. Chapter 13 of the CCrP ("Measures of restraint") governs the use of measures of restraint, or preventive measures (*меры пресечения*), while criminal proceedings are pending. Such measures include placement in custody. Custody may be ordered by a court on application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive measure of restraint cannot be used (Article 108 §§ 1 and 3). A period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period up to six months (Article 109 § 2). Further extensions of up to twelve months, or in exceptional circumstances, up to eighteen months, may only be granted if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4). If the grounds serving as the basis for a preventive measure have changed, the preventive measure must be cancelled or amended. A decision to cancel or amend a preventive measure may be taken by an investigator, a prosecutor or a court (Article 110).

156. A judge's decision on detention is amenable to appeal before a higher court within three days of its delivery date (Article 108 § 11 of the CCrP). A statement of appeal should be submitted to the first-instance court (Article 355). While the CCrP contains no time-limit during which the first-instance court should send the statement of appeal and the case file to the appeal-instance court, Order no. 36 of 29 April 2003 by the Judicial Department of the Supreme Court of Russia requires that, "after the expiry of the three-day time-limit for appeal", the first-instance court should submit the detention file to the higher court. Having received this file, second-instance courts should examine appeals lodged against the judge's decisions on detention within three days (Article 108 § 11).

157. Chapter 16 ("Complaints about acts and decisions by courts and officials involved in criminal proceedings") provides for judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of

parties to criminal proceedings (Article 125 § 1). The competent court is the court with territorial jurisdiction over the location at which the preliminary investigation is conducted (ibid.).

158. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. Upon receipt of a request for extradition not accompanied by a detention order issued by a foreign court, a prosecutor must decide on the measure of restraint in respect of the person whose extradition is sought. The measure must be applied in accordance with established procedure (Article 466 § 1). If a request for extradition is accompanied by a detention order issued by a foreign court, a prosecutor may impose house arrest on the individual concerned or place him or her in detention "without seeking confirmation of the validity of that order from a Russian court" (Article 466 § 2).

4. Relevant case-law of the Constitutional and Supreme Courts of Russia

159. On 4 April 2006 the Constitutional Court examined an application by Mr N., who had submitted that the lack of any limitation in time on the detention of a person pending extradition was incompatible with the constitutional guarantee against arbitrary detention. In its decision no. 101-O of the same date, the Constitutional Court declared the application inadmissible. In its view, the absence of any specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, which in the case of Russia was the procedure laid down in the CCrP. That procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Measures of restraint") which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests. Accordingly, Article 466 § 1 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP or the time-limits fixed in the Code. The Court also refused to analyse Article 466 § 2, finding that it had not been applied in Mr N.'s case.

160. On 1 March 2007 the Constitutional Court, in decision no. 333-O-P, held that Articles 61 and 62 of the Minsk Convention, governing a person's detention pending the receipt of an extradition request, did not determine the body or official competent to order such detention, the procedure to be followed, or any time-limits. In accordance with Article 8 of the Minsk Convention, the applicable procedures and time-limits were to be established by domestic legal provisions.

161. The Constitutional Court further reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention, in that it required a court to examine whether the arrest was lawful and justified. The Constitutional Court held that Article 466 § 1 of the CCrP, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure and within the time-limits established in Chapter 13 of the CCrP.

162. On 19 March 2009 the Constitutional Court, by decision no. 383-O-O, rejected as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the CCrP, stating that this provision "does not establish time-limits for custodial detention and does not establish the grounds and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign state to detain an accused. Therefore, the disputed norm cannot be considered to violate the constitutional rights of [the claimant] ..."

163. On 10 February 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No.1, aimed at clarifying the application of Article 125 of the CCrP. It stated that acts or inaction of investigating and prosecuting authorities, including a prosecutor's decision to hold a person under house arrest or to remand him or her in custody with a view to extradition, could be appealed against to a court under Article 125 of the CCrP. The plenary particularly emphasised that in declaring a specific decision, act or failure to act on the part of a law-enforcement authority unlawful or unjustified, a judge was not entitled to annul the impugned decision or to order the official responsible to revoke it or to take any particular actions, but could only instruct him or her to rectify the shortcomings indicated. Should the authority concerned fail to comply with the court's instructions, an interested party could raise that matter before a court, and the latter body could issue a special decision [*частное определение*], drawing the authority's attention to the situation.

164. On 29 October 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No. 22, stating that, pursuant to Article 466 § 1 of the CCrP, only a court could remand in custody a person in respect of whom an extradition check was pending when the authorities of the country requesting extradition had not submitted a court decision to

place that person in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the CCrP and following a prosecutor's petition to place that person in custody. In deciding to remand a person in custody, a court was to examine if there existed factual and legal grounds for the preventive measure to be applied. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor was entitled to remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCrP.

165. In a recent ruling, no. 11 of 14 June 2012, the Plenary Session of the Russian Supreme Court held that a person whose extradition was sought might be detained before the receipt of an extradition request only in cases specified in international treaties to which Russia was a party, such as Article 61 of the Minsk Convention. Detention under those circumstances should be ordered and extended by a Russian court in accordance with the procedure, and within the time-limits, established by Articles 108 and 109 of the CCrP. The detention order should mention the term for which the detention or extension was ordered and the date of its expiry. If the request for extradition is not received within a month, or forty days if the requesting country is a party to the Minsk Convention, the person whose extradition is sought should be released immediately.

B. International materials concerning Kazakhstan

166. For relevant reports on Kazakhstan covering the period between 2004 and 2009 see *Dzhaksybergenov v. Ukraine*, no. 12343/10, §§ 25-29, 10 February 2011.

167. In his statement to the 13th Session of the Human Rights Council on 8 March 2010 the UN Special Rapporteur on Torture, Manfred Nowak, stated, among other things, that "while the conditions of detention were much better in Kazakhstan and had improved in recent years, the practice of torture certainly went beyond isolated cases, but was not widespread or systematic".

168. The chapter on Kazakhstan of the Amnesty International report "The State of The World's Human Rights in 2010", released in 2010, in so far as relevant, reads as follows:

> " ... Confessions extracted under torture continued to be admitted as evidence in trials. Criminal proceedings failed to comply with international standards of fair trial. Torture and other ill-treatment by members of the security forces remained widespread, in particular by officers of the National Security Service in the context of

operations in the name of national security, and the fight against terrorism and corruption. Freedom of expression and freedom of religion continued to be restricted.

... Torture and other ill-treatment

In November the European Court of Human Rights ruled in the case of Kaboulov v. Ukraine that the extradition to Kazakhstan of any criminal suspect, including Amir Damirovich Kaboulov, would be in violation of Article 3 of the European Convention on Human Rights, as they would run a serious risk of being subjected to torture or inhuman or degrading treatment.

Despite amendments to the criminal and criminal procedural codes to clamp down on abusive practices, torture and other ill-treatment remained widespread. Confessions reportedly extracted under torture continued to be admitted as evidence in criminal trials, and individuals continued to be held in unregistered detention for longer than the three hours allowed for in national law. The lack of a clear definition of detention remained unaddressed despite recommendations of the UN Committee against Torture in November 2008.

Following his visit to Kazakhstan in May 2009, the UN Special Rapporteur on torture concluded that he "received many credible allegations of beatings with hands and fists, plastic bottles filled with sand and police truncheons and of kicking, asphyxiation through plastic bags and gas masks used to obtain confessions from suspects. In several cases, these allegations were supported by forensic medical evidence." ...

Prison conditions

Inessa Karkhu, an accountant serving an eight-year prison sentence for fraud handed down in 2007, continued to be denied essential medical treatment for glaucoma, a disease that progressively damages vision. Her condition continued to deteriorate throughout the year and it was feared that she could end up losing her sight if she was not treated as a matter of urgency. She had to rely on medication delivered by her family which became difficult when she was transferred to a prison in Almaty, some 1,000 km from the capital Astana. Following international pressure, Inessa Karkhu was examined by an independent ophthalmologist in November, who found that the disease had significantly progressed and that both her eyes were affected. Nevertheless, Inessa Karkhu had not received the recommended medical treatment by December."

169. Human Rights Watch, in its World Report 2010 – Kazakhstan, issued in January 2010, criticised the situation there as regards freedom of expression and assembly and considered that after the modest reforms of early 2009 Kazakhstan had dealt a series of blows to human rights. However, the report did not mention the issue of ill-treatment or torture of detainees or conditions of detention in that country.

170. The applicant referred to a report entitled "Nations in Transit 2010 - Kazakhstan", published in June 2010 by Freedom House, a US non-governmental organisation, which, in so far as relevant, states as follows:

" ... National Democratic Governance. Bolstered by its growing oil exports and rising prosperity over the past decade, Kazakhstan has employed a rhetoric of democratization to gain recognition from Europe and the United States, but it has failed to demonstrate its commitment in practice. ...

Moreover, the government has continued to pursue a vendetta against disaffected former members of the regime. For example, Mukhtar Ablyazov, a former minister and opposition figure who later became chairman of BTA, the country's leading bank, faced politically motivated fraud charges in 2009, and the widely respected technocrat and former state uranium company head Mukhtar Zhakishev was arrested on questionable grounds, apparently because of his personal ties to Ablyazov ...

Judicial Framework and Independence. The judiciary, which like the legislative branch operates under presidential patronage, has remained loyal to the regime and protected the interests of the state and its functionaries rather than those of individuals, minorities, and the weaker strata of society. A significant increase in funding allocated to the judiciary has led to an improvement in professional training, technical infrastructure, and wage levels to reduce corruption. Adoption of a new system of jury trials and incremental reforms to the penitentiary system denote positive changes. However, the 2009 trial of Evgeniy Zhovtis, which was marred by procedural violations and a failure to adequately consider evidence, and the ongoing legal persecution of regime opponents and critical media, have proven the inability of the judiciary to follow proper procedures and render fair and independent verdicts ...

Two recent, high-profile corruption cases – the multimillion-dollar fraud charges levied against the former BTA management led by Mukhtar Ablyazov, and the related case against former Kazatomprom head Mukhtar Zhakishev – have a clear political overtone. BTA Bank suffered huge losses amid the global financial crisis, leading the state to acquire a majority stake in early 2009. In August, the company's new state-controlled management commenced legal proceedings in the High Court in London, where Ablyazov and his associates had fled, accusing them of defrauding the bank of close to US$300 million through a series of questionable agreements. The London court granted an injunction freezing the assets of Ablyazov and his associates as the case proceeded ...

Zhakishev was arrested in May 2009 on charges of fraud worth USD 690,000. He was accused of establishing his own subsidiary companies in Austria using state resources and illegally selling uranium assets. The case linked him to Rakhat Aliev, who served as ambassador to Austria at the time. Zhakishev contends that his transactions were legal and approved by the government, and that the president directly controlled the uranium industry, meaning no deposit could be sold without his knowledge. There is a widespread perception that Zhakishev, who shares a close friendship with Ablyazov, was targeted in an effort to extract information about Ablyazov's assets, and that he could be released if he agrees to cooperate.

