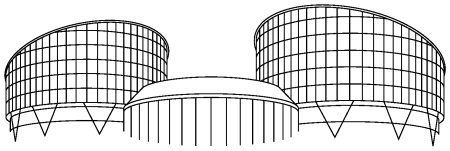

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OSHLAKOV v. RUSSIA

(Application no. 56662/09)

JUDGMENT

STRASBOURG

3 April 2014

FINAL

03/07/2014

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

In the case of Oshlakov 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 11 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 56662/09) 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 Kazakhstan national, Mr Oskar Kirillovich Oshlakov ("the applicant"), on 23 October 2009.

2. The applicant was initially represented by Mr R. Ambartsumov and subsequently by Ms E. Davidyan, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his extradition to Kazakhstan would subject him to the risk of ill-treatment, that his detention pending extradition had been unlawful and that there had been no effective judicial review of his detention.

4. On 28 October 2009 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, to also apply Rule 41 of the Rules of Court and to grant priority treatment to the application. The President also requested factual information from the Government under Rule 54 § 2 (a) of the Rules of Court.

5. On 9 February 2010 the President of the First Section decided to give notice of the application to the Government and lifted the interim measure indicated under Rule 39 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and comes from Almaty, Kazakhstan. He is currently residing in Moscow.

A. Background events and the applicant's arrest

7. In the 1990s the applicant was an entrepreneur in Almaty.

8. On 3 August 2004 the applicant was detained in Almaty on charges of involvement in the murder of Mr Ch., a crime which had been committed in 2001. In the applicant's submission, he was beaten upon detention by police officers and later by his fellow inmates. He did not complain about these beatings at the national level. No documents or other evidence were provided by the applicant in this respect.

9. On 27 September 2005 the Almaty City Court acquitted the applicant and two other men of the murder. The court noted the complaints of the two other men, but not of the applicant, that investigating officers had threatened them in order to obtain confessions.

10. In November 2005 the applicant and his family moved to Moscow.

11. On 20 December 2005 the Supreme Court of Kazakhstan, upon appeals by the victim's family and the prosecutor's office, quashed and remitted the judgment of the Almaty City Court. The applicant was represented at the hearing by his lawyer.

12. On 14 February 2006 the Almaty City Court ordered the applicant's remand in custody in connection with the criminal proceedings pending against him and put him on the wanted list. The charges against the applicant included, in particular, the creation of an organised crime group in 2001 in Almaty, purchasing and trafficking of arms, banditry and aggravated murder of Mr Ch.

13. At 10.30 p.m. on 3 May 2009 the applicant was arrested by policemen of the Yuzhnoye Butovo district department of the interior (Moscow) for the reason that his name had appeared on the international wanted list. On the same date the applicant was remanded in custody in Moscow remand prison SIZO-4 ("the remand prison").

14. On an unspecified date following the applicant's arrest, the Kazakhstan Prosecutor General's Office informed the Zyuzinskiy Inter-District Prosecutor's Office ("the district prosecutor's office") by fax of their intention to request the applicant's extradition and asked that office to ensure that the applicant remain in custody pending such request. They referred to the Almaty City Court's decision of 14 February 2006.

B. Extradition proceedings

15. On 1 June 2009 the Kazakhstan Prosecutor General's Office sent a request to the Russian Prosecutor General's Office for the applicant's extradition pursuant to the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 ("the Minsk Convention"). The request contained assurances that the applicant would not be extradited to a third State without the Russian authorities' consent or be discriminated against on any grounds, that he would be prosecuted only for the crimes mentioned in the extradition order, namely, banditry and aggravated murder, and that he would be free to leave Kazakhstan after having served the sentence imposed by a court. They also referred to a death penalty moratorium in place in Kazakhstan and stated that capital punishment would not be requested in respect of the applicant. They appended the judgments of the Almaty City Court of 27 September 2005 and of the Supreme Court of Kazakhstan of 20 December 2005, as well as the Almaty City Court's decision of 14 February 2006.

16. On 18 June 2009 the Kazakhstan Prosecutor General's Office sent their Russian counterparts an amended version of the extradition request, indicating the applicant's correct date of birth.

17. The Russian authorities carried out an extradition check, which established that a case charging the applicant with murder and banditry had been pending before the Almaty City Court and that the applicant had been placed on a wanted list on 14 February 2006.

18. The Russian Prosecutor General's Office sent requests for information to the Russian Ministry of Foreign Affairs and to the Russian Federal Security Service in order to verify the applicant's allegations of a risk of him being subjected to ill-treatment if extradited. The Russian Ministry of Foreign Affairs and the Russian Federal Security Service replied that they had no knowledge of any circumstances that would preclude the applicant's extradition.

19. On 14 July 2009 the Russian Prosecutor General's Office granted the Kazakhstan authorities' request and ordered the applicant's extradition. They decided to extradite the applicant on the charges of aggravated murder and banditry, as these were offences punishable under Articles 105 § 2, 209 § 1 and 222 § 3 of the Russian Criminal Code (aggravated murder, banditry and aggravated illegal possession of arms), noting that the statute of limitations for these offences had not expired either in Russia or in Kazakhstan. They further pointed out that, in line with the Minsk Convention and the Russian Code of Criminal Procedure ("CCrP"), differences existing in the classification of these offences and their constituent elements under Russian and Kazakhstan criminal law were not sufficient grounds for refusing extradition. The extradition order also referred to information provided by the Federal Migration Service ("FMS")

confirming that the applicant was a citizen of Kazakhstan and did not have Russian nationality. The Russian Prosecutor General's Office concluded that there were no obstacles to the applicant's extradition to Kazakhstan. The extradition order read, in so far as relevant, as follows:

> "Mr O. K. Oshlakov is charged with, in 2001, [having] created and managed an organised armed group and ... purchased arms ... and ... committed murder ..."

20. On the same date the Russian Prosecutor General's Office informed the Kazakhstan Prosecutor General's Office of the extradition order and asked them to keep their Russian counterparts informed of the outcome of the criminal proceedings against the applicant. Also on the same date the applicant was notified of the order and advised of the possibility of appealing against it.