By late 2009, a dozen senior managers affiliated with BTA had received prison sentences ranging from two to eight years, though the veracity of the charges and the evidence presented in court remained doubtful. A number of other professionals who were either connected to Ablyazov and the BTA management or suspected of involvement with them have reportedly avoided arrest by offering huge bribes to the prosecutor general and the financial police."

171. In its 2011 Annual Report on "the State of the World's Human Rights" Amnesty International stated, in so far as relevant, as follows:

> " ... Reports of torture or other ill-treatment remained widespread, despite government promises to adopt a zero tolerance policy toward its practice. Impunity for such human rights violations persisted ...
>
> In January, Kazakhstan assumed chairmanship of the OSCE, making counter-terror and security measures in Europe and Central Asia the OSCE's priority. Human rights commitments did not figure prominently in the chairmanship's agenda.
>
> In May, parliament approved a constitutional amendment that made President Nursultan Nazarbaev "leader of the nation" ... Defacing pictures of the "leader of the nation" and misrepresenting his biography were made criminal offences ...
>
> Torture and other ill-treatment
>
> The authorities introduced a number of measures intended to prevent torture, including widening access to places of detention to independent public monitors and committing publicly to a policy of zero tolerance on torture.
>
> Kazakhstan's human rights record was assessed under the UN Universal Periodic Review in February. In its presentation, the government delegation reiterated that the Kazakhstani authorities were committed to a policy of zero tolerance on torture, and that they "would not rest until all vestiges of torture had been fully and totally eliminated".
>
> In February, the government postponed the creation of an independent detention monitoring mechanism, the National Preventive Mechanism (NPM), for up to three years. However, in line with their obligations under the Optional Protocol to the UN Convention against Torture, the authorities continued to develop a legal framework for the NPM in close co-operation with domestic and international NGOs and intergovernmental organizations.
>
> In April, the Prosecutor General's Office told Amnesty International that members of Independent Public Monitoring Commissions had been given unprecedented access to pre-trial detention centres of the National Security Service (NSS); four visits had been carried out in 2009 and eight in 2010.
>
> Despite these measures, people in police custody reported that they were frequently subjected to torture and other ill-treatment, both before and after the formal registration of their detention at a police station. Law enforcement officials often failed to respect the existing law on detention, which requires that they register detainees within three hours of their arrest.
>
> In October, the UN Special Rapporteur on torture criticized Kazakhstan for continuing to conceal the full extent of torture and other ill-treatment in its detention and prison system.
>
> Impunity
>
> Impunity for such human rights violations remained fundamentally unchallenged. The authorities failed to fully and effectively implement Kazakhstan's obligations

under the UN Convention against Torture. They also failed to implement the recommendations of the UN Committee against Torture and other UN treaty bodies and special procedures, especially with regard to initiating prompt, thorough, independent and impartial investigations into allegations of torture or other ill-treatment.

In April, the Prosecutor General's Office informed Amnesty International that in 2009 only two allegations of torture by security officers had been confirmed and that criminal cases had been opened against the offending officers. It dismissed as unfounded all allegations of torture by security officers raised by a number of people whose cases had been taken up by Amnesty International, other human rights organizations and the UN Special Rapporteur on torture."

172. A document entitled "List of issues prior to the submission to the third periodic report of Kazakhstan" (CAT/C/KAZ/3), examined by the UN Committee Against Torture at its 45th session in November 2010 and published in February 2011, states, in so far as relevant:

" ... Article 2

3. According to information before the Committee since the consideration of the previous periodic report in 2008, torture and ill-treatment, including the threat of sexual abuse and rape, committed by law enforcement officials, remain an issue of serious concern in the State party, and do not occur in isolated or infrequent instances."

173. The UN Human Rights Committee's thirty-fifth annual report adopted on 28 July 2011 (A/66/40 (Vol.I)), in so far as relevant, reads as follows:

"...

While noting the adoption of an action plan for 2010-2012 on the implementation of recommendations of the Committee against Torture, the Committee expresses concern at increased reports of torture and the low rate of investigations of allegations of torture by the Special Procurators. The Committee is also concerned that the maximum penalty (10 years' imprisonment) for torture resulting in death under Article 347-1 of the Criminal Code is too low (art.7).

The State party should take appropriate measures to put an end to torture by, inter alia, strengthening the mandate of the Special Procurators to carry out independent investigations of alleged misconduct by law enforcement officials. In this connection, the State party should ensure that law enforcement personnel continue to receive training on the prevention of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) of 1999 in all training programmes for law enforcement officials. The State party should thus ensure that allegations of torture and ill-treatment are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims receive adequate reparation. In this regard, the State party is encouraged to review its Criminal Code to ensure that penalties on torture are commensurate with the nature and gravity of such crimes."

174. The Kazakhstan chapter of the 2012 Annual Report by Amnesty International, released in May 2012, reads as follows, in so far as relevant:

> " ... Reports of torture and other ill-treatment by security forces continued unabated, despite government claims that it was successfully addressing these violations. Security forces used excessive force to break up large-scale protest strikes by oil and gas workers and detained dozens of protesters and their supporters, as well as trade union and opposition activists ...
>
> Torture and other ill-treatment
>
> In July, the UN Human Rights Committee discussed Kazakhstan's report on implementing the ICCPR. It regretted that Kazakhstan had not made more progress in eliminating torture and questioned the political will of the authorities to fulfil their commitments, especially in initiating effective investigations into allegations of torture or other ill-treatment. In the same month, in a retrograde move, the President signed a decree authorizing the transfer of the prison system back to the authority of the Ministry of Internal Affairs, thereby defeating years of reform efforts by government and NGOs. Access by public monitors to prisons and pre-trial detention centres had greatly improved since their transfer to the authority of the Ministry of Justice in 2004. In contrast, access to police cells and other places of detention under the authority of the Ministry of Internal Affairs remained problematic and most allegations of torture continued to be received from there ...
>
> Following the violence in Zhanaozen on 16 December, released detainees and relatives of detainees reported that scores of people, including young women, had been rounded up and kept incommunicado in overcrowded cells in police custody. They claimed the detainees had been stripped naked, beaten, kicked, and doused with cold water. Journalists reported hearing screams coming from interrogation rooms in police stations. However, without access, independent monitors found it difficult to verify the allegations. At least one man was alleged to have died as a result of the torture he was subjected to in police custody."

175. The 2012 World Report published by Human Rights Watch, does not refer to the issue of ill-treatment in detention, and, in so far as may be relevant, states as follows:

> " ... Kazakhstan failed to carry out long-promised human rights reforms in the year following its chairmanship of the Organization for Security and Co-operation in Europe (OSCE). Instead, its rights record suffered further setbacks. Control of the penitentiary systems moved from the Ministry of Justice to the Ministry of Internal Affairs, putting prisons back in police control, and a new restrictive religion law was adopted. Websites were blocked and legal amendments limiting media freedoms remained. A union lawyer was imprisoned for six years for speaking out on workers' rights. The government continued to punish activists for breaking restrictive rules on freedom of assembly and Kazakhstan's leading human rights defender, Evgeniy Zhovtis, remains in prison ...
>
> Freedom of Assembly
>
> Kazakh authorities maintain restrictive rules on freedom of assembly and detained and fined activists and other individuals for organizing and/or participating in

unsanctioned protests and pickets. Work on a draft law on peaceful assembly remained suspended.

In two separate incidents in January small groups of activists in Almaty and Urals were detained and fined for protesting against the proposed referendum to extend President Nazarbaev's rule. In August three activists of the Socialist Movement of Kazakhstan were sentenced to short term administrative sentences after staging a protest in support of the striking oil workers outside the Nur-Otan party office in Almaty.

In mid-May workers in the oil sector in western Kazakhstan staged strikes and labor protests demanding higher wages, revised collective agreements, and non-interference in union work. On June 5, police dispersed several hundred workers who tried to protest outside the regional mayor's office in Aktau, and temporarily detained and fined several dozen. On July 8 riot police dispersed oil workers on strike in Zhanaozen, and the following night used force to round-up workers who remained on a hunger strike. In mid-August Akzhanat Aminov, an oil worker, was given a two-year suspended sentence for allegedly organizing an illegal strike ...

Detention of Activists

On August 8 union lawyer Natalia Sokolova was sentenced to six years in prison and banned from civil work for three years on charges of "inciting social discord" for addressing workers about wage disparity and "actively participating in illegal gatherings" at an oil company in western Kazakhstan. On September 26 her sentence was upheld on appeal, endorsing the government's violations of her right to free expression and association.

On August 19 a prison appeals commission rejected political activist Aidos Sadykov's latest request to be transferred from prison to a settlement colony, a penal establishment that allows for more freedoms than an ordinary prison. He was imprisoned for two years in July 2010 for "hooliganism accompanied by resistance to the police" in what appears to be a politically motivated set up.

On August 2 Evgeniy Zhovtis, Kazakhstan's most prominent human rights defender and head of the Kazakh International Bureau for Human Rights and the Rule of Law, was denied early release for the second time. On September 3, 2009, Zhovtis was found guilty of vehicular manslaughter, following an unfair trial marred by serious procedural flaws that effectively denied him the right to present a defence. Zhovtis was sentenced to four years in a settlement colony. ...

Key International Actors

Kazakhstan's controversial OSCE chairmanship culminated in a summit in December 2010 in Astana. NGOs held a parallel OSCE civil society conference and adopted recommendations to strengthen OSCE states' implementation of human dimension commitments and improve cooperation with civil society. On the eve of the summit, US Secretary of State Hillary Clinton held a town hall meeting with civil society organizations, stressing that fundamental freedoms such as expression, association, and religion are "are absolutely critical to the building of sustainable societies." Clinton honoured several Kazakh human rights groups, including the Almaty Helsinki Committee and the Kazakhstan Bureau for Human Rights and Rule of Law.

A July 2011 review by the UN Human Rights Committee criticized the use of child labor in tobacco and cotton fields and undue restrictions on freedom of association and assembly. The committee noted "concern at reports that threats, assaults, harassment and intimidation of journalists and human rights defenders have severely reduced the exercise of freedom of expression," and called on Kazakhstan to "fully comply with the principle of non-refoulement."

In July Catherine Ashton, EU high representative for foreign affairs and security policy/vice president of the European Commission, welcomed the launch of negotiations for a new "enhanced partnership" between the EU and Kazakhstan, which began in October, stressing that "the successful conclusion of the negotiations will be influenced by the advancement of democratic reforms."

In September the US ambassador to the OSCE and the EU issued critical statements reacting to developments in Kazakhstan, including Sokolova's imprisonment and the transfer of penitentiary control to the Ministry of Internal Affairs. However, such public criticism by the EU and US of human rights violations by the Kazakhstan government is muted."

THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

176. The Court notes that the original application was limited to the facts and complaints under Articles 3, 5 §§ 1 and 4, 6 and 13 about the applicant's extradition, the risk of denial of fair trial, the medical assistance available in detention in Russia, and the lawfulness of, quality and speediness of judicial review of her detention pending extradition, as well as effective remedies in respect of her complaint about extradition under Article 3. After the Court had given notice of the application to the respondent Government, the applicant made a number of new submissions under Articles 2, 3, 5, 6, 8, 13, 18 of the Convention and Article 2 of Protocol No. 4, including also in her additional observations of 4 and 31 May 2012, requested by the Court.

177. As it has decided in the previous cases, the Court does not find it appropriate to examine any new matters raised by the applicant after communication of the application to the Government, as long as they do not constitute an elaboration upon the applicant's original complaints to the Court (see *Rafig Aliyev v. Azerbaijan*, no. 45875/06, §§ 69-70, 6 December 2011; see also *Nuray Şen v. Turkey* (no. 2), no. 25354/94, § 200, 30 March 2004; *Piryanik v. Ukraine,* no. 75788/01, § 20, 19 April 2005; *Kovach v. Ukraine*, no. 39424/02, § 38, ECHR 2008; *Yusupova and Others v. Russia*, no. 5428/05, § 51, 9 July 2009; *Ruža v. Latvia* (dec.),

no. 44798/05, § 30, 11 May 2010, and *Saghinadze and Others v. Georgia*, no. 18768/05, § 72, 27 May 2010).

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S EXTRADITION TO KAZAKHSTAN

178. The applicant complained that if extradited to Kazakhstan she would run a risk of being subjected to ill-treatment in breach of Article 3 of the Convention, and that she had been deprived of effective remedies in respect of her grievance. Articles 3 and 13 provide:

Article 3

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

Article 13

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

A. Submissions by the parties

1. The Government

179. The Government argued that the applicant had failed to substantiate her allegation that she would run a real risk of ill-treatment if extradited. Kazakhstan is party to a number of international agreements on human rights, and its own legislation, including its Constitution and the Code of Criminal Procedure prohibits torture. In approving the decision on the applicant's extradition the Russian courts took into account the assurances provided by the Kazakhstani authorities. Among other things, they guaranteed that the applicant's criminal prosecution had not been politically motivated; that she would not be subjected to torture and would be provided with adequate medical assistance, if required; and that representatives of the Russian Federation authorities would be allowed contact with the applicant at any stage of criminal proceedings with a view to verifying whether their Kazakhstani counterpart complied with their undertakings. The Government also noted that in their cooperation with the Kazakhstani authorities in extradition matters they had never been faced with a failure on the authorities' part to comply with their assurances. The Government particularly stressed that, whilst the President of Kazakhstan had made

several statements concerning Mr Ablyazov, in none of them did he mention the applicant.

180. The Government further submitted that the domestic authorities had carefully examined the applicant's allegations of risk of ill-treatment in the extradition proceedings both at the pre-trial and trial stages. They concluded that she had been afforded effective remedies in respect of her grievance under Article 3.

2. The applicant

181. Referring to reports by various NGOs, the applicant submitted that the human rights situation in Kazakhstan was worrying, and that torture of detainees was not an exceptional situation. Conditions of detention, as well as medical care provided to detainees in Kazakhstani detention facilities, were poor and deficient. Moreover, in June 2010 Kazakhstan had enacted the law "On the leader of the nation" (*Закон «О лидере Нации»*), which, among other things, made it a criminal offence to "insult President Nazarbayev in public or to distort facts of his life". She alleged that the situation had worsened because of the events in Zhanaozen following the oil workers' strikes. Relying on the Court's judgment in *Kaboulov v. Ukraine* (no. 41015/04, 19 November 2009), the applicant submitted that any criminal suspect held in custody in Kazakhstan ran a risk of torture.

182. The applicant further claimed that Mr Ablyazov's criminal prosecution was politically motivated, that the Kazakhstani authorities had accused him, in addition to corruption charges, of terrorism, and that since the investigating authorities considered her to have had a "relationship of trust" with him, the charges against her also had a political overtone. In this respect she relied on the Freedom House report (see paragraph 170 above). In the applicant's submission, in view of the statements made by representatives of the Kazakhstani GPO on 10 August 2009 and by Mr Nazarbayev on 26 February 2009, and the fact that the authorities considered that she had a "relationship of trust" with Mr Ablyazov, it was obvious that she would be tortured with a view to obtaining statements incriminating him if she was returned to Kazakhstan.

183. She further alleged that high-ranking Kazakhstani officials had already subjected her to torture when they burst into the intensive care ward where she was a patient and threatened her with reprisals and also with withholding medical assistance from her if she refused to cooperate with them. Moreover, while in detention in Russia she was visited by an official of the Kazakhstani prosecutor's office who, in the presence of her lawyer and a Russian investigator threatened her with reprisals if she refused to give a statement incriminating Mr Ablyazov.

184. The applicant further doubted that, given her state of health and the poor level of medical care available in the requesting country's detention

facilities, she would receive the medical assistance there that she required for her condition.

185. Relying on the Court's case-law, the applicant submitted that the assurances provided by the Kazakhstani authorities were unreliable, that one of them had been provided by the same person who had threatened her with refusal of medical assistance, and that once extradited the Russian authorities would in any event not be interested in monitoring whether the Kazakhstani authorities were complying with their undertakings. Indeed, the Supreme Court of Russia had expressed reservations about the reliability of those assurances.

186. Lastly, she considered that she had not enjoyed effective remedies in respect of her grievance under Article 3 because the Russian courts had failed to properly assess the risk that she would be subjected to torture, and had instead heavily relied on the assurances provided by the requesting country without checking whether they were reliable.

B. The Court's assessment

1. Admissibility

187. The Court observes that the extradition order in respect of the applicant remains in force and hence it considers that she can still be regarded as running a risk of extradition in view of the criminal proceedings pending against her in Kazakhstan. It also notes that on 10 January 2012 the applicant was granted temporary asylum in Russia for a year (see paragraph 56 above). No further details as to the reasons for that decision were given; nor was a copy of it provided by the parties. None of the parties alleged, and the Court does not consider, that this measure affected the applicant's victim status, since the extradition order, which is at the heart of the applicant's complaint, remains enforceable. Therefore, the applicant has not lost victim status in respect of the alleged violation of Article 3 of the Convention.

188. The Court further notes that the complaints under Articles 3 and 13 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. They must therefore be declared admissible.

2. Merits

(a) Article 3

(i) General principles

189. The Court reiterates that 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 person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the requesting country. The establishment of that responsibility inevitably involves an assessment of the situation in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the requesting country, whether under general international law, the Convention or otherwise. In so far as any responsibility under the Convention is or may be incurred, it is responsibility incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005 I, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

190. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Saadi v. Italy* [GC], no. 37201/06, § 128, ECHR 2008). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, 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 of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (*see Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, Reports 1996-V).

191. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of the applicant being extradited to the requesting country, bearing in mind the general situation there and the applicant's personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). It is in principle for the applicant to

adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

192. As regards the general situation in a particular country, the Court considers that it can attach a certain weight to the information contained in recent reports from independent international human rights protection bodies and organisations, or governmental sources (see, for example, *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005, and *Al Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007).

193. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the country of destination does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). 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 (see *Mamatkulov and Askarov*, cited above, § 73).

194. In accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the commitments undertaken by the Contracting Parties to the Convention. With reference to extradition or deportation, the Court reiterates that in cases where an applicant provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials, as well as by materials originating from other reliable sources (see *Salah Sheekh v. the Netherland*s, no. 1948/04, § 136, 11 January 2007).

195. In assessing such material, consideration must be given to its source, 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 (see *Saadi*, cited above, § 143). Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their 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).

196. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Ultimately, the Court's own assessment of the human rights situation in a country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be extradited to that country. Thus, the weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3 (ibid., § 122).

(ii) Application of these principles to the present case

197. Turning to the circumstances of the present case, the Court will now examine whether the foreseeable consequences of the applicant's extradition are such as to bring Article 3 into play. Bearing in mind that the applicant has not yet been extradited to Kazakhstan, owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for its assessment of the risk is accordingly that of the Court's consideration of the case.

198. The Court notes at the outset that the applicant raised arguments concerning the risk of ill-treatment in both the asylum and the extradition proceedings. The asylum proceedings, in which the FMS and the courts mainly discussed and dismissed the applicant's submission about political persecution, were followed by four rounds of extradition proceedings, in which the Supreme Court on several occasions set aside City Court decisions because it deemed they had not thoroughly examined the applicant's arguments concerning the risk of ill-treatment (see paragraphs 45, 48 and 51 above).

199. The information and documents available to the Court indicate that following those decisions by the Supreme Court, the City Court granted the applicant's and her lawyers' requests and admitted to the case file a large quantity of material, which included reports by various international bodies on the human rights situation in Kazakhstan, articles from the media, video records and a number of judgments of the European Court of Human Rights, including the case of *Dzhaksybergenov* (see paragraphs 52 and 53 above). In the last round of proceedings, after examining those materials, as well as the information and documents collected during the extradition check conducted by the Russian GPO, the domestic courts dismissed the applicant's arguments concerning the risk of ill-treatment because of the alleged political motivation for her criminal prosecution and because of the

alleged threats against her by Kazakhstani officials in Kazakhstan and while she was in detention in Russia as unfounded, and those concerning statements by State officials as unconvincing. They further pointed out that her state of health was not such as to bar her extradition, and in dismissing her claims they also referred to the assurances given by the Kazakhstani authorities, which they considered to be wide-ranging and to have been issued by bodies with the authority to do so (see paragraphs 52-55 above).

200. Bearing in mind the domestic court's decisions, and turning to its own assessment of the applicant's allegations, the Court would reiterate that in its recent judgment of *Dzhaksybergenov v. Ukraine* it noted certain improvements in the human rights situation in Kazakhstan and considered that there were no indications that a total ban on extradition to that country was called for (judgment cited above, § 37, see also *Sharipov v. Russia*, no. 18414/10, § 35, 11 October 2011).

201. Having regard to the information contained in recent reports from various international bodies, summarised in paragraphs 168-175 above, the Court notes that they refer to the specific issue of torture or ill-treatment of detainees in different terms: whilst some of them, like Amnesty International, considered torture to be widespread, the UN special rapporteur on torture stated that torture was not widespread or systematic (see paragraph 167 above), and the UN Committee Against Torture and the UN Human Rights Committee observed that torture and ill-treatment did not occur in isolated or infrequent instances, but remained an issue of serious concern (see paragraphs 172 and 173 above). Bearing in mind this assessment of the situation, and whilst not underestimating the seriousness of the concerns expressed by such authoritative sources as, for instance, the UN Committee Against Torture and the UN Human Rights Committee, the Court nonetheless reiterates that it has consistently emphasised that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010, and *Shakurov v. Russia*, no. 55822/10, § 135, 5 June 2012).