21. The applicant appealed against the extradition order to a court. He stated that the charges against him were unfounded and that, if extradited, he would be subjected to persecution by the Kazakhstan police, who had previously threatened him in order to extract a confession to the murder. He stressed that he was at risk of being abducted or killed by police officers on his way back to Almaty. He also feared for the safety of his daughter and ex-spouse, both Russian nationals. The applicant further asserted that he would not be given a fair trial. He also claimed that he would not be able to freely practice his religion, Orthodox Christianity, in Kazakhstan and would be discriminated against on account of his ethnic origin. Finally, the applicant referred to his being ill with thyroid cancer. The applicant's counsel added that the illness rendered him unfit for prolonged detention.

22. On 28 August 2009 the Moscow City Court upheld the extradition order. It stated that the applicant was a Kazakhstan national and did not hold a Russian passport and thus could be extradited from Russia. The applicant had only applied for asylum after his arrest in Russia. Referring to the assurances by the Kazakhstan authorities contained in the extradition request, the court dismissed the applicant's allegations of persecution on ethnic grounds. It also rejected his reference to possible ill-treatment as unsubstantiated and found that the applicant's state of health was not such as to prevent his detention pending extradition.

23. The applicant lodged an appeal with the Supreme Court of Russia, claiming that police officers in Kazakhstan wanted to steal his property, that if extradited, he would face a real risk of ill-treatment, which was reportedly widespread in penal institutions in Kazakhstan, and that he suffered from cancer and thus should not be kept in detention.

24. On 13 October 2009 the Supreme Court of Russia upheld the extradition order in the final instance. It took into account the diplomatic assurances provided by the Kazakhstan Prosecutor General's Office in the extradition request to the effect that the applicant would only be prosecuted for the offences stated in the extradition request, that he was not being

persecuted on political grounds and that he would not be discriminated against. The Supreme Court concluded that the applicant had failed to present corroborative evidence that, if extradited to Kazakhstan, he would be subjected to a real risk of ill-treatment and that the Kazakhstan police wanted to take over his property. The applicant's medical condition did not preclude his detention. His detention in Russia was lawful, as it was based on the Almaty City Court's decision of 14 February 2006.

25. On 28 October 2009 the Court indicated to the respondent Government that the applicant should not be extradited to Kazakhstan until further notice.

26. On 29 October 2009 the Federal Prison Service of Russia informed the Russian Prosecutor General's Office that the Court had indicated to the Russian authorities that the applicant's extradition should be stayed until further notice.

27. Further to the Court's request, the Russian Government forwarded assurances provided by the Kazakhstan Prosecutor General's Office on 9 November 2009. They confirmed the assurances previously given and also contained specific guarantees that the applicant would not be subjected to torture or inhuman and degrading treatment and that he would enjoy all procedural safeguards provided by the United Nations International Covenant on Civil and Political Rights of 16 December 1966, which had been ratified by Kazakhstan in 2005. The Kazakhstan authorities further undertook to comply with Articles 2, 3, 5, 6, 7, 13 and 14 of the Convention, in particular, to ensure that the applicant would have a fair trial. They also stated that on 17 December 2003 Kazakhstan had declared a moratorium on the death penalty and, therefore, capital punishment could not be applied to the applicant. Finally, they gave assurances that the applicant would be provided with adequate medical assistance in Kazakhstan and that, if deemed necessary, medical personnel would accompany the applicant from Russia to Kazakhstan.

28. On 16 February 2010 the Court informed the Government that it had decided to lift the interim measure previously indicated on 28 October 2009 under Rule 39 of the Rules of Court in respect of the applicant.

C. The applicant's detention pending extradition in Russia

29. Following his arrest on 3 May 2009 (see paragraph 13 above), on 4 May 2009 the district prosecutor's office ordered the applicant's custodial detention as a measure of restraint in order "to ensure the possibility of extraditing him" on the basis of the Almaty City Court's decision of 14 February 2006. It cited Article 61 of the Minsk Convention as a legal basis for remand in custody.

30. On 9 June 2009, after receipt of the Kazakhstan Prosecutor General's Office's request of 1 June 2009, the district prosecutor's office

issued a second ruling ordering the applicant's custodial detention as a measure of restraint on the basis of the Almaty City Court's decision of 14 February 2006 and pursuant to Article 466 § 2 of the CCrP.

31. On 28 August 2009, while examining the applicant's appeal against the extradition order, the Moscow City Court denied the applicant's application for release from custody on medical grounds for the reason that, according to the information provided by the administration of the remand prison, the applicant had not been suffering from ailments precluding his custodial detention.

32. On 4 December 2009 the applicant submitted a complaint to the Moscow Preobrazhenskiy District Court. He stated that his continued detention was in breach of Russian criminal procedure and the Convention. He noted that his detention since 3 May 2009 had not been authorised by any court and stressed that his state of health warranted his urgent release.

33. On 9 December 2009 the Moscow Preobrazhenskiy District Court refused to examine the applicant's complaint under Article 125 of the CCrP for two reasons. First, the court noted that the complaint should have been lodged with another court, namely, the Moscow Gagarinskiy District Court, which had territorial jurisdiction. Secondly, it pointed out that Article 125 of the CCrP was not applicable in cases concerning the alleged unlawfulness of the complainant's detention.

34. On 23 April 2010 the Moscow City Prosecutor lodged a motion before a court asking it to extend the term of the applicant's detention pending extradition up to eighteen months, that is, until 3 November 2010, for the reason that after the adoption by the Supreme Court of Russia of the Directive Decision on 29 October 2009 judicial authorisation of the extension of a term of detention pending extradition was necessary, and that on 4 May 2010 it would be a year since the first order for the applicant's custodial detention had been made.