202. The Court would further point out that the domestic authorities and the Government discarded the applicant's allegations of risk of ill-treatment by relying, among other things, on the assurances provided by the Kazakhstani authorities, in which the latter pledged that her persecution was not politically motivated; that she would be provided with adequate medical assistance; that she would not be subjected to torture or ill-treatment; and that the relevant Russian authorities would be allowed contact with her at any stage of criminal proceedings against her, to verify whether the Kazakhstani authorities were complying with their undertakings (see paragraphs 33, 37, 42, 43 and 46 above). In this respect the Court reiterates that diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment, and there is an

obligation to examine whether they provide, in their practical application, that the applicant has protection against any such risk (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 187, 17 January 2012).

203. In *Othman (Abu Qatada)* the Court put forward an extensive list of criteria to be used to assess the quality of the assurances in the particular circumstances of the case, including, among other things, assessment of whether they are couched in general or specific terms and whether the requesting State's compliance with them can be objectively checked through diplomatic or other monitoring mechanisms, for instance by providing unfettered access to the applicant's lawyer (see ibid., § 189). In the present case the Court is inclined to consider that the assurances given by the Kazakhstani authorities were more of a general nature (compare, for example, *Klein v. Russia*, no. 24268/08, § 55, 1 April 2010). Moreover, whilst they contained a statement to the effect that competent Russian authorities would be allowed access to the applicant during the criminal proceedings against her, the Government failed to elaborate on that point and did not indicate if there existed any specific mechanisms – either diplomatic or monitoring – by which compliance with those undertakings could be objectively checked (see, by contrast, *Othman (Abu Qatada)*, cited above, §§ 199, 203-204). Their vague reference to the fact that they had not encountered any problems in their previous cooperation with Kazakhstan in similar matters (see paragraph 179 above) is not sufficient for the Court to dispel doubts about those assurances. In sum, it is not ready to give any particular weight to these statements in the present case (see *Kozhayev v. Russia*, no. 60045/10, § 84, 5 June 2012).

204. As the Court has stated above, reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. It will now turn to examining the applicant's specific allegations to ascertain whether she has adduced evidence capable of proving that there are substantial grounds for believing that, if extradited, she would be exposed to a real risk of treatment contrary to Article 3.

205. The thrust of the applicant's submissions in this respect was that, since the proceedings against Mr Ablyazov were politically motivated and the investigating authorities considered her to have had "a relationship of trust" with him, she herself was a victim of political persecution, which would inevitably lead to them torturing her with a view to obtaining incriminating statements against him, if she were to be returned to Kazakhstan. In this respect she referred to the threats allegedly received by her while she was in hospital in Kazakhstan, and also during her detention in Russia, and to statements of several Kazakhstani State officials. She also doubted that she would be provided with adequate medical treatment when in detention in Kazakhstan.

206. Having regard to the decisions of the domestic courts mentioned above, as well as the materials before it, the Court considers that the applicant's statement concerning the threats allegedly uttered by high-ranking Kazakhstani officials while she was in hospital in Kazakhstan (see paragraph 11 above) not only lacks substantiation but contains important discrepancies. In particular, it cannot but note that while she stated that the above-mentioned persons burst into the intensive care ward "despite the objections of the medical staff", the records of the interviews with the doctors who were directly supervising her medical treatment indicate that none of them was aware of the alleged visit. Moreover, according to their interview records, there was no intensive care ward in that hospital (see paragraph 35 above). The applicant did not comment on the veracity of those parts of the doctors' statements and, in the Court's view, these discrepancies do not lend credence to her account of the events.

207. In the same vein, apart from a vague statement that she had been allegedly threatened with reprisals by a Kazakhstani official while in detention in Russia (see paragraph 183 above), she failed to provide any further information in that respect – such as which detention facility she was in, the date or circumstances in which that conversation or conversations had taken place, or any specific details about the conversation.

208. As regards the applicant's reference to Mr Nazarbayev's statement that Mr Ablyazov's friends "should bear responsibility", and assessing it in its entirety (see paragraph 23 above), the Court cannot but observe that it was intended for a businessman who, among other people, in 2002 had signed a letter to Mr Nazarbayev in support of Mr Ablyazov's request for clemency, and it can hardly discern any link between that statement and the applicant, who never stated that she was one of those who had signed the letter or had otherwise militated for Mr Ablyazov's release, or that she had been involved in any political or opposition activities with him. The Court also does not consider, contrary to the applicant's submission, that the fact that she had replaced Mr Ablyazov as the head of a private company previously founded by him can be regarded as indicating that they were together in terms of any political involvement. The Court is therefore not persuaded that the impugned statement by Mr Nazarbayev can be regarded as indicative of a personal risk for the applicant of being subjected to treatment in breach of Article 3 (see, by contrast, *Klein*, cited above, § 54, where the Court accepted that the statement by the Vice-President of Colombia, addressed specifically to the applicant and saying that the latter should "rot in jail" could be regarded as an indication that the applicant ran a serious risk of being subjected to ill-treatment while in detention). The Court is likewise not convinced that the statement by the representatives of the Kazakhstani GPO during the media briefing concerning the criminal proceedings for misappropriation of BTA Bank property can be regarded as

a factor substantiating the alleged risk of ill-treatment for the applicant (see paragraph 22 above).

209. The Court further points out that it follows from the Freedom House report referred to by the applicant that that NGO considered the fraud charges levied against Mr Ablyazov and former BTA Bank management to be "politically motivated" and to have "a clear political overtone" (see paragraph 170 above). It notes at the same time that neither that report nor any other resources made available to the Court contain any references to allegations of ill-treatment or torture or the risk of such treatment against former BTA employees either suspected of fraud or standing trial or having already been convicted on those fraud charges, nor do they suggest that people who have enjoyed "a relationship of trust" with Mr Ablyazov are at particular risk of torture or ill-treatment. Against this background, and bearing in mind the principles enunciated in paragraph 196 above, the Court is not convinced that the labelling by Freedom House of the criminal proceedings against the former BTA management as "politically motivated" is in itself indicative of a risk specifically for the applicant of being subjected to torture, as alleged by her (see, by contrast, *Muminov v. Russia*, no. 42502/06, § 95, 11 December 2008, and compare with *Y.P. and L.P. v. France*, no. 32476/06, §§ 71-72, 2 September 2010). In this connection the Court reiterates its consistent approach that the right to political asylum is not contained in either the Convention or its Protocols (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012, with further references).

210. In so far as the applicant alleged that she might not receive adequate medical care in detention in Kazakhstan, the Court would reiterate its settled case-law that the fact that the applicant's circumstances, including his or her life expectancy, would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3 (see, among other authorities, *Ahorugeze v. Sweden*, no. 37075/09, § 88, 27 October 2011). The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where there are compelling humanitarian grounds against the removal (see *N. v. the United Kingdom* [GC], no. 26565/05, § 42, 27 May 2008).

211. The Court has also noted that treatment which might violate Article 3 because of an act or omission on the part of a Contracting State might not attain the minimum level of severity which is required for there to be a violation of Article 3 in an expulsion or extradition case (see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, § 177, 10 April 2012). For example, a Contracting State's negligence in providing appropriate medical care within

its jurisdiction has, on occasion, led the Court to find a violation of Article 3, but such violations have not been so readily established in the extra-territorial context (compare the refusal of prompt and appropriate medical treatment for HIV/Aids in *Aleksanyan v. Russia*, no. 46468/06, §§ 145–58, 22 December 2008 with *N. v. the United Kingdom*, cited above).

212. In any event, the Court points out that the applicant is suffering from Type II diabetes and a number of related conditions, including hypertension. It further notes that she furnished no medical evidence that her state of health was critical, and, having regard to the materials in its possession, it is not convinced that at the present moment her health problems should be considered so serious as to raise an issue under Article 3. The Court considers therefore that there are no compelling humanitarian grounds against her extradition to Kazakhstan in connection with her medical condition.

213. In view of what has been stated above, the Court is unable to conclude that the applicant has raised any individual circumstances which would substantiate her fears of torture or ill-treatment, or that substantial grounds have been shown for believing that she would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the requesting country. Accordingly, it concludes that the applicant's extradition to Kazakhstan would not be in breach of Article 3 of the Convention.

(b) Article 13 of the Convention

214. In view of the foregoing, the Court does not find it necessary to deal separately with the applicant's complaint under Article 13 of the Convention, which essentially contains the same arguments as already examined by it under Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S EXTRADITION TO KAZAKHSTAN

215. The applicant complained that if extradited to Kazakhstan she would face a flagrant denial of justice in breach of Article 6 of the Convention, which, in so far as relevant, provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Submissions by the parties

216. The applicant submitted that she would face a risk of being denied a fair trial in Kazakhstan because the criminal proceedings against the BTA

management were politically motivated. The courts in Kazakhstan were not independent, and the judges were appointed by the President, who had a personal interest in the outcome of the criminal proceedings against her. Lawyers in Kazakhstan were pressurised by the State authorities and the domestic courts had refused to admit K., a lawyer whom she had appointed to represent her in the criminal proceedings in Kazakhstan, as her defender in those proceedings. She also considered that the assurances provided by the Kazakhstani authorities were not such as to discard the risk of being denied a fair trial.

217. The Government argued, with reference to the assurances provided by the Kazakhstani authorities and examined by the domestic courts, that the applicant would not run the risk of being denied a fair trial in the requesting country.

B. The Court's assessment

218. The Court reiterates its established case-law to the effect that an issue might exceptionally be raised under Article 6 by an expulsion or extradition decision in circumstances where the fugitive had suffered or risked suffering a flagrant denial of justice in the requesting country (see *Soering*, cited above, § 113; *Mamatkulov and Askarov*, cited above §§ 90-91; and *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 149, ECHR 2010 (extracts)).

219. The term "flagrant denial of justice" has been considered synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (see *Othman (Abu Qatada)*, cited above, § 259, with further references, and *Ahorugeze*, cited above, § 114). In *Othman (Abu Qatada)* the Court indicated certain forms of unfairness which could amount to a flagrant denial of justice, such as conviction *in absentia* with no opportunity to obtain a fresh determination of the merits of the case; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; deliberate and systematic refusal of access to a lawyer, particularly for an individual detained in a foreign country (judgment cited above, § 259).

220. The Court also emphasised that it considered "flagrant denial of justice" to be a stringent test of unfairness, where the defects alleged would go beyond mere irregularities or lack of safeguards in the trial procedure such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article. It also held that in assessing whether the test has been met it would apply the same standard and burden of proof as in Article 3 expulsion cases, under which it is for the applicant to adduce evidence capable of

proving that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to a flagrant denial of justice if removed from the Contracting State. Where such evidence is adduced it is for the Government to dispel any doubts about it (see *Othman* and *Ahorugeze*, both cited above, §§ 260-61 and §§ 115-16, respectively).