35. On 30 April 2010 the Moscow City Court granted the request of 23 April 2010 and extended the term of the applicant's detention pending extradition until 3 November 2010. The decision read, in so far as relevant, as follows:

> "The Russian Prosecutor General's Office's extradition order in respect of the applicant, upheld by a final decision of the Moscow City Court of 28 August 2009, has not been enforced owing to the indication by the Vice-President of the European Court of Human Rights under Rule 39 of the Rules of Court in case of Oshlakov v. Russia that any actions related to Mr Oshlakov's extradition [should] be stayed until further notice.
>
> Given that such notice has not been received to date and that there are no reasons for Mr Oshlakov's release from custody, the court considers that there are factual and legal grounds in this case warranting an extension of the term of Mr Oshlakov's custodial detention up to eighteen months, that is, until 3 November 2010, which would not be contrary to the requirements of Articles 108 and 466 § 1 of the CCrP regarding choosing and extending [a period of] detention in custody as a measure of

> restraint in order to ensure the possible extradition of a person to a foreign State for crimes committed on its territory.
>
> The term in question is reasonable, [its extension] is caused by objective circumstances related to the indication made by the [European] Court of Human Rights and the adopted extradition order, and could not be considered as proof of violations of Mr Oshlakov's rights and freedoms."

36. According to the information provided by the Moscow City Court, by 18 May 2010 no appeal had been lodged against the decision of 30 April 2010. The latter thus became final.

37. On 24 May 2010 the Moscow Babushkinskiy District Court returned the applicant's complaint of detention in excess of the term provided for by Article 109 of the CCrP to him, owing to the fact that the applicant had failed to specify which particular actions of State officials he was challenging and whether he had applied under Article 125 of the CCrP or under Chapter 25 of the Russian Code of Civil Procedure. The district court advised the applicant of the opportunity to reapply to a court after having amended the text of his complaint. It appears that the applicant did not apply to the district court again, nor did he appeal against its decision.

38. On 3 November 2010 the applicant was released from the remand prison owing to the expiry of the eighteen-month maximum term of detention pending extradition. As indicated above (see paragraph 6), the applicant is currently residing in Moscow.

D. Proceedings related to the applicant's refugee status

39. On 4 May 2009, while in detention in the remand prison, the applicant filled in a questionnaire in which he indicated that he had come to Russia in 2005 in order to seek treatment for his cancer and that he had not applied for refugee status or for temporary asylum.

40. On 2 September 2009 the applicant applied to the Moscow Department of the FMS ("the Moscow FMS") for refugee status, referring to, amongst other things, the risk of persecution by the police in Kazakhstan on account of his entrepreneur status. He submitted that in 2004 upon his arrest he had been subjected to psychological pressure and beaten up by the police.

41. On 6 October 2009 the Moscow FMS dismissed the applicant's application for refugee status for the reason that there were no grounds to suggest that the criminal case against him had been opened for persecution on the grounds of belonging to a social, ethnic or political group.

42. On 27 November 2009 the Federal Migration Service of Russia ("the Russia FMS") dismissed an appeal lodged by the applicant against the decision of 6 October 2009 by the Moscow FMS.

43. On an unspecified date the applicant appealed against the Moscow FMS's decision of 6 October 2009 to the Moscow Babushkinskiy District

Court. On 11 December 2009 the said court returned the appeal to the applicant on the grounds that it did not have territorial jurisdiction and indicated that the applicant should apply to the Moscow Butyrskiy District Court.

44. On 7 May 2010 the Moscow FMS notified the district prosecutor's office of the decisions dismissing the applicant's refugee application.

45. On 4 June 2010 the Moscow Butyrskiy District Court refused to examine the applicant's complaint about the FMS decisions on procedural grounds.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation of 1993

46. Everyone has a right to liberty and security (Article 22 § 1). Arrest, remand in custody and custodial detention are permissible only on the basis of a court order. The term during which a person may be detained prior to such an order being obtained must not exceed forty-eight hours (Article 22 § 2).

B. Code of Criminal Procedure

47. Chapter 13 governs the application of preventive measures. Remand in custody is a preventive measure applied on the basis of a court order to a person suspected of or charged with a crime punishable with at least two years' imprisonment, when it is impossible to apply a more lenient preventive measure (Article 108 § 1). An application for remand in custody should be examined by a judge of a district court or a military court of a corresponding level (Article 108 § 4). A judge's decision on remand in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime must not exceed two months (Article 109 § 1), but may be extended up to six months by a judge of a district court or a military court of a corresponding level (Article 109 § 2). Further extensions may be granted only if the person has been charged with serious or particularly serious criminal offences (Article 109 § 3).

48. Chapter 16 sets out the procedure by which acts or decisions of a court or public official involved in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of an inquiry, an investigator, a prosecutor or a court may be challenged by "parties to criminal proceedings" or by "other persons in so far as the acts and decisions [in question] touch upon those persons' interests" (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions

taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of "parties to criminal proceedings" or of "hindering an individual's access to court" may be subject to judicial review (Article 125).

49. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the Prosecutor General or his deputy is to decide on whether to order a preventive measure in respect of the person whose extradition is sought. Any preventive measure ordered is to be applied in accordance with the established procedure (Article 466 § 1).

50. Upon receipt of a request for extradition accompanied by an arrest warrant issued by a foreign judicial body, a prosecutor may place the person whose extradition is being sought under house arrest or take him or her into custodial detention without prior approval of his or her decision by a court of the Russian Federation (Article 466 § 2).

51. Extradition may be denied if the act that gave grounds for the extradition request does not constitute a crime under the Russian Criminal Code (Article 464 § 2 (1)).

C. Decisions of the Russian Constitutional Court

1. Decision of 17 February 1998

52. Assessing the compatibility of section 31(2) of the Law on the Legal Status of Foreign Nationals in the USSR of 1982[1] with the Russian Constitution, the Constitutional Court ruled that a foreign national liable to be expelled from the territory of Russia could not be detained for more than forty-eight hours without a court order.

2. Decision no. 101-O of 4 April 2006

53. Assessing the compatibility of Article 466 § 1 of the CCrP with the Russian Constitution, the Constitutional Court reiterated its settled case-law to the effect that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

54. In the Constitutional Court's view, the absence of specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 1993 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

1. Repealed by Federal Law on the Legal Status of Foreign Nationals in the Russian Federation of 25 July 2002 No. 115-FZ

would be 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 ("Preventive measures"), 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.

55. The Constitutional Court emphasised that the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP or in excess of the time-limits fixed in the Code.

3. Decision no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

56. The Prosecutor General asked the Constitutional Court for an official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person's detention with a view to extradition.