221. Turning to the circumstances of the present case, the Court is not persuaded that the stringent test described above has been met in this application.

222. The Court takes note of the fact that the Freedom House report relied on by the applicant seems to corroborate her allegations concerning a general concern about the independence of the Kazakhstani judiciary and states that the proceedings against the former BTA management have a political overtone. However, in referring specifically to the situation of former BTA managers who had already been convicted on the impugned fraud charges it contains a general statement that "the veracity of the charges and the evidence presented in court remained doubtful" (see paragraph 170 above). Moreover, at no point does it refer to any defects in those proceedings which would be comparable to irregularities capable of amounting to a flagrant denial of justice, as defined in the Court's case-law summarised above (see, in particular, paragraph 219 above).

223. The Court further notes that the only specific argument put forward by the applicant to substantiate her fear of being faced with a flagrant denial of a fair trial in Kazakhstan concerned the Kazakhstani courts' refusal to admit her lawyer K. to the criminal proceedings against her. However, the materials available to the Court indicate that on an unspecified date in 2009 the Kazakhstani investigating authorities severed the criminal case concerning the fraud charges against a number of former BTA Bank employees (case no. 0951701710002) and sent it for examination to the Almatinskiy District Court, whilst the charges against the applicant remained part of criminal case no. 095751701710001, which apparently has not yet been sent for trial (see paragraph 20 above). Accordingly, the Court is unable to find unreasonable the district court's refusal to admit K. as the applicant's representative to the proceedings in the former case to which the applicant is not a party (see paragraph 21 above) and is not convinced that this fact can otherwise serve as an indication that the applicant would suffer a flagrant denial of a fair trial.

224. It likewise considers that the remainder of the applicant's allegations under this head are too general and vague, and that none of them is such as to substantiate her allegation that she would face a flagrant denial of a fair trial if removed to Kazakhstan (see, by contrast, *Othman (Abu Qatada)*, cited above, § 285).

225. In view of these findings the Court does not consider it necessary to assess the assurances given by the Kazakhstani authorities regarding the applicant's trial in Kazakhstan.

226. In sum, having regard to what has been stated above, the Court is not persuaded that the applicant in the present case has adduced evidence capable of proving that there are substantial grounds for believing that she would be exposed to a real risk of a flagrant denial of a fair trial if extradited to Kazakhstan.

227. Accordingly, it dismisses the applicant's complaint as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE MEDICAL ASSISTANCE AVAILABLE TO THE APPLICANT IN DETENTION

228. The applicant complained under Article 3 that the Russian authorities had failed to provide her with adequate medical assistance while in detention. She relied on Article 3 of the Convention, the text of which has been cited above.

A. Submissions by the parties

1. The Government

229. The Government submitted that upon arrival in the remand prison the applicant had undergone all necessary tests and had been placed under the continuing follow-up care of the medical unit. On 31 July 2009 she was sent to the prison hospital for inpatient treatment, which lasted until 26 August of the same year. There, following examinations by specialists and clinical tests, she was given conservative treatment which produced positive results and allowed her condition to stabilise. Upon discharge her state of health was considered satisfactory and she was given recommendations for follow-up care in the remand prison, where she remained under the active supervision of the medical unit and received the recommended maintenance therapy. In accordance with her treatment plan, from 14 to 22 October 2009 the applicant was again sent to the prison hospital for inpatient examination and treatment. The necessary amendments were made to her treatment, account being taken of her state of health, and she was discharged in a satisfactory condition.

230. On 3 March 2010 the applicant was examined by an ophthalmologist and a neurologist from a public hospital and from 1 to 15 April 2010 she underwent inpatient treatment, also in a public hospital, her condition upon discharge from there being assessed as satisfactory and the treatment having produced positive clinical results. Subsequently, and until her release from custody, her state of health was closely supervised by remand prison doctors.

231. The Government therefore argued that during the entire period of her detention the applicant had received the medical assistance required for her condition. The medical units of the remand prison and the prison hospital were equipped with the necessary staff and supplied with the correct medication. Her state of health was assessed as satisfactory, and there were no indications that she could not be held in detention at the material time.

2. The applicant

232. The applicant argued that detention had placed her life and health in danger. She submitted that before her placement in custody she had undergone rehabilitation treatment in a private hospital in Kazakhstan, which included sessions in a hyperbaric chamber, massage of the entire body, acupuncture, and cauterisation of nerve endings as in traditional Eastern medicine. In her submission, such treatment was to be made available to her every six months, including when she was in detention. Her condition also required regular sugar level and arterial blood pressure checkups and permanent supervision by a neurologist, an endocrinologist, an ophthalmologist and a nutritionist.

233. The applicant further submitted that the medical assistance provided to her in detention was superficial and that her health had seriously deteriorated, which was proven by the letter of the remand prison of 28 May 2010. She had not been provided with sufficient information about her treatment, and her medication had been withheld by the remand prison authorities. Moreover, she had not been offered an urgent consultation with an ophthalmologist, had not been given eye injections and had not been placed in an ophthalmological clinic, despite the fact that she needed urgent eye surgery. The remand prison lacked the eye drops prescribed by the ophthalmologist, the conditions of her transfer to the remand prison on 26 August 2009 had been inhumane and degrading, as were the conditions in which she had undergone inpatient treatment between 1 and 14 April 2010.

B. The Court's assessment

234. The Court reiterates that, in accordance with its established case-law, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

235. Although it has been the Court's consistent approach that Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds, it has always interpreted the requirement to secure their health and well-being, among other things, as an obligation on the part of the State to provide them with the requisite medical assistance (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; *Kudła*, cited above, § 94; and *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII (extracts)).

236. The Court is mindful that that the issue of the "adequacy" of medical treatment remains the most difficult element to be determined (see *Pakhomov v. Russia*, no. 44917/08, § 62, 30 September 2011) and that the particular circumstances of each case are inevitably different. Nonetheless, having regard to its case-law on the matter, it notes that in assessing similar claims it has examined whether the authorities provided for the detainee's timely and accurate diagnosis and care (see, among other authorities, *Popov*, cited above, § 211; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Mechenkov v. Russia*, no. 35421/05, § 102, 7 February 2008, and *A.B. v. Russia*, no. 1439/06, § 128, 14 October 2010) and whether, where this was necessitated by the nature of a medical condition, the related supervision was regular and systemic and involved a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see, among others, *Pitalev v. Russia*, no. 34393/03, § 54, 30 July 2009; *Hummatov*, cited above, § 109; and *Vladimir Vasilyev v. Russia*, no. 28370/05, § 58, 10 January 2012).

237. The Court also confirms that, on the whole, it reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan*, *Pakhomov* and *Vladimir Vasilyev*, all cited above, §§ 140, 63 and 59, respectively).

238. Turning to the circumstances of the present case, the Court observes at the outset that it was not disputed by the parties that the applicant had a history of a number of health problems prior to her detention, including diabetes and hypertension.

239. It further notes that upon admission to the remand centre the applicant was examined by remand centre doctors, who entered information on her health problems in her medical file and put her through a number of tests (see paragraphs 75-77 above). Shortly thereafter the applicant was sent to the prison hospital for inpatient treatment, and it appears that during her detention she underwent inpatient treatment in specialised medical institutions on three occasions – twice in the prison hospital and once in a public hospital (see paragraphs 78, 90 and 104 above).

240. The applicant's medical record indicates that while in hospital she was examined by specialist doctors, including, among others, a neurologist

and an endocrinologist, and that after comprehensive clinical testing she was prescribed and received hypoglycaemic treatment (metformin-based drugs) for diabetes, as well as hypotensive, spasmolytic, vasodilator and nootropic medication and injections for hypertension and related conditions (see paragraphs 78-84, 90-94 and 104-08 above). That treatment strategy appears not only to have corresponded to the recommendations given by the doctors who had examined the applicant before she was in custody but to have gone beyond what had been recommended by them (see paragraphs 59 and 60 above). Moreover, the medical documents available to the Court indicate that the therapeutic strategy chosen by the medical staff of the penal institutions produced positive clinical results and, in the absence of any evidence to the contrary, the Court finds no reason to question those findings.

241. It also appears from the medical evidence available that while in the remand prison the applicant continued taking the hypoglycaemic, hypotensive, spasmolytic, vasodilator and nootropic medication required for her condition, under the supervision of medical staff, and that she was allowed to have, and was taking, medication provided by her lawyers (see paragraphs 88, 96, 97, 99, 102 and 110 above). The applicant's submission that some of the medication was withheld from her remained unspecific. The applicant's medical record also indicates that her blood sugar level and arterial blood pressure were checked regularly, and that she was able to do her own checkups with her personal glucometer and sphygmomanometer (see paragraphs 76, 77, 88, 96, 97 and 102 above).

242. As regards the applicant's submissions concerning the unavailability of such alternative treatment as acupuncture or cauterisation of nerve endings as in Eastern medicine, the Court points out that no evidence has been produced to show that those constituted a medical necessity.

243. In so far as the applicant complained about the treatment of her eye problems, the Court finds that she has put forward no evidence, such as independent medical opinions, which would support her contention that she needed urgent eye surgery or eye injections (compare *Pitalev v. Russia*, no. 34393/03, § 55, 30 July 2009). It also does not lose sight of the fact that the medical documents pertaining to her examination after release from custody did not refer to any such necessity either (see paragraph 122 above).

244. Having serious doubts that the applicant alerted the remand centre hospital or prison hospital authorities to her eyesight issues before December 2009 (see paragraphs 68 and 120 above), the Court nonetheless considers that by 18 December 2009 at the latest the authorities must have become aware of her complaints in that respect (see paragraph 68 above). It takes into account that they then offered the applicant an examination by an ophthalmologist in the prison hospital and that she turned down the offer for reasons the Court is unable to accept as convincing (see paragraph 98

above). In this respect it reiterates that a State has sufficient discretion in defining the manner in which it fulfils its obligation to provide detainees with the requisite medical assistance, and it accepts that by choosing an appropriate medical facility the authorities have to take into account "the practical demands of imprisonment", as long as the standard of chosen care is "compatible with the human dignity of a detainee" (see *Vasyukov v. Russia*, no. 2974/05, § 79, 5 April 2011, and *Aleksanyan*, cited above, § 140). The Court is unable to find any indications that the authorities' choice of that medical facility for the applicant's examination by an ophthalmologist was incompatible with the required standard of care.

245. It further notes that following the applicant's refusal to be hospitalised the authorities secured a consultation with an ophthalmologist for her in public hospital no. 72, and also later, while she was a patient in hospital no. 20. It appears that the ophthalmologists prescribed her eye drops, medication and B group vitamins, none of them referring to any need for urgent surgery or other emergency intervention (see paragraphs 101, 106 and 119 above). The applicant's medical record indicates that she received this treatment while she was in public hospital no. 20. Although the remand prison doctor admitted not providing her with taurine eye drops before she was hospitalised, nothing indicates that the applicant, who was allowed to have her own medication, was unable to obtain the eye drops through her lawyers.

246. As regards the applicant's transfer from the prison hospital to the remand prison on 26 August 2009, the Court observes that it found a violation of Article 3 in a case where a post-operative patient was transported in a standard prison van in unsuitable conditions (see *Tarariyeva v. Russia*, no. 4353/03, §§ 112-17, ECHR 2006-XV (extracts)). However, the present case is different. The applicant's medical record for 24 August 2009 indicates that she received treatment for hypertension, that her condition stabilised, and that the doctors considered her fit for the transfer (see paragraph 85 above). The Court sees no reason to question those findings, and considers that the remainder of the applicant's submissions in that respect are speculative.

247. Having regard to what has been stated above, the Court considers that the applicant did not provide sufficient and convincing arguments or evidence disclosing any serious failings on the part of the national authorities in providing her with medical assistance while in detention. Accordingly, it dismisses her complaint as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

248. Lastly, as regards the allegedly inhumane conditions in which the applicant received treatment in hospital no. 20 in the period between 1 and 14 April 2010, the Court observes that she first raised this complaint in her observations of 21 April 2011. Hence, this part of the application should be

declared inadmissible for non-compliance with the six-month rule pursuant to Article 35 §§ 1 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

249. The applicant complained that her detention pending extradition had been unlawful. She relied on Article 5 § 1 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Submissions by the parties

250. The applicant submitted that her detention between 3 July 2009 and 3 July 2010 had been unlawful. In particular, as regards the detention order of 3 July 2009 she asserted that she was in the same situation as the applicant in the case of *Dzhurayev v. Russia* (no. 38124/07, 17 December 2009), that the decision to detain her had not been issued by a court, and that no time-limits had been set for her detention. Even assuming that it had been lawful, pursuant to Article 109 of the CCrP, the term of the applicant's detention authorised by it must have expired on 3 September 2009, whilst the domestic courts extended the applicant's detention for the first time on 18 November 2009. In the applicant's opinion, on that date the first-instance court in fact retroactively validated the preceding detention period. Moreover, the applicable provisions of the CCrP did not satisfy the Convention requirement of "quality of law", in that they were neither precise nor foreseeable.

251. The applicant further argued that her detention between 18 November 2009 and 3 July 2010 had also been unlawful, because the relevant first-instance court decisions extending her detention had not become final, and because the appeal courts had upheld the detention orders of 18 November 2009 and 1 February and 1 April 2010 after the term for her detention authorised in those decisions had already expired. Lastly, the applicant argued that the Russian authorities had failed to display due diligence during the first nine months of the extradition check before issuing the extradition order.

252. The Government contended that under Article 466 § 2 of the CCrP the transport prosecutor's office had correctly ordered the applicant's detention on 16 July 2009, referring to the receipt of the Kazakhstani

authorities' request for her extradition and an order of a foreign court remanding her in custody. They further noted that the Presidium of the Supreme Court, in a number of decisions issued in 2004 and 2005, had opined that Article 109 of the CCrP was not applicable to detention pending extradition. However, after the adoption of the Directive Decision no. 22 by the Russian Supreme Court in plenary session, the Russian GPO had issued instructions to its regional subdivisions by way of an information letter on the procedure to follow concerning detention of persons pending extradition. Consequently, prosecutors at all levels strictly followed the applicable rules, as interpreted by the Supreme Court. The maximum term of the applicant's detention having expired on 3 July 2010, she was released from custody by a decision of the transport prosecutor's office.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

254. The Court notes that it is common ground between the parties that the applicant was detained with a view to her extradition from Russia to Kazakhstan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require the detention of a person against whom action is being taken with a view to extradition to be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal*, cited above, § 112).

255. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention

refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, Reports 1996-III, and *Nasrulloyev v. Russia*, no. 656/06, § 70, 11 October 2007).

256. The Court must therefore ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court emphasises that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 does not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, it also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Nasrulloyev*, cited above, § 71, 11 October 2007, with further references).

257. Lastly, the Court reiterates that deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 72-74, ECHR 2008).

(b) Application of these principles to the present case

258. Turning to the circumstances of the present case, the Court considers that the applicant's allegations under Article 5 § 1 concern two identifiable periods of time: from 3 July to 18 November 2009 and from 18 November 2009 to 3 July 2010, when she was released from custody. She also claims that the Russian authorities failed to display due diligence during the first nine months of her detention. It will accordingly assess those complaints, as submitted by the applicant.

(i) Lawfulness of the applicant's detention from 3 July to 18 November 2009

259. Turning to the period of detention in question, the Court observes that the Government relied on Article 466 § 2 CCrP, submitting that it allowed the prosecutor to place the applicant in custody upon receipt of the extradition request, accompanied by a foreign court's detention order, which had been the case with the transport prosecutor's decision of 16 July 2009.

260. The Court observes, however, that by 16 July 2009 the applicant had already been in custody since 3 July 2009 on the basis of the

prosecutor's decision of the same date, which contained no reference to Article 466 § 2 of the CCrP and only referred to Article 61 of the Minsk Convention (see paragraphs 123-124 above). It appears that the detention order of 3 July 2009 contained no reference to Article 466 § 2 of the CCrP because that provision, as follows from its wording, started to apply from the moment of receipt of the extradition request, which in the applicant's case was received only on 8 July 2009 (see paragraphs 158 and 33, respectively).

261. Furthermore, in so far as the order of 3 July 2009 referred to Article 61 of the Minsk Convention, that provision does not establish any procedural rules to be followed when placing a person in custody before an extradition request has been received. It refers back to domestic law, providing that the requested party should apply its national legislation when executing a request for legal assistance, including a special request for arrest pending the receipt of an extradition request mentioned in its Article 61 (see paragraphs 150 and 151 above). Accordingly, Article 61 of the Minsk Convention can serve as a legal basis for detention only in conjunction with corresponding domestic legal provisions establishing the grounds and the procedure for ordering detention, as well as applicable time-limits (see the Constitutional Court decision cited in paragraph 160 above). However, neither the prosecutor in his decision nor the Government referred to any provision in the domestic law which would have authorised the former authority to place the applicant in custody pending the receipt of an extradition request. Accordingly, from 3 to 8 July 2009 the applicant was in a legal vacuum that was not covered by any domestic legal provision clearly establishing the grounds of her detention and the procedure and time-limits applicable to that detention pending the extradition request.

262. It further seems that after the extradition request had been received, on 8 July 2009, the applicant's detention started to be governed by Article 466 § 2 of the CCrP. However, that provision remains silent on the procedure to be followed when ordering or extending detention of a person whose extradition is sought. Nor does it set any time-limits on detention pending extradition. The Court also observes that in its decision of 19 March 2009 concerning specifically Article 466 § 2 the Constitutional Court, whilst finding that that provision did not violate a person's constitutional rights on the ground that it did not establish any grounds or procedure for ordering detention pending extradition or time-limits for such detention, did not explain which legal provisions did govern such a procedure and what time-limits were to be applied in situations covered by Article 466 § 2 (see paragraph 162 above). Accordingly, the Court cannot but note the absence of any precise domestic provisions which would establish under which conditions, within which time-limits and by a prosecutor at which hierarchical level and territorial affiliation the issue of detention is to be examined after an extradition request has been received.

263. The ambiguity of Article 466 § 2 is further illustrated by the fact that although the extradition request was received on 8 July 2009, it was not until 16 July 2009, that is eight days later, that the prosecutor ordered the applicant's detention on the basis of Article 466 § 2 of the CCrP. During that entire period the applicant remained unaware both of the grounds for and the time-limits of her detention. Moreover, the decision of 16 July 2009 itself did not refer to any domestic legal provision, be it a provision from Chapter 13 of the CCrP or otherwise, confirming the competence of that particular prosecutor to order the applicant's detention. Neither did that decision set any time-limit on the applicant's detention or refer to a domestic provision establishing such a time-limit. The prosecutor's reply to the applicant's complaint in which he stated that her detention, as ordered under Article 466 § 2 of the CCrP on 16 July 2009, was to be further governed by the Kazakhstani Code of Criminal Procedure (see paragraph 129 above) is a further indication of the confusion surrounding the application of the above-mentioned provision by the same authority which had applied it in the applicant's case.

264. The Court is, furthermore, not persuaded by the Government argument with reference to Directive Decision no. 22, because by the time of its adoption on 29 October 2009 the applicant had already been held for more than three months in a legal vacuum as to the procedure and time-limits for her detention. It further notes that this situation continued until 18 November 2009, when the Meshchanskiy District Court for the first time issued its detention order in respect of the applicant. Even assuming that the Directive Decision contained certain clarifications which could be relevant to the applicant's case (see paragraph 164 above), the Court is not convinced that they were such as to remedy the applicant's situation in the circumstances of the present application. In this respect it also does not lose sight of the fact that the Directive Decision appeared to suggest that whilst the prosecutor was entitled to place a person in custody under Article 466 § 2 for two months, following the expiry of that period further detention or its extension required a court authorisation (see ibid.), which did not occur in the applicant's case.

265. It follows that the applicant's detention from 8 July to 18 November 2009 was based on a legal provision, namely Article 466 § 2 of the CCrP, which, due to a lack of clear procedural rules, was neither precise nor foreseeable.

266. It is further noted that in the recent ruling of 14 June 2012 the Supreme Court gave an authoritative interpretation of Russian legal provisions applicable to detention pending extradition, including detention both before and immediately after the receipt of the extradition request (see paragraph 165 above). However, this ruling was adopted long after the applicant's release and this fact cannot therefore alter the fact that at the time of the applicant's detention and during a considerable period of time

under the Court's consideration Russian legal provisions were neither precise nor foreseeable in their application. Moreover, it appears from the ruling of 14 June 2012 that the applicant's detention should not only have been extended by, but also initially ordered by, a Russian court rather than by a prosecutor (see ibid).

267. In view of the above, the Court concludes that from 3 July to 18 November 2009 the applicant was kept in detention without a specific legal basis or clear rules governing her situation, which is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, *mutatis mutandis*, *Yudayev v. Russia*, no. 40258/03, § 59, 15 January 2009, and *Baranowski v. Poland*, no. 28358/95, § 56, ECHR 2000-III). The deprivation of liberty to which the applicant was subjected during that period was not circumscribed by adequate safeguards against arbitrariness. Russian law at the material time therefore fell short of the "quality of law" standard required under the Convention. The national system did not protect the applicant from arbitrary detention, and her detention cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention.