57. The Constitutional Court dismissed the request on the grounds that it was not competent to indicate specific provisions of the criminal law governing the procedure and time-limits for holding a person in custody with a view to extradition. That matter was within the competence of the courts of general jurisdiction.

4. Decision no. 333-O-P of 1 March 2007

58. The Constitutional Court 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 individual's detention was lawful and justified.

59. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, 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 established in the Russian Code of Criminal Procedure and within the time-limits fixed in the Code.

5. Decision no. 383-O-O of 19 March 2009

60. The Constitutional Court dismissed 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 set out the reasons 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 provision cannot be considered to violate the constitutional rights of [the claimant] ..."

D. Decisions of the Russian Supreme Court

1. Directive Decision no. 1 of 10 February 2009

61. By Directive Decision No.1 adopted by the Plenary Session of the Supreme Court of the Russian Federation on 10 February 2009 ("Directive Decision of 10 February 2009"), the Plenary Session issued several instructions to the courts on the application of Article 125 of the CCrP. The Plenary reiterated that any party to criminal proceedings or any other person whose rights and freedoms were affected by actions or the inaction of the investigating or prosecuting authorities in criminal proceedings could rely upon Article 125 of the CCrP to challenge a refusal to institute criminal proceedings or a decision to terminate them. The Plenary stated that whilst the scope of the decisions amenable to judicial review under Article 125 included decisions to institute criminal proceedings, refusals to admit defence counsel or to grant victim status, a person could not rely on Article 125 to challenge a court's decision to apply bail or house arrest or to remand a person in custody. It was further stressed that in declaring a specific action or inaction on the part of a law-enforcement authority unlawful or unjustified, a judge was not entitled to quash the impugned decision or to oblige the official responsible to quash it, but could only request that he or she rectify the shortcomings identified. Should the impugned authority fail to comply with the court's instructions, an interested party could complain to a court about the authority's inaction and the latter body could issue a special ruling (*частное определение*), drawing the authority's attention to the situation. Lastly, the decision stated that a prosecutor's decision to place 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.

2. Directive Decision No. 22 of 29 October 2009

62. In Directive Decision No. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 ("Directive Decision of 29 October 2009"), it was stated that, pursuant to

Article 466 § 1 of the CCrP, only a court could order the remand in custody of a person in respect of whom an extradition check was pending and where the authorities of the country requesting extradition had not submitted a court decision remanding him or her in custody. The judicial authorisation of remand in custody in that situation was to be carried out in accordance with Article 108 of the CCrP and following an application by a prosecutor for that person to be remanded in custody. In deciding to remand a person in custody, a court was to examine if there were factual and legal grounds for the application of that preventive measure. 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.

III. INTERNATIONAL INSTRUMENTS AND OTHER DOCUMENTS

A. The 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention")

63. When carrying out actions requested under the Minsk Convention, to which Russia and Kazakhstan are parties, an official body applies its country's domestic laws (Article 8 § 1).

64. Upon receipt of a request for extradition, the requested country should immediately take measures to search for and arrest the person whose extradition is sought, except in cases where no extradition is possible (Article 60).

65. The person whose extradition is sought may be arrested before receipt of a request for extradition if there is a related petition. The petition must contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested or detained before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

66. A person detained pending extradition pursuant to Article 61 § 1 of the Minsk Convention must be released if the requesting country fails to submit an official request for extradition with all requisite supporting documents within forty days of the date of detention in custody (Article 62 § 1).

B. International materials concerning Kazakhstan

67. For relevant reports on Kazakhstan covering the periods between 2004 and 2009 and between 2010 and 2012, see *Dzhaksybergenov v. Ukraine* (no. 12343/10, §§ 25-29, 10 February 2011) and *Yefimova v. Russia* (no. 39786/09, §§ 167-75, 19 February 2013), respectively.

68. The 2013 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:

> "Conduct of Police and Security Forces
>
> On December 16, 2011, clashes broke out between police and demonstrators, including striking oil workers, who had gathered in Zhanaozen's central square. In response to the clashes and subsequent mayhem, police and government troops opened fire, killing 12 and wounding dozens, according to government figures. Three further people died in the clashes and several police officers were injured. On December 17, police shot dead a protester in Shetpe. The security forces' use of force and firearms did not appear to be justified or proportionate ...
>
> Detention of Activists
>
> During 2012, the authorities amnestied a number of imprisoned activists ...
>
> Starting in January, authorities misused criminal charges to arrest over a dozen others, including Vladimir Kozlov, the leader of the unregistered opposition party *Alga!*, civil society activist Serik Sapargali, and oil worker Akzhanat Aminov ...
>
> Torture
>
> Detainees made credible and serious allegations of torture in 2012, particularly in the aftermath of the Zhanaozen violence. The authorities failed to take any meaningful steps to thoroughly investigate these allegations or hold the perpetrators accountable, reinforcing a culture of impunity.
>
> Between December 16 and 19, 2011, police detained hundreds of people in Zhanaozen, several of whom stated that police kicked and beat detainees with truncheons, stripped them naked, walked on them, and subjected them to freezing temperatures. In March, defendants at one of the trials following the Zhanaozen events testified that guards and investigators subjected them to physical and psychological abuse, including beatings, suffocation, and threats of rape or harm to family members. The prosecutor's office declined to open a criminal investigation.
>
> On December 22, Bazarbai Kenzhebaev, 50, died from wounds he sustained in police custody. Kenzhebaev had described to his family how police severely beat him, forced him to undress, lie face down on the floor and walked on him, stepping on his head. In May, the former director of the Zhanaozen temporary detention facility was sentenced to five years in prison, but those directly responsible for the beatings that led to Kenzhebaev's death have not been held accountable.
>
> Human rights groups expressed concern about Vladislav Chelakh, a 19-year-old border guard accused of murdering 15 colleagues at a Kazakhstan-China border post. The groups said the authorities held him incommunicado for weeks and coerced his confession. His case, ongoing at this writing, had been marred by irregularities."

69. The Kazakhstan chapter of the 2013 Annual Report by Amnesty International, in so far as relevant, reads as follows:

> "Excessive use of force
>
> In January 2012, following an investigation into the lethal use of force by security forces, five senior security officers were charged with abuse of office in relation to the use of force in Zhanaozen. However, the number of deaths and serious injuries from gunshot wounds indicated that many more security officers had used firearms. The trial followed the events on 16 December 2011, where celebrations of the 20th anniversary of Kazakhstan's independence in the south-western city of Zhanaozen were marred by violent clashes between protesters and police. At least 15 people were killed and more than 100 seriously injured. Reportedly, security forces had no specific training in using non-violent and proportionate methods of crowd control while policing protest demonstrations and strikes, despite months of being confronted by striking and protesting oil industry workers and their families and supporters in 2011...
>
> Torture and other ill-treatment
>
> Most of the 37 defendants, put on trial in March in the regional capital Aktau for organizing or participating in the violence in Zhanaozen, alleged that they were tortured or otherwise ill-treated in detention by security forces in order to extract confessions, and recanted their confessions in court. The torture methods described by the defendants were consistent with the allegations made by many of the released detainees in December 2011, namely that they were taken to unofficial places of detention or underground detention facilities at police stations, stripped naked, made to lie or crouch on a cold concrete floor, doused with cold water, beaten and kicked by security officers, often to the point of losing consciousness. They would then be doused with cold water again and beaten at regular intervals in cycles lasting for hours. Ten of the witnesses for the prosecution withdrew their testimonies against the defendants during the trial proceedings and complained that they had been tortured or otherwise ill-treated into giving evidence implicating the defendants.
>
> Some of the defendants identified police and security officers who had subjected them to torture and other ill-treatment. The police and security officers, accused by the defendants and their lawyers of opening fire at the demonstrators and ill-treating them in detention, testified in court as victims or witnesses, some of them anonymously. All police and security officers pleaded self-defence. When asked who had given the order to open fire, some of the officers stated that they had not received any orders to open fire but neither had they received any orders not to open fire. The General Prosecutor's Office reviewed the allegations of torture at the request of the presiding judge but rejected the claims. Seven of the defendants were sentenced to up to seven years in prison.
>
> Roza Tuletaeva, a labour activist who had been one of the main contact points for media and international organizations during the strike by oil industry workers in 2011, stated in court that during interrogations she was suspended by her hair, that security officers threatened to harm her 14-year-old daughter, that they put a plastic bag over her head to suffocate her and that they sexually humiliated and assaulted her. She said that she was too ashamed to describe the sexual torture she was subjected to in the courtroom as her family and friends were present. She was sentenced to seven years in prison for "inciting social discord".
>
> Unfair trials

> In addition to the 37 individuals who were detained in Zhanaozen in December 2011 and stood trial in March 2012, security forces detained three political opposition activists based in Almaty in January, and a prominent theatre director and a youth activist in June, and charged them with "inciting social discord" and "destabilizing the situation in the region" in relation to the Zhanaozen events. All but two were released conditionally after several weeks in National Security Service (NSS) detention when they agreed to sign confessions, admitting that they had travelled to Zhanaozen to support the striking oil industry workers...
>
> On 23 January, NSS officers arrested Vladimir Kozlov, the leader of the unregistered opposition Alga party, at his Almaty home on charges of "inciting social discord"..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

70. The applicant complained that his extradition to Kazakhstan would subject him to a risk of ill-treatment. He formulated his complaint under Article 3 of the Convention and vaguely referred to Article 6 of the Convention without making a specific detailed complaint in this respect. The Court considers that the complaint falls to be examined under Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

1. The Government

71. The Government stated that the applicant's allegations of possible ill-treatment in Kazakhstan had been examined by the Moscow City Court and the Supreme Court of Russia and had been dismissed as meritless and unsubstantiated.

72. The Government insisted that Kazakhstan was party to a number of international agreements on human rights, and its own legislation, including its Constitution and Code of Criminal Procedure, prohibited torture. There had been a moratorium on capital punishment in Kazakhstan since 2003. In upholding the extradition order in respect of the applicant, the Russian courts had taken into account the assurances provided by the Kazakhstan authorities. Among other things, they had given assurances that: the applicant's criminal prosecution had not been politically motivated; he would not be subjected to torture or other types of ill-treatment; and he would be provided with appropriate medical assistance, if required.

2. The applicant

73. The applicant stated that his extradition to Kazakhstan would breach Article 3 of the Convention. He claimed that the Kazakhstan authorities had deprived him of his property, which, in his view, proved that the rule of law was not respected in the requesting country. The Russian authorities had refused to examine his complaints of deprivation of property although, in his view, it was clear that the Kazakhstan police would do everything in their power to retain the property they had stolen from the applicant, including possible attempts at "getting rid" of him with the help of criminals.

74. The applicant further referred, albeit very vaguely, to the fact that he had been detained in the remand prison in Russia regardless of the fact that he had been suffering from cancer. He did not elaborate on that complaint.

75. The applicant further submitted in general terms that "ill-treatment of detainees was a recurrent problem in Kazakhstan", without providing any details or proof.

76. The diplomatic assurances given by the Kazakhstan authorities had been, in the applicant's submissions, belated, as they had only been received on 9 November 2009.

B. The Court's assessment

1. Admissibility

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

2. Merits

78. The Court reiterates at the outset that in order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative: it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999). Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

79. The Court further 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 conditions 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, under the Convention, or otherwise (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161, and *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 212, ECHR 2012).

80. 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*. 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, with further references, *Iskandarov v. Russia*, no. 17185/05, § 126, 23 September 2010). 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 of Judgments and Decisions* 1996-V, and *Klein v. Russia*, no. 24268/08, § 45, 1 April 2010).

81. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of extraditing the applicant to the requesting country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108 *in fine*, Series A no. 215). 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 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 raised by it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

82. As regards the general situation in a particular country, the Court considers that it can attach a certain importance to the information contained in recent reports from independent international human rights protection organisations such as Amnesty International, or governmental sources (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*,

no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, ECHR 2005-VI; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007).

83. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the requesting country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Iskandarov*, cited above, § 127). 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 v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I), except in the most extreme cases where the general situation of violence in the country of destination is of such intensity as to create a real risk that any removal to that country would necessarily violate Article 3 (see *N.A. v. the United Kingdom*, no. 25904/07, §§ 115-16, 17 July 2008; *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 217, 28 June 2011; and *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 153, ECHR 2013 (extracts)).