(ii) The lawfulness of the applicant's detention from 18 November 2009 to 3 July 2010

268. Turning to the lawfulness of the applicant's detention from 18 November 2009 to 3 July 2010, the Court observes that, by contrast to some previous cases against Russia (see, among others, *Dzhurayev*, cited above, § 68), the applicant's detention was extended by a Russian court (see paragraphs 135, 138 and 141 above). The extension orders contained specific time-limits, in compliance with the requirements of Article 109 of the CCrP, which was applicable in the context of detention in extradition cases following the 2009 Supreme Court Directive Decision no. 22 (see paragraph 164 above). The Court further notes that the offences with which the applicant was charged in Kazakhstan were regarded as "serious" offences under Russian law, on which basis her detention was extended to twelve months, in accordance with Article 109 § 3 of the CCrP (see paragraph 155 above) and that after the expiry of that term she was released. The lawfulness of the applicant's detention was reviewed and confirmed by the appellate court on several occasions.

269. In so far as the applicant complained that there were deficiencies in the review of the detention by the appellate court, which was also too slow, the Court will examine these complaints under Article 5 § 4 below.

270. The Court further considers that the applicant failed to put forward, either before it or before the domestic courts, any serious arguments prompting it to consider that her detention during the above-mentioned period of time was in breach of Article 5 § 1 of the Convention. It also does not find that the domestic courts acted in bad faith, that they neglected to

apply the relevant legislation correctly, or that the applicant's detention during the relevant period of time was otherwise unlawful or arbitrary (see *Kozhayev v. Russia*, cited above, §§ 107-108; *Khodzhamberdiyev v. Russia*, no. 64809/10, § 94, 5 June 2012; *Shakurov*, cited above, § 160, and *Rustamov v. Russia*, no. 11209/10, § 154, 3 July 2012).

(iii) The alleged lack of due diligence by the authorities in the conduct of the extradition proceedings from 3 July 2009 to 21 April 2010

271. The Court notes at the outset that the applicant complained of lack of due diligence on the part of the authorities in the extradition proceedings during the specific period of time referred to, and it will accordingly examine this complaint as submitted by her.

272. Referring to the relevant principles set out in paragraph 257 above, the Court points out that between 3 July 2009, when the applicant was detained, and 21 April 2010, when the extradition order was issued (see paragraph 38 above), the extradition proceedings were pending. During this period of time the Russian GPO received the extradition request from its Kazakhstani counterpart, as well as several letters containing assurances provided by the Kazakhstani authorities, and was informed of the results of the on-the-spot check conducted by them in respect of the applicant's allegations concerning the alleged incident of 23 February 2009. It is further observed that during the period of time in question the Russian GPO sought and received information from the Russian Ministry of Foreign Affairs which submitted that there were no obstacles to the applicant's extradition. Moreover, at the relevant time asylum proceedings initiated by the applicant were pending. In those proceedings the Moscow branch of the FMS dismissed the applicant's request for refugee status and the applicant instituted proceedings to challenge that decision before the courts.

273. Bearing in mind that the outcome of the asylum proceedings could be decisive for the question of the applicant's extradition (see *Chahal*, cited above, § 115, and *Rustamov*, cited above, § 165), and finding no particular delays in those proceedings which could be attributable to the authorities, as well as having regard to the steps taken by the Russian authorities in the extradition proceedings, the Court is satisfied that they complied with the requirement of due diligence as regards the period between 3 July 2009 and 21 April 2010 complained of by the applicant.

(iv) Conclusions

274. The Court finds that the applicant's detention from 3 July to 18 November 2009 was based on legal provisions which did not meet the Convention "quality of law" requirements. There has therefore been a violation of Article 5 § 1 (f) in respect of that period.

275. It further finds that there has been no violation of Article 5 § 1 (f) as regards the lawfulness of the applicant's detention from 18 November

2009 to 3 July 2010 or as regards the alleged lack of due diligence by the Russian authorities in the conduct of the extradition proceedings between 3 July 2009 and 21 April 2010.

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

276. The applicant complained that she had been deprived of an opportunity to obtain judicial review of her detention pending extradition, that her appeals against the court-issued detention orders had not been examined speedily, and that her lawyers had been absent from the hearings of 16 September 2009 and 1 February 2010 concerning her detention. She relied on Articles 5 and 6 of the Convention. The Court will examine her submissions under Article 5 § 4 of the Convention (see *Lebedev v. Russia*, no. 4493/04, § 72, 25 October 2007), which reads as follows:

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

A. Submissions by the parties

277. The applicant argued that during the entire period of her detention she had not been afforded access to a judicial review procedure in respect of her detention. She submitted in particular that although she had been held unlawfully under two detention orders issued by prosecutors and her detention had, in any event, become unlawful after 3 September 2009, she had been unable to obtain judicial review of her detention, referring to the actions she had brought under Article 125 of the CCrP with the Tverskoy and Meshchanskiy district courts. These proceedings had been concluded on 31 March and 12 and 19 April 2010, respectively, and her civil action against the detention facility had been dismissed by a final decision of 25 May 2010. The applicant further stressed that all her appeals against the court-issued detention orders had not been examined speedily and even long after the challenged periods of detention had already expired.

278. The applicant also submitted that, whilst the hearing on 16 September 2009 had been initially scheduled for 3 p.m. on the above date, the Meshchanskiy District Court, owing to its bad time management, had started examining her case later on that day, of which her lawyers had not been aware. Relying on the case of *Lebedev v. Russia* (cited above, § 89), she argued that her lawyers' absence from the hearing had amounted to a breach of Article 5 § 4, as had their absence from the hearing of 1 February 2010.

279. The Government argued that it had been open to the applicant to challenge the domestic authorities' detention orders pursuant to Article 125 of the CCrP, and that she had made use of that procedure in lodging numerous complaints with the courts. The applicant was also afforded an opportunity to appeal against the court detention orders, and all her related complaints were examined by the appellate courts.

280. In the Government's submission, the applicant was present at both hearings concerning her detention on 16 September 2009 and 1 February 2010. Furthermore, it followed from the text of the former decision that the applicant's lawyers had been duly notified of the hearing but had failed to attend it because they had decided to leave the court. As to their absence from the hearing of 1 February 2010, the appellate court had set aside the first-instance court decision precisely on that ground. Consequently, the alleged shortcoming had been remedied at the domestic level.

B. The Court's assessment

1. Admissibility

281. The Court observes that the applicant's submissions under Article 5 § 4 of the Convention specifically concerned three aspects of detention proceedings pending her extradition: the availability of judicial review of her detention pending extradition, the speediness of the review in respect of the court-issued detention orders, and the absence of her lawyers from the court hearings on 16 September 2009 and 1 February 2010.

282. As regards the third aspect, the Court points out that on 31 March 2010 the Moscow City Court set aside the detention order of 1 February 2010 precisely on the ground that the applicant's lawyers had been absent from the district court hearing as they had not been correctly notified, and had remitted the case at that level of jurisdiction for a fresh examination (see paragraph 139 above). It further follows that at the ensuing hearing on 8 April 2010 the issue was examined in the presence of the applicants' lawyers (see paragraph 142 above). Accordingly, the Court accepts the Government's argument, and considers that the applicant ceased to be a victim of the alleged breach of her rights under Article 5 § 4 on 1 February 2010. This part of the application must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

283. In so far as the applicant complained about her lawyers' absence from the hearing of 16 September 2009, the Court would reiterate that the requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary for an Article 5 § 4 procedure to be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and

provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009). The proceedings must be adversarial in nature and ensure equality of arms (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999 II). It is essential that the person concerned should have access to court and the opportunity to be heard either in person or, where necessary, through some form of representation (see, among others, *Niedbała v. Poland*, no. 27915/95, § 66, 4 July 2000, and *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A, concerning detention in the context of paragraph 1 (c) and (e) of Article 5, respectively). At the same time Article 5 does not contain any explicit mention of a right to legal assistance in this respect (see *Lebedev*, cited above, § 84).

284. In her submissions the applicant referred to the case of *Lebedev*, where the judge examining the detention issue had refused to admit the applicant's lawyers, who had arrived late, to the hearing which had already started (judgment cited above, § 88). The Court observes that in the present case both the applicant's privately appointed counsel chose to leave before the judge had started examining the applicant's case. Whilst the Court is mindful of the fact that the hearing began late, which in itself may be open to criticism, it is nonetheless not convinced that the delay was extraordinary long and that the respondent Government should be held responsible for the applicant's lawyers' conduct, particularly having regard to their reasons for leaving, as cited in their statements to the District Court, namely that they "could not waste their time waiting" (see paragraph 126 above). It furthermore does not find any specific circumstances in the present case which could have adversely affected the applicant's ability to present her case at the hearing of 16 September 2009 (see, by contrast, *Lebedev*, cited above, §§ 88-91). Therefore, this complaint should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

285. As regards the remainder of the applicant's submissions under Article 5 § 4, the Court considers that these complaints 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. They must therefore be declared admissible.

2. Merits

(a) Speediness of review

286. The applicant submitted that her appeals against the court detention orders had not been examined speedily.

287. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention, and to an order terminating it if proved unlawful (see *Baranowski*, cited above, § 68). Article 5 § 4 does not compel the

Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for an appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review in appeal proceedings. Accordingly, in order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings have been conducted at more than one level of jurisdiction (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). At the same time, the standard of "speediness" is less stringent when it comes to proceedings before a court of appeal (see *Lebedev*, cited above, § 96, with further references).

288. Although the number of days taken by the relevant proceedings is obviously an important element, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Merie v. the Netherlands* (dec.), no. 664/05, 20 September 2007). What is taken into account is the diligence shown by the authorities, the delay attributable to the applicant, and any factors causing delay for which the State cannot be held responsible (see *Jablonski v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000). The question whether the right to a speedy decision has been respected must thus be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

289. Turning to the circumstances of the present case, the Court points out that the latest of the applicant's appeal statements against the detention order of 18 November 2009, extending her detention until 3 February 2010, was received by the Meshchanskiy District Court in Moscow on 25 December 2009 (see paragraph 136 above). The Moscow City Court examined the applicant's appeal against that detention order on 9 June 2010, five months and fourteen days later (see paragraph 146 above).

290. It is further noted that on 31 March 2010, following the applicant's appeals, the most recent of which had been lodged on 15 February 2010, the City Court set aside the detention order of 1 February 2010, which had extended the applicant's detention until 3 April 2010 (see paragraphs 138 and 139 above). Accordingly, it took the City Court forty-three days to examine the applicant's appeal. In the new round of proceedings the City Court examined the applicant's appeal against the detention order of 8 April 2010 on 9 June 2010, thirty-six days after it had been lodged on 4 May 2010 (see paragraphs 142 and 146 above).