84. Turning to the circumstances of the present case, the Court points out that it is necessary to examine whether the foreseeable consequences of the applicant's extradition to Kazakhstan are such as to bring Article 3 of the Convention into play. Since he has not yet been extradited, the material date for the assessment of that risk is that of the Court's consideration of the case.

85. The Court observes that it has already found that although international reports have continued to voice serious concerns as to the human rights situation in Kazakhstan, there is no indication that the situation is grave enough to call for a total ban on extradition to that country (see *Dzhaksybergenov*, cited above, § 37; *Sharipov v. Russia*, no. 18414/10, § 35, 11 October 2011; and *Yefimova*, cited above, § 200).

86. Moreover, the reports by Human Rights Watch and Amnesty International on the general human rights situation in Kazakhstan in 2013 refer only to instances of ill-treatment attributable to the authorities that concerned individuals involved in the protests of 2011 in Zhanaozen and political opponents of the governing party (see paragraphs 68 and 69 above). The applicant has never claimed to belong to either of those groups.

87. The Court further emphasises that it is not evident from the materials at the Court's disposal that the applicant belongs to any other vulnerable group susceptible to be ill-treated in the requesting country. He is facing charges of banditry and murder, that is to say, regular criminal offences, which in the present case could not be described as politically motivated charges. The applicant's allegations that any detainee in Kazakhstan runs a risk of ill-treatment are too general and cannot be understood as revealing any particular risk for him arising from his individual situation. His claims of being targeted by unnamed Kazakhstan policemen who had, in his

submission, deprived him of his property, are not supported by any relevant evidence.

88. The applicant's vague reference to his poor state of health cannot in itself be regarded as a ground warranting his stay in Russia, as nothing in the applicant's submissions suggests that treatment facilities in Kazakhstan are in any way inferior to those available in Russia and that the applicant would not receive appropriate medical treatment for cancer in the requesting country. The Court thus does not discern any compelling humanitarian grounds against the applicant's extradition in the present case (see *N. v. the United Kingdom* [GC], no. 26565/05, § 42, ECHR 2008).

89. The Court therefore concludes that it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment (see *Puzan v. Ukraine*, no. 51243/08, § 34, 18 February 2010, and *Elmuratov v. Russia*, no. 66317/09, § 84, 3 March 2011).

90. Considering that the applicant has not demonstrated that he would face any real risk of ill-treatment if extradited, the Court does not deem it necessary to assess the diplomatic assurances given by the Kazakhstan authorities (see, by contrast, *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 192, ECHR 2012 (extracts)).

91. Having regard to the above, the Court considers that the applicant has failed to substantiate his allegations that his extradition to Kazakhstan would be in violation of Article 3 of the Convention.

92. There has accordingly been no violation of that provision.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

93. The applicant complained that his detention pending extradition had been in breach of the requirement of lawfulness and in violation of Article 5 § 1 (f) of the Convention. He also claimed that he had lacked access to judicial review of his detention, in breach of the provisions of Article 5 § 4 of the Convention. Article 5 reads, in so far as relevant, 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.
>
> ...
>
> 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. The parties' submissions

1. The Government

94. The Government contested the applicant's submissions. They claimed that the applicant's detention pending extradition had been lawful, as it had been authorised by the district prosecutor's office on 4 May 2009 pursuant to Article 61 of the Minsk Convention and then again on 9 June 2009 pursuant to Article 466 § 2 of the CCrP. The term of detention had been extended up to eighteen months by the Moscow City Court on 30 April 2010 pursuant to Article 109 of the CCrP and the Supreme Court of Russia's Practice Decision of 29 October 2009. The applicable domestic law had been accessible, precise and foreseeable in its application, and thus had complied with the Convention's "quality of law" standard.

95. The Government asserted that the applicant's prolonged detention in Russia after 13 October 2009, when the extradition order had entered into force, had been the result of the application of Rule 39 of the Rules of Court and the Court's indication that the applicant's extradition to Kazakhstan should be stayed.

96. The Government further claimed that the applicant had had an opportunity to challenge the lawfulness of his detention before a Russian court that he had made use of by applying to the Moscow Preobrazhenskiy District Court, which on 4 December 2009 had refused to examine the complaint pursuant to Article 125 of the CCrP.

97. In sum, the Government claimed that the applicant's detention pending extradition had been lawful and compatible with both the provisions of the Minsk Convention and Article 5 §§ 1 (f) and 4 of the Convention.

2. The applicant

98. The applicant claimed that his detention pending extradition had been in breach of both domestic and international legal provisions. The decision of the district prosecutor's office of 9 June 2009 authorising his remand in custody had been unlawful as, contrary to the requirements of Article 466 § 2 of the CCrP, the Russian authorities had not received either a copy of the Almaty City Court's arrest warrant or an extradition request by the time they had taken the decision in question. Furthermore, the applicant insisted that he should have been released no more than two months after his initial remand in custody since, pursuant to Article 466 § 2 of the CCrP, a term of detention authorised by a prosecutor could not be longer than two months. In the absence of any judicial decision covering his detention between 3 May 2009 and 30 April 2010, his detention had therefore been in breach of Article 5 § 1 (f) of the Convention. During his

lengthy detention he had not been protected against arbitrary deprivation of liberty.

99. Russian criminal procedural law remained unclear and unpredictable in respect of detention pending extradition, thus falling short of the requirements of the "quality of law" standard, as there were no indications of the maximum permissible term of detention and there was no periodic judicial review of the lawfulness of a person's detention. Detention on the basis of a prosecutor's decision affirming a foreign court order issued *in absentia* pursuant to Article 466 § 2 of the CCrP had deprived the applicant of the opportunity to present his arguments before a court considering whether to apply a measure of restraint and to challenge the lawfulness of his detention.

100. The applicant further complained that he had not had the ability to apply for release during his detention pending extradition, in breach of Article 5 § 4 of the Convention. His application for release had been left unexamined by the Moscow Babushkinskiy District Court on 24 May 2010, after the adoption of the Supreme Court's Practice Decision of 29 October 2009. In addition, the district court had made reference to Chapter 25 of the Civil Procedure Code, which could not be applicable to custodial detention.

101. Article 109 of the CCrP had not entitled the applicant to challenge the lawfulness of his detention in the absence of a prosecutor's request for the extension of the custodial measure applied against him, nor had he had any other effective procedure to obtain judicial review of the lawfulness of his detention after a certain period of time had elapsed.

B. The Court's assessment

1. Admissibility

102. The Court notes that the complaints under Article 5 §§ 1 and 4 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It considers that they are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) Article 5 § 1 of the Convention

(i) General principles

103. The Court reiterates at the outset that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and

no deprivation of liberty will be compatible with Article 5 § 1 unless it falls within one of those grounds (see, amongst many other authorities, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 60, ECHR 2012).

104. It is common ground between the parties that the applicant was detained as a person "against whom action is being taken with a view to ... extradition" and that his detention fell under Article 5 § 1 (f). The parties disagreed, however, as to whether the detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

105. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention essentially refers to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Khodzhayev v. Russia*, no. 52466/08, § 134, 12 May 2010).

106. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should therefore review whether this law has been complied with (see *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX, and *Dzhurayev v. Russia*, no. 38124/07, § 67, 17 December 2009).

(ii) The applicant's detention between 3 May 2009 and 30 April 2010

107. Turning to the circumstances of the present case, the Court points out that the applicant's detention that began on 3 May 2009 was initially ordered by the district prosecutor's office on 4 May 2009 on the basis of the Kazakhstan authorities' petition for arrest pending receipt of a request for extradition (see paragraph 29 above). The extradition request itself was sent to the Russian authorities on 1 June 2009 (see paragraph 15 above). The first judicial decision extending the term of the applicant's remand in custody was issued on 30 April 2010 (see paragraph 35 above).

108. The decision of 4 May 2009 cited as its legal basis Article 61 of the Minsk Convention. No other domestic legal provision authorising the prosecutor to remand the applicant in custody pending the receipt of an extradition request was cited, either by the Russian authorities in the domestic proceedings or by the Government before this Court. The Court has already established that Article 61 of the Minsk Convention does not establish any rules on the procedure to be followed when remanding a person in custody (see *Niyazov v. Russia*, no. 27843/11, § 120, 16 October 2012) and 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 *Abdulkhakov v. Russia*, no. 14743/11, § 171, 2 October 2012).

109. Considering that no Russian domestic legal provision governing the applicant's detention had been mentioned until the district prosecutor's office again ordered the applicant's remand in custody on 9 June 2009 (see paragraph 30 above), the Court finds that between 3 May and 9 June 2009 the applicant was in a legal vacuum that was not covered by any domestic legal provision clearly establishing the grounds for his detention and the procedure and the time-limits applicable to that detention pending the receipt of an extradition request (see *Abdulkhakov*, cited above, § 173).

110. The Court further points out that the applicant's detention between 9 June 2009 and 30 April 2010, when the first judicial decision covering his detention pending extradition was issued, was based on Article 466 § 2 of the CCrP, which the Court has already found to be "neither precise nor foreseeable in its application" (see *Abdulkhakov*, cited above, § 179, and *Niyazov*, cited above, § 121).

111. In view of the above, the Court concludes that between 3 May 2009 and 30 April 2010 the applicant was kept in detention without a specific basis in Russian domestic law or clear rules governing his situation. This conclusion is further strengthened by the fact that both decisions by the district prosecutor's office ordering the applicant's remand in custody did not set any time-limit on his detention or refer to any legal provision establishing such a time-limit. This is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, *mutatis mutandis*, *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 (see *Niyazov*, cited above, § 124). The applicable Russian law therefore fell short of the "quality of law" standard required under the Convention. The Court therefore finds that the applicant's detention between 3 May 2009 and 30 April 2010 was arbitrary and thus not "lawful" for the purposes of Article 5 § 1 (f) of the Convention.

(iii) The applicant's detention between 30 April and 3 November 2010

112. Turning to the period of the applicant's detention between 30 April 2010 when the first judicial decision extending the term of the applicant's custodial detention was delivered (see paragraph 35 above) and 3 November 2010 when he was released upon expiration of the eighteen-month maximum term (see paragraph 38 above), 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, § 74, ECHR 2008). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground(s) for detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

113. The Court further reiterates its long-established position that where extradition proceedings are provisionally suspended as a result of the application of an interim measure under Rule 39 of the Rules of Court, they are to be considered to be ongoing and in progress for the purposes of Article 5 § 1 (f) of the Convention (see, for example, *Umirov v. Russia*, no. 17455/11, § 139, 18 September 2012). However, in the present case the interim measures indicated to the Government were lifted by the Court on 9 February 2010 (see paragraph 5 above) and the Government were notified accordingly on 16 February 2010 (see paragraph 28 above). It is clear from the wording of the Moscow City Court's decision of 30 April 2010 extending the term of the applicant's detention up to eighteen months that the sole reason for such extension was the fact that interim measures had been indicated by the Court (see paragraph 35 above). The Government did not provide any explanation as to whether the domestic authorities in charge of the applicant's extradition case had been unaware of the aforementioned important procedural development or had deliberately chosen to ignore it.

114. The Court is not ready to presume that the authorities were acting in bad faith when relying on interim measures that had ceased to exist as grounds for extending the applicant's detention. However, it cannot but regret that the Moscow City Court was not informed that the interim measures in respect of the applicant ceased to apply at the time of its decision.

115. Taking into account that the Moscow City Court chose not to put forward sufficient factual or legal grounds capable of justifying the applicant's detention "with a view to ... extradition" for six months and four days, the Court finds that the applicant's detention during the period under consideration was not closely connected to the ground for detention relied on by the Government and thus was not circumscribed by adequate safeguards against arbitrariness.

116. In such circumstances the Court does not consider it necessary to examine whether the refugee status proceedings initiated by the applicant were still under way during the period under consideration, since they were in no manner assessed by the Moscow City Court in their decision.