291. As regards the applicant's appeal against the detention order of 1 April 2010 extending her detention until 3 July 2010, it was examined by the City Court on 14 July 2010, that is three months and twelve days after it had been lodged and after the applicant had already been released from custody (see paragraphs 141 and 148 above).

292. The Government have not argued, and the Court does not find any indication to suggest, that any delays in examination of the applicant's appeals against the detention orders mentioned above can be attributable to her conduct. Against this background, it considers that the time it took the appellate court to examine the applicant's appeals against the first-instance detention orders in the present case – ranging from thirty-six days and forty-three days to more than three months and more than five months – can only be characterised as inordinate delays. This is not reconcilable with the requirement of "speediness", as set out in Article 5 § 4 of the Convention.

293. Furthermore, the Court cannot overlook the fact that in all the proceedings mentioned above the appellate courts took their final decisions after the periods of detention authorised in the challenged detention orders had already expired, and that the latest of those decisions was taken after the applicant had already been released from custody (see paragraph 148 above). Accordingly, it considers that the issue of speediness of review in the present case closely overlaps with the issue of its effectiveness (see *Eminbeyli v. Russia*, no. 42443/02, § 68, 26 February 2009). Against this background the Court concludes that, in the circumstances of the present case, the authorities' failure to review without delay the lawfulness of the applicant's detention deprived the review of the requisite effectiveness (see *S.T.S. v. the Netherlands*, no. 277/05, § 60, ECHR 2011, with further references, and *Eminbeyli*, cited above, § 68, with further references).

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

(b) Alleged inability to obtain a review of detention

295. The Court observes that the applicant alleged that she had been unable to obtain a review of her detention during the entire period when she had been held in custody pending extradition.

296. Having regard to its findings and conclusions in paragraphs 293 and 294 above, the Court considers that it is not necessary to examine the applicant's allegations concerning review in the period between 18 November 2009 and 3 July 2010. It will therefore turn to her submissions concerning the period prior to 18 November 2009, when she was held in custody on the basis of two detention orders issued by the transport prosecutor.

297. The Government argued that it was open to the applicant to challenge her detention under Article 125 of the CCrP, and that she had made use of that procedure in issuing numerous sets of court proceedings. The applicant contested that argument, referring, among others, to several sets of proceedings under Article 125 of the CCrP issued by her when she was in custody on the basis of the prosecutors' detention orders.

298. In this connection the Court reiterates that where the decision depriving a person of liberty is one taken by an administrative body,

Article 5 § 4 obliges the Contracting States to make available to the person detained a right of recourse to a court (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12, and, more recently, in the context of detention pending extradition, *Soliyev v. Russia*, no. 62400/10, § 50, 5 June 2012). In order to constitute such a "court" an authority must provide the fundamental guarantees of procedure applied in matters of deprivation of liberty (see ibid.), and the review should be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1 (see *E. v. Norway*, 29 August 1990, § 50, Series A no. 181-A). The Court has specifically and consistently emphasised that the reviewing "court" must not have merely advisory functions, but must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful (see, among many other authorities, *A. and Others*, cited above, § 202; *Ireland v. the United Kingdom*, 18 January 1978, § 200, Series A no. 25; *Chahal*, cited above, § 130; and more recently, *Soliyev*, cited above, § 52, and *Rustamov*, cited above, § 175).

299. The Court observes that it has stated in a number of earlier cases relating to applicants' detention pending extradition that Article 125 of the CCrP could not be considered to provide an avenue for judicial complaints by individuals detained with a view to extradition, because Russian courts have consistently refused to examine complaints lodged by people in that position, on the ground that they are not party to criminal proceedings against them in Russia (see, for example, *Ismoilov and Others v. Russia*, no. 2947/06, § 50, 24 April 2008, and *Sultanov v. Russia*, no. 15303/09, § 91, 4 November 2010, with further references).

300. It is further noted that in its Directive Decision no. 1 of 10 February 2009, aimed at clarifying the practice of application of Article 125 of the CCrP by the domestic courts, the Supreme Court in plenary session stated that a prosecutor's decision to remand a person in custody pending extradition was also amenable to judicial review under Article 125 of the CCrP (see paragraph 163 above). This approach was subsequently confirmed by Directive Decision no. 22, issued on 29 October 2009 (see paragraph 164 above).

301. Having regard to Directive Decision no. 1, it appears that judicial review under Article 125 of the CCrP could have as its subject a decision (for example, as explicitly stated in it, a prosecutor's detention order, and, as it also seems, a refusal of an application for release), as well as an act or failure to act on the part of the law-enforcement authorities (for instance, a failure to take a decision to extend a period of detention).

302. At the same time the Court observes that in Directive Decision no. 1 the Supreme Court specifically emphasised that in declaring a specific decision, act or inaction of a State authority unlawful or not justified, a

judge was not entitled under Article 125 of the CCrP to annul the decision in question or to order the law-enforcement body to revoke it or to carry out specific acts, but could only instruct them to rectify the shortcomings he had indicated (see paragraph 163 above). Accordingly, regard being had to this authoritative interpretation of the application of Article 125 of the CCrP by the Supreme Court, this Court is not convinced that a domestic court was empowered under that legal provision to order the applicant's release from custody or to order the prosecutor, under whose detention orders the applicant was detained at the material time, to release her, even if the court found such a decision, act or inaction unlawful or unjustified.

303. This interpretation is supported by the decision of 16 November 2009, where the District Court explicitly stated that it had no authority under Article 125 of the CCrP to order the applicant's release from custody or to order any other authority to carry out any specific procedural acts, which, in the context of that decision and the Directive Decision no. 1, appears to suggest that it was likewise not empowered to order the prosecutor, whose inaction the applicant challenged, to release her from custody (see paragraph 133 above). The City Court upheld those findings in full and confirmed that a court had no competence under Article 125 of the CCrP to order a detained person's release or to instruct any other authority to do so (see paragraph 140 above). The courts made the same findings in the proceedings which had been issued by the applicant under Article 125 of the CCrP and were terminated with the city court decision of 12 April 2010 (see paragraph 143 above).

304. The Court also does not lose sight of the fact that the Directive Decision no. 1 provided for the opportunity for an interested party to complain again to a court about inaction on the part of the law-enforcement authorities should the shortcomings indicated not be rectified, in which case a judge could issue a "special decision", drawing the authority's attention to the situation (see paragraph 163 above). However, the Court is not persuaded that the above can be regarded as a "power to release", as interpreted in its case-law summarised above.

305. In any event, there was no such situation in the present case and the Government have not argued or provided any examples from the domestic courts' practice showing that a favourable judicial decision under Article 125 of the CCrP was, at the material time, capable of leading to the release of a person in the applicant's situation.

306. Bearing in mind what has been stated above and in the absence of any evidence to the contrary, the Court is not persuaded that the two further sets of proceedings referred to by the applicant and issued under Article 125 of the CCrP, although the courts seemed to have examined the merits of the applicant's claims, were not flawed by the same defect (see paragraphs 127, 130 and 144 above).

307. Having regard to the foregoing, the Court considers that the proceedings under Article 125 of the CCrP, issued by the applicant, at the material time failed to satisfy one of the key requirements concerning review under Article 5 § 4, as established in its case-law, namely that the reviewing court should have the competence to order the release of a detainee (see paragraph 298 above).

308. Accordingly, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

309. In view of this finding, it does not consider it necessary to examine the remainder of the applicant's submissions under this head.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

310. Lastly, the applicant raised a number of other complaints under Articles 3, 5, 6 and 8 of the Convention.

311. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. RULE 39 OF THE RULES OF COURT

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

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

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

314. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

315. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage she had sustained as a result of her detention and the inadequacy of the medical assistance available to her while in custody, as well as the suffering she and her daughter had endured owing to their separation for the period of the applicant's detention.

316. The Government submitted that they did not consider that any of the applicant's Convention rights had been violated. If the Court nonetheless decided otherwise a finding of a violation would constitute sufficient just satisfaction. They considered that the applicant's claims for non-pecuniary damages were, in any event, excessive.

317. The Court notes that it has dismissed the applicant's complaint about the alleged lack of medical assistance as manifestly ill-founded. Accordingly, no award should be made in this respect. At the same time it has found a violation of Article 5 §§ 1 (f) and 4 on account of unlawfulness of one period of the applicant's detention, as well as unavailability, ineffectiveness and lack of speediness of review of her detention pending extradition. It accepts that the applicant must have suffered distress which cannot be compensated for solely by a finding of a violation. It therefore awards her EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Pecuniary damage

318. The applicant claimed EUR 72,341 in respect of pecuniary damage, alleging that she had become disabled because of the inadequacy of the medical assistance she had received while in custody, and that after her release she had been compelled to pay EUR 9,841 for medical treatment. In that respect she submitted receipts of her payments to the private hospital of the Moscow Institute of Cybernetic Medicine in the total amount of 399,105 Russian roubles (RUB) and also claimed that her future medical expenses would amount to approximately EUR 2,500, without providing any further details in that respect. Lastly, she submitted that, having become disabled owing to the inadequate medical treatment she had received while in detention in Russia, she would not be able to work and, given that she was

aged 45 and had ten years before she could claim her pension, she was claiming EUR 60,000, which she calculated by multiplying EUR 500, which she considered an appropriate monthly disability payment, by the 120 months which remained before she reached pension age.

319. The Government stated that whilst the applicant had submitted copies of cheques relating to payment of sums amounting to RUB 399,105, there was no causal relationship between the actions of the domestic authorities and the damages sought by her.

320. The Court observes that the applicant's claims concerning pecuniary damage relate to her complaint under Article 3, which it had declared inadmissible (see paragraph 247 above). It therefore rejects this applicant's claim for pecuniary damage.

C. Costs and expenses

321. The applicant submitted that her lawyers were representing her before the Court free of charge. She therefore requested the Court to award her costs and expenses, leaving the determination of their amount to the Court.

322. The Government did not comment on this.

323. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the lack of any quantified submissions, the Court rejects the claim for costs and expenses (see *Kudeshkina v. Russia*, no. 29492/05, § 109, 26 February 2009).

D. Default interest rate

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the risk of the applicant's ill-treatment if extradited to Kazakhstan and the lack of effective remedies, the lawfulness of detention pending extradition and the alleged defects in judicial review of her detention admissible and the remainder of the application inadmissible;

2. *Holds* that the applicant's extradition to Kazakhstan would not be in breach of Article 3 of the Convention;

3. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention in respect of the applicant's detention from 3 July to 18 November 2009;

5. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention in respect of the remaining period of the applicant's detention from 18 November 2009 to 3 July 2010;

6. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention as regards the conduct of the extradition proceedings;

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the length of the proceedings concerning the applicant's appeals against the court-issued detention orders, as well as lack of effectiveness of review of those detention orders;

8. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's inability to obtain a review of her detention between 3 July and 18 November 2009;

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

10. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President