117. The Court thus considers that the national system failed to protect the applicant from arbitrary detention, and his detention between

30 April and 3 November 2010 cannot be considered "lawful" for the purposes of Article 5 § 1 (f) of the Convention.

(iv) Conclusion

118. Given its above findings as to the arbitrariness of the applicant's detention both prior to its judicial authorisation and after it, the Court does not deem it necessary to assess the length of the applicant's detention pending extradition and concludes that throughout his detention pending extradition to Kazakhstan from 3 May 2009 to 3 November 2010 the applicant was deprived of his liberty in breach of the guarantees of Article 5 § 1 (f) of the Convention.

119. There has therefore been a violation of Article 5 § 1 of the Convention.

(b) Article 5 § 4 of the Convention

(i) General principles

120. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII (extracts)).

121. The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. It is not the Court's task to enquire into what would be the most appropriate system in the sphere under examination. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4 (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A). However, where an automatic review of the lawfulness of detention has been instituted, the decisions on the lawfulness of detention must follow at "reasonable intervals" (see, among others, *Herczegfalvy v. Austria*, 24 September 1992, §§ 75 and 77, Series A no. 244, and *Blackstock v. the United Kingdom*, no. 59512/00, § 42, 21 June 2005).

(ii) Judicial review of detention between 3 May 2009 and 30 April 2010

122. The Court points out that during the period between 3 May 2009 and 30 April 2010 the applicant was detained on the basis of two decisions of the district prosecutor's office referring to Article 61 of the Minsk Convention and Article 466 § 2 of the CCrP, respectively. The Government asserted that the applicant had had an opportunity to seek effective judicial review of his detention on the basis of the prosecutor's orders which he had made use of when applying to the Moscow Preobrazhenskiy District Court. At the same time the Government admitted that the application to the said district court had remained unexamined on the merits (see paragraph 96 above).

123. The Court observes that the Preobrazhenskiy District Court dismissed the applicant's complaint concerning the lawfulness of his detention on 9 December 2009 for two quite contradictory reasons: failure to lodge his complaint with the court having territorial jurisdiction and a lack of subject-matter jurisdiction under Article 125 of the CCrP (see paragraph 33 above).

124. In these circumstances, the Court finds that, despite the Directive Decision of the Russian Supreme Court of 22 October 2009, the issue of the lawfulness of the applicant's detention on the basis of the prosecutor's orders of 4 May and 9 June 2009 was not examined by any court. Considering that the Government have failed to indicate any other avenues of review of the lawfulness of the applicant's detention on the basis of the district prosecutor's office's orders, the Court finds that that there was no judicial review of the applicant's detention between 3 May 2009 and 30 April 2010 contrary to the guarantees of Article 5 § 4 of the Convention.

125. There has therefore been a violation of Article 5 § 4 of the Convention as regards the period of detention between 3 May 2009 and 30 April 2010.

(iii) Judicial review of detention between 30 April and 3 November 2010

126. The Court notes that the applicant's detention initially ordered by a prosecutor was extended by a Russian court by six months and four days on 30 April 2010. The proceedings by which the applicant's detention was extended amounted to a form of periodic review of a judicial character. It is not in dispute that the first-instance court was capable of assessing the conditions which, according to paragraph 1 (f) of Article 5, are essential for "lawful" detention with a view to extradition (see *Niyazov*, cited above, § 150).

127. In addition, it was open to the applicant under Russian law to appeal against the detention order of 30 April 2010 to a higher court, which would have been able to review it on various grounds. As with the procedure before the first-instance court, there is no reason to doubt that an

appellate court would have been capable of assessing the lawfulness of the applicant's detention with a view to extradition.

128. In the Court's view, the applicant was thereby able to "take proceedings" by which the lawfulness of his detention between 30 April and 3 November 2010 could have been effectively assessed by a court.

129. As for availability of the periodic review of lawfulness of the applicant's detention, the Court notes that by 30 April 2010, the date of the impugned extension, the extradition order had already become final (see, by contrast, *Abdulkhakov*, cited above, § 216). Despite the fact that throughout the entire period of detention authorised on 30 April 2010 no interim measures were indicated by the Court in respect of the applicant, he failed to demonstrate that any new, relevant factors requiring the review of the lawfulness of his detention had actually arisen in the interval between the extension order and his release on 3 November 2010.

130. The applicant's attempt to apply for release before the Moscow Babushkinskiy District Court (see paragraph 37 above), albeit futile, cannot in itself be regarded as an illustration of the unavailability of periodic review in the domestic system, since it was open to the applicant to amend the text of his application in accordance with the district court's instructions or to appeal against its decision of 24 May 2010 to a higher court.

131. In such circumstances the Court does not consider that the length of the interval between the extension granted on 30 April 2010 and the applicant's release on 3 November 2010 was unreasonable.

132. Accordingly, there has been no violation of Article 5 § 4 of the Convention as regards the period of detention between 30 April and 3 November 2010.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

133. Relying on Article 6 § 2 of the Convention, the applicant complained that in the decision of 14 July 2009 the Russian Prosecutor General's Office had stated in affirmative terms that he had committed crimes before any tribunal had proved him guilty.

134. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicant's submissions disclose no appearance of violations 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. Article 41 of the Convention provides:

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

A. Damage

136. The applicant did not submit, within the time-limits fixed, claims for pecuniary or non-pecuniary damages. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

137. The applicant claimed 2,600 euros (EUR) in legal fees and EUR 182 in postal fees for the costs and expenses incurred before the Court. The claims for legal fees were supported by invoices from his representative and two consultant lawyers. The claims for postal fees were not supported by any receipts.

138. The Government submitted that the applicant had failed to substantiate his claims with receipts and asked the Court to reject them.

139. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,200 covering legal fees incurred for the proceedings before it, plus any tax which may be chargeable to the applicant on that amount.

C. Default interest

140. 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 under Article 3 and Article 5 §§ 1 and 4 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that the applicant's extradition to Kazakhstan would not amount to a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that that there has been a violation of Article 5 § 4 of the Convention as regards the period of detention between 3 May 2009 and 30 April 2010;

5. *Holds* that that there has been no violation of Article 5 § 4 of the Convention as regards the period of detention between 30 April and 3 November 2010;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into Russian roubles at the rate applicable at the date of settlement:
      EUR 2,200 (two thousand and two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President